

July 17, 2020

*Via E-Mail and Mail*

Re: Guenoc Valley Mixed-Used Development Project Final EIR Comments

Dear Mr. DeLeon:

As you know, our office represents the applicant for the above-referenced project (the “Project”), and we wish to address the various comments made in connection with the July 7<sup>th</sup> Board of Supervisors hearing – both the testimony presented at the hearing and some of the comments received by letter the day before the hearing. For ease of review, we have consolidated all our responses here.

To summarize briefly the adjustments we have made as a result of the comments, they are as follows:

- We have removed a total of 16 residential lots that abutted open space areas, bringing the total number of such lots down from 401 to 385;
- We have added connector roads so that the longest sections of the road end in a loop rather than a dead end;
- We have added the project commitments outlined in the Wildfire Prevention Plan to the Mitigation Monitoring and Reporting Plan, which makes them enforceable by the County;
- We have committed to become a certified Firewise community;
- We have added GHG credits to the mitigation measures
- We have voluntarily offered to construct the helipads on site to meet the requirements for use by Cal Fire helicopters for firefighting purposes; and
- We have removed Park Avenue as an access point for the Santa Clara housing project;

In addition to these adjustments, we have made other commitments in response to previous comments. These include increased oak preservation and wildlife corridors; exterior fire sprinklers; and property-wide fire breaks on the road network. We also include a number of

maps and illustrative exhibits with this letter to give the Board and members of the public a clear understanding of property's access routes, fire protection features, and road network.

With regard to the comment letters received prior to the July 7<sup>th</sup> hearing, the first set of comments we wish to address were received by letter (the "AG Letter") from the Attorney General's office on July 6<sup>th</sup>; this letter raised four main points regarding the FEIR, which we wish to address in turn.

## **1. Letter dated 07-06-2020, Attorney General's Office**

### **a. Risk of Wildfire Ignition and Spread**

We appreciate the detailed and thoughtful comments provided in the AG Letter, the first of which asserted that the FEIR did not adequately analyze whether the Project increased the risk of wildfire ignition and spread. As an initial matter, we believe that the Project design may have created some confusion; we would note that the Project differed from the usual application in that the applicant voluntarily offered at the outset to mitigate any risks of wildfire it had identified. This changed the EIR analysis to some extent, because rather than identifying risks that needed to be mitigated, the analysis largely analyzed the voluntary design features that reduced or mitigated those risks from the outset.

Prior to filing the application, the Project development team worked for approximately two years with Battalion Chief Mike Wink of the South Lake County Fire District, and a series of other relevant professionals, to design Project features that minimized the risk of wildfires and created robust firefighting defenses on the property. Battalion Chief Wink has been a firefighter with the California Department of Forestry and Fire Protection for 24 years, and he has been involved in fighting virtually all of the fires that have occurred in South Lake County during that time. He and other members of his team, as well as County staff, advised the applicant team on various aspects of the Project's design, including vegetation management, the siting of the Emergency Response Center and its amenities, and the design of the roads. Before addressing these Project features in detail, however, we first wish to discuss the comments in the AG Letter regarding the FEIR's analysis of wildfire ignition and spread.

After receiving the AG Letter, we wished to understand more fully the risks of wildfire ignition and spread as described in the referenced literature therein, and so we consulted with a number of faculty at the University of California at Berkeley, including Dr. Van Butsic – one of the authors cited in the AG Letter.<sup>1</sup> These faculty reviewed our Wildfire Prevention Plan, the AG Letter, and the relevant FEIR documentation.

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<sup>1</sup> Attached hereto as Exhibit 1 (CVs) is an email from Dr. Butsic affirming that he has reviewed and approved this letter, as well as the curricula vitae of four members of the Berkeley faculty with whom consulted: Dr. Thomas Azwell, Dr. Van Butsic, Dr. Michael Gollner, and Dr. Philip Marcus.

As an initial matter, Dr. Michael Gollner directed our attention to a useful article regarding wildfire ignition in California ecosystems.<sup>2</sup> The article notes a variety of factors that may have played a role in patterns of wildfire ignition and spread: population density, infrastructure development, fire-prevention success, fire-suppression effectiveness, vegetation-management practices, climate and possibly record-keeping accuracy.<sup>3</sup> Many of the anthropogenic causes of wildfire ignition (arson, smoking, children playing with fire, vehicles) have declined markedly in recent decades. Indeed, the authors aver that a factor potentially reducing vehicle fires is “improved vegetation treatment along roadside verges.”<sup>4</sup> However, as well all know from our own recent experiences in the North Bay, one significant anthropogenic source of ignition remains—electrical powerlines.

Unlike other human ignition sources, the authors explain, powerline fires and area burned have not declined in recent decades and often result in substantial spread. The authors suggest that “wiring these corridors with underground power could minimize the problem. However, utility companies have shown a reluctance to accept this solution.”<sup>5</sup>

We mention these sources of wildfire ignition because both Drs. Gollner and Butsic noted that the Project, by introducing “Project Design Feature Commitments” such as the voluntary creation of firebreaks along roads, the installation of exterior fire sprinklers on all occupiable structures, and the undergrounding of electrical utilities, eliminated some of the most significant causes of wildfire ignition. Dr. Gollner noted in particular that “undergrounding power lines should obviously reduce ignition risk on the worst weather days, as many of these fires are associated with powerline ignitions.”<sup>6</sup> Furthermore, they noted a number of other aspects of the Project that reduced wildfire risk, in contradistinction to a more typical subdivision.

Generally, humans are the main cause of fire ignitions in most of California, and in Lake County, nearly all natural vegetation is flammable from July to November. Dr. Butsic noted that low density developments may have a number of features that increase the risk of wildfires.<sup>7</sup> These include 1) substantial amounts of natural vegetation, often without any mechanism for ensuring compliance with vegetation clearing requirements; 2) the frequent reliance on wells as the sole water source, which can create problems of water access for firefighting; and 3) the difficulty of defending each structure individually when they are located at a distance from each other.

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<sup>2</sup> Keeley, J., Syphard A., *Historical Patterns of Wildfire Ignition Sources in California Ecosystems*, INTERNATIONAL JOURNAL OF WILDLAND FIRE, 2018, 27, 781-799.

<sup>3</sup> *Id.* at 794.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Gollner, M., Personal Communication, July 13, 2020.

<sup>7</sup> Butsic, V., Personal Communication, July 12, 2020.

While we understand that this type of typical low density housing within the Wildland Urban Interface (“WUI”) is not preferred, Drs. Butsic and Gollner pointed out that many of the Project design features make the risks referenced above inapplicable. As an initial matter, the Wildfire Prevention Plan establishes a network of fire breaks; it reduces high fire fuel vegetation through year-around grazing; and it establishes long-term and enforceable defensible spaces around buildings. Furthermore, as a result of initial comments on the Project at the DEIR stage, the applicant undertook to expand the fire breaks considerably, and they exceed all applicable Cal Fire standards.

We understand the concern raised by the AG Letter that the language of the Wildfire Prevention Plan may have suggested that these measures were discretionary rather than mandatory. Accordingly, the EIR consultant has incorporated the Project Design Features Commitments (“Project Commitments”) that were embedded within the Wildfire Prevention Plan (“WPP”) into the Mitigation Monitoring and Reporting Plan (“MMRP”), and this will require the adoption of all of these Commitments and make them enforceable by the County. In addition to the County, the homeowners’ association will have the right to ensure that all property-owners abide by the WPP. Attached as Exhibit 2 (Bradford letter) is a letter from Michael Bradford of the firm of Paul Hastings discussing the Project CC&Rs. Mr. Bradford is the author of these CC&Rs, and his letter explains the mechanisms available to the association to compel the long-term maintenance and enforcement of our fire prevention measures.

Similarly, as part of the Project Commitments the applicant will install a three-part fire suppression system: 1) fire hydrants distributed throughout the site along all of the Project roads, so that all homes can be served by a hydrant; 2) interior and exterior fire sprinklers on all structures; and 3) an extensive communications system to alert onsite security and the local fire department in the event of a fire – whether within a structure or outside. It is particularly worth noting the exterior fire suppression systems, as they are a significant expense (the average residential exterior sprinkler system costs between \$40,000 and \$60,000), and it is not required by current building or fire codes. Attached as Exhibit 3 (Waveguard) is a letter regarding Waveguard, a popular form of exterior sprinkler, which explains how these types of systems work to eradicate fires and stop their spread.

Further, as shown on page 31 of the WPP, the Project proposes a network of fire hydrants throughout the development. The combination of fire hydrants, fire breaks, and exterior sprinklers distinguishes the Project from the typical rural, low density projects identified by Dr. Butsic and his colleagues in the academic literature; unlike those developments, the Project has a safe, reliable and easily accessible supply of water for fire suppression purposes. As a result, the Project simply does not have the same wildfire risks associated with a low density development lacking in water infrastructure. As noted by Dr. Butsic in our discussions with him, the type of analysis that typically links lower densities to home loss do not take into account innovations such as these. In other words, the literature that says that lower density developments can have a greater risk of wildfires is not applicable to a planned development that has a network of fire hydrants, fire breaks, and exterior sprinklers on each residence. Similarly, Dr. Butsic and his

colleagues noted that the Project vegetation management is more prescriptive than in the areas studied in the relevant literature, as there are mechanisms to enforce such management.

Related to the issue of vegetation management, we have added one further Project Commitment to the MMRP, shown in redline on the attached Exhibit 4 (MMRP): we have volunteered to become a Firewise certified community. We plan to work with the group at UC Berkeley during the construction of the Project to meet the certification standards, and thereafter we will maintain this certification for the life of the Project. The UC Berkeley team is very excited about the possibility of working with us on an ongoing basis and having the opportunity to study the Project as we construct it, as they feel it could be used as a model for fire-safe communities in California and could add to their understanding of fire prevention strategies.

Furthermore, the Project is a planned development that was designed to incorporate a number of natural fire prevention features not generally seen in a residential subdivision. Attached as pages 6 and 11 of Exhibit 5 (Maps) are two maps: the first of these shows the relationship of the Project clusters to agriculture, irrigated lands, fire breaks, and large water bodies – all of which act as natural buffers and which total over 5,000 acres of defensible space surrounding the development clusters.<sup>8</sup> The second map shows this same acreage with the delineation of the grazed lands added in and superimposed on the fire hazard severity map. Together, the maps help to convey the fact that the Project is insulated by these features; again, this is very different from a typical subdivision in a WUI region.

In addition to these features, the Project benefits from being in a low density population base that is well served by emergency services. Battalion Chief Wink has pointed out that the South Lake County Fire District is 293 square miles in size with two existing fire Stations (and a Cal Fire station) available to service an existing population of only approximately 10,000 people. The Project itself is constructing a third fire station and Emergency Response Center, a very significant expenditure, primarily so that the Project and the surrounding properties are able to have the benefits of a quick response time for emergency personnel. In addition to the South Lake County region, this fire station will be available to provide assistance to neighboring counties (Napa and Yolo) if requested to do so, and can provide backup to the other South Lake County fire stations, providing a benefit far beyond the Project boundaries.

Finally, although the overall density of the Project is low relative to the size of the property as a whole, the Project itself actually consists of four separate Phase One development clusters, and the majority (more than two-thirds) of the lots are between 1 and 4.9 acres in size. The maps on the first five pages of Exhibit 5 (Maps) show the relative densities of the development clusters and demonstrate that the densities of the clusters are approximately ten times more dense than the overall land use density of the entire ranch. Because each of these clusters is surrounded by non-flammable landscapes, they serve to prevent the spread of fire to or from these areas.

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<sup>8</sup> This acreage consists of 2,535 acres of firebreaks, and 2,560 acres of irrigated agriculture and water bodies.

Taken together, therefore, the Project adopts a number of best practices that reduce the risk of wildfire ignition below a significant level and significantly ameliorate the risk of its spread. This creates a robust and resilient system of wildfire prophylaxis and defense, summarized by Drs. Gollner and Butsic as follows:

- Underground powerlines will limit ignitions, especially during the worst fire weather, making the Project unlikely to be a source of extreme fires;
- Because of the greenspace, agriculture, waterbodies, and exterior/interior fire suppression systems, wildfires are less likely to spread from the Project to other locations. Likewise, these same features make it less likely that fires started outside the Project area will spread to the Project site;
- The Project's ability to regulate vegetation control on individual parcels differentiates it from most subdivisions, and the enhanced fire breaks around roads and structures – when properly maintained, as here – mean that the Project does not have the same level of fire risk as the usual subdivision;
- Homes and buildings within the Project will be less flammable than average homes due to superior design and WUI construction standards, including the interior and exterior fire suppression systems;
- All of these positive features are compounded by one additional significant factor: the presence of a local Cal Fire station on the site. As the result of a recent request by Battalion Chief Wink, we have volunteered to construct the helipads to Cal Fire standards and add fire-rated water sources adjacent to the pads, so that the large firefighting helicopters can land and refill their tanks safely and efficiently. Again, this provides a benefit not only to the Project, but to the South Lake County area and to the adjacent Napa and Yolo counties, should they wish to use the services of this station. The fire station and associated improvements are a very unusual and important Project Commitment, because all of South Lake County will be much better situated to fight any fires that may start in the area.

Ultimately, the Project simply does not have the same associated fire risks seen in the current literature on rural and WUI wildfires. Rather, the Project was designed from the beginning to ameliorate these risks. Could it be possible to reduce the risks even further? A useful analogy was provided here by Dr. Butsic, who noted to us that of course it would always be possible to make the development 100% fire safe by paving the entire site – yet that would obviously not be an appealing landscape. This illustrates well the fact that CEQA is at its heart an exercise in tradeoffs between risk and benefit, and this Project can capably demonstrate that it is as fire safe as is feasible – and certainly more fire safe than other subdivisions of its size.

## **b. Analysis of Alternative C**

We take seriously the assertion in the AG Letter that FEIR does not adequately analyze the fire risks associated with Alternative C and that this alternative might not have the risk of wildfire associated with lower density developments such as the Project, but for many of the reasons discussed above, we believe that Alternative C cannot be shown to be preferable on fire-risk reduction grounds. Although lower density subdivisions can have a greater risk of wildfires than clustered subdivisions, that is not necessarily the case here where the Project design incorporates features and systems that eradicate the differences (in terms of wildfire risks) between high density and lower density developments.

Perhaps more to the point, however, is the fact that the very features that make the Project resilient to wildfire risks are the very features that would be economically infeasible in a more tightly clustered design. A single cluster of 400 homes and a large hotel would not be able to command prices that could pay for underground utilities, exterior sprinklers, helipads, animal husbandry, water recycling, and a Cal Fire station on site. Of equal importance, the series of roadway fire breaks and fuel load management throughout the landscape would not be implemented because those features would be irrelevant; a densely clustered subdivision would not need an extensive network of roads, and thus the roadway fire breaks would not be built. In the absence of these design features, there is no evidence that a densely clustered subdivision would have a reduced fire risk. And, a densely clustered subdivision would not meet the Project objective of becoming a “model project’ of wildfire mitigation.”<sup>9</sup>

In addition, the Project has other well defined objectives that cannot be met with Alternative C. Specifically, one of the most important Project goals is to provide educational training programs to expand the existing high-end hospitality and construction employment opportunities within Lake County.” To this end, the applicant is currently in negotiations with a world-famous hospitality school to establish a training program for employees at the Maha Resort. Without the series of boutique luxury hotels associated with the Project, however, there would be no need to provide this level of training, nor the same number of jobs. Thus, the adoption of Alternative C would mean the loss of this program. Similarly, the adoption of Alternative C would mean the loss of the landscape stewardship practices described in the project objectives, as the economics of the Project would not sustain these measures.

A letter from IMI, the sales team associated with the Project is attached here as Exhibit 6 (IMI). They discuss the attributes of a boutique luxury hotel and associated residences and describe how these are incompatible with the design of Alternative C. They also describe how the Project design is necessary to provide the economic base for the various amenities and benefits provided to residents, guests and the community. Essentially, the Project requires a very large capital expenditure on infrastructure improvements relative to its size; without the profit margins associated with a luxury profile, the Project is infeasible.

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<sup>9</sup> Statement of Project Objectives, November 1, 2019.

As you know, even if Alternative C were somehow found to be environmentally superior, which we believe it is not, CEQA would not require its adoption if it were ultimately infeasible.<sup>10</sup> Here, the analysis is even more nuanced: we contend that Alternative C is not environmentally superior because the economic losses associated with a higher density (and thus lesser revenue generating) project would nullify the very design features that provide the Project's extensive environmental benefits. In order to create an environmentally sustainable project with habitat corridors, native plant nurseries, water recycling, zero net energy improvements, and state of the art fire suppression systems, the Project relies on the revenues associated with a lower density, luxury ambience. In addition, although the Project overall has a low density, as demonstrated above, the density within each cluster is considerably higher than for the Project as a whole.

### **c. Wildfire Evacuation**

As an initial matter, it is important to emphasize the network of communications systems associated with this planned development. The Project includes features that extend the early warning systems, access to notifications, and preparedness for emergency situations. These features included a "non-opt-out notification system, a siren, onsite staging and meetings pots, organized evacuation, and an onsite fire station built within the Phase One development.

We feel it will also be helpful to provide further clarification on the road systems and evacuation routes associated with the Project. Initially, the AG letter questions whether the roadways are sufficient to accommodate the evacuation of residents while simultaneously allowing emergency response access. It should be noted that all of the Project roads are 20' wide and less than 16% slope, enabling the passage of evacuating residents and incoming emergency vehicles. As shown on the attached Exhibit 7 (Access) map, there are three driveways leading out onto Butts Canyon Road: an existing ranch road; an existing winery road; and a new road over two miles to the south at McCain Canyon Road. In addition, there is an existing road running from Highway 29 through Grange Road and the neighboring properties to the north which can be utilized in case of emergency – either by emergency vehicles, or for guided evacuation.

Furthermore, Dr. Gollner directed our attention to the standards promulgated by the National Fire Protection Association, which establish the number of means of access required for land developments. Specifically, their standards indicate that for residential areas, the required number of access routes for projects with 101-600 households is two.<sup>11</sup> Thus, the Project is in compliance with this standard.

Additionally, as indicated on Exhibit 8 (5 Mile), all lots are within five miles of the onsite fire station and Emergency Response Center. Thus, first responders will already be present during any emergency situation. It should also be noted that the Project will have an extensive communications system to guide and direct any emergency situation, including an evacuation.

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<sup>10</sup> CEQA Guidelines § 15091.

<sup>11</sup> See NFPA 1141, Table 5.1.4.1(a). It should be noted that the number of access routes for developments with over 600 households is three.

As mentioned, the property will be equipped with a siren, a mandatory text message system for all employees, visitors, and residents (equivalent to Nixle but “non-opt-out” rather than “opt-in”), and its own security personnel. The property has four separate meeting points, and in an emergency everyone will be directed to the nearest designated meeting point. We believe that the AG Letter perhaps misunderstood the point of the various gathering and staging areas onsite. These gatherings are intended to facilitate orderly evacuation from the property in the event such is required. Residents and visitors who meet at these sites will be provided with instruction from staff and emergency personnel regarding the best means of evacuation. In the usual evacuation situation, much of the delay is the result of the notification process: emergency personnel must go from door to door to ensure that inhabitants have notice of the evacuation. Here, by contrast, everyone on the property will automatically receive notice.

With regard to the mechanics of internal evacuation and regional evacuation connections, we would note, per Battalion Chief Wink, that there are three local evacuation centers that would serve the Project: Twin Pines Casino, Middletown High School, and Hidden Valley School. These are the evacuation centers that are currently used for the South Lake County area. Twin Pines Casino is 8.3 miles from the property; Middletown High School is 7.1 miles from the property; and Hidden Valley School is 11 miles from the property. Thus, for purposes of evacuation analysis, the relevant destinations are these centers, and not cities further afield. It is also worth noting, as shown on the Exhibit 7 (Access) map, there are roads leading in all directions from the area. Although the AG Letter is correct to point out that the lack of a traffic signal at the intersection of Butts Canyon Road and Highway 29 results in a current level of service F at that site, the FEIR requires the applicant to enter into an agreement with CalTrans, prior to issuance of any Project permits, for construction of the intersection improvements. Thus, by the time there are any meaningful number of residents living on the property, this traffic condition will have been improved.

#### **d. Road Standards.**

The fourth set of comments in the AG Letter deal with road standards and dead-end road limitations. We have consulted with the Project engineers, and they have prepared a map, attached as Exhibit 9 (Road Standards), analyzing the various road lengths and features.

Before discussing this map in detail, however, it is usual to describe briefly the administrative procedures used by the County of Lake for approval of roads. The Project site is in a State Responsibility Area, which means the site is subject to the road standards outlined by the State’s Fire Safe Regulations. The SRA Fire Safe Regulations (14 CCR § 1270.04), which were adopted in 1991, state that a local ordinance that is the same or more stringent than the state SRA Fire Safe Regulations applies instead of the state Regulations if the Board of Forestry and Fire Protection certifies the local ordinance as having the same practical effect as the state regulations.

The Lake County Fire Protection Standards allows for waivers or exceptions to the standards, and states: The terms of these Fire Protection Standards shall apply uniformly throughout the County of Lake to every subdivision or other residential development of land, except where

conditions of water availability, topography or conditions of native vegetation are such that in the judgment of the responsible firefighting agency the terms may be waived in greater or lesser degree consistent with protection of life and property. Lake County's longstanding administrative procedure is to verify that a project's road either meet the standards or demonstrate the same overall practical effect. The County does not utilize a formal exception application process but rather reviews the proposed road to ensure that the proposal meets the requirements or the "same practical effect" standard via an informal process.

During the application process, the County staff and fire representatives worked with the applicant to determine that length, width, slope and other aspects of the road network would allow for safe ingress and egress by visitors and residents, both on a day-to-day basis and in an emergency situation. In our discussions with the County after receipt of the AG Letter, they are comfortable that their administrative procedures were followed and that the road network is safe. The County based that decision on the fact that all roads are within five miles of a fire station; all roads comply with width and slope requirements; all roads have ample fire breaks (120' at every road); each road is two-lane; all of the structures have exterior sprinklers; all roads have hydrants throughout; and there is, as mentioned above, an extensive system of planned development communication systems. Together, these create a road network that far exceeds in safety the standards required under the Code.

Out of an abundance of caution, however, we asked the project engineers to prepare the Exhibit 9 (Road Standards) map to verify all of the road lengths relative to the road standards. In two locations (at the northeastern and northwestern edges of the Phase One project boundaries), a long road served a number of parcels at its terminus, with those parcels bordered by open space. Understanding the concerns raised by the AG Letter, we have eliminated 16 of those parcels, in each case leaving only two large parcels served by a shared driveway at the dead-end limitation. As a result, we have reduced the number of residential parcels in the Project from 401 to 385.

Similarly, for both Bohn Ridge and the Equestrian Lodge, we have created a loop road at the road terminus in order to avoid a dead-end. For Bohn Ridge, we were able to utilize the existing golf course road, and for the Equestrian Lodge, we simply show a road connection within two of the subdivision parcels.

We appreciate the AG Letter directed our attention to this matter, and we feel that these modest revisions make an appreciable improvement to the Project overall. By merging some of the proposed parcels, we will see a reduction from 401 to 385 parcels, with no clusters of parcels occurring at the end of long dead-end roads. And because all of the parcels within Phase One are within five linear miles of the Emergency Response Center, this means that they can all be comfortably supported by the ERC with a very adequate response time of under ten minutes.

In summary, then, we have made four minor revisions to the Project in response to the AG Letter: 1) we have reduced the number of residential lots from 401 to 385; 2) we have volunteered to become a certified Firewise community; 3) we have added the Project Commitments into the MMRP; and 4) we have in two places added short connector roads within

the existing subdivisions to create a loop at the terminus of longer roads. Although we do not believe that any of these changes were required in order to mitigate significant environmental impacts associated with the Project, we believe they are an additional benefit and commitments demonstrated by the Project.

## **2. Letter dated 07-06-2020, Center for Biological Diversity**

### **a. Habitat**

Because the environmental consultant has done a thorough job of responding to this letter, we do not wish to go through each point in turn, but we would like to comment briefly on some of its aspects. As an initial matter, we wish to point out to the County and to the Board that the Center for Biological Diversity (“CBD”) has attempted at each juncture during the CEQA review of this Project to delay and to delay again, apparently with a motive to frustrate the process. Rather than consolidating all of their comments and providing them early, they have dragged out their comments a few at a time, which accomplishes little other than delay.

When in April of this year, the CBD submitted their comments on the DEIR regarding the Mayacamas to Berryessa (“M2B”) Study and the impact of the Project on wildlife corridors in the region, we accepted their comments in good faith and agreed – on a purely voluntary basis -- to dedicate approximately 425 acres of additional land to establish additional wildlife corridors. After consulting with the local Audubon Society and Sierra Club who had been involved in the M2B Study, we recognized the importance of the corridors in question and the value in preserving those areas for the movement of wildlife. The Project development team hired an additional wildlife biologist who spent untold hours mapping the best routes to conform as closely as possible to the M2B pathways and to achieve the best possible long-term outcomes for the wildlife in question. This is a very significant improvement over the existing conditions because the status quo includes wildlife exclusionary fencing and other aspects that prohibit the ease of wildlife movement. We have prohibited this type of fencing in the Design Guidelines and CC&Rs.

In response, the applicant and the County received – the day before the hearing – a lengthy missive complaining that the FEIR did not adequately address impacts to habitat or wildlife connectivity and established insufficient setbacks. Apparently, 400 acres of corridors and 300’ setbacks are now inadequate. One suspects that had the applicant offered double – or triple – the acreage and setbacks, the response from the CBD would have been the same. We are reminded of Dr. Butsic’s joke that if we were to pave 100% of the property, there would be no risk of fire. Similarly, if we were to leave the entire property alone, there would arguably be no risks to the wildlife living there – and no project. But of course CEQA is not a mallet with which to bludgeon development, but a lens through which to view (and mitigate) the environmental consequences of that development. Here, we would simply point out that the corridors and setbacks are functionally ample to enable the free passage of wildlife. And we would note that no objections to the setbacks and wildlife corridors have been raised by those associated with the M2B Study or by local environmental groups. Those groups, who are intimately familiar with

the region, have worked closely with us to tailor this Project and recognize that the habitat connectivity achieves its intended goals.

### **b. Transportation Demand Management**

Here, a few technical words on the legal aspects of this issue are appropriate. In a footnote, CBD asserts that the TDM Plan was "belatedly published" as an Appendix to the Final EIR. CBD further asserts that the addition of the TDM Plan requires recirculation of the EIR. This is simply incorrect. The TDM Plan is not required to be included in the EIR; rather, a draft has been included with the Final EIR to provide additional specificity and clarification regarding mitigation measures 3.7-1 and 3.13-4. Recirculation is not required.<sup>12</sup>

Both of the referenced mitigation measures require the Project Sponsor to develop and implement a final TDM plan prior to the issuance of occupancy permits for Phase One. (See FEIR at 3.13-36.) This approach is sanctioned in CEQA Guidelines § 15126.4(a)(1)(B), which provides legal authority for deferring selection of specific measures where it is not practical at the time the EIR is prepared, so long as the lead agency describes the mitigation options that will be considered to achieve a performance standard articulated at the time of project approval.<sup>13</sup> Mitigation Measures 3.7-1 and 3.13-4 satisfy these requirements, and the draft TDM Plan is the next step toward final selection of specific measures. Mitigation measure 3.13-4 (which is also incorporated into mitigation measure 3.7-1) requires that the TDM include all feasible measures to achieve a performance standard that reduces the VMT per capita of the Proposed Project to below the regional average.

The final TDM must be submitted prior to issuance of occupancy permits for Phase One, and the mitigation measures include potential strategies such as shuttle services, carpooling programs, preferential parking, parking spaces for car share, on-site sale of transit passes, and designation of a TDM coordinator, among other potential measures, for achieving the performance standard. The Errata amplifies Mitigation Measure 3.14-4's performance standard – in that it is expected to reduce vehicle trips and VMT from the Proposed Project by 20 percent. The proposed TDM Plan goes above and beyond what is required in offering different strategies to reduce vehicle trips and VMT.

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<sup>12</sup> *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1130 (recirculation is not required when changes merely clarify, amplify, or make insignificant modifications to an adequate EIR); CEQA Guidelines § 15088.5(b)).

<sup>13</sup> *Sacramento Old City Assn v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1029; *City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 854 (upheld EIR's traffic mitigation where mitigation measures required adoption of a TDM Plan within 2 years of project approval, identified measures to be evaluated, performance goals, and required a monitoring plan and schedule for implementation); *Mission Bay Alliance v Office of Community Inv. & Infrastructure* (2016) 6 CA5th 160, 188 (transportation management plan included provisions for monitoring and refinement of mitigation measures coupled with specific performance standards).

The additional detail and clarifying information contained in the TDM Plan, here, is completely distinguishable from the situation in *Spring Valley Lake Association v. City of Victorville* (2016) 248 Cal.App.4th 91, 108, cited by CBD. In that case, the City replaced 26 pages of the EIR's hydrology and water quality text "with 350 pages of technical reports and bald assurance the new design is an environmentally superior alternative for addressing the project's hydrology and water quality impacts."<sup>14</sup> Such is not the case here, where the TDM plan was provided for informational purposes and not to remedy a defect in the analysis.

### **c. Purchase GHG Offsets**

The Errata includes a revision to Mitigation Measure 3.7-1 that adds the purchase of GHG emission credits to offset the difference between the mitigated project emissions and the recognized 2030 service population thresholds. As revised, the mitigation measure meets CEQA's requirements, in that it provides specific conditions, adequate performance criteria, and is not impermissibly vague. CEQA Guidelines, § 15126.4; see *Golden Door Properties, LLC v. County of San Diego*, 2020 WL 3119041 (carbon offset credits require performance standards to ensure mitigation goals are achieved).

The revision does not trigger recirculation either. Recirculation is required when a measure meets all of the following: "[it is] feasible . . . considerably different from others previously analyzed [and it] would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it." CEQA Guidelines § 15088.5(a)(3). Here, the measure will be adopted, which means even if it is not feasible, recirculation is not required. *South County Citizens for Smart Growth v. County of Nevada*, 221 Cal.App.4th 316, 330 (2013) (all criteria must be met to trigger recirculation). As the Response to Comments makes clear, the availability of offsets is not guaranteed, "particularly in light of the significant number of projects throughout the state of California that are similarly relying on purchase of offsets to mitigate GHG emissions." Response to Comments on Final EIR, p. 31. Accordingly, AES concluded that the purchase of offsets "cannot be considered feasible."

Nevertheless, the applicant has committed to purchase of GHG offset credits. Specifically, the applicant will purchase 14,865 CARB approved credits for Phase One and 4,099 CARB approved credits for future phases to the extent such offsets are available and economically feasible. *Sierra Club v. County of Fresno*, 6 Cal.5th 502 (2018). In sum, Mitigation Measure 3.7-1 does not trigger recirculation because it will be adopted, even though it may not be feasible. CEQA Guidelines § 15088.5(a)(3).

### **3. Letter dated 07-05-2020, Sierra Club Lake Group**

We wish to address the letter of Victoria Brandon on behalf of the Sierra Club Lake Group regarding the amendment of General Plan Land Use Policy LU-6.12. We understand that the County has, in response to her letter, revised the amendment to reference only the

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<sup>14</sup> *Id.*

Langtry/Guenoc Special Study Area, and not the other two areas referenced in the Middletown Area Plan, and we concur with that decision. We appreciate Ms. Brandon for pointing out this issue, and we would like to thank her for all the time that she and her group have given us during the application process, as well as the time and attention we have received from the local Audubon Society. We feel their input has resulted in very positive modifications to the Project.

**4. Comments at Public Hearing on 07-07-2020 by Monica Rosenthal**

At the July 7<sup>th</sup> Board hearing, Ms. Rosenthal asked a number of questions relating to the Santa Clara Road subdivisions, and we would like to take this opportunity to address them. Briefly, she inquired whether the units would be for rent or for sale, who would live there, and who would maintain the site. The property-owner plans to rent the units, and it is expected that the renters will largely consist of employees who work at the Project. However, it is hoped that many members of the local community will consider working at the Maha Resort and therefore living at the Santa Clara community. In addition, if there are units that are available, they will be made available to anyone who wishes to rent them. The owner will be responsible for maintenance of the site.

**Conclusion**

We wish to thank you for the opportunity to provide these responses and to present the various illustrative exhibits for your consideration. We hope that they have helped to clarify any remaining questions regarding these aspects of the Project.

Very truly yours,



Katherine Philippakis

KP:rja