



April 1, 2025

Via email

San Bernardino County  
Board of Supervisors  
c/o Clerk of the Board  
[COB@sbcounty.gov](mailto:COB@sbcounty.gov)

**Re: Appeal of the Planning Commission's approval of Tentative  
Tract Map (TTM No. 20443) (Lovemore Investment, LLC.)**

Honorable Supervisors

I submit this letter on behalf of Joshua Tree Village Neighbors (JTVN) in support of the appeal of the above-referenced residential project by the Morongo Basin Conservation Association (MBCA). The appeal raises several important issues but my comments only address the following four issues:

1. The Initial Study (IS) does not include an adequate discussion of potential hydrological impacts
2. The IS does not include a stable or adequate description of the proposed wastewater treatment facility (WWTF).
3. The IS fails to consider or analyze the environmental impacts of the Project's WWRF.

**The Initial Study does not adequately analyze the Project's potential hydrological impacts**

In its August 24, 2024 comments, the MBCA noted that the Project site "is within a larger wash flowing from the south which occasionally floods (in 2014 the border road to the south, Alta Loma, flooded, leading to the death of one man)." MBCA noted that the Project could therefore cause more serious flooding.

Similarly, the IS also notes that a tributary "flows northward within the Hillview Road right-of-way and encroaches the project slightly at the northwest property corner. **There is existing scour at this location from the offsite flow.**" (IS at p. 47.)

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Finally, based on these observations, the IS recommends a drainage easement at the northwest corner of the Site “from the right-of-way to the top of the existing slope of the existing off-site drainage path.” The IS therefore clearly recognizes that even without any additional development, the Project site is subject to scouring as a result of flooding and that the volume of floodwater leaving the site is large enough to warrant a drainage easement over the neighboring property in order to accommodate the offsite flows.

It is commonly accepted that stormwater flow rates increase substantially after when an empty lot is converted into a residential development. This widely accepted principle is described in a 2009 US Environmental Protection Agency (EPA) guidance entitled “Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects.”<sup>1</sup> (“Guidance”) The EPA guidance explains:

Alterations to Natural Hydrology and the Impact on Stormwater Runoff  
In the natural, undisturbed environment rain that falls is quickly absorbed by trees, other vegetation, and the ground. Most rainfall that is not intercepted by leaves infiltrates into the ground or is returned to the atmosphere by the process of evapotranspiration. Very little rainfall becomes stormwater runoff in permeable soil, and runoff generally only occurs with larger precipitation events. Traditional development practices cover large areas of the ground with impervious surfaces such as roads, driveways, sidewalks, and buildings. Under developed conditions runoff occurs even during small precipitation events that would normally be absorbed by the soil and vegetation. The collective force of the increased runoff scours streambeds, erodes stream banks, and causes large quantities of sediment and other entrained pollutants to enter the water body each time it rains (Shaver, et al., 2007; Booth testimony, 2008).

Guidance at p. 3. The figures on page 4 of the Guidance explain that post-development surface runoffs may increase by as much as a factor of 100.

Despite this common understanding, the IS surprisingly claims that post-development stormwater rates would actually be lower, and not higher.

on-site stormwater flow rate prior to development is estimated at 84.5 cfs and the post-development flow rate is estimated at 74.9 cfs. Runoff volume from the undeveloped site is approximately 5.94 acre-feet, and runoff volume from the developed site is estimated to be 5.27 acre-feet.

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<sup>1</sup> / Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security.pdf 2

Post development peak runoff flow rates are required to be less than 90% of the predevelopment peak runoff flow rate. The post-development peak flow rate is approximately 88.6% of the pre-development peak flow rate while the post-development runoff flow volume is approximately 88.7% of the predevelopment runoff volume. Therefore, no on-site retention is required.” (IS at p. 47.)

The IS does not explain how or why post-development rates would be lower. The IS does not refer to any project features or mitigation measures to explain the predicted lower flood rates.

The IS relies entirely on a May 30, 2024 Hydrology Study that was apparently prepared on behalf of the developer. The key to understanding the seemingly bizarre conclusion about future runoff rates appears on page 4 of the Hydrology Study, where under the heading “Methodology,” the Study falsely claims that the “[t]he current project is for lot sales and **minimal onsite disturbance of the existing condition is expected.**” This assumption renders the hydrology study essentially meaningless because the project the Report analyzed was **not** a 64 unit single-family residential development, but merely “sale of lots.” Selling individual owners would not cause any change in the site’s hydrology because it does not include any ground disturbance. The Hydrology Study therefore did not consider, let alone estimate, the stormwater rates that would result after all 64 lots are developed with single family homes.

The IS, therefore violates CEQA because it did not consider the hydrological impacts of building and occupying 64 single-family homes, a community center, internal roadways and a wastewater treatment facility. The IS study was required to analyze the potential impacts of all phases of the project grading, construction and eventual occupancy. CEQA Guideline §15063(a)(1). “The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. *The term ‘project’ does not mean each separate governmental approval.*” (Guidelines, § 15378, subd. (c)) (Moss v. Cnty. of Humboldt (2008) 162 Cal. App. 4th 1041, 1055.” Here, the IS assumed the “Project” consisted merely of the approval of the subdivision map, and ignored the fact that the definition of “project” under CEQA includes the “whole” of the project, which in this case includes not only the approval of the subdivision map, but the virtual certainty that the approval of the subdivision is merely the first step in the eventual construction and occupancy of the future homes on the lots contemplated by the map.

Rominger v. Cnty. of Colusa, (2014) 229 Cal. App. 4th 690<sup>2</sup> is instructive. There,

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<sup>2</sup> Rominger was disapproved on other grounds by Union of Med. Marijuana Patients, Inc. v. City

the Court of Appeal considered whether approval of a subdivision map is categorically a project subject to CEQA. In deciding that the answer to this question must be yes, the court observed that

It virtually goes without saying that the purpose of subdividing property is to facilitate its use and development. (See Gov.Code, § 66424 [defining “subdivision” for purposes of the Subdivision Map Act “the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, *for the purpose of sale, lease, or financing*, whether immediate or future,” italics added].) Presumably no one goes to the trouble of subdividing property just for the sake of the process; the goal of subdividing property is to make that property more useable. And with the potential for greater or different use comes the potential for environmental impacts from that use. Thus, the Romingers are correct that under subdivision (a) of section 21080, the approval of a tentative subdivision map is categorically a CEQA project.

Rominger v. Cnty. of Colusa (2014) 229 Cal. App. 4th 690, 702.

Rominger also rejected the County’s argument that the subdivision map was exempt from CEQA review pursuant to the Common Sense Exemption because it was reasonably possible “that the creation of smaller parcels that are easier to finance *will* lead to development that might not otherwise occur, and to attendant significant effects on the environment. Thus, the commonsense exemption does not apply.” (Id. at 704.)

Similarly, here, the subdivision of the subject property into smaller lots will almost certainly result in the construction and eventual occupancy of 64 new residential homes on the subject property, which would undoubtedly significantly alter the site’s hydrology. The construction of these homes would undoubtedly significantly increase the impermeable surfaces (e.g roofs, roadways, driveways) thereby significantly increasing the total stormwater leaving the parcel. Accordingly, at a minimum, the IS must estimate and analyze the reevaluate the Project’s potential hydrological impacts by assuming the eventual construction of all proposed houses and facilities.

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of San Diego, 7 Cal. 5th 1171 (2019)

**The IS study does not clearly explain whether the Project will or will not include a WWTF.**

The IS violates CEQA because it does not contain a stable and finite Project description. More specifically, the IS fails as an informational document because, as explained more fully below, it is not clear whether the Project description includes a wastewater treatment facility.

Under the heading: “Project Description,” the IS includes a reference to a “wastewater treatment facility” in Lot A. (IS at p. 2.) Similarly, the IS’s discussion of Project impacts on Geology and Soils, states that “[t]he Proposed Project would utilize a shared package treatment plant for wastewater disposal. Subsurface wastewater disposal would be subject to approval of the County’s Environmental Health Services Division,” but claims that “no significant adverse impact is identified or anticipated.” This discussion does not describe a “shared package treatment” or why no significant adverse impact is “anticipated.” (IS at p. 37.)

IS, Section XIX “Utilities and Service Systems” considers whether the Project would “require or result in the relocation or construction of new or expanded water, wastewater treatment or ... the construction or relocation of which could cause significant environmental effects.” (IS at p. 65.) The IS claims

The Proposed Project is not anticipated to require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electrical power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects. No significant adverse impacts are identified or are anticipated, and no mitigation measures are required.

Without any explanation, this discussion seemingly suggests the Project would NOT require the construction of a WWTF, notwithstanding the fact, as stated above, that the Project description specifically includes a WWTF. Accordingly, the IS is deficient and violates CEQA to the extent that it is unclear whether or not the Project will require and include a wastewater treatment facility.

It is conceivable though unlikely that the IS merely claims that though the Project will require the construction of a WWTF, there is no possibility that the proposed facility would be capable of causing any significant impacts. This is not a plausible claim because the IS does not include any description of the WWTF, let alone any explanation as to why the WWTF could not possibly cause any potential impacts.

Such a claim would be in clear violation of CEQA’s informational requirements,

which specifically prohibit conclusory and unsubstantiated claims about the likelihood of impacts. (Citizens Ass’n for Sensible Development v. County of Inyo (1985) 172 Cal.App.3d 151, 171 (an initial study must disclose the data or evidence supporting the study’s environmental findings.) (See, also Sundstrom v. County of Mendocino (1988) (the agency must develop a record that shows, and does not simply assumes, that significant impacts will not occur.) (CEQA Guideline § 15063(d)(“ An initial study shall contain in brief form (3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.”)

**The IS must include a description of the WWTF and a detailed analysis of its potential impacts**

There is no dispute that CEQA forbids “piecemeal” review of the significant environmental impacts of a project. This rule derives, in part, from section 21002.1, subdivision (d), which requires the lead agency—in this case, the Port—to “consider[ ] the effects, both individual and collective, of all activities involved in [the] project.” It has been recognized that “[a] curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.’ [Citation.]” (Sacramento Old City Assn. v. City Council (1991) 229 Cal.App.3d 1011, 1023, 280 Cal.Rptr. 478, original italics; Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 201, 55 Cal.Rptr.2d 625.)

(Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs (2001) 91 Cal. App. 4th 1344, 1358, as modified on denial of reh’g (Sept. 26, 2001).

San Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus (1994) 27 Cal. App. 4th 713, 729–30, is on point. There, the Court of Appeal agreed that the EIR was inadequate because the required wastewater treatment facility “was excluded from the description of the development project and its effects ignored in the FEIR. The FEIR

was thus premised on an improperly “curtailed” and “distorted” project description.” The Court agreed with the Appellants that the expansion of the sewer service was a “crucial element” of the project “without which the proposed project cannot go forward.” and the sewer would “have significant effects on the environment, as evidenced by the fact that a separate EIR was prepared and certified for the sewer expansion (expansion EIR).” (Id at 732.)

The Court further noted that “sewer expansion will, among other environmental effects, negatively impact air emissions, significantly impact existing water quality, and cause “[o]n-site flooding and overflow of the existing and proposed facilities during heavy rain.” This “presents a potential for flood waters to mix with treated wastewater.” (Id.)

Accordingly, the IS is inadequate and violates CEQA because it does not include any analysis of potential impacts associated with the proposed WWTF.

### **Conclusion**

For all of these reasons, I urge you to grant the appeal and send the Project back to the Planning Commission with instructions to staff to revise the IS to comply with the requirements of CEQA.

*Babak Naficy*\_\_\_\_\_

Babak Naficy, Counsel for JTVN

cc. Nelson Day (email)

**CONSULTING TEAM RESPONSES TO LAW OFFICES OF BABAK NAFICY LETTER DATED  
April 1, 2025**

**“Subject: Appeal of the Planning Commission’s approval of Tentative Tract Map (TTM No. 20443) (Lovemore Investment, LLC.)”**

**Comment 1:** This is an introduction stating that the letter is submitted on behalf of Joshua Tree Village Neighbors and summarizing the issues to be addressed.

**Response to Comment 1:** No response needed.

**Comment 2:** This comment summarizes the hydrological section of the Initial Study and Hydrology Study, which conclude a lower post-development runoff flow rate with the proposed project. The letter also notes that the Hydrology Study is based on lot sales instead of buildout. There are references to court cases to support the notion of why the CEQA findings are inadequate with regards to hydrology.

**Response to Comment 2:** The Hydrology Study utilized in the Initial Study was an outdated report. The findings of the preliminarily approved Hydrology Study, which analyzes build-out and includes the appropriate calculations, is summarized in an Errata to the Initial Study. Per the Hydrology Study, there will be an increase of flow rate, and a detention basin or storm drainpipe is required. The project as proposed includes the appropriate sized detention basin. No mitigation measures are required.

**Comment 3:** This comment asserts that the IS does not provide a stable and sufficient description of the wastewater treatment facility.

**Response to Comment 3:** The wastewater treatment facility (WWTF), which comprises the wastewater treatment plant, was identified in the Project Description and in applicable sections of the Initial Study. No additional detail of the plant is required that would further the environmental analysis.

**Comment 4:** This comment argues that the Initial Study’s conclusion of no significant environmental impacts from the WWTF is unsupported. Specifically, “Section XIX ‘Utilities and Service System’ ... discussion seemingly suggests the Project would NOT require the construction of a WWTF, notwithstanding the fact, as stated above, that the Project description specifically includes a WWTF.”



**Response to Comment 4:** For clarification, it is concluded in the Utilities and Services section that the proposed would include construction of the WWTF, but it would not have significant environmental impacts. As stated in the Initial Study, the wastewater treatment plant is subject to approval of the County's EHS division and that no unique conditions are known to exist that would adversely affect the proper use of an on-site septic (wastewater treatment) system. It should be noted that the wastewater treatment facility has been tentatively approved by the Regional Water Quality Control Board. No changes to the Initial Study are needed.