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September 20, 2017

***Via Email***

Scott Sherman, Chair  
David Alvarez, Vice Chair  
Chris Cate, Member  
Georgette Gómez, Member  
CITY OF SAN DIEGO,  
SMART GROWTH AND LAND USE COMMITTEE  
202 C Street  
San Diego, CA 92101

Re: Special Meeting, September 21, 2017, 1:00 p.m.  
Serra Mesa Community Plan Amendment Roadway Connection Project  
Project, No. 265605 (SCH No. 2012011048)

**REQUESTING AND SUPPORTING A “NO” VOTE AND DENIAL OF  
RECOMMENDING THE PROPOSED PROJECT AND CERTIFICATION  
OF ITS ENVIRONMENTAL DOCUMENT AND PROPOSED FINDINGS.**

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 final environmental impact report (FEIR) that was made available and circulated to the public August 15, 2017 for the proposed and (currently) described project: Serra Mesa Community Plan Amendment Roadway Connection, Project No. 265605 (“Project”).

**1. Multiple Uncertainties Exist with Regards to Proposed Project and  
Mitigation of Adverse Impacts to Traffic, Circulation and Public Safety**

“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (County of Inyo v. City of Los Angeles, (1977) 71 Cal.App.3d 185, 192.) While CEQA is not designed to “freeze the ultimate proposal in the precise mold of the initial project,” in order for the public and decision-makers to properly evaluate a project, they must have an accurate view of the project and its proposed mitigation measures. (Id. at p. 199.) CEQA requires that all reasonably foreseeable anticipated uses and impacts be analyzed and included in a CEQA study. (Laurel Heights Improvement Association v. Regents of the Univ. of Cal., (1988) 47 Cal.3d 376, 396.)

Page Two

September 20, 2017

CITY OF SAN DIEGO

Comments on FEIR and Proposed Approvals, Project No. 265605

Since originally conceived in 2011 and formally “noticed” for study in 2012, the underlying project has gone through numerous iterations, including project descriptions, types of CEQA documents, manners, purposes of stated goals, and project objectives; not to mention equivocal commitments about stated availability, willingness, and phasing for – listed, conflicting, ambivalent, removed, and uncertain implementation of possible, feasible, and potentially impossible – mitigation measures.

Unresolved issues remain present in the responses to comments of the Recirculated DEIR (“Rec-DEIR”), final EIR (“FEIR”), proposed findings, and MMRP. These continuing unresolved issues include, but are not limited to, the below items and City’s effort and desire to override incomplete analysis and attempted avoidance of significant impacts do not save it or protect it from legal challenge and legal infirmities:

- pedestrian and road crossing safety hazards
- mandatory mitigation required by prior projects
- mandatory mitigation required by responsible third party agencies
- unresolved impacts and conflicts arising from road grade and steepness
- unresolved impacts and conflicts arising lost or unavailable bike lanes
- unresolved conflicts and created/endorsed internal inconsistencies within and between community plans

## **2. Unresolved Vehicle, Bicycle, Pedestrian, and Noise Impacts on Murray Road Bridge Over I-805 and the Steep Phyllis Road Connection**

Where mitigation measures in-and-of-themselves will create or cause potential adverse environmental impacts CEQA requires that such impacts be disclosed and mitigated. (Pub. Res. Code §§ 21002, 21100; CEQA Guidelines § 15126.4, subd. (a)(1)(D); Stevens v. City of Glendale, (1981) 125 Cal.App.3d 986.) CEQA also mandates that identified and adopted mitigation measures must actually be possible to implement and will in fact be implemented. (Federation of Hillside & Canyon Associations v. City of Los Angeles, (2000) 83 Cal.App.4th 1252, 1260-1261; Anderson First Coalition v. City of Anderson, (2005) 130 Cal.App.4th 1173, 1189.)

MM-TRAF-4 & MM-TRAF-12 describes restriping of the Murray Ridge bridge between the ramps to 5 lanes. This bridge is currently 3 lanes with two bike lanes and two 5-foot raised sidewalks. Caltrans has confirmed the width of bridge is 68 feet curb to curb. Physical measurement has recently confirmed the same. The only prior available information for restriping the bridge indicates space and approval of a road with five 12’ lanes with no bike lanes.

Page Three

September 20, 2017

CITY OF SAN DIEGO

Comments on FEIR and Proposed Approvals, Project No. 265605

However, in order for City to make and support its fundamental and all-important findings for the project's purported Mission Valley and regional multi-modal road connection benefits, and not substantially conflict with other plans and policies, City must retain these bike lanes.

In conjunction with this project and the prior Quarry Falls project, the responsible agency Caltrans has written that (1) all mitigation stated in the original 2016 DEIR and mitigation measures in the Executive Summary are required for this project, (2) it will not grant an exception of the required 12-foot vehicle lanes for Murray Road bridge, and (3) it has reviewed and granted the Quarry Falls an encroachment permit consistent with no. 2 above.

The studies, assumptions, and locked-in conditions for both the current project and prior Quarry Falls project require that Murray Ridge bridge has to be five lanes. As City's poor disclosures and plan amendment project continues – this is inconsistent with the Serra Mesa Community Plan – which designates the bridge and Phyllis Road as a 4-lane “collector” roadway. Further, notwithstanding Caltrans state standards requiring 12-foot wide lanes, City's Street Design Manual also requires a minimum of 11-feet per lane and 8-foot for a bike lanes with standard safety buffer. At 68 total feet, the existing bridge is too narrow to meet the projects goals and mitigation measures, while complying with ordinary and safe lane-size requirements. It follows that City's overriding considerations are based on conditions that cannot be achieved.

As a result, City apparently is forcing itself and the public to have fewer or narrower vehicle travel lanes. This undisclosed road sizing and loss of travel lanes (for vehicle, bike and/or pedestrian) is unresolved and drastically turns the FEIR impact and traffic analysis on its head – from both functionality and safety perspectives. The proposed project is remarkably dependent on having on-ramps and off-ramps included in the mitigations, coupled with required widening or re-striping of Phyllis Place and Murray Ridge bridge to 5 lanes. Other options to redesign, re-stripe, enlarge or rebuild, to make it all fit, have defectively not been explored, disclosed, or explained. Thus, resulting impacts and/or losses to travel lanes, bike lanes, and/or a sidewalk are unknown and uncertain and the whole premise (and analysis) for the project and purported project purposes falls apart and becomes unreliable and uninformative.

If and when the bike lanes are removed or narrowed, the required mitigation would “cause a substantial conflict with applicable land use and mobility policies” and eliminate substantially all of the legal support for City's overriding considerations based on mobility. Admittedly, City had to remove bike lane elimination mitigations measures from the DEIR, FEIR and MMRP as proposed mitigation because such bike lane losses were required (under the Bike Master Plan) and were too fundamental to the project and purported project purposes. However, physically there is not enough space to construct and connect the project's 5-lane road widening (Phyllis Road) with a 5-lane bridge and bike lane configuration across the bridge (Murray Road).

Page Four

September 20, 2017

CITY OF SAN DIEGO

Comments on FEIR and Proposed Approvals, Project No. 265605

Narrowing bicycle, vehicle and pedestrian travel lanes would result in both direct and indirect impacts, and therefore must be analyzed and mitigated as part of a project's review and approval. (CEQA Guidelines §§ 15126.2, subd. (a), § 15131, subd. (b); *see also* Santiago Co. Water District v. County of Orange, (1986) 118 Cal.App.3d 818 [EIR defect due to fact delivery and infrastructure facilities were not included as expected impacts].) Similarly unaddressed, as discussed in the section immediately below, another indirect impact will arise from noise created and caused by City's proposed road addition project to allow construction of an overly-steep graded road adjacent to homes and public parks. This Project attribute has not been disclosed, properly analyzed, attempted to be mitigated, and therefore the project approval cannot lawfully be made on this record.

The City's FEIR and proposed findings and mitigation measures are deficient and not supported due to failing to account or provide potential additional losses, or how they will be reconciled.

### **3. Potential Significant Noise Impacts Have Not Been Studied or Disclosed**

The FEIR ignores potentially significant impacts from operational noise due to the steep grade of the project site and subsequent steep grade of the proposed (designed and located) road connection. (*See* FEIR at p. S-31 [admission that project site has steep slopes in excess of 25%].) City's documents and records for this proposed road extension indicate that the resulting road between Friars Road and the northern area of Phyllis Place will have sections reaching or approaching 10% grade and therefore have resulting operational noise impacts that are potentially significant due to vehicles ascending an extremely steep grade. (*See* FEIR at p. RTC-305.) The EIR did not study the potentially significant impact of noise arising from the design and steep grade of the road. (*See* Appendix E [no discussion of increase in noise due to steep grades].)

### **4. City Council Staff Report dated August 31, 2017 is Misleading and Wrong**

CEQA requires the FEIR and its approval to be a disclosure document that is honest, and the people preparing and approving it have integrity. As being presented and argued to City decision-makers, the proposed project initiated by City Council Resolution R-304297 did not "direct staff to amend" the Serra Mesa Community Plan. By way of example of the prevalent and incorrect bias, the City Council August 31, 2017 staff report states:

In 2008, as a result of the approval of the Quarry Falls (Civita) project in Mission Valley, **City Council initiated a plan amendment (City Council R-304297) directing staff to amend the 1977 Serra Mesa Community Plan to include a street connection between Phyllis Place and Friars Road.** The proposed amendment would reconcile the inconsistency between the Serra

Page Five

September 20, 2017

CITY OF SAN DIEGO

Comments on FEIR and Proposed Approvals, Project No. 265605

Mesa Community Plan and the Mission Valley Community Plan, which identified the subject road connection since it was adopted in 1985. **The City Council resolution identified four issues to be analyzed with the plan amendment.** The project Traffic Impact Study (TIS) includes a detailed analysis of these issues and conclusions which can be found in Appendix C of the Draft EIR.

However, more accurately and honestly, the initiating resolution (R-304297) clearly and simply asked that matter be studied (based on four factors that council asked to be studied) as to whether an amendment might be desirable and if it can be supported on those grounds:

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;

Since commencement of the requested and requisite studies and evaluation of the project proposal – including the CEQA studies, project purposes, goals, mitigation measures, conclusions, and findings – the project review has been biased in favor of solely approving a community plan amendment to include a road connection.

CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, *before* it approves that project. (Laurel Heights Improvement Association 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 deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. (Id.)

City's predetermination of a plan amendment and road connection in this case subverts and substantially makes meaningless the preparation and approval of a CEQA document. Instead, City's manner of project definition and evaluation have reduced CEQA to a process of generating paper whereby City has produced an EIR that describes a journey whose destination had already been predetermined and committed before the elected officials had any chance to consider the four requested study issues, and then chart a proper road map or evaluate adverse environmental effects. (*Cf.* Natural Resources Defense Council, Inc. v. City of Los Angeles, (2002) 103 Cal.App.4th 268, 271; *accord* Save Tara v. City of West Hollywood(2008) 45 Cal.4th 116, 135-136.) Part of CEQA's procedural requirements that City must fulfill is to set forth all reasonably foreseeable direct and indirect impacts arising from a project before an agency may approve a project. (Communities for a Better Environment v. South Coast Air Quality Management Dist., (2010) 48 Cal.4th 310, 319.)

Page Six  
September 20, 2017  
CITY OF SAN DIEGO  
Comments on FEIR and Proposed Approvals, Project No. 265605

By presuming a road connection and Serra Mesa CPA as the only way to (1) resolve community plan inconsistencies between the Mission Valley and Serra Mesa community plans and (2) resolve regional traffic woes to allow the future build-out of Mission Valley, City has thwarted the informed EIR contents, review, and decision-making purposes mandated by CEQA.

#### **5. The FEIR Artificially Narrows Objectives that Preclude the Reasonable Evaluation of Project Alternatives**

The first and foremost project objective created by City in the FEIR is: “1. Resolve the inconsistency between the Mission Valley Community Plan and the Serra Mesa Community Plan by **providing a multi-modal linkage from Friars Road in Mission Valley to Phyllis Place in Serra Mesa.**” (FEIR at p. S-2, bold added.)<sup>1</sup>

The FEIR’s subsequent Project Objectives Nos. 2-5 are actually subsets of the objective of “providing a multi-modal linkage from Friars Road in Mission Valley to Phyllis Place in Serra Mesa. . .” This is made very clear when analyzing the project objectives of the 2016 original DEIR in which the substantially same objectives were listed as subparts of the desire to build a road linking to Phyllis Place. (*See* original DEIR at p. ES-2.)

City has artificially narrowed its project objectives and listed, as its purported *objective*, the very project to be approved. City’s action is a violation of CEQA because an “agency may not give a project’s purpose an artificially narrow definition.” (*In re Bay-Delta etc.*, (2008) 43 Cal.4th 1143, 1166; CEQA Guidelines § 15124, subd. (b).)

City is required to state project objectives broadly enough to leave room for consideration of alternatives that reduce environmental impacts. (*Cal. Oak Foundation v. Regents of Univ. of Cal.*, (2010) 188 Cal.App.4th 227, 274.) Thus, whether an agency proceeds as required by law depends on whether, in pursuing its objectives, the agency satisfies its obligations under CEQA and the Guidelines to prepare an EIR that allows for informed decision-making by giving meaningful consideration to project alternatives with reduced environmental impacts. (*Cal. Clean Energy Commission v. City of Woodland*, (2014) 225 Cal.App.4th 173, 203.) The California Supreme Court has explained CEQA’s substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures. (CEQA Guidelines § 21081; *City of Poway v. City of San Diego*, (1984) 155 Cal.App.3d 1037, 1045–1046.)

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<sup>1</sup> In other words, the City’s underlying purpose is the proposed project - to build a road connection from Friars Road to Phyllis Place.

Page Seven

September 20, 2017

CITY OF SAN DIEGO

Comments on FEIR and Proposed Approvals, Project No. 265605

Here, City has stated a primary objective that can only be fulfilled by the chosen Project and precludes actual consideration of other project alternatives. As discussed below, City has not prepared an EIR that analyzes a reasonable range of alternatives as required by CEQA and, based on that analysis, properly determines whether alternatives were feasible – because City improperly narrowed the project objectives to fit the pre-decided Project.

#### **6. The FEIR Fails to Set Forth, Evaluate, and Consider a Reasonable Range of Project Alternatives**

There are only two proposed project alternatives, a no-project alternative and a project for pedestrian, bike and emergency vehicle access. (FEIR at p. S-2.) As City’s primary objective is to build a road, the no-project alternative does not actually meet City’s underlying purpose of building a road to Phyllis Place. The second project alternative for pedestrian, bike and emergency vehicle access only meets Project Objective No. 4 –“Improve emergency access and evacuation route options between the Serra Mesa and Mission Valley planning areas.” (*Id.*) It does not meet most of City’s objectives which are based on City’s underlying purposes of building a road connection. Further, it 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.

The CEQA Guidelines state that an EIR must “describe a range of reasonable alternatives to the project ... which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project ... .” (CEQA Guidelines, §15126.6, subd. (a); *see also In re Bay-Delta etc., supra*, 43 Cal.4th at p. 1163.) The stated project alternatives do not constitute a “range of reasonable alternatives” nor do they “feasibly obtain *most* of the basic objectives” listed in the FEIR. (*Cf.* FEIR at p. S-2; *In re Bay-Delta etc.*, at p. 1163.)

A decision-making agency is prohibited from approving a project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures. (Pub. Res. Code § 21081; *see also Environmental Council v. Board of Supervisors*, (1982) 135 Cal.App.3d 428, 439.) The requirement ensures there is evidence of the public agency’s actual consideration of alternatives and mitigation measures, and reveals to citizens the analytical process by which the public agency arrived at its decision. (*Citizens for Quality Growth v. City of Mt. Shasta*, (1988) 198 Cal.App.3d 433, 440-441.) Under CEQA, the public agency bears the burden of affirmatively demonstrating that, notwithstanding a project’s impact on the environment, the agency’s approval of the proposed project followed meaningful consideration of alternatives and mitigation measures. (*City of Poway v. City of San Diego*, (1984) 155 Cal.App.3d 1037, 1046.)

Page Eight

September 20, 2017

CITY OF SAN DIEGO

Comments on FEIR and Proposed Approvals, Project No. 265605

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; Pub. Res. 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 review 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.” (Id., at p. 566.) This is especially true because the rule of reason establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. (Id.)

Contrary to the enacted queries and directed purpose enunciated by the City Council to initiate review and consideration of a *possible* community plan amendment to the Serra Mesa Community Plan, city staff has prepared a FEIR that has 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 options or alternatives.

City also 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 that the selected alternatives were trying to avoid or minimize. (Los Angeles Unified School Dist. v. City of Los Angeles, *supra* at pp. 1028-1031.)

Additionally, the City’s refusal to consider and reject “facially valid” impact reducing alternatives 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.) 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). But, as the biased and legally infirm study shows, the City never properly considered or analyzed such possible impact-reducing solutions as alternatives. (*Cf.* FEIR at p. S-2.)

The FEIR improperly contends that neither of the project alternatives will *reduce* the already existing vehicle miles traveled and therefore will *increase* “impacts on land use, transportation and circulation, air quality, and GHG emissions.” (FEIR at pp. S-4 through S-5.) CEQA’s purpose is to: “Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.” (Guidelines § 15002, subd. (a)(1).)

Page Nine

September 20, 2017

CITY OF SAN DIEGO

Comments on FEIR and Proposed Approvals, Project No. 265605

None of the rejected project alternatives would actually *increase* vehicle miles traveled. This contention is a false and legally incorrect one that was created to avoid actual consideration of *impact-reducing* project alternatives by a sleight of hand; instead creating a project alternative that has *more* of an environmental impact than the selected project.

By failing to follow the requirements of CEQA Guidelines § 15126.6 and the relevant case law cited above – regarding the study of a reasonable range of feasible impact-reducing alternative projects – the FEIR is legally infirm.

### **7. The EIR and Proposed Project Approvals Fail by Way of Not Meeting Essential Goals or Legal Requirements**

The proposed project (a community plan amendment to add a road connection segment into the SMCP) and its CEQA environmental study have failed in their essential goals and do not meet the legal requirements of resolving community plan inconsistencies or considering a reasonable range of project alternatives to do so. The general plan, and its elements and parts thereof, must be an integrated and internally consistent and compatible statement of policies. (Cal. Government Code § 63500.5) The two subject community plans (MV and SM) comprise the City’s general plan and are required to be consistent. When adopting a community plan or amendments of a community plan, the law requires substantial compliance with the statutory consistency requirement.

Here, the proposed project simply proposes to draw a line on a map<sup>2</sup> without resolving the underlying goals and policies conflicts contained in the Serra Mesa and Mission Valley community plans. For instance, a major objective of the Serra Mesa Community Plan, when discussing urban character, mesa edges, and views, contains a major objective: “To preserve and enhance the physical environment, visual appearance, safety, identity and character of the Serra Mesa community through aesthetic improvement and careful urban design.” (SMCP at p. 50) Additionally, the Sand and Gravel Re-use Development section of the Mission Valley Community Plan states that “Streets serving new development should be connected to the road network and not to major streets serving residential areas in the mesas.” (MVCP at p. 56) Additionally, consistent with preserving views and mesas, and more directly on point, there is a mandatory provision in the SMCP plan that “No through roads should be permitted to traverse designated open space.” (SMCP at p. 49, emphasis added.)

As indicated in the proposed SMCP amendment, the proposed road connection intends to violate and conflict with the SMCP directly through designated open space. (See, proposed Serra Mesa Community Plan Amendment, Attachment 2 to City Council Staff Report at p. 46, Figure 14, Open Space map.)

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<sup>2</sup> Actually, lines on multiple maps as indicated in Figures 2-14.  
(See, Attachment 2 to City Council Staff Report dated August 31, 2017.)

Page Ten  
September 20, 2017  
CITY OF SAN DIEGO  
Comments on FEIR and Proposed Approvals, Project No. 265605

These statements and community plan provisions remain inconsistent with the proposed project and plan amendment. Further, identifying and resolving the conflicts of these important goals and policies were often conspicuously and consciously not disclosed, analyzed or resolved in any manner or extent in the draft or final EIRs.

The approval of the subject community plan amendment and road connection project will not correct these inconsistencies or stated goals and policies of the subject community plans. This amounts to approval of an inconsistent project rather than adoption a plan amendment to reconcile or resolve general plan inconsistencies. As is occurring here, the appellate court in Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors, (1998) 62 Cal.App.4th 1332, invalidated the approval of a project and general plan amendment because the proposed changes were inconsistent with other provisions within one or more of the same general plan elements. (Id. at p. 1343.)

Similarly here, the City's general plans remain inconsistent and in conflict with respect to the approval of the road connection amendment as juxtaposed with important policies of the MVCP, along with protection of the subject views, mesas, open spaces, planned parks, and residential areas of the Serra Mesa Community Plan.

## **8. Conclusion**

Thank you for your timely consideration of the above comments and concerns. Once again, my client and office respectfully recommend and request a "no" vote and denial of the proposed projects, certification of its environmental document, and approval of its proposed findings.

Sincerely,



Craig A. Sherman

cc: Sarah Jarman, Consultant, Smart Growth & Land Use Committee  
(via email [sjarman@sandiego.gov](mailto:sjarman@sandiego.gov))