

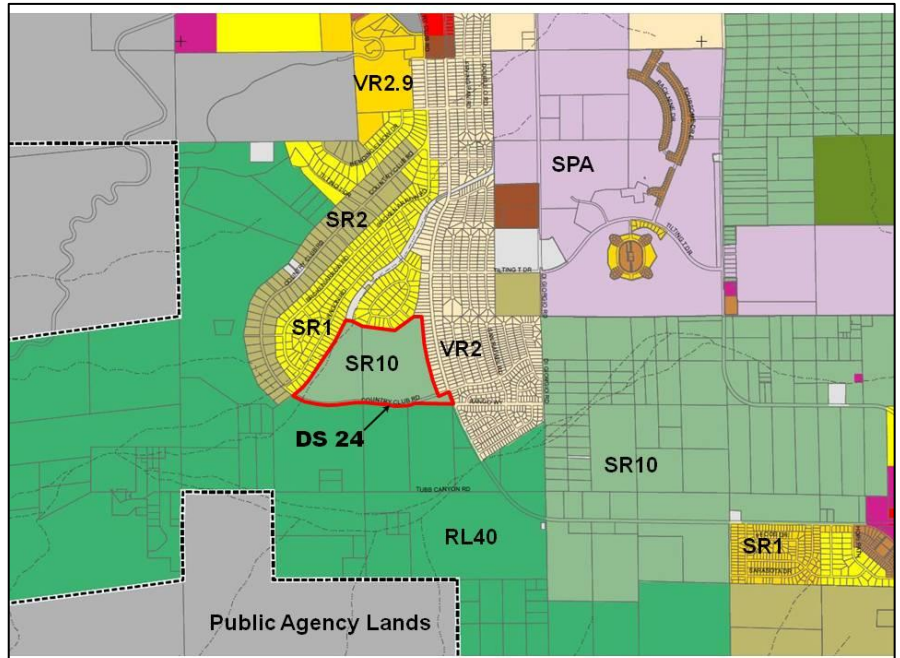
# DS24

Existing GP Designation(s)	SR10
Requestor(s) Position: Support workplan designation	
Area (acres): 171.8	
# of parcels: 2	

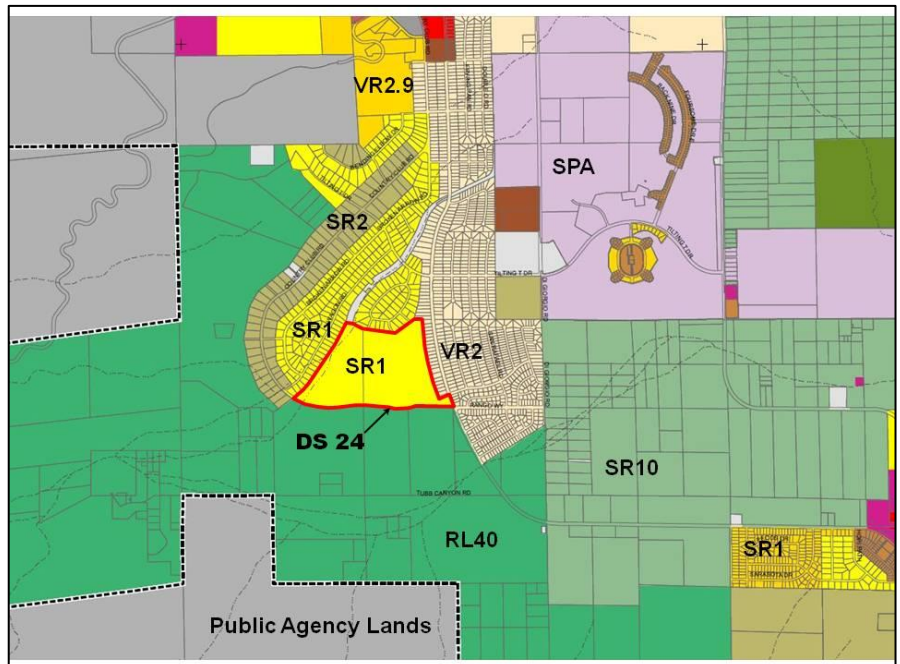
Workplan Designation(s) Evaluated	SR1
CPG Position	Oppose
Opposition Expected	Yes
# of Additional Dwelling Units	154
<b>Complexity</b>	<b>High</b>

**Discussion:** The requested change on these parcels from SR10 to SR1 would increase the dwelling unit yield from 17 to 171 units. The requested designation of SR1 is comparable to the existing SR1 designation to the north and west, and the VR2 designation to the east. The Borrego Community Sponsor Group opposes the increased density request and additional community opposition is expected.

Existing General Plan Designations:



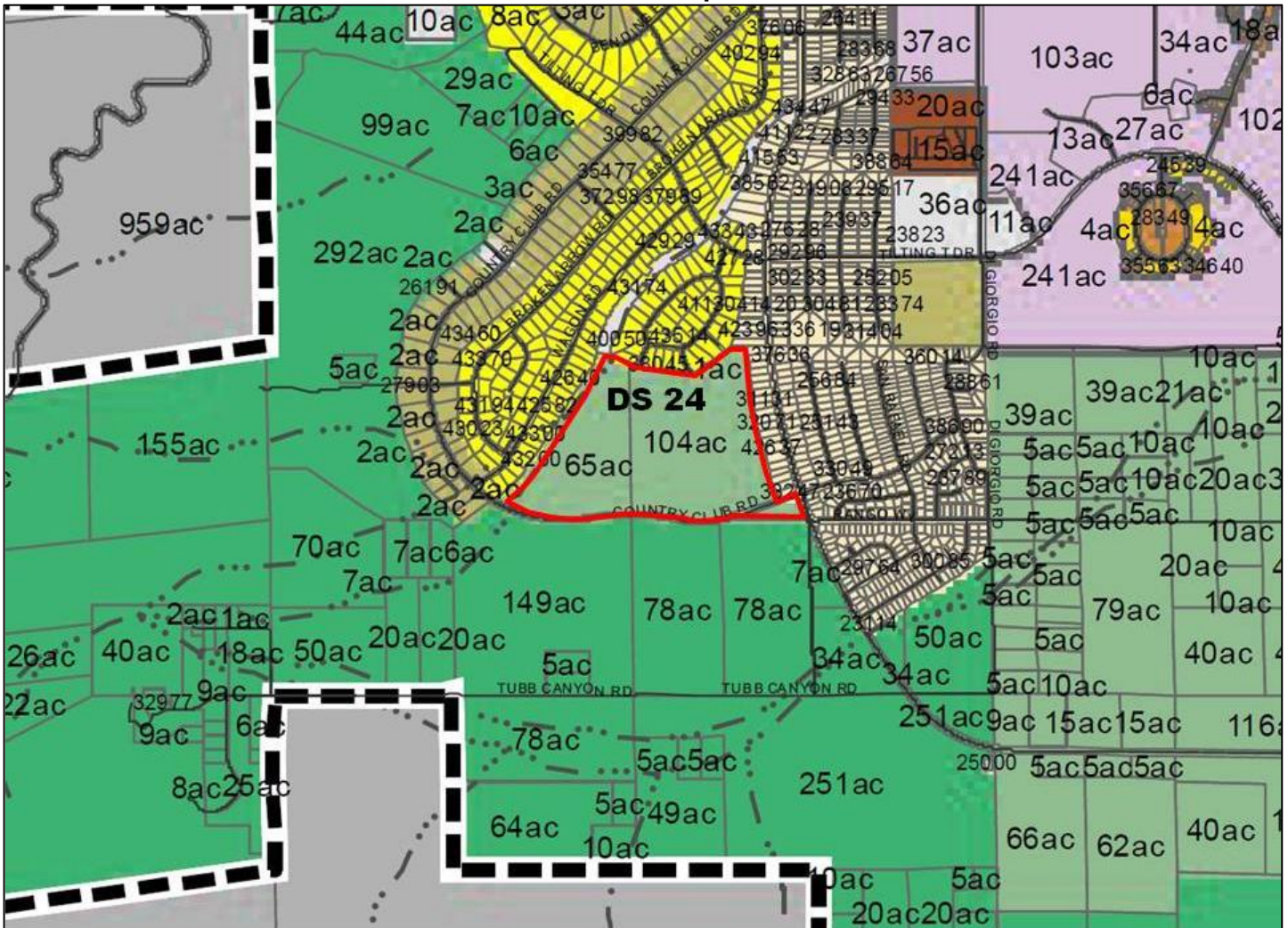
Workplan Designation(s) Evaluated:



**Rationale for High Complexity Classification:**

- A large number of dwelling units would be added under the workplan designations. Though adjacent to the village, the community continues to face issues with adequacy of fire protection services and water service. Additional environmental documentation would be necessary in order to comply with State law.
- The subject property consists of a large area of undisturbed native desert habitat. Desert Community Plan Policy LU-2.1.1 discourages development on undisturbed and substantially undisturbed desert native habitat land outside the Village Core. Desert Community Plan Policy LU-1.2.1 requires subdivisions within the Community Planning Area to maximize the use of clustering to preserve natural habitat while minimizing the infrastructure and resource requirements, such as irrigation water.
- A SR10 designation would ensure preservation of sensitive habitat lands under the Conservation Subdivision Program, while a SR1 designation is not subject to this program.
- The request would provide for a large number of total dwelling units in a small area relative to other PSR requests. A density this high was not evaluated in any of the EIR alternatives and would require additional analysis.

**Lot Size Map**



For Additional Information (January 9, 2012 Staff Report): [DS24](#)

**Borrego Springs Community Sponsor Group**  
**P. O. Box 1371**  
**Borrego Springs, CA 92004**

Devon Muto, Chief  
Advance Planning Division  
Department of Planning and Land Use  
5201 Ruffin Road, Suite B  
San Diego, CA 92123

RE: General Plan Property Specific Requests

Dear Mr. Muto:

The Borrego Springs Community Sponsor Group discussed this item on March 1, 2012, as part of our regular monthly meeting.

**Borrego Country Club Estates – 172.9 acres**  
**APN 198-320-01-00 and APN 198-320-26-00**

We are on record with our opposition to this density increase; however, we feel so strongly about the negative impacts to our community that would result from this change, that we are submitting this additional letter.

1. Paving of the continuation of Country Club Road is not a benefit to our community and should not be used as a justification for this increased density;
2. One of the principals of Country Club Estates LLC has ties to Supervisor Horn and this suggests a conflict of interest;
3. Sonoran Creosote Bush Scrub does not accurately depict the “Ocotillo Forest” that exists on this property;
4. The underlying sand dune would be disturbed by grading and would not restabilize;
5. There are hundreds of already subdivided lots in Borrego Springs;
6. The largest community outcry in the last decade was generated by this project in 2006.

**Sonoran Desert Palms LLC – 33.8 acres**  
**APN 141-160-47-00**

Changes in density on this parcel were supported.

Sincerely,

Judy Haldeman, Chair  
Borrego Springs Community Sponsor Group



**LOUNSBERY FERGUSON  
ALTONA & PEAK LLP**

ATTORNEYS AT LAW

960 Canterbury Place, Suite 300  
Escondido, California 92025-3870  
Telephone (760) 743-1201  
Facsimile (760) 743-9926  
www.LFAP.com

OF COUNSEL:  
JAMES P. LOUGH  
GARTH O. REID

SPECIAL COUNSEL:  
JOHN W. WITT

June 1, 2012

Devon Muto  
County of San Diego  
Department of Planning and Land Use  
5201 Ruffin Road, Suite B  
San Diego, CA 92123-1666

Re: Variance Request, DS 24 / Borrego Country Club Estates

Dear Mr. Muto:

The purpose of this letter is to convey to the County the position of a cohesive community group whose members oppose the pending application submitted by the proponents of the Borrego Country Club Estates ("BCCE") project. The BCCE investment partnership seeks to have its property included in a group of some 55 property owners who request variances from the terms of the General Plan Update.

The Borrego citizen's contingent ("Group") is comprised of numerous Borrego Springs property owners, many of whom own land adjacent to, or in the vicinity of, the two BCCE partnership-owned parcels in question (see Attachment A, a list of "Group" members who have contributed funds to aid the opposition effort).

To be clear, there is no active BCCE subdivision proposal at this time. Case #TM-5487 has been inactive with DPLU for several years following repeated failures on the part of the investors to meet County requirements within mandated schedules. At this time, BCCE is simply an investment partnership which owns two parcels totaling 179 acres. The owners were unable to adequately address the significant hurdles to development on this property prior to finalization of the General Plan Update.

Attached please find certain documents supporting the opposition by the Group. Attachment B is a "Statement of the Case" which summarizes the current position of the Group opposing the BCCE investment partnership's variance request. Attachment C is a July 24, 2008 protest letter, the terms of which provide more detailed support for the current position taken by the Group. Attachment D is a compilation of those opposing the BCCE investment partnership's

Borrego Country Club Estates

June 1, 2012

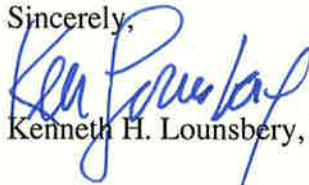
Page 2

plans. Attachment E consists of two relevant Borrego Springs Sponsor Group letters, both expressing opposition to any future subdivision or lot grading on the BCCE partnership-owned land, Attachment F is a sampling of the over 100 letters written to date, in opposition to the plans, and Attachment G is a published news article attempting to the depth of community opposition.

Please accept this letter and relevant attachments for filing in opposition to the variance application submitted by the BCCE investment partnership.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Lounsbery", written over the typed name.

Kenneth H. Lounsbery, Esq.

## ATTACHMENT A

Donors who made financial contributions to campaign against BCCE subdivision,  
April 2008

Elizabeth A. Backus  
T. Beltran  
Markell Brooks  
William R. Collins  
Nicholas R. Criss, III/Cheryl Lynn Criss/Criss Family Trust  
John A. Delaney/Mary P. Delaney  
John R. DiFrancesca  
Katherine R. DiFrancesca TTEE  
J. David Garmon, MD/Frank D. Gilman, MD  
William T. Hawes/Sally J. Hawes  
Joseph C. and Donna M. Hopkins  
Ann E. Irwin, MD  
Jeffery Irwin/Elisabeth Snyder  
Frederick Jee/Lydia Louise Lee  
Anne E. Johnson  
Patricia Heyl Jones  
La Jolla Industries, Inc.  
Clare R. Liebhardt/Fritz C. Liebhardt  
Lori L. Paul  
Lois B. Phillips/Robert L. Phillips  
Marjorie Popper/John V. Evarts  
H.R. Preston/M.G. Preston  
L. E. Rasmussen/A. A. Rasmussen  
Gary K. Saunders/Karen L. Saunders  
Clark M. Shimeall/Eleanor E. Shimeall  
Carolyn Shinabargar/Norman E. Shinabargar  
Vincent Shortland  
Hazel Spencer  
Robert Staehle  
Tom Stemnock/Christine M. Stemnock  
Barbara B. Tartre

In addition to those listed, County records include letters and email correspondence from dozens of other concerned Borrego Springs residents expressing their objections to this proposed subdivision.

The Borrego Springs Community Sponsor Group voted unanimously to reject this project in April, 2006 and April, 2008. They have also submitted multiple letters detailing their objections, most recently in April, 2012.

# ATTACHMENT B

## STATEMENT OF THE CASE - AN UPDATED POSITION PAPER BY THE BORREGO COMMUNITY

On July 24, 2008, the Group (as defined in the cover letter conveying this message) filed a 26 page critique (the "Letter") of the development plan proposed by the Borrego Country Club Estates ("BCCE") investment partnership (County Case # TM 5487). The Letter provided a comprehensive analysis of the environmental challenges posed by the original BCCE project proposal.

### IMPACTS UNDIMINISHED

The adverse environmental impacts of the original BCCE project, as described in the Letter, remain undiminished by the form of the subject application. Although the pending application for a variance does not meet the traditional definition of a "project", the environmental issues at stake remain unchanged.

The biological report filed with the project's original entitlement application indicated that the project would impact 100% of the habitat within the project boundaries and associated infrastructure. If the variance to the General Plan Update (GPU), as requested, were to be granted, adverse impacts upon the Burrowing Owl, the Flat-tailed Horned Lizard and the Peninsular Bighorn Sheep, along with other threatened, endangered and/or California Species of Special Concern (CSSC), or rare flora possibly present on the property, could become a reality. Such extensive impacts must be studied, defined and mitigated, even in the context of this application.

The BCCE property is located in a declared Riparian Desert Habitat and Desert Riparian Watershed, each of which designation heightens the importance of a thorough environmental review.

Impacts upon ground and surface water are potentially significant, particularly in such close proximity to Anza-Borrego Desert State Park and the recovery area for the endangered Peninsular Bighorn Sheep. See pages 15 through 21 of the Letter. Now, the County is engaged in the preparation of its own Watershed Protection Program, the terms of which will have direct application to the water issues of Borrego Valley. Predictions hold that the Watershed Protection Program could require two more years for completion. The advancement of any land use proposal at this location prior to the completion of the watershed study would be premature.

Any variance granted to the project at this time would be without the support of necessary environmental analyses of the noted concerns.

### REGIONAL CONSISTENCY

The property owners claim that re-designation of the BCCE partnership-owned property to the higher density of one dwelling unit per acre would bring future development into conformance with surrounding properties as "infill." This claim is unfounded. Abby King, as Chairperson of the Borrego Springs Community Sponsor Group, submitted an email to William Stocks of the DPLU in March 2007 detailing the specifics. In it she states:

*"[BCCE investor Rudy Monica's] AEIS submission neglected to indicate any uniqueness to the site, and the photographs provided are*



*not indicative of this either. This area is and always has been recognized as an Ocotillo Forest, a local artifact unique to the Borrego valley, with the highest density of Ocotillo in Borrego Springs. With the exception of Desert Gardens in Coyote Canyon, the density is also higher than anywhere within the Anza Borrego Desert State Park. This property was not included in the original Borrego Subdivision of 1947 (which parcelized all property to the north and east and west that this project intends to be an infill of) precisely because of 1) this natural uniqueness that is a major stopover point for Park visitors that form the economic backbone of our community, 2) excessive runoff from Tubb Canyon, and 3) because the shiftiness of the sand itself does not lend itself to stable construction (it is peculiar to us that this would be obvious in 1947, but overlooked today)."*

Please see the aerial photos submitted here as Exhibits 1 and 2, which clearly show that a subdivision would not constitute infill of an already densely built-out residential neighborhood. The nearby "residential neighborhood" is, in fact, interspersed with numerous parcels that have remained undeveloped for decades, including many parcels purchased by landowners to extend the natural desert around their own homes.

#### **DEEP-SEATED COMMUNITY OPPOSITION**

The Letter, this Statement, and multiple unanimous votes of the Borrego Springs Community Sponsor Group, combine to compel the conclusion that any proposed land use change on the BCCE partnership-owned land must be the subject of a thorough environmental review. As is pointed out on page seven of the Letter, a substantial community protest leads to a legally compelled conclusion that there is a "fair argument" that the project in question will have a significant impact on the environment; thus a full EIR must be prepared. Any variance of the GPU without the completion of such a study would be out of compliance with the law. We shall authorize our counsel to discuss with the County Counsel our interpretation of CEQA as it applies to these facts.

#### **PROJECT UNIQUELY COMPLEX**

The BCCE project is unlike any of the other projects being considered for variance relief from the GPU standards. The vast majority of those cases being reviewed are examples of unintended anomalies – virtually unfair impacts flowing from the recently adopted standards. Recognizing the need to address such anomalies, the Board of Supervisors authorized the subject review process.

The BCCE partnership-owned parcels, however, fall well outside the boundaries of eligibility for equitable review. The BCCE proposal marks a long list of environmental concerns that are unique – no other property under review comes close to presenting the numerous environmental issues at stake here. Such issues simply cannot be addressed in the context of the broader variance process. This land use request deserves – indeed, the law requires – that the BCCE proposal be the sole focus of a thorough, parcel-specific environmental review. A land use change of the magnitude proposed here must not be allowed to proceed under the guise of a variance process designed to address more finite or generic issues.

## **FAIRNESS PRINCIPLE**

Although opposition to the BCCE land use proposal is deeply held by the community, it is not the purpose of this Statement to urge the denial of development rights. Rather, we argue that the processing of any entitlements must be conducted in the context of the necessary environmental review.

The variance process authorized by the County was put in place to correct inequities imposed by the adoption of the General Plan Update. Such equitable relief is not applicable to the BCCE partnership-owned land. The proper avenue for entitlement in this case is through an independent application for a General Plan amendment and subdivision project approval, allowing for a full and focused review. Indeed, we would acknowledge the right of the project proponents to pursue an application for an amendment of the General Plan as it applies to their property, provided the process includes exhaustive environmental examination.

In this instance, the general doctrine of fairness needs to be acknowledged as the County considers the position of the BCCE applicant. Community opposition to the project is not a surprise; it has been a matter of record for a long period of time. This group formalized its opposition, in great detail, in 2008. As early as April 2006 the Borrego Springs Community Sponsor Group voted its opposition, which has been reiterated in March 2007, April 2008, and April 2012.

Certainly, the due diligence conducted by the current proponents upon their consideration of this land-use change, and County responses, resulted in a full disclosure of the issues historically raised and repeated here. The scope of the approval needed to reactivate the subdivision application which has been in an inactive "Idle" status for nearly 4 years, was clearly understood. So, the removal of this project from the category of projects eligible for "variance relief" should come as no surprise. The doctrine of fairness, which prompted the entire variance review process, is misapplied to the BCCE Variance Request DS 24.

# EXHIBIT 1

## AERIAL SATELLITE PHOTOS OF BCCE PROPERTY

(Source: Google Maps, May 2012)



In this image, note that the southern boundary of the BCCE property is a non-County-maintained section of Country Club Road, which is functionally little more than a dirt road at this point. As the town center is due north on Borrego Springs Road, note that the proposed "Country Club Road Extension" provides nothing to improve traffic flow.

Note that all land bordering the BCCE partnership-owned property to the south is essentially undeveloped open desert. Much of it belongs to Anza-Borrego Desert State Park and is part of a relict dune system as well as a desert riparian corridor and watershed.

## EXHIBIT 2



Note the low density of existing homes surrounding the property. Many homeowners have purchased multiple lots to preserve desert habitat and the rural feeling of the community. Ancient dunes are evident on the property.

**LOUNSBERY FERGUSON  
ALTONA & PEAK LLP**

ATTORNEYS AT LAW

960 Canterbury Place, Suite 300  
Escondido, California 92025-3870  
Telephone (760) 743-1201  
Facsimile (760) 743-9926  
www.LFAP.com

OF COUNSEL:  
GARTH O. REID

SPECIAL COUNSEL:  
JOHN W. WITT

July 24, 2008

Mr. Mark Slovick  
Land Use Environmental Planner/Project Manager  
County of San Diego  
Department of Planning and Land Use  
5201 Ruffin Road, Suite B  
San Diego, CA 92123-1666

**VIA CERTIFIED MAIL & EMAIL**

**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").

**A. PUBLIC RECORDS ACT REQUEST**

Pursuant to our clients' authorization, we lodged a Public Records Act ("PRA") request seeking copies of all documentation filed to date with respect to the processing of the noted MND by the County. 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 of San Diego, Department of Planning and Land Use (the "County") issued to the developer a letter, stating, "It will be necessary to prepare and submit a draft EIR to satisfy the requirements of the CEQA." (at p. 3). 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 OF 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 developer does not own, and has not offered to purchase;
4. Complete lack or inadequate analysis of ten areas of potential environmental impact, including noise, odor, air quality and visual consequences.<sup>1</sup>

## C. BORREGO SPRINGS SPONSOR GROUP OPPOSITION

It is not the purpose of this letter to represent the position of the Borrego Springs Sponsor Group. However, the findings of the Borrego Springs Sponsor Group offer an introductory backdrop to the conclusions reached in this letter. Such findings presaged the position of this client group.

The principal function of the Borrego Springs Sponsor Group is as an information link between the community and the County of San Diego on matters dealing with planning and the use of land in their community. On at least six occasions, the Borrego Springs Sponsor Group heard and considered the merits of the Project. In each instance, the last being on April 2008, the Group expressed its many concerns and recommend denial of the Project, as presented at the time. Most notably it lodged express requests for the preparation of a full EIR by the County. On February 5, 2008, the Group voted unanimously to reject the tentative map, as presented.

Overwhelmingly, the basis for denial as expressed on the record by each and every member of the Borrego Springs Sponsor Group, was a concern regarding the significance of the environmental impacts to be expected from the Project. While the specific concerns varied with

---

<sup>1</sup> This list is not all inclusive and simply highlights the most critical points set forth in this letter.



each member, they all related to a conviction that the Project would have a significant impact upon the environment of the Borrego Valley.<sup>2</sup>

In addition, concern was repeatedly expressed over the high density of the development and the fact that density is in direct conflict with the still pending County 20 / 20 General Plan that would establish a low density buffer zone at Tubb Canyon to protect the nearby park and wilderness. Lastly, the fact that no houses were planned, only the sale of graded lots, proved worrisome, even to those not as concerned about environmental damage to the site<sup>3</sup>.

The conclusion is clear. The body of individuals empowered to consider the merits of this Project advanced the position that the evidence presented to them (as incomplete as it may have been) was clear enough to support a fair argument that the Project would have a substantial effect on the environment. At page eight of this paper, we discuss the legal meaning of this finding, and the reasons why a full-scale EIR must be prepared.

#### D. TIMELINESS

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, the work product from the PRA request proves that 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 REVIEW OF THE LAW

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

---

<sup>2</sup> The specific concerns that were articulated include, but are definitely not limited to: destruction of the ancient "Ocotillo Forest" that had been a local tourist destination in the past; grading of the stable, ancient sand dune with resulting air quality issues; loss of viewshed from scenic overlooks and from neighboring homes; septic system concerns in sand used as fill for lot pads; loss of rare, possibly endangered species; adverse impacts on the state park and Pinyon Wilderness; economic impacts if lots remain unsold in the current housing downturn or if sold cheaply, causing a loss of adjacent property values.

<sup>3</sup> There are many local residents who are concerned with the local wildlife; for example, one resident is working with the East San Diego County Multiple Species Conservation Program to get high density Ocotillo forest declared a habitat requiring some protection or mitigation for development. Although getting a new designation is a lengthy, labor and time intensive process, the effort is a clear indication of community and agency interest in preserving significant, ancient stands of Ocotillo with associated flora fauna. (See, <http://www.co.san-diego.ca.us/dplu/mscp/index.html>)

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)<sup>4</sup>, 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 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 Supreme Court of California 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 decision makers with information which enables them to make a decision

---

<sup>4</sup> California Pub. Res. Code § 21000, *et seq* is referenced as CEQA; its implementing regulations are at Cal. Code Regs. Tit. 14, §§ 15000, *et seq.* and are referenced as "CEQA Guidelines".

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, supra*, 47 Cal.3d 376 at 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.

It is in this legal context that the Project, as described below, must be analyzed.

### III. PROJECT SITE DESCRIPTION

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 land consisting of undisturbed natural terrain that is situated on portions of two alluvial fans (a bajada) created by the Culp Tubb - Loki Canyon complex and Dry Canyon, conveying runoff west to east, ultimately to the Borrego Sink mesquite bosque in the southeast portion of Borrego Valley. An ancient sand dune, stabilized by native vegetation including a dense ocotillo "forest," runs diagonally across the project site next and portions of the flood plain with associated shallow arroyos. The parcel is located at the extreme western terminus of the great Sonoran (Colorado) Desert that extends from Southwest Arizona to the Anza-Borrego Desert. The habitat on the property is biodiverse Sonoran Desert within the Lower Colorado Subdivision. Seasonal storm water runoff from the nearby canyons support a particularly dense stand of creosote scrub, ocotillo, barrel cactus and other species. Habitat on the site is contiguous to the geological landforms, flora, and fauna of the adjacent Anza-Borrego Desert State Park and Pinyon Wilderness to the south<sup>5</sup>.

According to the 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, flash floods from these canyons during rainfall flooded the project site and surrounding areas. A ten-foot high diversion dike was constructed upstream of the project site on or about 1963. The resulting dike diverts flood flows from Culp-Tubb Canyon to the south reducing the confluence of runoff

---

<sup>5</sup> In addition, as ignored by the studies prepared in support of the Project, the Project site will cover an area in which a route for the National Forest Hiking Trail is being proposed. The route already contains rudimentary dirt trail which is commonly utilized by hikers and horseback riders.

from Culp-Tubb Canyon and Dry Canyon. See footnote 24 at page 19 for a more complete description of this construction project.

Studies in support of the Project state that despite the fact that the dike has not failed over the last forty years, is in good condition and functions 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, including desert watershed recharge, nearby state parkland, and local flora and fauna that are dependent upon the ephemeral flow of water across Tubb Canyon bajada.

#### IV. MATCHING THE LAW TO THE FACTS

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 developer 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 – boldface emphasis added).<sup>6</sup>

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

---

<sup>6</sup> CEQA defines a "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in the environment" (CEQA §§ 21068; See also, CEQA Guidelines § 15382).

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. 4<sup>th</sup> 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 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)).

The “fair argument” test has particular application here. On six occasions the Borrego Springs Sponsor Group – comprised of persons empowered to render land-use recommendations – expressly found that the Project was likely to have a significant impact upon the environment. The Group’s findings were not simply an unsubstantiated public outcry; rather, they were proof of the fair argument that the Project would produce a significant environmental impact.

Unquestionably, a “fair argument” can be made that any one (if not all) of the four standards listed above can be met.<sup>7</sup>

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. THE ENVIRONMENTAL FACTS

### A. BIOLOGY IMPACTS:

#### 1. The Project will have Significant Biological Impacts

The Biological Technical Report prepared by REC Consultants, Inc. (the “Report”) 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 – boldface 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 its 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. In fact, in Section 7.3 it concludes that “[b]ecause the project will not result in significant sensitive wildlife impacts, no sensitive wildlife mitigation is required.” This conclusion is wholly unsupported and erroneous.

#### 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 burrows and plants were identified onsite or collected for identification.

---

<sup>7</sup> Note the detailed discussion of the actions of the Borrego Springs Sponsor Group, described at pages 2-3.



It does not appear the California Department of Fish and Game ("CDFG") has 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 estivate, brumate (during cold conditions at the site), become dormant, or migrate away from the area at such times. A complete environmental survey and analysis, therefore, must be conducted at different times of the year, taking into consideration drought and the ephemeral desert growing season. The Project cannot be approved unless and until a survey and an analysis are completed and carefully considered.

As discussed above, it appears that 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 also 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, summer heat, 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 in the Project Biological Technical Report.

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 such as the comprehensive information available in the Draft Environmental Impact Report / Environmental Impact Statement prepared by Aspen Environmental Group specifically for the proposed San Diego Gas and Electric Sunrise Powerlink Project, Desert Alternative Route through Grapevine and Canyon, Tubb Canyon<sup>8</sup> and southern Borrego Valley. The information contained in this draft environmental impact report, and its supporting studies, is available for review and as a source of information regarding the impacts on both plant and animal species in the area. Failure to consider or mention it is an egregious oversight on the part of Project proponents.

3. **The Project is located in a Riparian Desert Habitat and Desert Riparian Watershed**

On August 2006, the County acknowledged that the natural drainage on the Project site may qualify the site as a wetland under the San Diego County Resources Protection Ordinance,

---

<sup>8</sup> See, Anza-Borrego Desert State Park and Anza-Borrego Desert Natural History Association (ABDNHA) publications and staff reports available at <http://www.cpuc.ca.gov/environment/info/aspen/sunrise/sunrise.htm> (last accessed on July 18, 2008).

which prohibits impacts to wetlands and wetland buffers.<sup>9</sup> 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 to the Biological Technical Report).

The County seems to have accepted the developer'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 developer'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 CDFG 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.

In making the above conclusions, the developer failed to provide support, perhaps because the above interpretation of "riparian habitat" is inaccurate for desert environments: Dry riparian habitats share most of their defining characteristics with traditional "wet" riparian habitats as they are chronically disturbed, unstable sites where water and nutrients are harvested and concentrated from larger areas (watersheds), and are important corridors for dispersal of plants (seeds) and animals.<sup>10</sup>

The fact that an arroyo, a dry desert wash, does not carry year round water or exhibit perennial native vegetation does not mean that it fails to qualify as critical "riparian desert habitat" or as a "desert riparian wildlife corridor." Indeed, the ephemeral streams and flood channels on the proposed site are of significance to both wildlife and watershed recharge. Ecologists are broadening the concept of riparian communities to include the banks of dry washes in desert, such as the Project site, because although these dry washes occupy less than 5% of the subdivision of the Sonoran Desert, they support 90% of its bird life.<sup>11</sup>

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

---

<sup>9</sup> 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."

<sup>10</sup> Arizona Sonora Desert Museum, "A Natural History of the Sonoran Desert" (University of California Press, 2000).

<sup>11</sup> *Id.*

4. **The Report Omits Discussion of Important Species such as the Burrowing Owl**

Section 4.2 of the Report 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 the presence of the Burrowing Owl (*Athene cunicularia*), for example, a declining species of special concern as listed by the CDFG, that has its habitat in the Anza Borrego Desert; and goes on to inaccurately state that this species does not occur on site.

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.

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.

The Burrowing Owl is in decline across its entire historic range with a few flourishing populations. It has been making an unexpected and welcome comeback in Borrego Valley, especially in the vicinity of Tubb Canyon. The development of the Project would cause direct loss of current nest sites on the dune, and the presence of grass lawns with pesticides and herbicides would pose a significant risk both from the direct exposure and consumption of contaminated prey such as small rodents and insects. Moreover, increased traffic in the area of the Project site will almost certainly result in own mortality.

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 species of special concern simply cannot be contemplated.

Moreover, Project proponents tend to ignore, or downplay, the fact that Burrowing Owl nest burrows are protected by both CDFG Regulations and the U.S. Migratory Bird Treaty Act.<sup>12</sup>

5. **The Report Omits Discussion of the Flat Tailed Horned Lizards**

The flat tailed horned lizard (*Phrynosoma mcalli*) is another CDFG species of special concern which has been documented at the Project site and which the Report omits. And once again, Appendix D to the Report attempts to misleadingly imply that the flat tailed horned

---

<sup>12</sup> U.S. Department of Interior, Fish and Wildlife Service, *Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States* ( Biological Technical Publication, Washington DC, 2003).

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*.<sup>13</sup> 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.

It is noteworthy that the Project site may have more than one horned lizard species on the site - the San Diego horned lizard (*Phrynosoma blainvillii*) along with the flat tailed horned lizard - and potentially a significant "intergrade population" between those two species. The San Diego horned lizard, like the flat tailed horned lizard, is a CDFG "California Species of Special Concern." The intergrade (hybrid) lizards have been found in Grapevine and Tubb Canyon.

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. This description contains a significant omission. The Report downplays, and fails to affirmatively state that the Bighorn are within the CDFG classification of endangered species<sup>14</sup>.

The Biological Technical Report goes on to say that the Bighorn traverse the land impacted by the Project, then contradicts itself in another place by asserting that "there were no rare, threatened, or endangered animal species" observed on site. The Report further misstates facts by asserting, "**no sensitive habitats were identified on site**" (See, Section 4.3.1 – boldface emphasis added). First, these statements ignore the obvious fact that this site is classified as a sensitive habitat in numerous ways discussed herein, including the Riparian Desert Habitat discussed above and the fact that the Bighorn, which do occur on site, are endangered. 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).

---

<sup>13</sup> See, UCSD Science and Engineering Press release, Proliferation Of Argentine Ants In California Linked To Declines In Coastal Horned Lizards February 26, 2002, available at <http://ucsdnews.ucsd.edu/newsrel/science/mclizard.htm>

<sup>14</sup> U.S. Fish & Wildlife Service Species Report, <http://ecos.fws.gov/speciesProfile/SpeciesReport.do?spcode=A0DR>.

The reality is that the Bighorn 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 prepared a *Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California*, in accordance with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) ("Recovery Plan"). The "objective" of the Recovery Plan is to:

[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 down listed to threatened status, and ultimately delisted.<sup>15</sup>

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 nine recovery regions within this habitat for full recovery to occur.<sup>16</sup>

Tubb Canyon is located in one of these nine 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 spring 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 and vicinity 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.

---

<sup>15</sup> See, *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).

<sup>16</sup> 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."

Bighorn ewes in the Tubb Canyon area give birth to their lambs during the months of February through April, though some lambs are born even 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.

As the main spring 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 "water guzzler" that provides critical water to the sheep and other wildlife. The water guzzler was installed by Anza-Borrego Desert State Park, with permission of the landowner, and is maintained by state park staff. These water sources are especially important during the current, prolonged, drought.

The Project, both during its construction and ongoing existence brings a high density human presence, increased traffic and noise to a secluded and wild region that will disturb the Bighorn Sheep during sensitive periods. The intrusion the Project will 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 developer's expert. The Report attempts to suggest a 1:1 mitigation measure for the Sonoran creosote bush scrub in an attempt to 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 critical population of Bighorn Sheep - it is specific to their very being. One cannot "add" to this population'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 this herd, which historically exists in a fixed



region. The loss of any portion of such habitat and important buffer lands surrounding it would remain a net loss.<sup>17</sup>

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 Bighorn Sheep and perhaps other species yet to be determined by environmental survey and analysis. An extension of the proposed mitigation plan would be to relocate the herd 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.<sup>18</sup>

## **B. 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 Watershed and adjacent Anza-Borrego Desert State Park and Pinyon Wilderness, to which the Project site is a geologic and watershed 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. In addition, the report fails to provide an analysis of the proposed sewer system for the Project. The developer's 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 developer 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 developer acknowledged the following anticipated pollutants: sediments, nutrients, trash and debris, oxygen demanding substances, oil and grease, bacteria and viruses, herbicides, and

---

<sup>17</sup> In addition, the proffered mitigation does not address the disturbance from increased human activity in the form of the Project's "new" high density neighborhood with traffic, and associated noise, for example. The resulting disturbance to sensitive animals such as the Bighorn is immeasurable.

<sup>18</sup> 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.

pesticides and that since the Project would include work in natural water channels, there is an increase in the velocity or volume of downstream flow, discharge to unlined channels, and would cause an increase in potential sediment load of downstream flow.

On August 29, 2006, the County, in turn, determined that since the project will use groundwater, a technical investigation into the available groundwater resources will be required (Appendix L). Neither the developer 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 developer failed to provide information on the beneficial 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.<sup>19</sup> 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.<sup>20</sup> 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

---

<sup>19</sup> See also, discussion above regarding the Project site being a desert riparian corridor.

<sup>20</sup> 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](http://www.borregowd.org/Downloadable_Files.html), p. 26).

extraction will increase as the water levels decline.<sup>21</sup> The accepted conclusion is that 100 years is likely overly optimistic.

Borrego Valley does not have 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 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.<sup>22</sup> 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.<sup>23</sup>

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 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 with trenching and land disturbance to connect the project area to the tank.

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 supplies remaining), the developer's plans are more problematic than considered in the 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 the Anza-Borrego Desert State Park.

Overall, the developer 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 developer 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

---

<sup>21</sup> *Id.*

<sup>22</sup> See, Borrego Water District, *Groundwater Management Study March 2001*, available at [http://www.borregowd.org/Downloadable\\_Files.html](http://www.borregowd.org/Downloadable_Files.html).

<sup>23</sup> 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).

flow of water, water use, water reuse and the only way to adequately study the associated environmental impacts is with a full EIR.

### 3. Flood Control

As noted in the Flood Hazard Evaluation, prepared on August 27, 2007 in support of the MND, approximately 60% of the proposed residential development is within a desert riparian flood plain as are significant neighboring developments immediately to the north of the project and significant flood-prone developments 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 within 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.

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 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 extensive 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, a species of special concern, as identified by the California Department of Fish & Game. That fact has been brought to your attention by our client, Lori Paul, a biologist and California licensed veterinary technician. 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 and on the proposed project site, and has presented physical evidence of active owl burrows in the form of Burrowing Owl "pellets" to the Borrego Springs Sponsor Group. As discussed above, disturbance of this species, that is in severe decline across its range, simply cannot be contemplated. Burrowing Owls in recent years have made a remarkable and unexpected comeback in the Tubb Canyon and adjacent southern Borrego Valley region, which would be jeopardized by the proposed project.

Second, the existing levees identified for reconstruction are all located on private property. They were first built in 1963 by the Army Corps of Engineers with the consent of one

owner of record.<sup>24</sup> 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 oppose.

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.<sup>25</sup>

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

---

<sup>24</sup> Construction of these levies should not be confused with a formalized project constructed in accordance with established flood control standards. Rather, the work was done on an ad hoc basis. Local lore holds that Army Corps workers who, at the time, were staying at the Stanlunds Motel, downstream from one of the properties owned by a member of the client group, conferred with the motel owner who had experienced the flow of flood debris into his pool. The military engineer guests, seeking to protect the motel pool and property from debris during the severe storm events of that year, obtained permission from one (but perhaps not all) of the landowners where the dirt levies were constructed, and undertook to do the work.

<sup>25</sup> This is not intended to be a definitive description of any particular assessment district proceeding. It only generally describes the framework imposed on all such proceedings by the passage of Proposition 218. Most notably, the rule allowing for an over-ride of a majority protest, particularly for flood control facilities, is no longer the law. A majority protest lodged by affected property owners will prevent the formation of a district.

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. 4<sup>th</sup> 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.

#### 4. Wastewater Disposal Systems

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.<sup>26</sup> 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 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 the plans for wastewater disposal and/ or sewage treatment plans, either on the tentative maps or the preliminary grading plans. Given the DEH’s concerns and the possible restrictions by the Regional Water Quality Control Board, the property owners in Borrego Community (and the County) should be wondering what the developer plans on doing with the sewage from the proposed 150 residences. Apparently, the developer is proposing to grade the lots for sale and is not planning on building a planned development; regardless of the developer’s plans, current and future residents, if not the County, need to know at the very minimum who will be responsible for the infrastructure and how or when it will be implemented, and what the potential environmental, social and economic effects may be.

---

<sup>26</sup> Kurt Schauppner Desert Trail. *Who has Sewer Power? The City*, <http://www.deserttrail.com/articles/2007/02/29/news/news2.prt> (March 2, 2007, last accessed on July 11, 2008).



**C. 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, 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 the Project to be grandfathered in under the General Plan Update (or the 2020 Plan). Thus, it will not be compatible with land use designations currently recommended by the County upon the Plan Update's approval.

**D. 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 find rejuvenation 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 and a dense "forest" of ancient ocotillos that extend contiguously across Tubb Canyon bajada into Anza-Borrego Desert State Park. Once occupied, these homes could represent an increase exceeding 10% of the present Borrego Springs year-round population. The construction and grading down of the vegetated sand dune, the necessary road expansions, the accompanying vehicles and traffic and the resulting development, will be widely visible throughout the surrounding areas, including higher elevation scenic overlooks.

In addition, both the diversionary structure and the channel will create significant adverse 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.

**E. 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.

In addition, traffic generated by the 170+ home sites would be directed onto West Star and East Star roads to the north of the Project. Those 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 that will adversely impact adjacent, established homes, introduce unacceptable levels of noise, dangerous traffic, etc. 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 and generate intrusive noise in the quiet, secluded environment surrounding the Project site.

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 side effect of the Project, and its resulting increase in the population of the area.<sup>27</sup>

**F. AIR QUALITY IMPACTS:**

Without explanation or analysis, in the August 29, 2006 letter from the County to the developer, the County determined that no significant impacts to air quality have been identified (Attachment J). 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 forest / creosote scrub and other perennial Sonoran desert flora) and the emissions from construction earthmoving activities. As construction on the subdivision lots will not begin immediately, the denuded desert and exposed dune sand will result in an air quality

---

<sup>27</sup> In many aspects, including the lack of clarity as to how the TIF Fee 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.

hazard; as well as a visual blight. Extremely high velocity winds (over 80 mph) frequently blow through Tubb Canyon and surrounding canyons; recently, in the spring of 2008, two SDG&E power poles were snapped off and others in De Anza were blown over.

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 to the elderly, those with respiratory conditions, and the school that is downwind approximately one mile from the site. The irony is that many people moved to Borrego Springs for the health benefits of the clean, dry desert air. The further irony is that the existing elevated 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.

#### **G. NOISE/ODOR IMPACTS:**

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 an appropriate project for the Borrego Springs area, or that at a minimum, it cannot be adequately addressed by a MND. 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 add an additional 1,480 average daily vehicle trips, 118 occurring the AM peak hour and 148 in the PM peak hour, must be addressed.

#### **H. FIRE HAZARD IMPACTS:**

According to the Fire Services Availability letter for the project dated, May 6, 2005, in the Fire Protection Plan for the Projects, prepared December 2007, services are not anticipated to

be available within the next five years. The Borrego Springs Fire Protection District only has one fire house, with limited resources, to serve the entire Borrego Springs area. Our clients are informed that previous subdivision projects have been denied because of inadequate fire protection in the area. Although the Fire Protection Plan indicates that the Project, along with several other proposed projects have worked with the Fire District and the County of San Diego to form Community Facilities District 2007-1 (at p. 1), current information is necessary to address fire protection - a particularly relevant concern for a development in the desert.

**I. 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.

**J. 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).

**K. 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, teachers 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.

**L. CUMULATIVE IMPACTS:**

Again, characteristic of the studies' utter disregard of essential points, it appears the cumulative impacts of the Project are not addressed. Examples of cumulative impacts that were not addressed include several subdivisions pending approval in the surrounding area as a result of the Project, of which we have become aware.

It further appears that Project proponents do not address the low or no light district which is in the process of being established in order to safeguard the use of the nearby Palomar Observatory, and prevent light from the area from obstructing the view from the observatory telescope.

## VI. PROJECT ALTERNATIVES

A Mitigated Negative Declaration is not required to discuss project alternatives, including the "no action" or "no project" alternative. On the other hand, 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.

## VII. CONCLUSION

As a preface to our conclusion, it is important to place the contents of this letter in proper perspective. Although reference has been made to several technical studies prepared by acknowledged experts, many of the noted observations are made by the residents of the Borrego Valley – longtime observers of the local flora and fauna. While they may be "lay environmentalists", they are not experts whose observations and opinions qualify for the purpose of satisfying the analytical standards of CEQA. They do, however, serve to point out the alarming shortcomings of the environmental analyses performed to date. Stated differently, the testimony of the members of the client group proves that there is the likelihood of a substantial environmental impact resulting from the Project, which deserves far closer scrutiny to adequately measure such impacts.

For all the reasons set forth herein, 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 MND as suggested by studies in support of the Project. The Project, if implemented, will create significant unmitigated impacts beyond those which would fall within the confines of a MND, in contravention of 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.

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 if necessary. 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,



KENNETH H. LOUNSBURY, ESQ.

KHL/rmq

cc: William D. Smith, Senior Deputy County Counsel  
Client Group

ATTACHMENT D

**PETITION OPPOSING PROJECT  
SIGNED BY  
BORREGO SPRINGS RESIDENTS**



Bill Horn  
County Supervisor

May 8, 2006

RECEIVED

MAY 15 2006

Dear Mr. Horn,

San Diego County  
DEPT. OF PLANNING & LAND USE

I have the following concerns, first about the diminishing water resources in Borrego Springs and secondly with regard to the proposed "Borrego Country Club Estates" subdivision in Borrego Springs.

1. Re: Borrego's Water Resources. Despite your suggestion that a 1980's study shows there is no water shortage in Borrego, a series of more recent and well-documented studies have shown that there is a very significant lowering of the water table of approximately twenty feet per year and because of the conical shape of the aquifer, this drop is increasing exponentially. Therefore, growth in this area needs to be judiciously implemented.

2. Re: Borrego Country Club Estates:

i. The sheer number of homes proposed in this development (148) is overwhelming. Furthermore, the thought of separate septic systems on each of these approximately acre lots is troubling. Reviewing this project the sponsor group has suggested a ratio of one home for every 10 to 20 acres would be a more reasonable proposal.

ii. This subdivision, along with the others that have been proposed for the area, would put a strain on an already stretched infrastructure (e.g. fire department). The county must address this issue before these new homes are built.

iii. Any developer must do thorough due diligence on his property--- At the moment, the developer has proposed a road down the middle of a sand dune and a host of other potential mistakes. The disruption of the dune alone will cause everyone problems with blowing sand.

As county supervisor, we look forward to your exercising responsible and informed judgment in these matters.

Bill Horn/Borrogo Residents 2.

Respectfully,

Josh Jones

---

PATRICIA JONES  
3822 Bar O (P.O. Box 1454)  
Patricia Jones

---

DR. SAUL L. MILLER

Saul L. Miller

3363 BROKEN ARROW RD.

P.O. Box 1763

SUSAN S. DOLKAS

Juan Dolkas

1651 MOUTEZUMA

P.O. Box 2562

---

Robert J. Cassidy  
P.O. Box 1583

---

Elintus M. Walker

3819 Yung Park Borrego Springs PO Box 1724

---

HAROLD SALT

202 PORTER PLACE DR BOX 556

---

JOYOUS RAINBOW  
GENERAL DELIVERY BORREGO SPRINGS, CA 92004

---

Richard Mounier

Box 458 Borrego Springs 92004

---

DON NICHOLS

P.O. Box 865 BORREGO SPRINGS, CA.

---

Bill Horn/Borrogo Residents 3.

Jan Nikola P.O. Box 865 P.S.

Rynthia Anne Clark PO Box 1239 760 767 4605  
2726 Country Club, Borrego Springs CA 92004

Joanne Cahill  
P.O. Box 2577 Joan & Cahill  
Borrogo Sp CA 92004

Thomas Anteo  
P.O. Box 392  
Borrogo Springs CA 92004

Astrid Webb  
P.O. Box 2268  
BORREGO Springs, Ca. 92004

Barbara F. Schmit (main residence)  
P.O. Box 1083 14575 Flathead Rd 760 767 4226  
BORREGO SPRINGS, CA 92004 APPLE VALLEY, CA 92307 760 240 7668

Patricia Schmit 760 240 8271  
P.O. Box 1083 14575 Flathead Rd  
BORREGO SPRINGS CA 92004 APPLE VALLEY, CA 92307

JAY ALDINGER  
GEN. DEL.  
BORREGO SPRINGS CA 92004

Margaret Hurten  
PO Box 548  
Borrogo Springs CA 92004

Harold Cohen  
PO Box 594  
Borrogo Springs CA 92004

Mary Helen Prince Day Helen Prince 4274 Borrogo Springs Rd  
3266 Wagon Rd.

HAZEL SPENCER Hazel Spencer P.O. Box 1595

Annast Robin Smith 3324 Wagon Rd., Borrogo Springs, P.O. Box 2101

Linda Laughlin POB 626  
Lenore Laughlin 675 Riata Rd, Borrogo Springs, CA 92004  
JACK LAUGHLIN " " "

Jack H. Laughlin  
JACQUELINE M. HINE 3345 Country Club Rd  
Jacqueline M. Hine Borrogo Springs CA 92004

Wes Anthony

W 303 Tub Canyon Rd 92004

KARLA K. MAXWELL 3363 Brown Arrow Rd.

Robert Maxwell

Philip A Decker 3292 Brokenarrow Rd

Philip A. Deh

THOMAS P. HUMPHREYS

Thomas P. Humphreys

3515 COUNTRY CLUB RD.  
BORRGO SPRINGS, CA. 92004

Bill Horn/Borrego Residents 4.

Denise IMBAULT P.O. Box 718 - Borrego Springs CA  
92004

Susan Browne. P.O. Box 955 Borrego Springs, CA 92004

Mary Ellis P.O. Box 2552 Borrego Springs, CA 92004

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BILL HOEN / BORREGO  
RESIDENTS

Joseph Raffetto III  
*Joseph Raffetto III*

1233 Palm Canyon Dr  
Borrego Springs CA 92004

Lori L. Paul  
Yoni & Paul

Tubb Canyon Baja, landowner (54.67 acres)  
current residence:  
153 Jaxine Drive  
Alhambra, CA 91001

Pamela Levens  
Badlands Market Cafe  
Elsa L. Chambers

PO Box 2109  
B. Springs CA 92004

P.O. Box 1065  
B. Springs CA 92004

John and Lisa SCRANTON  
*John & Lisa Scranton*

P.O. Box 1004  
Borrego Sp. 92004

ATTACHMENT E

**OPPOSITION FROM  
BORREGO SPRINGS COMMUNITY  
SPONSOR GROUP**





Bill Stocks  
858 694-3913  
FAX 858 694-3373

COUNTY OF SAN DIEGO • DEPARTMENT OF PLANNING AND LAND USE

PLANNING GROUP ACTION ON PROJECT (Case Number) IM 5187

The Desert - Borrego Springs Group at their meeting on \_\_\_\_\_  
evaluated the following issues and provided comments as applicable:

A. Results of your Group's evaluation of the project including the following:

- o The completeness and accuracy of the Project Description
- o Issues of concern in the project vicinity
- o Consistency with the community character
- o Potential inconsistencies with your Community Plan
- o Specific concerns regarding project design, planning or environmental issues (e.g., traffic, biology, archaeology, noise)

SEE ATTACHED LETTER

B. The Borrego Spr. Comm. Grp. Group  did OR  did not make a formal recommendation, approval or denial on the project at this time. (Please consider the direction provided by the Project's DPLU Project Manager.)

If a formal recommendation was made, please check the appropriate box below:

MOTION:  Approve with/without Conditions  Deny  Continue

VOTE: 0 Yes 12 No \_\_\_\_\_ Abstain

BY: KURT LEVENS Position VICE CHAIR Date 4.1.06

Conditions/Recommendation

SEE ATTACHED LETTER

**BORREGO SPRINGS COMMUNITY  
SPONSOR GROUP  
CHAMBER OF COMMERCE BUILDING  
786 PALM CANYON DRIVE**

4/8/06

re: County Project #TM5487, APN: 198-320-01 and 198-320-26

The Borrego Springs Community Sponsor Group is recommending that this application for subdivision be denied. The Owner / Subdivider Rudy Monica presented his plan at the July 2005 Sponsor Group meeting at which time the members of the Sponsor Group, upon review of his proposal, recommended that he reduce the density of his proposed project, especially around the perimeter where the lot size being proposed was much smaller than adjoining estate lots. Sponsor Group members also recommended open air easements keeping with some the features of the natural terrain that are quite remarkable. Sponsor Group Members felt that larger lot size and subdivision layout sensitive to existing conditions would make the proposal more acceptable to the residents of the community who were going to be directly impacted by any eventual build-out in that area. Rudy Monica was very appreciative of our comments and stated very clearly that he wanted this development to be an integral part of the community. He spoke of keeping dark night skies, under-grounding of utilities for minimizing scenic intrusion, minimal excavation impact for building pads, CC&R's and building development consistent with a medium to high end building subdivision.

Over 70 Community Members responded to the posting of the Sponsor Group Meeting with this agenda item. This is the largest community turnout for any meeting in the past five years that I, as Vice-Chair, have been present. After reviewing the revised proposal, it became readily clear to members of the Sponsor Group and members of the community present that there was little consistency between what was being said and what was being shown in the subdivision application, falling short of just about everyone's ideals and expectations. The Sponsor Group's recommendations of this past July were not adopted. The density of the proposed subdivision is 15% higher than it was when last presented. No attempt was made to work with the terrain or geographic features of the site. When polled, not one of the community members at the meeting voiced support for the subdivision as shown.

The application stipulates 200,000 c-yd grading with 15' cut and fill, presenting the possibility that the entire site would get graded in swathes with existing vegetation destroyed as is common to suburban subdivisions. Although some narrow and long open air easements are provided, the community is asking for assurances that the open air areas will be enlarged as the scope of the subdivision diminishes, and will remain undisturbed and natively vegetated.

The project description indicates "the biological setting consists mainly of Sonoran Creosote Bush Scrub". It is not desert scrub as the application indicates. It is an Ocotillo Forest, some of the richest in the Valley, a natural artifact that has been a tourist attraction historically since the 1940's (enclosure). Unusual natural artifacts of this type underlie much of Borrego tourist economy, and may be why an unprecedented turnout at the Sponsor Group's monthly meeting occurred. Furthermore, much of this area in the proposed subdivision is covered by a sand dune unique to Borrego upon which residents have noticed desert tortoise. When cut into, this sand dune will not re-stabilize and will create a mess for the inhabitants, as was created by John Cameron's project for many years. The original sub-dividers intentionally left this area out of the development plans of Borrego because this area is subject to flooding by outflows from Tub and Dry canyons during very heavy rainstorms, in addition to its natural uniqueness and appeal.

The project description also states that "even though vacant lots exist, there are very few for sale" in Borrego. Members of the Sponsor Group and members of the audience found this statement peculiar, misrepresenting the abundance of sale lots of this size. There is presently a large and expanding inventory of smaller lots, and values of smaller lots, and houses built on smaller lots, is declining faster than any other segment of real estate in Borrego. What will happen to the real estate market if it is flooded with similar size lots? It's starting to look like Love Canal out here, with everyone selling lots, and the few potential buyers wondering why everyone is trying to get out of Dodge!

The project description also states "a septic analysis performed by Shepherson Engineering Associates found that every lot passed the percolation testing". This is fine and predictable as Borrego has a Valley Wide percolation test, but did this analyses look at the impact of putting 148 Septic tanks into 148 adjacent lots? We suspect not. Is this what an EIR would determine? With high percolation, it seems apparent that untreated septic through out the subdivision could have consequences upon groundwater.

The Sponsor Group requests a full Environmental Impact Report be required, for reasons of septic, sand dunes, ancient ocotillo, disturbance to neighbors, scenic compromise, and myriad other community concerns. The sponsor Group requests that the Bio Study referred to in this application be presented for examination to the Sponsor Group.

**Bill Collins, Chairperson  
P.O. Box 1371  
Borrego Springs, CA 92004**

kl:bc

ATTACHMENT F

**OPPOSITION LETTERS  
SUBMITTED TO DPLU  
BY  
BORREGO SPRINGS RESIDENTS**

20 February 2008

P. O. Box 2632  
Borrego Springs, CA 92004

Mr. Mark Slovick, Project Manager  
Department of Planning and Land Use  
5201 Ruffin Road  
San Diego, CA 92123

Re: Country Club Estates, Number TM5487

Dear Mr. Slovick:

We reside year round at 3388 Country Club Road in Borrego Springs and write today about the project known as Country Club Estates located in Borrego Springs, Case Number TM5487, APNs 198-320-01 and 198-320-26 (The Project). Our questions about it fall primarily into three broad categories: Density, Environmental Damage, and General/Administrative.

With respect to density:

- What modifications will be required to reduce the overall size and density of the project as a whole so that it conforms to the character of the community and the area in which it is located?
- How will The Project's impact as an anomalous, visual blight on the landscape be reduced?
- How will the county accommodate the fact that parcel size within the project area is significantly less than proximate parcels?
- How will the county accommodate the additional fact that the de facto lot size in areas surrounding The Project is often two to four times larger than indicated by the legal description of the parcel on which many homes are actually located?<sup>1</sup>
- How is The Project consistent the concept of "feathering" or reducing density as an inverse function of the distance from the town center when the Project site is on the extreme southern edge of the built up area of Borrego Springs and so, under this concept, should have a lower density than areas to the north?
- What measures will be taken to mitigate the significant increase in traffic caused by The Project on Country Club and Broken Arrow Roads into the town center and aggravation of the already dangerous situation that exists at their junction?
- What is the justification for The Project when there are already about 2,000 vacant lots of 1 acre or less in Borrego Springs?

---

<sup>1</sup> Many home owners around the project area have purchased vacant lots adjacent to and across the street/road from their residence in order to prevent these properties from being developed resulting in a much lower density in these neighborhoods than would be permitted under applicable zoning regulations.

**Sent:** Tuesday, March 27, 2007 1:14 PM

**To:** Stocks, William

**Cc:** WRCconsult@cox.net; webb@uia.net; kerin shugart; jdaniels@cableusa.com; info@seleyranches.com; castlekeepers@sbcglobal.net; Betsy Knaak; Judy Haldeman; david@thepalmsatindianhead.com; ceshimeall@znet.com; jimsal@cableusa.com; gaboon@sbcglobal.net

**Subject:** TM 5487 - Borrego Springs

## ***BORREGO SPRINGS COMMUNITY SPONSOR GROUP***

*Bill Stocks  
DPLU  
County of San Diego*

Bill,

We are surprised to learn that the County intends to issue a Neg Dec on Rudy Monica's project. In response to the community outcry about this project, the CSG included in its advisory rejection, a historical map of Ocotillo Heights, along with the signatures of 70 attending residents and numerous letters of concern about the wholesale destruction of this habitat as proposed by this developer. Mr Monica has stated quite clearly that he will develop the land to the maximum density that the DPLU will allow, which is inappropriate to the GP2020 density, and inappropriate to the diversity of the natural characteristics of the site. **His AEIS submission neglected to indicate any uniqueness to the site, and the photographs provided are not indicative of this either.** This area is and always has been recognized as an Ocotillo Forest, a local artifact unique to the Borrego valley, with the highest density of Ocotillo in Borrego Springs. With the exception of Desert Gardens in Coyote Canyon, the density is also higher than anywhere within the Anza Borrego Desert State Park. This property was not included in the original Borrego Subdivision of 1947 (which parcelized all property to the north and east and west that this project intends to be an infill of) precisely because of 1) this natural uniqueness that is a major stopover point for Park visitors that form the economic backbone of our community, 2) excessive runoff from Tubb Canyon, and 3) because the shiftiness of the sand itself does not lend itself to stable construction (it is peculiar to us that this would be obvious in 1947, but overlooked today).

I am now just beginning a dialog with the ABDSP leadership, the Anza Borrego Foundation, and the Anza Borrego Natural History Association about the ramifications of a Neg Dec on this project. This community has assumed for the last year that the County would be requiring a full EIR as was recommended by the CSG. A biologist with a contiguous parcel who has evidence of Burrowing Owls on her property may be contributing to the next letter that the County receives on this issue. Her concerns, summarily addressed, are as follows:

"Regional Planning in San Diego County intends to issue a Neg/Dec (negative declaration) on Rudy Monica's 149 lot graded subdivision on top of that relict sand dune and cholla/ocotillo forest! I asked Kurt to put Bill Stocks, the County planner/project manager, on notice that a Neg/Dec is NOT acceptable. I saw flat tailed horned lizards and possibly a rare species of fringe-toed lizard out there (if it is Colorado fringe-toed lizard, that's an endangered species). A full EIR / EIS needs to be required for that parcel and the proposed development. I will write a lengthy, forceful, well-documented letter to the County about that parcel, my dike (that Rudy's plan wants to "upgrade" and turn into a concrete flood control dam) and the need for environmental study before any approval is granted".

Kurt mentioned that you could not get support for an EIR from the others in your office. Who else was consulted? Would it be expedient for us to address the next letter to the Planning Commission? Biological issues aside, the a) water/septic needs of a subdivision of this size in relation to Borrego, the b) peculiar indication that the existing dike (which is not in any way under County jurisdiction, was privately fabricated, and is private owned) will somehow be modernized to help in the channelization of water, and 3) the expansion of Borrego to the South when planning efforts have been made to move growth to the north, make an EIR the appropriate vehicle for checking the whimsical vision of this developers needs. Once the community receives wind of this intent to issue a Neg / Dec, the groundswell of opposition that has attended community meetings over the past year will likely elevate this concern.

AK:kl

**Abby King, Chairperson  
P.O. Box 1371  
Borrego Springs, CA 92004**

With respect to environmental factors:

- How will the destruction of the project site, a pristine natural area, be mitigated? Specifically:
  - The burrowing owl nests on the property that will be destroyed by The Project;
  - The thriving ocotillo forest covering the property that will be completely destroyed by The Project;
  - The very large sand dune near the north boundary of the property that will either be destroyed outright by extensive grading or so denuded and destabilized that it will be very quickly eroded by fierce winds that blow across the desert.
- How will degradation of air quality in the valley caused by grading the entire site and denuding and destabilizing the dune resulting in blowing sand and dust be mitigated?
- How will the county mitigate the damage The Project t will do to a major effort to protect the valley's critically overdrafted, sole-source aquifer?<sup>2</sup>

General/Administrative:

- How will the county deal with the fact that the dike mentioned in the permit application as an integral and necessary part of the project's flood control infrastructure is on private land that applicant does not own?<sup>3</sup>
- How will the county deal with the fact that the 3.5 acres of land that is required for applicant to connect improvements on the portion of Country Club Road fronting The Project with the already improved portion to the north is owned by a party who has declared that he will not sell said land to applicant or grant an easement?

---

<sup>2</sup> At least 70% of water extracted from the aquifer each year is for irrigation. In 2004, the Borrego Springs Community Sponsor Group (BSCSG) was successful in increasing the density of about 5,000 acres of farm land in the northern part of the valley from one dwelling unit (du) per 20 acres, to one du per 4 acres in General Plan 2020. The sole purpose of the increase was to facilitate sale of farms for estate developments to reduce demand on the aquifer. Permitting The Project on raw land will seriously undermine this groundwater management strategy by adding 148 redundant homesites to the existing inventory, competing with and slowing the development of farmland, and hastening the degradation and depletion of the valley's only water source.

<sup>3</sup> The several owners of the property in question vehemently oppose The Project and have vowed not to cooperate with applicant in any way.



Letter to Mark Slovick, DPLU  
26 February 2008  
Page 3 of 3

- With respect to DPLU's stated policy of "grandfathering" projects that were "in the permitting pipeline before a certain date" without considering the intent of the proposed General Plan (2020 plan):
  - Specifically, what does "in the pipeline" mean?
  - What is the "certain date," i.e., cutoff date?
  - Does The Project meet the criteria for being "in the pipeline" by the cutoff date?
  - If it does not meet the criteria, specifically what does that mean for The Project?
- How will the county accommodate community values when considering The Project's application for a permit?<sup>4</sup>
- Will the county require a full Environmental Impact Report on the proposed project area?
  - If not, why not?
- When will the county hold public meetings in Borrego Springs where residents can present their case against The Project directly to decision makers?

Thank you.

Sincerely,

Dennis W. Dickinson

Judith Dickinson

---

<sup>4</sup> Applicant has repeatedly demonstrated a callous disregard for environmental and aesthetic values that are widely shared in the community. More than 70 residents of the area surrounding the project area attended a BSCSG meeting on 4 April 2006 to protest the project. No one supported it. Moreover, Applicant has consistently ignored recommendations from the BSCSG, which voted in April 2006 to deny a permit for The Project and continues to vigorously oppose it.

Barbara Stone  
PO Box 1929  
Borrego Springs, CA 92004

February 20, 2008

Mr. Mark Slovick  
Project Manager, TM 5487  
Department of Planning and Land Use  
5201 Ruffin Road, Suite B  
San Diego, CA 92123

Dear Mr. Slovick,

I have written before in regard to Borrego Country Club Estates (BCCE). I have voiced my concerns about the density of the project, the destruction of the Ocotillo Forest and the degradation of the relict sand dune. This letter will pose direct questions that I hope will focus on the inherent problems of developing this particular acreage.

- What is the time line for your department to determine if an EIR will still be required for BCCE?
- Why is the County considering changing the original determination that an EIR would be required?
- Who is responsible for flooding a depressed real estate market with 150 more lots for sale while there are currently 214 individual lots listed with Realtors in Borrego Springs? More lots are available "for sale by owner" and in large developments.
- What is the projected economic impact on current real estate investors?
- How can BCCE plan to use 233 acres of adjoining land to mitigate the loss of Sonoran creosote brush scrub when BCCE does not own it?
- What are the results of the more recent noise study?
- Will all pads and driveways be graded at the same time before the lots are sold?
- What plans have been made to maintain air quality in the neighborhood in regard to grading and scraping of lots?

RECEIVED  
FEB 21 2008  
DEPARTMENT OF PLANNING  
AND LAND USE

- Will the county be liable for permitting a development in the established flood channel that parallels Wagon Road?
- When water is diverted to neighboring properties from the development, who is responsible?
- Will the relict sand dune be scraped and graded?
- What is the storm water management plan?
- Does the SWMP rely on the dike in Culp-Tubb Canyon?
- How will the developers accomplish “all proposed improvements to diversion dike located on Culp-Tubb canyon” when they do not own the dike?
- If the entire drainage study presumes the armoring of a dike that the developers do not own, how can downstream owners be protected from diverted water?
- What responsibility does the County have to assure adequate groundwater resources to serve this proposed development?
- What value would new owners retain in their investment if there is not sufficient water?
- What impact does this project have on the local school district?
- Currently, West/East Star Road serves 20 homes. What will be done to mitigate the traffic impact on West/East Star Road by adding 150 more households to the traffic flow?
- Will an existing traffic count be collected during the peak tourist season of Borrego Springs?
- What will be done to prevent the sand dune from blowing after the soil crust is broken?
- Have any “letters of permission for any increased drainage discharge off-site” been obtained?
- Who will solicit the waivers and releases from all affected downstream property owners?
- What does an “armored” pad mean?
- Will the increase in runoff be greater than 11% if the dike owners do not allow it to be armored?

- When would the significance of the three sites mentioned in the Cultural Resource Survey be assessed through subsurface investigations?
- How will the burrowing owl habitat on the sand dune be preserved?
- How will the developer modify the density to meet the actual density of the surrounding neighborhoods?
- As noted in the Cultural Resource Survey, this property is prone to seasonal flooding on both sides of the sand dune. Can the County assure us that this development will not divert these flood waters onto our properties?

Thank you for your consideration of these questions. My concern about this project is sincere and heartfelt. The San Diego Chapter of the Sierra Club believes that this development merits their attention as well.

I hope that you will explore some of the issues that my questions have raised. As a citizen in the unincorporated portion of the County, I depend on the employees in the DPLU to protect our community from poorly designed projects and to carefully follow the regulations for developments. I believe that you try to do that each day.

Thank you,

A handwritten signature in cursive script that reads "Barbara Stone". The signature is written in black ink and is positioned above the printed name.

Barbara Stone

## Slovick, Mark

---

**From:** Gaboon [gaboon@sbcglobal.net]  
**Sent:** Friday, February 15, 2008 2:01 PM  
**To:** Slovick, Mark  
**Cc:** Abby King  
**Subject:** Borrego County Club Estates, Case #TM5487

**Follow Up Flag:** Follow up  
**Flag Status:** Red

Dear Mr. Slovik,

It has been brought to my attention that you are replacing Mr. Tim Taylor as the DPLU Project Manager for the Borrego Country Club Estates subdivision application, Case #TM5487. Prior to you, Mr. Taylor was the recent replacement for Mr. Bill Stocks, who retired sometime late last summer. Perhaps your assignment will bring better responsiveness from the DPLU regarding Mr. Monica and Mr. Davis' proposed subdivision.

Back on 31 August 2007 I sent an extensive letter of concern regarding this project. After receiving no reply for almost two months, I sent second copies of the letter, by certified mail, along with a follow-up cover letter to both Mr. Stocks and Mr. Devon Muto, Interim Chief, Department of Planning and Land Use. I requested a prompt reply. I also left phone messages.

Certified mail postcards indicate that Mr. Taylor and Mr. Muto signed for the second copies of my letter on 31 October 2007 and 1 November 2007, respectively.

It is now 15 February 2008 and I have yet to receive any response to my letter from anyone in San Diego County. I understand that other landowners and neighbors who would be adversely impacted by the proposed subdivision have also failed to receive any reply from the DPLU to their inquiries.

I have attended several of County Sponsor Group meetings in Borrego Springs when the Borrego Country Club Estates subdivision application is on the agenda. In spite of the great interest and opposition the project has generated, no DPLU staff has been present to answer questions from the Sponsor Group, impacted neighbors or the concerned general public.

Recently, County Zoning officials attended a Sponsor Group meeting to discuss zoning issues. The County Trails Coordinator has appeared at meetings to review controversial trail maps with the Sponsor Group and affected landowners (including trail easements bordering the proposed subdivision). However, to my knowledge, no one from your department has ever been present to answer serious questions about the planning process for the proposed Borrego Country Club Estates. When present, the developer (Mr. Rudy Monica) constantly refers questions back to the County.

Though it is difficult for me to do so, I take time off on weekdays to drive down from Altadena (near Pasadena) to attend Sponsor Group meetings when the Borrego Country Club Estates application is on the agenda. If I and other impacted landowners can do this, along with other County Dept. representatives, one would assume that DPLU staff could manage to be there also. I respectfully suggest that you or

some other authoritative member of the DPLU staff attend relevant County Sponsor Group meetings in Borrego Springs. The information you gather at such meetings is directly pertinent to the proper processing of the Borrego Country Club Estates application by both the local Sponsor Group and the County DPLU.

Since 29 August of 2006 when the first letter and "Determination of Completion" package was issued by Mr. Bill Stocks for this case, there has been a confusing lack of current status information and solid details about the proposed project. There have been numerous delays, changes in scope, a consultant brought on in mid-process, 233 acres of mitigation land proposed that is not even owned by the applicant, and no order for a full EIR evaluation of the site (as required in the first "Determination of Completion" package under CEQA & NEPA, see page 3 "Project Requires An Environmental Impact Report").

As the new Project Manager for Case #TM5487, please review my letter and respond at your earliest convenience to my questions and requests for further technical information. I appreciate your prompt consideration and look forward to hearing from you. If you do not have a copy of my letter for whatever reason, I will be pleased to send you one upon request.

Respectfully,

Lori L. Paul, RVT  
Tubb Canyon area landowner  
626.798.3235  
gaboon@sbcglobal.net  
153 Jaxine Drive  
Altadena, CA 91001

CC:  
Abby King, Borrego Springs County Sponsor Group

December 10, 2007

Mr. Tim Tyler  
Department of Planning and Land Use  
5201 Ruffin Road Suite B  
San Diego, CA 92123

Re: DPLU application for Country Club Estate Subdivision Case #TM5487

Dear Mr. Tyler:

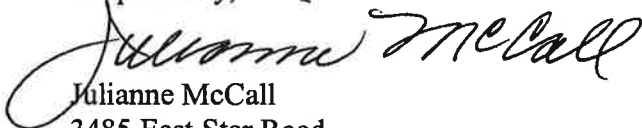
As a homeowner adjacent to the above proposed development, I want to urge you to require an environmental impact report (EIR) on the above application. The developers Rudy Monica and David Davis are not concerned with the impact their development might cause adjacent homeowners, drainage issues, pollution and decimation to several species of animal and plant life that exist on the property they propose to develop. My property abuts the development and I am extremely concerned about any possible removal the old dirt levee that protects my property from possible flooding from runoff of a possible flash flood. Liability to the City of San Diego, from resulting damage due to the levee's removal should be of concern to you.

In addition to all my stated personal concerns, the overwhelming consideration is WATER. We have a limited underground aquifer in Borrego Springs and a development of this size should be measured against the increased pressure on our water table and its finite supply.

The proposed development is not in keeping with current homes in the valley and attached is a copy of a letter to the former project manager, William Stocks, from a qualified biologist enumerating a large number of concerns about environmental issues. 80 miles to the east of Borrego lies the Salton Sea housing developments. Unchecked development with little regard to the environment has created a very tragic situation. Mile after mile of unsold homes with endless accompanying real estate signs abound. Roads are cracked, dead trees and a sense of desolation to what has been created by overdevelopment of a fragile environment. Also, with the sub prime loan problem that exists throughout the United States, adding all these proposed housing units to the current deteriorating market would not be good for anyone owning property in the valley.

Initially, the County stated that such an EIR should be done since the impact of the large size of the development would be significant to the area. Nothing as changed; the impact would still be significant. Mr. Monica hired a consultant to redraw the plans to avoid an EIR. As a concerned citizen, taxpayer and homeowner in the valley, I urge you to require an EIR to Mr. Monica's amended proposal.

Respectfully,



Julianne McCall  
3485 East Star Road  
Borrego Springs, CA 92004  
attachment

cc: Supervisor Dianne Jacob

cc: Ms. Judy Meier, Editor and General Manager, Borrego Sun/Copley Press



**Steven and Jodie Forrest**  
*Alpha Lyra Consulting*  
**POB 82 Borrego Springs,  
(3260 East Star Road) CA 92004**  
**stevenforrest@mindspring.com**  
**www.sevenpawspress.com**

December 6, 2007

To: Mr. Tim Taylor  
Department of Planning and Land Use  
5201 Ruffin Road, Suite B  
San Diego, CA 92123

Re: TM 5487

Dear Mr. Taylor,

I am writing to encourage you to oppose Borrego Country Club Estates as it is currently envisioned. Please come out and have a look before approving this project! This density of housing is completely out of character with the neighborhood, and will be profoundly and wastefully destructive to a sensitive habitat that really should be protected. I am sure you've heard about the rare sand dune this project will destroy. It is home to the burrowing owl (a California Species of Special Interest). My geologist friends tell me the dune itself is of a rare, wind-created form, perhaps the only one in San Diego County. The diversion of the natural flow of water from Tubb Canyon will shatter whatever fragile desert environment might survive the bulldozers. How these developers have evaded the obvious need for an Environmental Impact Statement is a mystery to me.

My wife and I have just built a new home in the adjoining neighborhood. We are near, but not on, the dune. Because of flood-plain issues, the County required us to dig special six-foot deep footing before building - at an additional cost of \$28,000. The entirety of Borrego Country Club Estates will either be on the far more fragile dune or on even lower, more flood-prone ground than we are. Will they face similarly requirements?

Thanks so much for your attention. We're new to the neighborhood, but there's such a sense of desperation here locally about this project that it has actually helped us forge some new friendships!

All Best,



Steven Forrest

RECEIVED  
DEC 11 2007

DEPARTMENT OF PLANNING  
AND LAND USE

November 9, 2007

Mr. Devon Muto, Interim Director  
Department of Planning and Land Use  
5201 Ruffin Road, Suite B  
San Diego, CA 92123-1666

RE: DPLU Application for country Club Estates Subdivision, Case #TM5487

Dear Mr. Muto:

I am writing regarding the above-referenced project due to major concerns about how the application process has been handled to date, and to reiterate points made in previous correspondence to your office from Lori Paul (see letter dated 31 August, 2007). As Ms. Paul points out, there are many valid reasons to require a full Environmental Impact Report, and yet the County appears to be considering issuing a "Neg Dec" for the development.

As a property owner who will be immediately impacted by this project on adjacent land, it is of note that we have not been contacted directly by the County with any information regarding this proposal. Furthermore, as a current member and immediate past Chairman of the Borrego Springs Community Sponsor Group, I fully concur with Ms. Paul's assessment of the review process to date. Information has not been provided in a timely manner by the developers, nor has the County provided appropriate materials to the Sponsor Group for review.

Of particular concern is that the proposed development would require destructive flood structure modifications on neighboring parcels, including those owned by my family corporation, La Jolla Industries. The existing earthen dam, an old levee constructed by the Army Corps of Engineers in the 1960's, has never been owned, acknowledged, or maintained by the County. The County even denied its existence to Ms. Paul when she and her husband bought their property, which the levee crosses. I want to make it clear that La Jolla Industries has never been contacted by the project proponents about the "improvements" they are proposing for this old levee, and will never grant permission for this levee to be "re-engineered" to meet the standards they suggest.

This entire project is ill conceived. It proposes an inconsistently high density of homes, and would be damaging to the sand dune site and surrounding area. It is essential that the County require the project proponents to follow required California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) environmental impact analysis.

Thank you for your attention to this matter.

Sincerely,

*William R Collins*

William R. Collins, Vice President  
La Jolla Industries, Inc.  
7598 Eads Avenue  
La Jolla, CA 92037  
858-459-6827

cc: Tim Taylor, Project Manager  
Ken Brazell, Project Manager, Dept. of Public Works  
Jim Bennett, Staff Geologist, Department of Planning and Land Use

RECEIVED  
NOV 13 2007

DEPARTMENT OF PLANNING  
AND LAND USE

**VICTOR S. WHITE/JENNIFER L. WHITE**  
**7499 Hazard Center Drive**  
**San Diego, California 92108**  
**(619) 543-9890/VictorWh@aol.com/JenniferWh@aol.com**

August 5, 2007

Mr. Bill Stocks  
Department of Planning and Land Use  
County of San Diego  
5201 Ruffin Road  
San Diego, CA 92123

Re: Borrego Country Club Estates, TM 5487

Dear Mr. Stocks:

We own a home and 2.4 acres adjacent and immediately to the West of the proposed project. Our mail address has changed since your generation of labels for notification of surrounding property owners. In the event of any/all opportunities for public input, we wish to be notified. The correct owner/ mailing address (for APN 1983120400 and 0500, the two parcels we own as the White Family Trust 09-21-01) is now: 7499 Hazard Center Drive; San Diego, CA 92108.

We, like the Borrego Springs Community Sponsor Group, are very opposed to the Borrego Country Club Estates project, as proposed, and urge the DPLU to require completion of an Environmental Impact Review.

Our primary concerns are:

- ❑ **Density proposed is excessive**, is not supported by demand and further adds to Borrego's immediate and possibly long-term water supply crisis;
- ❑ **Destruction of an historic and unique Ocotillo forest will occur** with development, as proposed; similarly, **destruction of other natural vegetation and habitat will occur** with development, as proposed; and,
- ❑ **Destruction of a unique sand dune will occur** with grading and development, as proposed.

After review of project documents, we are particularly concerned about the following:

**1. Issue: density and water supply crisis.** The 148 dwelling units, when constructed, will add to Borrego Springs' water supply crisis. The Borrego Water District reports that County staff estimates that "...at current levels of use the easily extractable water will be gone in 35 years." While the Borrego Water District attempts to influence agriculture and golf course use of Borrego's extremely limited, diminishing water supply, there is no guarantee that "the water problem" will be solved soon. Until water can be guaranteed for the long term, approval of high density housing projects, like this one, is totally inappropriate. And, we note that the Project Facility Availability Form submitted by the Borrego Water District (on 10/28/05) indicates (and emphasizes) that its tentative **"approval [of the proposed project] is for one year"**. To the best of our knowledge, the BWD did not extend its approval of the project beyond 10/28/06.

**2. Issue: mitigation and public access.** In February 2007, RBF Consulting, representing Mr. Davis, indicated that all "on site open space designations will be removed" (in conjunction with acquisition/designation of 233 acres immediately to the South of the project site. The Open Space Easement designated "A1" is adjacent to our property and includes a wash that carries excessive, seasonal storm generated water. And, when we acquired our home, we learned that, in addition to the SDGE easement, a riding/walking trail easement exists along the entire West side of the proposed project. Elimination of Open Space Easement "A1" could cause unplanned flooding of adjacent property and will cause elimination of public access. Open Space Easement "A1" should be retained and expanded to cover the entire length of the West side of the project and, somehow, modified to allow for its current use as a designated public access riding/walking trail.

**3. Issue: preservation of the sand dune.** Enclosed are photographs of the extensive sand dune formation that runs essentially from the Southwest to the Northeast of the project. It parallels what the developer proposes as Lightning Road. A small portion of it is contained in proposed Open Space Easements "A4" and "A5". The photographs taken from Wagon Road indicate its relative size. The Slope Analysis Data submitted by Mr. Davis includes 5.2 acres of 15% to 50% slope: a significant percentage of the 5.2 acres is associated with this unique sand dune. A reasonable concern we have is that, with grading, the currently stable sand dune will be dramatically affected and loose, unconsolidated material will be moved by wind, and will deteriorate our neighborhood's air quality. Additionally, and as important, a geologist has advised us that this specific sand dune is truly unique and that no similar formation exists in San Diego County.

**4. Issue: noise.** The developer has indicated "No" substantial change in noise levels in the surrounding vicinity will occur with construction/addition of 148 dwelling units. Our neighborhood is sparsely populated, with many owners intentionally owning adjacent parcels (for distancing and privacy). The addition of 148 two-story dwelling units is inconsistent with our neighborhood: additional people, cars and traffic in our neighborhood will bring a substantial change in noise levels.

**5. Issue: visibility.** Under "Aesthetics", the developer has indicated that the project will not be "more visible than are its neighbors". 148 two-story houses, with little or no screening, will be incompatible with the surrounding neighborhood. Currently, there are two two-story houses within one mile of the project site.

**6. Issue: natural features of scenic value or rare unique characteristics.** While the developer has indicated that "No" natural features of "scenic value or rare unique characteristics" exist within the project area, the sand dune (discussed above) is a very unique geologic formation; and, the very extensive, historic Ocotillo Forest is another. Both are truly unique and worthy of being preserved, both as habitat and as features that help make Borrego Springs unique and valuable for tourism.

Thank you very much for considering our input.

Sincerely,



Victor S. White



Jennifer L. White

Enclosure (photographs)

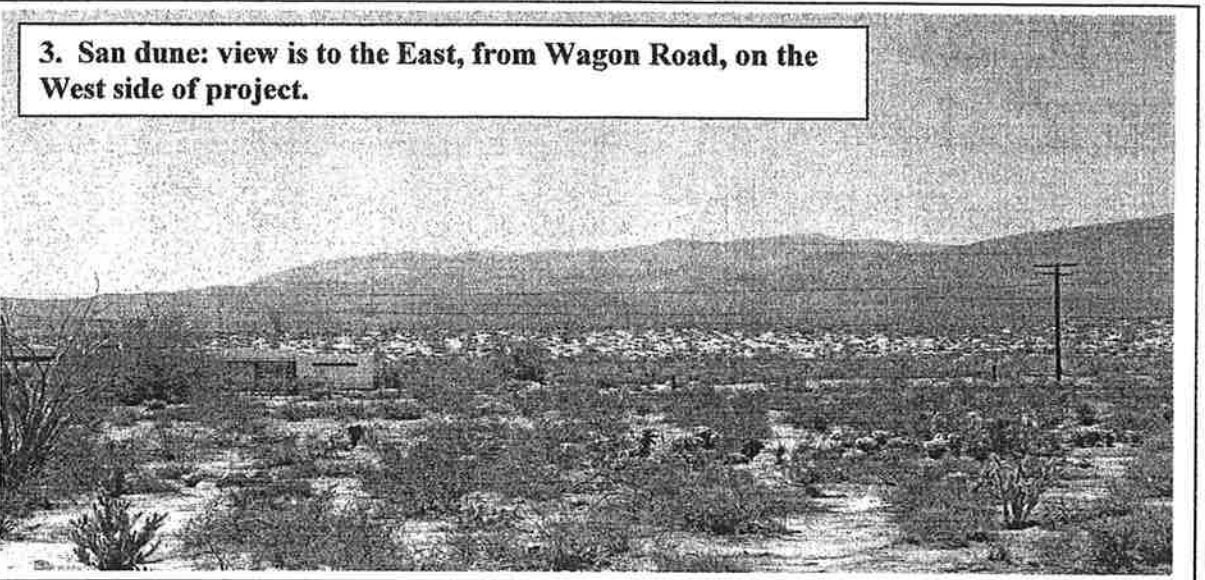
**1. San dune and wash/trail: view is to the East, from the West project boundary, near Country Club Road.**



**2. San dune: view is to the East, from Wagon Road, on the West side of project.**

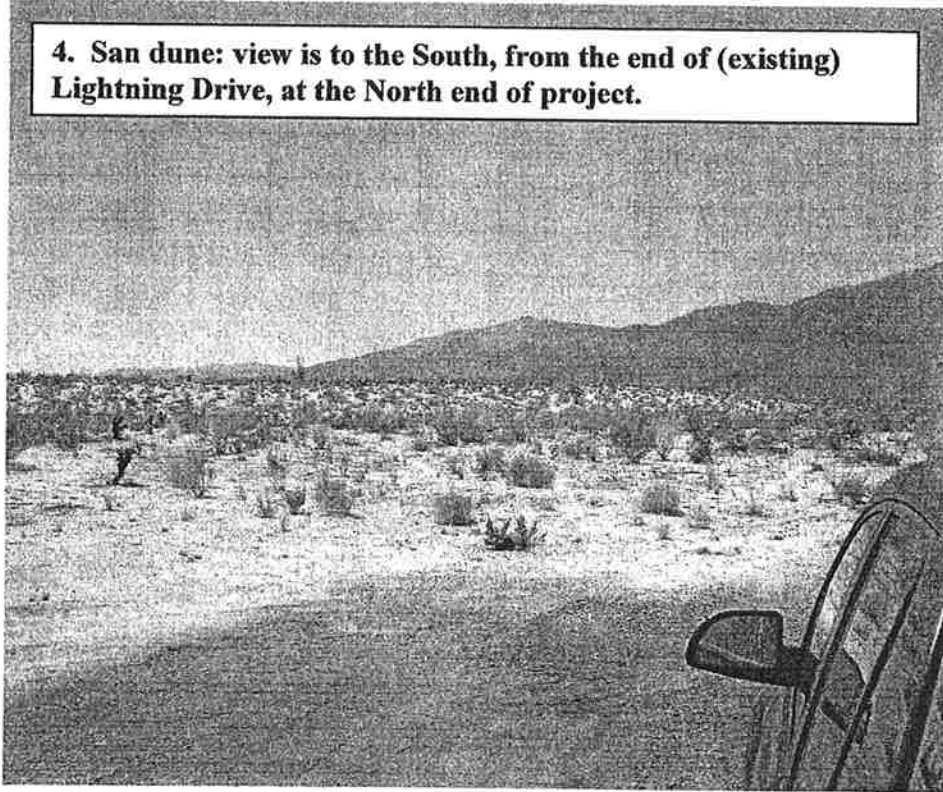


**3. San dune: view is to the East, from Wagon Road, on the West side of project.**

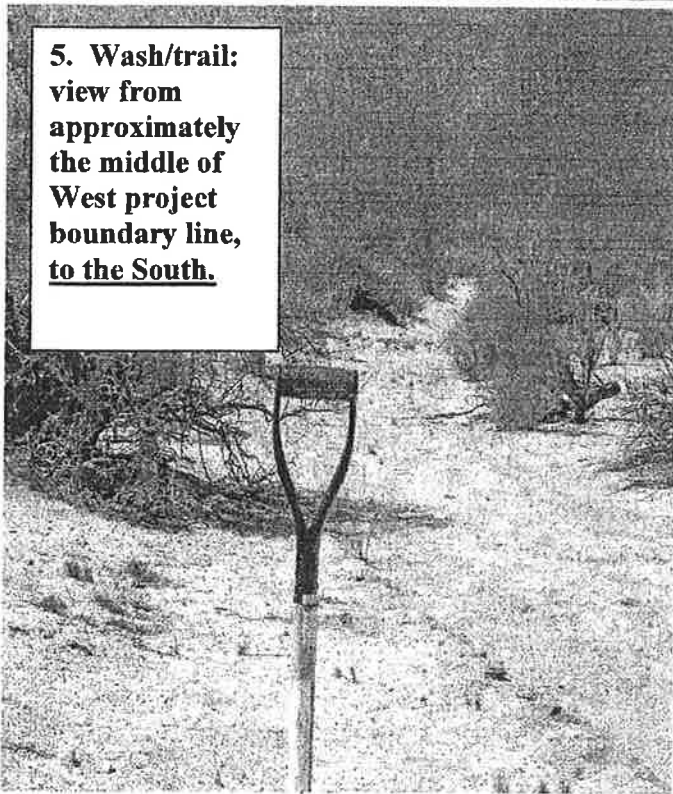




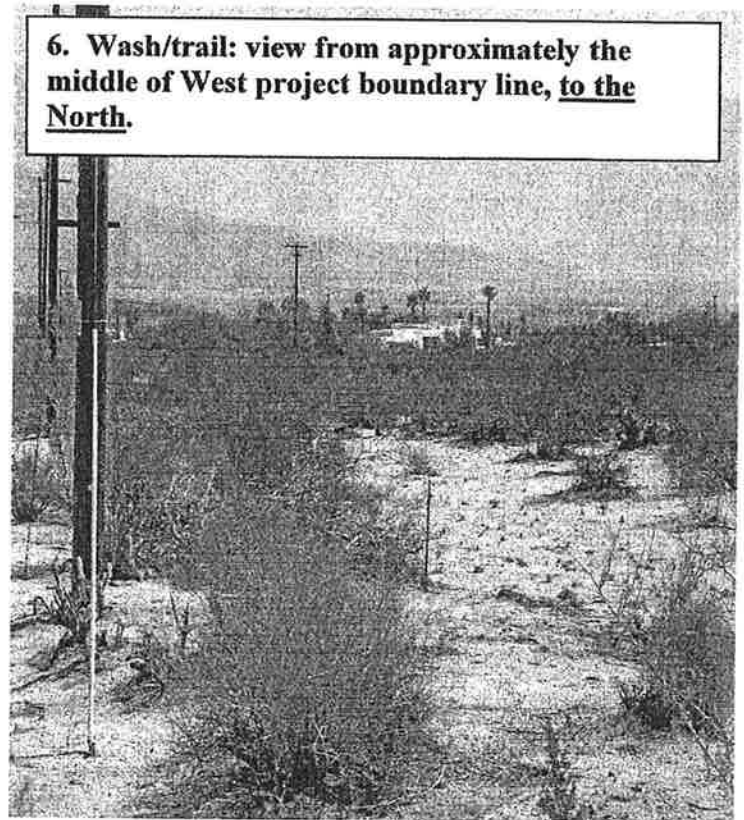
**4. San dune: view is to the South, from the end of (existing) Lightning Drive, at the North end of project.**



**5. Wash/trail: view from approximately the middle of West project boundary line, to the South.**



**6. Wash/trail: view from approximately the middle of West project boundary line, to the North.**



**From:** Michael Wisner [michaelwisner@gmail.com]  
**Sent:** Tuesday, June 26, 2007 9:48 PM  
**To:** Stocks, William  
**Subject:** opposition to case # 5487

Dear Mr. Kenneth Brazell,

I am a property owner in Borrego Springs near the proposed development referenced TM 5487 where Borrego Country Club Estates has proposed 149 housing units on 172 acres. Many significant concerns come to mind on this proposed project ranging from environmental impact to quality of life for present residents. Most homes in this area exist on 2 to 5 acre parcels separated by large undeveloped tracts. A development of this concentration will not only strain the fragile ecosystem but look very cosmopolitan in the rural Borrego setting. The density of such a project will certainly have significant negative impact on the fragile desert flora and fauna chiefly the Ocotillo, Creosote plant and Burrowing Desert Owl. Furthermore, the water well ( I believe referred to as #8) in this area of Borrego recently went dry requiring the water district to pump in water from adjacent wells to meet the local demand. I strongly urge the county to study the environmental impact and density of this project under consideration.

Sustainable development benefits the entire community and ecosystem. The scope and density of this project looks to be about development and profit. Certainly developers are not going to be stewards of the fragile desert environment so government needs to do the necessary research to see if this project will have serious negative impacts.

My opinion is that in its proposed form would be out of sync with Borrego's current development. Furthermore it would be completely ignoring environmental issues of sustainable desert flora and fauna as well as an aquifer that is dropping 15 ft/year. The water district has no solid data on what remains in the dropping aquifer. At a rate of 15 feet/ year one thing for certain is there is a finite supply that will be taxed by large developments. I urge you to consider my letter as a concerned community member and perform the Environmental Impact Report so that future generations in Borrego may enjoy the results of your thorough and thoughtful research.

Sincerely, Michael D Wisner

---

**From:** princesskls@att.net  
**Sent:** Saturday, May 26, 2007 2:07 PM  
**To:** Stocks, William  
**Subject:** Case No. TM 5487 - Country Club Estates, Borrego Springs

Mr. Stocks:

Please accept this communication as an expression of deep concern and dismay over the proposed, above named development. To go forward with this project would cause irreparable destruction of our coveted desert flora, fauna and subject our dunes to destabilization. Furthermore, the size and density of this development is contradictory to the established households in the neighborhood, as well as the adjacent valley.

Borrego Springs is one of the "final frontiers" in San Diego County, and is held in very high regard for its natural environment, clean air, and dark skies. There is no market in Borrego for the type of housing proposed in this development, and to allow construction to begin, and then falter due to lack of sales, would cause a horrendous shift in the quality of our life. There would be an increased risk of flooding, not to mention the impact on our air quality due to blowing sand.

Country Club Estates, as currently proposed, would butt up to my property, blocking our mountain views to the southeast. The plans propose that my road, which is currently a dead-end with only two homes on it, be completed as a throughfare to accommodate residents in the new development. Our access roads are clearly not able to sustain such increase in traffic.

I sincerley request that, at the very least, the County insist that the developers conduct an Environmental Impact study to evaluate the feasibility of continuing their propped project. There are many residents in this neighborhood who are fearful of the negative impact these developers may have on our environment, endangered wildlife and vegetation. Once it's gone - it's gone! And no amount of money will be able to restore it after it's plowed up and paved.

As a full-time resident and homeowner in Borrego Springs, I thank you for your consideration in this matter.

Karen Saunders  
P.O. Box 1030  
Borrego Springs CA 92004

(760) 767-5232 or  
(619) 885-2524

5/29/2007



**From:** ZBFRTZ@aol.com  
**Sent:** Tuesday, May 15, 2007 12:08 PM  
**To:** Stocks, William  
**Subject:** Borrego Springs Project PM 5487

Dear Mr. Stocks:

I am a full time resident of Borrego Springs, California, residing at 3324 Wagon Road. I am writing you about my concerns regarding the housing development project, PM 5487, which is under consideration. Several thoughts:

\* the scope of seeking to develop 148 units in a concentrated area is totally out of step of the nature of Borrego Springs. This sort of massive development is foreign and contrary to the mentality of Borrego Springs. Mass developments are one of the features of larger towns that many of the residents here, including my wife and myself, came here to escape. The rural pace and low key nature of Borrego Springs are some of reasons we moved here.

\* The area under consideration is pristine and is an eco system unto itself – animals, plants and in particular the cactus and the ocotillo. A development as planned would destroy this.

\* I encourage you to drive out S 22 to the Salton Sea and see what is happening with the massive housing development there. The housing density itself is disturbing but the number of above ground telephone poles and power lines is absolutely appalling. Community planning of this level lowers all standards of aesthetics and beauty, and sets a negative tone for years to come.

In sum a development of this size and concentration in Borrego Springs would begin to overwhelm this beautiful desert area and oasis. The Environmental Impact would be huge and negative. I encourage you to vote against this project as presented.

Sincerely,

Frederick R. Smith, MD

\*\*\*\*\*

See what's free at <http://www.aol.com>.

HERBERT STONE  
P.O. BOX 1929  
BORREGO SPRINGS, CA  
92004

Mr. Bill Stocks, Project Manager, PM 5487  
5201 Ruffin Road, Suit B  
San Diego, CA 92123

Dear Mr. Stocks,

I am writing you to encourage you to require an Environmental Impact Report (EIR) for the proposed Country Club Estates housing development in Borrego Springs. I have several concerns about allowing this project to proceed without studying the environmental impact of a project of this size and in that location.

A sand dune runs diagonally across the land in question. To scrape the vegetation from this dune would destabilize it leading to water and wind erosion. Also, this project is planned on a piece of land that is known locally as the "Ocotillo Forest". Is there to be any requirement that the developer preserve this unique forest? The plans, as proposed, call for a lot density that is completely out of character with the surrounding neighborhood. Adding 148 houses to this neighborhood will greatly increase traffic and noise patterns. And last, on my morning walks, which lead me past this beautiful tract of land, I have seen Burrowing Owls nesting. I know that this owl has been nearly exterminated from San Diego County due to habitat reduction. I would hate to think that our county would allow the destruction of Burrowing Owl habitat without even studying the impact beforehand.

I have lived in this neighborhood for over twenty years and during that time, about ten houses have been built on my block. I am not opposed to new houses or new neighbors. But to build a development the size and the density of the proposed Country Club Estates, will greatly alter scenic and tranquil qualities of my neighborhood, and of Borrego Springs in general, and I am opposed to that.

Sincerely,



Herbert Stone  
3275 West Star Road

RECEIVED  
MAY 11 2007

DEPARTMENT OF PLANNING  
AND LAND USE

*Elizabeth Knaak*  
3441 Broken Arrow Road  
P.O. Box 2021, Borrego Springs, CA 92004-2021  
*bknaak@sciti.com \* Tel 760/767-4808*

May 7, 2007

Bill Stocks  
County Dept. of Planning & Land Use  
5201 Ruffin Road, Suite B  
San Diego, CA 92123  
858/694-3913, [william.stocks@sdcounty.ca.gov](mailto:william.stocks@sdcounty.ca.gov)

RECEIVED  
MAY 10 2007

Dear Mr. Stocks:

**RE: Project #TM 5487, Environmental Concerns**

DEPARTMENT OF PLANNING  
AND LAND USE

I and many others in Borrego Springs are concerned about the environment issues associated with County Project # 5487, the 172 acres under consideration for development, and urge you to require an Environmental Impact Report (EIR) be conducted to assess potential impact to the desert flora and fauna.

Environmental concerns regarding this project include the following issues.

1. The acreage is a mature growth, unexploited native plant community, representative of bajada habitat within the Sonoran Creosote Scrub flora zone. It contains dense stands of mature-growth ocotillo and cacti, providing prime habitat, food, and shelter necessary for the survival of native desert wildlife.
2. Biologists and local naturalists have documented Species of Special Concern, including birds and reptiles, which means that the state population is in decline in large portions of their range.
3. The dense stands of ocotillo in their natural setting on this large parcel are striking in their visual beauty and known by residents and visitors, alike, as a unique and defining scenic feature of the Borrego Valley.
4. The native vegetation growth over many decades has stabilized a major sand dune, thereby protecting neighbors from encroachment and wind-borne sand and dust.
5. The project maps indicates no concessions made for drainages—the natural flood channels created by runoff in the desert—jeopardizing surrounding properties for miles by increased flood waters. Removal of native plants and the higher density construction will increase runoff, erosion, and property damage in established neighborhoods due to flooding.
6. Borrego's sole source of drinking water is the aquifer, which scientific evidence indicates is being seriously over-drafted. Recent reports indicate that the Borrego Water District's well located on Country Club Road (the well closest to Project #5487) has gone dry. For a project of this size, an EIR should address the availability of water, as well as the fact that there is no sewer system serving this area.

The parcel in project #5487 is a biologically important, pristine natural area of the Borrego Valley, rich in the flora and fauna that define our community. A full EIR needs to be required for the parcel and proposed development before any approval is granted.

Respectfully submitted,

*Betsy Knaak*  
Betsy Knaak

cc: Community Sponsor Group

---

**From:** CE Shimeall [ceshimeall@znet.com]  
**Sent:** Friday, April 27, 2007 1:33 PM  
**To:** Stocks, William  
**Cc:** Kurt Levens  
**Subject:** PM 5487 --edited copy

Hi Mr. Stocks:

As a member of the Sponsor Group, and a neighbor of the Project PM 5487 , I am writing to voice some concerns and observations.

This project, as described by Mr. Monica to the Sponsor Group in a letter dated Feb. 22, 2006 , is "relatively flat with a northwest to northeast ridge running diagonally through the project". Actually, this ridge is a sand dune which is oriented from southwest to northeast. This dune stands out on the Boyle Flood Plain map as one of the few locations where building site pads are not required. The geologic map as well as the topo map also delineate the dune.

This unique dune (likely the only desert dune of this type in San Diego county) was formed under optimum conditions of source environment, sediment transportation, and depositional environment. A significant portion of the dune's history involves considerable geologic time during which the optimum conditions were operating.

The large area providing the sand grains (resulting from the continuous weathering process of the large granite mass , the Boulder Factory, ) extends from the western boundary of the park eastward to Borrego Basin and from the Ranchita area on the north to the Pinon mountains on the south. The west to east flow of air tends to be funneled through Culp Valley and Tubb Canyon. This flow tends to cause a venturi effect to the area with the high winds scouring the surface and transporting the grains eastward to Borrego Valley. On entry to the basin, the wind velocity diminishes thus decreasing the ability to maintain suspension of the sand grains..Thus the deposition on the surface results in the formation of the unique geologic deposit.

This dune is now stable , in part due to the covering vegetation, and any disturbance of the dune will result in destabilization resulting in continued movement of the sand, which in turn will destroy the habitat for the desert fauna which depend on the dune for existence..

In connection with the above, I received a phone call on Tuesday, from Paul Jorgensen, retired Park ecologist, who along with Mark Jorgensen, current Park Superintendent, hike the dune frequently. Paul said they had seen two burrowing owls and the nesting site that afternoon.

Another concern I have is that this sand dune would be 'fair game' to the developer for use in pad construction or moving around to mound up the relatively flat areas on each side of the elongate dune. The sand would be extracted without benefit of an extraction permit.

Sorry to have been so long winded, but because of the above and of the many other ramifications of vegetation habitat -including the ocotillo forest on the property, I urge that you require the completion of an EIR, on this project...

Sincerely, Clark M. Shimeall, retired geologist and member of the Borrego Springs

Community Sponsor Group...

## County should require EIR for proposed subdivision, lawyer says

By Maris Brancheau

A lawyer representing about 25 neighbors of Borrego Country Club Estates, a proposed subdivision of 150 homes located on Borrego Springs Road in the area commonly called the "ocotillo forest," has sent a 26-page letter to the county expressing concerns about the project.

The proposed subdivision has been the subject of local debate for more than two years. The 171 acres is owned by a limited liability company

of which Rudy Monica is a principal. Neighbors have expressed concerns about the density of the project, the impact on the area's sand dune and ocotillos, and a host of other issues addressed in the most recent letter.

Many people in town call the project "Rudyville."

The overriding objective of the letter, written by the law firm Lounsberry Ferguson Altona & Peak, is to convince the county's Department of Planning and Land Use that the scope of the project should prompt an Environmental Impact Report.

Another environmental alternative is a mitigated negative declaration. A "neg dec" as it's called in the development industry, includes an environmental survey but determines that with mitigation measures there would be no significant environmental impacts of the project. The process is spelled out under the California Environmental Quality Act.

Attorney Kenneth Lounsberry wrote: "No fair-minded observer of the project - whether critic or supporter - could fail but to conclude that a draft (mitigated negative declaration) 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 if necessary."

Note to county: This means the neighbors would sue "if necessary."

The county has received the letter but is "not anywhere close to a final decision," on the environmental studies required of the Country Club Estates project, according to DPLU Land Use Chief Brian Baca.

# RUDYVILLE: Full EIR could delay project for years

*Continued from Page 3*

"I can assure you we are reading this letter very carefully. The applicant is reading it very carefully. We just haven't decided if we agree with it yet," Baca said.

Baca said the county planners were pleased to have received the lengthy list of concerns because it helps them to do their job better. The letter could lead to a full EIR or it could lead to a mitigated negative declaration that addresses each of the issues laid forth in the letter, he said.

He expected the county could decide in a month's time, although he noted that initial studies determine the scope of environmental requirements. And, the initial studies for the project are not yet complete.

"Our call at the moment is that we had felt able to prepare a mitigated 'neg dec.' If a fair argument is raised, we can change our minds," Baca said.

No matter the scope of the environmental review, the final decision on whether or not Rudyville is built resides with the county Board of Supervisors. But, a full EIR, would stall the process, perhaps for years.

That could give the county enough time to adopt the General Plan Update, a complicated policy document that has taken years to rework. If adopted as it is currently proposed, the updated plan would reduce density on the very acreage that Monica is hoping to develop. That could kill Country Club Estates.

"Why do we need another 149 lots

in Borrego?" asked Bill Collins, a former sponsor group member who helped hire the lawyer along with his wife, Ann Irwin, and neighbor, Lori Paul.

Collins said a full EIR would buy time for the general plan to be approved and could derail the Rudyville project. He said more than a dozen people have contributed to the legal fund, with the majority of funds coming from Tub Canyon property owners.

The canyon would be directly affected by the project in a number of ways, the neighbors claim. Among them is the developer's proposal for the stabilization and extension of an earthen dike on Paul's property. That's something the biologist says she will never allow and she told the county that more than a year ago.

In fact, many of the arguments presented to the county in the recent Lounsbury letter were part of a lengthy missive Paul wrote herself and shared with the county and the sponsor group last August. It included information about the presence of burrowing owl and flat-tailed horned lizard on the property, both of which are state species of concern.

The fact that the most recent letter is from a law firm doesn't make a difference, Baca said.

He called the information exchange part of a lengthy process. He said the county is open to anyone "providing information that may help us do a better environmental document."

The sponsor group has consistently recommended to the county that all

tentative maps and plans put before them in relation to Country Club Estates be rejected. The CSG is also requesting a full EIR for the project. Lounsbury reminded the county of this in the recent letter.

"Overwhelmingly, the basis for denial as expressed on the record by each and every member of the (CSG), was a concern regarding the significance of the environmental impacts to be expected from the project. While the specific concerns varied with each member, they all related to a conviction that the project would have a significant impact upon the Borrego Valley."

Main points raised by the neighbors include:

- the project will have significant biological impacts;
- the biological technical report is incomplete and requires further study;
- the project is located in a riparian desert habitat and watershed;
- the report omits discussion of burrowing owl, flat-tailed horned lizards, and misstates the impact of the project on bighorn sheep;

- impacts to surface and ground water need to be adequately studied;
- the proposed construction of a 5,800-foot perimeter levee and the formation of an assessment district to fund such a project would be stoutly opposed;

- the Department of Environmental Health has not approved an additional 150 septic tanks for the project;
- the project does not respect the density requirements that will apply under the General Plan Update;

- a proper study of the impacts on views from adjoining wilderness lands should be conducted;
- grading the area's sand dune and preparing lots for sale could contribute to major air quality issues;

- traffic impacts, noise impacts, fire-hazard impacts and school district impacts have not been fully analyzed.

Monica, project principal who is the namesake of "Rudyville," has readily spoken with the media about the project in the past, but did not return a phone call nor reply to an e-mail that requested an interview with him prior to deadline.