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August 11, 2020

VIA EMAIL

Mr. Carl Holm, AICP, RMA Director
Monterey County Resource Management Agency
Planning Department
1441 Schilling Place
Salinas, CA 93901
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Re: Comments on Second Revised Draft Environmental Impact Report for the Rancho Canada Village Project

Dear Mr. Holm:

This law firm represents the Carmel Valley Association (CVA) regarding the above referenced Project and submits the following comments on the Second Revised Draft Environmental Impact Report (SRDEIR). We also represent CVA in the litigation on this project and succeeded in getting a favorable judgment in *Carmel Valley Association v. County of Monterey, et al.* (Case No. 17CV000131), which has led to the preparation of this SRDEIR. There are assertions about the case and its affect which are inaccurate in the SRDEIR and we will correct these assertions below.

As a preliminary matter, the SRDEIR is an attempt to hold onto the dated information in the previous iterations of the EIR. When the project was approved in 2016, the County took the EIR for a project long-abandoned by a previous landowner and simply added information. The flaw, as confirmed by the Monterey County Superior Court, is that the Project Description was not accurate. Instead of starting with a clean slate and doing an honest assessment of the environmental impacts, the SRDEIR simply reuses the previously flawed EIR and deletes and adds information. This continues to confuse the public as to the true extent of the environmental impacts. Furthermore, the SRDEIR misrepresents the impact of the litigation.

The SRDEIR on page 1-1 concludes that "The Monterey County Superior Court found no problems with the impact analysis and mitigation measures in the EIR.... With very limited exceptions, the impact analyses and mitigation measures are no different from what they were previously." Page 1-3 of the SRDEIR states that "CVA did not challenge any aspect of the

environmental impact analysis or any mitigation measures." Page 1-4 states that "The superior court found no other problems with the 2016 Final EIR. None of the impact analysis was found deficient. No mitigation measures were found to be insufficient or problematic. CVA had never alleged such inadequacies." (See also, SRDEIR pp. 1-6, 2-1.) However, these statements are misleading and minimize the impact of the litigation on the County's required reconsideration of the project and the EIR. Indeed, the SRDEIR at page 2-2 states that "The Second Revised Draft EIR represents a very limited revision to the Revised Draft EIR to render the latter document compliant with the superior court's ruling."

First, CVA argued in the litigation that "Leaving the 281-unit project in the DEIR analysis unduly confuses the scope and objectives of the project and establishes a false baseline against which the Project alternatives discussed in the EIR are measured." (Petitioner's Opening Brief, 9:2-4.) CVA also argued that "'an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. The defined project and not some different project must be the EIR's bona fide subject.' *County of Inyo [v. City of Los Angeles* (1977)] 71 Cal.App.3d [185,] 199." (Petitioner's Opening Brief, 23:11-13.) And, "As demonstrated, the pattern of continuous shifting project descriptions prevents the EIR from being "a document of accountability." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 ("*Laurel Heights*"). (Petitioner's Opening Brief, 27:20-24.) CVA also argued:

> In *County of Inyo*, the court noted, "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input. Among the public comments in the final EIR were many objections and expressions of uncertainty aroused by the department's homemade project description." *County of Inyo* at 197. The Supreme Court further admonished: "The incessant shifts among different project descriptions do vitiate the city's EIR process as a vehicle for intelligent public participation." *Id*. By contrast, "If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392. (Petitioner's Opening Brief, p.28-29.)

CVA also pointed to a number of statements from the public regarding confusion over the scope and the reality of the project.

On appeal, CVA also argues that "A project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading. (*Washoe Meadows Community v. Department of Parks and Recreation*, (2017) 17 Cal.App.5th 277, 287 ("*Washoe Meadows*").) 'The defined project and not some different project must be the EIR's bona fide subject.' (*County of Inyo, supra*, 71 Cal.App.3d at 199.)" (Respondent's Brief and Opening Brief on Cross-Appeal, p. 23.) In addition, CVA argued that ""Inconsistences in a project's description…*impairs the public's right and ability to participate in the environmental review process*." (*Washoe Meadows Community v. Department of Parks and Recreation, supra*, 17 Cal.App.5th at 288, emphasis added.)" .)" (Respondent's Brief and Opening Brief on Cross-Appeal, p. 29.)

Importantly, the Monterey Superior Court concluded as follows:

> "The defined project and not some different project must be the EIR's bona fide subject." *(County of Inyo , supra*, 71 Cal.App.3d at p. 199.) The Project's history demonstrates that the "Alternative" effectively replaced the Project as the true project under consideration, and that consequently, the existing Project Description is inaccurate. Absent an accurate project description, the EIR could not fulfill its central function to provide sufficient information to allow the public and decision-makers to "ascertain the project's environmentally significant effects, assess ways of mitigating them, and consider project alternatives." *(Sierra Club, supra,* 163 Cal.App.4th at p. 533; *County of Inyo, supra,* 71 Cal.App.3d at pp. 192-193.) In short, the EIR's inaccurate project description violated CEQA. (Statement of Decision p. 32, attached to Judgment.)

The effect of the case is sweeping. The County cannot argue that all it must do is fix the Project Description and call it a day. Indeed, the environmental analysis relied on an inaccurate Project Description. Moreover, the SRDEIR adds and subtracts from analysis throughout the document. Moreover, the Project Purpose and Objectives was entirely revised. (SRDEIR pp. ES-3, 2-3.)

These assertions, and the lack of serious attention to the environmental analysis again misleads and confuses the public. Indeed, the SRDEIR asserts at page 1-8 that "Consistent with this approach, the County encourages commenters to focus on the new information found herein." However, changes are found throughout the document. It is again placing the burden on the public to figure out what to review and comment on.

The DEIR is so fatally flawed that it must be corrected and recirculated for further public comment. We present the following specific comments on the DEIR. **(All page references are to the SRDEIR.)**

1) Page ES-3, states that on 2004 the "Project applicant first proposed a residential development project at the project site." This is inaccurate. A previous applicant proposed this project. As discussed above, the SRDEIR continues to bootstrap all analysis and environmental review to this long-abandoned project. The SRDEIR cannot pretend that the applicant proposed a project in 2004.

2) When did the current applicant submit a newly revised project that is being considered in this SRDEIR?

3) When was the Vesting Tentative Map for the current iteration of the project submitted?

4) Page ES-3 states that one of the Project Purpose and Objectives is to "Assist the County in addressing the statewide housing and affordability crisis." However, the project proposes to reduce the amount of affordable housing that is required of other developers and as required by the General Plan, the Carmel Valley Master Plan (CVMP) and the County Affordable Housing Ordinance. Therefore, this assertion is a ruse and an attempt to cast the project as beneficial for affordable housing when it does not meet basic affordable housing requirements.

5) Explain how giving a special exception to the applicant in the General Plan from the normal requirements in the General Plan, the CVMP and the County Housing Element does not violate the legal requirement that the General Plan be internally consistent?

6) One of the Project Purposes and Objectives is to "Create opportunities allowing for County implementation of regional drainage control solutions." Please explain how this project accomplishes this objective.

7) Page ES-8, the SRDEIR states that "The 2013 CVMP Policy CV-1.27 requires a minimum 50% affordable/workforce housing units for the Rancho Canada Village Special Treatment Area. This ratio was based on a higher density project (281 units) that would allow for greater affordability." This is inaccurate and intended to blunt criticism of the project's reduction in affordable housing. CV-1.27 does not designate the site for 281 units of housing. The County agreed to amend the CVMP in 2012 to include the 190-unit cap. Moreover, the County's agreement with CVA promises that CV-1.6 that "There shall be preference to projects including at least 50% affordable housing units." Therefore, the project's reduction in affordable

housing is inconsistent with other provisions of the General Plan, specifically the CVMP, and inconsistent with the County's agreement with CVA.

8) Page ES-11 states that Lower Carmel Valley Control Alternatives provide additional benefits, but these alternatives are not considered because improvements "would be in excess of mitigation proportionality and nexus allowed by CEQA." It should be noted that in 2016, the applicant and one of the justifications for approving the project was the benefit to the community for flood control infrastructure. However, if in reality the applicant is only mitigating the impacts of its project, there is no overarching community benefit to the community.

9) Page ES-11 strikes out the conclusion that a Visitor-Serving Development "would not meet most of the project objectives because it would not provide housing and this is dismissed from further consideration." However, now the SRDEIR includes a visitor-serving development. It is clear that the EIR's conclusions are malleable. Please explain why a visitor-serving alternative is now feasible.

10) Page ES-11 and ES-12 concludes that while

> an increased ratio of affordable housing units would all achieve all the project objectives, it would not measurably reduce environmental impacts since the development footprint and intensity would be the same. Furthermore, the Applicant could elect to build more affordable units, if determined financially feasible, without such a scenario being considered in this Chapter. For these reasons, none of the Alternatives considered in this Second Revised Draft EIR identify a higher ratio of affordable units.

This is completely untrue and contradicts other conclusions in the SRDEIR. Page 3.5-21 concludes that "it is probable that less construction of affordable housing within the Rancho Canada Special Treatment Area would result in greater pressure to provide such housing elsewhere in the County.... the lesser amounts of affordable/workforce housing could result in longer commutes to work for Carmel Valley and Monterey Peninsula employees... which could result in worsened regional traffic conditions." (See also, p. 5-9.) Moreover, since the current General Plan and CVMP require a higher level of affordable units, the SRDEIR must address an alternative that includes more affordable housing.

11) Page ES-12 concludes that the No Project Alternative "would also not implement CVMP Policy CV-1.27, which was intended was (sic) to allow for affordable housing units to be developed within this Special Treatment Area as designated in the CVMP Land Use Map."

However, the proposed project does not implement the CVMP Policy 1.27 either. So this cannot be used as a distinguishing factor.

12) Why was the East Golf Course Alternative deleted from consideration?

13) Many of the Alternatives are described as avoiding "a substantial portion of the improvements cited in the County Service Area 50 Final Lower Carmel River Stormwater Management and Flood Control Report (Balance Hydrogics, Inc. 2014b)." However, this statement is unintelligible and the public and decisionmakers has no way of evaluating the benefits if the alternatives over the project with respect to this statement. Elsewhere, the SRDEIR states for a number of the alternatives that they "would also include the raising of a portion of the emergency access road west of the project site, to a level that has been designed to directly address the large potential flood flow path down Rio Road from the river and obviate the need for a substantial portion of the work cited in the County Service Area 50...." We assume that this is related to the first statement regarding avoidance. Page 3.2-45 states that "the Project would provide flood control benefits to CSA-50." Please clarify, as well as clarify the benefits of avoiding this infrastructure.

14) Please clarify that the Alternatives will also provide flood control benefits to CSA-50.

15) Page ES-15 states that Alternative 3 is "is considered potentially feasible at this time." What is the factual basis of this determination? The wording also indicates that it might not be considered feasible later. What facts would change this determination? The concern is that SRDEIR is setting up straw alternatives that can later be discounted as infeasible.

16) Page ES-16 states that Alternative 4 "is considered potentially feasible." What is the factual basis of this determination? The wording also indicates that it might not be considered feasible later. What facts would change this determination?

17) Page ES-17 concludes that "Alternative 5 was developed to examine the potential to lessen GHG related impacts." However, this is not accurate. Alternative 5 is a slight variation of the proposed project that is fully compliant with the 2019 Building Energy Efficiency Standards of the California Building Code. 14 Cal. Code Regs. Part 6. However, the proposed project must also comply with these standards regarding the installation of solar photovoltaic systems. The SRDEIR cannot assume that the proposed project will not comply with this standard. Therefore, the ability to lessen GHG related impacts is nonexistent. The SRDEIR must be revised accordingly.

18) Alternative 6 assumes that 30 ADUs would be built as part of the proposed project. Does the proposed project bar ADUs?

19) While acknowledging that there are slightly greater adverse impacts, the SRDEIR assumes that the significance of the impacts of Alternative 5 "would likely be the same as those of the Proposed Project." There is no support for this statement. This could include increased vehicle trips associated with the project. And many traffic impacts are significant and unavoidable, thereby there will be an increase in the severity of the significant and unavoidable impacts. This has to be acknowledged and supported by data. Moreover, there will be additional water consumption that reduces the alleged positive impact of reduced water consumption.

20) If the project developer does not bar ADUs, then ADUs cannot be prohibited later. Therefore, for the same reasons as Alternative 5, the additional traffic impacts must be analyzed for the project. Moreover, the additional water use must be considered and the analysis of water consumption must be considered.

21) The current use of the project site is for cattle grazing. What is the water consumption of the property during this period of cattle grazing?

22) We assume that the water consumption associated with cattle grazing is far less than that of a golf course. Given this, has there been benefits to habitat, the Carmel River, and species as the SRDEIR asserts would happen as a result of less water consumption as part of the proposed project?

23) Page 1-9 states that "If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the lead agency may consider the adverse environmental impacts to be acceptable. (14 CCR 15093[a])." This is an oversimplification of the requirements for a Statement of Overriding Considerations.

The California Supreme Court has stated that the alternatives and mitigation sections are "the core" of an EIR. *Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at 564; *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029; *Preservation Action Council v. City of San Jose, supra,* 141 Cal.App.4th at 1350. Public Resources Code Section 21002 states:

> The legislature finds and declares that it is the policy of the state that 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... .

Public Resources Code Section 21002.1(b) states that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Public Resources Code Section 21002.1(b).

> Public Resources Code Section 21081 encapsulates these mandates as follows:
>
> Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:
>
> (a) The public agency makes one or more of the following findings with respect to each significant effect:
>
> > (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
> >
> > (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
> >
> > (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
>
> (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

In short, the County must adopt feasible alternatives to a project when there are significant and unavoidable impacts unless it is infeasible to do so. Only when the alternatives are infeasible may the Board of Supervisors adopt a Statement of Overriding Considerations finding that the benefits of the project outweigh the significant effects on the environment. This reading of CEQA's requirement to adopt feasible alternatives is supported by caselaw. *City of Marina* (2006) 39 Cal. 4th 341, 368-369; see also *County of San Diego v. Grossmont-Cuyamaca Community College Dist*. (2006) 141 Cal.App.4th 86, 108, fn.18.

Mitigations and alternatives are substantive mandates, not mere perfunctory informational requirements which the County can ignore by simply finding that the benefits outweigh the harm.

> Further, the Legislature has also declared it to be the policy of the state "that 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 . . . ." (§ 21002.) "Our Supreme Court has described the alternatives and mitigation sections as 'the core' of an EIR." (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.) In furtherance of this policy, section 21081, subdivision (a), "contains a 'substantive mandate' requiring public agencies to refrain from approving projects with significant environmental effects if 'there are feasible alternatives or mitigation measures' that can substantially lessen or avoid those effects." (*County of San Diego v. Grossmont-Cuyamaca Community College Dist*. (2006) 141 Cal.App.4th 86, 98, italics omitted; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.) Subdivision (b) of section 21081, which "codifies an 'override' requirement and comes into play where the lead agency has issued an infeasibility finding under section 21081(a)(3)" (*County of San Diego v. Grossmont-Cuyamaca Community College District, supra*, 141 Cal.App.4th at p. 100), allows the lead agency to approve the project if it "finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment" (§ 21081).

Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App.4th 587, 597-598 (review denied).

24) Page 2-1, it is unclear as to why the definition of a PUD was deleted. Please explain.

25) Page 2-22, footnote 1, states that variances may be granted. This approach ignores the standard for granting variances. Courts have made clear that a variance should not be used to do away with zoning that protects the community welfare.

> [D]espite the applicability of the substantial evidence rule and the deference due to the administrative findings and decision, judicial review of zoning variances must not be perfunctory or mechanically superficial. ' Vigorous and meaningful judicial review facilitates, among other factors, the intended division of decision-making labor [in land-use control]. Whereas the adoption of zoning regulations is a legislative function (Gov. Code, § 65850), the granting of variances is a quasi-judicial, administrative one.

> [Citations.] If the judiciary were to review grants of variances superficially, administrative boards could subvert this intended decision-making structure. [Citation.] They could "[amend] ... the zoning code in the guise of a variance" [citation], and render meaningless, applicable state and local legislation prescribing variance requirements. Moreover, courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party forgoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations.] If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests. Abdication by the judiciary of its responsibility to examine variance board decision-making when called upon to do so could very well lead to such subversion... . (*Stolman v. City of Los Angeles* (2003) 114 Cal. App. 4th 916, 923-924.)

Variances by their very nature are intended to be rarely granted.

> [C]ourts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations] If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests. (*Topanga Assoc for Scenic Cmty. v. County of L.A.*, (1974) 11 Cal. 3d 506, 517-518.)

Moreover, the grant of a variance for nonconforming development of a 28-acre parcel in the instant case is suspect. Although we do not categorically preclude a tract of that size from eligibility for a variance, we note that in the absence of unusual circumstances, so large a parcel may not be sufficiently unrepresentative of the realty in a zone to merit special treatment. By granting variances for tracts of this size, a variance board begins radically to alter the nature of the entire zone. Such change is a proper subject for legislation, not piecemeal administrative adjudication. [Citations]. Since there has been no affirmative showing that the subject property differs substantially and in relevant aspects from other parcels in the zone, we conclude that the variance granted amounts to

> the kind of "special privilege" explicitly prohibited by Government Code section 65906. (*Topanga Assoc for Scenic Cmty. v. County of L.A.* supra 11 Cal. 3d at 522.)

Furthermore, the applicant and buyers of lots will be fully aware of the constraints before they purchased their properties. "One who purchases property in anticipation of procuring a variance to enable him to use it for a purpose forbidden at the time of sale cannot complain of hardship ensuing from a denial of the desired variance." *San Marino v. Roman Catholic Archbishop*, (196) 180 Cal. App. 2d 657, 672-673. Therefore, the SRDEIR cannot assume that variances will be granted and the project analysis must be updated to reflect the correct status of the law.

26) The SRDEIR has conflicting information regarding a Restoration Plan, which is 14 years old. Page 2-23 states that "the restoration plan discussed in this Second Revised Draft EIR is only applicable to the Proposed Project." However, page 3.3-1 states that a restoration plan is not yet developed. Moreover, a Restoration Plan was developed for the abandoned project. The SRDEIR assumes the development of restoration plan for the proposed project, but there is no way to evaluate the plan or its efficacy. Indeed, the SRDEIR did describe the components of the outdated Restoration Plan at page 3.3-59, which had to be stricken because it is only related to the abandoned project. Nonetheless, the public is in the dark about the components of such a Restoration Project. Making matters worse, and highlighting the problems with the SRDEIR, page 3.3-65 to 66 concludes that "The proposed 2006 Restoration Plan (Zander Associates 2006) identifies that the Project Applicant would replant 16 coast live oaks, but does not specifically mention replanting of redwood trees." Yet, since the plan is no longer relevant, the SRDEIR's reliance on the Restoration Plan is improper at best. In fact, this analysis is related to the conclusion that the loss of protected trees is less than significant ***with mitigation***.

Finally, on page 3.3-80 with respect to wildlife corridors, the SRDEIR states that "the Project, with implementation of the proposed 2006 Restoration Plan, would increase the amount and quality of the riparian habitat immediately adjacent to the Carmel River which would improve the value of the river as a wildlife corridor compared to existing conditions." This is absurd and again highlights the problems with the County cobbling together an EIR from outdated information and an abandoned project.

27) Page 2-25 states that "MCWRA has an unwritten policy that requires that the post Project, 100-year flow rate not exceed the preproject, 10-year flow rate. However, this policy is not practical for the Project because the site is so near the downstream end of the watershed." This statement has no context and unintelligible. Please explain.

28) Page 2-26 states that "In order to accommodate the County's future drainage channel, the developer, at the time of construction would install a below-grade drainage pipe on the project site that could connect to the drainage channel, when built, at a future date." However, the public understands that the County's project is uncertain, has no funding, and is likely never to be built. Please explain the status of the County project, and the likelihood of the project ever being constructed.

29) What is the effect of the applicant's installation of the drainage pipe if the County drainage is never constructed?

30) Throughout the entire SRDEIR is a summary of the prior County General Plan (1982) and Carmel Valley master Plan (1986). These summaries are confusing and of no consequence to the proposed project because they are no longer in effect. These summaries should be removed as they confuse the public trying to understand the SRDEIR. (See for example, pp. 3.1-12 to 13, 3.2-23 to 24, 3.3-50 to 53, 3.4-22 to 24, etc.)

31) Page 3.1-15, text stating "These codes include a wide variety of stipulations relevant to recurring earthquake related risks, including foundation and structural design, and structural tolerance," was deleted because it was in reference to the abandoned 281-unit project. However, similar context is needed for the proposed project.

32) The entire analysis regarding geology is based on a 2005 report from ENGEO for the previous abandoned project. The SRDEIR information must be updated to reflect current conditions, science, standards and project.

33) Similarly, the Hydrological analysis is based on 2005 and 2006 reports from Balance Hydrologics, Inc. (For example, pages 3.2-3, 3.2-27, 3.2-31.) SRDEIR information must be updated to reflect current conditions, science, standards and project.

34) Page 3.2-7, the SRDEIR relies on Department of Water Resources information from 2003. Is there more updated information from the Department of Water Resources?

35) Page 3.2-27 relies on a 60% factor for impervious surfaces based on a *Preliminary Stormwater Management Plan* from 2005, which was for the abandoned project. This again proves that the County's approach to simply adding and subtracting from an infirm EIR for an abandoned project results in deficient and inaccurate analysis.

36) Page 3.2-37 states that "The Proposed Project's stormwater drainage system, which includes two infiltration basins and conventional drainage facilities, would treat surface runoff." However, the SRDEIR does not state how these facilities will indeed treat runoff. CEQA requires analysis and data, not bald statements.

37) Page 3.2-39 states that "Low-impact development stormwater treatment methods such as this would be designed in accordance with the MCWRA and state agency policy and the design would ensure infiltrated groundwater would not cause underlying groundwater to exceed water quality objectives or adversely affect beneficial uses." What are these policies? How do they inform design? What is the design?

38) Like other analyses, the SRDEIR relies on old biological reports. In fact, page 3.3-33 states that "No protocol-level surveys have been conducted for CRLF in the project area." In other words, the SRDEIR does not even attempt to gather the data, even though there is evidence that CRLPF is present. The DEIR then improperly defers the conducting a site assessment in accordance with Fish & Wildlife Service guidance. Then, stunningly, the SRDEIR states that "Alternatively, if acceptable to FWS, the applicant can assume that CRLF are present and not do the surveys. (Page 3.3-68. An "agency should not be allowed to hide behind its own failure to gather relevant data." *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408.

> CEQA advances a policy of requiring an agency to evaluate the environmental effects of a project at the earliest possible stage in the planning process. We conclude that, by failing to accurately describe the agency action and by deferring full environmental assessment of the consequences of such action, the County has failed to comply with CEQA's policy and requirements.

Id. at 410 (emphasis added). "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. [Citations]." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307. "A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of *post hoc* rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. [Citations]." *Id.* at 307; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

Courts have consistently held that

> it is improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur before the project is approved.

Oakland Heritage Alliance v. City of Oakland (2011) 195 Cal.App.4th 884, 906 (citing *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621; *Sundstrom v. County of Mendocino, supra,* 202 Cal.App.3d 296; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1359).

39) Page 3.3-71 bases the conclusion that there are no breeding or wintering Western Burrowing Owls, in part, on surveys conducted of in 2003 and 2004 related to ground squirrel burrows. These studies are too old to be reliable.

40) Page 3.3-70 concludes that the impact to upland habitat for Southwestern Pond Turtles would be compensated by the construction of the habitat preserve. However, as discussed, *supra*, the Restoration Plan has not been developed and there are no criteria for such a plan. Therefore, this cannot be the basis of the SRDEIR's conclusion of the impact being reduced to a less-than-significant level.

41) Page 3.3-79 calls for rescuing steelhead from new site basins. However, the SRDEIR sounds as if approval from NOAA Fisheries and DFW will occur at a much later date, such as after the basins are constructed and the problem occurs. "The Applicant or successor(s) in interest will apply to NOAA Fisheries and to the DFW for permission to rescue steelhead ***if they become trapped***..." Given this, the problem will occur prior to the applicant or successors getting permission. And there is no indication that the Homeowner's Association or some other entity will be responsible in the event that that steelhead become trapped. The mitigation is unworkable and leaves much to chance. Therefore, it is inadequate.

42) Page 3.3-83 concludes that "the addition of some residential cats and dogs will not result in an overall significant impact on wildlife." This is again a bald and conclusory statement in violation of CEQA. In fact cats are known to wreak havoc on riparian and river ecosystems.

43) The SRDEIR describes the Project as including 51 acres of open space. This includes 11 acres of common area. The common area can be interspersed with development and therefore does not truly act as open space. Please describe the amount of contiguous open space that is not bisected, or interspersed with development, including homes, infrastructure and roads.

44) The SRDEIR mentions the Development Evaluation System (DES) in the General Plan. Will the project be subject to analysis of a DES, that must still be approved by the Board of Supervisors?

45) If the project will not comply with a DES approved by the Board of Supervisors, how does the project comply with each of the components of the DES as set forth at page 3.5-7? Please explain.

46) Page 3.5-21 states that consistency of the project with the CVMP is in Appendix D. This information should be included in the EIR like it was for the abandoned project (e.g., see strikeouts page 3-5-18 to 21). The public should not be forced to sift through appendices to review environmental impacts. *Banning Ranch Conservancy v. City of Newport Beach, supra*, 2 Cal.5th at 941; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at 442; *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239-1240.

47) Page 3.5-21 concludes that "increased amounts of affordable/workforce housing is not financially feasible." Please provide evidence supporting this contention as it relates to consideration of such an alternative.

48) Page 3.5-23 states that the project will have workforce housing. Elsewhere, it states that there will only be moderate income housing. Please resolve the inconsistency and define what workforce housing is, and the relevant income limits.

49) Page 3.7-36 states that the SR-1 Carmel Operational Improvement Project will begin in fiscal year 2016-2017. What is the current status of that improvement project?

50) Page 3.7-37, why was Mitigation Measure TR-2 deleted?

51) Page 3.8-29, at the bottom of the page ends with "... including." Including what? There is missing text.

52) It is clear that the there is a question as to whether the applicant has appropriative or riparian water rights. While the SRDEIR asserts that CEQA is only concerned with the physical impacts of the environment, the problem for the applicant is that if it turns out it does not have water rights, than additional water will be drawn from CalAm's supply. The SRDEIR must consider the impacts of the Project on CalAm's limited supply. This is particularly true

since page 3.10-29 concludes that the "net reduction is a beneficial impact for both water supply and for biological resources in the river, such as steelhead."

53) Page 4-29 and 30 discusses *Nolan* and *Dolan* Supreme Court rulings. This discussion misses the mark. The applicant has no right to develop the project site without General Plan and zoning changes. The County is not obligated to make those changes. Therefore, the County can limit the number of units to reduce cumulative impacts.

54) Page 4-36 discusses the Deep Water Desal and People's Moss Land Desal projects. Please explain the current status of these projects.

55) Page 5-21 concludes that Alternative 3 "includes a greater number of market-rate units..." This is untrue.

56) Page 5-21 concludes that Alternative 3 would not assist the County in addressing the statewide housing crisis. If the County and applicant cared about that, a mix of affordable units, include low and very-low income units, would be provided. The project does not assist in solving the housing crisis.

For the foregoing reasons, the SRDEIR must be completely revised to include environmental analysis and recirculated for further public comment.

Pursuant to Public Resources Code § 21167(f), I am requesting that the County forward a Notice of Determination to me if the Project is finally approved. That section provides:

> If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid.

Thank you for your consideration of these comments. I look forward to the County's individual responses to these comments.

/ / /

Very truly yours,
WITTWER PARKIN LLP

William P. Parkin

cc: Client