

21 January 2018

County of San Diego

Planning and Development Services

[Kevin.Johnston@sdcounty.ca.gov](mailto:Kevin.Johnston@sdcounty.ca.gov)

pds.advanceplanning@sdcounty.ca.gov

5510 Overland Avenue #310

San Diego, California 92123

**Re: Comments in response to the draft Subsequent Environmental Impact Report (SEIR) and General Plan Amendment (GPA) published December 14, 2017 as they pertain to Property Specific Request (PSR) Desert Subregion 24 (DS-24) proposed change from Semi-Rural (SR)-10 to SR-1 under the current San Diego County General Plan** **encompassing approximately 170 acres of undisturbed desert in Borrego Springs (APNs 198-320-01 and 198-320-26)**

**General Comments**

Thank you for the opportunity to comment on the Property Specific Requests (PSRs) General Plan Amendment and Rezone (GPA 12-005; REZ 14-006) draft Subsequent Environmental Impact Report (SEIR). The comments below relate to both the Proposed Project and the Reduced Density Alternative for PSR Analysis Area DS-24.

The Tubb Canyon Desert Conservancy (TCDC) was established to preserve desert habitat and biodiversity, to protect native plants and wildlife, and to promote understanding of these special places. TCDC represents numerous landowners in the vicinity of the proposed DS-24 Property Specific Request located on approximately 170 acres (APNs 198-320-01 and 198-320-26). It is our assertion that any increase in density on the DS-24 site would adversely impact neighboring landowners, the Anza-Borrego Desert State Park, the Pinyon Ridge Wilderness, rare species, and the economy of Borrego Springs.

TCDC has provided comment at every possible occasion in this now decade-long process, beginning with a June 26, 2008 letter to the Department of Planning and Land Use in opposition to a Mitigated Negative Declaration that had been requested by the developer. All concerns and questions outlined in that June 26, 2008 letter (attached below as Appendix A) are herewith incorporated by reference in this present comment letter.

TCDC representatives provided public testimony at the July 2012 hearings before the County Board of Supervisors and recommended DS-24 not be included in the list of those projects that are the subject of the current SEIR.

More recently, on February 3, 2016 TCDC provided written comments to the Department of Planning and Development Services regarding our continued concerns regarding the DS-24 PSR to increase residential density by a factor of ten. All the concerns and questions elaborated in that February 3, 2016 letter (attached below as Appendix B) are herewith incorporated by reference in this present comment letter.

In the more than ten years since the initial proposal of DS-24, none of the concerns that we have described have abated, diminished, or have been mitigated. And in several instances, outlined below, new circumstances have significantly increased the negative impacts of the DS-24. Chief among the new circumstances that have arisen since the initial proposal of DS-24 are 1) in 2016 the Borrego Valley was designated a critically overdrafted aquifer by the California Department of Water Resources (<http://www.water.ca.gov/groundwater/sgm/pdfs/COD-basins_2016_Dec19.pdf>), and 2) the “orphan” dike to the west of DS-24 that once partially shielded DS-24 from outflows from the Tubb Canyon-Culp watershed was breeched in 2013.

**Additional Questions**

The following questions are submitted as additional questions to those that remain outstanding from the incorporated comment letters referenced above and attached below as appendices.

**1) WHERE IS THE ANALYSIS OF THE INDIRECT ADVERSE IMPACT ON AGRICULTURE IN BORREGO SPRINGS IF THE DENSITY OF DS-24 IS INCREASED BY A FACTOR OF TEN?**

The economy of Borrego Springs has been dependent upon its agricultural industry for more than half a century. The Groundwater Sustainability Plan (GSP) currently being crafted by the relevant Groundwater Sustainability Agencies (The County of San Diego and the Borrego Water District) has proposed a proportional reduction of water usage by 70% across all segments of water users—agricultural, residential, and commercial/recreational. If the density of DS-24 is increased from 17 residential units to approximately 170 units, the increased water usage for this residential development can only come from existing supplies, supplies that are already over drafted by 300%. Given that agriculture currently uses 70% of the water in the Borrego Basin, proportional reduction of water usage across all sectors means 70% of the “extra” water needed for increasing the density of DS-24 would come from agriculture. Thus, the agricultural sector would bear the lion’s share of the burden to provide the additional water to additional homes if the density of DS-24 is increased. **Where in the EIR or SEIR is the analysis of the impact on agriculture of increased residential density in the Borrego valley?**

**2) WHAT ANALYSIS SUPPORTS THE “LEAPFROG” DEVELOPMENT THAT DS-24 WOULD CREATE? WHAT ANALYSIS SUPPORTS THE ABROGATION OF LU-2.1.1 OF THE BORREGO SPRINGS COMMUNITY PLAN?**

The Borrego Springs Community Plan, which was adopted by the County Board of Supervisors on August 3, 2011 as part of the General Plan for San Diego County, specifically calls for increased residential development to be located near the “urban core” and on previously disturbed lands rather than pristine desert land[[1]](#footnote-1). DS-24 fails on both these counts as elaborated on page 1 of our February 3, 2016 letter referenced above and incorporated herewith.

**3) WHAT ANALYSIS HAS BEEN DONE REGARDING DS-24’s IMPACT ON BORREGO SPRINGS DARK SKY DESIGNTION AND TOURISM ECONOMY?**

The economy of Borrego Springs is more and more dependent upon tourism, and a significant portion of that tourism is based on the community’s designation as a Dark Sky Community. Borrego Springs was the second community in the world to achieve this designation and the first in the United States; it is now one of seventeen such communities in the U.S. and abroad.[[2]](#footnote-2) This designation is a critical component of Borrego Springs’ emerging tourism economy. **What analysis has been done regarding the economic impact of DS-24’s PSR on Borrego’s Dark Sky Designation and subsequent impact on tourism?**

**4) WHAT ANALYSIS HAS BEEN DONE REGRDING FLOOD MITIGATION MEASURES THAT WOULD HAVE TO BE TAKEN AS A CONSEQUENCE OF THE 2013 BREECHING OF THE “ORPHAN” DIKE TO THE WEST OF DS-24?**

As we pointed out in our February 3, 2016 letter, the document, “Flood Hazard Evaluation for Borrego Country Club Estates,” that was prepared by Walter F. Crampton, Principal Engineer for TerraCosta Consulting Company, to analyze flood issues for the DS-24 site, and dated August 27, 2007, incorrectly states:

“*The 2,700-foot-long existing dike within the headwaters of the Culp-Tubb Canyon drainage was constructed by the County in the 1970s to divert flood flows to the south away from the populated east of Country Club Road, and has effectively done so for the last 40+ years.*”

The earthen dike in question was *not* built by San Diego County, nor does the County own or maintain that dike or the smaller sub-dikes located northwest of the main dike across the Tubb Canyon Bajada. No easements vesting these dikes in the public domain have ever been granted or recorded. The main dike and sub-dikes were actually built in the early 1960s by the Army Corps of Engineers, some would argue illicitly, and without the permission of the original landowners.

Of greater relevance now is he fact that the dike in question, which is not claimed or maintained by any governmental agency, was breeched at its northernmost extent in severe flooding in 2013. The flood that breeched the dike may be seen in a video on the Tubb Canyon Desert Conservancy Facebook page.

Historic drainage channels across Tubb Canyon bajada restored by 2013 storm waters breeching the dike are readily visible spreading across the DS-24 site in photo 4 on page 2 (Areal and Site Photos) of the County Analysis DS-24 Worksheet created by the Department of Planning and Development Services. **What analysis supports the creation and additional burden on emergency services and neighboring property owners of 150 new residential lots in a known flood plain that encompasses a natural desert riparian wash system?**

**5) HOW HAVE THE INCREMENTAL EFFECTS ON GROUNDWATER OF DS-24 BEEN ADDRESSED IN THE SEIR, WHEN VIEWED IN CONNECTION WITH THE EFFECTS OF PAST PROJECTS, THE EFFECTS OF OTHER CURRENT PROJECTS, AND THE EFFECTS OF PROBABLE FUTURE PROJECTS?**

According to the SEIR (page 4-36), estimates show that over 10,000 additional dwelling units would be possible when considering existing legally buildable vacant lots plus the additional subdivision and multi-family development potential in the current Land Use Map for the community.

Table 1-11 in the SEIR lists projects currently being processed by the County. The following three are listed for the Desert in the vicinity of Borrego Springs and PSR Analysis DS-24:

Mesquite Trails Ranch 480 dwelling units

Borrego West SPA 177 dwelling units

Borrego Springs Country Club 255 dwelling units

The combined total number of proposed dwelling units for these in-process projects plus those in DS-8 and DS-24 is over 1400 additional dwelling units. Also, Table 1-13 lists an additional eight private projects in the desert community.

County Policy LU-8.2 requires new developments to identify adequate groundwater resources in groundwater dependent areas, as follows: “In areas dependent on currently identified groundwater overdrafted basins, prohibit new development from exacerbating overdraft conditions.”

County Policy LU-13.2 requires new development “to identify adequate water resources, in accordance with State law, to support the development prior to approval.”

County Policy LU-2.2 of the Community Plan calls for GPAs to “consider the extent of existing vacant lots in evaluating density increases.”

Given the groundwater basin overdraft and the estimate of over 10,000 dwelling units from the current Land Use Map for the community, there are cumulatively considerable impacts related to overdraft of the groundwater basin. **How and where does the SEIR address these cumulative impacts on groundwater vis-à-vis DS-24?**

**Conclusion**

The community of Borrego Springs has uniformly opposed DS-24. The Borrego Springs Community Sponsor Group first voiced its opposition in a March 1, 2012 letter to the Department of Planning and Land Use. The Borrego Water District signaled its opposition to DS-24 in its public statement dated March 23, 2016. The Borrego Springs Chamber of Commerce elaborated its opposition to DS-24 in a letter to the Department of Planning and Development Services dated April 7, 2016.

The significant environmental impacts of DS-24 are manifold. The DS-24 PSR does not conform to the principles of the General Plan, or the Borrego Springs Community Plan. Without DS-24, and at the current rate of land sales, there is already a 30-year inventory of vacant, zoned residential lots in Borrego Springs. Increasing the zoning density of DS-24 would provide residential lots that are patently not needed, and would needlessly exacerbate the water crisis in Borrego Springs. Any attempt at flood mitigation for DS-24 would have severe adverse impacts on private property adjacent to, and upslope of, DS-24 and would be opposed by impacted landowners and by property rights activists in perpetuity.

The current analysis demonstrates beyond a reasonable doubt that approval of the DS-24 PSR would result in significant irreversible environmental change as well as in an irretrievable commitment of groundwater resources. Thus DS-24 is noted throughout the SEIR to have multiple “significant and unavoidable impacts.” I suggest the significant negative impacts of the DS-24 PSR are in fact avoidable. They are avoided by selecting the **No Project Alternative**.

A **No Project Alternative** conclusion is particularly justified by the fact that DS-24 *does not represent an existing subdivision in process as there is no active application for such a project.* “Borrego Country Club Estates” (DS-24) is a phantom project that exists nowhere in County Planning except the idle subdivision application file. *Granting a zoning density increase to landowners who had no active project application* in process *at the time the General Plan was approved* would grant unmerited special privilegeto these landowners, a privilege that has been denied to neighboring residents and landowners restricted by identical zoning limitations.

We trust that because of the facts outlined above and in the attached prior documentation, the **No Project Alternative** will be the recommendation of the Department of Planning and Development Services and eventually of the County Planning Commission, and that the **No Project Alternative** will be ratified by the County Board of Supervisors.

Sincerely yours,

J. David Garmon, M.D.

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President, Tubb Canyon Desert Conservancy

**Appendix A**

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| **Lounsbery Ferguson** | |  |
| **Altona & Peak llp** | | **Attorneys at Law** |
| **960 Canterbury Place, Suite 300** |  | **of counsel:** |
| **Escondido, California 92025-3870** |  | **Garth O. Reid** |
| **Telephone (760) 743-1201** |  |  |
| **Facsimile (760) 743-9926** |  | **special counsel:** |
| **www.LFAP.com** |  | **John W. Witt** |
|  |  |  |
|  |  |  |

June 26, 2008

Mr. Mark Slovick

Land Use Environmental Planner/Project Manager

County of San Diego

Department of Planning and Land Use

5201 Ruffin Road, Suite B

San Diego, CA 92123-1666

Telephone: (858) 495-5172

Facsimile: (858) 694-3373

[mark.slovick@sdcounty.ca.gov](mailto:mark.slovick@sdcounty.ca.gov)

**SUBJECT: NEED FOR AN EIR FOR THE BORREGO COUNTRY CLUB ESTATES PROJECT**

Dear Mr. Slovick:

1. **INTRODUCTION**

This firm represents Dr. Ann Irwin and Ms. Lori Paul who are the principals in a group comprised of 25 property owners in the Borrego Community. We have been asked to review the documents prepared to date with respect to the Mitigated Negative Declaration (“MND”) proposed for the development of Borrego Country Club Estates (“the Project”).

The Project is a residential subdivision containing 149 lots on approximately 173 acres. The project is located north of Country Club Road and south east of Star Road, between Wagon Road and Borrego Springs Road in Borrego Springs, California.

1. PUBLIC RECORDS ACT REQUEST

Pursuant to our clients’ authorization, we lodged a Public Records Act request seeking copies of all documentation filed to date with respect to the processing of the noted MND by the County. See the letter, attached. The documents received in April 2008, pursuant to our PRA request have been reviewed and are the basis for this comment letter. Documents filed with the County since April 2008, if any, have not been provided or reviewed.

On August 29, 2006, the County issued to the developer a letter, which, at page three, stated, “It will be necessary to prepare and submit a draft EIR to satisfy the requirements of the CEQA.” Since that time, the developer has hired a team of consultants who apparently convinced County officials to accept a more abbreviated study of the project, a MND. After reviewing all documents revealed by the PRA request, it is the position of our clients that the Project does not qualify for such abbreviated treatment. Rather, its scope and potential impact mandate the preparation of a full-scale Environmental Impact Report (“EIR”).

To support its position, the client group, with the help of this firm, has reviewed the substance of those reports prepared and filed to date which, purportedly, would support the developer’s assertion that a MND provides a sufficient level of environmental review. However, a critical analysis of the Project compels a very different conclusion. The facts, when compared to the applicable law, mandate the preparation of an EIR.

1. SUMMARY FINDINGS

In fact, there are numerous points of weakness in the reports and studies prepared in support of the Project; particularly fatal are the following:

* 1. Incomplete and misleading analysis of significant biological impacts, such as the mischaracterized impacts on the Peninsular Bighorn sheep, the Burrowing Owl, and other species as well as the inadequate or nonexistent mitigation measures;
  2. Misleading and incomplete analysis of the use of and impact on water resources;
  3. Statements regarding use of mitigation land which the Project developers do not own, and have not offered to purchase;
  4. Lack of analysis of numerous impacts such as noise and air quality;
  5. Inadequate analysis of areas such as visual impacts.[[3]](#footnote-3)

1. TIMELINESS

The client group fully recognizes that this letter is submitted prior to that point in time when comment letters are typically filed. In the ordinary course, the MND draft would be completed and made available for review and comment. It might be argued that, the process not yet having been completed, it is premature to comment. However, it is not too early to state the position that the MND environmental review process being pursued is wrong. This project does not qualify for an abbreviated review, as will be demonstrated below.

1. **GENERAL COMMENTS**

At the outset, it is helpful to briefly outline the law which governs the process of environmental review applying to the Project.

“Only through an accurate view of [a] project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance.... An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR. The defined project and not some different project must be the EIR's bona fide subject." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 & 199)

The four basic purposes of the California Environmental Quality Act (CEQA)[[4]](#footnote-4), as described in CEQA Guidelines §15002, are to:

(1) Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.

(2) Identify the ways that environmental damage can be avoided or significantly reduced.

(3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

(4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

In order to accomplish these purposes, a public agency must prepare an EIR when there is substantial evidence that a project may have a significant effect on the environment (CEQA Guidelines §15002(f)(1)). The courts have long affirmed that CEQA is to be used as an informational tool which protects not only the environment but also informed self-government (*Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74). The *Laurel Heights* court stated that an EIR is a document of accountability and serves as an environmental alarm bell to agencies **and** the general public *before* the project has taken on overwhelming “bureaucratic and financial momentum” (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 395 – boldface emphasis added). The EIR’s function is to ensure that government officials who approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho* Cordova (2007) 40 Cal.4th 412, 449). An EIR must provide its readers with the ability to understand the scope of the project seeking approval, as well as its potential impacts. Thus, an EIR which is confusing, misleading or otherwise faulty is a disservice to the government officials tasked with reviewing the project and the public they serve.

In short, an adequate documentary study must be "prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." (CEQA Guidelines §15151) If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. (*Laurel Heights at p. 392*) An environmental impact report "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Id. at p. 405*) If an environmental impact report is intended to provide “accountability and serve[s] as an environmental alarm bell to agencies and the general public” then the study documents submitted in support of a MND fail this basic legal test and must be denied certification.

**III. Project Description**:

As set forth above, the Project is a residential subdivision containing 149 to 150 lots on approximately 173 acres, located north of Country Club Road and south east of Star Road, between Wagon Road and Borrego Springs Road in Borrego Springs, California.

The 173-acre site is undeveloped property consisting of undisturbed natural terrain that is situated on portions of two alluvial fans created by Culp-Tubb Canyon and Dry Canyon, conveying runoff west to east, ultimately to the Borrego Sink in the southeast portion of Borrego Valley. Per Borrego Valley General Plan for Flood Control Improvements, July 1972, Culp-Tubb Canyon watershed is 12.2 square-miles and generates approximately 7,700 cfs during 100-year storm events. Dry Canyon watershed is 1.6 square-miles, generates approximately 1,300 cfs during 100-year storm events, and confluences with Culp-Tubb Canyon approximately 2,000–ft downstream of the existing diversion dike. Prior to 1960, potential flash floods from these canyons during rainfall events had the potential to cause flooding of the project site and surrounding areas. In an effort to mitigate this potential flooding, a diversion dike was constructed upstream of the project site to divert flood flows from Culp-Tubb Canyon to the south, around the community, eliminating the confluence of runoff from Culp-Tubb Canyon and Dry Canyon.

Studies in support of the Project state that despite the fact that the dike has not failed over the last forty years, and that it is in good condition and functioning to divert flows, the armoring of the dike does not meet Federal standards. As a result, the Project studies claim that FEMA mapping ignores the dike altogether during 100-year storm events. The study concludes that improvements to the existing dike and additional diversion structures are necessary.

Among the proposed Alternatives is the construction of a diversion structure (Alternative 2), or construct a 200-foot wide soil cement channel (Alternative 6). However, the studies discussing the Project Alternatives fail to fully analyze their impacts on the surrounding area.

**IV. LEGAL FRAMEWORK**

We began this comment letter with a reminder of the general purposes of the CEQA law; what follows is a relatively detailed discussion of the facts known to date about the Project. It is now timely to compare those facts to the law as it should be applied to this stage of the process of review.

At the outset, presumably as a result of an initial study, the County concluded that a full-scale EIR would have to be prepared for the Project. However, the County was subsequently convinced to consider a diminished level of review by the preparation of a MND. Whether as a review of the documentation purporting to support a MND, or as part of the continuing consideration of an initial study, it is now imperative to measure the necessity for a full EIR.

CEQA authorizes a MND for a project when the initial study has identified potentially significant effects on the environment but:

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where **clearly** no significant effect on the environment would occur, and (2) there is **no substantial evidence in light of the whole record** before the public agency that the project, as revised, may have a significant effect on the environment” (CEQA § 21064.5, emphasis added).[[5]](#footnote-5)

An EIR therefore may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project **may** significantly affect the environment. In the present case, the only issue that is clear is that the information provided to date is insufficient to preclude preparation of an EIR. Indeed, the opposite is true. The documents of record conclude that the project will have a significant impact on the environment, virtually precluding an abbreviated review process.

A strong presumption in favor of the preparation of an EIR is built into CEQA; “[t]here is ‘a low threshold requirement for preparation of an EIR’ (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84) and a ‘preference for resolving doubts in favor of environmental review’ ( *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317). This presumption is reflected in the “fair argument” standard, under which the County MUST prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment (*Mejia* v. *City of Los Angeles* (2005) 130 Cal. App. 4th 322, 332).

A lead agency must find that a project may have a significant effect on the environment and must prepare an EIR if the project meets any one of the following conditions:

(1) The project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.

(2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly. (14 California Code of Regulations § 15065(a)(1)

Matching the facts, as demonstrated by the findings of the biologist (see below), to the applicable law, a mandatory finding of a significant impact on the environment is compelled; thus the preparation of a full EIR is required.

**V. SPECIFIC COMMENTS**

**Biology Impacts**:

1. **The Project Will Have A Significant Biological Impact.**

The Biological Technical Report prepared by REC Consultants, Inc. in support of the Project immediately acknowledges that the Project “will directly impact 100% of the habitat within the proposed project boundary and associated infrastructure. **This is considered a significant impact and will require mitigation**.” (See Section 1.0) [Emphasis added.]

In reaching the conclusion that the Project will have a significant impact that will require mitigation, the Report relies on the CEQA definition of a significant impact as an impact that will:

substantially degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of major periods of California history or prehistory. (See Section 6.0)

Despite their acknowledgement of this significant fact, the Report attempts to downplay the effect of the Project on certain species and, in fact attempts to disregard or misstate that effect.

1. **The Report Is Incomplete And Requires Further Study.**

At Sections 1.0 – 4.0 the Report lists the biological surveys conducted in the Project area (approximately 172.7 acres). The surveys were conducted between 2004 and 2007. Wildlife species were identified via sight, vocalizations, scat, tracks or burros and plants were identified onsite or collected for identification.

The California Department of Fish and Game has not conducted a wildlife survey on the Project site; and any study that has been or will be conducted must be conducted at such time and season that the affected species will be present. For example, a brief survey conducted in the hot summer months and during a severe drought when annual seeds are dormant, would necessarily report the absence of certain species that naturally migrate away from the area at such times. A complete environmental analysis, therefore, must be done at different times of the year, and the Project cannot be approved unless and until it is completed and carefully considered.

As discussed above, the studies conducted for the Project at this time do not provide a complete picture of the biological impacts, or the necessary mitigation. A more complete study is necessary in order to cover the following, at a minimum. For example, of the four surveys conducted, the first was in the fall of 2004, the second in April, 2005 and the third in April 2005. The fourth survey was conducted in the summer of 2007. The Report does not discuss the impact of the seasons during which the particular surveys were conducted. This is a significant factor in that certain species are present and apparent during certain seasonal cycles and more elusive depending on breeding patterns, migrational patterns, etc. For example, rare desert horned lizards, a fringe toed lizard of unknown species, raptors including at least one burrowing owl exist on the Project property, and have not yet been documented.

This would lend itself to the lack of observation of animals that are known to be in the Anza Borrego Desert, and in the Project area in particular.

Moreover, the Report fails to refer to other well known biological surveys of the area which provide authority that additional species animals can be found therein, and support the impact of the Project on those species.

1. **The Project is located in a Riparian Desert Habitat and Desert Riparian Watershed Which Sets Forth Protections/Canyon Outflow**

On August 2006, the County acknowledged that the natural drainage may qualify as a wetland under the San Diego County Resources Protection Ordinance, which prohibits impacts to wetlands and wetland buffers. The County specifically requested a wetland survey using the County’s definitions because they varied from the federal U.S. Army Corps of Engineers’ definition; and, to the extent there is a disagreement over the extent of the wetlands, further study will need to be conducted (Attachment D). The County seems to have accepted the applicant’s Report that indicates two areas of potential water flow observed on the western side of the Project were shallow channels that did not contain vegetation. The County also seems to have accepted the applicant’s conclusion in the Report that the two areas do not qualify as United States Army Corps Waters of the U.S. because they are not tributaries to navigable waters; do not qualify as Army Corps jurisdictional wetlands because they do not support wetland vegetation; do not fall under the jurisdiction of the California Department of Fish and Game because they do not contain standing water or riparian vegetation; and, do not qualify as Resource Protection Ordinance wetlands because they lack wetland vegetation, hydric soils or a non-soil substance.

The County has accepted the applicant’s conclusion regarding this important topic, despite the applicant failing to provide any explanation, analysis or source for its conclusions.

1. **The Report Omits Discussion Of Important Species Such As The Burrowing Owl.**

Section 4.2 describes the wildlife found on the Project site. Of the birds, only the mourning dove (*Zenaida macroura*), Say’s phoebe (*Sayornis saya*), and house finch (*Carpodacus mexicanus*), together with the more common greater roadrunner (*Geococcyx californianus*), cactus wren (*Campylorhynchus brunneicapillus*), phainopepla (Phainopepla nitens) and red tailed hawk (*Buteo lineatus*). The Report does not reference burrowing owl (*Athene cunicularia)*, for example, a known endangered species, listed by the USFWS that has its habitat in the Anza Borrego. And Appendix D, which lists the uSFWS sensitive animal species misstates that the habitat for the burrowing owl does not occur on site.

In fact, as discussed above, the burrowing owl has been seen in the area of the Project. Our client, Lori Paul, brought this to your attention, with actual photographic evidence, on August 31, 2007 and then again on October 30, 2007. Not only are these owls on the Project site, but as discussed further herein, they are directly within the line of construction of the levee which is among the items to be constructed in the furtherance of the Project. Disturbance of this endangered species simply cannot be contemplated.

Appendix D innacurately represents that most, if not all of the usfWS sensitive animals known to be in the Borrego area either have not been observed on site, their habitat does not occur onsite, or these animals have no roosting sites on the Project site. And the Report has reached that conclusion by conducting merely four surveys between 2004 and 2007.

1. **The Report Omits Discussion Of The Flat Tailed Horned Lizards.**

The flat tailed horned lizard (*Phrynosoma mcalli*) is another species which has been documented at the Project site and which the Report omits. And once again, Appendix D attempts to misleadingly imply that the flat tailed horned lizard’s habitat “does not occur onsite”. The reality is that it does, and that the Project threatens to take their habitat.

The Biological Technical Report also ignores the significant impact the Project will have on these animals. In fact, the status of these animals is currently undergoing research and review due to a startling discovery made in 2002. These lizards require native ant populations for food and *cannot survive on the invasive and aggressive Argentine ants that radiate out from housing developments.[[6]](#footnote-6)* The Project will no doubt increase the Argentine ant population which, in turn, will adversely impact the horned lizards beyond the loss of their important habitat.

Thus, the impact on the lizard is inadequately and misleadingly addressed in the Report, and requires significantly more study.

1. **The Report Misstates The Impact Of The Project On The Bighorn Sheep, And Provides No Mitigation Measures.**

Section 4.3.3 the Biological Technical Report specifically states that the Peninsular Bighorn Sheep, sensitive animals according to the USFWS (2005), CDFG (2005) or candidates for those lists, have the potential to occur onsite.

The Report goes on to say that the Bighorn traverse the land impacted by the Project, then contradicts itself by asserting that “there were no rare, threatened, or endangered animal species” observed on site. Report further misstates facts by asserting that states that “**no sensitive habitats were identified on site**.” (See section 4.3.1)[Emphasis added.] First, this statement totally ignores the obvious fact that this site is classified as a sensitive habitat in numerous ways discussed herein, including the Riparian Desert Habitat discussed above. Most importantly the Report attempts to mislead the County by asserting that that no mitigation measures to alleviate the impact on the Bighorn are necessary because the Project site is not a “viable wildlife corridor”. (Section 5.1.2).

The reality is that the Bighorn do migrate through the Project area, and since it has been acknowledged that 100% of the habitat within the Project area will be impacted, the Bighorn will be threatened and that threat cannot be mitigated, in any way but to abstain from building the Project in the planned location.

The Bighorn occur in the Peninsular Ranges of southern California, which include the Tubb Canyon area. The continued existence of the Bighorn Sheep population in these mountains relies heavily upon maintaining connectivity between all subpopulations, so that gene flow can continue and subpopulations will be resilient. The USFWS has a prepared a *Recovery* *Plan for Bighorn Sheep in the Peninsular Ranges*, *California*, in accordance with the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.) ("Recovery Plan"). The “objective” of the Recovery Plan is to:

[S]ecure habitat and alleviate threats to the overall Peninsular bighorn sheep population so that population levels will increase to the point that this species may be downlisted to threatened status, and ultimately delisted. (see the *Notice of Availability of a Draft Recovery Plan for the Bighorn Sheep in the Peninsular Ranges for Review and Comment,* [Federal Register: December 29, 1999 (Volume 64, Number 249)]

Contrary to the assertions in the Biological Technical Report of “no sensitive habitat” being identified, the Recovery Plan identifies contiguous habitat, such as the Bighorn sheep habitat in the Tubb Canyon area, as **key** to its recovery goals and provides guidelines for maintaining connectivity between populations. In addition, the Recovery Plan states that Bighorn sheep must be found in 9 recovery regions within this habitat for full recovery to occur.[[7]](#footnote-7)

Tubb Canyon is located in one of these 9 recovery regions, near the middle of the narrow ribbon of habitat. Approximately 38 Bighorn Sheep, referred to as the “south San Ysidro Mountains subpopulation,” reside in this area.  According the USFWS’s Recover Plan presence of Bighorn sheep in the Tubb Canyon area is critical to the persistence and recovery of the entire endangered population, because they provide the crucial link between sheep in the northern and southern portions of their narrow range. Tubb Canyon and its bajada provide essential habitat, including crucial water and forage resources, for this subpopulation. Within this relatively small range, this group of Bighorn sheep must find all the resources necessary for survival in the desert, including food, cover (from predators or inclement weather), and water. Thus, the Bighorn Sheep and their essential habitat in Tubb Canyon justify the attention, concern, and protection, which are now afforded by the law, and which the Project and the Reports in support of the Project ignore.

Bighorn Sheep in the Tubb Canyon area are currently in lambing season, with most lambs born during the months of February through April, and some born during summer months. Female Bighorn sheep will seek remote, quiet places when they are ready to give birth. Females with young lambs are particularly susceptible to disturbance, which can occur via a number of human activities.

As the lambing season ends, Bighorn Sheep face one of their toughest times of the year - the harsh conditions of the Anza Borrego Desert summer. During the summer, the south San Ysidro Mountains subpopulation relies heavily on Tubb Canyon, due to the presence of two natural springs and an artificial drinker, constructed and maintained by one of the landowners in Tubb Canyon. These water sources may be especially important this summer, due to the prolonged, current drought.

The Project, its construction, ongoing existence and associated traffic will no doubt disturb the Bighorn sheep during sensitive periods. The intrusion the Project will simply add to the cumulative negative impacts that already threaten the future recovery of this endangered population.

1. **The Report states that 1:1 Mitigation Is Necessary For The Sonoran Creosote Bush Scrub, But Ignores The Fact That It Is Insufficient For other Federally listed critical species**

The substantial evidence available to the County in this instance is unusually revealing and persuasive. Such evidence is provided by nothing more than the Biological Technical Report prepared by the developers’ expert. The Report attempts to suggest a 1:1 mitigation measure for the Sonoran creosote bush scrub, which would address the impact on the plant. Without arguing about the adequacy of the 1:1 mitigation plan proposed, it is elemental to question what plan is proposed to address the impact on the Bighorn? It could be concluded from the report that the diminution of the Bighorn range as a result of the Project is of no great consequence requiring no mitigation whatsoever. Such a conclusion is so irresponsible as to be an unintended interpretation.

Yet, it is only slightly more credible to extrapolate and apply the biologist’s 1:1 mitigation formula to the Bighorn. If the mitigation formula is the suggested solution, it would propose that the 21 acres of Bighorn habitat lost to the Project be replaced in kind.

The land impacted by the development of the Project is habitat which is peculiar to one particular flock of Bighorn sheep – it is specific to their very being. One cannot “add” to the flock’s habitat – it is what it is. If more land is to be purchased and set aside for other puposes, it would not add to the range of the flock, which is fixed and in place. The loss of any portion of such habitat would remain a net loss.

This particular land is not some generic environmental asset which can be replaced in kind at another location through a standard mitigation plan. Even if the mitigation ratio were changed to 20:1, it would not help this particular population of endangered species. An extension of the proposed mitigation plan would be to relocate the flock to some larger habitat - a truly ludicrous solution but a logical extension of the consultant’s solution.

The conclusion is inescapable – the loss of habitat for the Bighorn sheep as a result of the development of the Project would be un- mitigatable. So, do these facts support a finding of significance regarding the threatened environmental impact of the project? Most certainly.[[8]](#footnote-8)

**Water Impacts**:

There are significant issues affecting water that have not been sufficiently studied, or even addressed. What has been included are a number of descriptions, without any answers to crucial questions such as: quantifying the Project’s discharge during construction and thereafter; the impact to the Clark Water shed, to which the Project is a tributary; the impact to the local plant and animal environment; the effect the Project will have on local, state and national water conservation efforts; and, the effect on potential flooding and flood control measures. This failure does not allow the County or the public to understand the full impact of the Project as would be provided by a proper EIR.

The following is a survey of the issues that must be addressed and studied in depth, as is only possible with a full EIR:

1. **Impacts to Surface and Ground Water**

In the Storm Water Management Plan dated November 7, 2005 (“SWMP”), the applicant indicated that receiving waters would not be affected by the project throughout the project life cycle and that there are no high risk areas within the project limits (high risk areas being municipal or domestic water supply reservoirs or groundwater percolation facilities). However, the applicant acknowledged the following anticipated pollutants: sediments, nutrients, trash and debris, oxygen demanding substances, oil and grease, bacteria and viruses and pesticides and that since the Project would include work in channels, there is an increase in the velocity or volume of downstream flow, discharge to unlined channels, increase in potential sediment load of downstream flow.

On August 29, 2006, the County’s Department of Planning & Land Use (“DPLU”), in turn, has determined that since the project will use groundwater, a technical investigation into the available groundwater resources will be required (Appendix L). Neither the applicant nor the County, however, have sufficiently considered the extent or significance of the water impacts beyond superficially identifying that there may be concerns.

The relationship between groundwater and surface water is well-known to professional hydrologists but neither is sufficiently discussed or analyzed in any of the documents provided. In fact, the applicant failed to provide information on the beneficial uses for inland surface waters and ground waters, as requested in the SWMP. Although surface water is not a major source of water, there are still concerns with possible contamination and depletion. The Project proposes to divert drainage as a flood control measure and cites the need to obtain a waiver and release from all affected downstream property owners. This is not only an inadequate proposal for flood control, but again fails to address the impact on the environment, for which waivers and releases are not available.[[9]](#footnote-9) Water from contributing basins along with run-off generated on the Project site will travel though the site via shallow overland flow, continuing downstream through existing subdivisions and ultimately to Borrego Sink, the lowest point in valley to which all natural drainage is directed.

As much as 8,000 acres around the Borrego Sink is home to mesquite woodland, some of which has been a protected feature under County of San Diego land use regulations. Every year there is increased evidence that the otherwise adaptable mesquite in the Borrego Sink are dying of thirst.[[10]](#footnote-10) Although plant and animal life can adapt to change when it occurs gradually, what happens when the change is not so gradual as will occur with the addition of the Project- a high-density subdivision on 173- acres? This is only a preliminary question that has not been answered and cannot be adequately studied in the absence of an EIR.

**2. Water Conservation Impacts**

For approximately fifty years, groundwater levels in the Borrego Valley have been dropping in response to a continuing overdraft of the aquifer, the valley’s sole source of water which is being insufficiently recharged by the area’s very sparse rainfall. The most commonly accepted figures for storage, use and inflow indicate that at the current level of usage, the usable supply of groundwater could last approximately 100 years; however, the current levels of usage will not remain static as the population and water use continues to grow and the cost of extraction will increase as the water levels decline.[[11]](#footnote-11)

Borrego Valley has no access or right to any imported water, from either the Colorado River or Northern California water, partly because of cost, but mainly because these sources are already oversubscribed. Similarly, obtaining water from adjacent areas such as San Felipe Creek, Clark Dry Lake and Ocotillo Wells is possible but extremely unlikely as there is only limited water available, in most cases it is of poor quality and the facilities to transmit and treat the water would be prohibitively expensive.[[12]](#footnote-12) For example, building a pipeline to import water (from either the Colorado River or the Imperial Irrigation District canal approximately thirty-eight miles away) would cost approximately $60 million.[[13]](#footnote-13)

According to the description provided by the applicant, the Project will be served by on-site septic systems and groundwater from the Borrego Water District, which will require 1) the construction of an on-site well that would be tied into the district water system; 2) upgrading or increasing the pipe sizes surrounding the property; and, 3) upgrading the existing water tank located to the west of the Project. However, the applicant fails to include estimated water usage and potential alternatives to the planned water source, given the very real and immediate water crisis facing the area. In addition, the applicant does not quantify or otherwise analyze the need/ use of new potable water versus reclaimed water or the amount of reclaimed water that might be produced and the associated costs and benefits of reusing water.

As outlined below, a major function of an EIR is to ensure all reasonable alternatives to proposed projects are thoroughly considered, analyzed and assessed. It is not enough to merely designate the source of the water; water is at a premium and any development will impact the flow of water, water use, water reuse and the only way to adequately study the associated environmental impacts is with an EIR.

**3. Flood Control**

As noted in Flood Hazard Evaluation, prepared on August 27, 2007 in support of the MND, approximately 60% of the proposed residential development is within the flood plain as is significant neighboring developments immediately to the north of the project and significant flood-prone development downstream of Borrego Springs Road (at p. 19). The report further acknowledges the uniqueness of the Project in that the central portion, which includes approximately sixty (60) lots, is elevated out of the flood plain, with the majority of the remaining lots in the flood plain (p. 19).

Despite acknowledging the significant flood potential, the discussion in the reports of the solutions to the potential problems of flooding are graphic examples of the flawed approach to the environmental analysis process.

Six different flood control alternatives are pro-offered, some of which are stand-alone solutions, while others would have to be undertaken conjunctively. The point to be made is that no one approach is clearly designated as the preferred solution. Thus, the environmental review must analyze the impacts of each and every such potential solution. Of course, absolutely no such impacts have been environmentally analyzed.

The developer’s engineer did, however, present a preferred engineering solution to the threat of flood waters. He recommended the reconstruction of the pre-existing 2700 foot (4000+ foot?) Culp- Tubb Canyon dike, and the construction of 5,800 feet of a new perimeter levee. While we have no way of completely filling the analytical gap regarding this engineering solution, several concerns come immediately to mind.

Existing Dikes. Reconstruction of the dikes now in place presents problems of nearly insurmountable magnitude. First, the existing berms are home to the burrowing owl, an endangered species. That fact has been brought to your attention by our client, Lori Paul. On August 31, 2007 and then again on October 30, 2007, Ms. Paul presented written and photographic evidence of the existence of burrowing owls in the berm situated on her property. As discussed above, disturbance of this endangered species simply cannot be contemplated.

Second, the existing levees identified for reconstruction are all on private property. They were first built in 1963 by the Army Corps of Engineers with the consent of the then owners of record. No easements vesting the levees in the public domain have ever been granted or recorded. The berms are privately owned. The current owners have expressed their adamant opposition to the reconstruction of any of the levees located on their properties. If reconstruction is contemplated, it could only be accomplished through a forced taking of the property, which each and every owner promises to stoutly appose.

Third, the recommended method of financing the berm construction and reconstruction work noted above must be addressed. While there is a split of authority regarding the reach of CEQA into economic matters, there can be no doubt that, in this instance, the suggested financing vehicle for the levee work raises grave environmental concerns. Stated differently, if the financing vehicle is deemed feasible, the work which it funds will have a dramatic environmental impact on the entire Borrego Valley.

The developer’s engineer recommends the formation of an assessment district to finance the reconstruction of certain of the existing dikes, and the construction of 5,800 feet of new dike. Simplified, the boundaries of an assessment district are formed by defining all the properties which could be said to benefit by the completion of the infrastructural work being completed – the dikes. Any property that is to be benefited will have to pay an assessment – a tax burden added to the property – in proportion to the predicted benefit, which is measured by an engineer experienced in analyzing such benefits.

In this instance, the engineer does not specifically identify these “benefited properties” but he broadly describes an area of benefit both upstream and downstream from the subject development. This could include most of the Borrego Valley.

Fortunately, the formation of an assessment district is subject to the consent of those property owners whose lands would be affected. A vote must be conducted within the proposed district and a majority of the impacted owners must approve the assessments. If a majority of the owners “protests” the assessments, formation of the district fails.[[14]](#footnote-14)

Obviously, the developer’s engineer has proposed an element of the Project which presents financial and political issues that CEQA does not necessarily require to be analyzed (CEQA § 21080 (b)(8)) . However, the same element does present an issue which CEQA is designed to address. There can be no doubt that the reach and scope of the dike construction constitutes a “project” under CEQA § 21065. Any such “project” is required by CEQA to be analyzed, and the superficial study afforded by a MND will simply not suffice. No public agency, in good conscience, could allow a public works project of this scope and magnitude to proceed without the preparation of a full-scale EIR (*Lighthouse Field Beach Rescue* v. *City of Santa Cruz* (2005) 131 Cal. App. 4th 1170, 1202), especially when, as is the present case, the agency has failed to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study (see, *City of Redlands* v. *County of San Bernardino* (2002) 96 Cal.App.4th 398, 406, 408).

For this reason alone, not to mention the others covered herein, the County must abandon the preparation of a MND and order the completion of the more comprehensive environmental review which the Project requires.

**Land Use Impacts**:

At this time the County has not yet implemented its General Plan Update which would decrease the density requirements for the Project area and the Anza Borrego Desert in general. Nonetheless, it is our understanding that the General Plan Update is in the process of being approved by the County Board of Supervisors. This Update will limit the permissible density to one residence per 20, 40 or 80 acres, which is totally incompatible with the planned density of the Project, which is a high density project consisting of 149 lots on approximately 173 acres.

We have been advised that the requisite applications for the Project were not submitted in a manner that would allow it to be grandfathered in under the General Plan Update (or the 2020 Plan). Thus, it will not be compatible with the area upon the Plan Update’s approval.

**Landform Alteration/Visual Quality Impacts**:

One must appreciate the visual and aesthetic qualities of the Anza Borrego Desert, and the Tubb Canyon area, qualities which are profoundly threatened by the proposed Project. It is important to note that the analysis contained in the Studies in support of the Project are incomplete as they do not adequately address the significant and unavoidable visual impacts.

It is clear that the studies and reports in support of the Project do not take the necessary next step and analyze the project’s effects on the “wilderness experience” in the Anza Borrego Desert. Unlike urban and suburban projects that create visual quality impacts within the context of mostly man-made structures, this Project creates visual impacts in an area that provides a wild, natural haven for those individuals who enjoy the outdoors and need a break from the stresses of city life.

For example, the Project will consist of a residential community being constructed on 149 to 150 lots, where there is currently natural terrain. This construction, the necessary roads, the accompanying vehicles and traffic and the resulting development, will be widely visible throughout the surrounding areas, including higher elevation impacts.

In addition, both the diversionary structure and the channel will create significant visual impacts on surrounding properties, as well as higher elevation viewpoints. The area is specifically known for its natural resources, landscape and natural untouched scenery. The structural intrusions will cause unavoidable disruption, as will the construction of these large structures.

**Traffic Impacts**:

The Project is located on the west side of Borrego Springs Road (S-3) just south of Tilting T Drive. The Transportation Analysis demonstrates that the project will have significant impacts on Palm Canyon Drive between Country Club Road and Borrego Springs Road by adding significant traffic. For example, the Project is expected to generate approximately 1,480 average daily vehicle trips, 118 occurring the AM peak hour and 148 in the PM peak hour.

The recommended mitigation measure set forth in the Transportation Analysis is to add a local and regional fee to mitigate development impacts based on the Estimated Dwelling Units (EDU). As estimated by the Transportation Analysis, the Project will generate 1,480 trips, generating 123.33 EDU based on 12 trips/EDU. The Total TIF fee recommended is $352,610.00.

Clearly the need to add a local and regional fee to the tune of $352,610.00 demonstrates that there are currently insufficient funds to mitigate the traffic impacts on the area. Moreover, should the fee be implemented, the Transportation Analysis does not indicate how it will be utilized to mitigate the impacts as the amount of daily trips and the consequent traffic will be an unavoidable aide effect of the Project, and its resulting increase in the population of the area[[15]](#footnote-15).

**Air Quality Impacts**:

Without explanation or analysis, the County[[16]](#footnote-16) determined that no significant impacts to air quality have been identified. Given the current undisturbed nature of the site and the scope of the Project, this conclusion is hard to believe and the public deserves an explanation based on a complete analysis.

The potential adverse impacts to air quality include, but are not limited to: the accelerated wind and flood erosion of the relict sand dune after the removal of natural vegetation (the established ocotillo/ creosote plants) and the emissions from construction earthmoving activities. Extremely high winds frequently blow through Tubb Canyon and surrounding canyons. Depending on the wind direction, newly exposed and/ or the displaced sand will clearly and negatively affect a number of local residents and properties. The exposure to fine particulates blowing from the grading site may present a serious health risk or the elderly and those with respiratory conditions. The irony is that many people moved to Borrego Springs for the benefit of the clean, dry dessert air. The further irony is that the existing sand dune is a natural barrier for wind and traffic sound; the Project will not only be causing adverse impacts to air quality, noise and traffic (discussed in other sections), but will be eliminating the natural protection already in existence.

Another potential adverse impact that needs further analysis and study is whether or not the site will be subject to inversion layers which increased traffic will exacerbate. Most valleys face this issue, and given that the site is within the Borrego Valley, this issue deserves consideration. The failure to provide any explanation regarding air quality impacts is just another of the gaps in the study of material issues which must be addressed in order for a full and complete environmental review to be conducted.

**Noise/Odor Impacts**:

Once again, there has been no study conducted with regard to the potential impacts of noise and odor on the surrounding areas. Given that the Project plans on grading a site that currently has a natural barrier in the form of the ridge in the middle of the site, it is hard to believe that no consideration has been given to noise and odor impacts. At the very least, there will be a large adverse impact during grading and construction.

Like the apparent gaps in information addressed above, this serves to demonstrate the Project is not the appropriate project for the Borrego Springs area, or that at a minimum, it cannot be adequately addressed by a Mitigated Negative Declaration. In passing, in the Biological Technical Report, Section 6.1.1, states that “noise pollution is not expected to be a problem.” Again, no supporting statement or analysis is referenced.

At a minimum, the fact that, as set forth in the Transportation Analysis, the Project will an additional 1,480 average daily vehicle trips, 118 occurring the AM peak hour and 148 in the PM peak hour, must be addressed.

**Growth Inducement Impacts**:

As with many areas discussed above, the studies prepared in support of the Project are silent as to the population growth impacts. With 149 to 150 lots, and the resulting residential construction on those lots, the increase in the population and its impact on the resources of the surrounding area is a significant impact; one which cannot be disregarded or ignored as is being done in this instance.

**Socio-Economic Impacts**:

The studies fail to discuss the socio-economic impacts of the Project when there is a clear threatened impact to the surrounding sparsely populated Borrego Springs area, both with regard to undeveloped and developed properties. This omission is in direct contradiction to the requirements of the court. (*Bakersfield Citizens for Local Control* v *City of Bakersfield* (2004) 123 Cal. App. 4th 777, 793).

**School District Impacts**:

The studies fail to discuss the impacts of the Project on the local school district and all of its constituent schools as required. (*El Dorado Union High School District* v *City of Placerviller* (1983) 144 Cal. App. 3d 123). This failure is surprising considering that a project of this magnitude has potentially significant health, safety and welfare impacts on these sensitive receptors in terms of odor, air quality, noise and traffic, many of which have not been addressed by the Study. For instance, the increased traffic on the road will directly compete with school buses, teacher’s and parent’s vehicles and student drivers themselves. Not only is this a potentially significant issue with regard to schedule due to additional traffic delays, but it creates a more dangerous road condition to have so many additional large vehicles on the roads near to schools. The omission of this analysis is likely one of self-interest, as the County would be hard-pressed to wave off the public’s apprehension when the Project’s impacts are shown to affect children.

**Cumulative Impacts**:

Again, characteristic of the studies’ utter disregard of essential points, the cumulative impacts of the Project are not addressed.

**Project Alternatives**:

A major function of an EIR is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official. (*San Joaquin Raptor/Wildlife Rescue Center* v. *County of Stanislaus* (1994) 27 Cal.App.4th 713, 735). The CEQA Guidelines explain that an EIR "shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. A potential alternative should not be excluded from consideration merely because it would impede to some degree the attainment of the project objectives, or would be more costly. (*Preservation Action Council* v. *City of San Jose* (2006) 141 Cal.App.4th 1336, 1354, quoting CEQA Guidelines, §15126.6(b)). In determining the nature and scope of alternatives to be examined in an EIR, ... local agencies shall be guided by the doctrine of 'feasibility.'" (*Citizens of Goleta Valley v. Board of Supervisors,* (1990) 52 Cal.3d 553, 565). Feasible, in this context, means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (CEQA §21061.1).

As project alternatives are not addressed in the studies in support of the Project, an EIR is absolutely necessary.

1. **Conclusion**

For the reasons set forth above, we find that the studies in support of the Project are defective and incomplete, making it evident that either the Project should not go forward, or at a minimum should undergo the scrutiny of a full EIR rather than simply a Mitigated Negative Declaration as suggested by the studies. The Project, if implemented, will create significant unmitigated impacts beyond those which would fall within the confines of a MND, in contravention to the stated purpose of CEQA. We recommend that, considering the massive oversights by the Project proponents, at a minimum, the County require an EIR for the Project.

Our recommendation is more than timely. As we noted above, this comment letter would, typically, be filed in response to the circulation of a draft MND. Thanks to the information provided in response to our PRA request, we are in a position to address corrective measures sooner rather than later. The net affect of the decision, now, to prepare a full EIR, will save the developer and the County the expense of a pointless exercise - the completion of a draft MND.

No fair-minded observer of the Project – whether critic or supporter – could fail but to conclude that a draft MND will never pass judicial muster under CEQA. Preparation of a full EIR will be compelled, either by the reasoned conclusion of the County, or by judicial mandate. The client group urges that the County follow the law and order the preparation of a full-scale EIR.

Thank you for your consideration of our thoughts and concerns.

Very truly yours,

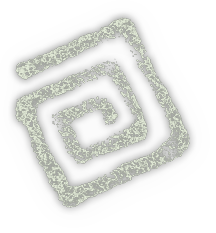
LOUNSBERY FERGUSON ALTONA & PEAK, LLP

Kenneth H. Lounsbery, Esq.

KHL/rmq

**Appendix B**

3 February 2016



**County of San Diego**

**Planning and Development Services**

Peter.Eichar@sdcounty.ca.gov

Kevin.Johnston@sdcounty.ca.gov

5510 Overland Avenue #310

San Diego, California 92123

**Re: Opposition to Property Specific Request Desert Subregion 24 (DS-24) proposed change from Semi-Rural (SR)-10 to SR-1 under the current San Diego County General Plan** encompassing ~172 acres of pristine desert (APNs 198-320-01 and 198-320-26)

Dear San Diego County Advanced Planning Staff,

Tubb Canyon Desert Conservancy (TCDC) was established to preserve desert habitat and biodiversity, to protect native plants and wildlife, and to promote understanding of these special places. Tubb Canyon Desert Conservancy represents numerous desert landowners and visitors to the Anza-Borrego Desert in the vicinity of the proposed DS-24 Property Specific Request located on ~172 acres (APNs 198-320-01 and 198-320-26). It is our strong assertion that any increase in density on the DS-24 site would adversely impact neighboring landowners, Anza-Borrego Desert State Park, Pinyon Ridge Wilderness, rare species, and the associated economy of Borrego Springs.

DS-24 is located at the southern edge of the unincorporated San Diego County community of Borrego Springs. **The high conservation and pastoral recreational value of the two subject parcels was broadly recognized during the protracted San Diego County General Plan process, resulting in the final determination to include DS-24 in the lower density SR-10 zoning designation.** **This decision was correct and fair and should not be altered.** The current owners of the property had the same opportunity as all landowners in the immediate vicinity to provide input during the lengthy General Plan update process.

**The high density of buildable lots surrounding the sand dune and a dense ocotillo forest on the DS-24 site as represented on the County planning maps for DS-24 is not reflected in reality and actual land use. DS-24 is not, as described by the property owner, “in-fill” to existing residential housing.** In spite of the name “Country Club Road,” there is no country club or high-density development in the area around DS-24. In fact, many local residents in the immediate area have deliberately “self-zoned” at lower density than the current SR-2, SR-1 or Village Residential (VR)-2 permits by purchasing vacant land (lots) on one or more sides of their own homes to prevent future development, which, in turn, preserves natural vegetation and wildlife habitat, maintains their semi-rural lifestyle, and protects their scenic views. Many more residents desire to purchase the vacant lot or lots around their homes; however, they cannot yet afford to acquire those parcels. Allowing DS-24, currently zoned low-density SR-10, to become a more “urban” SR-1 would result in smaller lots than currently exist in the surrounding residential area. See the attached aerial photos that document the actual low density of the neighboring homes adjacent to the DS-24 parcel as well as the floodplain and dune complex on the site.

The approved General Plan appropriately took the discrepancy between the County-specified density and reality into consideration, along with other germane factors, in lowering the zoning density for the open space parcels: APNs 198-320-01 and 198-320-26. It should also be noted that the two, large **DS-24 parcels have never been subdivided and have no certificate of compliance.**

In this context, **the owners of DS-24 should not be granted a special zoning change that has been denied to other adjacent landowners of large parcels.** All property owners should abide equally with the new, lower density zoning in the region. Area landowners recognize the importance of a low-density, natural habitat buffer zone around their homes (or planned homes) that complements and protects adjacent Anza-Borrego Desert State Park. Area landowners, that is, excluding the owners of DS-24, notably Rudy Monica, David Davis, and Chris Brown. It is unacceptable that these property owners, *who had no active application in County Planning for any project at the time the General Plan was approved*, should be granted a free Subsequent EIR, conducted at taxpayers expense, to further their desire to be granted special privileges that other County landowners in the immediate area will not receive and that would be contrary to public interest.

In fact, local opposition to the numerous incarnations of the proposed high-density subdivision promoted by owner Rudy Monica has been consistent and so strong over the years, that immediate neighbors of the site, the larger community, state park personnel, local news media and even some law enforcement and utility company staff routinely refer to the DS-24 project as “Rudyville.” This is because the ostentatious name of “Borrego Country Club Estates” used in past Project documents and at Borrego Springs County Sponsor Group meetings, was perceived as absurd for what has become, over the years, a scheme to grade 172 acres of pristine desert into a grid of small, vacant lots for sale. Borrego Springs already has a large surplus of buildable lots for the foreseeable future, especially considering the new limitations on water resources in Borrego Valley.

**The density proposed under the requested change for DS-24 would no longer be acceptable in the current, critically overdrafted state of the Borrego Valley Groundwater Basin (BVGB).** Regarding water resource limitations on land use planning mandated by the adopted Groundwater Management Plan (GSP) under the Sustainable Groundwater Management Act (SGMA), please refer to the comment letter from TCDC dated 17 December 2015 at the Notice of Preparation public hearing (copy attached).

In a related matter, TCDC is concerned about **inadequate construction of water service infrastructure and the wastewater disposal system for any increased density development proposed on the DS-24 parcels.** In a letter dated July 24, 2008 sent to the San Diego Department of Land Use and Planning, Kenneth H. Lounsbery, of Lounsbery Ferguson Altona and Peak LLC Attorneys at Law, wrote the following:

*According to the description provided by the developer, the Project will be served by on-site septic systems and groundwater from the Borrego Water District, which will require: 1) the construction of an off-site well that would be tied in to the District water system; 2) upgrading or increasing the pipe sizes surrounding the property; and, 3) upgrading the existing water tank located to the west of the Project with trenching and land disturbance to connect the project area to the tank.*

*Regardless of whether a well is even feasible (there is reason to believe it is not, since a nearby well is going dry with minimal water supplies remaining), the developer’s plans are more problematic than considered in the Project’s reports. The plan is for the developer to dig a viable yield well elsewhere in Borrego Valley, then lease or donate the well to the Borrego Water District. The Borrego Water District would, in turn, import water to the large storage tank to the west of the Project site and pipe it to the development. This will require additional trenching for the pipes, over land that has recently been donated to Anza-Borrego Desert State Park.*

*Because Borrego Springs is in the Colorado River District, it falls under the jurisdiction of the Regional Water Quality Control Board, which has started to require treatment plants for housing developments with ten (10) or more units. [ Kurt Schauppner Desert Trail, “Who has Sewer Power? The City” March 2, 2007 ] The only indication that the developer has considered wastewater disposal systems is by a reference in a letter dated February 18, 2008 from the County of San Diego Department of Environmental Health, Land and Water Quality Division which notes deficiencies in the developer’s replacement of the Tentative Map, dated December 19, 2007. According to this letter, with the increase in the number of lots, the developer failed to provide percolation test data on certain lots; failed to include the layout of the existing well, or the layout for the proposed onsite wastewater disposal system and reserve area. Lastly, the letter notes that “leach lines may not exceed 24 inches of cover and lines may not be placed in fill or in areas of disturbed soil.” The fact is that all of the lots in the Project area would be elevated on sand fill from the graded down dune.*

*The Department of Environmental Health did not recommend approval of the subdivision proposal or the associated preliminary grading plan.*

*Not surprisingly, there is also a dearth of information in the record on plans for wastewater disposal and / or sewage treatment plans, either on the tentative maps or the preliminary grading plans. Given the Department of Environmental Health’s concerns and the possible restrictions by the Regional Water Quality Control Board, the property owners in the Borrego Community (and the County) should be wondering what the developer plans on doing with the sewage from 150+ residences. Apparently, the developer is proposing to grade lots for sale and is not planning on building a planned development.*

**Most egregiously, the proposed development of the DS-24 parcels involves an unpublicized, covert preferred alternative to infringe on the property rights of neighboring landowners, through eminent domain and local “assessment district” fees, in order to build the subdivision in a hazardous floodplain.** ~60% of the proposed project site is located in a desert riparian floodplain susceptible to periodic flash flooding. Such floods in the desert are a periodic, natural, and beneficial phenomenon that brings water to an otherwise parched landscape. Floods move soil nutrients for vegetation from higher locations to lowlands. Floods also form the ephemeral streams and ponds that numerous species, such as frogs and waterfowl, require for sustenance and reproduction. There are even certain native plants, such as smoke trees, whose seeds have evolved to only germinate after a flood has rolled and battered their tough outer surface. Flood damage to the seed coat signals that there is water present to nourish the seedling, which in turn triggers germination at the right time. Regardless of the role flash floods play in Nature, desert floodplains are an unsafe and unwise location to build homes.

The document and accompanying maps, “Flood Hazard Evaluation for Borrego Country Club Estates” was prepared by Walter F. Crampton, Principal Engineer for TerraCosta Consulting Company, to analyze flood issues for the DS-24 site; dated August 27, 2007. The report incorrectly states:

“*The 2,700-foot-long existing dike within the headwaters of the Culp-Tubb Canyon drainage was constructed by the County in the 1970s to divert flood flows to the south away from the populated east of Country Club Road, and has effectively done so for the last 40+ years.*”

The earthen dike in question was *not* built by San Diego County, nor does the County own or even maintain that dike or the smaller sub-dikes located northwest of the main dike across Tubb Canyon Bajada. No easements vesting the levees in the public domain have ever been granted or recorded. The main dike and sub-dikes were actually built by the Army Corps of Engineers, some would argue illicitly without the permission of the original landowners. Examination of historic aerial photos will confirm this along with the consistent recollections of long-time local residents of the area. Why were the earthen dikes built by the Corps? During a year of serious floods across the U. S. Southwest, the Army Corps of Engineers was assigned to protect public safety and property by constructing emergency levees in many locations, including in Borrego Valley. The dike in question, which is being allowed to naturalize over time, is privately owned. Burrowing owls live on the east side of the main dike berm. Eventually, the floods from Tubb Canyon and adjacent mountains will erode the levee and water will once again flow across the bajada and into Anza-Borrego Desert State Park.

None of the owners on whose property the old earthen dike and sub-dikes exist would allow the County or any other agency to construct a new, 5,800 foot long concrete dam to federal standards across their land. Nor would neighboring property owners east of the dike approve the construction of concrete channels down unpaved Tubb Canyon Road, per the proposed plans to protect the DS-24 parcels from future floods. Only a forced taking of private property, which each and every owner has promised to oppose, would enable a major dam system to be built on the natural desert. Apparently, the developers who own the DS-24 parcels have considered exactly that approach.

In the “Flood Hazard Evaluation for Borrego Country Club Estates,” author Walter F. Crampton recommends the formation of a “Geologic Hazard Abatement District (GHAD)” to finance the design and construction of an expanded dam, flood channels, and additional dikes. An abatement district levees a tax burden on all the neighboring properties alleged to “benefit” from the project.

This covert Draconian flood control plan to enable a high-density subdivision to be built where it does not belong presents grave environmental concerns. Blocking natural flood waters from desert trees and ocotillo in the State Park would degrade the high diversity currently thriving on the bajada. An expanded concrete dam and channel system would also be a visual blight marring the scenic vistas and state park. More ominous is the fact that this extensive dam system and channels, including full blueprints, was never publicized by the developers, not to the affected neighbors who would lose their properties and not to the Borrego Springs Sponsor Group during the many briefings and discussions about the “Rudyville” project. This sort of subterfuge is chilling. It makes one wonder what else is not known about this project. The intent to charge neighbors through a special assessment district, as well as to take private land by eminent domain, in order to build a large development for their own profit, is unacceptable on multiple levels. This massive flood control plan should be definitively opposed by San Diego County. TCDC and the affected landowners oppose this plan along with any attempt to impose an assessment fee on surrounding neighbors.

DS-24 is located within walking distance of Anza-Borrego Desert State Park and is a component of the transition zone between the Sonoran Desert (Colorado Subdivision) at its western terminus with foothill chaparral. **As with most transition zones, the DS-24 site supports significant biodiversity and listed species** due to the variety of vegetation regimes and terrain located in close proximity. The slightly wetter transition habitat where DS-24 is located encompasses the westernmost complex of Sonoran desert sand dunes, home to numerous lizard species, including the Flat-tailed Horned Lizard (*Phyrnosoma mcallii*), a California Species of Special Concern, which favors stable dunes and desert riparian gravel flats. See the annotated California Department of Fish & Wildlife map attached. The property in question is also an attractive hunting ground for a resident population of Burrowing Owls (*Athene cunicularia*), another California Species of Special Concern. Burrowing Owl populations remain in decline across much of their range.

**DS-24 is adjacent (within walking distance) to the federal recovery area for the endangered Peninsular Desert Bighorn Sheep (***Ovis canadensis nelsonii / cremnobates***)**. See the annotated U.S. Fish & Wildlife Service map attached.

**The varied terrain on the DS-24 site attracts a variety of migratory birds to its ephemeral water sources and ancient ocotillo forest**, including several species of hummingbirds, hawks, warblers, and orioles. Bats roost nearby within local cliff cracks and small caves, flying out at night to feed on abundant insects present around seasonal water sources. The full spectrum of species living within the subject area has not been fully documented, merits further study, and is deserving of full protection from destruction.

As noted by County planners, **the current designation of SR-10 for the undisturbed desert on the DS-24 parcels qualifies for habitat reservation measures under the Conservation Subdivision Program** (http://www.sandiegocounty.gov/pds/advance/conservationsubdivision.html). **The requested SR-1 designation would not qualify for that program**.

As previously mentioned, a vast majority of neighbors and visitors familiar with “Rudyville” have strongly opposed the project in all its various forms over the years. Local neighbors and landowners greatly value the wildlife, wildflowers, and a large, ancient ocotillo forest located on the subject site that was once a popular destination highlighted on local tourist maps. **Development of DS-24 threatens the quality of life and property values of neighboring residents.**

**Grading the stable dune and ocotillo forest into rows and rows of elevated vacant lots would result in unconsolidated sand and fine particulates becoming airborne in the frequent high winds (60 to 80 mph) that blow across Tubb Canyon Bajada from the western mountains.** **Dust storms created by vacant lots would blow into other neighborhoods and pollute the clean, dark skies that are highly valued in Borrego Valley**. Borrego Springs is one of only nine IDA-certified “International Dark Sky Communities” in the United States: http://darksky.org/idsp/communities/. The tourism value of the Dark Sky designation would be diminished by the proposed development, as would business to a variety of local overnight accommodation and eating establishments, and other businesses supported by tourism.

**Destabilizing the sand dune would also increase health risk in the community.** Many persons move to the desert to improve their health, including seniors and those with allergies and other respiratory conditions. DS-24 is located in a high wind corridor that would pick up fine sand and dust particles from the 172+ acre denuded dune and graded floodplain, creating localized dust storms that would lower air quality to an unacceptable level, both in the immediate area and farther away in residential and recreational areas “downwind.” The resulting degraded air quality would also diminish the tourist value of Borrego Springs and the surrounding State Park, resulting in harm to the local economy. Tourism revenues have decreased in other communities where a nearby land use change has resulted in an increase in thick haze, high airborne particulate counts, and more frequent asthmatic, allergic, and other negative respiratory reactions in visitors and local residents.

Country Club Road across the DS-24 acreage is not paved. **Roads planned through any future subdivision, along with the numerous vehicles associated with a higher density of homes, would bring undesirable and intrusive traffic through on existing narrow roads and through quiet neighborhoods, thereby changing the pleasant character of the semi-rural streets and sparsely spaced desert homes.** According to the 2006 Transportation Analysis for developing the DS-24 site, the proposed subdivision would generate approximately 1,480 average daily vehicle trips, with 118 occurring during morning peak hour and 148 in the PM peak hour. Much of this traffic would be directed onto West Star and East Star Roads to the north of the site. These roads are both narrow (~20 feet wide), rural in nature, and insufficient for increased 2-way traffic flow. Redirecting traffic out via those low density roads will require extensive widening and redesign that will adversely impact adjacent, established homes, and increase danger to pedestrians and animals, including wildlife and horses. Increased commercial vehicle traffic serving the proposed subdivision, such as heavy garbage trucks, UPS and Federal express delivery trucks, etc. will greatly accelerate road wear, necessitating more frequent and costly road maintenance and repair.

Increased traffic, private and commercial, would also contribute to higher ambient noise levels generated by a concentration of houses in what is an otherwise very low-density location. **Noise generated by an increased density of homes and associated human activities on the DS-24 parcels would reverberate off the nearby mountains and canyons, causing unacceptably high noise levels locally and across the adjacent State Park.** Noise is potentially destructive to both wildlife and the tranquil setting visitors expect in the State Park. Neighbors who moved to the outskirts of town for added solitude highly value the subtle sounds of nature around their homes, including bird songs, the chorus of frogs and toads after rain, as well as serenades by coyotes out on the bajada. All this would be lost if the DS-24 site is ever developed.

**Increased traffic also has the potential adverse impact of vehicle emissions generating an inversion layer, further degrading air quality and visibility in the Borrego Valley.** This consequence of increased traffic needs to be fully evaluated.

**A higher density subdivision would destroy ancient Native American sites.** Tubb Canyon Bajada was once heavily used by the local Cahuilla for their seasonal harvest of agave. Nearby canyons and arroyos were a reliable source water in the desert from both nearby springs and ephemeral floods. Potsherds, stone hand tools, and other artifacts are often found in the surrounding area and are no doubt present on the DS-24 site.

**Lastly, it has come to our attention that an owner / investor in DS-24, Chris Brown, is allegedly a former San Diego County employee who has worked directly for Supervisor Bill Horn in matters of regional planning. This relationship raises conflict of interest questions** originating at the 2012 Board of Supervisors hearing that authorized a Property Specific Request (PSR) for the DS-24 site… in spite of strong, ongoing community and Borrego Springs Sponsor Group opposition… and, in spite of the fact that there was *no active application for any subdivision project on the DS-24 parcels* in the County planning system for *several years* before the new General Plan was ratified. The value of a “free” EIR for the landowners of DS-24 is immense, because this costly process may lead to special privileges for Mr. Brown not granted other landowners in the same area, and likely involving eminent domain “taking” of nearby properties for the purpose of a future subdivision.

This PSR is particularly unjustified considering the fact the owners’ original project plan for “Borrego Country Club Estates” (TM5487) had been in the County “dead file” *for years* at the time of General Plan approval. All this, along with the substantial impacts raised in this letter, generates suspicion about how a Project Specific Request for DS-24 ever qualified for County consideration.

Based on all of the reasons and evidence presented herein, TCDC urges the County to disqualify and remove DS-24 from the collective Property Specific Request SEIR process (thereby saving taxpayer funds and conserving limited County resources, including valuable staff time). In any case, the County should deny the zoning change that the owners of DS-24 have requested.

Sincerely,



J. David Garmon, MD

President, Tubb Canyon Desert Conservancy

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Close up of a burrowing owl "pellet" (~2 inches long). Fur, bones, insect chitin and other indigestible parts of prey collect in the bird's gizzard where they are compressed into a pellet form, then regurgitated by the owl. Note the leg bones and piece of rodent skull above the pellet. Several pellets were taken from the DS-24 site as tangible, physical proof of the burrowing owl's existence on the property.

Photo by L. Paul



Burrowing Owl (*Athene cunicularia*) near property. Burrowing owls are a California Dept. of Fish & Wildlife Species of Special Concern. Photo by Thad McManus (used with permission)

Active burrowing owl burrow on the DS-24 property proposed for complete grading and leveling. Red arrows (upper left of image) indicate greyish owl pellets above the hole (located just left of one "observation perch" in the creosote bush that extends over the burrow's entrance). There is a back entrance (exit) to the burrow on the other side of the bush.

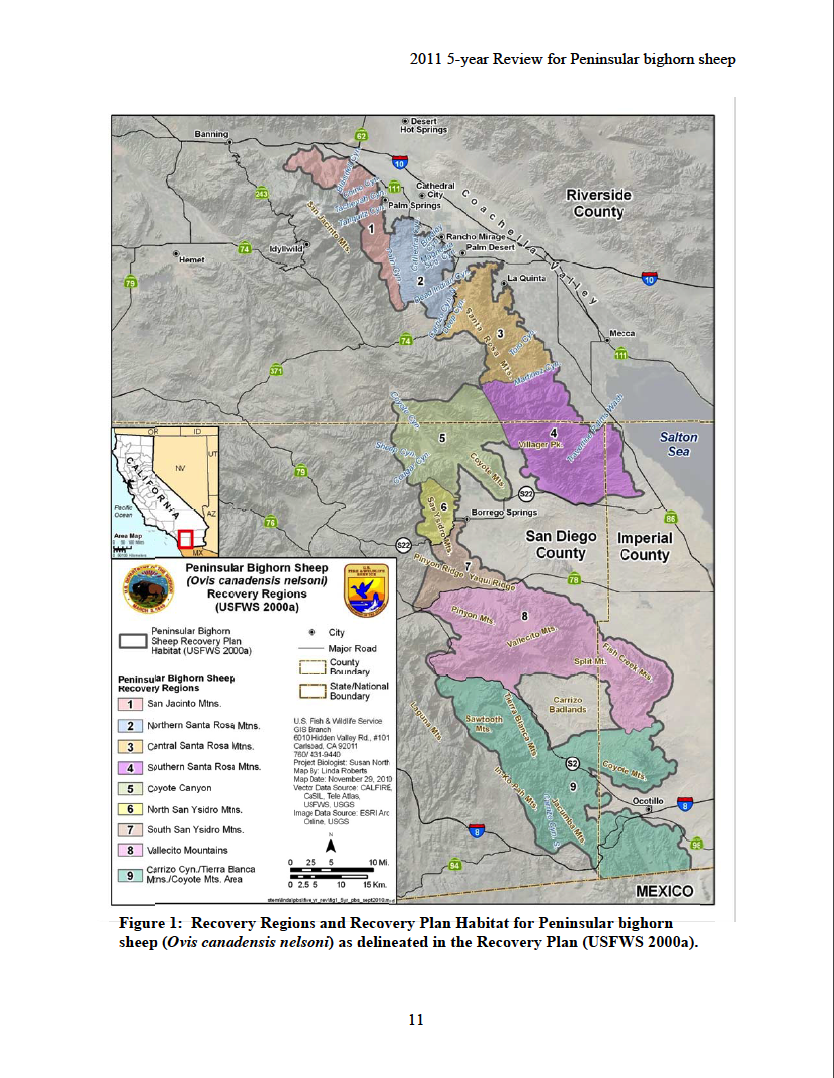
Photo by L. Paul



Burrowing Owls on DS-24 Parcels



**DS-24**



**DS-24**

DS-24 is located at the boundary of the South San Ysidro Mountains / Region 7 of the Recovery Plan Habitat for the federally listed (endangered) Peninsular Bighorn Sheep. [Map excerpted from page 11 of the “Peninsular Bighorn Sheep (*Ovis Canadensis nelsonii*) 5-Year Review” by the U.S. Fish and Wildlife Service, April 21, 2011. Estimated location of DS-24 parcels added.]

1. Borrego Springs Community Plan, LU-2.1.1, pg. 27. [↑](#footnote-ref-1)
2. <http://www.darksky.org/idsp/communities/>, as viewed 21 January 2018 [↑](#footnote-ref-2)
3. This list is not all inclusive and simply highlights the most critical points set forth in this letter. [↑](#footnote-ref-3)
4. California Pub. Res. Code §21000, *et seq.* [↑](#footnote-ref-4)
5. CEQA defines a “significant effect on the environment” as “a substantial, or potentially substantial, adverse change in the environment” (CEQA §§ 21068; see also, California Code of Regulations § 15382). [↑](#footnote-ref-5)
6. *See* *Proliferation Of Argentine Ants In California Linked To Declines In Coastal Horned Lizards,* UCSD Science and Engineering Press release, February 26, 2002, <http://ucsdnews.ucsd.edu/newsrel/science/mclizard.htm> [↑](#footnote-ref-6)
7. Moreover, in 2007, there was a proposed Taxonomic Revision of the *Designation of Critical Habitat for the Peninsular Bighorn Sheep*, which highlighted the Anza Borrego Desert as a significant portion of their critical habitat. This revision indicates that many of the areas of critical habitat within the Anza Borrego will require “special management” in order to “decrease the effects of human disturbance.” [↑](#footnote-ref-7)
8. Moreover, it is important to note that 233 acres of the proposed mitigation land is currently owned by Tim Skogen, not the developer of the Project. In fact, Mr. Skogen has made it clear that he has no intention of selling that land to the proponents of the Project. [↑](#footnote-ref-8)
9. In addition, such diversion is strictly prohibited pursuant to San Diego County Code, Ordinance 9426, Part G, section G.3.1.2, which states: “Measures to control flow rates and velocities shall not disrupt flows and flow patterns that are necessary to support downstream wetlands or riparian habitats. Diversion of runoff to regional facilities shall not be allowed to deprive immediate downstream habitats of the minimum flows and /or over-bank flow events they need.” [↑](#footnote-ref-9)
10. See for example, the concerns outlined by the Borrego Water District, *Groundwater Management Study March 2001*, available at http://www.borregowd.org/Downloadable\_Files.html, p. 26). [↑](#footnote-ref-10)
11. *Id*. [↑](#footnote-ref-11)
12. See, Borrego Water District, *Groundwater Management Study March 2001*, available at <http://www.borregowd.org/Downloadable_Files.html>. [↑](#footnote-ref-12)
13. Mike Lee San Diego Union Tribune. Aquifer is Drying Up in Borrego Springs, <http://signonsandiego.printthis.clickability.com/pt/cpt?action=cpt&title=Aquifer+is+dryin>... (April 4, 2008, last accessed on April 11, 2008). [↑](#footnote-ref-13)
14. It must be noted that in certain limited instances, the majority protest can be over-ridden by the local legislative body; the Board of Supervisors. Flood control facilities are one example of public improvements for which the majority protest over-ride is possible [↑](#footnote-ref-14)
15. In many aspects, including the lack of clarity as to how the TIF will be applied, this Transportation Analysis fails to address the points raised in the proposed Memorandum of Understanding attached as Exhibit C to the County of San Diego’s August 29, 2006 letter addressing the Project application for a Tentative Map. [↑](#footnote-ref-15)
16. Ltr. from William Stocks, Project Manager, Regulatory Planning Division, County of SD, DPLU, to David Davis (August 29, 2006), Attachment J. [↑](#footnote-ref-16)