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May 30, 2017

Via Email

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Susan Morrison, Environmental Planner
PLANNING DEPARTMENT, CITY OF SAN DIEGO
1010 2nd Avenue, Suite 1200, MS 413
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Re: Comments on the Recirculated DEIR – Serra Mesa Community Plan Roadway
Connection, Project No. 265605 (SCH No. 2012011048)

This office represents the Serra Mesa Community Council for the purpose reviewing, commenting and seeking to enforce local and state laws regarding the completeness and legal sufficiency of the March 29, 2017 recirculated draft environmental impact report (Rec-DEIR) for the proposed and (currently)¹ described project: Serra Mesa Community Plan Amendment Roadway Connection, Project No. 265605 (“Project”).

Prior and New Recirculated Draft EIRs

The Rec-DEIR for the Project is *generally* stated as being “recirculated for an additional public review [because] significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review, but before certification.” (Notice of Availability, Mar. 29, 2017) However, neither the Rec-DEIR, nor any of its notices or disclosures, identify what changes were made in hundreds of pages of the original April 18, 2016 noticed and available draft program environmental impact report (DPEIR) and appendices thereto. This is a violation of CEQA Guidelines § 15088, subs. (f)(1), (g).

As you are aware, but not disclosed in the Rec-DEIR, dozens of civic groups, and corporations, and hundreds of individuals attended meetings, reviewed, and then comment on the April 18, 2016 DPEIR only now having to possibly do it all again *without knowing* what material or substantive changes City made to the DPEIR, that is now repackaged and being noticed and recirculated in the Rec-DEIR.

In addition to the specific provisions regarding recirculated draft EIRs, CEQA requires candid disclosures and is not designed or intended to be a guessing game or fishing expedition. (Laurel Heights Improvement Assn. v. Regents of Univ. of Cal., (1988) 47 Cal.3d 376, 394 [“A fundamental purpose of an EIR is to provide decision makers with information they can use in

¹ Since originally conceived in 2011 and formally “noticed” for study in 2012, the underlying project has gone through numerous iterations, including project descriptions, type of CEQA document, manner and purpose and phasing, stated goals and objectives; not to mention equivocal commitments about stated availability, willingness, and phasing – about whether stated mitigation measures would be implemented (or not).

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deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved.”].) Please identify, by providing either, or both: (a) a list of material changes in the project design and/or study, and (b) an interlineated and strike-out version of the Rec-DEIR and its appendices so that the public, third party agencies, and decision-makers know what to focus on *during their second reading and comments* such that meaningful comment can be provided. (CEQA Guidelines § 15088, subs. (f)(1), (g))

In response to the numerous, and presumably many hundreds of, pages of commenting on the DPEIR, City apparently made a “determination [] in response to comments received during public review of the Draft EIR [for the] public review concluded on June 20, 2016.”

As part of the revised and recirculated document, CEQA requires lead agency explanation and disclosures in any recirculated, supplemental, or addendum of a previously certified or circulated EIR, so that a reader knows what to look for and focus on, including the *substantive* basis (not merely legal basis) for the changes and recirculation.

The recirculation and re-drafted decision of City, to essentially change the label of the draft CEQA document from a Community Plan Amendment and Program EIR (the “DPEIR”) to a Community Plan Amendment for a Road Connection (with foreseeability of actually building the subject road connection) (now the “Rec-DEIR”), does not inform any reader what material differences have been made to the proposed project, project alternatives, mitigations measures and the like. As one commenter has previously pointed-out, the label attached to the CEQA document is not as important as the contents therein. (Citizens for a Sustainable Treasure Island v. City and County of San Francisco, (2014) 227 Cal.App.4th 1036, 1051)

As a result of not explaining what is new and different in the Rec-DEIR, City is now required to respond to comments made on both the original DPEIR and the Rec-DEIR to both (a) explain whether or not the original comments were reviewed and addressed (including how and why), and (b) whether the comments remain applicable to the Rec-DEIR, and whether and how they have been addressed. Because responses to comments were not given for the DPEIR, to the extent those prior comments have not been FULLY addressed, they need to be reviewed in the context of the Rec-DEIR. Thus, for each set of original submitted comments on the April 18, 2016 DPEIR, mandatory CEQA responses to comment need to be given for both the original comment (and applicability), and whether and how it has been addressed in the Rec-DEIR.

For example, this commenter questions which, if any, of the original (Appx. A-G) and recirculated (Appx. A-H) appendices have been changed. If it is just that the Appendix H has been added and is new, please explain how and why. If there were any changes or updates, or new or significant information added to prior Appendices A-G, please identify each and explain how they were changed and why – i.e., whether impacts are reduced, increased, or unchanged.

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Incorporation of All Prior DPEIR Comments

This office, my client, as well as other entities, civic groups, and members of the public have reviewed, studied, and provided detailed and timely written comments about the proposed project, alternatives to the project, and mitigation measures as set forth in the DPEIR. It is requested (and required by law) that each of those prior written comments be reviewed, considered, and responded to as part of City now moving forward on the Rec-DEIR. Therefore, this written comment incorporates not only the July 5, 2016 prior written comment by this office, but also all written comments prepared and submitted in response to the DPEIR in June and July of last year.

Notwithstanding the failure to both (a) advise the public and other agencies if only new comments would be considered, and (b) what are the material changes (CEQA Guidelines § 15088, subs. (f)(1), (g)), City is additionally required to address all comments because “In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.” (CEQA Guidelines § 15088, subd. (f))

In addition to those prior June and July 2016 comments submitted on the DPEIR by this office and others, the following additional comments are presented on the Rec-DEIR for lead agency review and response:

The Rec-DEIR Fails to Set Forth, Evaluate, and Consider a Reasonable Range of Project Alternatives

An accurate, stable and complete project description is the *sine qua non* of an informative and legally adequate EIR; without it public disclosure and informed decision-making is stymied. (County of Inyo v. City of Los Angeles, (1977) 71 Cal.App.3d 185, 192) City has now changed the goals, purposes, and definition of the Project multiple times. Please set forth each of the changes to the goals, purposes, and definition of the Project (including deletions, additions and amendments) and explain why each was added, eliminated, or amended.

Contrary to the enacted direction and purpose enunciated by the city council to initiate review and consideration of a possible community plan amendment to the Serra Mesa Community Plan (SMCP), the DPEIR, (and now the Rec-DEIR), have redefined the Project description, purposes, and goals, in a manner that has impaired the ability of the City to select and consider a reasonable range of project alternatives.

Additionally, the refusal to consider and reject “facially valid” impact reducing alternative or mitigation is both a procedural and substantive violation of CEQA. (Los Angeles Unified School Dist. v. City of Los Angeles, (1997) 58 Cal.App.4th 1019, 1028-1031.) There are at least two reasons why City should consider reevaluating project alternatives and not move forward with approval or certification of the Rec-DEIR. First, City failed to present a reasonable range of project alternatives because it did not correctly include or conclude analyses of one or more identified adverse effects or mitigating alternatives. (Los Angeles Unified, *supra* at 1028-1031)

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Particularly, the City was given at least two feasible alternatives – (1) a Mission Valley community plan amendment consistency option, and (2) an alternative that improves the existing road network (including Mission Center Road and Mission Village Drive). City never properly analyzed or considered these possible impact-reducing solutions as alternatives.

City does not set forth and consider a reasonable range of project alternatives. Instead, the City considered only one (1) alternative for bicycle, pedestrian, and emergency access, which is essentially the same as the no project alternative because current access for those modes of travel are already available and are being provided by Quarry Falls specific plan, development agreement, and project requirements.

One of the primary goals and purposes of the proposed Project is to see if a Serra Mesa community plan amendment is desirable for the City and the Serra Mesa community based on the impacts that it would cause (or that might be avoided).

The requirement to present and analyze a reasonable range of alternatives which minimize and avoid significant impacts is a mandatory and substantive requirement of CEQA. (Kings County Farm Bureau v. City of Hanford, (1990) 222 Cal.App.3d 692, 711, 730-731; Public Resources Code §§ 21002, 21081; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), and 15091(a).) The “rule of reason” to be applied in the selection of project alternatives requires that a reasonable range of alternatives be considered *so far as the environmental aspects of a project site are concerned*. The reasonableness of the selected range of alternatives is subject to judicial reviewed based upon the facts of the case and statutory purpose under CEQA which is “to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (Friends of Mammoth v. Board of Supervisors, (1972) 8 Cal.3d 247, 259; Citizens of Goleta Valley v. Board of Supervisors, (1990) 52 Cal.3d 553, 563.) In reviewing the range of alternatives, the court serves a vital function in that “[e]ach case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose.” (Citizens of Goleta Valley, *supra* at p. 566) This is especially is true because the rule of reason establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. (Id.)

So that the public and decision-makers can review each of the alternatives rejected and not studied, please list (1) the alternatives raised by City but rejected and not studied or considered in the Rec-DEIR, and (2) those alternatives brought to the attention of the City (by members of the public, other agencies, planning or civic groups, or other third parties) but were rejected and not studied or considered in the Rec-DEIR. For each of the rejected and not studied alternatives, describe (1) what were the Project goals at the time the alternative was rejected, (2) what Project goals would not have been attained as a result of each rejected alternative, and (3) why the alternative was (or was not) found infeasible.

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Failure to Properly Identify and Consider Reasonable Mitigation Measures

In addition to CEQA's purpose of procedurally requiring that an EIR be a full disclosure and information document, it has important substantive provisions requiring an agency to avoid and/or reduce environmental harm. (Citizens of Goleta Valley v. Bd. of Supervisors, (1990) 52 Cal.3d 553, 564 [EIR is an informational document]; Public Resources Code §21002 ["it is the 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. . ."].)

Please ensure that each mitigation measure (not only relating to traffic) is identified and information about commitment and enforcement is provided as to (1) who is responsible for constructing, (2) who is responsible for paying for it, (3) who is responsible for overseeing implementation, (4) when it is phased or planned to be implemented; and (5) the importance and priority of each mitigation measure – as compared to the other measures.

Further, the Rec-DEIR fails to describe, analyze and mitigate the potential impacts that will result to areas within the SMCP by the creation of 4-lane and 5-lane roads. While the Rec-DEIR labels all of the road widening and increased traffic flow through SMCP as "mitigation," the Rec-DEIR fails to analyze the actual and potential impacts these mitigation measures will cause to residents, homes, and people who use the areas around Murphy Canyon Road and Phyllis Road. The Rec-DEIR needs to consider and evaluate potential impacts and changes to areas in the SMCP planning area with respect to impacts to community character and road noise.

Land Use Compatibility and Consistency

I remind the City that the one of the principal purposes of the current study is to determine whether a community plan amendment for the Serra Mesa Community Plan (SMCP) is in the best interest of that that community. As directed by the city council: "Whereas, the initiation of a community plan amendment in no way confers adoption of a plan amendment and City Council is in no way committed to adopt or deny the amendment once it goes forward for approval..." (Resolution No. 304297)

From a community plan and land use consistency perspective, assuming the City decides to not proceed with the instant SMCP amendment, what is the plan and/or options to make the Mission Valley Community Plan consistent with the SMCP?

Please describe how Rec-DEIR addresses the planning principle, and/or policy of the City, that each community planning area should have definite boundaries and borders so as to maintain its own design, characteristics and attributes.

The Rec-DEIR does not adequately discuss buffers for usable and enjoyable parks from a noise, traffic, safety, and aesthetics perspectives.

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The Rec-DEIR incorrectly concludes that no deviations are required for the Project and thus there can be no possible land use incompatibility. (Rec-DEIR Section 5.1.4, pp. 5.1.11 to 5.1-12) This is apparent misinformation as the road grade will exceed City design road standards of acceptable grades of 7% or less. The land use compatibility section of the Rec-DEIR needs to be revised. Also, disclosure in the Rec-DEIR needs to be made if a Site Development or other permit will be required for this deviation (and perhaps other undisclosed deviations). Does any prior Quarry Falls/Civita submission or approval cover the findings necessary for an overly steep roadway configuration? If so, please provide and circulate a copy in a recirculated draft EIR so that the public and decision-maker can gauge whether a road at this location and manner is favorable over other identified access routes that may be developed or improved. Has the City calculated the additional vehicle emissions that will be generated by the overly steep climb of Franklin Ridge Road to the mesa summit in the community of Serra Mesa?

Parks and Recreation

The Rec-DEIR incorrectly states that it does not need to address parks and recreation needs for the community because the Project is not *directly* creating new population growth. (Rec-DEIR, Section 7.7.5, p. 7-12 [“the proposed project does not include a population-generating component that would in turn increase the use of existing neighborhood and regional parks”]; Section 7.9, p.7-14 [“The proposed project does not include a population-generating component that would in turn increase the use of existing neighborhood and regional parks.”].) This is incorrect for two reasons.

First, the desire to create increased road capacity for further Mission Valley residential and other development is growth-inducing and will *indirectly* create a need for additional parks and recreation for the subject Project area and communities. (CEQA Guidelines § 15126.2 (a) [“Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.”])

Despite City’s refusal to consider how new roads and road widening projects are growth-inducing, it is improper for the lead agency to evaluate CEQA impacts by assuming that the environmental baseline will be some prospective and build-out of City’s plans for Mission valley and its future traffic needs. (Environmental Planning & Information Council v. County of El Dorado, (“EPIC”)(1982) 131 Cal.App.3d 350 [CEQA environmental review must address the existing level of actual physical development in the area as the baseline for its impact analysis, not the existing planned development planned therein.]) Thus, it is necessary to consider the growth-inducing impacts.

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Second, one area of the likely and intended impacts of the Project would be to bisect a park and recreation area with 2 major arterial and high-traffic arterial roads and signalized intersections. Building major roadways through the Quarry Falls/Civita parks² will substantially diminish their desirability and usability. The Rec-DEIR does not adequately address diminished park usability, instead only stating that “the linear park would be slightly bifurcated by the proposed roadway connection but would retain the same acreage.” (Rec-DEIR, Section 7.9, p.7-14) While the acreage may retain some open space qualities (or quantification), the Project’s impacts on the usability and desirability of the Quarry Falls/Civita parks needs to be fully evaluate and mitigated. (See CEQA Guidelines § 15126.2 (a) [discussion in an EIR should include “human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as . . . scenic quality, and public services.”].)

The Rec-DEIR needs to consider and evaluate how and whether the Project impacts the desirability and usability of the currently plan and partially constructed Quarry Falls/Civita parks? Will families with children, or elders with asthma, or those who do not like parks on major roadways with noise and traffic – need or want to find other parks and recreation areas to visit and enjoy? Due to the likely, potential, and actual impacts to existing parks - that must be presumed to exist (Civita Park and Phyllis Place Park) – the Rec-DEIR needs to evaluate and consider provision of other parks and recreation areas available nearby. Related, the Rec-DEIR fails to analyze overall parks and recreational area needs of the MVCP and SMCP communities and planning areas. Are these communities park-deficient based on an area or per capita basis?

Please address the potential impacts arising from routing 20,000 or more daily vehicle trips around and through the Civita Park and Phyllis Place Park as the parks are intended and anticipated to be used. For this purpose, please see and review the news article, “Civita Park: From Quarry to Pleasure Grounds,” Union Tribune, April 18, 2017 (<http://www.sandiegounion-tribune.com/business/growth-development/sd-fi-civitapark-20170426-story.html>)

Traffic and Parking:

Legally Defective Disclosure and Qualifications of Mitigation Measures

The traffic mitigation measures set forth in the Rec-DEIR all contain unambiguous language that they will be imposed (and when) to mitigate significant adverse impacts the extent possible. (Rec. DEIR, MM-TRAF nos. 1-19, pp. 5.2-26 through 5.2-45 [“Prior to the commencement of any grading activities or, if a grading permit is required, prior to issuance of a grading permit, . . .”].)

² For the purposes of this comment, “Quarry Falls/Civita parks” means and includes requested and necessary Rec-DEIR analysis for both “Phyllis Place Park” and “Civita Park” (aka “Quarry Falls Park”).

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However, as pointed out by other commenters, in fine print footnote (that this commenter and perhaps others similarly did not initially realize), the City improperly seeks to equivocate and outright nullify any intent or obligation to actually consider, impose, or implement a large number of the all-important traffic mitigation measures (that will ruin a part of the Serra Mesa community if not imposed and actually implemented) based on “policy” or other reasons. If identified and enumerated mitigation measures will not be implemented based on “policy” or other current or future purported reasons of “infeasibility,” please identify each one and explain: (1) is it infeasible based on policy or other reasons; (2) what makes it infeasible based on policy or other reasons; (3) are abilities to vary or except or get around “policy” or other reasons not to implement identified mitigation measures; (4) what efforts has or will City undertake to vary or except or get around “policy” or other reasons so that it can and will implement identified mitigation measures; and (5) why did City propose and set forth mitigation measures in the Rec-DEIR that it deems either “infeasible” (based on policy, availability of funding economics, or otherwise) or, as City puts it, contrary to “policy.”

Why did the Rec-DEIR include, analyze, and consider mitigation measures that it has apparently footnoted and categorized as infeasible based on policy? Why did the Rec-DEIR refuse to include, analyze, and consider project alternatives that might be categorized as infeasible based on policy?

With regards to each of the above-referenced traffic mitigation measures, please also consider and provide information in response to the following legal precept and requirement:

“In mitigating the effects of its projects, a public agency has access to all of its discretionary powers and not just the power to spend appropriations.” (City of San Diego v. Bd. of Trustees of Cal. State Univ., (2015) 61 Cal.4th 945, 959, citing Pub. Res. Code, § 21004.) District’s “discretionary powers include such actions as adopting changes to proposed projects, imposing conditions on their approval, adopting plans or ordinances to control a broad class of projects, and choosing alternative projects.” (Id., citing CEQA Guidelines, § 15002, subd. (h).)

As a result of all the ambivalence, unwillingness, or purported infeasibility, City cannot support and rely on findings that mitigation measures will (or will not) avoid or reduce significant impacts because CEQA requires that City find, based on the substantial evidence, that the mitigation measures have been “required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.” (Cal. Pub. Res. Code § 21081, subd. (a)(a); Guidelines § 15091, subds. (a)(1) &(b).) The Rec-DEIR fails to ensure and “provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures” (Cal. Pub. Res. Code § 21081.6, subd. (b)), and City has failed to set forth a clear mitigation program to ensure that all the mitigation measures will be implemented. (Cal. Pub. Res. Code § 21081.6, subd. (a).) The purpose of these requirements is to ensure that identified mitigation measures will actually be implemented as a condition of the development, and not merely adopted and ignored. (*See* Cal. Pub. Res. Code § 21002.1, subd. (b).)

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VMT

Please explain the “Vehicle Miles Traveled Output and Summary” (hereafter “VMT) and why is it being used and when was it decided to be added? It is noted that CEQA implementing regulations under SB 743 have not been adopted and currently is not the law of this state or for purposes of CEQA. What VMT policy or CEQA guideline(s) has City adopted and/or is using as a basis for Project evaluation of traffic impacts under a VMT methodology?

As a part of City’s decision to create, pay for, and have the VMT prepared, what considerations and adjustments were made for other existing and mandatory projects designed to both discourage and/or reduce vehicle trips, including but not limited to Civita/Quarry Falls project and other known projects’ direct and cumulative project impacts such as Town & Country redevelopment project, Union Tribune redevelopment project, Bob Baker Ford residential project, redevelopment of Qualcomm stadium site including results of the studies (preliminary or final) for a Chargers Stadium and Soccer City?

What considerations were made in the VMT study that the City of San Diego is promoting and approving what it calls “walkable” and “transit-oriented” communities within the regional and immediate vicinity of the proposed Project?

Is this VMT study intended and being used as a rationale to build more and wider roads, including the proposed Project to accommodate future increased automobile vehicle travel? Please describe what alternative modes of travel (non-motor vehicle) are already provided for in the Project area so that the public and decision-makers can evaluate and decide whether building more of the Project-intended motor vehicle roads and lanes is the best approach and/or result for the Project area.

What considerations were made in the VMT study for both expecting declines in overall VMT on national and local levels? (See, “The Road...Less Traveled: An Analysis of Vehicle Miles Traveled Trends in the U.S” by Robert Puentes and Adie Tomer, Metropolitan Policy Program at Brookings, December 2008. (https://www.brookings.edu/wp-content/uploads/2016/06/vehicle_miles_traveled_report.pdf)³)

Thank you for your timely consideration and responses to the above comments, concerns, and questions.

Sincerely,



Craig A. Sherman

³ See also “Vehicle Miles Traveled: Another Look at Our Evolving Behavior,” by Jill Misliniski, Advisor Perspectives, May 16, 2017 (<https://www.advisorperspectives.com/dshort/updates/2017/05/16/vehicle-miles-traveled-another-look-at-our-evolving-behavior>)