

**ATTACHMENT 13
TO CITY COUNCIL STAFF REPORT**

**RESPONSE TO LETTER FROM ENVIRONMENTAL
DEFENSE CENTER, DATED APRIL 6, 2011**

Comment 1: Pages 1-3

On April 6, 2011, the day before the Planning Commission hearing on the SouthShore Specific Plan and development agreement ("Project"), the City received a 60 page letter from the Environmental Defense Center commenting on the Project.

The EDC previously submitted comments on the City's Recirculated Draft Environmental Impact Report ("EIR") and on the City's certification of the EIR last year. The EDC's comments on the EIR were responded to in the City's Final EIR for the Project. Many of the comments presented in the EDC's letter repeat comments previously submitted and responded to by the City in the Final EIR and at the prior Planning Commission and City Council hearings that considered the certification of the EIR.

As noted in its letter, EDC's primary concern is the potential impacts it believes the SouthShore Project will have on the Ormond Beach wetlands. Although the SouthShore project is approximately 1.5 miles from the Ormond Beach wetlands, EDC believes that the development of the Project removes a buffer between the wetlands and existing urban development. In order to respond to these concerns, EDC requests the City to require the Project to acquire, either in fee or through an open space easement, 352 acres of land in the adjacent Southern Subarea to prohibit development on that site which exceeds the development area of the proposed Project.

The comments presented by EDC are responded to in this document.

Comment 2: The City has not Complied with CEQA (Page 3).

CEQA requires that when an agency approves a project for which an EIR has been prepared, it must make findings pursuant to Section 21166 of CEQA and Section 15091 of the CEQA Guidelines.

EDC alleges that the proposed Findings of Fact ("Findings") and Statement of Overriding Considerations ("SOC") are not supported by substantial evidence in the record, as required by the CEQA Guidelines. (CEQA Guidelines § 15091(b).) As a general matter, we believe that EDC mischaracterizes the "substantial evidence" standard. Substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines § 15384(a).) It includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (*Id.*) It is a highly-deferential standard.

EDC's entire letter is predicated on the allegation that both the Findings and the SOC lack support by substantial evidence. However, instead of explaining why the evidence presented in support of the Findings and SOC is somehow inadequate, EDC relies on what it refers to as new "evidence" that it submits in support of its challenge. Under well-settled CEQA case law, "an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. *Failure to do so is fatal*. A reviewing court will not independently review the record to make up for appellant's failure to carry his burden. [Citation.]" (*Defend the Bay v. City of Irvine (Irvine Co.)* (2004) 119 Cal.App.4th 1261, 1266.

Comment 3: Impacts to Agricultural Resources (Page 4)

The EDC letter reiterates the same concerns regarding the Project's impact to agricultural resources that were raised in its comment letter on the FEIR (Comment Letter O.4) and the City responded to those comments in the FEIR Responses to Comments.

The EIR provided a discussion as to why various mitigation measures such as offsite mitigation, obtaining conservation easements, and financial contributions to agricultural conservation organizations were not feasible, and those reasons were set forth in the City's findings. In response to EDC's claims that the findings does not present "empirical evidence," CEQA requires that the findings be supported by substantial evidence in the record which is defined to mean "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines § 15384(a).) It includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (*Id.*) The EIR and Findings identify that costs of purchasing conservation easements or agricultural land outright could range from \$12 million to \$32 million dollars given the size of the project. (EIR at 3.7-24) The EDC states that the City has overstated the costs of acquiring conservation easements, but fails to provide any evidence in the form of current day comparisons as to what it believes are the costs to acquire agricultural easements. Even at a reduced acquisition ratio, the impact could not be reduced to less than significant, and the feasibility – both economic and the availability of land to be acquired – is questionable given the size of the Project and the costs already borne by the Project. Finally, the City considered whether contribution to conservation organizations would be feasible and determined that there were no programs in place to do so and therefore whether the mitigation could be successfully accomplished in a reasonable period of time given the lack of operating programs was determined to be infeasible.

Comment 4: Impacts to Visual/Aesthetic Resources (Page 4)

EDC's comments regarding the City's findings with respect to Visual and Aesthetic Resources is similar to the discussion above regarding impacts to agricultural areas. The EIR determined that the transition of the Project site (together with the adjacent South Ormond Beach Specific Plan area) from agricultural uses to urban uses would have a significant and unavoidable impact on visual character. The Project site has been designated for urban development

(residential, general commercial, park) under the City's 2020 General Plan. (EIR at 3.7-4) EDC suggests that the change in visual character could be mitigated through acquisition of land – essentially, the same mitigation that it proposed to address agricultural resources. As discussed above in Comment 3 regarding agricultural resources and in Section 3.8 of the EIR, the acquisition of land whether at a 1:1 ratio or a lesser ratio is not feasible because of the costs to acquire such land or easements. Moreover, as noted in Section 3.9 of the EIR, the City of Oxnard is largely built-out, and the Project site and the adjacent parcel are the last undeveloped sites within the City Urban Restriction Boundary (CURB) line in this part of the City. Therefore, there are no similarly-sized or similarly-situated lands that could be feasibly acquired within the CURB line, and all lands outside the CURB line are required to remain in agricultural production. Given the lack of available land in this area, the cost of acquiring land in general, and the City's determination in its 2020 General Plan that the Project site was appropriate for urban development, the City determined that there were no feasible measures due to policy (i.e., General Plan) considerations, economic considerations, and the unavailability of undeveloped land within the CURB line in this area.

EDC states that the City must require the applicant to acquire for every acre of development an open space easement over one acre of land within the Southern Subarea (i.e., 322 acres), the specific plan for which is currently being considered by the City. For the reasons discussed in Comment 3, above, the City has determined that such acquisition would not be feasible.

Comment 5: Findings Regarding Impacts Mitigated To Less Than Significant Levels (Page 4)

The Findings set forth the evidence in the record that support the conclusions that impacts were mitigated to less than significant. As EDC notes, it submitted these comments previously in its letter commenting on the EIR. Those comments were responded to by the City and the responses to those comments address the EDC comments raised in this letter. CEQA requires that the findings be supported by substantial evidence in the record which is defined to mean “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (CEQA Guidelines § 15384(a).) It includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (*Id.*) Those facts, assumptions and other evidence were set forth in the City's findings and EDC has not provided any evidence to the contrary.

Comment 6: Water Resources (Pages 5-13)

Comment 7: Biology (Pages 13-15)

The comment expresses two concerns regarding the EIR's mitigation for raptor foraging habitat. First, EDC reiterates its prior comments on the Draft EIR regarding BIO Mitigation

Measure 2. This comment was responded to in the Response to Comments in the Final EIR. Given the degraded value of the habitat due to its historical use for agriculture and high degree of disturbance, and the amount of protected open space used as foraging habitat by raptors (approximately 80,000 acres), in addition to the Ventura County Game Preserve, the EIR determined that the mitigation ratio of 1:10 was appropriate.

Second, EDC provides comments on the Adaptive Management Plan. When the City Council certified the EIR, it adopted by Resolution the following action: "4. The City Council shall, at the time it considers approving the Ormond Beach Specific Plan Projects, consider adopting an Adaptive Management Plan which identifies mitigation that is comparable to Biology Mitigation Measure No. 2 recommended in the EIR regarding the creation and/or restoration of raptor foraging habitat. Specific mitigation identified in the Adaptive Management Plan shall consist of open space and/or fees to be determined by the Development Agreements for the Ormond Beach Specific Plan projects and the City shall be designated the agency responsible for carrying out said mitigation." In approving the SouthShore Specific Plan, the City Council hereby determines to replace BIO-2 as it was set forth in the FEIR with the mitigation measure stated in Resolution No. _____, adopted on March 23, 2010, which shall be made a part of the Mitigation Monitoring/Reporting Program.

The Adaptive Management Plan has been submitted to and reviewed by the City. The Adaptive Management Plan allows for some onsite mitigation (10.2 acres of native habitat) to occur within the SouthShore Project site in combination with offsite mitigation. In an effort to provide as much native habitat within the Project site and adjacent to the Ormond Beach area, the Plan provides a program for installation of specific native plant species and prescribes monitoring requirements and success criteria.

Comment 8: Biology/Indirect Impacts to Sensitive Habitat (page 15)

The EDC reiterates its comments on the Natural Resource Management Program that were previously submitted on the EIR and responded to by the City (See Comment O-24 and Response). EDC's comments are premised upon a misunderstanding and misreading of the EIR, the Natural Resource Management Program, and case law.

The NRMP is not a mitigation measure. The NRMP is a program that is being developed by and funded by the project proponents of the SouthShore Specific Plan and the South Ormond Beach Specific Plan in order to reduce or avoid indirect impacts that may result from these two developments on the sensitive resources at Ormond Beach. Because this is a project applicant-sponsored program, it is not mitigation and therefore not included in the list of mitigation measures. See Master Response 2 in the Final EIR (Response to Comments-6).

Although the NRMP has not been developed, this does not render it legally inadequate. The NRMP is similar to the types of programs that were upheld in *Defend the Bay v. City of Irvine* (2004) 119 Cal. App.4th 1261, and *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011 where, although the specific program or measures have not been developed, so long as there is a commitment to develop measures that will satisfy specific performance criteria articulated at the time of project approval, the courts have determined the

measure to be sufficient to address potential impacts. In this case, the EIR identifies specific resource protection measures that will be included in the NRMP, such as fencing, signage, predator management, invasive plant control, public information and enforcement and identifies detailed criteria that will guide the design, development and implementation of these NRMP components. For example, the EIR describes the location of the signage (along the beach and perimeter of the property), the frequency (at 100-foot intervals), and content (information regarding "leash laws"). "Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan." *Sacramento Old City Association v. City Council, supra* at 1028-1030. The NRMP is an applicant-sponsored program to which commitments are ensured through the development agreement. It has been described with sufficient detail and specificity regarding its contents that it is not an improper deferral of mitigation. The level of detail and criteria for development of this plan provides the substantial evidence before the City to determine that the NRMP, when implemented, would reduce these potential biological resource impacts (BIO-11, BIO-12, BIO-22, BIO-26 and BIO-27) to less than significant.

The letter also recites sections of the EIR regarding the project features that would inhibit predators, such as domestic cats, from reaching the Ormond Beach area and tries to attack the adequacy of the City's findings by pointing to what it states is inconsistent information. Again, the EDC has mischaracterized the facts and findings in the EIR. As noted, the physical features of the SouthShore project, such as the 18 acre lake, would inhibit domestic cats from reaching the sensitive habitat areas. Because this only pertains to the southern boundary of the SouthShore Project site, the EIR also discusses the fact that similar barriers are not proposed along the eastern edge. The NRMP's provisions regarding predator management is designed to address the potential impact of cats traveling to sensitive habitat areas using the eastern edge of the site. (The northern and western edges of the site are adjacent to developed, urban areas and do not provide a means to reach the Ormond Beach area.) As described, the predator management plan would address all types of predators identified in the EDC letter (gulls, crows, coyotes, raptors, etc.).

EDC expresses concerns regarding implementation of MM BIO-5 which is a water quality measure that requires the installation of trash traps at all entrances to bioswales. The SouthShore Project's water quality is addressed through the creation of a lake that will also serve to capture runoff from the site before it is discharged into the storm drain system. Because the South Ormond Beach project does not include a similar feature, MM BIO-5 was developed to address its water quality runoff. If the South Ormond Beach project is not developed, the runoff impacts that the EIR identified will not occur and there will be no need to implement this measure. Thus, if the South Ormond Beach Specific Plan is not approved, the impacts from that project will not affect the Ormond Beach resources. The development agreement would still require the SouthShore Specific Plan project to develop a NRMP to address its impacts, but if the adjacent project is not developed, the impacts will be greatly reduced.

The EIR concluded that with implementation of the NRMP and identified mitigation measures, the impacts to biological resources would be mitigated to less than significant. No substantial evidence has been presented by EDC to require the City to impose on the SouthShore Project the requirement to acquire portions of the adjacent South Ormond Beach project site.

Comment 9: Findings Regarding Impacts Determined to be Less Than Significant (Page 18)

The EDC notes that the City's Findings identify those impacts that were determined, in the EIR, to be less than significant and for which no mitigation measures were required. (City Findings, Section V.) These impacts were provided for informational purposes to the City and summarize the evidence in the EIR that was used to support the determination that these impacts did not exceed the thresholds of significance and no mitigation measures were required. CEQA only requires that Findings be made for significant effects identified in the EIR. (Cal. Public Resources Code Section 21081.)

Comment 10: Geology: Coastal Flooding, Tsunami and Sea Level Rise (Page 18)

The EDC letter makes the following three points with respect to coastal flooding, tsunami and sea level rise: (1) the City failed to support its findings regarding the potential for coastal flooding in the Specific Plan area—or to identify ways to reduce or avoid such impacts—with substantial evidence; (2) Federal Emergency Management Agency (“FEMA”) maps are not authoritative and underestimate coastal flood risk; and (3) the City failed to consider the effects of sea level rise on biological resources. These points were made in EDC's prior comment letter (Comment Letter O.4) and were previously responded to in the FEIR Responses to Comments and in revisions to the FEIR itself (notably Master Response 1.)

First, with respect to coastal flooding, the FEIR includes an expanded analysis of sea level rise as it relates to tsunami hazards and the increased potential for flooding in the Specific Plan area. This analysis includes citation to information published by the Pacific Institute in *The Impacts of Sea-Level Rise on the California Coast*, which EDC references in its letter. As explained in the FEIR, the effects of sea level rise on coastal flooding and the associated risk to properties would be addressed through application of City development and building standards concerning the placement and construction of structures in areas prone to flooding, as established by FEMA and the California Office of Emergency Services. The impact was deemed significant but feasibly mitigated (Class II) to a less-than significant level, with reference to Mitigation Measure GEO-5: Tsunami Emergency Evacuation. Therefore it is not the case, as EDC asserts, that the City has failed to identify mitigation or has failed to support its findings with substantial evidence.

Second, with respect to mapping, the findings do not rely only on the FEMA map that EDC criticizes. As discussed in the FEIR, the California Emergency Management Agency (“Cal EMA”) published a new Tsunami Inundation Map for Emergency Planning for the Oxnard area in February 2009. According to both FEMA and Cal EMA, the Specific Plan Study Area is not within 100- or 500-year floodplain and is not expected to be inundated by a tsunami. While the City acknowledges that there is research suggesting that sea level rise could exacerbate the probability of coastal flooding in the Study Area by the end of the 21st century, additional local research and analysis are required to more fully understand how local circumstances would affect such probability. In the meantime, the City will continue to enforce development standards concerning the placement of structures in areas prone to flooding, based on the best

available information published by FEMA or Cal EMA. Additionally, the City will continue to implement the recommendations of the Operational Area Tsunami Evacuation Plan and “Tsunami Emergency Information: How to Prepare, React, and Survive.” This is a brochure that identifies evacuation routes and reunification areas for evacuees. Therefore, substantial evidence—including both FEMA and CAL EMA maps—support the City’s coastal flooding findings.

Finally, EDC alleges that the City has failed to consider the effects of sea level rise on biological resources in the EIR and the findings. As discussed in the FEIR, there is some indication in the research prepared by the Pacific Institute and others that sea level rise will cause wetlands to migrate upslope into low-lying coastal areas, including those adjacent to Ormond Beach. In the absence of a State Coastal Conservancy (“SCC”) wetland restoration plan for the Ormond Beach area, however, it is not possible to determine what the biological effects of the Ormond Beach projects on such a plan might be. The City assumes that, in conjunction with the development of its wetland restoration plans for the Ormond Beach area, the SCC will consider sea level rise as part of its environmental review process. Therefore, per longstanding discussions with the SCC, the southernmost 220 acres of the South Ormond Beach Specific Plan area will be retained for agricultural uses, which leaves open the opportunity for the SCC or others to acquire and use that land to advance wetland restoration efforts. Notwithstanding the uncertainty surrounding a potential future wetland restoration plan, EDC invites the City to speculate as to the contents of such a plan and to conduct analysis and adopt mitigation based on that hypothetical document. CEQA does not require such speculation (*See* CEQA Guidelines § 15145.) As a result, the City’s findings with respect to sea level rise are supported by substantial evidence and adhere to CEQA’s requirements.

Comment 11: Water Resources

Comment 12: Biology: Wildlife Corridors (Page 22)

The letter states that the City failed to address evidence submitted by David Magney. Mr. Magney submitted a comment letter on the EIR. Responses to his comments were included in the Final EIR (see Letter I.18 and Response 12). The EDC letter both mischaracterizes Mr. Magney’s comment as well as the City’s response to the evidence in the EIR. Mr. Magney’s comment letter included a map prepared by the Ventura County Planning Division and South Coast Wildlands in 2007 showing wildlife movement corridors in the region. The Project site is clearly marked and is not designated as a wildlife movement corridor, nor is it adjacent to a wildlife movement corridor. Moreover, as noted in Response 12 to Mr. Magney’s letter, the threshold for determining significance is whether the proposed Project would interfere substantially with migratory wildlife corridors. Based upon the analysis in the EIR and information in the record regarding the marginal habitat values of the Project site and the lack of any wildlife movement corridors on or adjacent to the Project site, the City’s conclusion that the Project would not interfere substantially with migratory wildlife movement is supported by substantial evidence.

Comment 13: Land Use: Consistency with General Plan Land Use Policy (Page 22)

Comment 12 introduces a series of arguments that the SouthShore Project is inconsistent with Oxnard's General Plan. EDC's prior comment letter raised the same issues, and City has already responded to same in the FEIR. As a general matter, and per the City's adopted thresholds, the Land Use and Planning analysis in the FEIR (Section 3.7) relies heavily on a comparison of the uses proposed in the specific plans with the General Plan land use map, as well as a review of consistency with General Plan land use policies. As that analysis indicates, there are no substantial conflicts or inconsistencies between the proposed SouthShore Specific Plan and the General Plan.

Comment 14: Global Climate Change (Pages 22-23)

As EDC has noted, it has submitted comments on global climate change in its prior correspondence on the EIR and the City has responded to those comments in the Final EIR. (See Responses 14-19 to Letter O4 and Master Response 3: Global Climate Change at Responses to Comments-8.) CEQA Guidelines Section 15064.4 which EDC cites does not mandate a particular finding, nor does it render the City's analysis and findings "legally unfounded." The section requires the lead agency to make "a good faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." Section 15064.4(a)(2) also permits a city to rely on a qualitative – as opposed to quantitative – analysis. As noted in Master Response 3, the EIR quantifies the potential estimated operational GHG emissions associated with the project, and evaluates the project's consistency with various GHG emission reduction strategies.

Comment 15: Findings Regarding Alternatives

The EDC submitted extensive comments regarding alternatives in its comment letter on the EIR. These comments were responded to in the Final EIR. (See Comments O-43 to O-50, and the Responses to Comments.)

Five alternatives were analyzed in the EIR, and three alternatives (Alternatives 3, 4 and 5) would reduce or avoid impacts. CEQA requires that the "no project" alternative be evaluated. Alternative 2, which would actually increase the amount of residential development, was the "no project" alternative that was included in accordance with CEQA Guidelines Section 15126.6(e).

Alternative 1

Comments regarding Alternative 1 were previously addressed in the Final EIR. (See Response 47 to Letter O-4.) This alternative would reduce the impacts that would be generated from uses developed on the SouthShore Project site. The SouthShore Project proponent does not propose to relocate or build the high school on the east side of Olds Road, and therefore the impacts of the high school were not considered impacts resulting from development of the Project site. When considering the air and traffic impacts of the high school to the additional

residential units that would be constructed on the high school's footprint, the residential units would generate less traffic (peak hour trips) and less air emissions.

As to whether Alternative 1 should be eliminated because it was requested by the property owner, Section 15126.6(a) of the CEQA Guidelines states that "There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." Given that the school development plans of the high school district may change, this was a reasonable alternative for the City to consider.

Alternative 2

Alternative 2 was considered because it was the "no project" alternative required under CEQA Guidelines Section 15126.6(e). "The 'no project' analysis shall discuss . . . what would be reasonably expected to occur in the foreseeable future if the project were not approved." (Section 15126.6(e)(2).) "If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed." (Section 15126.6(e)(3)(B).) Development in accordance with the General Plan is a probable consequence and was therefore considered.

Alternative 5

In response to the question posed in EDC's prior comment letter, the EIR notes that impacts to biological resources would be reduced because many of the impacts are directly related to human occupation, and the reduction in development and potential occupants of the site, will correlate to a reduction in impacts to resources.

Comment 16: Environmentally Superior Alternative (Page 24)

EDC notes that it agrees with the City's finding that Alternative 4 is the environmentally superior alternative. As to the feasibility of this alternative due to the availability or lack of funding to acquire the land to implement the alternative, the City previously responded to comments regarding the possible acquisition of the site in the Responses to Comments in the Final EIR.

[Need City's input re pressure to develop elsewhere and what the City's housing needs are.]

Comment 17: Statement of Overriding Considerations (Page 25-26)

The EDC comments mischaracterizes the benefits that are to be provided by the Project and which were identified by the City as considerations that override the significant impacts of the Project. The NRMP is not a mitigation measure, but a voluntary program that has been developed by the Project applicant and the proponent of the South Ormond Beach Specific Plan to protect the sensitive natural resources at Ormond Beach. Implementation of the NRMP will be funded by the SouthShore Project proponent, and the commitment established through the development agreements. This is not a project mitigation or condition of approval but a program

initiated by the Project applicants to design the development in a manner that is sensitive and compatible with the Ormond Beach area.

The use of reclaimed water infrastructure is not a mitigation measure, but an enhancement provided by the Project to expand the reach of the City's program to encourage use of reclaimed water. Most projects are only required to connect to the City's reclaimed water infrastructure and to use reclaimed water for common area, or public park irrigation. The Project will install reclaimed water lines to each house so that private landowners can use reclaimed water. This far exceeds the Project's obligation to connect to the City's backbone system.

Finally, the fire station funding is not a mitigation measure, but a public benefit that will be provided by the Project and confirmed through the development agreement. The Project's contribution exceeds the fees that they would be required to pay under City fee ordinances, and therefore, the additional contribution towards the fire station is a benefit that could not otherwise be achieved through a mitigation measure or condition of approval alone.

In conclusion, the three Project benefits that are cited in the EDC letters all represent voluntary commitments of the Project, not mitigation measures to reduce impacts.

Comment 18: General Plan Consistency

According to EDC, the City has failed to demonstrate, based on substantial evidence, that the SouthShore Specific Plan is consistent with the 2020 General Plan, generally, and its biological, water quality, and agricultural lands objectives, specifically. EDC correctly notes that, under State law, proposed specific plans must be consistent with general plans. Each of EDC's claims is addressed in turn, below. They were also addressed in the FEIR in response to EDC's prior comment letter.

Comment 19: Biological Resources

EDC alleges that the SouthShore Specific Plan is based on an inadequate identification of botanical species. In fact, Section 3.6 and Appendix A to the Recirculated Draft EIR cite the presence and potential presence of a vast array of biological resources both within and near the Ormond Beach Study Area. This data is based on years of research conducted by numerous experts on biology and the Ormond Beach area, as well as limited direct field observation during the preparation of the RDEIR. These sources provide an adequate baseline by which the lead agency can assess the magnitude of project impacts, and constitute substantial evidence to support the City's biological resources General Plan finding. EDC is also referred to FEIR Master Response 2, Indirect Impacts Sensitive Offsite Habitat and Sensitive Species, for additional discussion.

Second, EDC reiterates its earlier point that the SouthShore Specific Plan fails to avoid or minimize significant impacts to rare species and unique habitats in the Ormond Beach area. The responses to EDC's comments on the same topics above, as well as in the FEIR, provide substantial evidence to refute this point.

EDC contends that the SouthShore Specific Plan fails to consider or address the SCC's proposed plan to restore the Ormond Beach wetlands. As discussed in the response to Comment 10, above, without an actual wetland restoration plan for the Ormond Beach area, it is not possible to determine what the biological effects of the Ormond Beach projects on such a plan might be. The City assumes that, in conjunction with the development of its wetland restoration plans for the Ormond Beach area, the SCC will consider sea level rise as part of its environmental review process. Therefore, and per longstanding discussions with the SCC, the project applicants have designated the southernmost 220 acres of their project area for agricultural uses, which leaves open the opportunity for the SCC or others to acquire and use that land to advance wetland restoration efforts. Notwithstanding the uncertainty surrounding a potential future wetland restoration plan, EDC invites the City to speculate as to the contents of such a plan and to conduct analysis and adopt mitigation based on that hypothetical document. CEQA does not require such speculation (*See* CEQA Guidelines § 15145.) As a result, the City's findings with respect to sea level rise are supported by substantial evidence and adhere to CEQA's requirements.

Comment 20: Water Resources (Pages 27-28)

According to EDC, the City does not have substantial evidence to conclude that the SouthShore Specific Plan will be consistent with the General Plan's objective regarding water resources and overdraft. The response to Comment 6, above, comprehensively addresses water supply availability and concludes that the City's evaluation, which accounted for the uncertainties associated with future supplies and facility improvements, provides substantial evidence to support the City's findings regarding project-level water supply impacts.

Comment 21: Agricultural Resources (Page 28)

The Project site is designated "Ormond Beach Specific Plan" in the City's 2020 General Plan and contemplates future urban development of the site. The General Plan also calls for the Ormond Beach Specific Plan land uses to contribute to achieving the objectives listed in Table 3.7-2 of the EIR. (See page 3.7-5.) Protecting agricultural lands from premature and unnecessary urbanization is not one of the objectives for this area cited in the General Plan. The City analyzed the Project's impact to agricultural resources in Section 3.8 of the EIR, including whether mitigation would be feasible. The comments raised in the EDC letter were previously raised in its comment letter in the EIR and were responded to in the Responses to Comments in the Final EIR. (See Letter O-4, and Responses to Comments 33-37.) See also response to Comment 3, above.

Comment 22: Land Use Element – Preservation of Scenic Views (Page 28)

According to EDC, City has failed to explain how the unmitigated loss of over 300 acres of agricultural land is consistent with Goal 2 of the Land Use Element, which calls for the preservation of scenic views. EDC is correct that the development of the Ormond Beach Specific Plan Study Area is considered to have a substantial impact on the visual character of the site, as the development would involve converting agricultural land to urban uses. This impact was determined to be significant and unavoidable. Although the Specific Plan provides for

landscaping and other aesthetic amenities to buffer the proposed urban development, and the proposed change in use was previously contemplated in connection with amendment of the General Plan, there are no feasible mitigation measures that would reduce or mitigate the change from open agricultural areas to urban development. EDC's comments on aesthetics and view impacts were also addressed in response to Comment 4, above.

Notwithstanding this impact, however, the Specific Plan is still consistent with Goal 2 of the Land Use Element. That element recognizes that the area's scenic resources are not limited to agricultural areas, but also include beaches, coastline, and distant views of foothills and mountains surrounding the Oxnard Plain as important scenic resources. The potential impacts to all of these scenic vistas in the Study Area are assessed for each subarea and the photographs presented in Figures 3.13-1 through 3.13-5 in the FEIR. With the incorporation of standards contained in the California Building Code and City Grading Ordinance, all non-agricultural visual impacts were found to be less than significant. Therefore, substantial evidence supports the conclusion that the Specific Plan is consistent with Goal 2 of the Land Use Element.

Comment 23: Growth Management Element – Quality of Life (Page 28)

EDC claims that the Specific Plan will degrade the quality of life in Oxnard in violation of Goal 2 of the Growth Management Element. In support of this claim, EDC anonymously quotes the preferences of "numerous residents" who believe that wetlands preservation is synonymous with "quality of life." Such personal, subjective beliefs are not the standard against which a project's consistency with Goal 2 is to be measured. Rather, the City must consider a wide range of quality of life issues, including housing supply, amenities, and proximity to essential services. In those respects, the Project is consistent with Growth Management Goal 2. It would increase local housing opportunities, provide new recreational amenities for future residents, and would be located in close proximity to schools, parks and commercial opportunities. The City's finding regarding Growth Management Element Goal 2 consistency is therefore supported by substantial evidence.

Comment 24: Growth Management Element - Resource Protection (Page 28)

EDC claims that the Specific Plan is inconsistent with Objective 2 of the Growth Management Element, which relates in part to resource protection. As a result, EDC does not believe that the City can support a consistency finding with the Growth Management Element. As discussed in responses to Comments 7, 8, and 11, above, all available and feasible mitigation measures to reduce potential resource protection impacts have been incorporated into the Specific Plan. The City's finding regarding Growth Management Element Objective 2 consistency is therefore supported by substantial evidence.

Comment 25: Development Agreement (Page 29)

EDC alleges that the City has failed to demonstrate that the Project is consistent with the 2020 General Plan. Each of EDC's comments regarding the General Plan policies has been responded to in the prior responses.

EDC observes that the parties to the development agreement are the City and the seven property owners of the parcels that make up the SouthShore Project site. Section 65865(a) of the California Government Code states that a city may enter into a development agreement with any person “having a legal or equitable interest in real property for the development of the property . . .” The seven landowners are those individuals with legal interest in the real property. The obligations, however, are contingent upon development of the SouthShore Project through a “master developer.” The requirement for a “master developer” ensures that all of the individually-owned properties will be developed in unison, and that all mitigation measures, conditions of approval and applicant-offered measures will be provided pursuant to the comprehensive development plan that is reflected in the SouthShore Specific Plan and confirmed through the development agreement. The development agreement requires that all of the owners work together through a master developer, so that the Project infrastructure, grading, and drainage, among other Project components, are implemented in a comprehensive manner as opposed to each other developing independently. All of the obligations imposed on the Project will be implemented by the master developer, including implementation of the mitigation measures and conditions of approval. If one owner wishes to proceed on his or her own, they must assume the responsibilities of the master developer to ensure that the Project is implemented as contemplated in the Specific Plan and the development agreement.

Comment 26: Section 6.5 Public Benefits (Page 29)

EDC’s comments regarding the public benefits that are described in the development agreement repeat comments made about the SOC. See response to Comment 17. The public benefits are not conditions of the Project. The NRMP is an applicant-sponsored measure, not a condition or mitigation measure. Under the City’s fee ordinance, the Project would be required to pay fees towards a new fire station. The Project’s contribution towards the fire station exceed the amount of fees it would have been required to pay and that additional funding provides considerable benefits to the City. Finally, the Project’s commitment to extend reclaimed water infrastructure to each residence goes well beyond what could have been required under the conditions of approval or mitigation measures.

EDC then reiterates its request that the Project proponent acquire either in fee or in easement 352 acres of property in the South Ormond Beach Specific Plan area. For the reasons discussed in responses to Comments 3 and 4, above, the City has determined that this is not a feasible measure to impose on the Project.

Comment 27: Subdivision Map Act (Page 30)

EDC repeats its argument regarding the Project’s consistency with the General Plan. Responses to the prior comments presented by EDC regarding consistency with General Plan policies are set forth above. (See responses to Comments 18-24.)

The “Developer” is the “master developer” that will assume the obligations under the development agreement, and implement the mitigation measures and conditions of approval in developing the site.

The dedication of water rights to the City is a standard condition of approval. While this will provide the City with an additional supply of groundwater and water rights that it does not currently have, this condition was not imposed to address water supply. Water supply was addressed in the EIR and FEIR and in responses to EDC's prior comment letter in the FEIR. For a discussion of water supply, see also response to Comment 6, above.

Comment 28: Conditions of Approval from Adaptive Management Plan (Page 31)

The City Council previously modified the requirements of MM BIO-2 and required the preparation of an Adaptive Management Plan which would be considered for adoption at the time the City Council considered the SouthShore Specific Plan Project. The Adaptive Management Plan is required to identify mitigation that is comparable to Biology Mitigation Measure No. 2 recommended in the EIR regarding the creation and/or restoration of raptor foraging habitat. An Adaptive Management Plan has been prepared and submitted for City consideration. It identifies restoration areas on site, specifies a plant palette for habitat restoration, and provides higher quality habitat areas onsite than what currently exists. By providing onsite restoration, the City is assured that the habitat that will be provided will be proximate to the Ormond Beach area, will be of higher quality habitat than what currently exists, and will be timely provided to address the potential loss of foraging habitat.

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4/20/11



environmental
DEFENSE CENTER

April 6, 2011

Planning Commission
City of Oxnard
214 S. C Street
Oxnard, CA 93030

Re: Southshore Specific Plan Project – April 7 Agenda Item E.1: Planning & Zoning Permit Nos. 03-620-03 (General Plan Amendment), 03-640-01 (Specific Plan), 03-560-01 (Rezoning), 07-300-16 (Tentative Subdivision Map), 05-670-03 (Development Agreement) and Findings and Statement of Overriding Consideration

Dear Chair Mullin and Members of the Planning Commission:

Enclosed are comments submitted on behalf of the Environmental Defense Center (EDC), the Los Padres Sierra Club (“Sierra Club”), and the Environmental Coalition of Ventura County (“Environmental Coalition”) regarding your April 7 Agenda Item E.1: Planning & Zoning Permit Nos. 03-620-03 (General Plan Amendment), 03-640-01 (Specific Plan), 03-560-01 (Rezoning), 07-300-16 (Tentative Subdivision Map), 05-670-03 (Development Agreement) and Findings and Statement of Overriding Consideration for the Southshore Specific Plan project (“Southshore Project” or “project”). The EDC is a non-profit, public interest law firm that protects and enhances the environment through education, advocacy and legal action. The Sierra Club serves Ventura and Santa Barbara Counties, with issues of concern ranging from forest management and wilderness to the growing problems with land use and energy development. The Environmental Coalition is a non-profit confederation of citizens and local groups working together to protect the environment and the quality of life throughout Ventura County.

We apologize that we were not able to submit this letter to you further in advance of your meeting. As you know, the Staff Report for this Agenda item is over 300 pages, and much of it is important, new information that has not been available to the public prior to its release with the Staff Report (e.g., Adaptive Management Plan for raptor habitat loss; Development Agreement; Findings of Fact and Statement of Overriding Consideration). We do not believe the Commission or the public has been provided sufficient time to review this information. We have attempted here to preliminarily

identify our most significant concerns based on our initial review of the Staff Report, and reserve the right to provide additional comment as we have time to analyze the document.

We have previously submitted comments on the Ormond Beach Specific Plan Recirculated Draft Environmental Impact Report¹ and the proposed Ormond Beach Specific Plan Final Environmental Impact Report (FEIR).² We have also provided testimony at multiple public meetings and hearings of the Planning Commission and City Council on this matter. We incorporate our prior comments here by reference.

Our interest in this Project primarily stems from the impacts it will have on the Ormond Beach wetland area. This Project, a primarily residential development with over 1500 units, would eliminate a vast open space area that provides the fragile wetlands one of the last remaining buffers from existing urban development. In addition, the City and Applicant have failed to address significant impacts that the Project will impose on the wetlands – including that the considerable increase in residents, domestic predators, and invasive plants would harm wetland plants and wildlife.

For the reasons described below, the Planning Commission cannot legally justify recommending approval of the Southshore Project. We believe this is the appropriate outcome as the California State Coastal Conservancy (“SCC”) has invested millions of dollars in Ormond Beach, and is poised to invest even more, to permanently protect and restore the area. If successful, this could be one of the largest coastal wetland areas in Southern California – a destination for local residents and visitors from afar. We would like to see the City support the Conservancy and prioritize protection and preservation of Ormond Beach in its land use planning decisions.

If the Commission does move forward with a recommendation of approval to the City Council, then we urge you to also recommend that, at least, the following additional mitigations and conditions are adopted to ensure that Project impacts are mitigated as much as feasible and that the Applicant contributes an appropriate amount to the protection and restoration of Ormond Beach:

¹ Kraus, Karen (EDC). 2008. Letter to Ms. Kathleen Mallory (City of Oxnard) Re: Ormond Beach Specific Plan Recirculated Draft Environmental Impact Report – State Clearinghouse No. 2005091094. Sep 22; and Kraus, Karen (EDC). 2009. Letter to Ms. Kathleen Mallory (City of Oxnard) Re: Significant New Information for Ormond Beach Specific Plan Environmental Impact Report – State Clearinghouse No. 2005091094. Mar 23.

² Kraus, Karen (EDC). 2009. Letter to Planning Commission Re December 10, 2010 Special Meeting Regarding Certification of Final Environmental Impact Report No. 05-03 for the SouthShore and South Ormond Beach Specific Plan Projects (Agenda Item F). Dec 8; Kraus, Karen (EDC). 2010. Letter to Oxnard City Council Re City Council Certification of Final Ormond Beach Specific Plan Environmental Impact Report – March 2, 2010 Hearing. Feb 23; and Kraus, Karen (EDC). 2010. Letter to Oxnard City Council Re: Certification of Final Ormond Beach Specific Plan Environmental Impact Report and Adoption of Resolution of Approval – March 23, 2010 AGENDA ITEM I-4. Mar 23.

(1)

- Mitigation for Impacts to Agricultural Resources and Visual/Aesthetic Resources – For every 1 acre of Project development, the Applicant should be required to acquire 1 acre, through an open space easement, within the Southern Subarea.
- Mitigation for Impacts to Ormond Beach wetland habitat, species, and special status species – For every 10 acres of Project development, the Applicant should be required to acquire at least 1 acre, in fee, within the southernmost 230-acres of the Southern Subarea that are not currently proposed for annexation.

I. The City has not Complied with CEQA

Although the City has certified the FEIR³, it cannot approve the SouthShore Project without (1) findings that describe how the City has responded to significant effects identified in the FEIR, and (2) a statement of overriding considerations explaining why the City is approving the SouthShore Project with unmitigated significant environmental impacts.⁴ We have identified the following flaws with the proposed Findings of Fact and Statement of Overriding Considerations⁵:

(2)

Findings of Fact

For each significant effect identified in the FEIR, the City must make one or more written findings, including a brief written explanation of the rationale for each finding, that:

- 1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR;
- 2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency;
- 3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers make infeasible the mitigation measure or project alternatives identified in the final EIR⁶

These findings must be supported by substantial evidence in the record.

³ As stated in our prior comments on the EIR, we disagree with the City that the EIR is legally adequate and preserve our right to assert any legal claims regarding the adequacy of the EIR.

⁴ Pub. Res. Code § 21081.

⁵ Exhibit B to Attachment G to Staff Report (Resolution Approving Southshore Specific Plan).

⁶ CEQA Guidelines § 15091(a).

Findings Regarding Significant And Unavoidable Impacts. The FEIR identifies several impacts that cannot be mitigated to a less than significant level and therefore remain significant and unavoidable. These include impacts to agricultural resources and impacts to visual/aesthetic resources.

For impacts to agricultural resources (based on the unmitigated loss of 322 acres of prime farmland), the City states “no mitigation measures or acceptable Project alternatives are proposed or recommended that could feasibly reduce the Project’s significant impacts.” (Ex. B at 12.) The City, however, simply reiterates discussion from the EIR without providing evidence of infeasibility. The City must present empirical evidence that the mitigation would render the Project, as a whole, impracticable. In addition, the City’s discussion in EIR significantly overstates easement costs and relies on factors that are irrelevant to open space/agricultural easements. (FEIR at 3.8-24.) The City also does not address the possibility of preserving acreage at less than a 1:1 ratio. (FEIR, Volume II, RTC Letter O.4 #34.) Conservation of less acreage would reduce cost and increase feasibility. Imposition of this mitigation measure may not entirely reduce the class of impact, but it would still minimize adverse impacts and must be considered rather than simply dismissing all mitigation out of hand.

The City also fails to explain why it is infeasible to contribute to organizations that perform agricultural conservation activities. For example, the SCC administers funds for the acquisition of land, and is currently interested in conserving acreage within the Ormond Beach area. As the City is well aware, the SCC and The Nature Conservancy, in partnership, have managed the acquisition and conservation of land in the Ormond Beach area, some of which remains in agricultural production, and are interested in acquiring property in the Specific Plan area. (EIR Figure 2-1, noting 276 acres in “TNC” ownership.)

For impacts to visual/aesthetic resources, the City similarly concludes, “no mitigation measures or acceptable Project alternatives are proposed or recommended that could feasibly reduce the Project’s significant impacts.” (Ex. B at 16.) The City identifies no evidence to support this finding. The City must present empirical evidence that the mitigation would render the Project, as a whole, impracticable. The City also fails to address the feasibility of partially reducing this impact.

This Project’s impacts to Agricultural Resources and Visual/Aesthetic Resources can be feasibly mitigated. The City must require the Applicant to provide for the permanent acquisition and preservation of resource protected open space in the south Ormond Beach area. For every 1 acre of Project development, the Applicant should be required to acquire 1 acre, through an open space easement, within the Southern Subarea.

Findings Regarding Impacts Mitigated To Less Than Significant Levels. The FEIR identifies multiple impacts that the City asserts will be avoided or mitigated to less than significant levels through the imposition of mitigation measures identified in the FEIR. The City’s findings in Exhibit B generally track the FEIR discussion regarding

5 impacts and mitigation and do not identify any additional evidence to support its conclusions that impacts will be mitigated to less than significant levels. (Ex. B at 17-63.)

As explained in detail in our prior comments on the EIR, the FEIR fails to properly identify significant environmental effects related to the Southshore Project, and it also fails to identify mitigation that would avoid or substantially lessen the identified environmental impacts. We incorporate our EIR comments here by reference with respect to the City's findings, and specifically highlight the following:

Water Resources: Water Supply Availability

There are significant errors with the City's findings that water supply impacts have been mitigated to less than significant levels.

6 First, the Project description has changed substantially from the Project evaluated in the EIR – the Project evaluated in the EIR included approximately 1200 residential units and the project now includes “up to 1,545 residential dwelling units” identified on the April 7 Agenda or at page 1 of the Staff Report. It is not apparent that the EIR or the water supply assessment and verification evaluated this increase. Appendix E to the EIR (Water Supply Assessment and Verification for North Ormond Beach) identifies 1,283 dwelling units as the project description. (p. 5.) The City's findings are based on the EIR project description (see Ex. B at 5). Thus, the EIR may substantially underestimate water demand for the Project.

Second, the City's findings describe that the developer must “provide to the City additional water rights, water supplies, or water offsets in the form of recycled water facilities, conservation retrofits, financial contributions towards City programs which generate in-City water conservation, or participation in other similar programs with [sic] cumulatively result in a total water supply contribution, taken together with other water rights or FGCMA allocation provided to the City, which offset the entire estimated water demand associated with the project.” (Ex. B at 25.) The City and Applicant have yet to identify how the Project will offset the 402 AFY shortfall. (Ex. B at 24, FEIR FEIR at 3.3-118.⁷) CEQA prohibits the postponed formulation of mitigation measures.⁸

Third, the City's findings that water supply impacts are mitigated to less than significant are inconsistent with statements made by the City about water supply and demand in other proceedings. In litigation regarding the proposed Southern California Edison peaker plant, City staff declared in May 2010 that “A substantial water shortage now exists for the City and is likely to exist for at least the next five years.” “. . . water supply and demand projections in the City's 2005 Urban Water Management Plan and various other City documents prepared prior to 2009 . . . are no longer accurate or reliable due to the substantial changes in the City's water supply situation . . .” “While the City

⁷ See also Addendum to Final Water Supply Assessment and Verification for North Ormond Beach at 14.

⁸ CEQA Guidelines § 15126.4(a)(1)(B).

presently has some reserve water supply in the form of groundwater pumping credits with the Fox Canyon GMA and UWCD, the projected water supply shortages will substantially deplete or completely exhaust all credits by 2014. *A substantial reduction or exhaustion of these reserves would leave the City with no emergency supplies in the event of a continued drought, further cutbacks of imported water, further reductions in groundwater allocations from the Fox Canyon GMA or UWCD, or interruptions of imported water supplies. This is not considered an acceptable option from the City's point of view.*⁹ The peaker plant would only require 27 AFY.

Finally, as we have repeatedly commented, the City's conclusions that water supply impacts are less than significant is based on a highly flawed analysis in the EIR. The EIR fails to analyze potential impacts to groundwater supply. Its demand projections are unsupported and inconsistent. And, it overstates the reliability of water supplies and fails to identify and evaluate alternative sources.

The City's Water Supply Analysis Does Not Analyze Potential Impacts To Local Groundwater Supply

The FEIR concludes that impacts to water supply availability are less than significant – Impact Water 1 (Northern Subarea) and 11 (Southern Subarea) – but entirely fails to analyze potential impacts to groundwater supply and recharge. The only consideration in the FEIR pertinent to the evaluation of groundwater supply impacts is the following:

During the period 2010 to 2014, the City may draw on a portion of its groundwater credit bank of approximately 37,000 AF as an interim supply until the GREAT Program Phase 1 is completed as planned. Further, under extended dry and multiple dry year conditions, it is possible that during the years 2010 to 2014, the cumulative draw on the groundwater credits could nearly exhaust the City's currently available credits. However, the City has developed this credit bank for use during these types of extended drought or water supply restricted conditions.

(FEIR at 3.3-102 and 3.3-111)

This discussion is deficient for several reasons. First, there is inadequate information in the FEIR about the environmental setting by which to measure potential impacts to local groundwater supplies. The FEIR fails to provide critical baseline information about local groundwater supply, in particular, that the groundwater basin is in overdraft:

⁹ Declaration of Chris Williamson in *City of Oxnard and Chris Williamson v California Coastal Commission* (No. BS 122248). May 24, 2010. (emphasis added) [Attached].

There is little doubt that the coastal basins within the [Fox Canyon Groundwater Management Agency] have exceeded their yield and been in overdraft for several decades.¹⁰

The Fox Canyon Groundwater Management Agency, the entity responsible for managing the local groundwater resources (“Fox Canyon GMA”), has detailed the status of the groundwater resources¹¹ and has recently described “safe yield” of the aquifers as 100,000 acre feet per year, an amount that is “routinely exceeded.”¹²

In addition, the FEIR fails to disclose and discuss the full scope of users relying on local groundwater. It is mentioned that the City’s groundwater supplies are regulated through the Fox Canyon GMA, but there is no discussion of the extent of agricultural and municipal and industrial users throughout Ventura County that rely on the same groundwater reserves as the City of Oxnard. This omission is inconsistent with CEQA Guidelines which require an EIR to consider the effects of a project “in the full environmental context.”¹³

Second, the statements about groundwater quoted above from the FEIR do not even consider the potential impacts to groundwater supply.¹⁴ There appears to be an inconsistency in the City’s identified “thresholds of significance.” The Recirculated Draft EIR for the 2030 General Plan, citing to Appendix G of the CEQA Guidelines and the “City of Oxnard *Thresholds Guide*” identifies the following threshold of significance for its water supply impact analysis:

The project would result in a significant impact if it would . . .
[s]ubstantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume of a lowering of the local groundwater table level.

The FEIR, however, does not identify this threshold of significance or otherwise consider potential impacts to groundwater supply. Instead the discussion simply focuses on whether the City would have enough “credits” available and whether it would be able to

¹⁰ Fox Canyon Groundwater Resource Management Agency et al. 2007. 2007 Update to the Fox Canyon Groundwater Management Agency Groundwater Management Plan. May.

¹¹ See e.g., Fox Canyon GMA, et al 2007; Fox Canyon GMA. 2007a. Calendar Year 2007 Annual Report.

¹² Hubner, Gerhardt (Deputy Director, Watershed Protection District). 2009. Letter to City of Oxnard Planning Commission re Response to Comments – FEIR: South Shore Specific Plan and South Ormond Beach Specific Plan Projects. Dec 10. See also Fox Canyon GMA, et al 2007 at 43.

¹³ CEQA Guidelines § 15125(c).

¹⁴ There also appears to be an inconsistency in the City’s identified “thresholds of significance.” The Recirculated DEIR for the 2030 General Plan, citing to Appendix G of the CEQA Guidelines and the “City of Oxnard *Thresholds Guide*” identifies the following threshold of significance for its water supply impact analysis: The project would result in a significant impact if it would . . . [s]ubstantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume of a lowering of the local groundwater table level. (Oxnard 2030 General Plan Recirculated Draft EIR at 2.2-2.)

restore its “credit bank.”¹⁵ As discussed in more detail below credits are not groundwater allocations.¹⁶ Rather, use of a groundwater credit represents the ability of an operator to avoid a payment penalty if that individual operator exceeds its allotted groundwater allocation. Thus, the “impact” discussion in the FEIR appears to have more to do with the City’s ability to obtain water at an expected cost than with impacts to local groundwater supply.

There is no analysis in the FEIR about the potential impacts to local groundwater supplies if the City does utilize all of its available banked credits during the short-term (years 2010 to 2014) and is required to pump additional groundwater – i.e., if the City needs additional groundwater supply beyond 1) its allocated supply, and 2) the excess amounts for which it is planning on using its current banked credits. Would this have the potential to “substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume of a lowering of the local groundwater table level”? This question is neither asked nor answered.

Highlighting the problem with this lack of analysis in the FEIR is the City’s heavy reliance on the future implementation of the GREAT program. In fact, the City’s reliance on groundwater credits would likely continue well beyond 2014, as the GREAT program itself is another means to generate further groundwater credits for the City:

The City *will receive groundwater credits* from the [Fox Canyon] GMA for GREAT Program recycled water that is either injected into coastal aquifers or provided to agricultural irrigators who subsequently reduce their groundwater pumping The City may also use the recycled water directly for approved municipal uses, thus displacing the need for potable water delivery for these uses. (emphasis added)

(FEIR at 3.3-31.) The FEIR identifies the GREAT program as an important future water “supply” for the City, but once again the analysis fails to consider the impacts of the City’s continued reliance on groundwater credits as part of this program.

In comments submitted to the Planning Commission regarding the water supply analysis for the Ormond Beach Specific Plan Final EIR, the Fox Canyon GMA has explicitly questioned the FEIR’s assumptions regarding groundwater credits and the potential impacts to groundwater quantity, and stated that not enough information is available in that EIR to conclude that “potential stress on the aquifer(s) does not result in water quality or water quantity problems.”¹⁷ The Fox Canyon GMA has identified the

¹⁵ No support is provided for this conclusion.

¹⁶ Fox Canyon GMA Ordinance 8.1, Section 5.7.1.

¹⁷ Hubner 2009 at 1.

increased use of groundwater credits as a potential threat to the regional groundwater resource:

Should there be an extended period with limited groundwater recharge a significant number of credits could be used in a short period of time overstressing the groundwater resource

The effect of any large-scale use credits would be significant. For example, even a modest 5% use of the total amount of credits currently available could easily result in a nearly 26,930 AF increase in extraction in any given year. Given the mean annual groundwater extraction observed from 2000 through 2007 (approximately 118,500 AF), this additional 26,930 AF extraction based on credit usage would represent a net 22.7% increase in annual extractions. One documented consequence of groundwater over extraction is groundwater basin overdraft in both the UAS and LAS groundwater elevations, land subsidence, and seawater intrusion.¹⁸ (citations omitted)

(6)

The Fox Canyon GMA raised similar questions and concern about the EIR for the 2030 General Plan,¹⁹ as did the Ventura County Watershed Protection District. As explained above, the new information and data supporting the 2030 General Plan EIR water supply analysis are the same as for this Specific Plan FEIR.

FEIR Demand Projections Are Unsupported And Inconsistent

An EIR must provide a “consistent and coherent description” of future demand for water.²⁰ The FEIR fails to meet this standard.

Table 3.3-7 identifies a figure of 28,900 AFY “baseline water demand” and states that “water demand by existing customers is anticipated to remain fairly stable through 2030.” (FEIR Table 3.3-7, FN (a).) However, no foundation is provided for this conclusion, other than that it is a “conservative estimate” because “[i]n all likelihood current customers will continue to implement best management practices, which should reduce overall per capita water consumption.” (FEIR at 3.3-45.) The FEIR immediately undercuts its own assumptions, however, by significantly reducing the demand projection based on a “Demand Reduction Program.” (FEIR Table 4-7.) This “program,” which identifies over 13,000 AF in reductions, is at best anticipatory, as it is based on a “draft plan” (not referenced or provided for public review) “due by the end of 2009” that will

¹⁸ Fox Canyon GMA 2007a at 10.

¹⁹ Pratt, Jeff (Executive Officer, Fox Canyon GMA). 2010. Letter to City of Oxnard Planning Division re Review of Notice of Availability and Recirculation of Five Sections of The Oxnard 2030 General Plan Draft program Environmental Impact Report (Sent Via Email to Chris.Williamson@ci.oxnard.ca.us 1/7/2010). Jan 7.; Pratt, Jeff (Executive Officer, Fox Canyon GMA). 2010a. Letter to Oxnard City Council re City of Oxnard 2030 General Plan Final EIR. Jan 25.

²⁰ *Vineyard Area Citizens for Responsible Growth v City of Rancho Cordova* (2007) 40 Cal. 4th 412, 439.

help the City identify "*potential* demand management measures and *potential* demand reductions." (FEIR at 3.3-46 (emphasis added).) It is not even clear whether this program will actually be implemented. These demand figures are thus unsupported, inconsistent, and illusory.

In addition, the FEIR's assumption about the potential demand reduction program is inconsistent with assumptions otherwise made by the City in its water management planning. The 2005 Urban Water Management Plan (UWMP), which is referenced by the FEIR,²¹ assumes a 5% reduction in demand through 2030 from water conservation programs.²² The UWMP states:

It is estimated that aggressive water conservation programs can reduce water demands by approximately five (5) percent.²³

In contrast, the FEIR assumes that water conservation programs would reduce demand by as much as 10% from 2021-2030. (FEIR 3.3-46.) The FEIR fails to explain why it is reasonable to rely on this more aggressive assumption to reduce projections of water demand. This assumption also appears to be inconsistent with the phenomenon of "demand hardening," as described in the UWMP – i.e., as the community continues to become more water efficient, it may become more difficult for customers to reduce their water use.²⁴

Finally, the FEIR's projected new demand for new development is based on "the buildout of the 2030 General Plan, Alternative B Year to year projected new development demand based on the July 2009 City Project List, the July 2009 Project List, 2030 General Plan Background Report (2006), Ventura Council of Governments Decapolis Report, and UCSB Forecast." (FEIR at 3.3-46.) However, it is completely unclear what data from these documents is used to update the demand projections. It is also unknown why this information is being used to replace demand projection information in the 2005 UWMP – or what precisely it is replacing.

Adding to the confusion of determining the basis for the demand projections, none of the documents identified are included in the list of references for the FEIR, and it is not clear from the FEIR whether they are meant to be incorporated by reference. In order to reduce the size of an EIR, CEQA Guidelines allow for incorporation by reference, under certain specific circumstances.²⁵ In order to incorporate any document by reference, an EIR must summarize, or briefly describe, the data referenced, and the "relationship between the incorporated part of the referenced document and the EIR."²⁶

²¹ FEIR at 3.3-44. It is unclear whether the UWMP is intended to be incorporated by reference. See discussion below.

²² Final Draft 2005 Urban Water Management Plan at 48 and 53.

²³ UWMP at 48.

²⁴ UWMP at 62.

²⁵ CEQA Guidelines §15150.

²⁶ CEQA Guidelines § 15150(c).

The documents must also be made available to the public. None of the documents identified above were made available to the public. Full citations were not even provided. The FEIR thus fails to minimally comply with CEQA Guidelines for incorporating these documents by reference.

Reliability of Identified Sources of Water is Overstated and Alternative Sources are not Identified or Evaluated

1. New Identified Sources of Groundwater in the EIR are Speculative

Multiple water sources included in the FEIR are identified as groundwater credits from the Fox Canyon GMA – including the “Ferro Property Program,” the “GMA Groundwater Credit Transfer,” and the “PHWA Program,” as well as anticipated credits from implementation of the GREAT Program. (FEIR Table 3.3-5.) However, credits “are not considered as extraction allocations or adjustments to extraction allocations.”²⁷ When available, credits “shall be used to avoid paying extraction surcharges,”²⁸ which are set at a high rate to discourage extraction of groundwater in excess of approved allocation amounts. In other words, credits are used to offset a water user’s *overuse* of groundwater. A groundwater credit is not an allocation of water *per se*; rather, it represents the ability of an operator to avoid a payment penalty if that individual operator exceeds its allotted groundwater allocation. Table 4-8 conflates “credits” and “allocations,” misrepresenting what is available as allocated water in the “Total Annual Supplies.” *All* groundwater credits should be identified in the “Groundwater Banked Credits” category. (6)

The Fox Canyon GMA, in comments on the Specific Plan FEIR, has expressed concern with “relying on credits as a groundwater allocation,” and stated:

Credits are intended to be used infrequently to offset extraction surcharges, but not as a strategy for new development.²⁹

In addition, the Fox Canyon GMA has more generally identified the groundwater credit system as a serious potential threat to regional groundwater resources. For this reason, in the *2007 Update to the Fox Canyon Groundwater Management Agency Groundwater Management Plan* (“2007 Groundwater Management Plan”), the GMA identifies two potential strategies that could significantly curtail the use of credits.³⁰ Thus, these credits may not be available for use over time. In its comments on the FEIR, the Fox Canyon GMA recently reiterated:

Credits are subject to revision or expiration at any time by the Fox Canyon Groundwater Management Agency’s Board of Directors.³¹

²⁷ Fox Canyon GMA Ordinance 8.1, Section 5.7.1.

²⁸ Fox Canyon GMA Ordinance 8.1, Section 5.7.1.

²⁹ Hubner 2009 at 1.

³⁰ Fox Canyon GMA, et al 2007 at 63 and 69-70.

³¹ Hubner 2009 at 1.

Moreover, the FEIR fails to clarify that a transfer of credit must be approved by the Fox Canyon GMA.³² Confirmation of such approval, as well as any other meaningful detail about these transfers, is not provided in the FEIR for any of the identified credit transfers. It is therefore completely speculative to presume that these credits will be transferred to the City.³³

Finally, the EIR also identifies several thousand acre feet in water from “transferred allocations,” based on the City’s expectation that several geographical areas that are currently agricultural land will undergo urban development. (FEIR at 3.3-39.) These areas include the Teal Club Specific Plan area, the Sakioka Farms Specific Plan area, Camino Real Business Park, and the Jones Ranch Specific Plan. However, it is speculative to presume these sources will be available or adequate, especially because, even if these projects are approved and constructed, as with the Ormond Beach Specific Plan, they would generate water demand beyond the Fox Canyon GMA allocations generated by the conversion of agricultural land to municipal and industrial use.

2. Climate Change Effects on Water Supplies highlights Uncertainty of Water Sources

We have previously commented on the need to consider climate change effects on water supplies. The California Climate Adaptation Strategy identifies both the potential impacts of climate change on water resources and the need to plan for such impacts:

[D]rought conditions are likely to become more frequent and persistent over the 21st century due to climate change Population growth expected over the next few decades will lead to additional demand. Even without higher air temperatures and changing precipitation patterns over the next few decades, California’s water supply problems would already be challenging. *A portfolio of measures implemented at the local and regional level will be needed to meet these growing challenges.* (Emphasis added.)³⁴

The City has asserted that the EIR accounts for fluctuations in water supply, including those that might result from climate change. (FEIR, Volume II, Responses to Comments Letter O.4 #8.) However, as discussed throughout this section, information added to the FEIR does not adequately account for fluctuations in water supply. Moreover, specifically with respect to climate change, the FEIR relies extensively on MWD planning, which only accounts for part of the City’s water supply. (FEIR at 3.3-40 – 3.3-41.) Climate change impacts, which are acknowledged in the FEIR, highlight the

³² Fox Canyon GMA Ordinance 8.1, Section 5.7.2.1.

³³ See also, Pratt 2010 at 1 (noting that “a) credit use is not automatically granted by the FCGMA, and b) that credits may be subject to reduction by the FCGMA”).

³⁴ California Natural Resources Agency. 2009. California Climate Adaptation Strategy: A report to the Governor in Response to Executive Order s-13-2008. (p. 79 and Chapter VII.)

potential unreliability of all water sources and reinforce the need to identify alternative sources.

3. Alternative Sources Must Be Identified and Evaluated

An EIR must include an adequate discussion of contingencies in case anticipated water supplies for a land use project fail to materialize.³⁵ As explained above, the FEIR fails to disclose the fact that newly identified local groundwater sources and continued imported surface water allocations may not materialize and/or may be more limited than assumed. Moreover, the identified sources provide a false sense of “diversity” of supply. (FEIR at 3.3-52.) In reality, all of the sources identified since the Recirculated draft EIR stem from only one source – local groundwater managed by Fox Canyon GMA – and in the entirety of its water supply analysis, the FEIR identifies only two distinct sources of supply – local groundwater managed by Fox Canyon GMA and imported surface water from the State Water Project. Both are currently subject to limitations, both may continue to experience restrictions in allocations, and both may actually experience *increases* in restrictions.³⁶ This situation is in stark contrast to the scenario described in the FEIR where the City is purportedly free to shift to another more available supply as one becomes less available. In reality, the supplies relied upon in the FEIR are speculative and may be reduced in response to circumstances beyond the City’s control. Although the FEIR was supposedly updated to include “changed circumstances” in the City’s water supply programs, it still fails to disclose an accurate picture of the City’s water supply outlook or to analyze impacts associated with the various water supply options.

Thus, the City has failed to support its findings regarding water supply impacts with substantial evidence.

Biology – Direct Impacts to Bird Foraging Habitat (Impact BIO-4, BIO-6, BIO-7)

The City finds that impacts to bird, including raptor, foraging habitat will be mitigated to less than significant because the City Council will consider adoption of an Adaptive Management Plan (“Plan”), which identifies mitigation that is comparable to BIO Mitigation Measure No. 2 in the EIR. (Ex. B at 46-48.) The City has failed to support these findings with substantial evidence.

First, we have previously commented that BIO Mitigation Measure No. 2 is inadequate mitigation for the significant loss of foraging habitat associated with this Project. The EIR notes the loss of 677 acres of agricultural lands (321 acres for the

³⁵ *Vineyard Area Citizens for Responsible Growth v City of Rancho Cordova* (2007) 40 Cal. 4th 412, 432 ([W]here, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.)

³⁶ Norris 2009.

Southshore Project), which are “comparable to grasslands and open shrublands, for raptors, shorebirds, migratory waterfowl, and other birds.” (FEIR at 3.6-65.)

CDFG considers raptor foraging habitat to be sensitive habitat, particularly if it supports sensitive species such as burrowing owls or white-tailed kites. White-tailed kites are known to forage in both the Northern and Southern Subareas, and burrowing owls have been observed in the Southern Subarea, which provides generally higher quality habitat than the Northern Subarea. (FEIR at 3.6-65.)

The EIR required the project applicants to compensate 1 acre for every 10 acres developed but provided no explanation for this minimal compensation. In response to our comment, the City simply stated that the compensation ratio is based on the “degraded foraging value” of the area. (FEIR at 3.6-66.) However, this conclusory statement is belied by the other statements in the EIR that both the Northern and Southern subareas support sensitive species such as white tailed kites and burrowing owls, as well as other foraging bird species.

The Plan proposed as a “comparable” replacement for BIO Mitigation Measure No. 2 has only been identified to the public with the release of the Staff Report. We have not had sufficient time to review it and these comments are preliminary. Preliminarily, however, we do not believe this Plan provides substantial evidence to support the City’s findings. First, the new “mitigation” provision explicitly leaves open the possibility that it may never be adopted because the proposed resolution states only that the City Council will “consider adopting an Adaptive Management Plan” (emphasis added). 7

Second, even presuming it is adopted, it is unclear what specific provisions in the Plan would be adopted and at least some recommendations of the Plan are clearly inadequate to mitigate these biological impacts. Specifically, the Plan allows for onsite “restoration” – i.e., “restoration” within the Southshore Project area. This is inconsistent with allowing a 1:10 compensation ratio (i.e., replace 1 acre for every 10 acres lost). Proposed replacement habitats in the Project area would also be low quality habitats in that they are located predominantly within thin strips and along roadsides. Given that low quality habitat would also be replaced by low quality habitat (rather than high quality habitat) in the Northern Subarea, the 1:10 ratio is not supported by the restoration plan. That ratio is only appropriate when low quality habitat is being replaced by high quality habitat. The Plan itself states that the Project area does not “meet the criteria” for raptor foraging habitat characteristics and habitat values. (Plan at 17.)

The Plan also does not appear to consider that human uses near Lake SouthShore will degrade the area as raptor foraging habitat. The open space around Lake SouthShore is expected to be heavily used by the public including new residences of the specific plan area, for purposes including dog walking. Birds, including raptors, are sensitive to human activities including dog-walking. The Plan does not discuss whether human uses within and near the habitat restoration areas will be limited to protect their values as habitat for

raptors. Unless these areas are placed off limits to the public, they will likely be heavily used by the public and this use will degrade the areas' value for foraging raptors.

Considering these issues, offsite restoration in an area with fewer roads and wider open spaces (compared to thin strips along roads) is greatly preferable from a biological standpoint. In this regard, the offsite restoration identified in the Plan "such as within the approximate 230-acre southernmost area of the southernmost area of the Southern Subarea that is not proposed for annexation" has the only potential to create high quality habitat justifying the 1:10 ratio. (Plan at 24.)

**Biology – Indirect Impacts to Sensitive Habitat and Special Status Wildlife
(Impact BIO-10, BIO-11, BIO-12)**

The City finds that the Southshore Project has been modified to mitigate or avoid significant indirect impacts to the Ormond Beach wetlands and special status species such as western snowy plover and least tern (Impacts BIO-10, BIO-11, BIO-12). (Ex. B at 52-55. This finding is incorrect and not supported by substantial evidence because the City still relies on measures that are inadequate to reduce these significant impacts.

First, as we have repeatedly commented, the Natural Resource Management Program ("NRMP") improperly defers mitigation of impacts to biological resources.³⁷ The EIR and Specific Plan state that "a qualified biologist" will prepare the program, but this approach has been held explicitly contrary to CEQA.³⁸ (FEIR at 3.6-41.) CEQA prohibits the postponement of the preparation of mitigation plans. CEQA does provide that identified 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."³⁹ The items identified in the EIR and the Specific Plan, however, do not satisfy these criteria.

Taken together they consist of little more than a sketch of a management plan. The items listed are vaguely described (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; fail to define scope, performance standards for predator management). They are open-ended (e.g. "construct seasonal *and/or* permanent fencing," "Specific targeted measures would be employed if plover *and/or* tern nest predation increases significantly"). And, they omit important plan components (e.g., no measure to implement monitoring and reporting to evaluate success of program and status of species).

³⁷ CEQA Guidelines § 15126.4(a)(1)(B).

³⁸ *Defend the Bay v. City of Irvine* (4th Dist. 2004) 119 Cal App. 4th 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.").

³⁹ CEQA Guidelines § 15126.4(a)(B).

With respect to potential impacts to the California least tern and western snowy plover, the City disregards explicitly stated concerns from both the U.S. Fish and Wildlife Service (FWS) and the Department of Fish and Game (DFG) about Project impacts. FWS has stated:

It is our opinion that the North and South Ormond Beach projects, as proposed, would, in our opinion, result in take of California least tern and western snowy plover and have potentially very significant effects on breeding success at this important breeding site. Therefore we recommend you address these significant effects of the proposed project in your final EIR.⁴⁰

DFG concurred with FWS's findings and stated:

The likely effects of the proposed projects include direct and indirect mortality to both the California least tern and western snowy plover and potentially, a dramatic decrease in breeding success at this important site for this species . . . and opposes the approval of the proposed project without additional avoidance, minimization, and mitigation measures . . .
⁴¹

The City's response in the FEIR – that each agency has independent jurisdiction to protect these species and will do so under their own regulatory proceedings – is cursory and fails to address the fundamental concern raised by the trustee agencies that the Project will result in significant impacts that have not been mitigated.

We identified these concerns in our comments on the RDEIR and in response, the City merely restates the same information described in the RDEIR and fails to specifically address these limitations. Concerns raised by other commenters about adequate funding to implement the NRMP are similarly unaddressed in the response to comments. The SCC, for example, commented that an adequate program would likely cost several hundred thousand dollars per year to fulfill the mitigation needs – significantly more than the amounts that would be secured through Project development agreements. (FEIR, Volume II, RTC Letter S.1, #4.)⁴²

Second, the City states in its findings that physical features of the Southshore Project (e.g., the 18.3 acre lake) would inhibit domestic cats from reaching sensitive

⁴⁰ 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. (FEIR, Volume II, RTC Letter F.1.)

⁴¹ Pert, Edmund J (California DFG). 2006. Letter to Ms. Kathleen Mallory (City of Oxnard) re Recirculated Draft Environmental Impact Report for North and South Ormond Beach Projects SCH # 2005091094, Ventura County. Sep 22. (FEIR, Volume II, RTC Letter S.2.)

⁴² "This concern will be forwarded to the appropriate decision-makers for review and consideration."

habitat areas south of Hueneme Road. (e.g., Ex. B at 52.). This statement, however, is belied by information in the FEIR which states:

[T]here is no physical barrier or fencing proposed along the eastern project boundary that would prevent cats from entering bird foraging habitat east of Olds Road and potentially traveling through agricultural fields farther south to more sensitive areas at Ormond Beach. (FEIR at 3.6-52.)

Moreover, domestic cats are not the only predator of concern that will be introduced or increased as a result of the Project. Predators of concern at Ormond Beach include crows, ravens, gulls, raptors, coyotes, mice, possums, raccoons, and ground squirrels.⁴³ The addition of over 1500 residences, a school, and nearby parks can increase the presence of all of these species, and just the infiltration of predator species in a beach area can have a serious impact on a breeding plover population.⁴⁴

Finally, the City asserts that any impacts will be less than significant, but expressly bases this conclusion on measures that will also be implemented by another project which has yet to be approved. For example, The City states, “the Southern Subarea Project, which is also addressed in the Final EIR, will be required to implement Mitigation Measure BIO-5 as set forth at page 3.6-69 of the Final EIR which requires the installation of trash traps at all entrances to bioswales and a maintenance program to remove trash on a routine basis from the Southern Subarea, but because of its participation in the “Ormond Beach Natural Resource Management Program,” the Northern Subarea is not required to implement Mitigation Measure BIO-5.” This is inconsistent with the FEIR, however. Impacts BIO-10, BIO-11, and BIO-12 – each of which is specific to the Northern Subarea Southshore Project – all state that impacts would be reduced by the NRMP “*and implementation of Mitigation Measure BIO-5.*” (FEIR at 3.6-52 and 53, emphasis added.) Thus, if the Southern Subarea Project is not approved, impacts will not be fully mitigated.

Similarly, the Southern Subarea is also required to contribute to the NRMP. Although this information is not clear from the City’s findings, it is explicit in the FEIR (Impacts BIO-22, BIO-26, and BIO-27 and in the Southshore Specific Plan which states, “Southshore will participate, on a fair-share basis with the South Ormond Beach Specific Plan Project and potentially other projects, in the implementation of an ‘Ormond Beach Natural Resource Management Program’ (Specific Plan at 6-12.) Neither the City, nor the EIR allocates responsibility for portions of the impacts or implementing the NRMP among the projects. Thus, if the Southern Subarea Project is not approved, the impacts will not be fully mitigated.

⁴³ Kahler, Chris (VCShorebirds Program Coordinator). 2010. Personal communication to Karen Kraus (EDC). Nov.

⁴⁴ In one year at Vandenberg Air Force Base, predators were responsible for loss of 20% of nests. U.S. Air Force. 2007. Breeding Activities of the Western Snowy Plover (*Charadrius alexandrinus nivosus*) on Vandenberg Air Force Base: 2007 Annual Report. Nov.

To ensure that this Project's impacts to Ormond Beach wetland habitat, species, and special status species, including the western snowy plover and least tern are adequately mitigated, the City must require the Applicant to provide for the permanent acquisition and preservation of resource protected open space in the south Ormond Beach area. For every 10 acres of Project development, the Applicant should be required to acquire at least 1 acre, in fee, within the southernmost (approximate) 230-acres of the Southern Subarea that are not currently proposed for annexation. (8)

Findings Regarding Impacts Determined To Be Less Than Significant. The FEIR identifies multiple impacts that the City asserts will be avoided or will be less than significant and do not require mitigation measures. The City's findings in Exhibit B generally track the FEIR discussion and do not identify any additional evidence to support its conclusions that impacts will be mitigated to less than significant levels. (Ex. B at 64-94.) (7) (9)

As explained in detail in our prior comments on the EIR, the FEIR fails to properly identify significant environmental effects related to the Southshore Project, and it also fails to identify mitigation that would avoid or substantially lessen the identified environmental impacts. We incorporate our EIR comments here by reference with respect to the City's findings, and specifically highlight the following:

Geology: Coastal Flooding, Tsunami, and Sea Level Rise

The City acknowledges that sea level rise and tsunamis increase the potential risk of coastal flooding in the Specific Plan area, but still only identifies a less than significant impact and fails to identify any meaningful mitigation to minimize or avoid this risk. (FEIR at 3.2-37; Ex. B at 64.) As discussed in a review of the FEIR prepared by the Pacific Institute,⁴⁵ a nonpartisan research institute with expertise in sea level rise impacts on the California Coast,⁴⁶ the City has failed to support its findings regarding the significance of potential for flooding in the Specific Plan area, or to identify ways to reduce or avoid such impacts, with substantial evidence. The Pacific Institute explains why the FEMA maps (which the City relies on to suggest the Project area is not at risk of flooding) are not authoritative. These maps are outdated, do not consider the risk of sea-level rise, and many experts believe the FEMA maps underestimate coastal flood risk.⁴⁷ In addition:

⁴⁵ The Pacific Institute's comments on the Specific Plan EIR are incorporated herein by reference.

⁴⁶ In 2009, the Pacific Institute released the report, *The Impacts of Sea-Level Rise on the California Coast*, an analysis prepared for three California state agencies. EDC submitted this document to the City as significant new information regarding the EIR on March 23, 2009.

⁴⁷ Heberger and Gleick (Pacific Institute). 2009. Letter to City of Oxnard Planning Commission re Review of City of Oxnard Ormond Beach Specific Plan Final Environmental Report. Dec 8. (p. 3) Heberger and Gleick 2009 at 3.

An area where no floodplain is shown does not necessarily mean there is no floodplain, but simply that it has not been studied.⁴⁸

The Pacific Institute mapping and analysis specifically considers sea-level rise and the risk of flooding for the life of the Project, and therefore provides an authoritative assessment of the potential risk of flooding in the Project area. It shows that coastal flooding from a 100 year-flood, considering sea level rise, could extend into the Southshore Project area.⁴⁹

Notably, while the City attempts to downplay the conclusions of the Pacific Institute's Sea Level Rise report and mapping, it otherwise relied on both in comments to the Coastal Commission opposing a coastal development permit for Southern California Edison's peaker plant:

The [Pacific Institute's] March 2009 report . . . includes a sea-level rise map that places the proposed peaker plant within the 1.4 meter coastal base flood zone The report states, "Continued development in vulnerable areas will put additional areas at risk and raise protection costs." It does not make sense to locate a \$60 million major critical public facility in an area that is identified as being inundated by sea level rise.⁵⁰ (citations omitted)

Additionally, this discussion highlights the City's failure to consider the effects of sea level rise on biological resources. CEQA requires analysis of any significant effects a project might cause "by bringing development and people into the area affected."⁵¹ One of the direct effects of development in the Project area is expected to result from sea level rise. Sea level rise will cause the shoreline to migrate inland and wetlands, where they exist, to move upslope/inland.⁵² The recent report on sea level rise preparedness from the California State Lands Commission acknowledges this effect, stating:

One of the most significant impacts will be to property boundaries from the resultant changes in the elevation in the mean high tide line.⁵³

Where natural lands exist upslope/inland, these areas can provide suitable wetland habitat in the future. However, if these upslope/inland areas are developed, they cannot

⁴⁸ Heberger and Gleick 2009 at 3.

⁴⁹ Heberger and Gleick 2009. California Flood Risk: Sea Level Rise (Oxnard Quadrangle)

⁵⁰ Holden, Thomas, et al (Oxnard City Council). 2009. Letter to Ms. Bonnie Neely (California Coastal Commission) re Appeal of the City of Oxnard's Denial of the Southern California Edison (SCE) Peaker Plant Coastal Development Permit (CDP), Located at 251 North Harbor Boulevard: Appeal No. A-4-OXN-07-096, Mar 24.

⁵¹ CEQA Guidelines § 15126.2. See also, California Office of Attorney General 2009 at 6.

⁵² Heberger and Gleick (Pacific Institute). 2009. Letter to City of Oxnard Planning Commission re Review of City of Oxnard Ormond Beach Specific Plan Final Environmental Report. Dec 8.

⁵³ California State Lands Commission 2009 at 28.

provide suitable wetland habitat to accommodate sea level rise. Wetlands that cannot “migrate” inland will eventually convert to permanent open water and no longer support the same diversity of plants and animals. The California Natural Resource Agency’s Climate Adaptation Strategy discusses similar impacts from sea level rise and concludes that “Sea-level rise, especially at the increasing rates projected for the 21st century, may result in the loss of substantial areas of critical habitat for a variety of coastal species.”⁵⁴ In addition, if wetlands become inundated, they will no longer be available to reduce flooding and provide other benefits.

The City acknowledges this potential impact, but fails to analyze it in the EIR or address it in its findings.⁵⁵ (FEIR Volume II, RTC Letter O.4 #6.) The justification for this omission in the EIR is that there is no wetland restoration plan from the SCC. (FEIR Volume II, RTC Letter O.4 #66.) This response does not justify the complete lack of analysis of this issue in the EIR. The City is fully aware that the SCC has been spearheading efforts to acquire, preserve and restore wetland habitat throughout Ormond Beach, including in the Specific Plan area, for many years now. It is simply inaccurate to state that there is no wetland restoration plan underway by the SCC as information about restoration plans for the Specific Plan area have been provided formally to the City in comments on the RDEIR and informally over the course of the past several years through meetings and presentations.⁵⁶

(10)

The Pacific Institute has reviewed the EIR and describes that in the Specific Plan area, the Ormond wetland “migration area” would extend at least as far as McWane in the Southern Subarea.⁵⁷ Figure 5 in the Pacific Institute review demonstrates how the Specific Plan development would limit the ability of restored wetlands to migrate. Figure 5 also demonstrates how the Specific Plan development directly overlaps with the SCC’s restoration plan.⁵⁸ The best way to avoid the impact of sea level rise on biological resources in the Ormond Beach Specific Plan area is to prevent development in the area south of McWane to ensure that it will be available to support intermittently wetted wetland habitat as sea level rise occurs. In addition, the areas north of McWane (Northern and Southern Subareas) should remain undeveloped so that other wetland habitats (e.g., southern coastal salt marsh, coastal prairie, treatment wetlands) and other open space can also be maintained to buffer the wetlands from urban development. This scenario is consistent with the California Natural Resource Agency’s recommendation that all levels

⁵⁴ California Natural Resources Agency 2009 at 52.

⁵⁵ The RTC generally refers to “Master Response 1” on this issue, which also discusses our comment on exacerbated impacts to flooding, erosion, etc from sea level rise.

⁵⁶ FEIR Volume II, RTC-Letter S-1. (“City planning staff, City EIR consultants, and the Specific plan project developers and property owners” have known “for the past four or more years” “how the wetland project needs to be at least 900 acres in size to include the area on the east side of Edison Drive and south of McWane Boulevard.”)

⁵⁷ Figure 4, Heberger and Gleick (Pacific Institute). 2009. Letter to City of Oxnard Planning Commission re Review of City of Oxnard Ormond Beach Specific Plan Final Environmental Report. Dec 8.

⁵⁸ Peter Brand has identified “Alternative 2U” as the most likely SCC restoration alternative. This alternative is consistent with information and figures provided to the City by the SCC in comments on the EIR, as discussed above.

of government consider “prohibiting projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones.”⁵⁹

The City’s findings with respect to coastal flooding, tsunami and sea level rise are thus inadequate because they entirely omit consideration of an acknowledged potential significant environmental impact. There is no discussion in the findings of ways to avoid, reduce, or mitigate this impact, or why it is infeasible.

Water Resources: Water Facility Construction (Impact WATER-2)

The City finds that impacts from water facility construction will be less than significant but this conclusion is not supported by substantial evidence. (Ex. B at 64.) The City relies on the analysis conducted in the GREAT Program EIR, but notes that the “the wetlands element”⁶⁰ would be “covered under the environmental document for the GREAT program at a program level and developed to a project-specific level as that element is developed more substantially.” It is improper to defer to a future environmental analysis, and the City has made no finding that facilities for the Southshore Project will not include the “wetlands element” of the GREAT Program. Yet the City still concludes that impacts would be less than significant. (FEIR at 3.3-103, 3.3-112.) This approach has been explicitly repudiated by the courts.⁶¹

It is also improper to defer to a past environmental document if that document does not fully assess impacts or mitigation. As discussed in our prior comments regarding water resources and water supply, the City has incorrectly stated that the GREAT Program EIR concluded that all project impacts were either less than significant or would be mitigated to less than significant, and that “a Mitigation Monitoring and Reporting Plan (MMRP) was adopted to ensure that project-specific impacts of the program components are effectively mitigated.” (FEIR at 3.3-30.) Based on this assertion, the EIR apparently concludes that GREAT Program environmental impacts will be less than significant. (see e.g., FEIR at 3.3-103, 3.3-112.)

In reality, the GREAT Program EIR did not fully assess impacts or ensure mitigation for the GREAT Program. The GREAT Program EIR is explicit that additional

⁵⁹ California Natural Resources Agency 2009 at 73-74.

⁶⁰ It is unclear what is meant by this phrase. The EIR also states that review of the GREAT program indicates that with the exception of the “wetlands element,” there are no identifiable issues that “could represent significant permitting challenges.” We are also unsure what is meant by the phrase “permitting challenges” in this context. The issues of concern in the EIR are whether there are potential environmental impacts and whether they are mitigated.

⁶¹ *Vineyard Area Citizens for Responsible Growth v City of Rancho Cordova* (2007) 40 Cal. 4th 412 (EIR held invalid on several grounds, including improperly purporting to “tier” from a future environmental document.”). See also, *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal. App. 4th 182.

environmental analysis of Phase 2 is not part of that document and would still be required:

... actual quantities of water that would be produced under Phase 2 are unknown, and will depend on a variety of technical and regulatory issues as well as the level of planned growth that is projected in the City's updated general plan. These issues will need to be addressed and clarified prior to conducting a *detailed environmental evaluation* of Phase 2 elements⁶² (emphasis added)

A review of the summary of potential impacts and proposed mitigation measures in the GREAT Program EIR demonstrates that, for Phase 2, this EIR does not address potential impacts to, and mitigation for, land use, geology/soils/mineral resources, cultural resources, paleontological resources, biological resources, air quality, traffic and transportation, noise, public services/utilities, hazardous materials/waste, and socioeconomic/environmental justice.⁶³ The GREAT Program EIR also did not analyze growth inducing impacts of Phase 2.⁶⁴

Biology: Wildlife Corridors (Impact BIO-10)

The City concludes that the Southshore Project disruption to wildlife will be less than significant. This finding is not supported by substantial evidence. The City fails to address evidence submitted by Mr. David Magney that the City does not address direct or indirect impacts to wildlife corridors, including that it "does not adequately quantify, much less recommend adequate mitigation to compensate for the loss of existing foraging habitat, decreasing the value and functionality of the existing wildlife corridor on South Ormond Beach, or eliminating potential for habitat restoration and expansion of wildlife habitat onsite."⁶⁵

Land Use: Consistency With General Plan Land Use Policy

See comments below in Section II. regarding Specific Plan consistency with General Plan.

Global Climate Change

The City fails to make the required CEQA findings for global climate change. The City makes no evaluation of the potential significance of impacts from the Project's greenhouse gas ("GHG") emissions because "it would be speculative to determine if the potential GHG emissions associated with the proposed project would or would not

⁶² GREAT Program EIR at ES-4 – ES-5.

⁶³ GREAT Program EIR at ES-9 – ES-20.

⁶⁴ GREAT Program EIR at 5.3-3.

⁶⁵ 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. (pp 7-8.)

contribute considerably to the cumulative impact of global climate change.” (Ex. B at 92-93.) This finding is not supported by substantial evidence in the record and is legally unfounded.⁶⁶ As documented in our prior comments, the City has also failed to properly identify GHG emissions, and to identify alternatives and/or mitigation measures to reduce the impact. The City has consistently disregarded our repeated comments on this issue, which are incorporated here by reference.

In sum, the City has failed to support each of its findings regarding Project impacts based on substantial evidence in the record.

Findings Regarding Alternatives To The Project. We have previously submitted comments describing how the EIR fails to describe a reasonable range of alternatives, including alternatives that avoid or substantially lessen adverse environmental effects of the Project. No changes have been made in response to our comments and they continue to remain valid. In sum, an EIR must describe a range of reasonable alternatives, and the purpose of considering project alternatives is to “avoid or substantially lessen any of the significant effects of the project.”⁶⁷

Of the five identified alternatives, the FEIR only supports a conclusion that the Northern subarea component of two alternatives would actually reduce or avoid impacts. These are Alternative 3 (No Project/Continuation of Existing Uses) and Alternative 4 (Conservation) – the only alternatives for which substantial evidence in the record demonstrates that impacts in the Northern subarea would be avoided or substantially reduced.

The Northern subarea component of Alternative 1 (Proposed Project with High School located East of Olds Road instead of within Northern Subarea) does not meet the CEQA requirement that alternatives must avoid or substantially lessen project impacts. Alternative 1 increases the number of residential units in the Northern subarea and therefore increases impacts. (FEIR at 4-6.) The City incorrectly states that this alternative will reduce impacts. (Ex. B at 97.) This is inconsistent with conclusions in the EIR and makes no logical sense. Alternative 1 would simply move the high school across the street and increase the number of residential units in the Project area. Thus it would relocate known Project impacts associated with the high school, potentially create new impacts in a new location, and increase Project impacts from the increased number of residences.

Alternative 1 was included not because it reduces impacts, but because it was requested by a property owner. The FEIR states that it is appropriate to include Alternative 1 because the “no project” alternative also increases impacts. (FEIR, Volume II, RTC Letter O.4 #47.) However, CEQA always requires consideration of the “no

⁶⁶ CEQA Guidelines § 15064.4

⁶⁷ CEQA Guidelines § 15126.6(a).

project” alternative,⁶⁸ and that alternative may or may not increase impacts. The FEIR simply disregards the basic requirement for formulation of other project alternatives. As a result, Alternative 1 does not comply with CEQA Guidelines § 15126.6(a) and must be eliminated from the range of alternatives considered in the EIR.

The Northern subarea component of Alternative 2 (No Project/General Plan 2020) also would not necessarily avoid or substantially lessen Project impacts. As discussed in the FEIR, the 2020 General Plan allows substantially more residential development in the Northern subarea. (FEIR at 4-9.)

Alternative 5 is described as “less intensive development.” However, as we have repeatedly stated in our comments on the EIR, insufficient detail about this alternative is provided in the EIR to support a conclusion that impacts will be reduced or avoided. For example, there is no information provided that demonstrates impacts to biological resources from the SouthShore Project would be reduced or avoided.

Environmentally Superior Alternative

The City’s findings continue to perpetuate the fallacy that CEQA requires the identification of an “Environmentally Superior *Build* Alternative.” (Ex. B. at 103.⁶⁹) 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.⁷⁰

The EIR identifies Alternative 4, the conservation alternative, as the environmentally superior alternative. We agree with this finding and support Alternative 4 as the environmentally superior alternative.

The City correctly points out that that the SCC and The Nature Conservancy have completed acquisitions in the area and “it is likely that a substantial part of the area south of McWane may be acquired for conservation purposes.” (Ex. B at 100-101.) These statements undercut the later finding that the feasibility of this Alternative is questionable and speculative “due to the lack of identifying firm funding sources needed to acquire land to fully implement this alternative.” (Ex. B at 101.) The SCC itself noted this similar discrepancy in the EIR and confirmed its goal of acquiring the entire area south of McWane.⁷¹ In addition, the SCC’s acquisition goals in the Specific Plan area are part of a larger wetland restoration effort that would likely generate income for the restoration

⁶⁸ CEQA Guidelines § 15126.6(e).

⁶⁹ See also RDEIR at 4-33 and FEIR at 4-38.

⁷⁰ CEQA Guidelines § 15126(e)(2).

⁷¹ FEIR RTC Letter S-1 at 10.

project, as well as generate economic benefits for the broader area. Studies of wildlife areas have shown that visitors to the areas generate a substantial amount of money and jobs for local economies.⁷² Similarly, a recent report by the U.S. Fish & Wildlife Service concluded that one in every five Americans watches birds, and in doing so contributed \$36 billion to the U.S. economy in 2006.⁷³

The City also states that Alternative 4 may lead to proposals to accommodate development demand in areas of the City not currently planned for that purpose and could result in impacts to other areas of the City in order to accomplish the goals of the 2020 General Plan. (Ex. B at 101.) However, there is no substantial evidence in the EIR or anywhere else in the record to support this conclusion. For example, the most recent draft of the Oxnard Housing Element (January 2011) does not identify the Ormond Beach Specific Plan developments as necessary to meet Regional Housing Needs Allocations.⁷⁴ It also identifies that targets for above-moderate housing in Oxnard have been achieved.⁷⁵ Thus, although this Alternative may not meet development related objectives of this Specific Plan, it is not clear such objectives remain paramount to the City. The findings, for example, reference the 2020 General Plan. However, the City is actively updating and near finalization of a 2030 General Plan and a new Housing Element.

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In addition, the City fails to address the feasibility of achieving the Project development objectives, 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.⁷⁶ In addition, Hearthside Homes, the corporation identified as co-applicant for this Project, is not actually a party to the Development Agreement, and it is therefore unknown what financial backing this Project has.

Statement of Overriding Consideration

The City must state its reasons to support its decision to approve the Project despite the significant unmitigated effects identified in the FEIR.⁷⁷ If “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment,” the adverse environmental effects may be determined “acceptable.”⁷⁸ The City’s “statement of overriding considerations” must be supported by substantial evidence in the record.⁷⁹

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⁷² Caudill, James and Erin Henderson (USFWS). 2004. Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation.

⁷³ U.S. Fish & Wildlife Service. 2009. Birding in the United States: A Demographic and Economic Analysis. Jun.

⁷⁴ January 2011 draft Housing Element, Section F.

⁷⁵ January 2011 draft Housing Element, Table D-6.

⁷⁶ See, e.g., Sanchez 2008 (discussing cancellation of 1000 unit “Levitz” development). [submitted as attachment to EDC comment on RDEIR.]

⁷⁷ CA Pub Res Code 21081(b); CEQA Guidelines § 15093.

⁷⁸ *Id.*

⁷⁹ CEQA Guidelines § 15093(b).

Several of the considerations identified by the City are Project modifications or mitigation measures relied on to reduce impacts to less than significant. These are:

- Contribution to habitat protection at Ormond Beach
- Use of reclaimed water infrastructure
- Fire station funding

These are not overriding benefits of the Project, but requirements that have already been incorporated to ensure that Project impacts will not adversely affect the environment. As such it is improper for the City to rely on them as substantial evidence of benefits supporting a decision to proceed with the Project notwithstanding its adverse impacts.

II. SouthShore Specific Plan Must be Consistent with Oxnard's General Plan

A specific plan cannot be adopted unless it is consistent with the general plan.⁸⁰ Oxnard's current general plan is the 2020 General Plan ("2020 GP"). The City has failed to demonstrate, based on substantial evidence, that the SouthShore Specific Plan is consistent with the 2020 General Plan.

For example, the City asserts that the Southshore Project is consistent with the Open Space and Conservation Element Goals and Objectives.⁸¹ (Staff Rpt. at 18-19.) The 2020 GP Open Space and Conservation Element, however, includes the goal of "Maintenance and enhancement of natural resources and open space."⁸² The SouthShore Specific Plan interferes with this goal because it is substantially inconsistent with the following objectives in the 2020 GP:

1. Project 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.⁸³

Unique Biological Habitats

The SouthShore Specific Plan is inconsistent with the objective of protecting unique biological habitats from development. Notably, the City does not even identify this Objective in its evaluation of the Project's consistency with the General Plan.

⁸⁰ Gov. Code § 65454.

⁸¹ The Southshore Specific Plan is required to demonstrate consistency with the General Plan. The Specific Plan simply reference the analysis in the EIR. (Specific Plan at 1-11 – 1-14 and App. B). We have previously commented that the EIR fails to properly analyze consistency with the General Plan and incorporate those comments here by reference.

⁸² 2020 GP at VIII-50.

⁸³ 2020 GP at VIII-50 – VIII-51.

As detailed by Mr. David Magney, a specialist in botanical resources and wetlands with extensive experience in the Ormond Beach area, the SouthShore Specific Plan is based on a wholly inadequate identification of botanical species.⁸⁴ It omits species known to occur in the area, is not based on field surveys, and fails to follow standard survey and assessment protocols.⁸⁵ It also understates the likelihood of occurrence in the Project area of species that are rare to the region.⁸⁶ Mr. Magney concludes that significant impacts to special status plant species are likely. Thus, development in the Project area is likely to impact unique biological habitats, and due to inadequate surveys and identification, the City has no evidence to support a finding otherwise.

In addition, as described above in our CEQA comments, the SouthShore Specific Plan fails to avoid or minimize significant impacts to rare species and unique habitats in the Ormond Beach area.

Lastly, the SouthShore Specific Plan fails to consider or address the SCC's plan to restore the Ormond Beach wetlands. The Oxnard Local Coastal Plan notes that "[a]dditional planning to determine the location and character of this restoration will need to be undertaken prior to any major redevelopment of the area."⁸⁷ The SCC has been spearheading efforts to acquire, preserve and restore wetland habitat throughout Ormond Beach, including in the Specific Plan area, for many years, and the parameters of the restoration planning have been presented to the public, to the City, and to the Project applicant. Despite this, there is no discussion in the Southshore Specific Plan regarding how the unique biological habitat of a restored Ormond Beach may or may not be impacted by development in the Northern subarea. As discussed above, the record fails to otherwise establish that the unique biological resources at Ormond Beach will be protected from development or from sea level rise impacts that will be further constrained by such development.

Thus, the City has failed to demonstrate, based on substantial evidence, that the SouthShore Specific Plan is consistent with the 2020 GP objective of protecting unique biological habitats from development.

Water Resources

The SouthShore Specific Plan is inconsistent with managing water resources to prevent overdraft and loss of water quality because, as described above in our comments regarding compliance with CEQA, the City does not have substantial evidence to conclude impacts to water supply availability will be less than significant.

⁸⁴ 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. See, pp 3-6. See also, [more recent news article]

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ 2020 GP at III-8.

Agricultural Resources

Finally, the SouthShore Specific Plan is inconsistent with the Objective of protecting agricultural lands from premature and unnecessary urbanization. The SouthShore Specific Plan results in the loss of 322 acres of prime agricultural land. No offsite or onsite mitigation is identified for conversion of this land. The City has stated that requiring the Project Applicant to replace the lost acreage (i.e., protecting other agricultural land from conversion) at a 1:1 ratio would be infeasible, but the City has not considered mitigation at less than 1:1. The City also has failed to consider that the SCC administers funds for the acquisition of land, and is currently interested in conserving acreage with the Specific Plan Study area. See our discussion above regarding CEQA compliance.

The City asserts that the Project is consistent with this Objective because it will include a 150-foot wide agricultural buffer along the eastern boundary of the site to protect adjacent agricultural land from urban encroachment. (Staff Rpt. at 18.) However, the City fails to address the fact that the Project will result in the fully unmitigated loss of over 300 acres of prime agricultural land, and does not explain how this is consistent with protecting agricultural land from premature and unnecessary urbanization.

Land Use Element – Preservation of scenic views

Goal 2 of the Land Use Element includes preservation of scenic views and Oxnard identifies agricultural lands as an important visual resource. The City fails to explain how the unmitigated loss of over 300 acres of agricultural land is consistent with Goal 2 of the Land Use Element, incorrectly stating that “development of the Southshore Specific Plan would have a less than significant impact on scenic vistas.” (Staff Rpt. at 13.)

Growth Management Element – Quality of Life

Goal 2 of the Growth Management Element is to maintain the quality of life desired by the residents of Oxnard. The City states the Project is consistent with this goal because it would provide a “desirable quality of life by increasing local housing opportunities and providing recreational amenities for future residents.” (Staff Rpt. at 14.) The City does not identify that numerous residents of Oxnard have expressed that quality of life includes restoration and preservation of the Ormond Beach wetlands, and that they do not support Project development if it interferes with the restoration and preservation of Ormond Beach.

Growth Management Element – Resource Protection

Objective 2 of the Growth Management Element is to insure that new development avoids or fully mitigates impacts on resource protection. The City asserts the Project is consistent with this Objective. (Staff Rpt. at 14.) This finding is not

supporting by substantial evidence as we have demonstrated in our comments throughout this letter and in our prior comments to the City.

III. Development Agreement

We have only just received the Development Agreement (“DA”) for review with release of the Staff Report. We have the following initial comments and questions based on our preliminary review, and reserve the right to provide additional comment as we have time to analyze the document.

Pursuant to Government Code Section 65867.5, a development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan. As discussed above, the City has failed to demonstrate that the Southshore Project is consistent with the 2020 General Plan. The DA is thus also inconsistent with the 2020 General Plan. In addition:

Multiple Owners as “Applicant,” Section 4.1 (and throughout)

The DA will be executed between the City and 7 different property owners. In reviewing the DA, we are uncertain what obligation this imposes on the property owners in complying with mitigation requirements and how these requirements are intended to be implemented. For example, it appears that “all obligations of all Owners” is contingent upon a Master Developer filing a Development Approval Application. (Section 4.4.) However, implementation by a Master Developer is not guaranteed under the DA. (see, e.g., Section 4.3.) As the DA is an agreement between the City and the Property Owners, the obligations of the Property Owners should be clearly and consistently articulated. The introduction of a “Master Developer” in the DA is misleading and needlessly confusing.

Similarly, Section 4.1 states that “Each of the Owners” shall have the vested right to develop the Project on the Owner’s property. In addition, development by any owner may apparently proceed independently of the other owners, with the owners’ consent. (Section 4.5) We are confused about implementation of this Project, the possibility that some parts may or may not be implemented, and the potential bearing this may have on each owner’s obligation to comply with identified mitigation requirements.

Section 6.5 Public Benefits:

First, it is stated that “The public benefits exceed the exaction which the City could legally impose upon the Projects.” However, several “benefits” identified in the DA are conditions of the Project on which the City bases its findings that impacts will be less than significant. As such, these items are legally required conditions of the project, not extra public benefits providing consideration to the City for entering into this agreement. They include:

- Fire station funding

- Ormond Beach Natural Resource Management Program
- Water, recycled water and wastewater requirements

Second, if the City is not going to require additional mitigation to reduce biological, agricultural, visual, and other impacts, as we have demonstrated is necessary for purposes of CEQA compliance, then the City should require additional public benefits in the DA to improve the quality of the Ormond Beach wetland area and help facilitate its restoration. Inclusion of these benefits would ensure the City is receiving sufficient consideration and not improperly surrendering its police power. Although no nexus is legally required in this context, such benefits would be appropriate as the Project is located within, and affects, the Ormond Beach area. The City should require:

- Benefits to area Agricultural Resources and Visual/Aesthetic Resources – For every 1 acre of Project development, the Applicant should be required to acquire 1 acre, through an open space easement, within the Southern Subarea.
- Benefits to Ormond Beach wetland habitat, species, and special status species – For every 10 acres of Project development, the Applicant should be required to acquire at least 1 acre, in fee, within the southernmost 230-acres of the Southern Subarea that are not currently proposed for annexation.

IV. Subdivision Map Act

We have only just received the Conditions of Approval for Tentative Tract Map No. 5427 (“TTM”), along with other exhibits associated with the proposed Resolution for the Tentative Subdivision Map, for review with release of the Staff Report. We have the following initial comments and questions based on our preliminary review, and reserve the right to provide additional comment as we have time to analyze the document.

Conditions of Approval for Tentative Tract Map (Ex. A)

Pursuant to Government Code Section 66473.5, “no local agency shall approve a tentative map, or a parcel map for which a tentative map was not required, unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan.” As discussed above, the City has failed to demonstrate that the Southshore Project is consistent with the 2020 General Plan. The TTM is thus also inconsistent with the 2020 General Plan.

The Conditions of Approval reference “Developer,” but do not define this party anywhere in the Conditions. This term should be explicitly defined in the Conditions of Approval, as there are multiple property owners signing the Development Agreement as well as two Applicants for the Project – i.e., Hearthside Homes and Ito Farms.

Paragraph 96 requires Developer to ensure that water rights associated with the Project property are transferred to the City. As discussed in the EIR and above in our comments regarding CEQA compliance, these water rights are not sufficient to ensure that water supply is available.

Conditions of Approval from Adaptive Management Plan (Ex. B)

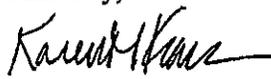
Exhibit B to the proposed Resolution approving the TTM identifies for the first time “Specific recommendations/requirements for the Northern Subarea” raptor foraging mitigation. The recommendation appears to be to allow the Project Applicant to mitigate onsite and offsite. As discussed in more detail above in our comments regarding CEQA compliance, on-site mitigation is inappropriate and does not mitigate the loss of foraging habitat as defined by BIO Mitigation Measure No. 2. Proposed replacement habitats in the Project area would also be low quality habitats in that they are located predominantly within thin strips and along roadsides. Given that low quality habitat would also be replaced by low quality habitat (rather than high quality habitat) in the Northern Subarea, a 1:10 ratio is not supported by the restoration plan. That ratio is only appropriate when low quality habitat is being replaced by high quality habitat. The Plan itself states that the Project area does not “meet the criteria” for raptor foraging habitat characteristics and habitat values. (Plan at 17.) Offsite restoration in an area with fewer roads and wider open spaces (compared to thin strips along roads) is greatly preferable from a biological standpoint. The offsite restoration identified in the Plan “such as within the approximate 230-acre southernmost area of the southernmost area of the Southern Subarea that is not proposed for annexation” has the only potential to create high quality habitat justifying the 1:10 ratio. (Plan at 24.)

Conclusion

For the reasons explained above, the City cannot approve the Southshore Project.

Thank you for your consideration. Please feel free to call me at 805-658-2688, or email me at kkraus@edcnet.org, if you have any questions.

Sincerely,



Karen M. Kraus
Staff Attorney

Attachment:

Declaration of Chris Williamson in *City of Oxnard and Chris Williamson v California Coastal Commission* (No. BS 122248). May 24, 2010.

ATTACHMENT 13
Responses (*in italics*) to April 26, 2011 Saviers Road Design Team Letter

We do not believe the project can be successfully completed. There is no “Master Developer” and the development agreement does not require one.

Response: Although the development agreement does not require a Master Developer, the property must be developed in a comprehensive fashion due to the integrated nature of the infrastructure. The development of one property is dependent on the development of all the properties. Given the integrated nature of the project, it will most likely be coordinated by a single entity. There is no requirement in the development agreement that a Master Developer be identified at this time. A Master Developer can be either a third party that acquires a legal interest in each of the properties or it could be the owners acting collectively through an agreement to develop the property.

The specific plan is going forward for entitlement only, with no actual development anticipated for the foreseeable future.

Response: Most specific plans of this scale that the city has previously approved have taken many years to build out. The city cannot require a landowner to pursue development of the property within a specified time period.

The Development Agreement “shall remain in effect for a term of 30 years” and “the city and an individual owner may agree to extend the term ... as to that Owner’s property...”

Response: Thirty years is a standard term for development agreements throughout the state.

It is foolish to lock in a specific development plan for 30 or more years into the future, well exceeding the proposed 2030 General Plan.

Response: The purpose of a development agreement is to provide a mechanism whereby the landowner(s) and the city agree to a mutually beneficial development of the specific plan area. The city provides certainty for the landowner with respect to the development regulations governing the property in exchange for the property owner providing public benefits that exceed nexus requirements.

There are presently thousands of residential units approved, with entitlements, but not yet under construction. There is no demonstrable need for this project.

Response: The assertion that there are currently thousands of entitled but yet to be built residential units is incorrect. The Regional Housing Allocation targets imposed on the City by the State less the units already constructed since 2006 is roughly 3,000 affordable units. Market rate units continue to be developed in response to the market and can vary year by year at significantly different rates and is not anticipated to increase in the near future.

In the future, if there is a need for more residential development, neighborhood design may be dramatically different and housing needs may significantly change.

Response: The SouthShore Specific Plan allows for a wide range of housing types – apartments, condominiums, townhomes, and single-family homes on a variety of lot sizes. This mix of housing types provides housing opportunities for a diverse population of the city's residents. An exceptionally well-designed community such as SouthShore is timeless.

Since this area is within the Military Influence Area of the Point Mugu Navy Base, and especially within the Noise Contour Area, the viability of the Base may be threatened.

Response: The Navy has communicated to the city that they have no concerns regarding the SouthShore Specific Plan. The Final EIR for the project requires certain mitigation measures be included in the project to address the issue of aircraft noise.

Developing the SouthShore Specific Plan in four phases is not workable because of the extensive pre-construction infrastructure that is required. That includes not only the utilities and streets but the importation of 450,000 cubic yards of fill material, excavation of the lake/detention basin and extensive grading of the entire site so that it functions as a whole. This is particularly important for the stormwater drainage.

Response: The infrastructure for the project will be installed concurrent with the development of the project. The fact that a disproportional share of the infrastructure will be installed with the first phase of development is common for projects of this scale and is not anticipated to affect the feasibility of the project.

The four-phase construction over many years and with different property owners/developers will likely create a blighted appearance and negatively affect the quality of life for the first residents.

Response: The fact that the project is currently designed to be constructed in four phases does not mean that multiple developers will be involved or that there will be years between phases.

Because the community park is proposed to be constructed in phases on land owned by SCE under high voltage transmission lines, it is questionable whether the developers will be able to finance a lease with SCE and construct the park.

Response: It is not the responsibility of the developer to finance a lease with SCE. The city will enter into a license agreement with SCE. Annual payments for the license agreement will be financed through the formation of a Community Facilities District on private property within the specific plan area. The CFD will be administered by the city.

The Specific Plan will not meet the criteria for an "Urban Village" because there is essentially no commercial development planned to serve the new residents. The only commercial development within the project is a small mixed-use area in the far southwest corner of the Specific Plan area that would not be developed until the fourth and final phase.

Response: The commercial area planned within the project is commensurate with the need for additional commercial/retail area in south Oxnard. There are a number of retail centers a short distance from the project that have high vacancy rates and are in need of rehabilitation. The expectation is that residents of SouthShore will be served by the neighborhood retail center within the project, but will purchase the majority of their goods and services from nearby retail centers north of the project. This additional buying power will stimulate sales in nearby commercial centers leading to lower vacancy rates and investment in rehabilitation.

The commercial center outside and to the north of the project area is no longer planned to be a shopping center that could serve the SouthShore residents, but instead is planned for 98 condos.

Response: The retail center at the intersection of Rose and Pleasant Valley is currently zoned for commercial uses and there are no proposals currently pending to change the commercial zoning on the property.

Attempting to remove/eliminate birds and wildlife from the lake/detention basin does not make sense because of the close proximity of the ocean and wetlands.

Response: The specific plan does not require the removal of birds from the lake.

There is no nexus for the payment of \$1,500,000 as required by the development agreement for College Park. The payment should be for the Ormond Wetlands Gateway Park and Interpretive Center.

Response: No nexus is required for the provision of public benefits in a development agreement.

The payment of \$2,000,000 toward the cost of the needed new City fire station to serve this project will not be made until after the 750th building permit is issued.

Response: A new fire station in the southern section of the city will serve an area much larger than the SouthShore Specific Plan area and therefore will require funding from other sources beyond this project. Until the new station is built, the fire department will serve the project from the Cypress station.

The question of water and water credits being available in the event of a prolonged drought has not been adequately addressed.

Response: This issue was thoroughly addressed in the FEIR for the project.

There will be no further public hearings unless there are changes to the Specific Plan. "Individual builders/project developers will be required to obtain discretionary permits through the Development Design Review (DDR) process, which is an administrative process that does not involve a public hearing".

Response: One of the purposes of a specific plan is to establish site development standards and architectural guidelines for development of a particular area in order to provide the public with assurances that the project will conform to the standards set forth in the specific plan. As long as the proposed development is consistent with the regulations established in the specific plan there is no need for further public hearings.

**SAVIERS ROAD DESIGN TEAM
3830 SAN SIMEON AVE.
OXNARD, CA 93033
April 26, 2011**

**Oxnard City Council
300 W. Third St.
Oxnard, CA 93030**

RE: Proposed SouthShore Development Project

Members of the Council:

The Saviers Road Design Team has met with representatives of the proposed SouthShore development since 2003. We appreciate that they have done extensive community outreach. We raised many issues, and they did respond to many of our concerns. However, we still have numerous concerns.

The Saviers Road Design Team cannot support the SouthShore project because it does not meet our goals for enhancing and revitalizing our community. The proposed project does not contribute in a meaningful way to the preservation and restoration of the Ormond Beach Wetlands.

We ask that the Oxnard City Council not approve the SouthShore Specific Plan for the following reasons:

- **We do not believe that the project can be successfully completed. There is no "Master Developer" and the Development Agreement does not require one.**
- **This Specific Plan is going forward for entitlement only, with no actual development anticipated in the foreseeable future.**
- **The Development Agreement "shall remain in effect for a term of 30 years," and "the City and an individual Owner may agree to extend the term ... as to that Owner's Property..."**
- **It is foolish to lock in a specific development plan for 30 or more years into the future, well exceeding the proposed 2030 General Plan.**
- **There are presently thousands residential units approved, with entitlements, but are not yet under construction. There is no demonstrable need for this project.**
- **In the future, if there is a need for more residential development, neighborhood design may be dramatically different and housing needs may significantly change.**

- Since this area is within the Military Influence Area of the Point Mugu Navy Base, and especially within the Noise Contour Area, the viability of the Base may be threatened.
- Developing the SouthShore Specific Plan in four phases is not workable because of the extensive pre-construction infrastructure that is required. That includes not only the utilities and streets but the importation of 450,000 cubic yards of fill material, excavation of the lake/detention basin, and extensive grading of the entire site so that it functions as a whole. This is particularly important for stormwater drainage.
- The four-phase construction over many years and with different property owners/developers will likely create a blighted appearance and negatively affect the quality of life for the first residents.
- Because the Community Park is proposed to be constructed in phases on land owned by Southern California Edison under the high voltage transmissions lines, it is questionable whether the developers will be able to finance a lease with SCE and construct the park.
- This Specific Plan will not meet the criteria for an "Urban Village" because there is essentially no commercial development planned to serve the new residents. The only commercial development within the project is a small mixed-use area in the far southwest corner of the Specific Plan area that would not be developed until the fourth and final phase.
- The commercial center outside and to the north of the project area is no longer planned to be a shopping center that could serve the SouthShore residents, but instead is planned for 98 condos.
- Attempting to remove/eliminate birds and wildlife from the lake/detention basin does not make sense because of the close proximity of the ocean and wetlands.
- There is no nexus for the payment of \$1,500,000, as required by the Development Agreement, for College Park. The payment should be for the Ormond Wetlands Gateway Park and Interpretive Center.
- The payment of \$2,000,000 toward the cost of the needed new City fire station to serve this project will not be made until after the 750th building permit is issued.
- The question of water and water credits being available in the event of a prolonged drought has not been adequately addressed.
- There will be no further public hearings unless there are changes to the Specific Plan. "Individual builders/project developers will be required to obtain discretionary permits through the Development Design Review (DDR) process, which is an administrative process that does not involve a public hearing."



Shirley Godwin, Chairperson
Saviers Road Design Team

**ATTACHMENT 13
TO CITY COUNCIL STAFF REPORT**

**RESPONSE TO LETTER FROM ORMOND BEACH OBSERVERS,
DATED APRIL 7 2011**

Comment 1: Page 1

On April 7, 2011, the day of the Planning Commission hearing on the SouthShore Specific Plan and development agreement ("Project"), the City received a 24-page letter from the Ormond Beach Observers ("OBO"), signed by Alan Sanders, President. Ormond Beach Observers did not submit comments on the City's Recirculated Draft Environmental Impact Report ("EIR"); however, Mr. Sanders, as Conservation Chair of the Sierra Club, Los Padres Chapter, submitted an 88-page comment letter on the EIR which was responded to by the City in the Final EIR. Many of the comments presented in the Sierra Club's letter on the EIR are repeated in OBO's April 7, 2011, letter.

OBO states that it supports completion of the City of Oxnard 2030 General Plan before any decisions are made on the Project, and expresses the opinion that approval of the Project will result in violations of various state and federal statutes. The 2030 General Plan is still in draft form and has not been approved. The applicable General Plan is the 2020 General Plan. The 2030 General Plan reflects the proposed land uses for the Project. There is no need to delay consideration of the Project until after final decisions regarding the 2030 General Plan are made.

Comment 2: Pages 1-2

OBO asserts that the City has never resolved its policies and plans for the Ormond Beach Wetlands Restoration Project. The EIR analyzes the potential effect of the Project on the Ormond Beach wetlands and has identified mitigation measures to ensure that any potential impacts are reduced to less than significant. City Council consideration of the Project does not require resolution of any issues regarding the Ormond Beach Wetlands Restoration project, and the Project will not adversely impact the Ormond Beach Wetlands Restoration project regardless of what decisions are made by the City with respect to the Restoration project.

Comment 3: Page 2

OBO notes that recent State agency developments may affect the existing energy production facilities in Oxnard. The Project would not have any impact on the existing energy facilities, and any decisions with respect to these facilities would not affect the planning and development of the proposed Project.

Comment 4: Page 2

OBO notes that the Project site is surrounded on two sides by high voltage transmission lines. This comment is noted.

Comment 5: Pages 2-3

OBO notes that City leadership is necessary to find a resolution regarding land acquisition for the Ormond Beach wetlands project, including compensation for Southland Sod. The issues cited by OBO do not involve the Project site, and consideration of the Project is not dependent upon resolution of these issues.

Comment 6: Page 3

OBO reiterates its request that the City complete the 2030 General Plan process before consideration of the Project. See Response to Comment 1, above.

Comment 7: Page 3

OBO requests the City to rezone a number of properties – none of which include the Project site, and requests postponing consideration of the Project. See Response to Comment 1, above.

Comment 8: Pages 3-4

OBO expresses concern regarding the Project's impact on Ormond Beach habitat areas and the Naval Base Point Mugu. Potential land use compatibility impacts with respect to the adjacent Ormond Beach area and the Naval Base at Point Mugu were addressed in the EIR. See, e.g., EIR Land Use (Section 3.7), Biological Resources (Section 3.6), and Noise (Section 3.11).

Comment 9: Page 4

OBO expresses its opinion regarding the City's CEQA compliance. The comment is noted.

Comment 10: Pages 4-5

Comments regarding the EIR's environmental impact analysis are presented, including whether studies and surveys were deferred, the analysis of biological impacts, and agricultural resource impacts. These comments were previously submitted by the commenter during the public comment period for the Draft EIR, and were responded to in the Final EIR. See Responses to Comments O.6-2, O.6-3, O.6-4, O.6-33 to O.6-73, O.6-108 to O.6-117, and O.6-142.

The EIR included a comprehensive analysis of biological impacts. See EIR Section 3.6. The EIR included an analysis of agricultural resource impacts at EIR Section 3.8 and addressed various regulatory mechanisms such as the Right to Farm Ordinance, the SOAR initiative and General Plan policies to protect agricultural resources. The EIR also included an alternatives analysis which was directed towards identifying alternatives that could avoid or reduce significant impacts of the proposed Project. OBO states its opinion that the EIR should be corrected and recirculated. This comment was previously submitted with respect to the Draft

EIR by the commenter. See Response to Comment O.6-1. The issues raised by OBO in this comment have all been addressed in the EIR, and no reasons have been presented by OBO that identify any specific corrections that need to be made to the EIR, or require recirculation of the EIR.

Comment 11: Pages 6-7

The comment describes the role of the project description in an EIR, and asserts that the EIR did not include information regarding the Project's circulation improvements. This comment was previously submitted by the commenter in his letter on the Draft EIR, and was responded to at that time. No new issues are presented in the OBO letter. See Response to Comment O.6-9. As noted in that response, the Draft EIR included an analysis as to why various circulation improvements were required pursuant to Mitigation Measure Trans-2 in Section 3.10 of the EIR. See also Responses to Comment O.6-93. The concern regarding the funding of the identified traffic improvements was previously raised by the commenter and responded to by the City. As noted in Response to Comment O.6-93, the City's traffic impact fee is structured to cover the cost of interchange improvements and some auxiliary capacity on State highways. Applicants are also required to pay County of Ventura traffic impact fees. Therefore, the City was assured that funding for the improvements would be provided as a condition of development.

Comment 12: Pages 7-8

The comment reiterates general CEQA principles regarding the fundamental purpose of CEQA, and the requirement that an agency analyze the environmental impacts of a proposed project prior to approval. The comment and cases cited are noted.

Comment 13: Pages 8-9

The comment states that the EIR fails to assess the actual effect on traffic from implementation of the roadway projects. Section 3.10 of the EIR included a comprehensive analysis of the impacts of the proposed Project on the circulation system and those improvements needed to reduce the Project's impacts to less than significant to achieve identified levels of service. The EIR also included a Traffic Study that analyzed the environmental impacts of the Project on traffic and the necessary improvements to mitigate Project traffic impacts. See EIR Appendix B.

Comment 14: Pages 9-10

The comment recites provisions of the CEQA Guidelines and CEQA reported judicial decisions regarding the need to describe the environmental setting of a proposed project in an EIR, and describes sensitive species and habitats in the general area. The environmental setting was described in each environmental impact analysis section of the EIR. Each section contained a discussion of the existing conditions against which the potential impacts of the Project were assessed. See, e.g., Section 3.2.1, describing the Existing Conditions for Geology. This

comment was also raised by the commenter on the Draft EIR, and responded to in the Responses to Comments. See Response to Comment O.6-12.

Comment 15: Pages 10-12

The comment identifies various impacts that the commenter believes the project would have on biological resources and asserts that these impacts have not been analyzed. The same comment was submitted by the commenter on the Draft EIR, and responded to in the Final EIR. See Responses to Comments O.6-16 to O.6-18.

Comment 16: Pages 12-14

The comment asserts that the EIR does not identify proper mitigation measures or alternatives for various impacts to biological resources. The comment describes the requirement that the impacts of a project be performed before project approval, and the role of the EIR as an informational document. These comments were previously submitted by the commenter on the Draft EIR, and responded to in the Final EIR. See Response to Comment O.6-141. The EIR's mitigation measures to address impacts to biological resources does not rely upon the "good will of other agencies and individuals." The mitigation measures identified in the EIR was based upon an analysis of the Project's impacts on biological resources, and requires certain measures to be undertaken by the project proponent as a condition of development. Analysis of impacts was not deferred, and where subsequent plans were required to be prepared, specific criteria and performance standards and required mitigation ratios that must be satisfied were identified consistent with the decision in *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011. (See also Response to Comment 8 in the Environmental Defense Center letter, dated April 6, 2011.)

Comment 17: Pages 14-15

The comment reiterates the requirement set forth in CEQA and the CEQA Guidelines that an EIR must analyze the cumulative impacts of a proposed Project. The cumulative impacts of the Project were analyzed in each environmental impact section. As an example, the cumulative impacts with respect to biological resources were addressed in Section 3.6.3.4.3 of the EIR. The same comment was submitted by the commenter on the Draft EIR, and responded to in the Final EIR. See Response to Comment O.6-139.

Comment 18: Pages 15-16

The comment summarizes the analysis of agricultural resources that was included in the EIR. This comment was previously submitted by the commenter on the Draft EIR, and was responded to by the City in the Final EIR. See Responses to Comments O.6-108 to O.6-117.

Comment 19: Pages 16-18

The comment reiterates the requirement that an EIR discuss a project's impact on air quality. The EIR analyzed the Project's direct, indirect and cumulative impacts on air quality in

Section 3.4 of the EIR. This comment was previously submitted by the commenter on the Draft EIR, and was responded to by the City in the Final EIR. See Responses to Comments O.6-83 to O.6-89.

Comment 20: Pages 18-19

This comment recites the requirement that an EIR include a statement describe the growth-inducing impacts of a proposed project. The growth-inducing impacts of the proposed Project were addressed in Section 5.5 of the EIR. This comment was previously submitted by the commenter on the Draft EIR, and was responded to by the City in the Final EIR. See Response to Comment O.6-140.

Comment 21: Pages 19-21

This comment recites the requirement that an EIR describe a range of alternatives to the project. The EIR included a discussion of alternatives to the proposed Project in Section 4.0. Five alternatives to the Project were considered, including the CEQA-mandated “No Project” alternative, a conservation alternative, and an alternative that proposed less intensive development. This comment was previously submitted by the commenter on the Draft EIR, and was responded to by the City in the Final EIR. See Response to Comment O.6-142.

The comment states that the EIR included alternatives to the proposed Project, but that they were not developed to the same level of serious consideration as is given to the preferred project. In accordance with Section 15126.6(d) of the CEQA Guidelines (14 Cal. Code of Regs. §15126.6(d)), the “EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” The discussion need not be exhaustive and a crystal ball inquiry is not required. *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 547. The agency need make only an objective good faith effort to compare the project with the alternatives. *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 374, 286.

The remainder of the comment expresses the opinion that Ventura County and the City must look at developing alternatives to residents’ dependence on the private automobile and that alternatives to transportation and land use planning should be considered. The purpose of an alternatives analysis in an EIR is to consider alternatives to the proposed Project that would feasible attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project. (14 Cal. Code of Regs. § 15126.6(a).) While the commenter’s concern regarding the dependence on the automobile is a worthwhile concern, it goes far beyond the scope of impacts of the proposed Project, the scope of the EIR, and the purpose of the alternatives analysis in this EIR for this Project. See also Responses to Comments O.6-150 to O.6-151.

Finally, the comment states that the EIR’s alternatives analysis fails to consider various cited Ormond Beach management plans. These plans were raised in the commenter’s letter on the Draft EIR and responded to in the Final EIR. See Responses to Comments O.6-143 to O.6-153.

Comment 22: Pages 21-23

The comment reiterates the views of the commenter that the EIR should be redrafted and recirculated. This comment was previously submitted on the Draft EIR and responded to in the Final EIR. See Response to Comment O.6-154. The commenter has cited changes which the commenter believes requires reconsideration in a revised EIR, including the economic downturn affecting the nation, the "war with three other nations," and the prices for gasoline. While the City acknowledges these concerns and the other concerns raised in this comment, none of these affect the environmental impacts of the proposed Project or would alter the findings and conclusions set forth in the EIR and do not require revision or recirculation of the EIR. Information regarding sea level rise and the tsunami in Japan was addressed in the Responses to Comments on the Final EIR, and in the Response to Comment 10 to the Environmental Defense Center letter, dated April 6, 2011.

Comment 23: Page 24

The commenter requests that the City recirculate a revised EIR after consideration of the General Plan revision and Coastal Plan revision. The comments are noted and will be provided to the City decisionmakers for their consideration.



In loving tribute to Roma Joy Armbrust, our mentor, our friend, our inspiration.

April 7, 2011

City of Oxnard
Planning Commission

RE: SOUTHSHORE SPECIFIC PLAN

Ormond Beach Observers, (OBO), supports completion of the review of the City of Oxnard 2030 General Plan (GP) before any further decisions on development in the Ormond Beach Planning Area are made. We believe that approval of the Specific Plan for the Southshore Plan, (Project), will result in violations of the California Environmental Quality Act, (CEQA), The City of Oxnard General Plan, (GP), The Coastal Act, (CA), the City Coastal Plan, (CP), the Clean Water Act, (CWA), the Endangered Species Act, (ESA), the County General Plan, (CGP), and County rules for the Local Agency Formation Commission, (LAFCO). The Project may also violate several state rules on provision of water, protection against flooding due to sea level rise and other provisions.

It makes absolutely no sense to move forward on this decision when completion of the 2030 GP is so near. This means that decisions on Southshore development should await completion of the GP. Several large issues are unresolved at this time that may affect the future of the City. Decisions on these issues must be made prior to allowing further residential development. First, the City has never resolved its policies and plans for the

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Ormond Beach Wetlands Restoration Project. Since all nearby development may affect these plans, the City should decide how and if it wishes to see these plans succeed. Should the City decide that it does not wish to be a partner in the restoration of Ormond Beach, it should make that clear, now.

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It is also noteworthy that recent actions of the State Water Board may have significant impact on the future of energy production facilities still using single-pass-through technology. The implication is that one or both of the existing energy production facilities in Oxnard may be altered or closed. Therefore, the City should be considering how it wishes to deal with future energy needs. Does Oxnard wish to have an energy production facility within the City? If so, what kind of facility and where would it be located?

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At the last meeting of the Ormond Beach Task Force, Genco, the new owners of the two energy plants, stated that they had not yet decided how they would react to the State Water Board's new orders. Clearly, this is an issue of major concern to the City's future planning efforts.

Metropolitan Water District (MWD) has plans for a desalination facility on 20 acres right in the center of the planned restoration area. MWD should be offered alternative locations if the City wishes to support both the restoration plan and MWD's interests.

The Southshore project site is surrounded on two sides by high voltage transmission lines, making the site a possible location for both energy production and desalination.

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City leadership is necessary to assist in finding a resolution to land acquisition for the wetlands project. Specifically, there is a need for the City to assist in moving or compensating Southland

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Sod and other Ormond area landowners so that the Coastal Conservancy Restoration plans might move forward.

Success with all of the items mentioned above requires that the City first completes its General Plan process before contemplating the two Ormond Specific Plans. It also requires that the City take deliberate speed so that it adequately deals with all of the relevant information that is available and will become available in the future.

OBO, is one of many voices asking for the City to act to protect all of the land south of Hueneme Road between Edison and Arnold Road. We also ask for rezoning of the Halaco site, Agromin, the Ormond Generating Station and MWD property. However, this would require a substantial effort by the City to help find acceptable alternatives for all of the parties involved. It will require skilled leadership.

Those alternatives could involve uses to the land north of Hueneme Road. Therefore, the City should postpone specific planning decisions until it knows where all pieces of the puzzle will be placed. Many Oxnard citizens feel, rightly or wrongly, that residential development always comes first and everything else must deal with what is left. But the issues involved in the Ormond area beg for a higher standard, and yes, for a vision of what Oxnard should look like in 2030. This vision shouldn't be controlled by market forces, entitlements to special interests or lack of vision. That's why citizens have worked hard for over twenty years to share what they have learned at the Ormond Beach Task Force, (OBTF).

A great example of how planning can go awry is evident on the other end of Oxnard--the Northshore project. Having been given

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entitlements, the site sits empty, the former owners bankrupt. Now the City envisions giving entitlements to yet another landowner with a troubled financial history. OBO feels that Southshore will create unmitigated encroachment issues that will harm the sensitive habitat areas at Ormond and possibly harm the future of Naval Base Point Mugu. For this reason we joined other members of OBTF in voting on a Consensus Plan in 1998 and again in 2003 that rejects residential development of the Southshore project area.

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The City has, until now, been prudent in allowing itself time to work through this process. We hope that the City will avail itself of all the information needed, as well as time to process this information in the future. But most importantly, listen to your citizens.

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OBO believes that the Project fails to comply with state law, as it flatly contravenes several core requirements of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, section 1500 et seq., ("CEQA Guidelines"). Therefore, we must advise you that in our opinion the EIR for this project will not suffice.

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Moreover, the Project is based on the most truncated "analysis" of the far-reaching environmental consequences of the Project. In most instances, the Project systematically disregards the severity of most of the Project's environmental impacts and consistently defers the necessary studies and surveys until after Project approval. Nowhere is this more apparent than in the FEIR's analysis of biological impacts. While noting that the Ormond area provides habitat for over 100 endangered, threatened and rare plant and wildlife species, the FEIR makes

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no attempt to actually analyze the Project's impacts on those species. The document's treatment of impacts related to loss of agricultural resources is equally flawed. In a glaring omission, the FEIR fails to provide any mitigation for the loss of County farm land that would occur upon implementation of the Project. This deficiency is especially disturbing in as much as the proposed specific plans presents a tremendous opportunity to preserve agricultural land and to adopt a farm land preservation program.

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The FEIR also fails to adequately identify or analyze a reasonable range of alternatives to the Project that could potentially reduce adverse impacts, as is required by CEQA. Rather than seize the opportunity afforded by the drafting of the specific plan to consider broad land use considerations, and alternative approaches to habitat restoration, agricultural land protection, recreational uses, and transportation planning, the document's alternatives analysis focuses myopically on only a few issues.

Perhaps most important, the FEIR's failure to provide the requisite impact analysis undermines the opportunities and advantages of the environmental review process.

Guidelines Section 15168 (b).

Because the Project fails to honestly evaluate the need for habitat restoration, ag land protection, recreational uses, and transportation planning, the document fails to sufficiently analyze impacts and mitigation measures, does not identify an acceptable range of alternatives to the proposed Project, and all but ignores the Project's cumulative impacts. Only by circulating a corrected document can the public, decision-makers, and the

affected agencies be adequately informed of the Project's environmental repercussions.

THE FEIR DOES NOT COMPLY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The EIR Fails to Adequately Describe the Proposed Project.

Under CEQA, the inclusion in the EIR of a clear and comprehensive description of the proposed Project is critical to meaningful public review. County of Inyo v. City of Los Angeles, (71 Cal.App.3d 185, 193 (1977)) ("Inyo II"). The court in Inyo II explained why a thorough project description is necessary:

A curtailed or distorted project description may stultify the objective 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, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance.

71 Cal.App.3d at 192-93. Here the EIR omits important information relating to details of the Project which are necessary to ascertain the validity of the environmental impact analysis. Specifically, the Project's proposal to widen local roadways purportedly to accommodate 2020 traffic flows at a particular level of service ("LOS") is completely unjustified in the EIR. The document simply does not include any information about the relationship between the 2020 demographic projections, the projected traffic flows, and the existing and projected LOS on these roadways. Absent this information, neither the public nor

decision-makers can ascertain whether each and every one of the proposed roadway improvements are necessary.

Nor does the EIR provide any evidence that such an ambitious program could ever be funded. Indeed, funding sources appear to be conspicuously absent. According to the following, Ventura County Congestion Management Program ("CMP"), Ventura County is the largest urban county without a local sales tax for transportation purposes, so improvements on the County's highway system are reliant on the State. Now that the County's electorate has soundly rejected Measure B, the County's half-percent sales tax measure to fund transportation projects in the County, it is highly unlikely that the State would be expected to fund this road-widening program. To the contrary, the State budget is in much worse condition than anyone considered when the DEIR was written. Therefore, every State agency that might have contributed to area infrastructure and education must now be re-evaluated for its potential contribution.

In sum, the Project's cavalier approach to building its way out of apparent traffic congestion is especially troubling in light of the EIR's failure to justify the need for the roadway projects. The City should revise the EIR's project description to fully explain the correlation between the updated demographic projections and the need to widen area roadways.

The EIR Fails to Adequately Analyze and Mitigate the Project's Significant Environmental Impacts

Meaningful analysis of impacts effectuates one of CEQA's fundamental purposes: to "inform the public and responsible officials of the environmental consequences of their decisions

before they are made." Laurel Heights Improvement Ass'n v. Regents of the University of California, 6 Cal.4th 1112, 1123 (1993) ("Laurel Heights II"). To accomplish this purpose, an EIR must contain the facts and analysis, not just an agency's bare conclusions. Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 568 (1990). Nor may an agency defer its assessment of important environmental impacts until after the Project is approved. Sundstrom v. County of Mendocino, 202 Cal.App.3d 296, 306-07 (1988). An EIR's conclusions must be supported by substantial evidence. Laurel Heights Improvement Ass'n v. Regents of the University of California, 47 Cal.3d 376, 409 (1988) ("Laurel Heights I"). The EIR fails to fulfill this paramount CEQA purpose, both because it neglects to present all relevant facts relating to the Project's potential environmental impacts and because its cursory conclusions are based upon no analysis.

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The EIR Fails to Adequately Identify and Analyze the Traffic Impacts that Would Result From the Project.

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Never does the EIR attempt to assess the actual effect on traffic that would result from implementation of the roadway projects. Numerous studies have demonstrated the rebound effect of increasing roadway capacity. It is a well-documented phenomenon that, rather than improve traffic flow and minimize travel delay, increases in highway capacity encourage additional car travel. In order for the public and decision-makers to understand the traffic consequences of the Project, the EIR must acknowledge that the roadway projects would result in a significant increase in traffic and analyze the consequences of this increased traffic.

In sum, the failure of the EIR to accurately portray the existing and projected traffic levels and the need for the roadway projects contemplated by the Project undercuts the legitimacy of the environmental impact analysis. In addition, because the EIR fails to actually analyze the traffic consequences of roadway projects, as required by CEQA, the EIR must be revised and recirculated.

The EIR Fails to Adequately Analyze or Mitigate Impacts Upon the Area's Biological Resources.

a. Environmental Setting

An EIR "must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both the local and a regional perspective." CEQA Guidelines Section 15125; see also Environmental Planning and Info. Council v. County of El Dorado, 131 Cal.App.3d 350, 354 (1982). Knowledge of the regional setting is critical to the assessment of environmental impacts. CEQA requires that special emphasis be placed on environmental resources that are rare or unique to the region that would be affected by the project. CEQA Guidelines Section 15125 (c).

An EIR's description of a project's environmental setting plays a crucial part in all of the subsequent parts of the EIR because it provides "the baseline physical conditions by which a lead agency determines whether an impact is significant." CEQA Guidelines, Section 15125 (a). "Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the EIR cannot provide a meaningful assessment of the environmental impacts of the proposed project." Save Our Peninsula Committee v.

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Monterey County Board of Supervisors, 87 Cal.App.4th 99, 119 (2001). As will be discussed below, the EIR's discussion of the area's existing biological resources is sorely deficient.

Ventura County is host to over 100 special status species. The Hueneme, Ormond, Mugu area provides habitat at various times for almost all of these species. The survival of many of these species and capacity for reproduction in the wild are in immediate jeopardy. Many of these species are currently experiencing a dramatic rate of decline. Given the magnitude of these issues, one would expect the EIR to have included comprehensive surveying and mapping of these resources. Instead, the document merely contains a rather shallow representation of the general locations of generic plant and animal species. We can find no evidence that the EIR has conducted any meaningful surveys of sensitive species and their habitats that would provide the basis for an analysis of impacts. Equally troubling, although the entire area appears to have extensive endangered, threatened and rare animal species populations, the EIR has failed to identify area migration corridors. Nor, has the EIR attempted to update wetland maps. Absent this environmental information, it is simply not possible for the EIR to estimate how implementation of the respective specific plans would impact the area's sensitive biological resources, its wildlife movement corridors or its wetlands.

b) Impact Analysis

The EIR should conclude that the planned widening of roads will have a direct, significant impact on wetlands, migration corridors and possibly on other biological resources as well. Given the extensive biological resources in the area,

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the impacts to these resources would be significant. The EIR, however, contravenes CEQA because it fails to actually analyze these significant impacts. CEQA requires that an EIR must be detailed, complete, and reflect a good faith effort at full disclosure. CEQA Guidelines Section 15151. The document should provide a sufficient degree of analysis to inform the public about the proposed Project's adverse environmental impacts and to allow decision-makers to make informed judgments. Consistent with this requirement, the information regarding the Project's impacts must be "painstakingly ferreted out." Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado, 131 Cal.App.3d 350, 357 (1982) (finding inadequate an EIR for a general plan amendment where the document did not make clear the effect on the physical environment).

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The EIR's treatment of biological resources impacts does not come close to meeting this legal standard. Indeed, with the exception of a limited discussion relating to the potential for a few select problems with wildlife, the EIR never addresses the actual and specific consequences to the area's endangered, threatened and rare species from the impacts created by the Project. Once the EIR conducts the necessary surveys and mapping, it must analyze the loss of habitat that would occur as a result of the Project. A revised document must, for example, correlate an individual aspect of the project to sensitive habitat and sensitive species, analyze the severity and extent of habitat loss in the context of the quality of the habitat, identify the specific species that would be impacted, and, finally, analyze the significance of the expected impacts in light of these facts. Unless and until the EIR is revised to provide a comprehensive analysis of impacts to the area's myriad biological resources, the public and decision-makers will remain uninformed as to

whether the magnitude of project components contemplated by the EIR will destroy the biodiversity of the Hueneme, Ormond, Mugu ecological system.

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c) **Mitigation Measures**

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CEQA requires that mitigation measures be identified and analyzed. "Purpose of an environmental impact report is...to list ways in which the significant effects of such a project might be minimized...." CEQA Section 21061. The California Supreme Court has described the mitigation and alternative sections of the EIR as the "core" document. Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.App.3d 553 (1990).

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In the present case, the EIR's failure to conduct an analysis of the impacts to biological resources renders it unable to identify proper mitigation for such impacts or to propose alternatives that could alleviate them. Amazingly, rather than propose realistic mitigation measures, the EIR looks to the good will of other agencies and individuals to develop and implement and fund required mitigations. Therefore, no additional protection to the area's sensitive species would be forthcoming due to mitigations required by approvals of the Project.

Because many impacts to biological resources will be significant, the detailed analysis of environmental analysis must be performed now. As the Court of Appeal explained in Stanislaus Natural Heritage Project v. County of Stanislaus, 48 Cal.App. 4th 182 (1996), CEQA requires that this environmental review take place before project approval. Id. at 196 (citing Laurel Heights II for the proposition that a fundamental purpose of CEQA is to "inform the public and responsible officials of the

environmental consequences of their decision before they are made"). In Stanislaus, the Court rejected the argument that a programmatic EIR for a specific plan and general plan amendment could ignore site specific environmental review because future phases of the development project would include environmental review, stating that "tiering is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause." Id. at 199. The Court emphasized that agencies should expect environmental analysis to involve some degree of forecasting: We do not by this opinion place any new burdens on preparers of EIRS. Our opinion today is merely an affirmation of already existing law. "Drafting an EIR...necessarily involves some degree of forecasting. While forecasting the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." Id. at 206. Citing CEQA Guidelines Section 15144.

At the same time, CEQA requires that project description and environmental impact assessments account for reasonably foreseeable future phases, or other reasonably foreseeable consequences of proposed projects. (Laurel Heights I at 393-99.) In Laurel Heights I, the California Supreme Court required that an EIR analyze future effects of project expansion or other action where "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant that it will likely change the scope or nature of the initial project or its environmental effects." Id. at 396. In that case, the Court required the University's EIR to discuss the future expansion of its project in order to inform decision-makers and the public about the impacts that would likely occur. Id.

The EIR's promise to reduce potential impacts on biological resources does not constitute suitable mitigation. This failure demonstrates the substantive inadequacies of the EIR's environmental review. Moreover, the County may not use the failure of its review to avoid mitigation: "The agency should not be allowed to hide behind its own failure to collect data."
Sundstrom v. County of Mendocino 202 Cal.App.3d at 361.

In sum, the EIR's discussion of biological resources is incomplete, misleading and unsupported by necessary analysis. In light of the flaws identified above, the EIR must be substantially revised and recirculated before the City can properly consider approving the Project.

d) Cumulative Impacts

An EIR must discuss significant "cumulative impacts." CEQA Guidelines Section 15130 (a). "Cumulative impacts are defined as 'two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.'" CEQA Guidelines Section 15355 (a). "Individual effects may be changes resulting from a single project or a number of separate projects." Id. A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines Section 15355 (b). The cumulative impacts concept recognizes that "the full environmental impact of a proposed...action cannot be gauged in a vacuum."

Whitman v. Board of Supervisors, 88 Cal.App.3d 397, 408 (1979).

Because the Hueneme, Ormond, Mugu area provides habitat for a vast array of sensitive species, and because implementation of the Project would significantly impact these species, the EIR should have carefully analyzed the cumulative impacts to biological resources. The need for such analysis is compelling given the EIR's own assertion that natural habitats have already been severely fragmented and lost due to previous developments and many sensitive species no longer occupy the remaining degraded habitat. Incredibly, the EIR contains no analysis whatsoever of the Project's cumulative impact upon biological resources. The EIR makes no attempt, for example, to identify projected development plans and projects for other jurisdictions in the area. The EIR's failure to analyze the cumulative impacts from all of these other projects as well as from the proposed general plan update triggers the requirement that the EIR be revised and recirculated.

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3. The EIR Fails To Adequately Mitigate Impacts Relating To The Loss Of Agricultural Land.

The EIR identifies that the Project would result in the loss of several hundred acres of prime agricultural lands resulting from implementation of the proposed specific plan. This loss of agricultural lands would constitute a significant impact on the environment. Rather than identify feasible mitigation measures capable of minimizing impact, the EIR cites the goal of the Project as proposed.

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The City of Oxnard had opportunity to support Measure A on the November 2004 ballot, which provided for a plan to fund the purchase of conservation easements and implementation of a farm land preservation program. Rather than supporting Measure A, the City Council voted to implement its own farm land preservation program. Because the City has publicly expressed its preference to establish its own farm land preservation program, all aspects of implementation of the proposed plan should be discussed within the EIR.

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The EIR's failure to conduct the necessary study to determine the feasibility of the farm land preservation program clearly violates state law. CEQA requires that an agency's conclusion that mitigation is infeasible be supported by substantial evidence. CEQA Sections 21081, 21081.5 Yet here, the EIR admits that it would take further study to even determine if such a program is feasible. Given the importance of the County's agricultural resources and the City's own acknowledgement that a farm land preservation program would provide permanent protection for this declining resource, the EIR must assess the feasibility of this mitigation measure prior to project approval. If the measure is determined to be feasible, the City's General Plan update process affords an ideal opportunity to adopt this program to protect agricultural resources.

4. The EIR Fails to Adequately Identify or Analyze the Air Quality Impacts that Would Result From Implementation of the Project

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Ventura County is a non-attainment area for the federal 8-Hour Ozone Standard and the State P.M.-10 Standard. As such, the EIR should have fully analyzed the consequences of

implementing the Project on air pollution levels and the County's ability to attain air quality standards. CEQA requires an EIR to analyze the severity and extent of the impact. Once again, the EIR makes no attempt to quantify the increase in emissions resulting from the increase in population, nor to model the effect that the increased emissions would have on attainment projections. The EIR must provide this analysis.

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The EIR's air quality "analysis" ignores altogether the air quality impact of widening area roadways contemplated by the Project. The correlation between air pollution and vehicular emissions is well documented. In particular, vehicles are a major source of ground-level ozone. The EIR's complete failure to identify the increase of air emissions and the effect that these emissions would have on the attainment of ozone and particulate standards triggers the need for recirculation of the EIR.

The flaws in the EIR's air quality analysis extend beyond its failure to adequately identify and analyze the impacts relating to ozone in PM-10. California has classified the particulate fraction of diesel exhaust as a toxic air contaminant and established toxicity criteria for those emissions. Diesel exhaust causes cancer and other serious health effects. Implementation of the roadway expansion portion of the project combined with increased daily vehicle trips generated by the specific plan would likely result in a substantial increase in diesel particulate emissions. Sources of these diesel emissions include increased truck travel along expanded roads, and the heavy-duty construction equipment used to construct the project. The revised EIR should identify the increase in diesel particulate emissions from implementation of the Project and provide an analysis on the health effects from these increased emissions.

The revised EIR should also identify and analyze the feasibility of implementing alternatives to diesel

5. The DEIR Fails to Adequately Identify or Analyze the Project's Growth-Inducing Impacts

CEQA requires that an EIR include a "detailed statement" setting forth the growth-inducing impacts of the proposed project. Cal.PRCs 21100 (b) (5); City of Antioch v. City Council of Pittsburgh, 187 Cal.App.3d 1325, 1337 (1986). The statement must "discuss the ways in which the proposed project could foster economic growth, or the construction of additional housing, either directly or indirectly in the surrounding environment." Guidelines Section 15126.2 (d). It must also discuss how projects "may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively" or "remove obstacles to population growth." Id.

The planned widening of the area road network could have growth-inducing effects. But rather than generally discuss where and when this growth would occur or evaluate the environmental impacts associated with this growth, the EIR merely states that impacts of this growth are addressed in other sections of the EIR. We cannot find any evidence that the EIR has, in fact, analyzed the effect of this growth anywhere in the EIR. Moreover, the EIR admits that in the area east of the Project site where the SOAR ordinance has effect, that project-related but SOAR exempt components of the Project can be located. Unfortunately, rather than analyze these impacts, the EIR merely asserts that these Project components are speculative and may not occur. Nowhere does the EIR address the relationship between increased highway capacity and land

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use development. Nor does the document acknowledge that increased highway capacity is an indispensable prerequisite for future development.

Each new resident of the proposed project will require new services and goods. The cumulative effect of a project this size should be considerable. But no analysis has been conducted to honestly evaluate the growth inducing impacts.

While the EIR need not predict the precise form, location and amount of commercial and residential development resulting from the proposed Project, it must attempt to describe the general form, location and amount of such development that now seems reasonable to anticipate. The revised EIR must include this analysis.

C. The EIR Fails To Adequately Describe A Reasonable Range of Alternatives to the Proposed Project.

Every EIR must describe a range of alternatives to the proposed project and its location that would feasibly attain the Project's basic objectives while avoiding or substantially lessening the Project's significant impacts. CEQA Section 21100 (b) (4); CEQA Guidelines Section 15126 (d). A proper analysis of alternatives is essential for the DEIR to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. PRCS 21002; CEQA Guidelines Sections 15002 (a) (3), 150251 (a) (2), 15126 (d); Citizens for Quality Growth v. City of Mount Shasta, 198 Cal.App.3d 433, 443-45 (1988). As stated in Laurel Heights I, "without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the

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CEQA process....[courts will not] countenance a result that would require blind trust by the public especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." 47 Cal.App.3d at 404. The EIR's discussion of alternatives in the present case fails to live up to these standards.

Implementation of the specific plan within the Project would significantly impact the area's biological resources, farm lands, air quality, cultural resources, scenic highways, scenic views and vistas and the character of several communities. Although the EIR includes purported "alternatives" to the Project, these alternatives are not developed to the same level of serious consideration as is given to the preferred project. Unfortunately, these myopic alternatives are no substitute for a true alternatives analysis that would address all of the other issues that are present within the project location area.

Ventura County is at a crossroads. While retaining much of its agricultural and rural charm, the County is rapidly changing by adopting the same land use and traffic characteristics of its southern neighbors. Unfortunately, Ventura County is insufficiently supported by any real alternatives to the automobile. The City now has an important opportunity to implement a more balanced approach to land use development and transportation planning by adopting objectives, principles and standards designed to protect the diminishing resources in the County. Specifically, the City should take any and all action to substantially alter residents' current dependence on the private automobile. The revised EIR must include an alternative that embraces forward-looking and comprehensive land use and transportation planning designed to protect the environment

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and maintain quality of life for those living and working in this area.

In addition to the EIR's failure to identify and analyze a credible range of alternatives, the document also fails to provide an adequate comparative environmental evaluation of project alternatives. The EIR must include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed Project. CEQA Guidelines Section 15126.6 (b); King's County Farm Bureau v. City of Hanford, 221 Cal.App.3d 692, 733 (1990) (absence of comparative data precluded meaningful consideration of alternatives). Here, the EIR fails to provide the requisite comparative analysis of the few alternatives it does provide, however, more importantly, the EIR fails to consider substantial evidence in the form of the OBTF Consensus Plan 2003, the Ormond Beach Conceptual Management Plan, the South Ormond Conceptual Management Plan, federal recovery plans for each of the area's listed endangered species and several other regional management plans designed specifically to create alternatives to promote protection of sensitive habitats and species.

The document provides no detailed analysis—and certainly no quantification—addressing the environmental impacts likely to result from each alternative. The revised EIR should provide this analysis.

D. The EIR Should Be Redrafted and Recirculated.

CEQA requires recirculation of a revised EIR "when significant new information is added to an environmental impact report."

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after public review and comment on the earlier EIR. PRCS 21092.1. The opportunity for meaningful public review of significant new information is essential "to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." Sutter Sensible Planning Inc. v. Sutter County Board of Supervisors, 122 Cal.App.3d 813, 822 (1981); City of San Jose v. Great Oaks Water Company, 192 Cal.App.3d 1005, 1017 (1987). An agency cannot simply release the draft report that "hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review." Mountain Lion Coalition v. California Fish & Game Commission, 214 Cal.App.3d 1043, 1053 (1989).

Significant changes in the area economy, ecology, public resources and other conditions have occurred since the draft EIR was written. The nation has experienced the largest economic downturn since the great depression almost 90 years ago. We are at war with three other nations. Prices for gasoline and other energy are near an all time high. The real estate market is in crisis. Our national budget is in crisis. Our state budget is in crisis. City leaders are still evaluating the effects on our local economy.

New information on sea rise due to global warming is now available and it appears that the rise will be much greater than predicted when the DEIR was written.

A new federal rule on critical habitat for snowy plovers is now available for comment.

A gigantic Tsunami hit Japan killing over 10,000 people and devastating its economy. The project is in a liquafaction zone that is also subject to tsunamis.

Oxnard realtors are having great difficulty moving current inventory. The prospect of placing thousands of new units on a depressed market may have a significant harmful effect to both realtors and homeowners. No analysis was done of the negative economic effect of the Project.

New questions have arisen regarding water availability, energy availability and the ability of existing agencies to conduct past activities. For example, some mitigation measures require a level of involvement from agencies like the California Department of Fish and Game, the US Fish and Wildlife Service and others. In some cases these services are no longer available. Therefore the mitigation measures must be revised to accommodate the changed conditions.

In short, the world has significantly changed in these ways and many others since the environmental documents were prepared. Therefore, the City's decision to certify the documents was based not upon present conditions but how things were in 2007.

In order to cure the panoply of EIR defects identified in this letter, the City will have to obtain substantial new information to adequately assess the impacts from the proposed Project and to identify effective mitigation capable of alleviating these significant impacts. CEQA requires that the public have a meaningful opportunity to review and comment upon this significant new information in the form of a recirculated draft EIR.

CONCLUSION:

For the foregoing reasons, OBO urges the City to delay further consideration of the Project unless and until it prepares and recirculates a revised draft EIR that fully complies with CEQA and the CEQA Guidelines. We also suggest that the City completes its GP revision and revision of its Coastal Plan prior to making any determination on Southshore.

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Alan Sanders
President
Ormond Beach Observers

Sincerely,
Alan Sanders
Alan Sanders

Alan Sanders
President
Ormond Beach Observers

