



21 January 2018

County of San Diego
Planning and Development Services
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5510 Overland Avenue #310
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Re: Comments in response to the draft Subsequent Environmental Impact Report (SEIR) and General Plan Amendment (GPA) published December 14, 2017 as they pertain to Property Specific Request (PSR) Desert Subregion 24 (DS-24) proposed change from Semi-Rural (SR)-10 to SR-1 under the current San Diego County General Plan encompassing approximately 170 acres of undisturbed desert in Borrego Springs (APNs 198-320-01 and 198-320-26)

General Comments

02-1 Thank you for the opportunity to comment on the Property Specific Requests (PSRs) General Plan Amendment and Rezone (GPA 12-005; REZ 14-006) draft Subsequent Environmental Impact Report (SEIR). The comments below relate to both the Proposed Project and the Reduced Density Alternative for PSR Analysis Area DS-24.

02-2 The Tubb Canyon Desert Conservancy (TCDC) was established to preserve desert habitat and biodiversity, to protect native plants and wildlife, and to promote understanding of these special places. TCDC represents numerous landowners in the vicinity of the proposed DS-24 Property Specific Request located on approximately 170 acres (APNs 198-320-01 and 198-320-26). It is our assertion that any increase in density on the DS-24 site would adversely impact neighboring landowners, the Anza-Borrego Desert State Park, the Pinyon Ridge Wilderness, rare species, and the economy of Borrego Springs.

02-3

TCDC has provided comment at every possible occasion in this now decade-long process, beginning with a June 26, 2008 letter to the Department of Planning and Land Use in opposition to a Mitigated Negative Declaration that had been requested by the developer. All concerns and questions outlined in that June 26, 2008 letter (attached below as Appendix A) are herewith incorporated by reference in this present comment letter.

02-4

TCDC representatives provided public testimony at the July 2012 hearings before the County Board of Supervisors and recommended DS-24 not be included in the list of those projects that are the subject of the current SEIR.

02-5

More recently, on February 3, 2016 TCDC provided written comments to the Department of Planning and Development Services regarding our continued concerns regarding the DS-24 PSR to increase residential density by a factor of ten. All the concerns and questions elaborated in that February 3, 2016 letter (attached below as Appendix B) are herewith incorporated by reference in this present comment letter.

02-6

In the more than ten years since the initial proposal of DS-24, none of the concerns that we have described have abated, diminished, or have been mitigated. And in several instances, outlined below, new circumstances have significantly increased the negative impacts of the DS-24. Chief among the new circumstances that have arisen since the initial proposal of DS-24 are 1) in 2016 the Borrego Valley was designated a critically overdrafted aquifer by the California Department of Water Resources (http://www.water.ca.gov/groundwater/sgm/pdfs/COD-basins_2016_Dec19.pdf), and 2) the "orphan" dike to the west of DS-24 that once partially shielded DS-24 from outflows from the Tubb Canyon-Culp watershed was breached in 2013.

Additional Questions

The following questions are submitted as additional questions to those that remain outstanding from the incorporated comment letters referenced above and attached below as appendices.

02-7

1) WHERE IS THE ANALYSIS OF THE INDIRECT ADVERSE IMPACT ON AGRICULTURE IN BORREGO SPRINGS IF THE DENSITY OF DS-24 IS INCREASED BY A FACTOR OF TEN?

The economy of Borrego Springs has been dependent upon its agricultural industry for more than half a century. The Groundwater Sustainability Plan (GSP) currently

02-8
being crafted by the relevant Groundwater Sustainability Agencies (The County of San Diego and the Borrego Water District) has proposed a proportional reduction of water usage by 70% across all segments of water users—agricultural, residential, and commercial/recreational. If the density of DS-24 is increased from 17 residential units to approximately 170 units, the increased water usage for this residential development can only come from existing supplies, supplies that are already over drafted by 300%. Given that agriculture currently uses 70% of the water in the Borrego Basin, proportional reduction of water usage across all sectors means 70% of the “extra” water needed for increasing the density of DS-24 would come from agriculture. Thus, the agricultural sector would bear the lion’s share of the burden to provide the additional water to additional homes if the density of DS-24 is increased. **Where in the EIR or SEIR is the analysis of the impact on agriculture of increased residential density in the Borrego valley?**

02-9
2) WHAT ANALYSIS SUPPORTS THE “LEAPFROG” DEVELOPMENT THAT DS-24 WOULD CREATE? WHAT ANALYSIS SUPPORTS THE ABROGATION OF LU-2.1.1 OF THE BORREGO SPRINGS COMMUNITY PLAN?

The Borrego Springs Community Plan, which was adopted by the County Board of Supervisors on August 3, 2011 as part of the General Plan for San Diego County, specifically calls for increased residential development to be located near the “urban core” and on previously disturbed lands rather than pristine desert land¹. DS-24 fails on both these counts as elaborated on page 1 of our February 3, 2016 letter referenced above and incorporated herewith.

02-10
3) WHAT ANALYSIS HAS BEEN DONE REGARDING DS-24’S IMPACT ON BORREGO SPRINGS DARK SKY DESIGNATION AND TOURISM ECONOMY?

The economy of Borrego Springs is more and more dependent upon tourism, and a significant portion of that tourism is based on the community’s designation as a Dark Sky Community. Borrego Springs was the second community in the world to achieve this designation and the first in the United States; it is now one of seventeen such communities in the U.S. and abroad.² This designation is a critical component of Borrego Springs’ emerging tourism economy. **What analysis has been done regarding the economic impact of DS-24’s PSR on Borrego’s Dark Sky Designation and subsequent impact on tourism?**

¹ Borrego Springs Community Plan, LU-2.1.1, pg. 27.

² <http://www.darksky.org/idsp/communities/>, as viewed 21 January 2018

4) **WHAT ANALYSIS HAS BEEN DONE REGARDING FLOOD MITIGATION MEASURES THAT WOULD HAVE TO BE TAKEN AS A CONSEQUENCE OF THE 2013 BREACHING OF THE "ORPHAN" DIKE TO THE WEST OF DS-24?**

As we pointed out in our February 3, 2016 letter, the document, "Flood Hazard Evaluation for Borrego Country Club Estates," that was prepared by Walter F. Crampton, Principal Engineer for TerraCosta Consulting Company, to analyze flood issues for the DS-24 site, and dated August 27, 2007, incorrectly states:

"The 2,700-foot-long existing dike within the headwaters of the Culp-Tubb Canyon drainage was constructed by the County in the 1970s to divert flood flows to the south away from the populated east of Country Club Road, and has effectively done so for the last 40+ years."

02-11

The earthen dike in question was *not* built by San Diego County, nor does the County own or maintain that dike or the smaller sub-dikes located northwest of the main dike across the Tubb Canyon Bajada. No easements vesting these dikes in the public domain have ever been granted or recorded. The main dike and sub-dikes were actually built in the early 1960s by the Army Corps of Engineers, some would argue illicitly, and without the permission of the original landowners.

Of greater relevance now is the fact that the dike in question, which is not claimed or maintained by any governmental agency, was breached at its northernmost extent in severe flooding in 2013. The flood that breached the dike may be seen in a video on the Tubb Canyon Desert Conservancy Facebook page.

Historic drainage channels across Tubb Canyon bajada restored by 2013 storm waters breaching the dike are readily visible spreading across the DS-24 site in photo 4 on page-2 (Areal and Site Photos) of the County Analysis DS-24 Worksheet created by the Department of Planning and Development Services. **What analysis supports the creation and additional burden on emergency services and neighboring property owners of 150 new residential lots in a known flood plain that encompasses a natural desert riparian wash system?**

5) **HOW HAVE THE INCREMENTAL EFFECTS ON GROUNDWATER OF DS-24 BEEN ADDRESSED IN THE SEIR, WHEN VIEWED IN CONNECTION WITH THE EFFECTS OF PAST PROJECTS, THE EFFECTS OF OTHER CURRENT PROJECTS, AND THE EFFECTS OF PROBABLE FUTURE PROJECTS?**

02-12

According to the SEIR (page 4-36), estimates show that over 10,000 additional dwelling units would be possible when considering existing legally buildable vacant

lots plus the additional subdivision and multi-family development potential in the current Land Use Map for the community.

02-13 Table 1-11 in the SEIR lists projects currently being processed by the County. The following three are listed for the Desert in the vicinity of Borrego Springs and PSR Analysis DS-24:

Mesquite Trails Ranch	480 dwelling units
Borrego West SPA	177 dwelling units
Borrego Springs Country Club	255 dwelling units

The combined total number of proposed dwelling units for these in-process projects plus those in DS-8 and DS-24 is over 1400 additional dwelling units. Also, Table 1-13 lists an additional eight private projects in the desert community.

02-14 County Policy LU-8.2 requires new developments to identify adequate groundwater resources in groundwater dependent areas, as follows: "In areas dependent on currently identified groundwater overdrafted basins, prohibit new development from exacerbating overdraft conditions."

02-15 County Policy LU-13.2 requires new development "to identify adequate water resources, in accordance with State law, to support the development prior to approval."

02-16 County Policy LU-2.2 of the Community Plan calls for GPAs to "consider the extent of existing vacant lots in evaluating density increases."

02-17 Given the groundwater basin overdraft and the estimate of over 10,000 dwelling units from the current Land Use Map for the community, there are cumulatively considerable impacts related to overdraft of the groundwater basin. **How and where does the SEIR address these cumulative impacts on groundwater vis-à-vis DS-24?**

Conclusion

02-18 The community of Borrego Springs has uniformly opposed DS-24. The Borrego Springs Community Sponsor Group first voiced its opposition in a March 1, 2012 letter to the Department of Planning and Land Use. The Borrego Water District signaled its opposition to DS-24 in its public statement dated March 23, 2016. The Borrego Springs Chamber of Commerce elaborated its opposition to DS-24 in a letter to the Department of Planning and Development Services dated April 7, 2016.

02-19

The significant environmental impacts of DS-24 are manifold. The DS-24 PSR does not conform to the principles of the General Plan, or the Borrego Springs Community Plan. Without DS-24, and at the current rate of land sales, there is already a 30-year inventory of vacant, zoned residential lots in Borrego Springs. Increasing the zoning density of DS-24 would provide residential lots that are patently not needed, and would needlessly exacerbate the water crisis in Borrego Springs. Any attempt at flood mitigation for DS-24 would have severe adverse impacts on private property adjacent to, and upslope of, DS-24 and would be opposed by impacted landowners and by property rights activists in perpetuity.

02-20

The current analysis demonstrates beyond a reasonable doubt that approval of the DS-24 PSR would result in significant irreversible environmental change as well as in an irretrievable commitment of groundwater resources. Thus DS-24 is noted throughout the SEIR to have multiple "significant and unavoidable impacts." I suggest the significant negative impacts of the DS-24 PSR are in fact avoidable. They are avoided by selecting the **No Project Alternative**.

02-21

A **No Project Alternative** conclusion is particularly justified by the fact that DS-24 *does not represent an existing subdivision in process as there is no active application for such a project.* "Borrego Country Club Estates" (DS-24) is a phantom project that exists nowhere in County Planning except the idle subdivision application file. *Granting a zoning density increase to landowners who had no active project application in process at the time the General Plan was approved would grant unmerited special privilege to these landowners, a privilege that has been denied to neighboring residents and landowners restricted by identical zoning limitations.*

02-22

We trust that because of the facts outlined above and in the attached prior documentation, the **No Project Alternative** will be the recommendation of the Department of Planning and Development Services and eventually of the County Planning Commission, and that the **No Project Alternative** will be ratified by the County Board of Supervisors.

Sincerely yours,

J. David Garmon, M.D.

J. David Garmon, M.D.
President, Tubb Canyon Desert Conservancy

Appendix A

This letter is
comment 02-23

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**SUBJECT: NEED FOR AN EIR FOR THE BORREGO COUNTRY
CLUB ESTATES PROJECT**

Dear Mr. Slovick:

I. INTRODUCTION

This firm represents Dr. Ann Irwin and Ms. Lori Paul who are the principals in a group comprised of 25 property owners in the Borrego Community. We have been asked to review the documents prepared to date with respect to the Mitigated Negative Declaration ("MND") proposed for the development of Borrego Country Club Estates ("the Project").

The Project is a residential subdivision containing 149 lots on approximately 173 acres. The project is located north of Country Club Road and south east of Star Road, between Wagon Road and Borrego Springs Road in Borrego Springs, California.

A. PUBLIC RECORDS ACT REQUEST

Pursuant to our clients' authorization, we lodged a Public Records Act request seeking copies of all documentation filed to date with respect to the processing of the noted MND by the County. See the letter, attached. The documents received in April 2008, pursuant to our PRA request have been reviewed and are the basis for this comment letter. Documents filed with the County since April 2008, if any, have not been provided or reviewed.

On August 29, 2006, the County issued to the developer a letter, which, at page three, stated, "It will be necessary to prepare and submit a draft EIR to satisfy the requirements of the CEQA." Since that time, the developer has hired a team of consultants who apparently convinced County officials to accept a more abbreviated study of the project, a MND. After reviewing all documents revealed by the PRA request, it is the position of our clients that the Project does not qualify for such abbreviated treatment. Rather, its scope and potential impact mandate the preparation of a full-scale Environmental Impact Report ("EIR").

To support its position, the client group, with the help of this firm, has reviewed the substance of those reports prepared and filed to date which, purportedly, would support the developer's assertion that a MND provides a sufficient level of environmental review. However, a critical analysis of the Project compels a very different conclusion. The facts, when compared to the applicable law, mandate the preparation of an EIR.

B. SUMMARY FINDINGS

In fact, there are numerous points of weakness in the reports and studies prepared in support of the Project; particularly fatal are the following:

1. Incomplete and misleading analysis of significant biological impacts, such as the mischaracterized impacts on the Peninsular Bighorn sheep, the Burrowing Owl, and other species as well as the inadequate or nonexistent mitigation measures;
2. Misleading and incomplete analysis of the use of and impact on water resources;
3. Statements regarding use of mitigation land which the Project developers do not own, and have not offered to purchase;
4. Lack of analysis of numerous impacts such as noise and air quality;
5. Inadequate analysis of areas such as visual impacts.³

C. TIMELINESS

³ This list is not all inclusive and simply highlights the most critical points set forth in this letter.

The client group fully recognizes that this letter is submitted prior to that point in time when comment letters are typically filed. In the ordinary course, the MND draft would be completed and made available for review and comment. It might be argued that, the process not yet having been completed, it is premature to comment. However, it is not too early to state the position that the MND environmental review process being pursued is wrong. This project does not qualify for an abbreviated review, as will be demonstrated below.

II. GENERAL COMMENTS

At the outset, it is helpful to briefly outline the law which governs the process of environmental review applying to the Project.

"Only through an accurate view of [a] project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance.... An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR. The defined project and not some different project must be the EIR's bona fide subject." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 & 199)

The four basic purposes of the California Environmental Quality Act (CEQA)⁴, as described in CEQA Guidelines §15002, are to:

- (1) Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.
- (2) Identify the ways that environmental damage can be avoided or significantly reduced.
- (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

In order to accomplish these purposes, a public agency must prepare an EIR when there is substantial evidence that a project may have a significant effect on the

⁴ California Pub. Res. Code §21000, *et seq.*

environment (CEQA Guidelines §15002(f)(1)). The courts have long affirmed that CEQA is to be used as an informational tool which protects not only the environment but also informed self-government (*Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74). The *Laurel Heights* court stated that an EIR is a document of accountability and serves as an environmental alarm bell to agencies and the general public before the project has taken on overwhelming “bureaucratic and financial momentum” (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 395 – boldface emphasis added). The EIR’s function is to ensure that government officials who approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449). An EIR must provide its readers with the ability to understand the scope of the project seeking approval, as well as its potential impacts. Thus, an EIR which is confusing, misleading or otherwise faulty is a disservice to the government officials tasked with reviewing the project and the public they serve.

In short, an adequate documentary study must be "prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." (CEQA Guidelines §15151) If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. (*Laurel Heights at p. 392*) An environmental impact report "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Id. at p. 405*) If an environmental impact report is intended to provide “accountability and serve[s] as an environmental alarm bell to agencies and the general public” then the study documents submitted in support of a MND fail this basic legal test and must be denied certification.

III. PROJECT DESCRIPTION:

As set forth above, the Project is a residential subdivision containing 149 to 150 lots on approximately 173 acres, located north of Country Club Road and south east of Star Road, between Wagon Road and Borrego Springs Road in Borrego Springs, California.

The 173-acre site is undeveloped property consisting of undisturbed natural terrain that is situated on portions of two alluvial fans created by Culp-Tubb Canyon and Dry Canyon, conveying runoff west to east, ultimately to the Borrego Sink in the southeast portion of Borrego Valley. Per Borrego Valley General Plan for Flood Control Improvements, July 1972, Culp-Tubb Canyon watershed is 12.2 square-miles and generates approximately 7,700 cfs during 100-year storm events. Dry Canyon watershed

is 1.6 square-miles, generates approximately 1,300 cfs during 100-year storm events, and confluences with Culp-Tubb Canyon approximately 2,000-ft downstream of the existing diversion dike. Prior to 1960, potential flash floods from these canyons during rainfall events had the potential to cause flooding of the project site and surrounding areas. In an effort to mitigate this potential flooding, a diversion dike was constructed upstream of the project site to divert flood flows from Culp-Tubb Canyon to the south, around the community, eliminating the confluence of runoff from Culp-Tubb Canyon and Dry Canyon.

Studies in support of the Project state that despite the fact that the dike has not failed over the last forty years, and that it is in good condition and functioning to divert flows, the armoring of the dike does not meet Federal standards. As a result, the Project studies claim that FEMA mapping ignores the dike altogether during 100-year storm events. The study concludes that improvements to the existing dike and additional diversion structures are necessary.

Among the proposed Alternatives is the construction of a diversion structure (Alternative 2), or construct a 200-foot wide soil cement channel (Alternative 6). However, the studies discussing the Project Alternatives fail to fully analyze their impacts on the surrounding area:

IV. LEGAL FRAMEWORK

We began this comment letter with a reminder of the general purposes of the CEQA law; what follows is a relatively detailed discussion of the facts known to date about the Project. It is now timely to compare those facts to the law as it should be applied to this stage of the process of review.

At the outset, presumably as a result of an initial study, the County concluded that a full-scale EIR would have to be prepared for the Project. However, the County was subsequently convinced to consider a diminished level of review by the preparation of a MND. Whether as a review of the documentation purporting to support a MND, or as part of the continuing consideration of an initial study, it is now imperative to measure the necessity for a full EIR.

CEQA authorizes a MND for a project when the initial study has identified potentially significant effects on the environment but:

- (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where **clearly** no significant effect on the environment would occur, and
- (2) there is **no substantial**

evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment” (CEQA § 21064.5, emphasis added).⁵

An EIR therefore may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project **may** significantly affect the environment. In the present case, the only issue that is clear is that the information provided to date is insufficient to preclude preparation of an EIR. Indeed, the opposite is true. The documents of record conclude that the project will have a significant impact on the environment, virtually precluding an abbreviated review process.

A strong presumption in favor of the preparation of an EIR is built into CEQA; “[t]here is ‘a low threshold requirement for preparation of an EIR’ (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84) and a ‘preference for resolving doubts in favor of environmental review’ (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317). This presumption is reflected in the “fair argument” standard, under which the County **MUST** prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment (*Mejia v. City of Los Angeles* (2005) 130 Cal. App. 4th 322, 332).

A lead agency must find that a project may have a significant effect on the environment and must prepare an EIR if the project meets any one of the following conditions:

- (1) The project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.
- (2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
- (3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects

⁵ CEQA defines a “significant effect on the environment” as “a substantial, or potentially substantial, adverse change in the environment” (CEQA §§ 21068; see also, California Code of Regulations § 15382).

of past projects, the effects of other current projects, and the effects of probable future projects.

(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly. (14 California Code of Regulations § 15065(a)(1))

Matching the facts, as demonstrated by the findings of the biologist (see below), to the applicable law, a mandatory finding of a significant impact on the environment is compelled; thus the preparation of a full EIR is required.

V. SPECIFIC COMMENTS

Biology Impacts:

1. The Project Will Have A Significant Biological Impact.

The Biological Technical Report prepared by REC Consultants, Inc. in support of the Project immediately acknowledges that the Project “will directly impact 100% of the habitat within the proposed project boundary and associated infrastructure. **This is considered a significant impact and will require mitigation.**” (See Section 1.0) [Emphasis added.]

In reaching the conclusion that the Project will have a significant impact that will require mitigation, the Report relies on the CEQA definition of a significant impact as an impact that will:

substantially degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of major periods of California history or prehistory. (See Section 6.0)

Despite their acknowledgement of this significant fact, the Report attempts to downplay the effect of the Project on certain species and, in fact attempts to disregard or misstate that effect.

2. The Report Is Incomplete And Requires Further Study.

At Sections 1.0 – 4.0 the Report lists the biological surveys conducted in the Project area (approximately 172.7 acres). The surveys were conducted between 2004 and

2007. Wildlife species were identified via sight, vocalizations, scat, tracks or burros and plants were identified onsite or collected for identification.

The California Department of Fish and Game has not conducted a wildlife survey on the Project site; and any study that has been or will be conducted must be conducted at such time and season that the affected species will be present. For example, a brief survey conducted in the hot summer months and during a severe drought when annual seeds are dormant, would necessarily report the absence of certain species that naturally migrate away from the area at such times. A complete environmental analysis, therefore, must be done at different times of the year, and the Project cannot be approved unless and until it is completed and carefully considered.

As discussed above, the studies conducted for the Project at this time do not provide a complete picture of the biological impacts, or the necessary mitigation. A more complete study is necessary in order to cover the following, at a minimum. For example, of the four surveys conducted, the first was in the fall of 2004, the second in April, 2005 and the third in April 2005. The fourth survey was conducted in the summer of 2007. The Report does not discuss the impact of the seasons during which the particular surveys were conducted. This is a significant factor in that certain species are present and apparent during certain seasonal cycles and more elusive depending on breeding patterns, migrational patterns, etc. For example, rare desert horned lizards, a fringe toed lizard of unknown species, raptors including at least one burrowing owl exist on the Project property, and have not yet been documented.

This would lend itself to the lack of observation of animals that are known to be in the Anza Borrego Desert, and in the Project area in particular.

Moreover, the Report fails to refer to other well known biological surveys of the area which provide authority that additional species animals can be found therein, and support the impact of the Project on those species.

3. **The Project is located in a Riparian Desert Habitat and Desert Riparian Watershed Which Sets Forth Protections/Canyon Outflow**

On August 2006, the County acknowledged that the natural drainage may qualify as a wetland under the San Diego County Resources Protection Ordinance, which prohibits impacts to wetlands and wetland buffers. The County specifically requested a wetland survey using the County's definitions because they varied from the federal U.S. Army Corps of Engineers' definition; and, to the extent there is a disagreement over the extent of the wetlands, further study will need to be conducted (Attachment D). The County seems to have accepted the applicant's Report that indicates two areas of potential water flow observed on the western side of the Project were shallow channels that did not contain vegetation. The County also seems to have accepted the applicant's conclusion in the Report that the two areas do not qualify as United States Army Corps

Waters of the U.S. because they are not tributaries to navigable waters; do not qualify as Army Corps jurisdictional wetlands because they do not support wetland vegetation; do not fall under the jurisdiction of the California Department of Fish and Game because they do not contain standing water or riparian vegetation; and, do not qualify as Resource Protection Ordinance wetlands because they lack wetland vegetation, hydric soils or a non-soil substance.

The County has accepted the applicant's conclusion regarding this important topic, despite the applicant failing to provide any explanation, analysis or source for its conclusions.

4. **The Report Omits Discussion Of Important Species Such As The Burrowing Owl.**

Section 4.2 describes the wildlife found on the Project site. Of the birds, only the mourning dove (*Zenaida macroura*), Say's phoebe (*Sayornis saya*), and house finch (*Carpodacus mexicanus*), together with the more common greater roadrunner (*Geococcyx californianus*), cactus wren (*Campylorhynchus brunneicapillus*), phainopepla (*Phainopepla nitens*) and red tailed hawk (*Buteo lineatus*). The Report does not reference burrowing owl (*Athene cunicularia*), for example, a known endangered species, listed by the USFWS that has its habitat in the Anza Borrego. And Appendix D, which lists the USFWS sensitive animal species misstates that the habitat for the burrowing owl does not occur on site.

In fact, as discussed above, the burrowing owl has been seen in the area of the Project. Our client, Lori Paul, brought this to your attention, with actual photographic evidence, on August 31, 2007 and then again on October 30, 2007. Not only are these owls on the Project site, but as discussed further herein, they are directly within the line of construction of the levee which is among the items to be constructed in the furtherance of the Project. Disturbance of this endangered species simply cannot be contemplated.

Appendix D inaccurately represents that most, if not all of the USFWS sensitive animals known to be in the Borrego area either have not been observed on site, their habitat does not occur onsite, or these animals have no roosting sites on the Project site. And the Report has reached that conclusion by conducting merely four surveys between 2004 and 2007.

5. **The Report Omits Discussion Of The Flat Tailed Horned Lizards.**

The flat tailed horned lizard (*Phrynosoma mcalli*) is another species which has been documented at the Project site and which the Report omits. And once again, Appendix D attempts to misleadingly imply that the flat tailed horned lizard's habitat "does not occur onsite". The reality is that it does, and that the Project threatens to take their habitat.

The Biological Technical Report also ignores the significant impact the Project will have on these animals. In fact, the status of these animals is currently undergoing research and review due to a startling discovery made in 2002. These lizards require native ant populations for food and *cannot survive on the invasive and aggressive Argentine ants that radiate out from housing developments.*⁶ The Project will no doubt increase the Argentine ant population which, in turn, will adversely impact the horned lizards beyond the loss of their important habitat.

Thus, the impact on the lizard is inadequately and misleadingly addressed in the Report, and requires significantly more study.

6. **The Report Misstates The Impact Of The Project On The Bighorn Sheep, And Provides No Mitigation Measures.**

Section 4.3.3 the Biological Technical Report specifically states that the Peninsular Bighorn Sheep, sensitive animals according to the USFWS (2005), CDFG (2005) or candidates for those lists, have the potential to occur onsite.

The Report goes on to say that the Bighorn traverse the land impacted by the Project, then contradicts itself by asserting that “there were no rare, threatened, or endangered animal species” observed on site. Report further misstates facts by asserting that states that “**no sensitive habitats were identified on site.**” (See section 4.3.1)[Emphasis added.] First, this statement totally ignores the obvious fact that this site is classified as a sensitive habitat in numerous ways discussed herein, including the Riparian Desert Habitat discussed above. Most importantly the Report attempts to mislead the County by asserting that that no mitigation measures to alleviate the impact on the Bighorn are necessary because the Project site is not a “viable wildlife corridor”. (Section 5.1.2).

The reality is that the Bighorn do migrate through the Project area, and since it has been acknowledged that 100% of the habitat within the Project area will be impacted, the Bighorn will be threatened and that threat cannot be mitigated, in any way but to abstain from building the Project in the planned location.

The Bighorn occur in the Peninsular Ranges of southern California, which include the Tubb Canyon area. The continued existence of the Bighorn Sheep population in these mountains relies heavily upon maintaining connectivity between all subpopulations, so that gene flow can continue and subpopulations will be resilient. The USFWS has a prepared a *Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California*, in accordance with the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.) (“Recovery Plan”). The “objective” of the Recovery Plan is to:

⁶ See *Proliferation Of Argentine Ants In California Linked To Declines In Coastal Horned Lizards*, UCSD Science and Engineering Press release, February 26, 2002, <http://ucsdnews.ucsd.edu/newsrel/science/mclizard.htm>

[S]ecure habitat and alleviate threats to the overall Peninsular bighorn sheep population so that population levels will increase to the point that this species may be downlisted to threatened status, and ultimately delisted. (see the *Notice of Availability of a Draft Recovery Plan for the Bighorn Sheep in the Peninsular Ranges for Review and Comment*, [Federal Register: December 29, 1999 (Volume 64, Number 249)]

Contrary to the assertions in the Biological Technical Report of “no sensitive habitat” being identified, the Recovery Plan identifies contiguous habitat, such as the Bighorn sheep habitat in the Tubb Canyon area, as key to its recovery goals and provides guidelines for maintaining connectivity between populations. In addition, the Recovery Plan states that Bighorn sheep must be found in 9 recovery regions within this habitat for full recovery to occur.⁷

Tubb Canyon is located in one of these 9 recovery regions, near the middle of the narrow ribbon of habitat. Approximately 38 Bighorn Sheep, referred to as the “south San Ysidro Mountains subpopulation,” reside in this area. According to the USFWS’s Recovery Plan presence of Bighorn sheep in the Tubb Canyon area is critical to the persistence and recovery of the entire endangered population, because they provide the crucial link between sheep in the northern and southern portions of their narrow range. Tubb Canyon and its bajada provide essential habitat, including crucial water and forage resources, for this subpopulation. Within this relatively small range, this group of Bighorn sheep must find all the resources necessary for survival in the desert, including food, cover (from predators or inclement weather), and water. Thus, the Bighorn Sheep and their essential habitat in Tubb Canyon justify the attention, concern, and protection, which are now afforded by the law, and which the Project and the Reports in support of the Project ignore.

Bighorn Sheep in the Tubb Canyon area are currently in lambing season, with most lambs born during the months of February through April, and some born during summer months. Female Bighorn sheep will seek remote, quiet places when they are ready to give birth. Females with young lambs are particularly susceptible to disturbance, which can occur via a number of human activities.

⁷ Moreover, in 2007, there was a proposed Taxonomic Revision of the *Designation of Critical Habitat for the Peninsular Bighorn Sheep*, which highlighted the Anza Borrego Desert as a significant portion of their critical habitat. This revision indicates that many of the areas of critical habitat within the Anza Borrego will require “special management” in order to “decrease the effects of human disturbance.”

As the lambing season ends, Bighorn Sheep face one of their toughest times of the year - the harsh conditions of the Anza Borrego Desert summer. During the summer, the south San Ysidro Mountains subpopulation relies heavily on Tubb Canyon, due to the presence of two natural springs and an artificial drinker, constructed and maintained by one of the landowners in Tubb Canyon. These water sources may be especially important this summer, due to the prolonged, current drought.

The Project, its construction, ongoing existence and associated traffic will no doubt disturb the Bighorn sheep during sensitive periods. The intrusion the Project will simply add to the cumulative negative impacts that already threaten the future recovery of this endangered population.

7. **The Report states that 1:1 Mitigation Is Necessary For The Sonoran Creosote Bush Scrub, But Ignores The Fact That It Is Insufficient For other Federally listed critical species**

The substantial evidence available to the County in this instance is unusually revealing and persuasive. Such evidence is provided by nothing more than the Biological Technical Report prepared by the developers' expert. The Report attempts to suggest a 1:1 mitigation measure for the Sonoran creosote bush scrub, which would address the impact on the plant. Without arguing about the adequacy of the 1:1 mitigation plan proposed, it is elemental to question what plan is proposed to address the impact on the Bighorn? It could be concluded from the report that the diminution of the Bighorn range as a result of the Project is of no great consequence requiring no mitigation whatsoever. Such a conclusion is so irresponsible as to be an unintended interpretation.

Yet, it is only slightly more credible to extrapolate and apply the biologist's 1:1 mitigation formula to the Bighorn. If the mitigation formula is the suggested solution, it would propose that the 21 acres of Bighorn habitat lost to the Project be replaced in kind.

The land impacted by the development of the Project is habitat which is peculiar to one particular flock of Bighorn sheep – it is specific to their very being. One cannot “add” to the flock's habitat – it is what it is. If more land is to be purchased and set aside for other purposes, it would not add to the range of the flock, which is fixed and in place. The loss of any portion of such habitat would remain a net loss.

This particular land is not some generic environmental asset which can be replaced in kind at another location through a standard mitigation plan. Even if the mitigation ratio were changed to 20:1, it would not help this particular population of endangered species. An extension of the proposed mitigation plan would be to relocate the flock to some larger habitat - a truly ludicrous solution but a logical extension of the consultant's solution.

The conclusion is inescapable – the loss of habitat for the Bighorn sheep as a result of the development of the Project would be un-mitigatable. So, do these facts

support a finding of significance regarding the threatened environmental impact of the project? Most certainly.⁸

Water Impacts:

There are significant issues affecting water that have not been sufficiently studied, or even addressed. What has been included are a number of descriptions, without any answers to crucial questions such as: quantifying the Project's discharge during construction and thereafter; the impact to the Clark Water shed, to which the Project is a tributary; the impact to the local plant and animal environment; the effect the Project will have on local, state and national water conservation efforts; and, the effect on potential flooding and flood control measures. This failure does not allow the County or the public to understand the full impact of the Project as would be provided by a proper EIR.

The following is a survey of the issues that must be addressed and studied in depth, as is only possible with a full EIR:

1. Impacts to Surface and Ground Water

In the Storm Water Management Plan dated November 7, 2005 ("SWMP"), the applicant indicated that receiving waters would not be affected by the project throughout the project life cycle and that there are no high risk areas within the project limits (high risk areas being municipal or domestic water supply reservoirs or groundwater percolation facilities). However, the applicant acknowledged the following anticipated pollutants: sediments, nutrients, trash and debris, oxygen demanding substances, oil and grease, bacteria and viruses and pesticides and that since the Project would include work in channels, there is an increase in the velocity or volume of downstream flow, discharge to unlined channels, increase in potential sediment load of downstream flow.

On August 29, 2006, the County's Department of Planning & Land Use ("DPLU"), in turn, has determined that since the project will use groundwater, a technical investigation into the available groundwater resources will be required (Appendix L). Neither the applicant nor the County, however, have sufficiently considered the extent or significance of the water impacts beyond superficially identifying that there may be concerns.

The relationship between groundwater and surface water is well-known to professional hydrologists but neither is sufficiently discussed or analyzed in any of the documents provided. In fact, the applicant failed to provide information on the beneficial

⁸ Moreover, it is important to note that 233 acres of the proposed mitigation land is currently owned by Tim Skogen, not the developer of the Project. In fact, Mr. Skogen has made it clear that he has no intention of selling that land to the proponents of the Project.

uses for inland surface waters and ground waters, as requested in the SWMP. Although surface water is not a major source of water, there are still concerns with possible contamination and depletion. The Project proposes to divert drainage as a flood control measure and cites the need to obtain a waiver and release from all affected downstream property owners. This is not only an inadequate proposal for flood control, but again fails to address the impact on the environment, for which waivers and releases are not available.⁹ Water from contributing basins along with run-off generated on the Project site will travel through the site via shallow overland flow, continuing downstream through existing subdivisions and ultimately to Borrego Sink, the lowest point in valley to which all natural drainage is directed.

As much as 8,000 acres around the Borrego Sink is home to mesquite woodland, some of which has been a protected feature under County of San Diego land use regulations. Every year there is increased evidence that the otherwise adaptable mesquite in the Borrego Sink are dying of thirst.¹⁰ Although plant and animal life can adapt to change when it occurs gradually, what happens when the change is not so gradual as will occur with the addition of the Project- a high-density subdivision on 173- acres? This is only a preliminary question that has not been answered and cannot be adequately studied in the absence of an EIR.

2. Water Conservation Impacts

For approximately fifty years, groundwater levels in the Borrego Valley have been dropping in response to a continuing overdraft of the aquifer, the valley's sole source of water which is being insufficiently recharged by the area's very sparse rainfall. The most commonly accepted figures for storage, use and inflow indicate that at the current level of usage, the usable supply of groundwater could last approximately 100 years; however, the current levels of usage will not remain static as the population and water use continues to grow and the cost of extraction will increase as the water levels decline.¹¹

Borrego Valley has no access or right to any imported water, from either the Colorado River or Northern California water, partly because of cost, but mainly because these sources are already oversubscribed. Similarly, obtaining water from adjacent areas

⁹ In addition, such diversion is strictly prohibited pursuant to San Diego County Code, Ordinance 9426, Part G, section G.3.1.2, which states: "Measures to control flow rates and velocities shall not disrupt flows and flow patterns that are necessary to support downstream wetlands or riparian habitats. Diversion of runoff to regional facilities shall not be allowed to deprive immediate downstream habitats of the minimum flows and /or over-bank flow events they need."

¹⁰ See for example, the concerns outlined by the Borrego Water District, *Groundwater Management Study March 2001*, available at http://www.borregowd.org/Downloadable_Files.html, p. 26).

¹¹ *Id.*

such as San Felipe Creek, Clark Dry Lake and Ocotillo Wells is possible but extremely unlikely as there is only limited water available, in most cases it is of poor quality and the facilities to transmit and treat the water would be prohibitively expensive.¹² For example, building a pipeline to import water (from either the Colorado River or the Imperial Irrigation District canal approximately thirty-eight miles away) would cost approximately \$60 million.¹³

According to the description provided by the applicant, the Project will be served by on-site septic systems and groundwater from the Borrego Water District, which will require 1) the construction of an on-site well that would be tied into the district water system; 2) upgrading or increasing the pipe sizes surrounding the property; and, 3) upgrading the existing water tank located to the west of the Project. However, the applicant fails to include estimated water usage and potential alternatives to the planned water source, given the very real and immediate water crisis facing the area. In addition, the applicant does not quantify or otherwise analyze the need/ use of new potable water versus reclaimed water or the amount of reclaimed water that might be produced and the associated costs and benefits of reusing water.

As outlined below, a major function of an EIR is to ensure all reasonable alternatives to proposed projects are thoroughly considered, analyzed and assessed. It is not enough to merely designate the source of the water; water is at a premium and any development will impact the flow of water, water use, water reuse and the only way to adequately study the associated environmental impacts is with an EIR.

3. Flood Control

As noted in Flood Hazard Evaluation, prepared on August 27, 2007 in support of the MND, approximately 60% of the proposed residential development is within the flood plain as is significant neighboring developments immediately to the north of the project and significant flood-prone development downstream of Borrego Springs Road (at p. 19). The report further acknowledges the uniqueness of the Project in that the central portion, which includes approximately sixty (60) lots, is elevated out of the flood plain, with the majority of the remaining lots in the flood plain (p. 19).

Despite acknowledging the significant flood potential, the discussion in the reports of the solutions to the potential problems of flooding are graphic examples of the flawed approach to the environmental analysis process.

¹² See, Borrego Water District, *Groundwater Management Study March 2001*, available at http://www.borregowd.org/Downloadable_Files.html.

¹³ Mike Lee San Diego Union Tribune. Aquifer is Drying Up in Borrego Springs, <http://signonsandiego.printthis.clickability.com/pt/cpt?action=cpt&title=Aquifer+is+dryin...> (April 4, 2008, last accessed on April 11, 2008).

Six different flood control alternatives are pro-offered, some of which are stand-alone solutions, while others would have to be undertaken conjunctively. The point to be made is that no one approach is clearly designated as the preferred solution. Thus, the environmental review must analyze the impacts of each and every such potential solution. Of course, absolutely no such impacts have been environmentally analyzed.

The developer's engineer did, however, present a preferred engineering solution to the threat of flood waters. He recommended the reconstruction of the pre-existing 2700 foot (4000+ foot?) Culp- Tubb Canyon dike, and the construction of 5,800 feet of a new perimeter levee. While we have no way of completely filling the analytical gap regarding this engineering solution, several concerns come immediately to mind.

Existing Dikes. Reconstruction of the dikes now in place presents problems of nearly insurmountable magnitude. First, the existing berms are home to the burrowing owl, an endangered species. That fact has been brought to your attention by our client, Lori Paul. On August 31, 2007 and then again on October 30, 2007, Ms. Paul presented written and photographic evidence of the existence of burrowing owls in the berm situated on her property. As discussed above, disturbance of this endangered species simply cannot be contemplated.

Second, the existing levees identified for reconstruction are all on private property. They were first built in 1963 by the Army Corps of Engineers with the consent of the then owners of record. No easements vesting the levees in the public domain have ever been granted or recorded. The berms are privately owned. The current owners have expressed their adamant opposition to the reconstruction of any of the levees located on their properties. If reconstruction is contemplated, it could only be accomplished through a forced taking of the property, which each and every owner promises to stoutly appose.

Third, the recommended method of financing the berm construction and reconstruction work noted above must be addressed. While there is a split of authority regarding the reach of CEQA into economic matters, there can be no doubt that, in this instance, the suggested financing vehicle for the levee work raises grave environmental concerns. Stated differently, if the financing vehicle is deemed feasible, the work which it funds will have a dramatic environmental impact on the entire Borrego Valley.

The developer's engineer recommends the formation of an assessment district to finance the reconstruction of certain of the existing dikes, and the construction of 5,800 feet of new dike. Simplified, the boundaries of an assessment district are formed by defining all the properties which could be said to benefit by the completion of the infrastructural work being completed – the dikes. Any property that is to be benefited will have to pay an assessment – a tax burden added to the property – in proportion to the predicted benefit, which is measured by an engineer experienced in analyzing such benefits.

In this instance, the engineer does not specifically identify these “benefited properties” but he broadly describes an area of benefit both upstream and downstream from the subject development. This could include most of the Borrego Valley.

Fortunately, the formation of an assessment district is subject to the consent of those property owners whose lands would be affected. A vote must be conducted within the proposed district and a majority of the impacted owners must approve the assessments. If a majority of the owners “protests” the assessments, formation of the district fails.¹⁴

Obviously, the developer’s engineer has proposed an element of the Project which presents financial and political issues that CEQA does not necessarily require to be analyzed (CEQA § 21080 (b)(8)) . However, the same element does present an issue which CEQA is designed to address. There can be no doubt that the reach and scope of the dike construction constitutes a “project” under CEQA § 21065. Any such “project” is required by CEQA to be analyzed, and the superficial study afforded by a MND will simply not suffice. No public agency, in good conscience, could allow a public works project of this scope and magnitude to proceed without the preparation of a full-scale EIR (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal. App. 4th 1170, 1202), especially when, as is the present case, the agency has failed to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study (see, *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406, 408).

For this reason alone, not to mention the others covered herein, the County must abandon the preparation of a MND and order the completion of the more comprehensive environmental review which the Project requires.

Land Use Impacts:

At this time the County has not yet implemented its General Plan Update which would decrease the density requirements for the Project area and the Anza Borrego Desert in general. Nonetheless, it is our understanding that the General Plan Update is in the process of being approved by the County Board of Supervisors. This Update will limit the permissible density to one residence per 20, 40 or 80 acres, which is totally incompatible with the planned density of the Project, which is a high density project consisting of 149 lots on approximately 173 acres.

We have been advised that the requisite applications for the Project were not submitted in a manner that would allow it to be grandfathered in under the General Plan

¹⁴ It must be noted that in certain limited instances, the majority protest can be overridden by the local legislative body; the Board of Supervisors. Flood control facilities are one example of public improvements for which the majority protest over-ride is possible

Update (or the 2020 Plan). Thus, it will not be compatible with the area upon the Plan Update's approval.

Landform Alteration/Visual Quality Impacts:

One must appreciate the visual and aesthetic qualities of the Anza Borrego Desert, and the Tubb Canyon area, qualities which are profoundly threatened by the proposed Project. It is important to note that the analysis contained in the Studies in support of the Project are incomplete as they do not adequately address the significant and unavoidable visual impacts.

It is clear that the studies and reports in support of the Project do not take the necessary next step and analyze the project's effects on the "wilderness experience" in the Anza Borrego Desert. Unlike urban and suburban projects that create visual quality impacts within the context of mostly man-made structures, this Project creates visual impacts in an area that provides a wild, natural haven for those individuals who enjoy the outdoors and need a break from the stresses of city life.

For example, the Project will consist of a residential community being constructed on 149 to 150 lots, where there is currently natural terrain. This construction, the necessary roads, the accompanying vehicles and traffic and the resulting development, will be widely visible throughout the surrounding areas, including higher elevation impacts.

In addition, both the diversionary structure and the channel will create significant visual impacts on surrounding properties, as well as higher elevation viewpoints. The area is specifically known for its natural resources, landscape and natural untouched scenery. The structural intrusions will cause unavoidable disruption, as will the construction of these large structures.

Traffic Impacts:

The Project is located on the west side of Borrego Springs Road (S-3) just south of Tilting T Drive. The Transportation Analysis demonstrates that the project will have significant impacts on Palm Canyon Drive between Country Club Road and Borrego Springs Road by adding significant traffic. For example, the Project is expected to generate approximately 1,480 average daily vehicle trips, 118 occurring the AM peak hour and 148 in the PM peak hour.

The recommended mitigation measure set forth in the Transportation Analysis is to add a local and regional fee to mitigate development impacts based on the Estimated Dwelling Units (EDU). As estimated by the Transportation Analysis, the Project will generate 1,480 trips, generating 123.33 EDU based on 12 trips/EDU. The Total TIF fee recommended is \$352,610.00.

Clearly the need to add a local and regional fee to the tune of \$352,610.00 demonstrates that there are currently insufficient funds to mitigate the traffic impacts on the area. Moreover, should the fee be implemented, the Transportation Analysis does not indicate how it will be utilized to mitigate the impacts as the amount of daily trips and the consequent traffic will be an unavoidable aide effect of the Project, and its resulting increase in the population of the area¹⁵.

Air Quality Impacts:

Without explanation or analysis, the County¹⁶ determined that no significant impacts to air quality have been identified. Given the current undisturbed nature of the site and the scope of the Project, this conclusion is hard to believe and the public deserves an explanation based on a complete analysis.

The potential adverse impacts to air quality include, but are not limited to: the accelerated wind and flood erosion of the relict sand dune after the removal of natural vegetation (the established ocotillo/ creosote plants) and the emissions from construction earthmoving activities. Extremely high winds frequently blow through Tubb Canyon and surrounding canyons. Depending on the wind direction, newly exposed and/ or the displaced sand will clearly and negatively affect a number of local residents and properties. The exposure to fine particulates blowing from the grading site may present a serious health risk or the elderly and those with respiratory conditions. The irony is that many people moved to Borrego Springs for the benefit of the clean, dry dessert air. The further irony is that the existing sand dune is a natural barrier for wind and traffic sound; the Project will not only be causing adverse impacts to air quality, noise and traffic (discussed in other sections), but will be eliminating the natural protection already in existence.

Another potential adverse impact that needs further analysis and study is whether or not the site will be subject to inversion layers which increased traffic will exacerbate. Most valleys face this issue, and given that the site is within the Borrego Valley, this issue deserves consideration. The failure to provide any explanation regarding air quality impacts is just another of the gaps in the study of material issues which must be addressed in order for a full and complete environmental review to be conducted.

Noise/Odor Impacts:

¹⁵ In many aspects, including the lack of clarity as to how the TIF will be applied, this Transportation Analysis fails to address the points raised in the proposed Memorandum of Understanding attached as Exhibit C to the County of San Diego's August 29, 2006 letter addressing the Project application for a Tentative Map.

¹⁶ Ltr. from William Stocks, Project Manager, Regulatory Planning Division, County of SD, DPLU, to David Davis (August 29, 2006), Attachment J.

Once again, there has been no study conducted with regard to the potential impacts of noise and odor on the surrounding areas. Given that the Project plans on grading a site that currently has a natural barrier in the form of the ridge in the middle of the site, it is hard to believe that no consideration has been given to noise and odor impacts. At the very least, there will be a large adverse impact during grading and construction.

Like the apparent gaps in information addressed above, this serves to demonstrate the Project is not the appropriate project for the Borrego Springs area, or that at a minimum, it cannot be adequately addressed by a Mitigated Negative Declaration. In passing, in the Biological Technical Report, Section 6.1.1, states that “noise pollution is not expected to be a problem.” Again, no supporting statement or analysis is referenced.

At a minimum, the fact that, as set forth in the Transportation Analysis, the Project will an additional 1,480 average daily vehicle trips, 118 occurring the AM peak hour and 148 in the PM peak hour, must be addressed.

Growth Inducement Impacts:

As with many areas discussed above, the studies prepared in support of the Project are silent as to the population growth impacts. With 149 to 150 lots, and the resulting residential construction on those lots, the increase in the population and its impact on the resources of the surrounding area is a significant impact; one which cannot be disregarded or ignored as is being done in this instance.

Socio-Economic Impacts:

The studies fail to discuss the socio-economic impacts of the Project when there is a clear threatened impact to the surrounding sparsely populated Borrego Springs area, both with regard to undeveloped and developed properties. This omission is in direct contradiction to the requirements of the court. (*Bakersfield Citizens for Local Control v City of Bakersfield* (2004) 123 Cal. App. 4th 777, 793).

School District Impacts:

The studies fail to discuss the impacts of the Project on the local school district and all of its constituent schools as required. (*El Dorado Union High School District v City of Placerville* (1983) 144 Cal. App. 3d 123). This failure is surprising considering that a project of this magnitude has potentially significant health, safety and welfare impacts on these sensitive receptors in terms of odor, air quality, noise and traffic, many of which have not been addressed by the Study. For instance, the increased traffic on the road will directly compete with school buses, teacher’s and parent’s vehicles and student drivers themselves. Not only is this a potentially significant issue with regard to schedule due to additional traffic delays, but it creates a more dangerous road condition to have so

many additional large vehicles on the roads near to schools. The omission of this analysis is likely one of self-interest, as the County would be hard-pressed to wave off the public's apprehension when the Project's impacts are shown to affect children.

Cumulative Impacts:

Again, characteristic of the studies' utter disregard of essential points, the cumulative impacts of the Project are not addressed.

Project Alternatives:

A major function of an EIR is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 735). The CEQA Guidelines explain that an EIR "shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. A potential alternative should not be excluded from consideration merely because it would impede to some degree the attainment of the project objectives, or would be more costly. (*Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1354, quoting CEQA Guidelines, §15126.6(b)). In determining the nature and scope of alternatives to be examined in an EIR, ... local agencies shall be guided by the doctrine of 'feasibility.'" (*Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553, 565). Feasible, in this context, means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (CEQA §21061.1).

As project alternatives are not addressed in the studies in support of the Project, an EIR is absolutely necessary.

VI. CONCLUSION

For the reasons set forth above, we find that the studies in support of the Project are defective and incomplete, making it evident that either the Project should not go forward, or at a minimum should undergo the scrutiny of a full EIR rather than simply a Mitigated Negative Declaration as suggested by the studies. The Project, if implemented, will create significant unmitigated impacts beyond those which would fall within the confines of a MND, in contravention to the stated purpose of CEQA. We recommend that, considering the massive oversights by the Project proponents, at a minimum, the County require an EIR for the Project.

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Our recommendation is more than timely. As we noted above, this comment letter would, typically, be filed in response to the circulation of a draft MND. Thanks to the information provided in response to our PRA request, we are in a position to address corrective measures sooner rather than later. The net affect of the decision, now, to prepare a full EIR, will save the developer and the County the expense of a pointless exercise - the completion of a draft MND.

No fair-minded observer of the Project – whether critic or supporter – could fail but to conclude that a draft MND will never pass judicial muster under CEQA. Preparation of a full EIR will be compelled, either by the reasoned conclusion of the County, or by judicial mandate. The client group urges that the County follow the law and order the preparation of a full-scale EIR.

Thank you for your consideration of our thoughts and concerns.

Very truly yours,

LOUNSBERY FERGUSON ALTONA & PEAK,

LLP

Kenneth H. Lounsbery, Esq.

KHL/rmq

Appendix B



3 February 2016

**County of San Diego
Planning and Development
Services**
Peter.Eichar@sdcounty.ca.gov
Kevin.Johnston@sdcounty.ca.gov
5510 Overland Avenue #310
San Diego, California 92123

Re: Opposition to Property Specific Request Desert Subregion 24 (DS-24) proposed change from Semi-Rural (SR)-10 to SR-1 under the current San Diego County General Plan encompassing ~172 acres of pristine desert (APNs 198-320-01 and 198-320-26)

Dear San Diego County Advanced Planning Staff,

02-24

Tubb Canyon Desert Conservancy (TCDC) was established to preserve desert habitat and biodiversity, to protect native plants and wildlife, and to promote understanding of these special places. Tubb Canyon Desert Conservancy represents numerous desert landowners and visitors to the Anza-Borrego Desert in the vicinity of the proposed DS-24 Property Specific Request located on ~172 acres (APNs 198-320-01 and 198-320-26). It is our strong assertion that any increase in density on the DS-24 site would adversely impact neighboring landowners, Anza-Borrego Desert State Park, Pinyon Ridge Wilderness, rare species, and the associated economy of Borrego Springs.

02-25

DS-24 is located at the southern edge of the unincorporated San Diego County community of Borrego Springs. **The high conservation and pastoral recreational value of the two subject parcels was broadly recognized during the protracted San Diego County General Plan process, resulting in the final determination to include DS-24 in the lower density SR-10 zoning designation. This decision was correct and fair and should not be altered.** The current owners of the property had the same opportunity as all landowners in the immediate vicinity to provide input during the lengthy General Plan update process.

02-26

The high density of buildable lots surrounding the sand dune and a dense ocotillo forest on the DS-24 site as represented on the County planning maps for DS-24 is not reflected in reality and actual land use. DS-24 is not, as described by the property owner, "in-fill" to existing residential housing. In spite of the name "Country Club Road," there is no country club or high-density development in the area around DS-24. In fact, many local residents in the immediate area have deliberately "self-zoned" at lower density than the current SR-2, SR-1 or Village Residential (VR)-2 permits by purchasing vacant land (lots) on one or more sides of their own homes to prevent future development, which, in turn, preserves natural vegetation and wildlife habitat, maintains their semi-rural lifestyle, and protects their scenic views. Many more residents desire to purchase the vacant lot or lots around their homes; however, they cannot yet afford to acquire those parcels.

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02-27

Allowing DS-24, currently zoned low-density SR-10, to become a more "urban" SR-1 would result in smaller lots than currently exist in the surrounding residential area. See the attached aerial photos that document the actual low density of the neighboring homes adjacent to the DS-24 parcel as well as the floodplain and dune complex on the site.

02-28

The approved General Plan appropriately took the discrepancy between the County-specified density and reality into consideration, along with other germane factors, in lowering the zoning density for the open space parcels: APNs 198-320-01 and 198-320-26. It should also be noted that the two, large **DS-24 parcels have never been subdivided and have no certificate of compliance.**

02-29

In this context, **the owners of DS-24 should not be granted a special zoning change that has been denied to other adjacent landowners of large parcels.** All property owners should abide equally with the new, lower density zoning in the region. Area landowners recognize the importance of a low-density, natural habitat buffer zone around their homes (or planned homes) that complements and protects adjacent Anza-Borrego Desert State Park. Area landowners, that is, excluding the owners of DS-24, notably Rudy Monica, David Davis, and Chris Brown. It is unacceptable that these property owners, *who had no active application in County Planning for any project at the time the General Plan was approved*, should be granted a free Subsequent EIR, conducted at taxpayers expense, to further their desire to be granted special privileges that other County landowners in the immediate area will not receive and that would be contrary to public interest.

02-30

In fact, local opposition to the numerous incarnations of the proposed high-density subdivision promoted by owner Rudy Monica has been consistent and so strong over the years, that immediate neighbors of the site, the larger community, state park personnel, local news media and even some law enforcement and utility company staff routinely refer to the DS-24 project as "Rudyville." This is because the ostentatious name of "Borrego Country Club Estates" used in past Project documents and at Borrego Springs County Sponsor Group meetings, was perceived as absurd for what has become, over the years, a scheme to grade 172 acres of pristine desert into a grid of small, vacant lots for sale. Borrego Springs already has a large surplus of buildable lots for the foreseeable future, especially considering the new limitations on water resources in Borrego Valley.

02-31

The density proposed under the requested change for DS-24 would no longer be acceptable in the current, critically overdrafted state of the Borrego Valley Groundwater Basin (BVGB). Regarding water resource limitations on land use planning mandated by the adopted Groundwater Management Plan (GSP) under the Sustainable Groundwater Management Act (SGMA), please refer to the comment letter from TCDC dated 17 December 2015 at the Notice of Preparation public hearing (copy attached).

02-32

In a related matter, TCDC is concerned about **inadequate construction of water service infrastructure and the wastewater disposal system for any increased density development proposed on the DS-24 parcels.** In a letter dated July 24, 2008 sent to the San Diego Department of Land Use and Planning, Kenneth H. Lounsbery, of Lounsbery Ferguson Altona and Peak LLC Attorneys at Law, wrote the following:

According to the description provided by the developer, the Project will be served by on-site septic systems and groundwater from the Borrego Water District, which will require: 1) the construction of an off-site well that would be tied in to the District water system; 2) upgrading or increasing the pipe sizes surrounding the property; and, 3) upgrading the existing water tank located to the west of the Project with trenching and land disturbance to connect the project area to the tank.

02-32
con'd.

Regardless of whether a well is even feasible (there is reason to believe it is not, since a nearby well is going dry with minimal water supplies remaining), the developer's plans are more problematic than considered in the Project's reports. The plan is for the developer to dig a viable yield well elsewhere in Borrego Valley, then lease or donate the well to the Borrego Water District. The Borrego Water District would, in turn, import water to the large storage tank to the west of the Project site and pipe it to the development. This will require additional trenching for the pipes, over land that has recently been donated to Anza-Borrego Desert State Park.

Because Borrego Springs is in the Colorado River District, it falls under the jurisdiction of the Regional Water Quality Control Board, which has started to require treatment plants for housing developments with ten (10) or more units. [Kurt Schauppner Desert Trail, "Who has Sewer Power? The City" March 2, 2007] The only indication that the developer has considered wastewater disposal systems is by a reference in a letter dated February 18, 2008 from the County of San Diego Department of Environmental Health, Land and Water Quality Division which notes deficiencies in the developer's replacement of the Tentative Map, dated December 19, 2007. According to this letter, with the increase in the number of lots, the developer failed to provide percolation test data on certain lots; failed to include the layout of the existing well, or the layout for the proposed onsite wastewater disposal system and reserve area. Lastly, the letter notes that "leach lines may not exceed 24 inches of cover and lines may not be placed in fill or in areas of disturbed soil." The fact is that all of the lots in the Project area would be elevated on sand fill from the graded down dune.

The Department of Environmental Health did not recommend approval of the subdivision proposal or the associated preliminary grading plan.

Not surprisingly, there is also a dearth of information in the record on plans for wastewater disposal and / or sewage treatment plans, either on the tentative maps or the preliminary grading plans. Given the Department of Environmental Health's concerns and the possible restrictions by the Regional Water Quality Control Board, the property owners in the Borrego Community (and the County) should be wondering what the developer plans on doing with the sewage from 150+ residences. Apparently, the developer is proposing to grade lots for sale and is not planning on building a planned development.

02-33

Most egregiously, the proposed development of the DS-24 parcels involves an unpublicized, covert preferred alternative to infringe on the property rights of neighboring landowners, through eminent domain and local "assessment district" fees, in order to build the subdivision in a hazardous floodplain. ~60% of the proposed project site is located in a desert riparian floodplain susceptible to periodic flash flooding. Such floods in the desert are a periodic, natural, and beneficial phenomenon that brings water to an otherwise parched landscape. Floods move soil nutrients for vegetation from higher locations to lowlands. Floods also form the ephemeral streams and ponds that numerous species, such as frogs and waterfowl, require for sustenance and reproduction. There are even certain native plants, such as smoke trees, whose seeds have evolved to only germinate after a flood has rolled and battered their tough outer surface. Flood damage to the seed coat signals that there is water present to nourish the seedling, which in turn triggers germination at the right time. Regardless of the role flash floods play in Nature, desert floodplains are an unsafe and unwise location to build homes.

02-34

The document and accompanying maps, "Flood Hazard Evaluation for Borrego Country Club Estates" was prepared by Walter F. Crampton, Principal Engineer for TerraCosta Consulting Company, to analyze flood issues for the DS-24 site; dated August 27, 2007. The report incorrectly states:

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"The 2,700-foot-long existing dike within the headwaters of the Culp-Tubb Canyon drainage was constructed by the County in the 1970s to divert flood flows to the south away from the populated east of Country Club Road, and has effectively done so for the last 40+ years."

02-35

The earthen dike in question was *not* built by San Diego County, nor does the County own or even maintain that dike or the smaller sub-dikes located northwest of the main dike across Tubb Canyon Bajada. No easements vesting the levees in the public domain have ever been granted or recorded. The main dike and sub-dikes were actually built by the Army Corps of Engineers, some would argue illicitly without the permission of the original landowners. Examination of historic aerial photos will confirm this along with the consistent recollections of long-time local residents of the area. Why were the earthen dikes built by the Corps? During a year of serious floods across the U. S. Southwest, the Army Corps of Engineers was assigned to protect public safety and property by constructing emergency levees in many locations, including in Borrego Valley. The dike in question, which is being allowed to naturalize over time, is privately owned. Burrowing owls live on the east side of the main dike berm. Eventually, the floods from Tubb Canyon and adjacent mountains will erode the levee and water will once again flow across the bajada and into Anza-Borrego Desert State Park.

02-36

None of the owners on whose property the old earthen dike and sub-dikes exist would allow the County or any other agency to construct a new, 5,800 foot long concrete dam to federal standards across their land. Nor would neighboring property owners east of the dike approve the construction of concrete channels down unpaved Tubb Canyon Road, per the proposed plans to protect the DS-24 parcels from future floods. Only a forced taking of private property, which each and every owner has promised to oppose, would enable a major dam system to be built on the natural desert. Apparently, the developers who own the DS-24 parcels have considered exactly that approach.

02-37

In the "Flood Hazard Evaluation for Borrego Country Club Estates," author Walter F. Crampton recommends the formation of a "Geologic Hazard Abatement District (GHAD)" to finance the design and construction of an expanded dam, flood channels, and additional dikes. An abatement district levees a tax burden on all the neighboring properties alleged to "benefit" from the project.

02-38

This covert Draconian flood control plan to enable a high-density subdivision to be built where it does not belong presents grave environmental concerns. Blocking natural flood waters from desert trees and ocotillo in the State Park would degrade the high diversity currently thriving on the bajada. An expanded concrete dam and channel system would also be a visual blight marring the scenic vistas and state park. More ominous is the fact that this extensive dam system and channels, including full blueprints, was never publicized by the developers, not to the affected neighbors who would lose their properties and not to the Borrego Springs Sponsor Group during the many briefings and discussions about the "Rudyville" project. This sort of subterfuge is chilling. It makes one wonder what else is not known about this project. The intent to charge neighbors through a special assessment district, as well as to take private land by eminent domain, in order to build a large development for their own profit, is unacceptable on multiple levels. This massive flood control plan should be definitively opposed by San Diego County. TCDC and the affected landowners oppose this plan along with any attempt to impose an assessment fee on surrounding neighbors.

02-39

DS-24 is located within walking distance of Anza-Borrego Desert State Park and is a component of the transition zone between the Sonoran Desert (Colorado Subdivision) at its western terminus with foothill chaparral. **As with most transition zones, the DS-24 site supports significant biodiversity and listed species** due to the variety of vegetation regimes and terrain located in close proximity. The slightly wetter transition habitat where DS-24 is located encompasses the westernmost complex of Sonoran desert sand dunes, home to numerous lizard species, including the Flat-tailed Horned Lizard (*Phrynosoma mcallii*), a California Species of Special Concern, which favors

stable dunes and desert riparian gravel flats. See the annotated California Department of Fish & Wildlife map attached. The property in question is also an attractive hunting ground for a resident population of Burrowing Owls (*Athene cunicularia*), another California Species of Special Concern. Burrowing Owl populations remain in decline across much of their range.

02-40

DS-24 is adjacent (within walking distance) to the federal recovery area for the endangered Peninsular Desert Bighorn Sheep (*Ovis canadensis nelsonii / cremnobates*). See the annotated U.S. Fish & Wildlife Service map attached.

02-41

The varied terrain on the DS-24 site attracts a variety of migratory birds to its ephemeral water sources and ancient ocotillo forest, including several species of hummingbirds, hawks, warblers, and orioles. Bats roost nearby within local cliff cracks and small caves, flying out at night to feed on abundant insects present around seasonal water sources. The full spectrum of species living within the subject area has not been fully documented, merits further study, and is deserving of full protection from destruction.

02-42

As noted by County planners, **the current designation of SR-10 for the undisturbed desert on the DS-24 parcels qualifies for habitat reservation measures under the Conservation Subdivision Program** (<http://www.sandiegocounty.gov/pds/advance/conservationsubdivision.html>). **The requested SR-1 designation would not qualify for that program.**

02-43

As previously mentioned, a vast majority of neighbors and visitors familiar with "Rudyville" have strongly opposed the project in all its various forms over the years. Local neighbors and landowners greatly value the wildlife, wildflowers, and a large, ancient ocotillo forest located on the subject site that was once a popular destination highlighted on local tourist maps. **Development of DS-24 threatens the quality of life and property values of neighboring residents.**

02-44

Grading the stable dune and ocotillo forest into rows and rows of elevated vacant lots would result in unconsolidated sand and fine particulates becoming airborne in the frequent high winds (60 to 80 mph) that blow across Tubb Canyon Bajada from the western mountains. Dust storms created by vacant lots would blow into other neighborhoods and pollute the clean, dark skies that are highly valued in Borrego Valley. Borrego Springs is one of only nine IDA-certified "International Dark Sky Communities" in the United States: <http://darksky.org/idsp/communities/>. The tourism value of the Dark Sky designation would be diminished by the proposed development, as would business to a variety of local overnight accommodation and eating establishments, and other businesses supported by tourism.

02-45

Destabilizing the sand dune would also increase health risk in the community. Many persons move to the desert to improve their health, including seniors and those with allergies and other respiratory conditions. DS-24 is located in a high wind corridor that would pick up fine sand and dust particles from the 172+ acre denuded dune and graded floodplain, creating localized dust storms that would lower air quality to an unacceptable level, both in the immediate area and farther away in residential and recreational areas "downwind." The resulting degraded air quality would also diminish the tourist value of Borrego Springs and the surrounding State Park, resulting in harm to the local economy. Tourism revenues have decreased in other communities where a nearby land use change has resulted in an increase in thick haze, high airborne particulate counts, and more frequent asthmatic, allergic, and other negative respiratory reactions in visitors and local residents.

02-46

Country Club Road across the DS-24 acreage is not paved. **Roads planned through any future subdivision, along with the numerous vehicles associated with a higher density of homes, would bring undesirable and intrusive traffic through on existing narrow roads and through**

quiet neighborhoods, thereby changing the pleasant character of the semi-rural streets and sparsely spaced desert homes. According to the 2006 Transportation Analysis for developing the DS-24 site, the proposed subdivision would generate approximately 1,480 average daily vehicle trips, with 118 occurring during morning peak hour and 148 in the PM peak hour. Much of this traffic would be directed onto West Star and East Star Roads to the north of the site. These roads are both narrow (~20 feet wide), rural in nature, and insufficient for increased 2-way traffic flow. Redirecting traffic out via those low density roads will require extensive widening and redesign that will adversely impact adjacent, established homes, and increase danger to pedestrians and animals, including wildlife and horses. Increased commercial vehicle traffic serving the proposed subdivision, such as heavy garbage trucks, UPS and Federal express delivery trucks, etc. will greatly accelerate road wear, necessitating more frequent and costly road maintenance and repair.

02-47

Increased traffic, private and commercial, would also contribute to higher ambient noise levels generated by a concentration of houses in what is an otherwise very low-density location. **Noise generated by an increased density of homes and associated human activities on the DS-24 parcels would reverberate off the nearby mountains and canyons, causing unacceptably high noise levels locally and across the adjacent State Park.** Noise is potentially destructive to both wildlife and the tranquil setting visitors expect in the State Park. Neighbors who moved to the outskirts of town for added solitude highly value the subtle sounds of nature around their homes, including bird songs, the chorus of frogs and toads after rain, as well as serenades by coyotes out on the bajada. All this would be lost if the DS-24 site is ever developed.

02-48

Increased traffic also has the potential adverse impact of vehicle emissions generating an inversion layer, further degrading air quality and visibility in the Borrego Valley. This consequence of increased traffic needs to be fully evaluated.

02-49

A higher density subdivision would destroy ancient Native American sites. Tubb Canyon Bajada was once heavily used by the local Cahuilla for their seasonal harvest of agave. Nearby canyons and arroyos were a reliable source water in the desert from both nearby springs and ephemeral floods. Potsherds, stone hand tools, and other artifacts are often found in the surrounding area and are no doubt present on the DS-24 site.

02-50

Lastly, it has come to our attention that an owner / investor in DS-24, Chris Brown, is allegedly a former San Diego County employee who has worked directly for Supervisor Bill Horn in matters of regional planning. This relationship raises conflict of interest questions originating at the 2012 Board of Supervisors hearing that authorized a Property Specific Request (PSR) for the DS-24 site... in spite of strong, ongoing community and Borrego Springs Sponsor Group opposition... and, in spite of the fact that there was *no active application for any subdivision project on the DS-24 parcels* in the County planning system for *several years* before the new General Plan was ratified. The value of a "free" EIR for the landowners of DS-24 is immense, because this costly process may lead to special privileges for Mr. Brown not granted other landowners in the same area, and likely involving eminent domain "taking" of nearby properties for the purpose of a future subdivision.

02-51

This PSR is particularly unjustified considering the fact the owners' original project plan for "Borrego Country Club Estates" (TM5487) had been in the County "dead file" *for years* at the time of General Plan approval. All this, along with the substantial impacts raised in this letter, generates suspicion **about how a Project Specific Request for DS-24 ever qualified for County consideration.**

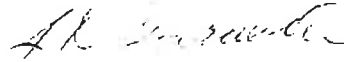
02-52

Based on all of the reasons and evidence presented herein, TCDC urges the County to disqualify and remove DS-24 from the collective Property Specific Request SEIR process (thereby saving taxpayer

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funds and conserving limited County resources, including valuable staff time). In any case, the County should deny the zoning change that the owners of DS-24 have requested.

Sincerely,



J. David Garmon, MD
President, Tubb Canyon Desert Conservancy

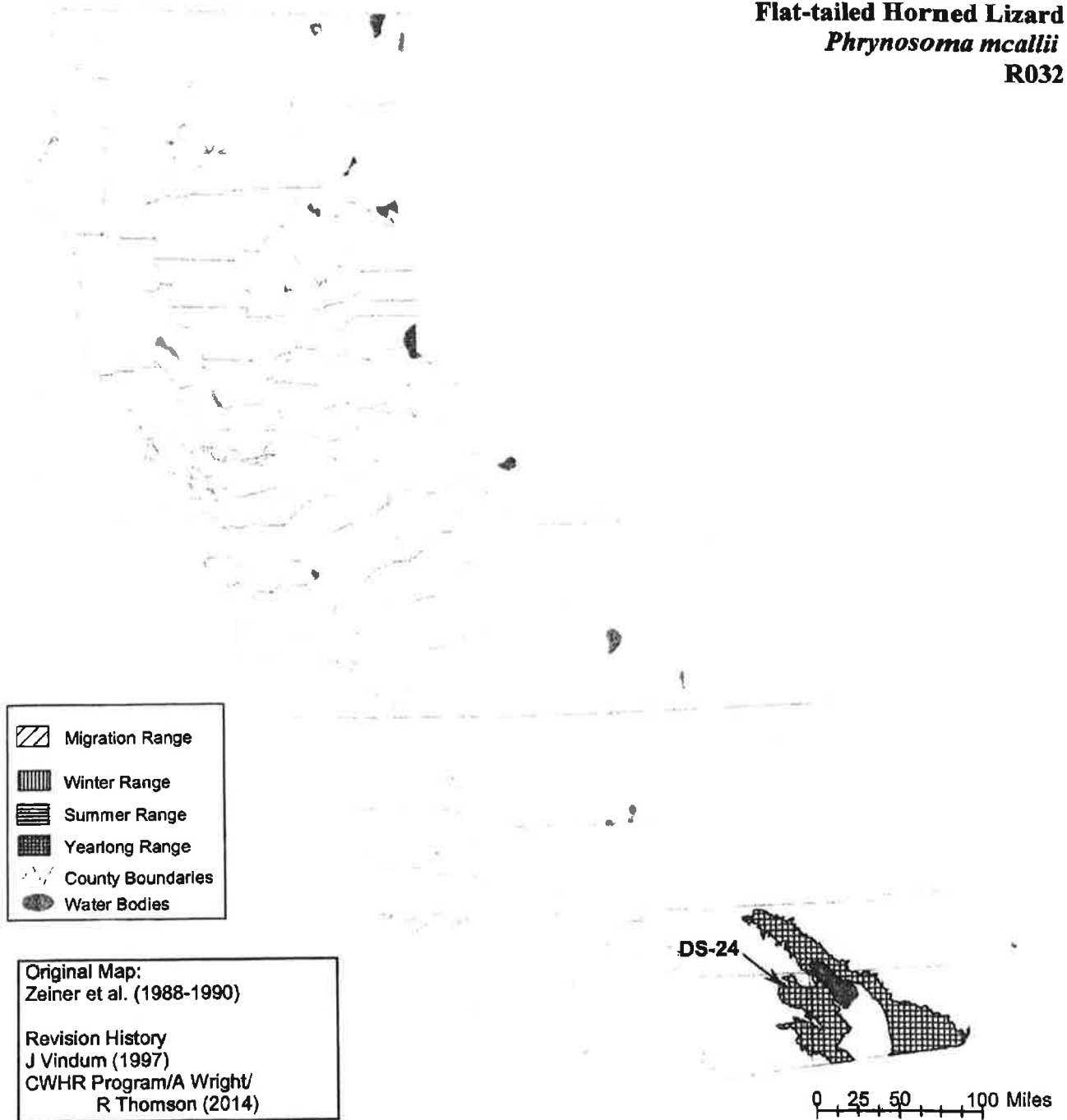
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California Wildlife Habitat Relationships System

California Department of Fish and Wildlife
California Interagency Wildlife Task Group

Flat-tailed Horned Lizard *Phrynosoma mcallii* R032



Original Map:
Zeiner et al. (1988-1990)

Revision History
J Vindum (1997)
CWHR Program/A Wright/
R Thomson (2014)

Range maps are based on available occurrence data and professional knowledge. They represent current, but not historic or potential, range. Unless otherwise noted above, maps were originally published in Zeiner, D.C., W.F. Laudenslayer, Jr., K.E. Mayer, and M. White, eds.



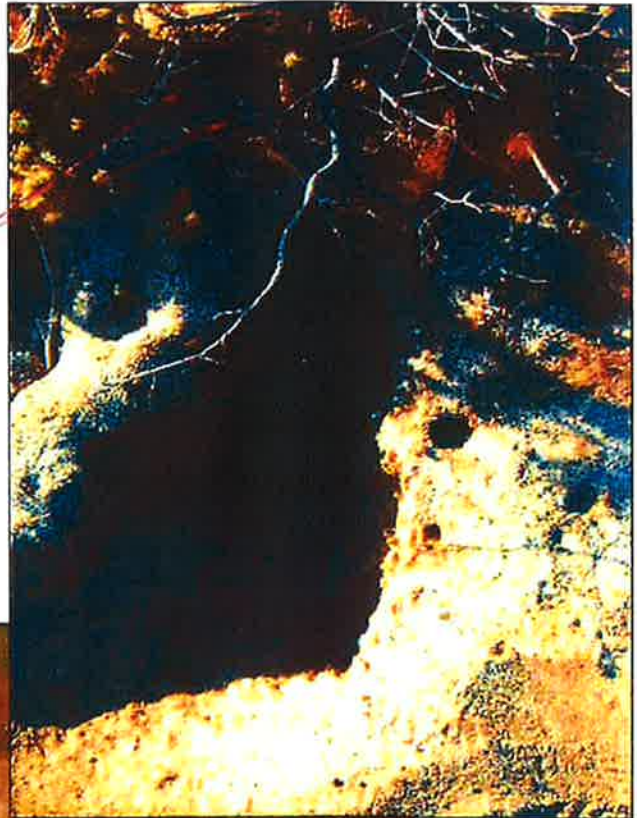
Close up of a burrowing owl "pellet" (~2 inches long). Fur, bones, insect chitin and other indigestible parts of prey collect in the bird's gizzard where they are compressed into a pellet form, then regurgitated by the owl. Note the leg bones and piece of rodent skull above the pellet. Several pellets were taken from the DS-24 site as tangible, physical proof of the burrowing owl's existence on the property.

Photo by L. Paul

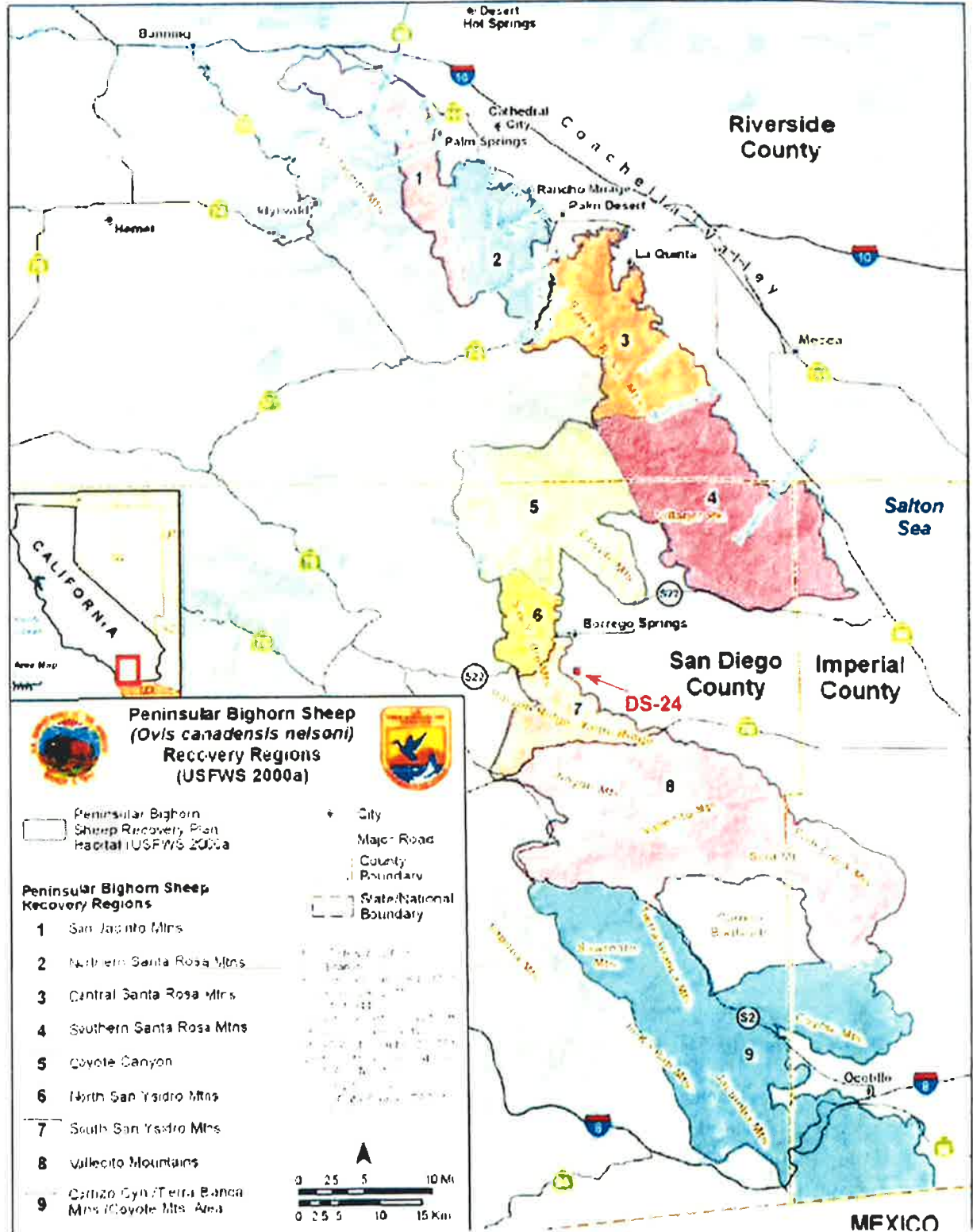
Burrowing Owls on DS-24 Parcels

Active burrowing owl burrow on the DS-24 property proposed for complete grading and leveling. Red arrows (upper left of image) indicate greyish owl pellets above the hole (located just left of one "observation perch" in the creosote bush that extends over the burrow's entrance). There is a back entrance (exit) to the burrow on the other side of the bush.

Photo by L. Paul



DS-24 is located at the boundary of the South San Ysidro Mountains / Region 7 of the Recovery Plan Habitat for the federally listed (endangered) Peninsular Bighorn Sheep. [Map excerpted from page 11 of the "Peninsular Bighorn Sheep (*Ovis Canadensis nelsonii*) 5-Year Review" by the U.S. Fish and Wildlife Service, April 21, 2011. Estimated location of DS-24 parcels added.]



Responses to Letter O2, Tubb Canyon Desert Conservancy

- O2-1 This comment provides introductory remarks thanking the County for the opportunity to comment and stating that their comments on the Draft SEIR relate both to the Proposed Project Map and the Reduced Density Alternative Map for PSR Analysis Area DS24.
- The County acknowledges the comment. This comment does not pertain specifically to the analysis in the Draft SEIR. No further response is necessary.
- O2-2 This comment provides background information about the Tubb Canyon Desert Conservancy (TCDC) and states TCDC’s opinion that any increase in density on PSR Analysis Area DS24 site would adversely impact neighboring landowners, the Anza Borrego Desert State Park, the Pinyon Ridge Wilderness, rare species, and the economy of Borrego Springs.
- The County acknowledges the comment. The comment does not raise issues regarding the Draft SEIR analysis; therefore, no further response is necessary.
- O2-3 This comment provides background about TCDC’s decade-long opposition to development of PSR Analysis Area DS24 and provides as Appendix A, a 2008 comment letter regarding a previous development proposal.
- The County acknowledges the comment. Responses to Appendix A are provided in response to comment O2-23, below.
- O2-4 This comment states that TCDC representatives provided public testimony at the 2012 hearings before the County Board of Supervisors and recommended that PSR Analysis Area DS24 not be included in the list of those projects that are the subject of the current SEIR.
- The County acknowledges the comment. The comment does not raise issues regarding the Draft SEIR analysis; therefore, no further response is necessary.
- O2-5 This comment states that on February 3, 2016, TCDC provided comments to the Department of Planning and Development Services regarding their continued concerns regarding the Analysis Area DS24 proposal. These comments are attached as Appendix B.
- The County acknowledges the comment. Responses to Appendix B are provided in responses to comments O2-24 through O2-52, below.
- O2-6 This comment states that since the initial proposals for development within PSR Analysis Area DS24, none of TCDC’s concerns have abated, diminished, or been mitigated, and that some new circumstances have increased the negative impacts of PSR Analysis Area DS24, including the 2016 determination by the California Department of Water Resources (CDWR) that the Borrego Valley aquifer is critically overdrafted. In addition, the “orphan” dike that once shielded PSR Analysis Area DS24 from outflows from the Tubb Canyon-Culp watershed was breached in 2013.

The County acknowledges the comment. Section 2.8.3.2 provides an analysis of Groundwater Supplies and Recharge. In this chapter it was determined the Proposed Project would have potentially significant and unavoidable impacts related to groundwater supplies and recharge (Impact HY-2 and HY-11). Groundwater use that would be required for DS24 contributed to these impacts. Section 2.8.3.6 provides an analysis related to placement of housing within a 100-year flood hazard area for the PSR Analysis Areas. It was determined that 110 acres of the DS24 site are located within a 100-year FEMA floodplain and development of DS24 as proposed by the project would contribute the potential impact that was identified (Impact HY-6). However, application of General Policies and mitigation from the 2011 GPU PEIR (Hyd-6.1) are anticipated to mitigate this impact to less than significant.

No changes were made to the SEIR as a result of this comment.

- O2-7 This comment asks where is the analysis of the indirect adverse impact on agriculture in Borrego Springs, associated with the proposed density increase on the DS24 site. The comment (continuing into comment number O2-8) discusses proposals for a proportional reduction of water usage by 70% across all segments of water users, associated with the process of developing a Groundwater Sustainability Plan.

Impacts related to indirect conversion of agricultural resources were evaluated in Section 2.2.3.3 of the Draft SEIR. A Groundwater Sustainability Plan has not yet been adopted for the Borrego Valley; therefore, the Draft SEIR cannot evaluate consistency with a plan that does not yet exist. Section 2.8.3.2 provides an analysis of Groundwater Supplies and Recharge, including discussing the issue of the overdraft in the Borrego Valley, the unbuilt density currently on the General Plan Land Use Map, and implications of upcoming efforts to address the Sustainable Groundwater Management Act.

- O2-8 This comment asks where is the analysis of the indirect adverse impact on agriculture in Borrego Springs, associated with the proposed density increase on the DS24 site. The comment (continuing into comment number O2-8) discusses proposals for a proportional reduction of water usage by 70% across all segments of water users, associated with the process of developing a Groundwater Sustainability Plan. Comment O2-7 expands on the question posed in comment O2-7.

See response to comment O2-7.

- O2-9 This comment asks where is the analysis that supports the “leapfrog” development that PSR Analysis Area DS24 would create and where is the analysis that supports the abrogation of LU-2.1.1 of the Borrego Springs Community Plan?

Section 2.9.3.2 of the Draft SEIR provides a consistency analysis with applicable plans and policies. The General Plan policy that specifically references “leapfrog” development is LU-1.2, which defines leapfrog, for the purposes of the policy, as “Village densities located away from established Villages or outside established water and sewer service boundaries. That policy (which prohibits leapfrog as defined, unless certain requirements are met) does not apply to the DS24 proposal, because no Village densities are proposed.

In the Draft SEIR, staff found the DS24 proposals (Proposed Project Map and Reduced Density Alternative Map) to be inconsistent with General Plan Policy LU-2.3 (in addition to other inconsistencies found), which calls for assigning densities and minimum lot sizes in a manner that is compatible with the character of each unincorporated community. In finding inconsistency, consideration was given to the large number of vacant lots between the DS24 site and the Village, that already have access to water lines and public roads. In the Draft SEIR, staff also found the DS24 proposals (Proposed Project Map and Reduced Density Alternative Map) to be inconsistent with Borrego Springs Community Plan Policy LU-2.1.1 (referenced in the comment), which discourages development on undisturbed and substantially undisturbed desert native habitat lands outside the Village Core in favor of development on areas of previously-disturbed habitat. In order to approve either of these maps, the Board of Supervisors would have to instead find consistency with these policies.

- O2-10 This comment asks what analysis has been done regarding the impact of the PSR Analysis Area DS24 proposal on the Borrego Springs Dark Sky Designation and tourism economy.

As noted above in response to comment O2-2, CEQA does not require analyses related to the socioeconomic impacts of a proposed project, thus, the Draft SEIR does not contain an analysis related to the effects of the proposed project on the tourism economy.

Regarding dark skies, the Draft SEIR analyzes impacts on this resource in Section 2.1.3.4. It was determined the Proposed Project would have significant and unmitigable direct and cumulative impacts related to light and glare (Impacts AE-4 and AE-8). PSR DS24 was recognized to contribute to these potential impacts due additional lighting that would potentially not be in conformance with dark skies provisions of the Borrego Springs Community Plan.

- O2-11 This comment asks what analysis has been done regarding flood mitigation measures that would have to be taken as a consequence of the breached dike located west of PSR Analysis Area DS24. The comment references text from a study submitted as part of a previous subdivision application on the DS24 site.

Section 2.8.3.6 of the Draft SEIR analyzes flood hazards at a programmatic level. This section discloses that PSR Analysis Area DS24 falls mostly within a 100-year FEMA floodplain, and development of residential land uses within these floodplains would result in potentially significant impacts. Furthermore, as identified in Section 2.8.5.6, the Draft SEIR recommends mitigation measures as well as several General Plan policies to address impacts associated with development in 100-year FEMA floodplains.

The drainage study referenced in the comment was never approved by the County. Flood hazards and drainage would be analyzed at the development project level when an application to subdivide the site is submitted. When/if an application is submitted, a new drainage study will be required, that takes into account existing conditions at that time; along with details on the proposed construction, maintenance, and ownership/access rights of any proposed flood control/drainage facilities.

O2-12 This comment asks how the incremental effects on groundwater have been addressed in the SEIR given that over 10,000 additional dwelling units would be possible under buildout of the current General Plan Land Use Map and in consideration of existing buildable vacant lots. Comment O2-13 is related and expands on O2-12 by referring to additional groundwater supply impacts associated with cumulative projects in the Desert Subregion (as listed in the Draft SEIR).

Sections 2.8.4.2 and 2.16.4.4 of the Draft SEIR analyze cumulative impacts on groundwater recharge and water supply, respectively. As discussed in those sections, the proposed project would result in significant cumulative impacts on groundwater supplies and recharge. Mitigation measures and General Plan policies would be implemented to reduce these impacts, but the Draft SEIR found that these impacts would remain significant and unavoidable.

O2-13 The response to comment O2-12 provides a summary of related comments O2-12 and O2-13, along with a response to each.

O2-14 This comment quotes General Plan Policy LU-8.2, which states that new developments are required to identify adequate groundwater resources in groundwater dependent areas.

General Plan Policy LU-8.2 has not been determined to be applicable to a stand-alone GPA/Rezone with no associated development applications or proposals, because it refers to requirements for development projects. As such, review of this policy is not necessary for the PSRs GPA/Rezone Draft SEIR. Future development projects within the areas covered by the Project would be required to comply with this policy. The comment does not raise issues regarding the SEIR analysis; therefore, no further response is necessary.

O2-15 This comment cites General Plan Policy LU-13.2, which requires new development to identify adequate water resources to support the development prior to approval.

General Plan Policy LU-13.2 has not been determined to be applicable to a stand-alone GPA/Rezone with no associated development applications or proposals, because it refers to requirements for development projects. As such, review of this policy is not necessary for the PSRs GPA/Rezone Draft SEIR. Future development projects within the areas covered by the Project would be required to comply with this policy. The comment does not raise issues regarding the SEIR analysis; therefore, no further response is necessary.

O2-16 This comments cites Policy LU-2.2 of the Community Plan, which calls for GPAs to “consider the extent of existing vacant lots in evaluating density increases.”

There is no Policy LU-2.2 of the Borrego Springs Community Plan. The referenced phrase is from Issue LU-2.2 of the Community Plan. As shown in the review of DS24 per applicable General Plan and Community Plan policies, staff has considered the extent of existing vacant lots in reviewing applicable policies.

O2-17 This comment states that given the groundwater basin overdraft and the estimate of over 10,000 additional dwelling units possible on the current Land Use Map (with consideration of

buildable vacant lots), there are cumulatively considerable impacts related to overdraft of the groundwater basin. The comment asks how and where the SEIR addresses these cumulative impacts on groundwater.

As discussed in response to comment O2-12, Sections 2.8.4.2 and 2.16.4.4 of the Draft SEIR analyze cumulative impacts on groundwater recharge and water supply, respectively. As discussed in those sections, the Proposed Project would result in significant cumulative impacts on groundwater supplies and recharge. Mitigation measures and General Plan policies would be implemented to reduce these impacts, but the Draft SEIR found that these impacts would remain significant and unavoidable.

- O2-18 This comment provides conclusory remarks, which reiterate Borrego Springs' opposition to development within PSR Analysis Area DS24 and provides a history of its opposition to previous development proposals within this area.

The County acknowledges the comment. The County Board of Supervisors will take the commenter's concern into consideration when deciding whether to approve the proposed project. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

- O2-19 The comment reiterates some of the significant environmental impacts of any development that would occur within PSR Analysis Area DS24; specifically that the proposed project is not consistent with the County's General Plan or the Borrego Springs Community Plan, the proposed project would exacerbate the water crisis in Borrego Springs, and attempts to mitigate the flooding potential of the site would result in impacts on private property adjacent to and upslope of PSR Analysis Area DS24.

The County acknowledges the comment. See the responses to comments O2-6 through O2-18. The comment does not raise issues regarding the SEIR analysis; therefore, no further response is necessary.

- O2-20 The comment states that the analysis in the Draft SEIR demonstrates beyond a reasonable doubt that approval of the PSR Analysis Area DS24 PSR would result in significant and unavoidable environmental impacts and would result in an irretrievable commitment of groundwater resources. The comment suggests that impacts related to PSR Analysis Area DS24 are avoidable by selection of the No Project Alternative.

The County acknowledges the comment. The comment does not raise issues regarding the SEIR analysis; therefore, no further response is necessary.

- O2-21 This comment states that the No Project Alternative conclusion is further justified by the fact that PSR Analysis Area DS24 does not represent an existing subdivision in process because there is no active application for such a project, and that by granting a zoning density increase to landowners who had no active project application in process at the time the General Plan was approved would grant unmerited special privilege to these landowners when this privilege has been denied to neighboring residents and landowners.

The County acknowledges the comment. The comment does not raise issues regarding the SEIR analysis; therefore, no further response is necessary.

- O2-22 The letter concludes by stating that TCDC trusts that because of the facts outlined in this letter and the attached documentation, that the No Project Alternative will be the recommendation of County staff to the Planning Commission and Board of Supervisors.

The County acknowledges the comment. The comment does not raise issues regarding the SEIR analysis; therefore, no further response is required.

- O2-23 This comment provides as Appendix A, a letter dated June 26, 2008, to the County from the law firm Lounsbury Ferguson Altona & Peak, LLP, who represented 25 property owners in the Borrego community. The letter provides comments on the Mitigated Negative Declaration prepared for the Borrego Country Club Estates Project, specifically outlining reasons that the project should be subject to an EIR.

The County acknowledges the comment. As discussed in response to comment O2-19, this Draft SEIR does not provide a development project-specific analysis for any development proposal at PSR Analysis Area DS24, but rather analyzes the maximum development potential on a programmatic scale associated with the land use densities/intensities allowed by the land use designations proposed. This information would be pertinent to the environmental analysis of a subdivision project on the DS24 site, if the project proposed a density similar to that of the Country Club Estates project. If the Borrego Country Club Estates project were to be taken out of idle status, environmental studies would need to be updated.

- O2-24 Comments O2-24 through O2-52 comprise Appendix B of this comment letter. These comments include a February 3, 2016, letter from TCDC to the County of San Diego Planning and Development Services Department outlining TCDC's opposition to the proposed changes to the PSR Analysis Area DS24 property. Comment O2-24 provides introductory comments and background of the TCDC organization. The comment also states that it is TCDC's assertion that any increase in density at PSR Analysis Area DS24 would adversely affect neighboring landowners, Anza-Borrego Desert State Park, Pinyon Ridge Wilderness, rare species, and the associated economy of Borrego Springs.

The County acknowledges the comment. The comment does not raise issues regarding the Draft SEIR analysis; therefore, no further response is necessary.

- O2-25 This comment provides location information for PSR Analysis Area DS24 and states that the high conservation and pastoral recreational value of PSR Analysis Area DS24 was recognized during the 2011 update of the County's General Plan, resulting in the determination that PSR Analysis Area DS24 remain at the lower density SR-10 designation. The comment states TCDC's opinion that this was the correct decision and notes that the property owners of PSR Analysis Area DS24 had the same opportunity as all landowners in the vicinity to provide input during the General Plan update process.

The County acknowledges the comment. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

O2-26 This comment notes that PSR Analysis Area DS24 is not “in-fill” to existing residential housing because there is no high-density development in the area surrounding PSR Analysis Area DS24. The comment notes that many local residents have “self-zoned” at lower densities by purchasing vacant lands adjacent to their properties in order to prohibit development and preserve natural vegetation and wildlife habitat as well as their semi-rural lifestyle.

Comment noted. The General Plan land use designation maps (Existing, Proposed, and Alternative maps) show nearby roads, without distinguishing between public roads and private roads. Staff is aware that most of the segment of Country Club Road adjacent to the southern boundary of the DS24 site is private. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

O2-27 This comment notes that allowing PSR Analysis Area DS24 to upzone from SR-10 to SR-1 would result in smaller lots than exist in the surrounding residential area. The comment references aerial photographs that demonstrate the low-density development of the surrounding area.

The County acknowledges the comment. See the response to comment O2-9. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

O2-28 This comment notes that the adopted 2011 General Plan took into consideration the existing development pattern when lowering the allowable density to open space parcels (APNs 198-320-01 and 198-320-26). The comment also notes that the two large PSR Analysis Area DS24 parcels have never been subdivided and have no certificate of compliance.

The County acknowledges the comment. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

O2-29 This comment asserts that, based on the above comments, the owners of PSR Analysis Area DS24 should not be granted special zoning changes that have been denied to other adjacent landowners. The comment further asserts that it is unacceptable that the PSR Analysis Area DS24 property owners, who had no active application in County Planning for any project at the time the General Plan update was approved, to be granted a free Subsequent EIR, conducted at taxpayers’ expense, to be granted special privileges that other landowners will not receive and that would be contrary to public interest.

The County acknowledges the comment. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

O2-30 This comment further highlights past and present local opposition to development of the PSR Analysis Area DS24 site.

The County acknowledges the comment. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

O2-31 This comment states that the density proposed for PSR Analysis Area DS24 would no longer be acceptable in the current, critically overdrafted state of the Borrego Valley Groundwater Basin (BVGB). The comment references the water resource limitations on land use adopted by the Groundwater Management Plan under the Sustainable Groundwater Management Act. The

comment also references a comment letter from TCDC dated December 17, 2015, at the Notice of Preparation public hearing.

The County acknowledges the comment. A Groundwater Sustainability Plan (GSP) has not yet been adopted for the Borrego Valley; therefore, the Draft SEIR cannot evaluate consistency with a plan that does not yet exist. Section 2.8.3.2 provides an analysis of Groundwater Supplies and Recharge, including discussing the issue of the overdraft in the Borrego Valley, the unbuilt density currently on the General Plan Land Use Map, and implications of upcoming efforts to address the Sustainable Groundwater Management Act. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

- O2-32 This comment discusses the commenter’s concern about the inadequate construction of water service infrastructure and the wastewater disposal system for any increased density proposed on the PSR Analysis Area DS24 parcels. The comment references, and provides citations from, a July 24, 2008, letter sent to the San Diego Department of Land Use and Planning from Lounsbury Ferguson Altona and Peak, LLC, attorneys at law. The citations outline the process through which developers would provide water and wastewater services to the PSR Analysis Area DS24 site, including a discussion about how the County Department of Environmental Health did not recommend approval of a previous subdivision proposal for the site due to the lack of an adequate wastewater disposal system. The comments included are related to a previous subdivision application on the DS24 site.

Comment noted. Specific water and wastewater infrastructure impacts will be analyzed when/if a development proposal (subdivision application) is submitted for the PSR Analysis Area DS24 site. As noted previously, no plans for this past application were approved, and the County cannot speculate what would be proposed in a future subdivision application. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

- O2-33 This comment asserts that a previous development proposal at PSR Analysis Area DS24 would have involved an “unpublicized, covert preferred alternative to infringe on the property rights of neighboring landowners, through eminent domain and local ‘assessment district’ fees, in order to build the subdivision in a hazardous floodplain.” The comment goes on to discuss how 60 percent of PSR Analysis Area DS24 is within a desert riparian floodplain that is susceptible to flash flooding, which is beneficial on several levels to the natural habitat. The comment ends by stating that desert floodplains are an unsafe and unwise location on which to build homes.

Section 2.8.3.6 of the Draft SEIR analyzes flood hazards at a programmatic level. This section discloses that PSR Analysis Area DS24 falls mostly within a 100-year FEMA floodplain, and development of residential land uses within these floodplains would result in potentially significant impacts. Furthermore, as identified in Section 2.8.5.6, the Draft SEIR recommends mitigation measures as well as several General Plan policies to address impacts associated with development in 100-year FEMA floodplains. In addition, Section 2.4.3.1 of the Draft SEIR

discusses the potential direct impacts on biological resources that could occur within the PSR Analysis Area DS24 property.

Regarding the assertion that development on the PSR Analysis Area DS24 parcels would involve an unpublicized, covert infringement on property rights, this is again referring to a draft drainage study submitted for a subdivision application on the DS24 site that is in Idle status. As stated previously, this study was never accepted or approved by the County. The Proposed Project does not include any specific project development design.

- O2-34 This comment cites a document regarding an earthen dike that would divert floods for the Borrego Country Club Estates project that was prepared in August 2007. The comment states that the document is incorrect.

The County acknowledges the comment. This comment concerns a previous proposal for the project site that, if resumed, would require new environmental studies (see response to comment O2-23). This comment does not specifically pertain to the PSR Draft SEIR. No further response is necessary.

- O2-35 The comment further discusses the dike raised in comment O2-34 and discusses the history of the construction of the dike.

Comment noted. The comment is again referring to a draft drainage study submitted for a previous subdivision application on the DS24 site, which included numerous potential options for addressing the flood hazards. As stated previously, this study was never accepted by the County. There is no development proposed in PSRs GPA/Rezone. This comment does not specifically pertain to the analyses of the Draft SEIR and no further response is necessary.

- O2-36 This comment asserts that none of the owners of property through which the earthen dike runs would allow the County or any other agency to construct a new concrete dam across their lands, nor would they allow the construction of concrete channels down the unpaved Tubb Canyon Road. The comment notes the construction of such infrastructure would require the forced taking of private property.

The County acknowledges the comment. The comment is again referring to a draft drainage study submitted for a previous subdivision application on the DS24 site, which included numerous potential options for addressing the flood hazards. As stated previously, this study was never accepted by the County. There is no development proposed in PSRs GPA/Rezone. This comment does not specifically pertain to the analyses of the Draft SEIR and no further response is necessary.

- O2-37 This comment discusses the recommendation by a consultant hired to assess flood hazards for the Borrego Country Club Estates project to form a Geologic Hazard Abatement District to finance the construction of a dam, flood channels, and dikes. The comment notes that this would levee a tax burden on all neighboring properties.

The County acknowledges the comment. The comment is again referring to a draft drainage study submitted for a previous subdivision application on the DS24 site, which included

numerous potential options for addressing the flood hazards. As stated previously, this study was never accepted by the County. There is no development proposed in PSRs GPA/Rezone. This comment does not specifically pertain to the analyses of the Draft SEIR and no further response is necessary.

- O2-38 This comment discusses how the “covert” flood control plan to enable a high-density subdivision to be built would present grave environmental concerns, including impacts on biological and aesthetic resources. The comment also notes that the lack of disclosure of project plans, which would require the use of eminent domain, to the public and neighboring property owners is unacceptable and reiterates TCDC’s and landowners’ opposition to the project.

The County acknowledges the comment. The comment is again referring to a draft drainage study submitted for a previous subdivision application on the DS24 site, which included numerous potential options for addressing the flood hazards. As stated previously, this study was never accepted by the County. There is no development proposed in PSRs GPA/Rezone. This comment does not specifically pertain to the analyses of the Draft SEIR and no further response is necessary.

- O2-39 This comment notes that given PSR Analysis Area DS24’s location in a transition zone between the Sonoran Desert and the foothills, the site supports significant biodiversity and listed species.

The County acknowledges the comment. See Section 2.4 of the Draft SEIR for a discussion of the potential impacts on biological resources related to the rezoning of PSR Analysis Area DS24. Section 2.4 discloses the potential for special-status plant and wildlife species to exist within PSR Analysis Area DS24 and concludes that potentially significant direct and cumulative impacts (Impacts BI-1 and BI-4) could occur with implementation of the proposed project. The impacts were determined to remain significant and unmitigable with implementation of General Plan policies and mitigation measures with the programmatic level of analysis that was performed.

- O2-40 This comment states that PSR Analysis Area DS24 is within walking distance of the federal recovery area for the endangered Peninsular Desert Bighorn Sheep and references an attached U.S. Fish and Wildlife Service (USFWS) map.

Chapter 2.4 of the Draft SEIR analyzes impacts to biological resources, including special status species. The Draft SEIR was conducted at the programmatic level and any subsequent development proposals would require site-specific biological studies and surveys that would identify the extent of impacts on special-status species for specific areas of proposed development footprint.

- O2-41 This comment discusses how the varied terrain within PSR Analysis Area DS24 attracts a variety of migratory birds.

Chapter 2.4 of the Draft SEIR analyzes impacts to biological resources, including special status species. The Draft SEIR was conducted at the programmatic level and any subsequent

development proposals would require site-specific biological studies and surveys that would identify the extent of impacts on special-status species for specific areas of proposed development footprint.

- O2-42 This comment states that, as noted by County planners, the current designation of SR-10 qualifies for habitat reservation measures under the Conservation Subdivision Program. The proposed SR-1 would not qualify for that program.

County staff concurs with the comment, with the clarification that the Conservation Subdivision process is required for SR-10 and lower densities, but is only optional for higher densities, including SR-1. The comment does not provide any comments on the Draft SEIR, and no further response is necessary.

- O2-43 This comment reiterates the continuing community opposition to the proposed project and how the development would threaten the quality of life and property values of neighboring residents.

The County acknowledges the comment. The comment does not provide any comments on the Draft SEIR. In addition, CEQA does not require an assessment of socioeconomic conditions. No further response is necessary.

- O2-44 The comment discusses how grading activities at the project site would result in air quality impacts on the neighbors and would pollute the clean, dark skies that are valued in the community. The comment continues to assert that because Borrego Springs is one of only nine “International Dark Skies Communities,” impacts on this resource would affect the tourism industry in the community.

The County acknowledges the comment. See Chapter 2.3 of the Draft SEIR for an analysis of potential air quality impacts and Chapter 2.1, which analyzes the potential for light pollution. As discussed in Section 2.3, the potentially significant impacts on air quality from grading activities has been evaluated. In addition, Section 2.1 acknowledges the potentially significant impacts on dark skies associated with increased lighting in the area. CEQA does not require an assessment of socioeconomic conditions.

- O2-45 This comment states that destabilizing the sand dunes would degrade air quality to unacceptable levels, which would affect residents and the tourism industry.

See Chapter 2.3 of the Draft SEIR for an analysis of potential air quality impacts. As discussed in Section 2.3, grading activities associated with future development within the PSR Analysis Areas have the potential to result in significant impacts. Due to the programmatic nature of the analysis in the Draft SEIR, dust generated from construction activities at PSR Analysis Area DS24 was not specifically analyzed. Any subdivision application on the DS24 site would require subsequent environmental review that would identify the extent of air quality impacts associated with grading activities and/or vegetation removal and identify mitigation, as necessary. Regarding impacts on the tourism industry, CEQA does not require an assessment of socioeconomic conditions.

- O2-46 This comment states that roads planned through future subdivisions would result in undesirable and intrusive traffic through narrow roads and quiet neighborhoods and would change the character of the neighborhood. In addition, the increased traffic would require road widening that would have adverse impacts on residents, and increase dangers to pedestrians and animals.

Staff is aware that most of the segment of Country Club Road adjacent to the southern boundary of the DS24 site is private. There is no analysis in the Draft SEIR that states that this segment is public, nor is there any analysis in the Draft SEIR that assumes this segment is public, in making an impact determination.

Chapter 2.15 of the Draft SEIR analyzes Transportation and Traffic impacts, and particularly the topics of Traffic and LOS Standards and Road Safety. While the application of General Plan policies and mitigation measures would reduce impacts associated with these two sub-topics, potential impacts associated with future development were found to be significant and unavoidable. However, any subdivision applications on the DS24 site would require subsequent environmental review, including traffic analysis, with the application of additional mitigation measures, as necessary.

- O2-47 This comment states that increased traffic resulting from the Proposed Project would also increase ambient noise levels in what is a low-density location. These noise levels would reverberate off the nearby mountains and canyons, which would cause unacceptably high noise levels. This noise would be destructive to wildlife and visitors to the State Park. The tranquility of the area would be lost by this increased noise.

Section 2.11.3.3 of the Draft SEIR discusses traffic noise, with a determination that the overall Proposed Project would result in a potentially significant impact related to traffic noise. Mitigation measures and General Plan policies outlined in Section 2.11.5.3 would help reduce these noise impacts, but impacts would remain significant and unavoidable.

- O2-48 This comment states that emissions associated with increased traffic in PSR Analysis Area DS24 would create an inversion layer that would degrade air quality and visibility in the Borrego Valley and that this needs to be evaluated.

See Sections 2.1, 2.3 and 2.15 of the Draft SEIR for an evaluation of how the proposed GPA would affect aesthetics (visibility), air quality, and traffic, respectively. As outlined in those sections, the proposed GPA would have the potential to result in significant and unavoidable impacts on those resources. If a future subdivision is proposed on the site, it would require subsequent environmental review and analysis of these issues, based on the level of development proposed at that time.

- O2-49 This comment suggests that a high density development on PSR Analysis Area DS24 would destroy ancient Native American sites.

See Section 2.5 of the Draft SEIR for an evaluation of how the proposed GPA would affect cultural resources. Section 2.5 identifies PSR Analysis Area DS24 as having known archaeological resources and acknowledges that future development within the site would

potentially adversely affect these resources. The analysis identifies six mitigation measures as well as several General Plan policies to mitigate these potential impacts to less-than-significant levels. The mitigation measures outline requirements for future development projects, related to preservation of cultural resources.

- O2-50 This comment discusses a potential conflict of interest between one of the property owners of PSR Analysis Area DS24 and County Supervisor Bill Horn. The comment suggests that this relationship resulted in the property being included in the PSR GPA despite strong, ongoing community opposition and in the absence of an active application for subdivision of PSR Analysis Area DS24. The comment further suggests that this resulted in a “free” EIR for the landowners of PSR Analysis Area DS24 and gives special privileges to the landowners of PSR Analysis Area DS24 not granted to other landowners in the same area. The comment also suggests that subdivision of PSR Analysis Area DS24 may involve the use of eminent domain to take nearby properties.

The County acknowledges the comment. County staff is analyzing proposed changes for the DS24 site as part of this GPA/Rezone process, in response to Board of Supervisors direction in 2012. At the 2012 hearings for consideration of PSRs/ Analysis Areas to include in the GPA/Rezone, the Board did not impose a requirement that PSRs should have an active subdivision application. Most of the PSRs do not have a current subdivision application. There are no development applications or proposals associated with this GPA/Rezone. The comment does not provide any comments on the Draft SEIR. No further response is required.

- O2-51 This comment suggests that this PSR is particularly unjustified considering that the previous proposal for the Borrego Country Club Estates had been in the County’s “dead file” for years at the time of the General Plan update. The comment asserts that this fact, along with the substantial impacts raised in the comment letter, creates suspicion about how a PSR for DS24 ever qualified for County consideration.

See the response to comment O2-50. The comment does not provide any comments on the Draft SEIR. No further response is necessary.

- O2-52 This comment includes conclusory statements that based on the reasons provided in the letter, TCDC urges the County to remove PSR Analysis Area DS24 from the collective PSR SEIR process or at least deny the zoning change to PSR Analysis Area DS24.

The County acknowledges the comment. See the response to comment O2-50. The comment does not provide any comments on the Draft SEIR. No further response is necessary.