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June 30, 2016

**Via E-Mail and FedEx**

Kim Stater  
Assistant Community Development Director  
City of Highland  
27215 Base Line  
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Re: Harmony Specific Plan Proposed Resolutions

Dear Ms. Stater:

On behalf of Greenspot Residents Association, I am writing to point out significant flaws in the resolutions proposed for the approval of various aspects of the City of Highland's Harmony Specific Plan project. We informed you of significant flaws in the environmental review of the Project by our letter of June 27, 2016. The proposed findings reproduce and reinforce these errors, and add several new ones. Any project approval effected by the resolutions discussed below will be invalid.

**Subdivision Map Act**

The Subdivision Map Act, Government Code sections 66410 et seq., requires certain findings in connection with a tentative map approval. The resolutions proposed for the approval of Tentative Tract Maps 18861 and 18871 do not meet this requirement: they are missing mandatory findings and several of the findings they do make are not supported by substantial evidence.

Government Code section 66412.3 requires an agency processing a subdivision map to "consider the effect of ordinances and actions adopted pursuant to this division on the housing needs of the region in which the local jurisdiction is situated and balance these needs against the public service needs of its residents and available fiscal and environmental resources." Similarly, Government Code section 66473.1 requires that subdivision's design "provide, to the extent feasible, for future passive or natural heating

or cooling opportunities in the subdivision.” A map that does not meet this requirement must be disapproved. *See* 64 Ops. Cal. Atty. Gen. 328. The City must make an affirmative finding that that it has complied with section 66412 and that the subdivision satisfies section 66473.1. *See Spring Valley Lake Assn. v. City of Victorville* (May 25, 2016, No. D069442) \_\_\_ Cal.App.4th \_\_\_ [2016 Cal. App. LEXIS 469, at \*24] (holding that map approval must “affirmatively address all of the matters covered” by parallel language in Government Code § 66474.) The proposed resolutions do not include the required findings and cannot validly approve the tentative maps. We can discern no evidence in the record that would support such findings.

Government Code section 66473.5 requires the City to find that the tentative maps are consistent with the Highland General Plan. As explained in our CEQA Comment Letter, the Harmony Project does not meet the mandate of Highland General Plan Public Health and Safety Element Policy 6.3-3, under which the City must

“[r]equire a drainage study be completed by a qualified engineer prior to all proposed development to certify that the proposed development will be adequately protected and that implementation of the development will not create new downstream flood hazards.”

The drainage study attached to the EIR does not meet this requirement, as it fails to account for proposed fill in the Santa Ana River/Mill Creek floodplain and how such fill might affect floodplain storage capacity or impact downstream flood-prone areas. Moreover, mitigation measures HYD 1 and HYD 2 do not appear to require investigation of these potential flooding effects. The Project is therefore inconsistent with the General Plan and the findings asserting otherwise are not supported by substantial evidence. The Project cannot be approved.

Government Code section 66474 requires the City to reject the maps if it makes any of several findings. The City must “affirmatively address all of the matters” covered by this section. *Spring Valley Lake Assn.*, 2016 Cal. App. LEXIS 469, at \*24. The resolutions do not meet this requirement. Specifically, subdivision (b) of section 66474 requires the City to address whether “the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans,” and subdivision (e) requires the City to determine whether “the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.” The resolutions make neither finding.

Moreover, the EIR could not support either required finding. As explained above, the Project is not consistent with the Highland General Plan, preventing the City from making a supportable finding under Government Code 66474(b). And the required finding under section 66474(e) is untenable because “the term ‘substantial environmental damage’ . . . is the equivalent of ‘significant effect on the environment’.” *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal. App. 3d 1348, 1356 n.3; *see also* 59 Ops. Cal. Atty. Gen. 129 (1976); 68 Ops. Cal. Atty. Gen. 108 (1985).

By its own terms, the EIR notes two significant and unavoidable environmental impacts. DEIR at 7-39. As numerous commenters have pointed out, the EIR lacks substantial evidence to support its conclusions that many other impacts will be less than significant; each of these is an independent reason the City cannot make the section 66474(e) finding. The EIR moreover acknowledges the Project will injure San Bernardino Kangaroo Rat. that 88.8 acres of Riversidean alluvial sage scrub “will be lost through the Project development,” and that the Project will “permanently impact[]” 1.29 acres of surface waters and approximately 31.48 acres of streambeds and associated riparian vegetation. DEIR at 5.3-29, 5.3-35, 5.3-36. These injuries are yet another bar to the required finding. In short, the resolutions do not include a mandatory finding and they cannot make such a finding. The Project cannot be approved.

The fundamental requirements for agency findings apply to all of the provisions discussed above: the findings must “bridge the analytic gap between the raw evidence and ultimate decision.” *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. Thus, the bare assertion that a map “complies with the Subdivision Map Act, Sections 66410- 66499.58 of the Government Code of the State of California” does nothing to meet the City’s obligations; nor do the resolutions unsupported claims of General Plan consistency, site suitability, or any of the other issues for which the Subdivision Map Act requires findings.

## **CEQA**

Like the Subdivision Map Act findings, the City’s proposed resolution making findings required by the California Environmental Quality Act, Public Resources Code sections 21000 et seq., fail to “bridge the analytic gap between the raw evidence and ultimate decision.” *Topanga Assn. for a Scenic Community*, 11 Cal.3d at 515. The proposed CEQA findings assert that “substantial evidence supports the use of the 28.5% emission reduction target for the Project,” but other than a vague reference to “the DEIR and elsewhere,” there is no indication of what or where this evidence might be. *See* June 30, 2016 Staff Report, Attachment 10 at 19.

The discussion in the findings does nothing to correct the deficiencies identified in our CEQA comment letter: the City continues to assume that the Project will have a less than significant impact if it includes emissions reductions in the same proportion required of the entire state. *Id.* at 19-23. The findings walk through the EIR's analysis but they do not even attempt to justify the use of the 28.5% reduction as the standard of significance. With no explanation and no evidentiary support, the findings, if adopted, would plainly violate the rule set out in *Center for Biological Diversity v. California Dep't of Fish & Wildlife* (2015) 62 Cal.4th 204, 227: an agency may not "simply assume[] that the level of effort required in one context, a 29 percent reduction from business as usual statewide, will suffice in the other, a specific land use development." *Id.* Instead, the findings leave an "analytical gap" because they "fail[] to establish, through substantial evidence and reasoned explanation, a quantitative equivalence between the Scoping Plan's statewide comparison and the EIR's own project-level comparison. *Id.* The EIR thus fails as an "informative document" and findings are equally insufficient. *Id.*; see also *Topanga Assn. for a Scenic Community*, 11 Cal.3d at 515.

Further the findings' assertion that some mitigation measures "are within the responsibility and jurisdiction of other public agencies" does not relieve the City of the obligation to disclose the significance of the Project's climate change impact or its responsibility to specifically identify all feasible mitigation measures to reduce or avoid that impact. Many such measures, as explained in our CEQA comment letter, are within the City's jurisdiction and control. To the extent that City does not control the implementation of measures sufficient to bring the Project's impacts to a less than significant level, the appropriate conclusion is that the impact is significant and unavoidable. The City may not simply say that mitigation is someone else's problem and on that basis ignore the impact.

The proposed findings similarly fail to correct any of the flaws identified in the CEQA comment letter. The findings regarding flooding impacts, hazards, traffic, biological resources, and land use all lack the support of substantial evidence, for the reasons described in the CEQA comment letter. And for the same reasons, the resolution's certification of the EIR is equally unsupported.

### **Conclusion**

For all of the reasons described above and in our June 27, 2016 letter, the Harmony Specific Plan project cannot be approved on the basis of the EIR or the findings as presently proposed. Any such approval would be invalid and subject to serious

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challenge. The Project, moreover, is the type of ill-conceived sprawl that is inconsistent with California's environmental needs and commitments. It would add to the state's climate change challenge, further threaten its species, and impose new and wholly unnecessary flood risk on neighbors.

We urge the City to take no action on the Project unless and until these flaws are remedied or, better yet, to reject the Project now, thus eliminating the need for the extensive revision and recirculation that such a remedy would require.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to read 'G.M.B. Ross', with a small mark to the right.

Gabriel M.B. Ross