Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

Jon Sanabria
Acting Director of Planning

August 19, 2009

TO: Leslie G. Bellamy, Chair
Wayne Rew, Vice-Chair
Harold V. Helsley, Commissioner
Esther Valadez, Commissioner
Pat Modugno, Commissioner

FROM: Rudy Silvas
Principal Planning Assistant, Impact Analysis Section

SUBJECT: Comments received on Final EIR, other letters, and Clarifications on Appendix VI
Pacific Heights Project
Project Numbers 92-027-(4)
Vesting Tentative Tract Map No. 51153
Conditional Use Permit No. 92-027-(4)
Oak Tree Permit No. 92-027-(4)
Environmental Assessment Case No. 92-027-(4)
RPC Meeting: August 19, 2009
Agenda Item: 5

Honorable Commissioners, attached are copies of comments received on the Final EIR (FEIR) within the official 10 day comment and review period (from August 6, 2009 to August 17, 2009), comments received subsequently and letters in general on the project. Also attached is a copy of the cover letter prepared by the arborist for the project and inserted into Appendix VI of the FEIR. The cover letter indicates that the use of the methodology for replanting oaks will be based on the Oak Woodland Mitigation Plan Feasibility Report dated October 16, 2008, which is also inserted in Appendix VI. The report calls for using the same methodology to replant oaks on natural slopes as those used to replant on manufactured slopes.

Regional Planning and the County Forester do not find the Oak Woodland Mitigation Plan Feasibility Report in Appendix VI as adequate in its methodology for replanting the oak trees, despite the letter from the arborist dated April 24, 2009. However, in discussions with the applicant as of yesterday, the applicant agrees to go with any planting technique deemed acceptable to the County Forester *(see attached email following cover letter from arborist)* in the preparation of an oak tree and oak woodland habitat planting and mitigation plan to be reviewed and approved by the County Forester and the Department of Regional Planning as outlined under mitigation measure M-B-2. The Oak Woodland Mitigation Plan Feasibility Report in Appendix VI was cited by the County Forester for discrepancies contained within it at the Environmental Review Committee meeting held on the project on November 6, 2008, and will be required to be revised by the County Forester until it is found to be acceptable.

Staff will be available for any questions you may have during the public hearing on the item before you today, August 19, 2009.

COMMENTS RECEIVED ON THE FINAL EIR WITHIN THE 10 DAY COMMENT PERIOD

Puente Hills Landfill
Native Habitat Preservation Authority

August 14, 2009

County of Los Angeles
Department of Regional Planning
Impact Analysis Section, Room 1348
Attn: Rudy Silvas
320 West Temple Street
Los Angeles, CA 90012

Comments on Final Environmental Impact Report (FEIR) for the Revised Pacific Heights Residential Project, Tentative Tract Map 51153, County Project No. 92-027

Dear Mr. Silvas:

The Puente Hills Landfill Native Habitat Preservation Authority (Habitat Authority) appreciates the opportunity to comment on the FEIR for the above mentioned project of a 47-home gated subdivision.

The Habitat Authority is a joint powers authority established pursuant to California Government Code Section 6500 *et seq.* with a Board of Directors consisting of the City of Whittier, County of Los Angeles, Sanitation Districts of Los Angeles County, and the Hacienda Heights Improvement Association. According to our mission, the Habitat Authority is dedicated to the acquisition, restoration, and management of open space in the Puente Hills for preservation of the land in perpetuity, with the primary purpose to protect the biological diversity. Additionally, the agency will endeavor to provide opportunities for outdoor education and low-impact recreation. The Habitat Authority owns and or manages 3,869 acres which lie within the Cities of Whittier and La Habra Heights as well as in the County unincorporated area of the Puente Hills known as Hacienda Heights and Rowland Heights.

The Habitat Authority appreciates the applicant's efforts to address many of the previously submitted comments. However, there are several items that we believe require additional resolution; these are discussed below.

Conservation Easement

- The conservation easement should be held by the California Department of Fish and Game.

The Habitat Authority appreciates that the previous recommendation to place a conservation easement over the entire preserved open space area was incorporated as part of the project as stated in the FEIR. However, as stated in the FEIR response to comments, the applicant intends to have the open space fee title and the conservation easement held by different entities, but would like to keep the option available for the Homeowner's Association (HOA) to hold either of these. It is our recommendation that the California Department of Fish and

Game or another qualified conservation entity hold the conservation easement to the preserved open space, not the HOA, to ensure that the ecological integrity of the land is adequately protected and maintained in perpetuity. This will insure that the preservation of the open space will serve as sufficient mitigation for the significant biological impacts from the proposed project.

Oak Woodland Mitigation

- The proposed oak woodland mitigation location is questionable. We recommend that either the California Department of Fish and Game (CDFG) or the Los Angeles County Biologist approve the location and plan for the oak woodland habitat restoration.

As stated in the FEIR, the planting of replacement oak woodland habitat is proposed in the northeastern portion of the site, and that detailed plans would be deferred in a mitigation plan to be approved by the County. However, based on a review of the topography of the project site, it appears that portions of the proposed oak woodland mitigation area may not be suitable for coast live oak woodland habitat. This habitat generally occurs on north-facing slopes and/or in canyons or along streams, such as those locations where existing oak woodlands currently occur on the site. In addition, the FEIR mentions that scattered shrubs typical of coastal sage scrub habitat occur in the area proposed for oak woodland mitigation, which also calls into question the appropriateness of this location, as coastal sage scrub vegetation usually grows on drier and/or south-facing slopes and does not frequently co-occur with oak woodland habitat. The presence of coastal sage scrub individuals within the non-native grassland indicates that this area may be reverting back to its pre-disturbance native habitat type, which has evolved to be the most appropriate vegetation for that specific location.

If appropriate locations for restoration are not found on site by CDFG or County Biologist, the Habitat Authority has several opportunities on the adjacent Preserve in Powder Canyon for oak woodland mitigation in ecologically suitable locations and would welcome working with the applicant in fulfilling this mitigation requirement on the Preserve. In addition, Powder Canyon also supports numerous opportunities for coastal sage scrub habitat restoration should such additional mitigation be required off-site. See the Habitat Authority website at www.HabitatAuthority.org for Restoration Guidelines for Proposed Mitigation and Monitoring Plans.

The oak woodland habitat mitigation plan, to be approved by the County Forester and Department of Regional Planning, should include planting of native oak woodland understory species in addition to the oak trees themselves, as trees alone do not compensate for the complexity and diversity of the habitat that will be lost due to the project. The plan should require that irrigation cease at least two years prior to the end of the monitoring period to insure that the oaks become adapted to the naturally dry conditions in the Puente Hills, or to provide the opportunity for replacing those trees that die if they cannot adapt to such conditions. The plan should also include contingency measures in case of mitigation failure, which should include the option of oak woodland restoration at a more appropriate, off-site location if the initial site proves to be unsuccessful. Performance criteria to determine the success of the oak woodland mitigation should include a minimum of 80 percent survival of all

planted trees by the end of the monitoring period and should require that no noxious or invasive weeds are present in the mitigation area (those identified by the California Invasive Plant Council and Department of Agriculture). In addition, performance criteria should also include measures to compare the replacement habitat to the existing preserved oak woodland habitat on-site (including native understory cover and diversity and wildlife use), to evaluate whether the mitigation area is developing toward replacing the mature oak woodland habitat removed by the proposed project.

Riparian Mitigation

- The ratios for riparian habitat mitigation are typically 2:1, not 1:1 as proposed.

The Habitat Authority appreciates that previous comments regarding a lack of analysis of impacts to riparian mulefat scrub habitat have been addressed in the FEIR. The FEIR now includes a delineation of regulated waters and streambeds, and analyzes impacts to these features. Proposed mitigation for these impacts includes preservation of existing riparian habitat on-site as well as replacement of impacted mulefat scrub at a minimum 1:1 ratio. However, compensatory mitigation for impacts to riparian habitat is generally at a minimum 2:1 ratio per most regulatory agency permits. In addition, the Habitat Authority has several opportunities on the adjacent Preserve for mulefat scrub and would welcome working with the applicant if off-site mitigation is determined necessary.

Recreational Access

- Historic public access to the open space should remain.

The Habitat Authority appreciates that previous comments regarding maintaining public access have been addressed in the FEIR. To clarify, the Habitat Authority supports the proposal in the FEIR to facilitate regional public access from Apple Creek Lane to the preserved open space portion of the property and the adjacent public lands, the Preserve and Schabarum Park. The trails in these open space areas have been utilized by local residents for many years and we encourage the continuation of such recreation for public benefit and not that exclusively for the gated community.

Tract Conditions

- All project conditions need to be incorporated into the CC&Rs to insure compliance in perpetuity.

Lastly, the Habitat Authority appreciates that the applicant addressed a previous comment recommending that the tract conditions be recorded in the Covenants, Conditions, and Restrictions (CC&Rs) so as they are a part of the public record. The FEIR response to this comment states that the applicant will work with the Department of Regional Planning to determine appropriate conditions to be incorporated into the CC&Rs; however, we would like to encourage that all conditions be incorporated into the CC&Rs to insure compliance in perpetuity.

Thank you for your consideration of our comments. Feel free to contact Shannon Lucas, Ecologist, or Andrea Gullo, Executive Director, at (562) 945-9003 for further discussion.

Sincerely,

Bob Henderson
Chairman

cc: Board of Directors
Citizens Technical Advisory Committee

COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
"Creating Community Through People, Parks and Programs"
Russ Guiney, Director

August 17, 2009 Sent via email: rsilvas@planning.lacounty.gov

TO: Rudy Silvas
Department of Regional Planning
Impact Analysis Section

FROM: Julie Yom
Department of Parks and Recreation
Environmental Section

SUBJECT: **FINAL ENVIRONMENTAL IMPACT REPORT (FEIR)**
REVISED PACIFIC HEIGHTS RESIDENTIAL
PROJECT NO. 92-027/ VTTM NO. 51153
STATE CLEARINGHOUSE NO. 2000021044

The Department of Parks and Recreation has reviewed the FEIR for the proposed project for potential impact on the facilities under the jurisdiction of the Department. We have determined that the proposed project will not affect facilities under the jurisdiction of this Department.

Thank you for the opportunity to comment. If we may be of further assistance, please contact me at (213) 351-5127 or jyom@parks.lacounty.gov.

c: Parks and Recreation (N. E. Garcia, L. Hensley, J. Rupert)

SIERRA CLUB
FOUNDED 1892

San Gabriel Valley Task Force
Angeles Chapter of Sierra Club

Attn: Rudy Silvas
Los Angeles County Department of Regional Planning
320 W. Temple Street
Los Angeles County 90012

Re: Pacific Heights Subdivision Case Number 92-027, TTM 51153.

The San Gabriel Valley Task Force, Angeles Chapter of Sierra Club has reviewed the Final Environmental Impact Report (FEIR) for the Pacific Heights Subdivision, Tentative Tract Map 5113, Project No. 92-027. **We urge the Los Angeles County Planning Commission to deny approval of this project for the following reasons:**

1. The property is wholly in SEA #17. SEATAC has not approved this project after several attempts by the developer. Furthermore, in Staff recommendations for the Apr. 8, 2009 L.A. Planning Commission meeting, it was stated that **"Based on applicable Plan goals and policies stated in the full staff report, due to the direct impacts on biotic resources and from associated grading and infrastructure required for the project, the proposed development is believed to be inconsistent with Plan policies and incompatible with the SEA designation."**

2. This open space area would be a logical addition to the Puente Hills Native Habitat Preservation Authority Wildlife Corridor or to Schabarum Regional Park due to its location adjacent to the wildlife corridor (south) as well as Schabarum Park (east) and its position wholly within the Powder Canyon Significant Ecological area #17. Addition of this property would enlarge the wildlife corridor extending from the Puente Hills to the Chino Hills.

   The developer claims the open space after development of the land will be donated as open space in perpetuity to a public agency but reserves the right to give it to the Home Owner's Association if no agency will provide management. We question whether the Home Owner's Association, if given possession, would be a responsible caretaker for long-term maintenance of existing undisturbed land, mitigated oak trees and restored coastal sage scrub areas. Before approval of this project, a public agency

such as the Native Habitat Authority or Schabarum Park /Dept. of Parks and Recreation) must be found that would assume management.

3. Although the developer proposes mitigation measures, the destruction of 126 mature oak trees and impact to another 20 is not a true mitigation since replacement trees will take many years to reach the size of those destroyed.

4. Although the developer claims the project will be consistent with the residential development to the north, the size of the project homes (approximately 3,500 to 4,500 sq. ft. as proposed at a local community meeting) are larger in general than those in adjacent areas and are on some lots as small as 5,002 sq. ft.

   In addition, the developer has not indicated even the general design of these homes to allow evaluation of the aesthetic impact of these homes on residents adjacent to the property. In two places on the north boundary, a retaining wall will be 15 feet high at the edge of their backyard. Instead of looking at a view of the hills as they have for many years, residents from those properties would look directly at a wall! The view of these homes would also impair the designation of Colima Blvd. as a scenic road.

5. We continue to be concerned about the single access to the project along Apple Creek Lane. These homes will be located in a zone designated as Los Angeles County Fire Zone 4 (Very High Fire Severity). One road limits evacuation potential in the event of fire, flood, or earthquake (which could be attended by possible fires). Emergency vehicles might not be able to reach residents. An additional consideration is whether the proposed water tank is adequate to provide for fire-fighting should a brush fire threaten this area.

   Hacienda Heights has experienced fires before and the recent devastation of Chino Hills State Park illustrates the potential problem. SEATAC in its minutes of May 5, 2008 (Appendix G of RDEIR) expresses concern about ignition sources and the potential for fires. The local vegetation is extremely flammable. Sierra Club is concerned about fires spreading from the urbanized area into the wildlife corridor as well as hazards of brush fires to the project homeowners.

6. The 47 homes to be placed on this parcel are much above the Planning Commission Staff recommendations of 27 units (L.A. County Planning Commission packet for the Apr. 8, 2009 meeting of the Planning Commission. The developer claims such a reduction would make the project economically unfeasible. The extent and cost of cut and fill required, the drainage basin that must be constructed, the extent of manufactured slopes and the alteration of topography required for this project indicates this land should be left undeveloped as open space.

7. Local residents along Apple Creek Lane and Dawn Haven will be strongly affected by an increase in traffic generated by the residents of the new homes. The developer claims there will be an average of 3.3 residents per dwelling. We believe these

estimates are low considering the size of the homes and the recently changing demographics of Hacienda Heights where multigenerational families are often living together. These expensive homes will probably have two or more cars per family. All traffic will be funneled down Apple Creek Lane due to the single access road from the project. From Apple Creek Lane, the traffic will converge on Dawn Haven to Colima. The intersection of Dawn Haven and Colima Rd. is already congested , at peak hours without the proposed additional load. The traffic analysis studied traffic at the Halliburton/Colima intersection directly across from the Dawn Haven/Colima intersection. These two intersections are not similar. Halliburton is a 4-lane road, whereas Dawn Haven is only 2-lane. An increase in traffic on Dawn Haven will cause a far greater impact than is suggested in the FEIR at peak hours when probably at least 2 trips per home will be made to work or to take children to school. The additional 35 trips for 47 homes at peak hours as claimed in the RDEIR and FEIR is absurd.

8. We are concerned about the cumulative effects of development in this area on future availability of water supplies. The Rowland Water Company claims adequate water is available, however residents served by this company recently were required to implement mandatory water conservation due to drought this year. A Level 1 Water Supply Shortage has been declared in the Rowland Water District service area requiring mandatory minimum 10% water use restrictions commencing July 1, 2009. This is not the only development proposed for the Rowland or Hacienda Heights areas that will add to cumulative effects.

9. The developer claims this project is not required to meet new standards of neither the Hacienda Heights Community Plan nor the Los Angeles County General Plan, both of which are currently being revised. However, **the current Hacienda Heights Community Plan puts a high priority on preservation of open space.**

   This project is not necessarily planned for immediate implementation. The developer has stated that time of construction will depend on changing economic and market conditions. The developer should be required to meet the standards of both the Los Angeles County General Plan and Hacienda Heights Community Plan at the time of construction if these have been Plans have beenrevised.

10. The geotechnical evaluations must be brought up to current level of knowledge and building codes should this project go forward. Approval of the project by the lead agency without a current, approved seismic hazard report would be an abuse of discretion. The Seismic Hazard Mapping Act (SHMA) report id outdated. Final Grading cannot be approved without a current SHMA report (see CGS SP-117A-2008).

    Recent seismic investigations project ground motions in areas of Southern California to be much above what was previously suggested. This project is directly above the Puente Hills Blind Thrust Fault, capable of generating a M_w=7.5 earthquake, and a

potential exists for strong ground motions from other nearby faults as well as the more distant San Andreas.

The new location of the water tank must be evaluated to show site is both safe (or non- hazardous) as well as being feasible. Location of the water tank directly above housing units puts residents in danger should the water tank fail during an earthquake (as water tanks did during the Northridge Earthquake). In addition, the geologic and seismic parameters of the water tank location must be evaluated to show feasibility.

These hills are a known landslide area. The developer is planning to remove landslide on this site in order to build 47 homes. Landslides have damaged homes on several occasions in Hacienda Heights—homes that had been permitted by the County.

At the time of submitting the 40 ft./in. scale grading plan the seismic, geologic, and geotechnical reports must be to the current code and regulations. Landslide analysis at that time must meet the current code and regulations. If a lot is shown to be unbuildable the map will have to be revised.

Finally, we are also concerned about the availability of the documents for public evaluation for this proposal. CEQA requires that the public be informed of impacts prior to approval of a project with adequate time to do an evaluation. Public evaluation of this project has become very difficult, if not impossible. The FEIR is based on an older 2003 Draft environmental Impact Report (DEIR) and the 2009 Recirculated DEIR and includes changes that were needed as a result of earlier comments. The reader must constantly go between the 3 documents while trying to find referenced sections. Although all documents are available on the internet, moving from one to another and finding referenced sections is extremely difficult (or impossible) and time consuming.

The FEIR only became available at the Hacienda Heights Library on Aug. 10, 2009 with comments due before Aug. 19th, a very short time period to study comments, replies and changes. The 2003 DEIR Appendices are not available at the Hacienda Heights library. These appendices are referenced in the 2003 and later documents. **This is an unacceptable situation that does not meet the intent of CEQA.**

Thank you for your consideration of our concerns. Please keep us advised of any activity associated with this project.

Respectfully submitted,

Joan Licari
Chair, San Gabriel Valley Task Force
Angeles Chapter of Sierra Club
16017 Villa Flores
Hacienda Heights CA 91745
Tel.: 626-330-4229

E-mail: jlicari@roadrunner.com

SUBSEQUENT COMMENTS RECEIVED AND LETTERS IN GENERAL

March 20, 2009

APR - 7

County of Los Angeles
Department of Regional Planning
320 West Temple Street, Room 1346
Los Angeles, Ca 90012
Attn: Rudy Silvas

Subject: Pacific Heights Project 92-027, Tentative Tract Map 51153

We the following residents of Hacienda Heights are greatly concerned with this project. We have been fighting various attempts to develop this property since 1994. Unfortunately, we are now in another situation of trying to prevent a development which could result in disastrous consequences for our community.

Most of us have lived in this community for over 30 years. We enjoy the view of the hills, the natural habitat and beautiful trees and shrubs. Many of us also remember the heavy rains that have caused the hills to slide and the fires that have come close to destroying our homes. Now, Pacific Communities is attempting to disrupt our community by destroying the hills to add more homes. Hacienda Heights' hills are crowded now, why are we adding more homes which will only increase the crowds and destroy the natural flow of the community?

The traffic on Dawnhaven and Colima Road is now extremely congested and the homes are going to increase the number of vehicle trips. Because Apple Creek is the only feasible access, this makes it even more dangerous regarding the number of vehicles traveling on this street. It is even more of concern, in cases of emergencies such as earthquake, fire or other disaster.

Our hope is that the County will take into consideration all of the factors that make this project unfeasible. Also, something to think about is the fact that the County could become a party in a possible lawsuit if there is a disaster in which these Pacific Heights homes results in damages to our homes.

This letter has been written and presented to you by the following homeowners.

Name	Address
[illegible]	[illegible]
Name	Address
Name	Address

March 27, 2009

APR - 7

Dept. of Regional Planning
County of Los Angeles

Re: Tentative Tract Map No. 51153, Conditioal Use Permit Case No. 92-027-(4), Oak Tree Permit Case No. 92-027-(4) and Environmental Assessment Case No.92-027-(4).

Dear Lady & Gentleman:

The So called Pacific Hights Project is located on the hill top, the steep hill top contains 47 single-family units will truely cause landslide, especially when earthquake strikes, the existing community homes below level also be endangered.

They say a 500,000 Gallon capacity water tank with a 32 high shell will be built at the hill side, this measure gonna make existing home in great danger, why, when landslide or earthquake occurs, the existing home downhill will be destroyed for sure ! and mudslides thereafter.

In order to protect valuable biological resources, the precious natural open space gonna be disturbed and loss of wilderness habitat,, and , in the mean time the surrounding community will lost of existing views of the natural hillside.

The proposed project is expected to generate a total vehicle of 450 daily trips, these will disturb the peace of the existing community and produce large volume of air pollution over this area.

The hilltop buildings are easily to catch wildfire and threatens the safty of the existing community home .

Therefore, We opposed ourself to the proposed project with all our might, and your serious consideration is appreciated !

Sincerely,

Sergio & Eredina Cosd
2568 Apple Creek Ln
Hacienda Hts Ca 91745
Tel (626) 369-6973.

William Chow
2556 Apple Creek Ln. Hacienda Hts, CA. 91745
626-961-7802

Oscar & Liliana Cisneros
2562 Apple Creek Ln.
Hacienda Hts, CA 91745
(626) 363-4145

Fe Espina Villahin
2569 Apple Creek Lane
Hacienda Height, CA 91745
Tel 6) 961-2330

John C Joe
2548 Apple creek Lane
Hacienda Heights CA 91745
Tel 626 330-3700

April 3, 2009

County of Los Angeles
Department of Regional Planning
320 West Temple Street, Room 1346
Los Angeles, Ca 90012
Attn: Rudy Silvas

Subject: Pacific Heights Project 92-027, Tentative Tract Map 51153

We the following residents of Hacienda Heights are greatly concerned with this project. We have been fighting various attempts to develop this property since 1994. Unfortunately, we are now in another situation of trying to prevent a development which could result in disastrous consequences for our community.

Most of us have lived in this community for over 30 years. We enjoy the view of the hills, the natural habitat and beautiful trees and shrubs. Many of us also remember the heavy rains that have caused the hills to slide and the fires that have come close to destroying our homes. Now, Pacific Communities is attempting to disrupt our community by destroying the hills to add more homes. Hacienda Heights' hills are crowded now, why are we adding more homes which will only increase the crowds and destroy the natural flow of the community?

The traffic on Dawnhaven and Colima Road is now extremely congested and the homes are going to increase the number of vehicle trips. Because Apple Creek is the only feasible access, this makes it even more dangerous regarding the number of vehicles traveling on this street. It is even more of concern, in cases of emergencies such as earthquake, fire or other disaster.

Our hope is that the County will take into consideration all of the factors that make this project unfeasible. Also, something to think about is the fact that the County could become a party in a possible lawsuit if there is a disaster in which these Pacific Heights homes results in damages to our homes.

This letter has been written and presented to you by the following homeowners.

Name	Address
1. Cecilia Chang	16730 Rocky Knoll Rd Hacienda Hts. CA 91745
2. STACY SUNG	16065 Chella Dr. Hac. Hts. CA 91745
3. Tomoko Myeki	16920 Larkbrook Dr. Hac. Hts Ca 91745

Name	Address
4. Mermita S. Dangaran	1521 Sarahwood Ave. Hacienda Hts.
5. Marilyn Lee	2336 Glendale Ave HH.
6. Cesar Aguilar	2516 Cranberry Ln.
7. Pattie Chavez	3431 Punta Del Este Dr.
8. Monica Carlos	16290 Canelones Dr.
9. Mayra Lujano	15960 Corina Ct. Hacienda Hts
10. Elena Rodriguez	2857 Antisana Pl., Hac Hts
11. Marsha Goetz	2419 Lazy Brook Ln. Hac. Hts.
12. Larry Ontiveros	Los Bentos Dr. Hacienda Hts.
13. [illegible]	2817. Rio Leamp Dr
14. [illegible]	3275 Richview Dr. Hacienda Heights, Ca. 91745
15. Carmen Aguilar	16537 Circle Hill Ln H.H CA 91745
16. Fernando Gebles	16800 Rock Dr H.H CA 91745
17. Claudia Huang	16515 Wain Pl HH CA 91745
18. Owen Wu	16515 Wain Pl H H CA 91745
19. Dongqing Yu	15919 Del Prado Dr. Hacienda Hts. CA 91740
20. [illegible]	2875 Garona Dr Hacienda Hts CA 91745
21. [illegible]	15945 Ca Ronda Circle Hacienda Hts.
22. Hazel Lu	16370 Chella Drive Hacienda Heights CA 91745
23. [illegible]	2401 S. Hacienda Blvd apt 345 Hacienda Heights CA. 91745
24. Jigna R. Patel	17080, E. Colima Rd. App #334 Hacienda Hts, CA - 91745
Name	Address

	Name	Address
25.	DONNA RAHM	16722 ROCKY KNOLL RD.
26.	[illegible]	2344 S Rustic Gate Way H. Hts CA 91745
27.	[illegible]	2352 RUSTIC GATE WAY, HACIENDA HTS. CA 9174
28.	[illegible]	2353 S. RUSTIC Gate Way; Hacienda Hts CA 91745
29.	[illegible]	2338 S Rustic Gate Way H.H. CA 91745
30.	[illegible]	2310 Rustic Gate
31.	[illegible]	2457 CAZBROOK LANE CA 91765
32.	Donna Chung	2463 Lazy Brook Lane, CA 91745
33.	LOU CABRERA	2470 CAZBROOK LN CA 91745
34.	Ali Jawad	2442 Lazy Brook Lane C.A 91745
35.	[illegible]	2506 Whitehead Ln 91745
36.	YAO RUNG H YANG	16736 ROCKY KNOLL RD HACIENDA HEIGHTS CA 91745
37.	[illegible]	16736 Rocky Knoll Rd Hacienda Hts CA 91745
38.	[illegible]	16730 Rocky Knoll Hacienda, HTS 91745
39.	[illegible]	2569 Cranberry Ln. H. H,
40.	[illegible]	2568 Cranberry Ln H.H. 91745
41.	[illegible]	2509 Cranberry Lane
42.		
43.		
44.		
45.		

Silvas, Rudy

From: James Flournoy [flurnet@hotmail.com]
Sent: Tuesday, August 18, 2009 11:47 AM
To: Silvas, Rudy
Subject: pacific heights comments on responses
Attachments: response .rtf

Rudy Silvas
Regional Planning

Some comments on the Sierra club comments on the Pacific Heights Project I received today

Jim Flournoy
8655 Landis View
Rosemead Ca 91770

Hotmail® is up to 70% faster. Now good news travels really fast. Try it now.

Comments on Responses to coments in Pacific Heights FEIR By James I Flournoy

G Fire Safety
No response on residential fire Sprinklers

H No CURRENT Seismic Hazard Mapping Act report has been reviewed or approved by GMED (CBC 2007 and SP117 A 2008 compliant)
A CURRENT SHMA REPORT IS REQUIED PRIOR TO PROJECT APROVAL
in addition
Final Grading Cannot be approved without a SHMA report see CGS SP-117A-2008
The GMED document in the draft was
limited to the tenative subdivision tract map, not project approval
The Preliminary Grading plan in the 2009 DEIR did not meet 2008 CBC
The promise of a future compliant plan is insufficient.
Current Ground Motion is not given
It is impossible to determine if the proposed project or any project is feasible.

Comments on responses to Sierra Club DEIR comments in FEIR

28 Water tank Map shows the Water tank at elevation P898.0
Has the elevation been changed? if so Map will have to be revised
Without current ground motion estimates it is impossible to determine if the proposed water tank location is feasible.
Tank is now on a hogback ridge with no geotechnical investigation of the site. There is no Rowland Water District review and approval of the site which is required for them to accept the utility
Due to the exceedingly high fire danger and no back up system the water tank and fire system must be designed to funcition after an earthquale to the level for "critical structures" 1% prpbability of exceedence (POE) in 50 years
Thre is no discussion of a tank for recycled water
Rowland says MWD suggests a 7 day supply- is this tank adequate?

34 The response provided discussion but no data. The generalization refering to all of Southern California is a generalization, not site specific and therefore insufficient. The Puente Hills thrust fault was not mentioned and has still not been addressed as a specific hazard to the site. This fault is directly under the project and therefore inheratently more dangerous. UP lift is not addressed
There is also no specific of the hazard of the San Andreas fault and the effect of long duration events on landslides.
There is no discussion on the long period motion required by CBC 2007 on the water tank- we cannot determine feasibility

35 The nearest known active fault is the Puente Hills thrust directly under the project if the formula for determining near fault distance which is easily found in table 16 of the 1998 CBC is used. Fault rupture is not the issue- slope stability/ landslides/ ridgetop spreading and side hill fils is
Ground surface rupture answer does not address the comment.

36 A seismologist familiar with local faults must develop the site specif ground motions- there is no place to look up site specific data- only regional estimates.
The statement begining with "Inference" is unintelligible There was no review in the Draft, what is being refered to here?
Seismic Paramaters for the project need to include distant large events such as the San Andreas (see SP-117A-2008)
These are not included in the coarse building code maps (read the footnotes and paper), a site specific determination is required.

37 No evidence that the PHBTF is not active- The 1987 Whittier Earthquake? The Puente Hills thrust is what uplifted the Puente Hills where the project is. The hills are still uplifting. The project is in

the hills A Structural Geologist such as Dr. Yeats needs to resolve this issue.
b The response is evidently referencing obsolete data. A reference from Dolan, Shaw and Christofferson 2004 was submitted as was a comment from Dr Syndor from Fullerton 2005. Dr James Dolan (USC/SCEC) confirms that currently any one segment could generate 7.1-7.2 and SFS could generate 7.4-7.5 all three breaking together would give a much longer duration event but the position of the project over one segment would cause that one segment to predominate the Magnitude. reference for your assertion please

38 Permanent surveyed and GPS benchmarks must be required as a mitigation measure/ COA

Silvas, Rudy

From: James Flournoy [saveourcommunityinc@live.com]
Sent: Tuesday, August 18, 2009 2:43 PM
To: Silvas, Rudy
Subject: PAcific Heights Ceqa Issues
Attachments: Rialto- incl GHG issue[1].pdf; SOC responsest.rtf

Dear MR Silvas
Attached are our thoughts on the applicants responses to our public comments on the PAcific Heights Project..
We do not find a current Seismic Hazards Mapping Act report which is requied prior to approval of the Project.

Sincerly yurs
Jim Flournoy

(sorry about the timing FEIR document was not at the laibrary till last Monday and Appendices to the 2003 report do not seem to be anywhere)
Also spell checker was tearing up the document- apologies

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Save Our Community
LA County Regional Planning
Pacific Heights Comments on FEIR and responses to DEIR COMMENTS

We will be referencing this recent case opinion begining on page 7 of the attached opinion but especiall after line 20 page 8

Global climate Change
Page 14 concludes that there was an insufficeint analysis of the effects of global change- We think the Project analysis is equally flawed.

Grenhouse Gases commented on by the Puente Chino Hills Task force (see pg 2-29) and Save our community #20 are discussed on page 20 of the opinion line 10

We do not see that feasible mitigation such as solar panels, light coloured pavement, etc, are proposed

Save Our Community #23 we suggest that a Plant pallet from the Rivers and Mountains Conservancy or California Native Plant society woudl be appropriate

SOC 24, 28, 29 in addition to height and lumens the light spectrum- wavelength and effect on night sky and wildlife must be considerd
The effect of nightlighting on the lower elevation neighbors is insufficiently considered

SOC 31 The response is non responsives- estimates must be made and considered

SOC 36 The response is not project specific. The project must comply with neighborhood standards Baelines must be established on both the wild and developed sides of the project The amoun increase over baseline which is acceptable
MUST be established.

SOC 37 Curbeside recycling must be requierd not merely suggested.

SOC 40 We prefer this item to be addressed as a condition of approval

SOC 45 Mandatory water rationing is in effect by the Rowland Water District.
MWD has increased the suggested supply to 7 days
Rowland Water District must consider Fire Flows and Peak demand. Ther eis no certification tht this has been accomplished to current levels

Recycled Water
Rowland indicates that Recycled water is available by gravity as near as the intersection of Colima and Azusa and is available in the immediately adjacent Schabarum
Regional Park. A gravity tank for recycled water would allow for filing via pumping at off peak overnight hours hours. Recycled water is also appropriate for Fire Flow, irrigation and fire sprinklers (which may be requied by the time this project is permitted) Orange County encourages recycled water for domestic sanitary uses

SOC 52
A meer hook up for portable emergency use when the Rowland Water district has insufficient emergency pumps available is insufficient. The projet is in an extremely hazaradous location with no reliable source of water by gravity. Addequate storage and flow are essential.

SOC 61
Responder mixes and confuses the Geotechnical Requirements

For the Tenative tract map the reliance on CBC 98 and SP-117 were accepted by GMED which has

vested the Tract Map unless changes are made (such as moving the water tank or changing the number oh homes)

For grading Permit compliaance witht the Current Grading Code, Current Seismic Hazards Mapping Act Regulations (SHMA) (CGS- SP117A 2008) building code, and LA County Department of Public Works Guidelines for Geotechnical Reports will be required.

Subsequent compliance for a building permit will also be required based on the code at time of plan submittal for plan Check

SHMA compliance is required at the time of Project Approval by the Lead Agency and there is no grandfather for the much earlier Subdivision submittal.

Appendix V Is not available to the public at the library locations listed

EIR no specific requirements except compliance with the County Geotechnical manual
CGS SP-117A states

However, the working premise for the planning and execution of a site investigation within Seismic Hazard Zones is that ***the suitability of the site should be demonstrated***. This premise will persist until either:
(a) the site investigation satisfactorily demonstrates the absence of liquefaction or landslide hazard,

or
(b) the site investigation satisfactorily defines the liquefaction or landslide hazard and provides a suitable recommendation for its mitigation.
The site-specific investigation is sufficiently thorough;
The findings regarding identified hazards are valid; and,
The proposed mitigation measures achieve an acceptable level of risk, as defined by the lead agency and CCR Title 14, Section 3721(a).

3721. Definitions

(a) "Acceptable Level" means that level that provides reasonable protection of the public safety, though it does not necessarily ensure continued structural integrity and functionality of the project.

In this case we have a large water tank on an un-investigated hog back ridge and the geotechnical report for the project does not meet current codes or regulations.

Approval of the project would be illegal and an abuse of discretion

SOC 62 The Regional Fault map presented with the project is a disgrace

It omits the Puente Hills Thrust and the two Norther branches of the Whittier fault, one of which may run through the canyon to the south of the project,

The Local faults Handorf, Little Puente Hills Thrust, San Jose all hazards to the project are not

mapped.

The regional fault- the VERY ACTIVE Upper Elysian Park is not shown.

etc

SOC 64 Prior submission for tract map apprval is the start of the process. When the 40 scale grading map is presented a detailed review WILL be made by GMED. The public wishes to know if the project is "suitable" or "feasible"

SOC 65 Section 111 statement are required by the County Building Code and MUST be supplied- response to SOC 61 is irrelevant

SOC 68 REspondent misstated GMED approval. GMD has not approved any grading plan hence has not approved the geotechnical report for the project.

Where do we find Globals reports and where do we find any approval of any report which meets current codes?

As we said earlier CBC 98 compliance is only valid for the Subdivision map vesting

that was then --this is now

A SHMA report to the current code is required PRIOR TO PROJECT APPROVAL

SOC 71 The response is unresponsive- the comment refered to seismic ground motion and co-seismic events not fault rupture

SOC 72, 73, 74 Response is False

SOC 75 REsponse that correspondence ws stamped is correct. It is also correct that Global inherited the project

We dispute the "At this time" statement A SHMA report to the current code is required PRIOR TO PROJECT APPROVAL

And GMED will review again at plan check

SOC 76 We find no site specific Deterministic seismic hazard analysis to support this statement. There is no discussion of the duration of shaking

SOC 77 The databases mentioned are not current

WE requie a statement from GMED that ridgetop amplification will not be considered at the time of grading plan approval if the rewponse to 77 is to be accepted

"at this time" is not allowed by CEQA- deferal of analysis and mitigation is not allowed.

SOC 78 The response is false Hard bedrock materiel is way below the project site. The projec site is underlain by the weak, landslide prone north face of the Puente Hills

Agree on liquefaction however landslide analysis did not consider current seismic inputs, did not look at the ridge, and did not consider the length of shaking.

SP-117 requires that large distant events be considered (San Andreas) they were not.

GMED acceptance is only for the preliminary tract map-- later findings will requie the map to be redone- we prefer that these investigations be done during the public review for the EIR and they must be accomplished prior to projet approval.

SOC 80, 81 Thank you-- the CalTrans retaining wall(soundwall) guidelines are for a mzximum earthquake event and would be appropriate here

SOC 82 The known Workman Hill and Whittier Heights branches of the Active Whittier fault system are not mapped by the applicant. The could be in the canyon downhill of the water tank.

SOC 83 we erred- SPPV ws for liquefaction- we apologise

However a fault does not have to be zoned under Alquist Priolo to be "know and active" If you are using CBC 98 the near fault calculation is found in table 16 and the footnote. You do not get to pull definitions out of a hat. Read Syndors monologue for a discussion. The nearest active fault trace almost certainly crosses the property. Pleaseow all of the traces of the Whittier fault on your map.

The nearest fault trace using CBC 98 rules is undoubtedly the Puente Hills Thrust and my be a distence of 0.0km for near fault calculations.

SOC 84 SOC alledges that the CBC 98 compliant report is only valid for the currently vested tract map and that a current cbc report will have to be made for grading and construction.

A current SMA report will have to be prepared prior to project approval by the lead agency, EIR requirements are not directly tied but do have to demonstrate suitability and feasiblity which is only tenative at this time., especially as to the large water tank perched above the homes.

"Global used an assumed seismic value of 0.15g" if you are refering to the static method coefficient it's not g- otherwise we do not know of what you are refering to.

SOC 86 SOC has extensive corespondence with USGS SCEC has an 8 Million dollar grant to update the maps however most of the data is currently available should the applicant care to dig it out- which they must do for a site specific analysis. Applicant should not expect a national effort to do their site specific work for them.

Ask Dr. Lucy jones if her moderate estimates are rnresonable or cataclsmic. A 7.8 on the San Andreas is a most probable not even a building code level and certainly a level required for Critical Structures. Arrowhead Regional Medical Center is designed for an 8.3- a resonable

design level for landslide analysis and critical infrastructure such as the projects water tank.

SOC87

Responder asserts tht the project has been approved. This statement is False

SOC 88 Please provide a seismic coefficient using the procedure referenced in SP-117A-2008 for screening

A Nwmark analysis may be required for the water tank ridge

89 THE Project is NOW under SP-117 A 2008 and the 2007 CBC.

SOC 91 There is no current site specific study

SOC 92 The building code references ASCE7-05 and the commentaries to it and NEHRP for clairification, SP117- rquires the latest data and methods

SOC 93 we hope not also

SOC 96 WE and GMED consider the report approved for the tract map to be preliminary for grading and construction

SOC 98 The data given in the CBC maps are not to be used for site specific analysis as they are too coarse grained Read the footnotes

SOC 103 The approval of the tract map is ofhistorical iterest only We agree with the final sentence however that future action does not show us the project is feasible.

SOC 106 Question ws not responded to

SOC 107 we consider co seismic events shuch as ridgetop amplification, ridgetop spreading applicable to ridges above the project and the water tank road/ ridge/ pipelines

SOC 110 A building code statement meeting sections 110 et seq mut be provided.

SOC 117 we do not find ay Ciriculum vitae which would show that any licensed professionals are practicing in the fields required.

SOC 118 We dispute the response.

SOC 120 we dispute that the nearest active fault is the Whittier

SOC 128 we are concerned that tank failure as happended in Topanga during the moderate Northridge event could wash our or mud cover roads hindering fire and emergence access.

SOC 138 Solar panels are a feasible mitigation The project is not limited to "requirements"

SOC 139 Rowland Will provide recycled water if requested. They consider it useful for landscaping and fire prevention.

SOC 153 The curicutious access for the public is burdensom

SOC 154 The applicant is not limited by regulations

SOC 155 WE expect the proponent to agree to the county's hillside ordence when adopted

SOC 156 The project should not be limited by minimal county requirements the single access road and on street parking must also be considered.

SOC 172 The project has not yet been aproved- there is a hearing Wednasday

SOC 181 The project's safety is not limited by the Water copany

SOC 188 The Syndor comments to Fullerton clearly show that prior to2005 CGS utilized the seismic paramaters shown in the Dolan Nature Article

There have been many peer reviewed articles since however Dr Dolan indicates that the Nature article is still current and unrefuted.

SOC 190 Appendix V is not available to the public, no C.V.s are provided

Thanks you for your Consideration

James I Flournoy

secretary

CLT.001
GLS

Superior Court of California
County of San Bernardino
Civil Division, Department S-33
303 West Third Street
San Bernardino, California 92415

FILED-Central District
SUPERIOR COURT
SAN BERNARDINO COUNTY
JUL 29 2009
By Stephanie Chandler
Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

SAN BERNARDINO DISTRICT

RIALTO CITIZENS FOR RESPONSIBLE GROWTH,

Petitioner,

vs.

CITY OF RIALTO; REDEVELOPMENT AGENCY OF THE CITY OF RIALTO; and DOES 2 through 100,

Respondents;

WAL-MART REAL ESTATE BUSINESS TRUST; WAL-MART REAL ESTATE BUSINESS TRUST, INC., WAL-MART REAL ESTATE TRUST, INC.; and DOES 101 through 1,000,

Real Parties in Interest.

CITY OF COLTON, a California municipal corporation,

Plaintiff/Petitioner,

vs.

CITY OF RIALTO, a California municipal corporation; CITY COUNCIL OF THE CITY OF RIALTO; and DOES 1 through 50 inclusive,

Defendants/Respondents,

Case No.: CIVSS 810834

RULING ON PETITION FOR WRIT OF MANDATE

WAL-MART STORES, INC., a Delaware corporation; WAL-MART REAL ESTATE BUSINESS TRUST, INC., a Delaware corporation; and ROES 51 through 100, inclusive,

Real Parties in Interest.

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This matter came before the court for a hearing on a Petition for Writ of Mandate (CEQA). The court has reviewed and considered the fairly extensive briefs by and between the parties, as well as the oral arguments of counsel heard at the hearing on this petition and issues its ruling as follows.

A. Factual and/or Procedural Context

This is an action brought under CEQA by petitioner Rialto Citizens for Responsible Growth against respondents City of Rialto and the Redevelopment Agency of the City of Rialto following the City's approval of a Wal-Mart Supercenter to be located between Riverside Avenue and Willow Avenue in Rialto along San Bernardino Avenue. A similar case has been filed by the City of Colton (*City of Colton v. City of Rialto*, civss811119); both cases have been fully briefed, one administrative record has been filed as to both cases, and the opposing brief addresses arguments made in both cases. The cases have not been consolidated, however.

B. Analysis

Before turning to the CEQA issues, Citizens argues that the City committed two procedural errors in approving the Project. First, Citizens contends that the City did not provide proper notice of the public hearing at which the Project was adopted. Second, Citizens contends that the City did not make the necessary findings that the Development Agreement was consistent with the general plan and applicable specific plans.

Notice: Approval of the Project required, among other things, an amendment to the existing General Plan and amendments to a specific plan, and as a consequence the City was required to hold a public hearing and to give advance notice of the hearing. Gov. Code §65355. Such notice was required to "include[] the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing." Gov. Code §65094.

Petitioner contends that the "general explanation of the matter to be considered"

was insufficient because the notice (A.R., Tab 172, pp. 6135-6136, Tab 186, pp. 6761-6762)[1] did not include the Planning Commission's recommendation. Opposing parties agree that notice was required to be given under §65094 and that the Planning Commission's recommendation was not included in the notice, and contend that the notice is not required to include the Planning Commission's recommendation.

Petitioner turns to *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, one of the few cases discussing §65094, in support of its position. In *Environmental Defense Project*, the public entity provided notice of the hearing prior to the Planning Commission's recommendation being made. The court held that the notice was insufficient: "Consistent with the Legislature's recognition of 'the importance of public participation at every level of the planning process' and the policy of the state to give the public 'the opportunity to respond to clearly defined alternative objectives, policies, and actions' [Citation], we hold that the 10-day notice of the legislative body's hearing must be given *after* the planning commission's recommendation has been received and must include the planning commission's recommendation as part of the 'general explanation of the matter to be considered.' " Environmental *Defense Project*, 158 Cal.App.4th at 881 (italics in original).

Opposing party focuses on the fact that the issue in *Environmental Defense Project* was whether notice was proper when it was given before the Planning Commission's decision and ignore the language in the decision about how such notice is defective because an accurate description of the project must include the Planning Commission's decision.

It seems clear from the case, however, that the reason why the court found the notice to be defective in *Environmental Defense Project* is because the public was not given notice of the Planning Commission's recommendation, not merely because the description of the project could have been changed by the Commission. For example, the court stated that "there can be little doubt that the purpose of notice in cases such

[1]Reference is to the Administrative Record by Tab and page number and omit the volume number since most of the relevant documents are in the excerpts provided by the parties.

as this one is to inform the public of the legislative body's hearing so they will have an opportunity to respond *to the planning commission's recommendation* and protect any interests they may have before the legislative body approves, modifies, or disapproves that recommendation." *Environmental Defense Project*, 158 Cal.App.4th at 891 (italics added). "[W]ithout inclusion of what that recommendation was, the purpose behind the notice provision would be ill-served." *Environmental Defense Project*, 158 Cal.App.4th at 892. Since the public is entitled to provide input on the planning decisions, knowledge of the recommendation, along with the project, would accordingly be necessary. Moreover, it seems that, to a project opponent or proponent, whether the Planning Commission agreed with you or not might make a difference in determining whether you felt it was necessary to appear at the hearing, whether you should bring evidence or witnesses, what arguments you would prepare, and so on.

The remarks in *Environmental Defense Project* as to the necessity of including the Planning Commission's recommendation in the notice might be technically classified as *dicta*; the only thing necessary for the decision in *Environmental Defense Project* is the finding that the notice cannot be given until after the Planning Commission's decision. But the *dicta* nevertheless includes a clear statement that the recommendation be included in the notice and "command[s] our serious respect." *Sheeler v. Greystone Homes, Inc.* (2003) 113 Cal.App.4th 908 at 919. Moreover, the reasoning in *Environmental Defense Project* regarding the necessity of the public needing to know the recommendation in order to fully participate at the hearing applies equally to the present set of facts as it did to the facts in that case, so even the designation of the language as *dicta* would seem to be questionable. The court would prefer to follow *Environmental Defense Project* and find that the notice was insufficient.

Failure to Make Requisite Findings: Petitioner next argues that the public entity failed to make the required findings that the Development Agreement was consistent with the General Plan and applicable Specific Plans. "A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement

are consistent with the general plan and any applicable specific plan." Gov. Code §65867.5(b). Petitioner contends that no such findings were made.

At Tabs 167, 168 and 169 of the Administrative Record the Planning Commission adopted resolutions approving the EIR, the amendments to the General Plan, and an amendment to the applicable Specific Plan. At Tab 171 the Planning Commission adopted a resolution approving the Development Agreement and finding that the provisions of the Development Agreement "are consistent with the General Plan and Specific Plan." A.R., Tab 171, p. 6132.

Opposing parties contend that "[o]n July 15, 2008, the City Council adopted all findings and recommendations of the Planning Commission without modification. A.R., Tab 203, pp. 8155-8156. Therefore, the City Council made the required findings under section 65867.5. . . ." Opposition, 14:16-17.

The cited document does not, in fact, adopt all of the findings and recommendations of the Planning Commission. That document, a resolution adopted by the City, states that the Planning Commission found the EIR to be adequate, states that the EIR is adequate, and resolves that the EIR is certified as being in compliance with CEQA. See A.R., Tab 203, pp. 8155-8156. The resolution does not state that the Development Agreement is consistent with the General Plan or the Specific Plan, does not state that the Planning Commission found such a consistency, does not adopt the findings of the Planning Commission *in toto*, and in fact does not reference the Development Agreement except in the title. The court would disagree with the opposing party's interpretation of the resolution – it does not appear that the City by this document adopted the findings of the Planning Commission and thus did not find that the Development Agreement was consistent with the General Plan and the Specific Plan, and thus the City did not make the requisite findings under §65867.5(b).[2]

/ / /

/ / /

CEQA

The California Environmental Quality Act (Pub. Res. Code §§21000 et seq.) ("CEQA"), originally enacted in 1970, establishes as a policy of the state "that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." Pub. Res. Code §21002. To achieve that goal, CEQA sets forth an environmental review process designed to assist agencies in identifying and disclosing environmental effects and feasible alternatives or mitigation measures which would avoid or substantially lessen the significant effects of proposed projects. *Id.*

CEQA establishes a "three-tiered process to ensure that public agencies inform their decisions with environmental considerations." *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106 at 112. First there must be a determination of whether CEQA applies to the proposed activity. *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677 at 688. If the activity is not a project or is exempt, no further review is required and the public entity may file a notice of CEQA exemption if it so desires. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356 at 1373. If the project is not categorically exempt, however, the agency must undertake an initial study of the project. *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786 at 792. If the initial study shows that there is no substantial evidence that the project may have a significant effect on the environment, the agency may adopt a negative declaration. *San Bernardino Valley Audubon Society v. Metropolitan Water District of Southern California* (1999) 71 Cal.App.4th 382 at 389. If, on the other hand, after the initial study is conducted it is determined that the project may have a significant effect on the

[2] It could be argued, but is not actually argued, that since the EIR found the Project to be consistent with the General and Specific Plan, the City adopted that finding, but the City only certified the EIR as sufficient under City; the City did not adopt the factual findings of the EIR.

environment, an Environmental Impact Report ("EIR") is required. *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398 at 405.

The EIR is "the heart of CEQA." *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795 at 810. One function of the EIR is "the informing of the executive and legislative branches of government, state and local, and of the general public of the effect of the project on that revered resource which we call 'The Environment.' " *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal.App.3d 695 at 705. The EIR "is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 at 392 (hereafter *Laurel Heights I*").

In *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112 at 1123-1124 (*Laurel Heights II*), the court explained:

> When an EIR is required, the lead agency initially prepares a draft EIR. Once the draft EIR is completed, a comment period is provided for the public and interested agencies. [Citations.] Public hearings to discuss the draft EIR are encouraged, but not required. [Citation.] The comment period is generally no shorter than 30 days and no longer than 90 days. [Citations.]
>
> In the course of preparing a final EIR, the lead agency must evaluate and respond to comments relating to significant environmental issues. [Citations.] In particular, the lead agency must explain in detail its reasons for rejecting suggestions and proceeding with the project despite its environmental effects. [Citations.] "There must be good faith, reasoned analysis in response [to the comments received]. Conclusory statements unsupported by factual information will not suffice." [Citation.] Thus, it is plain that the final EIR will almost always contain information not included in the draft EIR.
>
> The final substantive step in the EIR review process is certification of the final EIR. The lead agency is required to certify that the final EIR has been completed in compliance with CEQA, and that it reviewed and considered the information in the final EIR prior to

> approving the project. [Citation.] CEQA also requires that, before approving a project, the lead agency "find either that the project's significant environmental effects identified in the [final] EIR have been avoided or mitigated or that the unmitigated effects are outweighed by the project's benefits. [Citations.]" [Citation.]
>
> – *Laurel Heights II*, 6 Cal.4th at 1123-1124 (footnotes omitted)

Public Res. §21168.5 provides that a court's inquiry "shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." It is important to note that the court "does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 at 189; see also *Laurel Heights I*, 47 Cal.3d at 392.

> We may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. "Our limited function is consistent with the principle that 'The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.' " [Citations.] We may not, in sum, substitute our judgment for that of the people and their local representatives. We can and must, however, scrupulously enforce all legislatively mandated CEQA requirements.
>
> – *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553 at 564

Project Description: CEQA Guidelines 15124 (14 C.C.R. §15124) require that the EIR include a description of the project including the location and boundaries of the proposed project, a statement of the objectives sought by the project, a general description of the project's technical, economic, and environmental characteristics, and a statement describing the intended uses of the EIR including a list of the agencies that are expected to use the EIR in their decision-making, a list of permits and other approvals required to

implement the project, and a list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. The project description "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact." In *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, the Fifth Appellate District summarized:

> "[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." [Citation.] "[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input." [Citation.] "[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 alternative. . . ." [Citation.]
>
> -- *San Joaquin Raptor*, 149 Cal.App.4th at 655

In listing the public approvals necessary for the Project, the EIR does not include the Development Agreement among them. See A.R., Tab 105, p. 1177. In justifying this exclusion opposing parties note that in *Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892 at 909-910 the court held that the contents of a Development Agreement did not necessarily need to be *analyzed* in an EIR. The Development Agreement was included in the project description in the EIR in *Native Sun/Lyon Communities*, thus giving "adequate notice of the existence of the development agreement and provid[ing] a means for determining the terms of that document,", making the project description "adequate with respect to the development agreement." *Native Sun/Lyon Communities*, 15 Cal.App.4th at 910. However, since CEQA does not require an analysis in the EIR of each and every activity carried out in conjunction with a project, the EIR in *Native Sun/Lyon Communities* adequately apprised the public of the scope of the project for "intelligent weighing of the environmental consequences of the project" without having to analyze the terms of the Development Agreement listed as part of the project components. *Native Sun/Lyon*

Communities, 15 Cal.App.4th at 910.

If anything the cited case seems to support the Petitioner's position, since in *Native Sun/Lyon Communities* the Development Agreement was included in the project description and the court specifically noted that including the Agreement in the description provided the public with the notice required by CEQA. The court's own research has not turned up a single case where an EIR was held adequate when it failed to include in the project description a discretionary approval by a public entity necessary for the completion of the project. In *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, the court held that a project description for a housing development that did not include the expansion of a public wastewater treatment plant was legally inadequate because the housing development could not proceed without the plant expansion and was thus an integral component of the project. *San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 734; see also *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20 at 27 (listing cases). And, indeed, the plain language of the Guideline ("The description of the project shall contain. . . [¶] [a] list of permits and other approvals required to implement the project") would seem to suggest that no other interpretation was possible and that all public entity approvals necessary to implement the project must have to be included in the project description for the description to be sufficient. The EIR failing to include the public entity's approval of the Development Agreement, the description is insufficient.

Regional Significance: Next Petitioner contends that the City failed to determine whether the project was of statewide, regional, or areawide significance. The relevant CEQA Guideline is 14 C.C.R. 15206(b), which requires the lead agency to determine that a project of is statewide, regional or areawide significance if it meets any one of seven criteria, including that "[a] proposed local general plan, element, or amendment thereof for which an EIR was prepared." 14 C.C.R. §15206(b)(1). The Project includes a General Plan amendment and thus meets this definition.

In the opposition it is claimed that a formal finding of significance is not required; this appears to be correct. Subdivision (a) does not require the EIR to make an explicit finding that the project is of such significance, only that projects of significance have the EIR sent to the State Clearinghouse, which would then provide notice to the affected public entities. See 14 C.C.R. §§15023(c), 15087(f), 15105, 15205(e). Here the EIR was sent to the State Clearinghouse (A.R., Tab 109, pp. 5463-5464), an implicit finding of significance and meeting all of the requirements for a project of statewide, regional, or areawide significance under Guideline 15206(a).

Cumulative Traffic Impacts: The Guidelines provide that "[t]he following elements are necessary to an adequate discussion of significant cumulative impacts: [¶] (1) Either: [¶] (A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or [¶] (B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency." CEQA Guidelines, 14 C.C.R. §15130(b). But rather than work off of a list of projects the cumulative traffic analysis was done by projecting traffic based on "updated socioeconomic data and the extension of the State Route 210 freeway to its current terminus." A.R., Tab 105, p. 1277. This would appear to be insufficient under the Guideline, quoted above, which requires either a list of anticipated projects or working off of a prior document that assembled such a list. Neither was done in the present case, and the general projections described in the EIR thus leave anyone examining the EIR unable to question what projects were included (or excluded) and thus unable to properly question the sufficiency of the analysis.[3]

[3] One can imagine a member of the City Council or the public, aware of another application for a large project in an earlier stage of development, asking the preparer of the EIR whether that project was included in the projection; but what would the response be?

Greenhouse Gas Emissions and Climate Change Impacts: At the outset, the court should note that in the copy of the A.R. lodged with the court, the discussion of greenhouse gasses at pages 1319-1320 is garbled and illegible. Legible copies of these pages are included in opposing parties' excerpts of the administrative record.

At Tab 105, p. 1321 of the A.R., the EIR discusses global climate change and notes that the Legislature has passed a bill (AB 32) requiring global warming emissions to be reduced to 1990 levels by 2020, that the bill does not provide any thresholds or methodologies for analyzing a project's impacts, and states that:

> Based on the current scientific literature, it would be speculative to determine whether the contribution of any particular project or plans to greenhouse gas emissions and climate changes is significant. Based on an investigation of compliance with local air quality thresholds, future long-term operational impacts, and Wal-Mart's commitment to increasing the company's environmental sustainability goals and policies, that the project would still have the potential to result in impacts associated with greenhouse gas emissions and global climate change. However, there is significant uncertainty involved in making predictions of the extent of which the project operations have on greenhouse gas emissions and global climate change. Therefore, a conclusion on the significance of the environmental impact of climate change cannot be reached. Section 15145 of the CEQA Guidelines provides that, if after a thorough investigation a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impacts.
>
> *Mitigation Measures*: No mitigation measures are recommended.
> *Level of Significance*: Significant and Unavoidable Impact.
> -- A.R., Tab 105, pp. 1321-1322

This recitation of the current state of legislation is correct: Guidelines proposing significance thresholds have been proposed but not adopted. In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099 at 1111 the court held that the EIR must explain why an impact was or was not significant. CEQA Guidelines §15064, 14 C.C.R. 15064, subdivision (b), similarly requires the determination of significance to be based "to the extent possible on scientific and factual

data." But, the Guideline continues, "[a]n ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting." Guideline §15064.7(a), 14 C.C.R. §15064.7(a), only "encourages" significance thresholds, but does not require them. See also *Meija v. City of Los Angeles* (2005) 130 Cal.App.4th 322 at 342 (significance thresholds are "useful" but not "conclusive").

As an analysis of the *individual* impacts of the Project it seems to be within the public entity's discretion to conclude that no levels of significance can be determined, but this is all part of an analysis of the *cumulative* impacts. See A.R., Tab 105, p. 1318. It should be obviously impermissible to decline to analyze the *cumulative* impacts because it cannot be determined whether or not the *individual* impacts of the Project are significant; there is no showing in the EIR that levels of significance cannot be determined for the cumulative impact on greenhouse gasses. And finally, the EIR does conclude that the cumulative impacts would be significant, as quoted above, yet addresses no potential mitigation measures nor explains why mitigation measures cannot be adopted. This is accordingly an insufficient analysis of the cumulative impacts on global climate change.

Water Supply Impacts: Petitioner claims that there were two errors in the analysis of the water supply impacts. First, Petitioner claims that the calculation of the anticipated water consumption was in error. Second, Petitioner claims that the EIR fails to show that there will be enough water to service the project.

The EIR calculated the water consumption by taking an existing Wal-Mart and calculating the water consumption per square foot, multiplying that amount by the square footage of the proposed Wal-Mart in the Project, and then factoring in water demand factors for typical restaurant and retail uses to calculate demand for the other six buildings in the Project. Petitioner notes that the Wal-Mart included in the Project would include the sales of groceries (A.R., Tab 105, p. 1141) and claims that the store on which the calculation is based does not. It is probably sufficiently well-known that grocery sales is a more water-intensive use per square foot than the other sales one

might find at a Wal-Mart; if there were evidence that the Wal-Mart upon which the calculation is based did not include a grocery component this would be an inaccurate way of determining water usage. But there is no evidence in the Administrative Record cited to by Citizens that shows that the Wal-Mart upon which the calculations were based did not have the same sales in the same proportions as the proposed Wal-Mart. In the absence of such a showing, and with the burden of proof on Petitioner, the court would see no error in this method of calculation.

As for water supply, the Project is anticipated to consume some 15,196,410 gallons per year (A.R., Tab 105, p. 1438), while the City produces 4.37 billion gallons of water, purchases an additional 740 million gallons per year, and sells 244 million gallons of water. A.R., Tab 105, p.1429.

The City contends that the water sold by the City is surplus and since that surplus greatly exceeds the amount of water consumed by the Project (244 million gallons compared to 15 million gallons), the impact of the Project on the City would be less than significant. A.R., Tab 105, p. 1439. Petitioner contends that the analysis is incomplete because the EIR does not evaluate whether or not the water purchased by the City (740 million gallons per year) will continue to be available.

A public entity may not rely on mere promises of water from the State Water Project. See, e.g., *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715 ("The dream of water entitlements from the incomplete State Water Project (SWP) is no substitute for the reality of actual water the SWP can deliver"); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 at 430. But here the City is relying on actual water sold to it, not a mere promise to sell it. Petitioner's arguments regarding an anticipated reduction in water from the SWP (see A.R., Tab 188a, pp. 1769-1770) are inapplicable because "[w]hile the City is within the area of the local State Water Project (SWP) Contractor -- San Bernardino Valley Municipal Water District (SBVMWD), the City does not currently have the infrastructure in place to use SWP water." A.R., Tab

188a, p. 1757. The evidence does not show that the water previously sold to the City will not be available in the future, and thus the analysis relying on that water is sufficient.

Biological Impacts: Petitioner contends that the EIR improperly defers analysis and mitigation of biological impacts.[4] Five special status plant species (the San Diego ambrosia, Plummer's mariposa lily, smooth tarplant, Robinson's pepper-grass, and rayless ragwort) are found to have the potential to occur on the Project site. A.R., Tab 105, p. 1362. The EIR does not disclose that any effort was made to determine whether these species were actually occurring on the property. Rather, three mitigation measures were proposed: First, prior to the issuance of a grading permit, focused surveys by a qualified botanist during the appropriate blooming period must be conducted. Second, consultation must then take place between the Project Applicant and the USFWS, CDFG, City, and other appropriate organizations to determine appropriate mitigation.[5] And third, if Threatened or Endangered Species (but not merely special status species) should be discovered, permitting from the USFWS or CDFG would be required. A.R., Tab 105, p. 1362-1363.

" 'Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. [Citation.] On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report. [Citation.]' [Citation.] If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them." *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777 at 793. Here the City has not

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[4] Petitioner also argues within this section that the City adopted the Draft EIR, not the Final EIR. The relevant resolution (A.R., 203:8155-8156) certifies "the EIR" and while there are references to the draft EIR earlier, the interpretation of the resolution as adopting the EIR with revisions and responses to comments would seem more accurate taking the resolution as a whole into account. ("WHEREAS, comments relating to the Draft EIR have been received and adequate responses thereto have been prepared and sent to the commenting agency and included in the Draft EIR. . .")

[5] The acronyms stand for United States Fish & Wildlife Service and California Department of Fish and Game.

even required the applicant to comply with the recommendations made by the USFWS or CDFG; the EIR merely requires the project applicant to "consult" with these entities.

Opposing parties cite to *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261. In *Defend the Bay*, there was a suitable habitat for a species and the EIR required surveys potential breeding pools prior to issuing grading permits. If the species was found in the project area, "a mitigation plan must be prepared in consultation with USFWS and CDFG. It is to include the construction of breeding pools satisfactory to these agencies on nearby protected lands." *Defend the Bay*, 119 Cal.App.4th at 1275.

The obvious distinction between the present case and *Defend the Bay* is that in *Defend the Bay* the applicant was required to adopt a mitigation plan satisfactory to the USFWS and CDFG and such a plan was required to establish breeding pools on protected land. In the present case, by contrast, the project applicant is merely required to consult with the USFWS and CDFG. The applicant is not required to adopt a mitigation plan satisfactory to either or both of these entities and is not required to adopt a mitigation plan that would accomplish any particular goals. The mitigations measures adopted by the EIR state that "[t]he appropriate mitigation shall be determined on a case-by-case basis, considering factors such as quality of habitat on the project site, size of plant populations located, and status of the species. Mitigation typically includes avoidance of the plaintiffs to the extent possible, relocation of specimens with monitoring/collection of seeds, or purchase of offsite habitat areas containing this species." A.R., Tab 105, p. 1363. This is so broad as to be essentially meaningless; the EIR sets no limits or parameters on the mitigations measures at all except to make the factors used to determine these parameters so varied that essentially any measure could be justified, up to paving over the species. And then, to top it off, the EIR does not even state who would determine "the appropriate mitigation" -- one can only assume the project applicant, since it is the applicant who is required to consult with the public agencies listed but is not required to abide by their suggestions. This is less a mitigation measure than a vague hope that one will be adopted in the future, and is

plainly an inadequate analysis under CEQA.

The analysis and mitigation measures proposed in the EIR for the Delhi Sands Flower-Loving Fly, the San Bernardino and Stephens' Kangaroo Rats, the western burrowing owl, and nesting raptors are all generally similar to the ones for the plants but the mitigation measures differ in certain ways as to each.

As to the Delhi Sands Flower-Loving Fly, the mitigation measures require off-site mitigation and the USFWS must approve the habitat ratio. A.R., Tab 105, p. 1364. This follows the *Defend the Bay*-type mitigation measure where the plan must meet with approval from the USFWS and requires off-site mitigation.

As to the Kangaroo Rats, the mitigation measures require trapping and "consulting and permitting between the Project Applicant and the USFWS and/or City of Rialto. . . to determine the appropriate mitigation, which would generally include provisions that require the Project Applicant purchase suitable off-site habitat." A.R., Tab 105, p. 1365. The word "permitting" is used, but viewing the mitigation measure as a whole the Project Applicant could fulfill its duties by consulting with the public agencies and then deciding that an appropriate mitigation measure would be throwing the trapped animals into the ocean. Once again the mitigation measure just leaves too much unresolved and is insufficient.

As to the burrowing owl, the mitigation measure merely requires consultation with the Lead Agency to determine "the appropriate mitigation." A.R., Tab 105, p. 1366. This is insufficient for the reasons stated above with regard to the five plant species.

Finally, as to nesting raptors, the mitigation measure requires protecting the site until the nesting activity has ended. A.R., Tab 105, p. 1367. This is definite and specific and thus sufficient for the purposes of CEQA.

Cumulative Air-Quality Impacts: Petitioner contends that the analysis of the cumulative air quality impacts was insufficient for failing to take into account the BNSF Railway yard. "[A]n adequate cumulative analysis requires a list of projects producing related or cumulative impacts. [Citation.] The contents of this list are 'closely related

past, present, and [reasonably] foreseeable probable future projects.' " *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61 at 73.

"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." CEQA Guidelines, 14 C.C.R. §15355(b). In this case the EIR provided a cumulative projects list (A.R., Tab 105, pp. 1181-1183), as is permitted by CEQA Guidelines, 14 C.C.R. §15130(b)(1). "When utilizing a list. . . , factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic." CEQA Guidelines, 14 C.C.R. §15130(b)(2). "Lead agencies should define the geographic scope of the area affected by the cumulative effect *and provide a reasonable explanation for the geographic limitation used.*" CEQA Guidelines, 14 C.C.R. §15130(b)(3) (italics added).

The list is described in the EIR as being projects and possible developments "having the potential to interact with the proposed project to the extent that a significant cumulative effect may occur." A.R., Tab 105, p. 1180. The EIR lists 72 projects, 65 of which are within 3 miles of the Project and the other 7 of which are between 3 and 5 miles of the Project. See A.R., Tab 105, p. 1184. The EIR states that these boundaries were drawn for the market impact analysis because these are the typical trade areas for neighborhood shopping areas and "big box" facilities. A.R., Tab 105, p. 1185. This makes for a reasonable explanation for a 5 mile geographic limit being provided for the market impact cumulative analysis, but it does not constitute an explanation for why a 5 mile limit should be used for the air quality cumulative analysis.

The Administrative Record in fact refers to 82 projects (rather than the 72 in the list) used in analyzing the cumulative air quality impacts. A.R., Tab 105, p. 1318. Either (A) this is a typo and the cumulative air quality impacts analysis was based on a list of 72 projects defined by their potential to impact the market rather than air quality, or (B) the air quality cumulative impacts was based on a different list, one with 82 projects, and a list which the court cannot locate in the EIR.[6] Either way, it is insufficient. A geographic limit based solely on market impact is not a reasonable explanation for limiting the study of non-market cumulative impacts, and a list not included in the EIR is equally inappropriate under CEQA Guidelines, 14 C.C.R. §15130(b).

Findings as to Greenhouse Gasses: In addition to the arguments discussed above, Petitioner contends that the EIR is defective for failing to identify the climate change and greenhouse gas impacts in the stand-alone section of the EIR concerning significant impacts. Pub. Res. Code §21100(b)(2)(A) requires that the EIR state "[i]n a separate section [¶] Any significant effect on the environment that cannot be avoided if the project is implemented." The list of mitigation measures and significant impacts after mitigation is at A.R., Tab 105, pp. 1143-1164; it does not mention greenhouse gasses or climate change as a significant impact. A similar list is at A.R., Tab 105, pp. 1495-1496 and also does not mention greenhouse gasses or global climate change.

Quoted *supra* at page 13 is part of the section on global climate change, including the conclusion "*Level of Significance*: Significant and Unavoidable Impact." See A.R., Tab 105, pp. 1321-1322. The analysis of the global climate change issues seem to be leading to the conclusion that no levels of significance could be determined, which makes the conclusion that there would be a significant and unavoidable impact appear to be unjustified. More pertinently, as discussed above, the analysis is insufficient because it fails to address the cumulative impacts merely because a level of

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[6] In the opposition, Respondents and Real Parties claim that the project list included "21 residential projects, 25 industrial warehouse or manufacturing projects, 6 office/commercial projects, and 8 restaurant/retail projects" (Opposition, 24:19-21) -- a total of 60 projects, rather than 72 or 82. Opposing parties also cite to A.R., 75:915-967 as the basis for this list, which is the market impact analysis and a study which does not reference air quality (or other non-market environmental) impacts.

significance could not be determined for the Project's individual impact. But to the extent that there was nevertheless a conclusion that there would be a significant and unavoidable impact on the global climate, Petitioner is correct in noting that the impact was required to be noted in the section on impacts of the project.

Reduced Density Alternative: Among the project alternatives examined by the EIR was a reduced density alternative consisting of the Wal-Mart Supercenter only and without the four commercial outparcels. See A.R., Tab 105, pp. 1460-1464. This alternative met all of the project objectives except the one to "[c]reate an opportunity for synergistic mix of retail and restaurant tenants in the City of Rialto providing residents with additional shopping and eating options." A.R., 105:1463. The Reduced Density Alternative was found to be environmentally superior as to the traffic and noise impacts. A.R., Tab 105, pp. 1461-1462.

The parties dispute whether the City ever adopted the Statement of Overriding Considerations, which was part of an exhibit to the resolution. The resolution does state that the City Council "adopted a Statement of Overriding Considerations for traffic, noise, and air quality impacts which may remain significant and unavoidable notwithstanding implementation of feasible mitigation measures." A.R., Tab 203, p. 8156. This language does not expressly adopt the Statement of Overriding Considerations as to the rejected project alternatives but by incorporating the Statement may be read to incorporate all of the findings in the Statement, including those as to the Reduced Density Alternative.

A more significant problem is that the findings are not supported by substantial evidence. The relevant finding in the Statement of Overriding Considerations is at A.R., Tab 203, p. 8257 –

> Based on the entire record, this Council finds that the Reduced Density Alternative would not fulfill all of the Project's objectives. By not developing the outparcel sites, the stated objective to "Create an opportunity for synergistic mix of retail and restaurant tenants in the City of Rialto providing residents with additional shopping and eating options," would not be achieved. The remaining Project objectives would be fulfilled by the Reduced Density Alternative, but to a lesser degree than the proposed Project. Furthermore, this alternative is not environmentally superior with

regard to those impacts that are considered to be a significant Project impact. Accordingly, this Council finds the Reduced Density Alternative infeasible and rejects the Reduced Density Alternative.

It is the second-to-the-last sentence in this paragraph that is unsupported by substantial evidence. The EIR expressly found significant individual and cumulative impacts as to traffic and cumulative impacts as to noise caused by the Project (A.R., Tab 105, pp. 1494-1495)[7] and that the Reduced Density Alternative would be environmentally superior as to both traffic and noise impacts (A.R., Tab 105, pp. 1461-1462), so the finding that "this alternative is not environmentally superior with regard to those impacts that are considered to be a significant Project impact" (A.R., Tab 203, pp. 8257) is contrary to the factual findings in the EIR.

Arguments by the City of Colton: At the end of its brief Citizens attempts to incorporate arguments made by the City of Colton in its action challenging the Project under CEQA. The court declines to address these arguments here as the cases are not consolidated.

C. Disposition

Grant the Petition for a writ of mandate --

1. The City improperly approved the Project without providing notice to the public of the Planning Commission's recommendation.
2. The City improperly approved the Project without finding that the Development Agreement was consistent with the General Plan and the Specific Plan.
3. The finding in the Statement of Overriding Considerations that the Reduced Density Alternative is not environmentally superior with regard to those impacts that are considered to be a significant Project impact is not supported by

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[7] As to traffic: "[T]he Opening Year (2008) impacts to the intersections of Valley Boulevard and Willow Avenue and Riverside Avenue and Placentia Lane would be significant and unavoidable even after the payment of fair share costs by the project applicant. Cumulative impacts would also be significant and unavoidable under Year 2008 conditions." As to noise: "[T]he project in addition to future growth within the City of Rialto would result in a significant and unavoidable impact regarding noise."

substantial evidence, since the Reduced Density Alternative is environmentally superior as to the significant traffic and noise impacts.

4. The City improperly approved an EIR that was defective for the following reasons:

- The Project Description does not list all of the public approvals necessary for the Project since the Development Agreement is not included;
- The Cumulative Traffic Impacts do not either include a list of anticipated projects or work off of a prior document that assembled such a list;
- The EIR improperly dismisses the cumulative impacts of Greenhouse Gas Emissions and Climate Change Impacts because of an inability to analyze the individual impacts of the Project;
- The analysis of the Biological Impacts improperly defers or fails to analyze and mitigate potential impacts to five special status plant species (the San Diego ambrosia, Plummer's mariposa lily, smooth tarplant, Robinson's pepper-grass, and rayless ragwort), the San Bernardino and Stephens' Kangaroo Rats, and the western burrowing owl;
- The EIR fails to provide a reasonable explanation for the geographic limitation used in defining the cumulative projects list; and
- The EIR in its body finds a significant and unavoidable impact as to greenhouse gasses and global climate change yet fails to separately list this impact among the significant impacts of the Project.

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Accordingly, the court directs the City to set aside all of the approvals it made in approving this Project, including: the Development Agreement, the General Plan Amendment, the Specific Plan Amendment to the Gateway Specific Plan, three Conditional Use Permits (CUPs), the Parcel Map Approval, the Precise Plan Review by the Design Review Committee, and the text change to Zoning Code §18.31.020.[8]

Dated this 29 of July 2009.

DONALD R. ALVAREZ
Judge of the Superior Court

[8] Aside from the Development Agreement, which as discussed above is not listed in the EIR among the approvals required for the project, this list is in the EIR at A.R., 105:1177. The appropriate remedy should include setting aside all approvals since these approvals were neither properly noticed nor based on an adequate EIR.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

PETITIONER:	**RIALTO CITIZENS FOR RESPONSIBLE GROWTH**
RESPONDENTS:	**CITY OF RIALTO; REDEVELOPMENT AGENCY OF THE CITY OF RIALTO**
REAL PARTIES IN INTEREST:	**WAL-MART REAL ESTATE BUSINESS TRUST; WAL-MART REAL ESTATE BUSINESS TRUST, INC., WAL-MART REAL ESTATE TRUST, INC.**
PLAINTIFF/PETITIONER:	**CITY OF COLTON, a California municipal corporation**
DEFENDANTS/RESPONDENTS:	**CITY OF RIALTO, a California municipal corporation; CITY COUNCIL OF THE CITY OF RIALTO**
REAL PARTIES IN INTEREST:	**WAL-MART STORES, INC., a Delaware corporation; WAL-MART REAL ESTATE BUSINESS TRUST, INC., a Delaware corporation**
CASE NO.:	**CIVSS 810834**

DECLARATION OF SERVICE BY MAIL

My business address is: 303 West Third Street, 4th Floor, San Bernardino, California 92415-0210. I hereby declare that I am a citizen of the United States, over the age of 18, employed in the above-named county, and not a party to nor interested in this proceeding. On July 30, 2009, I deposited in the United States mail at San Bernardino, California, a sealed envelope (postage prepaid) which contained a true copy of the attached:

NAME OF DOCUMENT: **RULING ON PETITION FOR WRIT OF MANDATE**

which was addressed as follows:
Name and Address of Person(s) Served:

Cory J. Briggs, Esq. Briggs Law Corporation 5663 Balboa Avenue, No. 376 San Diego, CA 92111-2705 (Attorney for Petitioner Rialto Citizens for Responsible Growth)	Epstein Becker & Green, P.C. Henry Shields, Jr. Eric A. Cook 1925 Century Park East, Suite 500 Los Angeles, CA 90067-2506 (Attorneys for Real Parties in Interest Wal-Mart Stores, Inc., Wal-Mart Real Estate Business Trust, Wal-Mart Real Estate Business Trust, Inc., and Wal-Mart Real Estate Trust, Inc.)
Geralyn L. Skapik, Esq. Law Office of Mark J. Skapik, APC 250 West First Street, Suite 330 Claremont, CA 91711 (Attorneys for City of Colton)	Allison E. Burns, Esq. Jennifer Yu, Esq. Joseph M. Adams, Esq. Stradling Yocca Carlson & Rauth 660 Newport Center Drive, Suite 1600 Newport Beach, CA 92660-6422 (Attorneys for City of Rialto and City Council of the City of Rialto)

At the time of mailing this notice there was regular communication between the place of mailing and the place(s) to which this notice was addressed.

I declare under penalty of perjury the foregoing to be true and correct.

DATED: July 30, 2009

BY: _____
Mary Jo Phipps
Judicial Secretary

Silvas, Rudy

From: Elsa Trujillo [Elsa@pcbinc.com]
Sent: Tuesday, August 18, 2009 4:04 PM
To: Silvas, Rudy
Cc: Cordova, Ramon
Subject: RE: PAcific Heights Ceqa Issues
Attachments: pac_heights(001).PDF

Rudy,
Note that the Final EIR was hand delivered by me in order to ensure that it was available for review on Aug. 6, see attached NOAs w/ signatures from Librarians/library staff who signed for them on Aug. 6, 2009. You may call them to verify that the document was given to them for public review on the Aug. 6 as required.

Elsa Trujillo, Project Manager
Pacific Communities Builder Inc.
1000 Dove Street Suite 300
Newport Beach, CA 92660
TEL: (949) 660-8988 Ext. 123
FAX: (949) 253-0683
Elsa@pcbinc.com

From: Silvas, Rudy [mailto:rsilvas@planning.lacounty.gov]
Sent: Tuesday, August 18, 2009 2:48 PM
To: Elsa Trujillo
Cc: Cordova, Ramon
Subject: FW: PAcific Heights Ceqa Issues

Received today.

Rudy Silvas
Principal Regional Planning Assistant
Los Angeles County Department of Regional Planning
(213) 974-6461
rsilvas@planning.lacounty.gov

From: James Flournoy [mailto:saveourcommunityinc@live.com]
Sent: Tuesday, August 18, 2009 2:43 PM
To: Silvas, Rudy
Subject: PAcific Heights Ceqa Issues

Dear MR Silvas
Attached are our thoughts on the applicants responses to our public comments on the PAcific Heights Project..
We do not find a current Seismic Hazards Mapping Act report which is requied prior to approval of the Project.

Sincerly yurs
Jim Flournoy

(sorry about the timing FEIR document was not at the laibrary till last Monday and Appendices to the 2003 report do not seem to be anywhere)
Also spell checker was tearing up the document- apologies

Hacienda Heights Lib.

Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

Jon Sanabria
Acting Director of Planning

NOTICE OF COMPLETION AND AVAILABILITY FINAL ENVIRONMENTAL IMPACT REPORT FOR THE REVISED PACIFIC HEIGHTS RESIDENTIAL PROJECT STATE CLEARINGHOUSE NUMBER 2000021044

County Project Number 92-027
Vesting Tentative Tract Map 51153, Conditional Use Permit, Oak Tree Permit

The County of Los Angeles Department of Regional Planning acting in the capacity of "Lead Agency" under the County Environmental Guidelines, Chapter III, Section 304, has filed a "Notice of Completion" of a Final Environmental Impact Report (FEIR) for the Revised Pacific Heights Residential Project. This document has been prepared in accordance with, and pursuant to, the California Environmental Quality Act (CEQA), as amended; Public Resources Code, Section 21000 *et seq.*; and the "Guidelines for Implementation of the California Environmental Quality Act (State CEQA Guidelines), California Code of Regulation, Title 14, Chapter 15000 *et seq.*, (including Section 15160).

PROPOSED PROJECT AND SITE LOCATION

The enclosed Final Environmental Impact Report (FEIR) has been prepared for the above project, located in the unincorporated community of Hacienda Heights in the County of Los Angeles, approximately one mile south of State Highway 60 (Pomona Freeway) and one mile east of S. Hacienda Boulevard. The proposed project site is situated along the northern slopes of the Puente Hills, within the Powder Canyon Significant Ecological Area (SEA #17), and is currently vacant.

Access to the site will be through Apple Creek Lane, a local street that traverses through the neighboring residential area on the north side of the proposed project area. The revised project consists of 47 (formerly 50) single family lots (8.9 acres/0.078%), a water tank (0.6 acres/0.005%), supporting open space manufactured slopes (23.1 acres/0.202%), and private driveways and fire lanes (3.2 acres/0.028%) on 36 acres/0.315% of a 114.3 acre site. The remaining 78.3 net acres/68.5% of the site will remain undeveloped open space. Total combined open space on-site will be 101.4 net acres/88.7% of the project site. Residential lot sizes will range from 5,002 square feet to 16,715 square feet, averaging 8,268 square feet. Lot street frontage averages 69 feet and ranges from 41 to 135 feet.

Grading is proposed for 506,700 cubic yards of cut and 516,700 cubic yards of fill, for a total of 1,023,400 cubic yards of graded material handled. Although preliminary plans indicate a shortage of 10,000 cubic yards, it is not anticipated that imported fill will be required. An on-site balance is anticipated through construction activities that will generate excess dirt including but not limited to excavation required for dry and wet underground utilities, street over-cut, and footing from walls and homes. Should fill material import be required then a haul route must first be approved by the Department of Regional Planning and Public Works.

A conditional use permit for hillside management and development within an SEA has been filed by the applicant. The applicant has also filed for an oak tree permit which is required for the removal of 126 oak trees and encroachment into the protective zone of 20 other oak trees. An

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Ryan Riccio
Rec'd 8-6-09

Rowland Heights Library

Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

Jon Sanabria
Acting Director of Planning

NOTICE OF COMPLETION AND AVAILABILITY
FINAL ENVIRONMENTAL IMPACT REPORT
FOR THE REVISED PACIFIC HEIGHTS RESIDENTIAL PROJECT
STATE CLEARINGHOUSE NUMBER 2000021044

County Project Number 92-027
Vesting Tentative Tract Map 51153, Conditional Use Permit, Oak Tree Permit

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Los Angeles County Department of Regional Planning

Planning for the Challenges Ahead

Jon Sanabria
Acting Director of Planning

NOTICE OF COMPLETION AND AVAILABILITY FINAL ENVIRONMENTAL IMPACT REPORT FOR THE REVISED PACIFIC HEIGHTS RESIDENTIAL PROJECT STATE CLEARINGHOUSE NUMBER 2000021044

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M. DeLATTE
AUG 10 '09

COVER LETTER PREPARED BY PROJECT ARBORIST FROM APPENDIX VI OF FEIR

L. Newman
Design Group, Inc.

April 24, 2009

Elsa Trujillo
Project Manager
Pacific Communities Builder Inc.
1000 Dove Street, Suite 300
Newport Beach, CA 92660

RE: Replacement Oak Trees
LNDG # 2282-01

Dear Ms. Trujillo,

As was noted in the attached Oak Woodland Mitigation Feasibility Report (Oak Feasibility Report), dated October 16, 2008, locating trees properly for planting is important. While the most ideal locations have already been taken up by the existing oak tree groves, L. Newman Design Group, Inc. has reviewed the selected replacement coast live oak planting area. Based on this review we have determined that this area has similar characteristics as the existing oak tree groves and is sufficient in size for successful growth and survivability of the replacement oaks. Refer to section 1 and 2 of the Oak Feasibility Report for more information regarding planting locations, species and size.

Even in ideal locations, hundreds of seedlings may sprout from a single tree, but only a few of these will survive over several years. Nearly all of the seedlings will eventually die due to harsh conditions, mainly lack of water and a lack of fertile soil in a particular spot where the acorn landed. These two factors that most limit plant growth, a lack of water and a lack of organic nutrients, will be easily overcome horticulturally, for 277 replacement oaks.

Within the designated Replacement Coast Live Oak Planting Areas, young replacement trees (15 gallon in size) with a developed root system will be placed in a nearly ideal setting, close to where other oak trees have managed to survive on their own. In order for these new trees to become established, they will be irrigated and mulched. In other words, the needed conditions that may be lacking in these slightly less than ideal settings, will be created horticulturally, as described in sections 2 through 4 of the Oak Feasibility Report. Note that while the Oak Feasibility Report specifically addressed planting oaks on manufactured slopes, the same methods will be used to plant replacement oaks on natural slopes. However, natural slopes will actually pose less of a planting challenge than manufactured slopes since natural slopes are not inherently hard and tightly compacted.

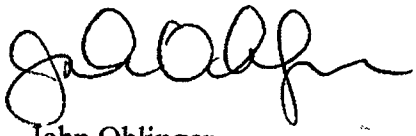
Once the new trees have developed and have increased their root systems and branch structure, they will be able to survive on their own. The needed boost that will be supplied horticulturally, as described in the Oak Feasibility Report, will allow the replacement trees to survive, until they are capable of tapping the resources that are

available on their own. Having become established, this grove of new trees will perpetuate the conditions needed to continually produce more trees. The shade provided will allow natural moisture to be retained in the soil causing new acorns to sprout. Oak trees continually shed leaves that add nutrients to the soils as they break down and soil enriching organisms proliferate under these conditions, providing a topsoil suitable for establishing more oak trees as well as other plants, and so on.

I am confident that under proper management after the replacement trees are planted, they will become established and will expand the native oak tree resource and habitat.

Sincerely,

L. Newman Design Group, Inc.
ASLA California State License #1314



John Oblinger
Certified Arborist WE-6820A

JO: kg

OAK WOODLAND MITIGATION PLAN
FEASIBILITY REPORT

SUBJECT:

Vesting Tentative Tract No. 51153
Hacienda Heights
Los Angeles County, California

PREPARED FOR:

Pacific Communities Builders, Inc.
1000 Dove Street, Suite 100
Newport Beach, California 92660

PREPARED BY:

L. NEWMAN DESIGN GROUP, INC.
31300 Via Colinas, Suite 104
Westlake Village, California 91362-3992
Ph: 818.991.5056
Fx: 818.991.3478

Contact: John Oblinger
Certified Arborist WE-6820A
Oak Tree Consultant

Date: October 16, 2008
LNDG Project No. 2282-01

Silvas, Rudy

From: Elsa Trujillo [Elsa@pcbinc.com]
Sent: Tuesday, August 18, 2009 1:56 PM
To: Romo, William
Cc: Silvas, Rudy
Subject: RE: TT-51153 Pacific Heights

Good Afternoon Bill,
I just spoke to Rudy Silvas at the Department of Regional Planning. He informed me that you had a problem with the planting methods included in the Oak Tree Feasibility Report included in our Final EIR. It was our understanding that the only issue you had with this report is that you did not agree that Oaks would survive when planted on manufactured slopes. The Oak Feasibility Report was included in the Final EIR to show planting techniques that would be used to plant oaks on natural slopes. (As noted in the cover letter) Please be aware that Pacific Communities has no problem with using a different planting technique that is acceptable to the County Forester as noted in mitigation measure M-B-2, the applicant will prepare an oak mitigation plan that must be reviewed and approved by the Department of Regional Planning and your Department. Therefore, it should not be misunderstood that this is our oak mitigation plan, this was just one proposed method of planting oaks on natural slopes. Other methods can and will be utilized as per your Department's direction as well as the Department of Regional Planning. Please give me a call at number below and we can discuss further.

Elsa Trujillo, Project Manager
Pacific Communities Builder Inc.
1000 Dove Street Suite 300
Newport Beach, CA 92660
TEL: (949) 660-8988 Ext. 123
FAX: (949) 253-0683
Elsa@pcbinc.com

From: Romo, William [mailto:WRomo@fire.lacounty.gov]
Sent: Tuesday, November 18, 2008 4:36 PM
To: Elsa Trujillo
Cc: Silvas, Rudy
Subject: RE: TT-51153 Pacific Heights

Good evening Ms Trujillo – groups/clusters of several trees (3-10 trees) would be acceptable with spacing 3' – 20' from each other. My reference was that Mother Nature does not have a planting standard so I am comfortable with groups/clusters strategically placed in areas that already promote good growth. Ultimately, a more natural site will be established and stand a better chance of surviving with less overall human impact. Please feel free to email or call 818-890-5719 to discuss any details, Bill

---

From: Elsa Trujillo [mailto:Elsa@pcbinc.com]
Sent: Tuesday, November 18, 2008 3:54 PM
To: Romo, William
Subject: TT-51153 Pacific Heights

Bill,
I have a brief question. As you may recall during the ERC meeting on Nov. 6 for the Pacific Heights project you mentioned that spacing for replacement oaks did not need to be 20' from trunk to truck in areas outside of a fuel modification zone. Can you tell me what the minimum spacing is in areas not within a fuel modification zone.

Elsa Trujillo, Project Manager