



December 8, 2009

Board of Supervisors for the County of San Diego
County Administrative Center
1600 Pacific Highway, Rm. 335
San Diego, California 92104

RE: Comments on Merriam Mountains Specific Plan and Environmental Impact Report

Dear Hon. Dianne Jacob (Chairwoman), Hon. Pam Slater-Price (Vice-Chairwoman), Hon. Greg Cox, Hon. Bill Horn, and Hon. Ron Roberts:

The Attorney General's Office has reviewed the Environmental Impact Report ("EIR") for the Merriam Mountains Specific Plan ("Project") which proposes to develop 2,700 residential dwelling units on a 2,327 acre site in a remote, mountainous and undeveloped area of North San Diego County.¹ According to the EIR, the Project will result in additional greenhouse gas (GHG) emissions of 66,547 metric tons per year (without mitigation strategies). Contrary to the summary assertions in the EIR that there will be no significant impacts, this Project will likely hinder rather than help the County meet a GHG emissions reduction trajectory consistent with AB 32 and Executive Order S-03-05.

Below, we set forth more specifically why the EIR for the Project is legally deficient under the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000, *et seq.*) Instead of continuing with "business as usual" sprawl, the County should revise the EIR to consider lower-carbon development alternatives that would promote the objectives and policies of the proposed General Plan Update to reduce GHG emissions and achieve sustainable land use in the County.

The EIR Does Not Adequately Identify and Analyze the Project's GHG Emissions.

CEQA mandates that an EIR identify and analyze all significant environmental effects of a project. (Pub. Resources Code § 21100; Cal. Code Regs., tit. 14, §15126.2.) The EIR fails to make a good faith effort to describe, calculate, or estimate the amount of GHG emissions

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the natural resources of the State. While this letter sets forth some areas of particular concern, it is not intended to be an exhaustive discussion of the EIR's compliance with the California Environmental Quality Act.

resulting from the project as required by CEQA. (See Proposed Cal. Code Regs., tit. 14 § 15064.4, available at <http://ceres.ca.gov/ceqa/guidelines/>.) Although the EIR includes a GHG Emissions Inventory for the Project, it is very confusing and based on unsupported assumptions regarding reductions of GHG emissions that result in a gross understatement of emissions. Perhaps most troublingly, while the Inventory discloses transportation-related GHG emissions of 33,269 metric tons per year, the EIR fails to include these emissions in the total GHG emissions of the Project. (EIR, pp. 2.1-28, 2.1-56; Appendix Y.) In addition, the tables of GHG emissions in the EIR state different amounts for total GHG emissions without explaining why the numbers differ.²

The EIR also fails to evaluate impacts of the Project beyond 2020, even though the EIR states that the build-out traffic analysis for the project used 2030 as the build-out year. (EIR, p. 2.1-24.) Because the Project extends beyond 2020, the EIR must analyze its projected impacts beyond this date.

The EIR Fails to Quantify Asserted Reductions in GHG Emissions.

To support its determination that climate change impacts of the Project are insignificant, the EIR makes conclusory statements regarding the reductions in GHG emissions that will be achieved by the Project and by other measures, including state regulations. For example, the EIR acknowledges that it fails to quantify reductions from mobile sources and construction activities. (EIR, pp. 2.1-30, 2.1-31.) There also is no substantial evidence supporting the EIR's estimated reductions in GHG emissions from the Project's design features. Further, very few project-specific reduction measures are proposed in the EIR, and most are permissive and not mandatory and enforceable. For example, Table 2.1-12 of the EIR lists project design features to reduce GHG emissions, such as "strive for a 50% reduction in embodied energy in water use . . ." (EIR, p. 2.1-55.)

The EIR Fails to Adequately Analyze VMT Impacts.

The EIR's calculation of transportation-related GHG emissions is grossly deficient. First, the EIR ignores the fact that the Project provides for virtually no connection to public transportation, either currently existing or planned, includes scant job creation with little internal infrastructure, and relies on nearby cities for job creation and basic services for its residents. The

² For example, Table 2.1-11 states that total emissions (excluding transportation) are 24,911 metric tons per year. (EIR, p. 2.1-54.) Table 2.1-13 states that at build-out in 2017, total emissions are 25,677 metric tons per year. (EIR, p. 2.1-56.) The GHG Emissions Inventory in Appendix Y states that total GHG emissions in 2020 (excluding transportation-related emissions) are 32,257 and 24,886 metric tons per year for a hypothetical "business as usual" project and the Project respectively, but the Inventory does not clearly explain the difference between the amounts. (EIR, Appendix Y.)

EIR does not acknowledge, let alone analyze, the impacts from promoting the use of private cars without providing any access to public transportation, even though the EIR anticipates that employment opportunities and essential services will be provided by other communities, most are more than a few miles away. Nor does it discuss the impacts of planning for almost no internal infrastructure. There is no mixed use being considered; the only commercial development planned is one shopping center with a grocery store and some small businesses, which will not be built until the fourth phase of the Project. (EIR, pp. 1-5, 1-14.)

Second, the EIR relies on road improvements, rather than smart, sustainable planning, to address transportation-related emissions. (EIR, p. 2.1-56.) The Project will allow for the widening of Deer Springs Road to an expressway-like road, providing easier access for commuters from San Marcos and more westerly urban areas to get to Interstate 15. The County suggests that this road-widening will reduce congestion and therefore GHG emissions, but this assertion is unsupported by substantial evidence and runs contrary to studies that suggest that while such road-widening may offer short term relief, any such gains are later outweighed by additional traffic.³ Further, the EIR appears to consider the Project's proximity to Interstate 15 as transportation panacea, asserting that Merriam Mountains will attract homebuyers who currently commute inter-county to jobs in the City of San Diego, thus cutting down on VMT. (EIR, p. 2.1-18.) This assertion is unsupported by data and may in fact simply promote a sprawling, freeway-dependent community. Ignoring opportunities for creating complete communities, as this project does – communities that provide basic goods and services without need for freeway travel – is inconsistent with the County's stated interest in its General Plan Update to promote infill and greater housing densities near existing urban areas.

The EIR Uses an Inappropriate Baseline for Evaluating GHG Impacts.

The EIR uses an inappropriate baseline for determining climate change impacts. To determine significance, the EIR compares the amount of GHG emissions that could be avoided through implementation of various emission reduction strategies with a "business as usual" ("BAU") scenario, which the EIR defines as a proposed project that could be built on the currently undeveloped site without any reduction strategies. (EIR, p. 2.1-32.) The appropriate baseline under CEQA is not a hypothetical future project, but rather existing physical conditions. (Cal. Code Regs., tit. 14, § 15126.2, subd. (a).)

The EIR's Finding of No Significant Impacts is Not Supported by Substantial Evidence.

The EIR concludes that the Project's climate change impacts are less than significant because "[t]he project incorporates features to reduce GHG emissions to more than 33% below BAU" and therefore "would not interfere with the State's ability to achieve its GHG reduction

³ See University of San Diego School of Law Energy Policy Initiatives Center, *Reducing Greenhouse Gases from On-Road Transportation in San Diego County*, p. 41 (2009.)

goals and strategies set for the year 2020.” (EIR, p. 2.1-44.) The EIR’s use of an inappropriate baseline based on a hypothetical project rather than existing conditions, also means that the EIR’s conclusion that the Project will not have significant climate change-related impacts is invalid under CEQA. In short, the EIR concludes that the Project will not have significant impacts because it is better than a hypothetical “straw” project.

Even if the EIR’s estimated GHG reductions are accurate, the Project would result in 58,135 metric tons of GHG emissions per year. There is no substantial evidence that GHG emissions of this magnitude would not interfere with the County’s ability to meet a GHG emissions reductions targets of reducing GHG emissions to 1990 levels by 2020 set forth in AB 32 and 80% below 1990 levels by 2050 set forth in Executive Order S-03-05.

The EIR Fails to Analyze and Impose Feasible and Enforceable Mitigation Measures to Reduce GHG Impacts.

CEQA requires an EIR to describe all feasible mitigation measures that could minimize significant environmental impacts. (Cal. Code Regs., tit. 14, §15126.4.) Because the EIR concludes that the Project would not result in significant climate change impacts, the EIR fails to analyze and adopt all feasible mitigation measures that could reduce the Project’s GHG emissions. For example, the Project includes a design feature for photovoltaic units on 20% of suitable dwelling units. (EIR, p. 2.1-55.) The EIR does not evaluate what is meant by “suitable” dwelling units, and why photovoltaic units cannot be required on 100% of the Project’s dwelling units. The EIR fails to analyze other feasible measures to reduce the Project’s GHG emissions. See Attorney General’s Office website for a list of climate change mitigation measures at http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

In addition, because the EIR does not analyze the impacts of promoting private car use and of failing to plan for public transportation, it does not discuss mitigation for those impacts, even though the EIR concedes that the Project will generate 35,518 vehicle trips per day, and even with mitigation strategies, the Project will contribute at least 58,135 metric tons of GHG emissions to the atmosphere each year. No binding mitigation measures are proposed to address the sizeable GHG emissions of this project. The County should consider requiring that the Project include at least some basic services and commercial enterprises within the community, and should look for ways to connect this large residential project to public transportation to the other communities this project will rely upon to provide its residents with employment.

The EIR Fails to Analyze the Wildfire Impacts of Climate Change on the Project

The EIR does not analyze the increased risks of locating a large development in a high fire hazard area where climate change will exacerbate wildfires. "Climate change will greatly influence the size, severity, duration, and frequency of fires. Rising temperatures will produce drier fuel conditions and increase moisture stress, likely impacting forest health and increasing susceptibility to pathogens and insects. These stressors, in turn, will further increase fire hazard." (Cal. Natural Resources Agency, 2009 *California Climate Adaptation Strategy*, p. 111

(2009), available at <http://www.climatechange.ca.gov/adaptation>.) The EIR acknowledges that global climate change may have potential effects on wildfire hazard. (EIR, p. 2.1-10.) However, the EIR found fire-related impacts to be insignificant without evaluating the effects of climate change on the Project. The EIR should evaluate the increased wildfire impacts of the Project as a result of climate change. (Cal. Code Regs., tit. 14, § 15126.2, subd. (a).)

The EIR Fails to Consider a Reasonable Range of Alternatives.

An EIR must describe a reasonable range of alternatives. (Cal. Code Regs., tit. 14, § 15126.6, subd. (a).) The EIR's discussion of a range of feasible alternatives is inadequate. Alternatives are cursorily rejected for not meeting all of the Project objectives. Alternatives must be considered, "even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (Cal. Code Regs., tit. 14, § 15126.6, subd. (b).) For example, the EIR rejects Alternative E, the General Plan Update-consistent alternative, because it does not meet most of the Project's objectives, such as a master-planned community, neighborhood commercial uses, affordable housing, and conservation of open space. (EIR, p. 5-29.) However, this alternative, or others, if slightly modified, could meet most of the Project objectives, and substantially reduce GHG emissions of the Project.

In sum, given the significant deficiencies in the EIR, we request that the Board of Supervisors refer the EIR back to the Planning Staff for revision and recirculation to include an adequate discussion of GHG emissions, climate change impacts, and mitigation of those impacts.

Sincerely,

/s/

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SEM:

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