July 20, 2023

From:

San Dieguito River Community Alliance
sdrca@gmail.com

To:

Shawna Anderson
Executive Director, Joint Powers Authority (JPA)

Subject: Our concerns about the El Camino Real Assisted Living Facility

Dear Ms. Anderson:

We are writing this letter to you / JPA to provide you an update of the proceedings at the Carmel Valley Planning Board (CVPB) June meeting regarding the El Camino Real Assisted Living Facility.

In a bizarre voting process, after the chair first commented "I'm opposing this project due to the massing, scale, and density of the project as it is proposed", he then reversed his stance and voted in favor of this development, stating "if I do not vote for this, this will not pass". It was a long and drawn out meeting, where the eventual vote was cast around 11:00 pm in dubious circumstances:

> 4 of the board members requested multiple times to delay the vote as they wanted to review all the information but were being pressed to make a decision.
>
> Several of the board members (Michelle Strauss, Jeffrey, Brenda, and Debbie) were not comfortable with making a decision that night as there were several pending questions/concerns about the safety, massing and scale of this proposed project. There are obvious concerns that this does not fit and could propose some dangers to the community.
>
> In the end, Brenda abstained after noting that she cannot vote on this project without further study, Debbie voted against, Michelle and Jeffrey voted in favor only after noting their concerns about many aspects of this project (not to mention again the chair's comments, previously noted above).

One of our main concerns about this project is the devastating effect this will have on the precious open space in the San Dieguito River Valley that exists today. This project is completely out of character with these Prop A protected lands.

We urge the JPA to take a strong stand against this project which is being pushed through under the guise of helping the elderly while really driven by a for-profit business.

During the CVPB meeting, it was noted that the developer and lobbyist for this project will be coming to the JPA. We checked this month's agenda, and do not see this on the agenda. If it is on the agenda, we would like to attend in person to continue to express our reservations about the project. If not, please consider this letter as a continued indication of our request to the JPA for your support against this project.

Sincerely,

Johnny John (for the SDRCA)

Enclosures: Copy of the response that SDRCA's attorney submitted to the City, in response to the Subsequent Environmental Impact Report (S.E.I.R) regarding our concerns about the El Camino Real Assisted Living Facility (No. 675732).

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June 23, 2023

(***VIA EMAIL TO DSDEAS@Sandiego.gov***)

Sara Osborn
City of San Diego Development Services Center
1222 First Avenue, MS 501
San Diego, CA 92101
DSDEAS@Sandiego.gov

RE: Comments on El Camino Real Assisted Living Facility (No. 675732)
Subsequent Environmental Impact Report

Dear Ms. Osborn,

On behalf of the San Dieguito River Community Alliance ("SDRCA"), we submit the following comments on the Subsequent Environmental Impact Report ("SEIR") for the proposed El Camino Real Assisted Living Facility Project ("Project"). SDRCA is a coalition of residents and stakeholders in the San Dieguito River Valley that are concerned with protecting the natural resources and residents in the San Dieguito River Valley from environmental harms.

SDCRA supports uses and development of land that are consistent with the governing land use policies meant to protect the San Dieguito River Valley, including Proposition A. However, SDRCA is strongly opposed to the Project because of the Project's inadequate environmental review, the impacts that the Project will have on the surrounding environment and community (including its dangerous traffic and fire impacts), concerns regarding privacy of the adjacent residential community, and the Project's incompatibility in this sensitive location that is protected from intense urban development by the requirements of voter-approved Proposition A. SDRCA respectfully requests that the City recirculate the SEIR to address the issues identified below.

I. The Project is Located in a Highly Sensitive Area.

The Project site is extraordinary land. The Project site is situated in the San Dieguito River Valley, in an area dense with natural resources. The site includes and is surrounded by land designated within the Multi-Habitat Planning Area, established by the countywide Multiple Species Conservation Plan which sets aside a reserve to protect the County's precious biological resources. The site is also designated as land subject to Proposition A, a voter-approved initiative meant to preserve sensitive areas from development. The site is within the Coastal Zone, and 10% of the site within the 100-year floodplain (SEIR, p. 5.1-105). Jurisdictional wetlands are 100 feet away. (SEIR, p. 5.1-67.) San Dieguito River Park trails are also near the Project site, allowing recreational uses near the site.

II. The Project Violates the San Diego Municipal Code and Proposition A.

A. The Project Is Not of a Type Authorized For Construction in the Agricultural A-1 Zone.

The City does not itself have the power to reclassify Proposition A lands to a category allowing more intense development, called a "phase shift;" only the electorate has that power under the express terms of Proposition A. Proposition A lands are classified as A-1 – allowing agricultural uses or residential use at a density of one residential unit per ten acres of land – unless the land undergoes a phase shift to zoning that allows more intense development. Such a phase shift requires a vote of the electorate.[1] Despite this, the City attempts to carve out an exception for the Project, on specious grounds that such an exception is necessary as a "reasonable accommodation" for disabled persons. The SEIR fails to justify this conclusion.

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1 Apparently, "[a] deviation to the regulation prohibiting Nursing Facilities in Proposition A Lands was approved in accordance with SDMC Section 131.0466 via Process 1 review." (SEIR, p. ES-2, see, also, p. 5.1-13.) However, this "deviation" is *not* reflected in the San Diego Municipal Code, which continues to show Hospitals, Intermediate Care Facilities, and Nursing Facilities as *not* among the residential uses allowed in areas zoned Residential and Agricultural that are also Proposition A lands. (SDMC § 131.0340(a)(4)).

B. The Project Site is Protected by Proposition A, a Voter-Enacted Initiative.

The SEIR assumes that the City has the authority to carve out an exception to make what it purports are "reasonable accommodations" for disabled persons. It does not have that authority in this case, because the *electorate* mandated the restricted status of the site, through passage of Proposition A. (SEIR, p. 2-1.) The SEIR describes the explicit purpose of Proposition A, and of the North City Future Urbanization Area Framework Plan adopted by the City to carry out Proposition A, as "to prevent premature urbanization until it has been determined that it will accommodate the City's growth." Yet, urbanization is precisely what the proposed CUP would allow. The SEIR itself admits:

> "The predominant irreversible environmental change that would occur as a result of project implementation would be the planned *commitment of land resources to urban/developed uses.* The project would irreversibly alter the previously graded vacant site to an assisted living facility for the foreseeable future. This would constitute a permanent change. Once construction occurs, reversal of the land to its original condition is highly unlikely. Other permanent changes would include more traffic, and an increased human presence in the area."

(SEIR, p. 8-2, emphasis added.) The SEIR admits that Project approval would irrevocably convert the Project site to urban uses. Such urbanization of the NCFUA land without a vote of the City's electorate is exactly what Proposition A was passed to avoid.

The text of Proposition A specifically provides:

> Section 1. "**No property** shall be changed from the "future urbanizing" land use designation in the Progress Guide and General Plan to any other land use designation and the provisions restricting development in the future urbanizing area **shall not be amended except by majority vote of the people voting on the change or amendment** at a City wide election thereon."
>
> . . .
>
> Section 2 Definitions For the purposes of this initiative measure, the following phrases shall have the following meanings:

> . . .
> (b) "Change in Designation" or "changed from 'Future Urbanizing'" [sic]shall mean **the removal of any area of land** from the future urbanizing designation."

(Ballot, Municipal Election Tuesday, November 5, 1985, summary of Proposition A, at www.sandiego.gov/sites/default/files/legacy/city-clerk/elections/city/pdf/pamphlet650921.pdf, emphasis added.)

The Project proposes to remove the assisted living facility's site from the future urbanizing designation to which Proposition A assigned it, and to do so without a vote of the people. The City has no authority to do so, and the issuance of a CUP that purports to do so is therefore unauthorized. The SEIR also is defective as an informative document due to its failure to make this clear. The Project site was designated for Future Urbanizing by Proposition A, and is designated Agricultural-Residential (low density) in the City's General Plan. The Future Urbanizing designation was approved by the voters when Proposition A was passed, cannot be changed absent a majority vote of the electorate. Further, before the redesignation could be done, the City would need to adopt a specific plan for Subarea II, something that it has not yet done (SEIR, pp. 5.1-4, 5.1-9), and that would have to go through numerous City procedures.

The SEIR summarizes the contradictory nature of the City's treatment of this land thusly:

> Zoning for the project site is Agricultural-Residential (AR-1-1). AR-1-1 regulations allow private stables, commercial riding, training or boarding horse stables, and most agricultural uses. The AR-11 [sic] regulations also allow several other uses, such as hospitals, Intermediate Care Facilities & Nursing Facilities, and churches, with an Uncodified Conditional Use Permit (CUP) Ordinance. However, Hospitals, Intermediate Care Facilities & Nursing Facilities are *not* permitted within Proposition A Lands per the Separately Regulated Use Regulations of the Municipal Code.

(SEIR, pp. 5.1-3 to 5.1-4, emphasis added.) In a sort of environmental double-speak, the SEIR states that uses such as the proposed Project both are and are not permitted on the site in question. Both cannot be correct.

C. The SEIR Fails to Justify an Uncodified Conditional Use Permit.

There is an explicit prohibition on nursing facilities and densities greater than one residential unit per ten acres (i.e., group living facilities are banned) in Proposition A lands. Nonetheless, the SEIR concludes that the Project, although not of a type authorized for construction in Proposition A land zoned A-1, may be approved through the City's adoption of an uncodified CUP ordinance that would be used to grant a conditional use permit to the assisted living facility, on grounds that federal and state "policy" favors ensuring that disabled persons have equal access to a dwelling place. (SEIR, pp. ES-2, 5.1-13.)

Laws banning discrimination on the basis of disability are a necessary shield against the deprivation of disabled persons to access to group living situations on the basis of their disabilities. (Cf., *Broadmoor San Clemente Homeowners Assn. v. Nelson* (1994) 25 Cal.App.4th 1, 320-21 [restrictive covenants against elderly group housing struck down as prohibited discrimination against disabled persons].) SDRCA is highly supportive of equal access to housing, and agrees that the goal of remedying housing discrimination for disabled people is laudable and important. However, the SEIR is a document of accountability, and it does not explain why constructing the Project on this highly protected site in contravention of Proposition A and the San Diego Municipal Code is necessary to effect equal access for disabled persons. Thus, the SEIR's explanation appears to present a post hoc rationalization to circumvent the zoning requirements rather than a genuine effort to address housing inequalities for disabled persons. This conclusion constitutes a stark change of the SEIR from the unbiased, "informational document" CEQA contemplates (Public Resources Code § 21061) to an advocacy document for the Project, regardless of the will of the voters or the provisions of applicable City zoning law.

Moreover, even if the SEIR's explanation was something more than a post hoc rationalization, the SEIR's conclusion is not supported by well-settled law. The Unruh Civil Rights Act does not prospectively confer rights or privileges that are conditioned or limited by law. (Civil Code § 51, subd. (c).) Thus, the City cannot carve out an exception from the requirements of Proposition A on a baseless assumption that the

"minimal availability" of developable land in Subarea II necessitates development of the Project. Federal anti-discrimination law also proscribes this approach. This is shown by *Leocata, ex rel. Gilbride v. Wilson-Coker,* 343 F.Supp.2d 144 (2004), a case that considered the claim of a disabled woman that the federal Americans with Disabilities Act entitled her to an accommodation in the form of funding that would allow her to stay in a group home that she could no longer afford. The federal district court held that "[s]uch an accommodation, however, would represent a grant of special substantive rights to Leocata. The Second Circuit has stated specifically that "the ADA does not mandate the provision of new benefits." (*Leocata ex rel Gilbride*, *supra*, 343 F.Supp.2d at 156, citing *Rodriguez v. City of New York* (2nd Cir. 1999) 197 F.3d 611, at 619.)

In carving out an exception to Proposition A for the Project, the City grants the Project a benefit without sufficient justification. This is demonstrated by the fact that the SEIR justifies the rejection of an alternative to the Project of building Single-Family Residences on the Project site, on grounds that the General Plan's land use category for the subject land, and the City's zoning for it, would allow, at the very most, three single-family residences, either clustered together or spread over the entire parcel. (SEIR, p. 9-5.)

D. California Law Recognizes The Right Of Initiative As A Reserved Power. Proposition A, As A Voter Initiative, Must Take Primacy Over The SEIR's Proposed Conditional Use Permit Granted Pursuant To An Uncodified Ordinance.

The SEIR, at page 5.1-13, appears to argue that a municipal ordinance authorizes the Project despite its conflict with Proposition A, citing San Diego Municipal Code section 131.0466, subdivision (c)'s provision for "reasonable accommodation" for disabled persons in order to allow them "the equal opportunity to use and enjoy a dwelling." (SEIR, p. 5.1-13.) As shown above, federal and state law do not mandate approval of the proposed Project, which would be a benefit conferred to the Project that is not supported by law or adequately justified in the SEIR.

Proposition A was adopted as a voter initiative, and as such must take precedence over a municipal ordinance. California law, beginning with the state's Constitution, resolves the contradiction pointed out by the SEIR. *Brookside Investments, Inc. v. City of El Monte* (2016) 89 Cal.App.5th 540, at 550, recounts the scope and purpose of local initiative powers, stating:

Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the duty of the courts to jealously guard this right of the people' [citation], the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' [citation]. . . . Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the duty of the courts to jealously guard this right of the people' [citation], the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' [citation]. . . .

The local electorate's right to initiative "is generally co-extensive with the legislative power of the local governing body.". . . [T]hrough the exercise of the initiative power the people may bind future legislative bodies other than the people themselves." (89 Cal.App.5th at 549-550, citations and italics omitted.)

Here, the people of the City of San Diego enacted Proposition A, and provided that its land use restrictions could not be changed except by a vote of the electorate. (Ballot, Municipal Election Tuesday, November 5, 1985, summary of Proposition A, at www.sandiego.gov/sites/default/files/legacy/city-clerk/elections/city/pdf/pamphlet650921.pdf.) The Proposition explicitly provided that "removal of *any* area of land from the future urbanizing designation" was banned. (*Id.*, emphasis added.) The City cannot violate this ban through any action, including the issuance of "deviation" through a CUP issued under Municipal Code section 131.0466. The Project may not be approved, pursuant to the ballot initiative.

A somewhat analogous situation was presented in *De Vita v. County of Napa* (1995) 9 Cal.4th 763, where a 1990 voter initiative "amended the land use element of the County's General Plan to preserve agricultural land. The initiative, Measure J, made any "redesignation of existing agricultural land and open space essentially conditional on voter approval" for the next three decades. (*DeVita, supra*, Cal.4th at 770.) The California Supreme Court upheld this initiative, holding that the power of initiative extends even to charter counties. (*DeVita,* at 9 Cal.4th 784.)

The City is free to put a measure on the ballot to ask the voters to amend Proposition A to allow this Project, but until such time as the electorate exercises that power, the City is without power or authority to override the Proposition.

III. The Project is Incompatible with Surrounding Development.

The Project is also incompatible with surrounding development, including the Stallion's Crossing residential development that is just south of the Project site. The Project's Site Plan reveals that the Project's residential units would be concentrated in the southeastern portion of the site, in close proximity to the adjacent residential development. (SEIR, p. 3-21.) The Project is a three-story, 40-foot-tall building that exceeds the designated height limit of 30 feet. The Project's excessive height and relatively short setbacks would create privacy issues and noise impacts as the Project's residential units would tower over the adjacent residential development.

IV. The SEIR is Inadequate and Requires Recirculation.

The California Environmental Quality Act (CEQA) serves two basic, interrelated functions: ensuring environmental protection and encouraging governmental transparency. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) CEQA requires full disclosure of a project's significant environmental effects so that decision-makers and the public are informed of these consequences before the project is approved to ensure that government officials are held accountable for these consequences. (*Laurel Heights Improvement Ass'n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) The environmental impact report

process is the "heart of CEQA" and is the chief mechanism to effectuate its statutory purposes. (*In Re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal. 4th 1143, 1162.) SDRCA is concerned the SEIR fails to adequately describe the Project and disclose, analyze, and mitigate the Project's significant adverse environmental impacts.

A. The SEIR Improperly Segments Project Analysis and Contains an Inadequate Project Description.

Every EIR must set forth a project description that is sufficient to allow an adequate evaluation and review of the project's environmental impacts. (CEQA Guidelines § 15124.) "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192 93; accord *San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) "[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives." (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.)

The SEIR is presented as a subsequent environmental impact report from the 2014 EIR for the St. John Garabed Church Project ("Church Project"), a project proposed and approved on an adjacent 13.41 acre parcel for a 51,680 square-foot development, including a 8,740 square-foot, 350 seat church, a 18,090 square-foot multi-purpose hall with an assembly area of 6,200 square-feet, an 11,010 square-foot cultural and education facility, and a 13,840 square-foot youth center with basketball court. (2014 Church EIR, p. 3-2.) While the church has been constructed, the accessory buildings have not yet been constructed.[2]

2 The SEIR's discussion of the Church Project's accessory buildings appears to be incomplete, stating "The three accessory buildings that would be associated with the Church have not yet been constructed although the" without completing the sentence. (SEIR, p. 3-2.) We request clarification of this sentence.

The SEIR provides data from only the Assisted Living Project and the Assisted Living Project appears to operate independently from the Church Project. However, the Project is adjacent to the Church Project, and the developer is seeking an amendment to the Conditional Use Permit for the Church Project to include a condition for a lot-tie agreement requiring the Church and Assisted Living Facility to be developed as one overall project. (SEIR, p. ES-1.) It is thus unclear whether the Project analyzed in the SEIR is separate or a part of the Church Project. If the Project is to be developed as one project, the impacts of both projects must be analyzed and reported together. CEQA requires analysis of "the whole of an action," including activities that are a reasonably foreseeable consequence of a project, and prohibits evading comprehensive CEQA analysis by splitting projects into separate pieces. (CEQA Guidelines § 15378; *Bozung v. LAFCO.* (1975) 13 Cal.3d 263, 283-84; *Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.) The City must "construe the project broadly to capture the whole of the action and its environmental impacts." (*Save Berkeley's Neighborhoods v. Regents of University of California* (2020) 51 Cal.App.5th 226, 239.) All phases must be considered together for environmental review. (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 284.) Thus, the SEIR must be recirculated to analyze both projects together, particularly given the fact that the Church Project's accessory buildings have yet to be built, and construction and operation of those buildings must be taken into account when considering construction and operation of the Project.

Moreover, the SEIR failed to even *present* the 2014 Church EIR, and to the best of SDCRA's knowledge, the 2014 Church EIR is not publicly available online. The public cannot evaluate whether there are changed circumstances or new information giving rise to new impacts if they cannot evaluate the original EIR. The SEIR must be recirculated with the 2014 Church EIR to give the public the full view of the Project's impacts.

Finally, the SEIR presents an outdated construction schedule. The SEIR assumes that construction commenced in January 2023 and will run through January 2024. (SEIR, pp. 3-6, 3-7.) Within this time frame, the SEIR sets a schedule for each phase of construction. (SEIR, p. 3-7.) Since the Project has not even been approved yet, the construction schedule is now outdated. The construction schedule is important, particularly as the mitigation measures for the Project's biological impacts purport to

restrict construction activities during the breeding season of sensitive species. (SEIR, p. 5.4-22 to 5.4-27.) The SEIR must be recirculated with an updated and realistic construction schedule.

B. The SEIR Improperly Relies on Project Design Features and Proposed Conditions to Mitigate Impacts Without Analysis or Enforceability.

Throughout, the SEIR improperly relies upon so-called Project Design Features (PDFs) and Compliance Measures (CMs). (See SEIR, Table 3-3, pp. 3-9 to 3-20.) The majority of these PDFs and conditions appear to be mitigation measures that the Project applicant and City have failed to incorporate into the Project's Mitigation Monitoring and Reporting Program (MMRP). When a Project incorporates mitigation measures, CEQA requires that those mitigation measures be "fully enforceable through permit conditions, agreements, or other measures." (Pub. Resources Code § 21081.6(b).) As mere PDFs and CMs that will not necessarily be incorporated into Project approvals, conditions, and the MMRP, they are not properly enforceable by the City or third parties and cannot be relied upon for any reductions in Project impacts. CEQA's mitigation requirements exist for a reason. "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Federation of Hillside & Canyon v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261; *Katzeff v. California Dept. of Forestry and Fire Protection* (2010) 181 Cal.App.4th 601, 612; *Lincoln Place Tenants Assn v. City of Los Angeles* (2005) 130 Cal.App.4th 1491.)

The heavy reliance on Project PDFs and CMs and the future imposition of conditions also improperly compresses the SEIR's disclosure and analysis functions. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-656.) A "mitigation measure cannot be used as a device to avoid disclosing project impacts." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 663-664.) Here, the SEIR claims that the PDFs are part of the Project itself and fail to assess the impacts of the Project without these PDFs. Recent Court of Appeal decisions disapprove of this practice:

> A 'mitigation measure' is a suggestion or change that would reduce or minimize significant adverse impacts on the environment caused by the project as proposed." (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445, 66 Cal.Rptr.3d 120.) ***A mitigation measure is not part of the project***. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656 & fn. 8, 167 Cal.Rptr.3d 382.) Thus, it is questionable whether these measures even qualify as mitigation measures.

(*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 433, emphasis added.) An EIR cannot incorporate "the proposed mitigation measures into its description of the project and then conclude [] that any potential impacts from the project will be less than significant." (*Lotus*, *supra*, 223 Cal.App.4th 645, 655-657.) The SEIR's shortcut is "not merely a harmless procedural failing…[it] subverts the purposes of CEQA by omitting material necessary to informed decisionmaking and informed public participation." (*Id.* at 658.)

C. The SEIR Fails to Adequately Analyze and Disclose the Project's Traffic Impacts.

Mr. Tom Brohard, an expert transportation engineer with decades of experience in the field of transportation engineering and planning, reviewed the SEIR and found several substantial issues with the SEIR's traffic analysis that must be addressed. We summarize these issues below, which are outlined in detail in Expert Brohard's letter, included as Attachment 1 to this letter.

- The SEIR's traffic study failed to follow the requirements of the City's Transportation Study Manual ("TSM"). The SEIR's analysis improperly relied on estimated traffic volumes, factored from traffic counts taken in 2012 for the Church Project's traffic study. In doing so, the SEIR violates the City's own transportation study manual which requires new transportation data to be collected if the available data is older than two years.
- The SEIR's analysis relied on improperly factored estimates from data collected in the winter of 2012, despite the TSM's requirement for traffic counts in areas near beaches to be taken during summer months or include adjustments to reflect summer conditions. The Project site is within the coastal zone.

- The SEIR underestimated the Project's trip generation. The SEIR estimated that the Project would generate 234 daily trips. Expert Brohard revealed that, according to the Institute of Transportation Engineers Trip Generation Manual, the Project would generate 331 daily trips. The SEIR failed to prepare a study of the Project's vehicle miles traveled ("VMT"), claiming that the Project would not meet the required threshold of 300 daily trips. However, since the Project would exceed the 300-trip threshold, a VMT study is necessary.
- The SEIR improperly segments analysis of the Project's traffic and parking analysis by presenting analysis of only the assisted living facility without the Church Project. Both projects must be analyzed together.
- The SEIR must analyze and mitigate the Project's stopping sight distance at the Church driveway and El Camino Real, which is necessary given that the driveway's entrance is close to a superelevated horizontal curve on El Camino Real on which vehicles travel at high speeds.
- Mitigation measures to remedy impacts to bicyclists and bicycle facilities are necessary given the Project's traffic safety impacts.
- Vehicle travel for the Project would require unsafe U-turns maneuvers involving vehicles and bicycles to merge across several lanes of fast-moving traffic.
- Left-turn and U-turn lane lengths at traffic signals are too short, which would result in overflow and rear-end collisions.
- An emergency evacuation and service plan is required for the Project, which is located in a landlocked parcel. The plan must detail how the narrow 24-foot-wide, two-way aisle through the Church parking lot will accommodate emergency access vehicles to the Assisted Living Facility.

D. The SEIR Fails to Adequately Disclose and Mitigate the Project's Conflicts with Land Use Policies, Plans, and Ordinances.

1. The Project is Contrary to Proposition A, the City's General Plan, and Proposition A's Implementing Ordinances and Policies.

The Project site is located in an area with extremely stringent restrictions on development due to the presence of highly sensitive natural resources and voter-approved

imposition of strong environmental protections. Thus, development within the area may only proceed under a narrow set of circumstances as described below, none of which are present here. The City's attempt to construe the Project as one that falls under the narrow categories of allowable projects set forth by Council Policy 600-29 impermissibly circumvents the development restrictions set in place by that Policy and the voter-approved provisions of Proposition A.

a. The Citywide Electorate Passed Proposition A to Protect Sensitive Land and Prevent Sprawl Development.

The Project site is governed by the North City Future Urbanizing Area Framework Plan ("Framework Plan"). The NCFUA Plan designates Subarea II, the area in which the Project is located, as Future Urbanizing Area that is kept in reserve "to avoid premature urbanization, to conserve open space and natural environmental features, and to protect the fiscal resources of the City by precluding costly sprawl and/or leapfrog urban development." (Framework Plan, p. 13.)

Proposition A, the Managed Growth Initiative, was passed by San Diego voters in November 1985. Supported by the Sierra Club, Common Cause, League of Conservation Voters, and Citizens Coordinate for Century 3 (C3), the Proposition was a bipartisan citizen's effort to halt what was seen as a City Council pattern of violating the Growth Management Plan. (Ballot Argument accompanying Proposition A, November 1985.) The Growth Management Plan set aside thousands of acres of land in the City, protecting them from development until they were actually needed. In so doing, the Plan also prevented new urban sprawl and accompanying traffic and air pollution, termed as the "Los Angelization of San Diego." (*Ibid*.) As recognized by the California Supreme Court, the voters were thus using a "legislative battering ram." (*Amador Valley Joint Union High Sch Dist. v. State Bd of Equalization* (1978) 22 Cal.3d 208, 228.) The initiative power "was designed for use in situations where the ordinary machinery of legislation had utterly failed . . ." (*Id*.) The ballot arguments make it clear that the sponsors of Proposition A felt the City Council was being unduly influenced by developers. To prevent this, the voters reserved to themselves the right to make the fundamental decision about whether certain broad swaths of land would be

developed. Specifically, Proposition A provides:

> No property shall be changed from 'future urbanizing' land use designation in the Progress Guide and General Plan to any other land use designation, and the provisions restricting development in the Future Urbanizing Area shall not be amended except by majority vote of the people...at a citywide election thereon.

(Proposition A, Section 1, City of San Diego General Plan, p. AP-27.) The Proposition applies to lands designated as 'future urbanizing' in the General Plan on August 1, 1984. (Proposition A, *supra*, at Section 2.) Thus, lands set aside as 'future urbanizing' or 'Proposition A lands' cannot be opened to urban development without a majority vote of the people. The only exception provided in Proposition A is for projects for which "a building permit has been issued . . . prior to the effective date of this measure." (Proposition A, *supra*, at Section 5.) As the Project would be located on Proposition A lands, and as it was not proposed until long after 1984, it does not fall within Proposition A's exception. Therefore, the project cannot be built unless a majority of voting San Diegans approve of removing Proposition A protections from the site.

Proposition A authorized the City to "take any and all actions necessary" to "carry out the intent and purpose of this initiative measure," (Proposition A, *supra*, Section 3), including the adoption of reasonable guidelines for implementation (*Id*., Section 4). Like conversions of Proposition A lands, the measure may be amended or repealed only by a majority of voters. (*Id*., Section 6.) Proposition A has not been amended or repealed.

The General Plan is the City's constitution for development. (*Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 152.) Thus, any decision of the city affecting land use and development must be consistent with the general plan. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.) Proposition A has been incorporated directly in the General Plan, most notably in the Land Use and Planning Element, which contains a map of Proposition A lands. (General Plan, Figure LU-4). General Plan Policy LU-J.2 guides the City to:

> Follow a public planning and voter approval process consistent with the provisions of this Land Use Element for reuse planning of additional military lands identified as Proposition 'A' lands, and other areas if and when they become subject to the City's jurisdiction.

Conversion of the project site to an urbanized use such as the proposed Project, without achieving a majority vote of the public, therefore, would violate not only Proposition A, but the City's General Plan.

b. The Project is Inconsistent with the Implementation Policies for Proposition A, which are Incorporated into the General Plan.

According to the current General Plan, implementation of the Proposition has divided the City's land into two jurisdictions, Proposition A lands and urbanized lands. Proposition A lands are characterized by very low-density residential, open space, natural resource-based park, and agricultural uses. (General Plan, p. LU-41.) By contrast, urbanized lands are characterized by communities at urban and suburban levels of density and intensity. (*Ibid*.) Proposition A has been further incorporated into the General Plan's Public Facilities Element, where it affects how the City finances public facilities. (General Plan, Figure PF-1.)

Pursuant to Section 3 of the Proposition, the City of San Diego has adopted implementation policies. Two notable ones are Policies 600-29 and 600-30, each of which became effective on October 26, 1993. Policy 600-29 declares the Future Urbanizing areas "urban reserves" that will help the City avoid premature urbanization, conserve open space and the natural environment, and protect fiscal resources. (Council Policy 600-29, October 26, 1993, p. 1.) The policy opines that permitting development in these urban reserves would "strain City fiscal resources," inefficiently divert development from urbanized areas, increase drive times and air pollution "without any realistic prospect for mass transit service," and "infringe upon the few remaining viable agricultural areas with[in] the City limits." (*Ibid*.) To that end, Policy 600-29 declares, "It shall be the policy of the City Council that lands within the Future Urbanizing area be

maintained as an 'urban reserve' in part through the application or continuation of agricultural zoning which prohibits development at urban intensities." (*Id*., at p. 2.) For lands zoned A-1, such as the project site, Policy 600-29 permits residential development in four ways:

1) according to the density and minimum lot size permitted by A-1 zoning regulations;

2) pursuant to cluster development regulations that allow the same amount of total development as A-1 zoning regulations, but clustered in one location to allow future development of other lands when the property is shifted into an urbanizing area;

3) pursuant to the Planned Residential Development regulations that allow development at an increased density in exchange for permanent easements on undeveloped land; and

4) pursuant to conditional use permit regulations provided that the conditional uses as natural resource dependent, non-urban in character and scale, or are of an interim nature which would not result in an irrevocable commitment of the land precluding future uses.

(Council Policy 600-29, pp. 2-4.) Each of these development options incentivizes the preservation of agricultural and open space land. Policy 600-29 further incentivizes the retention of undeveloped land by promoting the consideration of preserved lands for tax benefits under the Williamson Act. (*Id*., p. 3.) Finally, the policy provides that lands only be considered for shifting outside of a Proposition A designation in accordance with specific procedures and monitoring mechanisms. Before urban density can be permitted in Proposition A lands, a General Plan Amendment and supporting community, specific, or precise plan is required. (*Ibid*.) However, before the City may expend funds on such a plan, it must make supportable findings that "(1) available lands are approaching full utilization; (2) a need exists for additional developable lands; and (3) a process has been developed to identify where the next phase of urban development should occur."

(Council Policy 600-29, p. 4) Finally, the policy requires the completion of a survey to identify lands that should be retained as permanent open space for agricultural, environmental, or other purposes.

The SEIR claims that the Project qualifies under one of the development alternatives stated in Policy 600-20, which applies when the conditional uses are non-urban in character or scale. The SEIR cannot reasonably claim that the Project is non-urban in character or scale. As the General Plan states, urbanized lands are characterized by communities at urban and suburban levels of density and intensity. (General Plan Land Use Element, p. LU-47.) The Project would entail a dramatic increase in the intensity of the land. The Project would add 124 beds, increased traffic trips including from residents, employees, and visitors, and would generate significant noise impacts. The Project also exceeds the scale of the area, with a 40 foot, three-story facility that exceeds height limits. The Project is also incompatible with surrounding development—the Project's excessive height limit and short setback would create privacy and noise issues as the Project's residential units would tower over the adjacent residential development. The Project simply does not qualify under this or any development alternative.

The proposed Project's 105 residential units vastly exceed those that would be permitted by any of Policy 600-29's allowable development types, and is therefore not permissible at this time. Additionally, a phase shift into an urbanizing area cannot yet occur because a general plan amendment, specific plan, or precise plan has not been approved for this portion of the North County Future Urbanizing area, as required.

Policy 600-30 sets out the City's policies for handling the "exceptional situations," wherein the Council may consider land shifts outside of the General Plan update process, such as when a property owner petitions for a land shift. (City Council Policy 600-30, October 26, 1993, p. 1.) The Policy restates Proposition A, making it clear that "No land shall be shifted from the Future Urbanizing area...except by a General Plan Amendment approved by the City Council and approved by a majority vote of the people." (*Ibid.*) Applications for land shifts can only be considered for substantive review by the Planning Commission if they are consistent with an adopted land use plan, such as the

North City Future Urbanizing Area Framework Plan, or if the application provides a "reasonable basis" for the General Plan amendment it would require. (*Id*., at p. 2.) Pursuant to the policy, an application for an amendment provides a reasonable basis if it is needed to provide land development, as determined by City monitoring; if the amendment is "responsive to population and growth rates which demand land availability"; if the amendment will not contribute to "urban sprawl, leapfrog development, or premature development"; or if the amendment will "provide the City with substantial and unique public benefits." (*Ibid*.) Without one of these showings, the application cannot be forwarded to the Planning Commission, and ultimately the City Council, for review and the scheduling of a public vote.

Council Policy 600-30 also prohibits approval of the project, which fails to meet any of the thresholds for a substantive review – the project is neither unique nor required by great demand – and it is inconsistent with the NCFUA.

2. The Project is Categorically Prohibited in Proposition A Lands.

The Project is explicitly prohibited in Proposition A Lands. The Project is a Continuing Care Retirement Community, which is not permitted within agricultural zones designated as Proposition A land. (San Diego Municipal Code § 141.0303, subd. (a); § 131.0322, Table 131-03B.)

Moreover, the Agricultural Zoning Designation on Proposition A Lands precludes the Project. Under the current zoning code, no more than one dwelling unit is allowed for every four acres, or no more than three units for the entire property, on Proposition A lands. The purpose of the Agricultural designation is to retain agricultural uses in a rural environment and only allow development at a very low density. For each of reference, portions of the existing zoning code are provided with emphasis:

§131.0301 Purpose of Agricultural Zones

The purpose of the agricultural zones is to provide *for areas that are rural in character* or areas where agricultural uses are currently desirable.

§131.0302 Purpose of the AG (Agricultural--General) Zones

(a) The purpose of the AG zones is to accommodate all types of agricultural uses and some minor agricultural sales on a long-term basis. *Nonagricultural uses are limited in the AG zones in order to strengthen the presence and retention of traditional agricultural uses.*

(b) The AG zones are differentiated based on the minimum lot size as follows:

• AG-1-1 requires minimum 10-acre lots
• AG-1-2 requires minimum 5-acre lots

§131.0303 Purpose of the AR (Agricultural--Residential) Zones

(a) The purpose of the AR zones is to accommodate a wide range of agricultural uses while also *permitting the development of single dwelling unit homes at a very low density*. The *agricultural uses are limited to those of low intensity* to minimize the potential conflicts with residential uses. This zone is applied to lands that are in agricultural use or that are undeveloped and not appropriate for more intense zoning. Residential development opportunities are permitted with a Planned Development Permit at various densities that will preserve land for open space or future development *at urban intensities when and where appropriate*.[3]

§131.0340 *Maximum Permitted Residential Density* in Agricultural Zones
. . .

(4) *Within Proposition A Lands* except within the Del Mar Mesa Specific Plan area, *an increase in density of up to one dwelling unit per 4 acres of lot area may be requested through a Planned Development Permit* in accordance with Process

[3] Because the voters have determined that the land is subject to Proposition A, they have determined that urban densities are not appropriate on this land unless they vote a Phase Shift to have it developed as urban property.

> Five subject to the regulations in Section 143.0402. *The remainder of the premises shall be left undeveloped in perpetuity. . .*

The Project, which will provide 105 units and 124 beds in a 3.97-acre parcel, far exceeds the development limits set by San Diego Municipal Code section 131.0340(A). Accordingly, the Project is prohibited from development on the parcel.

3. The Project is Inconsistent with the Framework Plan.

The SEIR fails to disclose the Project's inconsistencies with the Framework Plan. First, the SEIR claims that the Project is consistent with Guiding Principles 2.3e and 2.4b because the Project would not require a Phase Shift. As discussed above, this is false. The Project fails to fall within any of the narrow development alternatives specified in Council Policy 600-29, and therefore cannot proceed without undertaking the Phase Shift procedures outlined in Proposition A.

4. The SEIR Fails to Disclose and Mitigate the Project's Inconsistency with the MSCP.

The countywide Multiple Species Conservation Plan ("MSCP") "is a comprehensive habitat conservation planning program that addresses multiple species habitat needs and the preservation of native vegetation communities for a 900-square mile area in southwestern San Diego County." (MSCP, p. 1-1.) The MSCP is implemented by local jurisdictions though MSCP subarea plans, "which describe specific implementing mechanisms for the MSCP." (*Ibid.*) The Multi-Habitat Planning Area ("MHPA") is the area within which the permanent MSCP preserve is assembled and managed for its biological resources. (MSCP, p. 3-7.)

The Project site is governed by the City of San Diego MSCP Subarea Plan ("Subarea Plan"). "The overarching MSCP goal is to maintain and enhance biological diversity in the region and conserve viable populations of endangered, threatened, and key sensitive species and their habitats, thereby preventing local extirpation and ultimate extinction, and minimizing the need for future listings, while enabling economic growth in the region." (MSCP Subarea Plan, p. 49.) The City of San Diego is required to

"manage and maintain lands obtained as mitigation where those lands have been dedicated to the City in fee title or easement." (*Ibid*.) Further, the Subarea Plan requires that "[m]itigation, when required as part of project approvals, shall be performed in accordance with the City of San Diego Environmentally Sensitive Lands Ordinance and Biology Guidelines." (*Id.* at 51.)

The Implementing Agreement to the MSCP fortifies these goals and policies with restrictions. The Implementing Agreement states that the City of San Diego agrees to be responsible for managing lands within the MHPA in perpetuity, including lands for which a covenant of easement has been granted to the City. (Implementing Agreement §10.6A, p. 26.) The SEIR identifies that a Project Design Feature, PDF-BIO-1, includes a covenant of easement for the portion of the Project site that includes MHPA. However, the SEIR does not specify any kind of management plan for this land. The failure of the SEIR to specify a management plan for the MHPA land constitutes deferred mitigation. Deferred mitigation violates CEQA. (*Endangered Habitats League v County of Orange* (2005) 131 Cal. App. 4th 777, 793-94; CEQA Guidelines § 15126.4(a)(1)(B).) Deferral is permitted when a mitigation measure commits to specific performance standards, but no such standards are included here.

Further, the SEIR fails to disclose the Project's inconsistencies with the Land Use Adjacency Guidelines. The Land Use Adjacency Guidelines are guidelines that apply to land uses that are adjacent to MHPA to ensure minimal impacts to the MHPA. The Land Use Adjacency Guidelines cover impacts relating to drainage, toxics, lighting, noise, barriers, invasive species, brush management, and grading. (MSCP Subarea Plan, pp. 47-49.)

The SEIR claims that no toxics impacts would occur, yet the SEIR relies on an improperly deferred Stormwater Pollution Prevention Plan (SWPP) to mitigate impacts resulting from toxics. As explained above, CEQA does not allow deferred mitigation without specific performance criteria. (CEQA Guidelines § 15126.4(a)(1)(B).)

The SEIR claims that the Project would not conflict with the guidelines regarding lighting. The Guidelines state that lighting of all developed areas adjacent to the MHPA should be directed away from the MHPA, and shielding to protect the MHPA and

sensitive species should be provided where necessary. The SEIR claims that the Project would not have lighting impacts because exterior lighting would be directed downward or away from the MHPA. But the Site Plan shows parking spaces in close proximity to the MHPA boundary line. (SEIR, Figure 3-1, p. 3-21.) The SEIR includes no information to mitigate lighting impacts from these uses.

SEIR Appendix D, the Biological Report relied on by the SEIR, also claims that the 100-foot wetland buffer would help to prevent lighting impacts. (SEIR, Appx. D, p. 30.) But the wetland buffer extends into the MHPA, so a portion of the MHPA is not included within the buffer zone. (SEIR, Figure 5.4-2, p. 5.4-37.) Thus, the buffer could not provide sufficient protection from lighting impacts. Moreover, neither the Report nor the SEIR explain why a distance of 100 feet would shield the sensitive land from lighting impacts.

The Land Use Adjacency Guidelines prohibit introduction of invasive non-native plant species into areas adjacent to the MHPA. (MSCP Subarea Plan, p. 48.) The SEIR identifies that a 2,182 square foot residential cutting garden will be placed in the southeastern corner of the site, directly abutting the MHPA boundary. The shrub plan identifies that the garden will be "seasonal and to be specified by property management company." (SEIR, Figure 3-4a, p. 3-27.) No other details are provided in the SEIR regarding this cutting garden, nor are the garden's impacts analyzed. Given this garden's adjacency to the MHPA, the SEIR must provide specific details regarding the construction and operation of this garden, and include enforceable mitigation measures to ensure that no invasive non-native species are introduced in this garden or any of the landscaping onsite.

Finally, the Project violates the Land Use Adjacency Guidelines regarding noise. The Guidelines require protections to mitigate noise impacts adjacent to the MHPA, including a requirement that "Excessively noisy uses or activities adjacent to breeding areas must incorporate noise reduction measures and be curtailed during the breeding season of sensitive species." (MSCP Subarea Plan, p. 48.) Though the Project will have significant noise impacts to wildlife, the mitigation measures stated in the SEIR are vague, impermissibly deferred, and inadequate. (Section IV.E.8.) Thus, the Project is

inconsistent with the Land Use Adjacency Guidelines, and conflicts with the MSCP and the MSCP Subarea Plan. The SEIR must be recirculated to analyze, disclose, and mitigate these conflicts.

E. The SEIR Fails to Analyze, Disclose, and Mitigate the Project's Noise Impacts.

1. Effects of Noise Pollution on Health Are Extensive.

"[T]hrough CEQA, the public has a statutorily protected interest in quieter noise environments." (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1380.) ***Despite this clear mandate to analyze noise impacts, the SEIR omits a discussion of the extensive health impacts of noise exposure***, as required by CEQA (Cf. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521).

Excess noise pollution can cause hearing damage and loss. Loud noise, either experienced as a single event or continuously over time, can damage cells in the inner ear that detect sound and help transmit information on sound to the brain. (https://www.cdc.gov/nceh/hearing_loss/how_does_loud_noise_cause_hearing_loss.html, incorporated by reference.) Damage to these receptor cells is permanent and cannot be repaired. (*Ibid.*) Such damage can make it difficult to hear, including causing difficulties in understanding speech. (*Ibid.*)

Sound level is measured in dBA. (https://www.nonoise.org/library/suter/suter.htm#physical, incorporated by reference.) In 1974 the EPA recommended that the equivalent A-weighted sound level over 24 hours ($L_{eq(24)}$) be no greater than 70 dBA to ensure an adequate margin of safety to prevent hearing loss and damage. (https://nonoise.org/library/levels74/levels74.htm, incorporated by reference.) To prevent interference with activities and annoyance, the EPA recommended a day-night average sound level no greater than 45 dBA for indoors and 55 dBA for outdoors.

The SEIR must relate these health impacts of excessive noise exposure to the Project's significant noise impacts.

2. Noise Impacts from the Church Project and the Assisted Living Project Must be Analyzed Together.

As stated above, the SEIR provides data from only the Assisted Living Project. However, the Project is adjacent to the Church Project, and the developer is seeking an amendment to the Conditional Use Permit for the Church Project to include a condition for a lot-tie agreement requiring the Church and Assisted Living Facility to be developed as one overall project. (SEIR, p. ES-1.) Thus, the impacts of both projects should be analyzed and reported together.

While noise impacts were studied separately in the SEIR and the 2014 Church SEIR, the combined noise impacts of both projects are unknown. This is because due to the logarithmic measurement of sound in decibels, "the total sound pressure created by multiple sound sources does not create a mathematical additive effect." (New York State Department of Environmental Conservation, "Assessing and Mitigating Noise Impacts," available at https://www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf, pp. 8-9; Minnesota Pollution Control Agency, "A Guide to Noise Control in Minnesota," available at https://www.nonoise.org/library/sndbasic/Sound.pdf, pp. 6-7.) Because the Project will be developed together, the SEIR must include these combined analyses.

3. Construction Noise Impacts Cannot be Evaluated Until there is an Updated Construction Schedule.

The SEIR includes an outdated construction schedule that assumed construction would commence in January 2023. The SEIR should include a revised and realistic construction schedule that also incorporates construction of the three unbuilt, previously approved accessory buildings on the Church site.

4. The SEIR Must Define and Identify Sensitive Receptors.

The SEIR fails to clearly define the noise-sensitive uses that surround the site. The Project site is located in a highly sensitive area with numerous noise-sensitive uses. As measured on Google Maps, the following sensitive receptors occur within 500 feet of the Project site:

- Stallions Crossing residential development, which includes 47 residences.
- Harvest Evangelical Church, located at 13885 El Camino Real, San Diego, CA 92130.
- St. Sarkis Armenian Church, the associated project that was the subject of the 2014 Church EIR.
- The San Dieguito River Park Dust Devil Nature Trail.

The SEIR must specifically identify these noise-sensitive uses that surround the Project site as sensitive receptors and ensure that analyses accurately capture impacts to these uses.

5. The SEIR's Noise Measurement Locations Do Not Provide the Full Picture of Noise Impacts.

The SEIR measures outdoor ambient noise levels at only two locations: on the western and southeastern boundaries of the Project site. (SEIR, Appx. J, pp. 13, 15.) There is no measurement point located on southern boundary of the Project site, which directly abuts the residential development south of the Project site. The SEIR only measures traffic noise near the residential development. (SEIR, p. 5.10-24 [SC1].) The SEIR thus fails to adequately assess the Project's operational noise impacts to the residential development. The SEIR separately assesses the impacts of noise from HVAC units in shared spaces and individual units, and the emergency generator, but addresses no other stationary operational noise impacts. For example, the Project includes an outdoor seating courtyard along the southern border of the site, which appears to contain a lap pool. (SEIR, Appx. J, p. 5.) The SEIR must analyze noise impacts from the Project's outdoor recreation areas.

Neither is there a measurement point on the north boundary of the Project site, which would assess impacts to the Church uses. There is also no measurement point on the northeastern boundary of the Project site, which would provide greater assessment of the impacts to the MHPA. The failure to assess sound impacts at these locations is a prejudicial omission that renders the draft SEIR invalid.

6. The SEIR's Traffic Noise Impacts are Underestimated.

The SEIR also underestimates the Project's traffic noise impacts. As set forth in the expert comments prepared by Mr. Tom Brohard, the Project relies on an assumption of 210 average daily trips, which is an underestimate. The analysis of traffic noise must be reevaluated using an assumption of 331 average daily trips, which accurately estimates the Project's trip generation.

Additionally, the SEIR relies on a misleading noise measurement location (SC1) to assess roadway noise impacts to the Stallions Crossing residential development. SC1 is located far from the Project site, on a section of El Camino Real outside the Stallions Crossing development. (SEIR, Figure 5.10-1, p. 5.10-25.) This measurement will not capture the noise impacts of traffic within the Project site and the Church site, including from parking and emergency vehicles. Nor does this measurement capture the impacts on the residences closest to the Project site. The SEIR should measure traffic noise at the southern boundary of the Project site in order to rectify these inadequacies.

7. The SEIR Must Evaluate Sleep Disturbance.

Excessive sound level can have a profound health impact by disturbing sleep. Sleep disturbance is considered "the most deleterious non-auditory effect of environmental noise exposure . . . because undisturbed sleep of a sufficient length is needed for daytime alertness and performance, quality of life, and health." (Basner et al., *Auditory and Non-Auditory Effects of Noise on Health* (2014) 383 Lancet 1325, 1329.) Repeated sleep disturbance can change sleep structure, including "delayed sleep onset and early awakenings, reduced deep (slow-wave) and rapid eye movement sleep,

and an increase in time spent awake and in superficial sleep stages." (*Id.* at 1330.) The short-term effects of sleep disturbance include "impaired mood, subjectively and objectively increased daytime sleepiness, and impaired cognitive performance." (*Ibid.*) Exposure to noise during sleep "may increase blood pressure, heart rate, and finger pulse amplitude as well as body movements." (Stansfeld and Matheson, *Noise Pollution: Non-Auditory Effects on Health* (2003) 68 Brit. Med. Bull. 243, 244.) In 1974, the EPA observed that a nighttime portion of a day-night average sound level of approximately 32 dB should protect against sleep interference. (https://nonoise.org/library/levels74/levels74.htm, p. 28.)

Despite the potential for these harmful impacts, the SEIR fails to sufficiently analyze sleep disturbance and disclose the Project's risks of sleep disturbance to the public and decisionmakers. The SEIR is required to analyze and disclose "the nature and the magnitude" of the Project's potential impact on sleep disturbance and must connect the potential health impacts of sleep disturbance to the noise impacts from the Project. (*Friant Ranch, supra*, 6 Cal.5th 502, 519–21.) The Project abuts residential properties to the south of the Project site. Families with small children, particularly infants, will be impacted by the construction noise, even if construction is limited to certain hours.

8. The SEIR's Noise Mitigation Measures are Inadequate.

The SEIR identifies that the Project's construction noise will exceed the 75 dBA L_{eq} threshold. (SEIR, p. 5.10-18.) The Project would thus have impacts to breeding wildlife when construction occurs during the breeding season. (*Ibid*.) The SEIR claims that implementation of Mitigation Measure MM-NOI-1 would result in less than significant impacts.

MM-NOI-1 is an impermissibly vague mitigation measure that does not meet CEQA's standards for deferred mitigation. MM-NOI-1 simply defers mitigation to the discretion of the "project applicant or its contractor." (SEIR, p. 5.10-20.) MM-NOI-1 identifies general options for implementation, including "administrative controls," "engineering controls," and the installation of sound blankets for noise abatement on the

southern boundary for the site. (*Ibid*.) The project applicant—or a contractor—could elect to implement "one or more" of these unspecified options in any manner it chooses. (*Ibid.*) This falls far short of CEQA's requirement to analyze and disclose all feasible mitigation measures.

Mitigation measures must be enforceable. (Pub. Resources Code § 21081.6(b).) The so-called mitigation applied by MM-NOI-1 must "yield a minimum of approximately 10 dbA of construction noise reduction during the grading phase of the project," but there is no method of quantifying or enforcing that requirement. Moreover, without specified mitigation, there is no ability to assess whether MM-NOI-1 will be effective in reducing construction noise. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 866.) Thus, MM-NOI-1 does not comply with CEQA and is impermissibly deferred.

The Noise Report also claims that the Project's requirement to comply with the local noise ordinance is a "compliance measure." (SEIR, Appx. J, p. 33.) But the SEIR may not rely on compliance with the law to avoid necessary analysis. (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 17.)

The Noise Report also includes CM-NOI-2, another "compliance measure," requiring the installation of sound blankets or comparable barriers in the coastal sage scrub portion of the MHPA, if grading occurs during the California gnatcatcher breeding season. (SEIR, Appx. J, p. 33.) As stated in Section IV.B, the SEIR's "compliance measures" must be separately analyzed as mitigation measures in order to fulfill CEQA's requirements of information disclosure. Moreover, we question the effectiveness of this deferred mitigation measure; a far more effective and feasible measure would be to avoid grading during the breeding season of the California gnatcatcher or any other sensitive species.

9. The SEIR Fails to Implement All Feasible Mitigation for Construction Impacts.

The SEIR is required to consider and adopt all feasible mitigation measures. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 852, 866, 869.) The following mitigation measures must be considered:

- Locating or parking all stationary construction equipment as far from sensitive receptors as possible, and directing emitted noise away from sensitive receptors.

- Verifying that construction equipment has properly operating and maintained mufflers.

- Limiting construction hours to daytime hours on weekdays only (9am to 5pm, Monday to Friday).

- Replacing gas- and diesel-powered equipment with electric equipment to reduce the noise impacts associated with operation of that equipment.

F. The EIR Fails to Adequately Analyze and Mitigate Fire Danger

The SEIR admits the Project is located in a Very High Fire Hazard Severity Zone, but finds that, due to the inclusion of fire protection features in a previous, nearly 10-year-old EIR, that impacts of wildfire hazards will be less than significant. (SEIR p. 7-7 through 7-9.) The SEIR discloses this conclusion about the Project's fire safety in the "Effects Not Found to Be Significant" chapter. Thus, the SEIR entirely omits analysis of the Project's wildfire impacts and its ability to safely evacuate residents if needed. This omission violates CEQA and must be corrected.

1. The 2014 EIR Failed to Analyze Fire-Related Impacts.

While CEQA permits a lead agency to rely on past environmental review, that permission only exists for CEQA review that was conducted. The 2014 Church EIR did not actually analyze that project's impacts on wildfire and fire evacuation. Instead, the 2014 EIR placed its fire discussion in the chapter "Effects Found Not to Be Significant." The entirety of the 2014 EIR's discussion is as follows:

> The project site is located within the City of San Diego "Official Very High Fire Hazard Severity Zone" (City of San Diego 2009) and includes a wildland-urban interface along the northern, southern, and eastern project boundaries. Dudek prepared a Fire Fuel Load Model Report for the St. John Garabed Project that is included as Appendix H (Dudek 2012). The project-specific Brush Management Plan is included as Attachment 5 to the Fire Fuel Load Model Report. The Brush Management Plan specifies that brush management will be provided on site through a method of alternative compliance approved by the Fire Marshall consistent with Land Development Code 142.0412(1). Per the Fire Fuel Load Model Report, with consideration of the climatic, vegetation, wildland-urban interface, and topographic characteristics along with the fire behavior modeling results and fire history of the area, the project site, once developed, is determined to be at low risk of wildfire starting on the site. The potential for off-site wildfire burning onto, or showering embers on the site exists, but is considered low risk based on the type of construction and fire protection features that will be provided for all structures. Additionally, the project includes features listed in Table 3-1 of this EIR that would ensure that the risk of fire spreading to the on-site structures is low. Impacts from wildfire hazard would be less than significant.

(2014 EIR pp. 7-2 through 7-3.) The 2014 EIR claims that the project site will have low risk once it is developed, based on climatic, vegetation, wildland-urban interface, and topographic characteristics, but it fails to even summarize what those characteristics are. Instead, the 2014 EIR contains bare conclusions that the Project will be safe. CEQA

requires that an EIR's conclusions be supported by facts. Bare conclusions are insufficient.

The 2014 EIR asserts that the "potential for off-site wildfire burning onto, or showering embers on the site" is low based on the construction materials and fire protection features, but it fails to discuss what those features are or how they will work, or the distance the underlying report assumed fire brands could travel. The 2014 EIR failed to conduct the requisite analysis of the Project's likely fire and evacuation-related impacts and cannot be relied on here.

2. The SEIR Repeats the Mistakes of the 2014 EIR.

The current SEIR discussion of fire is similar to (nearly identical, really) that in 2014 EIR, finding that the potential for off-site fire "is considered low based on the type of construction and fire protection features" that are not detailed in the discussion. (SEIR p. 7-8.) The discussion continues, "Additionally, the Assisted Living Facility site includes features listed in Table 3-2…that would ensure that the risk of fire spreading to the on-site structures is low." (*Ibid*.) No analysis of these features or their relative efficacy in reducing fire risk is provided. CEQA requires that an EIR discuss the efficacy of proposed mitigation measures. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645.)

But an EIR cannot incorporate "the proposed mitigation measures into its description of the project and then conclude [] that any potential impacts from the project will be less than significant." (*Lotus v. Department of Transpo*rtation, 223 Cal.App.4th 645, 655-657.) This is exactly what the SEIR does here. Instead of admitting that there are inherent dangers in locating an Assisted Living Facility in a Very High Fire Hazard Severity Zone, many of which may be mitigable, the SEIR takes a shortcut. This shortcut is "not merely a harmless procedural failing…[it] subverts the purposes of CEQA by omitting material necessary to informed decisionmaking and informed public participation." (*Lotus*, 223 Cal.App.4th 645, 658.) For this reason, an EIR that compresses the analysis of impacts and mitigation measures violates CEQA. (*Id*. at 655-656.)

Further, a read of Table 3-2 reveals that it contains a list of required discretionary actions, none of which are directly related to reducing fire risk. Table 3-3, found in the separate, Project Description of the SEIR, identifies PDFs, including interior sprinklers, reduced building openings, "alternative" brush clearance compliance, irrigated landscaping, and window glazing and gypsum sheathing on certain building finishes. PDF-Fire-2 and PDF-Fire-3 merely require code compliance for emergency vehicle access and water delivery. (SEIR p. 3-19.) A project's compliance with code does not necessarily ensure that environmental impacts are mitigated below significance.

The SEIR is also clear that the proposed arrangement of buildings less than 100 feet from the edge of the property precludes compliance with the San Diego Fire-Rescue Department Brush Management Zones. (SEIR p. 7-8.) Accordingly, "alternative compliance would be required." (*Ibid*.) This, alone, may constitute a significant fire impact that requires analysis and mitigation in an EIR.

Under alternative compliance, the Project would have smaller brush clearance zones with either paving or irrigated landscaping. The Project would also include dual-paned, tempered glass doors and windows and Type X fire rated gypsum sheathing on the eastern side of the structure. While these features will certainly improve the Project's performance in fire conditions, the SEIR contains no analysis supporting its conclusion that alternative compliance will reduce the likelihood of ignition. Again, an EIR must analyze the efficacy of the measures it relies upon to deem an impact insignificant. This is especially true given that fire brands and embers originating offsite can land anywhere in the Project, not just along the eastern side of the Project that will be treated with gypsum sheathing.

The SEIR states that "A Fire Fuel Load Modeling Report" (FFLMR) was prepared and is provides as Appendix O to the SEIR. According to the EIR, "The FFLMR provides both City and State fire and building code required elements for construction, as well as enhanced, City and state code-exceeding measures along the eastern side of the structure where non-conforming BMZs occur adjacent to the MHPA." (SEIR p. 3-5.) To the extent that the SEIR relies on analysis and conclusions of the FFLMR that are not

summarized in the SEIR, it violates CEQA. An agency may use an appendix to provide technical detail that without unduly complicating or lengthening the EIR, so long as the key findings are summarized in the EIR itself. However, "[I]nformation 'scattered here and there in EIR appendices,' or a report 'buried in an appendix,' is not a substitute for 'a good faith reasoned analysis . . . .' (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th at p. 442.)" (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 941.) Burying information in an appendix has also been found to frustrate the legally required informational purposes of an EIR. (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.)

3. Significant New Information About the Size and Severity of Wind-Driven Fire Events Requires Environmental Review.

Even if the 2014 EIR had included an analysis of the Project's fire impacts, the current SEIR would require analysis of the Project's impacts related to wildland fire and fire evacuation safety because "significant new information" is available demonstrating a greater impact than known in 2014. (CEQA Guidelines section 15162.) For example, it is now known that firebrands and embers can travel up to five miles ahead of an active fire, and that 60 percent of wildland/urban interface home ignitions are from such "red snow." (https://www.rwbfire.org/190/Be-Ember-Aware#:~:text=Flaming%20brands%20and%20embers%20can,in%20turn%20ignites%20the%20home.) Offsite fire risk was cited in the superior court's recent rejection of the EIR prepared for the Centennial Project in rural Los Angeles County. (See, https://www.nbclosangeles.com/news/local/judge-halts-tejon-ranch-development-citing-wildfire-risk/2569511/ .)

Red flag wind events are becoming more common and are occurring in much drier conditions than the past, resulting in the largest wildfires the state has ever seen. As a result, fires are burning hotter than in the past, reducing the effectiveness of some previously reliable fire protection measures. The increase in massive, wind-driven fire event has also strained fire departments such that the Project may not be able to reliably rely on a fire response in the event of a wind-driven wildfire. The SEIR must be revised

to acknowledge and mitigate these increases in the severity of the fire and evacuation threats to the Project.

4. The SEIR Fails to Discuss Wildfire Evacuation.

The 2014 EIR also omits any discussion of wildfire evacuation. Even if the project's design features reduce the likelihood that the structures will be destroyed in a fire, the SEIR does not state that the facility is designed to enable residents to safely shelter in place in the event of wildfire. The ability to evacuate residents is particularly important for the proposed Assisted Living Facility whose residents will be unable to evacuate themselves. Typical evacuation scenarios provide for residents to evacuate from wildfires using their own vehicles. Here, however, the Assisted Living Facility will house 124 residents who are unable to evacuate themselves and must rely on the facility to do so.

The stakes are high, as documented in news accounts of recent fires describing the complications inherent in evacuating assisted living residents and hospital patients who often require mobility assistance and medical support during evacuations. While evacuation is fraught for the able-bodied, additional steps are required when evacuating assisted living residents. As described by one staff member of an assisted living facility that evacuated the 2018 Camp Fire:

> The medical records director bags each patient's documents, paperwork that describes who they are, how to reach their next of kin, what drugs they should take, the care they will want when they are dying. A medication nurse bags each one's drugs. A certified nursing assistant puts together a change of clothes.

(Attachment 2, California fire: If you stay, you're dead. How a Paradise nursing home evacuated, https://www.latimes.com/local/california/la-me-ln-nursing-home-fire-evac-20181117-story.html .) Transportation is only part of the process.

During the 2018 Camp Fire, medical staff faced harrowing conditions and blocked evacuation routes while evacuating patients from Feather River Hospital. (See, Nurse

Describes Harrowing Hospital Evacuation of Patients During California Fires: 'We Had to Go', https://people.com/human-interest/nurse-hospital-evacuation-california-fires/ .) Medical staff had to rely on personal vehicles for evacuation. (*Ibid*.) Will the facility have large-capacity vehicles and specialized medical vehicles, such as ambulances, available in the event of an emergency? Will these vehicles remain onsite? An escape plan that relies on vehicles that may be unable to reach the Project site during an emergency will not protect future residents, as occurred in the Camp Fire. As reported by Wildfire Today:

> The [hospital] staff made calls in attempts to get ambulances and helicopters to transport patients, but due to gridlocked traffic and the fire, only two ambulances from Chico made it to Paradise near the end of the evacuation. One arrived at the hospital, while the other caught fire and burned. Helicopters could not land at the helipad due to the smoke.

(Feather River Hospital evacuated 280 patients and staff as Camp Fire approached, available at https://wildfiretoday.com/2019/02/26/feather-river-hospital-evacuated-280-patients-and-staff-as-camp-fire-approached/ .) One critically-ill patient died. (*Ibid*.) An assisted living facility in Paradise faced similar complications when a fleet of vans being sent to evacuate the 91 patients and 30 staff members of Cypress Meadows Post-Acute Center was turned back due to the fire danger. (Attachment 2, California fire: If you stay, you're dead. How a Paradise nursing home evacuated, https://www.latimes.com/local/california/la-me-ln-nursing-home-fire-evac-20181117-story.html.) Staff members drove patients through fire tornadoes in their personal vehicles and even in the vehicles of non-staff members when staff member vehicles were destroyed during evacuations.

In other wildfires, such as the 2017 Santa Rosa Tubbs Fire, panicked nursing home staff members "at two nursing homes abandoned their residents, many of them unable to walk and suffering from memory problems, according to a legal complaint filed by the California Department of Social Services." (California Says Nursing Homes Abandoned Elderly During Fire, https://www.nytimes.com/2018/09/07/us/california-wildfires-nursing-homes-abandoned-elderly.html ; See also, In the Face of Wildfire,

California Nursing Homes are Unprepared, Science Friday, https://www.sciencefriday.com/articles/nursing-homes-wildfires/ .)

The SEIR does not explain how the Project will safely evacuate residents and staff, an omission that is particularly important given the relative isolation of the Project site. Courts have required lead agencies to rescind approvals based on inadequate evacuation analyses in their EIRs. (*See*, e.g., Guenoc Development, https://biologicaldiversity.org/w/news/press-releases/california-court-orders-lake-county-to-set-aside-approval-of-mega-resort-2022-01-06/.) Speedy evacuations will be hampered by the single entrance/exit to the Project, which it shares with the existing Church. Fire trucks may have difficulty reaching the site from the north, due to the U-turn required to enter the site. As area residents have made clear to the City, the Project site has no direct access. The only way in and out is on El Camino Real. Vehicles coming from the north and Via de La Valle must U-turn at the intersection with Sea Country Road to reach the site. Slow U-turns of emergency vehicles may increase the likelihood of traffic accidents as existing residents attempt to flee oncoming wildfire. The existing situation is already fraught, given the curve of El Camino Real around the Project site. The City must disclose these dangers to the public, evaluate them fully, incorporate mitigation, and recirculate the SEIR with a full and complete wildfire evacuation analysis before the Project moves forward. If the Project plans to merely prepare an evacuation plan before opening, such a future preparation of a plan amounts to deferred mitigation and violates CEQA.

Further, since the SEIR did not even analyze wildfire impacts, such a plan would likely be insufficient. (See Attachment 3, *PQ-NE Action Group vs. City of San Diego*, San Diego County Superior Court Case No. 37-2021-00033583-CU-TT-CTL.) Reliance on voluntary plans to avoid analyzing and disclosing impacts was soundly rejected *in Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645. That strategy "compress[es] the analysis of impacts and mitigation measures into a single issue," fails to disclose the impacts of a project absent the mitigation, and prevents a meaningful opportunity to consider alternative measures. (*Id*. at 656-57; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 85 [omission of feasible mitigation measure is abuse of discretion].)

Importantly, the Project's evacuation difficulties, single exit, and lack of direct access from the north will also hamper the ability of existing residents to evacuate in an emergency. The City must also analyze the Project's impacts on the evacuation of existing residents and include this analysis and means of avoiding or mitigating these dangers in a revised SEIR.

G. The SEIR Fails to Disclose All Cumulative Projects.

An EIR must consider whether "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." (CEQA Guidelines §§ 15130, 15064, subd. (h)(1).)

Here, the SEIR failed to consider the cumulative impacts resulting from all past, current, and future projects. The SEIR omitted analysis of the San Dieguito Lagoon W19 Restoration Project, an approved project to restore the wetlands and habitat around the San Dieguito Lagoon.

Omission of such analysis is not permitted by CEQA. In February 2023, in a case entitled *PQ-NE Action Group vs. City of San Diego*, San Diego County Superior Court Case No. 37-2021-00033583-CU-TT-CTL, the Superior Court of the County of San Diego rescinded approval of a project in the nearby community of Rancho Peñasquitos, for which the EIR failed to consider cumulative impacts from two nearby projects. (Attachment 3.) The SEIR must be recirculated to analyze the impacts of the Restoration Project.

H. The SEIR's Alternatives Analysis is Inadequate.

Adequate considerations of alternatives to a proposed project is part of the basic command of CEQA that significant environmental impacts be avoided and environmental values be preserved, if possible. Specifically, Public Resources Code section 21002 provides that "agencies should not approve projects if there are feasible alternatives or

feasible mitigation measures available which would substantially lessen the environmental effects of such projects[.]" To that end, the CEQA Guidelines, at section 15126.6, require a good-faith analysis of alternatives to a proposed project, with a reasoned analysis of why alternatives were rejected. The analysis is based on a "rule of reason," set out in the CEQA Guidelines at section 15126.6, subd. (a). The rule of reason "requires the EIR to set forth only those alternatives necessary to permit a reasoned choice" and to "examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project." (*In re Bay Delta etc*. (2008) 43 Cal.4th 1143, 1163, citing CEQA Guidelines § 15126.6, subd. (f).) Like all portions of the CEQA process, alternatives analysis imposes a duty of good faith on the agency proposing to approve the project at issue.

Here, the SEIR has artificially stacked the deck against an off-site alternative, and therefore has not conducted a reasonable, good faith analysis of alternatives to the proposed Project. This lack of reasonableness and good faith begins with the listing of Objectives the Project is intended to meet. The third Objective listed in the SEIR is:

Provide an assisted living facility in walking distance from the St. John Garabed Armenian Church. (Fundamental project objective.)

(SEIR, pp. 3-2, 9-3.) This Objective means that a fundamental purpose of the Project is to have the facility at a very short distance from the existing church. It is also unclear how the SEIR measures walking distance. Regardless, this Objective renders the range of alternatives unduly and unreasonably narrow.

A critical purpose of presenting alternatives to the proposed project is to allow informed and reasoned decision making. As *California Native Plant Society v. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, at 980-981, characterizes it:

> An EIR's discussion of alternatives must contain analysis sufficient to allow informed decision making. It also "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" thereby

> fostering "meaningful participation and criticism by the public." (Citations omitted.)

In order to provide this level of information, the SEIR here should provide a reasoned justification for the decision to list the extreme proximity of the assisted living facility to the church as a "fundamental objective" of the Project. It does not. *No* reasons are provided for the importance placed on this objective, yet it is used as one of two objectives whose failure to be met supposedly justifies the elimination of *any* offsite location for the facility as an alternative to the Project as proposed. (SEIR, p. 9-4.) The reasons behind locating the facility right next to the church, rather than close to doctors, hospitals, rehabilitation facilities, or urban amenities that the non-memory-care residents of the facility might enjoy, should be explained. Such an explanation is needed in order for the decision makers and the public to "consider meaningfully" the setting of a Project objective in a way that appears to preclude the Project's placement in an area with whose zoning it would be consistent, and appears to limit its placement to an area with multiple environmental sensitivities, and where the electorate did not allow it to be placed (see elsewhere in these comments).

The SEIR argues that any off-site location for the assisted living facility would not actually avoid the environmental impacts, it would only transfer the environmental impacts to another site. (SEIR, p. 9-4.) However, a location for the facility that is outside the highly sensitive land where it is now proposed would avoid the land use conflict discussed elsewhere in these comments, which is the main impact the SEIR recognizes. The Project on another site could then use similar noise reduction mitigation measures as used in the SEIR now, mitigation measures that the SEIR finds would reduce the noise impacts to less than significant levels. The SEIR does not present any valid justification for refusing to consider such an off-site alternative.

The SEIR also frustrates meaningful consideration of alternatives by misapplying the main purpose of the Alternatives section. Consideration of alternatives is intended to avoid significant environmental impacts. (Public Resources Code § 21002.) Yet, the SEIR identifies as alternatives two scaled-back versions of the Project, namely the Sensitive Nesting Bird Construction Noise Avoidance Alternative (two-thirds reduction

in facility capacity) and the Construction Noise Avoidance Alternative (16% reduction in facility capacity) that do not fit the definition of a proper alternative. An alternative project should result in avoiding a significant environmental impact. Yet, the SEIR emphasizes that neither of these alternatives will avoid a significant environmental impact from the assisted living facility, because mitigation measures proposed as part of the proposed Project would reduce all Project noise to a less than significant level, i.e., there is no significant impact to avoid. (See SEIR, pp. 9-11 and 9-13.) These are false alternatives that mask the absence of a true alternative, namely one that would avoid the Project's conflict with the land use restrictions placed by the electorate and the City on the parcel, by locating the facility elsewhere.

The SEIR's consideration of Alternatives does not comply with CEQA, and must be redone.

V. Conclusion

For all of the reasons set forth above, SDRCA strongly urges the City to reject this SEIR as the Project conflicts with the clear and mandatory protections of Proposition A. SDRCA finds the SEIR to be wholly inadequate. If this Project does move forward as proposed, which we urge the City not to allow, a revised SEIR must be recirculated to address the many failings described herein.

Additionally, we ask that you inform us of any future Project notices pursuant to Public Resources Code section 21092.2 and applicable Municipal Code requirements. We further request that you retain all Project related documents including correspondence and email communications as required by CEQA. (*Golden Door Properties, LLC v. Superior Court of San Diego County* (2020) 52 Cal.App.5th 837 [agency "must retain writings"].)

Thank you for your time and consideration in this matter.

Sincerely,

Sunjana Supekar
Michelle Black
Susan Durbin

Attachments:

1. Expert Comments from Tom Brohard and Associates, dated June 19, 2023.
2. Maria L. La Ganga, California fire: If you stay, you're dead. How a Paradise nursing home evacuated, Los Angeles Times (Nov. 17, 2018) https://www.latimes.com/local/california/la-me-ln-nursing-home-fire-evac-20181117-story.html
3. Trial Court Decision, *PQ-NE Action Group vs. City of San Diego*, San Diego County Superior Court Case No. 37-2021-00033583-CU-TT-CTL.

ATTACHMENT 1

Tom Brohard and Associates

June 19, 2023

Mr. Doug Carstens
Carstens, Black & Minteer, LLP
2200 Pacific Coast Highway, Ste. 318
Hermosa Beach, CA 90254

SUBJECT: El Camino Real Assisted Living Facility Draft Subsequent EIR – Transportation Issues and Deficiencies

Dear Mr. Carstens:

Tom Brohard, P.E., has reviewed the transportation portions of the May 12, 2023, Draft Subsequent Environmental Impact Report (Draft SEIR) for the El Camino Real Assisted Living Facility Project in the City of San Diego. The proposed addition incorporates an assisted living facility into the St. John Garabed Armenian Church Project. The Project Description in the Draft SEIR states the assisted living facility proposes 104 assisted living beds and 20 memory care beds.

According to the September 15, 2014 Final EIR, the approved church project included a 350-seat church, a multi-purpose two-story hall with main assembly area to accommodate up to 500 persons, a two-story cultural and education facility with 10 classrooms for Sunday school, a youth center which includes an indoor basketball court, and 175 parking spaces for the Proposed Church Project. The Draft SEIR for the Assisted Living Facility indicates the Church has been constructed and it is operational. Current Google Earth photography indicates temporary buildings are in place for some church operations, and 95 parking spaces have been constructed (an additional 12 parking spaces exist but temporary buildings make these spaces unusable for vehicle parking).

Sections of the Draft SEIR for the Assisted Living Facility which I have reviewed include:

- ES - Executive Summary
- Chapter 1.0 - Introduction
- Chapter 3.0 - Project Description
- Chapter 5.8 – Transportation
- Appendix H.1 – Access Analysis (August 2021)
- Appendix H.2 – VMT Memo (November 10, 2022)

I have also reviewed portions of the September 15, 2014 Final EIR for the St. John Garabed Church Project including Chapter 3.0 – Project Description, and Chapter 5.8 – Transportation/Circulation and Parking.

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The following documents relating to the preparation of transportation studies in the City of San Diego have also been reviewed:

- February 20, 2020 Draft Transportation Study Manual (TSM)
- June 10, 2020 Draft Transportation Study Manual (TSM)
- September 19, 2022 Transportation Study Manual (TSM)

Education and Experience

Since receiving a Bachelor of Science in Engineering from Duke University in Durham, North Carolina in 1969, I have gained over 50 years of professional traffic engineering and transportation planning experience. I am licensed as a Professional Civil Engineer both in California and Hawaii and as a Professional Traffic Engineer in California. I formed Tom Brohard and Associates in 2000 and have served many diverse communities as the City Traffic Engineer and/or the Transportation Planner. During my career in both the public and private sectors, I have reviewed numerous environmental documents and traffic studies for various projects as shown in a brief summary of my experience in the enclosed resume.

Transportation Issues and Deficiencies

The May 12, 2023, the Draft Subsequent Environmental Impact Report (Draft SEIR) for the El Camino Real Assisted Living Facility Project requires revisions to correct several errors and omissions. Each of the following transportation issues must be fully addressed, analyzed, and revised before the City of San Diego acts on the Proposed Project:

1) City's Transportation Study Manual (TSM) Requirements Not Followed

Page 1 of Appendix H.1 Access Analysis August 2021 states "Based on the City of San Diego's new SB 743-compliant CEQA Significance Thresholds for Transportation implemented via the City of San Diego Transportation Study Manual (September 2020)..."

Draft TSM Reports dated February 20, 2020 and June 10, 2020 were issued by the City of San Diego, with the current final report dated September 19, 2022. I could not find any September 2020 TSM report issued by the City of San Diego as referenced in the Access Analysis.

Each of the three TSM Reports that I reviewed requires that the City of San Diego approve the Project Information Form (PIF), and that the approved PIF be included in the Project's Transportation Study Appendix. The PIF in the

Appendix to the Access Analysis does not indicate that the City of San Diego reviewed and approved or required revisions. The PIF also was not signed and stamped as required by a Registered Traffic Engineer in California.

None of the three City TSM Reports indicate traffic counts made on Thursday, February 23, 2012, for the St. John Garabed Armenian Church traffic study could be factored up to estimate traffic volumes used in analyses of existing or future conditions. Instead of factoring, each of the City TSM Reports state:

- "New transportation data is required if available data is older than two years..."

  Counts used in the Access Analysis were made in 2012, 11 years ago

- "For areas near beaches, counts should be taken during summer months (between Memorial Day and Labor Day when schools are <u>not</u> in session) or should be adjusted to reflect typical summer conditions."

  Counts used in the Access Analysis were made in the winter in February, not during the summer months. Instead, The City's TSM requires traffic volumes to be collected when local traffic volumes are influenced by beach traffic. In addition, traffic to and from the San Diego County Fair at the Del Mar Fairgrounds (daily in 2023 from June 7 through July 4) or during the horseracing season on Thursdays through Sundays at the Del Mar Racetrack (in 2023 from July 21 through September 10) should also be considered.

- "Any deviation should be discussed with City staff."

  No evidence is presented to indicate if City staff knew or approved of the approach used in the Access Analysis in Appendix H-1 to factor up 11-year-old counts

The Access Analysis factored up traffic volumes measured in 2012 to forecast current traffic volumes and also factored up 2016 forecast traffic volumes to establish future volumes for analysis. If the City of San Diego approved of the factoring that was done, then formal concurrence of that approach should have been given and shown in Appendix H-1. Without proof of City concurrence, using factored volumes cannot be relied upon and/or utilized to reach engineering decisions in the Access Analysis.

2) <u>Trip Generation Forecasts for Assisted Living Are Unrealistically Low</u>

Page 8 of the Access Analysis relies upon trip generation developed by the City of San Diego prior to May 2003, more than 20 years ago. Table 3.1 in the

Project Description in the Draft SEIR provides project trip generation forecasts for 87 dwelling units proposed for congregate care and for 20 beds for convalescent/nursing.

The trip generation rates used for congregate care in the Draft SEIR are incorrectly based on dwelling units rather than the number of beds. Page 3-3 of the Project Description states "The proposed 105 units would include 87 assisted living units and 18 memory care units. A total of 124 beds would be provided, including 104 assisted living beds and 20 memory care beds."

I have calculated weekday daily trips for the proposed project based upon data published by the Institute of Transportation Engineers (ITE) in their September 2021 Trip Generation Manual, 11th Edition. As shown on the enclosures, the average weekday trip generation rate per bed for Land Use 254, Assisted Living, is 2.60 trips per weekday. With 104 assisted living beds in the Proposed Project, 270 daily weekday trips will be generated. With 20 memory care beds in the Proposed Project, ITE Land Use 620, Nursing Home, is the closest comparable land use and would generate 3.06 weekday daily trips per bed, 61 weekday daily trips for the memory care portion of the Proposed Project. Using the most recently available data provided by ITE, the Proposed Project can be expected to generate 331 weekday daily trips.

With 331 weekday daily trips, the September 19, 2022 City of San Diego Transportation Study Manual (TSM) Transportation Analysis Scoping Flowchart on Page 12 requires both a Transportation VMT CEQA Analysis as well as a Local Mobility Analysis, with neither of these analyses being screened out. The Local Mobility Analysis in the Draft SEIR contains many errors as indicated throughout this letter, and Appendix H-2 (Transportation VMT CEQA) analysis was not conducted according to the City's TSM.

3) Church and Assisted Living Project Parking Must Be Analyzed Together

Table 5.8-12 on Page 5.8-11 of the Final EIR for the Church provides parking rates and peak parking demand individually for the Church, Assembly Hall, Church offices, cultural center classrooms, cultural center office, and youth center. With 500 portable seats and assuming three persons per vehicle for the Assembly Hall, the overall peak parking demand is shown as 165 vehicles on a Saturday afternoon. At the same time, Table 5.8-12 shows there will be no parking demand created by any of the other buildings or uses during Saturday afternoons.

It is unreasonable and illogical to assume that there will be no parking demand created by any of the other uses during Saturday afternoons. In addition, the Sunday parking totals for both the morning and the afternoon are incorrectly added – these should total 12 parking spaces used on Sunday

morning and 158 parking spaces used on Sunday afternoon. Furthermore, the parking demands have not been accompanied by a schedule showing all of the planned events for the approved Church plus auxiliary buildings.

After correcting the existing errors in Table 5.8-12 to properly show the parking demand, it must be adjusted to match the schedule of events for each of the buildings including the Assembly Hall, Church offices, cultural center classrooms, cultural center office, and youth center. Parking calculations for the Assisted Living Project Facility result in the need for 57 parking spaces according to Page 3-4 of the SEIR. These spaces, together with the 175 parking spaces required for the Church Project FEIR, result in a total of 232 required parking spaces for the campus as planned but without consideration for schedule overlaps of the buildings.

Only 107 parking spaces have been built, and 12 of those parking spaces are currently occupied with temporary buildings (and unusable). The Church Project plus the proposed Assisted Living Facility must be evaluated with the planned schedules for the individual building uses to make sure the overall peak parking demand will be met.

4) <u>Church and Assisted Living Project Traffic Must Be Analyzed Together</u>

The Draft SEIR for the Assisted Living Project states the Access Analysis has been prepared to review conditions on El Camino Real at the church driveway, an intersection that was not evaluated in the 2014 Final EIR. This driveway provides a single right turn only lane from northbound El Camino Real into the church driveway after a short deceleration lane as well as a single right turn only exit lane from the Church into a single acceleration lane.

The existing continuous raised median on El Camino Real requires all traffic to enter the church from the south, with southbound traffic passing the church on El Camino Real, making a U-turn at the traffic signal at Sea Country Lane, and then traveling northbound on El Camino Real to the deceleration lane followed by a right turn into the church property. All traffic leaving the church property must always travel northbound on El Camino Real to the traffic signal at San Dieguito Road, with traffic heading south to the City of San Diego after making a U-turn there.

The Church Project approved in 2014 included a 350-seat church and three auxiliary buildings. The Draft SEIR for the Assisted Living Project indicates that the 350-seat church has been constructed and is operational. In my review of Google-Earth photography dated June 2023, I confirmed that the church building has been constructed together with 107 parking spaces. Three temporary buildings have also been constructed, with one of those buildings occupying 12 parking spaces in the parking lot for the church.

The Transportation/Circulation and Parking chapter of the 2014 Final EIR provides limited information regarding trips and parking, and it lacks the detail needed to provide proper analyses of these topics. The listing of facilities in the Final EIR for the Church does not acknowledge that several buildings will be in use at the same time (i.e., Church, Sunday School, and children's programs). In fact, just the opposite assumptions have been made, particularly in regard to parking at the site where no overlapping attendance has been assumed. At this time, there are no limitations on concurrent use of traffic, parking, and loading/unloading facilities which may dramatically overload the driveway access as well as the parking facilities without even considering the incremental increase in traffic and parking for the Assisted Living Facility.

Details are needed from the Church to evaluate the traffic volumes and parking associated with the initial and future construction as well as the combined impacts of the 2014 Final EIR with the Draft SEIR on the access driveway and on the adjacent signalized intersections including these:

- Current and planned church schedules with gap time between services to facilitate reuse of parking stalls
- Concurrent planned activities with church services such as Bible study, Sunday school, children's programs, etc.
- Real data to support person and vehicle occupancy for the church services and other activities
- Number of drop-offs and pick-ups associated with the start and conclusion of regular worship services as well as other regular events
- Special events such as lunches, dinners, and other gatherings, together with attendance and schedules of these events

The Access Analysis must be revised to consider these factors for the Church as approved in 2014 together with the Proposed Assisted Living Project.

4) <u>Intersection Analyses Must Be Reanalyzed with Both Projects</u>

The Access Analysis must be expanded to include these additional topics and to analyze and mitigate them using accepted traffic engineering and transportation planning practices:

a) <u>Stopping Sight Distance</u> - Stopping sight distance at the Church driveway and El Camino Real has not been reviewed or analyzed. The driveway is located within a northbound downgrade of about 2 percent on

the inside of a superelevated horizontal curve between Sea Country Lane and the Church driveway. Adjacent embankments on both sides of the driveway further limit stopping sight distance at this intersection.

The 7th Edition of A Policy on Geometric Design of Highways and Streets 2018 The Green Book published by the American Association of State Highway and Transportation Officials (AASHTO) is the definitive resource of stopping sight distance. This publication is used by Caltrans as well as all local jurisdictions in California. Traffic engineers and transportation planners understand that stopping sight distance is based upon the design speed of the roadway under review, a speed which is typically 10 MPH higher than the posted speed limit. With a posted speed limit of 50 MPH, a design speed of 60 MPH must be used to evaluate the Church driveway for adequate stopping sight distance. Stopping sight distance for a 60 MPH design speed is 570 feet as shown in Table 3-1 on Page 3-4, Stopping Sight Distance on Level Roadways, in the Green Book.

Traffic speeds on northbound El Camino Real are higher than the posted 50 MPH speed limit for these reasons:

- Based on roadway elevations available from USGS National Map viewer (https://apps.nationalmap.gov/viewer/), northbound El Camino Real has a downgrade of about 6 percent between Derby Downs Road and Sea Country Road (the roadway elevation decreases by about 120 feet in the 2,000-foot distance). The roadway downgrade then decreases to about 2 percent between Sea Country Road and the Church driveway as the roadway elevation decreases by about 30 feet in this 1,600-foot distance.

- The horizontal curve on El Camino Real between Sea Country Road and the Church driveway is superelevated and banked like you would encounter on a vehicle racetrack. This design is commonly used on freeways and high-speed expressways, but is not usually used on City streets as it allows and encourages higher speeds

- Northbound motorists on El Camino Real approaching the church driveway typically exceed the posted 50 MPH speed limit with the roadway downslope of 6 percent transitioning into flatter 2 percent plus the superelevation. In one of the current Google Earth ground level photographs, a vehicle speed feedback sign was positioned in the raised median in the horizontal curve to remind motorists of their speeds, an indication that the City of San Diego recognized the issue of speeding downhill traffic. However, this temporary speed feedback sign will not decrease the speed of northbound vehicles as speeds tend to increase back to before the feedback sign after 600 feet

beyond the sign. Hill warning symbol signs for vehicles and/or bicyclists at the beginning of the downgrade near Derby Downs Road should be considered and the wide vehicle lanes should be narrowed.

The 140-foot-long right turn lane constructed as required as a Project Design Feature in the 2014 FEIR on northbound El Camino Real for the Church driveway is not sufficient to provide proper deceleration out of the travel lanes as well as appropriate stopping sight distance for the 60 MPH design speed of the roadway. From Google Earth ground level photography, stopping sight distance of northbound traffic in the outside lane of El Camino Real from a driver's eye located 10 feet before the limit line on the Church driveway is about 360 feet. This distance equates to a speed of 45 MPH for northbound El Camino Real, a distance that is insufficient for the design speed of 60 MPH as well as for the posted speed limit of 50 MPH.

To correct these conditions and to accommodate vehicle/vehicle and vehicle/bicycle weaving, the right turn lane must be lengthened to accommodate deceleration out of the through travel lanes and the embankment on the south side of the Church driveway must be graded down and back to provide at least the required 570 feet of stopping sight distance at this location. Landscaping in the sight distance triangle must also be limited and restricted to no more than 24 inches in height.

Extension of the deceleration areas and transitions into the left turn lanes are required to address conflicting weaving movements between vehicles and bicyclists. With the identified improvements, rear-end and side-swipe collisions at high speeds between bicyclists and vehicles can be avoided.

b) **Bicycle Facilities on El Camino Real Should Be Enhanced** – The Draft SEIR requires that the Assisted Living Project contain twelve short term and four long term bicycle parking spaces. The residents of this facility will use bicycles to travel among the buildings within the Church site and on El Camino Real. I also understand that bicycle riders on El Camino Real often travel in groups at moderately high speeds of 35 MPH or more. Except where the deceleration and acceleration lanes have been constructed adjacent to the church, vehicle travel lanes are very wide on both sides of El Camino Real. These 12' to 16' wide vehicle lanes encourage excessive vehicle speeds, particularly on the downhill grade through the horizontal curve. To enhance safety for bicyclists, El Camino Real should be restriped to provide Class IV protected bicycle lanes with a 4' or wider painted buffer between the bicycle lanes and the outside vehicle travel lanes.

c) **All Vehicle Travel for the Proposed Project Requires U-Turns** – Vehicle and bicycle crossings from the Proposed Project to southbound El Camino Real require entering the northbound acceleration lane, crossing two high speed northbound through lanes, entering the northbound left turn lane at the traffic signal at San Dieguito Road, and making a U-turn with the green arrow. Similarly, southbound vehicle and bicycle traffic on El Camino Real is required to pass the church driveway, merge left across two high speed through lanes, enter the left turn lane at Sea Country Lane, make a U-turn, and travel northbound to reach the Church driveway. Each of these maneuvers requires extreme caution and care, particularly under the high speeds that will be encountered in both directions on El Camino Real to reach the inside left turn lanes for U-turns.

d) **Left Turn/U-Turn Lane Lengths at Traffic Signals Are Too Short** – All vehicles accessing the church property are required to make a U-turn as described above to arrive at or leave the Church. The raised median on El Camino Real at San Dieguito Road has a 120-foot-long reverse taper that then enters into a 150-foot-long U-turn lane. The total distance required to stop from the posted 50 MPH speed limit is 425 feet which significantly exceeds the existing length available to slow and stop before U-turning. Accepted traffic engineering practice requires that all deceleration and stopping must occur within the left turn/U-turn lane rather than in the inside through lane, requiring an extension of the left turn/U-turn lane of a minimum of 275 feet. At the same time, the reverse taper leading into the turning lane should also be extended to 150 feet for smoother and safer entry at the posted 50 MPH speed limit. Without lengthening the reverse taper and the left turn/U-turn lane, vehicles will overflow into the inside through lane, resulting in an increase in rear end collisions.

Similar conditions exist and require correction on El Camino Real at Sea Country Lane that serves the Stallion's Crossing residential development. The raised median on El Camino Real at Sea Country Lane has a 90-foot-long reverse taper that enters into a 180-foot-long U-turn lane. The total distance required to stop from the posted 50 MPH speed limit is 425 feet which significantly exceeds the existing length available to slow and stop before U-turning. Accepted traffic engineering practice requires that all deceleration and stopping must occur within the left turn/U-turn lane rather than in the inside through lane, requiring an extension of the left turn/U-turn lane of a minimum of 245 feet. The reverse taper into the turning lane should also be extended to 150 feet for smoother and safer entry. Without lengthening the reverse taper and the left turn/U-turn lane, vehicles will overflow into the inside through lane, resulting in an increase in rear end collisions.

5) Transportation Vehicle Miles Traveled (VMT) CEQA Analysis Is Required

Appendix H-2 provides a November 10, 2022 memorandum prepared by C R Associates regarding expected vehicle miles traveled (VMT) by the project. This memo and portions of the SEIR rely on trip generation of the project being less than 300 trips per day. As discussed above, I believe the Assisted Living Project daily trip generation will be at least 331 weekday daily trips.

The Transportation Analysis Scoping Flowchart on Page 12 of the September 19, 2022 City of San Diego Transportation Study Manual (published and effective about 2 months prior to Appendix H-2) requires that a Transportation VMT CEQA Analysis be prepared if more than 300 daily trips will be generated. As indicated above, the El Camino Real Assisted Living Project will generate at least 331 weekday daily trips and this analysis is required. Typically, mitigation measures must also be incorporated into the Proposed Project to reduce the vehicle miles traveled by at least 15 percent.

6) Emergency Evacuation and Service Plan Is Required

Legislation has been drafted (SB-571) to require evaluation of emergency evacuation and preparation of a supporting plan. This is a two-year Senate Bill and will be considered next year. With the Proposed Project site located in an extremely high fire area subject to high winds, an emergency evacuation plan must be prepared and monitored for the safety of the residents, guests, and employees of the El Camino Real Assisted Living Facility.

Details must be provided that demonstrate how the 24-foot-wide, two-way aisle through the parking lot at St. John Garabed Armenian Church will remain open and available during emergency conditions, and for paramedics and ambulance services at all times to the Assisted Living Facility.

Conclusions

There are significant deficiencies in the El Camino Real Assisted Living Facility Draft SEIR. These omissions and errors summarized and detailed throughout this letter require that each of these issues and items be reanalyzed and reevaluated through additional study before the Proposed Project is considered further by the City of San Diego.

If you have questions regarding these comments, please contact me at your convenience.

Respectfully submitted,

Tom Brohard and Associates

Tom Brohard, PE
Principal

Enclosures

- Resume
- Trip Generation Manual, 11th Edition, published by the Institute of Transportation Engineers (ITE), September 2021 – Land Uses
- A Policy on Geometric Design of Highways and Streets 2018 The Green Book, 7th Edition, published by the American Association of State Highway and Transportation Officials (AASHTO) – Table 3-1

Tom Brohard, PE

Licenses: 1975 / Professional Engineer / California – Civil, No. 24577
1977 / Professional Engineer / California – Traffic, No. 724
2006 / Professional Engineer / Hawaii – Civil, No. 12321

Education: 1969 / BSE / Civil Engineering / Duke University

Experience: 50+ Years

Memberships: 1977 / Institute of Transportation Engineers – Fellow, Life
1978 / Orange County Traffic Engineers Council - Chair 1982-1983
1981 / American Public Works Association – Life Member

Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

Tom has extensive experience in providing transportation planning and traffic engineering services to public agencies. In addition to conducting traffic engineering investigations for Los Angeles County from 1972 to 1978, he has previously served as City Traffic Engineer in the following communities:

- Bellflower ..... 1997 - 1998
- Bell Gardens ..... 1982 - 1995
- Big Bear Lake ..... 2006 - 2015
- Indio ..... 2005 - 2019
- Huntington Beach ..... 1998 - 2004
- Lawndale ..... 1973 - 1978
- Los Alamitos ..... 1981 - 1982
- Oceanside ..... 1981 - 1982
- Paramount ..... 1982 - 1988
- Rancho Palos Verdes ..... 1973 - 1978
- Rolling Hills ..... 1973 - 1978, 1985 - 1993
- Rolling Hills Estates ..... 1973 - 1978, 1984 - 1991
- San Fernando ..... 2004 - Present
- San Marcos 1981
- Santa Ana ..... 1978 - 1981
- Westlake Village ..... 1983 - 1994

During these assignments, Tom has supervised City staff and directed other consultants including traffic engineers and transportation planners, traffic signal and street lighting personnel, and signing, striping, and marking crews. He has secured over $10 million in grant funding for various improvements. He has managed and directed many traffic and transportation studies and projects. While serving these communities, he has personally conducted investigations of hundreds of citizen requests for various traffic control devices. Tom has also successfully presented numerous engineering reports at City Council, Planning Commission, and Traffic Commission meetings in these and other municipalities.

In his 14 years of service to the City of Indio, Tom accomplished the following:

- Oversaw preparation and adoption of the 2008 Circulation Element Update of the General Plan including development of Year 2035 buildout traffic volumes, revised and simplified arterial roadway cross sections, and reduction in acceptable Level of Service criteria under certain conditions.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Jackson Street and on Monroe Street over I-10 as well as justifications for protected-permissive left turn phasing at I-10 on-ramps, the first such installations in Caltrans District 8 in Riverside County; reviewed plans and provided assistance during construction of both $2 million projects to install traffic signals and widen three of four ramps at these two interchanges under Caltrans encroachment permits.

- Reviewed traffic signal, signing, striping, and work area traffic control plans for the County's $45 million I-10 Interchange Improvement Project at Jefferson Street.

- Reviewed traffic impact analyses for Project Study Reports evaluating different alternatives for buildout improvements of the I-10 Interchanges at Jefferson Street, Monroe Street, Jackson Street and Golf Center Parkway.

- Oversaw preparation of plans, specifications, and contract documents and provided construction assistance for over 70 traffic signal installations and modifications.

- Reviewed and approved over 2,000 work area traffic control plans as well as signing and striping plans for all City and developer funded roadway improvement projects.

- Oversaw preparation of a City-wide traffic safety study of conditions at all schools.

- Obtained $47,000 grant from the California Office of Traffic Safety and implemented the City's Traffic Collision Database System. Annually reviews "Top 25" collision locations and provides traffic engineering recommendations to reduce collisions.

- Prepared over 1,500 work orders directing City forces to install, modify, and/or remove traffic signs, pavement and curb markings, and roadway striping.

- Oversaw preparation of engineering and traffic surveys to establish enforceable speed limits on over 500 street segments.

- Reviewed and approved traffic impact studies for more than 35 major projects and special events including the annual Coachella and Stagecoach Music Festivals.

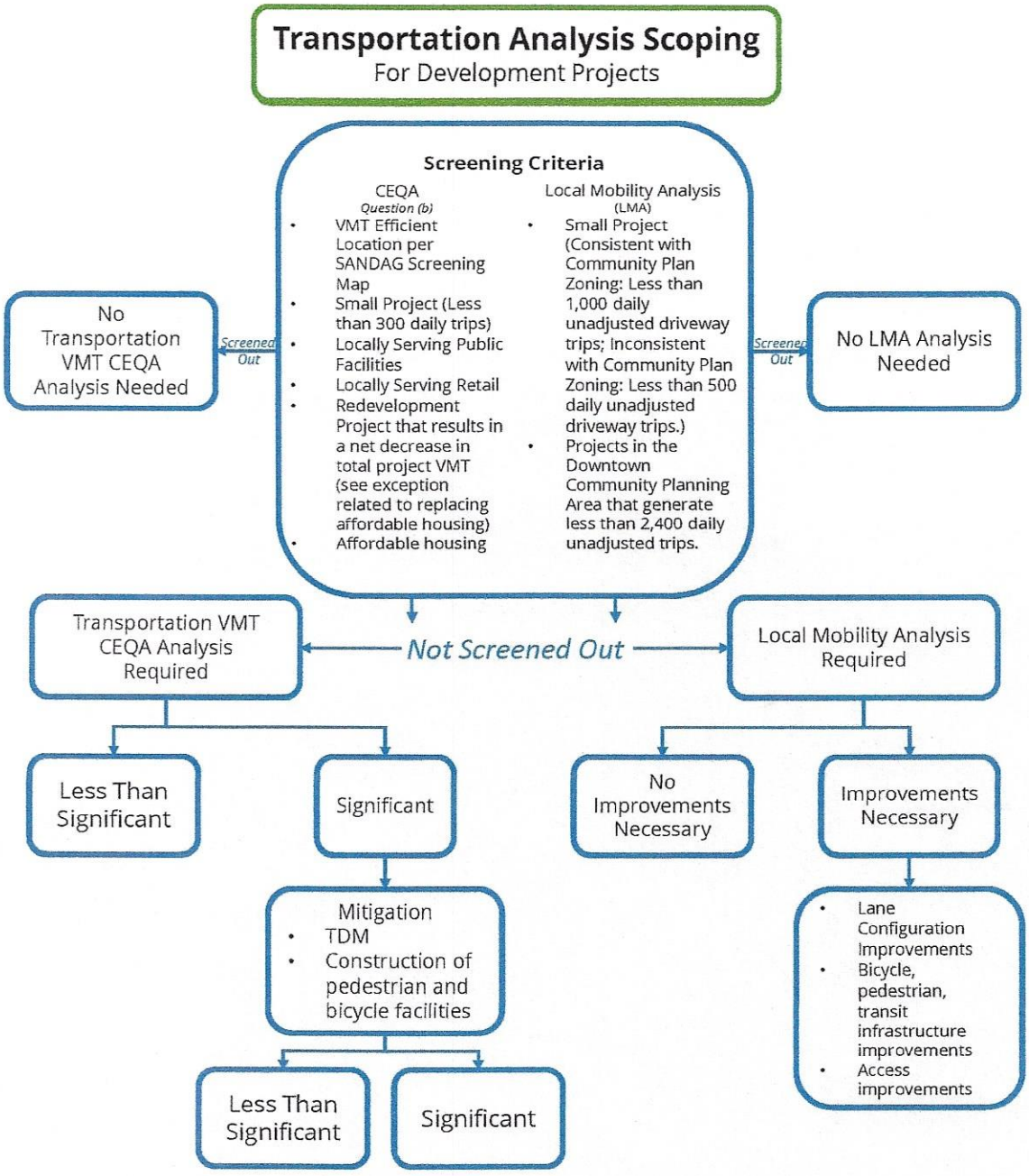
- Developed and implemented the City's Golf Cart Transportation Program.

Since forming Tom Brohard and Associates in 2000, Tom has reviewed many traffic impact reports and environmental documents for various development projects. He has provided expert witness services and also prepared traffic studies for public agencies and private sector clients.

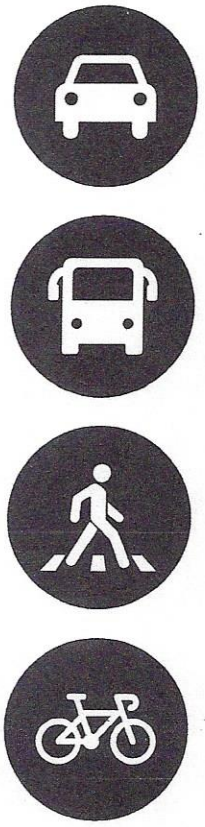
The City of SAN DIEGO

Transportation Study Manual (TSM)

DATE: 09/19/2022



* City staff may request analysis or additional study requirements due to location, project complexity, local transportation system complexity, or other local context despite meeting the screening criteria listed in the flow chart.



ite
A Community of Transportation Professionals

Trip Generation Manual

11th Edition • Volume 3

General Urban/Suburban and Rural (Land Uses 000–399)

Institute of Transportation Engineers
September 2021

Land Use: 254
Assisted Living

Description

An assisted living complex is a residential setting that provides either routine general protective oversight or assistance with activities necessary for independent living to persons with mental or physical limitations. The typical resident has difficulty managing in an independent living arrangement but does not require nursing home care. Its centralized services typically include dining, housekeeping, social and physical activities, medication administration, and communal transportation.

The complex commonly provides separate living quarters for each resident. Alzheimer's and ALS care are commonly offered at an assisted living facility. Living quarters for these patients may be located separately from the other residents.

Assisted care commonly bridges the gap between independent living and a nursing home. In some areas of the country, an assisted living residence may be called personal care, residential care, or domiciliary care. Staff may be available at an assisted care facility 24 hours a day, but skilled medical care—which is limited in nature—is not required. Congregate care facility (Land Use 253), continuing care retirement community (Land Use 255), and nursing home (Land Use 620) are related uses.

Additional Data

The technical appendices provide supporting information on time-of-day distributions for this land use. The appendices can be accessed through either the ITETripGen web app or the trip generation resource page on the ITE website (https://www.ite.org/technical-resources/topics/trip-and-parking-generation/).

The sites were surveyed in the 1980s, the 1990s, the 2000s, and the 2010s in Connecticut, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, and Utah.

Source Numbers

244, 573, 581, 611, 725, 876, 877, 912, 1016, 1029

Assisted Living
(254)

Vehicle Trip Ends vs: Beds
On a: Weekday

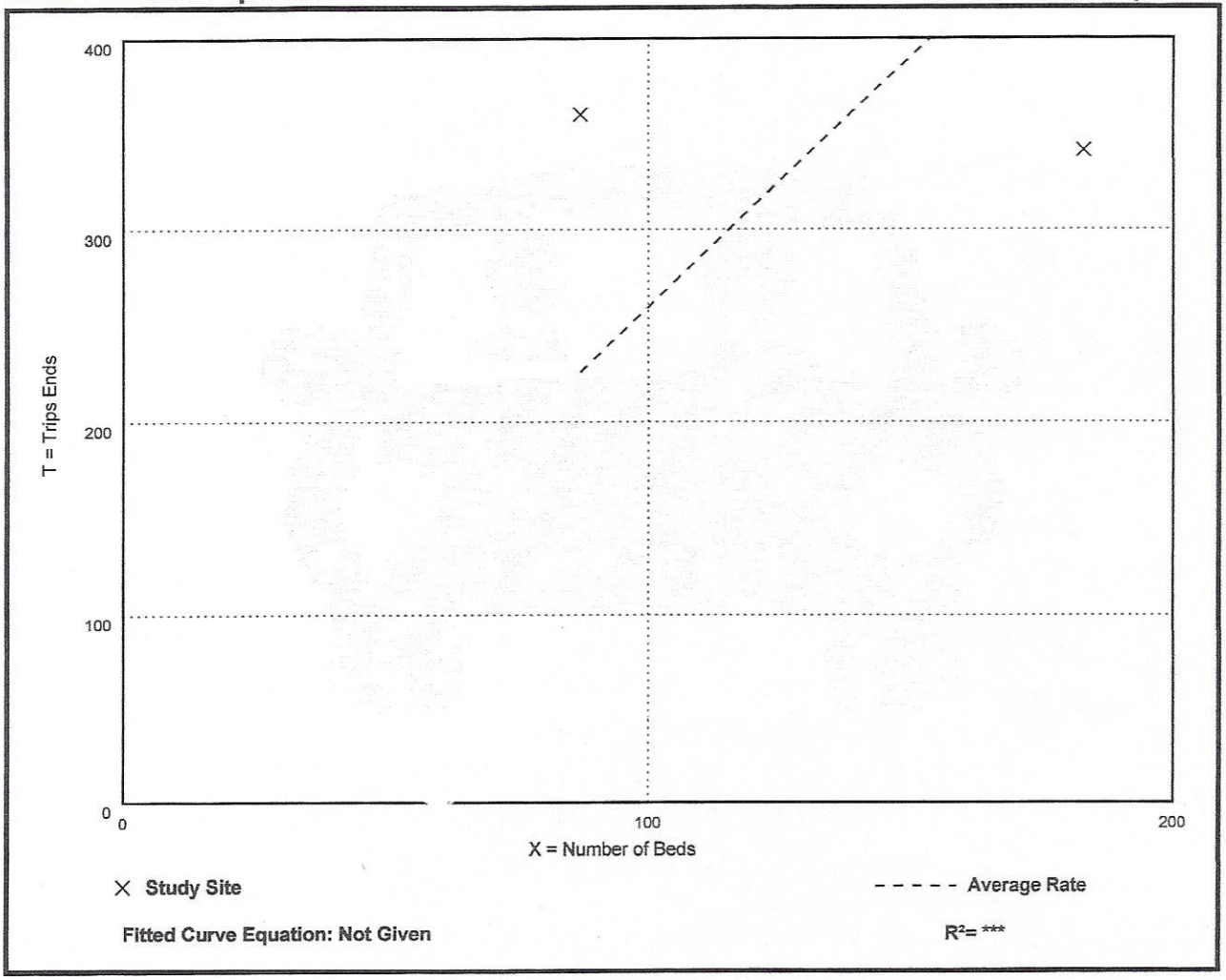
Setting/Location: General Urban/Suburban
Number of Studies: 2
Avg. Num. of Beds: 135
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
2.60	1.86 - 4.14	***

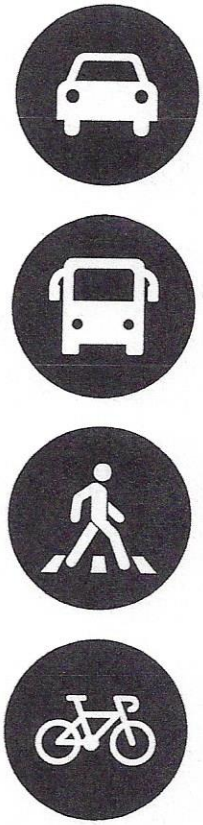
Data Plot and Equation

Caution – Small Sample Size



Fitted Curve Equation: Not Given

R^2= ***



ite
A Community of Transportation Professionals

Trip Generation Manual

11th Edition • Volume 4

General Urban/Suburban and Rural (Land Uses 400–799)

Institute of Transportation Engineers
September 2021

Land Use: 620
Nursing Home

Description

A nursing home is a facility whose primary function is to provide care for persons who are unable to care for themselves. Examples include rest homes, chronic care, and convalescent homes. Skilled nurses and nursing aides are present 24 hours a day at these sites. Residents often require treatment from a registered healthcare professional for ongoing medical issues. A nursing home resident is not capable of operating a vehicle. Traffic is entirely generated by employees, visitors, and deliveries. Assisted living (Land Use 254) and continuing care retirement community (Land Use 255) are related uses.

Additional Data

The technical appendices provide supporting information on time-of-day distributions for this land use. The appendices can be accessed through either the ITETripGen web app or the trip generation resource page on the ITE website (https://www.ite.org/technical-resources/topics/trip-and-parking-generation/).

The average numbers of person trips per vehicle trip at the three general urban/suburban sites at which both person trip and vehicle trip data were collected were as follows:

- 1.0 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 7 and 9 a.m.
- 1.1 during Weekday, AM Peak Hour of Generator
- 1.5 during Weekday, PM Peak Hour of Generator

The sites were surveyed in the 1980s, the 1990s, the 2000s, and the 2010s in Alberta (CAN), Florida, New Hampshire, New Jersey, New York, Ontario, Canada, and Texas.

Source Numbers

436, 502, 598, 734, 878, 971, 972

Nursing Home
(620)

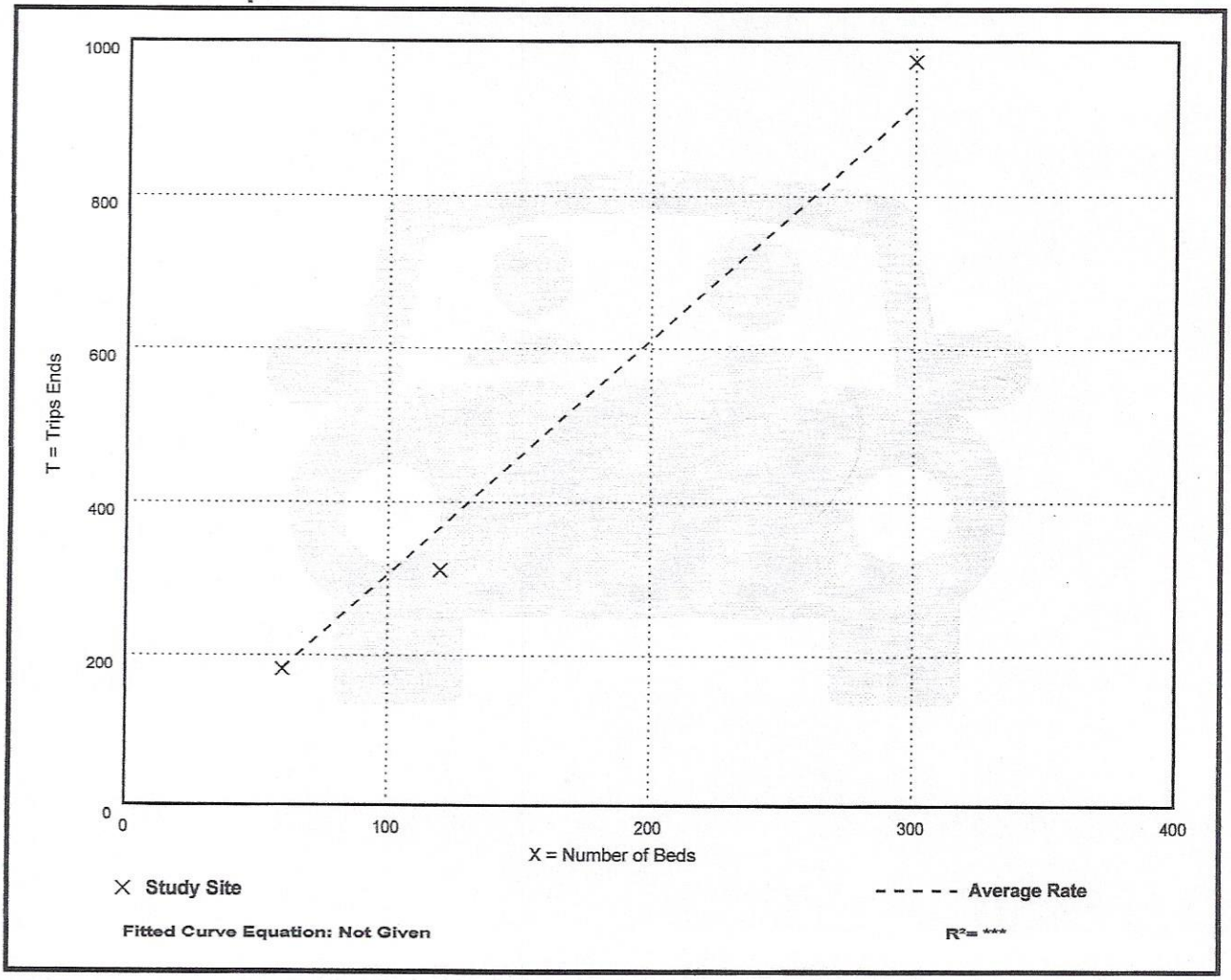
Vehicle Trip Ends vs: Beds
On a: Weekday

Setting/Location: General Urban/Suburban
Number of Studies: 3
Avg. Num. of Beds: 160
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
3.06	2.60 - 3.25	0.33

Data Plot and Equation

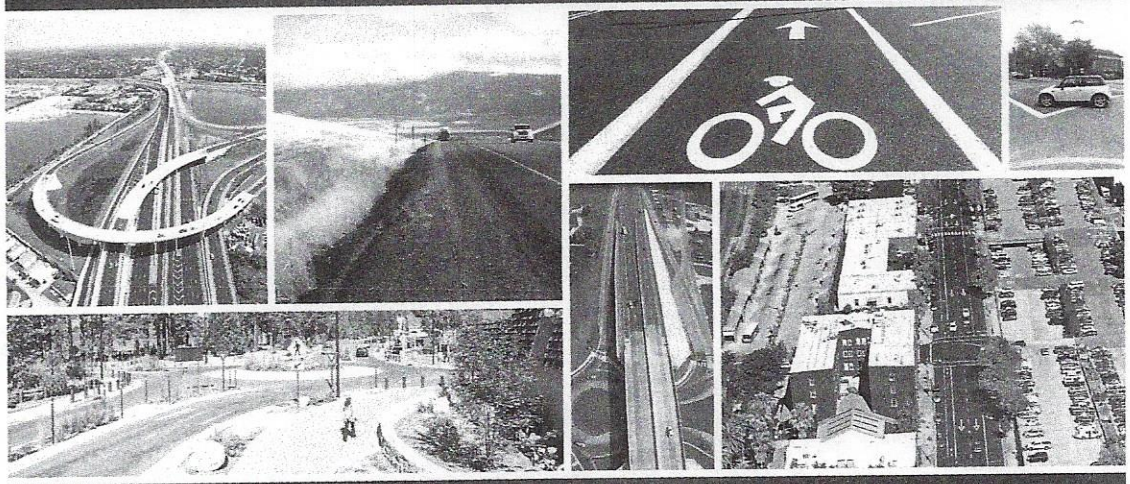


American Association of State Highway and Transportation Officials

AASHTO

A Policy on Geometric Design of Highways and Streets

2018
7th Edition



THE GREEN BOOK

U.S. Customary	Metric
$d_B = 1.075 \frac{V^2}{a}$ (3-1)	$d_B = 0.039 \frac{V^2}{a}$ (3-1)
where:	where:
d_B = braking distance, ft	d_B = braking distance, m
V = design speed, mph	V = design speed, km/h
a = deceleration rate, ft/s²	a = deceleration rate, m/s²

Studies documented in the literature (*19*) show that most drivers decelerate at a rate greater than 14.8 ft/s² [4.5 m/s²] when confronted with the need to stop for an unexpected object in the roadway. Approximately 90 percent of all drivers decelerate at rates greater than 11.2 ft/s² [3.4 m/s²]. Such decelerations are within the driver's capability to stay within his or her lane and maintain steering control during the braking maneuver on wet surfaces. Therefore, 11.2 ft/s² [3.4 m/s²] (a comfortable deceleration for most drivers) is recommended as the deceleration threshold for determining stopping sight distance. Implicit in the choice of this deceleration threshold is the assessment that most vehicle braking systems and the tire-pavement friction levels of most roadways are capable of providing a deceleration rate of at least 11.2 ft/s² [3.4 m/s²]. The friction available on most wet pavement surfaces and the capabilities of most vehicle braking systems can provide braking friction that exceeds this deceleration rate.

Table 3-1. Stopping Sight Distance on Level Roadways

U.S. Customary				
Design Speed (mph)	Brake Reaction Distance (ft)	Braking Distance on Level (ft)	Stopping Sight Distance	
			Calculated (ft)	Design (ft)
15	55.1	21.6	76.7	80
20	73.5	38.4	111.9	115
25	91.9	60.0	151.9	155
30	110.3	86.4	196.7	200
35	128.6	117.6	246.2	250
40	147.0	153.6	300.6	305
45	165.4	194.4	359.8	360
50	183.8	240.0	423.8	425
55	202.1	290.3	492.4	495
60	220.5	345.5	566.0	570
65	238.9	405.5	644.4	645
70	257.3	470.3	727.6	730
75	275.6	539.9	815.5	820
80	294.0	614.3	908.3	910
85	313.5	693.5	1007.0	1010

Metric				
Design Speed (km/h)	Brake Reaction Distance (m)	Braking Distance on Level (m)	Stopping Sight Distance	
			Calculated (m)	Design (m)
20	13.9	4.6	18.5	20
30	20.9	10.3	31.2	35
40	27.8	18.4	46.2	50
50	34.8	28.7	63.5	65
60	41.7	41.3	83.0	85
70	48.7	56.2	104.9	105
80	55.6	73.4	129.0	130
90	62.6	92.9	155.5	160
100	69.5	114.7	184.2	185
110	76.5	138.8	215.3	220
120	83.4	165.2	248.6	250
130	90.4	193.8	284.2	285
140	97.3	224.8	322.1	325

Note: Brake reaction distance predicated on a time of 2.5 s; deceleration rate of 11.2 ft/s² [3.4 m/s²] used to determine calculated sight distance.

ATTACHMENT 2

Los Angeles Times

CALIFORNIA

California fire: If you stay, you're dead. How a Paradise nursing home evacuated

The ruins of the Cypress Meadows Post-Accute skilled nursing facility. (Kent Nishimura / Los Angeles Times)

BY MARIA L. LA GANGA | STAFF WRITER

NOV. 17, 2018 4 AM PT

How do you evacuate a nursing home when the deadliest wildfire in California history is bearing down and there are 91 men and women to move to safety — patients in need of walkers or wheelchairs or confined to hospital beds, suffering from dementia, recovering from strokes?

The fire is coming fast. Help is not.

Staying at the Cypress Meadows Post-Acute center in Paradise is not an option. Sheltering in place means certain death for the 30 or so staff members on hand and the patients who rely on

them. A fleet of vans that might have helped ferry them to safety has been turned back because of the danger.

Sheila Craft, director of admissions and marketing at Cypress Meadows, has to find 91 beds within driving distance of this small town in the Sierra foothills. And she has to find them now.

LIVE UPDATES: The latest on the California fires »

On a typical day, there are waiting lists to get a bed at a skilled nursing home or memory care center or assisted living facility. This is not a typical day.

The fire starts about 6:30 a.m. Nov. 8, about eight miles of rugged terrain away from the nursing home. Craft sees smoke an hour later, while driving her four kids to school in this woodsy town where all of them were born.

She spots flames in the distance as she heads to Cypress Meadows.

By 7:45 a.m., she is at her desk, working the phones.

"I was calling every facility around, 'Hey, we're getting evacuated, this is happening, I don't know if you've watched the news, but how many beds do you have available?'" Craft said. "So they'd tell me, 'Four females and two males.' 'OK, I'm putting you down, I'll take 'em.' Then I called another facility, 'How many beds do you have available?' ...

"So, I've got one phone in this ear, calling, finding residents homes or beds, and the other phone in this ear with my 12-year-old seventh-grader standing in front of her gym with a plume of smoke, going, 'Mom, I have to be picked up. We're being evacuated.' I'm, 'OK, I'm gonna get somebody to you. You stay right there. Don't move.'"

By the time Olivia Drummond arrives at work at 8 a.m., Cypress Meadows is "in full evacuation mode," a process that is fraught even for the able-bodied gathering their own things and their own loved ones and leaving their own homes under their own steam.

The fire is growing.

The medical records director bags each patient's documents, paperwork that describes who they are, how to reach their next of kin, what drugs they should take, the care they will want when they are dying. A medication nurse bags each one's drugs. A certified nursing assistant puts together a change of clothes.

Patients are dressed and seated in wheelchairs. Bags with their drugs and clothes and paperwork are tied to the chair handles.

"We pulled them out of the rooms," said Drummond, Cypress Meadows' director of social services. "Our plan was to get the rooms emptied and close the door. Once the door was closed, we knew there was no resident in there."

That way, no one would be left behind as flames licked the rafters and made their way through the nursing home's wings.

The first 40 patients, the most ambulatory and easiest to move, head out about 9:30 a.m. Then comes an order to shelter in place. Patients who had been queued up in wheelchairs outside are rolled back into the dining area, away from the growing toxic smoke.

Just before 10 a.m., Drummond said, authorities arrive and say, "You gotta go." Staff members line up their cars to ferry patients out. The wheelchairs are abandoned.

Drummond helps her daughter, Sarah, a dietary technician at the home, load two patients into her Ford Focus. Sarah is 19. The last thing Drummond's husband tells her: "Don't separate from Sarah."

But on this terrible Thursday morning, she has no choice.

MORE: Track key details of the California wildfires »

Drummond is 4½ months pregnant. She had planned to take the passenger seat. But one of the patients needs it because she doesn't fit in back. And Drummond can't squeeze in either. So she sends the car down the hill.

Sarah will not be heard from for the next 10 hours. Her parents won't know if she and her passengers made it out alive.

Craft pulls her white Chevrolet Suburban to the Cypress Meadows entrance. She's not a nurse, so she will be driving patients who do not need complicated care. Two women and a man — one stroke victim, two with Alzheimer's disease.

They are headed to Roseleaf, a memory care facility in Chico, about 16 miles away, a 30-minute drive when the world's not ablaze. On this day, it will take nearly seven hours.

Craft pulls into gridlock headed south. She considers piloting her truck down a bike path and through a trailer park. But the bike path is on fire. She sees there are no cars in a northbound lane, so she takes it, heading south — and then comes upon flames at an intersection.

Ahead of her is a line of stopped cars. To the left is a tall tree on fire, a medical building ablaze. A fire tornado swoops by, along the driver's side of her Suburban. She is on the phone with her husband. She is certain that she and everyone around her will die.

"My side [of the car] was hot," she said. "There was fire right there. I was sick to my stomach. I've never been so scared. I was telling my husband goodbye. He was with my kids. He kept saying, 'No, no, no.' He was praying an angel to come to me, somebody who would help me, get us out of here."

Craft chokes up as she relives this. Her face is flushed. Tears start to well. Six days have passed since fire destroyed her hometown. It hurts.

"I just told him, 'I don't think that's true. I can't talk my way out of this. I can't make this go away. I can't get out of this situation." She is crying in earnest. "He goes, 'You do what you have to do. You have to drive around people, you drive around people. You get off that hill.'"

She jumps a curb, makes some headway, jumps another, pops a tire.

Craft pulls into the parking lot of the local Safeway. She cannot find the jack to change the tire.

Then, she says, a little electric-powered Ford pulls up, a car "that my husband and I would never own in a gazillion, million years."

Behind the wheel is Nate Reich, operations general manager for Safeway in Northern California. He wants to drive her to safety. But she has the three patients with her. She asks for help with the tire.

Still no jack. Safeway goes up in flames.

But Sheila Craft has found her angel. Somehow, the three frail, elderly patients and Craft all jam into Reich's little Ford. He points the car south. The sky is black as night.

A week passes. All 91 patients have been resettled. Four are now with family, the rest spread among 15 nursing homes and two hospitals.

Cypress Meadows is gone. Plum Healthcare Group, which owns it and 55 other facilities in California and Nevada, has held two job fairs for its displaced workers and hopes to employ them at its other properties. No decision has been made about rebuilding, said Aaron Edmonds, Plum's area president.

Sarah Drummond and the two patients in her care sheltered in place with other evacuees and law enforcement agents, first in one Paradise parking lot and then another, wrapped in fire blankets. She plans to leave California.

Olivia Drummond does not know if her house in Magalia is still standing. She had a prenatal checkup on Wednesday. She heard the baby's heartbeat.

And Craft went back to see her house and the nursing home for the first time since flames rushed through the town she loves.

Both were destroyed.

All that is left of Cypress Meadows are a wavy metal roof and a tangle of ruined equipment. The abandoned wheelchairs, most badly burned, remain queued up in front of what was once a graceful entrance.

Their big tires lie on blackened ground, reduced to circles of white ash, which crumbles when touched.

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ATTACHMENT 3

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

MINUTE ORDER

DATE: 02/03/2023 TIME: 04:00:00 PM DEPT:

JUDICIAL OFFICER PRESIDING: Ronald F. Frazier
CLERK: Sarah Doski
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2021-00033583-CU-TT-CTL** CASE INIT.DATE: 08/05/2021
CASE TITLE: **PQ-NE Action Group vs City of San Diego [E-FILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

APPEARANCES

The Court, having taken the above-entitled matter under submission on 2/2/23 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioner PQ-NE Action Group's Petition for Writ of Mandate is GRANTED IN PART. (ROA 1, 49.)

This proceeding concerns Respondent City of San Diego's approval of a residential development known as a Junipers Project ("Project") located in the Rancho Penasquitos area. Real Parties in Interest Carmel Partners, LLC and Carmel Land, LLC ("RPIs") are the Project applicants.

Petitioner seeks a writ of mandate vacating the City's approval of the Project.

Whether the EIR Adequately Considers Cumulative Impacts

An Environmental Impact Report ("EIR") must consider a project's "cumulative impacts." (14 C.C.R. § 15130(a).) "[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (14 C.C.R. § 15130(a)(1).) "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and *reasonably foreseeable probable future projects*." (14 C.C.R. § 15355(b).)

Petitioner asserts the EIR failed to adequately consider the cumulative impact of the Project together with the Millennium PQ and Trails at Carmel Mountain Ranch projects. In opposition, Respondent and the RPIs assert these projects did not qualify for inclusion in the cumulative impacts study. Specifically, Respondent and the RPIs assert the City used the Project's Notice of Preparation of the EIR (April 10, 2018) as the cutoff date, and neither the Millennium PQ nor the Trails projects were analyzed because neither of these applications was "deemed complete" before this date. (AR 43:11381-11406; 15:4859.)

"[M]ere awareness of proposed expansion plans or other proposed development does not *necessarily* require the inclusion of those proposed projects in the EIR." (*Gray v. County of Madera* (2008) 167

Cal.App.4th 1099, 1127 (emphasis added).) However, "any future project where the applicant has devoted significant time and financial resources to prepare for any regulatory review *should be considered* as probable future projects for the purposes of cumulative impact." (*Id*. at pp. 1127-28 (emphasis added).) "Projects that are undergoing environmental review are reasonably probable future projects." (*Id*. at p. 1127.)

Here, the administrative record reflects both the Millennium PQ and Trails projects were reasonably probable future projects known to the City well before the draft EIR was published. Although the City attempts to assert it was not obligated to consider these projects because neither of the applications was "deemed complete" before the Project's April 10, 2018 Notice of Preparation was issued, the court is not persuaded.

The EIR states the Millennium PQ application was deemed complete on June 14, 2019 and the Trails application was deemed complete on January 31, 2020. (AR 15:4859.) However, the record and judicially noticeable documents demonstrate the City was concurrently evaluating the Project, Millennium PQ, and the Trails for many months prior to the publication of the draft EIR. (AR 225:24408-24412, 15:4991; Pet. RJN at Exh. A.) The City was clearly aware Millennium PQ and Trails were reasonably probable future projects.

The court is sympathetic to the City's desire to apply a bright-line rule. However, the legal authorities reflect a more flexible approach. (14 C.C.R. § 15355(b); *Gray* at pp. 1127-28.) RPIs cited both *Gray* and *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321 as support for their position that the City's selection of the Notice of Preparation date as the cutoff was reasonable. Notably, however, both these cases are distinguishable on their facts from the case presented here. In *Gray*, the court noted "the County could not locate any project where an applicant has filed for review with the County Planning Department" before determining the County had reasonably exercised its discretion to set the date of the project application as the cutoff. (*Gray* at p. 1128.) By contrast, here there is evidence the City was aware of other probable future projects in close proximity to the Project.

Likewise, in *South of Market*, the plaintiffs asserted the EIR had used an outdated list of projects and made "generalized observations that development is 'rampant,'" but the court noted the lack of evidence that the list was "defective or misleading, or that the City ignored projects that were in the pipeline for the purpose of adjudging cumulative impacts." (*South of Market* at p. 336-37.) Thus, "[t]he City had discretion to determine a reasonable date as a cutoff for which projects to include in the cumulative impacts analysis, and plaintiffs have not shown the City's decision to use a 2012 project list was unsupported by substantial evidence." (*Id*. at p. 337.) Here, Petitioner has sufficiently demonstrated Petitioner's decision to exclude Millennium PQ and the Trails projects was not reasonable under the facts. In the court's view, the close proximity of these projects – particularly Millennium PQ, which is adjacent to the Project – renders the City's decision all the more arbitrary.

Thus, the EIR fails to comply with CEQA because it did not adequately consider the cumulative impact of Millennium PQ, Trails, and the Project.

As to these grounds, the Petition is granted.

Whether the EIR Adequately Considers Wildfire Safety Impacts

"An EIR shall identify and focus on the significant effects of the proposed project on the environment."

(14 C.C.R. § 15126.2(a).) This includes "any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, *wildfire risk areas*)...." (*Ibid*., emphasis added.)

Within the context of wildfire safety impacts, Petitioner argues the EIR failed to consider the cumulative impacts of the Project together with the Millennium PQ (which will use the same evacuation exit) and Trails projects (which will significantly increase the number of evacuating residents). The court agrees and finds the EIR also fails to comply with CEQA because it did not adequately consider the cumulative impact of Millennium PQ, Trails, and the Project when evaluating the Project's wildfire safety risks.

In their opposition, Respondent and RPIs point out the RPIs commissioned a study on Millennium PQ's impact on evacuation times, and that the study concluded the community's evacuation time would only increase from 3.5 to 3.8 hours if Millennium PQ project were also considered. (AR 21:10659-10662.) As a preliminary matter, this study still does not take the Trails project into consideration. Further, "CEQA requires agencies to discuss a project's potentially significant impacts in the draft EIR and final EIR." (*Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 86, 103; see also 14 C.C.R. § 15120.) "[T]o the extent an agency omits an adequate discussion of a project's potential impacts in its EIR, it cannot afterward make up for the lack of analysis in the EIR through post-EIR analysis." (*Ibid*., citing *Save Our Peninsula Committee v. Monterey Cty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 130.)

Here, the RPIs submitted the study on the eve of the City Council hearing. (AR 21:10659.) The memo is dated June 11, 2021 and the City Council hearing was held June 15, 2021. No such analysis is contained in either the draft EIR or final EIR. Thus, the EIR fails to comply with CEQA requirements. This deficiency cannot be cured by post-EIR analysis, and in any event the post-EIR analysis is still insufficient because it does not consider the Trails project.

As to these grounds, the Petition is granted.

At hearing, Petitioner argued the EIR also improperly omitted consideration of Pacific Village in its analysis of cumulative impacts with regard to evacuation and wildfire safety. In response, RPIs asserted this issue was waived because it had not been asserted during the administrative process. However, it appears this issue was raised before the agency. (AR 018319.) The court agrees the EIR also fails to comply with CEQA requirements because it omits Pacific Village from its cumulative impact analysis for evacuation and wildfire safety.

Petitioner also argues the EIR's wildfire analysis is not supported by substantial evidence, challenging several of the assumptions made in evaluating the Project's impact on evacuation. As to these grounds, the Petition is denied.

Third, Petitioner asserts the EIR obfuscates wildfire and evacuation risks because it uses a "voluntary" Fire Protection Plan and Wildfire Evacuation Plan. As to these grounds, the Petition is denied.

Whether the EIR Adequately Considers Transportation Impacts

Petitioner asserts the EIR did not adequately analyze and mitigate transportation impacts.

As to these grounds, the Petition is denied. There is substantial evidence in the record to support the EIR's transportation impact analysis.

Whether the EIR Adequately Considers Greenhouse Gas Impacts

Consistent with CEQA Guidelines, the City has a Climate Action Plan (CAP) Consistency Checklist. The City's CAP "was adopted to ensure that emissions from activities in the City would not exceed established state targets" and the Checklist "serves as the significance determination threshold for cumulative impacts related to climate change." (AR 16:6498.) "If a project is not consistent with the City's CAP, as determined through the CAP Consistency Checklist, a potentially significant cumulative GHG impact would occur." (AR 16:6474.)

Petitioner asserts the EIR did not adequately disclose and mitigate greenhouse gas impacts.

As to these grounds, the Petition is denied. There is substantial evidence in the record to support the EIR's conclusion the Project will not significantly impact greenhouse gas emissions.

Whether the EIR Adequately Considers Land Use Impacts

"The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans." (14 C.C.R. § 15125(d).)

Petitioner asserts the EIR did not adequately disclose or mitigate the Project's land use impacts.

As to these grounds, the petition is denied. There is substantial evidence in the record to support the EIR's conclusion the Project is consistent with the City's General Plan, the Rancho Penasquitos Community Plan, and the San Diego Association of Governments' Regional Transportation Plan/Sustainable Communities Strategy.

Whether the EIR Adequately Considers Biological Impacts

Petitioner asserts the Project failed to adequately mitigate biological impacts. Petitioner's argument is not entirely clear here. Although the California Department of Fish and Wildlife made certain mitigation recommendations to the City in a comment on the Project, it appears these concerns were considered by the City, even if the recommendations were not incorporated into the Project's approval.

As to these grounds, the Petition is denied. There is substantial evidence in the record to support the EIR's conclusion the Project will not significantly impact biological resources.

Whether a Variance from the City's Affordable Housing Ordinance Should Have Been Granted

City Code requires affordable housing units to be "comparable in bedroom mix, design, and overall quality of construction to the market-rate" housing units. (San Diego Mun. Code § 142.1304(e)(2).) Variances may be sought under certain circumstances. (SDMC §§ 142.1310, 142.1311.)

Petitioner asserts the City's determination to grant a variance from its affordable housing ordinance lacked substantial evidence. The RPIs obtained a variance to provide an alternative mix of one- and two-bedroom units rather than a mix of two- and three-bedroom units. (AR 21:10189.)

As to these grounds, the Petition is denied. There is substantial evidence in the record to support the granting of a variance.

Requests for Judicial Notice

Petitioner's requests for judicial notice submitted with its moving papers are granted as to Exhibits A, B, and C and denied as to Exhibit D. (Evid. Code § 452(b), (c); ROA 50.) As to Exhibit D, judicial notice is denied on the grounds it is not relevant.

Respondent's and RPIs' requests for judicial notice are granted. (ROA 55; Evid. Code § 452(c).)

Petitioner's requests for judicial notice submitted with its reply papers are granted. (ROA 58; Evid. Code § 452(c).)

However, all counsel are admonished for submitting separate, additional memoranda regarding the requests for judicial notice. Although the court considered these unauthorized memoranda, they are improper absent leave of court. "Any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306(c)." (Cal. R. Court, rule 3.1113(*l*).) The rule contemplates *a list of items*, not lengthy additional briefing. Any legal argument should have been included in the opening, opposition, and reply memoranda, not in the requests for judicial notice or other unauthorized memoranda. The rules requiring a separate document for a request for judicial notice may not be used to circumvent the court's rules regarding page limits for memoranda. (Cal. R. Court, rule 3.1113(d).)

Request for Separate Hearing re: Remedy

At hearing, RPIs' counsel requested that the court set a separate hearing and allow further briefing if it was inclined to confirm its tentative ruling. This request is denied.

A writ of mandate shall issue vacating Respondent's approval of the Project and suspending any and all activity pursuant to Respondent's approval of the project until Respondent has fully complied with CEQA requirements. (Pub. Res. Code § 21168.9.)

Petitioner is to submit a proposed Judgment within five (5) days.

Judge Ronald F. Frazier