

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

504B



**FROM:** TLMA - Planning Department

**SUBMITTAL DATE:**  
October 18, 2012

**SUBJECT: SPECIFIC PLAN NO. 380, GENERAL PLAN AMENDMENT NO. 951, CHANGE OF ZONE NO. 7723** - Certify an Environmental Impact Report – Applicant: Hanna Marital Trust – Engineer/Representative: Jack Dimond – Third Supervisorial District – French Valley Community – Southwest Area Plan: Rural: Rural Residential (R: RR) (5 Acre Minimum) – Highway 79 Policy Area – Location: Northerly of Keller Road, easterly of Pourroy Road, on the southerly of foothills that are approximately ½ mile south of Scott Road and westerly of State Highway 79 – 201.1 Gross Acres – Zoning: Rural Residential (R-R) – **REQUEST:** The Specific Plan proposes eight (8) land use Planning Areas, ranging from 8.8 acres to 61.1 acres. The Specific Plan proposes up to 400,000 square feet of commercial retail uses and up to 200,000 square feet of commercial office uses on 13.9 acres, medium density residential uses (up to 73 dwelling units with a minimum lot size of 5,000 sq.ft.) low density residential uses (up to 22 dwelling units with ½ acre minimum lot sizes) on 36.4 acres, 21.6 acres for mixed use (up to an additional 225 housing units within a Continuing Care Retirement Community), 61.1 acres for open space conservation, and 20.2 acres for master plan roadways. The General Plan Amendment proposes to change the site's foundation component from Rural to Community Development, and amend the land use designation from Rural Residential (R:RR) to Community Development Specific Plan: (CD:SP) with Community Development: Low Density Residential (CD:LDR), Community Development: Medium Density Residential (CD:MDR), Commercial Retail (CD:CR), Commercial Office (CD:CO), Mixed Use (CD:MU), Open Space Conservation (OS-C) and Very Low Density Residential (CD:VLDR) as reflected in the Specific Plan Land Use Plan. The Change of Zone proposes to change the existing zoning of the project site from Rural Residential (R-R) to Specific Plan (SP) zone and establish legal boundaries for each of the 8 Planning Areas. The Environmental Impact Report has analyzed the potential

*Carolyn Syms Luna*  
\_\_\_\_\_  
Carolyn Syms Luna  
Planning Director

Initials:  
CSL:ms *DL*

(continued on attached page)

REVIEWED BY EXECUTIVE OFFICE

DATE 11/7/12  
*Tina Grande*  
Departmental Concurrence

- Dep't Recomm.:  Consent  Policy
- Per Exec. Ofc.:  Consent  Policy

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Stone, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is tentatively approved as recommended, and staff is directed to prepare the necessary documents for final action.

**Ayes:** Buster, Tavaglione, Stone, Benoit and Ashley  
**Nays:** None  
**Absent:** None  
**Date:** December 18, 2012  
**xc:** Planning(2), Applicant, Co Co

Kecia Harper-Ihem  
Clerk of the Board  
By: *[Signature]*  
Deputy

**Prev. Agn. Ref.**  **District:**  **Agenda Number:**   
 Third/Third

ATTACHMENTS FILED

**16.1**

The Honorable Board of Supervisors

Re: SPECIFIC PLAN NO. 380 / GENERAL PLAN AMENDMENT NO. 951 / CHANGE OF ZONE NO. 7723 / ENVIRONMENTAL IMPACT REPORT NO. 525

Page 2 of 3

environmental impacts of the proposed project.

**RECOMMENDED MOTION:**

**CERTIFICATION** of the **ENVIRONMENTAL IMPACT REPORT NO. 525**, based on the findings incorporated in the EIR, and subject to resolution adoption by the Riverside County Board of Supervisors; and,

**APPROVAL** of **SPECIFIC PLAN NO. 380**, based on the findings and conclusions incorporated in the staff report, subject to the proposed conditions of approval; and, pending adoption of the Specific Plan Resolution by the Board of Supervisors; and,

**APPROVAL** of **GENERAL PLAN AMENDMENT NO. 951** amending the Land Use Designation for the subject property to Specific Plan as reflected by the land use diagram; based on the findings and conclusions incorporated in the staff report; and, pending final adoption of the General Plan Amendment Resolution by the Board of Supervisors; and,

**APPROVAL** of **CHANGE OF ZONE NO. 7723**, amending the zoning classification for the subject property from Rural Residential (R-R) to Specific Plan (SP) in accordance with the Zoning Exhibit; and to adopt a project specific Zoning Ordinance amendment to the text of Ordinance No. 348 based upon the findings and conclusions incorporated in the staff report; and, pending Ordinance adoption by the Board of Supervisors.

**BACKGROUND:**

The project site (Specific Plan Area) is approximately 200 acres, is located in the French Valley community, and is in the Sphere of Influence of the City of Murrieta. The General Plan amendment was initiated by the Board of Supervisors on March 31, 2009. The initiation was from Rural: Rural Residential to Community Development: Specific Plan.

The Planning Commission, through two public hearings (April 18, 2012 and October 17, 2012) recommended approval of the project, by a vote of 3-1 (Roth opposed, Sanchez abstained).

The Commission requested that the following text be added to the zoning Ordinance for the Project:

- All structures in Planning Area No. 3 shall have a height limitation of 15' not including parapets or architectural projections; except,
- 45' structures are permitted only in the northeast corner of the Planning Area No. 3, and then only where the building is opposite a commercial use. In addition, any three story building shall be stepped so that the third story is significantly set back from the ground floor. No vertical planes shall be permitted.

Additionally, some minor condition of approval modifications are being proposed:

- Six conditions of approval (60. E. Health.1, and 60. EPD. 2., 3., 4., and 5.) will be reorganized so they can be properly implemented when placed on future projects.
- One Transportation condition was deleted as it did not apply (60.Trans.1)

The Honorable Board of Supervisors

Re: SPECIFIC PLAN NO. 380 / GENERAL PLAN AMENDMENT NO. 951 / CHANGE OF  
ZONE NO. 7723 / ENVIRONMENTAL IMPACT REPORT NO. 525

Page 3 of 3

- 30. Planning. 11 added a maximum life to the Specific Plan. The Condition has been modified to clarify that the County would have to proactively begin revocation hearings should the life be exceeded. The permit cannot automatically expire.

3 MIN

**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
Speakers are entitled to three (3) minutes, subject  
Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Paul Jacobs

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** Temecula **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12/18/12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**  
\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    \_\_\_\_\_ **Neutral**

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\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_

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**SPEAKER'S NAME:** Garry Grant

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

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\_\_\_\_\_ **Support**      \_\_\_\_\_ **Oppose**      \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** Paul Jacobs

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Request to Speak**

*10 min*

Submit request to Clerk of Board (right of podium),  
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**SPEAKER'S NAME:** KIRK GORLING

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** WINCHESTER **Zip:** 92596

**Phone #:** (951) 325-8486

**Date:** 12-18-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

       **Support**             **Oppose**        X   **Neutral**  
*UNTIL I KNOW WHAT HAS BE DECIDED*

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**I give my 3 minutes to:** \_\_\_\_\_



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Request to Speak**

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**SPEAKER'S NAME:** Michael Gurling

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** WINCHESTER **Zip:** 92596

**Phone #:** 951-325-8486

**Date:** 12-18-12 **Agenda #** 16.1

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Support     Oppose     Neutral

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Support     Oppose     Neutral

**I give my 3 minutes to:** Kirk Gurling

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Request to Speak**

*6 min.*

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**SPEAKER'S NAME:** RANDY WILLIAMS

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** WINCHESTER **Zip:** 92596

**Phone #:** (951) 966-7714

**Date:** 12-18-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

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**Support**       **Oppose**       **Neutral**

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**I give my 3 minutes to:** \_\_\_\_\_

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**SPEAKER'S NAME:** SHIRLEY GURLING

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 951-506-9715

**Date:** \_\_\_\_\_ **Agenda #** 16.1

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\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    X **Neutral**

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**I give my 3 minutes to:** RANDY WILLIAMS

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*6min.*

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**SPEAKER'S NAME:** DENNIS F. TUFFIN

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** WINCHESTER **Zip:** 92595

**Phone #:** 81-897-5713

**Date:** 12/18/12 **Agenda #** 16.1 380<sup>5P</sup>

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**I give my 3 minutes to:** \_\_\_\_\_



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**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
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Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Sharon Gurling

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** WINCHESTER **Zip:** 92596

**Phone #:** 951-325-8486

**Date:** \_\_\_\_\_ **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**      **Oppose**      **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

**Support**      **Oppose**      **Neutral**

**I give my 3 minutes to:** DENNIS F. TUEFFEL

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**SPEAKER'S NAME:** MARIGOLD VELASCO

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 951.216.1448

**Date:** \_\_\_\_\_ **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:** Hanna Proj.

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**       **Oppose**       **Neutral**

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\_\_\_\_\_ **Support**      \_\_\_\_\_ **Oppose**      \_\_\_\_\_ **Neutral**

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MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



16.1

11:00 a.m. being the time set for public hearing on the recommendation from Transportation & Land Management Agency/Planning regarding Specific Plan Amendment No. 380 / General Plan Amendment No. 951 / Change Of Zone No. 7723 – Hanna Marital Trust – Jack Diamond – French Valley – Southwest Area Plan. Recommendation to Certify the Environmental Impact Report No. 525; Approval of Specific Plan No. 380 which proposes eight (8) land use Planning Areas, ranging from 8.8 acres to 61.1 acres, and also proposes up to 400,000 square feet of commercial retail uses and up to 200,000 square feet of commercial office uses on 13.9 acres, medium density residential uses (up to 73 dwelling units with a minimum lot size of 5,000 sq. ft.) low density residential uses (up to 22 dwelling units with ½ acre minimum lot sizes) on 36.4 acres, 21.6 acres for mixed use (up to an additional 225 housing units within a Continuing Care Retirement Community), 61.1 acres for open space conservation, and 20.2 acres for master plan roadways; Approval of General Plan Amendment No. 951 to change the site's foundation component from Rural to Community Development, and amend the land use designation from Rural Residential (R:RR) to Community Development Specific Plan (CD:SP) with Community Development: Low Density Residential (CD:LDR), Community Development: Medium Density Residential (CD:MDR), Commercial Retail (CD:CR), Commercial Office (CD:CO), Mixed Use (CD:MU), Open Space Conservation (OS-C) and Very Low Density Residential (CD:VLDR) as reflected in the Specific Plan Land Use Plan; and, Approval of Change of Zone No. 7723 to change the zoning from Rural Residential (R-R) to Specific Plan (SP) zone and establish legal boundaries for each of the 8 Planning Areas, 3<sup>rd</sup> District, the Chairman called the matter for hearing.

Matt Straite, Principal Planner, Planning Department, presented the matter.

Continued on second page

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on December 11, 2012 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors  
Dated: December 11, 2012  
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in  
and for the County of Riverside, State of California.

(seal)

By: [Signature] Deputy

AGENDA NO

.0.1

xc: Planning, Applicant, CQB

MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



Page 2

The following people spoke on the matter:

Jack Diamond, Applicant

Andy Domegoni

Clara Asima Kopoulos

Saba A. Saba

Richard Powell

Marc Miller

Flesperita Flonoid

Kirk Gurling

Rick Croy

Michael Gurling

Steve Rush

Theodore Karenis

Warren Baine

Dave Jeffers

Paul Attyah

Mark Richards

Garry Grant

Richard Chandler

Sharon Gurling

Amy McKaig

Wade Hough

Jana Rush

Randy Williams

Casy Klem

The Chairman closed the public hearing.

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried, IT WAS ORDERED that the above matter is continued to Tuesday, December 18, 2012 at 11:00 a.m.

Roll Call:

Ayes: Tavaglione, Stone, Benoit and Ashley

Nays: None

Absent: Buster

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on December 11, 2012 of Supervisors Minutes.

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Dated: December 11, 2012  
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(seal)

By:  Deputy

AGENDA NO.  
16.1

xc: Planning, Applicant, COB

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Submit request to Clerk of Board (right of podium),  
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**SPEAKER'S NAME:** Andy Domenigon

**Address:** 31851 Winchester Road  
(only if follow-up mail response requested)

**City:** Winchester **Zip:** 92591

**Phone #:** 951 926 6924

**Date:** 12-11 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**       **Oppose**       **Neutral**

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**I give my 3 minutes to:** \_\_\_\_\_



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**SPEAKER'S NAME:** Susan Walker

**Address:** Ø Keller Rd Kindowner  
(only if follow-up mail response requested)

**City:** Winchester **Zip:** 92596

**Phone #:** 909-824-5852

**Date:** 12-11-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**  
 **Support**       **Oppose**       **Neutral**

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**I give my 3 minutes to:** Do not wish to speak

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**SPEAKER'S NAME:** Warren A Bain

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** Murrieta **Zip:** \_\_\_\_\_

**Phone #:** 951 226 4041

**Date:** 12/11/12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

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**Support**     **Oppose**     **Neutral**

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**SPEAKER'S NAME:** Dave Jeffers

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12-11-12 **Agenda #** 16.1

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**SPEAKER'S NAME:** Clara Asimakopoulas

**Address:** 39908 Via Caravana

(only if follow-up mail response requested)

land on Keller Rd, Winchester

**City:** Mumeta **Zip:** 92563

**Phone #:** 951-894-2097

**Date:** 12-11-12 **Agenda #** 16.1

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**Support**       **Oppose**       **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_



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**Riverside County Board of Supervisors  
Request to Speak**

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Speakers are entitled to three (3) minutes, subject  
Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** PAUL ATTYAH

Landowner - Keller Road  
at Rooden

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** LA **Zip:** 90049

**Phone #:** 310 562-5153

**Date:** 12-11-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**     **Oppose**     **Neutral**

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**I give my 3 minutes to:** \_\_\_\_\_

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Request to Speak**

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Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** SABA A. SABA

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** TERRACULA **Zip:** 92591

**Phone #:** 951-676-1602

**Date:** 12/11/12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**       **Oppose**       **Neutral**

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Request to Speak**

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Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Mark Richards

**Address:** 33450 Fowler Dr  
(only if follow-up mail response requested)

**City:** Winchester **Zip:** 92596

**Phone #:** 217-1899

**Date:** 12/11/12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**     **Oppose**     **Neutral**

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Request to Speak**

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**SPEAKER'S NAME:** Richard Powell

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** Winchester **Zip:** 92596

**Phone #:** 951-553-6260

**Date:** 12/11/12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**     **Oppose**     **Neutral**

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**SPEAKER'S NAME:** GARRY GRANT

**Address:** 27068 JARVIS ST  
(only if follow-up mail response requested)

**City:** PERRIS **Zip:** 92570

**Phone #:** 951-657-9319

**Date:** DEC 11TH 07 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

Support  Oppose  Neutral

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**I give my 3 minutes to:** \_\_\_\_\_

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**SPEAKER'S NAME:** Marc Miller

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 951 764-4518

**Date:** 12-11-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

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**Support**     **Oppose**     **Neutral**

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**I give my 3 minutes to:** \_\_\_\_\_

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**SPEAKER'S NAME:** Kelly Gray

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 951-301-1912

**Date:** 12-11 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

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**Support**     **Oppose**     **Neutral**

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**I give my 3 minutes to:** MARL MILLER

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**SPEAKER'S NAME:** Jim King

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12-11-12 **Agenda #** \_\_\_\_\_

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

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the appeal below:

\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** MARC MILLER



## **BOARD RULES**

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**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
Speakers are entitled to three (3) minutes, subject  
Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Richard E. Chandler

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 951 251 4968

**Date:** 12/11/12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

\_\_\_\_\_ **Support**     **Oppose**    \_\_\_\_\_ **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_

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Request to Speak**

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**SPEAKER'S NAME:** Hesperita Flanoid

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 951-325-8078

**Date:** 12-11-2012 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**     **Oppose**     **Neutral**

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the appeal below:

**Support**     **Oppose**     **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_

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**Riverside County Board of Supervisors  
Request to Speak**

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Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Sharon Gurling

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12-11-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

\_\_\_\_\_ **Support**     **Oppose**    \_\_\_\_\_ **Neutral**

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the appeal below:

\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_

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Request to Speak**

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Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** SHIRLEY GURLING

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 951-506-9715

**Date:** 12-11-2012 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**     **Oppose**     **Neutral**

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the appeal below:

**Support**     **Oppose**     **Neutral**

**I give my 3 minutes to:** SHARON GURLING



## **BOARD RULES**

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**SPEAKER'S NAME:** KIRK R. GORLING

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** ~~951~~ 951-325-8486

**Date:** 12-11-2012 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

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\_\_\_\_\_ **Support**     **Oppose**    \_\_\_\_\_ **Neutral**

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**I give my 3 minutes to:** \_\_\_\_\_

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**SPEAKER'S NAME:** Carol Sullivan

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12-11-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

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**Support**     **Oppose**     **Neutral**

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**I give my 3 minutes to:** Kirk Gurling

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**SPEAKER'S NAME:** MARTIN ROSEN

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12/11/12 **Agenda #** 16.1

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**SPEAKER'S NAME:** Amy Mckaig

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12/11/12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**     **Oppose**     **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

**Support**     **Oppose**     **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_



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**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
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Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Rick Crowl

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 213-494-3969

**Date:** 12-11 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

\_\_\_\_\_ **Support**      X   **Oppose**    \_\_\_\_\_ **Neutral**

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\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_

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Request to Speak**

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Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Courtney Mazzotti

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** (951) 970-3733

**Date:** 12/11/12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

\_\_\_\_\_ **Support**     **Oppose**    \_\_\_\_\_ **Neutral**

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the appeal below:

\_\_\_\_\_ **Support**    \_\_\_\_\_ **Oppose**    \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** Rick Cooy

## **BOARD RULES**

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Request to Speak**

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**SPEAKER'S NAME:** Wade Hough

**Address:** 33975 Pourroy Road  
(only if follow-up mail response requested)

**City:** Winchester CA **zip:** 92596

**Phone #:** 714-614-3903

**Date:** Dec 11, 2012 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

       **Support**       X   **Oppose**            **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

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**I give my 3 minutes to:** \_\_\_\_\_

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Request to Speak**

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**SPEAKER'S NAME:** Michael Gurling

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12-11-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

\_\_\_\_\_ **Support**     **Oppose**    \_\_\_\_\_ **Neutral**

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the appeal below:

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**I give my 3 minutes to:** \_\_\_\_\_



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**SPEAKER'S NAME:** Jana Rush

**Address:** 32265 Keller Road  
(only if follow-up mail response requested)

**City:** Winchester **Zip:** 92596

**Phone #:** 951 712-2435

**Date:** 12-11-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

       **Support**        X   **Oppose**             **Neutral**

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**SPEAKER'S NAME:** Stephen Rush

**Address:** 32265 Keller Rd.  
(only if follow-up mail response requested)

**City:** Winchester **Zip:** ~~92566~~  
92596

**Phone #:** 951-712-2434

**Date:** 12-11-12 **Agenda #** S.P. 380 <sup>No. 1</sup>

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

Support  Oppose  Neutral

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**SPEAKER'S NAME:** JEFF STAUB

**Address:** 17580 SANDY  
(only if follow-up mail response requested)

**City:** RIVERSIDE **Zip:** 92504

**Phone #:** 957-218-0476

**Date:** 12-11-12 **Agenda #** S.P. 380

**PLEASE STATE YOUR POSITION BELOW:**

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**Support**     **Oppose**     **Neutral**

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**I give my 3 minutes to:** Steve Rush

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Speakers are entitled to three (3) minutes, subject  
Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** RAUDY WILLIAMS

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** 951 ~~926~~ 926-6800

**Date:** 12-11-12 **Agenda #** 16.1

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**     **Oppose**     **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

**Support**     **Oppose**     **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_



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**Riverside County Board of Supervisors  
Request to Speak**

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**SPEAKER'S NAME:** JANINE Matelka

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12-11-12 **Agenda #** 16.1

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**I give my 3 minutes to:** RANDY WILLIAMS

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Request to Speak**

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**SPEAKER'S NAME:** Cathy King

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 12-<sup>11</sup>~~18~~-12 **Agenda #** \_\_\_\_\_

**PLEASE STATE YOUR POSITION BELOW:**

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**I give my 3 minutes to:** RADDY WILLIAMS

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**SPEAKER'S NAME:** THEODORE KARNEZIS

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone #:** (949) 933-2645

**Date:** 12/11/12 **Agenda #:** 16.1

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**SPEAKER'S NAME:** Casey Clem

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** Winchester **Zip:** 92596

**Phone #:** \_\_\_\_\_

**Date:** 12/11/12 **Agenda #** 16.1

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Johnson Sedlack  
ATTORNEYS AT LAW

Raymond W. Johnson, Esq. AICP  
Abigail A. Broedling, Esq.  
Kimberly Foy, Esq.  
Carl T. Sedlack, Esq. Retired

26785 Camino Seco, Temecula, CA 92590

E-mail: EsqAICP@WildBlue.net  
Abby.JSLaw@gmail.com  
Kim.JSLaw@gmail.com  
Telephone: 951-506-9925  
Facsimile: 951-506-9725

**FAX COVER SHEET**

**DATE:** December 10, 2012  
**TO:** BOARD OF SUPERVISORS  
**COMPANY:** COUNTY OF RIVERSIDE  
**DEPARTMENT:**  
**FAX:** (951) 955-1071  
**FROM:** RAYMOND W. JOHNSON, ESQ. AICP  
**PHONE:** 951-506-9925  
**FAX:** 951-506-9725  
**RE:** Keller Crossing Final Environmental Impact Report No. 525,  
Specific Plan No. 380

**CASE NUMBER:**

Number of pages including cover sheet: 23

Urgent     For Review     Please Comment     Please Reply     Please Recycle

**COMMENTS:**

Comment letter re the above named project.

2012 DEC 10 PM 4: 50  
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CLERK / BOARD OF SUPERVISORS

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2012-12-11 5494  
12-11-12  
16.1

Johnson Sedlack

ATTORNEYS AT LAW

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*E-mail:* EsqAICP@WildBlue.net  
Abby.JSLaw@gmail.com  
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Telephone: 951-506-9925  
Facsimile: 951-506-9725

December 10, 2012

Riverside County Board of Supervisors  
4080 Lemon Street, 1<sup>st</sup> Floor  
Riverside, CA 92501  
Fax: (951) 955-1071

**VIA FACSIMILE AND E-MAIL**

***RE: Keller Crossing Final Environmental Impact Report No. 525, Specific Plan No. 380***

Greetings Board of Supervisors:

On behalf of local concerned citizens, our firm hereby submits these comments on the *Keller Crossing Final Environmental Impact Report No. 525 and Specific Plan No. 380*.

We respectfully ask that you disapprove this project. It is grossly premature, as evidenced by the fact that the Specific Plan identifies the Mixed Use area as possibly being a continuing care retirement community, but if not, it could be any type of residential or commercial use. As discussed in this comment letter, the EIR is inadequate as it fails to comply with the requirements of the California Environmental Quality Act ("CEQA") by inadequately analyzing impacts pertaining to agriculture, air quality, hydrology/water quality, noise, and traffic/transportation, among others.

CEQA was adopted as a disclosure and transparency document. The theory is that by providing a document that adequately describes the environmental consequences of a project to decision-makers and the public, the decision-makers will make a rational decision based upon the true environmental consequences of the project and if they do not, the electorate can hold them accountable for their decisions. The core of this statutory structure is the adequacy of the document as an informational document.

The Final EIR ("FEIR") continues to fail as an informational document and fails to inform the public and decision-makers of the real impacts of this project. The FEIR is also very conclusory and fails to provide the analysis and examination required by CEQA to inform the public and decision-makers of the analytical pathway taken from facts to conclusions. Generally, the findings are not supported by substantial evidence in the record.

December 10, 2012  
Page 2

Moreover, CEQA requires that *where feasible mitigation exists which can substantially lessen the environmental impacts of a project, all feasible mitigation must be adopted*. In this way, CEQA goes beyond its informational role to require that projects substantively lessen their negative effects on the environment. It is critical to proper drafting of an EIR that all feasible mitigation measures be required of a project. For this project, the EIR concludes that *unavoidable* adverse impacts will result to/from the following: air quality and noise. Feasible mitigation measures exist which would reduce these impacts, and which have not been required of this project. This is contrary to the requirements of CEQA, and the additional feasible mitigation must be required of this project.

The EIR also fails to ensure that mitigation measures are certain and fully enforceable through permit conditions, agreements, and/or other legally binding instruments. (State CEQA Guidelines § 15126.4(a)(2).) Much of the mitigation contained in the EIR is drafted in an utterly unenforceable manner. This is unacceptable and misleading to the public and decision-makers as to the extent of mitigation required of this project. Additionally, many mitigation measures have been suggested but rejected without explanation.

Lastly, the EIR fails to consider a reasonable range of alternatives, as required by CEQA.

### **Findings of Fact**

The Findings of Fact were not made available to the public prior to the meeting. Therefore, it is impossible to exhaust administrative remedies on this issue.

Even so, the findings required under CEQA cannot be made with respect to this project because not all significant effects of the project have been eliminated or substantially lessened.

### **Statement of Overriding Considerations**

The Statement of Overriding Considerations was not made available to the public prior to the meeting. Therefore, it is impossible to exhaust administrative remedies on this issue.

CEQA Guidelines § 15093(b) provides that when the agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR, but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The decision to approve a project in spite of significant environment impacts requires the decision-making agency to balance the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks. (Guidelines § 15093(a).) The statement of overriding considerations shall be supported by *substantial evidence* in the record. (*Id.*) In *Sierra Club v. Contra Costa County* (1992) 10 Cal. App. 4th 1212, 1222, the court said: "Whereas the [mitigation and feasibility] findings ... typically focus on the feasibility of specific proposed alternatives and mitigation measures, the statement of overriding considerations focuses on the

December 10, 2012  
Page 3

larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like.”

A statement of overriding considerations is improper with this project. Substantial evidence in the record does not support the adoption of a statement of overriding considerations given the immense environmental harm expected with the project balanced with minimal economic benefits. This project will have massive and detrimental impacts to, *at least*, air quality, traffic, and noise. These enormous detriments cannot be outweighed by the promise of jobs which are uncertain, unlikely, and few. A statement of overriding considerations is not supported for this project.

### **Mitigation Monitoring and Reporting Program**

The Mitigation Monitoring and Reporting Program was not made available to the public prior to the meeting. Therefore, it is impossible to exhaust administrative remedies on this issue.

CEQA requires the lead agency to establish a program to monitor and report on mitigation measures as part of the environmental review process. (Pub. Res. Code § 21081.6(a)(1).) The Mitigation Monitoring and Reporting Program is intended to ensure that mitigation measures in the EIR are fully implemented and must be adopted at the time the agency determines to carry out a project.

As detailed below, this project’s mitigation measures are deficient. Many of the measures are unenforceable and uncertain. Additionally, the project has failed to adopt all feasible mitigation measures which would reduce environmental impacts, as required by CEQA.

### **Agricultural Resources**

The finding of no significant impacts is not supported.

The project site consists of 167.6 acres of Farmland of Local Importance and is currently used for agricultural purposes. Thresholds of significance make clear that a significant impact would result if the project would: (1) convert or change existing agricultural uses or Farmland of Local Importance; or (2) involve other changes to the existing environment which would result in the conversion of existing agricultural uses or Farmland of Local Importance (FEIR, 3.2-7).

The EIR admits that “the proposed project would result in the conversion of all described on-site agricultural operations, as well as approximately 147 acres designated as Farmland of Local Importance, to non-agricultural uses” (FEIR, 3.2-8). To be sure, the project will result in a loss of nearly one percent of all agricultural lands in the County. Even so, the EIR concludes that this conversion and loss of agricultural uses and Farmland of Local Importance is not significant. This conclusion is clearly erroneous.

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Page 4

Additionally, the project conflicts with the General Plan Multipurpose Open Space Element. Open Space Policy 7.2 works to “ensure the long-term conservation of viable agricultural operations within Riverside County.” Also, Open Space Policy 7.3 “encourage[s] conservation of productive agricultural lands and preservation of prime agricultural lands.” Certainly, the conversion of 160 acres of land currently used for agricultural operations and the loss of 147 acres of Farmland of Local Importance would be at odds with these policies.

Because this project will have a significant agricultural impact, mitigation is required. At present, the EIR provides for no mitigation for agricultural impacts.

Mitigation measures identified by the California Department of Conservation to reduce agricultural impacts include:

- The purchase of agricultural conservation easements;
- Transfer of development rights;
- Acquisition of farmland by the city or county;
- Mitigation banking;
- The establishment of “urban limits,” greenbelts, and buffers;
- The payment of in-lieu fees sufficient to purchase and maintain farmland conservation easements; and
- Planning tools such as clustering development, use of density bonuses, and limiting “leapfrog” development.

Our firm proposes the following mitigation measures be required of the project:

1. Require a permanent agricultural conservation easement on land of at least 2:1 of equal quality and to compensate for the direct and growth inducing/ cumulative loss of agricultural land by one of the following methods:
  - a. The outright purchase of easements; or
  - b. Donation of mitigation fees to a local, regional, or statewide organization that provides for acquisition and stewardship of agricultural conservation easements.
2. Require the implementation of the California Department of Conservation’s 30 conservation tools, available from the California Department of Conservation upon request.

These mitigation measures, or other similar measures, must be required of this project.

December 10, 2012  
Page 5

### **Air Quality**

The project will result in significant and unavoidable impacts to air quality during construction and operation.

#### ***Construction Impacts***

While the EIR correctly finds that construction air quality impacts are significant and require mitigation, it fails to adopt all feasible mitigation measures to reduce these impacts.

Mitigation Measure AQ-3 requires only that certain pieces of equipment be CARB Tier II-certified. This measure does not go far enough. All equipment should be required to meet CARB Tier III standards.

Mitigation Measure AQ-6 is only required "to the extent feasible." This measure is thus highly uncertain and difficult to enforce. The measure is also vague in that it applies to "construction activities that affect traffic flow," rather than specifying precise activities anticipated to impact traffic.

Response to Comment E-1 is unresponsive to the commenter's suggestion of a mitigation measure prohibiting vehicle and engine idling in excess of five minutes. The project must adopt all feasible mitigation, such as this, which would decrease air quality impacts.

Additional mitigation measures are also feasible to further reduce construction air quality emissions, including the following:

1. Gravel pads must be installed at all access points to prevent tracking of mud onto public roads.
2. Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect (e.g., install wheel shakers, wheel washers, and limit site access).
3. All roadways, driveways, sidewalks, etc., should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
4. Pave all construction roads.
5. Pave all construction access roads at least 100 feet on to the site from the main road.
6. Limit fugitive dust sources to 20 percent opacity.
7. Require a dust control plan for earthmoving operations.

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8. When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
9. All streets shall be swept at least once a day using SCAQMD Rule 1186 certified street sweepers utilizing reclaimed water trucks if visible soil materials are carried to adjacent streets.
10. The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite.
11. Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 24 hours.
12. Extend grading period sufficiently to reduce air quality impacts below a level of significance.
13. The simultaneous disturbance of the site shall be limited to five acres per day.
14. Any vegetative cover to be utilized onsite shall be planted as soon as possible to reduce the disturbed area subject to wind erosion. Irrigation systems required for these plants shall be installed as soon as possible to maintain good ground cover and to minimize wind erosion of the soil.
15. Any on-site stockpiles of debris, dirt or other dusty material shall be covered or watered three times daily.
16. Any site access points within 30 minutes of any visible dirt deposition on any public roadway shall be swept or washed.
17. A high wind response plan shall be formulated for enhanced dust control if winds are forecast to exceed 25 mph in any upcoming 24-hour period.
18. Implement activity management techniques including: a) development of a comprehensive construction management plan designed to minimize the number of large construction equipment operating during any given time period; b) scheduling of construction truck trips during non-peak hours to reduce peak hour emissions; c) limitation of the length of construction work-day period; and d) phasing of construction activities.\*
19. Develop a trip reduction plan to achieve a 1.5 AVR for construction employees.
20. Require high pressure injectors on diesel construction equipment.\*



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21. Restrict truck operation to "clean" trucks, such as a 2007 or newer model year or 2010 compliant vehicles.\*
22. Require the use of CARB certified particulate traps that meet level 3 requirements on all construction equipment.\*
23. Utilize only CARB certified equipment for construction activities.\*
24. The developer shall require all contractors to turn off all construction equipment and delivery vehicles when not in use and/or idling in excess of three minutes.\*
25. Restrict engine size of construction equipment to the minimum practical size.\*
26. Use electric construction equipment where technically feasible.\*
27. Substitute gasoline-powered for diesel-powered construction equipment.\*
28. Require use of alternatively fueled construction equipment, using, e.g., compressed natural gas, liquefied natural gas, propane, or biodiesel.\*
29. Use methanol-fueled pile drivers.\*
30. Install catalytic converters on gasoline-powered equipment.\*
31. Require the use of Alternative Diesel Fuels on diesel equipment used. Alternative diesel fuels exist that achieve PM10 and NOx reductions. PuriNOx is an alternative diesel formulation that was verified by CARB on January 31, 2001 as achieving a 14 percent reduction in NOx and a 63 percent reduction in PM10 compared to CARB diesel. It can be used in any direct-injection, heavy-duty compression ignition engine and is compatible with existing engines and existing storage, distribution, and vehicle fueling facilities. Operational experience indicates little or no difference in performance and startup time, no discernable operational differences, no increased engine noise, and significantly reduced visible smoke.
32. Electrical powered equipment shall be utilized in-lieu of gasoline-powered engines where technically feasible.\*
33. All forklifts shall be electric or natural gas powered.\*
34. Suspend use of all construction equipment operations during second stage smog alerts.\*
35. Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow.\*
36. Provide dedicated turn lanes for movement of construction trucks and equipment on- and

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off-site.\*

37. Reroute construction trucks away from congested streets and sensitive receptor areas.\*
38. Configure construction parking to minimize traffic interference.\*
39. Prior to the issuance of a grading and building permit, the applicant shall submit verification that a ridesharing program for the construction crew has been encouraged and will be supported by the contractor via incentives or other inducements.\*
40. Minimize construction worker trips by requiring carpooling and providing for lunch onsite.\*
41. Provide shuttle service to food service establishments/commercial areas for the construction crew.\*
42. Provide shuttle service to transit stations/multimodal centers for the construction crew.\*
43. Require the use of Zero-VOC paints, coatings, and solvents.

(\* Would reduce impacts to GHGs as well.)

### ***Operational Emissions***

The EIR traffic analysis relies on a false assumption which causes the operational emissions generated by this project to be greatly underestimated. The EIR uses extremely low trip generation rates based on a continuing care retirement community. However, the Specific Plan recognizes that *any* commercial or residential use is permitted in the Mixed Use area. An assumption of retirement community trip rates is thus entirely unreasonable. Estimated traffic generation is less than 25 percent of the actual potential for the area. As a result, the stated air quality impacts from mobile sources are merely a portion of the actual impacts which may result from the approval of this project.

But even ignoring the fact that EIR operational emissions are seriously underestimated, the estimated operational emissions are still substantial and concerning. By far, the main source of the project's operational emissions is mobile source emissions. Yet, the mitigation measures adopted fail to reduce mobile source emissions, focusing instead on the energy efficiency of the building (e.g., Mitigation Measure AQ-12). The project's non-mobile source operational emissions are essentially limited to ROG emissions. In this respect, and in other respects as explained below, the air quality mitigation measures are extremely deficient.

Mitigation Measure AQ-12 does not go far enough in that it only requires that the project's building energy efficiency exceed Title 24 by 15 percent. Moreover, the purported purpose of this mitigation measure is to address emissions of criteria pollutants which will exceed regional

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thresholds. However, as Title 24 deals with building energy efficiency, other mitigation measures concerning mobile emissions and vehicle standards, the primary contributors to the problem, are not required to be implemented in order to satisfy the goal of the mitigation.

Response to Comment G-2 is unresponsive to the commenter's concern that Mitigation Measure AQ-12 only requires compliance with the 2008 code, rather than the 2010 version. The response states that "the project will need to comply with the California Energy Code in effect at the time of construction," but this is not conveyed in AQ-12. The response fails to explain why the 2010 version was not referenced, as it is the most recent version of the code, and does not address requiring compliance with the 2010 California Green Building Standards at all.

Even more problematic, AQ-12 does not in any way require the implementation of each of the measures contained therein. The listing of alternatives to satisfy this mitigation measure is misleading and causes the EIR to fail as an informational document.

Additionally, CEQA also requires that where feasible mitigation exists which can substantially lessen the environmental impacts of a project, all feasible mitigation must be adopted. It is reasonable to assume that any measures, even if they are presented as supplemental or as alternatives, listed as mitigation in the EIR are feasible. If the measures were not feasible, then the EIR would be deceptive to the public and decision-makers. Mitigation Measure AQ-12 provides a list of four measures which "*may* be used to fulfill this mitigation measure" (emphasis added). These are feasible measures which are not required of the project and which would lessen impacts.

More generally, *the mitigation required of this project to reduce operational air quality impacts does not incorporate all feasible mitigation*. Most of this project's operational emissions will derive from mobile sources, and no mitigation measures directly pertain to reducing these emissions. These measures must simply be *required* mitigation for the project, as these measures will actually reduce the project's mobile source operational emissions.

The following mitigation measures are feasible and must be required of this project:

1. The operator of the primary facilities shall become SmartWay Partner.\*
2. The project shall meet SmartWay 1.25 ratings.\*
3. The project shall use only freight companies that meet SmartWay 1.25 ratings.\*
4. (ALTERNATIVELY from 2,3 above) The operator of the primary facilities shall incorporate requirements or incentives sufficient to achieve at least 20% per year (as a percentage of previous percentage, not total trips) increase in percentage of long haul trips carried by SmartWay carriers until it reaches a minimum of 90% of all long haul

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- trips carried by SmartWay 1.0 or greater carriers. Results, including backup data shall be reported to the Planning Department semi-annually.\*
5. The operator of the primary facilities shall incorporate requirements or incentives sufficient to achieve a 15% per year (as a percentage of previous percentage, not total trips) increase in percentage of consolidator trips carried by SmartWay carriers until it reaches a minimum of 85% of all consolidator trips carried by SmartWay 1.0 or greater carriers. Results, including backup data shall be reported to the Planning Department semi-annually.\*
  6. All fleet vehicles shall conform to 2010 air quality standards or better. Results, including backup data shall be reported to the Planning Department semi-annually.\*
  7. All spaces utilizing refrigerated storage, including restaurants and food or beverage stores, shall provide an electrical hookup for refrigeration units on delivery trucks. Trucks incapable of utilizing the electrical hookup for powering refrigeration units shall be prohibited from accessing the site. All leasing documents shall include these requirements and provide that violation of those provisions will constitute a material breach of the lease that will result in the termination of the lease. Because of the fact that these terms of the lease are designed to benefit the public, the public shall be considered to be a third party beneficiary with standing to enforce the requirements of the lease.\*
  8. Install catalytic converters on gasoline-powered equipment.\*
  9. Where diesel powered vehicles are necessary, require the use of alternative diesel fuels. Alternative diesel fuels exist that achieve PM10 and NOx reductions. Electrical powered equipment should be utilized in-lieu of gasoline-powered engines where technically feasible.\*
  10. Utilize electrical equipment for landscape maintenance.\*
  11. All forklifts shall be electric or natural gas powered.\*
  12. Utilize electric yard trucks.\*
  13. Prohibit idling of trucks for periods exceeding three minutes.\*
  14. Provide electrical vehicle ("EV") and compressed natural gas ("CNG") vehicles in vehicle fleets.\*
  15. Charge reduced or no parking fee for EVs and CNG vehicles.\*
  16. Install EV charging facilities for a minimum of 10% of all parking spaces.\*
  17. Install a CNG fueling facility.\*

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18. Provide preferential parking locations for EVs and CNG vehicles.\*
19. Implement parking fee for single-occupancy vehicle commuters.\*
20. Plant shade trees in parking lots to provide minimum 50% cover to reduce evaporative emissions from parked vehicles.\*
21. Plant at least 50 percent low-ozone forming potential (Low-OFP) trees and shrubs, preferably native, drought-resistant species, to meet city/county landscaping requirements.\*
22. Plant Low-OFP, native, drought-resistant, tree and shrub species, 20% in excess of that already required by city or county ordinance. Consider roadside, sidewalk, and driveway shading.\*
23. Orient 75 percent or more of homes and buildings to face either north or south (within 30 degrees of N/S) and plant trees and shrubs that shed their leaves in winter nearer to these structures to maximize shade to the building during the summer and allow sunlight to strike the building during the winter months.\*
24. Provide grass paving, tree shading, or reflective surface for unshaded parking lot areas, driveways, or fire lanes that reduce standard black asphalt paving by 10% or more.\*
25. Electrical outlets shall be installed on the exterior walls of all residential and commercial buildings (and perhaps parking lots) to promote the use of electric landscape maintenance equipment.\*
26. Prohibit gas powered landscape maintenance equipment within residential, commercial, and mixed-use developments. Require landscape maintenance companies to use battery powered or electric equipment or contract only with commercial landscapers who operate with equipment that complies with the most recent California Air Resources Board certification standards, or standards adopted no more than three years prior to date of use or any combination of these two themes.\*
27. Provide a complimentary cordless electric lawnmower to each residential buyer.
28. Implement parking cash-out program for non-driving employees.\*
29. Require each user to establish a carpool/vanpool program.\*
30. Create a car sharing program within the planned community.\*
31. Create a light vehicle network, such as a neighborhood electric vehicle (NEV) system.\*
32. Provide preferential parking for carpool/vanpool vehicles.\*

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33. Provide subsidies or incentives to employees who use public transit or carpooling, including preferential parking.\*
34. Provide secure, weather-protected bicycle parking for employees.\*
35. Provide direct, safe, attractive pedestrian access from project to transit stops and adjacent development.\*
36. Provide direct safe, direct bicycle access to adjacent bicycle routes.\*
37. Provide showers and lockers for employees bicycling or walking to work.\*
38. Short-term bicycle parking for retail customers and other non-commute trips.\*
39. Connect bicycle lanes/paths to city-wide network.\*
40. Design and locate buildings to facilitate transit access, e.g., locate building entrances near transit stops, eliminate building setbacks, etc.\*
41. Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, etc.\*
42. Provide a display case or kiosk displaying transportation information in a prominent area accessible to employees or residents.
43. Provide shuttle service to food service establishments/commercial areas.\*
44. Provide shuttle service to transit stations/multimodal centers.\*
45. Provide on-site child care or contribute to off-site child care within walking distance.\*
46. Implement a compressed workweek schedule.\*
47. Implement home-based telecommunicating program, alternate work schedules, and satellite work centers.\*
48. All buildings shall be constructed to LEED Platinum standards.\*
49. Buildings shall exceed Title 24 requirements by 20%.\*
50. Design buildings for passive heating and cooling and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.\*
51. Construct photovoltaic solar or alternative renewable energy sources sufficient to provide 100% of all electrical usage for the entire Project.\*
52. Install an ozone destruction catalyst on all air conditioning systems.\*

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53. Construct renewable energy sources sufficient to offset the equivalent of 100% of all greenhouse gas emissions from mobile sources (internal combustion engines) for the entire Project. \*
54. Purchase only green/ renewable power from the electric company.\*
55. Install solar water heating systems to generate all hot water requirements.\*

### **Biological Resources**

The discussion of the HANS process and consistency with the MSHCP misstates the process. The HANS process does not provide any approval, as claimed on 3.4-1. At most it provides a recommendation to the approving authority. Additionally, the EIR does not discuss how the goals for preservation of the MSHCP will be met when the project does not meet the requirements of the MSHCP.

### **Geology/Soils**

The FEIR makes clear that the feasibility of the project from a geotechnical viewpoint depends on the project's "conformance with regulatory guidelines, as well as completion of additional geotechnical investigation and implementation of related recommendations and design and/or remedial measures" (FEIR, 3.6-6). However, Mitigation Measure GEO-1 only requires that a geotechnical report be prepared. The measure does not require adherence with its recommendations. Without requiring that the project actually implement the recommendations of the geotechnical report, impacts are not properly mitigated and remain significant.

### **Hazards and Hazardous Materials**

The FEIR concludes that agricultural chemicals used on the project site in the past present a potentially significant hazard (FEIR, 3.8-7). Unfortunately, Mitigation Measure HAZ-1 falls far short of combating this hazard. HAZ-1 merely requires that an agricultural chemical residue survey be performed; it does not require adherence to the survey's conclusions or recommendations.

### **Hydrology and Water Quality**

The FEIR's finding of no significant impact to drainage alteration is not supported. The FEIR itself states that drainage patterns will be altered (FEIR, 3.9-14). Also, the discussion of impacts associated with off-site roadway improvements is seemingly an after-thought and is not taken into account in the finding determination.

Mitigation for hydrology and water quality impacts is uncertain to occur because the determination of certain mitigation measures is deferred. Mitigation Measure WQ-1 defers

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mitigation until a Storm Water Pollution Prevention Plan is prepared. Mitigation Measure WQ-2 defers mitigation until the NPDES Permit process is complete. Mitigation Measure WQ-3 defers mitigation until a Water Quality Management Plan is prepared and approved.

Instead of certain mitigation measures, the FEIR makes a list of standard BMPs and presents these as mitigating measures, even though they are not actually required of the project. Indeed, additional mitigation measures may be required to reduce impacts. This is misleading to the public and decision-makers.

### **Land Use/Planning**

The project is inconsistent with the General Plan Circulation Element Policies. This inconsistency stems, in large part, from the uncertainty of the traffic impact mitigation measures. To illustrate, Policy C 2.4 states that “[t]he direct project-related traffic impacts of new development proposals *shall* be mitigated via conditions of approval *requiring* the construction of any improvements identified as necessary to meet level of service standards” (emphasis added). Unfortunately, the traffic mitigation measures for this project can be waived if already constructed or “as approved by the Transportation Department”; the measures are not actually required. As a result, the project cannot ensure that LOS standards will be met.

### **Noise**

To be clear, limiting the hours of construction will not mitigate for impacts from noise during those hours (e.g., N-1 and N-11).

Mitigation Measure N-11 improperly defers mitigation pending the approval of an acoustical report.

Mitigation Measure N-12 is uncertain and unenforceable. The measure defers determination of mitigation and lists possible noise requirements. This list is misleading, as none of these measures are actually required of the project.

***The mitigation required of this project to reduce noise impacts does not incorporate all feasible mitigation.*** The following mitigation measures are feasible and must be required of this project:

1. Temporary noise barriers must be installed during project construction.
2. Where technically feasible, utilize only electrical construction equipment.
3. During construction, the developer shall require that all contractors turn off all construction equipment and delivery vehicles when not in use and prohibit idling in excess of 3 minutes.
4. Provide a “windows closed” condition requiring a means of mechanical ventilation (e.g.,



- air conditioning) for all buildings.
5. Provide upgraded windows with a minimum Sound Transmission Class (STC) rating of 34 for all buildings, and/or require the installation of double-paned windows.
  6. Keep new transportation facilities away from vibration sensitive areas.
  7. When dealing with existing transportation facilities, obvious vibration causes, such as pot holes, pavement cracks, differential settlement in bridge approaches or individual pavement slabs, etc., may be eliminated by resurfacing.
  8. Require the use of rubberized asphalt for construction of all roadways and parking areas.
  9. Maintain quality pavement conditions that are free of bumps, pot holes, pavement cracks, differential settlement in bridge approaches or individual pavement slabs, etc.
  10. Require resurfacing of roads.
  11. Ban heavy trucks near vibration sensitive uses.
  12. Use alternate construction methods and tools to reduce construction vibrations. Examples are pre-drilling of pile holes, avoiding cracking and seating methods for resurfacing concrete pavements near vibration sensitive areas, using rubber tired as opposed to tracked vehicles, placing haul roads away from vibration sensitive areas.
  13. Scheduling construction activities (particularly pile driving) for times when it does not interfere with vibration sensitive operations (e.g., night time).

### **Transportation and Traffic**

The EIR improperly estimates traffic impacts and, as a result, has dramatically underestimated the traffic impacts associated with the proposed project. The EIR does not evaluate the worst case scenario for the development of the Mixed Use area. Extremely low trip generation rates were used based on a continuing care retirement community. However, the Specific Plan recognizes that *any* commercial or residential use is permitted in the Mixed Use area, so an assumption of retirement community rates is unreasonable. The presented traffic generation is less than 25 percent of the potential for the area.

Mitigation measures for traffic/transportation are grossly inadequate. The EIR lists 11 intersections which would operate at LOS F, the worst operating conditions possible, with the proposed project. Although the proposed mitigation measures purport to improve conditions to at least LOS D, which is still hardly desirable, the measures are not certain to occur.

Indeed, the mitigation measures are illusory. While, theoretically, off-site improvements are required, these improvement measures can be waived if already constructed or "as approved by

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the Transportation Department.” Thus, the traffic mitigation measures may not necessarily come to fruition, as the Transportation Department could waive the measures.

The *mitigation required of this project to reduce noise impacts does not incorporate all feasible mitigation*. The following mitigation measures are feasible and must be required of this project:

1. Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow.\*
2. Provide dedicated turn lanes for movement of construction trucks and equipment on- and off-site.\*
3. Reroute construction trucks away from congested streets and sensitive receptor areas.\*
4. Configure construction parking to minimize traffic interference.\*
5. Prior to the issuance of a grading and building permit, the applicant shall submit verification that a ridesharing program for the construction crew has been encouraged and will be supported by the contractor via incentives or other inducements.\*
6. Minimize construction worker trips by requiring carpooling and providing for lunch onsite. \*
7. Provide shuttle service to food service establishments/commercial areas for the construction crew.\*
8. Provide shuttle service to transit stations/multimodal centers for the construction crew.\*

Moreover, the EIR finds that impacts to intersections and roadway segments within the DIF and TUMF programs will be reduced below a level of significance despite the fact that many of these improvements are not yet funded and will likely not be funded for some time. Mitigation is therefore uncertain and deferred.

The EIR glosses over the fact that the project site is located within the Highway 79 Policy Area, and thereby fails as an informational document. The Highway 79 Policy Area requires the provision of improvements and funding for Circulation Element roadways. Because the project could only seemingly meet these requirements through the very uncertain mitigation measures outlined in the EIR, the project fails to meet the requirements for the Highway 79 Policy Area.

### **Cumulative Impacts**

The cumulative impact analysis for all impacts is brief, lacking in evidence and data, and generally insufficient. The cumulative impact section often fails to recognize that impacts which are less than significant on their own may nonetheless be cumulatively significant.

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### **Alternatives**

CEQA mandates that a lead agency consider a reasonable range of alternatives to the proposed project that meet the basic objectives of the proposed project but that substantially lessen or avoid significant project impacts. The FEIR fails to satisfy this mandate. *The FEIR considers only one alternative other than the no project alternative: the Reduced Project Alternative.*

The Reduced Project Alternative has been identified as the environmentally superior alternative. Although the Reduced Project Alternative would reduce air quality impacts, impacts to hydrology/water quality, and impacts to transportation, these impacts remain significant without mitigation and all other impacts would remain the same. This does not constitute consideration of a "reasonable range of alternatives."

Even so, because the Reduced Project Alternative is environmentally superior, would reduce project impacts, and meets all eight project objectives, the Specific Plan must be revised to be consistent with the Reduced Project Alternative.

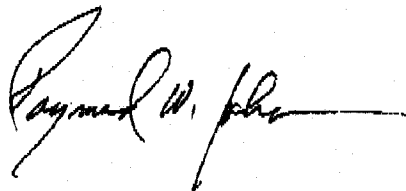
The FEIR's analysis of alternatives is severely lacking. First, it was unreasonable not to consider an alternative site given that the impacts to agriculture are site specific. Second, the evaluation of the impacts of higher residential densities on adjacent properties has not been evaluated and this project is not represented in the Specific Plan. The land use impacts of the higher density residential development must be evaluated. Third, an alternative which does not include commercial office, or which includes commercial office but it is located towards the northwest portion of the site, has not been considered.

### **Desired Actions**

For the above reasons, we respectfully ask that you deny the project and deny certification of the FEIR.

Thank you for your consideration of the above comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond W. Johnson". The signature is fluid and cursive, with a long horizontal line extending to the right.

Raymond W. Johnson

JOHNSON & SEDLACK

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**RAYMOND W. JOHNSON, Esq., AICP LEED GA**  
**26785 Camino Seco**  
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**Johnson & Sedlack**, an Environmental Law firm representing plaintiff environmental groups in environmental law litigation, primarily CEQA.

**City Planning:**

Current Planning

- Two years principal planner, Lenexa, Kansas (consulting)
- Two and one half years principal planner, Lee's Summit, Missouri
- One year North Desert Regional Team, San Bernardino County
- Thirty years subdivision design: residential, commercial and industrial
- Thirty years as applicants representative in various jurisdictions in: Missouri, Texas, Florida, Georgia, Illinois, Wisconsin, Kansas and California
- Twelve years as applicants representative in the telecommunications field

General Plan

- Developed a policy oriented Comprehensive Plan for the City of Lenexa, Kansas.
- Updated Comprehensive Plan for the City of Lee's Summit, Missouri.
- Created innovative zoning ordinance for Lenexa, Kansas.
- Developed Draft Hillside Development Standards, San Bernardino County, CA.
- Developed Draft Grading Standards, San Bernardino County.
- Developed Draft Fiscal Impact Analysis, San Bernardino County

Environmental Analysis

- Two years, Environmental Team, San Bernardino County
  - Review and supervision of preparation of EIR's and joint EIR/EIS's
  - Preparation of Negative Declarations
  - Environmental review of proposed projects
- Eighteen years as an environmental consultant reviewing environmental documentation for plaintiffs in CEQA and NEPA litigation

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**Representation:**

- Represented various clients in litigation primarily in the fields of Environmental and Election law. Clients include:
  - Sierra Club
  - San Bernardino Valley Audubon Society
  - Sea & Sage Audubon Society
  - San Bernardino County Audubon Society
  - Center for Community Action and Environmental Justice
  - Endangered Habitats League
  - Rural Canyons Conservation Fund
  - California Native Plant Society
  - California Oak Foundation
  - Citizens for Responsible Growth in San Marcos
  - Union for a River Greenbelt Environment
  - Citizens to Enforce CEQA
  - Friends of Riverside's Hills
  - De Luz 2000
  - Save Walker Basin
  - Elsinore Murrieta Anza Resource Conservation District

**Education:**

- B. A. Economics and Political Science, Kansas State University 1970
- Masters of Community and Regional Planning, Kansas State University, 1974
- Additional graduate studies in Economics at the University of Missouri at Kansas City
- J.D. University of La Verne. 1997 Member, Law Review, Deans List, Class Valedictorian, Member Law Review, Published, Journal of Juvenile Law

**Professional Associations:**

- Member, American Planning Association
- Member, American Institute of Certified Planners
- Member, Association of Environmental Professionals
- Member, U.S. Green Building Council, LEED GA

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**Johnson & Sedlack, Attorneys at Law**

26785 Camino Seco  
Temecula, CA 92590  
(951) 506-9925

12/97- Present

Principal in the environmental law firm of Johnson & Sedlack. Primary areas of practice are environmental and election law. Have provided representation to the Sierra Club, Audubon Society, AT&T Wireless, Endangered Habitats League, Center for Community Action and Environmental Justice, California Native Plant Society and numerous local environmental groups. Primary practice is writ of mandate under the California Environmental Quality Act.

**Planning-Environmental Solutions**

26785 Camino Seco  
Temecula, CA 92590  
(909) 506-9825

8/94- Present

Served as applicant's representative for planning issues to the telecommunications industry. Secured government entitlements for cell sites. Provided applicant's representative services to private developers of residential projects. Provided design services for private residential development projects. Provided project management of all technical consultants on private developments including traffic, geotechnical, survey, engineering, environmental, hydrogeological, hydrologic, landscape architectural, golf course design and fire consultants.

**San Bernardino County Planning Department**

Environmental Team  
385 N. Arrowhead  
San Bernardino, CA 92415  
(909) 387-4099

6/91-8/94

Responsible for coordination of production of EIR's and joint EIR/EIS's for numerous projects in the county. Prepared environmental documents for numerous projects within the county. Prepared environmental determinations and environmental review for projects within the county.

**San Bernardino County Planning Department**

General Plan Team  
385 N. Arrowhead  
San Bernardino, CA 92415  
(909) 387-4099

6/91-6/92

Created draft grading ordinance, hillside development standards, water efficient landscaping ordinance, multi-family development standards, revised planned development section and fiscal impact analysis. Completed land use plans and general plan amendment for approximately 250 square miles. Prepared proposal for specific plan for the Oak Hills community.

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**San Bernardino County Planning Department**

North Desert Regional Planning Team

15505 Civic

Victorville, CA

(619) 243-8245

6/90-6/91

Worked on regional team. Reviewed general plan amendments, tentative tracts, parcel maps and conditional use permits. Prepared CEQA documents for projects.

**Broadmoor Associates/Johnson Consulting**

229 NW Blue Parkway

Lee's Summit, MO 64063

(816) 525-6640

2/86-6/90

Sold and leased commercial and industrial properties. Designed and developed an executive office park and an industrial park in Lee's Summit, Mo. Designed two additional industrial parks and residential subdivisions. Prepared study to determine target industries for the industrial parks. Prepared applications for tax increment financing district and grants under Economic Development Action Grant program. Prepared input/output analysis of proposed race track. Provided conceptual design of 800 acre mixed use development.

**Shepherd Realty Co.**

Lee's Summit, MO

6/84-2-86

Sold and leased commercial and industrial properties. Performed investment analysis on properties. Provided planning consulting in subdivision design and rezoning.

**Contemporary Concepts Inc.**

Lee's Summit, MO

Owner

9/78-5/84

Designed and developed residential subdivision in Lee's Summit, Mo. Supervised all construction trades involved in the development process and the building of homes.

**Environmental Design Association**

Lee's Summit, Mo.

Project Coordinator

6/77-9/78

Was responsible for site design and preliminary building design for retirement villages in Missouri, Texas and Florida. Was responsible for preparing feasibility studies of possible conversion projects. Was in charge of working with local governments on zoning issues and any problems that might arise with projects. Coordinated work of local architects on projects. Worked with marketing staff regarding design changes needed or contemplated.

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**City of Lee's Summit, MO**

220 SW Main  
Lee's Summit, MO 64063  
Community Development Director

4/75-6/77

Supervised Community Development Dept. staff. Responsible for preparation of departmental budget and C.D.B.G. budget. Administered Community Development Block Grant program. Developed initial Downtown redevelopment plan with funding from block grant funds. Served as a member of the Lee's Summit Economic Development Committee and provided staff support to them. Prepared study of available industrial sites within the City of Lee's Summit. In charge of all planning and zoning matters for the city including comprehensive plan.

**Howard Needles Tammen & Bergendoff**

9200 Ward Parkway  
Kansas City, MO 64114  
(816) 333-4800  
Economist/Planner

5/73-4/75

Responsible for conducting economic and planning studies for Public and private sector clients. Consulting City Planner for Lenexa, KS.

Conducted environmental impact study on maintaining varying channel depth of the Columbia River including an input/output analysis. Environmental impact studies of dredging the Mississippi River. Worked on the Johnson County Industrial Airport industrial park master plan including a study on the demand for industrial land and the development of target industries based upon location analysis. Worked on various airport master plans. Developed policy oriented comprehensive plan for the City of Lenexa, KS. Developed innovative zoning ordinance heavily dependent upon performance standards for the City of Lenexa, KS.



**Barton, Karen**

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**From:** Dan Silver <dsilverla@me.com>  
**Sent:** Thursday, December 06, 2012 10:16 AM  
**To:** Buster, Bob; Ashley, Marion; Tavaglione, John; Stone, Jeff; Benoit, John; COB  
**Cc:** Barnes, Olivia; Stahovich, Dave; Field, John; Gialdini, Michael; Kuenzi, Darcy; George Johnson; Syms Luna, Carolyn; Coyle, Frank; Straite, Matt; Lind, Katherine; Clack, Shellie  
**Subject:** Item 16.1, GPA 951, SP 380 (Dec. 11, 2012)  
**Attachments:** EHL-Item16.1-GPA951SP380-12.11.12.pdf; ATT00001.htm

December 6, 2012

Dear Chairman Tavaglione and Members of the Board:

Please find written testimony from the Endangered Habitats League on this proposed General Plan amendment. We urge denial due to the compelling reasons discussed.

Thank you for considering our views.

Sincerely,  
Dan

Dan Silver, Executive Director  
Endangered Habitats League  
8424 Santa Monica Blvd., Suite A 592  
Los Angeles, CA 90069-4267

213-804-2750  
[dsilverla@me.com](mailto:dsilverla@me.com)  
[www.ehleague.org](http://www.ehleague.org)

December 6, 2012

*BY ELECTRONIC MAIL ONLY*

The Hon. John Tavaglione  
Riverside County Board of Supervisors  
County of Riverside  
4080 Lemon St., 3rd Floor  
Riverside, CA 92501

**RE: Item 16.1: SPECIFIC PLAN NO. 380, GENERAL PLAN AMENDMENT  
NO. 951 (Dec. 11, 2012) – Recommendation for DENIAL**

Dear Chairman Tavaglione and Board Members:

The Endangered Habitats League (EHL) recommends denial of this ill-conceived General Plan amendment. As you know, EHL is a long-term stakeholder in County planning efforts.

We wish to raise compelling objections to this project:

1. Lack of a basic planning justification,
2. Inconsistency with the General Plan Certainty System,
3. Inconsistency with Community Separators policies, and
4. Potential inconsistency with an adopted regional plan.

#### **Planning justification**

The County of Riverside currently has a surfeit of housing capacity in its General Plan, with no need for additional units over a multi-decade horizon. Adding even more surplus capacity surely exceeds the limits on how far out any of us anticipate future needs. With so much surplus capacity, it is impossible to rationally allocate constrained transportation infrastructure and service dollars.

#### **General Plan inconsistency**

According to Section 2.5 of Zoning Code:

g. FINDINGS. A Planning Commission resolution recommending approval of a regular Foundation Component Amendment and a Board of Supervisors resolution approving a regular Foundation Component Amendment shall include findings, based on substantial evidence, that new conditions or circumstances

disclosed during the review process justify modifying the General Plan, that the modifications do not conflict with the overall Riverside County Vision, and that they would not create an internal inconsistency among the elements of the General Plan. The foregoing requirement for findings shall not apply to any amendment to the Riverside County Vision.

In this case, what is the substantial evidence that new conditions have arisen to justify a Foundation change? Surely, there is no regional lack of land designated as Community Development.

### **Community Separators**

Furthermore, the General Plan calls for "Community Separators" of Rural lands that prevent urban communities from simply merging into each other, as in the Los Angeles basin:

*"Our communities maintain their individual distinctive qualities and character, surrounded in most cases by open space or non-intensive uses to contribute to their sense of unique identity. Community centers, gathering places, and special focal points unique to each community also aid this identity."*

*"We are proud of the distinctive identities that our communities now possess and cherish the sense of place that results from them. We want this sense of place and distinctiveness maintained and enhanced in our planning and development activities."*

*- RCIP Vision*

This section is intended to focus on the desired aspects, at a community or neighborhood level, that help achieve the RCIP Vision and General Plan Principles. The RCIP Principles state that, *"The General Plan should promote development of a "unique community identity" in which each community exhibits a special sense of place by retaining distinct edges and sufficient open space between scattered urbanized areas."* At this scale, policies focus on achieving compact, transit adaptive development, identifying open space separators to provide edges between communities, and enhancing or creating the distinctiveness of each community. (Emphasis added.)

LU 3.2 Use open space, greenways, recreational lands, and watercourses as community separators. (AI 25, 40, 60, 61)

LU 8.3 Incorporate open space, community greenbelt separators, and recreational amenities into Community Development areas in order to enhance recreational opportunities and community aesthetics, and improve the quality of life. (AI 9, 28)

Rural areas in the French Valley serve the function of defining existing communities, and this project *contravenes* these many important aspects of the General Plan.

### **Regional plans**

Finally, the Southern California Association of Governments has just adopted a Sustainable Community Strategy (SCS) under SB 375. How is this sprawl-type project consistent with the GHG reduction targets of the adopted SCS?

We acknowledge that the project proposes to set aside appropriate lands for the MSHCP, specifically portions of Constrained Linkage 17. However, MSHCP conformance does *not* serve as a surrogate for overall land use planning. We urge you to exert planning discipline and *deny* this proposed amendment to the General Plan.

Sincerely,

Dan Silver, MD  
Executive Director

December 9, 2012

To: Jeff Stone and the Board of Supervisors

Re: SP#380

It is inevitable that the project will go forward. It would be honorable to consider me and my husband's concerns addressed in our letters, as well as our neighbor's concerns. Again I'll mention that my husband and I have not received any notifications of the hearings by mail. The SP#380 doesn't show how the new Keller Rd. exits West to intersect with Pourroy Rd. This is not fair to us.

The West/South corner of the project significantly impacts our property where the new Keller Rd. intersects Pourroy Rd. If the plan is to proceed with intersecting the new Keller Rd. and Pourroy Rd. it will damage our well which provides our water supply. Water is life, so the message I get is "who cares about your life".

**Why does the new Keller Road have to exit West?**

**Why can't the entrance and exit to the new development be from Winchester Rd?**

Scott Rd. is nearly a half mile North of the new development, seconds to get to Scott Rd. and it is already being used as a main access to Winchester Rd.

It is an unacceptable plan to impede on our property, depreciate the value of our property, and damage our well. Not including the significant traffic noise and pollution that will be unhealthy, not including that we have many other concerns. Also with a significant high volume of traffic I can't see how my husband and I can safely cross a busy intersection to enter and exit our property, this is unsafe to us. Presently Pourroy Rd. and Keller Rd. is a four way stop intersection, and usually when stopped at this intersection you're the only car crossing.

Please physically take a look at the area to see for yourself how our property is presently situated and you'll see why my husband and I have concerns. We've spent our life savings on our property, we plan to retire here, and we would like to continue to enjoy it as much as we can, as well as our family and friends that come to visit us.

Sincerely,



Victoria E. Hough  
33975 Pourroy Rd.  
Winchester, CA 92596

16.1  
12-11-12

**Barton, Karen**

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**From:** Aminta Raffalovich <aminta.jslaw@gmail.com>  
**Sent:** Monday, December 10, 2012 4:24 PM  
**To:** COB  
**Cc:** RAY JOHNSON; rwilliamsonline@msn.com  
**Subject:** Comment Letter re: Keller Crossing FEIR and Specific Plan No. 380 for Dec. 11th Meeting  
**Attachments:** Keller Crossing FEIR and SP 380 Comment Letter.pdf

Good Evening,

I am writing you on behalf of Johnson & Sedlack regarding the Keller Crossing Final Environmental Impact Report and Specific Plan No. 380, which are being considered at tomorrow's Board of Supervisors Meeting. Please find attached our Comment Letter regarding this project. Please distribute to the Board.

Thank you for your consideration.

Best Regards,

--

Aminta Raffalovich, Esq.  
JOHNSON & SEDLACK  
26785 Camino Seco  
Temecula, CA 92590  
(951) 506-9925  
(951) 506-9725 Facsimile  
Aminta.jslaw@gmail.com

The above email is for intended recipient only and is confidential and protected by attorney/client privilege. If you are not the intended recipient, please advise the sender immediately. Unauthorized use or distribution is prohibited and may be unlawful.

Johnson & Sedlack  
ATTORNEYS AT LAW

Raymond W. Johnson, Esq. AICP  
Abigail A. Broedling, Esq.  
Kimberly Foy, Esq.  
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26785 Camino Seco, Temecula, CA 92590

*E-mail:* EsqAICP@WildBlue.net  
Abby.JSLaw@gmail.com  
Kim.JSLaw@gmail.com  
Telephone: 951-506-9925  
Facsimile: 951-506-9725

December 10, 2012

Riverside County Board of Supervisors  
4080 Lemon Street, 1<sup>st</sup> Floor  
Riverside, CA 92501  
Fax: (951) 955-1071

**VIA FACSIMILE AND E-MAIL**

***RE: Keller Crossing Final Environmental Impact Report No. 525, Specific Plan No. 380***

Greetings Board of Supervisors:

On behalf of local concerned citizens, our firm hereby submits these comments on the ***Keller Crossing Final Environmental Impact Report No. 525 and Specific Plan No. 380***.

We respectfully ask that you disapprove this project. It is grossly premature, as evidenced by the fact that the Specific Plan identifies the Mixed Use area as possibly being a continuing care retirement community, but if not, it could be any type of residential or commercial use. As discussed in this comment letter, the EIR is inadequate as it fails to comply with the requirements of the California Environmental Quality Act ("CEQA") by inadequately analyzing impacts pertaining to agriculture, air quality, hydrology/water quality, noise, and traffic/transportation, among others.

CEQA was adopted as a disclosure and transparency document. The theory is that by providing a document that adequately describes the environmental consequences of a project to decision-makers and the public, the decision-makers will make a rational decision based upon the true environmental consequences of the project and if they do not, the electorate can hold them accountable for their decisions. The core of this statutory structure is the adequacy of the document as an informational document.

The Final EIR ("FEIR") continues to fail as an informational document and fails to inform the public and decision-makers of the real impacts of this project. The FEIR is also very conclusory and fails to provide the analysis and examination required by CEQA to inform the public and decision-makers of the analytical pathway taken from facts to conclusions. Generally, the findings are not supported by substantial evidence in the record.

Moreover, CEQA requires that *where feasible mitigation exists which can substantially lessen the environmental impacts of a project, all feasible mitigation must be adopted*. In this way, CEQA goes beyond its informational role to require that projects substantively lessen their negative effects on the environment. It is critical to proper drafting of an EIR that all feasible mitigation measures be required of a project. For this project, the EIR concludes that *unavoidable* adverse impacts will result to/from the following: air quality and noise. Feasible mitigation measures exist which would reduce these impacts, and which have not been required of this project. This is contrary to the requirements of CEQA, and the additional feasible mitigation must be required of this project.

The EIR also fails to ensure that mitigation measures are certain and fully enforceable through permit conditions, agreements, and/or other legally binding instruments. (State CEQA Guidelines § 15126.4(a)(2).) Much of the mitigation contained in the EIR is drafted in an utterly unenforceable manner. This is unacceptable and misleading to the public and decision-makers as to the extent of mitigation required of this project. Additionally, many mitigation measures have been suggested but rejected without explanation.

Lastly, the EIR fails to consider a reasonable range of alternatives, as required by CEQA.

### **Findings of Fact**

The Findings of Fact were not made available to the public prior to the meeting. Therefore, it is impossible to exhaust administrative remedies on this issue.

Even so, the findings required under CEQA cannot be made with respect to this project because not all significant effects of the project have been eliminated or substantially lessened.

### **Statement of Overriding Considerations**

The Statement of Overriding Considerations was not made available to the public prior to the meeting. Therefore, it is impossible to exhaust administrative remedies on this issue.

CEQA Guidelines § 15093(b) provides that when the agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR, but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The decision to approve a project in spite of significant environment impacts requires the decision-making agency to balance the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks. (Guidelines § 15093(a).) The statement of overriding considerations shall be supported by *substantial evidence* in the record. (*Id.*) In *Sierra Club v. Contra Costa County* (1992) 10 Cal. App. 4th 1212, 1222, the court said: "Whereas the [mitigation and feasibility] findings ... typically focus on the feasibility of specific proposed alternatives and mitigation measures, the statement of overriding considerations focuses on the



larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like.”

A statement of overriding considerations is improper with this project. Substantial evidence in the record does not support the adoption of a statement of overriding considerations given the immense environmental harm expected with the project balanced with minimal economic benefits. This project will have massive and detrimental impacts to, *at least*, air quality, traffic, and noise. These enormous detriments cannot be outweighed by the promise of jobs which are uncertain, unlikely, and few. A statement of overriding considerations is not supported for this project.

### **Mitigation Monitoring and Reporting Program**

The Mitigation Monitoring and Reporting Program was not made available to the public prior to the meeting. Therefore, it is impossible to exhaust administrative remedies on this issue.

CEQA requires the lead agency to establish a program to monitor and report on mitigation measures as part of the environmental review process. (Pub. Res. Code § 21081.6(a)(1).) The Mitigation Monitoring and Reporting Program is intended to ensure that mitigation measures in the EIR are fully implemented and must be adopted at the time the agency determines to carry out a project.

As detailed below, this project’s mitigation measures are deficient. Many of the measures are unenforceable and uncertain. Additionally, the project has failed to adopt all feasible mitigation measures which would reduce environmental impacts, as required by CEQA.

### **Agricultural Resources**

The finding of no significant impacts is not supported.

The project site consists of 167.6 acres of Farmland of Local Importance and is currently used for agricultural purposes. Thresholds of significance make clear that a significant impact would result if the project would: (1) convert or change existing agricultural uses or Farmland of Local Importance; or (2) involve other changes to the existing environment which would result in the conversion of existing agricultural uses or Farmland of Local Importance (FEIR, 3.2-7).

The EIR admits that “the proposed project would result in the conversion of all described on-site agricultural operations, as well as approximately 147 acres designated as Farmland of Local Importance, to non-agricultural uses” (FEIR, 3.2-8). To be sure, the project will result in a loss of nearly one percent of all agricultural lands in the County. Even so, the EIR concludes that this conversion and loss of agricultural uses and Farmland of Local Importance is not significant. This conclusion is clearly erroneous.

Additionally, the project conflicts with the General Plan Multipurpose Open Space Element. Open Space Policy 7.2 works to “ensure the long-term conservation of viable agricultural operations within Riverside County.” Also, Open Space Policy 7.3 “encourage[s] conservation of productive agricultural lands and preservation of prime agricultural lands.” Certainly, the conversion of 160 acres of land currently used for agricultural operations and the loss of 147 acres of Farmland of Local Importance would be at odds with these policies.

Because this project will have a significant agricultural impact, mitigation is required. At present, the EIR provides for no mitigation for agricultural impacts.

Mitigation measures identified by the California Department of Conservation to reduce agricultural impacts include:

- The purchase of agricultural conservation easements;
- Transfer of development rights;
- Acquisition of farmland by the city or county;
- Mitigation banking;
- The establishment of “urban limits,” greenbelts, and buffers;
- The payment of in-lieu fees sufficient to purchase and maintain farmland conservation easements; and
- Planning tools such as clustering development, use of density bonuses, and limiting “leapfrog” development.

Our firm proposes the following mitigation measures be required of the project:

1. Require a permanent agricultural conservation easement on land of at least 2:1 of equal quality and to compensate for the direct and growth inducing/ cumulative loss of agricultural land by one of the following methods:
  - a. The outright purchase of easements; or
  - b. Donation of mitigation fees to a local, regional, or statewide organization that provides for acquisition and stewardship of agricultural conservation easements.
2. Require the implementation of the California Department of Conservation’s 30 conservation tools, available from the California Department of Conservation upon request.

These mitigation measures, or other similar measures, must be required of this project.

## **Air Quality**

The project will result in significant and unavoidable impacts to air quality during construction and operation.

### ***Construction Impacts***

While the EIR correctly finds that construction air quality impacts are significant and require mitigation, it fails to adopt all feasible mitigation measures to reduce these impacts.

Mitigation Measure AQ-3 requires only that certain pieces of equipment be CARB Tier II-certified. This measure does not go far enough. All equipment should be required to meet CARB Tier III standards.

Mitigation Measure AQ-6 is only required "to the extent feasible." This measure is thus highly uncertain and difficult to enforce. The measure is also vague in that it applies to "construction activities that affect traffic flow," rather than specifying precise activities anticipated to impact traffic.

Response to Comment E-1 is unresponsive to the commenter's suggestion of a mitigation measure prohibiting vehicle and engine idling in excess of five minutes. The project must adopt all feasible mitigation, such as this, which would decrease air quality impacts.

Additional mitigation measures are also feasible to further reduce construction air quality emissions, including the following:

1. Gravel pads must be installed at all access points to prevent tracking of mud onto public roads.
2. Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect (e.g., install wheel shakers, wheel washers, and limit site access).
3. All roadways, driveways, sidewalks, etc., should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
4. Pave all construction roads.
5. Pave all construction access roads at least 100 feet on to the site from the main road.
6. Limit fugitive dust sources to 20 percent opacity.
7. Require a dust control plan for earthmoving operations.

8. When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
9. All streets shall be swept at least once a day using SCAQMD Rule 1186 certified street sweepers utilizing reclaimed water trucks if visible soil materials are carried to adjacent streets.
10. The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite.
11. Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 24 hours.
12. Extend grading period sufficiently to reduce air quality impacts below a level of significance.
13. The simultaneous disturbance of the site shall be limited to five acres per day.
14. Any vegetative cover to be utilized onsite shall be planted as soon as possible to reduce the disturbed area subject to wind erosion. Irrigation systems required for these plants shall be installed as soon as possible to maintain good ground cover and to minimize wind erosion of the soil.
15. Any on-site stockpiles of debris, dirt or other dusty material shall be covered or watered three times daily.
16. Any site access points within 30 minutes of any visible dirt deposition on any public roadway shall be swept or washed.
17. A high wind response plan shall be formulated for enhanced dust control if winds are forecast to exceed 25 mph in any upcoming 24-hour period.
18. Implement activity management techniques including: a) development of a comprehensive construction management plan designed to minimize the number of large construction equipment operating during any given time period; b) scheduling of construction truck trips during non-peak hours to reduce peak hour emissions; c) limitation of the length of construction work-day period; and d) phasing of construction activities.\*
19. Develop a trip reduction plan to achieve a 1.5 AVR for construction employees.
20. Require high pressure injectors on diesel construction equipment.\*

21. Restrict truck operation to “clean” trucks, such as a 2007 or newer model year or 2010 compliant vehicles.\*
22. Require the use of CARB certified particulate traps that meet level 3 requirements on all construction equipment.\*
23. Utilize only CARB certified equipment for construction activities.\*
24. The developer shall require all contractors to turn off all construction equipment and delivery vehicles when not in use and/or idling in excess of three minutes.\*
25. Restrict engine size of construction equipment to the minimum practical size.\*
26. Use electric construction equipment where technically feasible.\*
27. Substitute gasoline-powered for diesel-powered construction equipment.\*
28. Require use of alternatively fueled construction equipment, using, e.g., compressed natural gas, liquefied natural gas, propane, or biodiesel.\*
29. Use methanol-fueled pile drivers.\*
30. Install catalytic converters on gasoline-powered equipment.\*
31. Require the use of Alternative Diesel Fuels on diesel equipment used. Alternative diesel fuels exist that achieve PM10 and NOx reductions. PuriNOx is an alternative diesel formulation that was verified by CARB on January 31, 2001 as achieving a 14 percent reduction in NOx and a 63 percent reduction in PM10 compared to CARB diesel. It can be used in any direct-injection, heavy-duty compression ignition engine and is compatible with existing engines and existing storage, distribution, and vehicle fueling facilities. Operational experience indicates little or no difference in performance and startup time, no discernable operational differences, no increased engine noise, and significantly reduced visible smoke.
32. Electrical powered equipment shall be utilized in-lieu of gasoline-powered engines where technically feasible.\*
33. All forklifts shall be electric or natural gas powered.\*
34. Suspend use of all construction equipment operations during second stage smog alerts.\*
35. Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow.\*
36. Provide dedicated turn lanes for movement of construction trucks and equipment on- and

off-site.\*

37. Reroute construction trucks away from congested streets and sensitive receptor areas.\*
38. Configure construction parking to minimize traffic interference.\*
39. Prior to the issuance of a grading and building permit, the applicant shall submit verification that a ridesharing program for the construction crew has been encouraged and will be supported by the contractor via incentives or other inducements.\*
40. Minimize construction worker trips by requiring carpooling and providing for lunch onsite.\*
41. Provide shuttle service to food service establishments/commercial areas for the construction crew.\*
42. Provide shuttle service to transit stations/multimodal centers for the construction crew.\*
43. Require the use of Zero-VOC paints, coatings, and solvents.

(\* Would reduce impacts to GHGs as well.)

### ***Operational Emissions***

The EIR traffic analysis relies on a false assumption which causes the operational emissions generated by this project to be greatly underestimated. The EIR uses extremely low trip generation rates based on a continuing care retirement community. However, the Specific Plan recognizes that *any* commercial or residential use is permitted in the Mixed Use area. An assumption of retirement community trip rates is thus entirely unreasonable. Estimated traffic generation is less than 25 percent of the actual potential for the area. As a result, the stated air quality impacts from mobile sources are merely a portion of the actual impacts which may result from the approval of this project.

But even ignoring the fact that EIR operational emissions are seriously underestimated, the estimated operational emissions are still substantial and concerning. By far, the main source of the project's operational emissions is mobile source emissions. Yet, the mitigation measures adopted fail to reduce mobile source emissions, focusing instead on the energy efficiency of the building (e.g., Mitigation Measure AQ-12). The project's non-mobile source operational emissions are essentially limited to ROG emissions. In this respect, and in other respects as explained below, the air quality mitigation measures are extremely deficient.

Mitigation Measure AQ-12 does not go far enough in that it only requires that the project's building energy efficiency exceed Title 24 by 15 percent. Moreover, the purported purpose of this mitigation measure is to address emissions of criteria pollutants which will exceed regional

thresholds. However, as Title 24 deals with building energy efficiency, other mitigation measures concerning mobile emissions and vehicle standards, the primary contributors to the problem, are not required to be implemented in order to satisfy the goal of the mitigation.

Response to Comment G-2 is unresponsive to the commenter's concern that Mitigation Measure AQ-12 only requires compliance with the 2008 code, rather than the 2010 version. The response states that "the project will need to comply with the California Energy Code in effect at the time of construction," but this is not conveyed in AQ-12. The response fails to explain why the 2010 version was not referenced, as it is the most recent version of the code, and does not address requiring compliance with the 2010 California Green Building Standards at all.

Even more problematic, AQ-12 does not in any way require the implementation of each of the measures contained therein. The listing of alternatives to satisfy this mitigation measure is misleading and causes the EIR to fail as an informational document.

Additionally, CEQA also requires that where feasible mitigation exists which can substantially lessen the environmental impacts of a project, all feasible mitigation must be adopted. It is reasonable to assume that any measures, even if they are presented as supplemental or as alternatives, listed as mitigation in the EIR are feasible. If the measures were not feasible, then the EIR would be deceptive to the public and decision-makers. Mitigation Measure AQ-12 provides a list of four measures which "*may* be used to fulfill this mitigation measure" (emphasis added). These are feasible measures which are not required of the project and which would lessen impacts.

More generally, *the mitigation required of this project to reduce operational air quality impacts does not incorporate all feasible mitigation*. Most of this project's operational emissions will derive from mobile sources, and no mitigation measures directly pertain to reducing these emissions. These measures must simply be *required* mitigation for the project, as these measures will actually reduce the project's mobile source operational emissions.

The following mitigation measures are feasible and must be required of this project:

1. The operator of the primary facilities shall become SmartWay Partner.\*
2. The project shall meet SmartWay 1.25 ratings.\*
3. The project shall use only freight companies that meet SmartWay 1.25 ratings.\*
4. (ALTERNATIVELY from 2,3 above) The operator of the primary facilities shall incorporate requirements or incentives sufficient to achieve at least 20% per year (as a percentage of previous percentage, not total trips) increase in percentage of long haul trips carried by SmartWay carriers until it reaches a minimum of 90% of all long haul

trips carried by SmartWay 1.0 or greater carriers. Results, including backup data shall be reported to the Planning Department semi-annually.\*

5. The operator of the primary facilities shall incorporate requirements or incentives sufficient to achieve a 15% per year (as a percentage of previous percentage, not total trips) increase in percentage of consolidator trips carried by SmartWay carriers until it reaches a minimum of 85% of all consolidator trips carried by SmartWay 1.0 or greater carriers. Results, including backup data shall be reported to the Planning Department semi-annually.\*
6. All fleet vehicles shall conform to 2010 air quality standards or better. Results, including backup data shall be reported to the Planning Department semi-annually.\*
7. All spaces utilizing refrigerated storage, including restaurants and food or beverage stores, shall provide an electrical hookup for refrigeration units on delivery trucks. Trucks incapable of utilizing the electrical hookup for powering refrigeration units shall be prohibited from accessing the site. All leasing documents shall include these requirements and provide that violation of those provisions will constitute a material breach of the lease that will result in the termination of the lease. Because of the fact that these terms of the lease are designed to benefit the public, the public shall be considered to be a third party beneficiary with standing to enforce the requirements of the lease.\*
8. Install catalytic converters on gasoline-powered equipment.\*
9. Where diesel powered vehicles are necessary, require the use of alternative diesel fuels. Alternative diesel fuels exist that achieve PM10 and NOx reductions. Electrical powered equipment should be utilized in-lieu of gasoline-powered engines where technically feasible.\*
10. Utilize electrical equipment for landscape maintenance.\*
11. All forklifts shall be electric or natural gas powered.\*
12. Utilize electric yard trucks.\*
13. Prohibit idling of trucks for periods exceeding three minutes.\*
14. Provide electrical vehicle ("EV") and compressed natural gas ("CNG") vehicles in vehicle fleets.\*
15. Charge reduced or no parking fee for EVs and CNG vehicles.\*
16. Install EV charging facilities for a minimum of 10% of all parking spaces.\*
17. Install a CNG fueling facility.\*



18. Provide preferential parking locations for EVs and CNG vehicles.\*
19. Implement parking fee for single-occupancy vehicle commuters.\*
20. Plant shade trees in parking lots to provide minimum 50% cover to reduce evaporative emissions from parked vehicles.\*
21. Plant at least 50 percent low-ozone forming potential (Low-OFP) trees and shrubs, preferably native, drought-resistant species, to meet city/county landscaping requirements.\*
22. Plant Low-OFP, native, drought-resistant, tree and shrub species, 20% in excess of that already required by city or county ordinance. Consider roadside, sidewalk, and driveway shading.\*
23. Orient 75 percent or more of homes and buildings to face either north or south (within 30 degrees of N/S) and plant trees and shrubs that shed their leaves in winter nearer to these structures to maximize shade to the building during the summer and allow sunlight to strike the building during the winter months.\*
24. Provide grass paving, tree shading, or reflective surface for unshaded parking lot areas, driveways, or fire lanes that reduce standard black asphalt paving by 10% or more.\*
25. Electrical outlets shall be installed on the exterior walls of all residential and commercial buildings (and perhaps parking lots) to promote the use of electric landscape maintenance equipment.\*
26. Prohibit gas powered landscape maintenance equipment within residential, commercial, and mixed-use developments. Require landscape maintenance companies to use battery powered or electric equipment or contract only with commercial landscapers who operate with equipment that complies with the most recent California Air Resources Board certification standards, or standards adopted no more than three years prior to date of use or any combination of these two themes.\*
27. Provide a complimentary cordless electric lawnmower to each residential buyer.
28. Implement parking cash-out program for non-driving employees.\*
29. Require each user to establish a carpool/vanpool program.\*
30. Create a car sharing program within the planned community.\*
31. Create a light vehicle network, such as a neighborhood electric vehicle (NEV) system.\*
32. Provide preferential parking for carpool/vanpool vehicles.\*

33. Provide subsidies or incentives to employees who use public transit or carpooling, including preferential parking.\*
34. Provide secure, weather-protected bicycle parking for employees.\*
35. Provide direct, safe, attractive pedestrian access from project to transit stops and adjacent development.\*
36. Provide direct safe, direct bicycle access to adjacent bicycle routes.\*
37. Provide showers and lockers for employees bicycling or walking to work.\*
38. Short-term bicycle parking for retail customers and other non-commute trips.\*
39. Connect bicycle lanes/paths to city-wide network.\*
40. Design and locate buildings to facilitate transit access, e.g., locate building entrances near transit stops, eliminate building setbacks, etc.\*
41. Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, etc.\*
42. Provide a display case or kiosk displaying transportation information in a prominent area accessible to employees or residents.
43. Provide shuttle service to food service establishments/commercial areas.\*
44. Provide shuttle service to transit stations/multimodal centers.\*
45. Provide on-site child care or contribute to off-site child care within walking distance.\*
46. Implement a compressed workweek schedule.\*
47. Implement home-based telecommunicating program, alternate work schedules, and satellite work centers.\*
48. All buildings shall be constructed to LEED Platinum standards.\*
49. Buildings shall exceed Title 24 requirements by 20%.\*
50. Design buildings for passive heating and cooling and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.\*
51. Construct photovoltaic solar or alternative renewable energy sources sufficient to provide 100% of all electrical usage for the entire Project.\*
52. Install an ozone destruction catalyst on all air conditioning systems.\*

53. Construct renewable energy sources sufficient to offset the equivalent of 100% of all greenhouse gas emissions from mobile sources (internal combustion engines) for the entire Project. \*
54. Purchase only green/ renewable power from the electric company.\*
55. Install solar water heating systems to generate all hot water requirements.\*

### **Biological Resources**

The discussion of the HANS process and consistency with the MSHCP misstates the process. The HANS process does not provide any approval, as claimed on 3.4-1. At most it provides a recommendation to the approving authority. Additionally, the EIR does not discuss how the goals for preservation of the MSHCP will be met when the project does not meet the requirements of the MSHCP.

### **Geology/Soils**

The FEIR makes clear that the feasibility of the project from a geotechnical viewpoint depends on the project's "conformance with regulatory guidelines, as well as completion of additional geotechnical investigation and implementation of related recommendations and design and/or remedial measures" (FEIR, 3.6-6). However, Mitigation Measure GEO-1 only requires that a geotechnical report be prepared. The measure does not require adherence with its recommendations. Without requiring that the project actually implement the recommendations of the geotechnical report, impacts are not properly mitigated and remain significant.

### **Hazards and Hazardous Materials**

The FEIR concludes that agricultural chemicals used on the project site in the past present a potentially significant hazard (FEIR, 3.8-7). Unfortunately, Mitigation Measure HAZ-1 falls far short of combating this hazard. HAZ-1 merely requires that an agricultural chemical residue survey be performed; it does not require adherence to the survey's conclusions or recommendations.

### **Hydrology and Water Quality**

The FEIR's finding of no significant impact to drainage alteration is not supported. The FEIR itself states that drainage patterns will be altered (FEIR, 3.9-14). Also, the discussion of impacts associated with off-site roadway improvements is seemingly an after-thought and is not taken into account in the finding determination.

Mitigation for hydrology and water quality impacts is uncertain to occur because the determination of certain mitigation measures is deferred. Mitigation Measure WQ-1 defers

mitigation until a Storm Water Pollution Prevention Plan is prepared. Mitigation Measure WQ-2 defers mitigation until the NPDES Permit process is complete. Mitigation Measure WQ-3 defers mitigation until a Water Quality Management Plan is prepared and approved.

Instead of certain mitigation measures, the FEIR makes a list of standard BMPs and presents these as mitigating measures, even though they are not actually required of the project. Indeed, additional mitigation measures may be required to reduce impacts. This is misleading to the public and decision-makers.

### **Land Use/Planning**

The project is inconsistent with the General Plan Circulation Element Policies. This inconsistency stems, in large part, from the uncertainty of the traffic impact mitigation measures. To illustrate, Policy C 2.4 states that “[t]he direct project-related traffic impacts of new development proposals *shall* be mitigated via conditions of approval *requiring* the construction of any improvements identified as necessary to meet level of service standards” (emphasis added). Unfortunately, the traffic mitigation measures for this project can be waived if already constructed or “as approved by the Transportation Department”; the measures are not actually required. As a result, the project cannot ensure that LOS standards will be met.

### **Noise**

To be clear, limiting the hours of construction will not mitigate for impacts from noise during those hours (e.g., N-1 and N-11).

Mitigation Measure N-11 improperly defers mitigation pending the approval of an acoustical report.

Mitigation Measure N-12 is uncertain and unenforceable. The measure defers determination of mitigation and lists possible noise requirements. This list is misleading, as none of these measures are actually required of the project.

The ***mitigation required of this project to reduce noise impacts does not incorporate all feasible mitigation***. The following mitigation measures are feasible and must be required of this project:

1. Temporary noise barriers must be installed during project construction.
2. Where technically feasible, utilize only electrical construction equipment.
3. During construction, the developer shall require that all contractors turn off all construction equipment and delivery vehicles when not in use and prohibit idling in excess of 3 minutes.
4. Provide a “windows closed” condition requiring a means of mechanical ventilation (e.g.,

air conditioning) for all buildings.

5. Provide upgraded windows with a minimum Sound Transmission Class (STC) rating of 34 for all buildings, and/or require the installation of double-paned windows.
6. Keep new transportation facilities away from vibration sensitive areas.
7. When dealing with existing transportation facilities, obvious vibration causes, such as pot holes, pavement cracks, differential settlement in bridge approaches or individual pavement slabs, etc., may be eliminated by resurfacing.
8. Require the use of rubberized asphalt for construction of all roadways and parking areas.
9. Maintain quality pavement conditions that are free of bumps, pot holes, pavement cracks, differential settlement in bridge approaches or individual pavement slabs, etc.
10. Require resurfacing of roads.
11. Ban heavy trucks near vibration sensitive uses.
12. Use alternate construction methods and tools to reduce construction vibrations. Examples are pre-drilling of pile holes, avoiding cracking and seating methods for resurfacing concrete pavements near vibration sensitive areas, using rubber tired as opposed to tracked vehicles, placing haul roads away from vibration sensitive areas.
13. Scheduling construction activities (particularly pile driving) for times when it does not interfere with vibration sensitive operations (e.g., night time).

### **Transportation and Traffic**

The EIR improperly estimates traffic impacts and, as a result, has dramatically underestimated the traffic impacts associated with the proposed project. The EIR does not evaluate the worst case scenario for the development of the Mixed Use area. Extremely low trip generation rates were used based on a continuing care retirement community. However, the Specific Plan recognizes that *any* commercial or residential use is permitted in the Mixed Use area, so an assumption of retirement community rates is unreasonable. The presented traffic generation is less than 25 percent of the potential for the area.

Mitigation measures for traffic/transportation are grossly inadequate. The EIR lists 11 intersections which would operate at LOS F, the worst operating conditions possible, with the proposed project. Although the proposed mitigation measures purport to improve conditions to at least LOS D, which is still hardly desirable, the measures are not certain to occur.

Indeed, the mitigation measures are illusory. While, theoretically, off-site improvements are required, these improvement measures can be waived if already constructed or "as approved by

the Transportation Department.” Thus, the traffic mitigation measures may not necessarily come to fruition, as the Transportation Department could waive the measures.

**The *mitigation required of this project to reduce noise impacts does not incorporate all feasible mitigation.*** The following mitigation measures are feasible and must be required of this project:

1. Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow.\*
2. Provide dedicated turn lanes for movement of construction trucks and equipment on- and off-site.\*
3. Reroute construction trucks away from congested streets and sensitive receptor areas.\*
4. Configure construction parking to minimize traffic interference.\*
5. Prior to the issuance of a grading and building permit, the applicant shall submit verification that a ridesharing program for the construction crew has been encouraged and will be supported by the contractor via incentives or other inducements.\*
6. Minimize construction worker trips by requiring carpooling and providing for lunch onsite. \*
7. Provide shuttle service to food service establishments/commercial areas for the construction crew.\*
8. Provide shuttle service to transit stations/multimodal centers for the construction crew.\*

Moreover, the EIR finds that impacts to intersections and roadway segments within the DIF and TUMF programs will be reduced below a level of significance despite the fact that many of these improvements are not yet funded and will likely not be funded for some time. Mitigation is therefore uncertain and deferred.

The EIR glosses over the fact that the project site is located within the Highway 79 Policy Area, and thereby fails as an informational document. The Highway 79 Policy Area requires the provision of improvements and funding for Circulation Element roadways. Because the project could only seemingly meet these requirements through the very uncertain mitigation measures outlined in the EIR, the project fails to meet the requirements for the Highway 79 Policy Area.

### **Cumulative Impacts**

The cumulative impact analysis for all impacts is brief, lacking in evidence and data, and generally insufficient. The cumulative impact section often fails to recognize that impacts which are less than significant on their own may nonetheless be cumulatively significant.

**Alternatives**

CEQA mandates that a lead agency consider a reasonable range of alternatives to the proposed project that meet the basic objectives of the proposed project but that substantially lessen or avoid significant project impacts. The FEIR fails to satisfy this mandate. *The FEIR considers only one alternative other than the no project alternative:* the Reduced Project Alternative.

The Reduced Project Alternative has been identified as the environmentally superior alternative. Although the Reduced Project Alternative would reduce air quality impacts, impacts to hydrology/water quality, and impacts to transportation, these impacts remain significant without mitigation and all other impacts would remain the same. This does not constitute consideration of a "reasonable range of alternatives."

Even so, because the Reduced Project Alternative is environmentally superior, would reduce project impacts, and meets all eight project objectives, the Specific Plan must be revised to be consistent with the Reduced Project Alternative.

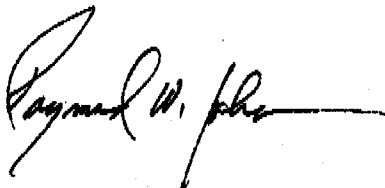
The FEIR's analysis of alternatives is severely lacking. First, it was unreasonable not to consider an alternative site given that the impacts to agriculture are site specific. Second, the evaluation of the impacts of higher residential densities on adjacent properties has not been evaluated and this project is not represented in the Specific Plan. The land use impacts of the higher density residential development must be evaluated. Third, an alternative which does not include commercial office, or which includes commercial office but it is located towards the northwest portion of the site, has not been considered.

**Desired Actions**

For the above reasons, we respectfully ask that you deny the project and deny certification of the FEIR.

Thank you for your consideration of the above comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond W. Johnson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Raymond W. Johnson

JOHNSON & SEDLACK

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**Johnson & Sedlack**, an Environmental Law firm representing plaintiff environmental groups in environmental law litigation, primarily CEQA.

**City Planning:**

Current Planning

- Two years principal planner, Lenexa, Kansas (consulting)
- Two and one half years principal planner, Lee's Summit, Missouri
- One year North Desert Regional Team, San Bernardino County
- Thirty years subdivision design: residential, commercial and industrial
- Thirty years as applicants representative in various jurisdictions in: Missouri, Texas, Florida, Georgia, Illinois, Wisconsin, Kansas and California
- Twelve years as applicants representative in the telecommunications field

General Plan

- Developed a policy oriented Comprehensive Plan for the City of Lenexa, Kansas.
- Updated Comprehensive Plan for the City of Lee's Summit, Missouri.
- Created innovative zoning ordinance for Lenexa, Kansas.
- Developed Draft Hillside Development Standards, San Bernardino County, CA.
- Developed Draft Grading Standards, San Bernardino County.
- Developed Draft Fiscal Impact Analysis, San Bernardino County

Environmental Analysis

- Two years, Environmental Team, San Bernardino County
  - Review and supervision of preparation of EIR's and joint EIR/EIS's
  - Preparation of Negative Declarations
  - Environmental review of proposed projects
- Eighteen years as an environmental consultant reviewing environmental documentation for plaintiffs in CEQA and NEPA litigation



**Representation:**

- Represented various clients in litigation primarily in the fields of Environmental and Election law. Clients include:
  - Sierra Club
  - San Bernardino Valley Audubon Society
  - Sea & Sage Audubon Society
  - San Bernardino County Audubon Society
  - Center for Community Action and Environmental Justice
  - Endangered Habitats League
  - Rural Canyons Conservation Fund
  - California Native Plant Society
  - California Oak Foundation
  - Citizens for Responsible Growth in San Marcos
  - Union for a River Greenbelt Environment
  - Citizens to Enforce CEQA
  - Friends of Riverside's Hills
  - De Luz 2000
  - Save Walker Basin
  - Elsinore Murrieta Anza Resource Conservation District

**Education:**

- B. A. Economics and Political Science, Kansas State University 1970
- Masters of Community and Regional Planning, Kansas State University, 1974
- Additional graduate studies in Economics at the University of Missouri at Kansas City
- J.D. University of La Verne. 1997 Member, Law Review, Deans List, Class Valedictorian, Member Law Review, Published, Journal of Juvenile Law

**Professional Associations:**

- Member, American Planning Association
- Member, American Institute of Certified Planners
- Member, Association of Environmental Professionals
- Member, U.S. Green Building Council, LEED GA

**Johnson & Sedlack, Attorneys at Law**

26785 Camino Seco  
Temecula, CA 92590  
(951) 506-9925

12/97- Present

Principal in the environmental law firm of Johnson & Sedlack. Primary areas of practice are environmental and election law. Have provided representation to the Sierra Club, Audubon Society, AT&T Wireless, Endangered Habitats League, Center for Community Action and Environmental Justice, California Native Plant Society and numerous local environmental groups. Primary practice is writ of mandate under the California Environmental Quality Act.

**Planning-Environmental Solutions**

26785 Camino Seco  
Temecula, CA 92590  
(909) 506-9825

8/94- Present

Served as applicant's representative for planning issues to the telecommunications industry. Secured government entitlements for cell sites. Provided applicant's representative services to private developers of residential projects. Provided design services for private residential development projects. Provided project management of all technical consultants on private developments including traffic, geotechnical, survey, engineering, environmental, hydrogeological, hydrologic, landscape architectural, golf course design and fire consultants.

**San Bernardino County Planning Department**

Environmental Team  
385 N. Arrowhead  
San Bernardino, CA 92415  
(909) 387-4099

6/91-8/94

Responsible for coordination of production of EIR's and joint EIR/EIS's for numerous projects in the county. Prepared environmental documents for numerous projects within the county. Prepared environmental determinations and environmental review for projects within the county.

**San Bernardino County Planning Department**

General Plan Team  
385 N. Arrowhead  
San Bernardino, CA 92415  
(909) 387-4099

6/91-6/92

Created draft grading ordinance, hillside development standards, water efficient landscaping ordinance, multi-family development standards, revised planned development section and fiscal impact analysis. Completed land use plans and general plan amendment for approximately 250 square miles. Prepared proposal for specific plan for the Oak Hills community.

**San Bernardino County Planning Department**

North Desert Regional Planning Team

15505 Civic

Victorville, CA

(619) 243-8245

6/90-6/91

Worked on regional team. Reviewed general plan amendments, tentative tracts, parcel maps and conditional use permits. Prepared CEQA documents for projects.

**Broadmoor Associates/Johnson Consulting**

229 NW Blue Parkway

Lee's Summit, MO 64063

(816) 525-6640

2/86-6/90

Sold and leased commercial and industrial properties. Designed and developed an executive office park and an industrial park in Lee's Summit, Mo. Designed two additional industrial parks and residential subdivisions. Prepared study to determine target industries for the industrial parks. Prepared applications for tax increment financing district and grants under Economic Development Action Grant program. Prepared input/output analysis of proposed race track. Provided conceptual design of 800 acre mixed use development.

**Shepherd Realty Co.**

Lee's Summit, MO

6/84-2-86

Sold and leased commercial and industrial properties. Performed investment analysis on properties. Provided planning consulting in subdivision design and rezoning.

**Contemporary Concepts Inc.**

Lee's Summit, MO

Owner

9/78-5/84

Designed and developed residential subdivision in Lee's Summit, Mo. Supervised all construction trades involved in the development process and the building of homes.

**Environmental Design Association**

Lee's Summit, Mo.

Project Coordinator

6/77-9/78

Was responsible for site design and preliminary building design for retirement villages in Missouri, Texas and Florida. Was responsible for preparing feasibility studies of possible conversion projects. Was in charge of working with local governments on zoning issues and any problems that might arise with projects. Coordinated work of local architects on projects. Worked with marketing staff regarding design changes needed or contemplated.

**City of Lee's Summit, MO**

220 SW Main

Lee's Summit, MO 64063

Community Development Director

4/75-6/77

Supervised Community Development Dept. staff. Responsible for preparation of departmental budget and C.D.B.G. budget. Administered Community Development Block Grant program. Developed initial Downtown redevelopment plan with funding from block grant funds. Served as a member of the Lee's Summit Economic Development Committee and provided staff support to them. Prepared study of available industrial sites within the City of Lee's Summit. In charge of all planning and zoning matters for the city including comprehensive plan.

**Howard Needles Tammen & Bergendoff**

9200 Ward Parkway

Kansas City, MO 64114

(816) 333-4800

Economist/Planner

5/73-4/75

Responsible for conducting economic and planning studies for Public and private sector clients. Consulting City Planner for Lenexa, KS.

Conducted environmental impact study on maintaining varying channel depth of the Columbia River including an input/output analysis. Environmental impact studies of dredging the Mississippi River. Worked on the Johnson County Industrial Airport industrial park master plan including a study on the demand for industrial land and the development of target industries based upon location analysis. Worked on various airport master plans. Developed policy oriented comprehensive plan for the City of Lenexa, KS. Developed innovative zoning ordinance heavily dependent upon performance standards for the City of Lenexa, KS.