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January 22, 2020

San Bernardino County Planning  
Commission  
County Government Center  
385 N. Arrowhead Avenue  
San Bernardino, CA 92415

Re: Church of the Woods

Dear Commissioners:

We submit the following letter on behalf of Save Our Forest Association ("SOFA") and Sierra Club – San Bernardino Mountains Group ("Sierra Club") in connection with the Church of the Woods Project ("Project" or "COTW") and its Final Environmental Impact Report ("FEIR"). Our clients remain deeply concerned about the far-ranging environmental impacts that would result from the proposed Project.

After carefully reviewing the FEIR, we have concluded that it fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq. The FEIR follows a similarly inadequate Revised Draft Environmental Impact Report ("DREIR"). Our letter of February 25, 2019 is by this reference incorporated herein in its entirety, including all attachments. In that letter we described many substantive flaws in the DREIR's analysis.

The FEIR neither adequately responds to comments previously raised nor cures the legal inadequacies identified by those comments. Rather than revise the DREIR to comprehensively analyze, for example, the Project's impacts on biological resources, wetland and riparian habitats, traffic, drainage and hydrology, evacuation and emergency response, and land use, the FEIR merely seeks to defend the erroneous assertions and conclusions of the prior document. Where the FEIR does add analysis or make changes to the Project, it fails to acknowledge the significance of the changes or recirculate the document. Additionally, the FEIR fails to include a legally adequate project description including the Project's relationship to the Rimforest Storm Drain System. The FEIR also fails to adopt feasible mitigation measures identified by members of the public. Although

B-1

B-2

B-3

San Bernardino County Planning Commission  
January 22, 2020  
Page 2

we identified several clearly feasible measures to reduce, for example, the Project's significant and purportedly unavoidable transportation impacts, the FEIR rejects the vast majority of these measures. The FEIR also fails to include a reasonable range of Project alternatives.

B-3  
CONT.

In addition to the FEIR's CEQA violations, key components of the Project, including the sports field complex, are not permitted by the County's Development Code. The Project also demonstrates a disturbing disregard for the San Bernardino County General Plan and the Lake Arrowhead Community Plan. Both plans include provisions developed to protect the environment and human health and well-being. Thus, because the Project conflicts with several fundamental planning provisions so as to result in significant environmental impacts, and because the County has failed to adequately identify these conflicts in the FEIR, approval of the Project would violate not just CEQA, but also the California Planning and Zoning Law, Government Code § 65000 et seq. Finally, the County lacks evidence to support the findings necessary to approve the conditional use permit, including the finding of General Plan consistency.

B-4

At a more fundamental level, the proposed Project represents a reckless disregard for the environment and the Rimforest community. Numerous environmental organizations and individuals have weighed in on legal inadequacies of the EIR and on the merits of the Project explaining that its serious environmental impacts would outweigh the Project's benefits. This letter incorporates herein the February 24, 2019 letter from Save Our Forest Association, the February 24, 2019 letter from Sierra Club – San Bernardino Mountains Group, and the February 25, 2019 letter from the San Bernardino Valley Audubon Society letter, including its May 28, 2010 addendum prepared by Biologist David Goodward. For the reasons identified in these and myriad other letters submitted on the DREIR, SOFA and the Sierra Club urge the County to reject this ill-conceived Project.

B-5

Finally, the public has not been given sufficient opportunity to review and comment on the FEIR. The County released the FEIR mid-day on January 10, 2020, providing the public just eight business days to review and comment on the document before the Planning Commission considers the Project at its January 23, 2020 hearing. As the County is likely well aware, the proposed Project is extraordinarily controversial. The abbreviated comment period does not provide adequate time for the public to review and comment on changes the County made to the DREIR including important changes between the relationship of the Project and the Rimforest Storm Drain Project that implicate the FEIR's analysis of numerous environmental impacts including impacts to jurisdictional waters, riparian habitats, wildlife, and stormwater drainage. Therefore, if

B-6

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 3

the Commission does not deny the Project outright, it should continue its hearing to allow for a more detailed review of the FEIR.

The remainder of this letter explains how the FEIR perpetuates the failings of the DREIR. We will not here reiterate our prior comments in full. Instead, we detail below some of the FEIR's more egregious shortcomings.

# **I. THE FEIR FAILS TO COMPLY WITH CEQA.**

## **A. The FEIR Fails to Resolve Deficiencies in the DREIR's Description of the Project.**

### **1. The EIR Lacks a Stable Project Description.**

In order for an environmental document to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. An EIR must describe a proposed project with sufficient detail and accuracy to permit informed decision-making. *See* Cal. Code Regs., tit. 14 ("CEQA Guidelines"), § 15124. Indeed, "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal. App. 4th 713, 730 (1994), quoting *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 193 (1977). As a result, courts have found that, even if an EIR is adequate in all other respects, the use of a "truncated project concept" violates CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor*, 27 Cal. App. 4th at 730. Furthermore, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *Id.* (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable. Here, the EIR fails entirely to meet this mandate because it lacks a stable project description.

Storm drainage is an integral part of the proposed Project as is the County's Rimforest Storm Drain Project. DREIR at 2-16 and 2-22 (stating that the proposed Project's drainage plan is dependent on connecting to facilities that will be installed as part of San Bernardino County's Rimforest Storm Drain Project). It is imperative therefore that the COTW EIR's Project Description clearly delineate the relationship between the COTW Project and the Storm Drain Project. Yet, rather than provide a stable description of this Project component, the COTW EIR shifts back and forth as to when the Storm Drain Project would be constructed.

SHUTE, MIHALY  
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B-6  
CONT.

B-7

B-8



San Bernardino County Planning Commission  
January 22, 2020  
Page 4

The DREIR asserted that the COTW Project would be constructed concurrent with or following installation of the regional drainage improvements included in the Storm Drain Project and that *"the DREIR evaluates both scenarios."* DREIR at 2-16 and 2-22, emphasis added). The DREIR, however, did no such thing. Its description of, and analyses of impacts to, the site's biological resources, hydrological resources, and geotechnical features (e.g., the offsite riparian corridor used by wildlife, riparian habitats including Southern Willow Riparian Forest and Southern Mixed Riparian Forest, streams, springs, jurisdiction waters, wetlands, drainage, slopes) was incomplete, cursory, and lacking evidentiary support.

B-8  
CONT.

Recognizing the serious flaws in the COTW DREIR's environmental impact analyses that are implicated by the Storm Drain Project, the FEIR shifts tacks altogether and asserts, absent any evidentiary analysis, that there would be no environmental impacts at all from the COTW because the Storm Drain Project would be constructed before the COTW Project. FEIR at 41, 50, 71, 85, 155, 165, 169, 172, 174, 175, 176, 428, etc. Yet, as we explain below, this is entirely incorrect. Regardless of when the Storm Drain Project would be constructed, there would be environmental impacts from the COTW that are not addressed or mitigated in the COTW EIR.

B-9

Compounding matters, the Planning Commission Staff Report for the January 23, 2020 hearing now asserts that the Storm Drain Project may in fact not be completed prior to the COTW Project after all. *See* Planning Commission Staff Report at 86 (Condition 37 stating that: "Verification shall be provided that all components of the San Bernardino County Flood Control District's Rimforest Storm Drain project, that would materially affect either the Church of the Woods project or property, have been installed and are operational. *As an alternative, the development and grading plans shall be revised to not rely on the Rimforest Storm Drain Project.*") (Emphasis added). In short, just three business days before the Planning Commission hearing in which staff is recommending approval of the COTW Project, the Project Description has changed yet again in a manner that may require that the COTW's development plans be revised. *See* Land Use Services Department Planning Commission January 23, 2020 Staff Report at 1, 86. This is a textbook example of a flawed Project Description which renders evaluation of the Project's environmental impacts impossible. Condition 37 also appears to contemplate that critical components of the Project (namely, the development and grading plans) might be completely reconfigured *after* Project approval. CEQA requires disclosure, analysis, and mitigation or avoidance of environmental impacts *before* projects are approved, not after. "If post-approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken." *Laurel Heights Improvement Assn. v. Regents of University of California*,

B-10

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 5

47 Cal. 3d 376, 394 (1988). The County may not defer its description of the Project, and its analysis and mitigation or avoidance of impacts, to some point in the future based on a condition of approval.

B-10  
CONT.

The County revised and recirculated the original DEIR in large part “to address the change in conditions resulting from the County’s purchase of a portion of land contained within the initial Project proposal to develop the Storm Drain Project.”<sup>1</sup> DREIR at 0-1, 1-2, 1-3; January 23, 2020 Planning Commission Staff Report at 37. Now, more than ten years following the publication of the original DEIR, the County has again modified the EIR in relation to the timing of the Storm Drain Project. The County must determine the timing of the Storm Drain Project vis-à-vis the COTW, evaluate the environmental impacts from both projects, identify feasible mitigation for these impacts, and then again recirculate the EIR for public review and comment.

B-11

**2. The FEIR Fails to Correct the DREIR’s Incomplete Description of the Project.**

In our previous letter, we detailed additional flaws in the DREIR’s description of the Project, including its failure to adequately disclose details regarding numerous Project components. We explained that without a sufficiently detailed Project description, including all of the Project’s components, the impact analyses were excessively vague. Comment 10-18, FEIR at 109. Rather than provide meaningful responses, the FEIR merely states that the proposed Project is described at a level of detail that is commensurate with the level of detail contained in the Project’s application materials. FEIR at 155. The fact that the Project application does not provide detailed information about the Project does not relieve the County of its responsibility to provide a sufficient level of detail to the public. CEQA requires that the description of the project be detailed enough to evaluate the Project’s environmental impacts. CEQA Guidelines § 15124.

B-12

<sup>1</sup> According to the DREIR, the County determined that the proposed Project’s environmental evaluation should consider the Storm Drain Project Final EIR that was certified by the County of San Bernardino in May 23, 2017 (SCH No. 2015051070) because the Rimforest Storm Drain Project occupies approximately 10.0 acres of land that was initially proposed as part of the previously proposed Church of the Woods Project that is not part of the currently-proposed Project. DREIR at 1-3.

SHUTE, MIHALY  
WEINBERGER LLP



San Bernardino County Planning Commission  
January 22, 2020  
Page 6

In response to our comment, for example, that the DREIR erred by not describing the special events that could occur at the Project site, the FEIR explicitly admits that special events could take place, such as weddings, sports tournaments, or other gatherings for use by public and private. Response 10-21B, FEIR at 156; DREIR at 2-16. Yet rather than disclose the nature of these events, the FEIR asserts that it would be speculative to try to identify them. We never requested a list of every special event, nor does CEQA require an analysis of speculative impacts. CEQA does, however, require that an EIR describe the Project's facilities and evaluate how their reasonably foreseeable use could impact the environment. For example, a sports tournament that occurs on the same day as the Sunday morning church service, which is expected to draw around 600 people (DREIR at 2-28), could certainly overwhelm the local roadway and intersection system beyond what the EIR already acknowledges. A wedding with amplified music could result in exceedances of the County's noise standards. Because the EIR fails to describe the special events that could occur on the Project site, it makes informed environmental impact analysis impossible.

To this end, the County must make a good faith effort to disclose the nature of these special events and also evaluate the foreseeable effects these events would have on the environment. Since the EIR explicitly acknowledges the potential for these events, the applicant must have some idea of what events are and are not allowed to occur at the Project site. Alternatively, the County could place a condition of approval on the Project that explicitly prohibits non-church related, i.e., public special events.

Nor does the FEIR provide an adequate response to public comments pertaining to the EIR's failure to provide basic information about the Project's design. See Comment 10-18, FEIR at 109. Here too, the FEIR suggests that the County has done enough as the EIR provided the same level of detail as was in the Project application. FEIR at 155. Again, this response is insufficient. Where the information provided by an applicant is insufficient, an agency may not merely throw up its hands and abdicate its responsibilities under CEQA. Rather, the agency must insist that the applicant provide the information necessary to determine whether a significant environmental effect will occur. See *Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1228 (1994); Pub. Res. Code § 21160. In the absence of any visual description or rendering of the proposed buildings, including building heights, architectural styles, building materials to be used, color schemes, landscaping design, and visual screening methods, meaningful analysis of the Project's visual impacts is not possible. This deficiency is particularly egregious here as the Project is not being developed in an urban environment; instead it would be built in the forest immediately adjacent to a scenic highway. See CEQA Guidelines § 15064(b) (1) explaining that the significance of an activity may vary with the setting. Impacts must

B-12  
CONT.

B-13

SHUTE MIHALY  
WEINBERGER LLP

San Bernardino County Planning Commission  
January 22, 2020  
Page 7

“be considered in the full environmental context” (CEQA Guidelines § 15125(c)), which includes the unique environmental setting of this forested setting. *See also Friends of Eel River v. Sonoma County Water Agency*, 108 Cal. App. 4th 859, 874 (2003) (EIR invalid because incomplete environmental setting “fail[ed] to set the stage for a discussion” of the project’s environmental impacts).

Nor can the FEIR simply rely on alleged compliance with the Development Code in lieu of a visual description of the Project’s features. This claim cannot justify the EIR’s approach. As we explained, the EIR makes clear that the applicant is entitled to request exceptions to the development standards. DREIR at 3.G-3; FEIR at 155.

The FEIR with its present Project Description cannot support approval of the proposed Project; it must be substantially revised and recirculated.

**B. The FEIR Fails to Resolve Deficiencies in the DREIR’s Analysis of and Mitigation for the Project’s Environmental Impacts.**

**1. The FEIR’s Evaluation of Impacts to Biological Resources Remains Inadequate.**

**(a) Jurisdictional Waters, Wetlands and CDFW Streambed/Riparian Impacts.**

The Project has the potential to impact jurisdictional waters, wetlands, and riparian habitats, yet the EIR fails to provide an adequate analysis of these impacts. As an initial matter, the DREIR fails to document the extent of these resources that occur on the COTW site and just off-site. *See generally* Letter 10 C, FEIR at 138-159 (explaining that the DREIR does not acknowledge the presence of a perennial stream, a spring located just north of the COTW project footprint, or associated wetlands). Because the DREIR did not acknowledge the presence of these resources, the DREIR also failed to adequately analyze the COTW’s potential to impacts these resources. Comment 10C-2, FEIR at 175.

Now, the FEIR alleges that the COTW would not be built until after the Storm Drain Project and that there would be no impacts whatsoever to jurisdictional waters, wetlands, and riparian. FEIR at 175. Yet, this simple tweak does nothing to resolve the deficiencies in the DREIR’s analysis. If the COTW DREIR had in fact analyzed both scenarios as it claims it did (at 2-2), it would have: (1) identified the precise location of the aforementioned hydrological features, jurisdictional waters, wetlands, and riparian habitats; (2) comprehensively evaluated how the COTW would

B-13  
CONT.

B-14

B-15

SHUTE, MIHALY  
WEINBERGER LLP



San Bernardino County Planning Commission  
January 22, 2020  
Page 8

impact these features; and (3) evaluated how these features would be impacted if the Storm Drain Project were constructed prior to the COTW. The DREIR skipped each of these steps.

The FEIR's blanket assertion that the COTW would not have *any* impacts to jurisdictional waters and wetlands because they would have already been impacted and mitigated by the Storm Drain Project is also flawed because it is entirely unsupported by evidence.<sup>2</sup> CEQA requires more than this "trust us" approach. Pub. Res. Code § 21080(e)(1)-(2). Contrary to the FEIR's assertion that there would be no impacts, as Kamman's 2019 report made clear, not all jurisdictional waters found on and immediately off of the COTW site would be permanently altered and eliminated by the Storm Drain Project. Comment 10C-3, FEIR at 138, 139. Kamman conducted a detailed analysis, supported with graphics, demonstrating that jurisdictional waters in the southwest portion of the COTW property will remain, albeit in a potentially slightly different restored condition, upon completion of the Storm Drain Project. *Id.* at 140. The COTW Project would build a roadway, ballfield and parking on these jurisdictional wetlands. *Id.* Thus, regardless of which project gets constructed first, it is clear that the COTW would impact these hydrologic features.

Kamman's review of the FEIR continues to reveal that regardless of the timing of the implementation of the Storm Drain Project, the COTW would result in impacts to state and federal jurisdictional waters that are not acknowledged or mitigated in the EIR. See Kamman Hydrology & Engineering, Inc, Report ("2020 Kamman Report"), January 21, 2020, attached as Exhibit A. Kamman explains that, based on the COTW EIR and the Storm Drain EIR, jurisdictional waters lie within the construction footprint of the proposed COTW. 2020 Kamman Report at 3. The Storm Drain FEIR indicates that impacts to jurisdictional waters would be restored on-site after completion of the Storm Drain Project. *Id.* Therefore, regardless of which project is constructed first, the jurisdictional wetlands will be present in an original or restored state at the time

<sup>2</sup> In fact, the FEIR preparers were so confident that the Storm Drain Project would be implemented prior to the COTW Project that the FEIR *removed* Mitigation Measure MM-3.C(2) (c) from the EIR altogether. This mitigation measure allegedly would have reduced the COTW's direct impacts to riparian habitats. DREIR at O-9; FEIR at 171. Now that the January 23, 2020 Planning Commission Staff Report confirms that the Storm Drain Project may not be constructed prior to the COTW Project and that the COTW's development plans may need to be revised, the EIR is left with a significant unmitigated impact on the Project's riparian habitats, requiring that the EIR be revised and recirculated.

SHUTE MIHALY  
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B-15  
CONT.

B-16



San Bernardino County Planning Commission  
January 22, 2020  
Page 9

the COTW Project undergoes construction. *Id.* It is also clear from the COTW's plans the jurisdictional waters lying within the COTW construction footprint will be disturbed if not completely eliminated. *Id.* The COTW FEIR does not acknowledge or mitigate for this impact. Again, this deficiency is particularly egregious, as Kamman explicitly identified this issue in his 2019 report. Comment 10C-2, FEIR at 138, 139.

B-16  
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Finally, as discussed above, the Planning Commission's January 23, 2020 Staff Report muddies the issue further by stating that if the Storm Drain Project is not constructed before the COTW, that COTW's development and grading plans will need to be revised. Just three business days before the Planning Commission is expected to approve the COTW, it is clear that the Storm Drain Project and the COTW are in a state of flux. Until the design and timing of both projects are finalized there can be no analysis of their environmental impacts. And until the environmental impacts are comprehensively evaluated, it is not possible to identify feasible mitigation measures capable of addressing those impacts. The EIR must be revised to resolve these deficiencies and recirculated for public review and comment.

B-17

**(b) Impacts to Wildlife Species and Their Habitats**

**(i) Sensitive Wildlife Species Impacts**

Together with other members of the public we identified many deficiencies in the DREIR's analysis of impacts to the wildlife and habitat on the Project site. Comments 10-53 – 10-59, FEIR at 126—129; *see also* comments from the San Bernardino Valley Audubon Society generally (Letter 7, FEIR at 53—66), and comments from Steve Loe, Certified Wildlife Biologist and retired Forest Service biologist (Letter 166, FEIR at 353). As these and other letters explain, the EIR fails to accurately depict the biological resources setting and understates the severity of the Project's impacts to wildlife including, but not limited to, the southern rubber boa ("SRB"), San Bernardino Flying Squirrel ("SBFS"), and the California spotted owl ("CSO").

B-18

Several commenters criticized the DREIR's failure to conduct current protocol-level surveys for the sensitive species that are likely present on the Project site. Comment 10-54, FEIR at 126, 127; Comment 166-G, FEIR at 353. This error is particularly egregious because the California Department of Fish and Wildlife ("CDFW") explicitly identified this omission in its comments on the 2010 DEIR. (*See* Comment 7-7, FEIR at 55, 56 explaining that the EIR's approach to surveys for species failed to comply with CDFW protocols and that "absent a truly qualified, thorough and legitimate biological survey, following full CDFW protocol, the unavoidable fact is that the entire site qualifies as suitable and occupied SRB habitat."). Audubon explained that the same

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 10

biologist employed by the COTW Project conducted biological studies for another nearby Project, the Hawarden Development. *Id.* The Hawarden Development Project was the subject of a legal challenge for its faulty and unsubstantiated analysis of impacts to SRB. *Id.* Audubon prevailed at the Court of Appeal, and the Court determined that the Hawarden consultant's scientific evaluations were invalid. *See Ctr. for Biological Diversity v. County of San Bernardino*, No. E042316, 2008 WL 4696065 (Cal. Ct. App. Oct 27, 2008), attached as Exhibit B. Given that the Hawarden Project is within the same habitat range as the COTW Project, the biological studies for the SRB on the COTW site are likely insufficient for purposes of identifying and analyzing impacts to SRB. The biological studies are also likely insufficient for identifying and analyzing impacts to SBFS and CSO.<sup>3</sup>

B-18  
CONT.

The FEIR suggests it is not required to respond to this comment claiming that the Audubon appellate case pertains to another project. Response 7-7, FEIR at 68. Yet, as explained above, the COTW occurs in the same habitat range and relies on the precise flawed methodology rejected by the Court of Appeal in the Hawarden case. Instead of addressing the substantive comment, the FEIR states that the DREIR's approach assumes presence of SRB which is a "commonly accepted methodology." Response 10-54, FEIR at 166. The EIR provides no scientific documentation nor any citation to resource agencies, such as CDFW, that would support the document's assertion that protocol surveys should not be undertaken.

B-19

It is entirely unclear how the DREIR even arrived at the amount of SRB acreage that would be impacted by the Project. Instead of conducting this critical analysis, the FEIR looks to several flawed mitigation measures before concluding that the Project's impacts would be reduced to a less than significant level. DREIR at 3.C-27.

B-20

First, MM-3C1(a) calls for preconstruction surveys to be undertaken for the wildlife species that likely occur on site. DREIR at 3.C-26. The measure states that if the surveys are negative, the County may issue a grading permit. Yet, if the species are as impossible to detect as the EIR assumes (i.e., FEIR states, for example, that SRB are

B-21

<sup>3</sup> The DREIR also disclosed that the Project site has the potential to support the olive-sided flycatcher, purple martin, long-eared owl, bald eagle, California mountain kingsnake, and white-eared pocket mouse. Response 10-58, FEIR at 168. Yet, rather than survey for these species, the DREIR asserted that because they have a low potential to occur, the impacts were determined to be less than significant. *Id.* The EIR should have surveyed for these species.

SHUTE, MIHALY  
WEINBERGER LLP



San Bernardino County Planning Commission  
January 22, 2020  
Page 11

“extremely secretive” and “seldom emerge into open habitat,” (Response at 7-8, FEIR at 69)), then the pre-construction surveys would likely not detect the species and grading of the site would be allowed. Consequently, construction of the Project could result in the loss or take of SRB, yet the EIR does not mention this impact at all.

B-21  
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Second, MM-3.C1(b), which requires the permanent preservation of varying acreages of each species’ habitat, is also deficient. DREIR at 3.2-26. CDFW protocols require that, in the absence of three years of protocol surveys, the entire site should qualify as suitable and occupied SRB habitat. Comment 7-9, FEIR at 56. Moreover, according to Steve Loe, based on SRB dispersal patterns, the SRB’s dispersal range would fully encompass the 37 acres of the Project site. Comment 166G, FEIR at 354. Finally, as Audubon explains, the standard mitigation for loss of SRB habitat is 3 to 1 replacement habitat. Comment 7-9, FEIR at 56. Because MM-3.C1(b) calls for the preservation of only 13.40 acres of SRB habitat, it clearly would not preserve sufficient habitat to ensure that impacts to SRB are mitigated to a less than significant level.

B-22

The EIR also lacks evidentiary support that impacts to the other sensitive species on the Project site, including CSO and SBFS, would be adequately mitigated. The EIR simply asserts that CSO and SBFS rely on the same habitat as SRB and thus mitigation for the SRB would also mitigate impacts to these other species. Response 10-54, FEIR at 166, 167. The FEIR offers no support for this assertion. Unless and until the EIR provides the appropriate surveys for all of the species, it cannot evaluate the Project’s impact on these species and their habitats and identify appropriate mitigation.

Moreover, as Steve Loe explains, the Project area is very important for CSO as it is connected to a larger block of National Forest with suitable/occupied habitat that is not densely developed in the area bounded by the mountain communities. Comment 166 G, FEIR at 354. This area also connects the forested areas on the north side with those forested islands in upper City Creek and Strawberry Creek. *Id.* The entire Project site is suitable habitat for CSO nesting or foraging. *Id.* Notwithstanding the importance of the Project area for CSO, the EIR fails to analyze how the Project would impact this species. *Id.*

B-23

Similarly, the EIR downplays impacts to SBFS because it assumes impacts would only occur in areas of high- and moderate-quality habitat. Comment 166 G, FEIR at 354. As Steve Loe explains, the EIR fails to recognize the importance and use of adjacent areas that SBFS will use to meet their daily and seasonal needs. Permanent destruction of habitat (including effects of human disturbance, lighting, and fuel modification) must be mitigated with off-site habitat protection. *Id.*

SHUTE MIHALY  
WEINBERGER LLP

San Bernardino County Planning Commission  
January 22, 2020  
Page 12

(ii) **Wildlife Corridor Impacts**

The FEIR fails to resolve deficiencies relating to the Project's impacts on the wildlife corridor that abuts the western boundary of the Project site. Comment 10-55, FEIR at 127; Comment 166 G, FEIR at 355; *see also* comments raised by San Bernardino Valley Audubon Society. As an initial matter, the DREIR failed to acknowledge the regional importance of the wildlife corridor and the Project area for wildlife movement. *Id.* As Steve Loe explains, "If one looks at the habitat in and around the project from the air or aerial photos, it is clear that this project is in the most viable landscape linkage remaining that connects the north-side habitats from the Mojave River Watersheds of Grass Valley Creek, and Deep Creek to the south side watersheds of City Creek and Strawberry Creek." Comment 166 G, FEIR at 355.

Although the DREIR recognizes that "wildlife movement would be impeded by Project-related disturbance," it concludes that impacts would be less than significant because the northwestern portion of the site would remain undisturbed. DREIR at 3.C-23. The DREIR overlooked entirely the fact that the Project's sports fields, planned for the southern boundary, have potential to completely cut off movement across the highway to City Creek and Strawberry Creek. Comment 166 G, FEIR at 355. It also failed to analyze how wildlife would pass through the Project site given the six-foot steel fence that would be constructed bordering SR 18, along the site's southern property line. DREIR at 3.A-11. Moreover, Audubon explains, encroaching on the wildlife corridor could certainly affect wildlife's use of the corridor. By altering its wideness ratio to an unacceptable level, it could cause significant stress to wildlife. Construction activities, along with increased noise, light, and human presence during the Project's operational phases, are likely to interfere with wildlife's use of the corridor or cause wildlife to avoid the corridor altogether. According to Steve Loe, "failure to maintain this linkage will have regional implications to wildlife and would be significant. Adversely affecting wildlife movement through the project area will have impacts to the Grass Valley, Deep Creek, Strawberry, and City Creek Corridors as well as to Arrowhead Ridge Preserve." Comment 166 G, FEIR at 355.

Despite this extensive evidence documenting the Project's potential to destroy the integrity of the wildlife corridor, the FEIR simply asserts, absent any factual support, that impacts would be less than significant because wildlife would occasionally still utilize the Project site. Response 10-55, FEIR at 167. Without *any* analysis of how the Project *would actually affect wildlife movement* along the corridor, the EIR's conclusion that impacts on wildlife movement are less than significant lacks the required support of substantial evidence.

B-24

SHUTE MIHALY  
WEINBERGER LLP



San Bernardino County Planning Commission  
January 22, 2020  
Page 13

**(iii) Indirect and Edge Effects**

Projects such as COTW can result in extensive indirect effects on wildlife. See e.g., “Minimizing the Impact of Development on Wildlife: Actions for Local Municipalities, Environmental Fact Sheet, attached as Exhibit C. We faulted the DREIR for its cursory discussion of the Project’s indirect effects on wildlife. The FEIR fares no better as it simply refers to the noise, drainage and lighting analysis included in the DREIR before concluding that impacts to wildlife would be less than significant. Response 10-59, FEIR at 168. The analyses in the DREIR, however, addressed impacts to humans, not wildlife. The EIR must be revised to evaluate the Project’s indirect effects on wildlife.

B-25

**(iv) Cumulative Impacts**

We commented that the DREIR lacked a legally adequate analysis of the Project’s cumulative effects on biological resources because it failed to actually analyze the effect of the Project together with the effects of related projects. Comment 10-64, FEIR at 131. The FEIR fails to resolve this deficiency.

The FEIR implies that the DREIR’s impact analysis complies with CEQA because it determined that the Project’s cumulative impacts on SRB, SBFS, and CSO would be significant and unavoidable. Response 10-65, FEIR at 171, 172. Yet, a determination that a project’s impact is significant and unavoidable is meaningless without supporting impact analysis. While the EIR is undoubtedly correct to conclude that this cumulative impact is significant, a conclusion of significance cannot take the place of description and analysis of the impact. As the courts have made clear, “[t]his approach has the process exactly backward and allows the lead agency to travel the legally impermissible easy road to CEQA compliance. Before one brings about a potentially significant and irreversible change to the environment, an EIR must be prepared that sufficiently explores the significant environmental effects created by the project.” *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs*, 91 Cal. App. 4th 1344, 1371; see also *Stanislaus Natural Heritage Project v. County of Stanislaus*, 48 Cal. App. 4th 182 (1996) (invalidating EIR that had failed to adequately analyze water supply impacts but found them to be significant and unavoidable). Here, the EIR fails to provide the legally required analysis of cumulative impacts.

B-26

The DREIR identified eleven projects in its “cumulative development land use summary.” DREIR at 1-11. It overlooked the next step entirely, however, which involves evaluating the actual and specific consequences to these sensitive species from all of these development projects. The DREIR made no attempt to: (1) identify whether

SHUTE, MIHALY  
WEINBERGER LLP

San Bernardino County Planning Commission  
January 22, 2020  
Page 14

each of the cumulative projects contains habitat that supports the SRB, SBFS, and CSO; (2) quantify the expected losses to species and habitat from each project; and (3) actually *analyze* the significance of the expected impacts in light of these facts.

B-26  
CONT.

The DREIR also failed to conduct this necessary cumulative analysis for sensitive natural communities, riparian habitats, wetlands, and jurisdictional waters. With regard to these natural resources, the DREIR concluded that impacts would be less than significant because they are “found in abundance throughout the San Bernardino National Forest” and that “the acreage of habitat impacted by the Project combined with related development in the area represents far less than 1% of the 8.8% of land within the forest that is potentially subject to future development.” DREIR at 3.C-24. This “drop-in-the-bucket” approach to cumulative impacts has been explicitly rejected by the courts. In *Kings County Farm Bureau*, the court invalidated an EIR that concluded that increased ozone impacts from a project would be insignificant because it would emit relatively minor amounts of precursor pollutants compared with the large volume already emitted by other sources in the county. 221 Cal. App. 3d 692, 717-18 (1990). The *Kings County Farm Bureau* court aptly stated, “The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.” *Id.* at 718.

B-27

The EIR’s treatment of cumulative impacts from the COTW and the Rimforest storm drain project is, not surprisingly, legally deficient. The DREIR concludes that cumulative impacts pertaining to geology (e.g., soils, erosion, landslide lateral spreading and liquefaction) would be less than significant, yet it provides no actual analysis of these cumulative effects. DREIR at 3.D-16. The cumulative impact sections in the hydrology and the biological resources chapters do not mention, let alone analyze, the potential for cumulative impacts from the COTW and the storm drain project. DREIR at 3.C-24, 3.C-25, 3.F-30.

B-28

The EIR’s failure to undertake an analysis of the Project’s cumulative effects in compliance with CEQA’s clear requirements is another fatal flaw requiring that the EIR be revised and recirculated.

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 15

**2. The FEIR's Analysis of and Mitigation for the Traffic and Circulation Impacts of the Proposed Project Remain Inadequate.**

**(a) Weekday Traffic Impacts**

We previously commented that the DREIR failed to analyze the Project's weekday traffic impacts, as it focused exclusively on the Project's weekend traffic. The FEIR fails to adequately respond to this comment and fails to provide the analysis necessary to understand and mitigate traffic impacts. Instead, the FEIR merely identifies the Project's peak hour weekday trip generation claiming that it would generate only 7 trips in the a.m. peak hour and 34 trips in the p.m. peak hour.<sup>4</sup> By focusing exclusively on the Project's traffic during the peak hour, rather than the *peak period* (which could range from, for example 5:00 to 8:00 a.m. and 4:00 to 7:00 p.m.), the FEIR, like the DREIR, fails to disclose the Project's traffic impacts during the weekday afternoons and early evenings. This analysis is particularly important as roadway and intersection traffic volumes are generally greater and traffic congestion is generally more severe on weekdays compared to weekends.

This analysis is critical as the Project's weekday traffic generation is quite large. The DREIR discloses that the Project's weekday activities include, for example, ancillary religious-oriented and family-oriented events for the congregation such as group bible study, choir practices, fellowship breakfasts and dinners, funeral/memorial services, seasonal/holiday program events and a variety of sporting events. DREIR Table 2-4 at 2-27, 2-28. Some of these events would have a large number of participants and therefore generate a substantial volume of traffic during weekday afternoons and early evenings in particular. For example, Wednesday Night Service, which begins at 5:00 p.m. is anticipated to draw 600 participants. *Id.* Other high participant events include: (1) Senior High Youth Group (150 participants beginning at 6:00 p.m.); (2) Fife and Drum (30 participants beginning at 5:00 p.m.); (3) Band Practice (20 participants ending at 5:00 p.m.); (4) Soccer Practice and Games (unspecified number of participants ending at 5:00 p.m.); (5) Baseball Practice and Games (unspecified number of participants ending at 5:00 p.m.); and (6) Basketball and Volleyball (unspecified number of participants ending

<sup>4</sup> Compounding matters, neither the DREIR nor the FEIR identify the "peak hour" so it is not possible to verify the accuracy of the EIR's trip generation estimates or its traffic impact analysis. The EIR should have identified the Project's "peak hour" and "peak period" as well as the nearby roadway's and intersection's "peak hour" and "peak period."

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 16

at 5:00 p.m.). In addition, as discussed above, other “special events” could also generate traffic weekdays in the afternoon and early evening.

The DREIR discloses that the Project would generate 390 peak hour trips on Saturday, 394 peak hour trips on Sunday, 657 daily trips on Saturday, and 1,112 daily trips on Sunday. DREIR at 3.I-8. While the Project *may* generate 34 trips in the p.m. peak hour during the week, given the voluminous weekend trip generation and the weekday events discussed above, it is clear that the Project could generate more than just 34 trips during weekday afternoons and early evenings. The EIR’s failure to disclose trip generation during these busy weekday periods or to analyze how the Project’s traffic would affect the roadway and intersection system during the weekday afternoons/evenings is a fatal flaw.

The FEIR also errs because it does not provide an analysis of cumulative weekday traffic or weekday emergency evacuation impacts, both of which we explicitly requested be addressed. Comment 10-24, FEIR at 112. For the reasons discussed in the preceding paragraph, the County must provide this analysis.

The FEIR also illegally dismisses the County’s obligation to evaluate Project-specific and cumulative impacts on regional highways. Comment 10-25, FEIR at 112 and Response 10-25, FEIR at 157. Here, the FEIR asserts that the County is only required to analyze off-site intersections if the Project adds 50 or more peak hour trips, citing to the County’s Transportation Authority Guidelines for CMP Traffic Impact Analysis Reports. FEIR at 157. Yet, the Project’s alleged compliance with County Guidelines does not mean that the Project would not significantly impact off-site intersections. *See, e.g., East Sacramento Partnerships for a Livable City v. City of Sacramento*, 5 Cal. App. 5th 281, 299-303 (2016) (compliance with General Plan traffic policies did not show impacts were less than significant). Indeed, the California Supreme Court emphasized that an EIR may not ignore the regional impacts of a project approval, including those impacts that occur outside of its borders; on the contrary, a regional perspective is required.” *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 575 (1990). An EIR must analyze environmental impacts over the entire area where one might reasonably expect these impacts to occur. *See Kings County Farm Bureau*, 221 Cal. App. 3d at 721-23. This principle stems directly from the requirement that an EIR analyze all significant or potentially significant environmental impacts. Pub. Res. Code §§ 21061, 21068. An EIR cannot analyze all such environmental impacts if its study area does not include the geographical area over which the impacts would occur. As discussed above, given the tremendous volume of traffic generated by the Project, it could certainly add more than 50 trips to regional highways on weekday afternoons/early

B-29  
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B-30

B-31

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 17

evenings, i.e., in the peak period, not the peak hour. The EIR should be revised to analyze how the Project would impact regional highways during the week.

**(b) Roadway Hazards**

As the EIR discloses and as discussed above, the Project would add an enormous amount of traffic to area roadways. The DREIR did not, however, analyze the effect that this increase in traffic would have on roadway safety. Instead, it merely states that the County reviewed the project application materials and determined that no hazardous transportation design features would be introduced by the Project. DREIR at 3.1-15, 16. This statement is not sufficient because it lacks evidentiary analysis. To conclude, as the EIR does, that an impact is less than significant, the document must support its conclusions with substantial evidence. 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 of insignificance is premised on unsupported assumptions, it fails far short of this threshold.

The FEIR provides a bit more information than the DREIR about existing roadway hazards, but, unfortunately, it raises more questions than it answers. For example, the document states that there have been six motor vehicle accidents near the Project site. FEIR at 161. While it is helpful that the EIR discloses the existing accident rate in the area, it does not disclose the Project’s potential to increase the accident rate on area roadways. In order to conclude that the Project would not increase the potential for motor vehicle accidents, it must disclose the existing accident rate on nearby roadways *and the projected accident rate once the Project is operational*.<sup>5</sup> Since traffic accidents are a function of various factors, the EIR should have evaluated the Project’s potential to increase accidents, taking into account the following factors: (1) the Project’s increase in motor vehicle trips; (2) posted speed limit and average driver speeds on area roadways; (3) time of day (e.g., peak roadway traffic periods and peak Project-traffic periods); and (4) roadway conditions (e.g., whether roadways meet current standards and shoulder widths).<sup>6</sup> It is particularly disingenuous that, despite having requested that the FEIR provide this important impact analysis, the FEIR preparers declined to do so. Comment

<sup>5</sup> Caltrans publishes collision data for state highways. See <https://dot.ca.gov/-/media/dot-media/programs/research-innovation-system-information/documents/annual-collision-data/2016-collision-data-on-california-state-highway-a11y.pdf>; accessed January 14, 2020.

<sup>6</sup> This analysis must take into account snow conditions. When SR-18 is plowed, the roadway narrows considerably as plowed snow sits in berms along each side of the road.

SHUTE MIHALY  
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B-31  
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B-32

San Bernardino County Planning Commission  
January 22, 2020  
Page 18

10-40, FEIR at 119. Instead, the FEIR suggests this analysis is not required because “the comment provides no substantial evidence that the Project would compromise traffic safety.” Response 10-40, 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. Res. Code § 21080(e)(1)-(2).

B-32  
CONT.

The FEIR also lacks evidentiary support that the Project would not result in an increase in hazards for bicyclists despite the increase in bicycle travel that will accompany the Project. The document states that over a ten-year period there were 34 bicycle involved collisions in the Rim of the World area and two on SR-18 near the Project site. FEIR at 162. The FEIR asserts that the Project does not propose any changes to the roadway network that would worsen bicycle safety or operations. *Id.* Yet, changes in the roadway network are only one factor in assessing increased risk. Here, the FEIR ignores the fact that the Project would add a substantial amount of traffic to narrow, winding two lane roadways, including SR-18. The FEIR attempts to downplay any increase in hazards because SR-18 would be widened at the access driveway. But conflicts between bicycles and Project-related traffic (and cumulative traffic) could occur in locations other than the Project’s driveway.

B-33

The EIR’s failure to evaluate the Project’s potential to increase safety hazards is a serious deficiency warranting that the EIR be revised and recirculated.

**(c) The EIR’s Mitigation Measures Are Legally Deficient.**

The Project would cause or contribute to significant impacts at six intersections throughout the study area. DREIR at 3.I-8–3.I-21. We commented that rather than make a concerted effort to reduce these severe impacts, the DREIR proposed a single approach to mitigation that the DREIR authors suggest is infeasible. Comment 10-30, FEIR at 114. In particular, for impacts at each of the intersections, the DREIR explains that signals should be installed but because the intersections are outside the jurisdictional authority of the County, the impacts are significant and unavoidable. *See* DREIR at 4.I-18–3.I-21.

B-34

The FEIR responds by stating that the County has no authority to compel or require other agencies (i.e., Caltrans) to enact mitigation measures or to approve the construction of improvements. Response 10-30, FEIR at 158. We understand that these improvements are outside the County’s control but the County must nevertheless make a good faith commitment to work with Caltrans to seek and provide funding for traffic mitigation measures that will reduce the Project’s significant impacts. The FEIR presents no evidence that it is doing so. *See* DREIR at 3.I-19 (MM3.I-2) stating that the County

SHUTE, MIHALY  
WEINBERGER LLP



San Bernardino County Planning Commission  
January 22, 2020  
Page 19

will simply make a “reasonable effort to pay” its fair share to Caltrans. As we explained, the end result of this lackluster approach is that the EIR is effectively offering no mitigation at all for the Project’s severe traffic impacts—an approach that directly violates CEQA’s mandate. Comment 10-30, FEIR at 114. The traffic mitigation measures must be revised so that both Caltrans and the public understand that the County is making an enforceable commitment to do everything in its power to pursue regional traffic solutions *before* approving the Project. For example, the County should commit to working with Caltrans to establish the fee program that is necessary to fund the Project-specific and cumulative traffic impacts. The County must also require the Applicant to commit to funding the Project’s fair share of the costs for these improvements, not just make “a reasonable effort to pay.”

B-34  
CONT.

**(d) The County Should Adopt Additional Mitigation Measures Recommended by SOFA and Sierra Club.**

Lead agencies must evaluate and respond to additional mitigation measures suggested by commenters on an EIR, and must adopt those measures if they are feasible. *See, e.g., Covington v. Great Basin Unified Air Pollution Control District*, No. C080342, 2019 WL 7169140, at \*6 (Cal. Ct. App. Nov. 26, 2019). In our letter on the DREIR, we suggested a number of feasible mitigation measures for the Project’s significant traffic impacts. Notably, these proposed measures do not involve off-site improvements, but rather address matters within the County’s control. The County should carefully consider whether those measures are feasible, and if they are, must adopt them.

B-35

First, we suggested a measure calling for a reduction in the amount of parking supply (which would reduce vehicular travel) as the County requires only 200 parking stalls yet the Project proposes 311 spaces. Comment 10-33, FEIR 115, 116. The FEIR acknowledges that reducing parking is a potentially successful measure but rejects it as infeasible for this Project due to lack of public transit and car-sharing opportunities. Response 10-33, FEIR at 160. The FEIR is incorrect. As the EIR clearly acknowledges, the Mountain Area Regional Transit Authority provides at least three transit lines that serve the Project site. DREIR at 3.I-5. In addition, Dial-A-Ride provides demand-response transit services throughout the Project area. *Id.* Nor does the EIR provide any explanation as to why it asserts the Project does not include car-sharing opportunities. Church patrons often share rides and would likely be motivated to do so more often if parking supply was limited (which is the explicit intent of the mitigation measure). Reducing parking supply is a feasible mitigation measure that should be adopted by the County.

B-36

SHUTE, MIHALY  
WEINBERGER LLP

San Bernardino County Planning Commission  
January 22, 2020  
Page 20

The FEIR also rejects each of the other measures suggested in our letter stating that the County has no authority to compel the Church of the Woods to take action to reduce vehicular travel such as offering private shuttle services, educating visitors on public transit opportunities, or funding public transit. Response 10-34, FEIR at 160. This makes no sense. Each of the mitigation measures we identified are within the responsibility and jurisdiction of the County and would have a proportional nexus to the Project's impact on the environment. We question why the County has determined that having the COTW include bicycle racks is a feasible mitigation measure (Response 10-35, FEIR at 160), yet requiring the Project to implement a transit education campaign or provide shuttle services to a major transit stop would be considered infeasible. *Id.*

B-37

The County appears to be claiming—albeit in conclusory fashion, without any supporting analysis or explanation—that it would be legally infeasible to require additional traffic mitigation. Absent a clear demonstration that the County cannot lawfully take specific actions, or that any such actions are within the exclusive control of another agency, the County cannot find any particular measure legally infeasible. “An EIR that incorrectly disclaims the power and duty to mitigate identified environmental effects based on erroneous legal assumptions is not sufficient as an informative document.” *City of Marina v. Board of Trustees of California State University*, 39 Cal. 4th 341, 356 (2006). The County cannot simply assert that it has no legal authority to require mitigation. “In mitigating the effects of its projects, a public agency has access to all of its discretionary powers . . . [including] such actions as adopting changes to proposed projects, imposing conditions on their approval, adopting plans or ordinances to control a broad class of projects, and choosing alternative projects.” *City of San Diego v. Board of Trustees of California State University*, 61 Cal. 4th 945, 959 (2015). The County's conclusory citation to CEQA Guidelines section 15091 does not provide legal or factual support for an infeasibility determination.

B-38

Nor does the FEIR provide evidentiary support for its rejection of a mitigation measure calling for a bus stop at the Project site. Comment 10-34, FEIR at 116. The FEIR rejects this measure asserting that buses do not run on Sundays. The EIR does not provide any support for this assertion. Response 10-34, FEIR at 160. Yet, the Project would hold services, activities, and special events most days of the week. Visitors could take a bus on these other days. Moreover, given the extensive number of visitors that would use the Project, perhaps the applicant could request that the transit service provider add service on Sundays.

B-39

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 21

**3. The FEIR Fails to Resolve Deficiencies Pertaining to Emergency Evacuation Impacts.**

We identified several flaws in the DREIR's analysis of emergency evacuation. We explained that the EIR lacked evidentiary support for its conclusion that emergency evacuation impacts would be less than significant. Comments 10-43-47, FEIR at 121-123. We also explained that the DREIR failed to identify the amount of time needed to implement a full evacuation of the Project site, including whether the evacuation could be accomplished within an acceptable time period. We also criticized the DREIR because it did not make a determination regarding the adequacy of the primary evacuation route, SR-18.

The FEIR fails to identify the amount of time that would be needed to implement a full evacuation of the site. It also fails to determine whether SR-18 could accommodate the Project's traffic together with the traffic from other evacuees during a wildfire event. Responses 10-44, 10-45, FEIR at 163. Instead, it merely asserts, absent evidentiary support, that emergency evacuation from the site is plausible in general terms. We reviewed the updated evacuation plan included as Appendix E1, and it does not resolve the deficiencies identified in our comments and does not provide the factual support that impacts relating to emergency evacuation would be less than significant. It also asserts, again absent evidentiary support, that the amount of traffic using SR-18 during an emergency would not substantially increase, if at all, as a result of the Project because worshipers and other patrons of the Project are likely to reside in the local area and would utilize the same evacuation routes with or without the proposed Project.

Given the wildfire crisis plaguing the West, it is now common practice for local agencies to require the preparation of evacuation analyses for land use development projects. These analyses identify the time it will take an area to evacuate by dividing the number of vehicles that need to evacuate by total roadway capacity. *See e.g.*, Safari Highlands Ranch and Citywide SOI Update Wildfire Hazard Analysis, attached as Exhibit D. These evacuation analyses also routinely take into account the fact that neighboring communities may be evacuating in a similar time frame. *Id.* Finally, these analyses actually model various scenarios of wildland fire that could occur in a project's vicinity based on various factors to determine whether project residents or visitors would have adequate time to escape, and the ability of emergency services to access the site in a timely manner, consistent with emergency service provider's response time goals. It is imperative that such an analysis be conducted for the proposed Project given its location

B-40

SHUTE, MIHALY  
WEINBERGER LLP

San Bernardino County Planning Commission  
January 22, 2020  
Page 22

in a “Very High Fire Hazard Severity” zone and because certain segments of SR-18 are projected to operate at near gridlock conditions. DREIR at 3.I-19–3.I-21.

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**4. The FEIR Fails to Resolve Deficiencies in the Analysis of and Mitigation for the Project’s Drainage and Hydrology Impacts.**

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 10-49–10-52, FEIR at 125. The FEIR fails to resolve these deficiencies. In Kamman’s 2019 Report, he commented, for example, that the DREIR did not acknowledge or analyze how the proposed Project’s facilities and increase in impervious surfaces would affect groundwater recharge. Comment 10C-6, FEIR at 140, 141. He explained that the Project had the potential to result in a net deficit in aquifer volume, lowering of the local groundwater table, and depletion of spring flows. *Id.* The FEIR, like the DREIR, fails to provide this necessary analysis.

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In addition, the EIR fails to adequately analyze or mitigate the Project’s effects on water quality in Little Bear Creek and Lake Arrowhead as discussed in Dr. Jennifer D. Alford’s January 20, 2020 email to the County in connection with the proposed Project (submitted under separate cover). As Dr. Alford explains, Little Bear Creek, a headwater tributary to Lake Arrowhead, traverses a watershed drainage area that includes Blue Jay and the proposed Project site. The EIR fails to disclose that not only will the excavation of a substantial amount of soil and removal of vegetation create changes to groundwater flows needed to sustain both water quality and quantity entering Lake Arrowhead year-round, it will simultaneously impact surface hydrology.

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The EIR relies on faulty mitigation for these undisclosed impacts. The EIR relies on Best Management Practices (“BMPs”) to mitigate the Project’s impacts. DREIR at 3.D-13. However, as Dr. Alford explains, these BMPs have not been proven, empirically, under similar site and climatic conditions, that they are/can be effective in mitigating downstream impacts in the short or long term. Additionally, it is highly likely, based on numerous peer-reviewed studies and assessments by hydrologists and biological engineers, that stormwater from the Storm Drain Project, together with the COTW Project, will impact water quality as indicated in over 30 years of academic research based on real-world assessments of BMP effectiveness. According to Dr. Alford, “Simply put, any alterations to the natural landscape create some degree of adverse impacts to downstream water resources.” *Id.* The EIR must be revised to provide a comprehensive analysis of, and mitigation for, these impacts to Little Bear Creek and Lake Arrowhead.

← B-43  
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SHUTE, MIHALY  
WEINBERGER LLP



San Bernardino County Planning Commission  
January 22, 2020  
Page 23

**5. The FEIR Fails to Resolve Deficiencies in the Analysis of and Mitigation for the Project's Geotechnical Impacts.**

The FEIR fails to adequately evaluate the Project's geotechnical impacts. The DREIR acknowledged that the Project site is located in an area susceptible to landslides and that the potential for landslides during construction and operation is considered significant. DREIR at 3.D-17. In addition, according to the Engineering Geology and Soils Engineering Investigation (DREIR Technical Appendix D) prepared for the Project, the sloped areas of the Project site (i.e., on-site valley area) may potentially be susceptible to lateral spreading and that any impacts associated with this would also be considered significant. *Id.* The DREIR called for a project-specific geotechnical investigation to be performed after the Project is approved to further evaluate potential hazards associated with landslides, lateral spreading and collapsible soils. As an initial matter, CEQA requires that this investigation occur now, prior to Project approval as these impacts have not yet been disclosed. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94-95 ("CBE"); *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 669-71; Guidelines § 15126.4(a)(1)(B).

The January 23, 2020 Planning Commission Staff Report provides further reason why this geotechnical investigation must happen now, prior to Project approval. As the Staff Report explains, it is unknown whether the Storm Drain Project (which, according to the FEIR) had been intended to commence prior to the COTW would have removed all of the soils susceptible to lateral spreading and liquefaction. Staff Report at 47. Therefore, even if the Storm Drain Project is constructed prior to the COTW, there would be a potential for the Project site to contain soils susceptible to lateral spreading and liquefaction. *Id.* Moreover, now that the Storm Drain Project may not be constructed prior to the COTW, the COTW's design and development plans may need to be revised. *Id.* Consequently, there is no evidentiary support that the COTW's geotechnical impacts have been adequately disclosed let alone mitigated.

Moreover, the Storm Drain culvert that would run from the southwest corner of the existing COTW property to the northeast portion of the Storm Drain Project site is proposed to be underground, buried under the mountaintop that would be removed as a result of the COTW. If the COTW Project is completed after the Storm Drain Project, where would the fill come from to bury the 72-inch pipeline? Neither the COTW nor the Storm Drain EIRs address this issue.

B-44

B-45

SHUTE, MIHALY  
WEINBERGER LLP

San Bernardino County Planning Commission  
January 22, 2020  
Page 24

The EIR must be revised to include a comprehensive evaluation of these geotechnical impacts and identify feasible mitigation capable of addressing these impacts.

B-46

**6. The EIR Lacks an Adequate Analysis of the Project's Impact on SR-18, a Designated Scenic Highway.**

It is essential that an EIR fully analyze and mitigate a Project's aesthetic impacts; CEQA requires careful review of harms to a visual landscape. Indeed, under CEQA, it is the State's policy to "[t]ake all action necessary to provide the people of this state with . . . enjoyment of aesthetic, natural, scenic, and historic environmental qualities." Pub. Res. Code § 21001(b). "A substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA." *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.*, 116 Cal. App. 4th 396, 401 (2004). No special expertise is required to demonstrate that the Project will result in significant aesthetic impacts. *Id.* at 402 ("Opinions that the [project] will not be aesthetically pleasing is not the special purview of experts."); *Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903,937 (2004).

B-47

The Project would be developed immediately adjacent to, and would be visible from, SR-18. SR-18 is designated as a Scenic Byway by the United States Forest Service. The segment of SR-18 that abuts the southern boundary of the Project site is also designated as a Scenic Route in the County of San Bernardino General Plan and is identified as an Eligible State Scenic Highway. DREIR at 3.A-3, 3.A-9, 3.G-16, 3.G-35, 3.G-45. Views of the Project site from SR-18 are of trees and a steep forested hillside. DREIR at 3.A-2.

The DREIR relied on a vague and misleading impact analysis to conclude, incorrectly, that the Project would not significantly damage scenic resources. DREIR at 3.A-9. Contrary to the DREIR's conclusion, there is ample evidence in the EIR that these impacts would be significant. The DREIR stated that the General Plan identifies "scenic resources" as a roadway, vista point, or area that provides a vista of undisturbed natural areas. DREIR at 3.A-2, citing General Plan Policy OS-5.1 SR-18 affords a clear vista of a currently undisturbed forested Project site that is itself surrounded by sweeping expanses of undeveloped forest land. Thus, by the County's own definition, the views of the Project site from a designated scenic highway meet the criteria of a scenic resource. DREIR at 3.A-9.

B-48

The DREIR itself admitted that the current pristine views of the Project site from SR-18 would be "starkly modified." DREIR at 3.A-12. What the EIR does not

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 25

disclose, however, is the extent of these impacts. The Project would essentially clear cut and level half of a beautiful forested site. While the Project proposes “landscaping” there is no amount of landscaping that can compensate for the large-scale grading and deforestation that would accompany the Project. The impacts to views caused by the Project would be permanent and would be experienced by thousands of motorists as they travel on what is considered one of Southern California’s most prominent Scenic Byways. It is this change in visual integrity during a scenic drive that affects the integrity of the vista. The EIR’s failure to recognize the Project’s effect on this scenic resource as a significant impact is a fatal flaw warranting that the EIR again be revised and recirculated for public comment.

B-48  
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**7. The FEIR Does Not Properly Analyze the Project’s Consistency with the San Bernardino County General Plan and Lake Arrowhead Community Plan.**

CEQA requires that environmental impact reports analyze the consistency of a project with applicable local plans, including General Plans. *See Napa Citizens for Honest Gov’t v. Napa County Bd. of Supervisors*, 91 Cal. App. 4th 342, 386-87 (2001); CEQA Guidelines Appendix G, § IX(b). Inconsistencies with a General Plan or other local plan goals and policies that were enacted in order to protect the environment are significant impacts in themselves and can also be evidence of other significant impacts. *See id.*; *Pocket Protectors*, 124 Cal. App. 4th at 929.

B-49

Despite extensive comments identifying the Project’s inconsistencies with the San Bernardino General Plan and Lake Arrowhead Community Plan, the FEIR either downplays the inconsistencies or ignores them altogether.

**(a) General Plan Land Use Element**

The General Plan’s Land Use Element places a high value on the natural resources in the Project area and calls for the protection of these resources. Accordingly, the Plan includes several goals and policies intended to protect the natural environment from adverse impacts of development. These policies explicitly call for protecting the area’s forest character and protecting hillsides from excessive grading and erosion. The Project would be blatantly inconsistent with the following policies:

B-50

- Policy M/LU 1.1: This policy calls for regulating the density of development in sloping hillside areas in order to reduce fire hazards, prevent erosion, and preserve the forest character of the region. The FEIR fails to provide any substantive response to our comment that the Project is inconsistent with this policy.

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 26

Comment 10-1, FEIR at 106. Moreover, although the 2010 DEIR found the Project to be inconsistent with this policy (*see* September 22, 2019 letter), the DREIR reversed itself and concluded the Project would in fact be consistent with this policy. Its consistency determination does not withstand scrutiny.

- The DREIR asserted that the Project would be consistent with this policy because it would be less intense than industrial uses permitted within the IC District and because it would retain approximately 50 percent of the Project site as natural open space. DREIR at 3.G-24. Comparing environmental impacts to an underlying land use designation or zone (such as the IC District), rather than to existing conditions, is inconsistent with CEQA case law. *Woodward Park Homeowners Assn., Inc. v. City of Fresno*, 150 Cal. App. 4th 683, 707–09 (2007); *Envil. Planning & Info. Council v. Cty. of El Dorado*, 131 Cal. App. 3d 350, 358–59 (1982). As we explained, the proposed Project is directly inconsistent with the spirit and intent of M/LU 1.1. Contrary to the DREIR’s assertions, the Project would not “blend in” with the natural environment (*see* DREIR at 3.G-24). Rather it would be developed immediately adjacent to SR-18 and thus would be clearly visible from this scenic roadway. It would also grade and denude one-half of an environmentally sensitive site that is surrounded on three sides by National Forest Land, and it has the potential to substantially increase erosion.
- M/LU1.2: This policy calls for design and siting of new development to meet locational and development standards to ensure compatibility of the new development with adjacent land uses and community character and is intended to ensure compatibility with the San Bernardino National Forest Land Management Plan. The original DEIR for the Project determined that the Project was inconsistent with this policy. (*See* September 22, 2019 letter). The DREIR, however, suggests the Project would not conflict with this policy. DREIR at 3.G-22. The DREIR did not explain what had changed since the analysis conducted in the original EIR. Nor did it provide any analysis of the Project’s consistency with the San Bernardino National Forest Land Management Plan. The Project is in clear violation of this policy for the reasons explained above under Policy M/LU 1.1 and for the reasons explained in the February 25, 2019 letter from San Bernardino Valley Audubon Society. FEIR at 53-66.
- M/LU1.4: This policy addresses the preservation of rural communities and rural character. The original DEIR for the Project determined that the Project was inconsistent with this policy. (*See* September 22, 2019 letter). Neither the DREIR nor the FEIR, however, even mention this policy let alone address the Project’s

B-50  
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B-51

B-52

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 27

inconsistency with it. The Project is in clear violation of this policy for the reasons explained above under Policy M/LU 1.1.

- M/LU 1.6: This policy states that the density and character of development shall not detract from the beauty, character, and quality of the residential alpine environment. The DREIR glossed over the glaring inconsistency with this policy. While it asserted that the Project has been designed to “blend in” with the natural environment (at 3.G-24), it failed to acknowledge that the DREIR also clearly admitted that the “the loss of a forested hillside and the potential visibility of the fire road and retaining wall present a *sharp contrast* from the existing view of this area of the site.” DREIR at 3.A-12 (emphasis added). Additionally, for the reasons discussed in the visual resources section of this letter, the Project will clearly detract from the beauty, character, and quality of the residential alpine environment. The Project is in violation of this policy.
- M/LU 1.20: This policy requires the County to conduct close review of development projects on private land adjacent to National Forest lands. It also calls for the County to consult with the Forest Service on development of private land. The DREIR lacked evidence that the County has complied with this policy as we could find no indication in the EIR that the County has consulted with the Forest Service.

**(b) General Plan Circulation and Infrastructure Element**

The San Bernardino General Plan’s Circulation and Infrastructure Element places great emphasis on ensuring that development projects do not adversely affect roadway operations and that project applicants pay their fair share toward improvements required by these projects. The Project would be blatantly inconsistent with the following policies:

- M/CI 1.1: This policy requires that the County 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 in the Mountain Region. The DREIR provided no analysis of the Project’s consistency with this policy. Moreover, by the EIR’s own admission, the Project conflicts with this policy because the County cannot assure the construction of improvements to State Highway facilities that will be needed to improve traffic flows at the intersections impacted by the Project. DREIR at 3.G-27.

B-52  
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B-53

B-54

B-55

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 28

- CI 4.6: This policy requires that the County ensure that applicants, sub-dividers, and developers dedicate and improve right-of-way per County standards and contribute to their fair share of off-site mitigation. The Project is clearly inconsistent with this policy, because, as discussed above, it would result in significant and unavoidable traffic impacts and the County cannot assure the construction of improvements will be implemented. Nor is the Project committing to pay its fair share of improvements. Rather it is committing to make a "reasonable effort to pay" its fair share to Caltrans. *See* DREIR at 3.I-19 (MM3.I-2).
- CI 9.1: This policy requires that the County control the timing and intensity of future development and ensure that future development is contingent on the provision of infrastructure facilities and public services. The DREIR incorrectly asserted that the Project is consistent with this policy because it is generally less intense than the industrial uses that could be developed on the Project. DREIR at 3.G-26. As discussed above, this assertion is irrelevant. Also as discussed above, the Project would result in significant and unavoidable traffic impacts because the County cannot assure the construction of improvements will be implemented. Consequently, the County is clearly not adequately controlling development in a manner that protects infrastructure.

B-56

B-57

**(c) General Plan Conservation Element**

The General Plan's Conservation Element contains numerous policies and implementation programs calling for the conservation of resources including native species and scenic resources. The Project is in violation of the following policies:

- Policy and Implementation Program CO 1.2: This policy and implementation program calls for the County to minimize recreational use in sensitive areas supporting local, state or federally protected species. As an initial matter, the DREIR did not identify this policy let alone analyze the Project's consistency with it. The Project would violate this policy because it would cause the loss of habitat for several sensitive species including the SRB, SBFS, and the CSO and the EIR fails to ensure that suitable replacement habitat would be preserved. In addition, the Project would degrade forested land and fill a natural stream and replace it with playing fields and recreational facilities. *See* DREIR, Chapter 3, Biological Resources.
- M/CO 1.4: This Policy calls for the County to protect unique habitats supporting rare and endangered species. For the reasons discussed above under Policy and

B-58

B-59

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 29

Implementation Program CO 1.2, the Project would be inconsistent with this policy.

- M/CO 1.7: This policy calls for conservation and sound management of the mountain character and natural resources. For the reasons discussed above under Policy M/LU 1.1 and Policy and Implementation Program CO 1.2, the Project would be inconsistent with this policy.
- CO-2: This policy calls for the County to maintain and enhance biological diversity and healthy ecosystems throughout the county. For the reasons discussed above and in the February 25, 2019 letter from San Bernardino Valley Audubon Society, the Project is inconsistent with this policy. FEIR at 53- 66.
- CO-2.1: The policy calls for the County to coordinate with state and federal agencies and departments to ensure that their programs to preserve rare and endangered species and protect areas of special habitat value, as well as conserve populations and habitats of commonly occurring species, are reflected in reviews and approvals of development programs. For the reasons discussed in the February 25, 2019 letter from San Bernardino Valley Audubon Society, the Project is inconsistent with this policy. FEIR at 53- 66.

**(d) General Plan Open Space Element**

The General Plan Open Space Element contains numerous policies calling for the protection of the County's important open spaces and the preservation of its scenic corridors. The Project is in violation of the following policies:

- OS 5: This policy calls for the County to maintain and enhance the visual character of scenic routes in the County. DREIR at 3.A-4. Neither the DREIR nor the FEIR analyze the Project's consistency with this policy. Moreover, as discussed in the visual resources section of this letter, the Project would not maintain, and certainly not enhance, the visual character of SR-18, a designated scenic route. Consequently, the Project is clearly inconsistent with Policy OS-5.
- OS 5.3: This policy calls for the County to retain the scenic character of visually important roadways throughout the County. DREIR at 3.G-35. Contrary to the DREIR's assertion that the Project would not degrade the visual character of the site and would be consistent with this policy (at 3.G-35), for the reasons discussed in the visual resources section of this letter, the Project would not retain the scenic

B-59  
CONT.

B-60

B-61

B-62

B-63

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 30

character of SR-18, a designated scenic route. Consequently, the Project is clearly inconsistent with Policy OS-5.3.

- OS 7.5 and 7.6: These policies requires that hillside development be compatible with natural features and the ability to develop the site in a manner that preserves the integrity and character of the hillside environment, including but not limited to, consideration of terrain, landform, access needs, fire and erosion hazards, watershed and flood factors, tree preservation, and scenic amenities and quality. DREIR at 3.G -37. As the San Bernardino Valley Audubon Society explains, the “cut and fill of 315,000 cubic yards of earth is unprecedented in the local mountain area. Such massive destruction to the natural environment would have significant adverse repercussions on every unique feature of the site as well as on the National Forest lands directly adjacent to the project on three sides, not to mention the quarter mile of US Forest Service-designated Scenic Byway which fronts the property.” Comment 7-4, FEIR at 54. The Project is clearly inconsistent with Policy OS 7.6.<sup>7</sup>
- M/OS-1: This policy calls for the County to ensure the preservation and proper management of National Forest lands within the Mountain Region to maintain the alpine character of the region. For the reasons discussed in the February 25, 2019 letter from San Bernardino Valley Audubon Society, the Project is inconsistent with this policy. FEIR at 53- 66.
- M/OS-2: This policy calls for the County to improve and preserve open space corridors throughout the Mountain Region. For the reasons discussed in the February 25, 2019 letter from San Bernardino Valley Audubon Society, the Project is inconsistent with this policy. FEIR at 53- 66.

**(e) Lake Arrowhead Community Plan**

The DREIR also fails to acknowledge the Project’s clear inconsistency with the Lake Arrowhead Community Plan’s vision which calls for the protection of the

<sup>7</sup> For the same reasons, the Project would also be inconsistent with General Plan Policy S 6.1 which requires development on hillsides to be sited in such a manner that minimizes the extent of topographic alteration required to minimize erosion, maintain slope stability, and reduce the potential for offsite sediment transport.

SHUTE MIHALY  
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B-63  
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B-64

B-65

B-66



San Bernardino County Planning Commission  
January 22, 2020  
Page 31

character of the Rim Forest community and the Lake Arrowhead planning area generally. The Community Plan states:

Residents feel that the high quality of life experienced in their neighborhoods today should not be degraded by growth and the subsequent impacts of traffic congestion, strains on infrastructure and threats to natural resources. The clean air, ambient quiet, dark skies, abundant wildlife and rich natural vegetation are valued highly by residents as well as by the visitors who frequent the area. Residents are concerned about the conversion of natural open space to development and particularly to a type of development that detracts from the natural setting and the mountain character currently enjoyed by the community. The preservation of the community's natural setting, small-town atmosphere and mountain character becomes important not only from an environmental sustainability perspective, but from a cultural and economic point of view.

Community Plan at 12.

In contravention of the Community Plan, the proposed Project would be grossly out of character with the existing rural ambience of the community. The Project would develop 27 acres of forested land, thereby removing hundreds of trees, destroying a natural stream, and significantly impacting habitat for several listed species. The open space would be replaced with a large-scale church campus encompassing more than 122,000 square feet of building space, a sports field and sports courts, and more than 300 parking spaces. DREIR at 2-2, 2-15. This large project, which would be better suited to an urban location, would irreparably alter the character of the surrounding area. The absolute disregard for the site's natural topography and terrain, coupled with the extensive structures and facilities, would irreparably alter the Rimforest community's ambience and character. Moreover, it is obvious that a project that will require up to seven new traffic signals in Lake Arrowhead—where there currently are none—would seriously degrade the community's small town atmosphere.

Indeed, the introduction of traffic signalization in the Lake Arrowhead community is in direct contradiction to Community Plan policy LA/CI 1.7, that specifically mandates traffic management “in keeping with the scenic sensitivity of the community plan area” and “to the maximum extent possible, use (of) alternatives to the construction of new traffic signals.” See Community Plan LA/CI 1.7. The evidence in the DREIR makes it abundantly clear that the Project as proposed is not compatible with the surrounding area and is therefore inconsistent with the Lake Arrowhead Community

B-66  
CONT.

B-67

B-68

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 32

Plan. Set forth below are just a few other examples of the Project's inconsistency with the Lake Arrowhead Community Plan:

- LA/CO 1: Preserve the unique environmental features of Lake Arrowhead including native wildlife, vegetation, and scenic vistas. DREIR at 3.A-4. As the DREIR concedes, the development of the Project would result in "stark modifications" to the existing character of the Project site from SR-18. DREIR at 3.A-12. Approximately 50 percent of the Project site would be converted from an undeveloped forested area to a developed site. *Id.* For the reasons discussed in the visual resources section of this letter and the February 25, 2019 letter from San Bernardino Valley Audubon Society, the Project is clearly inconsistent with this policy. FEIR at 53-66.
- LA/OS 4: This policy calls for the County to improve and preserve open space corridors throughout the plan area. For the reasons discussed in the February 25, 2019 letter from San Bernardino Valley Audubon Society, the Project is inconsistent with this policy. FEIR at 53- 66.
- LA/OS 4.2: This policy calls for the County to use open space corridors to link natural areas. For the reasons discussed in the February 25, 2019 letter from San Bernardino Valley Audubon Society, the Project is inconsistent with this policy. FEIR at 53- 66.

For the foregoing reasons, the Project is inconsistent with the General Plan and the Lake Arrowhead Community Plan. Because of the Project's inconsistencies with these planning documents, approval of the proposed Project would violate State Planning and Zoning Law and the County's Development Code.

**C. The FEIR Fails to Comply with CEQA's Requirements Regarding Project Alternatives.**

**1. The FEIR Fails to Evaluate a Reasonable Range of Alternatives.**

We informed the County that the DREIR failed to evaluate a reasonable range of alternatives to the Project since it included two no-project alternatives and only one build alternative. Comment 10-67, FEIR at 133. In response, the FEIR asserts that since one of the no-project alternatives would allow development, the EIR included a reasonable range of alternatives. This is incorrect.

B-68  
CONT.

B-69

B-70

B-71

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 33

Alternative 2 (no-project/feasible development alternative) calls for developing the site with an industrial use under its existing land use and zoning designations without the need for discretionary approvals. DREIR at 4-5. Under this alternative, the DREIR states that the Project site could theoretically accommodate 236,966 square feet of light manufacturing or warehouse use. *Id.* While the County is entitled to evaluate this alternative as one of the no-project alternatives, it is not a valid *project* alternative because it would not attain *any* of the Project's objectives. *See e.g.*, DREIR at 2-16 ("[t]o construct a new church campus that would include worship facilities, a youth center gymnasium, children's ministry, sports courts, and a sports field;" "[t]o relieve space constraints and address operational deficiencies at the existing Church of the Woods;" "[t]o provide a new Church of the Woods facility that adequately accommodates present and anticipated future congregational needs for worship services, bible study, social gatherings, and recreational activities;" "[t]o develop a church campus in a natural setting within the San Bernardino National Forest which provides facilities to accommodate spiritual, educational, and recreational activities;" "[t]o develop church facilities where community activities can occur, including meeting rooms, classrooms, and recreational facilities available for use by local public and private organizations"; "[t]o develop a church facility in such a manner that approximately 50% of its site is retained as natural open space"); *see also* DREIR at 4-9 explaining that this no-project alternative would not meet any of the Project's objectives. Consequently, the EIR is left with only one Project alternative which, as common sense dictates, cannot be considered a "reasonable range" of alternatives under CEQA.

B-72

**2. The FEIR, Like the DREIR, Defines the Project's Objectives So Narrowly as to Preclude a Reasonable Alternatives Analysis.**

We explained in our prior letter that the EIR relied on overly narrow Project objectives and thus precluded a reasonable alternatives analysis. We requested that the EIR evaluate alternatives, including an alternative that did not include the sports facilities. Comment 10-73, FEIR at 134. The FEIR responds by stating that a project that does not include sports facilities would not meet the Project's objectives. Response 10-71, FEIR at 173. It is clear that the only alternative that possibly could meet the County's objectives for the Project is the Project itself. CEQA forbids the use of this sort of circular logic to justify a project. *Watsonville Pilots Ass'n v. City of Watsonville*, 183 Cal. App. 4th 1059, 1089 (2010) (the "key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts," not to identify alternatives that meet few of the project's objectives so that they can be "readily eliminated"). Narrowing the Project's goals in this way tilts the analysis of alternatives unavoidably—and illegitimately—toward the Project

B-73

SHUTE MIHALY  
WEINBERGER LLP

San Bernardino County Planning Commission  
January 22, 2020  
Page 34

as proposed. Rather than providing the required reasoned, objective analysis, the EIR has become “nothing more than [a] post hoc rationalization[.]” for a decision already made. *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 394 (1988).

B-73  
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**3. The DREIR Incorrectly Rejects the Reduced Project Alternative as Infeasible.**

Other than the no-project alternatives, the DREIR identifies just one alternative that could feasibly attain most of the Project’s objectives. This alternative, referred to as the Reduced Project Alternative, would reduce the larger buildings proposed by the Project by approximately 25 percent, including the youth center gymnasium, assembly building, and parking lot. DREIR at 4-9, 4-10. It would also substantially avoid grading and disturbance of natural vegetation within an approximately 200-foot setback along SR-18. *Id.* This alternative would reduce impacts in almost every impact category. DREIR at 4-10–4-13. The DREIR suggests the Reduced Project Alternative is not feasible as it would not fulfill the Project objectives to the same degree as the proposed Project. DREIR at 4-13. However, neither the DREIR nor the FEIR provide any evidentiary support as to why Reduced Project Alternative would not achieve the Project’s objectives. The January 23, 2020 Planning Commission Staff Report (at 61) states that this alternative *may* not be able to fully accommodate present and future congregational needs for worship services and other related programs and activities, which may result in the need to lease or build additional facilities elsewhere, yet it fails to provide any documentation to support this assertion.

B-74

**4. The County May Not Approve the Project if a Feasible Alternative Exists that Would Meet the Project’s Objectives and Would Reduce Its Significant Environmental Impacts.**

Under CEQA, an agency may not approve a proposed project if a feasible alternative exists that would meet a project’s objectives and would reduce or avoid its significant environmental impacts. Pub. Res. Code § 21002; *Kings County Farm Bureau*, 221 Cal. App. 3d at 731; *see also* CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta*, 198 Cal. App. 3d 433, 443-45 (1988). An alternative need not meet every Project objective or be the least costly in order to be feasible. *See* CEQA Guidelines § 15126.6(b).

B-75

The DREIR identifies the Reduced Project Alternative as the environmentally superior alternative. DREIR at 4-14. As discussed above, this alternative would meet most, if not all, of Project’s objectives. Consequently, approval

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 35

of the Project, or any alternative project with greater impacts than the Reduced Project Alternative would violate CEQA.

**D. The EIR Must Be Revised and Recirculated.**

CEQA requires recirculation of an EIR when significant new information is added to the document after notice and opportunity for public review was provided. Pub. Res. Code § 21092.1; CEQA Guidelines § 15088.5. “Significant new information” includes: (1) information showing a new, substantial environmental impact resulting either from the project or from a mitigation measure; (2) information showing a substantial increase in the severity of an environmental impact not mitigated to a level of insignificance; (3) information showing a feasible alternative or mitigation measure that clearly would lessen the environmental impacts of a project and the project proponent declines to adopt the mitigation measure; or (4) instances where the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft EIR was essentially meaningless. *Laurel Heights Improvements Ass’n v. Regents of Univ. of Cal.*, 6 Cal. 4th 1112, 1130 (1993). Here, as discussed above, the Project and the circumstances surrounding the Project have changed substantially since release of the DREIR warranting that the EIR be revised and recirculated once again.

**II. Approval of the Project Would Violate California 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. This includes the requirement that zoning must be consistent with the general plan. Gov’t Code § 65860. 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). *See also* Development Code § 85.060.040 (requiring use permits to conform to San Bernardino County General Plan). 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.” *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors*, 62 Cal. App. 4th 1332, 1336 (1998).

It is an abuse of discretion to approve a project that “frustrate[s] the General Plan’s goals and policies.” *Napa Citizens*, 91 Cal. App. 4th at 379. 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.” *Id.* Here, the proposed Project does

B-75  
CONT.

B-76

B-77

SHUTE, MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 36

more than just frustrate the General Plan's goals. For the reasons discussed above, the Project is directly inconsistent with numerous provisions in the San Bernardino County General Plan and the Lake Arrowhead Community Plan.

In addition, as we explained in our prior letter, the Project is not consistent with the site's land use designation and zoning. The proposed Project would include a 41,037 square foot assembly building/children's ministry, a 27,364 square foot gymnasium, a maintenance building/caretaker unit, a 54,000 square foot sports field and sports court, and a 7,838 square foot water quality bioretention basin. DREIR at 2-15. The sports field complex component of the proposed Project is not allowed by the General Plan or Development Code.

The land use zoning district for the Project site is Lake Arrowhead Planning Area Community Industrial ("LA/IC"). "Places of worship" are allowable uses with a conditional use permit in the LA/IC zoning district. *See* Development Code Table 82-17. The LA/IC zoning district does not, however, allow "parks/playgrounds." *Id.* Development Code Section 810.01.180(bb) defines "place of worship" as "facilities operated by religious organizations for worship, or the promotion of religious activities and instruction; together with accessory buildings and uses on the same site." Section 84.01.020(d) defines accessory uses as uses "necessarily and customarily associated with and clearly incidental and subordinate" to the primary use. A sports field and sports court are plainly not incidental to worship services, and are not permitted under the site's current zoning.

The FEIR fails to adequately respond to this comment or resolve this deficiency. The document asserts that the Project's proposed sports field is an accessory use, which would be permitted following the submittal and approval of a Site Plan Permit. Response 10-7, FEIR at 152. The document also states that according to Development Code § 84.01.020, whenever accessory uses are questioned, the Director shall be responsible for determining if a proposed accessory use meets the criteria within Chapter 84 of the Development Code." *Id.* Yet, Development Code section 84.01.020(a) states that unless otherwise provided, *accessory structures and uses shall be subject to the same regulations as the primary structure or use*, including projections into setbacks specified in § 83.02.080 (Allowed Projections). This suggests that if play structures are banned under the zoning designation for the main Project's uses, they would still be banned for an accessory use. We can find no language that would allow an accessory use that is inconsistent with the primary use's regulations. Inasmuch as the Project's sports field and sports court are an integral part of the Project, and because they are not allowed by the LA/IC zoning district, the Project cannot be approved

B-77  
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B-78

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 37

Because the Project is inconsistent with the General Plan and because the Project does not comply with the stringent requirements set forth in the County Development Code, it cannot be approved in its current form.

B-78  
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**III. There is No Evidence to Support the Findings Necessary to Proceed with a Conditional Use Permit, Including the Finding of General Plan Consistency.**

In addition to the fact that the Project cannot include a sports complex, the County also would not be able to make the findings necessary to approve the conditional use permit for most, if not all of the Project's structures (i.e., the worship center, youth center gymnasium, assembly area, children's ministry). In order to approve the Project, the following findings must be made: 1) the site is adequate in size and shape to accommodate the proposed use including all features of that use; 2) the site has adequate access; 3) the use will not have a substantial adverse effect on abutting property, such as generating excessive noise, vibration, traffic or other disturbance, or interfering with the present or future ability to use solar energy systems; 4) the proposed use is consistent with the goals, maps, policies, and standards of the General Plan and any applicable community or specific plan; and 5) there is supporting infrastructure to accommodate the proposed development without significantly lowering service levels. Development Code section 85.06.040.

B-79

As discussed in our prior letters and in Kamman's reports, due to the severe topographical limitations of the site (e.g., steep slopes and landslide susceptibility), the site is not adequate to accommodate the proposed use. Nor, as explained above, is there evidentiary support that adequate emergency access exists to serve the Project. The Project also would result in significant and unavoidable transportation, noise, and light impacts on the sensitive U.S. Forest Service lands and the residential land uses adjacent to the Project site.<sup>8</sup> See DEIR at 3.A-12, 3.G.-11, 12, 23; DREIR at 5-2. The Project's increase in traffic would also result in a significant deterioration in roadway levels of service. DREIR at 3.I-17, 3.I-18. Finally, as discussed above, the Project is inconsistent with numerous policies in the San Bernardino County General Plan and Lake Arrowhead Community Plan and the Project's uses do not comply with the Development Code.

**IV. Conclusion**

In sum, the EIR is legally inadequate and cannot serve as the basis for Project approval. Further, the Project is inconsistent with key planning policies for the

B-80

<sup>8</sup> Twelve residential homes are located between 25 and 65 feet from the Project boundary. DEIR at 3.A-2.

SHUTE MIHALY  
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San Bernardino County Planning Commission  
January 22, 2020  
Page 38

region. For these reasons, Save Our Forest Association and Sierra Club – San Bernardino Mountain Group Sierra Club respectfully request that the Planning Commission deny the proposed Project.

B-80  
CONT.

Very truly yours,

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Laurel L. Impett, AICP, Urban Planner

Exhibits:

- Exhibit A: Kamman Hydrology & Engineering, Inc, Report, January 21, 2020.
- Exhibit B: *Ctr. for Biological Diversity v. County of San Bernardino* No. E042316, 2008 WL 4696065 (Cal. Ct. App. Oct 27, 2008).
- Exhibit C: Minimizing the Impact of Development on Wildlife: Actions for Local Municipalities, Environmental Fact Sheet.
- Exhibit D: Safari Highlands Ranch and Citywide SOI Update Wildfire Hazard Analysis.

cc: Steven Farrell, Sierra Club San Bernardino Mountain Group Sierra Club  
Hugh Bialecki, DMD, Save Our Forest Association

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