Letter No. 15

CENTER *for* BIOLOGICAL DIVERSITY

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March 3, 2008

Joan Wolff, Project Planner
City of Fullerton
Development Services Department
303 W. Commonwealth Avenue
Fullerton, CA 92832-1775

BY ELECTRONIC MAIL
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Re: Recirculated Revised Draft Environmental Impact Report SCH#1997051056; West Coyote Hills Specific Plan/Robert E. Ward Nature Preserve

Dear Ms. Wolff:

1 Please accept the following comments regarding the Recirculated Revised Draft Environmental Impact Report ("DEIR") for the West Coyote Hills Specific Plan project (the "Project"). These comments are submitted on behalf of the Center for Biological Diversity (the "Center"), and supplement previous comments submitted by the Center on the Draft EIR and Revised Draft EIR. The Center is a non-profit environmental organization with over 40,000 members dedicated to the protection of native species and their habitats through science, policy, and environmental law.

Greenhouse Gas Emissions

2 The Center's previous comments observed that the Revised DEIR failed to adequately analyze and mitigate the Project's greenhouse gas emissions. The recirculated Air Quality section now contains estimates of greenhouse gas emissions associated with both construction and operation of the Project. The Recirculated Revised DEIR concludes, however, that these emissions do not constitute a "cumulatively considerable" impact under CEQA (4.4-37). While the Center appreciates the attempt to include an inventory of the Project's greenhouse gas emissions, we strongly disagree with the Recirculated Revised DEIR's unsupported conclusion that the Project's greenhouse gas emissions are not cumulatively considerable.

3 On the contrary, emissions that contribute to climate change are a classic example of a severe environmental problem (indeed, the most pressing environmental and societal problem of out time) that results from the aggregation of emissions from numerous small sources. This is the type of environmental problem that CEQA's cumulative impact analysis requirement is intended to capture. CEQA Guidelines § 15355(b) ("Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."); *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 720 (1990) ("Perhaps the best example [of a cumulative impact] is air pollution, where thousands of relatively small sources of pollution

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cause a serious environmental health problem."); *see also Center for Biological Diversity v. National Highway Traffic Safety Admin.*, 508 F.3d 508, 550 (9th Cir. 2007) ("the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.")

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While the Project's greenhouse gas emissions (and the emissions from *any* given project) represent a fraction of California's total emissions, courts have flatly rejected the notion that the incremental impact of a project is not cumulatively considerable because it would make only a *de minimis* contribution to the problem as a whole. *Communities for a Better Environment v. California Resources Agency*, 103 Cal. App. 4th 98, 117, 120 (2002) ("In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant."); *Kings County Farm Bureau*, 221 Cal. App. 3d at 720 (rejecting "ratio theory" of cumulative impact analysis that looked at project's contribution relative to overall problem).

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The importance of capturing even relatively small sources of greenhouse gas emissions is further highlighted by estimates of future emissions trends that project growth in emissions under a "business as usual" scenario. *See* Exhibit D, California Energy Commission Inventory of Greenhouse Gas Emissions and Sinks 1990-2004 at p. 22. Given the emissions reduction goals set by the state through AB 32 and other means, it is essential to address a broad range of sources of new greenhouse gas emissions, and to not exclude such sources as *de minimis* or less than cumulatively considerable.

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Here, the Recirculated Revised DEIR compared the Project's estimated post-construction greenhouse gas emissions of 27, 250 tons per year to California's total emissions and concluded that because they account for less than 0.005 percent of the total emissions, the Project's contributions are not cumulatively considerable (4.4-37). This approach is simply an attempt to resurrect the ratio theory discredited in *Kings County Farm Bureau*. It is *not* a sufficient basis for dismissing the Project's cumulative greenhouse gas emissions. Moreover, it is irrelevant that estimated Project emissions would be less than "the level of reductions quantified by CARB in its lowest identifiable emissions reduction strategy proposed as 'Early Action Measures' in accordance with AB 32." As the Recirculated Revised DEIR acknowledges, neither the Legislature in adopting AB 32 or CARB in specifying its "Early Action Measures" set thresholds of significance for analyzing greenhouse gas emissions under CEQA.

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As a recent report prepared by the California Air Pollution Control Officers Association (CAPCOA) indicates, the absence of a threshold of significance does not relieve lead agencies of evaluating a project's greenhouse gas impacts under CEQA. Exhibit E, CEQA and Climate Change at p. 23. The lead agency may adopt a threshold of significance if it is supported by substantial evidence. It may, and in this case should, set a threshold of zero for a project's greenhouse gas emissions, where *any* increase in greenhouse gas emissions above existing levels is considered a significant impact under CEQA. Here, however, the Recirculated Revised DEIR simply dismisses the Project's greenhouse gas emissions because they are small relative to the overall problem, which is not a permissible method of analyzing such emissions.

Had the Recirculated Revised DEIR considered the Project's greenhouse gas emissions as a potentially significant impact, it could also have considered possible measures to reduce or avoid this impact. These measures include design features such as:

- Incorporating passive heating systems and design features
- Incorporating natural cooling systems
- Reducing paved surfaces throughout the Project area
- Requiring use of salvaged and recycled-content materials, and other materials that have low production energy costs, for building materials, hard surfaces, and non-plant landscaping whenever such materials are available
- Installing photovoltaic solar energy arrays on buildings to meet energy needs
- Installing solar hot water systems to meet hot water needs

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These measures all rely on demonstrated, readily available feasible technology. The CAPCOA report also provides further examples and analysis of potential mitigation measures for the Project's greenhouse gas emissions. Exhibit E at pp. 79-84.

Biological Resources

The Center's Revised DEIR comments noted, among other things, that the proposed onsite mitigation areas or preserves for California gnatcatchers and coastal sage scrub would be highly fragmented and ineffective in mitigating the Project's impacts. The Recirculated Revised DEIR includes no information that alters this conclusion and the Center's supporting analysis. Exhibit F, Revised DEIR Comments. While the Recirculated Revised DEIR does provide an improved disclosure and analysis of some impacts, such as the indirect effects associated with invasive exotic species, edge effects, and fuel modification, there is insufficient evidence to support the claims that the Project "was designed to avoid as many existing concentrations of gnatcatchers and cactus wren as possible" (4.12-52) or that the Project will "maintain and recover habitat sufficient to maintain a viable gnatcatcher population on the West Coyote Hills property." (4.12-79) Accordingly, the Center resubmits its Revised DEIR comments, with particular emphasis on those comments regarding reserve design and viability.

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The Recirculated Revised DEIR's conclusion that the Project will not have any significant cumulative impacts on gnatcatchers is also questionable. As the Recirculated Revised DEIR acknowledges (Fig. 4.12-3), the Project site includes, by a considerable margin, the largest gnatcatcher population in the region. Even with the optimistic projections for the Project's mitigation, there is the possibility that mitigation will fail, and some or all of this population will be lost. Even partial failure means the likelihood of significant cumulative gnatcatcher impacts, which must be evaluated in light of the status of gnatcatchers throughout the region.

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Thank you for your consideration of these additional comments, and please keep me on the list for notices regarding this Project.

Sincerely,

John Buse
Staff Attorney
Center for Biological Diversity

Attachments

Ex. D California Energy Commission *Inventory of Greenhouse Gas Emissions and Sinks 1990-2004*
Ex. E CAPCOA *CEQA and Climate Change* report
Ex. F Center Comments on Revised DEIR