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Via E-Mail and U.S. Mail

Chairman Todd Spitzer
Orange County Board of Supervisors
333 W. Santa Ana Blvd.
Santa Ana, California 92701
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Re: Rescission of Amendments to the Orange County General Plan and the Foothill-Trabuco Specific Plan

Dear Chairman Spitzer:

Shute, Mihaly & Weinberger represents the Save the Specific Plans Coalition¹ on the proposal to rescind the County's 2012 approval of amendments to the Orange County General Plan and the Foothill-Trabuco Specific Plan, respectively contained in Board Resolution 12-148 and Ordinance 12-031 ("Plan Amendments"). As you know, along with these amendments, the County approved an Area Plan (Resolution 12-149) and a Vesting Tentative Tract Map (17388) for the Saddle Crest Homes development and certified Environmental Impact Report #661 ("EIR #661"). EIR #661 considered environmental impacts from both developing Saddle Crest Homes and from the Plan Amendments. The proposed rescission of the Plan Amendments would leave in place the County approvals for Saddle Crest Homes and the certification of EIR #661.

Under the California Environmental Quality Act ("CEQA"),² rescinding the Plan Amendments would not require preparation of a new EIR. Courts have likened a lead

¹ Foothill Communities Association, Saddleback Canyons Conservancy, Friends of Harbors, Beaches and Parks, Canyon Land Conservation Fund, Wild Heritage Planners, Canyons First, Inter-Canyon League, Orange Park Acres Association, Rural Canyons Conservation Fund, California Native Plant Society.

² Public Resources Code § 21000 *et seq.* The CEQA Guidelines are contained in California Code of Regulations, title 14, § 15000 *et seq.*

agency's rescission of an earlier project approval to an agency's discretionary denial of a project, which is otherwise exempt from CEQA. *City of National City v. State of California* (1983) 140 Cal.App.3d 598, 603. Additionally, EIRs must evaluate the decision to not proceed with a project as part of the mandatory "no project" alternative analysis. CEQA Guidelines §15126.6(e). Thus, any impacts that could theoretically occur from rescission of a project approval are typically analyzed as part of an EIR's "no project" alternative and do not require further environmental review. *National City*, 140 Cal.App.3d at 603.

Significantly, EIR #661 already considered foreseeable environmental impacts from not approving or carrying out the Plan Amendments. Among other things, the EIR's no project alternative ("Alternative 1") evaluated potential environmental impacts associated with not amending the General Plan or the Foothill-Trabuco Specific Plan. *See* Draft EIR #661 at pp. 5-5 through 5-10. The EIR concluded that there would be no significant environmental impacts associated with adopting the no project alternative and not approving the Plan Amendments. Draft EIR #661 at p. 5-10. EIR #661 separately evaluated the impacts of a non-clustered project scenario, which it stated could be implemented without amending the Foothill-Trabuco Specific Plan. *See* Draft EIR #661 at p. 1-2. Consequently, because EIR #661 has already evaluated potential impacts associated with retaining the pre-amendment General Plan and Specific Plan standards, CEQA requires no further environmental review to revert to these pre-amendment standards. *National City*, 140 Cal.App.3d at 603.

Even if EIR #661 had not already analyzed the impacts that potentially could result from rescinding the Plan Amendments, CEQA still would not require an additional EIR here. After an agency certifies an EIR for a project (including changes to land use plans), CEQA only requires further environmental analysis in very limited circumstances. CEQA § 21166; CEQA Guidelines § 15162. Relevant here, CEQA would require an additional EIR only if "substantial changes are proposed" for a project that will necessitate "major revisions of the previous EIR" due to "new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects." CEQA Guidelines § 15162(a)(1). If these conditions are not met and CEQA does not require a new EIR, an agency may elect to prepare an addendum to a previously certified EIR to address later changes to a project. CEQA Guidelines § 15164.

Here, the County has already conducted environmental review for the General Plan and Specific Plan provisions that would be reinstated through rescission of the Plan Amendments. For instance, when the County adopted the Foothill-Trabuco Specific Plan in 1991, it prepared and certified EIR #531, which evaluated the environmental impacts associated with adopting that plan. There is no evidence that reversing the Plan

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Amendments and returning to the preexisting General Plan and Specific Plan standards would result in new, or greater, environmental impacts than those that were considered in the County's environmental documents previously prepared with adoption of those plans. Moreover, as EIR #661 noted, there were no foreseeable environmental impacts from retaining the pre-amendment plan standards. Draft EIR #661 at pp. 5-5 through 5-10. Consequently, if the County wished to acknowledge and incorporate rescission of the Plan Amendments into EIR #661, at most CEQA would require only a limited addendum to the EIR memorializing that change.

Please do not hesitate to contact our office should you have any additional questions concerning this matter.

Very truly yours,

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