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October 8, 2020

Via E-Mail

San Bernardino County
Board of Supervisors
385 N. Arrowhead Ave #2
San Bernardino, CA 92415
Attn: Lynna Monell
COB@sbccounty.gov

Re: Church of the Woods Project Appeal Hearing
Project Number P201700270/CUP

Dear Members of the Board of Supervisors:

On behalf of Save Our Forest Association (“SOFA”) and Sierra Club – San Bernardino Mountains Group (“Sierra Club”) we are writing to respectfully request that you uphold the appeal and reverse the Planning Commission’s approval of the Church of the Woods project (“Project” or “COTW”). Put simply, the Rimforest community does not need a massive development on this pristine forested site. This Project would irreparably destroy habitat for sensitive wildlife species, degrade water quality, including that of Lake Arrowhead, bring hundreds of people to a Very High Fire Hazard Severity zone, threaten the ability of the community to evacuate during a wildfire, and increase hazards on area roadways. There is simply too much at stake.

The Board should determine that the Project’s significant and unavoidable impacts outweigh its claimed benefits. The California Environmental Quality Act (“CEQA”) provides the County with explicit authority to disapprove the Project on these grounds. CEQA Guidelines section 15042 states: “A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Here, the environmental impact report (“EIR”) discloses that the Project would have numerous significant environmental impacts, fully justifying the County’s disapproval of the Project. Moreover, as discussed below, the EIR underestimates the Project’s significant environmental impacts and fails to comply with CEQA in other respects and, therefore, cannot serve as a basis for Project



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approval in any event. Finally, the Project conflicts with fundamental, mandatory policies of the San Bernardino County General Plan and the Lake Arrowhead Community Plan. Thus, approval of the Project would violate not only CEQA, but also the California Planning and Zoning Law, Gov't Code § 65000 *et seq.*

On behalf of SOFA and the Sierra Club and the hundreds, if not thousands, of other members of the public potentially affected by this Project, we urge you to approach your decision with a long term view: think about what is best for the Rimforest Community, Lake Arrowhead, and San Bernardino County. As you will hear in the appeal hearing on this Project, the answer is clear: this Project is incompatible with San Bernardino County's commitments to protecting its residents' safety, quality of life, and the environment.

I. Introduction

The proposed Project entails construction of almost 70,000 square feet of buildings; 225,000 square feet of parking areas, driveways, and other paved surfaces; and approximately 64,000 square feet of sports fields and courts. All of this development would occur on a steep, forested hilltop site adjacent to State Route 18, a highway designated as a Scenic Byway by the United States Forest Service. The Project would convert half of the site to developed area, necessitating the removal of all trees and vegetation and movement of approximately 315,000 cubic yards of soil. DREIR at 3.A-10 and 2-22. The Project's substantial increase in impervious surfaces would cause stormwater to discharge into and contaminate Little Bear Creek. Little Bear Creek flows into Lake Arrowhead, an important drinking water supply and a regional recreational resource.

The Draft Revised EIR ("DREIR") for the Project failed to adequately disclose, analyze, or mitigate the Project's environmental impacts as required by CEQA. Our February 25, 2019 letter to the County, which by this reference is incorporated herein in its entirety, addressed the DREIR's numerous flaws. The Final EIR ("FEIR") was similarly inadequate, as discussed in Part II below.¹ As we explained in our January 22, 2020 letter to the Planning Commission, which is likewise incorporated herein by reference, the FEIR neither adequately responds to the public's comments nor cures the DREIR's deficiencies. Rather than revise the DREIR to comprehensively analyze the Project's impacts on biological resources, wetland and riparian habitats, drainage and

¹ Unless specifically referencing the DREIR or the FEIR this letter generally refers to the EIR.

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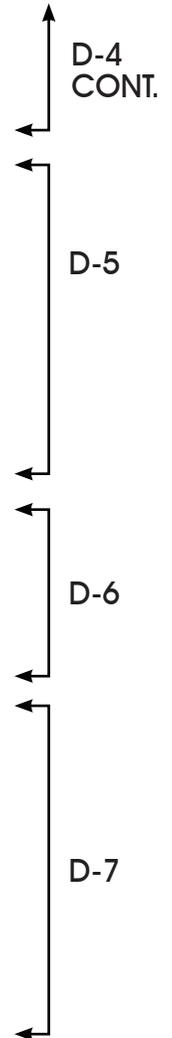
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hydrology, traffic, evacuation and emergency response, the FEIR merely seeks to defend the erroneous conclusions of the prior document. Further, the FEIR fails to adequately describe the Project’s relationship to the Rimforest Storm Drain Project and fails to adopt feasible mitigation measures for the Project’s myriad significant impacts.



In addition to the EIR’s CEQA violations, the Project clearly disregards numerous provisions in the San Bernardino County General Plan and the Lake Arrowhead Community Plan. Perhaps most egregiously, the Project would cause several intersections to operate at level of service (“LOS”) E or F. The Project thus squarely conflicts with County General Plan Policy M/CI 1.1 and Community Plan Policy LA/CI 1.1, which *require* the County to *ensure* that all new development proposals do not degrade LOS on State Routes and Major Arterials below LOS C during non-peak hours or below LOS D during peak hours in the Mountain Region. The FEIR identifies this inconsistency as a significant and unavoidable impact of the Project. As a result of this clear conflict with fundamental, mandatory policies, the County cannot rationally find the Project consistent with the General Plan or Lake Arrowhead Community Plan.

The Project also would destroy a stream and wetland to construct parking, driveways and sports fields, eliminating riparian habitat and negatively impacting water quality and stormwater runoff. This is inconsistent with County General Plan Policy CI 13.2(c), which calls for the County to reduce the water quality impacts of stormwater runoff by preserving wetlands and riparian corridors and maintaining buffer zones around those areas.

In short, approval of the Project would violate both CEQA and the California Planning and Zoning Law. Furthermore, the County lacks evidence to support the findings necessary to approve the conditional use permit for the Project, including the finding of General Plan consistency.

For these reasons, as well as those identified in SOFA and the Sierra Club’s prior letters and numerous other public and expert comments, SOFA and Sierra Club respectfully request that the Board uphold the appeal, reverse the Planning Commission’s decision, and reject this ill-conceived Project. Following are additional comments for the Board’s consideration which elaborate on and supplement the comments raised in our prior letters.

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II. The EIR Does Not Comply With CEQA.

As described in our prior letters, the EIR (1) fails to provide an adequate description of the Project; (2) defers analysis of critical environmental impacts and fails to adequately analyze those impacts it does address; (3) fails to support its conclusions with substantial evidence; and (4) fails to propose adequate mitigation measures for the Project's numerous significant environmental impacts. This letter elaborates on a few of the issues we previously raised including impacts on biological resources (including sensitive species, wetlands and riparian habitat), water quality, emergency evacuation, and traffic safety.

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A. The EIR Fails to Adequately Analyze or Mitigate the Project's Impacts on Biological Resources.

1. Southern Rubber Boa

The site provides habitat for the Southern Rubber Boa ("SRB"), a species listed as threatened by the State of California due to its very limited range and potential threats from human activity and climate change.² Previously we commented that the EIR failed to adequately analyze or mitigate impacts to this threatened species. Because the County dismissed these comments, we retained biologist Robert Hamilton, together with Brian Hinds with The North American Herpetological Education and Research Project and the North American Field Herping Association, to review the EIR's SRB impact analysis. See Report from Hamilton Biological, August 10, 2020, ("Hamilton Report"), attached as Exhibit B and incorporated by reference into this letter. A summary of the Hamilton Report follows; we direct the County to the entire report for a detailed accounting of Hamilton and Hind's comments.

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As an initial matter, the EIR understates the Project's impacts on the SRB because it mischaracterizes the quality of SRB habitat on the Project site and the acreage of habitat that would be lost as a result of Project development. The EIR incorrectly asserts that the Project site contains only 1.65 acres of high-quality SRB habitat in the northeast corner of the site and 2.18 acres of moderate quality habitat in the western portion, and claims that all of this habitat lies outside the Project's development footprint. DREIR at 3.C-20; Hamilton Report at 7. The EIR also incorrectly asserts that the remaining portions of the Project site, including the development footprint, contain 18.21 acres of

² See S. Loe and R. Stauber, Habitat Management Guide for Southern Rubber Boa on the San Bernardino National Forest (May 1985), attached as Exhibit A.

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supposedly “low quality” habitat and 5.08 acres of “unsuitable” SRB habitat. Hamilton Report at 7.

The EIR ultimately concludes that the Project’s grading footprint would impact only 8.64 acres of “low quality” SRB habitat, and wrongly dismisses the remaining 4.96 acres of the Project’s grading footprint as “unsuitable” habitat. DREIR at 3.C-20; *see* Hamilton Report at 4. On the contrary, as the Hamilton Report explains, all 13.6 acres of the Project’s grading area constitutes highly suitable SRB habitat. Hamilton Report at 4. Furthermore, proposed fuel modification impacts, which would also affect the SRB, would extend an additional 0.66 acres beyond the grading area. Hamilton Report at 4. Thus, the total area of the Project’s impacts to SRB habitat is 14.26 acres. *Id.* Notably, the EIR prepared for the Rimforest Storm Drain Project identifies the entire 10-acre storm drain Project site as “suitable” SRB habitat; finds that the boa has “high” potential to occur throughout the site; and would require an Incidental Take Permit from the California Department of Fish and Wildlife (“CDFW”) for all impacts to suitable habitat. *See* Storm Drain DREIR at 3.3-26 and Addendum attached as Exhibits C and D. Portions of the Storm Drain Project would be constructed on a 10-acre site that protrudes into the middle of the COTW site (which surrounds it on three sides), and contains similar riparian and forest habitats to the COTW site.

As CDFW informed the County, the 2010 Draft EIR for the COTW Project failed to recognize that development of the Project may render the entire site unsuitable habitat for the SRB. *See* Letter from J. Brandt, California Department of Fish and Game (“CDFW”) to M. Slowik, June 2, 2010 at 3, attached as Exhibit G; Hamilton Report at 7. The current EIR suffers from the same defect. Evaluation of the Project site by Hamilton and Hind confirms that no part of the site is “unsuitable” habitat for the SRB. *Id.* The biologists’ investigation found that several areas within the Project’s proposed development footprint are high-value SRB habitat, containing important habitat features like rock structures and moist drainage areas. *Id.* at 8. Similar to the Storm Drain EIR’s findings, Hamilton and Hind’s investigation determined that “all 27 acres of the project site represent high-value habitat likely occupied by the Southern Rubber Boa,” and that “[i]n the absence of an adequate survey effort for this species,” which has not been conducted, “the County should consider all 27 acres of the Project site to represent high-value habitat” occupied by the SRB. Hamilton Report at 10.

The EIR errs further because the methodology relied on for the SRB habitat surveys was directly inconsistent with CDFW’s guidance. The habitat assessment was conducted on January 25, 2018, during the middle of winter, a time of year when SRBs are hibernating and therefore undetectable. Hamilton Report at 7. CDFW explicitly stated

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that the assessment of SRB habitat must be based on species-specific surveys, conducted at the time of year when the sensitive species are active or identifiable, and developed in consultation with CDFW and the United States Fish and Wildlife Service (“USFWS”). CDFW 2010 letter at 4; *see also* Hamilton Report at 6, 7. There is no evidence that the applicant consulted with CDFW or USFWS regarding appropriate survey protocols.

Based on its flawed habitat assessment, the EIR wrongly concludes that the SRB “is not likely to occur within the development footprint of the Project site.” COTW EIR at 3.C-20; *see* Hamilton Report at 4. Contrary to this claim, the EIR’s technical appendix explicitly acknowledges that SRB has been reliably reported to occur along the eastern boundary of the Project site. EIR Appendix D, LBC report, at 4, Fig. 3. As the Hamilton Report explains, the church component of the Project would be developed in this eastern area. Hamilton Report at 9. Moreover, the SRB regularly forages across a 300-yard radius and can disperse up to a 500-yard radius from its hibernation sites. *Id.* at 9-10. It is therefore likely that the SRB also occupies the western portion of the site, where the applicant proposes to build sports fields and parking lots. Finally, although the EIR does not disclose it, as discussed below, the Project’s parking lot and sports field would destroy riparian habitat. Streams, seeps and other riparian areas are important SRB habitat. *Id.* at 9. The EIR’s failure to acknowledge the loss of habitat caused by the Project is an egregious flaw. Because the EIR does not accurately disclose habitat loss or recognize that development of the Project may render the entire site unsuitable habitat for SRB, it fails to identify appropriate mitigation for these impacts.

The EIR proposes mitigation measures to address SRB impacts (EIR at 3.C-26), including a preconstruction clearance survey (Mitigation Measure 3.C1(a)) and habitat conservation (Mitigation Measure 3.C1(B)), but provides no evidence in support of its conclusion that these measures would reduce impacts to a less than significant level. The EIR finds, without citing any evidence, that the Project’s impact to the SRB would be adequately mitigated by preserving 13.40 acres of the Project site as open space.³ DREIR at 3.C-26 (Mitigation Measure 3.C1(B)); *see* Hamilton Report at 5.

The EIR’s habitat conservation mitigation measure also overstates the area that would be conserved, as it improperly considers the 0.66-acre fuel modification zone as part of the area conserved under the mitigation measure. However, fuel modification activities also will disturb habitat. Accordingly, the fuel modification area also must be

³ Elsewhere the EIR asserts that 13.50 acres of open space would be retained. FEIR at 0-1.

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counted towards the Project’s total impact area of 14.26 acres. Hamilton Report at 5. This leaves only 12.86 acres of undisturbed open space on the site as SRB mitigation. *Id.*

Regardless of the acreage conserved, the proposed conservation of the remaining area of the Project site would not effectively mitigate impacts to the SRB. As discussed above, high density development is not compatible with the SRB. *See* Hamilton Report at 8. The entire Project site may be rendered unsuitable for the species because of its proximity to the Project’s development, so the conserved area may no longer be suitable habitat and cannot mitigate Project impacts. Moreover, preservation of some of the Project site does not replace or offset the permanent loss of habitat on the rest of the site. *Cf. King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 872-76. It merely reflects that much of the habitat on the site will be destroyed.

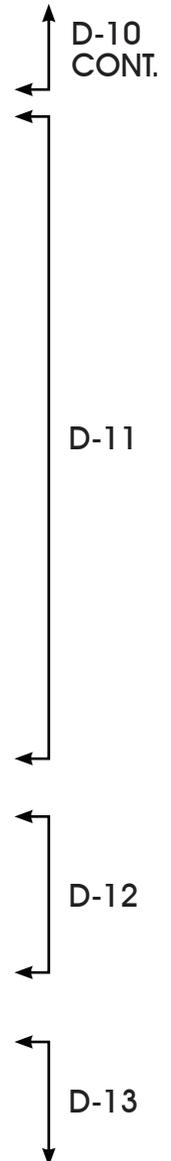
Adequate mitigation for the Project’s destruction of high-value SRB habitat and degradation of surrounding habitat would require the off-site conservation and permanent protection of high-value SRB habitat at a ratio of 3:1, for a total of 42.8 acres. Hamilton Report at 12. In addition to this off-site habitat conservation, the EIR errs further because it fails to include the protective measures identified in the Storm Drain EIR for direct impacts to the SRB. These measures include, for example, the requirement that the applicant obtain an Incidental Take Permit (“ITP”) under the California Endangered Species Act (“CESA”), Fish & Game Code §§ 2050 et seq. *Id.* Here, CDFW explicitly informed the County that an ITP would be required for the COTW Project. *See* Ex. G(Letter from J. Brandt) at 2, 6. However, we can find no requirement in the EIR that the applicant obtain an ITP. Absent a properly issued ITP, the proposed Project may cause a prohibited “take” of the SRB in violation of CESA. Fish & Game Code §§ 2080, 2081.

2. Other Wildlife Species

The EIR entirely ignores the Project’s potential impacts on several sensitive wildlife species which the Storm Drain EIR acknowledges are likely present on the site or in the area. As discussed above, the Storm Drain EIR identifies impacts to a 10-acre site that protrudes into the middle of the COTW site (which surrounds it on three sides), and contains similar riparian and forest habitats to the COTW site.

(a) Andrew’s Marble Butterfly

The Storm Drain EIR determines that Andrew’s Marble Butterfly, a CDFW Special Animal, has a “high potential for occurrence” on the Project site, and that absent mitigation, the storm drain project’s impacts on the butterfly would be significant. Storm



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Drain RDEIR at 3.3-27. The Storm Drain EIR identifies several mitigation measures which would purportedly reduce impacts on the Butterfly (MM BIO-1c (Minimize Impacts to Sensitive Habitat and Compensate for Habitat Loss), BIO-1d (Prevent Invasive Weed Introduction), BIO-1e (Speed Limit), BIO-1f (Fugitive Dust Control), MM BIO-1f (Personnel Training)). *Id.* The COTW EIR does not even acknowledge the likely presence of the butterfly, let alone analyze how implementation of the Project would impact this CDFW Special Animal or propose any mitigation measures.

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(b) Bald Eagle

The COTW also overlooks impacts to the Bald Eagle, a state-listed endangered species. The Storm Drain EIR concludes that the eagle is present on the Project site and would be affected by habitat loss, habitat disturbance, Project-related noise, dust and vibrations. Storm Drain RDEIR at 3.3-27. By contrast, the COTW EIR simply asserts, without any factual basis, that the Project site has “a low potential to support” the Bald Eagle, and thus fails to provide any analysis of Project impacts to this endangered species. COTW EIR 3.C-12. It is noteworthy that the COTW EIR’s technical appendix reaches the opposite conclusion, finding that the Project site “has a high potential to support” the Bald Eagle (DREIR Appendix C at 29), and that the bald eagle has a “high” “potential to occur” on the Project site, noting that “[s]uitable nesting habitat can be found throughout the project site” and that “this species has been observed nesting and foraging within the vicinity of Lake Arrowhead.” Storm Drain RDEIR Appendix C, Table C-1.

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(c) Peregrine Falcon

The COTW EIR fares no better with the American Peregrine Falcon, a state Fully Protected Species. The Storm Drain EIR determines that the Peregrine Falcon has been seen regularly in the Project vicinity and has a moderate potential for occurrence on the Project site. Storm Drain RDEIR at 3.3-28; 3.3-29. The Storm Drain EIR concludes that the Falcon could be impacted by habitat loss and disturbance from fugitive dust, noise, and vibration. *Id.* Here too, neither the COTW EIR nor its appendices include any mention at all of the American Peregrine Falcon.

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(d) American Badger

The Storm Drain EIR finds that suitable foraging habitat for the American Badger, a state Species of Special Concern, is present on the Project site. Storm Drain RDEIR at 3.3-29. The Storm Drain EIR determines that the Badger may forage on the Project site

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and concludes that impacts would be significant in the absence of mitigation. The Storm Drain EIR proposes mitigation measures to reduce these impacts. *Id.* (MM BIO-1g (Nest and Den Avoidance), MM BIO-1h (Avoid Wildlife Hazards and Entrapment), MM BIO-1i (Avoid Nocturnal Wildlife), MM BIO-1f (Personnel Training). The COTW DREIR does not mention the American Badger, while its technical appendix asserts that the badger is “presumed absent” because “no suitable habitat is present within the project site.” DREIR Appendix C, Table C-1. The technical appendix provides no support for this conclusion.

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(e) Ringtail

The Storm Drain EIR concludes that the Project site contains suitable habitat for the Ringtail (*Bassariscus astutus*), which is designated as a Fully Protected Species in California, and that impacts to the species would be significant in the absence of mitigation. Storm Drain RDEIR at 3.3-29. The Storm Drain EIR includes mitigation measures to reduce these impacts. *Id.* (MM BIO-1g (Nest and Den Avoidance), MM BIO-1h (Avoid Wildlife Hazards and Entrapment), MM BIO-1i (Avoid Nocturnal Wildlife), MM BIO-1f (Personnel Training). Neither the COTW EIR nor its appendices include any mention at all of the Ringtail.

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(f) Yellow Warbler

The Storm Drain EIR also finds that the site contains suitable habitat for the Yellow Warbler (*Setophaga petechia*), a state Species of Special Concern, and determined that impacts on the species due to habitat loss or modification would be significant. Storm Drain RDEIR at 3.3-28. The Storm Drain EIR proposes a mitigation measure (MM BIO-1g (Nest and Den Avoidance)) to address these impacts. *Id.* The COTW EIR makes no mention of the Yellow Warbler at all, while its technical appendix asserts that the species is “presumed absent” because “no suitable habitat is present within the project site.” DREIR Appendix C, Table C-1.

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The fact that the COTW EIR fails to acknowledge the presence of these species is a fatal flaw. As the Storm Drain EIR clearly determines, impacts to many of these species would be significant in the absence of mitigation. The COTW Project would destroy virtually the same type of habitat as the Storm Drain Project in almost the same exact location. Accordingly, the failure of the COTW EIR to disclose, analyze or mitigate these impacts is a fatal flaw warranting that the EIR be revised and recirculated.

(g) Cumulative Impacts

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The EIR fails to analyze the Project’s cumulative impacts to the sensitive wildlife species identified above. Instead, the EIR relies on unsubstantiated assertions to conclude impacts would be less than significant. FEIR at 3.C-24, 25. It is particularly troubling that the EIR fails to provide *any* cumulative impact analysis for the Southern Rubber Boa, San Bernardino Flying Squirrel, and the California Spotted Owl. FEIR at 438; 3.C-20; 3.C-21; 3.C-25. Rather than undertake this analysis, the EIR simply labels the impacts to these species significant and unavoidable. FEIR at 3.C-27. This approach is contrary to CEQA’s requirements. A lead agency cannot simply conclude that an impact is significant and unavoidable and move on. *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com’rs* (2001) 91 Cal.App.4th 1344, 1371 (lead agency may not “travel the legally impermissible easy road to CEQA compliance” by “simply labeling the effect ‘significant’ without accompanying analysis of the project’s impact”).

A conclusion that impacts remain significant and unavoidable does not excuse the agency from (1) performing a thorough evaluation and description of the impact and its severity before and after mitigation, and (2) proposing all feasible mitigation to “substantially lessen the significant environmental effect.” CEQA Guidelines § 15091(a)(1); *see also id.* § 15126.2(b) (requiring an EIR to discuss “any significant impacts, including those which can be mitigated but not reduced to a level of insignificance” (emphasis added). A mitigation measure may reduce or minimize a significant impact without avoiding the impact entirely. 14 Cal. Code Regs. §15370(b); *see also* Pub. Res. Code §§21002.1(a), 21081(a)(1). The EIR fails to meet these standards, and must be revised to provide adequate analysis and mitigation.

3. Jurisdictional Waters, Wetlands, Perennial Stream, Spring and Riparian Impacts

The EIR’s analysis of impacts to the site’s aquatic resources suffers from numerous flaws. First, the EIR incorrectly assumes that all impacts to jurisdictional waters and wetlands within the Project development footprint will be addressed and mitigated under the County’s Storm Drain Project. DREIR at 3.C-23. Yet, the EIR provides no evidence that this is the case. As the DREIR explains, it is unclear which project would be constructed first. DREIR at 3.F-3. Even if the Storm Drain Project is constructed before the COTW Project, as hydrologist Greg Kamman explained, not all jurisdictional waters and wetlands found on and immediately off of the COTW site would be permanently altered and eliminated by the Storm Drain Project, and the COTW Project would impact these waters and wetlands. *See* Letter from G. Kamman to C. Borg, February 21, 2019 (“Kamman 2019 Report”) at 2 (“jurisdictional waters in the southwest portion of the COTW property will remain, albeit in a potentially slightly different

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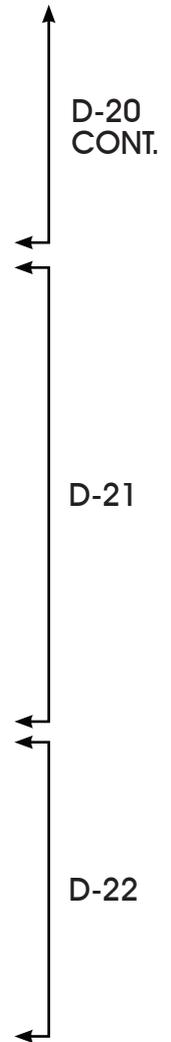
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restored condition, upon completion of the Storm Drain Project”); *see also* Kamman 2020 Report at 3 (“[w]hen comparing the COTW Project plans to the Project’s jurisdictional waters/wetlands map, it is clear that the jurisdictional waters lying within the COTW grading footprint will be disturbed if not completely eliminated (buried)” by the COTW Project). Indeed, the COTW Project would build a roadway, ballfield and parking on these jurisdictional waters and wetlands, either disturbing or eliminating these resources. Kamman 2019 Report at 2. The COTW EIR’s failure to disclose, analyze or mitigate for these impacts is an egregious flaw.

Second, as Kamman also explained, a perennial stream exists on the COTW Project site and a spring is located just north of the COTW Project footprint. The COTW EIR makes no mention of either resource. Kamman explains that the spring likely sustains the perennial flow in the stream as well as jurisdictional wetlands found along the downstream stream alignment through the COTW property. *See* report from G. Kamman to C. Borg, February 21, 2019 (“Kamman 2019 Report”) at 3 and report from G. Kamman to L. Impett, January 21, 2020 Report (“Kamman 2020 Report”) at 4. The COTW EIR fails to analyze how development of the Project would impact the perennial stream or the spring, which in turn would impact jurisdictional wetlands and riparian habitat. *See also* COW Rimforest – Storm Drain Realignment Email Chain, attached as Exhibit E (explaining that the County is unsure of the exact location of the spring and acknowledging that the Storm Drain could possibly impact the spring); Storm Drain Concept Realignment Rimforest (April 30, 2020), attached as Exhibit F (documenting the location of the spring). The COTW EIR’s failure to disclose, analyze or mitigate for these impacts is another serious flaw.

Third, despite acknowledging that the Project would impact 0.05 acres of jurisdictional waters, the EIR fails to provide any mitigation for impacts to this resource. Based on its incorrect conclusion that the Storm Drain EIR identified and mitigated riparian impacts (DREIR at 3.C-22) and would be built first, the FEIR for this Project eliminated Mitigation Measure MM-3.C2c, which called for the COTW Project Applicant to secure a Clean Water Act Section 404 Nationwide Permit, a CWA Section 401 Water Quality Certification and a CDFW Section 1602 Streambed Alteration Agreement. DREIR at 3.C-27; FEIR-171. Consequently, if the COTW Project is built before the Storm Drain Project, the EIR is left with no mitigation for these significant impacts. Moreover, it is important to note that the CDFW recommend that impacts to jurisdictional waters be mitigated at a no less than 3:1 ratio. *See* Ex. G at 7 (Letter from J. Brandt).



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Fourth, although the Project site contains riparian habitat, the EIR never discloses how much riparian acreage exists on the Project site and underestimates how much of this sensitive resource would be impacted by the Project. As discussed above, some section of the stream on the Project site (part of the headwaters of Little Bear Creek) would be buried under hundreds of thousands of cubic feet of dirt as a result of the COTW Project. DEIR at 3.C-23. Although the COTW EIR asserts that this impact would be mitigated as a result of the Storm Drain Project, it provides no evidence to support this conclusion.⁴ Moreover, the COTW DEIR never discloses how much riparian habitat would purportedly be restored by the Storm Drain Project nor does it disclose the extent to which construction of the COTW Project would eliminate any restored habitat. This latter point is of course paramount because it appears that the COTW Project has the potential to severely impact the site's stream and riparian areas. These areas have high wildlife value and constitute the central area of the wildlife corridor that traverses the Project site. FEIR-58. In addition, although the EIR generally references the site's "steep mountainous slopes" (*see e.g.*, 2-6, 3.E-1), it fails to evaluate how development of such steep terrain would threaten the site's riparian areas. The EIR also ignores a well-established principle, despite the existence of ample scientific studies, that stream and riparian habitats must be protected with an undisturbed, naturally vegetated buffer zone especially where steep slopes are adjacent to such areas. *See, e.g.*, the U.S. Environmental Protection Agency's Aquatic Buffer Model Ordinance Guidelines⁵ which would require a minimum of 200-225 feet between areas of disturbance and riparian areas.

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Fifth, the EIR lacks support for its conclusion that the Project's cumulative impacts on jurisdictional waters would be less than significant. DREIR at 3.C-24. As an initial matter, the EIR fails to conduct any analysis of these cumulative impacts because it does not consider the Project's impacts on jurisdictional waters together with impacts on jurisdictional waters from other projects. CEQA Guidelines § 15355(a). Instead of conducting this required analysis, the EIR simply asserts that the combined areas of impact would be small in relation to the overall areas of jurisdictional waters in the area.

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⁴ Because the FEIR eliminated Mitigation Measure MM-3.C2c, if the COTW Project is implemented before the Storm Drain Project, there will be no mitigation for the Project's impacts to riparian resources.

⁵ https://www.epa.gov/sites/production/files/2015-12/documents/2002_09_19_nps_ordinanceuments_buffer_model_ordinance1.pdf; accessed October 8, 2020.

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The EIR provides no factual support for this assertion (e.g., how many acres of jurisdictional waters exist in the area? How many acres have been destroyed due to cumulative projects?). Unless the EIR provides this information and analysis, it cannot conclude that the cumulative loss of jurisdictional waters from the Project would be less than significant.

In addition, the EIR asserts that any cumulative impacts would be less than significant because “impacts to jurisdictional waters of the State and U.S., while significant at the Project level, would be mitigated to a less than significant level through permitting requirements with the [U.S. Army Corps of Engineers] and CDFW” and “the same permitting requirements and mitigation would be applicable to other related projects.” DREIR at 3.C-24. As noted above, the COTW FEIR actually eliminated Mitigation Measure MM-3.C2c, which required the COTW Project Applicant to obtain Clean Water Act permits and CDFW regulatory approvals. Moreover, regulatory compliance does not automatically establish impacts will be less than significant, and it cannot be used to bypass the obligation to analyze and mitigate those impacts. *See Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-17; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-09. The EIR must conduct a comprehensive analysis of cumulative impacts.

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B. The EIR Fails to Adequately Evaluate the Project’s Effect on Water Quality.

Along with hydrologist Greg Kamman, we commented that the DREIR failed to adequately analyze the Project’s impacts associated with hydrology and water quality. Comments 10-49 to 10-52, FEIR at 125. The FEIR fails to resolve these deficiencies.

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As discussed further below, Dr. Jennifer Alford also commented on the EIR’s failure to adequately analyze and mitigate the Project’s water quality impacts. *See* email from Dr. Jennifer Alford to San Bernardino County re: California State University San Bernardino Water Quality Research Data – Little Bear Creek COTW Proposed Development (January 20, 2020), attached as Exhibit H. Dr. Alford also prepared and submitted a report to the County on water quality in Lake Arrowhead. Dr. Jennifer Alford, Lake Arrowhead Tributary Water Quality Community Report 2019-2020 (“Lake Arrowhead Report”), attached as Exhibit I.

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1. The EIR Does Not Accurately Disclose Existing Water Quality Issues in Little Bear Creek or Lake Arrowhead.

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To fulfill its information disclosure function, “an EIR must delineate environmental conditions prevailing absent the project, defining a baseline against which predicted effects can be described and quantified.” *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447; see *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953 (without an adequate baseline description, “analysis of impacts, mitigation measures and project alternatives becomes impossible”); Guidelines, § 15125, subd. (a). Here, the EIR acknowledges that drainage from the Project flows to the headwaters of Little Bear Creek, which then discharges to the Lake Arrowhead reservoir. DREIR at 2-13; 3.F-2. The EIR asserts that neither Little Bear Creek nor Lake Arrowhead have been identified as having limited or “impaired” water quality under the CWA Section 303(d) List of Water Quality Limited Segments, such that water quality standards and/or receiving water beneficial uses have not been met. FEIR at 3.F-4.

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Even if Little Bear Creek and Lake Arrowhead are not yet listed as water quality impaired for nutrients and bacteria, the evidence shows levels of these pollutants already exceed regulatory standards.⁶ As Dr. Alford informed the County, episodic spikes in nutrients (NH4+ and NO4-) as well as bacteria are currently present in Little Bear Creek. Ex. H at 1. Dr. Alford states:

Collectively these trends indicate that there are already activities on the landscape related to transportation, tourism, infrastructure (i.e. septic and sewer) and impervious surfaces that are adversely impacting surface water resources in perennial streams entering Lake Arrowhead. More specifically, data to date indicates that LBC1 [a site up stream of Blue Jay] has exceeded regulatory standards 36% of the sampling periods for NH4+, 63% for NO3-, 20% for total coliform, 40% for E. coli and 67% for enterococcus. The second site, LBC2 [Blue Jay], has exceeded regulatory standards for 70% of the sampling periods for NH4+, 40% for NO3-, 50% for total coliform, 17% for E. coli and 50% for enterococcus with many of the exceedances occurring simultaneously across multiple metrics. These trends continue to contribute to algal blooms and, if not mitigated, could result in the harmful algal blooms associated with cyanobacteria (blue-green algal blooms) as experienced by

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⁶ Contrary to the EIR’s assertions, Lake Arrowhead is on the 303(d) list due to mercury pollution.

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Lakes Gregory and Silverwood. Such conditions impact the social, economic and environmental quality of all mountain communities since many of the communities are financially dependent on tourist activities year-round as well as public health and safety, especially as they [are] related to recreational waters.

Ex. H (Dr. Alford January 20, 2020 email) at 1-2; Ex I (Lake Arrowhead Report) at 20. The EIR’s failure to accurately characterize existing water quality in Little Bear Creek and Lake Arrowhead renders adequate impact analysis impossible. The EIR must be revised to provide this information. An accurate description of baseline conditions is essential to evaluation and mitigation of the Project’s water quality impacts.

2. The EIR Lacks Evidentiary Support for its Conclusion that the Project Would Not Degrade Water Quality.

(a) Construction-related impacts

The EIR fails to adequately address the Project’s construction-related impacts on water quality. Although the EIR generally acknowledges the types of pollutants that would be generated by construction—and acknowledges that they could impact water quality—it stops short of analyzing how and where these pollutants would be conveyed and does not evaluate how the pollutants would affect water quality.

The Project would convert 50 percent of the site to a developed area by grading almost 17 acres and relocating 315,000 cubic yards of excavated soil. DREIR at 0-1; 2-22, 23; 3.A-10. Dr. Jennifer Alford informed the County in January that that the Project would create “changes to groundwater flows needed to sustain both water quality and quantity entering Lake Arrowhead year-round,” and that it would “simultaneously impact surface hydrology.” Ex. H (Dr. Alford January 20, 2020 email) at 2; Ex I (Lake Arrowhead Report) at 20. Dr. Alford also found that “[t]he location, landscape and hydrological alterations of the proposed Project, by design, will create adverse impacts to water resources” including Little Bear Creek. *Id.* Hydrologist Greg Kamman also informed that County that the EIR incorrectly characterizes groundwater conditions and fails to acknowledge or analyze the Project’s potential to substantially interfere with groundwater recharge with corresponding impacts to Little Bear Creek. *See Kamman 2019 Report* at 3, 4.

The EIR inappropriately relies on compliance with the County’s regulatory requirements to conclude that the Project’s impacts would be less than significant.

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DREIR at 3.F-23, 3.F-29. As discussed above, however, compliance with applicable regulations does not excuse the County from its obligation to analyze the Project’s construction-related impacts and is not a sufficient basis to conclude that the Project’s impacts would be less than significant. *See Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-17; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-09.

Moreover, because the EIR relies on mere regulatory compliance, it fails to identify *any* mitigation for the Project’s construction-related water quality impacts. Rather, the EIR looks to the eventual development of a Stormwater Pollution Prevention Plan (“SWPPP”) which would purportedly include best management practices (“BMPs”) to be used at the site. DREIR at 3.F-22. The EIR’s approach does not comply with clearly established case law. CEQA allows a lead agency to defer mitigation only when: (1) an EIR contains criteria, or performance standards, to govern future actions implementing the mitigation; (2) practical considerations preclude development of the measures at the time of initial project approval; and (3) the agency has assurances that the future mitigation will be both “feasible and efficacious.” *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94-95; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th at 669-71; Guidelines § 15126.4(a)(1)(B). Here, the County has met none of these requirements.

(b) Operational Impacts

The EIR also fails to provide the required evidentiary support for its conclusion that the Project’s operational water quality impacts would be less than significant. DREIR at 3.F-23. The Project would flatten a forested hillside, resulting in a 50 percent increase in impervious surfaces. DREIR at 3.F-24. Unless adequately controlled, the Project has the potential to discharge stormwater in Little Bear Creek and Lake Arrowhead. Anticipated pollutants of concern include bacteria/virus, heavy metals, nutrients, pesticides, organic compounds, sediments, trash and debris, oxygen demanding substances, and oil and grease. DREIR at 3.F-23. Despite the potential for these contaminants to discharge to area waterways, the EIR provides a confusing assessment of stormwater runoff volumes and inexplicably fails to provide *any* analysis of the Project’s potential to degrade water quality post development.⁷ Instead, as discussed below, the

⁷ The EIR asserts that there would be a 0.54 cubic feet per second (“cfs”) reduction in peak stormwater flows that would be discharged from the Project site when compared to existing conditions (a decrease to 67.64 cfs from 68.18 cfs as compared to undeveloped

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document impermissibly relies on a series of vague BMPs that would purportedly be incorporated into the Project in support of its conclusion that the Project’s impacts would be less than significant. DREIR at 3.F-23.

As an initial matter, CEQA does not allow an environmental document to avoid proposing and analyzing mitigation by labeling mitigation measures “Project design features” or otherwise folding them into the project description. The Project’s significant impacts must be determined first, and then the EIR must identify adequate, enforceable mitigation that will avoid or reduce the impacts. *See Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656, 658 (rejecting EIR that relied on project designs to find no significant impact, instead of identifying significant impacts and considering potential mitigation measures). In *Lotus*, the court held that an EIR was legally inadequate where it assumed certain mitigation techniques would be incorporated into the project, and thus failed to disclose the impacts of the project without those special techniques. *See id.* Further, the court in *Lotus* criticized the EIR’s failure to consider whether other possible mitigation measures would be more effective than the ones that were assumed to be incorporated into the Project. *Id.* at 657. Here, by describing what are effectively mitigation measures as part of the Project, the EIR replicates the error made by the agency in *Lotus*.

Furthermore, the EIR makes no attempt to evaluate how increased stormwater runoff during the Project’s operational stage would affect downstream water quality. There is ample research documenting the relationship between increases in impervious surfaces and water quality degradation. *See* Chester J. Arnold Jr. and C. James Gibbons, *Impervious Surface Coverage: The Emergence of a Key Environmental Indicator* (1996) 62 *Journal of the American Planning Association* 243, attached as Exhibit J; T.R. Schueler, *The Importance of Imperviousness* (1994) 1 *Watershed Protection Techniques* 100, attached as Exhibit K. The EIR must be revised to analyze the effect that increased impervious areas and resulting changes in stormwater discharge would have on water quality in Little Bear Creek and Lake Arrowhead.

conditions) due to regrading of the site. DREIR at 3.F-25; FEIR at 3.F-25. However, the EIR also states that when both offsite and onsite drainage areas are included, there would be a 1.24 cfs increase to the overall stormwater flows from 550.15 cfs to 551.39 cfs as compared to undeveloped conditions, again due to regrading. DREIR at 3.F-25; FEIR at 3.F-25; Technical Appendix F, pdf page 18. This 1.24 cfs increase across the total area would outweigh the supposed decrease from the Project site.

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EIRs for other projects in the area provide an indication of the type of analysis that should have been conducted for the COTW Project. For example, although the EIR prepared for the Sky Park at Santa’s Village Project did not provide a comprehensive analysis, it did disclose that paved (i.e. impervious) areas of the site would generate sheet flows of stormwater to down-slope locations. The Sky Park Village Project EIR’s nominal analysis should be a starting point for the COTW EIR. See Sky Park FEIR excerpts at 69-70, attached as Exhibit L.

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The COTW EIR lacks the required evidentiary support for its conclusion that the Project’s design features would protect water quality during the Project’s operational phase. The EIR looks to BMPs such as depressed landscapes (athletic fields and parking lots), storm drain filters, a bioretention basin, employee training, street sweeping and landscaping maintenance to claim that the Project’s water quality impacts would be less than significant. DREIR at 3.F-23, 3.F-24; FEIR at 3.F-23. Yet, the EIR provides no detail about these measures or any indication that they would effectively prevent water quality degradation. To support a conclusion that a project would have less-than-significant impacts, an EIR “must provide a quantitative or qualitative determination or estimate of the mitigation measures’ effect” on project impacts. *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 845. Here, the EIR neither actually calculates nor otherwise analyzes how the BMPs would protect water quality. Indeed, as Dr. Alford explains, BMPs have varying levels of effectiveness and the BMPs in the COTW EIR have not been proven, empirically, under similar site and climatic conditions. See Ex. H (Dr. Alford, January 2020 email) at 2. Dr. Alford further states:

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The selection of BMPs requires careful consideration of site location based on landscape characteristics and the quantity of stormwater runoff during precipitation events. Gautam et al. (2010) suggests that factors influencing stormwater BMP design for specific regions are land use, vegetation, soil type, topography, geology, and climatic factors. In areas with various types of impervious surfaces (i.e. buildings, roads, and parking lots), BMPs are highly variable in their ability to effectively remove pollution inputs from stormwater runoff and protect aquatic.

Ex. I (Lake Arrowhead Report) at 9.

The COTW EIR provides no information that the applicant has taken site characteristics, the types of impervious surfaces, or climatic factors into account and thus

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provides no indication that the proposed BMPs would effectively remove pollution from stormwater. Finally, as Dr. Alford notes, stormwater BMPs (grass swales, etc.) require constant management and monitoring to remain effective. Ex. I (Lake Arrowhead Report) at 7. Yet here, the EIR does not call for any monitoring at all. To conclude, as the EIR does, that an impact is less than significant, substantial evidence must demonstrate that mitigation measures will reduce an impact to a less-than-significant level. Substantial evidence consists of “facts, a reasonable presumption predicated on fact, or expert opinion supported by fact,” not “argument, speculation, unsubstantiated opinion or narrative.” Pub. Res. Code § 21080(e)(1)-(2). Because the EIR’s conclusion that water quality impacts would be insignificant was premised on unsupported assumptions, it falls far short of the showing required by CEQA. The COTW EIR must be revised to provide a comprehensive analysis of the COTW’s impacts on water quality and to identify effective BMPs capable of protecting water quality.

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3. Cumulative Water Quality Impacts

The COTW Project, together with the Storm Drain Project, have the potential to increase stormwater runoff on the Project site and consequently to cause cumulative water quality impacts. Regardless of the timing of the Storm Drain Project (i.e., even if the Storm Drain Project precedes the COTW Project), construction of both projects would increase impervious surfaces and runoff. As Greg Kamman explains, the COTW EIR does not incorporate the increased flow rates that would be introduced to COTW drainages by the Rimforest Storm Drain Project. *See* Kamman 2019 Report at 4, 5. He goes on to state that a complete analysis of COTW potential impacts should evaluate baseline hydrologic conditions under two scenarios – one in which the Storm Drain Project is constructed prior to COTW and the second in which COTW is constructed prior to the storm drain diversion. *Id.* Dr. Jennifer Alford expresses similar concerns about the cumulative water quality impacts from the COTW and the Storm Drain project. She concludes that “it is highly likely . . . that the county’s proposed, and now approved, stormwater project entering Little Bear Creek will impact water quality Simply put, any alterations to the natural landscape create some degree of adverse impacts to downstream water sources.” Ex. H (Dr. Alford’s January 2020 email) at 2; Ex. I. (Lake Arrowhead Report) at 20. Dr. Alford adds that “[t]he location, landscape and hydrological alterations of the proposed COTW project, by design, will create [additional] adverse impacts to water resources” including Little Bear Creek. *Id.*

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In sum, the EIR must be revised to provide a comprehensive analysis of the COTW’s direct and cumulative impacts on water quality and to identify effective mitigation measures capable of protecting water quality.

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C. The EIR Lacks Evidentiary Support for its Conclusion that the Project’s Emergency Evacuation Impacts Would Be Less Than Significant.

CEQA requires an EIR to discuss any “health and safety problems caused by physical changes” in the environment that arise out of a project. Guidelines § 15126.2(a). Where those physical changes contribute to or exacerbate wildfire and evacuation risks, the EIR must adequately inform the public and decisionmakers about the risks of attempting to evacuate the Project area. Here, the EIR does not meet CEQA’s standards.

Transportation engineer Neal Liddicoat with Griffin Cove Transportation Consultants (“GCTC”) reviewed the EIR’s emergency evacuation analysis. *See* GCTC Report, June 29, 2020, attached as Exhibit M. Liddicoat determined that the EIR does not disclose whether it is feasible to evacuate the Project’s occupants and surrounding community in a timely and safe manner. Consequently, the EIR lacks support for its conclusion that the risks associated with emergency evacuation would be less than significant.

Although the EIR identifies three potential evacuation routes from the Project site—SR 18, SR 138 and SR 189—the EIR does not evaluate the ability of these roadways to accommodate traffic under a mass evacuation scenario. No attempt was made, for example, to establish whether these roads would have adequate capacity during an evacuation and therefore provide a safe means for escaping from an approaching wildfire. GCTC Report at 9.

As an initial matter, it is important to point out that only SR 18 is a viable evacuation route. SR 189 and SR 138 are considered unsuitable for evacuating motorists. As the EIR acknowledges, SR 189 should be used only if time constraints do not exist or if there are no alternative routes available. EIR Project Evacuation Report at 8; GCTC Report at 9. SR 138 is also highly problematic as it is subject to significant, longstanding constraints on its use. *See* GCTC Report at 14. Although SR 138 is the only evacuation route to the north from the Project area, it is a very narrow, steep, winding road with hairpin turns that are difficult for large vehicles to negotiate. Notably, Caltrans has installed advisory signs warning against use of this highway by large trucks—as the roadway is frequently partially or completely blocked by semi-trucks. *See* GTCT Report at 15 (quoting the Alpenhorn News, February 18, 2017).

Consequently, although the EIR identifies SR 138 and SR 189 as evacuation routes, it is clear that the only real evacuation route for the proposed Project is SR 18.



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Because the Project and cumulative development would result in numerous significant and unavoidable impacts to intersections along SR 18, the Project would substantially impede emergency evacuation. (See GCTC Report at 3, stating, “In other words, key components of the primary evacuation route (SR 18) serving the Project site are expected to operate at or above capacity, leaving no room to accommodate a sudden influx of vehicles associated with an emergency evacuation.”)

The Victorville Daily Press notes that emergency evacuation out of Big Bear Valley is already a well-known risk. The lack of available routes out of the Valley during the 2003 Old Fire/Grand Prix Fire caused motorists attempting to evacuate the area to experience a 28-mile traffic jam on SR-18. See “Big Bear’s fire escape routes high risk,” Daily Press, May 8, 2019, attached to GCTC Report. This same article reveals that an analysis by USA Today placed Big Bear and surrounding communities as the worst 1% statewide when it comes to population-to-evacuation-route ratios. *Id.* The EIR’s failure to disclose these well-known risks, let alone analyze how the Project would contribute to these risks, is a serious flaw.

Given the lack of meaningful information in the EIR, Liddicoat reviewed an evacuation study prepared to implement certain San Bernardino County 2007 General Plan goals, policies and programs relative to evacuation of the mountain communities during emergencies. See Mountain Region Emergency Road Capacity Study, URS, April 16, 2012, excerpts attached to GCTC Report. The URS Study tested the abilities of SR 18 and SR 330 to accommodate traffic during an emergency evacuation in the Lake Arrowhead area.⁸ Liddicoat attempted to duplicate the URS Study’s analysis for certain segments along SR 18. His analysis revealed that that the traffic demand during an evacuation on SR 18 would be roughly *four to four-and-one-half times the capacity of the road*. GCTC Report at 12. It is important to note that roadway capacity could be reduced even further, as the URS Study did not take into account other critical variables that come into play during evacuations such as the possibility that the road will be obscured by smoke or other fire-related factors such as visible flames or flying embers. Moreover, as the EIR explains, only one lane of the two-lane highway would be available to evacuating

⁸ Although the URS Study initially identifies SR-18, SR-173 and SR-189 as the evacuation routes for Lake Arrowhead, when it conducts the detailed evacuation analysis, it focuses on SR-18 and SR-330. It does not address SR-189 or SR-173 at all.

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traffic as the “inbound” traffic lane would need to be reserved for approaching emergency vehicles. FEIR at 163 (Response to Comment 10-45). Consequently, the actual capacity of SR 18 would be substantially less than the URS study assumes. Furthermore, as Liddicoat explains, unstable flow will cause high levels of congestion and stop-and-go traffic, which will increase not only the time needed to evacuate, but also the levels of stress and anxiety for evacuees. GCTC Report at 13.

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In summary, although the EIR does not address the feasibility of safely accomplishing a wildfire-related evacuation, the URS Study demonstrates conclusively that inadequate road capacity exists and the likelihood of a safe evacuation is negligible, at best. In order to adequately evaluate the Project’s emergency evacuation impacts, the EIR should have addressed the following basic questions:

1. If a wildland fire is approaching the Project site from a direction that necessitates evacuation to the south, does the two-lane SR 18 have adequate capacity to accommodate all Project- and non-Project-related traffic that might be on that road during an evacuation?
2. If a fire is approaching the Project site from a direction that necessitates travel to the north on SR 138, does that winding, two-lane road have adequate capacity to accommodate all Project- and non-Project-related traffic that might be on that road during an evacuation?
3. How long would it take to evacuate the Project site in the event of a wildland fire?
4. Can an evacuation be successfully and safely accomplished?
5. Would multijurisdictional fire efforts be able to mount an adequate emergency response consistent with County standards?

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D. The EIR Underestimates the Project’s Potential to Increase Roadway Hazards and Threaten Public Safety.

1. The EIR Relies on Inaccurate Assumptions in Its Site Distance Analysis.

In our prior letters, we explained that the DREIR was deficient because it did not evaluate whether the Project’s traffic would increase roadway hazards. The FEIR declined to conduct this analysis, claiming that the burden was on the public to provide substantial evidence that the Project would compromise traffic safety. *See* Response 10-

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40, FEIR at 162. It is not the public’s responsibility to provide substantial evidence of an impact. Rather it is the duty of the EIR to support its conclusions with substantial evidence. Pub. Resources Code § 21080 (e) (1), (2).

Because the County declined to conduct this important analysis, we requested that GCTC review the applicable sections of the EIR. Liddicoat confirms that the EIR lacks evidentiary support for its conclusion that the Project’s roadway hazard impacts would be less than significant. In particular, Liddicoat determined that the EIR fails to disclose that the Project would increase the risk of accidents at SR 18 and the Project Driveway. The DREIR incorrectly relied on the actual speed limit of SR 18 rather than the roadway’s design speed. GCTC report at 4. According to Liddicoat, the design speed of a roadway is invariably higher than the speed limit; if it were equal to or less than the speed limit, then vehicles traveling at or even slightly above the speed limit would exceed the physical capabilities of the roadway. GCTC report at 4; 5. In this case, the speed limit on SR 18 is 35 mph; thus, it is likely that the design speed is 40 or 45 mph. Liddicoat recalculated the analysis using appropriate stopping sight distance values for the eastbound/downhill intersection approach. Liddicoat determined that for vehicles traveling two or more miles per hour over the speed limit, there would be inadequate stopping sight distance. Vehicles would be unable to stop in time to avoid entering the intersection if a red light is encountered or the intersection is otherwise occupied (e.g., pedestrians or bicyclists crossing the intersection or vehicles occupying the intersection because they have been involved in an earlier collision). GCTC Report at 4.

According to Liddicoat, to ensure safe operation, a minimum of 354 feet of stopping sight distance must be provided (i.e., the value for 40 mph) and it would be advisable to provide 427 feet, which would allow safe operation at up to 45 mph.⁹ As noted above, these values represent the likely design speed for SR 18 at this location. As GCTC explains, the inappropriate use of the posted speed limit (instead of the design speed) in determining the required safe stopping sight distance is a substantial flaw in the EIR. It also undermines the EIR’s conclusion that the Project’s impacts relating to roadway hazards would be less than significant. Indeed, according to Liddicoat, it is likely that construction of the traffic signal-controlled Project access intersection will create a substantial traffic hazard. In particular, many drivers approaching the site on eastbound SR 18 will be unable to safely avoid any obstructions that might be present in the Project access intersection, as they will be unable to stop before entering the

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⁹ The EIR calls for a mere 300 feet of stopping sight distance. FEIR at 162.

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intersection. The result will be collisions within the intersection, which will be a direct result of construction of the Project. GCTC at 6.

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2. The EIR Fails to Consider the Presence of Queued Vehicles.

Liddicoat also determined that the Project would create an additional safety hazard for motorists traveling eastbound toward the intersection of SR 18/Project Driveway. According to Liddicoat, if there are vehicles queued at the eastbound approach to this intersection, the approaching vehicle would be unable to stop in time to avoid a rear-end collision with the last vehicle in the standing queue. This is because the Project has been designed to provide a mere thirteen feet of stopping distance at this intersection. Many passenger trucks are longer than thirteen feet. GCTC Report at 6. Thus, a queue as short as one vehicle could completely consume the excess stopping sight distance for eastbound vehicles. In other words, unless there are no vehicles waiting on the eastbound intersection approach, there will be inadequate stopping sight distance available. *Id.*

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As Liddicoat explains, this safety hazard would be exacerbated in the event of icy or snowy conditions. While some drivers may have the acumen to safely traverse the curving, downhill grade approaching the Project site, others will not. In either case, it is reasonable to expect that stopping distances will increase, reducing the likelihood that an approaching driver will be able to stop prior to entering the intersection (or encountering the rear end of a queued vehicle). GCTC Report at 7, 8.

The County should revise the EIR to include a comprehensive analysis of the Project’s potential to increase public hazards and threaten public safety.

III. Approval Of the Project Would Violate the State Planning And Zoning Law.

The State Planning and Zoning Law (Gov’t Code § 65000 et seq.) requires that development decisions be consistent with the jurisdiction’s general plan. General plans establish long-term goals and policies to guide future land use decisions, thus acting as a “constitution” for future development. *Leshar Communications, Inc. v. City of Walnut Creek* 52 Cal.3d 531, 540 (1990). As reiterated by the courts, “[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.” *Resource Defense Fund v. County of Santa Cruz* 133 Cal.App.3d 800, 806 (1982). Accordingly, “[t]he consistency doctrine [is] the linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.”

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Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors 62 Cal.App.4th 1332, 1336 (1998).

To promote coordinated land use policies and practices, state law requires local governments not just to formulate theoretical land use plans, but also to conform their development and land use projects and approvals with those duly certified plans. *Citizens of Goleta*, 52 Cal.3d at 570. It is an abuse of discretion to approve a project that “frustrate[s] the General Plan’s goals and policies.” *Napa Citizens for Honest Gov’t v. Napa County* 91 Cal.App.4th 342, 379 (2001). The project need not present an “outright conflict” with a general plan provision to be considered inconsistent; the determining question is instead whether the project “is compatible with and will not frustrate the General Plan’s goals and policies.” *Napa Citizens*, 91 Cal.App.4th at 379.

As we and other members of the public including Sierra Club and SOFA explained in prior letters, the Project is inconsistent with the San Bernardino County General Plan and the Lake Arrowhead Community Plan. Subsequent to the submission of those letters and after the publication of the DREIR, the County determined that the Project’s increase in traffic would be inconsistent with the San Bernardino County General Plan (Policy M/CI 1.1) and Lake Arrowhead Community Plan (Policy LA/CI 1.1). Both polices require the County to maintain specific levels of service on Project area roadways. In particular, General Plan Policy M/CI 1.1 requires that the County “shall ensure that all new development proposals do not degrade Levels of Service (“LOS”) on State Routes and Major Arterials below LOS C during non-peak hours or below LOS D during peak hours” (emphasis added). As the DREIR explains, the Project would conflict with the County’s LOS standards at several intersections under all traffic scenarios. DREIR at 0-17. While the DREIR did not acknowledge these land use inconsistencies as a significant impact (DREIR at 0-16), the FEIR determines that these conflicts with the General Plan constitute significant and unavoidable impacts. FEIR at 0-16 (pdf page 469). The Project thus conflicts with a fundamental, mandatory, and clear General Plan policy with which it cannot rationally be found consistent. *See, e.g., Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777.

The Project also would be inconsistent with General Plan Policy CI 13.2(c), which calls for the County to reduce the water quality impacts of stormwater runoff by preserving wetlands and riparian corridors and maintaining buffer zones around those areas. The Project not only fails to include any buffer zone around riparian areas, but in fact would construct parking, driveways and sports fields directly on top of a stream and wetlands, eliminating riparian habitat. As explained above, the Project’s regrading of the hilltop site and construction of parking lots and other large impervious surfaces will

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degrade water quality and increase stormwater runoff, which will be exacerbated by the steep, erosion-prone slopes on the Project site and the lack of buffer areas around streams and wetlands. All of these impacts undermine the goals and policies of the General Plan.

Because of the Project's glaring inconsistencies with General Plan and Community Plan policies, approval of the Project would violate State Planning and Zoning Law. In addition, because the Project will result in new significant effects not identified in the DREIR, the County is obligated to revise the EIR and recirculate it for public review. CEQA Guidelines §§ 15162; 15163.

IV. Conclusion

For all of the foregoing reasons, as well as the reasons presented in our prior letters and other public and expert comments, and in light of the evidence in the record, the Board of Supervisors should uphold the appeal, reverse the Planning Commission's decision, and deny the proposed Project. In any event, the Board cannot lawfully approve this Project without first preparing a thorough, accurate, and complete EIR that discloses, analyzes, and provides mitigation for the Project's impacts to this unique environment.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Kevin P. Bundy

List of Exhibits:

- Exhibit A: S. Loe and R. Stauber, Habitat Management Guide for Southern Rubber Boa on the San Bernardino National Forest (May 1985).
- Exhibit B: Robert Hamilton, Hamilton Biological, Review of Rubber Boa Issues: Proposed Church of the Woods Project, County of San Bernardino, California (August 10, 2020).
- Exhibit C: Rim Forest Storm Drain DREIR.

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CONT.

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