



**APPEAL APPLICATION ATTACHMENT**  
**CHURCH OF THE WOODS CONDITIONAL USE PERMIT**

**Appellants**

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Save Our Forest Association, Inc., Sierra Club - San Bernardino Mountains Group, and the San Bernardino Valley Audubon Society (“Appellants”) submit that the San Bernardino County Planning Commission committed a prejudicial abuse of discretion in issuing the following decisions on January 23, 2020, related to approval of the Church of the Woods Project (hereafter the “Project”): (1) certification of the Environmental Impact Report (“EIR”) (SCH No. 2004031114) for the Church of the Woods Project; (2) adoption of California Environmental Quality Act (“CEQA”) Findings of Fact and Statement of Overriding Considerations; (3) adoption of the Mitigation Monitoring/Reporting Program; (4) approval of the Conditional Use Permit; (5) and adoption of the Conditional Use Permit and Findings.

The County had no authority to approve the Project because the EIR prepared in connection with the Project violates CEQA, Pub. Res. Code § 21000 et seq. In addition, the Project may not be approved because it is inconsistent with numerous provisions of the San Bernardino County General Plan, including the Lake Arrowhead Community Plan, and the San Bernardino County Development Code. The Conditions of Approval the County adopted when it approved the Project also reflect and recapitulate the flaws in the EIR, particularly with respect to the unstable project description and the numerous inadequate mitigation measures discussed herein and in our prior letters. The Conditions of Approval as a whole therefore should be set aside pending preparation of an adequate EIR and adoption of legally sufficient and effective mitigation or alternatives. The grounds for Appellants’ appeal are summarized below and are further set forth in and supported by the attached letters from Shute, Mihaly & Weinberger LLP to the County dated January 22, 2020, February 25, 2019, November 8, 2011, and September 22, 2010 and the reports prepared by Kamman Hydrology & Engineering, Inc. dated January 21, 2020 and February 21, 2019. These letters and reports are incorporated by reference into this Appeal. In addition, Appellants reserve the right to submit additional evidence in support of their appeal to the Board of Supervisors.

Appellants respectfully request that the Board of Supervisors reverse the Planning Commission’s decisions related to approval of the Project .

**I. The EIR Does Not Comply With CEQA.**

**A. Project Description**

The EIR failed to adequately describe the Project. It lacked a stable project description because it failed to consistently describe the Project’s relationship to the Rimforest Storm Drain Project. Major changes to an integral project component, storm drainage, were made following release of the Draft Revised EIR (“DREIR”), making it impossible to evaluate the Project’s environmental impacts. The Final EIR (“FEIR”) also stated that aspects of the project description may change again *after approval*, further undermining the required stability of the project description and precluding meaningful disclosure and analysis of Project impacts. The January 23, 2020 Planning Commission Staff Report further undermines the stability of the Project description as it includes a Condition of Approval calling for potential post-approval revisions to the Project’s development and grading plans.

The EIR also failed to identify or describe the special events that could occur at the Project site despite the fact that these events could significantly increase the amount of traffic

generated by the Project. The EIR also failed to provide basic information about the Project's design and appearance, rendering impossible a meaningful evaluation of the Project's visual and aesthetic impacts.

## **B. Environmental Impact Analysis and Mitigation Measures**

The EIR failed to adequately evaluate or mitigate the Project's environmental impacts.

### **1. Biological Resources**

The EIR failed to document the extent of biological resources, including jurisdictional waters, wetlands, and streambed and riparian resources, on the Project site. Because the EIR did not acknowledge the presence of these resources, the EIR also failed to adequately analyze the Project's impacts to these resources. The EIR also erroneously claimed that the Project would have no impact on these resources because they already would have been impacted and mitigated by the Rimforest Storm Drain Project. Because the EIR improperly determined that the Project's impacts to jurisdictional waters, wetlands, and riparian habitats were less than significant, it failed to adopt feasible mitigation measures.

The EIR also failed to adequately disclose, analyze or mitigate the Project's significant impacts to sensitive wildlife, including the southern rubber boa, San Bernardino flying Squirrel, and California spotted owl. The EIR also lacked an adequate analysis of the Project's potential to affect the site's wildlife corridor or to conduct a legally adequate analysis of the Project's indirect and cumulative effects on biological resources.

### **2. Traffic, Circulation, and Roadway Hazards**

The EIR underestimated the Project's traffic and circulation impacts because it neglected to evaluate weekday impacts despite the fact that the Project is expected to generate substantial volumes of traffic during the week. The EIR also lacked an adequate analysis of the Project's potential to increase roadway hazards including the potential to increase the motor vehicle accident rate and increase hazards for bicyclists. In addition, although the Project's substantial increase in traffic has the potential to impact regional highways, the EIR did not analyze these impacts. The EIR's traffic mitigation measures—which were incorporated into conditions of approval—also are legally inadequate. Finally, the EIR failed to adopt feasible mitigation recommended by members of the public for the Project's significant traffic impacts.

### **3. Emergency Response and Emergency Evacuation**

Although the Project site is located in a "Very High Fire Hazard Severity Area," the EIR failed to adequately evaluate impacts relating to emergency evacuation and emergency response. The EIR did not identify the amount of time needed to evacuate the site or determine whether the evacuation could be accomplished in an acceptable time period. It also did not assess the ability of emergency services to access the site in a timely manner, consistent with emergency service providers' response time goals.

### **4. Drainage, Hydrology and Water Quality**

The EIR failed to provide a legally adequate analysis of the Project's hydrology and water quality impacts. It failed to acknowledge or analyze the Project's: (a) effect on groundwater recharge; (b) potential to result in a net deficit in aquifer volume, lowering of the local groundwater table, and depletion of spring flows; and (c) effect on water quality in Little Bear Creek and Lake Arrowhead. The EIR also failed to provide legally adequate mitigation measures for these impacts.

## **5. Geology and Soils**

The EIR did not adequately evaluate the Project's geotechnical impacts. Although the Project site may be susceptible to landslides, lateral spreading, and liquefaction, the EIR impermissibly deferred the necessary geotechnical investigation of these impacts. The EIR also failed to provide feasible mitigation measures for these impacts.

## **6. Visual and Aesthetic**

Although the Project would be developed immediately adjacent to SR-18, a designated scenic highway, the EIR did not adequately disclose or evaluate the Project's adverse impact on this scenic resource.

## **7. Land Use**

The EIR failed to adequately identify or analyze the Project's numerous inconsistencies with policies in the San Bernardino County General Plan and the Lake Arrowhead Community Plan. Policies with which the Project conflicts include, for example, policies calling for the protection of the Rim Forest community's mountain character, the protection of the alpine environment, the preservation of rural communities from intensive development, the enhancement of the visual character of the County's scenic routes, the protection of hillsides from excessive grading, and the protection of unique habitats supporting rare and endangered species. These policies also call for ensuring that land use development projects do not degrade levels of service on area roadways.

## **8. Cumulative Impacts**

The EIR lacked a legally adequate analysis of the Project's cumulative environmental impacts including, but not limited to, those relating to biological resources, hydrology and geology. The EIR also failed to provide legally adequate mitigation measures for these impacts.

### **C. Project Alternatives**

The EIR failed to evaluate a reasonable range of alternatives to the Project because it included only one "build" alternative. In addition, because the EIR relied on overly narrow Project objectives, it omitted feasible alternatives that would have reduced the Project's significant and unavoidable traffic, biological resources, noise, and land use impacts. The EIR also incorrectly rejected the Reduced Project Alternative/Alternative Site Design Alternative ("Reduced Project") as infeasible.

### **D. Recirculation of EIR**

Although the County added significant new information in the FEIR, including new information pertaining to the timing of the Rimforest Storm Drain Project and the environmental impacts that would result from the Project and the Storm Drain Project, the County unlawfully failed to recirculate the EIR for further review and comment. The January 23, 2020 Planning Commission Staff Report also included new information about the timing of the proposed Project and the Storm Drain Project resulting in an EIR that was so fundamentally and basically inadequate in nature that meaningful public review and comment was precluded.

**E. CEQA Findings of Fact and Statements of Overriding Considerations**

**1. The Statement of Overriding Considerations Is Inadequate.**

The County failed to adopt a legally adequate Statement of Overriding Considerations. The Statement of Overriding Considerations merely restates the Project’s objectives. As a result, it does not provide support for the “fully informed and publicly disclosed” decision that CEQA requires—one that “[s]pecifically identifie[s] expected benefits from the project [that] outweigh the policy of reducing or avoiding significant environmental impacts of the project.” CEQA Guidelines §15043(b). In addition, the Statement of Overriding Considerations is not supported by substantial evidence as required by state law. CEQA Guidelines §15093(b). Consequently, the County lacks any evidentiary basis for its conclusion that any benefits of the Project outweigh the severe environmental impacts associated with the Project, including but not limited to impacts to biological resources, traffic and circulation, roadway hazards, emergency evacuation and response, wildfire, aesthetics, hydrology and drainage, and geology.

**2. The CEQA Findings Lack Evidentiary Support for the Conclusion that Impacts Would Be Less Than Significant.**

As explained in our prior comment letters, there is no substantial evidence to support the EIR’s conclusions that certain impacts would be less than significant, or less than significant after mitigation. The Findings’ conclusions lack substantial evidence for the same reasons. Specifically, the Findings’ conclusions that the Project’s aesthetics impacts (scenic resources within a state scenic highway and existing visual character, quality of the site and surroundings); biological resources impacts (jurisdictional waters/wetlands, migratory corridors); geology and soils impacts (soil erosion, soil stability); hazards impacts (emergency response plan, wildland fire); hydrology and water quality impacts (groundwater, drainage, landslides); and transportation and traffic impacts (roadway hazards, emergency access) would be less than significant lack the necessary evidentiary support.

**3. The Findings Lack Evidentiary Support for the Conclusion That Impacts Would Be Significant and Unavoidable.**

As explained in our prior letters, the Findings lack substantial evidence to support the conclusion that mitigation or avoidance of many impacts would be infeasible and that those impacts thus remain significant and unavoidable. For example, the EIR lacks substantial evidence to support the Findings’ conclusion that the Project’s traffic impacts would be significant and unavoidable. The Findings conclude that all of the traffic mitigation measures discussed in the EIR are infeasible because they are within the responsibility and jurisdiction of

another public agency, i.e., Caltrans. However, as we explained in our prior letters, the EIR's infeasibility findings were legally erroneous. The County provides no evidence that it has made a good faith effort to work with Caltrans to seek and provide funding for traffic mitigation measures. It also does not adopt other feasible measures to reduce the Project's significant traffic impacts.

**4. The Findings Regarding Consistency with Applicable Plans Are Not Supported by Substantial Evidence.**

The Findings lack support for the conclusion that the Project is consistent with the San Bernardino County General Plan and Lake Arrowhead Community Plan. As we explained in our prior letters, the Project conflicts with several fundamental provisions in these Plans and with the County's Development Code.

**5. The Findings Regarding Project Alternatives Are Not Supported by Substantial Evidence.**

Under CEQA, an agency may not approve a proposed project if a feasible alternative exists that would meet a project's objectives and would diminish or avoid its significant environmental impacts. Pub. Res. Code § 21002; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 731; *see also* CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. 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 Findings admit that the Reduced Project Alternative is the environmentally superior alternative and that this alternative would fulfill certain of the Project objectives. Findings at 28, 29. The Findings assert, however, that the Reduced Project Alternative site 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. The Findings lack support for this assertion. Consequently, the Planning Commission improperly found this alternative infeasible. The County cannot approve a project with significant environmental impacts if feasible alternatives that would reduce or avoid those impacts are available. Pub. Res. Code §§ 21002, 21002.1(b), 21081.

**II. The Project Fails to Comply With State Planning and Zoning Law.**

The State Planning and Zoning Law requires that development decisions, including conditional use permits, be consistent with the jurisdiction's general plan. *See Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184. As we explained in our prior letters, certain of the Project's land uses are not allowed by the General Plan or Development Code. In particular, the land use zoning district for the Project site is "Community Industrial," which does not allow parks, playgrounds, or sports fields. Development Code Table 82-17 and Sections 810.01.180 (bb) and 84.01.020(d). In addition, the Project is inconsistent with numerous Development Code standards relating to overlay areas (e.g., Code sections 82.13080(b)(3)(C), 82.13.080(D) and 83.08.040 pertaining to sensitive natural terrain and natural drainage courses and section 88.01.090(b) pertaining to tree removal and debris disposal). The

Project is also inconsistent with the slope density locational criteria for the Community Industrial District, which specifies uses should be located on areas of stable soil with average slope of 10 percent or less.

The Project is also inconsistent with numerous provisions in the San Bernardino County General Plan and the Lake Arrowhead Community Plan.

### **III. Conditional Use Permit Findings**

As we explained in our prior letters, there is no evidence to support the findings necessary to proceed with a Conditional Use Permit. Development Code section 85.06.040. 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. The County lacks evidentiary support that adequate emergency access exists to serve the Project. The Project would result in significant and unavoidable transportation, noise, and light impacts on the sensitive United States Forest Service lands and the residential land uses adjacent to the Project site. The Project's increase in traffic would result in a significant deterioration in roadway levels of service. In addition, the Project is inconsistent with numerous policies in the San Bernardino County General Plan, including policies in the Lake Arrowhead Community Plan, and the Project's uses do not comply with the County's Development Code.

### **IV. Conclusion and Remedy Requested**

For the foregoing reasons, Appellants respectfully request that the Board reverse the Planning Commission's January 23, 2020 decisions related to the Church of the Woods Project. The proposed Project represents a substantial change in the character and way of life of the Rim Forest community. The EIR fails to meet CEQA's requirements in myriad ways. In addition, the Project is inconsistent with the County General Plan and Development Code. As currently constituted, the Project cannot lawfully be approved.

Appellants therefore respectfully urge the Board of Supervisors to deny the proposed Project. If the Board opts to not deny the Project outright, it should reverse the Planning Commission's decisions related to approval of the Project and defer any further consideration of the Project until it is redesigned to comply with the General Plan and Development Code and until a legally adequate EIR is prepared.

#### **Supporting Documentation:**

1. January 23, 2020 San Bernardino County Conditions of Approval.
2. Letter from Shute, Mihaly & Weinberger, LLP to San Bernardino County Planning Commission, January 22, 2020.
3. Report from Kamman Hydrology & Engineering, Inc., January 21, 2020.
4. Letter from Shute, Mihaly & Weinberger, LLP to T. Nieves, February 25, 2019.

5. Report from Kamman Hydrology & Engineering, Inc., February 21, 2019.
6. Letter from Shute, Mihaly & Weinberger, LLP to Chair Rider and Members of the Planning Commission, November 8, 2011.
7. Letter from Shute, Mihaly & Weinberger, LLP to M. Slowik, September 22, 2010.

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