for commercial development in Core Reserve areas and crucial biological linkages also constitute new information not contemplated in previous consultations.

61. The impacts associated with the reduction in viability of the Sycamore Canyon-March Core Reserve population, the reduction of habitat in the Sycamore Canyon Core Reserve, development on previous Core Reserves, and the elimination of a biological linkage between the preserves on the species as a whole, and on remaining reserve areas, constitute new information that have not been identified and analyzed and require re-initiation of consultation. *See Sierra Club v. Marsh*, 816 F.2d 1376, 1388 (9th Cir. 1987).

62. Third, the modification of the requirements of the SKR HCP, SKR HCP Biological Opinion, and other SKR biological opinions associated with the March SKR Preserve affects the SKR in ways not previously considered during consultation.

63. The Service has repeatedly modified the terms and substance of the SKR HCP, and its associated BO throughout the term of the SKR HCP. The potential loss of all viable SKR populations within the entire Sycamore Canyon-March Core Reserve, due to the release of the March SKR Preserve, will modify the terms of the HCP and affect the SKR in a manner not previously considered in any biological opinion. The full terms of the SKR HCP requiring monitoring of acquired lands and disturbance of SKR occupied lands, acquisition of private lands adjacent to the March SKR Preserve, completion of the 15,000 acre reserve within the HCP boundary, exchange of land held by the Bureau of Land Management, and environmental review and ESA consultation prior to release of the March SKR Preserve have never been fulfilled. The Service's failure to monitor the compliance of the SKR HCP's overall reasonable and prudent measures, and the failure to assure that the reasonable and prudent measures were achieved prior to authorizing the release of the HCP, runs contrary to the requirements of 50 C.F.R. § 402.16. *Forest Guardians v. Johanns*, 450 F.3d 455, 463-464 (9th Cir. 2006).

64. Moreover, as discussed *infra*, the Service has failed to comply with this requirements regarding material changes to the SKR HCP, instead relying on "administrative amendments" that are only applicable to minor modifications of the HCP and ESA Section 10

permit.

65. Terms of other biological opinions associated with the SKR on the March SKR Preserve have been similarly neglected. By releasing the entire March SKR Preserve from the terms and conditions of numerous biological opinions, including the 1990 Biological Opinion for the Highway 215 expansion, the 1991 Biological Opinion for the March Land Use Strategy Plan, the 1993 Biological Opinion for the Riverside National Cemetary, and the 1999 Biological Opinion for the release of the March SKR Preserve, which includes a 105-acre maximum release, the Service has modified its actions in a way that was not considered in previous biological opinions and has negatively impacted listed species..

66. In short the Service's actions to release the entire March SKR Preserve without re-initiating consultation and preparing a new biological opinion violated 50 C.F.R. § 402.16 by authorizing the release of all SKR habitat in the March SKR Preserve for development. The Service's action was and is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the ESA within the meaning of the APA. 5 U.S.C. § 706(2).

SECOND CLAIM FOR RELIEF

(Violation of NEPA -- 42 U.S.C. § 4332(2)(C))

67. Each and every allegation set forth in this Complaint is incorporated herein by reference.

68. The Service's December 29, 2003 and May 22, 2006 authorizations to release the March SKR Preserve for development constitute a major federal action significantly affecting the quality of the human environment. As the Service repeatedly recognized during correspondence and formal consultation on establishing protected areas in the March SKR Preserve, the release of the March SKR Preserve may have a significant impact on SKR populations, SKR core reserves, and SKR individually.

69. Despite the Service's own acknowledgment in the SKR HCP that the release of the March SKR Preserve would need to be evaluated in a comprehensive NEPA and CEQA

document and formal amendment to the HCP prior to completion, the Service never prepared an EIS, an EA, or any NEPA documentation for the direct and indirect impacts of its authorization to release all of the March SKR Preserve lands for development.

70. The Service's authorization of the conversion of the March SKR Preserve to development does not fall within any of the categorical exclusions described in the Departmental Manual. In addition, one or more of the exceptions to Categorical Exclusions described in the Departmental Manual apply to the Service's authorization to allow development on endangered species habitat in the March SKR Preserve.

71. In particular, the authorization to release the March SKR Preserve for development would result in significant environmental effects that qualify as exceptions to categorical exclusions. The action affects ecologically significant and critical areas that have been protected for the SKR. The action will result in highly controversial effects by threatening the effectiveness of a longstanding HCP. Permitting the Service to authorize the release of HCP preserves for development without environmental review would establish a precedent for future action and represent a decision in principle about future actions with potentially significant impacts on the SKR HCP or other HCPs. Release of the March SKR Preserve is directly related to other actions with cumulatively significant environmental effects such as the limiting of environmental review of development projects on or adjacent to the March SKR Preserve. Finally, the action will have adverse effects on threatened and endangered species that inhabit the March SKR Preserve such as the SKR and least Bell's vireo.

72. Accordingly, the Service's December 29, 2003 and May 22, 2006 authorization to release the March SKR Preserve for development without any NEPA documentation despite the acknowledged potential for impacts to SKR and the SKR HCP is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedures required by law within the meaning of the APA. 5 U.S.C. § 706(2).

THIRD CLAIM FOR RELIEF

(Violation of the Administrative Procedures Act)

73. Each and every allegation set forth in this Complaint is incorporated herein by reference.

74. The release of the entire March SKR Preserve and potential loss of the entire Sycamore Canyon-March Core Reserve is a material change to the HCP that can only be accomplished by a formal amendment to the section 10 permit in accordance with ESA requirements. The Service failed to comply with this requirement by incorrectly relying on an "administrative amendment" to authorize the release of the March SKR Preserve.

75. The HCP clearly contemplates that Core Reserve boundary modifications accomplished through an administrative amendment are those connected with the *expansion* of the Core Reserve System. In contrast, changes to the Core Reserve System as a whole (such as the potential loss of all viable SKR populations on an entire Core Reserve) or reduction in the amount of land within a Core Reserve are material changes that require a formal amendment of the HCP. The elimination of the March SKR Preserve and potential elimination of SKR populations on the Sycamore Canyon-March SKR Core Reserve reduces the overall acreage of SKR occupied habitat within the SKR HCP boundaries below the required 15,000 acres as required by the SKR HCP. By relying on an administrative amendment the Service failed to properly amend the HCP to account for an action that reduces habitat within a core reserve, reduces the overall core reserve acreage within the boundaries of the SKR HCP, and threatens to eliminate the entire Sycamore Canyon-March Core Reserve by reducing the viability of the population.

76. The HCP further provides that "[i] n the event that the [March] SKR Management Area is made available for development or otherwise cease to be dedicated to this species, the RCHCA will amend this HCP to incorporate mitigation provisions defined in the USFWS Biological Opinion." As discussed, *supra*, the Service has not completed a Biological

Opinion for the release of the entire March SKR Preserve beyond the contemplated release of 105 acres analyzed in the 1999 Biological Opinion for the release of the March SKR Preserve.

77. The HCP limits the use of administrative amendments regarding changes to the configuration of Core Reserves for minor modifications of the HCP or section 10 permit "generally … not requiring formal NEPA or CEQA processing." As discussed, *supra*, the Service failed to conduct both NEPA and CEQA on the 2003 and 2006 release of the entire March SKR Preserve for development.

78. Because the SKR HCP only permits administrative amendments to the HCP for expansion of core reserves that do not require review under NEPA, CEQA or section 7 of the ESA the Service's administrative amendment of the SKR HCP is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law in violation of the APA, 5 U.S.C. § 706.

PRAYER FOR RELIEF

Plaintiffs request that this Court enter judgment providing the following relief:

1. Issue a Declaratory Judgment that Defendants are in violation of the law as alleged herein;
2. Declare unlawful and set aside the Service's approval of the March SKR Preserve release;
3. Order Defendants, through a permanent injunction, to set aside and vacate all authorizations related to the release of the March SKR Preserve for development;
4. Order Defendants, through a permanent injunction, to halt all activities related to the release of the March SKR Preserve for development, including issuing any incidental take permit approval for any actions that may harm the SKR or cause adverse modification to SKR habitat throughout its range;

5. Order Defendants, through a permanent injunction, to complete ESA § 7 consultation and complete a biological opinion prior to any release of the March SKR Preserve for development;

6. Order Defendants, through a permanent injunction, to complete NEPA analysis and a full Environmental Impact Statement prior to any release of the March SKR Preserve for development;

7. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees as provided in the ESA, the Equal Access to Justice Act and/or any other applicable law; and

8. Any other such relief as the Court deems just and proper.

DATED: August 27, 2009

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July 10, 2009

RE: Final Environmental Impact Report for the Allesandro Commerce Centre, SCH # 2008061136 (EIR #510, TPM #35365, Plot Plan #22925)

Dear Mr. Childers:

These comments are submitted on behalf of the Center for Biological Diversity and Sierra Club (collectively "Conservation Groups") on the Final Environmental Impact Report ("FEIR") for the Allesandro Commerce Centre ("Project"). These comments are submitted in addition to comments submitted on the Notice of Preparation of a Draft Environmental Impact Report ("DEIR") and Draft Environmental Impact Report itself. Please make these comments available for County Staff at the July 13th 2009 Riverside County Planning Director's Hearing.

The Conservation Groups are disheartened by the EIR's failure to make a good faith effort at the substantive requirements of the California Environmental Quality Act ("CEQA") to mitigate and avoid the significant environmental impacts that result form this Project. Furthermore, the EIR's disregard for CEQA's informational mandate to disclose the significant impacts to biological resources, aesthetic resources, and cultural resources, and provide an adequate response to comments is troubling. The Conservation Groups urge the County to require the Project applicant to adhere to CEQA's requirements to adopt a feasible environmentally superior alternative that requires full mitigation for the Project's potentially significant impacts.

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I THE EIR FAILS TO ADEQUATELY DISCLOSE AND ANALYZE IMPACTS TO NATURAL RESOURCES DUE TO INADEQUATE ANALYSIS AND PROJECT DESCRIPTION

While the FEIR attempts to correct the numerous deficiencies with the DEIR it fails to address many of the informational deficiencies that run afoul of CEQA's requirements for a proper analysis of the Project's impacts and description of the project area affected. In one example, out of many, the FEIR fails to correct the misleading comments in the DEIR that "the Project site does not contain any species listed or considered as sensitive by federal or state resource agencies." DEIR at 4.4-16. This is patently false because the Project site is recognized habitat for the Stephens' kangaroo rat ("SKR") (*Dipodomys stephensi*)—a species listed under the Endangered Species Act—and numerous SKR burrows and sign were observed on the project site (SKR HCP Figure 26, Sycamore Canyon Core Reserve; DEIR App. D. BURROWING OWL FOCUSED SURVEY REPORT, Aug. 12, 2008 at 9).

The DEIR and FEIR also fail to disclose and analyze the adjacent Center for Natural Lands Management Preserve March SKR Preserve, instead dismissing the biological importance of the adjacent site. The EIR claims that the adjacent natural preserve is undeveloped land that is designated as business park. DEIR 3-1, 4.9-8, 4.9-11, 4.9-12. The March SKR Preserve is home to a wide variety of animals and plants, including the SKR and least Bell's Vireo both of which are listed as imperiled under the Endangered Species Act (CNLM, March Stephens' Kangaroo Rat Preserve brochure; CNLM Preserve—March SKR webpage). Despite the existence of this regionally important wildlife preserve the DEIR fails to mention the existence and importance of the March SKR preserve. The EIR's glaring omission of this biologically important preserve that will be impacted by the Project fails the information disclosure requirements of CEQA. The EIR cannot dismiss the existence and importance of this preserve because of the alleged "release of the March Air Base Management Area for development. DEIR at 4.4-16. As the managers of the March SKR have stated the "Preserve will be maintained as a SKR protection area independent of whatever course the [March Air Force Base] realignment process takes (CNLM Preserve—March SKR webpage). Unfortunately, the EIR ignores this issue and fails to adequately respond to comments on the issue.

The DEIR and FEIR also fail to properly disclose and analyze the existence and presence of Core Reserves for the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) on the Project site. Core Reserves are important wildlife areas designated under the MSHCP for wildlife conservation and protection, prohibiting harmful development. The Appendices to the EIR recognizes that "approximately 5.4 acres of the southern edge of the Project Site located in Existing Core D." Habitat Assessment and MSHCP Consistency Analysis (Burrowing Owl) for the Amstar/Kaliber Property Riverside County, California at 15. The DEIR also acknowledges that Core Area D exists on the project site. DEIR 4.4-21. Exhibit 4.4-3 of the DEIR demonstrates that the Core Area D is located on the Project Area. Instead of consistently analyzing impacts to Core Area D on the Project site and the potential conflict with the regional MSHCP the FEIR later claims that Core Area D does not exist on the project site. FEIR 3-121 ("Core D... consists of the City of Riverside Park and Recreation Department and March JPA lands."). This type of contradictory opinion does not qualify as substantial evidence

under CEQA. Moreover, the DEIR fails to describe the requirements of Core Area D and how the Project will impact the area that has been designated for wildlife conservation (WRC MSHCP Core Area D).

The DEIR also fails to describe the importance of the Project site for wildlife movement and migration between the Sycamore Canyon and March SKR preserve. DEIR at 4.4-20. The Project site is located at a critical linkage point between the two preserves that provide for the movement of species and their genetic flow to benefit wildlife species including the SKR (1999 BO 1-6-99-F-13 at 20-21; SKR HCP EIS/EIR p.C-5; SKR HCP Sycamore Canyon Cropped Map). The linkage is currently impacted by Allesandro blvd., but still permits wildlife crossing (SKR HCP EIS/EIR p.C-5). The failure to disclose and analyze impacts to wildlife movement fails to provide the information and disclosure required by CEQA.

As described in previous comments the EIR fails to adequately analyze and mitigate the impacts to SKR and SKR popuations. "The Site is located within the fee area established for the Habitat Conservation Plan for Stephen's Kangaroo Rat in Western Riverside County (1996) (HCP)." Habitat Assessment and MSHCP Consistency Analysis (Burrowing Owl) for the Amstar/Kaliber Property Riverside County, California at 1. However, the EIR doesn't describe whether payment for SKR mitigation fee was accomplished, DEIR at 4.9-15, and there is no required payment of the SKR mitigation fees as part of the mitigation and monitoring program. FEIR at 5.6, 5.7.

The EIR also improperly defers analysis of jurisdictional drainages on the project site precluding the public and decision makers from a full analysis of the Project's impacts. The California Regional Water Quality Control Board for the Santa Ana Region requested the final jurisdictional delineation that would be provided to the Army Corps of Engineers and the California Department of Fish and Game (California Regional Water Quality Control Board, DEIR Comments at 2). Instead of providing that jurisdictional delineation to the Responsible agency the FEIR defers the analysis and disclosure "until applications and processing for regulatory permits has been initiated." FEIR at 3-41. Furthermore, the FEIR fails to address "all of the Project's direct and/or indirect impacts to waters of the state and to water quality standards [that] have not been fully analyzed in the DEIR." (California Regional Water Quality Control Board, DEIR Comments at 3). Furthermore, the FEIR fails to incorporate feasible mitigation measures to reduce the project's potentially significant impacts to water quality. *Id.* at 3-4. The EIR also fails to account for impacts from changes in hydrology and water quality on adjacent preserves, like the March SKR preserve. This type of response fails to disclose important impacts of the project, defers analysis of impacts and feasible mitigation measures, and represents an inadequate response to comments.

The EIR also fails to properly analyze and address the cumulatively significant impacts to biological resources, hydrology and water quality, and air quality. For example, the EIR claims that cumulative impacts to biological resources will be minimized to below a level of significance because of the EIR's reliance on the Western Riverside County MSHCP. DEIR at 5-9. However, the Western Riverside County MSHCP discloses that the cumulative impacts to biological resources for sensitive upland habitat and non-covered species from development such

as the Project are significant (WRCMSHCP Final EIS/EIR). The EIR fails to disclose this cumulatively significant impact.

Finally, the EIR's failure to provide a stable and accurate project description of the air quality impacts, and subsequent modifications to the project design and disclosure require recirculation of the EIR.

II THE COUNTY MUST ADOPT ALL FEASIBLE AIR QUALITY AND CLIMATE CHANGE MITIGATION MEASURES

CEQA requires that an EIR propose "feasible" mitigation measures "to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy." CAL. PUB. RES. CODE §§ 21000(b)(3), 21002.1(b); CEQA Guidelines § 15126.4(a)(1); *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors*, 91 Cal. App. 4th 342, 360 (2001). "Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified." CEQA Guidelines § 15126.4(a)(1)(B). Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal. App. 3d 30, 41 (1990). Therefore, it is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." CAL. PUB. RES. CODE § 21002. Unfortunately, the EIR fails to adopt many feasible mitigation measures that reduce pollutants, and, in responding to comments, disregards feasible mitigation measures without substantial evidence.

Many mitigation measures are dismissed because they are allegedly not economically feasible. *See. e.g.* FEIR 3-135 to 3-137. However, the EIR provides no substantial evidence that the mitigation measures are economically infeasible contrary to CEQA. Upon a cursory review it becomes clear that the mitigation measures are feasible and, in fact, provide an economic benefit (See e.g. Rahus, SunEdison, SolarCity, SolSource, City of Riverside) Furthermore, many mitigation measures are unenforceable. FEIR at 3-137, 3-138; DEIR at 1-5 (air quality mitigation measures only required "to the extent feasible", "to the extent practical", if they would be "economically feasible" or "encouraged"). This runs afoul of CEQA.

Many mitigation measures to be considered and adopted are described in detail in the two documents attached as Appendix A: (1) Greenhouse Gas Emission Mitigation Strategies and references provided by the California Office of the Attorney General and (2) the California Air Pollution Control Officer's Association. The two documents identify existing and potential mitigation measures that could be applied to projects during the CEQA process to reduce a project's GHG emissions. (CAPCOA 2008 at Appendix B; California Office of the Attorney General 2008b.) These mitigation measures also provide the co-benefits of reducing the significant impacts to air quality from the release of Clean Air Act criteria pollutants, such as ozone and particulate matter. The reduction of diesel exhaust is a particularly important means to address the severe health impacts associated with this Project (CARB).

While the EIR analyzed a portion of mitigation measures it neglected to analyze the feasibility of others that would have reduced the significant environmental effects of this project. Importantly, the EIR does little, beyond encouraging carpools and alternative transportation, to address the massive increases in vehicle miles and their associated pollutants. The EIR claims to address mitigation measures provided by the California Attorney General's Office and the California Air Pollution Control Officer's Association, but in reality disregards their suggested feasible mitigation for air quality impacts. The EIR also fails to provide substantial evidence refuting data provided by CAPCOA regarding feasibility.

Furthermore, the EIR fails to conduct a good faith analysis of other mitigation measures and fails to respond to comments suggested on mitigation measures. For example, instead of analyzing the feasibility of LEED standards, the EIR arbitrarily analyzes only three measures that LEED recommends, FEIR 3-133, 3-138, instead of addressing the feasibility of adopting LEED criteria of other green building criteria as suggested as mitigation (USGBC, LEED_Wikipedia, City of Riverside Greenbuilder, Press Enterprise, Riverside Public Utilities). Other types of mitigation are dismissed unless the applicant "may choose" to employ them. FEIR at 3-135, 137. The FEIR also fails to analyze or provide a good faith analysis of the air quality mitigation measures provided by the South Coast Air Quality Management District (Port of Los Angeles and Port of Long Beach); FEIR 3-50, 3-51. The EIR also must address other feasible mitigation measures such as Indirect Source Review or Voluntary Emission Reduction Agreements (SJVAPCD ISR 2008 Report; Environmental Defense Fund; TMV Voluntary Emissions Reduction Agreement).

III THE EIR FAILS TO ADEQUATELY DISCLOSE AND ANALYZE LAND USE IMPACTS

The EIR fails to adequately disclose and analyze the impacts to applicable land use regulations. For example, the "Proposed Project has some inconsistencies with the Business/Office Park designation" for the City of Riverside. DEIR at 4.9-15. This is pertinent because the Project is within the City of Riverside's Sphere of Influence, but allows inconsistency with City requirements. Furthermore, the EIR fails to discuss whether the Project violates the MOU between the City and County regarding development in mutually important regions. DEIR at 4.9-11. ("[T]he County and various cities of the County, including Riverside, produced a Memorandum of Understanding (MOU) in March 12, 2002. This document emphasizes the necessity of planning together when dealing with new development in mutually important regions (RivCo 2002).") Furthermore the Project runs contrary to the Riverside County General Plan, which calls for the protection of open space such as that on the Project site. (OS 20.1 Preserve and maintain open space that protects County environmental resources and maximizes public health and safety in areas where significant environmental hazards and resources exist.)

IV THE DEIR FAILS TO ANALYZE IMPACTS TO AESTHETIC RESOURCES

The EIR's disregard for the significant impacts to aesthetic resources is compounded by the FEIR's failure to provide a good faith analysis of comments submitted by the public. As

discussed in comments on the DEIR the Project will have a significant negative aesthetic impact on vistas from the adjacent Sycamore Canyon Park. These vistas currently show undeveloped grasslands, coastal sage scrub, and rock outcroppings (See attached photos, July 2009). These vistas would be permanently destroyed by the project. Furthermore, the EIR fails to provide project simulations that demonstrate there will be no negative aesthetic impact. The EIR's assertion of less than significant impacts cannot be supported by substantial evidence, and runs contrary to Riverside County Code requiring an "architectural perspective of all buildings and grounds showing the relationship of the proposed development to adjacent properties. (Ord. 348, § 10.3)." DEIR 4.9-8.

V THE EIR FAILS TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES AND FAILS TO ADOPT FEASIBLE ALTERNATIVES THAT MEET THE PROJECT OBJECTIVES

The EIR fails to consider a reasonable range of alternatives. The FEIR fails to mention alternatives proposed by the Conservation Groups during comments on the DEIR, such as avoidance of sensitive habitat, or mixed use combined with habitat preservation. FEIR 3-139. This omission violates both CEQA's requirements to respond to comments and analyze a reasonable range of alternatives. Furthermore, the FEIR disregards CEQA's substantive mandate to deny projects when other feasible alternatives exist that meet most of the project objectives. Pub. Res. Code § 21002, 21002.1; CEQA Guidelines §§ 15021, 15126.6. This project must be denied because the EIR itself acknowledges environmentally superior alternatives that meet most of the project objectives.

CONCLUSION

Thank you for your attention to these comments. The Conservation Groups would also like to note that while we requested to be placed on the notice list for all future notices regarding this project that notice was never received. However, the FEIR was provided to us for review by MBA the beginning of this month.

We hope to have the opportunity to work with the County to assure that the EIR conforms to the requirements of CEQA and to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. Should you have any questions feel free to contact Jonathan Evans at the contact information listed above.

Best regards,

Jonathan Evans

Center for Biological Diversity

George Hague
Conservation/Endangered Species Chair
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REFERENCES
(enclosed on CD)

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City of Riverside, Business Photovoltaic Program - Riverside Public Utilities, http://www.riversideca.gov/utilities/busi-solar.asp

City of Riverside, Riverside Green Builder.

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LEED_Wikipedia, Leadership in Energy and Environmental Design, http://en.wikipedia.org/wiki/Leadership_in_Energy_and_Environmental_Design

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Press Enterprise, J. Glick, New Riverside County buildings must meet sustainability standards, February 17, 2009.

Rahus, the Rahus Institute, Customer's Guide to Solar Power Purchase Agreements, 2008.

Riverside Public Utilities, Riverside, a Solar City - Riverside Public Utilities, A Map of Solar Projects around our City, webpage.

SJVAPCD ISR 2008 Report, San Joaquin Valley Air Pollution Control District 2008 Annual Report on the District's Indirect Source Review Program

SolarCity, combined webpages: SolarCity Introduces Affordable Solar Financing Option for Small, Medium and Large Businesses, Heritage Paper Case Study, eBay Case Study.

SolSource, Solar Purchase Power Agreement, http://www.solsourceinc.com/financing-purchase.htm

SunEdison, combined webpages: Commercial Solar Energy Programs, SunEdisonMap.

TMV Voluntary Emissions Reduction Agreement. Air Quality Emission Reduction Agreement between Tejon Mountain Village and the San Joaquin Air Pollution Control District.

USGBC, US Green Building Council, combined web pages: Intro- What is Leed, Intro - What LEED Measures, How to achieve certification.

US Fish and Wildlife Service, Species Profile for Granite Spiny lizard (sceloporus orcutti).

WRC MSHCP Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) FINAL MSHCP, VOLUME IV, FINAL EIR/EIS, June 17, 2003.

WRC MSHCP Core Area D, Western Riverside County Multiple Species Habitat Conservation Plan, Final MSHCP, Existing Core D, Page 3-35

Appendix A: Greenhouse Gas Emission Mitigation Strategies

California Office of the Attorney General 2008, The California Environmental Quality Act Addressing Global Warming Impacts at the Local Agency Level: Mitigation Measures available at http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf

CAPCOA 2008, California Air Pollution Control Officers Association, CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (2008), Appendix B: Mitigation Measure Summary

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via electronic and US mail

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April 10, 2009

RE: Draft Environmental Impact Report for the Allesandro Commerce Centre, SCH # 2008061136 (EIR #510, TPM #35365, Plot Plan #22925)

These comments are submitted on behalf of the Center for Biological Diversity, San Bernardino Valley Audubon Society, and the Sierra Club (collectively "Conservation Groups") on the Allesandro Commerce Centre ("Project"), located south of Allesandro Blvd. between Gem Ln and Brown St. The Project site is currently undeveloped open space that is covered with non-native grasslands, coastal sage scrub, southern willow scrub, riparian/riverine habitat, and small rocky outcroppings. The Project site is occupied habitat for the federally and state protected Stephen's kangaroo rat ("SKR") (*Dipodomys stephensi*) and is bordered by core reserve areas for the SKR. The Project represents a significant impact to biological resources, including SKR, air quality, and climate change.

The Project proposes over 700,000 square feet of commercial and industrial warehouse development on endangered species habitat, adjacent to several biologically significant preserve areas, and within a crucial constrained linkage connecting the Sycamore Canyon Wilderness Park and March SKR preserve. The Project would result in significant impacts to air quality contributing tons of criteria pollutants into an area currently designated as non-attainment under the Clean Air Act, and poses a significant impact to climate change. The EIR fails to adequately analyze a range of environmental impacts, mitigation measures, and alternatives. At a minimum, the EIR must be revised and recirculated to remedy these deficiencies. However, because of the permanent and irreconcilable conflicts with the SKR Habitat Conservation Plan and Western Riverside County Multiple Species Habitat Conservation Plan the Project must be denied or the HCPs must be amended and consultation must be re-initiated under the ESA to accommodate the project.

Arizona • California • Nevada • New Mexico • Alaska • Oregon • Montana • Illinois • Minnesota • Vermont • Washington, DC

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The Center for Biological Diversity is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center for Biological Diversity has over 200,000 members and e-activists throughout California and the western United States, including residents of western Riverside County. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the Inland Empire.

The San Bernardino Valley Audubon Society (SBVAS) is a local chapter of the National Audubon Society, a 501(c)3 corporation. The SBVAS chapter area covers almost all of Riverside and San Bernardino Counties and includes the project area. We have about 2,000 members, about half of whom live in Riverside County. Part of our chapter's mission is to preserve habitat in our area, not just for birds, but for other wildlife, and to maintain the quality of life in the Inland Empire.

The Sierra Club is a national nonprofit organization of over 732,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Over 193,500 Sierra Club members reside in California. The San Gorgonio Chapter of the Sierra Club focuses on issues within the inland empire, including western Riverside County.

I. THE EIR MUST FULLY EVALUATE AND ANALYZE IMPACTS TO THE STATE AND FEDERALLY PROPTECTED STEPHENS KANGAROO RAT

As mentioned by the Conservation Groups in comments on the Notice of Preparation for the Draft EIR, the Project poses a potentially significant threat to Stephens kangaroo rat (*Diapodomys sphensi*) ("SKR") and the surrounding SKR populations because the development is planned in a crucial linkage for SKR populations at the Sycamore Canyon Core Reserve and March SKR Reserve (collectively "the Sycamore Canyon Core Reserve" as definied by the SKR Habitat Conservation Plan). (SKR HCP Figure 26, Sycamore Canyon Core Reserve). Instead of analyzing the Project's impacts SKR populations and SKR onsite the EIR simply dismisses any analysis of SKR on the project site because "the Project site is no longer adjacent to the SKR reserve." (DEIR at 4.4-16). This is patently false and fails to take into consideration the direct impacts to SKR on site and the indirect impacts to adjacent populations from the elimination of the crucial linkage between the Sycamore Canyon and March SKR populations.

The March SKR reserve exists and is currently being managed for the benefit of threatened and endangered species, in particular the SKR. (CNLM March SKR webpage; CNLM March SKR brochure, CNLM March SKR Preserve Sensitive bird locations). The Biological Surveys conducted as part of the EIR recognize the existence of the SKR preserve. DEIR App. D BURROWING OWL FOCUSED SURVEY REPORT, Aug. 12, 2008. at 9 ("Surrounding land uses include... undeveloped land (as part of a Stephen's Kangaroo Rat preserve) to the east.") The EIR's clearly erroneous conclusion that the March SKR preserve no longer exists cannot be

supported by substantial evidence. The EIR cannot assume away the existence of wildlife on site or adjacent preserve systems.

Furthermore it imposes an improper baseline by failing to consider the existing conditions on site in favor of hypothetical conditions based on the "release of the March Air Base Management Area for development." (DEIR at 4.4-16). The March portion of the Sycamore Canyon-March Core Reserve still contains occupied SKR habitat and continues to be managed as an SKR preserve. The proper baseline for environmental analysis is not what might happen if the tradeout is fully implemented and the March portion of the Core Reserve is developed; it is the existing environment at the time of the project's Initial Study. This existing environment includes actual SKR populations in both Sycamore Canyon and March. Crucial connectivity exists between these populations through the project site.

The SKR is listed as endangered by the United States Fish and Wildlife Service under the Federal Endangered Species Act and threatened by the California Department of Fish and Game under the California Endangered Species Act. The potential impacts to SKR occupying the habitat, adjacent SKR populations, and the SKR HCP must be fully disclosed, analyzed, mitigated, and avoided in the EIR. There is no indication, however, that the project site was even surveyed for SKR, despite the fact that other surveys indicated the presence of SKR.

The proposed project would result in an overall direct loss of 54 acres of currently existing open space that is a critical linkage between the populations of SKR within the existing Sycamore Canyon-March Core Reserve for the SKR. Populations of SKR exist within the Sycamore Canyon Wilderness Park north of Allesandro Blvd. Additionally, there is known occupied habitat for SKR within the March Air Force Base property south of Allesandro Blvd. and west of Highway 215, and on the Project site. The linkage between populations is essential in maintaining the integrity of the overall Sycamore Canyon reserve, allowing genetic flow and animal dispersal between the two component parts of the reserve.

The 1999 Biological Opinion ("BO") issued by the U.S. Fish and Wildlife Service recognizes that Sycamore Canyon is unlikely to maintain a viable population of Stephen's kangaroo rats, absent the connection to the March portion of the core reserve (1999 BO 1-6-99-F-13 on the Disposal and Reuse of March Air Force Base at pg. 21). The 1999 BO thus indicates that if the connection is severed between the Sycamore Canyon and March units of the Sycamore Canyon Core Reserve, the longterm viability of the Sycamore Canyon unit could be jeopardized. Already habitat fragmentation has affected the genetic diversity of SKR. (McCleneghan and Truesdale 2002). The EIR must disclose and analyze the Project's potential to impact genetic flow and population viability for the SKR.

Protection of SKR movement across Alessandro Boulevard has long been seen as essential for SKR conservation. The 1990 Biological Opinion for the Highway 215 improvement project required Caltrans to construct culverts under Alessandro to maintain the biological connection between SKR populations. (Final SKR HCP 5(e); 1990 BO 1-6-90-F-29 Regarding Proposed Improvements to State Route 215 at pg. 4). However, this improvement has not been implemented. Despite this, the animals currently successfully cross Alessandro Blvd in order to

achieve this crucial genetic interchange. According to the 1999 Biological Opinion for the Disposal and Reuse of March Air Force Base, the large, contiguous, and intact Sycamore Canyon/March AFB Core SKR Reserve is important:

> because small isolated populations of SKR in the plan area and reserve system are at risk simply because of their small sizes. Small populations have a higher probability of extinction than larger populations because their low abundance renders them susceptible to stochastic (random naturally occurring) events such as inbreeding, the loss of genetic variation, high variability in age and sex ratios, and catastrophes such as floods, droughts, or disease epidemics . . .
>
> Another factor that renders populations vulnerable to stochastic events is isolation, which often acts in concert with small population size to increase the probability of extinction for endangered populations. Urbanization and land conversion has fragmented the historic ranges of the SKR such that remaining blocks of occupied habitat now function independently of each other. Isolated populations are more susceptible to extirpation by accidental or natural catastrophes because their recolonization has been precluded.

(1999 BO 1-6-99-F-13 at pp. 20-21.) Based on modeling, the U.S. Fish and Wildlife Service estimated the long-term probability of persistence of the Sycamore Canyon SKR population would drop from 66 percent to 42 percent if the March population were lost. (1999 BO 1-6-99-F-13 at p. 21.) The same result necessarily applies if the linkage between these populations is severed. Accordingly, the Fish and Wildlife Service modeling indicates that the Project will result in the likely elimination of the Sycamore Canyon SKR population – an impact that is entirely ignored in the Draft EIR.

The Environmental Impact Statement/Environmental Impact Report for the SKR HCP ("HCP EIS/EIR") also indicates that SKR can and do move across Alessandro between the project site and areas to the south. The HCP EIS/EIR states that:

> Chance crossings of the road by SKR and manual relocation of SKR from one portion of the reserve to the other would be a practical and biologically acceptable way to maintain connectivity among SKR populations in the reserve. Relocation, however, will require coordination of efforts by the City of Riverside Park and Recreation Department (the manager of Sycamore Canyon Park) and The Nature Conservancy (the manager of the MAFB conservation areas).

(SKR HCP EIS/EIR p. C-5.) We are unaware of any current relocation efforts by the City, further increasing the importance of the project site as a linkage between Sycamore Canyon and SKR populations to the south.

These statements in the Biological Opinion and HCP EIS/EIR indicate that SKR movement between Sycamore Canyon and March is both possible and extremely important to the viability of the Sycamore Canyon preserve. The project will sever the remaining connection between the March and Sycamore Canyon SKR populations because it is placed on a narrow

constrained linkage, or pinch point, between the March and Sycamore Canyon populations. (SKR HCP Sycamore Canyon, Cropped Map). The effect on the long-term viability of the Sycamore Canyon SKR population is potentially significant and must be disclosed and fully mitigated or avoided during the EIR process.

The EIR cannot rely on the March Air Force Base tradeout as a basis for determining that the impacts to the Stephen's kangaroo rat would be less than significant. The SKR HCP requires that the March Air Force Base tradeout must be subject to environmental review and Endangered Species Act consultation before the March portion of the Core Reserve is made available for development. (Final SKR HCP 5(C)(1)(e)). The 1999 Biological Opinion for the Disposal and Reuse of March Air Force Base further states that the SKR HCP must be amended prior to any impacts to the Core Reserve not addressed in the SKR HCP. (1999 BO 1-6-99-F-13 at p. 20.) To date, none of these requirements – environmental review, Endangered Species Act consultation, or HCP amendment - have been met for the tradeout. Notably, the 1999 Biological Opinion is not an Endangered Species Act consultation on the tradeout, but merely anticipates that the effects of the tradeout will be reviewed in the future. (1999 BO 1-6-99-F-13 at pp. 19-21.)

The EIR should also analyze the potential for night lighting to impact SKR populations both on and off the Project site. SKR often forages and moves around at night. Natural and artificial lighting impacts kangaroo rats because it inhibits their nocturnal foraging and makes them more susceptible to the chance of predation. (COSEWIC 2006). The EIR must discuss the extent that the proposed lighting will reduce SKR habitat adjacent to the project because of predation or avoidance.

Importantly, the EIR should disclose and analyze impacts to SKR on the Project site and not simply dismiss the obligation for disclosure and analysis required by CEQA under the guise that the Project applicant "must pay the appropriate mitigation fee." (DEIR at 4.4-16). (DEIR App. D BURROWING OWL FOCUSED SURVEY REPORT, Aug. 12, 2008. at 9 ("numerous Stephens' kangaroo rat (Dipodomys stephensi) (SKR) burrows and kangaroo rat sign were also observed on site."); SKR HCP Figure 26, Sycamore Canyon Core Reserve (Project site mapped as known occupied SKR habitat). Surveys for SKR should be conducted on the project site and adjacent to the project site to determine the potential impact from the project. Surveys are necessary to disclose to the responsible agencies what the overall impact of the project site would be to the existing SKR population, to determine the potential impacts to adjacent SKR populations, and to provide sufficient tracking and monitoring data. Without SKR surveys and the disclosure of accurate information regarding the presence of SKR on the Project site, the EIR would violate the information requirements of CEQA to disclose and evaluate impacts to rare, threatened, sensitive, or endangered species.

The CEQA Guidelines require mandatory findings of significance and preparation of an EIR when a project "has the potential to ... substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten or eliminate a plant or animal community, [or] reduce the number or restrict the range of an endangered, rare or threatened species ..." (CEQA Guidelines § 15065(a).) The project will do all of these things. It has the potential to substantially reduce the habitat of the SKR, cause the

Sycamore Canyon SKR population to drop below self-sustaining levels, and/or threaten or eliminate the Sycamore Canyon SKR population by reducing the long-term viability of the population. In addition, it will manifestly reduce the number and/or restrict the range of the endangered SKR by directly destroying occupied habitat and severing the connection between Sycamore Canyon and March populations.

A. THE EIR MUST FULLY EVALUATE AND ANALYZE IMPACTS TO THE AFFECTED SKR HCP

The Project has the potential to conflict with the established SKR Habitat Conservation Plan, which must be fully disclosed and analyzed. CEQA requires the evaluation of a project's potential to conflict with an established HCP. CEQA Guidelines App. G. The Project would sever the important connection between the Sycamore Canyon and March Air Force Base SKR populations that provides a tenuous connectivity relied upon in the SKR HCP. Furthermore, the elimination of the connection acts as the functional separation of the Sycamore Canyon and March Air Force Base populations reducing the population viability of SKR within the Core Reserve, and reducing the overall population viability analysis of the SKR HCP. (1999 BO 1-6-99-F-13 at p. 21.)

Moreover development of the parcel threatens the implementation of requirements under the SKR HCP and associated Biological Opinions. As referenced above the SKR HCP and 1990 Biological Opinion for Interstate 215 (1-6-90-P-29) required Caltrans to "provide for a crossing for SKR under Alessandro Boulevard to connect the Sycamore Canyon Study Area to habitat on MAFB." (SKR HCP 5(E)(1)(a)). Because Caltrans was unable to perform that task and in order to maintain that connection US Fish and Wildlife Service directed that "Caltrans perform the following tasks:

1. Two privately held parcels of land south of Alessandro would be acquired and conserved as SKR habitat. An amount equal to ten percent of the purchase price would be set aside to finance a "periodic, managed translocation of SKR between suitable SKR habitat areas in Sycamore Canyon Park and March Air Force Base and monitoring of such translocation efforts.", and;
2. Funding would be provided for a two-year monitoring study of SKR movement between MAFB and Sycamore Canyon Park.

(Final SKR HCP 5(E)(1)(a)). The industrial development of this land and conversion of it precludes the necessary mitigation measures required by Caltrans as part of their obligation to provide for a connection across Allesandro and the acquisition and conservation of privately held parcels south of Allesandro. The EIR has not disclosed how Caltrans has achieved that conservation and whether the development of this privately held land south of Allesandro would prohibit the implementation of the SKR HCP and conditions of the 1990 Biological Opinions for Interstate 215.

As discussed above this Project would potentially conflict with the existing SKR HCP and re-open the HCP for evaluation and amendment, pending section 7 consulation. 50 C.F.R. § 402.16(a-d). These impacts must be fully disclosed in the EIR.

II. THE EIR MUST FULLY EVALUATE AND ANALYZE IMPACTS TO THE AFFECTED WESTERN RIVERSIDE MSHCP AND ITS COVERED SPECIES

The Project threatens important components of the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") and must disclose or analyze those impacts to both the plan and species covered under the MSHCP. The Project threatens Core D, constrained linkages, and conducts a faulty Determination of a Biologically Equivalent or Superior Preservation ("DBESP").

The proposed project impacts Core Area D under the MSHCP by proposing development on and adjacent to Core Area D. (DEIR 4.4-6, Exhibit 4.4-3). Instead of analyzing this impact the EIR assumes that the southern portion of Core Area D has been eliminated from the MSHCP, and thus does not need to be analyzed. The MSHCP emphasizes that "the main blocks of occupied [SKR] habitat are concentrated in several Core Areas that must be conserved." (MSHCP at M-197). One of those Core Areas includes the March SKR preserve. (MSHCP at M-198 (Core areas, as identified in the HCP, include... Sycamore Canyon-March Air Force (Reserve) Base, Steele Peak, and Potrero ACEC.")). Elimination or infringement on the viability of Core Area D for purposes of this project would constitute a Major Amendment to the MSHCP.

The proposed changes to the MSHCP constitute a Major Amendment that must undergo formal review and approval prior to adoption. The MSHCP contemplated two tiers of amendments to the plan. The first tier of amendments is Minor Amendments "where the effect on Covered Species, levels of Take and Permittees' ability to implement the MSHCP are not significantly different than those described in the MSHCP as originally adopted." (MSHCP Implementing Agreement ("IA") at 61). Minor amendments constitute an exclusive and limited list of actions. (MSHCP IA at 62). The second tier of amendments is Major Amendments which propose changes that are not clerical or Minor Amendments. (MSHCP IA at 63).

The Project applicant has proposed substantive changes through the elimination of Core Area D and the severance of the linkage from the March SKR preserve to the Sycamore Canyon Core Area that do not fall into the limited list of contemplated minor amendments to the MSHCP. Minor revisions to survey, monitoring, reporting and/or management protocols must *clearly* not affect species or overall MSHCP Conservation Area functions and values. (MSHCP IA at 62 (emphasis added)). Major Amendments are a non-exclusive list that includes "changes in anticipated Reserve Assembly or funding strategies and schedules that would have substantial adverse effects on the Covered Species." (MSHCP IA at 23). Amendments that conflict with existing Federal law, 16 U.S.C. 1531, existing Endangered Species Act take permits or Habitat Conservation Plans, constitute major amendments that must be fully reviewed and analyzed. Minor amendments are not permitted for changes that impact the survival or recovery of listed species, substantially change Permittee's ability to achieve reserve assembly, and/or permit

development that impacts covered species and critical habitat for listed species, especially when these potential changes stand to impact overall function and value for conservation areas. As discussed above the Project threatens reserve assembly, and impacts covered species in a way that threatens the overall viability of conservation areas. The Project's impacts to Reserve Assembly through elimination of the linkage in Core Area D and assumption of the elimination of Core Area constitutes a Major Amendment that must be analyzed in the EIR.

Importantly, linkages such as the one impacted by the Project provide crucial connectivity between wildlife core areas to allow species to migrate and breed between population centers. The Biological Opinion for the MSHCP relies upon the viability of the linkages, such as the one threatened by this project.

> Notably, 60 percent of the linkages are described as "constrained linkages" indicating that their design may be particularly narrow, encounter a road or highway crossing(s), incorporate disturbed, developed or agricultural land uses, involve the use of culverts or be restricted to a modified stream channel, and/or are adjoined by land uses that will likely impair their suitability for supporting movement of some or all of the target species. Given the narrowness of many of the linkages, their high edge to interior ratios, and the constraints that many of them face such as developed land uses and roads, *functional connectivity between habitat areas will necessitate using the high end of the conservation Criteria ranges*, targeted for cells or cell groupings (*e.g.*, Proposed Constrained Linkages 1, 2, 14 and 19). Additionally, large linkage distances between several core areas (*e.g.*, Alberhill to Antelope Valley, Lake Mathews to Lake Perris, Santa Rosa Ecological Preserve to Santa Margarita Ecological Preserve) will necessitate conservation of suitable and diverse live-in habitat within the linkages in order to preserve functional connectivity among core areas for a number of target species.
>
> MSHCP BO at 130 (emphasis added).

Development throughout the MSHCP area has already impacted constrained linkages. Permitting the conversion of constrained linkages to development compromises the viability of the MSHCP conservation area by destroying critical linkages that have already been severely impacted by development.

Finally, the EIR conducts a faulty DBESP. Instead of conducting a reasonable avoidance feasibility analysis, minimization, and mitigation analysis for Riparian/Riverine resources the EIR fails to propose methods to avoid riparian/riverine habitat, and fails to minimize those impacts in the proposed design. In concert with a valid alternatives analysis the EIR could have conducted a DBESP that would have complied with both the MSHCP and CEQA. Further the mitigation through payment of mitigation fees fails to recognize the difficulty of restoring habitat once it has been lost.

A. THE EIR FAILS TO ANALYZE THE NEED FOR BUFFERS FOR RIPARIAN VEGETAION IMPACTED BY THE PROJECT

No buffers for riparian vegetation affected by the Project are discussed. Maintaining appropriate, fully protected buffer strips between streams and upland soil-disturbing activities is critical to sustaining aquatic and riparian ecosystems (Erman et al. 1996). Most of the current literature about estimating appropriate widths of riparian buffer strips takes into account the complexity of landscapes. Research conducted as part of the Sierra Nevada Ecosystem Project (Erman et al. 1996) provided guidance for designating riparian buffers that incorporate steepness of surrounding slopes and erodability of soils: this research concluded that if the average slope were 25 percent, the buffer width should be 524 feet on either side of the stream, and if the slope were 50 percent, the buffer should be 672 feet. The EIR fails to cite any available scientific literature or substantial evidence about appropriate buffer widths or how these significant impacts to riparian resources will be mitigated.

III. THE DEIR FAILS TO ANALYZE IMPACTS TO AESTHETIC RESOURCES

The location of the project will cause a significant impact on the aesthetic character of the area. Any substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA. See *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas*, (4th Dist. 1994), 29 Cal.App.4th 1597, 1604. Personal observations on nontechnical issues such as aesthetics and affects upon a viewshed can constitute substantial evidence that there will be a significant impact under CEQA. *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.*, (2nd Dist 2004), 116 Cal. App. 4th 396, 402. These comments emphasize that the project would create a significant detrimental effect on the aesthetic quality of the area.

The project will have a significant effect on the visual character of the area by creating a aesthetically undesirable large scale industrial warehouse project, contributing to increased urbanization of existing natural areas, destroying visually desirable wildlife, plant species, and natural areas, impacting the viewshed of the regionally important Sycamore Canyon Wilderness Park, and increasing tractor trailer diesel truck traffic. On the Project site the EIR and Biological Surveys document several scenic rock outcroppings and scenic vistas of the surrounding Sycamore Canyon Wilderness Park and Box Springs Mountains. (See DEIR Exhibits 4.1-2a, 4-1.2c). The Conservation Groups find the large industrial project aesthetically unpleasant in its own right. The project will also result in the further destruction of the coastal sage scrub, rock outcroppings, natural grasslands, and low rolling hills that provide aesthetic, spiritual, and scientific values for the Conservation Groups from adjacent parklands and thoroughfares. Increasing the amount of automobile and heavy truck traffic in the area will further degrade the character of the community. The destruction of additional habitat for listed species is a substantial negative effect of the project that will impact the visual character of the area. The project's destruction of this aesthetically desirable plant species such as California sagebrush (*Artemesia California*), California buckwheat (*Erigonum fasciculatum*), and bush monkey flower (*Mimulus aurantiacus*) is a significant aesthetic impact. The detrimental effect on the viewshed

would be seen by adjacent residents within the project vicinity, individuals passing along the roadway, and the many public individuals enjoying the regionally important Sycamore Canyon Wilderness Park across the road and to the north of the project. As a matter of law these observations represent the substantial evidence necessary to for a finding of significance and the required mitigation under CEQA.

IV. THE EIR MUST ADEQUATELY ANALYZE AND MITIGATE AIR QUALITY IMPACTS

The EIR fails to adequately analyze and mitigate the significant impacts to air quality resulting from the project. Californians experience the worst air quality in the nation, with annual health and economic impacts estimated in at 8,800 deaths (3,000–15,000 probable range) and $71 billion ($36–$136 billion) per year (Cayan 2006). Ozone and particulate matter (PM) are the pollutants of greatest concern (maximum levels are about double California's air quality standards) and the current control programs for motor vehicles and industrial sources cost about $10 billion per year. In light of these underlying conditions it is critical that the air quality analysis be rigorous. The EIR is required to properly analyze the Projects' direct, indirect, and cumulative contribution to deteriorating air quality.

A. SIGNIFICANT AIR QUALITY HAZARDS IN RIVERSIDE COUNTY

Riverside County has the dubious distinction of being one of the most polluted areas in the country. (American Lung Association 2005; American Lung Association 2008). The Project will directly result in an increase in construction emissions and vehicle trips per day which will increase the level of a broad number of criteria pollutants under the Clean Air Act. The Project will result in significant impacts to air quality that result from significant levels of emissions of Volatile Organic Compounds (VOCs), Nitrogen Oxides (NOx), Carbon Monoxide (CO), and Particulate Matter of 10 microns and 2.5 microns or less (PM10 and PM2.5). Increased diesel exhaust is particularly detrimental to long term human and lung health.

Ozone (O_3) is the chief component of the common pollutant known as "smog." Ozone is formed when emissions including reactive organic gases (ROG) and oxides of nitrogen (NOx) undergo photochemical reactions in sunlight and are transformed to O_3. Ozone irritates lung airways and causes inflammation much like a sunburn. Ozone causes wheezing, coughing, pain when taking a deep breath, and breathing difficulties during outdoor activities. The American Lung Association focuses on ozone as one of the most hazardous of the common air pollutants. (American Lung Association 2008). Repeated exposure to ozone pollution for several months may cause permanent lung damage. Children, the elderly, and those with respiratory problems are most at risk, but anyone who spends time outdoors may be affected. Even at very low levels, ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to pneumonia and bronchitis. Ozone also interferes with the ability of plants to produce and store food, which makes them more susceptible to disease, insects, and weather, and damages the leaves of trees and plants, ruining the appearance of cities, national parks, and recreation areas. Ozone also reduces crop yields, and is, in fact, responsible for 98% of air quality related crop damage in California. A revised EIR must discuss the proposed

project's production of ozone precursor emissions and the direct, indirect, and cumulative impact both on human health and on vegetation and wildlife habitat, especially habitat for threatened, endangered, and sensitive species.

Particulate matter (PM) is a category of pollutant which includes the respirable particles suspended in the the air. PM is classified into "coarse" particles, PM_{10}, or those under 10 microns in diameter, and "fine" particles, $PM_{2.5}$, or those under 2.5 microns in diameter, and comes from a variety of sources including diesel exhaust, windblown dust from agriculture and construction and motor vehicles. Because the human respiratory system's ability to filter out harmful particles decreases as particles size decreases, the smallest particles lodge deepest in the lungs and are especially dangerous. PM can contain at least 40 toxic chemicals including heavy metals, nitrates, sulfates, and aerosols, as well as soot, soil, and dust.

PM is associated with extreme health consequences. PM causes premature death, aggravates asthma, increases coughing, painful breathing, and chronic bronchitis, and decreases lung function. Lung inflammation caused by inhaling PM can also lead to changes in heart rhythm, constriction of blood vessels, blood coagulation, and increased risk of heart attacks. Unlike what is believed about some other air pollutants, there is no "safe" level of PM pollution: even very low levels of PM lead to health impacts. (EWG 2002 at 25). One study found that in Riverside County alone, 353 deaths per year are due to current PM10 levels, and 42,149 asthma attacks per year are due to current PM10 levels. (EWG 2002 at 19). The EIR's failure to address basic information on the link between air quality, health impacts, and impacts to biological resources render it inadequate. This and other information must be analyzed in a revised EIR so that the project's air quality impacts can be analyzed in the full environmental context.

B. THE EIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT AND ENVIRONMENTAL SETTING

The EIR must provide a stable and accurate project description in order to properly inform decision makers and the public, as well as provide a proper basis for analysis of impacts and mitigation to address those impacts. Here the EIR fails to fully disclose and analyze the air quality impacts from diesel emissions. One of the project objectives is the "transportation of goods and services" provided by over 400,000 square feet of industrial warehouse/distribution. (DEIR at 3-13, 3-9). Presumably much of the transportation and traffic associated with industrial warehouse and distribution facilities will be diesel truck traffic, which poses a much greater threat to human health due to the carcinogenic effects of diesel exhaust and fine particulates associated with diesel emissions. However, the EIR fails to describe what types of vehicles will be accessing the facility, in what volumes, at what frequency, and during what times. The EIR must fully disclose the types of vehicles that will be associated with the Project because those different vehicles pose very different threats and must be analyzed and mitigated in different fashions.

The EIR also fails to adequately describe the environmental baseline of the area affected and regional setting in order to properly inform the CEQA process. CEQA Guidelines §

15125(a).&(c). The Project lies within a mile of the residential community of Orangecrest, off of Van Buren Blvd., but fails to discuss the potential adverse health effects to that community from the recognized significant air quality impacts. The California Air Resources Board and others confirm that living close to high traffic and the associated emissions may lead to adverse health effects beyond those associated with regional air pollution in urban areas. (CARB 2005). Specifically, these studies found reduced lung function and increased asthma in children within 1,000 feet of heavy traffic. Id. In addition to the respiratory health effects, proximity to freeways increases potential cancer risk. Id.

Some land uses are considered more sensitive to air pollution than others due to the types of population groups or activities involved. The South Coast Air Quality Management District ("SCAQMD") includes in its list of sensitive receptors, residences, schools, playgrounds, childcare centers, convalescent homes, retirement homes, rehabilitation centers, and athletic facilities. Sensitive population groups include children, the elderly, and the acutely and chronically ill, especially those with cardiorespiratory diseases. Residential areas are also considered to be sensitive to air pollution because residents tend to be home for extended periods of time, resulting in sustained exposure to any pollutant present. The Project fails fails to adequately identify the number and type of sensitive receptors that would be affected by this proposed Project. For example, the sensitive receptors in the Orangecrest community are not addressed, neither are the sensitive receptors in the regionally important Sycamore Canyon Wilderness park where many in the local community go to exercise and recreate. Exercise increases the impacts of air pollution on pulmonary function.

C. THE EIR FAILS TO ADEQUATELY EXAMINE THE PROJECT'S HEALTH RISKS

The EIR air quality analysis fails to adequately address the Project's effect on the community's health. Although the DEIR acknowledges that proximity to roads is related to adverse health outcomes, including respiratory problems, the document fails to conduct this critical study of demonstrating what the qualitative or quantitative risk is associated to nearby residents as result of the Project. The Project can lead to increased rates of asthma, decreased, lung or cardiac function, and other threats, but there is no analysis of what that means for the regional residents or visitors. As with other important impact analyses it appears that the EIR authors use their failure to gather data as an excuse for their inability to document the Project's impacts. Such an approach violates the fundamental tenets of CEQA. Without this information, it is all but impossible to accurately and effectively gauge the severity and extent of the health, effects that would result from building the proposed Project. Again, the agencies have a duty to "painstakingly ferret out" the Project's impacts. *Envt'l Planning and Information Council of W. El Dorado County v. County of El Dorado* (1982) 131 Cal. App. 3d 350,357. It is critically important that the EIR emphasize the cumulative impacts of negative air quality and not simply dismiss those issues without thorough analysis and mitigation.

D. THE EIR FAILS TO ADEQUATELY ANALYZE AND IMPOSE MITIGATION MEASURES FOR SIGNIFICANT IMPACTS TO AIR QUALITY

In an attempt to subvert the procedural requirements of CEQA the EIR fails to adopt feasible mitigation measures that would have substantially lessened significant environmental impacts resulting from the Project. To effectuate its overarching purpose of reducing environmental harm, CEQA requires that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen" a Project's significant environmental effects. Pub. Res. Code § 21002; Guidelines 15021. CEQA's substantive mandate is clear, "each public agency shall mitigate or avoid the significant effects on the environment of projects that it caries out or approves whenever it is feasible to do so." Pub. Res. Code § 21002.1(b) (emphasis added).. Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990).

There are numerous mitigation measures that could be adopted to reduce the significant air quality impacts associated with this project. Many of the mitigation measures outlined to reduce the significant impacts associated with greenhouse gas emissions can reduce criteria pollutants. Therefore the EIR should fully analyze all greenhouse gas and criteria pollutant mitigation measures in order to reduce the significant impacts to air quality, or describe why those mitigation measures are infeasible.

V. THE EIR MUST ADEQUATELY ADDRESS THE IMPACTS OF GLOBAL WARMING AND CLIMATE CHANGE

As discussed in the comments provided on the NOP, as a potential significant impact, the Draft EIR must thoroughly evaluate alternatives and mitigation measures that would reduce the Project's greenhouse gas emissions. Curbing greenhouse gas emissions to limit the effects of climate change is one of the most urgent challenges of our time. Fortunately, the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §§ 21000 et seq., 14 Cal. Code Regs. § 15000 et seq. ("Guidelines"), set forth a clear and mandatory process to address the Project's greenhouse gas and global warming impacts. This letter sets forth how this analysis should be completed.

A. THE EIR MUST ADDRESS THE IMPACT GLOBAL WARMING WILL HAVE ON THE PROJECT

Unfortunately, the EIR fails to address the impacts of global warming on the Project contrary to the requirements under CEQA. California's temperatures are expected to rise "dramatically" over the course of this century (Cayan 2007). These factors will impact the planned project, as well as exacerbate its own environmental impacts. Global warming will affect California's climate, resulting in such impacts as increased temperatures and wildfires, and a reduction in snowpack and precipitation levels and water availability. These factors will impact development under the General Plan Update, as well as exacerbate its own environmental impacts. Therefore, these factors must be considered in the EIR. *See* Guidelines § 15126.2(a) (an EIR "shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.") The EIR must use its best efforts to find out and disclose all it reasonably can about the impacts of climate change on the

environment and—most importantly—use that information to form an educated opinion about how to plan and adapt for the impacts of climate change. (California Attorney General 2009). Examples of how global warming will impact development under the General Plan and intensify the environmental impacts it will already have are discussed below. It is not an exhaustive list.

The rise in temperatures resulting from global warming will create a more conducive environment for air pollution formation (Cayan 2007). This will intensify the adverse effects the proposed project will already have on air quality in the project area and threaten residents' health (Cayan 2007).

Significantly for the state, as well as the project area, is global warming's impact on water supply. The IPCC specifically identified the American West as vulnerable, warning, "Projected warming in the western mountains by the mid-21st century is very likely to cause large decreases in snowpack, earlier snow melt, more winter rain events, increased peak winter flows and flooding, and reduced summer flows". (IPCC 2007b). Recently, researches found that an increase in atmospheric greenhouse gases has contributed to a "coming crisis in water supply for the western United States" (Barnett 2008). Using several climate models and comparing the results, the researches found that "warmer temperatures accompany" decreases in snow pack and precipitation and the timing of runoff, impacting river flow and water levels (Barnett 2008). These researchers concluded with high confidence that up to 60 percent of the "climate related trends of river flow, winter air temperature and snow pack between 1950-1999" are human-induced (Barnett 2008). This, the researchers wrote, is "not good news for those living in the western United States" (Barnett 2008).

The California Center on Climate Change has also recognized the problem global warming presents to the state's water supply and predicts that if greenhouse gas emissions continue under the business-as-usual scenario, this snowpack could decline up to 70-90 percent, affecting winter recreation, water supply and natural ecosystems (Cayan 2007). Global warming will affect snowpack and precipitation levels, and California will face significant impacts, as its ecosystems depend upon relatively constant precipitation levels and water resources are already under strain (Cayan 2007). The decrease in snowpack in the Sierra Nevada will lead to a decrease in California's already "over-stretched" water supplies (Cayan 2007). It could also potentially reduce hydropower and lead to the loss of winter recreation (Cayan 2007). All of this means "major changes" in water management and allocation will have to be made (Cayan 2007). Thus, global warming may directly affect the City's ability to supply clean, affordable water to the residents, or force the City to change how it will utilize water, and it may also impact other activities outside the project area, such as agriculture.

Scientists indicate that climate change will also exacerbate the problem of flooding by increasing the frequency and magnitude of large storms, which in turn will cause an increase in the size and frequency of flood events (NRDC 2007). The increasing cost of flood damages and potential loss of life will put more pressure on water managers to provide greater flood protection (NRDC 2007). At the same time, changing climate conditions (decreased snowpack, earlier runoff, larger peak events, etc.) will make predicting and maximizing water supply more

difficult (NRDC 2007). These changes in hazard risk and water supply availability must be considered during environmental review.

Water quality, in addition to water quantity and timing, will also be impacted. Changes in precipitation, flow, and temperature associated with climate change will likely exacerbate water quality problems (NRDC 2007). Changes in precipitation affect water quantity, flow rates, and flow timing (Gleick 2000). Shifting weather patterns are also jeopardizing water quality and quantity in many countries, where groundwater systems are overdrawn (Epstein 2005). Decreased flows can exacerbate the effect of temperature increases, raise the concentration of pollutants, increase residence time of pollutants, and heighten salinity levels in arid regions (Schindler 1997).

These are only examples of how global warming will impact the proposed project and intensify the environmental impacts the project will already have. It is not an exhaustive list. Thus, when assessing the impact of the Project on air quality, water supply, flood hazards, and biological resources, the EIR must take into account global warming. To ignore the impact of global warming on the Project and the resources impacted by the Project significantly understates the Project's impacts.

B. The EIR's Significance Determination is Flawed

i. The EIR Fails to Properly Frame the Question of the Significance of the Project's Greenhouse Gas Impacts

As the EIR properly recognizes, the greenhouse gas emissions generated by the Project constitute a significant impact. (DEIR at 4-16-13). However, the DEIR improperly limits the consideration of its determination of significance to whether "the project would significantly hinder or delay California's ability to meet reduction targets contained in AB 32." (DEIR at 4-16-6). While the emission reduction targets set by AB 32 are important, they are only a first interim step toward a longer emission reduction pathway necessary to avoiding dangerous anthropogenic interference (DAI) with the climate system. While Project impacts remain significant, the significance criteria should be revised to recognize California's long term emission targets set by Executive Order S-3-05 and consider the extent to which these reductions are consistent with the emission reduction pathway necessary to avoid DAI.

The relevant environmental objective with regard to a project's impact on global warming is stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference ("DAI") with the climate system. Framing the objective of a threshold of significance in the context of preventing DAI with the climate system is consistent with the policy of CEQA. As set forth in Public Resources Code Section 21000(d), "The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached." With regard to climate change, the prevention of DAI is the critical threshold to protect the health and safety of the people of California. The prevention of DAI

with the climate is also the objective adopted by the international community. As set forth in the United Nations Framework Convention on Climate Change, to which the United States is a party: "The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."[1]

Dangerous anthropogenic interference with the climate system is a defined concept from which a threshold of significance under CEQA can be derived. While environmental impacts from global warming are already being experienced, dangerous anthropogenic interference has typically been defined at temperature increases above 2°C from pre-industrial levels, or a 450 ppm atmospheric concentration of CO_2 eq. (Union of Concerned Scientists 2007). 2050 is the time frame commonly set by scientists in which to achieve the emission reductions necessary for climate stabilization. The emission reduction scenario set by AB 32 and Executive Order S-3-05, whereby emissions are reduced to 1990 levels by 2020 and then to 80% below 1990 levels by 2050, is consistent with a stabilization scenario in the +/- 450 ppm range.[2]

However, climate scientists, including NASA's premier climatologist, James Hansen, are increasingly calling for more stringent stabilization targets in order to sufficiently reduce the risk of catastrophic outcomes. The best available scientific evidence now indicates that a 2°C temperature increase from pre-industrial levels is well past the point where severe and irreversible impacts will occur. It is now estimated that a mean global temperature increase of 1.5°C above pre-industrial levels has the potential to trigger irreversible melting of the Greenland ice sheet, a process that would result in an eventual 7m sea level rise over and above that caused by thermal expansion of the oceans, and potentially causing an additional sea level rise of 0.75m as soon as 2100. (Warren 2006 at 95). Specific consequences of a 2°C temperature rise from pre-industrial levels include the loss of 97% of the world's coral reefs and the transformation of 16% of global ecosystems. Approximately one to three billion people would experience an increase in water stress, sea level rise and cyclones would displace millions from the world's coastlines and agricultural yields would fall in the developed world. (Warren 2006). In the Arctic, ecosystem disruption is predicted owing to complete loss of summer sea ice, with only 42% of the tundra remaining stable. This would destroy the Inuit hunting culture and cause the extinction of the polar bear and large losses in global populations of birds. Moreover, because Arctic ice functions to reflect heat back into the atmosphere, its loss would allow more sunlight to heat the Arctic Ocean and further accelerate the buildup heat and the melting of the Greenland ice sheet. In the Antarctic, key marine mollusks are predicted to become extinct with damaging ramifications for the rest of the Antarctic marine ecosystem. (Warren 2006). As the devastating and irreversible impacts resulting from a 2°C mean global temperature rise are far in excess of

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1 United Nations Framework Convention on Climate Change (UNFCCC), art. 2, May 9, 1992, *available at* http://unfccc.int/essential_background/convention/background/items/1349.php.

2 While the emission reduction targets embodied in AB 32 and Executive Order S-3-05 can inform a determination of significance thresholds, this is because they reflect scientific data on needed emissions reductions. Under CEQA, regulatory standards can serve as proxies for significance only to the extent that they accurately reflect the level at which an impact can be said to be less than significant. *See, e.g., Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (2004).

any reasonable definition of "dangerous" interference with the climate, a 2°C target is not an acceptable objective for climate policy.

Moreover, equating a particular atmospheric concentration of greenhouse gases with a specific temperature increase involves a significant degree of uncertainty. This is because climate sensitivity – the extent to which temperatures will rise as a result of increasing concentrations of heat-trapping gases – depends on Earth's response to certain physical processes that are not fully understood. (Cayan 2007 at 4). For example, as greenhouse gas emissions cause temperatures to rise, the atmosphere can hold more water vapor, which traps heat and raises temperatures further – a positive feedback. Clouds created by this water vapor could absorb and re-radiate outgoing infrared radiation from Earth's surface (another positive feedback) or reflect more incoming shortwave radiation from the sun before it reaches Earth's surface (a negative feedback). (Cayan 2007). Thus, due to uncertainty in climate sensitivity, scientists estimate that the mean probability of exceeding 2°C where stabilizing greenhouse gases at a CO_2eq level of 450 ppm is 54% with a 30% probability that global average temperature would rise more than 3°C. (Cayan 2007; Union of Concerned Scientists 2007). This is effectively the equivalent of flipping a coin in the hopes that our children and grandchildren will not be confronted with the displacement of millions of people due to sea level rise, irreversible loss of entire ecosystems, and the triggering of multiple climatic "tipping points" wherein climate change begins to feed on itself and spin rapidly out of control.

As noted by the Attorney General in a recent guidance on the treatment of climate change in general plans, "the targets set by AB 32 and Executive Order S-3-05 can inform the CEQA analysis." (California Attorney General 2009 at 4). However, while the emission reduction targets embodied in AB 32 and Executive Order S-3-05 can inform a determination of significance thresholds, this is because they reflect scientific data on needed emissions reductions. *See* Guidelines § 15064(b) ("[t]he determination of whether a project may have a significant effect on the environment calls for careful judgment ... based to the extent possible on scientific and factual data."). Under CEQA, regulatory standards can serve as proxies for significance only to the extent that they accurately reflect the level at which an impact can be said to be less than significant. *See, e.g., Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (2004). Thus, to properly address the question of the significance of Project impacts, the EIR should set forth the environmental objective of stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent DAI with the climate system, discuss California's emission reduction targets and the extent to which these targets are sufficient to meet avoid DAI. In this manner, the EIR will set forth the issues related to the significance of Project impacts in a manner that accurately informs decision makers and the public.

ii. To Properly Evaluate Significance and Fulfill Its Informational Mandate, the EIR Must Compare Project Emissions with Emission Reduction Targets Set by AB 32 and Executive Order S-3-05

Although the EIR asserts that the Project would interfere with the goals of AB 32, the EIR fails to provide any data on Project emissions as compared with 1990 levels. Accordingly, it

is impossible to analyze the extent to which the Project exceeds AB 32 emission reduction mandates. The EIR must be revised to provide this data.

Moreover, in a failure to adequately describe the Project, the EIR fails to note the year for which the Project envisions build-out. Should the General Plan update contemplate growth past 2020, its significance analysis should evaluate the extent to which the Project complies with Executive Order targets. While the trajectory of reductions under Executive Order S-3-05 has not been definitely established, the EIR should make an appropriate assumption, such as a linear decrease to 2050 to determine significance criteria for the undisclosed year of build-out. Thus, if the General Plan is intended to accommodate growth until 2030, than the EIR could compare Project emissions with emissions approximately 27% below 1990 levels.

C. THE EIR MUST ANALYZE AND ADOPT ALL FEASIBLE MITIGATION MEASURES TO REDUCE THE PROJECT'S GREENHOUSE GAS EMISSIONS

In addition to thoroughly evaluating project alternatives, because it is clear that the project's greenhouse gas emissions will cumulatively contribute to global warming, "the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified." *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors*, 91 Cal.App.4th 342, 360 (2001). CEQA requires that agencies "mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Pub. Res. Code § 21002.1(b). Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). Therefore, it is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." Pub. Res. Code § 21002. Importantly, mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles*, 83 Cal.App.4th 1252, 1261 (2000).

There are any number of feasible measures that can be incorporated into a Climate Action Plan to reduce vehicle miles traveled, energy use, waste, water consumption and other sources of emissions. The California Air Pollution Control Officer's Association (CAPCOA) White Paper on CEQA and Climate Change identifies existing and potential mitigation measures that could be applied to projects during the CEQA process to reduce a project's GHG emissions. (CAPCOA 2008 at Appendix B). The California Office of the Attorney General also has developed a list of reduction mechanisms to be incorporated through the CEQA process. (California Office of the Attorney General 2008b). These resources provide a rich and varied array of mitigation measures to be incorporated in both the programmatic and project level. Furthermore, substantial federal funding is available to implement these projects so that implementation of greenhouse gas mitigation measures is economically feasible.3 Because CEQA requires the

3 Energy Efficiency and Conservation Block Grants are offered by the U.S. Department of Energy to municipalities in order to meet the following purposes: reduce fossil fuel emissions in a manner that is environmentally sustainable and, to the maximum extent practicable, maximizes benefits for local and regional communities; reduce the total

adoption of all feasible mitigation measures to reduce significant impacts like climate change the Project must adopt all feasible mitigation measures to reduce GHGs or provide substantial evidence as to why the mitigation measures are infeasible. Pub. Res. Code § 21081(a)(3).

i. Land Use Measures Reducing Traffic Flow

The development plan for the proposed project should incorporate public transit into the project design and should attempt to facilitate the use of public transit. (California Office of the Attorney General 2008). Additionally, the EIR should analyze ways of including pedestrian and bicycle only streets and plazas within the development and create routes that will allow residents to reach the commercial center, schools and parks by public transportation, bicycling and walking.

ii. Land Use and Energy

The EIR should consider mitigation measures that will ensure the planned community will use energy efficiently and conservatively. In doing so, it should analyze incorporating "green building" in the development. Green buildings are those buildings that lower energy consumption, use renewable energy, conserve water, harness natural light and ventilation, use environmentally friendly materials and minimize waste (Commission for Environmental Cooperation 2008).

Buildings create environmental impacts throughout their lifecycle; from the construction phase to their actual use to their eventual destruction (Commission for Environmental Cooperation 2008). In the United States, buildings account for 40 percent of total energy use, 68 percent of total electricity consumption, and 60 percent of total non-industrial waste (Commission for Environmental Cooperation 2008). Buildings also significantly contribute to the release of greenhouse gases. In the U.S. they account for 38 percent of total carbon dioxide emissions (Commission for Environmental Cooperation 2008). More specifically, residential buildings cause up to 1,210 megatons of carbon dioxide, while commercial building create approximately 1,020 megatons (Commission for Environmental Cooperation 2008). This is because buildings require a lot of energy for their day to day operations. Most of the coal-fired power plants – one of the biggest sources of greenhouse gas emissions – slated for development in the United States will supply buildings with the energy they need. In fact, 76 percent of the energy these plants produce will go to operating buildings in the U.S. (Commission for Environmental Cooperation 2008).

Using green building techniques, however, can substantially reduce buildings' influence in increasing greenhouse gas emissions. Green buildings help reduce the amount of energy used to light, heat, cool and operate buildings and substitute carbon-based energy sources with alternatives that do not result in greenhouse gas emissions (Commission for Environmental Cooperation 2008). Currently green buildings can reduce energy by 30 percent or more and carbon emissions by 35 percent. (Commission for Environmental Cooperation 2008). The

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energy use of the eligible entities; and improve energy efficiency in the building sector, the transportation sector, and other appropriate sectors. (US DOE 2009). See http://www.eecbg.energy.gov/

technologies available for green building are already in wide-use and include "passive solar design, high-efficiency lighting and appliances, highly efficient ventilation and cooling systems, solar water heaters, insulation materials and techniques, high-reflectivity building materials and multiple glazing (IPCC 2007c). Additionally, the U.S. Green Building Council (USGBC), a private, nonprofit corporation, has established a nationwide green building rating system, called Leadership in Energy and Environmental Design ("LEED"). The LEED standard supports and certifies successful green building design, construction and operations. It is one of the most widely used and recognized systems, and to obtain LEED certification from the USGBC, project architects must verify in writing that design elements meet established LEED goals.

Specific mitigation for the greenhouse gas emissions generated by the Project's energy consumption include, but are not limited to:

- Analyzing and incorporating the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) or comparable standards for energy- and resource-efficient building during pre-design, design, construction, operations and management.
- Designing buildings for passive heating and cooling, and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.;
- Designing buildings for maximum energy efficiency including the maximum possible insulation, use of compact florescent or other low-energy lighting, use of energy efficient appliances, etc.
- Reducing the use of pavement and impermeable surfaces;
- Requiring water re-use systems;
- Installing light emitting diodes (LEDs) for traffic, street and other outdoor lighting
- Limiting the hours of operation of outdoor lighting
- Maximizing water conservation measures in buildings and landscaping, using drought-tolerant plants in lieu of turf, planting shade trees;
- Ensure that the Project is fully served by full recycling and composting services;
- Ensure that the Project's wastewater and solid waste will be treated in facilities where greenhouse gas emissions are minimized and captured.
- Installing the maximum possible photovoltaic array on the building roofs and/or on the project site to generate all of the electricity required by the Project, and utilizing wind energy to the extent necessary and feasible;
- Installing solar water heating systems to generate all of the Project's hot water requirements;
- Installing solar or wind powered electric vehicle and plug-in hybrid vehicle charging stations to reduce emissions from vehicle trips.

iii. Mitigation Related to Project Construction

- Utilize recycled, low-carbon, and otherwise climate-friendly building materials such as salvaged and recycled-content materials for building, hard surfaces, and non-plant landscaping materials;
- Minimize, reuse, and recycle construction-related waste;

- Minimize grading, earth-moving, and other energy-intensive construction practices;
- Landscape to preserve natural vegetation and maintain watershed integrity;
- Utilize alternative fuels in construction equipment and require construction equipment to utilize the best available technology to reduce emissions.

iv. Transportation Mitigation Measures

- Encourage and promote ride sharing programs through such methods as a specific percentage of parking spaces for ride sharing vehicles;
- Create a car sharing program within the planned community;
- Create a light vehicle network, such as a neighborhood electric vehicle (NEV) system;
- Provide necessary facilities and infrastructure to encourage residents to use low or zero-emission vehicles, for example, by developing electric vehicle charging facilities and conveniently located alternative fueling stations;
- Provide a shuttle service to public transit within and beyond the planned community;
- Incorporate bicycle lanes and routes into the planned community's street systems.

v. Carbon Offsets

After all measures have been implemented to reduce emissions in the first instance, remaining emissions that cannot be eliminated may be mitigated through offsets. Preference should be given to offset mitigation measures in that are in close proximity to the project. (SCAQMD 2008). In other words project applicants should prioritize first on mitigation onsite, then on mitigation in the neighborhood or air district, next in state, then finally out of state. (SQAQMD 2008). Care should be taken to ensure that offsets purchased are real (additional), permanent, and verified, and all aspects of the offsets should be discussed in the EIR. As demonstrated by the Office of the Attorney General and SCAQMD offsets are a feasible CEQA mitigation measures[4] once all feasible mitigation measures have been adopted to reduce the Project's carbon footprint and produce energy using renewable sources. (SCAQMD 2008).

VI. THE EIR MUST CONSIDER A REASONABLE RANGE OF ALTERNATIVES

The EIR failed to consider a meaningful analysis of reasonable alternatives to the Project in order to lessen or avoid the Project's significant impacts. CEQA mandates that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d). A rigorous analysis of reasonable alternatives to the project must be provided to comply with this strict mandate. "Without meaningful analysis of alternatives in the EIR, neither courts nor the public can fulfill their proper roles in the CEQA process." *Laurel Heights Improvement Ass'n v. Regents of University of California*, 47 Cal.3d 376, 404 (1988). Moreover, "[a] potential alternative should not be

4 The California Attorney General's Office has adopted CEQA settlements calling for the auditing, reduction, and offsetting of greenhouse gas emissions related with a Project demonstrating that offsets are a feasible way to reduce a Project's negative environmental effects on global warming. See http://ag.ca.gov/newsalerts/release.php?id=1466&category=global%20warming See generally http://ag.ca.gov/globalwarming/ceqa.php

excluded from consideration merely because it 'would impede to some degree the attainment of the project objectives, or would be more costly" even when that alternative includes Project development on an alternative site. *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437, 1456-57 (2007) (quotations omitted).

As discussed in comments on the NOP the EIR must consider a reasonable range of alternatives including, but not limited to, the following: creation of the Project on an alternative site that does not impact SKR habitat, existing core reserves, or connections between existing reserves; Development of the Project on exisiting lands previously disturbed by development and exclusion of development on undeveloped lands; and increased density, mixed use development, transportation oriented design surrounding existing transit nodes or transit corridors within or adjacent to the Project area; and mixed use development combined with preservation and enhancement of existing wildlife habitat.

In analyzing the no-project alternative, the EIR must discuss the need for this project and whether the uses that would potentially utilize the Project can be accommodated in existing areas. As CAPCOA states in its white paper, one way local governments can avoid significant increases in greenhouse gas emissions and help solve the problem of global warming is to "facilitate more efficient and economic use of the lands" already developed within the community (CAPCOA 2008). Reinvesting in existing communities is "appreciably" more efficient than new development and may even result in a net reduction of greenhouse gases (CAPCOA 2008). The EIR should consider an alternative that relies more on higher-density mixed commercial/residential development projects on existing disturbed lands in order to support the reduction of vehicle trips, promote alternatives to individual vehicle travel, and encourage efficient delivery of services and goods (Office of the California Attorney General 2008).

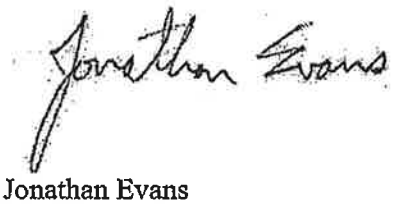
An analysis of alternatives should also quantify the estimated greenhouse gas emissions, quantified impacts to biological resources, water resources including water quality and water availability, and traffic resulting from each proposed alternative.

CONCLUSION

Thank you for your attention to these comments. We look forward to working with the County to assure that the EIR conforms to the requirements of CEQA to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. Should you have any questions feel free to contact Jonathan Evans at the contact information listed above.

The Center for Biological Diversity, San Bernardino Valley Audubon Society, and Sierra Club wish to be placed on the mailing list for all future notices regarding this project. Please mail all notices to CBD at the address listed above (via email at jevans@biologicaldiversity.org); San Bernardino Valley Audubon Society at and P. O. Box 10973, San Bernardino, California 92423-0973; and Sierra Club, San Gorgonio Chapter, Moreno Valley Group, 26711 Ironwood Ave, Moreno Valley, CA. 92555.

Best regards,



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(enclosed on CD)

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United States Fish and Wildlife Service, Formal Section 7 Consultation on the Disposal and Reuse of March Air Force Base, Riverside County, California (1-6-99-F-13), 1999.

USFWS BO, United States Fish and Wildlife Service, Intra-Service Formal Section 7 Consultation for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit (TE-088609-0) for the Western Riverside County Multiple Species Habitat Conservation Plan, Riverside County, California, June 22, 2004.

USFWS MSHCP IA, IMPLEMENTING AGREEMENT for the WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN

San Bernardino Valley
Audubon Society

SIERRA CLUB
FOUNDED 1892

via electronic and US mail

Riverside County Planning Department
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Attn: Christian Hinojosa, Project Planner
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August 26, 2008

RE: Environmental Impact Report No. 510, Tentative Parcel Map No. 35365, Plot Plan 22925, (Allesandro Commerce Centre).

These comments are submitted on behalf of the Center for Biological Diversity, San Bernardino Valley Audubon Society, and the Sierra Club on the Allesandro Commerce Centre ("Project"), located south of Allesandro Blvd. between Gem Ln and Brown St. The Project site is currently undeveloped open space that is covered with non-native grasslands, coastal sage scrub, southern willow scrub, riparian/riverine habitat, and small rocky outcroppings. The Project site is known occupied habitat for the federally and state protected Stephen's kangaroo rat ("SKR") (*Dipodomys stephensi*). (SKR Habitat Conservation Plan Fig. 26.). The Project represents a significant impact to biological resources including SKR, and the long term population viability for nearby SKR populations. Additionally, the Environmental Impact Report ("EIR") must fully analyze, quantify, and mitigate the Project's greenhouse gas pollution.

Although the comment period for the NOP has officially expired, because the following comments relate to matters that must be included in an EIS/EIR, we hope that the lead agencies will consider the comments in their preparation of the EIR. We also respectfully remind the County that under Public Resources Code § 21167.6(e)(6-7) all written comments received in connection with environmental documents become part of the administrative record for the environmental document and must be considered by the Lead Agencies in preparation, review, and approval of environmental documents.

The Center for Biological Diversity is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center for Biological Diversity has over 180,000 members and e-activists throughout

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California and the western United States, including residents of the City of Riverside and surrounding areas of western Riverside County. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the Inland Empire.

The San Bernardino Valley Audubon Society (SBVAS) is a local chapter of the National Audubon Society, a 501(c)3 corporation. The SBVAS chapter area covers almost all of Riverside and San Bernardino Counties and includes the project area. We have about 2,000 members, about half of whom live in Riverside County. Part of our chapter's mission is to preserve habitat in our area, not just for birds, but for other wildlife, and to maintain the quality of life in the Inland Empire.

The Sierra Club is a national nonprofit organization of over 732,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Over 193,500 Sierra Club members reside in California. The San Gorgonio Chapter of the Sierra Club focuses on issues within the inland empire, including western Riverside County.

I. THE EIR MUST FULLY EVALUATE AND ANALYZE IMPACTS TO THE STATE AND FEDERALLY PROPTECTED STEPHENS KANGAROO RAT

The Project poses a potentially significant threat to SKR and the surrounding SKR populations because the development is planned in a crucial linkage for SKR populations at the Sycamore Canyon Core Reserve, which encompasses both Sycamore Canyon Wilderness Park and portions of March Air Force Base. The SKR is listed as endangered by the United States Fish and Wildlife Service under the Federal Endangered Species Act and threatened by the California Department of Fish and Game under the California Endangered Species Act. The potential impacts to SKR occupying the habitat, adjacent SKR populations, and the SKR HCP must be fully disclosed, analyzed, mitigated, and avoided in the EIR.

The proposed project would result in an overall direct loss of 54.17 acres of currently existing open space that is a critical linkage between the populations of SKR within the existing Sycamore Canyon-March Core Reserve for the SKR. Populations of SKR exist within the Sycamore Canyon Wilderness Park north of Allesandro Blvd. Additionally, there is known occupied habitat for SKR within the March Air Force Base property south of Allesandro Blvd. and west of Highway 215. The linkage between populations is essential in maintaining the integrity of the overall Sycamore Canyon reserve, allowing genetic flow and animal dispersal between the two component parts of the reserve.

The 1999 Biological Opinion ("BO") issued by the U.S. Fish and Wildlife Service recognizes that Sycamore Canyon is unlikely to maintain a viable population of Stephen's kangaroo rats, absent the connection to the March portion of the core reserve (1999 BO 1-6-99-F-13 on the Disposal and Reuse of March Air Force Base at pg. 21). The 1999 BO thus indicates

that if the connection is severed between the Sycamore Canyon and March units of the Sycamore Canyon Core Reserve, the longterm viability of the Sycamore Canyon unit could be jeopardized. The EIR must disclose and analyze the Project's potential to impact genetic flow and population viability for the SKR.

Protection of SKR movement across Alessandro Boulevard has long been seen as essential for SKR conservation. The 1990 Biological Opinion for the Highway 215 improvement project required Caltrans to construct culverts under Alessandro to maintain the biological connection between SKR populations. (Final SKR HCP 5(e); 1990 BO 1-6-90-F-29 Regarding Proposed Improvements to State Route 215 at pg. 4). However, this improvement has not been implemented. Despite this, the animals currently successfully cross Alessandro Blvd in order to achieve this crucial genetic interchange. According to the 1999 Biological Opinion for the Disposal and Reuse of March Air Force Base, the large, contiguous, and intact Sycamore Canyon/March AFB Core SKR Reserve is important:

> because small isolated populations of SKR in the plan area and reserve system are at risk simply because of their small sizes. Small populations have a higher probability of extinction than larger populations because their low abundance renders them susceptible to stochastic (random naturally occurring) events such as inbreeding, the loss of genetic variation, high variability in age and sex ratios, and catastrophes such as floods, droughts, or disease epidemics ...
>
> Another factor that renders populations vulnerable to stochastic events is isolation, which often acts in concert with small population size to increase the probability of extinction for endangered populations. Urbanization and land conversion has fragmented the historic ranges of the SKR such that remaining blocks of occupied habitat now function independently of each other. Isolated populations are more susceptible to extirpation by accidental or natural catastrophes because their recolonization has been precluded.

(1999 BO 1-6-99-F-13 at pp. 20-21.) Based on modeling, the U.S. Fish and Wildlife Service estimated the long-term probability of persistence of the Sycamore Canyon SKR population would drop from 66 percent to 42 percent if the March population were lost. (1999 BO 1-6-99-F-13 at p. 21.) The same result necessarily applies if the linkage between these populations is severed. The Environmental Impact Statement/Environmental Impact Report for the SKR HCP ("HCP EIS/EIR") also indicates that SKR can and do move across Alessandro between the project site and areas to the south. The HCP EIS/EIR states that:

> Chance crossings of the road by SKR and manual relocation of SKR from one portion of the reserve to the other would be a practical and biologically acceptable way to maintain connectivity among SKR populations in the reserve. Relocation, however, will require coordination of efforts by the City of Riverside Park and Recreation Department (the manager of Sycamore Canyon Park) and The Nature Conservancy (the manager of the MAFB conservation areas).

(HCP EIS/EIR p. C-5.) We are unaware of any current relocation efforts by the City, further increasing the importance of the project site as a linkage between Sycamore Canyon and SKR populations to the south.

These statements in the Biological Opinion and HCP EIS/EIR indicate that SKR movement between Sycamore Canyon and March is both possible and extremely important to the viability of the Sycamore Canyon preserve. The project will sever the remaining linkage between the March and Sycamore Canyon SKR populations. The effect on the long-term viability of the Sycamore Canyon SKR population is potentially significant and must be disclosed and fully mitigated or avoided during the EIR process.

The EIR cannot rely on the March Air Force Base Trade Out as a basis for determining that the impacts to the Stephen's kangaroo rat would be less than significant. The environmental review and permitting of the March Air Force Base Trade Out has not been completed. The SKR HCP requires that the tradeout must be subject to environmental review and Endangered Species Act consultation before the March portion of the Core Reserve is made available for development. (Final SKR HCP 5(C)(1)(e). The 1999 Biological Opinion for the Disposal and Reuse of March Air Force Base further states that the SKR HCP must be amended prior to any impacts to the Core Reserve not addressed in the SKR HCP. (1999 BO 1-6-99-F-13 at p. 20.) To date, none of these requirements – environmental review, Endangered Species Act consultation, or HCP amendment - have been met for the tradeout. Notably, the 1999 Biological Opinion is not an Endangered Species Act consultation on the tradeout, but merely anticipates that the effects of the tradeout will be reviewed in the future. (1999 BO 1-6-99-F-13 at pp. 19-21.)

Furthermore, the March portion of the Sycamore Canyon-March Core Reserve still contains occupied SKR habitat and continues to be managed as an SKR preserve. The proper baseline for environmental analysis is not what might happen if the tradeout is completed and the March portion of the Core Reserve is developed; it is the existing environment at the time of the project's Initial Study. This existing environment includes actual SKR populations in both Sycamore Canyon and March. Some connectivity exists between these populations.

The EIR should also analyze the potential for night lighting to impact SKR populations. SKR often forages and moves around at night. Lighting known SKR habitat increases the chance of predation of SKR.

Surveys for SKR should be conducted on the project site and adjacent to the project site to determine the potential impact from the project. The area is known habitat for the SKR. (SKR HCP Figure 26, Sycamore Canyon Core Reserve). Surveys are necessary to disclose to the responsible agencies what the overall impact of the project site would be to the existing SKR population, to determine the potential impacts to adjacent SKR populations, and to provide sufficient tracking and monitoring data. Without SKR surveys the EIR would violate the information requirements of CEQA to disclose and evaluate impacts to rare, threatened, sensitive, or endangered species.

The CEQA Guidelines require mandatory findings of significance and preparation of an EIR when a project "has the potential to .... substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten or eliminate a plant or animal community, [or] reduce the number or restrict the range of an endangered, rare or threatened species ..." (CEQA Guidelines § 15065(a).) The project will do all of these things. It has the potential to substantially reduce the habitat of the SKR, cause the Sycamore Canyon SKR population to drop below self-sustaining levels, and/or threaten or eliminate the Sycamore Canyon SKR population by reducing the long-term viability of the population. In addition, it will manifestly reduce the number and/or restrict the range of the endangered SKR by directly destroying occupied habitat and severing the connection between Sycamore Canyon and March populations.

A. THE EIR MUST FULLY EVALUATE AND ANALYZE IMPACTS TO THE AFFECTED SKR HCP

The Project has the potential to conflict with the established SKR Habitat Conservation Plan, which must be fully disclosed and analyzed. CEQA requires the evaluation of a project's potential to conflict with an established HCP. CEQA Guidelines App. G. The Project would sever the important connection between the Sycamore Canyon and March Air Force Base SKR populations that provides a tenuous connectivity relied upon in the SKR HCP. Furthermore, the elimination of the connection acts as the functional separation of the Sycamore Canyon and March Air Force Base populations reducing the population viability of SKR within the Core Reserve, and reducing the overall population viability analysis of the SKR HCP. (1999 BO 1-6-99-F-13 at p. 21.) This Project would potentially conflict with the existing SKR HCP and re-open the HCP for evaluation and amendment, pending section 7 consulation. 50 C.F.R. § 402.16(a-d). These impacts must be fully disclosed in the EIR.

II. THE DEIR MUST ADEQUATELY ADDRESS THE IMPACTS OF GLOBAL WARMING AND CLIMATE CHANGE

As a potential significant impact, the Draft EIR must thoroughly evaluate alternatives and mitigation measures that would reduce the Project's greenhouse gas emissions. Curbing greenhouse gas emissions to limit the effects of climate change is one of the most urgent challenges of our time. Fortunately, the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §§ 21000 et seq., 14 Cal. Code Regs. § 15000 et seq. ("Guidelines"), set forth a clear and mandatory process to address the Project's greenhouse gas and global warming impacts. This letter sets forth how this analysis should be completed.

A. THE DEIR MUST ADEQUATELY SET FORTH THE THREAT OF GREENHOUSE GAS POLLUTION AND GLOBAL WARMING

The DEIR should discuss the grave threats posed by global warming to California and the world. Current scientific consensus on climate change has now determined that the link between greenhouse gas emissions and global warming is highly certain. In California, elected leaders, through Executive Order S-03-05 and the California Global Warming Solutions Act of 2006 (AB

32), have also squarely linked greenhouse gases with global warming.

In order to conform to CEQA's informational mandates and properly inform the public and decision makers of the significance of the Project's contribution to greenhouse gases, the DEIR must first adequately discuss the threat posed by greenhouse gas emissions and avoid minimizing or discounting the severity of global warming's impacts. *See* Guidelines § 15151. *See, e.g., Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* ("Laurel Heights I"), 47 Cal.3d 376, 392 (1988) (EIR is intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action."); Guidelines § 15151 (requiring an EIR be detailed, complete, and reflect a good faith effort at full disclosure). A discussion of global warming impacts need not be lengthy, but should, at a minimum, convey the magnitude of the threat posed by global warming to humans and the environment. For the City's convenience, a scientific background on global warming and the specific threats posed to California is provided below.

i. Scientific Background on Climate Change

There is no longer credible scientific dispute that the climate is warming. In its most recent assessment, the Intergovernmental Panel on Climate Change ("IPCC") concluded that "[w]arming of the climate is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting snow and ice, and rising mean sea level." (IPCC 2007a). Expressed as a global average, surface temperatures have increased by about 0.74°C over the last hundred years, with 11 of the 12 warmest years on record having occurred in the past 12 years (IPCC 2007a). In September 2007, Arctic sea ice plummeted to a record low level not anticipated by most climate models until 2050, leading scientists to predict that the Arctic could be ice-free in summer by 2030 (National Snow & Ice Data Center 2007).[1] Other observed consequences of the warming climate include sea level rise, increased frequency of droughts, floods, and heat waves and substantial increases in the duration and intensity of hurricanes (IPCC 2007a).

The IPCC now states with "very high confidence" that most of the warming observed over the past 50 years is the result of human generation of greenhouse gases, including carbon dioxide, methane, and nitrous oxide[2] (IPCC 2007a). The rapid warming observed since the 1970s has occurred in a period when the increase in greenhouse gases has dominated over all other factors (IPCC 2007a). The largest known contribution to global warming is from carbon dioxide (IPCC 2007a). Fossil fuel combustion is responsible for more than 75% of human-caused carbon dioxide emissions with the remainder due to land-use change (primarily deforestation) (IPCC 2007a). The global atmospheric concentration of carbon dioxide has increased from a pre-industrial value of about 280 parts per million (ppm) to 379 ppm in 2005, a

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1 Based on the startling loss of sea ice in 2007, some scientists have predicted that "the Artic Ocean could be nearly ice-free at the end of the summer by 2012." Seth Borenstein, *Ominous Arctic Melt Worries Experts*, Associated Press, Dec. 11, 2007.

2 *IPCC, 2007: Summary for Policymakers, in* CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS, CONTRIBUTION OF WORKING GROUP I TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE at 4 (Susan Solomon et al. eds., Cambridge Univ. Press 2007) at 2-3. "Very high confidence" is defined at "at least a 9 out of 10 chance of being correct." *Id.* at 3 n.7.

level that has not been exceeded during the past 650,000 years (during which carbon dioxide concentrations remained between 180 and 300 ppm). (IPCC 2007a; Canadell et al. 2007). In 2006, carbon dioxide concentrations reached a new high of 381.2 ppm (World Metrological Organization 2007). As greenhouse gas concentrations increase, more heat reflected from the earth's surface is absorbed by these greenhouse gases and radiated back into the atmosphere and to the earth's surface.[3] Consequently, the higher the level of greenhouse gas concentrations, the larger the degree of warming experienced.

At current growth rates and continued reliance on fossil fuels, atmospheric concentrations of carbon dioxide would likely exceed 1,000 ppm by the end of the century, resulting in an average global temperature increase of more than 5°C (United Nations Foundation & Sigma XI 2007). This is equivalent to the change in temperature since the last ice age – an era in which Europe and North America was under more than one kilometer of ice (United Nations Foundation & Sigma XI 2007). The growing consensus among climate scientists is that the threshold for dangerous climate change, whereupon a potential "tipping point" is reached and ecological changes become dramatically more rapid and out of control, is estimated at a temperature increase of around 2°C from pre-industrial levels, or an atmospheric concentration of carbon dioxide of approximately 450 ppm (United Nations Foundation & Sigma XI 2007; IPCC 2007c). In 2006, Dr. James E. Hansen, Director of the NASA Goddard Institute for Space Studies, and NASA's top climate scientist, stated: "In my opinion there is no significant doubt (probability > 99%) that . . . additional global warming of 2° C would push the earth beyond the tipping point and cause dramatic climate impacts including eventual sea level rise of at least several meters, extermination of a substantial fraction of the animal and plant species on the planet, and major regional climate disruptions" (Hansen et al. 2006). More recently however, given the recent unpredicted and extreme rate of loss of arctic ice observed in 2007, Dr. Hansen concluded that "the safe upper limit for atmospheric CO_2 is no more than 350 ppm" (McKibben 2007). Moreover, according to Hansen, just 10 more years of "business-as-usual" global emissions will make it difficult, if not impossible, to keep atmospheric concentrations of greenhouse gases at levels necessary to avoid a temperature increase above 2°C (Hansen et al. 2007).

Keeping the climate within the 2°C threshold requires significant reductions in the world's greenhouse gas emissions. To reach this objective, it is estimated that developed countries would have to target an emissions peak between 2012 and 2015, with 30 percent cuts by 2020 and 80 percent cuts from 1990 levels by 2050 (United Nations Foundation & Sigma XI 2007). In recognition of need for immediate action, California has committed itself though Executive Order S-3-05 and the California Global to reduce the state's emissions to 1990 levels by 2020 and by 80% reductions from 1990 levels by 2050. Ca. Health & Safety Code § 38550; Cal. Executive Order S-3-05 (2005).

The costs of taking no action to reduce greenhouse gas emissions far outweigh the costs of stabilizing emissions. The Stern Review of the Economics of Climate Change, a

3 Greenhouse gases have a warming effect because, when solar radiation is reflected by the earth, greenhouse gases capture this thermal radiation and reradiate it back to earth, much like the effect of a common garden greenhouse resulting in the "greenhouse effect."

comprehensive report commissioned by the British government, recently concluded that allowing current emissions trajectories to continue unabated would eventually cost the global economy between 5 to 20 percent of GDP each year within a decade, or up to $7 trillion, and warned that these figures should be considered conservative estimates (Stern 2006). By contrast, measures to mitigate global warming by reducing emissions were estimated to cost about one percent of global GDP each year, and could save the world up to $2.5 trillion per year (Stern 2006). The Stern Report determined that if no action is taken to control greenhouse gas emissions, each ton of CO_2 emitted causes damage worth at least $85 (Stern 2006).

ii. Impacts to California from Global Warming

Climate change poses enormous risks to California. Scientific literature on the impact of greenhouse gas emissions on California is well developed.[4] The California Climate Change Center ("CCCC") has evaluated the present and future impacts of climate change to California and the project area in research sponsored by the California Energy Commission and the California Environmental Protection Agency (Cayan et al. 2007). The severity of the impacts facing California is directly tied to atmospheric concentrations of greenhouse gases (Cayan et al. 2007; Hayhoe et al. 2004). According to the CCCC aggressive action to cut greenhouse gas emissions today can limit impacts, such as loss of the Sierra snow pack to 30%, while a business-as-usual approach could result in as much as a 90% loss of the snowpack by the end of the century. As aptly noted in a report commissioned by the California EPA:

> Because most global warming emissions remain in the atmosphere for decades or centuries, the choices we make today will greatly influence the climate our children and grandchildren inherit. The quality of life they experience will depend on if and how rapidly California and the rest of the world reduce greenhouse gas emissions (Cayan et al. 2007).

Some of the types of impacts to California and estimated ranges of severity – in large part dependent on the extent to which emissions are reduced – are summarized as follows:

- A 30 to 90 percent reduction of the Sierra snowpack during the next 100 years, including earlier melting and runoff.
- An increase in water temperatures at least commensurate with the increase in air temperatures.
- A 6 to 30 inch rise in sea level, before increased melt rates from the dynamical properties of ice-sheet melting are taken into account.
- An increase in the intensity of storms, the amount of precipitation and the proportion of precipitation as rain versus snow.
- Profound impacts to ecosystem and species, including changes in the timing of life events, shifts in range, and community abundance shifts. Depending on the timing and interaction of these impacts, they can be catastrophic.

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4 Additional reports issued by California agencies are available at http://www.climatechange.ca.gov, and IPCC reports available at http://www.ipcc.ch/.

- A 200 to 400 percent increase in the number of heat wave days in major urban centers.
- An increase in the number of days meteorologically conducive to ozone (O_3) formation.
- A 55 percent increase in the expected risk of wildfires (Cayan et al. 2007).

By providing details as to the ranges of proposed impacts, and indicating that the higher-range of impact estimates are projected if greenhouse gas emissions continue to increase under a "business as usual" scenario, decision-makers and the public will be better informed of the magnitude of the climate crisis and the urgency with which it must be addressed.

Finally, the DEIR should also include a brief discussion of other laws to address climate change, including California's mandate to reduce emissions to 1990 levels by 2020 and goal of further reducing emissions to 80% below 1990 levels by 2050. Achievement of state mandated emissions reductions will be severely impeded if agencies across the state continue to approve *new* projects without incorporating measures to reduce the added emissions created by these

B. The EIR the Project Must Include an Inventory and Analysis of the Project's Projected Greenhouse Gas Emissions

The first step in determining a project's greenhouse gas pollution impact is to complete a full inventory of all emissions sources. In conducting such an inventory, all phases of the proposed project must be considered. *See* 14 Cal. Code Regs. § 15126. A basic requirement of CEQA is that "[a]n EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." 14 Cal. Code Regs. § 15151. The greenhouse gas inventory for a project must include a complete analysis of all of a project's substantial sources of greenhouse gas emissions, from building materials and construction emissions to operational energy use, vehicle trips, water supply and waste disposal.

A greenhouse gas inventory for the project must include the project's direct and indirect greenhouse gas emissions. *See* 14 Cal. Code Regs § 15358(a)(1) (Indirect or secondary effects may include effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.). Consequently, a complete inventory of a project's emissions should include, at minimum, an estimate of emissions from the following:

- Fugitive emissions of greenhouses gases, such as methane, from the proposed project;
- Emissions during construction from vehicles and machinery;
- Manufacturing and transport of building materials;
- Electricity generation and transmission for the heating, cooling, lighting, and other energy demands of the project;
- Water supply and transportation to the project;
- Vehicle trips and transportation emissions generated by the project;

- Wastewater and solid waste storage or disposal, including transport where applicable; and
- Outsourced activities and contracting.

Methodologies are readily available to inventory the emissions from the proposed project. In its recent white paper, CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (Jan. 2008), the California Air Pollution Control Officers Association (CAPCOA) set forth methodologies for analyzing greenhouse gas pollution (CAPCOA 2008) The California Office of Planning and Research ("OPR") has also released technical guidance on the preferred approach for analyzing greenhouse gas emissions and climate change entitled "Technical Advisory, CEQA and Climate Change: Addressing Climate Change through California Environmental Quality Act Review" (California OPR 2008). OPR also provides references to methodologies to quantify greenhouse gas emissions. In addition to the methodologies set forth by CAPCOA and OPR, ICLEI's Clean Air/Climate Protection (CACP) software allows cities to calculate emissions reductions, track and quantify emission outputs, and develop emissions scenarios to inform the planning process.[5] As noted in the ICLEI Climate Action Handbook, "Expertise in climate science is not necessary" to conduct an emissions inventory and compare this inventory against a forecast year (ICLEI). "A wide range of government staff members, from public works to environment and facilities departments, can conduct an inventory" (ICLEI). ICLEI also provides technical assistance and training to local government using the CACP software. It is incumbent on the City to "disclose all it can" about project impacts and educate itself on methodologies that are available to measure project emissions. *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs ("Berkeley Jets")*, 91 Cal. App. 4th 1344, 1370 (2001).

As with any other project under CEQA, the baseline used for analyzing the impacts of a project is the existing on the ground environmental conditions at the time of the NOP. *See Environmental Planning & Information Council v. County of El Dorado (EPIC)*, 131 Cal.App.3d 350, 355 (1982) (effect of general plan amendment must be compared against actual environment, not assumptions in existing general plan). Accordingly, the DEIR should compare emissions from existing conditions with those that would result from the development of the project, as well as those that would occur under any proposed alternative scenarios. Because the Project envisions development over a long period, the EIR should also provide data on the trajectory for emissions in the planned community and under each proposed alternative in five-year increments.

Without a complete inventory, the DEIR cannot adequately inform the public and decision-makers about the Project's impacts. Similarly, without a complete inventory and analysis of greenhouse gas emissions that will result from the project, there is simply no way that

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5 ICELI's Clean Air/Climate Protection software is available at http://www.cacpsoftware.org/ ICLEI-Local Governments for Sustainability is an international association of more than 650 local governments. Cities, counties, towns and villages around the world are members of ICLEI. ICLEI's mission is to improve the global environment through local action. On the issue of global warming, for example, ICLEI provides resources, tools, peer networking, best practices, and technical assistance to help local governments measure and reduce greenhouse gas emissions in their communities.

the EIR can then adequately discuss alternatives, avoidance, and mitigation measures to reduce those impacts.

C. THE EIR MUST ADDRESS THE IMPACT GLOBAL WARMING WILL HAVE ON THE PROJECT

California's temperatures are expected to rise "dramatically" over the course of this century (Cayan 2007). These factors will impact the planned project, as well as exacerbate its own environmental impacts.

The rise in temperatures resulting from global warming will create a more conducive environment for air pollution formation (Cayan 2007). This will intensify the adverse effects the proposed project will already have on air quality in the project area and threaten residents' health (Cayan 2007).

Significantly for the state, as well as the project area, is global warming's impact on water supply. The IPCC specifically identified the American West as vulnerable, warning, "Projected warming in the western mountains by the mid-21st century is very likely to cause large decreases in snowpack, earlier snow melt, more winter rain events, increased peak winter flows and flooding, and reduced summer flows" (IPCC 2007b). Recently, researches found that an increase in atmospheric greenhouse gases has contributed to a "coming crisis in water supply for the western United States" (Barnett 2008). Using several climate models and comparing the results, the researches found that "warmer temperatures accompany" decreases in snow pack and precipitation and the timing of runoff, impacting river flow and water levels (Barnett 2008). These researchers concluded with high confidence that up to 60 percent of the "climate related trends of river flow, winter air temperature and snow pack between 1950-1999" are human-induced (Barnett 2008). This, the researchers wrote, is "not good news for those living in the western United States" (Barnett 2008).

The California Center on Climate Change has also recognized the problem global warming presents to the state's water supply and predicts that if greenhouse gas emissions continue under the business-as-usual scenario, this snowpack could decline up to 70-90 percent, affecting winter recreation, water supply and natural ecosystems (Cayan 2007). Global warming will affect snowpack and precipitation levels, and California will face significant impacts, as its ecosystems depend upon relatively constant precipitation levels and water resources are already under strain (Cayan 2007). The decrease in snowpack in the Sierra Nevada will lead to a decrease in California's already "over-stretched" water supplies (Cayan 2007). It could also potentially reduce hydropower and lead to the loss of winter recreation (Cayan 2007). All of this means "major changes" in water management and allocation will have to be made (Cayan 2007). Thus, global warming may directly affect the City's ability to supply clean, affordable water to the residents, or force the City to change how it will utilize water, and it may also impact other activities outside the project area, such as agriculture.

Scientists indicate that climate change will also exacerbate the problem of flooding by increasing the frequency and magnitude of large storms, which in turn will cause an increase in

the size and frequency of flood events (NRDC 2007). The increasing cost of flood damages and potential loss of life will put more pressure on water managers to provide greater flood protection (NRDC 2007). At the same time, changing climate conditions (decreased snowpack, earlier runoff, larger peak events, etc.) will make predicting and maximizing water supply more difficult (NRDC 2007). These changes in hazard risk and water supply availability must be considered during environmental review.

Water quality, in addition to water quantity and timing, will also be impacted. Changes in precipitation, flow, and temperature associated with climate change will likely exacerbate water quality problems (NRDC 2007). Changes in precipitation affect water quantity, flow rates, and flow timing (Gleick 2000). Shifting weather patterns are also jeopardizing water quality and quantity in many countries, where groundwater systems are overdrawn (Epstein 2005). Decreased flows can exacerbate the effect of temperature increases, raise the concentration of pollutants, increase residence time of pollutants, and heighten salinity levels in arid regions (Schindler 1997).

These are only examples of how global warming will impact the proposed project and intensify the environmental impacts the project will already have. It is not an exhaustive list. Thus, when assessing the impact of the Project on air quality, water supply, flood hazards, and biological resources, the EIR must take into account global warming. To ignore the impact of global warming on the Project and the resources impacted by the Project would significantly understate Project impacts.

D. THE PROJECT'S GREENHOUSE GAS IMPACTS ARE CLEARLY SIGNIFICANT

The greenhouse gas emissions generated by a project of this size and scope will have a clearly significant cumulative impact. An impact is considered significant where its "effects are individually limited but cumulatively considerable." Guidelines § 15065(a)(3). Climate change is the classic example of a cumulative effects problem; emissions from numerous sources combine to create the most pressing environmental and societal problem of out time. *Ctr. for Biological Diversity*, 508 F.3d 508, 550 (9th Cir. 2007) ("the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct."); *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 720 (1990) ("Perhaps the best example [of a cumulative impact] is air pollution, where thousands of relatively small sources of pollution cause a serious environmental health problem."). While a particular project's greenhouse gas emissions represent a fraction of California's total emissions, courts have flatly rejected the notion that the incremental impact of a project is not cumulatively considerable because it is so small that it would make only a de minimis contribution to the problem as a whole. *Communities for a Better Environment v. California Resources Agency*. 103 Cal.App.4th 98, 117 (2002); see also *Kings County Farm Bureau*, 221 Cal. App. 3d at 720 ("[p]erhaps the best example of [a cumulative impact] is air pollution, where thousands of relatively small sources of pollution cause a serious environmental health problem.").

. . . In addition. there is nothing speculative about the fact that higher levels of greenhouse gas pollution will lead to greater impacts, which is why the State of California has prioritized greenhouse gas pollution reductions under AB 32. Moreover, in the analogous context of the National Environmental Policy Act (NEPA), the Ninth Circuit has already rejected the argument that "global warming is too speculative to warrant NEPA analysis." *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 508 F.3d at 554.

In addition, lack of established significance thresholds does not excuse an agency from its obligation under CEQA to determine the significance of a Project's impacts. CEQA routinely calls for an agency to evaluate impacts in the absence of thresholds or to exercise its individual discretion in determining the significance of an impact. *See, e.g., Protect the Historic Amador Waterways*, 116 Cal. App. 4th at 1111 (agency required to assess potential impact not listed in CEQA checklist). The development of significance thresholds is "encouraged" and not a prerequisite for an impact analysis. Guidelines § 15064.7. Indeed, as noted in the CAPCOA white paper on CEQA and Climate Change, "[t]he absence of a threshold does not in any way relieve agencies of their obligations to address GHG emissions from projects under CEQA" (CAPCOA 2008). In fact, CEQA may require additional analysis even if a project meets an adopted standard, if other evidence indicates the project may nonetheless have a significant impact. *See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners*, 91 Cal.App.4th 1344, 1380-82 (2001).

As the lead agency, CEQA requires the City to determine the significance of the Project's emissions with or without established significance thresholds. Guidelines § 15064. CAPCOA provides various means by which a lead agency can determine the significance of project emissions (CAPCOA 2008). Importantly, a universally adopted methodology is *not* necessary to analyze project impacts. *Berkeley Keep Jets*, 91 Cal.App.4th at 1370 ("the fact that a single methodology does not exist...requires the [respondent] to do the necessary work to educate itself about the different methodologies that *are* available.").

"The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data." Guidelines § 15064(b). Any determination of whether there is a fair argument that the project may have a significant impact must include the consideration of the California Global Warming Solutions Act of 2006 (AB 32), wherein the State of California recognized that "global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California" and required that existing levels of greenhouse gases be reduced to 1990 levels by 2020. Health & Safety Code §§ 38501(a), 38550. Because AB 32 establishes that existing greenhouse gas levels are unacceptable and must be substantially reduced within a fixed timeframe, any additional emissions that contribute to existing levels frustrate California's ability to meet its ambitious and critical emissions reduction mandate. Ignoring emissions from smaller sources would be neglecting a major portion of the greenhouse gas inventory.

In accordance with the scientific and factual data, the City should adopt a zero significance threshold for the Project's greenhouse gas emissions. As noted by the Ninth Circuit

in *Center for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*:

> [W]e cannot afford to ignore even modest contributions to global warming. If global warming is the result of the cumulative contributions of myriad sources, any one modest in itself, is there not a danger of losing the forest by closing our eyes to the felling of the individual trees?

508 F.3d 508, 550 (9th Cir. 2007). Accordingly, the City must unequivocally consider Project emissions to be a potentially significant impact.

E. THE EIR MUST ANALYZE AND ADOPT ALL FEASIBLE MITIGATION MEASURES TO REDUCE THE PROJECT'S GREENHOUSE GAS EMISSIONS

In addition to thoroughly evaluating project alternatives, because it is clear that the project's greenhouse gas emissions will cumulatively contribute to global warming, "the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified." *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors*, 91 Cal.App.4th 342, 360 (2001). CEQA requires that agencies "mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Pub. Res. Code § 21002.1(b). Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). Therefore, it is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." Pub. Res. Code § 21002. Importantly, mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles*, 83 Cal.App.4th 1252, 1261 (2000).

To the extent that the project moves forward as planned, there are many mitigation measures the City can consider, as described below. This is not an exhaustive list and the EIR should explore these and all other feasible mitigation measures that will reduce the project's greenhouse gas emissions (CAPCOA 2008; California Office of the Attorney General 2008).

i. Land Use Measures Reducing Traffic Flow

The development plan for the proposed project should incorporate public transit into the project design and should attempt to facilitate the use of public transit. (California Office of the Attorney General 2008). Additionally, the EIR should analyze ways of including pedestrian and bicycle only streets and plazas within the development and create routes that will allow residents to reach the commercial center, schools and parks by public transportation, bicycling and walking.

ii. Land Use and Energy

The EIR should consider mitigation measures that will ensure the planned community will use energy efficiently and conservatively. In doing so, it should analyze incorporating "green building" in the development. Green buildings are those buildings that lower energy consumption, use renewable energy, conserve water, harness natural light and ventilation, use environmentally friendly materials and minimize waste (Commission for Environmental Cooperation 2008).

Buildings create environmental impacts throughout their lifecycle, from the construction phase to their actual use to their eventual destruction (Commission for Environmental Cooperation 2008). In the United States, buildings account for 40 percent of total energy use, 68 percent of total electricity consumption, and 60 percent of total non-industrial waste (Commission for Environmental Cooperation 2008). Buildings also significantly contribute to the release of greenhouse gases. In the U.S. they account for 38 percent of total carbon dioxide emissions (Commission for Environmental Cooperation 2008). More specifically, residential buildings cause up to 1,210 megatons of carbon dioxide, while commercial building create approximately 1,020 megatons (Commission for Environmental Cooperation 2008). This is because buildings require a lot of energy for their day to day operations. Most of the coal-fired power plants – one of the biggest sources of greenhouse gas emissions -- slated for development in the United States will supply buildings with the energy they need. In fact, 76 percent of the energy these plants produce will go to operating buildings in the U.S. (Commission for Environmental Cooperation 2008).

Using green building techniques, however, can substantially reduce buildings' influence in increasing greenhouse gas emissions. Green buildings help reduce the amount of energy used to light, heat, cool and operate buildings and substitute carbon-based energy sources with alternatives that do not result in greenhouse gas emissions (Commission for Environmental Cooperation 2008). Currently green buildings can reduce energy by 30 percent or more and carbon emissions by 35 percent. (Commission for Environmental Cooperation 2008). The technologies available for green building are already in wide-use and include "passive solar design, high-efficiency lighting and appliances, highly efficient ventilation and cooling systems, solar water heaters, insulation materials and techniques, high-reflectivity building materials and multiple glazing (IPCC 2007c). Additionally, the U.S. Green Building Council (USGBC), a private, nonprofit corporation, has established a nationwide green building rating system, called Leadership in Energy and Environmental Design ("LEED"). The LEED standard supports and certifies successful green building design, construction and operations. It is one of the most widely used and recognized systems, and to obtain LEED certification from the USGBC, project architects must verify in writing that design elements meet established LEED goals.

Specific mitigation for the greenhouse gas emissions generated by the Project's energy consumption include, but are not limited to:

- Analyzing and incorporating the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) or comparable standards for energy- and resource-

efficient building during pre-design, design, construction, operations and management.

- Designing buildings for passive heating and cooling, and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.;
- Designing buildings for maximum energy efficiency including the maximum possible insulation, use of compact florescent or other low-energy lighting, use of energy efficient appliances, etc.
- Reducing the use of pavement and impermeable surfaces;
- Requiring water re-use systems;
- Installing light emitting diodes (LEDs) for traffic, street and other outdoor lighting
- Limiting the hours of operation of outdoor lighting
- Maximizing water conservation measures in buildings and landscaping, using drought-tolerant plants in lieu of turf, planting shade trees;
- Ensure that the Project is fully served by full recycling and composting services;
- Ensure that the Project's wastewater and solid waste will be treated in facilities where greenhouse gas emissions are minimized and captured.
- Installing the maximum possible photovoltaic array on the building roofs and/or on the project site to generate all of the electricity required by the Project, and utilizing wind energy to the extent necessary and feasible;
- Installing solar water heating systems to generate all of the Project's hot water requirements;
- Installing solar or wind powered electric vehicle and plug-in hybrid vehicle charging stations to reduce emissions from vehicle trips.

iii. Mitigation Related to Project Construction

- Utilize recycled, low-carbon, and otherwise climate-friendly building materials such as salvaged and recycled-content materials for building, hard surfaces, and non-plant landscaping materials;
- Minimize, reuse, and recycle construction-related waste;
- Minimize grading, earth-moving, and other energy-intensive construction practices;
- Landscape to preserve natural vegetation and maintain watershed integrity;
- Utilize alternative fuels in construction equipment and require construction equipment to utilize the best available technology to reduce emissions.

iv. Transportation Mitigation Measures

- Encourage and promote ride sharing programs through such methods as a specific percentage of parking spaces for ride sharing vehicles;
- Create a car sharing program within the planned community;
- Create a light vehicle network, such as a neighborhood electric vehicle (NEV) system;
- Provide necessary facilities and infrastructure to encourage residents to use low or zero-emission vehicles, for example, by developing electric vehicle charging facilities and conveniently located alternative fueling stations;
- Provide a shuttle service to public transit within and beyond the planned community;

- Incorporate bicycle lanes and routes into the planned community's street systems.

v. Carbon Offsets

After all measures have been implemented to reduce emissions in the first instance, remaining emissions that cannot be eliminated may be mitigated through offsets. Care should be taken to ensure that offsets purchased are real (additional), permanent, and verified, and all aspects of the offsets should be discussed in the EIR. As demonstrated by the Office of the Attorney General offsets are a feasible CEQA mitigation measures[6] once all feasible mitigation measures have been adopted to reduce the Project's carbon footprint and produce energy using renewable sources.

III. THE EIR MUST CONSIDER A REASONABLE RANGE OF ALTERNATIVES

The EIR must consider a meaningful analysis of reasonable alternatives to the Project in order to lessen or avoid the Project's significant impacts. CEQA mandates that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d). A rigorous analysis of reasonable alternatives to the project must be provided to comply with this strict mandate. "Without meaningful analysis of alternatives in the EIR, neither courts nor the public can fulfill their proper roles in the CEQA process." *Laurel Heights Improvement Ass'n v. Regents of University of California*, 47 Cal.3d 376, 404 (1988). Moreover, "[a] potential alternative should not be excluded from consideration merely because it 'would impede to some degree the attainment of the project objectives, or would be more costly" even when that alternative includes Project development on an alternative site. *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437, 1456-57 (2007) (quotations omitted).

The EIR must consider a reasonable range of alternatives including, but not limited to, the following: creation of the Project on an alternative site that does not impact SKR habitat, existing core reserves, or connections between existing reserves; Development of the Project on exisiting lands previously disturbed by development and exclusion of development on undeveloped lands; and increased density, mixed use development, transportation oriented design surrounding existing transit nodes or transit corridors within or adjacent to the Project area; and mixed use development combined with preservation and enhancement of existing wildlife habitat.

In analyzing the no-project alternative, the EIR must discuss the need for this project and whether the uses that would potentially utilize the Project can be accommodated in existing areas. As CAPCOA states in its white paper, one way local governments can avoid significant increases in greenhouse gas emissions and help solve the problem of global warming is to

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6 The California Attorney General's Office has adopted CEQA settlements calling for the auditing, reduction, and offsetting of greenhouse gas emissions related with a Project demonstrating that offsets are a feasible way to reduce a Project's negative environmental effects on global warming. See http://ag.ca.gov/newsalerts/release.php?id=1466&category=global%20warming See generally http://ag.ca.gov/globalwarming/ceqa.php

"facilitate more efficient and economic use of the lands" already developed within the community (CAPCOA 2008). Reinvesting in existing communities is "appreciably" more efficient than new development and may even result in a net reduction of greenhouse gases (CAPCOA 2008). The EIR should consider an alternative that relies more on higher-density mixed commercial/residential development projects on existing disturbed lands in order to support the reduction of vehicle trips, promote alternatives to individual vehicle travel, and encourage efficient delivery of services and goods (Office of the California Attorney General 2008).

An analysis of alternatives should also quantify the estimated greenhouse gas emissions, quantified impacts to biological resources, water resources including water quality and water availability, and traffic resulting from each proposed alternative.

CONCLUSION

Thank you for your attention to these comments. We look forward to working with the County to assure that the EIR conforms to the requirements of CEQA to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. Should you have any questions feel free to contact Jonathan Evans at the contact information listed above.

The Center for Biological Diversity, San Bernardino Valley Audubon Society, and Sierra Club wish to be placed on the mailing list for all future notices regarding this project. Please mail all notices to CBD at the address listed above (via email at jevans@biologicaldiversity.org); San Bernardino Valley Audubon Society at and P. O. Box 10973, San Bernardino, California 92423-0973; and Sierra Club, San Gorgonio Chapter, Moreno Valley Group, 26711 Ironwood Ave, Moreno Valley, CA. 92555.

Best regards,

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Center for Biological Diversity

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Moreno Valley Group
San Gorgonio Chapter
Sierra Club

Drew Feldman
Chapter President
San Bernardino Valley Audubon Society

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COUNTY OF RIVERSIDE
SPECIALIZED DEPARTMENT RECEIPT
Permit Assistance Center

R0912510

4080 Lemon Street
Second Floor
Riverside, CA 92502
(951) 955-3200

39493 Los Alamos Road
Suite A
Murrieta, CA 92563
(951) 600-6100

38686 El Cerrito Road
Palm Desert, CA 92211
(760) 863-8277

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Received from: HOGLE-IRELAND INC $983.28
paid by: CK 2046
paid towards: PP22925 NOT EXEMPT FROM CEQA
at parcel #:
appl type: PP03

By_____ Aug 31, 2009 14:32
SBROSTRO posting date Aug 31, 2009

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Account Code	Description	Amount
200063130100230168	CMP TRANS PLAN	$28.00
100001000100777520	CLERK OF THE BOARD	$26.00
202033100200772210	LMS SURCHARGE	$19.28
100003120100777180	PLANNING: APPEALS	$910.00

Overpayments of less than $5.00 will not be refunded!

Additional info at www.rctlma.org

Appeal - 3rd par 9/22/09 PC

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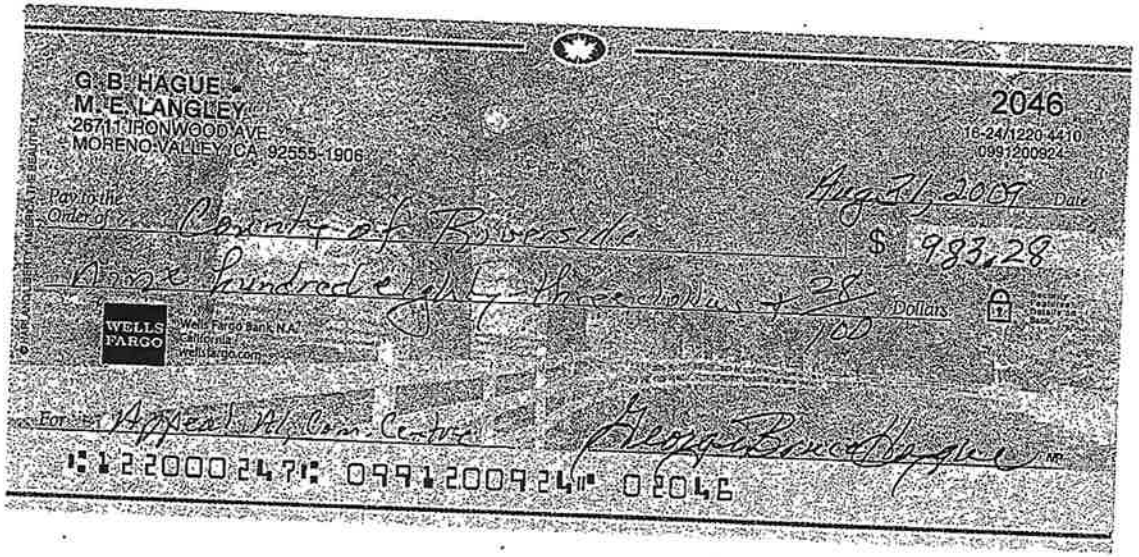


G. B. HAGUE
M. E. LANGLEY
26711 IRONWOOD AVE
MORENO VALLEY, CA 92555-1906

2046
16-24/1220-4410
0991200924

Pay to the Order of: County of Riverside

Aug 21, 2009 Date

$ 993.28

Nine Hundred eighty-three and 28/100 Dollars

WELLS FARGO
Wells Fargo Bank, N.A.
California
wellsfargo.com

For: Appeal At. Com. Center

George Bruce Hague

⑆122000247⑆ 0991200924⑈ 02046

PROPERTY OWNERS CERTIFICATION FORM

I, VINNIE NGUYEN, certify that on 6/16/09,

The attached property owners list was prepared by Riverside County GIS,

APN (s) or case numbers PP22925 For

Company or Individual's Name Planning Department,

Distance buffered 600'.

Pursuant to application requirements furnished by the Riverside County Planning Department, Said list is a complete and true compilation of the owners of the subject property and all other property owners within 600 feet of the property involved, or if that area yields less than 25 different owners, all property owners within a notification area expanded to yield a minimum of 25 different owners, to a maximum notification area of 2,400 feet from the project boundaries, based upon the latest equalized assessment rolls. If the project is a subdivision with identified off-site access/improvements, said list includes a complete and true compilation of the names and mailing addresses of the owners of all property that is adjacent to the proposed off-site improvement/alignment.

I further certify that the information filed is true and correct to the best of my knowledge. I understand that incorrect or incomplete information may be grounds for rejection or denial of the application.

NAME: Vinnie Nguyen

TITLE GIS Analyst

ADDRESS: 4080 Lemon Street 2nd Floor

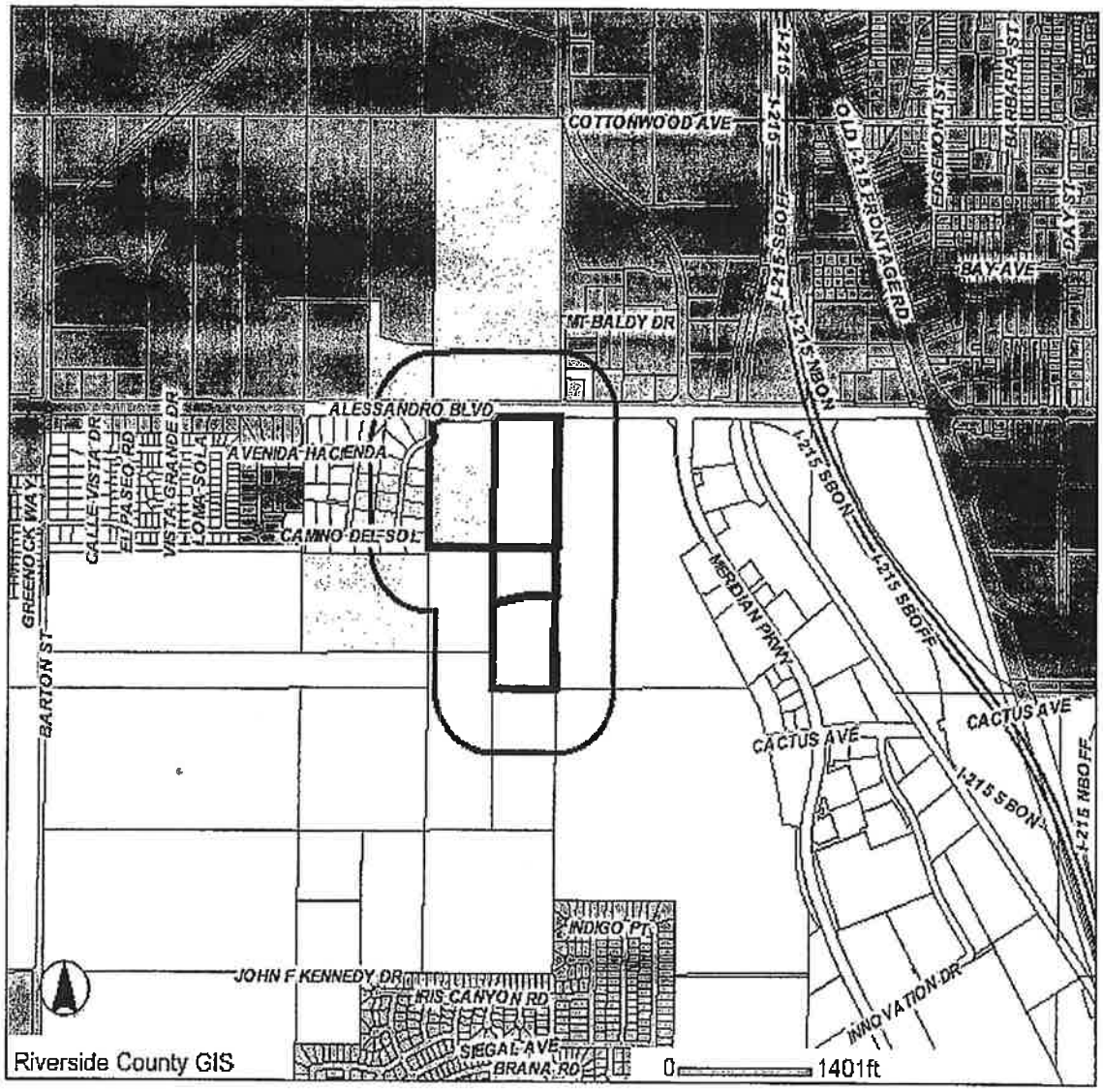
Riverside, Ca. 92502

TELEPHONE NUMBER (8 a.m. – 5 p.m.): (951) 955-8158

✓ 6.17.09 CB

EXPIRES 12.16.09

600 feet buffer



Selected parcel(s):

263-060-021	263-060-032	263-250-064	297-061-005	297-061-006	297-061-007	297-061-008
297-061-009	297-061-010	297-061-011	297-061-012	297-063-001	297-063-002	297-072-001
297-072-002	297-072-003	297-072-004	297-072-005	297-073-001	297-073-002	297-073-003
	297-073-004	297-073-005	297-073-006	297-080-004	297-080-007	

MAP PRINTED ON...06/16/2009

APN: 263060021 ASMT: 263060021
CORAC ALESSANDRO
C/O GARY EDWARDS
500 NEWPORT CENTER DR 630
NEWPORT BEACH CA 92660

APN: 263060032 ASMT: 263060032
GIBSON RIVERSIDE PROP
2410 YATES AVE
COMMERCE CA 90040

APN: 263250064 ASMT: 263250064
CHRISTIAN E SINGLETARY
RU ANNA SINGLETARY
2023 CHICAGO AVE NO B8
RIVERSIDE CA 92507

APN: 297061005 ASMT: 297061005
ALBERTO URENA
SOCRATES URENA
20620 AVENIDA HACIENDA
RIVERSIDE CA. 92508

APN: 297061006 ASMT: 297061006
ROBERT J GONZALES
LUPE R GONZALES
14050 AVENIDA LUNA
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APN: 297061007 ASMT: 297061007
MARILYN SUTTON
14080 AVENIDA LUNA
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APN: 297061008 ASMT: 297061008
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BEATRIZ ZIEGENFUS
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APN: 297061009 ASMT: 297061009
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14075 CAMINO DEL ORO
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APN: 297061010 ASMT: 297061010
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14055 CAMINO DEL ORO
RIVERSIDE CA. 92508

APN: 297061011 ASMT: 297061011
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KIM TRINH THI CHAU
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999 N W GRAND BLV STE 100
OKLAHOMA CITY OK 73118

APN: 297080004 ASMT: 297080004
MARCH JOINT POWERS AUTHORITY
C/O ELLEN STEPHENS FINANCE MANAGER
23555 MEYER DR
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APN: 297080007 ASMT: 297080007
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FULLERTON CA 92832

PROPERTY OWNERS CERTIFICATION FORM
Alessandro Commerce Centre
APN's 297-080-007 - 010

I, Mickey Zolezio, certify that on
(Print Name)
8/31/2009 the attached property owners list
(Date)
was prepared by County of Riverside / GIS
(Print Company or Individual's Name)
Distance Buffered : 800'

Pursuant to application requirements furnished by the Riverside County Planning Department; Said list is a complete and true compilation of the owners of the subject property and all other property owners within 600 feet of the property involved, or if that area yields less than 25 different owners, all property owners within a notification area expanded to yield a minimum of 25 different owners, to a maximum notification area of 2,400 feet from the project boundaries, based upon the latest equalized assessment rolls. If the project is a subdivision with identified off-site access/improvements, said list includes a complete and true compilation of the names and mailing addresses of the owners of all property that is adjacent to the proposed off-site improvement/alignment.

I further certify that the information filed is true and correct to the best of my knowledge. I understand that incorrect or incomplete information may be grounds for rejection or denial of the application.

NAME: Mickey Zolezio

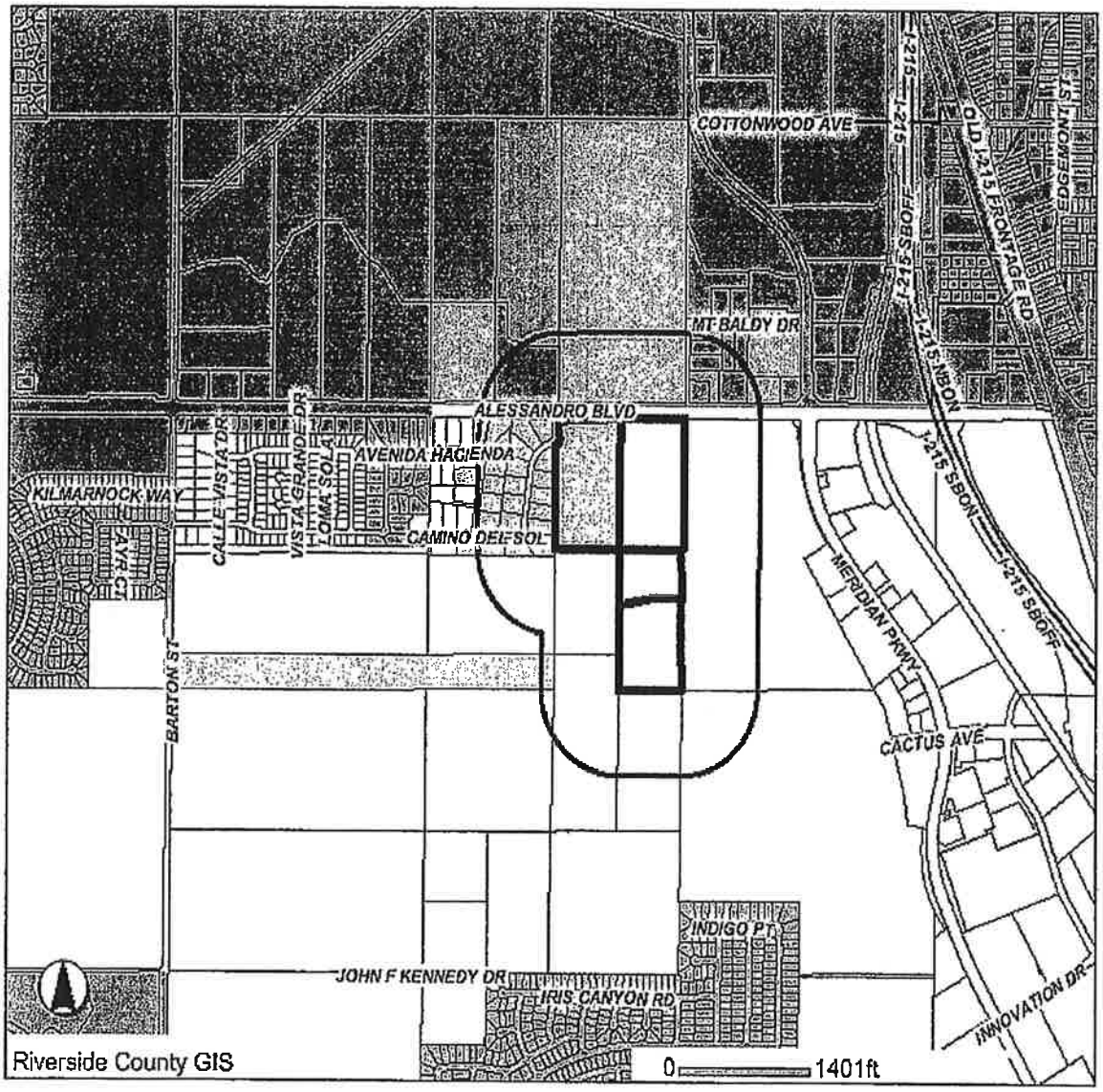
TITLE/REGISTRATION Senior GIS Analyst

ADDRESS: 4080 Lemon St. 2nd Floor

Riverside, CA 92501

TELEPHONE (8 a.m. – 5 p.m.): (951) 955-4649

Alessandro Commerce Centre

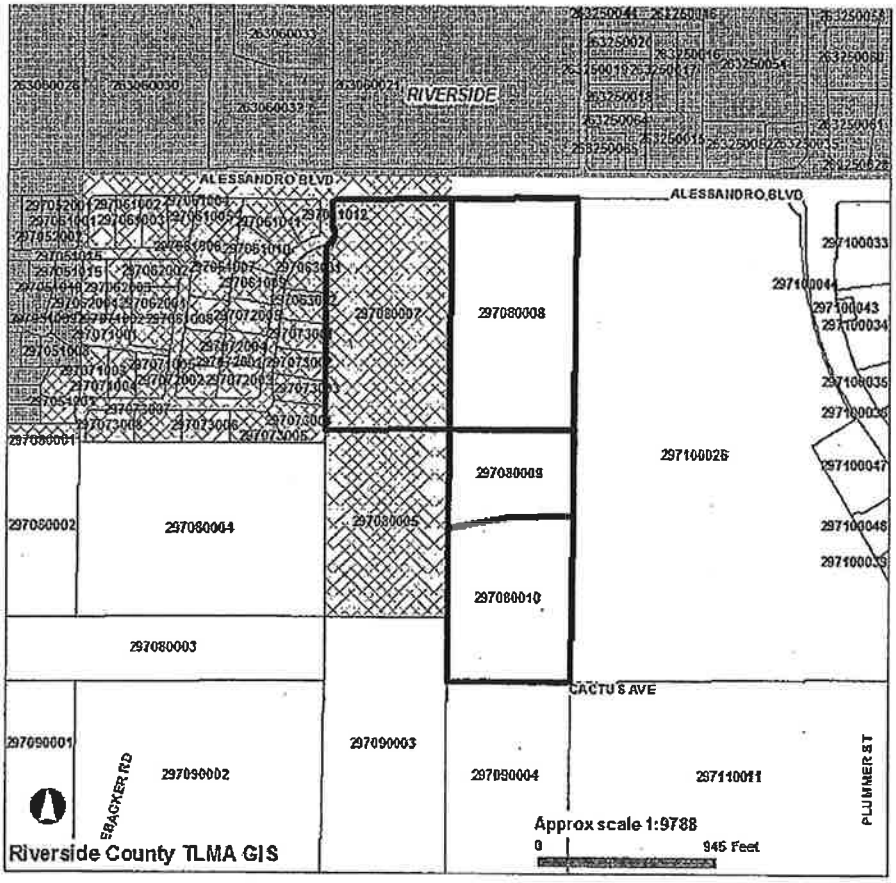


Selected parcel(s):

263-060-021	263-060-030	263-060-033	263-250-052	263-250-054	263-250-064	297-061-004
297-061-005	297-061-006	297-061-007	297-061-008	297-061-009	297-061-010	297-061-011
297-061-012	297-062-001	297-062-002	297-063-001	297-063-002	297-072-001	297-072-002
297-072-003	297-072-004	297-072-005	297-073-001	297-073-002	297-073-003	297-073-004
	297-073-005	297-073-006	297-073-007	297-080-003	297-080-007	

MAP PRINTED ON...08/31/2009

Allesandro Commerce Centre: Plot Plan 22925 / EIR 51



Selected parcel(s):
297-080-007 297-080-008 297-080-009 297-080-010

CITY BOUNDARY/SPHERE

SELECTED PARCEL | PARCELS | RIVERSIDE | RIVERSIDE SPHERE OF INFLUENCE

IMPORTANT
This information is made available through the Riverside County Geographic Information System. The information is for reference purposes only. It is intended to be used as base level information only and is not intended to replace any recorded documents or other public records. Contact appropriate County Department or Agency if necessary. Reference to recorded documents and public records may be necessary and is advisable.

REPORT PRINTED ON...Thu Aug 27 2009 17:54:20 GMT-0700 (Pacific Daylight Time)

Plot Plan 22925 / Environmental Impact Report 510; APNs 297-080-007 through 297-080-010