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January 4, 2007

Joyce Horizumi, Director  
County of Sacramento  
Department of Environmental Review and Assessment  
827 7<sup>th</sup> Street, Suite 220  
Sacramento, CA 95814

RE: Rancho Murieta Residences and Retreat Final Environmental Impact Report

Dear Ms. Horizumi:

This letter expresses the concern of the Attorney General of the State of California that Sacramento County's Final Environmental Impact Report (FEIR) for the Residences and Retreat projects in Rancho Murieta fails to adequately analyze the cumulative impacts of the proposed projects under the California Environmental Quality Act (CEQA).

The Attorney General represents the interests of the People of the State of California and has independent powers under the California Constitution, common law, and the Government Code to protect the environment and natural resources of the State. The Attorney General's Office routinely reviews CEQA pleadings that are required by statute to be submitted to the office, and we monitor environmental review documents submitted to the Governor's Office of Planning and Research. Occasionally, we submit comments on a particular document.

Our primary concerns with respect to adequacy of the cumulative impacts analysis in the Residences and Retreats FEIR are twofold. First, the FEIR improperly attempts to rely on an outdated cumulative impact analysis completed in 1983 to assess the impacts of the proposed projects on the current environmental conditions in Sacramento County. Second, the FEIR employs an incorrect baseline by evaluating the impacts of the proposed project in relation to the outdated Master Plan, rather than in relation to the existing environment. This letter focuses on these major concepts and concerns and is not an exhaustive discussion of all issues related to the FEIR.

1. The Residences/Retreat FEIR fails to adequately analyze the cumulative effects of the project, and improperly attempts to cure this defect by relying on an outdated Master Plan EIR.

As part of the CEQA analysis, the lead agency must identify and address the cumulative impacts of a development project where the project's "incremental effect is cumulatively considerable." (CEQA Guidelines, § 15130(a).) The purpose of the cumulative impacts analysis "is obvious: consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740 [quoting *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306]; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-84; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1024.)

Despite the long-standing precedent requiring an EIR to contain a thorough cumulative impact analysis, neither the Draft EIR nor the FEIR for the Residences/Retreat projects contains an analysis of the cumulative impacts in conjunction with other past, present and anticipated projects.<sup>1/</sup> Indeed, in response to public comments about the lack of this cumulative impacts analysis in the Draft EIR, the FEIR simply states, "Cumulative impacts were analyzed as part of the EIRs certified for the 1973 Master Plan and the 1984 Master Plan . . . and the following significant impacts were identified: water quality degradation, growth inducement, cumulative loss of grassland and oak woodland habitats, cumulative impacts to wildlife habitat and associated wildlife, cumulative impacts to air quality, cumulative impacts to the Highway 16 corridor, and potentially significant impacts to historic/cultural resources." (Residences/Retreat FEIR, Vol. 2, Comments and Responses, p. 2.)

The FEIR then incorporates by reference the EIRs accompanying these Master Plan

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1. Other approved or pending projects in Rancho Murieta and Sacramento County include: Lakeview (99 single-family residential units); Riverview (154 single-family residential units); Murieta Gardens (mixed use project consisting of 208 single-family residential units, 18,000 square feet of office development, and 159,935 square feet of retail development); the Residences (198 single-family residential units) and the Retreat (84 single-family residential units); Rooney Ranch (18 single-family residential units); Coyote Hills (11 single-family residential units); Sheldon Hills 3 (39 single-family residential units); Sloughhouse Vineyard Village (14 single-family residential units); Simpson Ranch (11 single-family residential units); Ione Band Miwok Indians' Casino (120,000 square foot casino complex and 250 room hotel in the city of Plymouth); Buena Vista Indian Casino (245,405 square foot casino complex); Stonehouse Road Elementary School (school with a proposed capacity of 850 students in the area west of Rancho Murieta); Sunrise Douglas Community Plan (6,120 acres of residential, commercial/business, mixed-use, open space, parks, school, and roadways/easements in Rancho Cordova. (Lakeview FEIR, Ch. 7, Traffic and Circulation, p. 7-5.)

documents. (FEIR, Ch. 4, Land Use, p. 4-2.) While a lead agency is encouraged to tier a newer EIR off of an existing EIR (Pub. Resources Code §§ 21068.5, 21093, 21094; CEQA Guidelines §§ 15152, 15167, 15168, 15175, 15385), “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project.” (CEQA Guidelines, § 15152(b).) The County has an obligation to adequately analyze reasonably foreseeable significant environmental effects, including the cumulative impacts of continuing to build out Rancho Murieta; this obligation cannot be met by relying on outdated data derived from a twenty-two year old document. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1367 [“By using scientifically outdated information derived from [a ten year-old profile], we conclude the EIR was not a reasoned and good faith effort to inform decisionmakers and the public” about the environmental impact of the project.])

Circumstances in Sacramento County have changed significantly and more information has become available over the last two decades regarding the environmental effects of continued development. From 2000 to 2005 alone, the population of Sacramento County increased by 11.4%, almost double the rate of population growth statewide. (United States Census Bureau, <http://quickfacts.census.gov/qfd/states/06/06067.html>) More than 12,600 acres were urbanized between 2000 and 2002 in the Sacramento region. (Calif. Dept. of Conservation, [http://conservation.ca.gov/DLRP/fmmp/time\\_series\\_img/sac\\_region.htm](http://conservation.ca.gov/DLRP/fmmp/time_series_img/sac_region.htm))

It is well-understood that high rates of urbanization place greater pressures on sensitive resources. The 1983 Rancho Murieta EIR acknowledged as much in its assessment of the irreversible impacts of the development: “Irreversible impacts associated with implementation of the proposed project include those related to construction, such as landform changes and conversion of the land from rural to suburban use, and impacts related to long term use, such as the use of non-renewable natural resources for heating, cooling, and transportation. . . . Implementation of the proposed project would reduce the range of beneficial uses of the environment to the degree that habitat is reduced for plants and animals now utilizing the project site. . . . Also, because the project is adjacent to both sides of the Cosumnes River, long term impacts can be expected in the form of intrusion upon habitat of species sensitive to the presence of people.” (1983 EIR, Irreversible Impacts, p. 47.)

Yet, the Residences/Retreat FEIR neglects to analyze the current effects of urbanization on high priority sensitive resources in the region. For example, many new development projects in the region – including the Residences/Retreat proposal – intend to rely on the Cosumnes River as a source of water. The Cosumnes River is the last free-flowing river on the western slope of the Sierra Nevada. Nowhere does the FEIR address the cumulative impacts of the new developments and their reliance upon the Cosumnes as a source of long-term water supply. (FEIR Ch. 5, Public Services, p. 5-33).<sup>2/</sup>

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2. In December 2005 this Office submitted an amicus brief in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, arguing that CEQA required Sacramento County to analyze the long-term water supply for a large development and to consider the

The FEIR similarly fails to consider the cumulative impacts on oak woodland habitat. (See Oak Woodlands Conservation Act, Pub. Resources Code, § 21083.4 [requiring county to determine whether a project in its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment].) Although the FEIR states that the Residences/Retreat projects would result in the “less than significant” loss of 4.78 acres of oak woodland canopy (2.4 acres in the Residences and 2.38 acres in the Retreat) and 4,974 inches of native oak trees (1,619 from the Residences and 3,355 from the Retreat) (FEIR, Ch. 10, Biological Resources, pp. 10-16, 10-26), the document does not outline the criteria used to judge significance.

While in some cases the loss of a single oak tree could be significant, we find notable the fact that there is no discussion of the significance of loss in relation to other development projects approved or proposed for the Rancho Murieta area or for Sacramento County in general. Only a cumulative impacts analysis that takes into account past, present, and reasonably anticipated future projects will enable the County to determine whether the loss of nearly five acres of canopy and 5,000 tree inches in the Residences/Retreat project sites is truly less than significant. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720; see also, Selmi, *The Judicial Development of the California Environmental Quality Act* (1984) 18 U.C. Davis L. Rev. 197, 244, fn. omitted [“One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact.”].)

Furthermore, a weak to non-existent cumulative impacts analysis necessarily results in weak to non-existent mitigation proposals. Because mitigation is a key element of an EIR, the failure of an agency to consider significant cumulative impacts, and their concomitant mitigation measures, may render an EIR deficient. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872 [absence of cumulative impact analysis “makes the EIR an inadequate informational document.”].)

2. The FEIR, in comparing the effects of the proposed development to the original plan rather than to the effects on the existing environment, utilizes the wrong baseline.

The FEIR compares the environmental effects of the Residences and Retreat projects to the 1983 EIR and 1984 Master Plan, rather than to the existing physical environment. However, it is the existing physical conditions that form the baseline against which the potential effects of a project must be measured, not the full extent of what is legally permitted but not present in reality. (CEQA Guidelines, §§ 15125(a), 15126.2(a); *Environmental Planning and Information Council of Western El Dorado County, Inc. v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354 [CEQA does not address effects of proposed general plan amendments on an existing general plan, but instead clearly expresses concern with the effects of projects on the actual environment upon which the proposal will operate]; *City of Carmel-by-the-Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246-47

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impacts of the development on the Cosumnes River prior to approval of the plan.

December 4, 2006

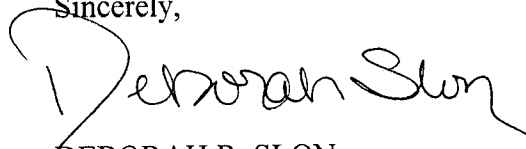
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[effects of rezoning are evaluated by comparing project with existing physical conditions, not full build-out]; *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 289 [baseline conditions against which project's changes are evaluated are current physical conditions]; *accord, Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, 1315 n.3].) Consequently, the county's reliance on the previously issued documents to determine the environmental effects of the Residences and Retreat projects was misplaced.

While the final decision determining county policy is a matter of discretion, the EIR "must provide sufficient information to make the exercise of this discretion an informed one." (*Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 134.) In the absence of a cumulative impacts analysis based on current environmental conditions, it is not clear that the County has made such an informed decision.

Thank you for your consideration of these comments.

Sincerely,



DEBORAH R. SLON  
Deputy Attorney General

For BILL LOCKYER  
Attorney General