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**Re: Ormond Beach Specific Plan Recirculated Draft Environmental Impact Report – State Clearinghouse No. 2005091094**

Dear Ms. Mallory:

These comments are submitted by the Environmental Defense Center on behalf of the Sierra Club, Los Padres Chapter regarding the City of Oxnard's Ormond Beach Specific Plan Recirculated Draft Environmental Impact Report ("RDEIR").

The Sierra Club, Los Padres Chapter ("Sierra Club") has been involved for many years with efforts to protect sensitive coastal habitat areas at Ormond Beach and protection of Ormond Beach is its highest environmental priority for Ventura County. The Sierra Club has submitted comments on prior iterations of the environmental impact report.

The Environmental Defense Center ("EDC") is a non-profit, public interest law firm that represents community organizations in matters affecting California's southern coastal environment. The EDC protects and enhances the environment through education, advocacy and legal action.

Section numbering in this comment letter is intended to replicate the section numbering in the RDEIR.

## **Introduction**

In May 2007, the City of Oxnard previously released a draft environmental impact report (“draft EIR”) evaluating the potential environmental impacts of the Ormond Beach Specific Plan. Following a 60 day public comment period, the City determined that several sections warranted additional analysis, including water resources, biological resources, air quality, and the alternatives discussion.<sup>1</sup> As a result, the City decided to republish and recirculate the entire EIR, rather than just selected sections.<sup>2</sup>

We appreciate the City’s commitment to attempt to address the issues that were raised during the comment period. Unfortunately, the RDEIR contains a significant number of inadequacies. These include the following:

- The RDEIR does not comply with CEQA requirements for a legally adequate Project description.
- The RDEIR does not comply with CEQA requirements for analyzing cumulative impacts. In some instances, the RDEIR does not even consider cumulative impacts.
- The RDEIR’s water resources impact analysis fails to identify sufficient water supplies, fails to account for the effects of climate change on water supply, and fails to identify adequate mitigation to reduce or avoid the impacts to water supply.
- The RDEIR fails to evaluate the Project’s impacts on global climate change.
- The RDEIR fails to identify biological resources in the Project area, fails to account for the effects of climate change on biological resources in the Project area, fails to identify adequate mitigation to reduce or avoid impacts to biological resources, and, as a result, fails to identify Class I impacts to biological resources including sensitive and endangered species.
- The RDEIR fails to evaluate the Project’s consistency with the 2020 General Plan.
- The RDEIR understates agricultural impacts and fails to adequately mitigate agricultural impacts.

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<sup>1</sup> City of Oxnard. 2008. Notice of Availability/Notice of Completion for Environmental Impact Report No. 05-03: North and South Ormond Beach Recirculated Draft Environmental Impact Report State Clearinghouse Number 2005091094. Jul 21.

<sup>2</sup> Id.

- The RDEIR fails to identify, consider, and compare the merits of a reasonable range of alternatives.

In addition, the public participation process surrounding the RDEIR has been subject to several procedural problems.

The correction of these and other deficiencies that are discussed below will result in “significant new information” being added to the EIR and will require recirculation.<sup>3</sup>

## **2.0 Project Description**

The RDEIR does not comply with CEQA requirements for a legally adequate Project description.

*The Project description does not provide sufficient detail for evaluation and review of environmental impacts*

A project description must contain sufficient detail to support the evaluation and review of environmental impacts in the EIR.<sup>4</sup> The description must include the project’s “technical, economic, and environmental characteristics.”<sup>5</sup> The RDEIR fails to conform to these standards. In particular, the description for the Southern subarea lacks any meaningful details about the characteristics of the Project. (RDEIR at 2-19.) The RDEIR takes just over one page to purportedly describe these “business/research campus, light industrial facilities and harbor-related uses.” This stands in stark contrast to the five pages devoted to the residential development in the Northern subarea (which itself may not be adequate). No actual detail is provided regarding the specific uses of the Southern subarea, only the barest outline.

The inadequate description requires the public to put its “blind trust” in the lead agency, which is counter to “CEQA’s fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials.”<sup>6</sup> The Project description be revised because it impossible to verify the impacts analyses without meaningful details about the Project.

*The Project description is improperly narrow*

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures,

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<sup>3</sup> CEQA Guidelines § 15088.5.

<sup>4</sup> CEQA Guidelines § 15125.

<sup>5</sup> CEQA Guidelines § 15125.

<sup>6</sup> *Laurel Heights Improvement Association v. The Regents of the University of California* (1988) 47 Cal. 3d 376, 404.

assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance.<sup>7</sup>

The Project description is too narrow because the RDEIR presumes that development identified in the City of Oxnard’s General Plan 2020 (“2020 GP”) must occur. Although not explicitly stated, in the Project description, the RDEIR states elsewhere that “offsite alternatives would fail to meet the basic objectives identified in the 2020 General Plan for *the development* of the Study Area . . . .”<sup>8</sup> (RDEIR at 4-3 emphasis added.) This approach misconstrues the purpose and nature of the General Plan. A general plan permits, but does not require development.<sup>9</sup> This is not to downplay the importance of the general plan as a planning document. Certainly, planning decisions must be consistent with a general plan.<sup>10</sup> But a general plan does not require that development identified in the document must occur. The Land Use Element of the 2020 GP itself recognizes the distinction, stating, “the 2020 General Plan *permits* approximately 3500 dwelling units at low-medium density . . . .”<sup>11</sup> However, nowhere in the document is it stated that development of the study area must occur.<sup>12</sup>

*The Project objectives are too narrow and omit key principles intended to guide planning for the Ormond Beach Study Area*

In addition, the Project objectives are limited to 2020 GP objectives identified specifically for new development, but do not include other Project objectives that are identified in the 2020 GP for the Study Area. The RDEIR Project objectives are clearly limited to the objectives identified for “new development” in the Ormond Beach Study Area.<sup>13</sup> (RDEIR at 2-4.) However, the Land Use Element identifies six general “principal areas of concern relating to the Ormond Beach study area”:

- Protection of significant wetlands and other habitat resources and enhancement of degraded resources
- Aesthetics in relation to blighted conditions
- Beach access and recreational use opportunities consistent with Coastal Act resource protection policies
- Need for visitor serving facilities
- Desirability of providing for a variety of housing types
- Desirability of relocating certain existing land uses in the study area<sup>14</sup>

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<sup>7</sup> *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal App. 3d 185, 192-193 (italics in original).

<sup>8</sup> We disagree with this conclusion as discussed below regarding Project alternatives.

<sup>9</sup> The 2020 GP Housing Element does not assume that the Ormond Beach area would contribute to satisfying the City’s housing needs within the time frame covered. (RDEIR at 3.7-4.)

<sup>10</sup> *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 540.

<sup>11</sup> Land Use Element at V-41 (emphasis added).

<sup>12</sup> Land Use Element at V-40 – V-43.

<sup>13</sup> See also, Land Use Element at V-41-43.

<sup>14</sup> Land Use Element at V-41.

It is from these principles that the City identified the development objectives (identified in the Project description), resource enhancement goals<sup>15</sup> (not included in the Project description), and “anticipated” land uses<sup>16</sup> for the study area. Other sections of the RDEIR identify this broader list of objectives. (e.g., RDEIR at 3.7-3 and 5-4) They are, however, conspicuously absent from the Project description. The RDEIR must be revised to include all of the applicable principles and objectives for this planning area.

The Project description in the RDEIR must also be revised to include an underlying Project purpose in the statement of objectives.<sup>17</sup> This should be stated as:

The underlying purpose of the Project is the consideration of potential land use changes in the Ormond Beach study Area, as guided by the City of Oxnard’s 2020 General Plan. Potential land use changes have been proposed in two Specific Plans – the Southshore Specific Plan and the South Ormond Beach Specific Plan.

In addition, in accordance with the discussion above, the Project objectives must also be revised to include, as the first consideration, the six areas of concern identified in the 2020 GP Land Use Element. The Project objectives currently in the RDEIR can remain, but by their own terms, they are only properly considered with respect to new development.

The improperly narrow Project objectives result in an inadequate articulation of alternatives in the RDEIR and also cause the RDEIR to mischaracterize the ability of alternatives to meet Project objectives. These inadequacies are discussed below in the Project Alternatives section.

*The Project objectives are described inconsistently in the RDEIR*

A second problem with the Project description is that it is described inconsistently within the document. “An accurate and stable project description is the *sine qua non* of an informative and legally sufficient EIR.”<sup>18</sup> The Project objectives (which are otherwise too narrow as discussed above) described in Section 2.2 of the RDEIR are different than the Project objectives described in Section 4.0 of the RDEIR (Project Alternatives). Section 4.0 summarizes the Project objectives. (RDEIR at Table 4-1.) However, this summary tends to eliminate or downplay mention of open space, coastal and resource protection. For example, the third “thematic objective” in Table 4-1 – “Address historic functional issues and management and improve appearance of area” eliminates reference to the more detailed description in the Project objectives of Section 2.2, which included addressing:

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<sup>15</sup> Land Use Element at V-43.

<sup>16</sup> Land Use Element at V-41.

<sup>17</sup> There is currently no statement of underlying purpose in the RDEIR. CEQA Guidelines § 15124(b).

<sup>18</sup> *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal App. 3d 185, 193 (italics in original).

- Inappropriate and environmentally damaging use of ocean front area;
- Poor water management in the study area and related adverse effects on wetlands resources;
- Relocation or removal of the Halaco Engineering Company facility and restoration of the site; and
- A broad mix of residential, commercial and open space uses that will create an overall appearance comparable to, or superior to the northern portion of the City.

The objectives identified in Section 4.0 are thus a narrower list of Project objectives. This narrower list was apparently used to consider, compare, and eliminate Project alternatives. (RDEIR at 4-1- “These thematic objectives, which are summarized in Table 4-1, are the basis for the comparative analysis of the merits of the Project Alternatives”.) This is precisely the outcome that an accurate and stable project description is intended to avoid.

*The RDEIR fails to identify all necessary agency actions for the Project*

Lastly, the Project description fails to identify the full scope of related environmental review and consultation requirements mandated by federal, state, and local law.<sup>19</sup> Specifically, Section 2.4.1 fails to identify the need for the City of Oxnard to issue a coastal development permit for the subdivision of two parcels in the Southern Subarea – 231-0-040-195 and 231-040-200. Both parcels lie partially within the Coastal Zone and will need to be subdivided in accordance with the Project description, which states that the Southern portion of these parcels will remain under County jurisdiction, while the Northern portion of these parcels will be annexed by the City and require a change in zoning consistent with conversion to light industrial use. (See also RDEIR Fig. 2-4.) This division of the lots will require a coastal development permit.<sup>20</sup>

The RDEIR asserts at 3.7-10 that a coastal development permit is not required because “[n]one of the land within the Coastal Zone is proposed for development as part of the Specific Plan and the applicants are not seeking to subdivide the parcels as part of their current application.” The Coastal Act, however, defines “development” to include:

Change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits . . . .<sup>21</sup>

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<sup>19</sup> CEQA Guidelines § 15124(d)(1)(c).

<sup>20</sup> Pub. Resources Code §§ 30106, 30600.

<sup>21</sup> Pub. Resources Code § 30106.

Coastal Commission staff confirm that any re-division of land requires a coastal development permit.<sup>22</sup> The applicant and the lead agency cannot avoid this fact by deferring application for the subdivision to some future date.

## **3.2 Geology and Geologic Resources**

### **3.2.3.3 Cumulative Impacts**

The geologic resources cumulative impact analysis does not comply with CEQA and therefore fails to disclose potentially significant cumulative impacts. A cumulative impact “consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.”<sup>23</sup> Cumulative impact analysis is required in an EIR because “[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum.”<sup>24</sup> A cumulative impact is considered significant when the project’s incremental effect is cumulatively considerable.<sup>25</sup>

To properly assess whether the potential cumulative impacts of a project may be significant, a lead agency must first consider the project’s effects in connection with the effects of past projects, other current projects, and probable future projects to determine whether the combined effects would be cumulatively significant.<sup>26</sup> To do so, a lead agency may either:

- A) Discuss “a list of past, present, and probably future projects producing related or cumulative impacts including, if necessary, those projects outside the control of the agency” (“list method”), or
- B) Discuss “a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact (“summary of projections method”).<sup>27</sup>

Once a lead agency has determined whether the combined effects of all projects would be cumulatively significant, then it must consider whether the project’s incremental effects are cumulatively considerable.<sup>28</sup> The RDEIR must always, in the first instance, however, consider the project in light of past, present and probable future projects.

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<sup>22</sup> Christensen, Deanna (California Coastal Commission, Coastal Program Analyst). 2008. Personal Communication to Karen Kraus. Sep 17.

<sup>23</sup> CEQA Guidelines § 15130(a)(1).

<sup>24</sup> *Whitman v. Board of Supervisors* (2d Dist. 1979) 88 Cal. App. 3d 397, 408.

<sup>25</sup> CEQA Guidelines §§ 15130(a), 15065(a)(3).

<sup>26</sup> CEQA § 21083; CEQA Guidelines § 15065(a)(3).

<sup>27</sup> CEQA Guidelines § 15130(b)(1).

<sup>28</sup> *Communities for a Better Environment v. California Resources Agency* (3d Dist. 2002) 103 Cal. App. 4<sup>th</sup> 98, 120.

The geologic resources cumulative impacts discussion fails to consider the Project in light of past, present and probable future projects. It does not comply with either method identified in the CEQA Guidelines. The discussion makes no effort to identify any past, current, or future projects. (RDEIR at 3.2-27.) Although the discussion does identify a Class II impact, the two sentence “analysis” is conclusory and utterly devoid of any meaningful information. It also fails define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>29</sup> It is thus impossible to discern whether it discloses the full scope of potential impacts and whether identified mitigation is adequate.

### **3.3 Water Resources**

#### *Water supply assessment and verification is inadequate*

With a project of this size, it must be demonstrated, as a general matter, that total projected water supplies available during normal, single-dry and multiple-dry water years during a 20-year projection will meet projected water demand for the Project in addition to existing and planned future uses.<sup>30</sup> If this demonstration cannot be made, then other water supplies must be demonstrated.<sup>31</sup>

The RDEIR asserts that “it will have a reliable portfolio of water supplies to meet anticipated demand for both the project and the presumed cumulative development anticipated under the City’s current General Plan. (RDEIR at 3.3-46.) However, this conclusion is belied by the potential 5 year gap in water supply identified elsewhere in the RDEIR:

The potential construction timing disconnect between capacity and delivery capability may result in the City’s continued reliance on its currently available sources into the period between 2010 and 2016 (Kennedy/Jenks, May 2007). In other words, there may be a delay in the availability of the groundwater credits and recycled water delivery capability anticipated from the initial phase of the GREAT Program. (RDEIR at 3.3-30.)

The RDEIR fails to demonstrate how the City will acquire water supply to remedy this potential 5 year gap. The demand reduction program suggested in the RDEIR does not comport with the requirements of SB 610 or SB 221.<sup>32</sup> The impact analysis in the RDEIR incorrectly presumes there will be no impacts to water supply.

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<sup>29</sup> CEQA Guidelines § 15130(b)(3).

<sup>30</sup> Water Code § 10910(c); Gov. Code § 66473.7(a).

<sup>31</sup> Water Code § 10910(c)(3), 10911(a); Gov. Code § 66473.7(d).

<sup>32</sup> Water Code § 10910(c)(3), 10911(a); Gov. Code § 66473.7(d).

The water supply assessment and verification also fail to properly consider the potential impacts of climate change on water supply, and are therefore inadequate. This issue is discussed in more detail below.

The RDEIR must be revised to correct these errors. The underlying water supply assessments and verification must also be corrected.

### **3.3.1.2.7 Climate Change Effects on Water Supplies**

The water resources impact analysis does acknowledge that global climate change may impact water supply. Unfortunately, other than recognizing that climate change is relevant to water supply, the RDEIR otherwise fails to consider the effects of climate change on the Project. (RDEIR at 3.3-38.)

CEQA requires the analysis of any significant effects a project might cause “by bringing development and people into the area affected.”<sup>33</sup> This Project would bring in up to 1200 residential units, as well as an unspecified number and type of industrial and business uses, into a region that is already tight on water supply. It is quite likely that the effects of climate change may exacerbate this Project’s impacts on water supply. Climate change effects may also reduce the effectiveness of identified mitigation measures and the RDEIR must include a discussion of these effects. The RDEIR relies on a complicated and interrelated series of water sources to demonstrate supply for this Project, and a reduction or loss of just one of those supplies could tumble the “house of cards” built to supply this Project with water.

The RDEIR dismisses climate change effects as speculative and uncertain. As discussed below, the likelihood and effects of climate change are far from uncertain. The Department of Water Resources (DWR) has prepared a comprehensive study of the potential impacts of climate change on the State Water Project, a significant source of water for this area and for the Project.<sup>34</sup> The information in this report should be clearly explained in the RDEIR, including a discussion of how the scenarios identified by DWR could potentially impact the water supply for the Project, as well as existing and planned future users.<sup>35</sup> This approach would properly disclose to the public and to decision makers the potential for climate change to exacerbate the Project’s impacts on water supply. The RDEIR should similarly identify, discuss and incorporate other information regarding the effects of climate change on water supply.

### **3.3.4.4 Mitigation**

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<sup>33</sup> CEQA Guidelines § 15126.2.

<sup>34</sup> Department of Water Resources. 2006. Progress on Incorporating Climate Change into Planning and Management of California’s Water Resources: Technical Memorandum Report. Jul. [Attached]

<sup>35</sup> The DWR report notes that its report is not sufficient in itself “to make policy decisions.” This does not mean that the information should be ignored by decision makers, as the RDEIR suggests. (RDEIR at 3.3-39.)

The RDEIR purports to impose “design, construction, and occupancy BMPs to protect sensitive riparian, wetland, and marine environments, reduce adverse affects to runoff water quality, and treat runoff generated by the community development and residential-occupancy phases to existing condition and levels.” (RDEIR at 3.3-104.) However, the RDEIR itself does not impose such requirements, but defers them to the Specific Plans. Lead agencies may not defer preparation of mitigation plans.<sup>36</sup> Notwithstanding this prohibition, mitigation measures may specify performance standards, but the BMPs identified in the RDEIR do not comport with this exception. The BMPs identified “are not meant to be an exhaustive list,” but only a “guide.” (RDEIR at 3.3-104.) They are not required to be implemented (RDEIR at 3.3-104.) They cannot thus be relied on to reduce adverse impacts.

### **3.3.3.3 Cumulative Impacts**

The water resources cumulative impact analysis does not comply with CEQA and therefore fails to disclose potentially significant cumulative impacts.

The water resources cumulative impacts discussion fails to consider the effects of the Project in light of past, present and probable future projects. It does not comply with either method identified in the CEQA Guidelines. The water supply cumulative impacts discussion makes no effort to identify any past, current, or future projects. (RDEIR at 3.3-102.) The “analysis” is completely conclusory and utterly devoid of any meaningful information. It also fails to define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>37</sup> It is thus impossible to discern whether it discloses the full scope of potential impacts and whether identified mitigation is adequate.

The Flood Control and Stormwater Drainage cumulative impacts discussion is similarly flawed. It vaguely mentions “new development” and also identifies a few “approved Specific Plan areas.” If using the list method, the analysis falls short by failing to identify a full list of past, present, and probable future projects. If relying on the summary of projections method, the analysis fall short because it fails to explain that the “approved Specific Plan areas” have been evaluated in a prior environmental document that has been adopted or certified, referencing and making those documents available to the public, and explaining how the environmental documents describe or evaluate the regional or area wide conditions contributing to the cumulative impact.<sup>38</sup> In addition, this portion of the cumulative impact analysis fails to even consider the full Project, considering only the Northern Subarea. (RDEIR at 3.3-103.) It also fails to define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>39</sup>

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<sup>36</sup> CEQA Guidelines § 15126.4(a)(B).

<sup>37</sup> CEQA Guidelines § 15130(b)(3).

<sup>38</sup> CEQA Guidelines §§ 15130(b)(1)(B) and (d).

<sup>39</sup> CEQA Guidelines § 15130(b)(3).

The Wastewater Collection and Treatment cumulative impacts discussion appears to rely on analyses in the Wastewater Collection System Master Plan. Again, if the RDEIR intends to rely on the summary of projections method, the analysis falls short because it fails to explain whether the Wastewater Collections System Master Plan has been evaluated in a prior environmental document that has been adopted or certified, to reference and make this document available to the public, and to explain how the environmental document describes or evaluate the regional or area wide conditions contributing to the cumulative impact.<sup>40</sup> It also fails define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>41</sup>

### **3.4 Air Quality**

#### **3.4.3.3 Cumulative Impacts**

The air quality cumulative impact analysis does not comply with CEQA or with applicable Ventura County APCD guidance and therefore fails to disclose potentially significant cumulative impacts. The RDEIR states that it follows the Ventura County APCD Air Quality Assessment Guidelines for evaluating cumulative air quality impacts, but fails to actually do so. (RDEIR at 3.4-21.) For example, the RDEIR purports to follow the procedures for projects “conforming to applicable general plans.” (RDEIR at 3.4-21). This is inappropriate since this Project does not conform to the 2020 GP and will require general plan amendments in order to proceed. (RDEIR at 2-20.) Furthermore, the RDEIR does not even accurately follow these provisions. Step 2 of the Guidelines is to “Determine the current estimated population of the growth area.” The RDEIR fails to identify any population estimates anywhere in the discussion. The remaining steps are similarly disregarded. The RDEIR thus fails to disclose any meaningful basis for its conclusion that the proposed Project is consistent with the Ventura County AQMP and thus without cumulative air quality impacts.

The RDEIR discussion otherwise fails to consider the effects of the Project in light of past, present and probable future projects. It does not comply with either method identified in the CEQA Guidelines. It also fails define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>42</sup>

#### **3.4.3.6 Global Climate Change**

One of the stated reasons for recirculating the draft EIR was to address the subject of global climate change, which was not included in the draft EIR. While we appreciate that the lead agency has now included a discussion of this subject in the RDEIR, there are nonetheless multiple and significant deficiencies with this discussion.

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<sup>40</sup> CEQA Guidelines §§ 15130(b)(1)(B) and (d).

<sup>41</sup> CEQA Guidelines § 15130(b)(3).

<sup>42</sup> CEQA Guidelines § 15130(b)(3).

*The RDEIR's summary of the state of science is flawed*

The RDEIR's summary of the scientific background includes statements that minimize or discount the scientific consensus regarding the causes and effects of climate change. This primarily results from the RDEIR's unbalanced reliance on outdated references, e.g., US EPA 2000 (RDEIR at 3.4-30) and IPCC 2001 (RDEIR at 3.4-32). The RDEIR's reliance on these outdated references suggests that significant uncertainty exists where it does not. This approach is not consistent with the "good faith effort at full disclosure" required under CEQA.<sup>43</sup> For example, the RDEIR cites to IPCC 2001 to support statements that scientific uncertainty remains about the extent to which human activity causes climate change. (RDEIR at 3.4-32). The RDEIR fails to report, however, that IPCC 2007 (which is referenced elsewhere in the RDEIR discussion) concludes, based on all available evidence, that it is very likely (+90%) that human activities are warming the planet.<sup>44</sup> Furthermore, as reported by the State Attorney General, multiple major scientific bodies in the United States with relevant expertise have issued reports or statements that confirm the IPCC's conclusion, including The National Academy of Sciences, The American Meteorological Society, The American Geophysical Union, and The American Association for the Advancement of Science.<sup>45</sup>

In addition, none of the references cited by the RDEIR in the global climate change analysis are identified in the References section. Without the full citation, readers know only the date and author of the reference and have no way of reviewing the actual source of information upon which the RDEIR relies. This makes it impossible for the public and decision makers to independently evaluate the statements and conclusions made in the RDEIR.<sup>46</sup>

*The RDEIR fails to consider impacts of climate change on the Project*

The RDEIR summarizes the potential effects that "could be experienced in California" as a result of climate change, but fails to consider any of these effects on the Project itself. (RDEIR at 3.4-32 – 3.4-34). The effects of global climate change may exacerbate this Project's impacts or reduce the effectiveness of identified mitigation measures and the RDEIR must include a discussion of these effects.<sup>47</sup> Of note is the fact that the RDEIR does discuss climate change impacts in the water supply impact analysis (RDEIR at 3.3-38 – 3.3-40.) Although that analysis is less than adequate, the fact that it is included it that discussion, makes the omission in every other impact analysis area all the more glaring.

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<sup>43</sup> CEQA Guidelines § 15151.

<sup>44</sup> Intergovernmental Panel on Climate Change (IPCC). 2007. Climate Change 2007: Synthesis Report. [Attached]

<sup>45</sup> California Office of the Attorney General. 2008. <http://ag.ca.gov/globalwarming/contrarians.php>. Global Warming Contrarians and the Falsehoods they Promote. Webpage viewed Aug 30. [Attached]

<sup>46</sup> *Santiago Water District v. County of Orange* (4<sup>th</sup> Dist. 1981) 1881 Cal. App. 3d 818, 831 (the public and decision makers should have before them the basis for the agency's opinion so as to enable them to make an independent, reasoned judgment).

<sup>47</sup> CEQA Guidelines § 15126.2.

*The RDEIR fails to adequately analyze Project's impacts on climate change*

The RDEIR asserts that because CARB and VCAPCD have not provided a methodology to establish “an appropriate baseline, to develop a project-level inventory for the project, or to evaluate the significance of [greenhouse gas] emission changes”, it is currently too speculative to evaluate climate change impacts at a local level and impossible to assign mitigation. (RDEIR at 3.4-38 – 3.4-39). As explained below, this approach is flatly inconsistent with CEQA requirements. It also ignores available guidance regarding the evaluation of climate change impacts under CEQA.

Baseline. The Project's baseline, or environmental setting, is the physical environmental conditions in the vicinity of the project as they exist at the time the Notice of Preparation is published.<sup>48</sup> As described at 3.4-39:

The Ormond Beach Study area is currently in agricultural production. On a continuous basis, there is minimal existing measurable level of greenhouse gas emissions associated with the current agricultural production.

This is an accurate assessment of the Project's baseline, as defined by the CEQA Guidelines. In contrast, statements in the RDEIR that Project greenhouse gas emissions are not “new,” but simply shifted from other residential locations (see, e.g., 3.4-39 and 3.4-41) are inconsistent with the CEQA Guidelines, inconsistent with the RDEIR's own description of the Project baseline, and wholly speculative.<sup>49</sup>

Greenhouse Gas Emission Inventory. The RDEIR fails to include a complete and adequate inventory of greenhouse gas (GHG) emissions. The RDEIR's inadequacies cannot be excused by its assertion that CARB and the VCAPCD have not yet provided a methodology to develop an inventory for the Project. (RDEIR at 3.4-48.) There are guidance documents available from reputable agencies that identify methodologies to develop GHG inventories.<sup>50</sup> However, even without such guidance, CEQA requires that an EIR “provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences,” and that the document make “a good faith effort at full disclosure.”<sup>51</sup> As noted in *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344,

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<sup>48</sup> CEQA Guidelines § 15125.

<sup>49</sup> See, e.g., *Center for Biological Diversity v. City of Desert Hot Springs* #RIC464585 (Riverside County Superior Court, August 6, 2008) (assumption that GHG emissions from new housing development would displace GHG emissions from old housing development was speculative and unlikely).

<sup>50</sup> See, e.g., Office of Planning and Research. 2008. CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review. Jun 17. (Attachment 2) [Attached]; California Air Pollution Control Officers Association (CAPCOA). 2008. CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions From Projects Subject to the California Environmental Quality Act. Jan. (ch. 8) [Attached].

<sup>51</sup> CEQA Guidelines § 15151.

1370-71, the fact that a single methodology does not exist for quantifying an impact does not excuse the lead agency from analyzing the issue. Instead, the agency must “*use its best efforts to find out and disclose all that it reasonably can*” and must conduct a “*thorough investigation*” (emphasis in original; citing CEQA Guidelines §§ 15144, 15145). The RDEIR falls far short of this standard.

The RDEIR identifies only a portion of the direct GHG emissions associated with the Project – natural gas consumption and motor vehicle use (construction and operation). Other direct emissions that must be considered include:

- Manufacturing and transport of building materials;
- Electricity generation and transmission for the heating, cooling, lighting and other energy demands of buildings;
- Water supply<sup>52</sup> and transportation to the project;
- Fugitive emissions, such as methane leaks from pipeline systems and leaks of HFC from air conditioning systems;
- Wastewater and solid waste storage or disposal, including transport where applicable.

The inventory must also identify and evaluate indirect emissions and growth inducing impacts.<sup>53</sup>

In addition, the GHG emission inventory discussion is so cursory and vague that it renders the entire analysis insufficient. There is no description anywhere in the RDEIR of the basis for emissions that are included. What, for example, is the scope of vehicle emissions that were evaluated? Were emissions from development in both the Northern Subarea and the Southern Subarea inventoried?<sup>54</sup> A complete lack of supporting data and modeling analyses further compounds this inadequacy. For example, although it identifies the use of the URBEMIS 2007 9.2.4 Model, the RDEIR fails to disclose any assumptions underlying the use of this model or whether it was modified at all to evaluate this Project. CAPCOA’s January 2008 *CEQA and Climate Change*, identifies several shortfalls of the URBEMIS model.<sup>55</sup> However, it is impossible to discern whether the RDEIR corrects for these shortcomings.

Perhaps in an attempt to veil these significant flaws in its GHG inventory, the RDEIR makes spurious, unsupported assertions, such as “new residential development

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<sup>52</sup> See, e.g., Office of Planning and Research. 2008. CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review. Jun 17. (p 5). [Attached]

<sup>53</sup> CEQA Guidelines § 15358(a)(1).

<sup>54</sup> The description of “area sources” only mentions “residences.” (RDEIR at 3.4-42). Following an inquiry to planning staff, some information was provided to EDC two weeks prior to the RDEIR comment deadline. Mallory, Kathleen. 2008. Email to Karen Kraus RE Ormond Beach DEIR GHG Modeling. Sep 8. [Attached]. This is an insufficient period of time to review the data, and in any case, providing information to EDC does not satisfy the lead agency’s obligation to disclose this information to the public in the RDEIR.

<sup>55</sup> CAPCOA 2008 at 59-63.

does not necessarily create entirely new GHG emissions,” and “an individual project cannot generate enough greenhouse gas emissions to influence global climate change.” (RDEIR at 3.4-41).

Significance Determination. Even for those GHG emissions that it does identify, the RDEIR fails to include an analysis of the Project’s potential impacts on global climate change. The RDEIR concludes that an impact evaluation would be “speculative” based on several purported reasons. (RDEIR at 3.4-39 – 3.4-40). The litany of stated reasons, however, boils down to two untenable excuses – 1) scientific uncertainty regarding climate change impacts to the environment ; and 2) lack of guidance and methodology for assessing Project specific impact on global climate change.

The IPCC, Union of Concerned Scientists, and the California Climate Change Center have published several studies that identify how climate change will affect the environment.<sup>56</sup> In California alone, an increase in GHG emissions will result in the following global warming effects:<sup>57</sup>

- Loss in Sierra snow pack
- Increase in sea level rise
- More heat wave days in major urban centers
- Increase in heat-related deaths
- Increases in ozone formation (smog)
- More critically dry years
- Decrease in forest yields
- Increases in large wildfires
- Increased electricity demand

Even effective lowering of current emissions will result in a 3.0 – 5.4% increase in temperature and all of the aforementioned impacts. Less effective lowering of current emissions will result in a 5.5 – 10.4% increase in temperature and enormous impacts to the State.<sup>58</sup>

The concern about climate change has increased recently due to the realization that there is a “lag time” between the changes in the environment and the warming effect. Scientists now agree that “the climate system will continue to change for many decades

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<sup>56</sup> Union of Concerned Scientists. 2006. California Global Warming Impacts and Solutions, available at [http://www.ucsusa.org/clean\\_california/ca-global-warming-impacts.html](http://www.ucsusa.org/clean_california/ca-global-warming-impacts.html); California Climate Change Center reports are available at <http://calclimate.berkeley.edu/research.html> and include: Baldocchi and Wong, 2006; Battles et al., 2006; Cavagnaro et al., 2006; Cayan et al., 2006a; Cayan et al., 2006b; Cayan et al., 2006c; Drechsler et al., 2006; Franco and Sanstad, 2006; Fried et al., 2006; Gutierrez et al., 2006; Joyce et al., 2006; Lenihan et al., 2006; Luers et al., 2006; Luers and Moser, 2006; Medellin et al., 2006; Miller and Schlegel, 2006; Moritz and Stephens, 2006; Viciuña, 2006; Viciuña et al., 2006; Westerling and Bryant, 2006.

<sup>57</sup> Union of Concerned Scientists. 2006. Climate Change Campaign: California Global Warming Impacts and Solutions. Feb.

<sup>58</sup> Id.

(centuries for sea level) even in the absence of future changes in atmospheric composition.”<sup>59</sup> Some warn that we may be approaching the “point of no return.”<sup>60</sup> Others note that global temperatures can “change substantially in only a decade or two” and that we could be on the path to another rapid change in climate temperatures and resulting effects.<sup>61</sup> Accordingly, the pressure on modern society to cease contributing to climate change through greenhouse gas emissions is even greater than previously thought. In *The Winds of Change*, environmental journalist Eugene Linden notes the significant micro repercussions that global warming is already having on our society, both in terms of actual damages from intense storms and hurricanes, but also through rising insurance rates in coastal areas.<sup>62</sup>

As to the lack of guidance and methodologies for assessing Project specific impacts on global climate change, a lack of guidance does not relieve the lead agency from its obligation to evaluate a Project’s environmental impact.<sup>63</sup> However, the RDEIR is incorrect that such guidance does not exist. The Governor’s Office of Planning of Research has issued a Technical Advisory to assist public agencies in assessing climate change issues.<sup>64</sup> Notably, this document states:

Lead agencies should determine whether greenhouse gases may be generated by a proposed project, and if so, quantify or estimate the GHG emissions by type and source. Second, the lead agency *must assess whether those emissions are individually or cumulatively significant.*<sup>65</sup>

Additionally, the California Air Pollution Control Officers Association has issued a resource document identifying approaches to evaluating a project’s impacts on global climate change.<sup>66</sup>

It is correct that there are no local or State established thresholds of significance for evaluating climate change impacts. However, this fact also does not relieve the lead agency of its obligation under CEQA to determine whether the Project may have

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<sup>59</sup> Wigley, T.M.L. 2005. The Climate Change Commitment. *Science* (vol. 37). Mar 18.; Meehl, G.A., et al. 2005. How Much More Global Warming and Sea Level Rise? *Science* (vol. 307). Mar 18.; Karl, T.R. and Trenberth, K.E. 2003. Modern Global Climate Change. *Science* (vol. 32). Dec 5.; Hasselmann, K., et al. 2003. The Challenge of Long-Term Climate Change. *Science* (vol. 302). Dec 12.; Levin, K. and Pershing, J. 2006. *Climate Science 2005: Major New Discoveries*. World Resources Institute. Mar (citing Barnett, T., et al.. 2005. Penetration of Human-Induced Warming into the World’s Oceans. *Science* (vol. 309). Jul 8.

<sup>60</sup> Alley, R.B. 2004. Abrupt Climate Change. *Scientific American*. Nov.

<sup>61</sup> Broecker, W.S. 1995. Chaotic Climate: Global temperatures have been known to change substantially in only a decade or two. Could another jump be in the offing? *Scientific American*. Nov.

<sup>62</sup> Newsweek. 2006. Tides Turning: A new book predicts that climate change is likely to be abrupt and cataclysmic – and that these sudden shifts could cripple national economies. Mar 25.

<sup>63</sup> CEQA Guidelines § 15064(b).

<sup>64</sup> Office of Planning and Research (2008).

<sup>65</sup> Office of Planning and Research (2008) at 5 (emphasis added).

<sup>66</sup> CAPCOA 2008.

significant climate change impacts.<sup>67</sup> A lead agency must meaningfully attempt to quantify a particular impact and determine whether the impact is significant.<sup>68</sup> Here, there is nothing speculative about the fact that 1) new sources of GHG add to existing levels; and 2) the State has determined existing levels are unacceptable and must be reduced within a fixed timeframe.

AB 32 (California's Global Warming Solutions Act) requires that GHG emissions in the state must be reduced to 1990 levels by 2020.<sup>69</sup> This emissions cap is equivalent to a 25% reduction from 2006 levels.<sup>70</sup> Clearly, if emissions must be *reduced*, any new emissions will result in a significant effect.<sup>71</sup>

The failure to find the GHG emissions of the project to be significant is a critical flaw in the RDEIR. Without a finding of significance, the lead agency cannot require mitigation or find other alternatives to be environmentally preferable. In this case, any increase in emissions should be considered significant from both a project-specific and cumulative standpoint.<sup>72</sup>

The RDEIR is thus fundamentally inadequate because it fails to analyze Project specific climate change impacts. It is also inadequate for its failure to analyze cumulative climate change impacts.<sup>73</sup> A project's impacts require a mandatory finding of significance if they are "cumulatively considerable."<sup>74</sup> In a case such as this, where the existing environmental problems are severe, the threshold for determining that a project's

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<sup>67</sup> CEQA Guidelines §§ 15064(b) and 15126(a). See also, Guideline § 15064.7 (which encourages, but does not require adoption of thresholds of significance); and Brown, Edmund G. (Attorney General). 2007a. Letter to Jared Hart (City of San Jose) RE Comments on Draft Environmental Impact Report for Coyote Valley Specific Plan SCH# 2005062017. Jun 17. (disagreeing with City of San Jose's determination that evaluating project's climate change impacts would be speculative without threshold for evaluation). [Attached]

<sup>68</sup> *Berkeley Keep Jets over the Bay Committee v. Board of Port Commissioners*, (2001) 91 Cal. App. 4<sup>th</sup> 1344, 1370-71.

<sup>69</sup> The California Global Warming Solutions Act of 2006, Health and Safety Code §38500 et seq.

<sup>70</sup> 9/27/06 Press Release from the Office of the Governor, available at <http://gov.ca.gov/index.php?print-version/press-release/4111>.

<sup>71</sup> Brown, Edmund G. (Attorney General). 2007. Letter to Maureen Parks (Contra Costa County Planning Commission) RE Comments on the ConocoPhillips Rodeo Refinery Expansion Project and Final Environmental Report (File #LP052048). May 8. (p. 6, ". . . the requirements of AB 32 create a point of reference for determining significance. Because the state is committed to a 25% decrease in GHG emissions, anything that produces a large increase clearly could be an obstacle to complying with AB 32 and should be considered a potentially significant cumulative impact.") [Attached]

<sup>72</sup> See, e.g., CAPCOA 2008 at 27-30. This approach has been taken by other lead agencies. See California State Lands Commission Venoco Ellwood Oil Development DEIR (2008); Marin Countywide Plan Update DEIR (2007); San Diego Association of Governments Regional Transportation Plan DEIR (2007).

<sup>73</sup> See, e.g., *Terminal Plaza Corp. v. City and County of San Francisco* (1<sup>st</sup> Dist. 1986) 177 Cal. App. 3d 892, 904-905 (the fact that a project's cumulative impacts are uncertain does not relieve a lead agency from including such impacts in its analysis).

<sup>74</sup> CEQA §21083(b)(2).

contribution to a cumulative impact is significant is that much lower.<sup>75</sup> Therefore, the RDEIR must fully analyze the Project's cumulative impact on global climate change.

Mitigation. The RDEIR fails to analyze any potential mitigation measures to avoid or minimize the Project's climate change impacts. Here again the RDEIR tries to justify its deficiency by asserting that there is no guidance available on how to adequately control or mitigate GHG emissions. (RDEIR at 3.4-40.) Again, the RDEIR is factually inaccurate as to the existence of relevant guidance.<sup>76</sup> Even without such guidance, the lead agency still has an obligation to identify mitigation measures in an EIR.<sup>77</sup>

The RDEIR includes a table describing how the Project is consistent with the 2006 Climate Action Team (CAT) Report GHG emission reduction strategies. The purpose for including this information in the RDEIR is unclear. If these Project provisions are intended to be mitigation measures, they have been identified without any analysis, so there is no meaningful way for the public or decision makers to determine whether they are feasible or will effectively lessen impacts. On their face however, these provisions are not mitigation as they are part of the Project description. Furthermore, the CAT Report recommendations are general in nature, directed at State agencies, and non-binding. They do not meet CEQA's requirements that mitigation measures be known, effective, feasible, and enforceable.<sup>78</sup>

After completing a meaningful analysis of Project impacts, the RDEIR should discuss and analyze measures that are capable of reducing the Project's GHG emissions. The first priority should be to reduce direct Project-related emissions. When such emissions have been reduced to the greatest extent feasible, the second strategy should be to require the purchase of GHG offsets through a credible program (e.g., the California Climate Action Registry). Through such measures, 100% of the emissions from the Project could be mitigated.

### **3.5 Hazards and Hazardous Materials**

#### **3.5.3.2.3 Cumulative Impacts**

The hazards and hazardous materials cumulative impact analysis does not comply with CEQA and therefore fails to disclose potentially significant cumulative impacts. This cumulative impacts discussion fails to consider the effects of the Project in light of past, present and probable future projects. It does not comply with either method identified in the CEQA Guidelines. The discussion makes no effort to identify any past, current, or future projects. (RDEIR at 3.5-18.) It also fails define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>79</sup> In

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<sup>75</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120.

<sup>76</sup> See, e.g., Office of Planning and Research 2008, Attachment 3; CAPCOA 2008 at Chapter 9 and App. B.

<sup>77</sup> CEQA Guidelines § 15126.4.

<sup>78</sup> CEQA Guidelines § 15126.4.

<sup>79</sup> CEQA Guidelines § 15130(b)(3).

addition, the project specific impact analysis is deferred until completion of future testing (RDEIR at 3.5-18.) Nonetheless, without any information about hazards from other projects, or information about hazards from this project, the RDEIR concludes that cumulative impacts will be less than significant. This conclusion has no basis in substantial evidence. The cumulative impact analysis fails to comply with CEQA, and it is thus impossible to discern whether it discloses the full scope of potential impacts.

### **3.6 Biological Resources**

#### **3.6.1 Existing Conditions**

##### *The RDEIR fails to adequately identify biological resources in the Project area*

An EIR must include “a description of the physical environmental conditions in the vicinity of the project.”<sup>80</sup> This constitutes the baseline conditions by which the lead agency determines whether an impact is significant.<sup>81</sup> In describing the baseline conditions, “special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.”<sup>82</sup> In general:

The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.<sup>83</sup>

As detailed by Mr. David Magney, a specialist in botanical resources and wetlands with extensive experience in the Ormond Beach area, the RDEIR is wholly inadequate in its identification of botanical species.<sup>84</sup> It omits species known to occur in the area, is not based on field surveys, and fails to follow standard survey and assessment protocols.<sup>85</sup> It also understates the likelihood of occurrence in the Project area of species that are rare to the region.<sup>86</sup>

This description of the environmental setting does not provide an adequate baseline by which the lead agency can assess the magnitude of Project impacts. For example, the RDEIR fails to identify any impacts to special status plant species. However, this conclusion is unsupported given the fact that no field surveys were performed.<sup>87</sup> Mr. Magney concludes that significant impacts to special status plant species are likely.

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<sup>80</sup> CEQA Guidelines § 15125(a).

<sup>81</sup> CEQA Guidelines § 15125(a).

<sup>82</sup> CEQA Guidelines § 15125(c).

<sup>83</sup> CEQA Guidelines § 15125(c).

<sup>84</sup> Magney, David L. 2008. Letter to Kathleen Mallory (City of Oxnard) re Comments on the Ormond Beach Specific Plan Recirculated DEIR (SCH 2005091094). Sep 22. [Attached]

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Id.

The RDEIR must be revised to address the inadequate description of the biological resources in the Project area and update the impact analysis in accordance with revised baseline conditions.

### **3.6.3 Project Impacts and Mitigation**

#### *The RDEIR fails to consider the impacts of climate change on the Project*

As discussed above, the RDEIR summarizes the potential effects that “could be experienced in California” as a result of climate change, but fails to consider any of these effects in almost every impact analysis for the Project. (RDEIR at 3.4-32 – 3.4-34.) CEQA requires analysis of any significant effects a project might cause “by bringing development and people into the area affected.”<sup>88</sup>

One of the direct effects of climate change in the Study Area impacting the Project will be sea level rise.<sup>89</sup> In the report, “Overview of Sea Level Rise and Some Implications for Coastal California,” the staff of the California Coastal Commission summarized information about sea level rise and investigated possible side effects to the California coast from a possible acceleration of sea level rise.<sup>90</sup> The report states:

Coastal wetlands will be greatly modified by changes in sea level; however, the consequences will vary with the different wetland areas. *Overall there will be greater areas of inundation.* The change in the intertidal area will depend on local topography, the future change in tidal range, *and the ability of the wetland to migrate both up and inland.* . . .

Wetland changes also will be affected by inland development. Historically, wetland areas migrated both upward and landward as they were inundated. If the inland area has a slope and soil composition that can support a wetland area and is not already developed, then inland migration may be possible.<sup>91</sup>

The RDEIR must discuss how these effects may exacerbate the Project’s impacts on biological resources as well as reduce the effectiveness of mitigation measures.<sup>92</sup> For

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<sup>88</sup> CEQA Guidelines § 15126.2.

<sup>89</sup> The RDEIR states, without any supporting reference, that “sea level could rise as much as two feet along the California Coast.” Recent scientific reports do not put this upper limit on sea level rise. IPCC 2007 at 45.

<sup>90</sup> California Coastal Commission. 2001. Overview of Sea Level Rise and Some Implications for Coastal California. Jun 1. [Attached]

<sup>91</sup> California Coastal Commission 2008 at “Wetlands” (emphasis added).

<sup>92</sup> The 2020 GP also requires the City to “confer with appropriate state and federal agencies and seek information and advice concerning the probability, impacts, and mitigation measures to minimize beach erosion and inundation of coastal development” and to “evaluate specific mitigation measures in EIRs for new development in coastal areas” Safety Element IX-18.

example, the RDEIR fails to take into account the fact that development in the Northern and/or Southern portions of the Study Area will limit the ability of the Ormond wetlands to migrate inland as sea level rises. This may result in loss of wetlands, as well as habitat for sensitive, threatened, and endangered species.<sup>93</sup>

*The RDEIR fails to consider the impact of the Project on the State Coastal Conservancy's Wetland restoration plan*

The California Coastal Conservancy is the steward agency for an Ormond wetland restoration project, and the RDEIR identifies the Coastal Conservancy as a responsible agency in the Project Description for the “[a]pproval of acquisition of 220 acres for restoration purposes. (RDEIR at 2-21.) Notwithstanding this recognition, the RDEIR fails to consider the impact of the Project on the Coastal Conservancy’s plan for the Ormond wetland restoration project.<sup>94</sup> The RDEIR must be revised to describe the Ormond wetland restoration plan and analyze the impacts of the Project on that plan.

*The mitigation measures are inadequate to reduce or avoid identified impacts*

The RDEIR relies on inadequate mitigation measures to reduce Class I and other impacts.

First, the RDEIR improperly defers mitigation of impacts to biological resources.<sup>95</sup> Multiple impacts (primarily indirect impacts to the Ormond wetland area) rely on the “Ormond Beach Natural Resource Management Program”<sup>96</sup> to reduce Class I biological impacts to less than significant – e.g., Impact BIO-10 (Sensitive Offsite Habitats), Impact BIO-11 (Western Snowy Plover), Impact BIO-12 (California Least Tern), Impact BIO-22 (Sensitive Offsite Habitats), Impact BIO-23 (Special-status Plants), Impact BIO-26 (Western Snowy Plover), Impact BIO-27 (California Least Tern). This program, however, is not actually identified in the list of mitigation measures in the RDEIR. (RDEIR at 3.6-61 – 3.6-65.)

In addition, this program has yet to be developed. (RDEIR at 3.6-41.) The RDEIR states that “a qualified biologist” will prepare the program, but this approach has been held explicitly contrary to CEQA.<sup>97</sup> (RDEIR at 3.6-41.) Lead agencies may not defer preparation of mitigation plans. Notwithstanding this prohibition, CEQA does provide

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<sup>93</sup> California Coastal Commission 2008 at “Wetlands”.

<sup>94</sup> CEQA Guidelines, App. G (IX)(b) requires the lead agency to consider whether the Project would conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project.

<sup>95</sup> CEQA Guidelines § 15126.4(a)(B).

<sup>96</sup> The RDEIR notes several governmental and NGOs that would be consulted for the development of this program, but does not include the California Coastal Commission. This program involves sensitive habitat, and potential coastal access, within the coastal zone, so the Coastal Commission must approve the plan.

<sup>97</sup> *Defend the Bay v. City of Irvine* (4<sup>th</sup> Dist. 2004) 119 Cal App. 4<sup>th</sup> 1261, 1275 (deferral is impermissible when the agency “simply requires the applicant to obtain a biological report and then comply with any recommendations that may be in that report.”).

that mitigation measures may specify “performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.”<sup>98</sup> The measures identified in the RDEIR, however, do not satisfy these criteria. The measures identified are vague (e.g., fail to define location and boundaries to implement measures; fail to describe content of signage “information” and “directions”; fail to define how public information program would be implemented). The measures identified are open-ended (e.g. “construct seasonal *and/or* permanent fencing”). And, the measures identified omit important plan components (e.g., no measure to implement monitoring and reporting to evaluate success of program and status of species).

Absent this program, the RDEIR identifies no mitigation to reduce the Class I impact for Impact BIO-11 (Western Snowy Plover). In addition, the U.S. FWS has stated that the Project could have significant effects on the breeding success of the western snowy plover and California least tern.<sup>99</sup> The RDEIR, therefore, has no basis to conclude that Impact BIO-11 (Western Snowy Plover), Impact BIO-12 (California Least Tern), Impact BIO-22 (Sensitive Offsite Habitats), Impact BIO-26 (Western Snowy Plover), and Impact BIO-27 (California Least Tern) are less than significant.

Second, Mitigation Measure BIO-2 (Foraging Habitat Creation/Restoration), significantly reduces the CDFG recommended habitat acquisition ratio. (RDEIR at 3.6-63.) For the Northern Subarea, only 30.2 acres of offsite habitat would have to be created or restored to compensate for the destroyed 302 acres of foraging habitat. (RDEIR at 3.6-63.) The RDEIR fails to provide any explanation for this lack of adequate mitigation or significant departure from CDFG’s recommendation. “The EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.”<sup>100</sup> The RDEIR suggests that a more detailed rationale is available in “Appendix A-3,” but no such Appendix is available in the Appendices provided with RDEIR. (RDEIR at 4.6-63). Therefore, the RDEIR has no basis to conclude that impacts BIO-4, 7, 8, 10, 16, 19, and 22 are less than significant.<sup>101</sup>

In addition, for the Southern Subarea, only 15.5 acres of offsite habitat would have to be created or restored to compensate for the destroyed 375 acres of foraging habitat. (RDEIR at 3.6-63.) The stated rationale for this reduction is that the Southern Subarea applicant will be “providing on-site protection for the southern 220 acres of agricultural land that may or may not be converted into a habitat restoration project.” (RDEIR at 3.6-63.) The rationale is dishonest at best because the RDEIR itself acknowledges that the 220 acres “may or may not” be used for a habitat restoration project. It is not appropriate to significantly reduce feasible mitigation to credit the applicant for something that only “may” happen. If the 220 acres is used for a habitat restoration project, it would be to enhance the Ormond wetland area and would not be

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<sup>98</sup> CEQA Guidelines § 15126.4(a)(B).

<sup>99</sup> Root, Roger R. (U.S. FWS). 2008. Letter to Kathleen Mallory (City of Oxnard) re Recirculated Draft Environmental Impact Report No. 05-03: North Ormond Beach and South Ormond Beach Projects, City of Oxnard, Ventura County, California. Sep 16.

<sup>100</sup> *Laurel Heights Improvement Assoc. v. Regents of University of California*, 47 Cal. 3d 376 (1988), 404.

<sup>101</sup> See also Magney 2008.

appropriate to mitigate upland foraging habitat.<sup>102</sup> Even if the 220 acres does remain in agricultural use, there is no legally enforceable mechanism in place to ensure it would remain in continued agricultural use (e.g., conservation easement), and the applicant should not receive mitigation credit without any such mechanism in place.

Therefore, the RDEIR has no basis to conclude that impacts BIO-4, 7, 8, 10, 16, 19, and 22 are less than significant.<sup>103</sup>

The RDEIR also has no basis to conclude that Mitigation Measure BIO-5 will reduce impacts from increased runoff and pollution. No information is provided on the design of the bioswales, and design “is critical to the functionality, ability of this method to adequately mitigate for the known and unknown contaminants that occur in urban and industrial runoff.”<sup>104</sup> Regardless of the type and number of bioswales, during heavy rains, floodwaters will bypass any bioswales and result in adverse impacts to habitats and wildlife.<sup>105</sup> Therefore the RDEIR has no basis to conclude that impacts to Mugu lagoon, other sensitive habitats, and the species that rely on those habitats will be less than significant.

#### **3.6.4.3 Cumulative Impacts**

The biological resources cumulative impact analysis fails to consider the effects of the Project in light of past, present and probable future projects, as required by CEQA. Instead, the cumulative impact discussion in the biological resources section simply makes vague reference to “past development” in the region, as well as to the lack of “substantial development projects” “in the immediate vicinity of the proposed project site”. (RDEIR at 3.6-61.) This discussion does not comply with either method identified in the CEQA Guidelines. Furthermore, it applies an inconsistent geographic scope, utilizing a “region” wide area for past projects, but the “immediate vicinity” for proposed development, and it fails to provide any explanation for these geographic limitations.<sup>106</sup> The cumulative analysis also fails to take into account the indirect biological resource impacts (e.g., impacts to the Ormond Beach wetland area).

Without the full identification and evaluation of past, present and future projects, as well as the complete identification of Project impacts it is impossible to evaluate whether the Project’s incremental effect is “cumulatively considerable.” However, even on its own terms, the analysis is internally inconsistent and unsupportable, stating that past development has resulted in the constriction of regional wildlife movement and extremely limited availability of habitat in the Oxnard coastal area, but that the loss of almost 700 acres of habitat, which supports several special status species and is part of a regional wildlife movement corridor would have less than significant cumulative impact.

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<sup>102</sup> Magney 2008.

<sup>103</sup> See also Magney 2008.

<sup>104</sup> Magney 2008.

<sup>105</sup> Magney 2008.

<sup>106</sup> CEQA Guidelines § 15130(b)(3).

(RDEIR at 3.6-61. This conclusion appears to entirely overlook even the minimally described impacts of past development.

### **3.7 Land Use and Planning**

#### **3.7.3.2 Project Impacts**

The RDEIR fails to adequately evaluate the Project's consistency with the 2020 GP. An EIR must discuss any inconsistencies between a proposed project and applicable general plans.<sup>107</sup> In particular, a Specific Plan must be consistent with the General Plan.<sup>108</sup> The RDEIR does consider the Project's consistency against the Land Use and Housing Element, but inexplicably omits other GP elements. (RDEIR at 3.7-21 and 3.7-26.)

For example, the RDEIR does not evaluate the Project's consistency with the Open Space/Conservation Element. This element includes several Goals, Objectives and Policies of relevance here, including the goal of "Maintenance and enhancement of natural resources and open space."<sup>109</sup> Objectives include:

1. Protect unique biological habitats from development.
2. Manage water resources to prevent overdraft and loss of water quality.
3. Protect agricultural lands from premature and unnecessary urbanization.
- ...
8. Preserve the coastline and beaches and minimize beach erosion.<sup>110</sup>

Policies include:

2. The City should encourage the preservation and enhancement of the wetlands in the Ormond Beach and Mugu lagoon.
3. Sensitive habitat areas are to be designated as permanent open space on the Land Use Map.
- ...
4. The City should consider setting aside nature preserves that encompass sensitive habitat areas for educational and research purposes.<sup>111</sup>

The RDEIR must be revised to evaluate the Project's consistency with the Open Space/Conservation Element. This discussion should include the information EDC has provided in this letter, which demonstrates the Project is not consistent with the Open Space/Conservation Element. As discussed throughout this letter, development in the

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<sup>107</sup> CEQA Guidelines § 15125.

<sup>108</sup> Gov. Code § 65454.

<sup>109</sup> Open Space/Conservation Element at VIII-50.

<sup>110</sup> Open Space/Conservation Element at VIII-50 – VIII-51.

<sup>111</sup> Open Space/Conservation Element at VIII-51.

Study Area significantly impacts agricultural and biological resources in the Northern and Southern Subarea and these impacts have not been adequately mitigated. Indirect impacts to the wetlands adjacent to the study area are significant and unmitigated. Sea level rise will exacerbate these impacts. Rather than encouraging preservation and enhancement of the Ormond Beach wetlands, this Project threatens them.

The RDEIR also omits discussion of the Safety Element, which includes the following policy:

In view of the potential rise in sea level, the City should confer with appropriate state and federal agencies and seek information and advice concerning the probability, impacts, and mitigation measures to minimize beach erosion and inundation of coastal development and shall evaluate specific mitigation measures in EIRs for new development in coastal areas.<sup>112</sup>

The RDEIR must be revised to include discussion of the Safety Element and other General Plan Elements that are not currently included in the RDEIR.

In addition, the RDEIR does not discuss any provisions of the Coastal Land Use Plan. Presumably this is because of the erroneous assertion at 3.7-10 that a coastal development permit is not required. As discussed above, however, the Project description clearly includes division of lots that are within the Coastal Zone, and the Coastal Act requires a coastal development permit for that division. Given this, the RDEIR here, must evaluate the Project's consistency with the Coastal Land Use Plan, including the following provision:

Although they are degraded, the Ormond Beach wetlands can be preserved, and possibly restored. Additional planning to determine the location and character of this restoration will need to be undertaken prior to any major redevelopment of the area.<sup>113</sup>

The RDEIR also fails to even evaluate all portions of the Land Use Element for consistency. For example, the RDEIR fails to address consistency with Item G in the Land Use Element:

New development shall be sited and designed in a manner that will mitigate potential use conflicts and protect the ongoing operations of . . . the Navy's Point Mugu facilities."<sup>114</sup>

### **3.7.3.3 Cumulative Impacts**

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<sup>112</sup> Safety Element IX-18.

<sup>113</sup> Coastal Land Use Plan at III-8.

<sup>114</sup> Land Use Element at V-43.

The Land Use and Planning cumulative impact analysis fails to consider the effects of the Project in light of past, present and probable future projects. It does not comply with either method identified in the CEQA Guidelines. The discussion makes vague reference to “other proposed development in South Oxnard,” but fails to identify any past, current, or future projects. (RDEIR at 3.7-35.) It also fails to define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>115</sup> Without the full identification and evaluation of past, present and future projects, as well as the complete identification of Project impacts it is impossible to evaluate whether the Project’s incremental effect is “cumulatively considerable.” However, even on its own terms, the analysis is internally inconsistent and unsupportable. For example, the Land Use and Planning cumulative impacts analysis mentions how the Project and proposed development would displace agricultural uses, but concludes that long term changes in land use would nonetheless be less than significant. Elsewhere in the RDEIR, however, “cumulative conversion of Ag lands to non-ag uses” is identified as a Class I impact. (RDEIR at 3.8-28.)

### **3.8 Agricultural Resources**

#### **3.8.4.2/3.8.4.4 Discussion of Impacts/Mitigation Measures**

There are several problems with the impact and mitigation analysis in the Agricultural Resources section. The RDEIR identifies two Class I Agricultural Resources Impacts, Impact AG-5 (Direct Farmland Conversion) in the Northern Subarea and Impact AG-7 (Direct Farmland Conversion) in the Southern Subarea. (RDEIR at 3.8-23 and 3.8-26.) According to the RDEIR, this represents the loss of 322 acres and 375 acres, respectively, of Prime Farmland and Farmland of Statewide Importance.

The first problem is that Impact AG-7 potentially understates the loss of direct farmland conversion. The 375 acres is calculated based on the presumption that 220 acres will remain in agricultural use. However, elsewhere in the RDEIR, it is anticipated that these same 220 acres may be converted for habitat restoration. (See, e.g., RDEIR at 2-19, 3.6-63.) Impact AG-7 should be revised to take into account the potential loss of an additional 220 acres.

Second, the RDEIR makes no attempt to impose feasible measures which could minimize these Class I impacts (or the cumulative Class I impact also associated with farmland conversion).<sup>116</sup> CEQA Guidelines allow for compensation of an impact to occur via the replacement or provision of substitute resources or environments.<sup>117</sup> The RDEIR entirely dismisses the possibility of such offsite mitigation, but treats the issue as an all or nothing proposition – presuming that acreage must be replaced at a 1:1 ratio – and thus dismisses it as infeasible. (RDEIR at 3.8-24 and 3.8-26.) The RDEIR, however, does not consider conservation of less acreage, which would reduce the cost for the applicants.

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<sup>115</sup> CEQA Guidelines § 15130(b)(3).

<sup>116</sup> CEQA Guidelines § 15126.4(a)(1).

<sup>117</sup> CEQA Guidelines § 15370(e).

Imposition of this mitigation measure may not reduce the class of impact, but it would still minimize adverse impacts and must be considered.

The RDEIR's reliance on the applicants' estimate of agricultural land values ranging from "\$75,000 to \$100,000," is inconsistent with other figures in the RDEIR which place agricultural land values in the area at "\$65,000." (RDEIR at 3.6-63.) Even this figure may overstate current land values, and is provided without any basis. This calls into question the RDEIR's conclusion that mitigation of Impact AG-5 and AG-7 at a 1:1 ratio would actually be infeasible.

Lastly, the RDEIR suggests that offsite mitigation would be infeasible because "While there are entities within Ventura County that could conceivably manage agricultural conservation programs . . . there are currently no such programs in place." The RDEIR fails to consider whether there are any State agencies that could assist with agricultural conservation. For example, the State Coastal Conservancy administers funds for the purchase of land and easements, and is currently interested in conserving agricultural acreage with the Study area.

#### **3.8.4.3 Cumulative Impacts**

The agricultural resources cumulative impact analysis fails to consider the effects of the Project in light of past, present and probable future projects. It does not comply with either method identified in the CEQA Guidelines. The discussion fails to identify any past, current, or future projects, but instead vaguely refers to "other pending urban development projects." (RDEIR at 3.8-28.) It also fails to define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>118</sup> Although the RDEIR does identify a cumulative Class I impact here, without a complete identification and analysis of past, present and future projects, the full cumulative impact has not been disclosed.

### **3.9 Public Facilities and Services**

#### **3.9.3.2.2 Cumulative Impacts (including 3.9.3.3.4, 3.9.3.4.4, 3.9.3.6.3, 3.9.3.5.3, 3.9.3.7.3, 3.9.3.8.4)**

The public facilities and services cumulative impact analysis fails to consider the effects of the Project in light of past, present and probable future projects. The various cumulative impacts discussions in this section do not comply with either method identified in the CEQA Guidelines. Some fail to mention any other projects at all – see, e.g., public school cumulative impacts. (RDEIR at 3.9-24.) Most vaguely reference other documents – see, e.g., fire protection cumulative impacts (RDEIR at 3.9-27), energy and public utilities (RDEIR at 3.9-38.) If the intent here is to utilize the summary of projections method, the analysis fall short because it fails to explain that the identified documents have been evaluated in a prior environmental document that has been adopted

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<sup>118</sup> CEQA Guidelines § 15130(b)(3).

or certified, reference and make those documents available to the public, and explain how the environmental documents describe or evaluate the regional or area wide conditions contributing to the cumulative impact.<sup>119</sup> In all cases, the cumulative impacts discussions are conclusory and devoid of any meaningful information. In addition, each discussion fails define the geographic scope of the area affected and to provide an explanation for the geographic limitation used.<sup>120</sup> It is thus impossible to discern whether the RDEIR discloses the full scope of potential impacts and whether identified mitigation is adequate.

### **3.10 Transportation and Circulation**

#### *Cumulative Impacts*

The RDEIR omits any discussion of cumulative transportation and circulation impacts. The RDEIR must always consider the effects of the project in light of past, present and probable future projects. Even where a lead agency determines that a cumulative impact is not significant, a lead agency must, at a minimum, describe the basis for its conclusion that the impact is not significant.<sup>121</sup> The RDEIR is inadequate as a matter of law based on its failure to discuss cumulative transportation and circulation impacts. Had a cumulative traffic analysis been conducted it would likely have found significant impacts. A recent traffic study reviewing only proposed developments concluded that 23 major intersections in the City of Oxnard will fail to meet a C level of service by 2020.<sup>122</sup>

### **3.11 Noise**

#### *Cumulative Impacts*

The RDEIR omits any discussion of cumulative noise impacts. The RDEIR must always consider the effects of the project in light of past, present and probable future projects. Even where a lead agency determines that a cumulative impact is not significant, a lead agency must, at a minimum, describe the basis for its conclusion that the impact is not significant.<sup>123</sup> The RDEIR is inadequate as a matter of law based on its failure to discuss cumulative noise impacts.

### **3.12 Cultural Resources**

#### *Cumulative Impacts*

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<sup>119</sup> CEQA Guidelines §§ 15130(b)(1)(B) and (d).

<sup>120</sup> CEQA Guidelines § 15130(b)(3).

<sup>121</sup> CEQA Guidelines § 15130(a).

<sup>122</sup> Sanchez, Jose L. 2008a. Traffic Expert Backs Change In Oxnard Growth: Oxnard told to modify how it deals with growth. Ventura County Star. Sep 11. [Attached]

<sup>123</sup> CEQA Guidelines § 15130(a).

The RDEIR omits any discussion of cumulative cultural resources impacts. The RDEIR must always consider the effects of the project in light of past, present and probable future projects. Even where a lead agency determines that a cumulative impact is not significant, a lead agency must, at a minimum, describe the basis for its conclusion that the impact is not significant.<sup>124</sup> The RDEIR is inadequate as a matter of law based on its failure to discuss cumulative cultural resources impacts.

### 3.13 Visual/Aesthetic Resources

#### 3.13.2.4 Cumulative Impacts

The visual/aesthetic resources cumulative impact analysis fails to consider the effects of the Project in light of past, present and probable future projects. It does not comply with either method identified in the CEQA Guidelines. The discussion fails to identify any past, current, or future projects, but instead vaguely refers to “other pending urban development projects.” (RDEIR at 3.8-28.) The discussion generally references the General Plan, but if the intent here is to utilize the summary of projections method, the analysis fall short because it fails to explain that the identified documents have been evaluated in a prior environmental document that has been adopted or certified, reference and make those documents available to the public, and explain how the environmental documents describe or evaluate the regional or area wide conditions contributing to the cumulative impact.<sup>125</sup> It also fails define the geographic scope of the area affected and provide an explanation for the geographic limitation used.<sup>126</sup> Although the RDEIR does identify a cumulative Class I impact here, without a complete identification and analysis of past, present and future projects, the full cumulative impact has not been disclosed, and it is impossible to evaluate whether identified mitigation is adequate.

### 4.0 Project Alternatives

CEQA not only requires the identification of significant adverse environmental effects, it also compels a lead agency to “mitigate those adverse environmental effects through the imposition of feasible mitigation measures *or through the selection of feasible alternatives.*”<sup>127</sup> The analysis of project alternatives is thus one of the most important features of an EIR. To adequately carry out this portion of the analysis:

An EIR for any project . . . must consider a reasonable range of alternatives to the project, or to the location of the project which (1) offer substantial environmental advantages over the project proposal . . .; and (2) may be ‘feasibly accomplished in a successful manner’ considering the economic, environmental, social and technological factors involved.<sup>128</sup>

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<sup>124</sup> CEQA Guidelines § 15130(a).

<sup>125</sup> CEQA Guidelines §§ 15130(b)(1)(B) and (d).

<sup>126</sup> CEQA Guidelines § 15130(b)(3).

<sup>127</sup> *Sierra Club v. State Board of Forestry* (1994) 7 Cal. 4<sup>th</sup> 1215, 1233 (emphasis added).

<sup>128</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 566 (italics deleted from original) (hereafter “*Goleta Valley II*”).

## 4.2 Project Objectives

Articulating complete and accurate project objectives is a fundamental foundation to the alternatives analysis in an EIR. The CEQA Guidelines directly associate the description of project objectives to the alternatives analysis:

A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR . . . .<sup>129</sup>

As discussed above regarding Section 2.0, the Project objectives in the RDEIR are improperly narrow in that they are limited to the 2020 GP objectives identified specifically for new development, but do not include other Project objectives that are consistent with the 2020 GP (in particular, protection of significant wetlands and other habitat resources and enhancement of degraded resources). Moreover, even within the limited context of the “new development” Project objectives that are identified in Section 2.0, the RDEIR inconsistently describes the objectives, utilizing a narrower list of objectives in the alternatives analysis – a list that tends to either eliminate or downplay mention of open space, coastal, and resource protection. (RDEIR at 4-1 – 4-2.)

As discussed below, the improper Project objectives result in an unreasonably limited range of alternatives. They also prevent the RDEIR from properly characterizing the ability of the alternatives to meet Project objectives.

The RDEIR should be revised to include all relevant Project objectives, including the six general “principal areas of concern relating to the Ormond Beach study area” that are set forth in the Land Use Element. Each of these objectives should be considered in the analysis and comparison of alternatives.

### 4.4-4.5 Alternatives Selection Process/Description of Project Alternatives

The RDEIR’s Alternatives selection process and description of Project Alternatives suffers from multiple inadequacies.

#### *The RDEIR fails to consider offsite alternatives*

The RDEIR improperly eliminates offsite alternatives from the analysis. An EIR must describe a range of reasonable alternatives to the project, *or to the location of the project*.<sup>130</sup> The RDEIR states:

Offsite project alternatives were considered and screened from further analysis in this EIR as the proposed Project involves the development of General Plan 2020 Ormond Beach Specific Plan Area. Any offsite

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<sup>129</sup> CEQA Guidelines § 15124(b).

<sup>130</sup> CEQA Guidelines § 15126.6(a) (emphasis added).

alternatives would fail to meet the basic objectives identified in the 2020 General Plan for the development of the Study Area and, therefore, further consideration is not required under CEQA. (RDEIR at 4-3.)

The RDEIR is flawed because it does not even identify the alternative sites that were considered and provides only the bare assertion that these offsite locations fail to meet Project objectives.<sup>131</sup> The RDEIR must explain in meaningful detail, the basis for its determination that offsite alternatives do not meet Project objectives.<sup>132</sup> “To facilitate CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.”<sup>133</sup> The RDEIR must at least identify the offsite locations that were considered and explain how they do or do not conform to the Project objectives.

Moreover, the RDEIR’s broad dismissal of offsite alternatives is undermined by Alternative 1, which does relocate a portion of the Project to an offsite location.<sup>134</sup> (RDEIR at 4-6.) The RDEIR must also explain why it is appropriate to consider offsite locations for some portions of the Project, but not others.

The RDEIR’s circular logic – that the Project objective is to develop within the Ormond Beach Study Area, therefore no locations outside the Study Area could meet the Project objective – has been refuted as a matter of law.<sup>135</sup> The mere fact that a general plan has been completed does not preclude an EIR analysis from proceeding with “regional blinders.”<sup>136</sup> At a minimum, the RDEIR should consider whether the 2020 GP identifies any alternative sites that would be suitable for either of the Specific Plan developments.<sup>137</sup> In some cases, a Project EIR may represent the culmination of multiple planning and legislative decisions, and the consideration of offsite alternatives would in effect require the lead agency to undo those decisions. This, however, is not that case. In fact, this Project as proposed requires the City Council to undo an entire series of legislative decisions, including, general plan amendments, annexations, and re-zoning. (RDEIR at 2-20 – 2-21.) Under such circumstances, it is reasonable to also consider offsite alternatives.<sup>138</sup>

In addition, the conclusion that offsite alternatives would not meet Project objectives is indefensible. As discussed above, the RDEIR has improperly narrowed the Project objectives, as well as unreasonably presumed that new development identified in

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<sup>131</sup> LAFCO Policies 3.1.5.1.iii and 3.1.5.2 also require an evaluation to determine if sufficient vacant lands or land that can be redeveloped currently exist within the City’s jurisdiction.

<sup>132</sup> *Laurel Heights Improvement Assoc. v. Regents of University of California* (1988) 47 Cal. 3d 376, 405 (EIR inadequate for eliminating offsite alternatives and failing to provide adequate explanation).

<sup>133</sup> *Id.* at 404.

<sup>134</sup> “This alternative is nearly identical to the specific plans as proposed, except the high school site proposed in the Northern Subarea would be relocated to the east, *just outside of the Study Area*” (emphasis added) (RDEIR at 4-6.)

<sup>135</sup> *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara Co.* (1988) 197 Cal. App. 3d 1167 (*Goleta Valley I*).

<sup>136</sup> *Goleta Valley II* at 573.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

the 2020 GP must occur. These legally insupportable decisions, which prioritize and emphasize new development in a manner inconsistent with the 2020 GP description for the Ormond Beach Study Area, undoubtedly underlie the conclusion to screen out offsite alternatives. In contrast, correctly framed Project objectives would reintroduce and reprioritize the other areas of concern identified for the Ormond Beach Study Area in the 2020 GP. That complete list is:

- Protection of significant wetlands and other habitat resources and enhancement of degraded resources
- Aesthetics in relation to blighted conditions
- Beach access and recreational use opportunities consistent with Coastal Act resource protection policies
- Need for visitor serving facilities
- Desirability of providing for a variety of housing types
- Desirability of relocating certain existing land uses in the study area<sup>139</sup>

Offsite alternatives considered in light of the above list of Project objectives, could meet most of these project objectives, as well as avoid or substantially lessen Project impacts (e.g., Agricultural impacts, Biological Resource impacts). Offsite alternatives should be analyzed with respect to relocating either one<sup>140</sup> or both of the Specific Plan developments at an offsite location.

*The RDEIR does not include an adequate range of alternatives that would meet coastal enhancement objectives and reduce or avoid impacts to Ormond wetlands*

The RDEIR fails to identify adequate onsite alternatives that would meet coastal enhancement Project objectives and reduce or avoid impacts to the Ormond wetland area. This inadequacy results from the fact that the RDEIR has improperly limited the Project objectives, failed to disclose the full scope Project impacts on biological resources, and failed to adequately mitigate such impacts.

The RDEIR only includes one alternative, Alternative 4, which somewhat promotes this objective and reduces or avoids some of the Project impacts. Under Alternative 4, all of the Study Area north of McWane Boulevard would remain in agricultural uses, while the area south of McWane would be set aside for resource protection. (RDEIR at 4-12.)

The RDEIR should also include an alternative that would set aside all of the Study Area south of Hueneme Road for resource protection, while the area north of Hueneme Road would remain in Agricultural use (“Sierra Club/EDC Alternative”). This alternative could meet all of the properly identified Project objectives, except those associated with providing housing. This alternative is significantly distinguishable from Alternative 4

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<sup>139</sup> 2020 GP Land Use Element at V-41.

<sup>140</sup> The RDEIR does not appear to contemplate the possibility of locating just one, as opposed to both of the Specific Plan developments to an offsite location.

because it provides more acreage in support of resource protection.<sup>141</sup> By eliminating residential and industrial development from the Study Area, this alternative would significantly reduce or avoid most of the Project impacts, especially impacts to the Ormond wetlands. It would meet the enhancement of coastal resource objective by accommodating inland migration of the wetland area against sea level rise, providing a significant area for the restoration of critical upland habitat, and providing a significant buffer from inland development impacts.<sup>142</sup>

*The RDEIR should consider alternatives in combination with each other*

The RDEIR should consider alternatives in combination with each other. For example, The RDEIR should consider the Sierra Club/EDC Alternative in combination with offsite alternatives. This combination meets Project objectives and reduces or avoids Project impacts.

*Alternative 1 does not meet the CEQA requirement that alternatives must avoid or substantially lessen Project impacts*

It appears that Alternative 1 was included not because it reduces impacts, but because it was requested by a property owner. The purpose of a Project alternative is to “avoid or substantially lessen any of the significant effects of the project.”<sup>143</sup> Alternative 1, however, increases adverse impacts, by increasing the number of residential units in the Northern subarea development. (RDEIR at 4-6.) This alternative should be eliminated from the range of alternatives considered in the RDEIR.

*Alternative 5 is not clearly described or analyzed*

The RDEIR fails to describe Alternative 5 in sufficiently meaningful detail to inform the public or the decision makers about its likely impacts. The City has added Alternative 5 in response to comments received on the draft EIR, and characterizes this alternative as having “less intensive development” than the Project. (RDEIR at 4-14.) With the information provided, however, it is impossible to independently verify the RDEIR’s conclusion. For example, the description for the Southern Subarea lacks any actual detail about the “port related” development that could occur, simply noting that it could be similar to uses that occur to the west of the Study Area, which “tend to support very low employment densities.” (RDEIR at 4-14.) The map provided does not add any additional information. (RDEIR Figure 4-6.)

The RDEIR description requires the public to put its “blind trust” in the lead agency, but this is counter to “CEQA’s fundamental goal that the public be fully

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<sup>141</sup> Zedler, Joy (Professor of Botany, University of Wisconsin-Madison). 2008. Letter to Kathleen Mallory (City of Oxnard) Re: Ormond Beach Specific Plan Recirculated Deir, South Ormond Specific Plan And Southshore Specific Plan. Sep 11. [Attached]

<sup>142</sup> Zedler 2008; California Coastal Commission 2001; Magney 2008.

<sup>143</sup> CEQA Guidelines § 15126.6(a).

informed as to the environmental consequences of action by their public officials.”<sup>144</sup> It is particularly important that information about this alternative be fully developed because the RDEIR has identified it as the environmentally superior “build” alternative. (RDEIR at 4-33.) It is impossible to verify this determination without meaningful details about this alternative.

#### **4.6 Comparison of Merits of Project Alternatives**

As discussed above, the RDEIR alternative selection process and alternative descriptions are significantly flawed. As a result, this comparison of alternatives is inherently unsound and fails to meet one of the RDEIR’s most crucial informative functions for the public and decision makers.<sup>145</sup> This fundamental flaw in the RDEIR mandates recirculation of the document.

In addition, notwithstanding the above flaws, the comparison of the merits of Project alternatives fails to adequately evaluate whether the alternatives meet the basic Project objectives. In some cases the analysis finds that development alternatives are consistent with certain Project objectives (e.g., protection of coastal resources), when in fact they are not. In other cases, the RDEIR states that coastal resource protection objectives are “not applicable” to certain alternatives, even though they are.

##### *Alternative 1 does not meet the objective of coastal resource protection*

The RDEIR fails to adequately explain that Alternative 1 will not achieve the objective of protecting significant wetlands and other habitat resources and enhancing degraded resources. (RDEIR at 4-19 and 4-29.) This alternative is essentially the same as the Project. As discussed above, implementation of the Project will have significant adverse impacts on the Ormond wetland area as it currently exists and will significantly impede State efforts to enhance the Ormond wetland area.

The RDEIR states that the ability of the Northern Subarea to protect coastal resources is “not applicable.” (RDEIR at 4-19.) However, as discussed above, development in the Northern Subarea will result in indirect impacts on the Ormond wetlands and the Mugu wetlands, so the proper conclusion here is that the Northern Subarea will not meet this objective. The RDEIR states the Southern Subarea will protect coastal resources. (RDEIR at 4-19.) This conclusion also fails to take into account the indirect impacts to Ormond and Mugu wetland areas, neither of which are adequately mitigated. It also fails to consider information regarding the effects of sea level rise on wetlands and how inland development will limit wetland migration in response to sea level rise. Therefore, the RDEIR must be revised to find that Alternative 1 does not meet this objective.

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<sup>144</sup> *Laurel Heights Improvement Association v. The Regents of the University of California* (1988) 47 Cal. 3d 376, 404.

<sup>145</sup> *Sierra Club v. State Board of Forestry* (1994) 7 Cal. 4<sup>th</sup> 1215, 1233.

In addition, the RDEIR fails to address the potential feasibility of this Alternative, particularly the feasibility of introducing large-scale residential development in the Region. Other pending residential projects in the City of Oxnard have been canceled recently due to poor economic conditions.<sup>146</sup>

*Alternative 2 does not meet the objective of coastal resource protection*

The RDEIR incorrectly asserts that Alternative 2 (“no Project/Existing Plan (Oxnard General Plan 2020)”) will “meet all of the City of Oxnard General Plan 2020 Objectives.” (RDEIR at 4-30.) This alternative would allow for “substantially more” development in the Study Area. (RDEIR at 4-31.) Thus, the adverse biological impacts described above would be even more significant. The RDEIR also asserts that the coastal resource protection objection is “not applicable” for the Northern Subarea in this Alternative. However, as discussed above, development in the Northern Subarea has indirect impacts on the Ormond wetlands and the Mugu wetlands.

*Alternative 4 is applicable to the coastal resource protection objective*

The RDEIR states that the Northern Subarea is “not applicable” to the coastal resource protection objective. (RDEIR at 4-20.) By eliminating residential development from the Study Area, this alternative would reduce impacts to the Ormond and Mugu wetlands. It would accommodate inland migration of the wetland area against sea level rise and provide buffer from inland development impacts.

The RDEIR concludes without any basis that Alternative 4 would have indirect adverse effects “since it may lead to proposals to accommodate population growth and provide other urban uses in lands not currently planned for that purpose” (and would presumably conclude the same for the Sierra Club/EDC Alternative) (RDEIR at 4-12.) However, this conclusion is speculative and made without any actual facts or analysis, as required under CEQA.<sup>147</sup> For example, the RDEIR does not even consider the Growth Management Element of the 2020 GP. This conclusion also apparently fails to take into account more recent information about the economic viability, and hence the likelihood, of new residential developments within the City of Oxnard.<sup>148</sup> The RDEIR also fails to support its conclusory assertion that Alternative 4 would be economically infeasible. (RDEIR at 4-32.)

*Alternative 5 does not meet the objective of coastal resource protection*

The RDEIR fails to explain the ability of Alternative 5 to meet the Project objectives. (RDEIR at 4-33.) Similar to Alternative 1, this alternative will not achieve

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<sup>146</sup> See, e.g., Sanchez 2008.

<sup>147</sup> *Laurel Heights Improvement Association v. The Regents of the University of California* (1988) 47 Cal. 3d 376, 404.

<sup>148</sup> See, e.g., Sanchez, Jose L. 2008. Project at Levitz Property Cancelled: Bad Economy Makes Condos Infeasible Now. Ventura County Star. Sept 3. [Attached]

coastal resource protection objectives. This alternative is essentially the same as the Project. Implementation of the Project will have significant adverse impacts on the Ormond wetland area as it currently exists and will significantly impede efforts to enhance the wetland system. Although the RDEIR asserts that Alternative 5 will have less intensive development and therefore less adverse impacts, as discussed above, the RDEIR does not provide sufficient detail about the alternative to verify these conclusions. In addition, the RDEIR fails to address the potential feasibility of this Alternative, including the feasibility of introducing large-scale residential development in the Region.

#### **4.7 Environmentally Superior Alternative**

The RDEIR concludes that Alternative 4, the conservation alternative, is the environmentally superior alternative, but once again betrays its development bias, asserting that “[w]here a ‘no development’ alternative is determined to be the Environmentally Superior Alternative, CEQA requires that the EIR identify the environmentally superior development alternative.” (RDEIR at 4-33.) The RDEIR then identifies Alternative 5 as the “Environmentally Superior *Build* Alternative.” (RDEIR at 4-33, emphasis added.)

This approach utterly misconstrues CEQA requirements. CEQA guidelines state:

If the environmentally superior alternative is the “no project” alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.<sup>149</sup>

Here, the “no project” alternative is not the environmentally superior alternative, so there is no requirement to identify a second “environmentally superior” alternative.

The RDEIR identifies Alternative 4 as the environmentally superior alternative. This conclusion is correct of the alternatives included in the RDEIR. However, as discussed above, EDC and Sierra Club recommend another alternative be included in the RDEIR – setting aside all of the Study Area south of Hueneme Road for resource protection, while the area north of Hueneme Road would remain in Agricultural use – as an environmentally superior alternative. This alternative is significantly distinguishable from Alternative 4 because it provides more acreage in support of resource protection. It would meet the enhancement of coastal resource objectives by accommodating inland migration of the wetland area against sea level rise, providing a significant area for the restoration of critical upland habitat, and providing a significant buffer from inland development impacts.

The Sierra Club/EDC Alternative meets most of the Project alternatives. However, an alternative could be developed to also meet the urban development Project

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<sup>149</sup> CEQA Guidelines § 15126(e)(2).

objectives by combining the Sierra Club/EDC Alternative with other alternatives, such as offsite development of one or both of the Specific Plans (see discussion above).

### **Section 5.5 Growth Inducing Impacts**

The RDEIR fails to use baseline conditions (existing conditions) to evaluate growth inducing impacts. Instead, the RDEIR compares the Project against the maximum development that would be allowed under the 2020 GP. (RDEIR at 5-6.) CEQA requires that impacts be evaluated against baseline conditions.<sup>150</sup>

In addition, the RDEIR fails to consider several issues pertinent to growth inducement from the Project. These include the impact of residential development on nearby agricultural land – e.g., will increases in land value occur that make farming less desirable or affordable to farmers; will proximity to residential land require farmers to change practices making farming less desirable? Also, what will be the impact of the significant loss of agricultural acreage on industry in the region that supports agriculture, and how will this in turn impact the continuing viability of agriculture in the region? An additional consideration the RDEIR fails to consider is the impact of residential development on the nearby Naval Base and whether encroachment of residential development may interfere with mission activities, ultimately impacting the continued viability of the Base.

### **Public Participation Concerns**

Public participation is a fundamental part of the environmental review process.<sup>151</sup>

[P]ublic review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources.<sup>152</sup>

We have multiple concerns about the lead agency's treatment of public participation.

As EDC testified during the August 21 Planning Commission Hearing, the Notice of Availability of the RDEIR is procedurally deficient. CEQA Guideline Section 15087 requires that:

The lead agency shall provide public notice of the availability of a draft EIR at the same time it sends a notice of completion to the Office of Planning and Research.

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<sup>150</sup> CEQA Guidelines § 15125(a). See, also *Environmental Planning and Information Council v. County of El Dorado* (3d Dist. 1982) 131 Cal. App. 3d 350 (“in comparing an old general plan with a new county general plan that would allow less growth than the old plan, the EIR had to address the existing level of actual physical development in the county as the base line for the comparison.”)

<sup>151</sup> CEQA Guidelines § 15201.

<sup>152</sup> *Schoen v. Department of Forestry & Fire Protection* (1<sup>st</sup> Dist. 1997) 58 Cal. App. 4<sup>th</sup> 556, 573-574.

According to the Office of Planning and Research's CEQAnet database, the Notice of Completion for the draft EIR was received on July 23.<sup>153</sup> The City, however, did not send its Notice of Availability to the public until many days after July 23.<sup>154</sup> In fact, the City apparently did not send its Notice to the public until after July 24, which is the date identified on the Notice of Availability as the official commencement of the public review period. The City's newspaper notice, which was published on July 24, was also provided after the RDEIR was received at OPR.<sup>155</sup> In any case, the newspaper notice would not cure the procedural defect, as the CEQA Guidelines require newspaper notice in addition to the notice that is required to be mailed to individuals.<sup>156</sup> This clear procedural violation of CEQA requires that the notice for the RDEIR be re-initiated and that the RDEIR should be re-circulated for an adequate public comment period.

The Notice of Availability also fails to specify the address where all documents referenced in the RDEIR are available for review, as required by CEQA.<sup>157</sup> Recirculation is also warranted because of the difficulties the public has experienced in accessing the RDEIR and related documents during the public review period.<sup>158</sup> To date, although the RDEIR is posted to the City of Oxnard's website, it is not possible to download the document because it freezes during the downloading process. Copies of the Specific Plans were not added to the City's website until several weeks into the public review period. Even once those documents were added, it was not possible to print the South Ormond Beach Specific Plan. Additional problems with obtaining materials referenced in the RDEIR are discussed above.

In addition, there is some confusion regarding whether City staff intend to accept DVD submissions as comments on the RDEIR and whether DVDs submitted as comments on the draft EIR were considered and added to the administrative record. CEQA, however, explicitly states that "comments may be submitted in any format."<sup>159</sup> Therefore, the DVDs submitted by the Sierra Club on the draft EIR and any DVDs submitted as comment on the RDEIR must be considered, responded to, and included in the administrative record.

Finally, we also have pending questions regarding the status of the comments Sierra Club submitted on the draft EIR. It appears that the City may not have considered all or a portion of Sierra Club's comments. It is also unclear whether a complete version of the Sierra Club's comment is in the administrative record. A representative of the

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<sup>153</sup> Office of Planning and Research. 2008a. Ormond Beach Specific Plans. <http://www.ceqanet.ca.gov>. queried Sep 15. (p. 2) [Attached]

<sup>154</sup> City of Oxnard. 2008a. Postmarked Envelope Addressed to Alan Sanders. Jul 28. [Attached]

<sup>155</sup> City of Oxnard. 2008. Notice of Availability/Notice of Completion Environmental Impact Report No. 05-03. Ventura County Star. Jul 24. [Attached]

<sup>156</sup> CEQA Guidelines § 15087.

<sup>157</sup> Pub. Resources Code § 21092 (b)(1).

<sup>158</sup> See, e.g., *Ultramar, Inc. v. South Coast Air Quality Management Dist.* (2d Dist. 1993) 17 Cal. App. 4<sup>th</sup> 689, 700) (comment period does not begin to run until lead agency provides public with complete copy of environmental document).

<sup>159</sup> CEQA § 21082.1(b).

Sierra Club was initially informed that City staff were unaware of most of the comment documentation submitted by the Sierra Club on the draft EIR.<sup>160</sup> This calls into question whether the Sierra Club's comment was properly considered by the lead agency. Subsequent communications from City staff have not fully clarified this issue.<sup>161</sup> To date, it is unknown whether the City reviewed the Sierra Club's comment in its entirety and whether the Sierra Club's entire submission is in the administrative record. Unfortunately, because the City decided to re-circulate the entire draft EIR for comment and did not prepare a response to public comments, it is impossible to independently verify whether the City did or did not consider the Sierra Club's comments on the draft EIR.

A lead agency's failure to consider public comments may frustrate the public participation requirements of the environmental review process, and is prejudicial error.<sup>162</sup> Here, the Sierra Club submitted a wide range of comments on the draft EIR that did not support the action proposed by the lead agency and were not duplicative of other comments submitted. As documented in the Sierra Club's comments submitted on the RDEIR, the RDEIR was not substantially updated or influenced by these comments, demonstrating that the lead agency failed to consider the Sierra Club comments. The confusion regarding the City's consideration of Sierra Club's comment and whether the full content of the comment is in the administrative record has also significantly the Sierra Club from reviewing the RDEIR and preparing comments on this document.

### **Conclusion**

For the reasons described above, the RDEIR must be revised and recirculated.

Sincerely,

/s/

Karen M. Kraus  
Staff Attorney

Attachments (enclosed on CD)

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<sup>160</sup> Sanders, Alan (Sierra Club). 2008. Letter to City of Oxnard, City Council RE The Planning Department Has Lost Substantial Evidence Placed On the Public Record Regarding the Ormond Beach Specific Plan DEIR, South Ormond Specific Plan and Southshore Specific Plan of 2007. Aug 5. [Attached]

<sup>161</sup> Martin, Sue (City of Oxnard). 2008. Letter to Alan Sanders re August 5, 2008, Correspondence Pertaining to the Ormond Beach Draft Environmental Impact Report. Aug 6. [Attached]

<sup>162</sup> *Environmental Protection and Information Center v. California Department of Forestry* (July 17, 2008) 2008 DJDAR10971, 10979.

### List of Attachments

Brown, Edmund G. (Attorney General). 2007. Letter to Maureen Parks (Contra Costa County Planning Commission) RE Comments on the ConocoPhillips Rodeo Refinery Expansion Project and Final Environmental Report (File #LP052048). May 8.

Brown, Edmund G. (Attorney General). 2007a. Letter to Jared Hart (City of San Jose) RE Comments on Draft Environmental Impact Report for Coyote Valley Specific Plan SCH# 2005062017. Jun 17.

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<http://ag.ca.gov/globalwarming/contrarians.php>. Global Warming Contrarians and the Falsehoods they Promote. Webpage viewed Aug 30.

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Mallory, Kathleen. 2008. Email to Karen Kraus RE Ormond Beach DEIR GHG Modeling. Sep 8.

Martin, Sue (City of Oxnard). 2008. Letter to Alan Sanders re August 5, 2008, Correspondence Pertaining to the Ormond Beach Draft Environmental Impact Report. Aug 6.

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<http://www.ceqanet.ca.gov>. CEQAnet database queried Sep 15.

Sanchez, Jose L. 2008. Project at Levitz Property Cancelled: Bad Economy Makes Condos Infeasible Now. Ventura County Star. Sep 3.

Sanchez, Jose L. 2008a. Traffic Expert Backs Change In Oxnard Growth: Oxnard told to modify how it deals with growth. Ventura County Star. Sep 11.

Sanders, Alan (Sierra Club). 2008. Letter to City of Oxnard, City Council RE The Planning Department Has Lost Substantial Evidence Placed On the Public Record Regarding the Ormond Beach Specific Plan DEIR, South Ormond Specific Plan and Southshore Specific Plan of 2007. Aug 5.

Zedler, Joy (Professor of Botany, University of Wisconsin-Madison). 2008. Letter to Kathleen Mallory (City of Oxnard) Re: Ormond Beach Specific Plan Recirculated Deir, South Ormond Specific Plan And Southshore Specific Plan. Sep 11.