

From: [Laurel L. Impett](#)
To: [Nieves, Tom](#)
Cc: [Hugh](#); [Steven Farrell](#); [Bob Sherman](#); [Kevin P. Bundy](#)
Subject: Church of the Woods Letter to Planning Commission
Date: Wednesday, January 22, 2020 11:40:53 AM
Attachments: [Letter to San Bernardino County Planning Commission \(with exhibits\).PDF](#)

Mr. Nieves,

On behalf of Save Our Forest Association and Sierra Club – San Bernardino Mountains Group, please find attached a letter to the Planning Commission in connection with the Church of the Woods Project (“Project”). Please include this letter with the Planning Commission’s packet for consideration at its January 23, 2020 hearing on the proposed Project.

I would appreciate confirmation of receipt of this email.

Best regards,

Laurel L. Impett, AICP, Urban Planner
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
415.552.7272
Impett@smwlaw.com

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

LAUREL L. IMPETT, AICP
Urban Planner
Impett@smwlaw.com

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

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.

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.

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 Woodward. 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.

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

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.

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.

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.

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*,

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.

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.”¹ 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.

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.

¹ 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.

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

“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

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.² 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

² 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.

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.

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) 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").

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

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.³

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.

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.

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

³ 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.

“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.

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.

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.*

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.*

(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.

(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.

(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.

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

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.

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.

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.

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.

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.⁴ 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

⁴ 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."

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

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*.⁵ 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).⁶ It is particularly disingenuous that, despite having requested that the FEIR provide this important impact analysis, the FEIR preparers declined to do so. Comment

⁵ 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.

⁶ 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.

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).

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.

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.

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

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.”

(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.

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.

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.*

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.

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.

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

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.

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.

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.

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.

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.

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

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).

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.

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

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.

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.

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:

- 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.

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); *Env'tl. 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

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.

- 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.

(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

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

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 7.6.⁷
- 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

⁷ 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.

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

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.

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.

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

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).

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.

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).

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

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

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

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.

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.

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.⁸ 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

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

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.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



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

1199648.8

EXHIBIT A



January 21, 2020

Ms. Laurel Impett
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102-4421

Subject: Review of Final Environmental Impact Report
SCH No. 2004031114
The Church of the Woods Project, Rim Forest, California

Dear Ms. Impett:

I have been retained by Shute, Mihaly & Weinberger LLP (SMW) to review and evaluate the Final Environmental Impact Report (FEIR) for the Church of the Woods (COTW) Project, Rim Forest, California, especially responses provided to SMW's comment letter dated February 25, 2019 on the Draft Revised Environmental Impact Report (DREIR) and my comment letter dated February 21, 2019. Because of the Project's close association with the Rimforest Storm Drain Project, I have also reviewed the Recirculated Draft and Final EIRs for the Rimforest Storm Drain Project (RSDP)¹.

I raised six issues/concerns in my February 21, 2019 comment letter. Apart from Item 5 (Potential impacts on slope stability), I don't feel the FEIR satisfactorily resolves the other deficiencies raised in my letter. Below, I elaborate on the deficient responses to Items 1 (Deferred analysis and mitigation for impacts to jurisdictional waters and wetlands) and Item 4 (Potential impacts on recharge, groundwater storage and spring flow) in my February 21, 2019 letter. The FEIR responses to Items 2 (No characterization of surface water conditions), Item 3 (Incorrect characterization of groundwater conditions) and Item 6 (Incomplete cumulative impact assessment) in my letter are dismissive and ignore the sound science and information introduced to assist in recognizing and addressing the incomplete characterization of site conditions and potential impacts to the environment.

¹ In the COTW FEIR (page 2-23), the County states that they will place a Condition of Approval (COA) that construction of the COTW Project is only permitted following the construction of San Bernardino County's RSDP. The close association and interrelation of these projects via shared construction footprint and pseudo-shared mitigations has complicated my review of the COTW FEIR – one can't review the COTW project without a clear understanding of the RSDP design and compliance. I have not been able to determine if the RSDP has obtained environmental and construction permits, and to what degree the conditions within these permits will alter project design and/or mitigations. If permit conditions place the RSDP design into a state of flux, there will certainly be trickle-down to COTW, possibly leading to unknown changes in design that will lead to omissions in coverage of the COTW EIR.

As indicated above, I elaborate here on a couple inaccuracies and deficiencies that remain in the FEIR, which result in incorrect and misleading conclusions about potential adverse impacts to the environment by project actions. These issues are listed here and discussed in detail below.

1. Acknowledging that the COTW Project will not be constructed until completion of the RSDP, I continue to contend that the COTW Project will result in impacts to state and federal jurisdictional waters that are not acknowledged or mitigated in the FEIR.
2. Potential reductions to groundwater recharge that supplies and sustains flow at the site spring have not been addressed. This spring maintains perennial creek flow and associated jurisdictional waters/wetlands downstream of the spring outfall.

1. COTW Project will impact state and federal jurisdictional waters.

The COTW's delineation of jurisdictional waters and wetlands on the project property provided in Appendix C² of DEIR is consistent with the findings presented in the RSDP DEIR. Maps of jurisdictional wetlands/waters for the COTW and RSDP projects are provided in Figures 1 and 2, respectively. Both maps indicate that jurisdictional waters lie within the construction footprint of the proposed COTW project (Figure 3).

The RSDP identifies jurisdictional wetlands and waters that will be permanently impacted and temporarily disturbed during construction. These areas are delineated as "Permanent Impact Area" and "Temporary Disturbance Area" on Figure 2. The RSDP FEIR indicates that impacts to jurisdictional waters and wetlands within the Permanent Impact Area will be mitigated off-site by the County. Mitigation Measure BIO-1c of the RSDP FEIR states that jurisdictional waters that are disturbed within the Temporary Disturbance Area would be restored on-site. Specific language pertaining to on-site restoration of jurisdictional waters in Mitigation Measure BIO-1c is as following.

To mitigate temporary impacts to sensitive vegetation or habitat that may support special-status plants or animals (e.g., temporary equipment staging areas), the County will prepare and implement an Ecological Restoration Plan, to establish native vegetation cover on all temporary impact areas within five (5) years of the end of construction. The plan will be prepared in coordination with CDFW prior to the start of construction. It will be implemented immediately following the completion of construction and shall be monitored for a period of five years to ensure that the establishment of vegetation is successful. The Ecological Restoration Plan's goal will be to restore native vegetation that will ultimately replace habitat values that are damaged or degraded by the Project and is not necessarily designed to replace in-kind vegetation within a five-year period. Instead, the plan is designed to create the baseline conditions that will allow

² Thomas Leslie Corporation, 2003, Results of a Wetland/Jurisdictional Delineation Study for Tentative Parcel Map No. 16155, August 15.

vegetation to establish and be replaced by natural succession over time. The plan will include: (a) quantitative description of habitat to be removed, including vegetation cover (by tree, shrub, and herb components), native species richness, and density of dominant species; (b) soil or substrate preparation measures, such as recontouring, decompacting, or imprinting; (c) provisions for topsoil and leaf litter salvage and storage; (d) provisions for woody debris, tree trunk, and boulder storage and placement; (e) plant material collection and acquisition guidelines, including guidelines for salvaging, storing, and handling seed, cuttings, or rooted plants from the Project site, as well as obtaining materials from commercial nurseries or collecting from outside the Project site; (f) time of year that the planting or seeding will occur and the methodology of the planting; (g) an irrigation plan or alternate measures to ensure adequate water; (h) quantitative success criteria, to reflect yearly progress and final completion; (i) a detailed monitoring program to evaluate conformance with the success criteria; and (j) contingency measures to remediate the restoration site if success criteria are not met.

Therefore, upon completion of the RSDP, the condition and status of the disturbed jurisdictional waters within the Temporary Disturbance Area will be restored and maintained. Regardless of which project (COTW or RSDP) is constructed first, the jurisdictional wetlands will be present in original or restored state at the time the COTW Project undergoes construction. When comparing the COTW project plans (Figure 3) to the project jurisdictional waters/wetlands map (Figure 1), it is clear that the jurisdictional waters lying within the COTW grading footprint will be disturbed if not completely eliminated (buried). The COTW FEIR does not acknowledge or mitigate for this impact even when identified in my February 21, 2019 comment letter to the DREIR. Instead, the following statement within the FEIR (response to comment 10C-2, page 175) makes the illogical argument that mitigation for COTW impacts to jurisdictional waters is credited to the restored jurisdictional waters that are being destroyed.

The DREIR has been revised to indicate that the proposed Project would not be implemented until after completion of the Rimforest Storm Drain project. As a result, and as documented in the revised DREIR, the proposed Project would not result in any impacts to jurisdictional waters and wetlands. Any impacts to jurisdictional waters and wetlands resulting from the Rimforest Storm Drain project would be mitigated in accordance with the EIR prepared for that project certified by the San Bernardino County Board of Supervisors on May 23, 2017 (SCH No. 2015051070). No revisions to the DREIR are required in order to respond to this comment.

Because the COTW does not provide mitigation for the destruction of the fully functioning jurisdictional wetlands restored as mitigation for RSDP impacts, the COTW FEIR should be considered incomplete until this significant impact to jurisdictional waters is mitigated.

2. Potential impacts of groundwater recharge that sustains perennial³ spring flow.

In my February 21, 2019 comment letter on the COTW DREIR, I provided the following statement.

As indicated above, there is an active spring on COTW property that sustains perennial flow in Little Bear Creek and, in turn, likely sustains jurisdictional wetlands and downstream riparian corridor. Although it does not appear the COTW will cover/fill this spring, the introduction of large impervious surface areas adjacent to and upgradient of the spring may reduce recharge to bedrock and/or alluvial groundwater aquifers that sustain spring flows. The COTW DREIR does not acknowledge or analyze how the project facilities and impervious surface areas may interfere substantially with groundwater recharge and deplete groundwater recharge such that there would be a net deficit in aquifer volume, lowering of local groundwater table, or depletion in spring flows. Thus, the DREIR fails to adequately analyze potential impacts to hydrologic and associated biologic resources.

Responses to this comment (response 10-50 on page FEIR-165 and 10C-6 on page FEIR-176) include: that there are insignificant amounts of perched water in site alluvium and limited amounts of water within the fractures of bedrock; groundwater is rarely present with the onsite alluvium; shallow groundwater conditions were not observed; and the project does not serve as an important recharge zone for groundwater under existing conditions. Yet, the fact remains that groundwater is released at the spring site year-round in sufficient quantities to maintain at least 4130-feet of perennial creek flow. This perennial creek flow supports associated jurisdictional wetlands/waters and aquatic habitat.

Since a spring is a place where groundwater flows out of the ground, the groundwater emanating from the spring typically comes from the area lying upgradient of the spring. Using the existing (pre-project) contours provided on the COTW jurisdictional wetland/waters map, I've shaded the area lying upgradient of the spring (left graphic in Figure 4). This area represents where infiltration of rainwater will recharge the underlying groundwater upgradient of the spring. Superimposing this recharge area on the proposed COTW project footprint (right graphic in Figure 4), illustrates how much of the recharge area will be influenced by project facilities. If drainage from the impervious surface areas is captured and directed into the RSDP storm drain, this water will be discharged downstream of the spring and is no longer available for groundwater recharge to the spring. Albeit this water will generate creek flow, but it will be ephemeral in nature as it will no longer be stored underground and metered out more slowly – a process that sustains perennial spring flow. The FEIR (response 10-50 on page FEIR-165) states, “*The landscaped areas and athletic field would act as infiltration beds to mitigate the increased runoff due to the impervious areas.*” However, in my experience, athletic fields are typically constructed with subdrain systems that accelerate drainage off the

³ A perennial flow means year-round flow. Ephemeral flow means flows occur briefly during and following a period of rainfall.

field and into storm drains to alleviate saturated conditions and ponding. Given the large percentage of recharge zone that will be covered by project facilities, it seems clear that the COTW needs to analyze how the project will modify and potentially impact both surface and groundwater hydrology and, in turn, spring flows that sustain downstream jurisdictional wetlands and waters. As it stands, the FEIR fails to analyze these potential impacts to hydrologic and biological resources.

Please feel free to contact me with any questions regarding the material and conclusions contained in this letter.

Sincerely,



Greg Kamman, PG, CHG
Principal Hydrologist



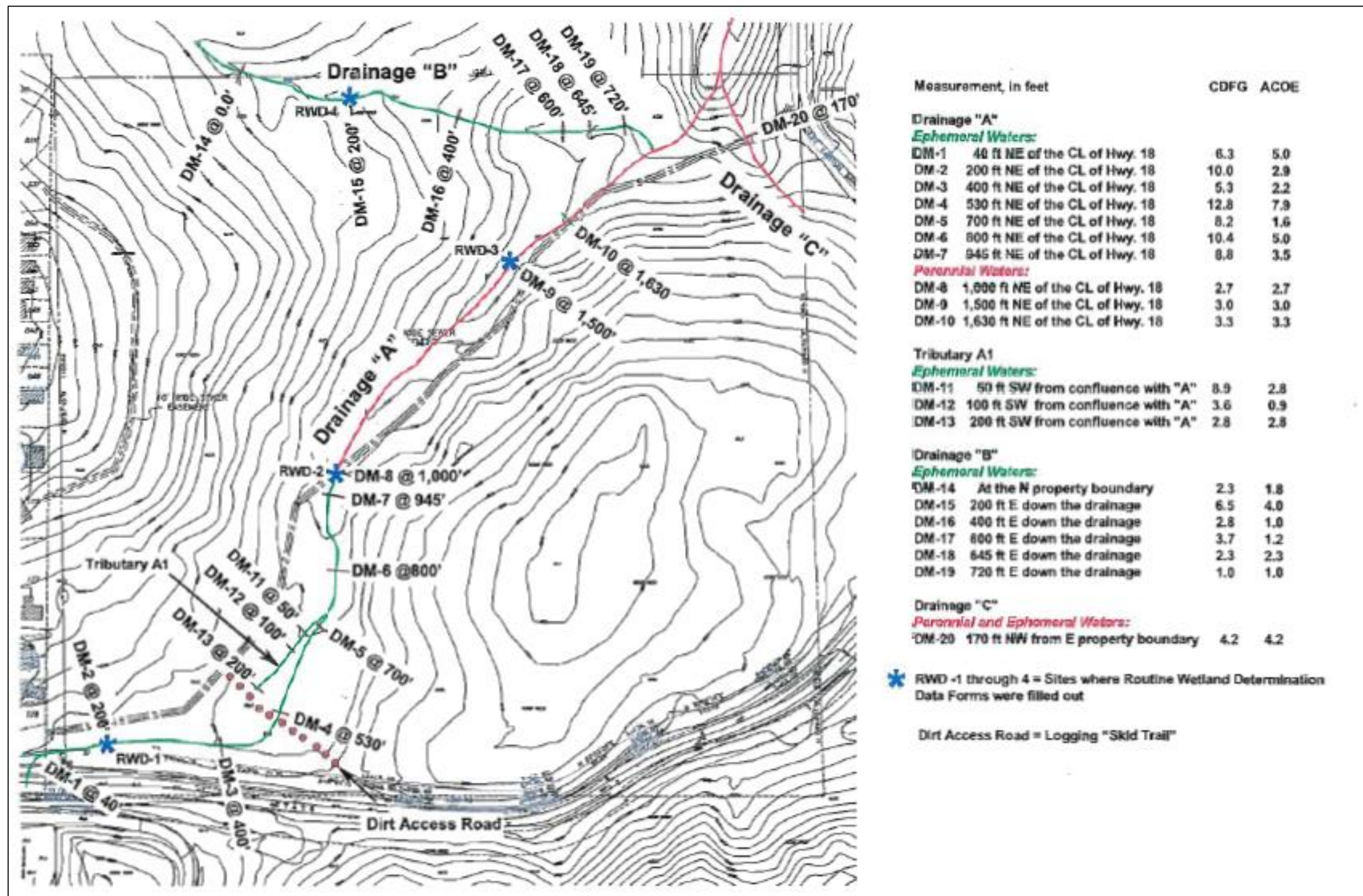


FIGURE 1: Jurisdictional waters and wetlands from Church of the Woods DEIR (source: Thomas Leslie Corporation, 2005).

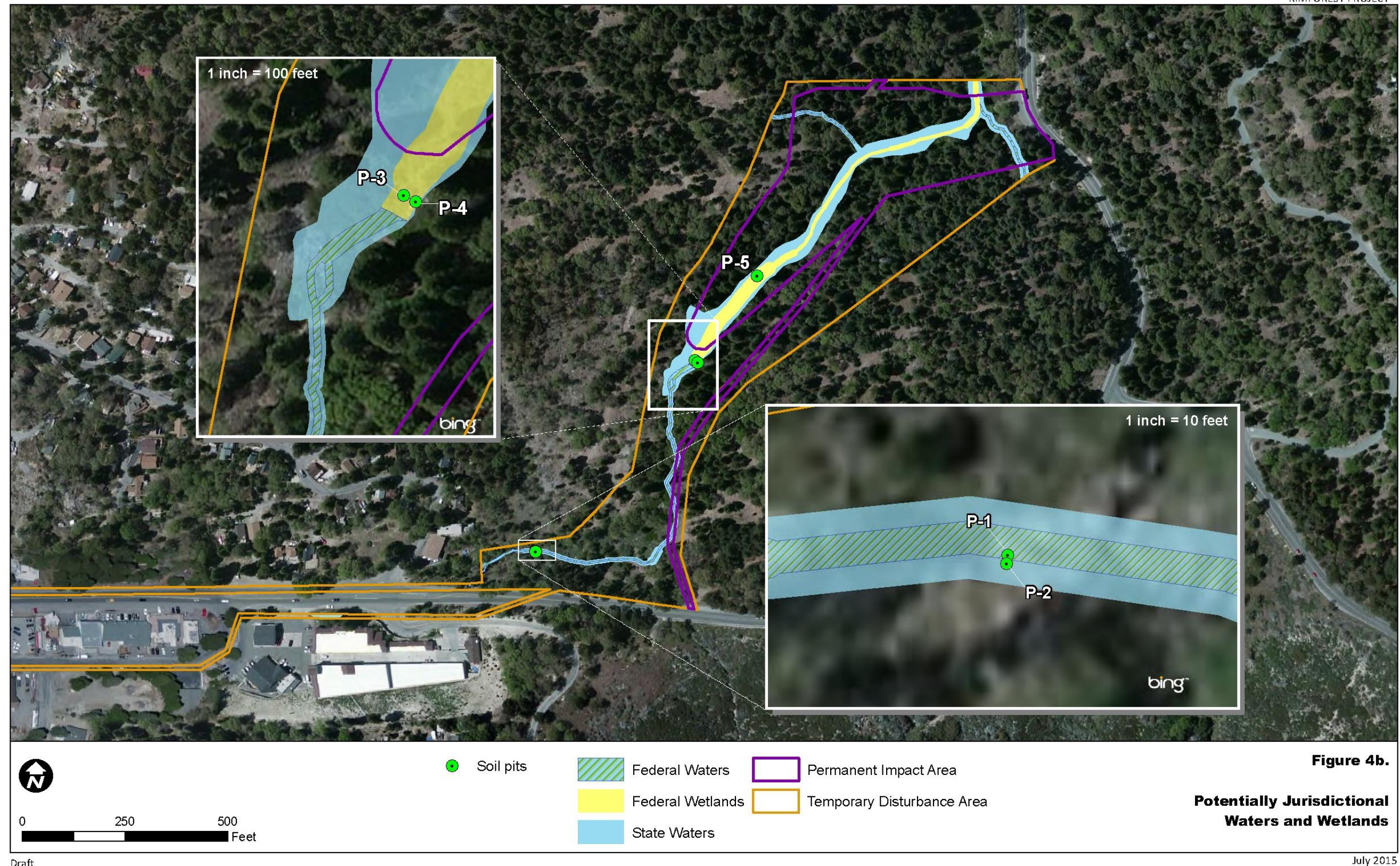


FIGURE 2: Jurisdictional waters and wetlands from Rimforest Storm Drain Project EIR (source: Aspen Environmental Group, 2015).



- NOTES:
1. RECORD OWNER: CHURCH OF THE WOODS, A CALIFORNIA CORPORATION; P.O. BOX 2000; LAKE ARROWHEAD, CA; 92352; 909-337-5483.
 2. PUBLIC UTILITIES ARE AS FOLLOWS:
 - A) WATER: CRESTLINE LAKE ARROWHEAD WATER AGENCY; P.O. BOX 3880; CRESTLINE, CA; 92325; 909-338-1775
 - B) SEWER: LAKE ARROWHEAD COMMUNITY SERVICES DIST; P. O. BOX 789; LAKE ARROWHEAD, CA; 92352; 909-337-8555
 - C) NATURAL GAS: SD. CAL. GAS CO.; P. O. BOX 6226; SAN BERNARDINO, CA; 909-889-9711
 - D) ELECTRIC: SD. CAL. EDISON CO.; P. O. BOX 96; RIM FOREST, CA; 92378; 909-337-2564
 - E) TELEPHONE: VERIZON; 1500 CRAFTON AVE.; MENTONE, CA; 92359; 909-793-7441
 - F) CABLE TV: FALCON CABLE; P. O. BOX 9; RIM FOREST, CA; 92378; 909-338-2457
 3. THE CURRENT AND PROPOSED GENERAL PLAN USE DISTRICT IS LA/IC.
 4. ENTRY SIGNS WILL BE SUBMITTED FOR REVIEW AT A LATER DATE.
 5. ALL PARKING AREAS WILL BE SURFACED WITH ASPHALT. THE MINIMUM PARKING SPACE WILL BE 9'x19' TYPICAL.
 6. TREES TO BE REMOVED ARE DISCUSSED IN THE FORESTERS REPORT PREPARED BY JOHN HATCHER DATED 3-29-03.

PROJECT SUMMARY:

BUILDINGS

PHASE 1	
YOUTH CENTER GYMATORIUM.	
FIRST FLOOR	18,305 SF
SECOND FLOOR	8,579 SF
SNACK BAR	480 SF
TOTAL SF:	27,364 SF
PHASE 2	
ASSEMBLY BUILDING - CHILDREN'S MINISTRY	
FIRST FLOOR	27,254 SF
SECOND FLOOR	13,783 SF
TOTAL =	41,037 SF
MAINTENANCE BUILDING & CARETAKERS RESIDENCE	
FIRST FLOOR	750 SF
SECOND FLOOR	750 SF
TOTAL SF=	1,500 SF
TOTAL PH 2=	42,537 SF

PROJECT SUMMARY

BUILDING COVERAGE (FOOTPRINT)	48,309 SF	3.9 %
DRIVEWAYS & PARKING	199,478 SF	16.9 %
CONCRETE WALKS & PATIOS	26,200 SF	2.2 %
SPORT COURTS	9,508 SF	0.8 %
SPORTS FIELD	54,000 SF	4.6 %
LANDSCAPE AREA	182,960 SF	15.5 %
LANDSCAPE SLOPES	66,133 SF	5.6 %
WATER QUALITY BASIN	7,338 SF	0.6 %
NATURAL AREA	1,013,670 SF	46.9 %
TOTAL PROJECT= (27.12 ACRES)	1,181,363 SF	100.0 %

PARKING SUMMARY (9x19 TYPICAL)

	REQUIRED	PROVIDED
CHURCH OF THE WOODS (BUILD OUT)		
600 SEATS (1 space for 3 seats)	200	311

IMPROVEMENT NOTES:

1. DRIVE AISLES AND PARKING SPACES TO BE A.C. PAVEMENT AND BASE PER GEOTECHNICAL ENGINEERING RECOMMENDATIONS.
2. ALL PAVED ACCESS AREAS TO BE BORDERS BY 6" CONCRETE CURBS.
3. SPORTS FIELD AND LANDSCAPE AREAS TO BE DEPRESSED AS PART OF STORM WATER RUNOFF MITIGATION PLAN.
4. SEE WATER QUALITY MANAGEMENT PLAN FOR DETAILS ON MODIFIED BIOTENTION BASIN.
5. BUILDINGS WITHIN CAMPUS ARE CONNECTED BY A.D.A. PATH OF TRAVEL. NO A.D.A. PATH OF TRAVEL IS PROVIDED TO ANY STATE HIGHWAYS BECAUSE PEDESTRIAN TRAFFIC IS NOT ALLOWED WITHIN STATE HIGHWAY RIGHT OF WAY.

LEGEND:

- INDICATES PLAY FIELD
- INDICATES ORNAMENTAL LANDSCAPE
- INDICATES SLOPE
- INDICATES CONCRETE WALKWAY
- INDICATES A.D.A. PATH OF TRAVEL
- INDICATES DIRECTION OF FLOW
- FF INDICATES FINISH FLOOR
- INDICATES FINISH GRADE
- INDICATES EXISTING CONTOURS
- INDICATES PROPOSED CONTOURS
- INDICATES LIGHT POLE

LEGEND

- ZONE 3 FUEL MODIFICATION (80,550.46 SF)
- ZONE 2 FUEL MODIFICATION (85.07 SF)
- DISTURBED AREA GRADING (BUFFER) (19,684.73 SF)



Source(s): McKeever Engineering (06-28-2017)

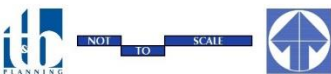


Figure 2-7

PROPOSED SITE PLAN

FIGURE 3: Proposed Church of the Woods (COTW) Site Plan (source: County of San Bernardino, 2016).

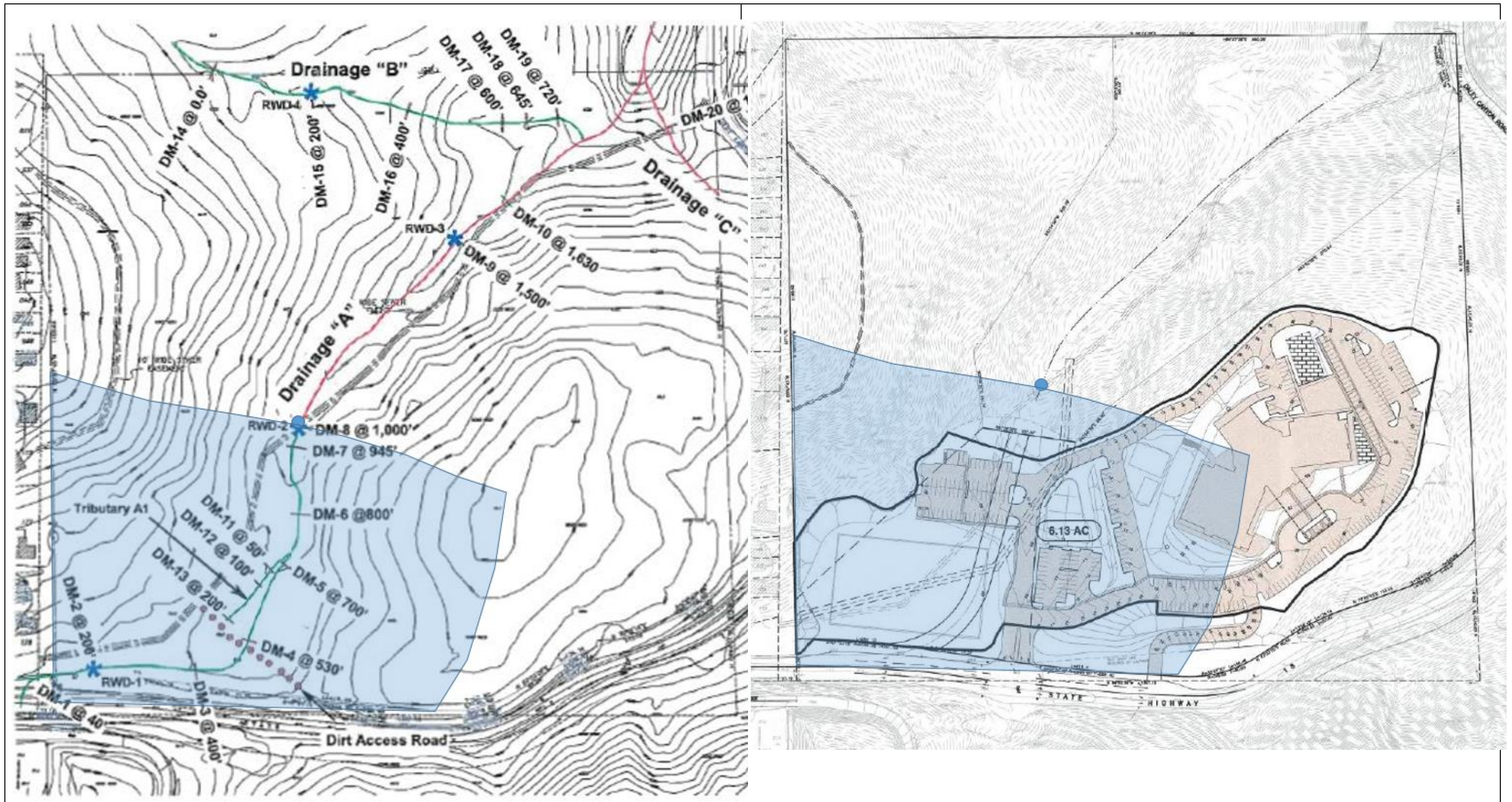


FIGURE 4: Drainage area to spring (blue shaded area): pre-project (left graphic) and proposed project (right graphic) conditions. Note: impervious surface areas shaded light brown on right graphic.

EXHIBIT B

2008 WL 4696065
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts
citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 2,
California.

CENTER FOR BIOLOGICAL DIVERSITY et al.,
Plaintiffs and Appellants,

v.

The COUNTY OF SAN BERNARDINO, Defendant
and Appellant;
Hawarden Development Company, Real Party in
Interest and Appellant.

No. E042316.

(Super.Ct.No. SCVSS133424).

Oct. 27, 2008.

APPEAL from the Superior Court of San Bernardino
County. [John P. Wade](#), Judge. Affirmed as modified.

Attorneys and Law Firms

Chatten-Brown & Carstens, [Jan Chatten-Brown](#), [Douglas P. Carstens](#), [Amy Minter](#); and [Adam Keats](#) for Plaintiffs
and Appellants.

[Ruth E. Stringer](#), County Counsel, [Mitchell L. Norton](#) and
[Robin Cochran](#), Deputy County Counsel, for Defendant
and Appellant.

Best Best & Krieger, [Michelle Ouellete](#), [Jason M. Ackerman](#), and [Melissa R. Cushman](#) for Real Party in
Interest and Appellant.

OPINION

[McKINSTER](#), J.

*1 This is a joint appeal by Hawarden Development
Company (hereafter Hawarden), and the County of San
Bernardino (hereafter County), from the trial court's

finding on a petition for writ of administrative mandamus
filed by various environmental organizations, including the
Center for Biological Diversity¹ (hereafter plaintiffs), that
substantial evidence does not support County's finding in
approving Hawarden's proposed development, Blue Ridge
at Lake Arrowhead, that the project is consistent with
County's General Plan (General Plan). The specific
General Plan provision at issue states, "Complete
Cumberland Road from Cedar Glen to State Highway 18
near Santa's Village as a condition of development of the
adjacent area," and is set out in section III-39, entitled
"Lake Arrowhead Policies/Actions, Man-made Resources,
Transportation/Circulation," of the General Plan, adopted
July 1, 1989, and revised April 12, 1993.

Hawarden owns 39.8 acres of real property near Lake
Arrowhead. In July 2001, Hawarden submitted a proposal
to County to develop the property into a subdivision called
Blue Ridge at Lake Arrowhead (Blue Ridge) comprised of
57 residential lots.² On August 18, 2005, the County
Planning Commission (Planning Commission) certified the
project environmental impact report (EIR) and approved
the project conditioned, among other things, on Hawarden
completing 610 feet of Cumberland Road, the part that runs
through or adjacent to the Blue Ridge development, and
contributing a pro rata share, calculated on a per lot basis,
toward the future cost of extending Cumberland Road from
the Blue Ridge development to Highway 18.

Plaintiffs challenged certification of the EIR and approval
of the project, first in an appeal to County's Board of
Supervisors, which denied the appeal and approved the
project on November 15, 2005, and next in court by filing
a petition for writ of mandate in which plaintiffs alleged
various challenges on numerous grounds set out in three
purported causes of action. The trial court denied the writ
petition on all grounds but one—that County's "fire safety
plan requires that Cumberland Road be completed prior to
development occurring and that the general plan is
unambiguous as to this issue." Hawarden and County
appeal from the judgment granting the petition and issuing
the writ of mandate. Plaintiffs, in turn, cross-appeal,
challenging the trial court's denial of the other aspects of
their writ petition, including their challenges under the
California Environmental Quality Act (CEQA).

We conclude, as explained fully below, that the trial court
correctly granted the petition with respect to the
Cumberland Road provision. We further conclude that
County did not comply with CEQA when it certified the
EIR for the project because the EIR did not identify a
specific source of water for the project or address the
environmental consequences of obtaining water from the

various purported alternative sources mentioned in the EIR. We further conclude that substantial evidence does not support the findings contained in the EIR regarding the impact of the Blue Ridge project on the Southern Rubber Boa, a threatened species found on the project site. Therefore, we will affirm the judgment granting the writ petition with respect to the Cumberland Road issue, and will modify it to include the EIR.

DISCUSSION1.APEAL BY COUNTY AND HAWARDEN

*2 County and Hawarden contend that the trial court erred in granting the writ petition because County's requirement that Hawarden complete 610 feet of Cumberland Road, the part that actually traverses the Blue Ridge project site, and pay a proportionate share toward future extension of Cumberland Road, not only is a reasonable interpretation of the so-called Cumberland Road provision contained in the General Plan, but also is consistent with County's previous interpretations and applications of that provision. The first assertion is not supported by the law, and the second is not supported by the evidence, as we now explain.

A. Standard of Review

"We review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citations.] Under this standard, we defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it. [Citation.]" (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782, fn. omitted.)

B. Analysis

Government Code section 65300 requires all cities and counties to adopt a general plan for the physical development of land within their boundaries. Since 1971, "proposed subdivisions and their improvements [have been] required to be consistent with the general plan [citation]." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 772.) As this court observed in *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985 (*Corona-Norco*), "The consistency doctrine has been described as 'the linchpin of California's land use and development laws; it is the principle which infused the

concept of planned growth with the force of law.' [Citation.]" (*Id.* at p. 994.) " 'An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.' [Citation.] [Fn. omitted.]" (*Corona-Norco, supra*, at p. 994, quoting General Plan Guidelines, p. 212, Governor's Office of Planning and Research, 1990, and noting in fn. 6, "The General Plan Guidelines are advisory only, but they assist in determining compliance with general plan laws.") Conversely, "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear. [Citation.]" (*Endangered Habitats League, Inc. v. County of Orange, supra*, 131 Cal.App.4th at p. 782.)

The Cumberland Road provision, as previously noted, is set out in the "Lake Arrowhead Policies/Actions, Man-made Resources, Transportation/Circulation" section of the General Plan. Circulation is one of the seven elements that must be included in a general plan. (*Gov.Code*, § 65301; *DeVita v. County of Napa, supra*, 9 Cal.4th at p. 773.) Therefore, the Cumberland Road provision is fundamental to the General Plan.

*3 The provision also is mandatory and clear: "Complete Cumberland Road from Cedar Glen to State Highway 18 near Santa's Village as a condition of development of the adjacent area." The language is concise, clear, and to the point-in order to develop land adjacent to Cumberland Road, the road must be completed from Cedar Glen to Highway 18 near Santa's Village. County and Hawarden argue that the Cumberland Road provision is "amorphous and ambiguous" because it "does not state with specificity how and when it applies." In their view, "It could have been written to state that 'no development shall occur in the area adjacent to Cumberland Road until Cumberland Road has been completed from Cedar Glen to State Highway 18.'" We see no difference between that articulation and the language actually used in the General Plan. Their contrary view notwithstanding, County and Hawarden have not offered an alternate interpretation of the Cumberland Road provision; they have merely rephrased the provision, without changing its meaning. County and Hawarden also contend that the Cumberland Road provision "does not say 'complete Cumberland Road from Cedar Glen to State Highway 18 prior to the approval of any development of the adjacent area.'" "In our view the Cumberland Road provision says exactly that, although in slightly different language. Instead of 'prior to the approval of,' the Cumberland Road provision says 'as a condition of' the development of the adjacent area. In both common and legal parlance, a 'condition' is 'something established ... as a requisite to the doing ... of something else.'" (Webster's 3d New Internat. Dict. (1993) p. 473; see also Black's Law

Dict. (6th ed.1990) p. 293.)

County's interpretation, which requires Hawarden to build only that section of Cumberland Road³ that runs through the Blue Ridge project, or to which the project is adjacent, and pay a pro rata share of the future cost of extending the road to Highway 18, is not consistent with the express language of the provision. If, when it drafted the Cumberland Road provision and adopted the General Plan, County had intended to require only incremental construction such that Cumberland Road would be completed in stages, it would have said that. County did not say that, however, and the words it actually used in the Cumberland Road provision are not subject to more than one interpretation. Although County's view of the Cumberland Road provision might be more equitable because it does not place the entire economic burden of completing Cumberland Road on a single developer, that application is not warranted by the language used in the General Plan. In short, County's application of the Cumberland Road provision is inconsistent with the General Plan.

In addition to being inconsistent with the express terms of the Cumberland Road provision in the General Plan, County's interpretation is not consistent with prior interpretations of the Cumberland Road provision because County had not previously applied the provision, notwithstanding the contrary assertion of Hawarden and County that for "two decades" County has interpreted the Cumberland Road provision to require extension of Cumberland Road in stages.⁴ The administrative record, namely a transcript of the pertinent Planning Commission hearing on August 18, 2005, reveals that 20 years earlier (which would be before 1989 when County adopted the General Plan) County obtained "an exaction" from the residents of Cedar Ridge "towards the establishing [of] a fund" to complete Cumberland Road, and "[t]hat money still sits in that fund." The basis of that "exaction" is not revealed in the administrative record (or at least is not readily apparent to this court), but what is clear is that the exaction was not, and could not have been, based on the General Plan because the General Plan was not adopted until several years later and therefore was not in effect at the time.⁵

^{*4} In short, County's interpretation and application of the Cumberland Road provision in this case is not consistent with the General Plan. For that reason, we will affirm the trial court's order granting the petition for peremptory writ of mandate, even though the trial court also purported to rely on County's fire safety plan as the basis for its ruling. On appeal we affirm the result if it is correct on the law, and disregard the reason for the ruling. (*D'Amico v. Board*

of Medical Examiners (1974) 11 Cal.3d 1, 19 ["'No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.'"].)

2.THE CROSS-APPEAL BY PLAINTIFFS

In addition to raising the issue regarding the Cumberland Road provision, plaintiffs also alleged in their writ petition that County failed to identify a reliable water source for the Blue Ridge project and thereby violated CEQA as well as the General Plan and County's Development Code. Plaintiffs also alleged another CEQA violation, namely the adequacy of County's analysis of the project's impact on the Southern Rubber Boa. The trial court denied the writ petition with respect to these two issues. Plaintiffs, as previously noted, challenge the trial court's ruling, and we now address those claims.⁶

A. Standard of Review

"In reviewing an agency's compliance with CEQA in the course of its legislative or quasi-legislative actions, the courts' inquiry 'shall extend only to whether there was a prejudicial abuse of discretion.' (Pub. Resources Code, § 21168.5.) Such an abuse is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' [Citations.]" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426-427, fn. omitted (*Vineyard*)). "An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.]" (*Id.* at p. 427.)

B. Analysis

We first address plaintiffs' claim that County failed to identify a viable source of water for the project, an oversight that violates not only CEQA but also County's Development Code and General Plan. We agree with the CEQA claim and conclude that the EIR is inadequate for reasons we now explain.

(i) CEQA Compliance Regarding Water

Both the draft and final environmental impact reports (DEIR and FEIR, respectively which collectively comprise the EIR) state, in pertinent part, that the Hawarden project is within the Lake Arrowhead Community Services District (LACSD), and LACSD encompasses about 4,900 acres, including the community of Lake Arrowhead, to which it provides water service. The DEIR states that LACSD relies almost entirely on water from Lake Arrowhead to meet its water demands. The exception apparently is “[a] small portion of the LACSD service area known as Deer Lodge Park [that] includes water supplies that are derived from a small number of wells and a connection to the State water project through the Crestline-Lake Arrowhead Water Agency (CLAWA). This water is pumped from Silverwood Lake. Annually about 10-15 acre-feet are produced from local wells and 50 acre-feet are purchased from CLAWA.” Both the DEIR and FEIR state that LACSD has the legal right, as the result of a quitclaim deed recorded in 1975, to draw a total of 6,541 acre-feet per year from Lake Arrowhead. However, the FEIR states in a footnote that in December 2004, the State Water Resources Control Board challenged LACSD’s right to withdraw water from Lake Arrowhead and that challenge had not yet been resolved.

*5 The DEIR and FEIR contain lengthy sections nominally directed at addressing the subject of water supply. Although the mechanism for supplying water to the Blue Ridge project is addressed (the project will connect to existing water lines at Cumberland Drive [*sic*]), neither the DEIR nor the FEIR identify the source of the water for the Blue Ridge project. That issue is only touched on in two sections of the DEIR and FEIR. First, in a section entitled “Impacts on Water Supply and Demand” the DEIR states, “The LACSD report [presumably referring to the 2000 Urban Water Management Plan] indicates that a safe yield [from Lake Arrowhead] has been established, through previous studies, to be approximately 4,000 acre-feet of water. The district calculates demand at 300 gallons per day per connection. The proposed project (58 units) would therefore require an estimated 17,400 gallons per day after build-out (equivalent to 19.5 acre-feet annually). The LACSD has indicated that there are sufficient water resources in place or required of the developer that will ensure water service until 2020. [Fn. omitted.]” The pertinent paragraph in the FEIR states, “Analysis of water demand and supply projections for the LACSD service area, including Blue Ridge at Lake Arrowhead, demonstrates that projected supplies exceed demand through the year 2020. These projections consider ultimate build-out of the Lake Arrowhead community based on available private land, which is expected to be

approximately 10,000 connections. The district calculates demand at 300 gallons per day per connection. The proposed project (58 units) would therefore require an estimated 17,400 gallons per day after build-out (equivalent to 19.5 acre-feet annually). Previously, LACSD has indicated that there [*sic*] sufficient water resources were [*sic*] in place or required of the developer to ensure water service until 2020. [Fn. omitted.] However, the original Water Service Certifications for Tentative Tract No. 16185 [the Blue Ridge project] have since lapsed, and the applicant is in the process of obtaining new water service certifications for the project, pursuant to the LACSD Rules and Regulations for Water and Wastewater Service (Updated 2004).”

In a letter dated December 16, 2004, the operations manager of LACSD identified numerous inaccuracies in the DEIR discussion of water, and stated, in pertinent part, that it is LACSD’s “policy to reduce and eliminate reliance on Lake Arrowhead as the community’s sole source of water supply. The proponent [Hawarden] would be required to fund the cost of fully developing and dedicating to the District a source, or sources[,] of water sufficient to supply all of the water demand associated with the proposed project.” The LACSD operations manager reiterated that requirement in a later section of his letter: “Substantial portions of Section 4.5 [“Water Supply”] are incorrect and need to be revised. For example, this section includes a discussion of the legal basis for [LACSD’s] right to draw water from Lake Arrowhead to provide domestic water. This discussion should be updated to acknowledge that this water right is presently being challenged before the State Water Resources Control Board. The DEIR discussion concerning groundwater and State Water Project supplies also need [*sic*] to be corrected and revised. [¶] *As previously stated, the proponent would be required to fund the cost of developing and dedicating to [LACSD] a source or sources of water sufficient to supply all of the water demand associated with the proposed project.*” (Emphasis added.)

*6 Presumably the above noted letter from LACSD’s operations manager explains the changes made to the section entitled “Potable Water Sources” in the DEIR, the other section that addresses the source of water for the Blue Ridge project. The DEIR states in pertinent part that, “[t]he proposed project’s water needs will be met by placing a 500,000 gallon, steel tank reservoir on lot ‘B’ [of the project] which will be filled by water from Lake Arrowhead.” The Potable Water Sources section in the FEIR states, in pertinent part, that the reservoir on lot B “could be filled by water from Lake Arrowhead *or alternative water sources as may be secured by the project and approved by LACSD.* With assurance of water supply

from sources other than the Lake, and with implementation of conservation methods, water supply will be available to meet water demand for the Blue Ridge project.”⁸

The FEIR includes the above emphasized language as a purported mitigation measure: “**U-W-2(A) Water Supply Source.** The developer shall fund the cost of fully developing and dedicating to LACSD a source, or sources[,] of water sufficient to supply all of the water demand associated with the proposed project. Evidence of compliance with this measure to the satisfaction of LACSD shall be provided to County Environmental Health Services prior to recordation of the Final Map[.]”

The CEQA findings adopted by the Planning Commission in the course of certifying the EIR and approving the tentative tract map for the project expressly acknowledge that a specific water source for the Blue Ridge project is not identified in the final EIR. Those findings state, in pertinent part that, “The Project will not divert water from Lake Arrowhead. The proposed Project’s water needs will be met by placing a minimum 300,000 gallon, partially buried water reservoir (or greater, up to 500,000, at the option and expense of LACSD) on lot ‘B,’ which will be filled by an alternative water source(s) as may be secured by the Project and approved by LACSD.”⁹

Hawarden and County point out that LACSD has agreed to provide water to the project, as evidenced by three “will serve” letters,¹⁰ and therefore the EIR identifies the project water source. The EIR identifies the water supplier, which is LACSD, but not the source of the water LACSD will supply to the project or the environmental impact of obtaining water from that source. Despite the lengthy discussion of water in the EIR, including the previously noted assurances from Hawarden that the project will not use water from Lake Arrowhead, the question remains—if the project is not getting water from Lake Arrowhead, where will the project get its water, and what is the environmental impact of obtaining water from that source? Both the DEIR and FEIR contain a great deal of information about water, but neither provides an answer to that question.

In our view, the circumstances in this case are no different than those in the cases the Supreme Court cited in *Vineyard*, which collectively “articulate certain principles for analytical adequacy under CEQA....” (*Vineyard*, *supra*, 40 Cal.4th at p. 430.) As pertinent here, those principles are that “CEQA’s informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to ‘evaluate the pros and cons of supplying

the amount of water that the [project] will need.’ [Citation.]” (*Id.* at pp. 430-431.) “[T]he future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations (‘paper water’) are insufficient bases for decisionmaking under CEQA. [Citation.] An EIR for a land use project must address the impacts of *likely* future water sources, and the EIR’s discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water’s availability. [Citation.]” (*Id.* at p. 432.) “Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. [Citation.] The law’s informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated water supply fails to materialize. But when an EIR makes a sincere and reasoned attempt to analyze the water sources the project is likely to use, but acknowledges the remaining uncertainty, a measure for curtailing development if the intended sources fail to materialize may play a role in the impact analysis.” (*Ibid.*)

*7 Although *Vineyard* was decided after this case and involved the development of more than 6,000 acres of land into a master planned community that would include 22,000 residential units as well as 480 acres of office and commercial space (*Vineyard*, *supra*, 40 Cal.4th at pp. 421-422), it nevertheless stands for the unremarkable principle that an EIR must “adequately address[] the reasonably foreseeable *impacts* of supplying water to [a] project.” (*Id.* at p. 434.) In order to fulfill that obligation, when the EIR identifies alternate likely sources of water for a project, the EIR must also address the reasonably foreseeable likely impacts of supplying water from each alternative source. (*Ibid.*)

In this case, the EIR does include a section entitled “LACSD Water Demand and Supply Report” that sets out water source options that LACSD has considered in view of its need to reduce and eventually eliminate reliance on Lake Arrowhead. Those potential sources and future projects include importing water from the State Water Project, sinking ground water wells, and annexation to San Bernardino Municipal Water District.¹¹ The EIR does not discuss the likelihood that water will actually be obtained from any of the identified sources.¹² Nor does the EIR address the reasonably foreseeable environmental consequences of supplying water to the project from any of those sources.¹³ Because it does not address those issues, the EIR does not comply with the requirements of CEQA (*Vineyard*, *supra*, 40 Cal.4th at p. 435) and, consequently,

County abused its discretion in certifying the EIR.

(ii) County General Plan and Development Code Compliance

Plaintiffs also claim that failure to identify an actual water source for the Blue Ridge project violates the General Plan and County's Development Code. In particular, plaintiffs claim that failure to identify an actual source of water for the project violates Goal C-29 of the General Plan which states, "County shall encourage and participate with the local responsible water authorities to: [¶] ... [¶] C-29 Approve new development conditioned on the availability of adequate and reliable water supplies and conveyance systems."

As previously discussed, approval of the Blue Ridge project is conditioned on the developer funding an adequate water supply for the project. Unlike CEQA, the General Plan objective does not require that the water supply be identified. Consequently, we conclude that County's approval of the project is consistent with the General Plan.

Plaintiffs also contend that failure to identify a specific water source for the Blue Ridge project violates section 83.040205, subdivision (a)(2) of County's Development Code, which specifies the format for tentative maps and states, "The tentative maps shall show or be accompanied by the following information: [¶] ... [¶] (B) Source, name of supplier, quality and an estimate of available quantity of water, or, if to be served by an established mutual water company or an established public utility, a letter shall be furnished to indicate that satisfactory arrangements have been made or can be made for water supply."

*8 The CEQA findings adopted by the Planning Commission, as noted above, expressly state that water for the onsite project reservoir will come from "an alternative water source(s) as may be secured by the Project and approved by LACSD.... Evidence of the alternative water supply must be provided prior to recordation of the Final Map." Because no other evidence was presented to the Planning Commission that identified the source of the water for the project, the Planning Commission approved the tentative tract map for the Blue Ridge project without requiring compliance with County Development Code section 83.040205.

(iii) CEQA Compliance Regarding Southern Rubber Boa
Plaintiffs' final contention is that the EIR does not accurately assess the project impact on the Southern

Rubber Boa (sometimes also referred to as SRB), and therefore the mitigation measures adopted by County are inadequate. In particular, plaintiffs contend that County's conclusion in the EIR that only 0.62 acres of the Blue Ridge project site are habitat occupied by the SRB is not supported by substantial evidence and, in fact, the entire project site (39.8 acres) is occupied by the SRB. Because the EIR does not accurately identify SRB habitat, plaintiffs contend that the mitigation measures specified in the EIR and adopted by County are also inadequate. We agree, for reasons we now explain, that the conclusion regarding the extent of SRB habitat on the project site is not supported by substantial evidence and therefore the evidence does not support the mitigation measures. In reaching this conclusion, we decline to express an opinion on the correct size of the SRB habitat because that is an issue that must be resolved later, with evidence that will be included in a subsequent EIR.

(a.) Standard of Review

Although previously stated, it bears repeating that our review of County's action in certifying the Blue Ridge EIR is limited to determining whether a prejudicial abuse of discretion occurred because either County did not proceed in a manner required by law, or its decisions are not supported by substantial evidence. (*Vineyard, supra*, 40 Cal.4th at pp. 426-427.) "Courts are 'not to determine whether the EIR's ultimate conclusions are correct but only whether they are supported by substantial evidence in the record and whether the EIR is sufficient as an information document.' [Citation.]" (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197.) "The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions." (*Id.* at p. 1198.) "Substantial evidence is defined in the CEQA Guidelines as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' [Citation.] Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citations.] It does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment. [Citation.]" (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654, fn. omitted, citing CEQA

Guidelines, § 15384, subds. (a) & (b), and [Pub. Resources Code, § 21082.2](#), subd. (c).)

(b.) Analysis

***9** The Blue Ridge project site at issue in this appeal is within an area designated in the General Plan Biological Resources Overlay as suitable habitat for the SRB.¹⁴ The EIR states that, “The SRB has a very limited distribution within the San Bernardino and San Jacinto Mountains and typically occurs between 5,000 and 8,000 feet in elevation [citation]. Because of the secretive nature of the species, very little is known about their behavior and biology. Typically this snake is found under rocks, rotting logs or thick vegetative debris in forested areas containing mixed conifer-oak vegetation on relatively gentle slopes with nearby riparian habitats [citation].” The DEIR states that “[f]or the purposes of this report, gentle slopes are those with 30 percent slope or less.” The SRB “has been found to migrate from its winter hibernating grounds on south facing slopes to lower moist canyon bottoms and riparian areas in the springtime and summer [citation].” One expert cited in the EIR reported that SRB travel as much as 300 yards in one season, while another reported that SRB travel as much as 500 meters (546 yards) in a season.

The EIR also states that habitat suitable to SRB foraging, nesting, and hibernating exists on the project site. Biologists employed by Michael Brandman Associates (MBA), the company County retained to prepare the Blue Ridge project EIR, determined that approximately 17.6 acres of the site are considered moderately suitable SRB habitat, however, “[i]mpacts to moderately suitable habitat are not considered significant and thus do not require mitigation. These areas have slopes greater than 30 percent.” The project site has 7.4 acres that “contain highly suitable habitat (slopes less than 30 percent); however, only 0.62 acre is considered occupied.” The DEIR states that the impact of the project to these areas is considered significant.

The above noted conclusions are purportedly based on focused SRB habitat surveys conducted by Thomas Leslie Corporation (TLC) in the spring of both 2001 and 2002. In the 2001 survey, TLC did not find any SRB on the project site. However, over seven days in April 2002, TLC found five female SRB on the project site, in two locations on what is designated lot 28 of the tentative tract map.¹⁵ In May 2003, County hired MBA to reassess the project impact on SRB habitat and make recommendations for mitigating the identified negative impacts. Thus, the above noted conclusions in the EIR regarding SRB habitat are based on MBA’s purported reassessment of the project site.

Plaintiffs contend that the conclusions regarding SRB habitat are not supported by substantial evidence, first, because the presence of five female SRB on the project site during the spring 2002 survey supports an inference that males could also be on or near the site, and that, in turn, indicates the presence of a “robust breeding population” that will produce offspring and those offspring will disperse in all directions across the entire project site. These assertions are based on comments to the DEIR submitted by the Sierra Club and the Audubon Society and included in the FEIR, along with MBA’s responses. We are not persuaded that the noted assertions are ones of fact that need to be addressed in the EIR.¹⁶ The issue posed by the noted assertions is whether there is sufficient evidence to support the conclusion in the EIR, previously noted, that 0.62 acres of the project site are actually occupied by SRB and that 7.4 total acres are suitable SRB habitat.

***10** With respect to the size of suitable habitat, the EIR includes the evidence, set out above, that experts believe the SRB migrates between 300 yards and 546 yards in a season. The EIR adopted the larger figure to calculate the size of the suitable SRB habitat on the project site. The EIR also states, in the response to the above noted comments to the DEIR by the Sierra Club that, “The County hired MBA, an independent and impartial biological consulting firm, to reassess the extent of SRB habitat and to make recommendations for mitigating any identified impacts. MBA did a comprehensive search of existing literature, including the review of the USFS’s *Habitat Management Guide for Southern Rubber Boa in the San Bernardino National Forest*’ as well as direct communication with several of the leading experts in SRB biology. The results of MBA’s reassessment and recommendations were the basis for the analysis and recommended mitigation measures presented in the Draft EIR. It should be noted that Hoyer and Stewart in 2000 conducted a two-year study on SRB movement studying 21 individuals. ‘In all but two instances, recaptured SRBs were found within 8 meters (25 feet) of their original recapture [*sic*] sites. The two exceptions were adult males found during the breeding season at a rock outcrop approximately 70-75 meters (250 feet) away.’ This study illustrated the fact that SRBs display strong site fidelity and over a course of several years, rarely move more than a few meters from its [*sic*] den. Occupied habitat estimates for the project site were based on movements of up to 500 meters (over 1,600 feet).”

Plaintiffs contend that the EIR misinterprets the results of the Hoyer and Stewart study because the study involved more than 21 SRB. Although the study did involve more than 21 snakes, that number is irrelevant.¹⁷ The significant fact however is not disputed-of the 104 snakes observed

during the two-year study, 21 were what the study termed “recaptures,” i.e., snakes that had previously been captured in the course of the study, and 83 were initial captures, i.e., ones that had not been captured before.¹⁸ “Of the 21 recaptures, 10 occurred the year following initial capture, four were in the two consecutive years after initial capture, and one was two years after initial capture.... In all but two instances, recaptured SRBs were found within 8m of their original capture sites. The two exceptions were adult males found during the breeding season at a rock outcrop approximately 70-75m away. These observations suggest a strong fidelity to home sites.” In short and contrary to plaintiffs’ claim, the study supports the factual assertion included in the above noted response to comments.

Plaintiffs also contend that the methodology used to conduct the SRB surveys does not comply with the pertinent Department of Fish and Game (DFG) draft protocols because the surveys did not include required maps of potential SRB habitat and site vegetation, and were not conducted on the entire site over the course of three years, at intervals of every one or two weeks during the period between March 15 and May 15. This claim, like plaintiffs’ previous assertions, is directed at challenging the sufficiency of the evidence to support the conclusion in the EIR regarding the size of the SRB habitat on the project site.

***11** Although the SRB surveys do not comport with the requirements of the DFG draft protocols, they nevertheless include information that the protocols are designed to collect. As previously noted, TLC conducted surveys in the spring of both 2001 and 2002, but only found SRB on the project site during the 2002 survey. According to the 2002 survey report, dated June 4, 2002, TLC conducted nine focused surveys over the course of seven days, between April 6 and April 28, 2002; “[a]t the direction of the Department [presumably referring to the DFG] surveys were terminated on April 28, 2002, because SRB were discovered onsite.” The 2002 report includes descriptions of site topography and vegetation, and also includes the explanation that as a result of phone conversations with Raul Rodriguez [of the DFG] “it was acknowledged that the preparation of [a map showing the location of downed logs and rocky outcrops on the project site] was not necessary. Instead, tables provided by John Hatcher and Jim Bridges, showing the square footage of logs and rocky outcrops [based on field investigations of the project site conducted on April 24, and April 29, 2002] were used to calculate the acreages of potentially suitable SRB habitat. The tables are included in Appendix F. [¶] As documented by the forester’s research, 0.65 acres of potentially suitable but unoccupied SRB habitat are present within the boundaries [of the project]: 0.05 acres of rock outcrops and

0.60 acres of logs (the total located in residential and open space lots and road prisms).”

The problem with the EIR in our view is that it does not calculate SRB habitat based on information derived from the TLC 2002 SRB survey results. Instead, the DEIR states, “Suitable foraging, nesting, and hibernating habitat exists on the project site” and then calculates the SRB habitat based on the analysis of MBA biologists who determined, as noted previously, “that approximately 17.6 acres of Sierran mixed coniferous forest habitat occurs onsite that could serve as moderately suitable habitat. Impacts to moderately suitable habitat are not considered significant and thus do not require mitigation” because the “areas have slopes greater than 30 percent. Additionally, 7.4 acres onsite contain highly suitable habitat (slopes less than 30 percent); however, only 0.62 acre is considered occupied. Impacts to these areas are considered significant. This differs from TLC’s 2002 analysis ..., which concluded that only 0.65 acre provided suitable habitat, of which 0.02 acre was occupied. TLC observed five females within this 0.02-acre area of the project site during focused surveys, and relocated two snakes to an offsite location in April, 2002.”¹⁹ The DEIR states that “fallen logs onsite provide suitable habitat for hibernating and denning [a term not previously used in either the DEIR or FEIR and which could mean nesting but might also mean hibernating]. However, suitable SRB habitat extends beyond fallen logs where they were found. Additionally, SRB use a much wider area during foraging and seasonal migration [a phrase not used previously]. It should be noted that SRB was [*sic*] only found on the northwest portion of the property. TLC reported that the southerly and westerly facing slopes appeared drier than the areas where SRB were found. It is unknown why these snakes may be restricted to this portion of the site and if the moisture difference is a contributing factor. [¶] Areas of the site that were rated unsuitable habitat include areas with steep slopes (>30 percent grade) and areas with little or no needle or leaf litter. During the follow-up assessment in Nov. 2003, it was determined that the increase in beetle-infested trees had no negative impact on the quality or suitability of SRB habitat found on the project site.”

***12** In its discussion of Sensitive Wildlife Species, the DEIR states, in pertinent part, “that SRB can travel up to 500 meters from their hibernacula site. If it is assumed that each SRB found on site uses approximately 500 square meters for hibernating, foraging and migrating, the five individuals found onsite, would occupy approximately 0.62 acre of habitat.” “Additionally, approximately 6.8 acres of suitable but unoccupied habitat occurs within the project site and will be directly or indirectly impacted by the project. Impacts to this species would be considered

significant.”

The FEIR purports to explain, in the response to comments, that the 0.62 acres of occupied habitat was calculated by using 546 yards (or 500 meters), which is the longest distance of seasonal movement reported in the pertinent literature on SRB, to “create a radius around each identified denning/hibernation site to determine SRB occupation (or 0.124 acres per snake found onsite).” That, however, cannot be how the 0.62 acres of occupied habitat was calculated. The calculation obviously is the result of attributing 500 square meters, or 0.124 acres,²⁰ to each of the five SRB located on the project site ($5 \times 0.124 = 0.620$). That figure is not based on any of the facts disclosed in the EIR, and therefore is not supported by the evidence, as we now explain.

According to the facts, TLC found 5 SRB on the project site, two in one tree stump and three in another tree stump on lot 28. The two tree stumps were 39 feet apart. Using these facts in the formula purportedly applied in the EIR, the territory actually occupied by SRB is determined by using the two tree stumps as the denning/hibernating/nesting sites of the five SRB, and calculating the area of a circle with a radius of 546 yards around each of the two sites.²¹ The EIR calculated the area of a square 23 meters by 23 meters, and then allotted that area to each of the five SRB found on the project site. That calculation is incorrect both factually and mathematically. Using the assumed fact that an SRB will travel up to 546 yards in any direction from a denning/hibernating/nesting site, the area traveled is a circle, not a square, and the facts indicate that there are two denning/hibernating/nesting sites, on the project site, not five.²² Because the calculation is incorrect, the conclusion contained in the EIR regarding SRB habitat is not supported by substantial evidence.

County and Hawarden point out there is other evidence in the record, namely the previously discussed study by Hoyer and Stewart, that shows SRB do not migrate or forage far from their denning/hibernating/nesting site. However, that was not the evidence MBA used in the EIR to calculate SRB habitat. As previously noted, both the DEIR and FEIR use 546 yards, the greatest migration distance mentioned in the pertinent literature or by the relevant experts, to calculate the area within the Blue Ridge project site that is actually occupied by SRB. The size of the SRB habitat directly determines or affects the proposed mitigation measures contained in the EIR and adopted by County when it certified that document. Therefore, the erroneous calculation of SRB habitat necessarily is prejudicial because it “ ‘precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.’ ”

[Citation.]” (*San Joaquin Raptor Rescue Center v. County of Merced*, *supra*, 149 Cal.App.4th at p. 653.)

*13 “The foremost principle under CEQA is that the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’ [Citation.]” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390.) “The EIR is the primary means of achieving the Legislature’s considered declaration that it is the policy of this state to ‘take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.’ [Citation.] The EIR is therefore ‘the heart of CEQA.’ [Citations.] An EIR is an ‘environmental “alarm bell” whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.’ [Citations.] The EIR is also intended ‘to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.’ [Citations.] Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government.” (*Id.* at p. 392.)

We also share plaintiffs view that use of slope steepness to calculate suitable SRB habitat on the project site is at the very least unclear if not also actually unsupported by the evidence, and therefore arbitrary. The analysis is unclear because it does not explain whether potential SRB denning/hibernating/nesting habitat, i.e., rock outcrops, downed logs, tree stumps, leaf litter, etc., are actually located on any of the slopes that are greater or less than 30 percent. If the calculation is based only on whether the slope is more or less than 30 percent, the calculation that 7.4 acres is the only suitable habitat is not supported by the evidence because there is no evidence in the record to support the conclusion that slopes greater than 30 percent are not “gentle” and therefore not suitable SRB habitat. Conversely, or stated differently, there is no evidence in the record to support the assertion that only slopes less than 30 percent are gentle and therefore are suitable SRB habitat.

On the issue of suitable habitat, as previously noted, a 1985 study by Loe is cited in the EIR as evidence to support the assertion that SRB inhabit “relatively gentle slopes.” However, there is no evidence to support the conclusion that the quoted phrase means slopes less than 30 percent.

The EIR simply defines gentle slopes as those with 30 percent slope or less, but it does not cite any source or authority to support that definition. Nor is any authority or factual source offered to support the statement in the EIR, noted above, that, “It is not reasonable to characterize slopes greater than 30 percent as gentle.” The assertion, unless supported by a source or other evidence, is nothing more than an arbitrary conclusion that begs the obvious question—why is it not reasonable to characterize slopes greater than 30 percent as gentle?²³

***14** We also do not share the assumption implicit in the EIR that all slopes greater than 30 percent are necessarily the same and differ only in their steepness. Some slopes although steeper than 30 percent, may nevertheless have rock outcropping or slight depressions that would accommodate SRB habitat, while others that are less than 30 percent slopes may be bare and therefore not suitable habitat. In other words, degree of steepness of a slope, standing alone, is insufficient evidence to support a conclusion regarding the size of the SRB habitat on the project site. It is nothing more than speculation and conjecture.

It occurs to us that the deficiencies in the EIR with regard to defining the SRB habitat on the project site could be the result of not following the DFG draft protocols more closely. Those protocols require among other things “3 years (3 survey seasons) of surveys following an approved protocol.” In addition, “surveys shall be conducted every one or two weeks, during the period from March 15 to May 15, lasting 1 to 4 consecutive days (depending on the size of project or site and amount of suitable habitat), and may begin just prior to complete snow melt.” Only the 2002 survey TLC conducted comports with the last quoted requirement. Ironically, the EIR ignores the facts contained in that survey in its calculation of SRB habitat on the project site. A more accurate picture of the actual SRB habitat might well have emerged if two additional years, or seasons, of surveys had been conducted in accordance with the draft protocols.

Whatever the explanation, the EIR discussion and conclusion regarding the effect of the Blue Ridge project on SRB habitat are not supported by substantial evidence, and therefore the mitigation measure regarding habitat acquisition specified in the EIR²⁴ is not supported by substantial evidence. That measure states in pertinent part that, “The project proponent will acquire and convey to a suitable land trust or other open space management entity acceptable to the County of San Bernardino, offsite lands within the mapped occupied habitat of the SRB [mapped SRB lands according to Loe (1985)]. Lands acquired and conveyed will be at a ratio of approximately 5:1 for

occupied SRB habitat and approximately 1:1 for highly suitable but unoccupied SRB habitat land, for a total of 10.5 acres. The final ratio for mitigation, however, will be established through consultation with the CDFG through the 2081 permit application process.”²⁵ The basis for the specified ratios is not explained or supported by any evidence in the EIR, and as disclosed by the final sentence of the quoted paragraph is also not the result of consultation with the DFG. For each of the reasons noted, we must conclude that mitigation measures set out in the EIR and approved by County when it adopted that document are not supported by substantial evidence.

Because we conclude that the evidence does not support the conclusion regarding SRB habitat, and therefore does not support the mitigation measures identified in the EIR, we must also agree with plaintiffs assertion that County failed to adopt feasible mitigation measures. However, we can not address the specifics of plaintiffs claim because those details require an adequate analysis of SRB habitat on the project site. Until such an analysis is conducted, we can do no more than cite the general principle, relied on by plaintiffs, that “CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project’s benefits, unless the measures necessary to mitigate those effects are truly infeasible.” (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368, citing *Pub. Resources Code*, § 21081, subd. (b).)

CONCLUSION

***15** The Blue Ridge project is inconsistent with the express terms of the Cumberland Road provision set out in the General Plan which requires completion of Cumberland Road from Cedar Glen to State Highway 18 as a condition of development of the adjacent property. By approving the Blue Ridge project tentative tract map and conditional use permit without requiring completion of Cumberland Road, County violated the express requirements of its General Plan. Therefore, we must affirm the trial court’s order granting the writ petition and issuing the writ of mandate.

The EIR for the Blue Ridge project does not comport with the requirements of CEQA because the document does not identify a source of water for the project or discuss the environmental impact of obtaining water from each of the various sources purportedly identified in the EIR. In addition, the EIR conclusions regarding the SRB habitat located on the project site are not supported by substantial evidence and therefore the EIR fails to set out adequate mitigation measures, in violation of CEQA. Accordingly, the trial court should also have granted the writ petition

with respect to the CEQA issues.

Plaintiffs to recover their costs on appeal.

DISPOSITION

The judgment is affirmed with respect to the appeal by County and Hawarden from the trial court's order granting the petition for writ of mandate. The judgment issuing the writ of mandate is modified to require County to prepare an EIR that complies with CEQA in addressing the issues of water supply for the Blue Ridge project and the impact on the Southern Rubber Boa.

We concur: [RAMIREZ](#), P.J., and [MILLER](#), J.

All Citations

Not Reported in Cal.Rptr.3d, 2008 WL 4696065

Footnotes

- 1 The other organizations are San Bernardino Valley Audubon Society, Save Our Forest Association, and the Sierra Club.
- 2 The original project design called for 58 residential lots but in order to improve fire access to the project, Hawarden agreed to eliminate one lot and to extend a roadway through the project.
- 3 The location of Cumberland Road apparently was sited, or its path determined, when County approved an earlier planned development called Cedar Ridge.
- 4 In the first of three requests for judicial notice, County and Hawarden ask that we take judicial notice of conditions of approval for two projects, Mill Pond Planned Development and Cedar Ridge (exhibits A and B, respectively, to the judicial notice request), which they contend support the assertion that County has consistently interpreted the Cumberland Road provision to require incremental construction and payment of a pro rata share of the cost to complete Cumberland Road to Highway 18. The request for judicial notice is denied because the evidence was not part of the administrative record presented in the trial court and therefore could not have been considered by the trial court in granting the writ petition. Moreover, even if we granted the judicial notice request, we would conclude that the evidence does not support the position espoused by Hawarden and County. The pertinent Mill Pond condition of approval does not expressly address the General Plan requirement regarding Cumberland Road, and even if it did, the condition clearly indicates that it was adopted on May 29, 2006, which is after County approved the Blue Ridge project. Similarly, the conditions of approval pertinent to Cedar Ridge do not expressly mention the Cumberland Road provision in the General Plan, nor could they refer to that provision because County approved Cedar Ridge in 1984, but did not adopt the General Plan that contains the Cumberland Road provision until 1989.
- 5 Plaintiffs request that we take judicial notice of nine items, identified as exhibits A through I, which include a letter to a County Planning Division employee (Exhibit A) and email messages between various employees of County's Planning Division (Exhibits B, D, E, F, G, and H) that reveal the history of the fund created with the Cedar Ridge exaction, and also explain how County decided to use a similar approach in interpreting and applying the Cumberland Road provision in this case. The request for judicial notice is denied with respect to exhibits A, B, D, E, F, G, and H, because those items were not presented to Planning Commission or the County of Board of Supervisors and therefore were not part of the record considered by the trial court in granting the writ petition. For this same reason, i.e., they were not part of the administrative record, we deny plaintiffs' request with respect to exhibits C and I, which pertain to the issue of the project impact on the Southern Rubber Boa, a threatened species found on the site. We also point out that under [Evidence Code sections 452 and 459](#), we may take judicial notice of the fact that the communications took place, because those communications are not reasonably subject to dispute, but we may not judicially notice the truth of the facts contained in those communications. (See [Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort \(2001\) 91 Cal.App.4th 875, 882.](#))
- 6 In their response to the appeal by County and Hawarden, plaintiffs asserted numerous ways in which the Blue Ridge project is inconsistent with the General Plan. However, they do not raise those claims in their cross-appeal.
- 7 Hawarden acknowledged in a letter dated August 9, 2005, that the Blue Ridge project would not rely on Lake Arrowhead water and that Hawarden "will be securing and funding an alternative water supply that will fully service our development."

- 8 This last sentence is ambiguous. The “assurance of water supply from sources other than the Lake” referred to in that sentence could be a reference to the requirement that Hawarden fund a water supply from sources other than Lake Arrowhead. It could also mean that adequate water sources other than Lake Arrowhead have been identified. If the latter, those sources are not identified in the EIR, at least not in a manner that makes their existence obvious to this court.
- 9 The Planning Commission CEQA findings also state that, “Sufficient water supply is anticipated to be available through the year 2020 to meet the entire 19.5 acre-feet per year demand associated with the proposed Project. However, the EIR concludes that without mitigation, the impact may be potentially significant.” It is apparent from the EIR that the water supply in question, i.e., the one deemed to be sufficient through the year 2020, is water from Lake Arrowhead. The mitigation requirement is that the developer fund the cost of fully developing a source of water other than Lake Arrowhead to meet all the project’s water needs.
- 10 The most recent “will serve” letter is the subject of County’s/Hawarden’s supplemental request for judicial notice. We deny that judicial notice request because the letter, Exhibit 1 to the judicial notice request, is dated August 3, 2007, and therefore is not relevant to the issue of whether the FEIR that County approved in 2005 adequately addressed the environmental impact of providing water to the project. Moreover, the letter does not identify the source of water for the project. Exhibit 2, which is a letter dated September 19, 2007 (the correct version of which is contained in County’s/Hawarden’s notice of errata to request for judicial notice), from County’s Land Use Services Department, is irrelevant for the same reason. In fact, that letter reinforces our conclusion that the EIR did not identify the source, or sources, of water for the Blue Ridge project, or the environmental consequences of acquiring water from those sources, because the letter identifies the potential sources of “Non-Lake Arrowhead LACSD water supplies” that could be used to provide water for the project.
- 11 The FEIR notes that LACSD recommended in its report that “each of the projects in Milestone 1 be pursued.” Milestone 1 projects are defined as “Groundwater Development Phase I: Drilling two wells on Lake Arrowhead Country Club (LACC) property to supply the irrigation needs of the golf course and for drinking water supplies.” In other words, Milestone 1 involves only one project.
- 12 County and Hawarden assert that if an actual water source is not found then Hawarden will pay a water resources fee to LACSD. Payment of a water resources fee might constitute adequate compliance with County code requirements, an issue we address below, but it does not satisfy the requirements of CEQA because the FEIR must identify an actual water source in order to address the environmental impact of obtaining water from that source.
- 13 At the Planning Commission hearing on August 18, 2005, a senior County planner stated that the various sources of water for the project included in the FEIR were taken from LACSD’s urban water management plan and the environmental consequences of each of those options were analyzed in preparing that plan. That statement is incorrect. Preparation and adoption of an urban water management plan is governed by [Water Code section 10620 et seq.](#), and [Water Code section 10652](#) expressly exempts that process from CEQA. More importantly, even if environmental review had been conducted in the course of preparing the urban water management plan, the results of that review were not included in any of the documentation provided to the Planning Commission members, as one of the commission members pointed out at the hearing.
- 14 The SRB is considered a threatened species by the California Department of Fish and Game, and a species of concern by the United States Fish and Wildlife Service.
- 15 Copies of TLC’s 2002 survey report are included in both the Appendices to the DEIR and in the Appendix-Additional Materials appended to the FEIR. That report states, among other things, that SRB surveys were conducted over the entire site. However, a caption on a photograph included in the report suggested that the searches were limited to specific areas associated with the center line of proposed streets and around proposed driveways. In response to County’s comments contained in its initial study, TLC clarified that the 2002 SRB study was based on searches conducted “over the entirety” of the project site.
- 16 The FEIR contains responses to the noted comments which include possible explanations for why all five SRB found on the property were female. Because they are not relevant to our resolution of this issue, we will not recount MBA’s responses, and instead note that they consist mostly of speculation, which in our view is appropriate given that the comments to which they are appended are also based on speculation and supposition.
- 17 Contrary to plaintiffs assertion, the study in question involved a total of 104 snakes, not 83, and the data does not support plaintiffs attempt to conduct a relative analysis of the migration habits of SRB because 83 of the snakes identified in the study had never previously been observed. The authors of the study did not know anything about the migration habits of those 83 snakes and therefore we cannot conclude, as plaintiffs urge that only 19 of 83 displayed site fidelity, “which shows a much wider dispersal and weaker site fidelity.”

- 18 The Hoyer and Stewart study is included the joint appendix.
- 19 Whether TLC had the required DFG approval to move the snakes, a claim raised by plaintiffs, is irrelevant in our view. The relevant fact for purposes of our review in this appeal is that the two snakes were found on the project site and were counted in TLC's SRB survey.
- 20 See <http://www.onlineconversion.com>
- 21 As plaintiffs correctly point out, the area of a circle is calculated using the following formula: $\text{Area} = \pi r^2$, with r being the radius of the circle, which in this case is 546 yards. So the correct calculation is $\text{Area} = 3.14 \times 546 \times 546$.
- 22 Because the denning/hibernating/nesting sites are located within approximately 40 feet of each other, the area encompassed by the two circles will necessarily overlap.
- 23 In their discussion of the slope issue, County and Hawarden point to photographs of the SRB included in the record and assert that "their body characteristics appear to be more akin to that of a large earthworm ... than a snake, which explains the SRB's low mobility levels and 'strong fidelity to home sites.'" Other than their color, which appears to be olive, the SRB depicted in the photographs look like snakes, not earthworms, to us. But even if we concurred in the characterization, we do not perceive its relevance to the slope issue nor do we agree that it would account for home site fidelity. Snakes and earthworms both slither on the ground, a mode of movement that seems particularly well suited not only to travel up and down steep slopes but also to inhabiting slopes greater than 30 percent, assuming suitable habitat exists. Snakes, because they are larger, presumably would travel farther than earthworms which would account for an earthworm's site fidelity, assuming such fidelity exists. However, an earthworm the size of a snake presumably would travel just as far and as fast as the reptile. In short, the fact that SRB look like a large earthworm in a photograph explains nothing about the snakes habits or habitat.
- 24 Other purported mitigation measures included in the EIR require the developer to obtain a so-called 2081 permit and comply with DFG directives before undertaking ground disturbing activities such as grading, or capturing and relocating any SRB found on the project site. These measures are not fact dependent and therefore are not implicated by our conclusion that the finding regarding SRB habitat is not supported by substantial evidence.
- 25 2081 is a reference to [Fish and Game Code section 2081](#) which empowers the DFG to authorize the "taking" of an endangered or threatened species under specified circumstances.

EXHIBIT C

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

ID-5

2004

Minimizing the Impact of Development on Wildlife: Actions for Local Municipalities

The rapid increase in human population and rate of development in New Hampshire is placing significant stress on our native wildlife populations. Land that was once habitat for wildlife species is being converted into residential and commercial subdivisions, roads, and other uses. The development of land and related activities impact both the quantity and quality of wildlife habitat. This fact sheet provides an overview of those impacts and offers some strategies for developers and towns to reduce the impact of development on native wildlife. This fact sheet is part of a two-part series; a second fact sheet focuses on habitat-sensitive site design and development practices.

How Development Impacts Wildlife

Habitat Loss

The loss of habitat through the conversion of land from its natural state to a developed landscape represents the single greatest impact of increased human activity on native wildlife. All animal species require certain habitat features to survive. Development typically eliminates or significantly changes many important habitat features found in a natural area, thus reducing or eliminating the habitat value of that area. For example, a diverse wildlife population depends upon the natural diversity of native plants found in most undeveloped areas. Development often changes the vegetative community, making it more difficult for many native species to survive. Those species able to survive in urban settings may thrive, but the rest are forced to find new territory or perish.

Habitat Fragmentation

Habitat fragmentation is a less obvious consequence of development, reducing both the quantity and quality of habitat. Fragmentation is a process whereby large tracts of the natural landscape are gradually developed and subdivided until only patches of original habitat remain. The patches are often too small and too far apart to support the basic survival and reproductive needs of many wildlife species during various stages of their life-cycle or in different times of the year. When a species' habitat is separated by distances that make movement from one patch to another impossible, the impacts on the genetic health of the population are significant and reduce a species' ability to reproduce and withstand stress. In addition, smaller habitat patches and the wildlife that depend on them are more vulnerable to the catastrophic effects of natural disturbances such as fire and ice storms. Fragmentation also results in higher populations of generalist predators, resulting in increased predation on those species that attempt to use the remaining habitat blocks.

Changing Landscape

The impact of human activity on wildlife extends beyond the actual area of development. When evaluating the impact of human activity on wildlife, we should consider a "disturbance zone" - the entire area where habitat value has been meaningfully reduced. The encroachment of human activity into a natural area creates more "edge effects." Edge effects are changes in environmental conditions and animal behavior and well-being that result from being in close proximity to the border between habitat areas. Unlike natural borders, human disturbances often create "harder" edges with greater detrimental impacts on wildlife. Even seemingly small manmade disturbances, such as power line easements, can have major consequences for wildlife.

In addition, the encroachment of human activity reduces the amount of interior habitat area relative to edge or border area. While borders between two different habitats are often an essential part of the ecology of an area, when habitat becomes so small that it is all edge and no interior, it loses its ability to support those species that require an isolated interior for some portion of their life (e.g. some nesting birds).

Landscape disturbance caused by development can also serve to introduce invasive species into natural habitats, further degrading the quality of remaining habitat areas.

The Impact of Roads

Roads may be the "single most destructive element of the habitat fragmentation process." They can:

- Disrupt or prevent passage across the disturbed area.
- Provide an entrance for exotic species or predators.
- Increase mortality.
- Increase unnatural disturbances from sources such as pollution and fire.

Source: Noss, 1993, Schonewald-Cox and Buechner 1990 and Bennett 1991, as cited in Duerksen, et al.

Changing Aquatic Habitat

Development also affects the quality and quantity of aquatic habitat. The more hard surface present after development, the less rainwater infiltrates the soil. Rainwater instead runs off the land at an increased volume and rate. This reduces the recharge of groundwater and increases flooding, streambed erosion, and sedimentation. Runoff from developed areas also is often warmer and polluted with pathogens (e.g. bacteria and viruses), household chemicals, metals, fertilizers, pesticides, oil, and grease. As vegetative buffers along water bodies are lost, sunlight can further warm water beyond a threshold at which native species can survive and reproduce.

The structural habitat of aquatic systems also can be significantly degraded by modifications associated with roads and development. The quality and flow of rivers, streams and wetlands can be reduced by inadequate or inappropriately designed culverts, creation of new dams, and channel straightening or modification.

Daily Human Activity

Human activity introduces changes to the surrounding environment that can negatively impact natural habitat. Changes in lighting in an area, for example, can significantly affect some species'

behavioral and biological rhythms, which are guided by natural cycles of light and dark. Nocturnal species, particularly birds, can become disoriented by night-time lighting. Domestic pets, particularly cats, may prey excessively on wildlife, such as ground-nesting birds. The availability of household trash can alter the composition of wildlife communities by providing food for animal populations that thrive on trash (such as rats, raccoons, and skunks) to the detriment of those that do not, e.g. small mammals and song birds.

Human recreational activity in an area may directly impact wildlife and reduce the quality of the habitat provided. Human activities can disturb sensitive habitats, like wetlands, and disturb or "flush" wildlife. Flushing wildlife raises an animals' stress level and increases energy consumption. If repeated frequently, such disturbance can impact reproduction and survivorship.

Examples of Important Habitat

Habitat of Rare Wildlife Species - Lands inhabited by species listed as endangered, threatened, or of special concern should be considered a priority for conservation.

Unfragmented Lands - Large tracts of contiguous open space that feature a mix of habitat types are more valuable to wildlife than small, fragmented patches.

Riparian Areas & Shorelines - The interaction of land and water fosters biodiversity and is invaluable for many reptiles, amphibians, and migratory birds.

Priority Wetlands - Swamps, marshes, tidal flats, wet meadows, and bogs. For a legal definition see New Hampshire Code of Administrative Rules Wt 101.82.

Agricultural and Other Open Land - Some species are dependent on open fields, an increasingly rare habitat type.

Connecting Lands - Areas of very-low development density between large unfragmented lands that provide wildlife with habitat, food, and cover, as well as corridors for movement.

Other Unique or Critical Habitats - Habitat types that are rare state-wide or to a particular geographic region are vital for maintaining regional biodiversity.

Actions for Local Municipalities

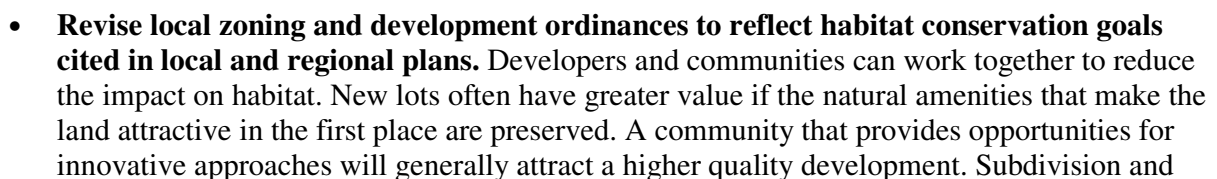
This section offers some basic actions to pursue to reduce the impact of development and human activity on native wildlife.

- **Specifically state habitat conservation goals in your master plan, open space plan, and/or habitat conservation plan.** Development proposals and regulatory changes are more likely to be consistent with a community's habitat conservation goals if those goals and objectives are clearly stated in a town's master plan. If a separate open space plan or habitat conservation plan is prepared, it should be adopted as an official part of the master plan. Including habitat conservation goals and objectives (or other plans focusing on habitat conservation) as part of the local master plan provides the basis for local land use regulations and changes in local zoning to support habitat conservation.
- **Prepare a natural resources inventory (NRI) to identify habitat areas that merit conservation.** Awareness of a town's natural resources is vital to informed decision-making about habitat conservation. A basic natural resources inventory is the first step. This should include a base map, land cover map, wetlands composite map, aerial photographs, tax map, topographic map, and wildlife information (see NRI Guidebook by UNH Cooperative

Map the town's "green infrastructure" and plan for conservation as well as development within a community. Natural resource features that are vital to human and wildlife well-being are a community's "green infrastructure." Consideration of these landscape features in open space and habitat conservation plans is essential to comprehensive natural resource planning. Comprehensive planning considers both conservation and development. It is vital to achieving a balance between economics and environmental health, between private property rights and community goals.

A basic natural resources inventory (NRI) will help identify green infrastructure as the first step in planning for its conservation. Once specific areas are identified, their locations and an explanation of their importance should be clearly stated in community plans. With appropriate regulatory mechanisms, communities can plan for open space in the same way they plan for transportation networks and other types of development.

Bear-Paw Regional Greenways Map



site plan regulations should include incentives to promote the conservation of habitat, open space, and natural resources. A community also can plan for areas where higher density development is more appropriate to balance reductions in development in areas of greater habitat value.

Municipalities can strengthen requirements in their local zoning and ordinances:

- Require site-specific natural resource inventories and/or wildlife assessments.
 - Require pre-proposal meetings with the planning board where the focus is on understanding the natural resource features of the site and providing input on the potential development plan.
 - Require that development proposals demonstrate how they will conserve important habitat features.
 - Require conservation-design subdivisions as the preferred format for new residential subdivisions.
-
- **Ensure that your community has an adequate management plan in place.** Appropriate management of habitat areas can ensure that conservation goals are met and maintained over the long-term. Basic strategies for maintaining the quality of protected habitat include enforcement of use restrictions and regular monitoring of habitat quality.

Examples of Regulatory Options

- Overlay zone for wetlands and streams. Overlay zones establish requirements beyond standard zoning regulations for specified areas.
 - Require conservation/open space subdivision design in areas designated by the town as important for habitat conservation.
 - Develop a habitat conservation checklist for application review. A checklist may increase adherence by applicants and planning boards to habitat-related objectives and design criteria.
 - Transfer of development rights (TDRs) programs redirect development from areas that are a priority for conservation to areas identified by the community as appropriate for growth.
 - Encourage maximum setbacks/buffers in projects with important interior wildlife habitat areas. A buffer is a naturally vegetated area adjacent to a habitat area. A setback is a minimum distance between development and an important landscape feature.
 - Maintain an additional unfragmented vegetated buffer along roadsides where streams and wetlands cross roads (300 ft. total minimum).
-
- **Raise funds to purchase development rights to permanently conserve important habitat areas.** Towns have many options for raising funds for land conservation. These include, but are not limited to:
 - Authorization of bonds for purchasing land.
 - Allocation of the land use change tax to a town conservation fund.
 - Private land trusts may provide money for the purchase of conservation lands, as do certain government grant and loan programs.

For more information, see "Saving Special Places: Community Funding for Land Conservation" (www.spnhf.org/pdf/savingplaces.pdf) by the Society for the Protection of New Hampshire Forests, or contact the Center for Land Conservation Assistance at (603) 224-9945 or the Land and Community Heritage Investment Program at www.lchip.org.

- **Control invasive and exotic species.** To maintain healthy populations of native flora and fauna, invasive and exotic species must be controlled. Invasives are non-native species that

proliferate rapidly and often have no local natural predators. This allows them to out-compete native species, often without filling the natives' vital roles in ecosystems. For more information, visit the website of the NH Invasive Species Program at http://agriculture.nh.gov/divisions/plant_industry/index.htm, NH Exotic Species Program at DES at <http://des.nh.gov/wmb/exoticspecies/>, or the EPA webpage on invasive species in ocean, coasts, and estuaries at http://www.epa.gov/owow/invasive_species/.

References and Resources

Benedict, Mark A. and Edward T. McMahon. 2001. *Green Infrastructure: Smart Conservation for the 21st Century*. Sprawl Watch Clearinghouse Monograph Series, Washington, D.C.

Boyd, Lynn. July 2001. *Buffer Zones and Beyond: Wildlife Use of Wetland Buffer Zones and their Protection under the Massachusetts Wetland Protection Act*. Wetland Conservation Professional Program, Department of Natural Resource Conservation, University of Massachusetts. Available at <http://www.umass.edu/nrec/onlinedocs.html>.

Chase, Vicki, Laura Deming, and Francesca Latawiec. November 1995 (revised May 1997). *Buffers for Wetlands and Surface Waters: A Guidebook for New Hampshire Municipalities*. Audubon Society of New Hampshire and the NH Office of State Planning.

Duerksen, C., D. Elliot, N. Hobbs, E. Johnson, and J. Miller. 1997. *Habitat Protection Planning: Where the Wild Things Are*. American Planning Association, Chicago, IL.

Kanter, John, Rebecca Suomala, and Ellen Snyder. 2001. *Identifying and Protecting New Hampshire's Significant Wildlife Habitat: A Guide for Towns and Conservation Groups*. Nongame and Endangered Wildlife Program of the NH Fish and Game Department, Concord, NH.

Stone, Amanda J. Lindley. 2001. *Natural Resources Inventories, A Guide for New Hampshire Communities and Conservation Groups*. UNH Cooperative Extension.

EXHIBIT D

2.14. Wildfire Hazards

This section addresses potential wildfire hazards impacts that may result from construction and/or operation of the proposed Safari Highlands Ranch (SHR) project. The following discussion addresses existing wildfire hazard conditions of the project site and surroundings, considers applicable goals and policies, identifies and analyzes environmental impacts, and recommends measures to reduce or avoid adverse impacts anticipated from project implementation, as applicable.

The analysis in this section is largely based on the Fire Protection Plan (FPP), Safari Highlands Ranch, prepared by Dudek (2017) and peer-reviewed by Anchor Point and Michael Baker International. The report is included in its entirety in **Appendix 2.14**.

The table below summarizes the wildfire hazards impacts detailed in **Section 2.14.4**.

Summary of Wildfire Hazards Impacts

Threshold Number	Issue	Determination	Mitigation Measures	Impact After Mitigation
1	Exposure to Wildland Fire Risk	Less than Significant Impact	None required	Less than Significant Impact
2	Emergency Response and Evacuation	Potentially Significant Impact	WF-1	Less than Significant Impact
3	Physical Impacts from Provision of New Fire Protection Facilities	Less than Significant Impact	None required	Less than Significant Impact

2.14.1. Existing Conditions

A wildfire is a nonstructural fire that occurs in vegetative fuels, excluding prescribed fire. Wildfires can occur in undeveloped areas and spread to urban areas where the landscape and structures are not designed and maintained to be ignition resistant. A wildland-urban interface is an area where urban development is located in proximity to open space or “wildland” areas. The potential for wildland fires represents a hazard where development is adjacent to open space or within close proximity to wildland fuels or designated fire severity zones. Steep hillsides and varied topography within portions of the City also contribute to the risk of wildland fires. Fires that occur in wildland-urban interface areas may affect natural resources as well as life and property.

The California Department of Forestry and Fire Protection (Cal Fire) has mapped areas of significant fire hazards in the state through its Fire and Resources Assessment Program (FRAP). These maps place areas of the state into different fire hazard severity zones (FHSZ) based on a hazard scoring system using subjective criteria for fuels, fire history, terrain influences, housing density, and occurrence of severe fire weather where urban conflagration could result in catastrophic losses. As part of this mapping system, land where Cal Fire is responsible for wildland fire protection and generally located in unincorporated areas is classified as a State Responsibility Area (SRA). Where local fire protection agencies, such as the City of Escondido Fire Department (EFD), are responsible for wildfire protection, the

land is classified as a Local Responsibility Area (LRA). Cal Fire currently identifies the project site as an SRA. In addition to establishing local or state responsibility for wildfire protection in a specific area, Cal Fire designates areas as very high fire hazard severity (VHFHS) zones or non-VHFHS zones. The project site is designated as VHFHS by the State of California.

The project site is located within the service boundaries of the Cal Fire Valley Center Fire Protection District. The Escondido Fire Department (EFD) provides fire protection and emergency medical services to the City and, through a contractual arrangement established in 1984, the Rincon Del Diablo Fire Protection District. A staff of 93 full-time safety (including Chief Officers), 18 full-time non-safety, 10 full-time administration, 3 part-time administration, and 27 senior volunteer personnel provide such services to a population of approximately 153,614 in an area covering 50 square miles in North San Diego County, California.

The EFD currently operates 7 fire stations which house emergency response personnel and equipment. The EFD addresses fire emergencies (e.g., structural, vegetation, and automobile); medical aid emergencies (all chief complaints including vehicle accidents); special rescue emergencies (e.g., confined space rescue, trench rescue, low angle rescue, high angle rescue, and water rescue); hazardous materials incidents (including explosive devices and weapons of mass destruction); and mass disaster incidents (e.g., earthquakes, flooding, and wind). **Table 2.14-1** summarizes the EFD's fire and emergency medical delivery system.

Table 2.14-1. Escondido Fire Department Responding Stations Summary

Fire Station	Address (all in Escondido)	Apparatus	Staffing (Total/Station)	Maximum Travel Distance*	Travel Time**
1	310 North Quince	Paramedic Engine Truck Company Brush Engine 2 Ambulances	27	7.3 miles	16 minutes
2	421 North Midway	Paramedic Engine Brush Engine Ambulance	9	6.2 miles	13 minutes
3	1808 Nutmeg Street	Paramedic Engine Brush Engine	9	9.3 miles	17 minutes
4	3301 Bear Valley Parkway	Paramedic Engine Brush Engine	9	6.1 miles	10 minutes
5	2319 Felicita Road	Paramedic Engine Brush Engine Ambulance	15	6.9 miles	15 minutes
6	1735 Del Dios Road	Paramedic Engine	9	7.8 miles	14 minutes
7	1220 North Ash	Paramedic Engine Ambulance	9	7 miles	15 minutes

* Distance measured to project entry gate located on Safari Highlands Ranch Road at the southern edge of the property.

** Assumes travel to the primary project's northern boundary and speeds calculated with the Insurance Service Office (ISO) travel time formula: Time = 0.65+1.7 (Distance)

The City of Escondido's Quality of Life Standard is to respond to all priority Level One or emergency-type calls within 7 minutes and 30 seconds, a total of 90 percent of the time. In 2012, the EFD's response time for all stations was 6 minutes and 32 seconds for all urgent calls (Dudek 2017, page 50; **Appendix 2.14**).

The outbreak and spread of wildland fires within the project area is a potential danger, particularly during the hot, dry summer and fall months. The buildup of dry brush provides fuel to result in potentially larger, more intense wildland fires. Various factors contribute to the intensity and spread of wildland fires: humidity, wind speed and direction, vegetation type, the amount of vegetation (fuel), and topography. The topography, climate, and vegetation of much of the project area are conducive to the spread of wildland fires once started.

Particularly at risk are the houses and structures in the inner rural and rural zones surrounding the project area. The project site is surrounded by the communities of Rancho San Pasqual and Rancho Vistamonte, residences in nearby unincorporated County of San Diego areas, and the San Diego Zoo Safari Park. The area to the north of Highway 78 is also adjacent to open space or agricultural fields, both of which are susceptible to wildland fires.

Since 1910, numerous wildfire events in the direct vicinity of the project site have been recorded by Cal Fire (Dudek 2017, page 31; **Appendix 2.14**). These fires, occurring in 1910, 1911, 1912, 1913, 1914, 1919, 1927, 1938, 1943, 1945, 1946, 1949, 1950, 1951, 1952, 1955, 1956, 1962, 1965, 1967, 1970, 1972, 1974, 1975, 1978, 1979, 1980, 1981, 1984, 1985, 1987, 1988, 1989, 1991, 1993, 1995, 1997, 2003, 2004, 2007, and 2013, burned within 5 miles of the project site. The site was burned completely in the 1910s, 1950s, 1993 (Guejito Fire), and 2007 (Witch Fire) and was partially burned in the 1930s. This information excludes fires less than 10 acres. However, there have been multiple fires throughout inland North San Diego County of less than 10 acres. Rapid and overwhelming response to these fires has resulted in their containment before they could grow to the size that would include them in Cal Fire's database.

The project site and several undeveloped natural areas to the east and west of the site last burned approximately nine years ago. These natural landscapes, as with much of the open space in the region, in their present state, represent a potential threat to the many existing homes scattered along Cloverdale Road, the San Diego Zoo Safari Park to the south, and the small avocado ranches and semi-rural homes along the northern and northwestern side of the project and beyond, which are all at risk from a Santa Ana wind driven wildfire (Dudek 2017, page 31; **Appendix 2.14**). Since the time of the last fire, the site has recovered with the natural vegetation having generally grown back.

With the proposed annexation of the project site to the City of Escondido, the San Diego Local Agency Formation Commission (LAFCO) would be approving a detachment from CSA #135 (SD Regional Communications) to the City.

2.14.2. Regulatory Framework

Federal

There are no federal regulations that apply to the proposed project with regard to wildfire hazards.

State

California Department of Forestry and Fire Protection

Cal Fire protects the people of California from fires, responds to emergencies, and protects and enhances forest, range, and watershed values providing social, economic, and environmental benefits to rural and urban citizens. Cal Fire's firefighters, fire engines, and aircraft respond to an average of more than 5,600 wildland fires each year (Cal Fire 2012).

The Office of the State Fire Marshal supports Cal Fire's mission by focusing on fire prevention. It provides support through a wide variety of fire safety responsibilities including by regulating buildings in which people live, congregate, or are confined; by controlling substances and products which may, in and of themselves, or by their misuse, cause injuries, death, and destruction by fire; by providing statewide direction for fire prevention in wildland areas; by regulating hazardous liquid pipelines; by reviewing regulations and building standards; and by providing training and education in fire protection methods and responsibilities.

State Fire Regulations

Fire regulations for California are established in Sections 13000 et seq. of the California Health and Services Code and include regulations for structural standards (similar to those identified in the California Building Code); fire protection and public notification systems; fire protection devices such as extinguishers and smoke alarms; standards for high-rise structures and childcare facilities; and fire suppression training. The State Fire Marshal is responsible for enforcement of these established regulations and building standards for all state-owned buildings, state-occupied buildings, and state institutions within California.

California Fire Plan

The Fire Plan is a cooperative effort between the State Board of Forestry and Fire Protection and the California Department of Forestry and Fire Protection. By placing the emphasis on what needs to be done long before a fire starts, the Fire Plan looks to reduce firefighting costs and property losses, increase firefighter safety, and to contribute to ecosystem health. The current plan was finalized in early 2010.

California Public Resources Code

Fire Hazard Severity Zones – Public Resources Code Sections 4201–4204

Public Resources Code (PRC) Sections 4201–4204 and Government Code Sections 51175–89 direct Cal Fire to map areas of significant fire hazards based on fuels, terrain, weather, and other relevant factors. These zones, referred to as fire hazard severity zones (FHSZ), define the application of various mitigation strategies to reduce risk associated with wildland fires. The project site is not designated as a fire hazard severity zone within the Local Responsibility Area for Escondido (Cal Fire 2009). However, as stated above, Cal Fire identifies the project site as a State Responsibility Area and designates the property as a VHFHS zone.

California Fire Code

The 2016 California Fire Code (Title 24, Part 9 of the California Code of Regulations) establishes regulations to safeguard against the hazards of fire, explosion, or dangerous conditions in new and existing buildings, structures, and premises. The Fire Code also establishes requirements intended to provide safety for and assistance to firefighters and emergency responders during emergency operations. The provisions of the Fire Code apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal, and demolition of every building or structure throughout California. The Fire Code includes regulations regarding fire-resistance-rated construction, fire protection systems such as alarm and sprinkler systems, fire services features such as fire apparatus access roads, means of egress, fire safety during construction and demolition, and wildland-urban interface areas. The City of Escondido has adopted the California Fire Code as part of its building regulations (Municipal Code Chapter 11, Article 2, Division 1, Section 11-17) and implements these standards through its building permit process.

Senate Bill 1241

In 2012, Senate Bill 1241 added Section 66474.02 to Title 7 Division 2 of the California Government Code, commonly known as the Subdivision Map Act. The statute prohibits subdivision of parcels designated very high fire hazard, or that are in a State Responsibility Area, unless certain findings are made prior to approval of the tentative map. The statute requires that a city or county planning commission make three new findings regarding fire hazard safety before approving a subdivision proposal. The three findings are, in brief: (1) the design and location of the subdivision and its lots are consistent with defensible space regulations found in PRC Section 4290-91, (2) structural fire protection services will be available for the subdivision through a publicly funded entity, and (3) ingress and egress road standards for fire equipment are met per any applicable local ordinance and PRC Section 4290.

Local

San Diego County Multi-Jurisdictional Hazard Mitigation Plan

The purpose of the County's Multi-Jurisdictional Hazard Mitigation Plan (San Diego County 2010) is to identify the county's hazards, review and assess past disaster occurrences, estimate the probability of future occurrences, and set goals to mitigate potential risks to reduce or eliminate long-term risk to people and property from natural and man-made hazards. The City of Escondido participates in the Multi-Jurisdictional Hazard Mitigation Plan. An important component of the plan is the Community Emergency Response Team, which educates community members about disaster preparedness and trains them in basic response skills, such as fire safety, light search and rescue, and disaster medical operations. The City of Escondido is one of 20 jurisdictions that support and participate in the team.

County of San Diego Consolidated Fire Code

The County of San Diego, in collaboration with local fire protection districts, created the first Consolidated Fire Code in 2001. The Consolidated Fire Code contains amendments to the California Fire Code. The purpose of consolidation of the County's and the local fire districts' adopted ordinances is to promote consistency in the interpretation and enforcement of the

code for the protection of public health and safety, which includes permit requirements for the installation, alteration, or repair of new and existing fire protection systems, and penalties for violations of the code. The code establishes the minimum requirements for access, water supply and distribution, construction type, fire protection systems, and vegetation management. Additionally, the Consolidated Fire Code regulates hazardous materials and includes associated measures to ensure that public health and safety are protected from incidents relating to hazardous substance releases.

County of San Diego Code of Regulatory Ordinances Sections 96.1.005 and 96.1.202, Removal of Fire Hazard

The San Diego County Fire Authority, in partnership with Cal Fire, the Bureau of Land Management (BLM), and the US Forest Service (USFS), is responsible for the enforcement of defensible space inspections. Inspectors are responsible for ensuring that adequate defensible space has been created and maintained around structures. If violations of the program requirements are noted, inspectors list the required corrective measures and provide a reasonable time frame in which to complete the task. If violations still exist upon re-inspection, the local fire inspector will forward a complaint to the County for further enforcement action.

City of Escondido Weed and Rubbish Abatement Program

Municipal Code Chapter 11, Article 2, Division 2 establishes the City's Weed and Rubbish Abatement Program. The purpose of this ordinance is to designate the responsibility of the owners of real property in the City of Escondido in the elimination of the public nuisance created by weeds, rubbish, and refuse on or around their property. Section 11-41 declares the following as a public nuisance or fire hazard: all weeds growing upon the streets, sidewalks, parking, and private property in Escondido; and all rubbish upon the streets, sidewalks, parking facilities, and private property in the city. The Chief of the Escondido Fire Department, or any agent thereof, is vested with the authority to determine if vegetation on private property results in a fire hazard and must be removed.

City of Escondido General Plan

The City's General Plan Community Protection Element outlines goals and policies to achieve community protection standards. Relevant goals and policies include:

GOAL 1: A prepared and responsive community in the event of disasters and emergencies.

Emergency Services Policy 1.1

Provide for emergency response during and after catastrophic events.

Emergency Services Policy 1.2

Maintain and upgrade the city's disaster response plans and continue to participate in appropriate Mutual Aid Agreements that enhance disaster preparedness and emergency response.

Emergency Services Policy 1.3

Conduct periodic emergency exercises to test and improve jurisdictional and inter-department coordination and response to emergencies brought about by catastrophes such as fire, flood, earthquakes, and hazardous spills.

Emergency Services Policy 1.4

Plan for the continued function of essential facilities such as hospitals, fire stations, and emergency command centers following a major disaster to facilitate post-disaster recovery.

Emergency Services Policy 1.6

Require minimum road and driveway widths and clearances around structures consistent with local and state requirements to ensure emergency access.

Emergency Services Policy 1.8

Regularly review and revise identified evacuation routes for the public's use in the event of an emergency to ensure adequacy.

Emergency Services Policy 1.9

Promote public awareness through the Community Emergency Response Team (CERT) of possible natural and man-made hazards and measures which can be taken to protect lives and property during and immediately after emergencies.

Emergency Services Policy 1.10

Maintain and periodically update a database documenting wildfire, flooding, and seismic hazard areas and risks as input for the city's Emergency Preparedness and Response programs. The database shall include debris management operations and landfill diversion requirements for the safe and responsible removal and disposal of debris after an emergency that maximizes recycling and minimizes materials disposed in landfills.

GOAL 2: Protection of life and property through adequate fire protection and emergency medical services.

Fire Protection Policy 2.1

Regularly review and maintain the Standards of Response Coverage and the Fire Department Strategic Plan to address staffing, facility needs, and service goals.

Fire Protection Policy 2.2

Provide Fire Department response times for no less than 90 percent of all emergency responses with engine companies by achieving the following service standard:

- Provide an initial response time of seven and one-half (7½) minutes for all structure fire and emergency Advanced Life Support (ALS) calls and a maximum response time of ten (10) minutes for supporting companies in urbanized areas of the city.

Fire Protection Policy 2.3

Provide a minimum total of seven (7) fire stations each sized and staffed with facilities, services and equipment to meet current and anticipated needs including, but not limited to, engine and truck units and crews and Advanced Life Support (ALS) staff prior to General Plan build out to the extent economically feasible.

Fire Protection Policy 2.4

Require new residential and non-residential development to be constructed consistent with the California Fire Code and the requirements set by the state.

Fire Protection Policy 2.5

Commit to the use of state-of-the-art equipment, technologies, and management techniques for fire prevention and suppression.

Fire Protection Policy 2.6

Require new development to contribute fees to maintain fire protection service levels without adversely affecting service levels for existing development.

Fire Protection Policy 2.7

Continue to include the Fire Department in the review of development proposals to ensure that projects adequately address safe design and on-site fire protection.

Fire Protection Policy 2.8

Consider provisions for adequate emergency access, driveway widths, turning radii, fire hydrant locations, and Needed Fire Flow requirements in the review of all development applications to minimize fire hazards.

Fire Protection Policy 2.10

Establish and maintain an adequate fire flow in relation to structure, size, design, and requirements for construction and/or built-in fire protection.

Fire Protection Policy 2.11

Maintain and enhance an emergency vehicle traffic signal activation system to improve fire station service area coverage in conjunction with planned improvements to the city's major circulation system.

Fire Protection Policy 2.12

Maintain close coordination between planned roadway and other circulation improvements in the city to assure adequate levels of service and response times to all areas of the community.

Fire Protection Policy 2.13

Utilize Mutual Aid and Automatic Aid Agreements with other jurisdictions when appropriate to supplement fire station service area coverage and response times to all portions of the community.

Fire Protection Policy 2.14

Require new development in high wildfire risk areas to incorporate site design, maintenance practices, and fire-resistant landscaping to protect properties and reduce risks.

Fire Protection Policy 2.15

Continue to remove excessive/overgrown vegetation from city-owned properties, and require private property owners to remove excessive/overgrown vegetation to the satisfaction of the Fire Department, to prevent and minimize fire risks to surrounding properties.

Fire Protection Policy 2.16

Require fire protection plans for mitigation of potential grass and wildland fires within designated high fire hazard areas and other areas required by the Fire Department, that address the need for fire systems, water availability, secondary emergency access routes, construction requirements, and fire-resistant landscaping and appropriate defensible space around structures.

Fire Protection Policy 2.17

Maintain programs to minimize impacts on sensitive biological habitat and species when suppressing wildland fires, when feasible.

Fire Protection Policy 2.18

Educate the public about wildland fire prevention techniques to minimize the potential hazards of wildland fires.

2.14.3. Thresholds for Determination of Significance

City of Escondido Environmental Quality Regulations (Zoning Code Article 47) and Appendix G of the California Environmental Quality Act (CEQA) Guidelines as amended contain analysis guidelines related to the assessment of wildfire hazards impacts. A project would result in a significant impact if it would:

1. Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.
2. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.
3. Result in substantial adverse physical impacts associated with the need and provision of new or physically altered fire protection facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection.

2.14.4. Analysis of Project Effects and Determination of Significance

Threshold 1: Would the project expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

Wildfires may potentially occur in wildland areas adjacent to the project site, or in on-site undeveloped open space or recreational areas. Under existing conditions, the project site includes numerous potential fire issues, including unmaintained, fire-prone vegetation. The project would include conversion of approximately 30 percent of the site to maintained urban development with designated landscaping and fuel modification areas. A fuel modification zone is a strip of land where combustible vegetation has been removed and/or modified and partially or totally replaced with more adequately spaced, drought-tolerant, fire-resistant plants in order to provide a reasonable level of protection to structures from wildland and vegetation fires.

The types of potential ignition sources that currently exist in the project area include vehicles, electrical transmission lines, machinery associated with agricultural operations, and residential neighborhoods, as well as arson. The existing physical condition poses as a challenge for fire protection to the surrounding communities because of heavy, flammable vegetation plant communities, lack of access due to topography and roads, and/or firefighter exposure. There are also no vegetation management actions based on prior fuel reduction projects.

The project would introduce new potential ignition sources in the form of building materials (e.g., wood, stucco), vegetation for landscaping, vehicles, and small machinery (e.g., for typical residential and landscape maintenance), but would also result in a large area separating ignition sources from native fuels as well as the conversion of existing ignitable fuels to maintained landscapes that are ignition-resistant. Therefore, the project would function as a fuel reduction project by helping create context-sensitive development and a new first-fuel break line of defensible space. In addition to current codes and standards which require defensible space to be provided around all structures located within a High Fire Hazard Area, the FPP prepared for the project identifies various policies and management actions for vegetation management. The vegetation management areas include private property, where vegetation management would occur in cooperation with the future landowners, as well as common areas. The FPP also outlines a suite of vegetation management methods to reduce wildland fuel hazards in and near the High Fire Hazard Area. This would ultimately reduce the potential flammability of the landscape. In addition, the project provides improved access throughout the site, which improves firefighters' access for wildland firefighting efforts.

In compliance with the County's Consolidated Fire Code (Section 96.1.4907.2) and the California Public Resources Code, the project proposes fuel modification zones (FMZ) ranging from a minimum of 100 feet to 200 feet, twice the required distance, or provides alternative measures to meet the intent of the FMZ requirement.

The FMZ would include two zones: Zone 1 and Zone 2. Lands within Zone 2 would require 50 percent thinning (removal of dead and dying, non-native, and fire-prone species), thereby slowing and reducing the intensity of an advancing fire as it approaches Zone 1. Zone 2 would be maintained on an annual basis to ensure that the reduced fuels remain at approximately 50

percent of typical. Zone 1 areas would require removal of all existing fuels during the project grading phase. These areas would be replanted with drought-tolerant species able to withstand ongoing irrigation to maintain high fuel moistures and maintenance to fire-safe conditions. Zone 1 areas would be maintained as reduced fuel zones to ensure that vegetation is not dense or continual. Plants in Zone 1 would be irrigated and be of higher moisture content and are intended to further reduce the potential for wildfire to advance or spread. Refer also to **Section 2.3, Biological Resources**, for discussion of potential project impacts on sensitive biological resources that may occur as the result of thinning and/or maintenance activities that would occur within the FMZs.

Additionally, the reduction of vegetation within the FMZs could cause a post-treatment, localized increase in soil erosion or potential downstream sedimentation. Therefore, Best Management Practices may be applied during fuel reduction activities that occur on on-site steep slopes. As appropriate, measures identified in the Fuel Modification Plan will be implemented to ensure that vegetation management activities do not result in an increased potential for erosion to occur. Refer also to **Section 2.8, Hydrology and Water Quality**, for discussion relative to maintaining storm water quality.

Acceptable plantings and required landscaping and maintenance are detailed in Section 7.4.1 of the FPP (Dudek 2017, page 62; **Appendix 2.14**). In addition, the developed portions of the site would be converted from native fuels to ignition-resistant managed and maintained landscapes and residences. These areas, combined with the perimeter fuel modification areas, would serve as a new fuel break that would further buffer communities to the south and east from advancing wildfires. In addition, the project applicant would remove invasive plants that have colonized the treated areas. Invasive plants are those that readily invade disturbed areas within native habitat areas, exhibit high rates of growth, and displace or otherwise adversely affect native vegetation due to their rapid and aggressive growth habits. The removal of such species would protect and possibly enhance native habitats in the High Fire Hazard Area. Native species are generally more adaptable to fire, and many are fire resistant.

Additionally, as identified in the FPP, all fuel modification area vegetation management shall occur as-needed for fire safety, compliance with the FMZ requirements detailed in the FPP, and as determined by the EFD. The project HOA or other established funding and management entity for each development area or neighborhood if separate, shall be responsible for all vegetation management throughout the respective project sites, in compliance with the requirements detailed herein and Fire Authority Having Jurisdiction requirements. The HOA(s) shall be responsible for ensuring long-term funding and ongoing compliance with all provisions of the FPP, including vegetation planting, fuel modification, vegetation management, and maintenance requirements throughout the project site (Dudek 2017, page 67; **Appendix 2.14**). Responsibility for fuel modification requirements will be identified in the Conditions of Approval adopted for the project.

The project would be subject to compliance with the 2016 California Building Code (or the most current version) and the 2016 edition of the California Fire Code (Part 9 of Title 24 of the California Code of Regulations), which would include ignition-resistant construction automatic interior fire sprinklers, a robust water delivery system, fire apparatus access, and defensible space, among others. All structures within a wildland-urban interface, as defined in

the San Diego County Building Code, must be built using ignition-resistive construction methods (San Diego County Code of Regulatory Ordinances Title 9, Division 2, Chapter 1). Project construction must meet all current Building Code (Chapter 7A) requirements for construction in wildland areas. Project conformance with ignition-resistant building requirements would greatly reduce the threat of wildfire, particularly with regard to flying embers entering a structure through attic ventilation or landing on a fuel and starting a new fire. Fire-resistive building features and/or landscape features that will be incorporated in the project are found in Section 7.2 of the FPP (Dudek 2017, page 59; **Appendix 2.14**).

Escondido is covered under the San Diego County Emergency Operations Plan (2014) and the San Diego County Operation Area Multi-Jurisdictional Local Hazard Mitigation Plan (2010). These plans provide guidance in effectively responding to any emergency, including wildfires. Implementation of these plans and policies in conjunction with compliance with the Fire Code would minimize the risk of loss due to wildfires.

The fire season typically runs from early May through October. Compounding the problem are Santa Ana wind conditions frequently experienced during the autumn months. The Escondido Fire Department has mandated conditions of approval for the SHR project (see Dudek 2017, Section 7.4, page 62; **Appendix 2.14**) to reduce the potential risk of wildfire at the project site. The project design would be required to conform to such measures to ensure that potential hazards relative to exposure of people or structures to significant risk of loss, injury, or death involving wildland fires are reduced to the extent feasible. The inclusion of such conditions in the project design will be verified by the City of Escondido Planning, Engineering, and Fire departments prior to issuance of a building permit.

As mentioned, the proposed project would improve fire protection to developed areas to the south/west by breaking up fuels and slowing fire spread. The project also includes provisions for an on-site fire station. The communities of Rancho San Pasqual and Rancho Vistamonte, residences in nearby unincorporated county areas, and the San Diego Zoo Safari Park would benefit from the project's conversion of wildland fuels and location upwind, which is anticipated to interrupt typical fire spread conditions. Additionally, the on-site fire station would provide a fire and medical emergency response capability that is not currently available in the area. The ability to respond quickly to emergencies proportionately raises the probability of successful outcomes.

The project would comply with applicable fire and building codes and would include a layered fire protection system designed to meet or exceed current codes and incorporate site-specific measures to achieve a development that is less susceptible to wildfire than surrounding landscapes and that would facilitate firefighter and medical aid response. Therefore, this impact is considered **less than significant**.

Threshold 2: Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

The project includes a comprehensive circulation plan that provides access to the project site and facilitates vehicular circulation throughout the property in accordance with City standards. To minimize impediments to emergency access, all on-site roadways would be designed in

compliance with the County Consolidated Fire Code and EFD standards, as shown in Section 7.1 of the FPP (Dudek 2017, page 55; **Appendix 2.14**).

The San Diego County Sheriff's Department, California Highway Patrol, and other cooperating law enforcement agencies have primary responsibility for evacuations. These agencies work closely within the Unified Incident Command System, with the County Office of Emergency Services, and with responding fire department personnel who assess fire behavior and spread, which ultimately influence evacuation decisions. As of this time, EFD, Cal Fire, City of San Diego Fire Department, San Diego County Fire Authority, County of San Diego Office of Emergency Services, San Diego County Sheriff's Department, and others have not adopted a comprehensive emergency evacuation plan applicable to this area. Section 9, Emergency Pre-Planning – Evacuation, of the Safari Highlands FPP (Dudek 2017, page 73; **Appendix 2.14**) is consistent with County evacuation planning requirements and can be integrated into a regional evacuation plan if area officials and emergency management stakeholders prepare and adopt one in the future. Refer also to **Figure 2.14-1**, which illustrates the proposed evacuation routes from the project site.

All evacuations in the County follow pre-planned procedures to determine the best plan for the type of emergency. The designated County emergency evacuation and law enforcement coordinator is the sheriff. The evacuation coordinator is assisted by other law enforcement and support agencies in emergency events. Law enforcement agencies, highway/street departments, and public and private transportation providers would conduct evacuation operations. Activities would include law enforcement traffic control, barricades, signal control, and intersection monitoring downstream of the evacuation area, all with the objective of avoiding or minimizing potential backups and evacuation delays.

Another factor in the evacuation process would be a managed and phased evacuation declaration. Evacuating in phases, based on vulnerability, location, or other factors, enables subsequent traffic surges on major roadway to be minimized over a longer time frame and can be planned to result in traffic levels that flow more efficiently than when mass evacuations include large evacuation areas simultaneously. Law enforcement personnel and Office of Emergency Services staff would be responsible for ensuring that evacuations are phased appropriately, taking into consideration the vulnerability of communities when making decisions.

Evacuation Routes

Evacuation routes are generally identified by fire protection and law enforcement personnel, are determined based on the location and extent of the incident, and include as many predesignated transportation routes as possible. Primary evacuation routes within the Safari Highlands Ranch community would be accessed through a series of internal neighborhood roadways, which would intersect with the primary ingress/egress roads that intersect off-site primary and major evacuation routes. The community would be able to evacuate to the north (once off-site), south, east, and west depending on the nature and location of the emergency. Available evacuation routes for the residents and guests of Safari Highlands Ranch include the following:

- **Egress to the west and south via Rockwood Road** – Rockwood Road is the primary Safari Highlands Ranch access road that would interconnect with Cloverdale Road to the west. Cloverdale Road to the north is a dead end. Cloverdale Road to the south offers travel options to State Route (SR) 78 east or west, or continuing south to

- San Pasqual Road, which intersects Bear Valley Parkway to the south and west and leads into Escondido.
- **Egress to the south and west on Zoo Road** – This gated secondary access road would provide a route to Old Battlefield Road (gated road into the existing Eagle Crest Golf Course community) which connects into Rockwood Road and then to the south and west as described above. Zoo Road continues south past Old Battlefield Road to SR 78, for a distance of approximately 0.8 mile, from which point travel to the east or west is possible.
 - **Egress to the west via north emergency secondary egress route** – This gated emergency-only secondary access road, approximately 4 miles long, along Stonebridge Road would interconnect with Meadow Creek Lane to the west, which would then intersect Hidden Trails Road. Hidden Trails Road offers travel to Highway S6 (Bear Valley Parkway/Valley Center Road) or continued travel to the west into urban areas of Escondido. Travel to the west along this emergency secondary egress would be under the direction of law enforcement. The road will be improved to offer two 12-foot wide travel lanes along with turnouts. The City will require that water storage be provided along this road, and regular maintenance will be provided by the HOA along the roadway to ensure that fuel modification zones are properly maintained.
 - **Emergency Access Road Improvements** – Both emergency access roads would be improved to a minimum paved width of 24 feet. Other improvement standards including inclination, turning radii, paving specifications and turnouts would be subject to review and approval by the EFD.

Depending on the nature of the emergency requiring evacuation, it is anticipated that the majority of residents would exit the project site via Rockwood Road or Zoo Road. These are the most direct routes from the Village Core. The northern emergency access route may be used by the northerly neighborhoods, including E-1, E-2, R-4, and R-5, depending on the time available for evacuation and the need for additional movement via the northerly route. In a typical evacuation that allows several hours or more (as experienced in the 2003, 2007, and 2010 wildfires), all traffic may be directed to the south and out Rockwood Road and/or Zoo Road. If less time is available, fire and law enforcement officials may direct some neighborhoods, primarily E-1 and E-2, to use the northerly gated route.

Evacuation Analysis

Roadway capacity represents the maximum number of vehicles that can reasonably be accommodated on a road. Roadway capacity is typically measured in vehicles per hour and can fluctuate based on the number of available lanes, number of traffic signals, construction activity, accidents, and obstructions, as well as positive effects from traffic control measures.

Each roadway classification has a different capacity based on level of service, with freeways and highways having the highest capacities. Based on traffic engineer estimates (Linscott, Law & Greenspan 2017) and using peak numbers and a conservative estimate, roads that would be the most likely available to Safari Highlands Ranch residents and their hourly capacities are:

1. **Rockwood Road** – 2,600 vehicles per hour

2. ***Zoo Road*** – 1,900 vehicles per hour
3. ***Cloverdale Road*** – minimum 2,600 vehicles per hour
4. ***Northerly emergency evacuation route*** – 1,000 vehicles per hour

Using these averages, the time it will take for an area to evacuate can be determined by dividing the number of vehicles that need to evacuate by the total roadway capacity. Based on Safari Highland Ranch's estimated 550 single-family homes, and assuming 2.2 cars per household, during an evacuation, it is calculated that up to 1,210 vehicles could be evacuating in a major incident that required full evacuation of the community (Dudek, page 82; **Appendix 2.14** 2017). This is a conservative estimate. That number would likely be far lower, as many families would likely drive in one vehicle versus in multiple vehicles and depending on the time of day, many of these vehicles may already be off-site, such as if a fire occurred during typical work hours.

Neighboring communities that may be evacuating in a similar time frame, depending on the type of wildfire emergency, are the 580-unit Rancho San Pasqual community (accessed via Rockwood Road and Cloverdale Road) and the 80-unit Rancho Vistamonte community (accessed via Rockwood Road). Additionally, San Pasqual Union School located off Rockwood Road would affect typical evacuations.

Based on the number of units or daily use averages (school), the estimated time requirement for evacuation was calculated as follows:

Rancho San Pasqual: 580 units x 2.2 vehicles = 1,276 vehicles

Rancho Vistamonte: 80 units x 2.2 vehicles = 176 vehicles

San Pasqual Union School: 560 students and staff, 180 from outside the area = estimated 200 vehicles (others are already accounted for in community estimates)

Based on the combined vehicle estimates for existing communities and land uses neighboring the Safari Highlands Ranch project during an evacuation, it is calculated that up to 1,652 vehicles in addition to the 1,210 vehicles from Safari Highlands Ranch (total of 2,862 vehicles) could be evacuating in a similar time frame during a major incident that required full evacuation of the area, although, for reasons previously stated, this is a conservative estimate.

Based on the internal and external roadway capacities and using the lowest capacity roadway (bottleneck) as the determining factor, and discounting the capacity for the possibility that traffic would move slower during some evacuations, it is estimated that between 1 to 2 hours may be necessary for a complete evacuation of Safari Highlands Ranch. Evacuation of the neighboring communities and school is estimated to require approximately the same time frame. When occurring simultaneously, it is estimated that an additional hour may be necessary for evacuation of all communities (3 hours total).

As detailed in Section 5.2 of the FPP (Dudek 2017, beginning on page 32; **Appendix 2.14**), two main scenarios were modeled to determine the potential behavior of a wildland fire that could occur in the project vicinity: (1) a potential Santa Ana wind-driven fire approaching from

the east-northeast (“peak weather condition”); and (2) a potential fire approaching from the west-southwest during typical onshore weather patterns (“summer weather condition”).

For the first scenario, the arrival time to the project boundary is estimated to be approximately 4 hours from the modeled ignition locations near the intersection of State Routes 76 and 79. For the second scenario, the estimated arrival time to the project boundary would be approximately 40 minutes from the nearest ignition location (end of Wild Oak Lane), while fires originating along San Pasqual Road and Cloverdale Road were estimated to take 3 to 5 hours to reach the project boundary, as advancement of the fire would be slowed by existing development along Rockwood and Harwood roads.

Therefore, while under the most common scenario of a Santa Ana wind-driven fire approaching from the open lands to the east-northeast, there would be adequate time for a full evacuation of the project site and surrounding communities (4 hours for fire to reach Safari Highlands Ranch site and 3 hours maximum evacuation of all communities), other scenarios could result in inadequate evacuation times. Perhaps the “worst-case” scenario is a wildfire that encroaches upon Safari Highlands Ranch and neighboring communities in a short time frame, with Rockwood Road becoming the only viable exit for Safari Highlands Ranch residents due to blockages or hazards on the alternate egresses. In this scenario, law enforcement would have the option to conduct a phased evacuation of Safari Highlands Ranch residents, relocate residents within the project, or even instruct all residents to take temporary refuge in their homes or designated facilities within the Village Core.

While Safari Highlands Ranch is not officially designated a shelter-in-place community, the structures would be ignition-resistant, defensible, and designed to require minimal resources for protection, thereby enabling contingency options that may not be available to the neighboring communities. These project design features would enable law enforcement (Escondido Police Department or County Sheriff) to effectively manage the outflow of Safari Highlands Ranch residents’ vehicles onto Rockwood Road, such that existing evacuation times for the neighboring Rancho Vistamonte and Rancho San Pasqual communities are not adversely affected. Accordingly, impacts would be **less than significant**.

Emergency Response

The EFD documented 14,536 total emergency calls in 2015. The project’s estimated 1,760 residents (assumes an average of 3.2 occupants per residence for this type of community) would generate roughly 182 calls per year (or 0.5 calls per day), most of which are expected to be medical-related calls (approximately 80.4 percent of total emergency incidents). Service level requirements are not expected to be significantly impacted with the increase of 182 calls per year. The actual number of calls would likely be based on the EFD’s per capita volume (i.e., the average number of calls per Escondido citizen per year).

Performance objectives for fire protection services are identified in Quality of Life Standard 3 of the General Plan Community Protection Element, which states that in urbanized areas of the city, an initial response time of 7.5 minutes for all structure fire and emergency Advanced Life Support (ALS) calls and a maximum response time of 10 minutes for supporting companies shall be maintained. Response to the project site from the closest existing EFD fire stations would not achieve the response time standard of 7.5 minutes for the first fire truck to

arrive at the site. Station 4 response is calculated at roughly 10 minutes to the SHR community's main entrance. The full effective firefighting force is estimated to arrive within 16 minutes. Therefore, the project does not comply with the city's response time standard (Dudek 2017, page 50; **Appendix 2.14**).

Because of the project's location, a new fire station would be required in order to meet response time goals. The primary response (first in) would be provided by the proposed on-site fire station. This station may be a co-located station including the EFD and the City of San Diego Fire Department. The fire station would also improve emergency response for fire and medical emergencies in the area, thereby benefitting existing residents.

The developer is proposing to build and dedicate to the City of Escondido a fire station that would be located at the southern tip of the project boundary, near the main entrance of the site off Safari Highlands Ranch Road (refer to **Chapter 1.0, Project Description**). The new station would be approximately 6,000 to 7,000 square feet with three bays for apparatus and five dorm rooms for staff. The station would be staffed 24/7 at the discretion of the Fire Chief. The station would likely have one paramedic engine, one brush engine, and one ambulance, also at the discretion of the Fire Chief. Travel time from the new station to the most remote (distant) lot within the project boundaries is estimated to be 5.8 minutes. This time frame would allow under 2 minutes for dispatch and turnout and is considered to meet the 7.5-minute EFD response goal (Dudek 2017, page 50; **Appendix 2.14**).

As of this time, there is no mechanism in place to fund personnel, maintenance, and operational costs. These costs would be subject to further negotiations between the City of Escondido and any other funding source it may identify, such as shared responsibility with other fire districts or municipalities that may also benefit from the fire station's location.

Additional resources would be available from EFD Stations 2 and 4, which are not considered to be busy fire stations, having 1,034 and 2,676 engine company calls during 2015, or roughly 2.8 and 7.3 calls per day, respectively. The addition of 182 calls per year (0.5 calls per day) to both stations is considered substantial, but Stations 2 or 4 have available capacity to respond to the additional calls, as analyzed in Section 6.3 of the FPP. The anticipated 3.3 or 7.8 calls per day would be below the number considered a busy station. For perspective, urban fire stations that respond to 5 calls per day are considered average and 10 calls per day would be considered a busy station, while a suburban/rural station that responds to roughly 6 calls per day can be considered busy (Dudek 2017, page 53; **Appendix 2.14**).

The new on-site fire station would be adequate to respond to project-generated calls and would have significant capacity to respond to other calls from outside of Safari Highlands Ranch in a time frame that would represent a substantial improvement as compared to existing service. However, without assurances that the fire station is adequately staffed, equipped, and maintained, the project would have the potential to physically interfere with an adopted emergency response plan, and a **potentially significant** impact would occur. Implementation of mitigation measure **MM WF-1** would reduce the potential impact to a **less than significant** level.

Resident Awareness and Education Program

The Safari Highlands Ranch community will be registered with Reverse 911, Alert San Diego, and the local Escondido Community Notification System. Notification to SHR residents will be provided as needed in the event of an emergency through standard operating procedures implemented with these programs. In addition, the community homeowners association (HOA) would organize annual evacuation public outreach activities as well as maintain a fire-safe page on the community's web page, including key sections of the Safari Highlands Ranch FPP (e.g., Section 9.0 of the FPP (Dudek 2017; [Appendix 2.14](#)), which discusses proposed evacuation procedures), and links to important citizen preparedness information. Evacuation procedures would be regularly updated, as appropriate, with lessons learned from actual evacuation events, as they were following the 2003, 2007, and 2010 San Diego County wildfires.

As discussed in Section 9.0 of the FPP (Dudek 2017, page 73; [Appendix 2.14](#)), the proposed evacuation plan for the project would require implementation of a program known as "Ready, Set, Go." The focus of the program is on the public's awareness and preparedness, especially for those living in the wildland-urban interface areas. The program is designed to incorporate the local fire protection agency as part of the training and education process in order to ensure that the information is disseminated to those subject to the impact from a wildfire.

For the reasons above, it is not anticipated that the project would impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. Impacts in this regard would be **less than significant**.

Mitigation Measures

MM WF-1 The project applicant, homeowners association (HOA), or property owners shall be required to pay fair-share costs for the staffing, equipment, and maintenance of the proposed fire station, for the life of the project. Payment mechanisms (e.g., HOA assessment, property tax assessment, or similar) and the funding amount for the fire station shall be determined by the City of Escondido, the Cal Fire Valley Center Fire Protection District, and any other applicable agencies and shall be memorialized in a Fire Service Agreement to be completed prior to map recordation.

Timing/Implementation: Prior to map recordation

Enforcement/Monitoring: City of Escondido Planning Division; Cal Fire Valley Center Fire Protection District

Level of Significance After Mitigation

The project would introduce 550 new residential units that would increase demand for area fire protection services. Such additional demand may potentially affect emergency response times, thereby impairing implementation of or physically interfering with an adopted emergency response plan.

With project implementation, access for emergency fire protection service vehicles would be improved by the proposed extension of two roadways providing new site access points. These roadway extensions would result in improved emergency response accommodation. The new emergency access roads would be provided at the northwestern and southern property boundaries. The northwestern road would connect to Stonebridge Road in the Hidden Hills Trails development. The southern road would connect to the gated emergency access on Zoo Road with access to Highway 76. Both roads would be upgraded to meet the Escondido Fire and City Engineering Departments' requirements. Additional construction permits would also need to be obtained from San Diego County and the City of San Diego. Such improvements would effectively provide new and improved access out of the Rancho San Pasqual and Rancho Vistamonte communities, residences in nearby unincorporated County of San Diego, and the San Diego Zoo Safari Park in the event of an emergency.

In addition, to ensure that the project does not adversely affect the provision of area fire protection services over the long term, mitigation is proposed to require the project applicant, HOA, or property owners, to make fair-share payment for ongoing operation and maintenance costs resulting with the new fire station (mitigation measure **MM WF-1**). The project's appropriate portion would be determined by the City based upon a fair-share formula. Given compliance with all proposed state, City of Escondido, and County of San Diego requirements related to land management within a Very High Fire Hazard Severity Zone, including the preparation of a Fuel Modification Plan, the project would not diminish the staffing or existing response times of existing fire stations in Escondido, nor would it create a special fire protection requirement on the site that would result in a decline in existing services levels in the Valley. Funding for maintenance and operation of the proposed fire station for the life of the project would ensure response times are adequate, and resulting impacts would therefore be **less than significant**.

Threshold 3: Would the project result in substantial adverse physical impacts associated with the need and provision of new or physically altered fire protection facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection?

Refer to Threshold 2 above for a discussion of emergency response times. There are no direct or indirect impacts on the environment resulting with physical construction of the fire station or the provision of emergency ingress/egress that have not been addressed elsewhere in this EIR. Construction of the west emergency access road and the fire station would have the potential to result in impacts related to construction air quality, noise, cultural resources, biological resources, and other resource areas. These impacts are evaluated within the context of the entire project in **Sections 2.1** through **2.13** of this EIR. Thus, for purposes of this section, and so as not to be duplicative of others, physical impacts related to the provision or alteration of fire protection facilities are considered **less than significant**.

2.14.5. Sources Cited

- Cal Fire (California Department of Forestry and Fire Protection). 2009. Very High Fire Hazard Severity Zones in LRA [Escondido]. Accessed December 13, 2016. http://www.fire.ca.gov/fire_prevention/fhsz_maps/FHSZ/san_diego/Escondido.pdf.
- . 2012. About Us. Accessed December 13, 2016. <http://calfire.ca.gov/about/about>.
- Dudek. 2017. *Fire Protection Plan, Safari Highlands Ranch*. Appendix 2.14
- Escondido, City of. 2012. *General Plan*. <https://www.escondido.org/general-plan.aspx>.
- Linscott, Law & Greenspan. 2017. *Traffic Impact Analysis, Safari Highlands Ranch, Escondido, California*. Appendix 2.12