



January 9, 2025

Robert Dmohowski, Principal Planner
City of Oceanside Planning Division

Sent via email to rdmohowski@oceansideca.org

Subject: Comments on Guajome Lake Homes DEIR

Dear Mr. Dmohowski,

This project is one of the worst examples of how the density bonus law is being used to destroy neighborhood character, ignore impacts on adjacent land uses—in this case a regional park, and ignore numerous environmental impacts. Furthermore, the density bonus law has been incorrectly interpreted to allow waivers that are not allowed. The project has substantial adverse impacts that have not been properly analyzed or mitigated. The key areas of concern include compatibility with the adjacent neighborhood, regional park, sensitive habitat, GHG, traffic, and housing. We realize that the density bonus law gives our city limited discretion about approving this project. But you still have the ability, and responsibility, to ensure that the project complies with density bonus law, environmental issues are addressed and that we end up with a project that will benefit our community, not harm it.

We believe the identified “environmentally superior” project is far better than the project that was proposed. Yet even that one has significant adverse impacts that have not been addressed, and still has essentially the same issues with compatibility with the neighborhood and adjacent park.

The following are specific comments on the DEIR for this project submitted on behalf of Preserve Calavera:

Project Description

➤ **Project fails to meet all of the stated objectives**

Section 3.1 identifies 5 project objectives. The project fails to meet 4 of those 5 stated objectives. The issues with these objectives include:

1. It does not achieve “functional compatibility” with other nearby land uses. This project is in the middle of an equestrian zone, an area with large lots and many that accommodate horses. It specifically is waiving compliance with the Equestrian Overlay Zone, will not accommodate horses or even provide equestrian access to Guajome Lake Rd that will become more difficult for safe equestrian crossing. It includes single family housing on small lots at a density of about 9/buildable acre whereas the nearby properties along Guajome Lake Rd have a single home on multiple acres. The proposed density is not at all consistent with the nearby properties. Furthermore, it will cause extensive impacts to the adjacent Guajome Regional Park.

2. This is not an in-fill site; infill sites have existing utilities. This site requires improvements to road and sewer extension as the area is currently on septic systems.
3. With only 4 affordable units provided it cannot claim to be “maximizing” affordable housing opportunities. Numerous other projects have built the minimum 10% on site affordable housing that was the standard when this application was filed. Furthermore, it is not a site “currently served by existing utilities, services, transit and street access.” The project requires a 2,000 ‘ extension of the sewer line, there are no nearby services, and the closest transit stop is 1.3 miles. This location does not provide transportation options, is currently a high VMT area and that will only be exacerbated with this project.
4. The project is not consistent with two key elements of the Zoning Ordinance-: the Special Park Overlay District, and the Equestrian Overlay District. Both of these districts are part of the Zoning Ordinance and provide more specific requirements for the geographic area that includes the project site.

➤ **The concept landscaping plan does not adequately optimize the use of natives, restrict the use of invasives or assure permanent compliance with requirements for 12% tree canopy cover or OFD restrictions on plantings within 0-5” of building foundations.**

The project area's southwestern-facing boundary at Guajome Lake Rd is immediately adjacent to County of San Diego Guajome Regional Park. This part of the regional park has healthy Coastal Sage Scrub (CSS) plants including California Sagebrush (*Artemisia californica*), California Buckwheat (*Eriogonum fasciculatum*), Menzies' Goldenbush (*Isocoma menziesii*), Coyote Bush (*Baccharis pilularis*) transitioning into a riparian zone with larger plants including Toyon (*Heteromeles arbutifolia*), California Wildrose (*Rosa californica*), Mule Fat (*Baccharis salicifolia*), Red Willow (*Salix laevigata*), and Coast Live Oak (*Quercus agrifolia*). On the northeastern-facing boundary, there is a slope with more California Sagebrush (*Artemisia californica*) transitioning as it drops in elevation to another riparian zone that includes Western Sycamore (*Platanus racemosa*). Most native trees in the CSS habitat are dwarf trees/large shrubs due to low water but transition to taller trees once water is present such as in riparian zones. Therefore, the use of taller trees like Western Sycamore within the project site would require frequent irrigation to ensure tree health. Dwarf trees/large shrubs would require less irrigation and could go without irrigation once established, which typically is around 2 years.

The project landscaping palette includes some recommended plants that are native to the project site, plants that are native to California but not native to the project site, non-native ornamental species, and one species that is on the emerging invasive plants watch list.

Specific comments on Plant Palette

1. Western Redbud (*Cercis occidentalis*) is a California native plant, but it is native to montane regions and not the project site. It is a small tree that is unlikely to provide a substantial canopy. Therefore, if a smaller tree aesthetic is the purpose of this selection, native large shrubs or dwarf trees would be recommended instead such as Toyon

(*Heteromeles arbutifolia*), Lemonade Berry (*Rhus integrifolia*), Summer Holly (*Comarostaphylis diversifolia*), Laurel Sumac (*Malosma laurina*), Blue Elderberry (*Sambucus mexicana*), Black Elderberry (*Sambucus nigra*), Scrub Oak (*Quercus berberidifolia*), and California Wildrose (*Rosa californica*).

2. Toyon (*Heteromeles arbutifolia*) is a recommended choice as it occurs on the SW-facing boundary with Guajome Regional Park and should be planted in lieu of several other plants currently listed in the project landscaping palette.
3. American Sweet Gum (*Liquidambar styraciflua*) is listed in the project landscaping palette. However, this tree is listed on California Invasive Plant Council (Cal-IPC)'s emerging invasive plants list for Orange County and likely applies to San Diego County. Source: <https://chapters.cnps.org/oc/wp-content/uploads/sites/2/2024/01/doc.2024-Invasive-Report.pdf>
It is recommended to remove this from the plant palette to prevent potentially introducing an invasive plant to the two adjacent riparian zones.
4. Western Sycamore (*Platanus racemosa*), is a recommended choice due to the presence of the tree already on the NE boundary. However, since the project site itself is not a riparian zone but a sloping hillside between two riparian zones, such a tree would need regular irrigation to become established and thrive given their water requirements. It is also the only tree native to the project site likely to provide substantial tree canopy over time. Also, since Western Sycamore hybridizes with non-native London Plane (*Platanus × hispanica*) in California, it is important to source Western Sycamore from reputable growers that have taken precautions against potentially hybridized seeds to prevent further genetic erosion of the species. Source: <https://mossmatters.com/assets/pdfs/papers/johnson-platanus.pdf>
5. Strawberry Tree (*Arbutus unedo*) is a non-native shrub/small tree that is unlikely to provide substantial tree canopy. Therefore, if a smaller tree aesthetic is the purpose of this selection, native large shrubs or dwarf trees would be recommended in lieu of this selection such as Toyon (*Heteromeles arbutifolia*), Lemonade Berry (*Rhus integrifolia*), Summer Holly (*Comarostaphylis diversifolia*), Laurel Sumac (*Malosma laurina*), Blue Elderberry (*Sambucus mexicana*), Black Elderberry (*Sambucus nigra*), Scrub Oak (*Quercus berberidifolia*), and California Wildrose (*Rosa californica*).
6. Blue Palo Verde (*Parkinsonia florida*) is a California native, but it is a small desert tree that is native to the inland deserts of Southern California. Therefore, if a smaller tree aesthetic is the purpose of this selection, native large shrubs or dwarf trees would be recommended in lieu of this selection such as Toyon (*Heteromeles arbutifolia*), Lemonade Berry (*Rhus integrifolia*), Summer Holly (*Comarostaphylis diversifolia*), Laurel Sumac (*Malosma laurina*), Blue Elderberry (*Sambucus mexicana*), Black Elderberry (*Sambucus nigra*), Scrub Oak (*Quercus berberidifolia*), and California Wildrose (*Rosa californica*).

7. Mezcal Bean (*Sophora secundiflora* syn. *Dermatophyllum secundiflorum*) is a non-native shrub/small tree that is unlikely to provide substantial tree canopy. Therefore, if a smaller tree aesthetic is the purpose of this selection, native large shrubs or dwarf trees would be recommended in lieu of this selection such as Toyon (*Heteromeles arbutifolia*), Lemonade Berry (*Rhus integrifolia*), Summer Holly (*Comarostaphylis diversifolia*), Laurel Sumac (*Malosma laurina*), Blue Elderberry (*Sambucus mexicana*), Black Elderberry (*Sambucus nigra*), Scrub Oak (*Quercus berberidifolia*), and California Wildrose (*Rosa californica*).
8. Desert Willow (*Chilopsis linearis*) is a California native plant, but it is native to inland desert regions of California and not the project site. It is a small tree that is unlikely to provide a substantial canopy. Therefore, if a smaller tree aesthetic is the purpose of this selection, native large shrubs or dwarf trees would be recommended instead such as Toyon (*Heteromeles arbutifolia*), Lemonade Berry (*Rhus integrifolia*), Summer Holly (*Comarostaphylis diversifolia*), Laurel Sumac (*Malosma laurina*), Blue Elderberry (*Sambucus mexicana*), Black Elderberry (*Sambucus nigra*), Scrub Oak (*Quercus berberidifolia*), and California Wildrose (*Rosa californica*). Red Willow (*Salix laevigata*).
9. Chitalpa (× *Chitalpa tashkentensis*) is a non-native, man-made hybrid tree with neither parent native to the project site. Better canopy tree alternatives include Western Sycamore (*Platanus racemosa*), Coast Live Oak (*Quercus agrifolia*), Engelmann Oak (*Quercus engelmannii*), Velvet Ash (*Fraxinus velutina*), Tecate Cypress (*Hesperocyparis forbesii*), Southern California Black Walnut (*Juglans californica*), and Hollyleaf Cherry (*Prunus ilicifolia*).
10. Sweet Bay (*Laurus nobilis*) is a non-native shrub/small tree that is unlikely to provide substantial tree canopy. Therefore, if a smaller tree aesthetic is the purpose of this selection, native large shrubs or dwarf trees would be recommended in lieu of this selection such as Toyon (*Heteromeles arbutifolia*), Lemonade Berry (*Rhus integrifolia*), Summer Holly (*Comarostaphylis diversifolia*), Laurel Sumac (*Malosma laurina*), Blue Elderberry (*Sambucus mexicana*), Black Elderberry (*Sambucus nigra*), Scrub Oak (*Quercus berberidifolia*), and California Wildrose (*Rosa californica*).
11. Willow Pittosporum (*Pittosporum phillyraeoides*) is a non-native shrub/small tree that is unlikely to provide substantial tree canopy. Therefore, if a smaller tree aesthetic is the purpose of this selection, native large shrubs or dwarf trees would be recommended in lieu of this selection such as Toyon (*Heteromeles arbutifolia*), Lemonade Berry (*Rhus integrifolia*), Summer Holly (*Comarostaphylis diversifolia*), Laurel Sumac (*Malosma laurina*), Blue Elderberry (*Sambucus mexicana*), Black Elderberry (*Sambucus nigra*), Scrub Oak (*Quercus berberidifolia*), and California Wildrose (*Rosa californica*).
12. Pink Trumpet Tree (*Handroanthus impetiginosus* syn. *Tabebuia impetiginosa*) is a non-native, canopy potential tree. Better canopy tree alternatives include Western Sycamore

(*Platanus racemosa*), Coast Live Oak (*Quercus agrifolia*), Engelmann Oak (*Quercus engelmannii*), Velvet Ash (*Fraxinus velutina*), Tecate Cypress (*Hesperocyparis forbesii*), Southern California Black Walnut (*Juglans californica*), and Hollyleaf Cherry (*Prunus ilicifolia*).

13. Java Cassia (*Cassia javanica*) is a non-native, canopy potential tree. Better canopy tree alternatives include Western Sycamore (*Platanus racemosa*), Coast Live Oak (*Quercus agrifolia*), Engelmann Oak (*Quercus engelmannii*), Velvet Ash (*Fraxinus velutina*), Tecate Cypress (*Hesperocyparis forbesii*), Southern California Black Walnut (*Juglans californica*), and Hollyleaf Cherry (*Prunus ilicifolia*).

14. Australian Willow (*Geijera parviflora*) is a non-native shrub/small tree that is unlikely to provide substantial tree canopy. Therefore, if a smaller tree aesthetic is the purpose of this selection, native large shrubs or dwarf trees would be recommended in lieu of this selection such as Toyon (*Heteromeles arbutifolia*), Lemonade Berry (*Rhus integrifolia*), Summer Holly (*Comarostaphylis diversifolia*), Laurel Sumac (*Malosma laurina*), Blue Elderberry (*Sambucus mexicana*), Black Elderberry (*Sambucus nigra*), Scrub Oak (*Quercus berberidifolia*), and California Wildrose (*Rosa californica*).

15. Mondell Pine (*Pinus eldarica*) is a non-native, canopy potential tree. Better canopy tree alternatives include Western Sycamore (*Platanus racemosa*), Coast Live Oak (*Quercus agrifolia*), Engelmann Oak (*Quercus engelmannii*), Velvet Ash (*Fraxinus velutina*), Tecate Cypress (*Hesperocyparis forbesii*), Southern California Black Walnut (*Juglans californica*), and Hollyleaf Cherry (*Prunus ilicifolia*).

16. Holly Oak (*Quercus illex*) is non-native, canopy potential tree. Better canopy tree alternatives include Western Sycamore (*Platanus racemosa*), Coast Live Oak (*Quercus agrifolia*), Engelmann Oak (*Quercus engelmannii*), Velvet Ash (*Fraxinus velutina*), Tecate Cypress (*Hesperocyparis forbesii*), Southern California Black Walnut (*Juglans californica*), and Hollyleaf Cherry (*Prunus ilicifolia*).

Other landscaping issues

The landscaping plan did not address the specific conditions of the OFD for plantings in the FMZ 0-5' from any building foundations as detailed in App O. See further comments in this letter under Fire Service.

There also is no mechanism specified to ensure the landscaping conditions, especially the requirement for a minimum 12% tree canopy cover are in place for the life of the project. This needs to be included in the conditions of approval with an enforcement mechanism specified.

Parking description includes 2 car parking stalls in garages for each residential unit, but no additional details.

Please provide additional information on availability of on-street parking and provisions for guests/vendors to park- not just residents in their own garages. This is especially important because of the numerous restrictions on parking described in App O.

➤ **Insufficient sustainability provisions**

In section 3.2.5.1 the two sustainability provisions are part of the minimum requirements of state law and/or Building Code. For this sensitive location we would expect the developer to consider actions far beyond the minimum required by law. See other sections for more specific suggestions on how to reduce adverse impacts with improved sustainable design features.

➤ **Need more detail on compliance with Scenic Park Overlay District (SPOD) requirements.**

These are mentioned in several places, but nowhere have we found any details that confirm compliance with the specific requirements for projects like this that are located within the SPOD. The DEIR specifically says they are in compliance with these requirements, while they are waiving all of the Equestrian Overlay Zone requirements. Compliance with standards in the SPOD for B Grading limitations, C View Preservation, D Building height, E Building materials and finishes, and H Signs are areas of particular concern.

➤ **Inconsistent description of waiver for retaining walls**

Table 3.3-1 says that retaining walls are one of the waivers and notes these will not be plantable. But it is unclear if that is the only waiver related to walls. In other places it talks about softening the appearance of walls with no detail. In our experience plantable walls are often unsuccessful in achieving a reasonable amount of coverage with plants leaving them eyesores.

➤ **Poor Circulation access and continued partial dirt road**

In some places the project proposes to only improve the road frontage along its border which leaves the remainder of Guajome Lake Rd in its current dirt condition. In others, it extends the paving and road improvements to the west up to the intersection with Albright St. The project is adding hundreds of ADT to this road. The entire alignment needs to be considered for improvement, not just for cars but for safety of bicycle and pedestrian access as well. While city guidelines may not require the developer to address the condition of the entire road, the city needs to consider taking further action to ensure the road conditions are addressed to accommodate the changing conditions caused by this project. Other cities would do things like set up a thoroughfare improvement district and require all projects that access the road to pay their fair share towards such needed improvements.

Aesthetics

➤ **Fails to evaluate compliance with Guajome Park Sphere of Influence criteria**

This is the only section of the DEIR that mentions “sphere of influence,” others reference the SPOD. Whatever it is called, the DEIR claims the project is consistent with the SPOD, yet it fails to provide any actual analysis of compliance with these conditions. This is in contrast to other land use criteria that are evaluated in great detail for General Plan Compliance as is shown on Table 4.10-1. Specific items in the SPOD that should be evaluated for aesthetics include:

1. F Structures not permitted on slopes abutting the park. In fact, the houses are all built on a slope abutting the park.
2. H Structures shall be oriented to protect views of the park and surrounding properties. The view analysis did not fully consider these views.
3. J transition area required between landscaped and natural areas. No such transition area is identified.
4. I Development shall integrate features such as landscaping, open areas and pathways with those of the park. There is no indication that this has been considered. In fact, access to the pathway within the park that parallels Guajome Lake Rd will be impacted by the project and safe integration between the trails on the north and the park will be a concern because of the increased volume of traffic.

➤ **No documentation of required review with General Plan Sphere of Influence**

On page 4.1-6 the DEIR concludes that the project is within the SOI and therefore would be **subject to** review for compliance. Based on being subject to review it concludes there are no conflicts. The DEIR is the document that should demonstrate the review has been done and the project is in compliance with all of the provisions of the SOI. No such review has been done. This remains a potentially significant impact that has not been addressed.

➤ **Outdoor lighting fails to restrict impact to the on-site sensitive habitat**

Page 4.1-9 says outdoor lighting will be “directed downward to minimize light trespass on surrounding properties.” This needs to also address light trespass within the property boundaries on the sensitive habitat (to comply with MHCP/SAP edge effect conditions).

Land Use

➤ **Fails to properly consider the relationship between General Plan and Zoning Ordinance.**

OPR provides guidance for general plans. Chapter 9 of their guidance document Preparing, Integrating and Implementing the General Plan can be found here and is incorporated by reference https://lci.ca.gov/docs/OPR_C9_final.pdf

It says, “The success of a general plan, particularly the land use element, rests in part upon the effectiveness of a consistent zoning ordinance in translating the long-term objectives and policies contained in the general plan into everyday decisions.” The two documents are interrelated. The DEIR has included detailed tables about compliance with provisions of the General Plan, but nothing about compliance with zoning.

The official Notice of Availability of Draft Environmental Impact Report specifically says “The 16.78 acre project site has a General Plan land use designation of Single-Family Detached Residential (SFD-R) and a zoning designation of Single-Family Residential-Scenic Park Overlay-Equestrian Overlay (RS-SP-EQ).” Both the general plan and zoning designations are key to understanding the land use allowed for this site. The City of Oceanside Land Use and Zoning Map Viewer also clearly identifies the project site as covered by both of these overlay districts.

➤ **Fails to properly consider the impacts of waiving Equestrian Overlay District**

The Equestrian Overlay District (EOD) is addressed in Article 28 of the City of Oceanside Comprehensive Zoning Ordinance. Under section 2802 it says “This article shall apply to all development projects except as otherwise provided for in this section.” Three exceptions are identified, but none are applicable to this project. Section 2808 says that alteration of these standards is allowed “provided further that the general and specific purposes of this Article are achieved.” There is nothing that allows waiver of the provisions of the entire EOD unless such alterations would still meet the purpose for which the EOD was established. The DEIR has done no such analysis of the impacts of the proposed wholesale waiver of this section. We note that it appears that an earlier version of the project accommodated horses in a designated common area, and it is still unclear what accommodation for horses, if any, is included with the project-as there is discussion about parking for horse trailers in App O.

Furthermore the EOD is intended to provide requirements that support equestrian use in a way that is compatible with the neighborhood and surrounding park. Eliminating this from one project in the middle of this zone could have multiple impacts on the adjacent properties and the function of this area to support equestrian use. How are horses supposed to move through this area in the absence of a path on this project, or crossings to the trail on the south side of Guajome Lake Rd. There are horses on the property on the west- how will they be able to leave their site safely? What path of travel will horses need to take to access the park?

➤ **Inconsistency with prior litigation and past practices wrt waivers of EOD Conditions**

Around the time the EOD was being adopted, there was a lawsuit filed by the developer of Marlboro (sp?) Estates. This project was partially through the entitlement process and did not want to comply with the conditions of the EOD which they considered an illegal taking. There was a settlement agreement reached that allowed the development to proceed, but we believe with some of the conditions of the EOD included. Following adoption of the EOD there have been other projects that asked for waivers of EOD requirements. To our knowledge, in all cases, the city required extensive justification for the waivers and demonstration that the requested waiver would not compromise the purpose of the EOD, and the waiver was specifically approved by the city council. There is nothing in the DEIR that discusses any impact from this prior litigation, or explains why a standard process used for over 30 years to require justification of such waivers was ignored.

➤ **Waiver for Equestrian Overlay Zone is not allowed under state density bonus law as is claimed.**

There is absolutely no precedent or legislative support to waive specific overlay zones, such as proposed by this project. We refer specifically to the City of Oceanside's Zoning Ordinance Article 28 Equestrian Overlay. Considering this an incentive or waiver was never anticipated nor delineated in the detailed Density Bonus laws. Indeed their legislative purpose is to build houses on residential land *not take all local control away or destroy a city's ability to determine special overlay zones that benefit their residents.*

To point out how illogical that is, the City certainly wouldn't want to override either Base District Zoning regulations or the Overlay Zoning Districts. Indeed the purpose of the base district in residential areas Chapter 10 1010 G is to provide compatible development for public and semi-public uses, exactly what the Equestrian Overlay Chapter intends to do. They should be read together clearly.

Such a waiver would completely eliminate all local zoning at every level. Can you imagine waiving Industrial Zoning to build houses? Or removing the Senior Mobile Home Park overlay and gutting the protections that can give residents? There has to be a limit to what a waiver or concession can consist of. Using common sense such a waiver is *not a design standard in any interpretation of 'design standard'.*

So reading Chapter 10 and Chapter 28 together it is clear both chapters are to be applied, not one to the exclusion of the other. The Overlay Districts are to be compatible with the underlying residential zoning, not in conflict with them. Much as the Coastal Act cannot be overridden by current density bonus laws, nor should the Equestrian Overlay Zone. One protects the Coast and preserves it for the public while the other protects and provides for recreation, animal care and the health and safety and welfare and vistas of the area as well as protecting the adjacent neighbors' property rights to quiet enjoyment of their land and horses. The intent is very clear here.

In reviewing the legislation and its analyses, there is no support or even a hint at waiving Overlay Zoning plans. Waivers and concessions are specified for density, lot size, setbacks, walls, parking, transit requirements etc. *All of those are design or development standards, not zoning standards.* Indeed design standards should be properly integrated with both zoning Chapters.

The rule of Statutory Interpretation generally states that one would read the Density housing rules as specific to housing only; it does not mention incentivizing or waiving or destroying local control of Overlay Zones. To put it another way, it is not logical to assume an Overlay District was ever contemplated as part of waivers and incentives. That is a stretch too far and the law cannot be enlarged in that manner.

Indeed, if something is not mentioned in a statute or law it is presumed to not be part of the interpretation of that law under the theory of *Expessum facit cessare tacitum*. Again,

nowhere in the legislative analyses or statements of intent is there any indication that building houses should override a local zoning overlay that provides for Equestrian uses. Again it's not logical or legal to eliminate or completely ignore the intent of the overlay district. Nor is it a logical interpretation to 'assume' overlay zones are included in the rather specific density housing rules. The clear meaning of the statute is to build housing, not destroy other local planning efforts. The clear meaning of Oceanside's zoning ordinance is to have the overlay district be compatible with underlying zoning, not eliminate it. We have not seen this type of zoning waiver in any other project in Oceanside.

Any development with a special overlay should and must be *compatible* with existing zoning regulations otherwise why have them at all? The intent of the density bonus rules is not to destroy quality of life and local planning efforts. There is no logical reason to exclude the equestrian aspect of this property other than to simply build houses and eliminate public benefits and overlapping plans for the area.

The intentions of Chapter 28 are extremely clear.

1. To provide for the public equestrian recreational opportunities and trails exactly in the Guajome area where this project is proposed. The project proposes nothing in this regard, no trails and teeny, tiny artificially created green space inside the project and not accessible for the enjoyment of the public.
2. To provide appropriate design standards for the safekeeping and protection of horses on said property. The project proposes to eliminate horses. There is no legal precedent upon which to eliminate that clear requirement and intent.
3. To enhance and provide an equestrian and rural atmosphere. Again this is completely destroyed/eliminated by the interpretation in the study that such intent can be waived.
4. To provide a pleasing and compatible relationship between buildings and a buffer between equestrian and non-equestrian uses. Again, the intent is clear. This area must provide horse amenities, trails, and open space. The proposal proposes to eliminate any equestrian uses. Again, this is not something that can be waived.

Furthermore the intent of the **Ch 28 EO to be primarily is very clear in the language itself :**

“2804 Allowable Modifications to Development Standards Development regulations of the underlying base district shall be modified by the designation of an EQ Overlay District to accomplish the stated purposes of the EQ Overlay. Where conflict occurs between the provisions of the EQ Overlay District and base district regulations or any other section of the Zoning Ordinance, the EQ Overlay District shall control. “

Further the elimination of an equestrian atmosphere and horse keeping is sure to cause conflict with the adjacent neighbors who do keep horses to the west and to the south. Horses

can generally cause noise, dust and odors. The seminal case on nuisance, the Del Webb ^[1]case incorporated by reference clearly shows that moving residential uses near a cattle operation caused conflict, nuisance and reduced the value of the agricultural use and value of the land. In this case, adjacent homeowners may experience the same conflict with highly dense residential uses that are adjacent to their homes, yards and horses. The City should not sacrifice their home values and peace and quiet due to an inappropriate application of density bonus laws and waivers.

The conflict with the Guajome Regional Park Sphere plans and intentions will essentially limit or destroy the purpose of that plan. Again, there is not a shred of legislative intent that a new density bonus development should be able to negatively impact local control and regional planning nor remove public benefit from the uses of this land.

Last, the adopted Housing Plan demonstrates this land is not needed to satisfy the number of units required to be met. It was never planned for high density beyond what is delineated in the Equestrian Overlay chapter. In fact that says just the opposite- the land is to be built to retain all *the public benefits* as specified in the Chapter. That is why this property was never on the list of proposed zoning changes for greater density.

The developer is entitled to his bonuses and individual waivers, but not a waiver of the Equestrian Overlay District and they cannot waive the stated intention to preserve the benefits included within it. This project needs to study the impacts on the loss of these public benefits and the impacts on the surrounding properties including the regional park. Any specific waivers of EOD requirements must require justification as has been city practice on other EOD waiver requests.

A recent HCD letter on another project (included as Att E) specifically discussed the ability of the local agency to request justification of requested waivers. That clearly needs to be done with this project.

➤ **Potential cumulative impacts of EOD waiver.**

According to a resident of the EOD, at the time the original EOD was adopted there had already been several property use changes that compromised the existing equestrian oriented neighborhood. The EOD was adopted to protect the existing uses. Included within the EOD was the intent to improve connectivity of the horse trails, provide for safe crossing of roads, and improve access to Guajome Regional Park. None of those anticipated improvements actually occurred. There was neighborhood opposition when the initial waivers were requested for ADU's. Adjacent residents were concerned that there would be limitations placed on their future property use as things like corrals could not be located

¹ [\[1\]](#) Spur industries Inc. versus Del E. Webb Development Co 108 Ariz. 178, 494 P.2d 700, 1972 Ariz. 4

within so many feet of a residence and now the adjacent property had two residences on site instead of one. While the city required justification for waivers, they were approved. And as had been anticipated, the neighborhood concern that such waivers would make it harder to continue horse use in the neighborhood proved to be true. The consequence was that over time a number of properties discontinued horses on site, especially in Jeffries Ranch. This became the start of a long slow process that reduced horse use in the neighborhood that had special conditions added that were supposed to protect these uses. All of these previous waivers were for small modifications, such as adding an ADU, and none included waiver of all of the provisions of the EOD.

It is reasonable to expect that waiving all of the conditions of the EOD, with no requirement to justify such waivers, will adversely impact the function of the EOD and ultimately will result in more such projects. All of the EOD property owners that supported the EOD, and many of whom provided additional funding to maintain the horse trails will have the use of their property compromised, further exacerbating the future rate of conversion of these properties from one that supports horses to one that does not.

Furthermore, adding dense housing next to a horse corral is expected to result in the common kind of nuisance complaints that occur near agricultural land uses. Residents are aware at the time that they are near horses. But they still complain about the smell and other impacts from their presence. To protect agricultural areas from such complaints it is common to adopt Right to Farm ordinances. There is nothing similar to this to protect these horse properties.

Additional mitigation is needed to protect the intent of the EOD from such cumulative impacts. This should include consideration of a Right to Horses ordinance, similar to those used for Right to Farm ordinances in agricultural areas. It should also include the requirement to justify the EOD waiver and require explanation of how it will not adversely impact the intent and purpose of the EOD.

Air Quality and Greenhouse Gasses (GHG)

➤ Computation/typo errors in App B section 2.4.2.1

Text says grading will occur for one month from “July 24 to August 23.” It appears this was intended to be “July 23 to August 23.” This describes a project of 84 units with 9 affordable whereas the DEIR project description is 83 units with 4 affordable. This inconsistency should be noted with a statement about how it impacts the final computation (we expect this would be negligible but without correction it remains an inconsistency).

The delay in project completion could have a significant impact on the compliance with VMT/capita threshold. The DEIR notes an 18 month construction schedule and on page 33 says it will be operational in 2024. However, the project has yet to secure entitlements which reasonably would take at least 6 months, followed by 18 months construction. It therefore could not be operational until 2027 at the earliest. Since VMT/capita is required

to decrease over time this results in the wrong threshold being applied, i.e. 2024 instead of 2027 which would require additional emission reductions.

- **Fails to properly comply with conditions of the SDAPCD**

For example, dust control strategies in section 1.5 says “Speeds on unimproved roads shall be reduced to less than 15 mph.” Speeds are limited to 15, not less than 15. Furthermore, dust control measures are only applied to construction although the dirt road will continue to cause dust issues throughout the life of the project. Page 10 of Appendix B specifically identifies “dust stirred up by vehicles traveling on roads.” as a source of dust pollution. On page 11 it says Visibility Reducing Particles are those that “obscure viewshed of natural scenery.” (Applying to PM 10 and PM 2.5.) This dirt road is adjacent to natural lands of Guajome Regional Park and even a casual observation shows substantial dust impacts to the viewshed—just from a single car driving along the street. Furthermore, there is no restriction to 15 MPH to reduce fugitive dust. Page 13 identifies ‘parks and playgrounds ’ as land uses with sensitive receptors, yet the adjacent Guajome Regional Park has not been evaluated for impacts on such sensitive receptors. On page 18 it notes that the recommendations of the 2005 SDAPCD additional guidance re control of PM (because the region is a nonattainment area). This includes source control measures to address “unpaved roads and windblown dust.” All of these dust control measures from the SDAPCD need to be brought forward into the project design and conditions of approval.
- **Error on page 33 Table 8 where it says VOC threshold is “Not” exceeded**

This appears to just be a significant typo as the numbers show the threshold is exceeded and the text that follows discusses the cause and mitigation proposed to address this.
- **Unclear analysis of impacts, both for project and 90 townhome alternative**

Page 28 of App B notes natural gas use for space and water heating. This is one of the sustainability measures that should be addressed by making this an all-electric project. That would reduce fossil fuel used, improve indoor air quality and safety and reduce construction costs.
- **Fails to identify conflicts with appropriate Air Quality Plan (AQ)**

The adopted AQ assumes that growth is consistent with the SANDAG growth projections. On page 30 of Appendix B, it explains this as complying with the need for 5,443 housing units by 2029. But that fails to account for housing by income level which is also a key part of the growth projections. This project proposes to add only 4 affordable housing units, although Oceanside is far short of achieving the housing for that income level. It also fails to note that the city is already projected to exceed the target for above moderate housing. Furthermore, above moderate housing units consume more energy and emit more GHG than the smaller units built for lower income levels. As further discussed under Population the project is not consistent with SANDAG growth projections.
- **DEIR references the 2008 CARB Scoping plan but should be updated to the 2022 version.**

The current version provides much more specific guidance for local jurisdictions. But even the 2008 version includes the bottom-line goal of achieving 6 MT/capita by 2030 which is necessary to meet the threshold of SB32 and AB 197 for 40% below the 1990 levels by 2030. The DEIR has not evaluated compliance with this key goal from the CARB Scoping Plan.

➤ **inconsistent statement about gas fired fireplaces**

Page 29 of App B says that PDF AQ-1 Restricts both woodburning and natural gas fireplaces. But the actual AQ mitigation measure AQ-1 only specifies low VOC materials, and AQ-2 only restricts wood burning and not natural gas fireplaces. It is unclear if natural gas fireplaces have been included in the emission calculations or not. If not, this potentially could result in greater GHG emissions, particularly for cumulative impacts.

➤ **Inaccurate statements about housing compliance**

Page 31 notes that the majority of these housing units will be above market rate. Other places in the DEIR discuss housing compliance, particularly related to RHNA housing needs. What this ignores is that addressing housing needs is not just achieving the total number of housing units, it is achieving the number of units for each income level. Oceanside already has exceeded the need for above moderate housing so this project is not on a trajectory of compliance with housing goals as it will result in an even greater excess of high cost housing.

➤ **The CAP Checklist has not been provided/verified and is not allowed as CEQA analysis of impacts**

The DEIR assumes consistency with the CAP Checklist is sufficient to claim there are no significant GHG impacts, yet the Checklist has not been included with the DEIR documents provided, nor is there any indication that it has been signed/verified by staff. The City of Oceanside Climate Action Plan Consistency Checklist says the Checklist is supposed to be submitted “concurrently with the initial entitlement application.” It further states the Checklist is to be used for CEQA review of new developments. However, it also states that use of the Checklist is only sufficient for projects that “meet one or more of specific locational criteria.” The following includes shortened version of each of those locational criteria and our conclusions about it being met:

1. Within a Smart Growth Opportunity Area – No
2. Within 1/4 mile of a priority TOD – No
3. Consistent with current land use and zoning – No. Proposed project is not consistent with current zoning. In fact, it is requesting a waiver of many zoning conditions (EOD) and it has violated others (SPOD) that have not been properly identified.
4. Analysis that proposed project would produce fewer GHG than current land use-consistent with surrounding zoning district and verified by a third party expert. – No claim was made nor was such analysis done.

Since the project fails to meet any of the identified location criteria further analysis of GHG is required. The Checklist further specifies that this includes VMT analysis, consistent with the provisions of the City of Oceanside Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and (VMT) and Level of Services. Table 5 of those guidelines further specifies that residential projects that generate 500 or greater ADT are required to meet the threshold of a 15% reduction of VMT from the regional average.

No such analysis has been done. The project is not in compliance with the CAP provisions for CEQA analysis of GHG impacts. Since the project includes no features that would be expected to result in a VMT reduction this remains a potentially significant impact that has not been properly analyzed or mitigated.

➤ **Project still shows a small amount of natural gas use**

We would like to see this clearly defined as an all-electric project with no natural gas infrastructure and with the inclusion of additional Title 24 voluntary measures.

➤ **No assurances of Checklist compliance over the life of the project**

There needs to be a mechanism that ensures the minimum 22% pervious cover and 12% tree canopy cover provided initially are maintained throughout the life of the project. This mechanism needs to be specified in the conditions of approval.

➤ **There are no plans to accommodate increased EV use over time**

The project meets the current minimum requirements for EV hookups/charging. But there is no discussion as to how this will be addressed as California moves to 100% EV's. GHG analysis is a cumulative impact so this needs to be addressed for the life of the project that includes responding to this known change in future conditions.

Biological Resources

The project is not in compliance with several provisions of the Oceanside SAP

Several of these specific issues are discussed below. But the key issue is that failure to comply with the SAP results in potential adverse impacts to biological resources-- direct impacts, indirect and cumulative.

➤ **Impacts to sensitive habitat are not allowed to accommodate Fire Management Zones (FMZ)**

Per the MHCP those impacts should all be within the development footprint. There is no figure that shows exactly where, and by how much the project has failed to comply with requirements of the 0- 30' FMZ 1- just text that says the FMZ varies from 0-30' in spite of the fact that it shows a consistent 30 ' width for this zone on Figure 3.

Page 1 of App C says "... southern FMZ will include ...between 19 and 70 feet of on-site zone 2 thinning for fuel modification, and off-site equivalent fuel modification." What exactly is this "equivalent" off-site fuel modification? And where does this occur?

Furthermore the FMZ does not appear to properly identify impacts to adjacent lands. Table 5 of App C identifies .31 acres of impact from the improvements to Guajome Lake Rd. It appears that at least part, if not all, of these off site impacts are affecting Guajome Regional Park. The analysis of these offsite impacts should discuss how they affect the biological resources in the park- which may be greater than just accounting for the direct impacts- especially at the low proposed mitigation ratios (.5:1)

➤ **Impacts are not specified to existing hardline preserve.**

The text identifies that there is overlap with what is identified as hardline preserve in the MHCP/SAP- but there is no figure that identifies where this occurs or any details about the extent of this. The SAP specifically requires 90-100% of hardline preserve to be permanently protected and per the DFW comment letter on the NOP since this is identified as a Focussed Planning Area(FPA) in the MHCP there should be no impacts within this zone. Without knowing exactly how much of this existing hardline has been impacted it is impossible to determine if this standard has been met. But it appears this is not consistent with the MHCP/SAP.

➤ **Ignored WLA recommendation for impacts to be mitigated on site.**

The WLA's recommended that mitigation occur on site because this is part of the MHCP FPA. While there has been substantial avoidance of on-site impacts, mitigation is still proposed at an offsite area, with no explanation of how this is equivalent to what was recommended.

Furthermore, the sensitive habitat that has been avoided is not being treated as mitigation. There is no active management or monitoring proposed, only minimal actions specified for the HOA, and no endowment that ensures that these resources will in fact be preserved in perpetuity.

➤ **Fails to comply with buffer requirements of the SAP.**

The SAP identifies requirements for a 50' biological and a 50' planning buffer from the edge of the riparian habitat. The text implies these buffer conditions have not been met, but fails to provide the details that show exactly where, and to what extent, such reductions in the buffers have been made. Page 9 of App C concludes reductions in this buffer are acceptable if approved by the city . It says "However, because the subarea plan has not been approved by the city, these buffers and setbacks are subject to reduction based on approval by the city." The project is still subject to conditions to be included after consultation within the WLAs' , both for habitat impact and Streambed Alteration permits. MM Bio 11 specifically says the project will comply with the conditions of future Section 10 consultation (for habitat impacts) which is not consistent with this conclusion.

On page 31 it says that the landscaped manufactured slope will serve as part of the buffer and “avoids the need to thin in the habitat.” Again, this area of impact has not been properly identified. The DEIR has failed to fully identify, analyze or mitigate for impacts to the buffers. This remains a potentially significant adverse impact.

- **The correct mitigation ratio for impacts to CSS per Table 5-2 of the SAP is 3:1, not 2:1 as proposed.**

The referenced footnote 6 to Table 5-2 appears to be the justification for reducing this requirement but it is not applicable to this project in the Off-site Mitigation Zone. The correct mitigation ratio for occupied CSS habitat is 3:1.

- **The DEIR fails to discuss impacts on local wildlife movement corridor**

The SAP requires evaluation of project impacts on local wildlife movement corridors. The DEIR only evaluated impacts to the regional north/south wildlife movement corridor identified as the Wildlife Corridor Planning Zone in the SAP. Wildlife typically move along riparian corridors, and between riparian corridors and large open space areas like Guajome Regional Park. In Oceanside the San Luis Rey riparian corridor and others are important for local east/west wildlife movement. The DEIR has failed to discuss any such impacts to local wildlife movement corridors caused by the project.

The project proposes direct impacts to CSS on site. One of these patches included CAGN nesting. The DEIR has failed to discuss how the project will impact future CAGN dispersal, a specific kind of local wildlife movement corridor.. CAGN can move through a landscape with patches of CSS, based on line-of- site and other conditions. How will eliminating these CSS patches effect dispersal along the northern part of the site? What is the distance between CSS patches along this riparian corridor if those on the project site are impacted? On Page 30 it assumes the remaining riparian corridor provides adequate habitat linkages for CAGN but there is no analysis that supports that conclusion.

Where wildlife movement corridors are already compromised (like they are in the northern riparian area on site), it is important to provide redundancy. Having more than one way to move through a landscape increases the success of dispersal. See further discussion of factors affecting CAGN dispersal included in the study Ca Gnatcatcher Corridor Study Evaluation of the Northern Connector Through the Wildlife Corridor Planning Zone in the City of Oceanside CA, incorporated by reference.

- **Please clarify where the Quarry Creek mitigation bank site is located and remaining credits**IR says the direct impacts to both CSS and NNG will be mitigated through the creation of 6.64 acres of CSS at the Quarry Creek mitigation bank. We are not aware of the establishment of this mitigation bank. If it is within the Quarry Creek development in the city of Oceanside this area is not within the boundaries of the WCPZ. For this project these direct impacts are required to be mitigated within this zone.

- **Insufficient management of the sensitive habitat proposed to be maintained by the HOA.**
The DEIR states that the project avoids impacts to riparian, CSS and NNG habitats and that these areas will be managed by the HOA to ensure “no trespassing into the natural habitat and that they are kept free of trash.” Those two items alone are insufficient to ensure the biological integrity of this sensitive habitat. Full edge effect conditions should apply to this area and be the responsibility of the HOA to monitor and enforce.
- **Indirect impacts to sensitive habitat have not considered operation of the project**
The project only discusses potential construction indirect impacts, not those from operation of the project. MM Bio 3-10 also only addresses construction impacts and not the on-going permanent impacts that will occur from operation of the project. Given that the project site includes what is, and will continue to be, hardline preserve, the edge effect conditions from the MHCP need to be included as project conditions. These conditions were routinely used by the City for several years but have not been addressed with this project. Failure to address these results in potential indirect impacts that have not been mitigated. These standard edge effect conditions are included as Att A and should all be included with this project.
- **MM Bio-2 needs to also address locally invasive plants**
The DEIR does specify that potential landscaping impacts will be addressed by insuring no invasive plants are included based on the CAL- IPPC list. In addition to that, the San Diego Natural History Museum publishes a list of plants that are locally invasive. This list needs to also be included.
- **MM Bio 11 illegally defers mitigation to future Section 10 consultation.**
Of course the project will need to comply with numerous future actions that have not yet been specified, for example changes to the Building Code. But the DEIR analysis is supposed to identify all such known impacts and provide proper mitigation with the EIR, not defer this to a future action. This is of particular concern because such consultations are not part of a public process and there is no opportunity for the public to evaluate whether any proposed modifications are sufficient. This sounds like there is an expectation that there are impacts that have not been adequately identified, analyzed and mitigated in the DEIR and instead of doing that it is proposed to just include this generic mitigation measure to comply with these in the future.
- **The DEIR has not identified potential direct or indirect impacts on Guajome Regional Park from the modifications to Guajome Lake Rd.**
Throughout the DEIR it has failed to properly consider direct and indirect impacts on the park. The DEIR notes that Guajome Lake Rd will be realigned and widened and that this will impact the park. Yet there is no figure that shows the extent of this impact or analysis of the potential impacts.(Only a table that indicates the number of acres impacted.) There is extensive sensitive habitat within the park. Both the construction and operation of this

realigned road, with potentially higher traffic volumes, could impact the biological resources of the park.

Noise

- **Please restrict construction to M-F**
Saturday construction can be allowed by permit. But considering the project is adjacent to a regional park, Saturday construction should not be allowed.
- **Potential off site noise impacts were not properly identified or mitigated if needed**
Figure 2 Site Plan does not indicate any off-site construction impacts. There will be impacts from the improvements of Guajome Lake Rd for 420' along the frontage to the park, into the park, the extension of paving to the west of the project up to Albright St, and the estimated 2,000 foot sewer line extension to the project site. The analysis needs to also include these potential off site noise impacts.
- **Private sewer lift station noise not evaluated**
App N Sewer System Analysis identifies an on-site sewer lift station. It appears this was added after the noise analysis was done and it therefore was not included in the noise analysis. These stations can be very loud and may require mitigation.
- **We did not see restrictions on the type of lawn equipment to be used, which can be a major source of excess noise (and GHG).** Please include proper analysis and mitigation if needed for this potential impact from lawn equipment.

Hydrology

- **Inaccurate project description**
App H says the site is an existing vacant lot covered in natural vegetation. In fact, as reported elsewhere in the DEIR, there is an existing single family home and shed on site and most of the vegetation on site is not natural. On page 17 of 390 it says the paving of Guajome Lake Rd is only along the project frontage while in other places paving extends past the project to the west. On page 20 of 390 it says the majority of the storm water will travel south across Guajome Lake Rd through culvert . This does not seem consistent with the details for drainage shown in App H and I discussed further below.
- **Unclear statements about existing hydrology**
Page 1 of App H says basin EX-1 “appears “ to output to Guajome Lake Rd at low spot...”
Page 2 says Basin EX-3 “appears to continue northwest to outlet to Guajome Lake within Guajome Regional Park.” The hydrology technical studies are expected to confirm actual existing conditions—not just conclude what “appears” to be the case. There is also no discussion about any historical issues with site run-off, particularly to the adjacent Guajome

Regional Park. Is there obvious erosion around the road low point or the culvert under the road?

➤ **No figure showing basin drainage post project**

Pre-project conditions are shown that identify the three drainage areas of the site. Text says this basic drainage pattern essentially remains post project. But there is no site plan that shows post project areas of drainage and what flows to the identified basins and structural BMP's. While the detailed site plan shows the location of these it does not show the limit of post project drainage areas in order to confirm this remains substantially similar. App A to App H provides details for each of the three areas as summarized here:

| <u>Area</u> | <u>Pre Project</u> | | <u>Post Project</u> | |
|--------------|--------------------|--------------|---------------------|--------------|
| | Acres | CFS | Acres | CFS |
| NW | 4.14 | 7.77 | 5.28 | 7.66 |
| SW | 4.34 | 8.35 | 4.76 | 8.29 |
| NE | 1.92 | 5.15 | .38 | 1.01 |
| Total | 10.4 | 21.27 | 10.4 | 16.96 |

This indicates the overall volume of drainage has declined substantially particularly the area that drains to the NE. Please provide further clarification of this apparent inconsistency.

➤ **Required Justification for use of run-off coefficient of .35 for undisturbed natural land has not been provided**

App A to App H includes Table 3-1 from the SD County Hydrology Manual page 3-6. This includes the runoff coefficient for identified land uses. It adds a qualifier to the use of .35 (0% impervious cover) that it must be undisturbed in perpetuity and that "justification must be given that it will remain natural forever." We find no such justification nor do we find anything that assures all of these areas will remain impervious in perpetuity. Both of these issues need to be addressed for this analysis to comply with the requirements of the Hydrology Manual and for this coefficient to be acceptable to use.

➤ **Boiler plate information provided for structural BMPS**

For example, page 59 of 390 in App I shows an example from 43rd St and Logan Ave. in San Diego. Further explanation is needed to clarify what changes, if any, are proposed to the generic information provided to make them specific to this project.

➤ **Error on Site Design BMP Checklist**

Page 28 of 390 has checked "Yes" natural lands are conserved. The text specifically says that arroyo willow riparian forest and coastal sage scrub on the northern portion of the site will not be impacted. This is in conflict with the BTR that shows there are impacts to coastal sage scrub.

➤ **Failure to consider impacts of increased traffic on dirt road**

Guajome Lake Rd already experiences washboard conditions from winter rains. The project proposes to leave a portion of this road as is, while greatly increasing the traffic volume. This is likely to result in increased erosion impacts on this road that need to be addressed. This is further support for paving the remainder of the road if this project proceeds instead of leaving a portion of it dirt.

Transportation

➤ **The DEIR has not adequately assessed compliance with state and local requirements to consider “complete streets” with the proposed modification to Guajome Lake Rd.**

The City of Oceanside General Plan Circulation Element (CE) page 8 states: “It is recommended that all transportation projects, new or retrofit shall be reviewed for opportunities to improve safety, access and mobility for all travelers and recognize pedestrian, bicycle and transit modes are integral elements of the transportation system.” Appendix K the draft LTA says the project will build the missing sidewalk only along the project frontage, and only on the north side of the road. There will be no bike lanes or facilities. The nearest transit stop is 1.3 miles. This clearly is not designed as a “complete” street.

➤ **Unreasonable assessment of current and cumulative traffic impacts.**

We did not find current traffic counts confirming existing conditions. Simple observations and reports of residents along this reach of Guajome Lake Rd reveal that there is substantial cut-through traffic. This includes school pick up and drop offs for Guajome Crest Academy, among others. While the project itself might not reach the nexus to pave this entire dirt section of the road, the city certainly should. While there are no other projects currently in the approval process that would access this reach of Guajome Lake Rd, essentially all of the existing parcels along the roads off of Guajome Lake Rd have only this single way in or out. There is a potential for a substantial increase in residential units from all of these roads, with or without density bonus additions.

➤ **The DEIR has not confirmed that the proposed roadway improvements to Guajome Lake Rd are consistent with the adopted Circulation Element**

Page 13 policy 3.7 says the city “shall adopt special alignment plans when ‘standard equal-sided widening is not adequate for future needs or where specific conditions exist that require a detailed implementation plan.’” It appears the project is proposing widening on only one side yet the justification for this has not been provided- especially since the widening is only on the park side of the road. Policy 3.21 requires landscaping along redesigned roadways-which has not been discussed.

- **Unclear if it meets all of the CE design criteria for a 2-Lane Local Road shown on page 24, Table 3-1**

**TABLE 3-1
CITY OF OCEANSIDE STREET DESIGN CRITERIA**

| Design Elements | 6-Lane Prime Arterial | 6-Lane Major Arterial | 4-Lane Major Arterial | 4-Lane with TWLT Secondary Collector | 4-Lane Secondary Collector | 2-Lane with TWLT Collector | 2-Lane Collector | 2-Lane Local | Cul-de-Sac Street | Private |
|--|-----------------------------------|-----------------------------------|-----------------------------------|--------------------------------------|-----------------------------------|---|---|---|--|---|
| Volume Capacity | 60,000 | 50,000 | 40,000 | 30,000 | 25,000 | 15,000 | 10,000 | 2,200 | Less than 200 | Less than 500 ² |
| Design Speed | 60 mph | 55 mph | 55 mph | 45 mph | 45 mph | 35 mph | 25 mph | 25 mph | 25 mph | 25 mph |
| Stopping Sight Distance ¹ | 580' | 500' | 500' | 360' | 360' | 250' | 200' | 150' | 150' | 125' |
| Minimum Spacing of Intersections ³ | 2,600' | 1,200' | 1,200' | 600' | 600' | 300' | 300' | 200' | NA | 200' |
| Right-of-Way ⁴ | 124' | 124' | 100' | 84' | 74'-80' | 70' | 60'-70' | 56'-60' | 56' | VARIABLES |
| Curb-to-Curb Distance | 104' 16' Median | 104' 16' Median | 80' 16' Median | 64' | 54'-60' | 50' | 40'-50' | 36'-40' | 36'-40' | 40'-36' 32'-28' ⁵ |
| Minimum Traffic Index | 10 | 10 | 9 | 8 | 8 | 7 | 6 | 5 | 5 | 5 |
| Minimum Structural Section ⁶ | 6AC/8AB | 6AC/8AB | 6AC/6AB | 5AC/6AB | 5AC/6AB | 4AC/6AB | 4AC/6AB | 3AC/6AB | 3AC/6AB | 3AC/6AB |
| Access to Adjoining Property | None | None | None | Where no other access is possible | Where no other access is possible | Where no other access is possible | Limited Access | OK | OK | OK |
| Minimum Horizontal Radius Without Superelevation | 1,000 2,200 | 1,000 1,800 | 1,000 1,800 | 750 1,100 | 750 1,100 | 500 600 | 350 N/A | 200 N/A | 200 N/A | 200 N/A |
| Maximum Grade | 6% | 8% | 8% | 8% | 8% | 8% | 10% | 12% ⁷ | 12% ^{7,8} | 12% ⁷ |
| Minimum Grade | 0.5% | 0.5% | 0.5% | 0.5% | 0.5% | 0.5% | 0.5% | 0.5% | 0.5% | 0.5% |
| Maximum Intersection Grade | 3% | 3% | 3% | 4% | 4% | 5% | 5% | 5% | 5% | 5% |
| Curb Return Radii | 35' | 35' | 35' | 35' | 35' | 30' | 30' | 25' | 40' | 25'-35' |
| Street Lights Location per Standard Drawing No. M-4 ⁹ | 30,000 lumen 200' staggered | 30,000 lumen 200' staggered | 30,000 lumen 200' staggered | 30,000 lumen 250' staggered | 30,000 lumen 250' staggered | 9,500 lumen 250' one side or staggered | 9,500 lumen 250' one side or staggered | 9,500 lumen at all intersections 250' spacing one side of street | 9,500 lumen at mid-block if less than 200' | 9,500 lumen at all intersections 250' spacing one side of street |

- **The project has waived the requirements of the Equestrian Overlay Zone, but that does not specifically address all of the equestrian related requirements in the CE**
6.2 Equestrian Facilities includes an objective to “preserve and enhance trails in the vicinity of Guajome Regional Park.” Policy 6.11 expands on that to include “the city shall protect and maintain the equestrian trails as a form of recreational opportunity as part of implementing the city’s Recreational Trails Element.” It also specifically mentions providing safe crossings to Guajome Park. The project has not complied with these requirements from the CE, yet it claims to be consistent with the General Plan.

The Recreational Trails Element is a sub element of the CE, was adopted in 1995 and reformatted in 2002. Page 9 of that document describes the Equestrian System component of recreational trails. This includes objective 6.1 to implement the Equestrian Circulation Master Plan shown on Figure RT-2. Goal 7 on page 12 is to “Enhance equestrian trail facilities in the Equestrian Overlay District. This includes three specific objectives: to continue access to Guajome Park, strive for master planned connections to the park, and to develop additional design standards. All of these have been ignored, contributing to impacts on the park.

- **Failed to consider safety impacts of horses crossing Guajome Lake Rd.**
Car/ horse collisions and avoidance of such collisions are dangerous for both the horse and rider and the occupants of the vehicle. These unsafe conditions already exist since no actual horse crossings have been provided in spite of the number of horses accessing the park from the north side of Guajome Lake Rd. With the proposed extension of Melrose Rd several years ago there was a requirement to provide special controls to activate crossing

signals that could be accessed by a rider on a horse. The incidence of such potential crossing conflicts is expected to increase substantially given the increased volume of traffic on Guajome Lake Rd. The project needs to specifically address the safety of potential conflicts with horses crossing the road.

- **Project is in a high VMT area and exceeds the regional average VMT/resident**
Appendix C to Appendix L states the census tract the project is located in has 19.1 VMT/Resident and the regional mean is 18.9 VMT/Resident. The project has not properly evaluated its GHG impacts and its location within an area with high VMT makes this even more concerning.
- **Issues with draft Local Transportation Assessment dated April 19, 2023**
This says the project will build missing sidewalks, but this is only a single sided sidewalk and appears to only extend along the project frontage with no sidewalk connections past the project frontage to the east or west. No bike lanes or facilities are provided and the closest transit stop is 1.3 miles away. The cumulative impacts conclude there are no other projects adding traffic to this reach of Guajome Lake Rd. However this fails to consider that many of the roads in this area have a single access to Guajome Lake Rd so any increase in intensity of use on all of those roads will result in increased traffic on Guajome Lake Rd. The presence of so many roads with a single access is a major factor to consider- both for general circulation and for impacts when there is a need to evacuate.
- **Unknown if applicant has coordinated with adjacent jurisdictions as is required**
Per page 7 the applicant is responsible for this coordination. This would include both the county of San Diego and city of Vista, two jurisdictions that will also be impacted by increasing traffic and roadway construction. Please provide verification that this required coordination has taken place.
- **Issues with compliance with ECAE Policies of the General Plan**
ECAE Policy 1c-3 requires outreach and educational materials promoting energy efficiency at point of sale. Policy 2c-4 requires the city to ensure improvements are consistent with the city's Complete Streets Program. There is no mention of compliance with these policies.

Energy

- **Construction energy use fails to include off site construction of road and sewer**
These off-site impacts should be consistently included in the DEIR.
- **Failed to include the required VMT analysis**
This section and the GHG section both conclude that the project is exempt from further analysis of GHG as it complies with the Checklist and based on the false claim that it meets one or more of the four exemption criteria. Specifically that is because the project is considered to be "consistent with current land use and zoning." Great detail is provided in

multiple locations about compliance with Land Use goals and policies in the General Plan including Table 4.10-1. However, there is no such analysis for compliance with zoning requirements. Page 4.10-9 discussion of compliance with the Zoning Ordinance merely goes through the details of computations for density bonus. In fact, the project specifically waives compliance with the zoning requirements for the Equestrian Overlay Zone. It can't both waive compliance and claim to be exempt from further energy analysis based on the compliance that has been waived. In addition, there has been no documentation of compliance with numerous conditions of the SPOD as discussed in these comments. We believe the project also fails to comply with numerous provisions of the SPOD which further invalidates the claimed exemption based on zoning compliance.

The DEIR has falsely claimed it is eligible for an exemption from further analysis of GHG. Further analysis as described in the CAP is required in order to determine that there are no significant impacts from GHG.

➤ **The project includes substantial use of natural gas and is not in compliance with 2022 CARB Scoping Plan**

The buildings are projected to use 669,031 kWh of electricity and 2.37 million thousand BTU natural gas/year. We found no details on what the natural gas is being used for. But residential projects are the easiest land use to support all electric buildings. Eliminating the use of natural gas reduces construction costs, improves safety, improves interior air quality and reduces GHG emissions. The 2022 CARB Scoping Plan includes measures for decarbonization of residential and commercial buildings. The standard for residential land uses is "all electric appliances by 2026." The project will not be operational until 2027 and should comply with this standard.

➤ CAP Checklist has a number of issues discussed under GHG.

Geotechnical

➤ **Drainage description is not consistent with hydrology report**

App G says "Surface drainage is directed toward the southwest and northeast on their respective ridge sides." App H Hydrology review says the majority of the drainage is to the southeast, across Guajome Lake Rd.

➤ **Private on site sewer lift station not evaluated**

Page 11 Section 5.3.1.6 notes "sewer utilities have not yet been designed." It further states such future details would require further review to ensure BMP's are not within 10' of sewer utilities. Further analysis of this is needed based on the design of the sewer system shown in Appendix N.

➤ **Geotechnical report recommendation are not properly carried forward into the DEIR**

The report states that further review at various stages of the project is needed to ensure there are no adverse impacts. The DEIR failed to identify the need to comply with geotechnical recommendations or the need for further review. These impact both construction and operation of the project. For example, under landscaping maintenance it notes the importance of avoiding overwatering. It also says “An abatement program to control ground-burrowing rodents should be implemented and maintained. This is critical because ground burrowing rodents can decrease the long- term performance of slopes.” It also says to avoid landscaping next to foundations. The DEIR needs to properly conclude that there could be significant impacts unless the recommendation of the Geotechnical report are complied with. This needs to be a formal Mitigation Measure with accountability for performance and an enforcement mechanism.

Public Services

Water Service

- **Unclear if additional demand has been included for fire sprinkler system in each residential unit.**
- **Unclear what is “public” vs “private”**
Figure 3 shows the 2 8” waterline connections to the existing 10” main along Guajome Lake Rd, as well as the line on the interior street. Does all of this become part of the public infrastructure once built? We would like to see a summary of infrastructure additions and the costs of their construction and on-going maintenance that will be paid for by the taxpayers of Oceanside, and not this developer.

Sewer Service

- **Off site impacts for sewer system extension from Old Ranch Rd are not accounted for.**
Figure 3-2 in project description only shows the paving of Guajome Lake Rd to Albright as an off site impact, not the 2,000 foot sewer line. Also, the construction Air Quality impacts have not accounted for this sewer extension. We do not see anywhere that the sewer system extension has been addressed in potential project impacts.
- **Need to address in perpetuity requirements to manage any private sewer system component**
The lift station is within the project footprint and is identified as “private.” There needs to be conditions that ensure adequate management of this facility. Will that be the responsibility of the HOA and what is the enforcement mechanism?

Fire Service/Wildland Fire

- **Inconsistent project description**

Page 5 of App O (and others) says the project is for 84 single family residences with 9 affordable whereas the DEIR project description is 83 with 4 affordable. There needs to be a consistent project description, both for the number of units and for off-site improvements. This is very critical as the project does not comply with standards for Fire Management Zones (FMZ) and is proposing alternative mitigation. Without a clear description of the amount and location of the compromised FMZs it is not possible to determine that this proposed mitigation is sufficient. Figure 3 text says the FMZ Zone 1 Irrigated area is 0-30' wide. The figure shows no area of 0 width. FMZ 2 Non-irrigated text says it is 30-70' but the Figure shows lots of areas that appear to be less than 30' wide. Furthermore section 4.18 Wildfire discusses a FMZ of 0-5' from building foundation, with very specific restrictions on that zone. Those include irrigation and limited plant use and plant height from 6 -18". That zone is not mentioned in App O, shown on Figures that describe the FMZs, nor is it found on the landscaping plan. Please provide a consistent description of all of the FMZ requirements including this 0 - 5 ' zone, include on the related figures, and include provisions for enforcement. We are not aware of HOA's or OFD having inspection programs that review the 5' perimeter around residential buildings for fire compliance.

- **App O Page 14 section on Water Supply missing the end of the sentence.**
- **Includes equestrian provisions that have been eliminated from project description**
Page 14 of App O says a "full width cul-de-sac bulb will be constructed at the northern end of the access road to accommodate horse trailers ." and later "... will provide all weather access to the community equestrian areas and public water and sewer utility area." It is not clear that this is actually shown on Figure 2, but it clearly is not consistent with the rest of the project description that has waived all Equestrian Overlay District conditions.
- **Areas that require parking restrictions are not shown on Figure 2**
Page 15 of App O talks about space for horse trailer parking, but this seems inconsistent with requirements for Fire Department turnaround. Also, the project description discussion of parking does not identify parking for visitors, deliveries, etc. Parking restricted areas should be identified on Figure 2. The project description needs to indicate the number and location of parking spaces provided, not just the 2 car garage for each residence.
- **Insufficient analysis and mitigation for failure to meet City of Oceanside Level 1 fire response time of 90% within 5 minutes**
Page 19 and continuing describes the anticipated response times. Table 1 on page 20 shows expected response times for each of the three closest fire stations. On page 21 it says "The final decision regarding the need to mitigate for not strictly complying with the Oceanside Fire Departments time would be at Oceanside Fire Department Discretion." Per the CEQA process this is at the discretion of the City Council as the lead agency and should be done as part of the public process and not administratively, after the fact with no public awareness.

- **Failure to support adequacy of the proposed mitigation for violation of FMZ width**
 The proposed mitigation seems primarily the requirement for double paned windows on the homes along the “northern, western and eastern boundaries. Double paned windows are already required for all SFR’s by the Building Code so this is not mitigation. And of course, windows only work to restrict embers entering the house if they are closed and there is no assurance that will occur 100% of the time during a fire situation. In other places it talks about the widening of Guajome Lake Rd., additional fire hydrants and limited number of new residents and vehicles as justification for the reduced width of FMZ’s. There is nothing that justifies that these measures are sufficient to reduce this risk to an acceptable level. Furthermore, this has not been properly treated as a formal mitigation for project impacts. Without acceptable mitigation the project fails to meet fire safety standards for FMZs so whatever is proposed as mitigation needs to be specified as a formal project Mitigation Measure with accountability for construction and enforcement for the life of the project. Furthermore page 23 states FMZs are “arguably more important when situated adjacent to older structures.” The FMZ width reduction does not just impact the project, it potentially impacts the other adjacent properties, which include older homes, and Guajome Regional Park. The DEIR has failed to consider any additional potential impacts to adjacent properties.

- **false conclusion that it is “not possible to achieve full 100’ FMZ width”**
 This conclusion on page 39 is not accurate. Of course they could include the full width for the FMZs, but it would substantially reduce the developable area of the site.

- **Issues with Appendix D Prohibited Plants List**
 It appears that Appendix D is missing two species that have been specifically restricted from being planted in Oceanside— tamarisk and pampas grass. These (along with *Arundo donax* that is included) were restricted several years ago following a series of arson fires in the San Luis Rey River bed. There are also several native plant species that are present (or could become present) in the land that is set aside for preservation. This should clarify that such existing native plants in the preserve area are not restricted.

- **Failed to consider impacts of roadway plan on emergency evacuation**
 The DEIR concludes that because the project has two access driveways and that Guajome Lake Rd is being improved this will be sufficient for evacuation. However, these two driveways are within about 200 ‘ of each other and both access to the same road, Guajome Lake Rd. In addition, there are several roads in the project vicinity that also have a single road in and out- and that single road is Guajome Lake Rd. According to the Transportation analysis 50% of the project traffic will exit to the east and 50% to the west. During evacuations it is common for an evacuation route to be limited to a single direction, away from the fire and to avoid conflicts with responding emergency vehicles. This roadway condition with so many one way in and out roads could result in increased evacuation times. This is a particular concern in areas where animals may need to be evacuated as that also adds to the evacuation time.

We believe an evacuation time study should be done to ensure there can be safe evacuation considering these roadway design limitations and the need to evacuate animals. Also the county of San Diego has recently adopted standards for evacuation in areas with animals that should also be incorporated.

Parks

➤ **Incorrectly includes protected habitat as part of the recreational amenities**

Page 4.13-1 says “residents of the project would have access to the 6.92 acres of common open space.” That number of acres includes the protected on site natural habitat for which there is no recreational access identified. If recreational access is allowed into that habitat area, then this would result in additional impacts to biological resources that have not been evaluated.

Recreation

➤ **Inaccurate statement about parks maintained by the city**

Page 4.14-1 says the city maintains a list of parks that include Calaveras Lake and Hosp Grove in Carlsbad, and Guajome Regional Park. The city of Oceanside does not maintain these three parks.

➤ **The analysis concludes that the park standard of 5 acres/1,000 residents will be met by the future El Corazon park**

There are no assurances as to when, if ever, the park acres included on ELC will ever be built. The first of 9 proposed parks on ELC was recently delayed for an unknown period of time when cost estimates more than doubled and there are insufficient funds available for construction. No funds have been committed to any of the other future parks on ELC. The city does not have a valid plan to address the existing shortfall in park acres and this project will further exacerbate that shortfall.

➤ **There is no discussion of the impacts of the project on the recreational value of Guajome Regional Park**

The park is described as 75 acres with 4.5 miles of trails, diverse habitat, playgrounds, basketball court and 33 campsites. The DEIR says that 420 feet of Guajome Lake Rd will be widened and improved within the park. There is no analysis of the direct impacts of this road widening although there is a parallel trail within the park that will now be closer to an improved road with increased traffic. The project would impact views from the trails and other areas of the park, and add noise and air pollution. There is no discussion about how eliminating compliance with the EOD for this project right along the park could impact equestrian access to the park, including from several horse properties on the north side of

Guajome Lake Rd who will now need to cross this wider road with heavier traffic to access the trails within the park.

Population/Housing

➤ Table 6-1 fails to identify numerous projects using density bonus to exceed the allowed density in the General Plan

There are a large number of projects already approved or in the pipeline that have used the density bonus law to exceed the number of housing units that are allowed in the General Plan. Furthermore, every discussion of housing in the DEIR uses the gross RHNA number for the current 8 year housing cycle and fails to show details by income level, and actual progress toward achieving those goals. A key impact is that overbuilding of above moderate housing has a disproportionate impact as these units are larger, have more vehicles and create more GHG. Attachment C to this comment letter shows the most recent SANDAG dashboard of housing for the city of Oceanside. At this rate the city is on track to exceed the above moderate housing units in a few years as it has already achieved 42.5 % in the first two years of the eight year cycle. At that pace it will achieve 180% of the total in the eight-year cycle. Oceanside, like most cities in this region, still fails to meet the need for very low income and low- income housing while continuing to build more above moderate units than are needed.

Other CEQA Considerations

➤ Project is growth-inducing

Once a non-equestrian project is allowed in this low density equestrian area it will start the dominoes falling—with more such projects to follow. The special overlay districts for the park and equestrian use were approved in 1992. It is clear from the slow rate of change in this area that they have helped protect its unique character. This developer is already under contract to purchase another nearby property (See Att D) . One can anticipate he will follow the same model he used with this project resulting in more pressure to develop this area with high density housing.

Improving at least part of Guajome Lake Rd and extending the sewer system will make it that much easier for the next project to increase the density and change the character of this area. These cumulative impacts all have long term cost implications for the taxpayers of Oceanside and continued adverse impacts on this neighborhood and are growth inducing.

Alternatives Analysis

We very much appreciate that the DEIR has identified an environmentally superior alternative that is both feasible and actually substantially reduces the adverse impacts of the proposed project. But further analysis of impacts and mitigation is needed because of the changes proposed with this alternative. It is proposing similar waivers as the existing project— which results in substantial potential impacts as discussed in these comments.

The change in land use to multi-family residential will require a General Plan Amendment and numerous other changes. That change in land use would require VMT analysis because the project will produce over 500 ADT. It does not appear that this analysis has been done for this alternative. Also the ECAE Policy 21-2 says the City shall explore incentives for EV charging facilities in multi-family developments. CAP compliance would need to be re-evaluated.

Thank you for considering our comments.

Sincerely,

Diane Nygaard, President
On Behalf of Preserve Calavera

Attachments:

- A MHCP/C SAP Edge Effect Conditions
- B Chatten Brown Carstens Letter on Failure to Implement the CAP
- C San Diego County RHNA Dashboard for Oceanside
- D Description of Nearby Property Under Contract for Purchase
- E HCD letter Allowing Justification For Use of Waivers

Attachment A: MHCP/C SAP Edge Effect Conditions

City of Oceanside - Standard Project Conditions

SELECT AS APPROPRIATE - FOR PROJECTS LOCATED ADJACENT TO RESERVE AREAS OR WITH OTHERWISE SENSITIVE HABITAT ISSUES

1. A qualified biologist shall be retained by the applicant to review the final grading plans, access routes and staging areas, monitor all aspects of construction, educate contractors about the biological sensitivities associated with the area and ensure compliance with mitigation measures.
2. The qualified biologist shall conduct a training session for all project personnel prior to any grading/construction activities. At a minimum the training shall include a description of the target species of concern, its habitats, the general provisions of the Endangered Species Act (Act) and the MHCP, the need to adhere to the provision of the Act and the MHCP, the penalties associated with violating the provisions of the Act, the general measures that are being implemented to conserve the target species of concern as they relate to the project, any provisions for wildlife movement, and the access routes to and project site boundaries within which the project activities must be accomplished.
3. A water pollution and erosion control plan shall be developed that describes sediment and hazardous materials control, dewatering or diversion structures, fueling and equipment management practices and other factors as deemed necessary. Erosion control measures shall be monitored on a regularly scheduled basis, particularly during time or rainfall. Corrective measures shall be implemented in the event erosion control strategies are inadequate. Sediment/erosion control measures shall be continued at the project site until such time as the revegetation efforts are successful at soil stabilization.
4. The footprint of habitat disturbance shall be minimized to the maximum extent feasible. Access to sites shall be via pre-existing access routes to the greatest extent possible.
5. The upstream and downstream limits of project disturbance plus lateral limits of disturbance on either side of the stream shall be clearly defined and marked in the field and reviewed by the biologist prior to initiation of work.
6. Placement of equipment and personnel within environmentally sensitive habitat areas stream channels or on sand and gravel bars, banks and adjacent upland habitats used by target species of concern shall be avoided. Activities that can not be conducted without

placing equipment or personnel in sensitive habitats shall be timed to avoid the breeding season of the target species of concern.

7. When stream flows must be diverted, the diversions shall be conducted using sandbags or other methods requiring minimal instream impacts. Silt fencing or other sediment trapping materials shall be installed at the downstream end of the construction activity to minimize the transport of sediments off-site. Settling ponds where sediment is collected shall be cleaned out in a manner that prevents the sediment from re-entering the stream. Care shall be exercised when removing silt fences, as feasible, to prevent debris or sediment from returning to the stream.
8. Equipment storage, fueling and staging areas shall be located to minimize risks of direct drainage into riparian areas or other environmentally sensitive habitats. These designated areas shall be located in such a manner as to prevent runoff from entering sensitive habitats. All necessary precautions shall be taken to prevent the release of cement or other toxic substances into surface waters. All project related spills of hazardous materials shall be reported to appropriate entities including but not limited to the City of Oceanside, FWS, and CDFG, SWQCB and shall be cleaned up immediately and contaminated soils removed to approved disposal areas.
9. Erodible fill material shall not be deposited into water courses. Brush, loose soils, or other similar debris material shall not be stockpiled within the stream channel or on its banks.
10. Stockpiling of materials and other aspects of construction staging shall be limited to disturbed areas without native vegetation, areas to be impacted by project development or in non sensitive habitats.
11. "No-fueling zones" shall be established within a minimum of 10 meters (33 feet) from all drainages and fire sensitive areas.
12. Scheduling of construction activities shall minimize potential impacts to biological resources. Construction adjacent to drainages shall occur during periods of minimum flow (i.e. summer through first rain of fall) to avoid excessive sedimentation and erosion and to avoid impacts to drainage dependent species. Construction near riparian

areas or other sensitive habitats shall be scheduled to avoid the breeding season (March through September) and potential impacts to breeding bird species.

13. Construction activities during the breeding season (dates tbd depending upon species of concern- some start in Feb March through September) shall be limited to those that will not produce significant noise impacts (i.e. noise levels greater than 60 dBLeq –decibels equivalent sound level) at the edge of the habitat of concern.
14. Conduct preconstruction surveys at potential impact areas between mid-May and mid-June.
15. Human and pet access to preserve areas shall be limited to designated trails by use of natural vegetation, topography, signs and limited fencing.
16. Artificial lighting adjacent to the preserve area shall be eliminated except where essential for roadway, facility use and safety and security purposes. Where use of artificial lighting is necessary it shall be limited to low-pressure sodium sources. Use of low voltage outdoor or trail lighting, spotlights or bug lights is prohibited. All light sources shall be shielded so that lighting is focused downward to restrict any light spillover onto sensitive habitat.
17. The HOA shall establish an education program for homeowners regarding responsible pet ownership. The program shall encourage a) keeping pets indoors, especially at night; b)having pets neutered or spayed to reduce unwanted reproduction and long-range wandering; c)bellling of cats to reduce their effectiveness as predators; d) prohibiting release of unwanted pets into the wild; e) keeping dogs on leashes when walking them on trails in preserve areas.
18. The HOA shall establish a feral animal removal program.
19. The qualified biologist shall monitor construction activities throughout the duration of the project to ensure that all practicable measures are being employed to avoid incidental disturbance of habitat and any target species of concern outside the project footprint. Construction monitoring reports shall be completed and provided to the City of Oceanside, FWS and CDFG summarizing how the project is in compliance with applicable conditions. The project biologist shall be empowered to halt work activity if

- necessary and to confer with staff from the City of Oceanside, FWS and CDFG to ensure the proper implementation of species and habitat protection measures.
20. The removal of native vegetation shall be avoided and minimized to the maximum extent practicable. Temporary impacts shall be returned to pre-existing contours and revegetated with appropriate native species. All revegetation plans shall be prepared and implemented consistent with Appendix C (Revegetation Guidelines of the Final MHCP Plan – Volume II) and shall require written concurrence of the FWS and CDFG.
 21. To avoid attracting predators of the target species of concern, the project site shall be kept clean of debris as possible. All food related trash items shall be enclosed in sealed containers and regularly removed from the site. Pets of project personnel shall not be allowed on site where they may come in contact with any listed species.
 22. Construction employees shall strictly limit their activities, vehicles, equipment, and construction materials to the proposed footprint and designated staging areas and routes of travel. The construction area(s) shall be the minimal area necessary to complete the project and shall be specified in the construction plans. Construction limits shall be fenced with orange snow screen. Exclusion fencing shall be maintained until the completion of all construction activities. All employees shall be instructed that their activities are restricted to the construction areas.
 23. Any habitat destroyed that is not in the identified project footprint shall be disclosed immediately to the City of Oceanside, FWS and CDFG and shall be compensated at a minimum ratio of 5:1.
 24. If dead or injured listed species are located, initial notification must be made within three working days, in writing to the Service's Division of Law Enforcement in Torrance California and by telephone and in writing to the applicable jurisdiction, Carlsbad Field Office of the FWS, and CDFG.
 25. The City of Oceanside shall have the right to access and inspect any sites of approved projects including any restoration/enhancement area for compliance with project conditions and BMPs. The FWS and CDFG may accompany the City representatives on this inspection.

26. Any planting stock to be brought onto the site for landscaping or ecological restoration shall be first inspected by a qualified pest inspector to ensure it is free of pest species that could invade natural areas, including but not limited to Argentine ants, fire ants, and other insect pests. Any planting stock found to be infested with such pests shall not be allowed on the project site or within 300 ft of natural habitats. The stock shall be quarantined, treated or disposed of according to best management principles by qualified experts in a manner that precludes invasions into natural habitats.
27. New utility lines or towers or modification of existing utility lines or towers shall implement designs that preclude or minimize harm to wildlife due to collisions or electrocution. Information on such designs is available at www.migratorybirds.fws.gov/issues/towers.
28. Use bridges, instead of culverts for all major riparian crossings and regional wildlife movement corridors. The site of the riparian crossing and its importance as a wildlife corridor should dictate the design. (Where appropriate based on site specific survey results) Wildlife undercrossings shall be designed and implemented (for new roads or road improvement projects that could disrupt wildlife movements or result in increased road kill). Such undercrossings, along with any necessary wildlife fencing or other facilities, shall be designed based on best available information to maximize use of the undercrossing by species of concern. Undercrossing design shall strive to maximize the openness index (widthXheight/length), minimize traffic noise within the crossing, use skylight openings within the underpass to allow for vegetative cover within the underpass, use appropriate fencing to funnel wildlife into the crossing rather than across the road surface, and screen the undercrossing opening and access path with natural vegetation. Undercrossing design shall be subject to review and approval by the City of Oceanside, FWS and CDFG prior to issuance of grading permits.
29. All mitigation sites shall be conserved through fee title acquisition or conservation easement, and proof of recordation shall be provided to the City of Oceanside prior to land disturbance.
30. Use of retaining walls shall be minimized. Development on the site shall be configured to existing topography to minimize grading and landform alteration.

31. Existing natural drainages and watersheds shall be maintained. The project shall restore or minimize changes to natural hydrological processes.

32. Detention basins shall incorporate earthen berms to allow growth of natural vegetation.

Note : There are additional specific conditions in areas of equestrian use

CONDITIONS SPECIFIC TO BUENA VISTA LAGOON

33. The Buena Vista Lagoon boundary (and/or wetland area) shall be delineated and criteria used to identify any wetlands existing on site shall be those of Section 30121 of the Coastal Act. Mapping of wetlands, conditions to protect sensitive resources and siting of development shall be done in consultation and subject to approval of DFG.

34. Landscaping on the site shall be utilized as a visual buffer and shall be compatible with the surrounding native vegetation and preserved open space through installation of native, non-invasive, drought tolerant plant species.

35. Approved landscaping shall be installed immediately upon completion of construction and maintained by the property owner in good growing condition for the life of the development.

36. Landscaping screening of structures with specimen trees and fire-retardant vegetation of substantial height, shall be required to screen and soften the view of structures from _____ (Interstate 5/ Buena Vista Lagoon etc.) and public vista points.

37. A HOA shall implement a landscape management plan that includes herbicide/pesticide management and removal of invasive species..

38. On-site sensitive biological resources areas inclusive of the 100-ft buffer area shall be left in their natural state (or restored with native drought tolerant vegetation) and used only for those passive activities allowed as a condition of permit approval. The permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property. The USFWS and DFG shall be named beneficiaries to any covenant of easement recorded pursuant to this condition.

39. The use of chemical pesticides for mosquito control is prohibited (rely on biological agents).

40. Access to buffer and sensitive habitat areas is prohibited during the breeding season (see species specific guidelines for breeding season dates) except for emergency access.

Attachment B: Chatten Brown Carstens Letter on Failure to Implement the CAP



Chatten-Brown Law Group, APC
Kathryn Pettit | Associate
325 W. Washington Street, Suite 2193
San Diego, CA 92103
kmp@chattenbrownlawgroup.com
Phone: (619) 393-1440

December 22, 2023

Via email

City of Oceanside City Manager
Jonathan Borrego

Re: The City of Oceanside's Failure to Implement its Climate Action Plan and Necessary Remedial Actions

Dear Mr. Borrego:

Our firm represents Preserve Calavera in relation to the City of Oceanside's Climate Action Plan. The mission of Preserve Calavera is to protect, enhance, and restore the natural resources of Coastal North San Diego County, which includes addressing and minimizing the growing impacts of climate change. As the world's leading experts on climate change have underscored:

Climate change is a primary driver of biodiversity loss. And climate change depends on biodiversity as part of the solution. So clearly, the two are linked and cannot be separated.

(Elizabeth Mrema, Executive Secretary, United Nations Convention on Biological Diversity, May 2022.)¹

As the harmful and costly impacts from climate change increase, swift and meaningful climate action from local governments becomes more and more imperative.² Yet, the City of Oceanside ("City") is failing to achieve several specified measures, strategies, and targets that are required under its Climate Action Plan ("CAP"). It is further failing to comply with the CAP's implementation and monitoring requirements.

At the outset, Preserve Calavera would like to make clear that its paramount goal is successful implementation of the CAP, and to achieve further reductions in greenhouse gas ("GHG") emissions in the City to ensure alliance with the State's climate mandates. At this stage, the purpose of this letter is not to initiate litigation, but to spur collaboration. Preserve Calavera aims to underscore the gravity of the CAP's shortcomings, propose solutions, and begin a cooperative process moving forward.

¹ <https://www.un.org/en/climatechange/science/climate-issues/biodiversity>

² <https://www.nature.com/articles/d41586-023-03849-y> [Climate change has placed the world in danger of breaching numerous planetary 'tipping points']; <https://www.noaa.gov/news-release/climate-change-impacts-are-increasing-for-americans> [Climate change impacts are increasing for Americans];

Preserve Calavera is committed to help reduce GHG emissions in Oceanside, and has secured funding to support local GHG-reducing projects. Preserve Calavera seeks to work together with the City to ensure timely and urgent implementation of the CAP, as well as additional local GHG reduction projects, to which Preserve Calavera can contribute funding.

I. Overview

Preserve Calavera urges the City to implement and adhere to its CAP. Unfortunately, as described throughout this letter, the City is falling woefully short of its promised strategies, timelines, monitoring, and implementation actions.

The City's own staff alerted City Council to several of these failures last year, including the lack of adequate staffing and funding. Yet, the City failed to take any meaningful action. Preserve Calavera has also notified the City of its failures to implement the CAP on several occasions. Meanwhile, the City continues to take advantage of the CAP's streamlining benefits and approve projects without individual-level GHG analysis and mitigation. We detail several examples of the City's failure to implement its CAP in **Section II**.

These failures result in ongoing violations of CEQA. First, the CAP is both an element of the City's General Plan and a mitigation measure for all development under the General Plan. Thus, it must be implemented and enforced, as detailed in **Section III**.

Additionally, the City continues to rely on the CAP as a GHG streamlining plan. CEQA Guidelines Section 15183.5 establishes the criteria for "Tiering and Streamlining the Analysis of Greenhouse Gas Emissions." The CAP fails to meet these criteria, and cannot be relied on for GHG analysis and mitigation for individual project CEQA review until the City's deficient implementation is corrected, as detailed in **Section IV**.

Finally, we see that the City is in the process of updating its General Plan, which may include an update to its CAP. The City must promptly update the CAP to remedy the deficiencies identified throughout this letter, especially in light of the history of inadequate and incomplete implementation. Preserve Calavera provides several recommendations in **Section V**.

Preserve Calavera appreciates the staff members who have worked on the CAP and its implementation. However, the City has failed to supply the funding, resources, time, and personnel to implement and monitor the CAP. This must change.

II. The City Is Failing to Implement its CAP

The City is failing to meet several of the CAP's specified strategies, timelines, and targets, as well as its required monitoring, reporting and adaptive management standards. Climate Action Campaign gave Oceanside a score of 53.5/100 for the City's CAP implementation.³ Further, the City's 2022 Climate Action Plan Implementation Progress Report ("Progress Report") demonstrated concerning deficiencies in the City's progress with CAP implementation, and revealed there is little monitoring being conducted.

a. Failure to Implement the CAP's Overarching Requirements, Including to Conduct Monitoring and Update the GHG Inventory

The CAP requires annual monitoring and reporting to track implementation progress and update the City's GHG inventory and forecasts. The CAP explicitly states: "The City will be responsible for developing protocol for monitoring the effectiveness of emissions reduction programs as well as for undertaking emissions inventory updates." (CAP, p. 4-22, see also "City will keep track of reduction measures implemented and schedule milestones identified in the CAP, including progress reports on the reduction measures, funding, and savings.")

As an initial matter, the City did not even publish its first required "annual" report until August 2022, despite approving the CAP three years earlier in August 2019. (Ibid. ["the City will report annually to the City Council on CAP implementation progress, activity indicators, and relevant changes in State measures"].)

Further, the 2022 Progress Report admitted that "the City has not consistently reported CAP progress." It attributed this lack of consistent reporting to "staffing challenges," yet said little about how the City plans to correct itself besides its vague assertion that "steps are being taken to develop a more consistent reporting system." (Progress Report, **Exhibit A**, p. 1.) We were unable to locate a 2023 Annual Progress Report.

Relatedly, the CAP had proposed an interdisciplinary Climate Action Planning Team and anticipated the establishment of a CAP Stakeholder Committee. (CAP, p. 4-1.) Yet, the City has only hired a "part time professional assistant" to coordinate CAP implementation." (Progress Report, p. 2.) The Progress Report admitted, "staff finds that additional staffing and/or funding resources **are needed** to effectively implement, monitor, and report on several of the emissions reduction measures. It is recommended that the City consider funding for a full-time

³ 2022 Climate Action Plan Report Card, p. 10 (available at: https://www.climateactioncampaign.org/files/ugd/91c4c2_db55421e0abd475aa467110ede7c298e.pdf?index=true)

sustainability coordinator...” (p. 12.) Further, “staff in responsible departments **indicated a lack of capacity for CAP implementation.**” (Id. at p. 3, emphasis added.)

In March 2020, members of the public raised concerns to the City that it was not devoting enough resources to CAP implementation, and that it needed to ensure adequate staffing.⁴ These concerns went ignored.

The 2022 Progress Report still failed to provide direction or concrete steps to address the deficiencies raised in the Progress Report, especially in regard to the current lack of adequate staffing, funding, and monitoring. In contrast, the cities of San Diego, Chula Vista, Carlsbad, Encinitas, and Del Mar maintain full-time staff dedicated to CAP implementation.

These overarching failures indicate a lack of priority to CAP implementation and erode confidence that the CAP is meeting its promised targets and GHG reductions.

Finally, the CAP states: “The City will comprehensively update its 2020 GHG inventory to evaluate progress toward meeting its GHG reduction goals . . . **Moving beyond 2020**, the City will comprehensively update its GHG inventory **every five years.**” (p. 4-22, emphasis added.) Yet, the Progress Report simply states, “An updated inventory will be prepared in conjunction with the next CAP update.” (p. 16.)

The City was required to prepare an updated inventory in 2020, and then again in 2025. Thus, it is imperative that the City prepares an updated inventory promptly. The City cannot wait multiple years to conduct this analysis – this must be initiated now, and completed as soon as possible.

We request a response from the City about when it plans to publish the next progress report, when it plans to update the GHG inventory, and what remedial actions it has taken since the 2022 Progress Report to address the deficiencies identified therein.

b. Failure to Implement the CAP’s Specific Measures

We also documented several specific examples of the City’s failures to implement measures that were identified in the CAP. Of the CAP’s strategies, the majority have seen little to no progress since CAP adoption. In **Exhibit B**, we highlighted in red all strategies that have not completed the required actions by the CAP’s specified deadlines, have seen no substantive progress, and/or

⁴ Summary of Public Comment Received at Open House, March 3, 2020 (available at: <https://records.ci.oceanside.ca.us/civicax/filebank/blobdload.aspx?blobid=53000>.)

are now considered infeasible. We highlighted in orange all strategies that fail to provide additional GHG reductions.⁵

A review of the individual strategies that were promised in the CAP, and what has been accomplished to date, is disconcerting. Only a fraction of the CAP has actually been implemented, and the City has failed to meet several timelines and targets. We detail some of these shortcomings in depth below.

i. Renewable Energy Procurement

The CAP assigned its highest reduction potential – 73,685 MT CO₂E by 2030 – to Renewable Energy Procurement (Measure E-1). (CAP, p. 4-7.) In fact, this measure accounts for **over 48%** of the CAP reductions.

The Progress Report claims this measure is “Mostly Implemented.” (p. 23.) Yet, a review of the individual strategies indicates otherwise. One of the CAP’s four strategies to implement Measure-E1 requires the City to “Promote Participation in SDG&E EcoChoice and EcoShare Programs.” The Progress Report claims this strategy is “In Progress.” Yet, the Progress Report later admits that “SDG&E is **discontinuing** EcoChoice and EcoShare has presented **extensive barriers** to entry for prospective subscribers.” The other strategy also centered on receiving reports on SDG&E Procurement and Program Participation, which is also claimed as “In Progress.” Thus, these strategies are failing.

While we are encouraged by the City’s direction to join the Clean Energy Alliance, in line with the third strategy, the City has not provided any evidence or data to show the CAP will achieve the promised reductions for Measure E-1.

Thus, we request the City demonstrate that it is meeting the CAP’s target for Measure E-1 to “procure 75 percent of local energy from renewable sources by 2030 and thereby exceed California RPS mandates.” (CAP, p. 3-3.)

ii. Solar Photovoltaic Promotion Program

The CAP’s second highest anticipated GHG reductions reportedly come from its Solar Photovoltaic Promotion Program (Measure E-2), which the Progress Report claims is “Mostly Implemented.” Measure E-2 lists four strategies for its implementation, but only half have been completed.

⁵ Meaning, the strategies do not cause GHG reductions that would have not otherwise occurred without the CAP.

The Progress Report claimed two of these strategies are “In Progress.” Yet, very little progress has occurred for both. For the “Promote Solar Financing Options” Strategy, the Progress Report simply states, “The City has outreach content in development.” For the “Establish an Aggregated Demand Solar PV Program” strategy, the City is only “in the process of gauging interest,” and exploring the “potential legal implications of partnering with private industry on such a program.” (Progress Report, p. 26.) Both of these strategies not only failed to meet the CAP’s prescribed timelines, but they are far behind meeting the CAP’s timelines. (CAP, p. 4-10.)

While the City adopted a solar ordinance in 2019, much of its mandates are already required by the State Building Code. The CAP notes, in a footnote, “the Energy Code will require that new residential projects incorporate renewable energy beginning January 1, 2020. The residential-component of the Ordinance will achieve GHG emission reductions by enforcing renewable energy requirements beginning at an earlier date.” Yet, the ordinance was only adopted a few months earlier. Similarly, the final strategy only requires the City to “maintain” expedited permitting for Residential Solar PV Systems. Thus, these two strategies provide very little additionality.

Further, the City has not provided any monitoring data demonstrating it is meeting the CAP’s reduction target of 50 percent forecasted energy demand. (CAP, p. 4-9). The only energy efficiency data provided in the 2022 Progress Report is a snapshot from 2018. There appears to be no monitoring or reporting beyond the adoption of the ordinance. This is a common theme across the board, and conflicts with CAP standards for monitoring implementation of reduction measures. (See CAP, p. 4-22.)

Thus, out of the four strategies, two have seen no progress, one requires nothing additional of the City, and the final strategy has not been monitored at all.

iii. Energy Promotion Measures

The CAP Measures E-3, E-4, and E-5 all centered on “promotion” of voluntary programs to City residents, which demands very little financial resources of the City. Yet, the City has not made progress on these measures.

Residential Energy Conservation and Disclosure (Measure E-3) included two strategies. For Strategy #1, “Promote Residential Energy Use Disclosure,” the Progress Report states the “[t]he City is awaiting information from SDG&E *on the future of the Home Energy Use Benchmarking Program.*” For Strategy #2, “Promote Energy Efficiency Improvement Financing Options,” the Progress Report stated that “*Upon development of a program, information, or resources by Development Services, the Water Utilities Green Oceanside program will promote through their outreach and education campaigns.*”

Thus, both of these strategies have seen no progress, and both fall behind the CAP's timelines and targets. (CAP, p. 4-10.)

For "Promotion of Low-Income Financing Programs" (Measure E-4), there was only one strategy: "Promote Low-Income Financing Options." The Status Report states this is "In Progress," but a closer look reveals this strategy has little chance of being implemented. The Progress Report states that "[t]he City began researching programs such as the California Solar Initiative, SASH, MASH, and LIWP. All programs previously outlined in the CAP have either sunset, run out of funding, or doesn't [sic] apply to Oceanside as the City is not considered a Disadvantaged Community." (Progress Report, p. 21.)

For "Non-Residential Building Energy Benchmarking and Disclosure" (Measure E-5), there was only one strategy, "Promote Non-Residential Energy Use Disclosure," which also has not been started. "The City **will begin** the planning process and meet with relevant staff to develop an outreach plan." (Progress Report, p. 21.)

iv. Transportation Measures

Transportation emissions account for 48% of Oceanside's GHG inventory. The CAP included a measure for Transportation Demand Management ("TDM") Plans (Measure TL-5), premised on three strategies. The CAP required adoption of a TDM ordinance as Strategy #1, which the City adopted in 2020.

While the ordinance is a step in the right direction, if it is not enforced and monitored, its adoption is ultimately meaningless. When Preserve Calavera submitted a Public Records Act request earlier this year for copies of TDMs and related monitoring reports, the City only produced one TDM plan from 2021. Further, the City did not produce any monitoring reports – just this one initial TDM plan. (**Exhibit C**, City Response to Preserve Calavera PRA Request.) This indicates a lack of monitoring and enforcement of the ordinance, and undermines the CAP's claimed "moderate" GHG reductions for this measure. The CAP's projected GHG reductions relied on an assumed 10% mileage reduction in commuter trip miles through this ordinance. Yet, the TDM ordinance itself, as well as the lackluster implementation and monitoring, fail to demonstrate anything close to a 10% trip mile reduction.

Further, the City has failed to implement the CAP's remaining TDM strategies. Strategy #2 required the following: "Conduct surveys of business to determine existing TDM measure implementation rates. Require businesses complete survey during business license renewal. Provide rebates for implementation of TDM measures such as addition of bicycle parking or transit stop shelter improvements." (CAP p. 3-32.)

The City was supposed to complete these requirements by now. (CAP, p. 4-16.) In particular, the CAP required the City to develop the survey within a year of CAP adoption, and then administer the survey to 25% of existing businesses within one year, and to 100% of businesses within 4 years of CAP adoption. (CAP, p. 4-16). Yet, according to the 2022 Progress Report, “The City is in the process of **generating** the content of a TDM survey and will aim to disperse the materials to the business community in September of 2022.” (Progress Report, p. 28, emphasis added.) The Progress Report is silent on the other elements.

Finally, the Progress Report admits it lacks funding to complete the third strategy to “[p]rovide incentives and marketing promotion through Green Oceanside Business Network for businesses that incorporate TDM measures.” (Progress Report, p. 28.) In contrast, the CAP promised that the City would “Use Survey Results to Identify TDM Opportunities Within 18 months of CAP Adoption,” and then “Provide Incentives as Appropriate for Infrastructure Improvements to Support Alternative Modes of Transit Within 2 years of CAP Adoption.” Four years have passed since CAP adoption.

The City must dedicate resources and fundings to its CAP measures. It cannot raise its hands in the air for lack of funding, while failing to provide any solutions. At a minimum, if it cannot identify funding to implement its CAP, it must then cease to utilize the CAP for CEQA streamlining.

v. Electric Vehicle Promotion

The CAP reported moderate reduction potential for “Electric Vehicle Promotion” (Measure TL-2), which was reported as “Mostly Implemented.” One of the strategies requires the City to “collaborate with local EV retailers to establish an Aggregated Demand EV Program.” (CAP, p. 3-5.) According to the 2022 Progress Report, this measure is “in progress and facing obstacles,” and is ultimately considered infeasible “due to the current lack of availability in the EV market.” (Progress Report, p. 25.)

Another strategy, “Promote Incentives for EVs and EV Charging Stations” was reported as “In Progress,” on the grounds that “The City provides expedited permitting for EV charging stations through our Checklist For Permitting Electric Vehicles and Electric Vehicle Service Equipment.” (Progress Report, p. 25.) Yet, in contrast, the CAP had required a host of actions for promotion beyond a Permit Checklist that were omitted from the Progress Report:⁶

⁶ Similarly, the Progress Report omits strategies for Measure TL-4, including to “Require new developments to provide connections and/or extensions of the bicycle and pedestrian networks where applicable.” (CAP, p. 3-30.)

- Promote incentives for purchase of ZEVs such as available federal tax credits (up to \$7,500) and available rebates offered through the California Clean Vehicle Rebate Project (up to \$2,500).
- Provide permit fee waivers for construction related solely to the installation of EV charging station circuitry such as electrical rewire permitting, electrical service upgrade permitting, or other miscellaneous permitting that is typically charged at an hourly rate.
- Allow by-right sale of ZEV vehicles within all retail-oriented commercial zones.
- Incentivize installation of direct current fast charging stations at gas stations and other retail.
- Establish public-private partnerships to increase charging infrastructure at existing office and industrial facilities.
- Promote commercial businesses and industry that provides EV charging stations and incentives for EV use to employees through added marketing and benefits from City's Green Oceanside Business Network program.

(CAP, p. 3-27 to 3-28.)

Further, the CAP required several of these actions to be accomplished by now. (CAP, p. 4-14.) Beside adoption of Zoning Ordinance 3048 in 2020, the City has not made any progress on Measure TL-2, and has failed to meet the majority of deadlines and timelines specified in the CAP.

vi. Water, Wastewater, and Solid Waste Measures

The City has also failed to implement the CAP's additional measures related to waste and wastewater. Of the CAP's three measures, the first measure simply requires the City to continue to "Implement its Water Conservation Master Plan" (Measure W-1), which predated the CAP. Thus, this measure does not provide any additional GHG reductions. Nor does the Progress Report provide any monitoring data.

The second measure, "Non-Residential Water Use Benchmarking and Disclosure" (Measure W-2), only requires one strategy – "Promote Non-Residential Water Use Disclosure." Yet, the Progress Report admits the City has not even started any promotion, as "The City is researching what programs are available..." (Progress Report, p. 22.)

Finally, the third measure, "Increased Local Water Supply" (Measure W-3) is "In progress and facing obstacles" and "needs to be updated." (Progress Report, p. 22.) In contrast, the CAP had promised the following strategy: "Identify and implement capital improvements to the San Luis Rey Water Reclamation Facility that increase the supply capacity of recycled water that meets Title 22 requirements for unrestricted use to at least 3.0 million gallons per day by 2025; 5.5

million gallons per day by 2035, and 7.5 million gallons by 2045.” (p. 3-16.) Notably, Measure W-3 anticipated 2,102 MT in reductions by 2025.

To address solid waste emissions, the CAP established two measures. The first measure was “Implementation of Zero Waste Strategic Resource Plan” (Measure SW-1), which the City had enacted in 2012. Again, this measure fails to require any new actions from the City, and thus fails to provide additional GHG reductions.

The second measure, “Beyond 2020 – Enhanced Waste Diversion” (Measure SW-2), included a host of strategies to enhance waste diversion. Notably, the CAP required, “In 2020, the City will ...draft an update to the Zero Waste Resources Management Plan that will reset targets to ensure a **minimum 90 percent** diversion rate in the near future.” (p. 23, emphasis.) The Progress Report provided little information on implementation of this measure, and omitted the new minimum 90% target rate that was supposed to be enacted three years ago.

Thus, the City has failed to implement these measures.

vii. Agricultural & Forestry Measures

The CAP included four measures in the realm of agricultural and forestry. None have reported any success.

Under the Urban Forestry Program (Measure AF-1), the CAP established a target to plant 200 trees each year on public rights-of-way and to require development projects to incorporate an annual average of 200 additional trees per year. (CAP, p. 3-35.) This measure involved eight strategies, of which only two have been completed (complete tree inventory, and adopt a Green Streets Ordinance.) Further, the CAP set a target requirement of 35% tree cover for new development, yet the City’s proposed ordinance only requires 7-12% tree cover. (CAP, p. 4-16; Progress Report, p. 35.)

For “Urban Agriculture and Community Gardens” (Measure AF-2), half of the four strategies are reported as “Not Yet Initiated,” and the other half are reportedly “infeasible.” (Progress Report, p. 31.) Further, the Progress Report again omitted several of the CAP’s strategies, including to “Establish a population ratio goal for community gardens within the City,” “Create and implement a Community Garden Program,” “Amend zoning regulations to allow for urban agriculture and community gardens in appropriate zones,” and “Provide incentives to multi-family developments that include community gardens for residents.” (CAP, p. 3-37.)

The CAP also included a measure for “Agricultural Lands Conservation” (Measure AF-3), in response to the development pressure in agricultural areas of South Morro Hills, and required the following strategy: “Collaborate with landowners to prepare agricultural easement grant

applications to the SALC Program. Between 2020 and 2024, identify internal or external funding sources for minimum matching funds for up to **250 acres of agricultural preservation easements**. Between 2025 and 2029, identify internal or external funding sources for minimum matching funds for up to 250 acres of agricultural preservation easements.” (p. 3-39.)

According to the Staff Report, the City has not preserved any acres yet, despite 2024 being less than one month away. Instead, the City has taken actions that actively undermine this goal, including approval of projects that result in significant loss of agricultural lands to development in South Morro Hills.

The Progress Report states, “The City has initiated dialogue with representatives of the SALC program and San Diego County’s PACE program” and “will look for opportunities to promote these programs.” (p. 31.) Again, the City has completely fallen short of the CAP’s promises.

III. The City Is Legally Required to Implement Its CAP under CEQA

The City’s September 28, 2022 CAP Implementation Report states, “The CAP is supported by the Environmental Impact Report (EIR) prepared for the first phase of the GPU, and as such, is considered a legally enforceable document.”

The CAP is a binding, enforceable document. Further, the Energy Climate Element of the City’s General Plan states:

In accordance with CEQA, the City’s decision to initiate a General Plan Update (GPU) has prompted the need to prepare and implement a CAP... which outlines a variety of measures **designed to mitigate the anticipated GHG emissions impacts of future development** and reduce local GHG emissions in accordance with state goals.

(Energy Climate Element, p. 3-8, emphasis added.)

The CAP is thus incorporated as a mitigation measure for the City’s General Plan Update. The General Plan further includes the CAP as an appendix. The City’s General Plan explains: “As the City pursues subsequent phases of the GPU, its CEQA-qualified CAP will help to ensure consistency with the state’s climate action goals and policies while streamlining the local development review process.” (Energy Climate Element, p. 4-7.) Further, “The City’s CAP summarizes the emission sources and provides measures the City **will take** to achieve the State’s 2020 and 2030 per capita GHG reduction targets.” (*Id.* at p. 6-1, emphasis added.)

The City incorporated its CAP into its General Plan to mitigate GHG emissions from General Plan development. Thus, the CAP is enforceable under CEQA as a promised mitigation measure.

An agency must implement promised mitigation measures, and where it fails to do so the public may enforce the mitigation measure under CEQA. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1166.) “Mitigating conditions are not mere expressions of hope.” (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508). Mitigation measures must be fully enforceable to ensure that they “will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” Further, the City must adhere to its General Plan. (*Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.)

Thus, the City is legally obligated to implement its CAP.

IV. The City Cannot Use a CAP It Is Not Implementing for CEQA Streamlining

CEQA Guidelines Section 15183.5 establishes the required criteria for tiering and streamlining the analysis of GHG emissions. Of particular relevance, Section 15183.5 instructs that qualified plans should:

- (B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;
- (C) Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;
- (D) Specify measures or a group of measures, including performance standards, **that substantial evidence demonstrates**, if implemented on a project-by-project basis, **would collectively achieve the specified emissions level**; and
- (E) Establish a mechanism to monitor the plan's progress toward achieving the level **and to require amendment** if the plan is not achieving specified levels.

(Section 15183.5, subd. (b)(1)(B)-(E), emphasis added.)

The Natural Resources Agency adopted CEQA Guidelines Section 15183.5 to address concerns that agencies preparing CAPs might “erroneously rely on a plan with purely aspirational intent to determine that a later project’s cumulative impact is less than significant pursuant to section 15064(h)(3).” (**Exhibit D** [Natural Resources Agency Final Statement of Reasons for Amendments to CEQA Guidelines]). The Natural Resources Agency noted the criteria in Section 15183.5(b)(1) are intended to ensure CAPs avoid or substantially lessen a cumulative problem as required by Section 15064(h)(3), stating “Criteria (D) and (E) **are necessary** to demonstrate that the plan **will actually avoid or substantially lessen** the cumulative effects of those emissions.”

Substantial evidence does not demonstrate that the City's CAP is achieving – or will achieve – the specific emissions reductions, in contravention of the Section 15183.5 criteria and section 15064(h)(3).

The State has elaborated on the importance of implementation of emission reduction measures, explaining: “The heart of a CAP is the suite of reduction measures that will ensure that the plan achieves the selected reduction targets in a transparent and replicable manner.”⁷ Yet, the City is failing to implement the majority of the CAP's reduction measures.

Further, *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal. App. 4th 70, provides guidance on the level of detail needed in a GHG reduction plan. The Court of appeal found a city's GHG reduction plan inadequate given its reliance on mitigation measures that are “nonexclusive, undefined, untested and of unknown efficacy.” (*Id.* at 93). The Court found that to be adequate, the plan should include measures that are “**known to be feasible**,” “coupled with **specific and mandatory performance standards**.” (*Id.* at 94, emphasis added).

Further, CEQA mandates that “[i]f there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan for the reduction of greenhouse gas emissions, **an EIR must be prepared for the project**.” (Section 15183.5(b)(2), emphasis added.)

The City's own staff admit that the CAP is not being implemented, and that emission reduction targets are not being met. This provides substantial evidence that individual projects in the City are resulting in significant GHG impacts.

Thus, the City's continued reliance on a CAP that fails to meet the criteria under Section 15183.5 as a streamlining tool violates CEQA. Individual projects must individually analyze and mitigate GHG impacts through preparation of environmental impact reports until the CAP is brought into compliance with CEQA.

V. Necessary Revisions to the CAP

In addition to fully complying with the CAP's implementation requirements and strategies, Preserve Calavera provides the following remedial measures necessary to bring the CAP into compliance with CEQA:

- Hire a full-time, qualified CAP coordinator, who will ensure compliance with the CAP's implementation, monitoring, and inventory requirements.

⁷ https://opr.ca.gov/docs/OPR_C8_final.pdf, p. 229.

- Identify the funding necessary for successful implementation, and secure the funding before any continued reliance on the CAP as a streamlining tool. Seek new sources including through Measure X, cannabis taxes, grants, and developer impact fees.
- Ensure timely, annual progress reports, which include the detail and monitoring data that was promised in the CAP.
- Timely prepare an updated GHG inventory.
- Swiftly remedy failed strategies, and either revise or replace with measures that have known feasibility.
- Opt into the Clean Energy Alliance at the 100% renewable energy level.
- Adopt an all-electric ordinance for *all* new construction.
- Increase requirements of individual Projects to ensure CAP implementation, through financial contributions to the CAP, mitigation measures, and project design features.
- Expand the TDM program to all land uses with a lower threshold, and ensure the TDM programs are actually monitored and implemented.

VI. Conclusion

Preserve Calavera requests a meeting with the City to discuss the concerns raised herein, as well as the remedial actions and steps that are necessary to bring the City back into compliance with CEQA. As we underscored above, the City cannot continue to rely on its CAP for CEQA streamlining purposes unless and until it remedies the identified deficiencies, secures funding, and implements its CAP.

We are available at your earliest convenience. Please do not hesitate to email or call with any questions.

Sincerely,

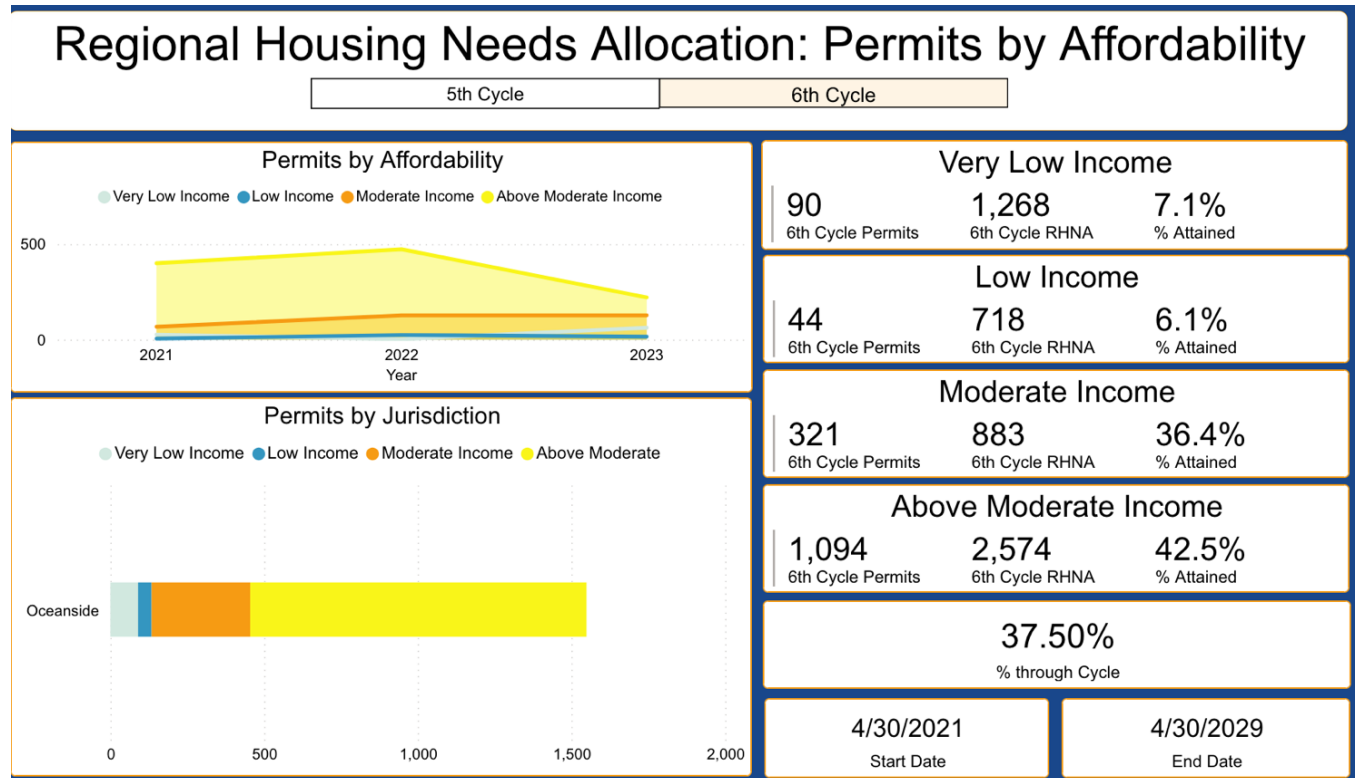


Kathryn Pettit
Josh Chatten-Brown

cc

Oceanside City Attorney

Attachment C: San Diego County RHNA Dashboard for Oceanside



Attachment D: Description of Nearby Property Under Contract for Purchase

Property Address: **2701 GUAJOME LAKE RD OCEANSIDE CA 92057-5636**

General Information

Parcel # (APN): **157-412-13-00** [Open Map](#)
 Owner: [See Full Detail](#)
 Mailing Address: **1005 W CASSIDY ST GARDENA CA 90248**
 Legal Description: **CC010201 LOT 4*POR***
 Use Type: **AGRICULTURAL**
 Tax Rate Area: **007-025**

Assessment

| | | | |
|--------------|---------------------------------|---------------|---------------------------------|
| Total Value: | \$380,960 | Year Assd: | 2024 |
| Land: | \$239,466 | Zoning: | See Full Detail |
| Structures: | \$141,494 | Use Code: | See Full Detail |
| Other: | | Census Tract: | See Full Detail |
| % Improved: | See Full Detail | Price/SqFt: | |
| Exempt Amt: | | | |
| HO Exempt: | N | | |

Full Detail \$14.95 [Add to Cart](#)

PLEASE NOTE: If a field is empty on this page, there is no data available, and the field will also be empty on the Full Detail property report.

Sale History

| | Sale 1 | Sale 2 | Sale 3 | Transfer |
|-------------------|--------|--------|--------|---------------------------------|
| Document Date: | | | | See Full Detail |
| Document Number: | | | | See Full Detail |
| Document Type: | | | | |
| Transfer Amount: | | | | |
| Seller (Grantor): | | | | |

Property Characteristics

| | | | |
|---------------------------|--------------|------------------|---------------------------------|
| Bedrooms: | Fireplace: | Units: | See Full Detail |
| Baths (Full): | A/C: | Stories: | |
| Baths (Half): | Heating: | Quality: | |
| Total Rooms: | Pool: | Building Class: | |
| Bldg/Liv Area: 714 | Park Type: | Condition: | |
| Lot Acres: 4.740 | Spaces: | Site Influence: | |
| Lot SqFt: 206,474 | Garage SqFt: | Timber Preserve: | |
| Year Built: | | Ag Preserve: | |
| Effective Year: | | | |

Attachment E: HCD letter Allowing Justification For Use of Waivers

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

651 Bannan Street, Suite 400, Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



December 12, 2024

Elyse Lowe, Development Services Department Director
City of San Diego
202 C St.
San Diego, CA 92101

Dear Elyse Lowe:

RE: 970 Turquoise Street Project, San Diego – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the application of the State Density Bonus Law (SDBL)¹ to the development project proposed at 970 Turquoise Street (Project). This letter provides technical assistance for the City of San Diego (City) and the Project applicant regarding the use of incentives and waivers under the SDBL.

Project Description and Background

HCD understands that the Project would comprise 74 dwelling units, of which five would be deed-restricted affordable to very low-income (VLI) households and another five would be deed-restricted affordable to moderate-income (MI) households, plus 139 visitor accommodation units, which are a commercial use under the City's Municipal Code.²

The Project's base density allows for 31 units. The Project is eligible for a 50-percent bonus (16 additional units) for the VLI units³ and an additional 50-percent bonus (16 additional units) for MI units⁴ under the SDBL. The Project is also eligible for an 11-unit bonus under the City's three-bedroom bonus provisions.

In addition, the Project is eligible for three incentives or concessions for providing the VLI units⁵ and is also eligible for waivers or reductions of development standards which would have the effect of physically precluding the construction of the Project resulting from the use of those concessions or incentives.⁶

¹ Gov. Code, § 65915.

² San Diego Municipal Code, § 131.0112, subd. (a)(6)(K), available at <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division01.pdf>.

³ Gov. Code, § 65915, subd. (f)(2).

⁴ Gov. Code, § 65915, subd. (v)(2).

⁵ Gov. Code, § 65915, subd. (d)(2)(C).

⁶ Gov. Code, § 65915, subd. (e)(1).

The Project applicant proposes to use an incentive to receive an additional 2.31 Floor Area Ratio (FAR) for the commercial component. The applicant further requests a waiver of the zoned 60-foot height limit and the 30-foot height limit under the City's Proposition D, for a proposed height of 240 feet, since those height limits would physically preclude construction of the Project with the additional 2.31 FAR.

The City has requested technical assistance on the following questions:

Question #1: The City understands that incentives and waivers may be provided for non-residential uses. Given that the waivers for height and FAR are predominantly for the non-residential use, does HCD have guidance as to what factors the City may evaluate and to what extent can those waivers and incentives be used to increase the non-residential use component?

The SDBL states that a city shall grant a requested concession or incentive unless the city makes one of three findings, one of which is particularly relevant here.⁷ That finding is that the incentive or concession does not "result in identifiable and actual cost reductions... *to provide for affordable housing costs*, as defined in Section 50052.5 of the Health and Safety Code, *or for rents for the targeted units* to be set as specified in subdivision (c)."⁸ (Emphasis added.) Section 50052.5 of the Health and Safety Code defines "affordable housing cost" for owner-occupied housing for extremely low-income (ELI), VLI, low-income (LI) and MI households. Moreover, SDBL requires that "rents for the lower-income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code."⁹

In other words, the incentive or concession must not just reduce costs (i.e., support the economic feasibility of the Project); that reduction in cost must be for the purposes of *providing affordable housing for lower-income or moderate-income households*.

The statute does not provide precise direction regarding how to determine whether the benefit of a requested incentive or concession has the requisite nexus to the provision of affordable housing. However, the Legislature's intent language provides helpful direction in implementing the SDBL provisions regarding waivers and incentives. The statute reads:

"In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter *shall contribute significantly to the economic feasibility of lower income housing* in proposed housing developments."¹⁰ (Emphasis added.)

⁷ Gov. Code, § 65915, subd. (d)(1).

⁸ Gov. Code, § 65915, subd. (d)(1)(A).

⁹ Gov. Code, § 65915, subd. (c)(1)(B)(i).

¹⁰ Gov. Code, § 65917.

Again, the Legislature has made it clear that the purpose of incentives is to support the economic feasibility of *lower-income housing* specifically. The statute further reads:

“The Legislature finds and declares that the intent behind the Density Bonus Law is to allow public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance *in exchange for* affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of *affordable housing* with regulatory incentives, rather than additional public subsidy.”¹¹ (Emphasis added.)

The City could conclude that the requested incentive in this case directly facilitates the affordable housing, in which case the SDBL compels the City to approve the requested incentive and associated waiver. On the other hand, the City might conclude that the Project does not need the requested incentive to cover the cost of “provid[ing] for affordable housing costs.”¹² If the City so concludes, the SDBL places the burden of proof on the City to deny the requested incentive and associated waiver by making a written finding, based on substantial evidence, that the incentive does not result in identifiable and actual cost reductions to provide for affordable housing.¹³

Question #2: What guidance does HCD have for cities to define what is an amenity eligible for density bonus and waivers compared to what is an entirely new project component?

“Amenity” is not a term used in the SDBL. The concept of an amenity has been discussed in appellate court decisions, most notably in the context of courtyards.¹⁴ A visitor accommodation use is not an amenity but rather a separate land use in a mixed-use project. Mixed-use projects are eligible for SDBL incentives, concessions, and waivers, consistent with the information provided in response to Question #1 above.

Question #3: When evaluating a mixed-use project, is there a minimum amount of residential component to justify that the project is in fact a housing development? Are there any parameters that would prevent the applicant from providing 1 percent of the square footage for housing and 99 percent of the square footage for any non-residential use of its choice?

¹¹ Gov. Code, § 65915, subd. (u)(1).

¹² Gov. Code, § 65915, subd. (d)(1)(A).

¹³ Gov. Code, § 65915, subs. (d)(1)(A), (d)(4).

¹⁴ See, for example, *Wollmer v. City of Berkeley*, 179 Cal.App.4th 933 (2009) [102 Cal.Rptr.3d 19] and *Bankers Hill 150 v. City of San Diego*, 74 Cal.App.5th 755 (2022) [289 Cal.Rptr.3d 268].

The SDBL statute does not include a definition of “mixed-use developments” and does not explicitly require a minimum residential component (other than the minimum required five residential units).¹⁵ However, an SDBL project would be subject to a jurisdiction’s zoning requirements unless it were eligible for a concession, incentive, or waiver. For this Project, the amount of non-residential use would naturally be limited by the City’s zoning requirements (including FAR and height limits) unless the Project uses a concession, incentive, or waiver to increase those limits. As discussed in the response to Question #1 above, the value of the concessions, incentives, or waivers must directly facilitate the proposed quantity and depth of affordability of the affordable units. A project whose floor area is 99 percent commercial and 1 percent residential would likely be outside of these parameters and the concessions, incentives, or waivers needed to achieve that ratio would likely not be required under the SDBL.

Finally, the SDBL statute reads, “This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.”¹⁶ While the SDBL contains no explicit requirement for a minimum percentage of residential floor area in a mixed-use development,¹⁷ an interpretation that a project with the minimum of five residential units is essentially entitled to a theoretically infinite amount of non-residential floor area could result in an absurd outcome that does not further the fundamental purpose of the SDBL.

Question #4: If visitor accommodation uses operate as a residential use with long-term stays, can visitor accommodations and vacation rentals count towards density bonus? If so, should the units be reported as permitted units on a Housing Element Annual Progress Report for purposes of tracking RHNA progress?

The answer is “no.” The visitor accommodation use is deemed a commercial use in the City’s municipal code. In addition, the Project has already maximized the number of housing units allowed on the site on top of the 31 units allowed under the base density. There would be no legal way for the visitor accommodation units to be added to the project as housing units. Accordingly, the visitor accommodation units are considered commercial uses, not housing units, and cannot be counted for the purposes of the SDBL, nor can they be reported as housing units on an Annual Progress Report.

¹⁵ Gov. Code, § 65915, subd. (i).

¹⁶ Gov. Code, § 65915, subd. (r).

¹⁷ In contrast, the Housing Accountability Act provides that, to qualify as a “housing development project,” a mixed-use project must have “at least two-thirds of the square footage designated for residential use.” (Gov. Code, § 65589.5, subd. (h)(2)(B).) Note that this definition is used in nearly every one of California’s housing laws, including but not limited to the Streamlined Ministerial Approval Process (Gov. Code, § 65913.4 (m)(7)), the Housing Crisis Act of 2019 (Gov. Code, § 66300, subd. (a)(6)), the Permit Streamlining Act (Gov. Code, § 65940, subd. (d)), and the Affordable Housing and High Road Jobs Act (Gov. Code, § 65912.101, subd. (e)).

Question #5: If visitor accommodation uses operate as a residential use with long-term stays, are there additional provisions of state law that would allow the City to require a deed-restriction for affordable housing?

As discussed in the response to Question #4 above, the visitor accommodation units are considered commercial uses, not housing units. Therefore, the visitor accommodation units cannot serve as deed-restricted affordable housing units.

Conclusion

The SDBL permits the City to approve the requested incentive and associated waiver or to deny the requested incentive and associated waiver by making a written finding, based on substantial evidence, that the incentive does not result in identifiable and actual cost reductions to provide for affordable housing. In addition, the proposed visitor accommodation units must be considered a commercial use, not a residential use.

HCD appreciates the opportunity to provide technical assistance on this matter. If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Stephanie Reyes at Stephanie.Reyes@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief