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April 16, 2023

VIA EMAIL TO: HLANG@CO.SISKIYOU.CA.US

Hailey Lang, Deputy Director
Planning Department
806 South Main Street
Yreka, CA 96097

Re: Kidder Creek Orchard Camp – proposed expansion and modernization

Dear Hailey:

As you know, this firm represents Mount Hermon Association, Inc., which operates the Kidder Creek Orchard Camp, and these comments are submitted on its behalf. More than 11 years ago, in 2011, Mount Hermon first proposed the Project to expand, upgrade and modernize its existing camp operations so that it can more effectively serve its ministry, accommodate more guests, and expand the spiritual, recreational, leisure, and social opportunities available at Kidder Creek Orchard Camp. The Project is also intended to improve safety at the campsite by relocating the existing road to separate vehicle and pedestrian traffic, and adding another access road for improved traffic flow in the event the site needs to be evacuated for any reason.

Over the past 11 years, the Project has undergone four separate rounds of public review under CEQA: (1) an Initial Study and Draft Mitigated Negative Declaration, which was never adopted due to concerns that the comments had identified some impacts that had the potential to be significant, (2) a Draft EIR, (3) a Partially Recirculated Draft EIR, and (4) the Second Partially Recirculated Draft EIR, which corrected some data related to the traffic counts and re-did the noise analysis.

Through its then-attorney, Donald B. Mooney, commenter Keep Scott Valley Rural Association submitted one (1) comment letter during the four (4) public review periods that have occurred during the last seven (7) years. Since the close of the last public comment period, commenter has submitted four (4) additional eleventh-hour letters (up through the date of this letter) from its current attorney, Marsha Burch. This letter responds to the primary issues raised in those four letters.

1. The Planning Commission Appropriately Reviewed the Project.

Although Keep Scott Valley Rural acknowledged the limited scope of the Planning Commission's delegated authority under the Siskiyou County Code, it claimed the Planning

Commission could not make an appropriate recommendation regarding the Project without considering the Final EIR.

This claim is moot because the project was returned to the Planning Commission for consideration along with the Final EIR. (*See Parkford Owners for a Better Community v. County of Placer* (2020) 54 Cal.App.5th 714, 722 [a matter becomes moot when a change in circumstances causes the controversy between the parties to cease to exist]; *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 [when a court cannot grant the plaintiff effectual relief because the issue complained about has been resolved, the matter is moot].)

2. The EIR Analyzed All Potentially Significant Impacts, and It Was Not Required to Analyze Impacts That the Initial Study Found Could Be Mitigated to Less-Than-Significant.

The EIR analyzed all impacts of the Project that the County determined were potentially significant. The EIR did not analyze impacts that the County determined were *not* potentially significant, nor was it required to do so.

Keep Scott Valley Rural incorrectly contends that "[t]he DEIR has been unorthodoxly coupled with a Mitigated Negative Declaration ('MND')." This claim is factually incorrect.

The County released its Initial Study/Draft Mitigated Negative Declaration for public review in 2016. It received 233 comments raising certain categories of environmental concern. After reviewing those comments, the County determined that "an EIR level of analysis was required for certain impact areas" because they had the potential to cause significant environmental effects. (DEIR, Section ES.3.) Thus, the County proceeded to prepare an EIR to analyze those potentially significant impacts.

Significantly, the County never adopted the Mitigated Negative Declaration proposed for this Project. Instead, it ordered the preparation of an EIR. Thus, there is only *one* CEQA document for this Project.

Here, then, the CEQA analysis was not "split" between a Mitigation Negative Declaration and EIR. Instead, an Initial Study was prepared pursuant to applicable law. (*See* Cal. Code of Regs., title 14 ("CEQA Guidelines") §§ 15006, subd. (d); 15063.) Pursuant to the CEQA Guidelines, the lead agency is *directed* to reduce paperwork and delay by, among other things, pursuing an initial study to "screen out" impact categories that need not be further analyzed in an EIR. (*Id.*) This is called "screening" and is routinely – and properly – done in the preparation of EIRs.

The County's Initial Study evaluated the Project's potential environmental impacts using Appendix G of the CEQA Guidelines. (See CEQA Guidelines, Appendix G.) Under CEQA, the EIR need only consider the impacts that are identified as potentially significant; those that are determined to be less than significant, with or without mitigation, do not require discussion in the EIR. (CEQA Guidelines, §§ 15063, subd. (b)(1)(A); 15070, subd. (b).) The CEQA Guidelines specifically confirm that an EIR need not be discuss effects that are found to be less than significant, so that the EIR may properly focus on those that are potentially significant. (CEQA Guidelines, §§ 15063, subd. (c)(3)(A); 15126, subds. (a)-(b).) The lead agency properly uses the Initial Study to mitigate adverse impacts to a less-than-significant level and "assist in preparing an EIR if one is required, by focusing the EIR on significant effects, identifying the effects determined not to be significant, and explaining why potentially significant effects would not be significant" and do not merit more extensive discussion or analysis in the EIR. (*Ocean Street Extension Neighborhood Assn. v. City of Santa Cruz* (2021) 73 Cal.App.5th 985, 1002.)

Here, the Initial Study identified those impacts that were less than significant with mitigation. (See CEQA Guidelines, § 15063, subds. (c)(2), (c)(3)(A) & (c)(3)(C).) The EIR relied on this analysis from the Initial Study to determine which impacts were potentially significant. (DEIR, § ES.3 ["[a]ll other impact analysis areas defined in Appendix G of the CEQA Guidelines and analyzed in the 2016 Draft IS/MND will not be included in this EIR" because, with the incorporation of the mitigation measures identified in the Initial Study, they would not cause significant environmental impacts].) The DEIR also confirmed that "all mitigation measures identified in these sections [of the Initial Study] will be included as mitigation in this EIR and in the Mitigation Monitoring and Reporting Program (MMRP)." (DEIR, § ES.3.)

The EIR properly focused on these potentially significant effects and included the Initial Study (as an appendix) describing why some categories of impacts were determined not to be potentially significant. In this manner, the EIR adequately explained the basis for the focus of its discussion, and the County fulfilled its purpose of providing information to "facilitate 'informed agency decisionmaking and informed public participation.'" (Cf., *Ocean St. Extension Neighborhood Ass'n v. City of Santa Cruz* (2021) 73 Cal.App.5th 985, 1002.) The County was not required to perform an "an exhaustive analysis" in the EIR for each category of impact. (*Id.* at p. 1006.)

Contrary to the assertions of Keep Scott Valley Rural, *Farmland Protection Alliance v. County of Yolo* (2021) 71 Cal.App.5th 300, does not support their claim that the County improperly used the Initial Study to narrow the scope of impacts selected for more detailed analysis in the EIR. In *Farmland Protection Alliance*, the lead agency adopted two different CEQA documents for one project, a Mitigated Negative Declaration and an EIR,

thereby splitting the project into multiple "pieces" for CEQA review. (*Farmland Protection Alliance v. County of Yolo* (2021) 71 Cal.App.5th 300, 309.) The court found this approach violated CEQA's "three-tiered" process, which requires a binary choice between adopting a negative declaration (of some type) and certifying an EIR. According to the *Farmland* court, these two types of CEQA compliance "are mutually exclusive." (*Id.*)

The cases relied upon by Keep Scott Valley Rural hold that an EIR must be prepared if one or more aspects of a project may cause a significant effect on the environment. (*See id.*; *see also San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382.) This is precisely the process the County followed: after evaluating the comments received on the Initial Study, it determined some impacts could be potentially significant and prepared an EIR to evaluate them. Keep Scott Valley Rural asserts that all impacts, including less-than-significant impacts, must be analyzed in a "full" EIR. Neither *Farmland Protection* nor *San Bernardino Valley Audubon* so holds, and *Ocean Street Extension* expressly approves the type of screening the County followed in this case. (Cf. *Ocean Street Extension, supra*, 73 Cal.App.5th at p. 1002.)

3. The Project Is Subject to the Regulatory Standards That Applied in 2016 When the Notice of Preparation Was Issued, Not the Greenhouse Gas Emissions Thresholds That Were Adopted in 2018.

As noted above, this Project – the simple expansion and modernization of an existing and operating camp facilities to allow Mount Hermon to better serve its ministry – has been undergoing environmental review since 2011. The Notice of Preparation for the Draft EIR was issued in 2016.

Under the CEQA Guidelines, the EIR's environmental analysis compares the effects of the project to the "baseline" conditions to determine whether an impact is significant. The existing physical and regulatory conditions "will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (CEQA Guidelines § 15125, subd. (a).) Generally, CEQA prescribes that the baseline conditions should be described "as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced." (*Id.*, subd. (a)(1).) The baseline includes regulatory conditions such as operations under permits issued under existing law. (*Id.*, subd. (a)(3); *Cmtys. for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 321.)

Here, Keep Scott Valley Rural seeks to hold the Project to new greenhouse gas emission standards that it acknowledges were issued in 2018, two years after the Notice of Preparation for the EIR. The novel rule Keep Scott Valley Rural seeks to impose would

create an even more unworkable standard for CEQA review.¹ Allowing the members of Keep Scott Valley Rural to delay the environmental review process for years and then require the environmental review to incorporate all the new regulatory standards adopted while the review was underway would render it nearly impossible to complete a CEQA document. California updates its regulatory standards all the time. Requiring project proponents to analyze the project under all regulatory standards that were adopted while the environmental review was underway would result in, as Justice Chin feared, "a never-ending battle. . . with ever-changing targets for project opponents to aim for." (*Tiburon Open Space Comm. v. Cty. of Marin* (2022) 78 Cal.App.5th 700, 781-82.)

Fortunately, CEQA imposes no such requirement. Here, the Initial Study properly analyzed the Project's potential greenhouse gas effects based on the regulatory standards that were in place when the Notice of Preparation was issued. (*See* CEQA Guidelines, § 15125.) Applying those standards, the Initial Study concluded that the Project's greenhouse gas emissions would be less than significant. (*See* MND Section 4.0-28.) The EIR appropriately relied on the Initial Study's conclusion that these effects would be less than significant. (*See City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 494 [EIR may find the project's impacts would not conflict with state and local plans or policies related to reductions in GHG emissions].)

4. The Project Objectives Have Not Precluded the Consideration of a Reasonable Range of Potentially Feasible Alternatives.

If the EIR discloses that the project will have significant and unavoidable environmental impacts, the EIR must include a discussion of alternatives that are potentially capable of avoiding or substantially lessening any significant effects of the project, even if they "would impede to some degree the attainment of the project objectives, or would be more costly." (Pub. Res. Code, §§ 21002; 21002.1, subd. (a); 21100, subd. (b)(4); *Mira Mar Mobile Cmty. v. City of Oceanside* (2004) 119 Cal.App.4th 477, 487.) CEQA Guidelines § 15126.6, subds. (a) & (b) [alternatives discussion properly focuses on the project's significant impacts and the ability of the alternatives to avoid or substantially

¹ Courts have already noted the extreme amounts of time and resources that can be consumed in CEQA processes. (*See, e.g., Tiburon Open Space Comm. v. Cty. of Marin* (2022) 78 Cal.App.5th 700, 782 [criticizing the County of Marin for a CEQA process that took 25 years and noting "[d]elay can become its own reward for project opponents. . . . [T]his is a recipe for paralysis. But CEQA is not meant to cause paralysis."]; *see also Jenkins v. Brandt-Hawley* (2022) 86 Cal.App.5th 1357, 1388 [while "CEQA was meant to serve noble purposes . . . it can be manipulated to be a formidable tool of obstruction"].) This Project, with an environmental review cycle of more than 12 years and four separate public review periods (Initial Study/MND, Draft EIR, Partially Recirculated EIR, Second Partially Recirculated EIR) to consider the modernization and expansion of camp facilities, presents a good example of the problem.

lessen those impacts].) However, an alternative that cannot "attain most of the basic objectives of the project" can be rejected. (*California Native Plant Soc'y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 992, 1000-03 [alternative's failure to fully satisfy project objectives determined to be important by decisionmakers, or to promote policy objectives of concern to decisionmakers, is grounds for rejection].) Thus, even if a project alternative will avoid or substantially lessen a significant environmental impact of the project, the lead agency may reject the alternative for failing to attain most of the project objectives.

Citing *We Advocate Through Env't Review v. County. of Siskiyou* (2022) 78 Cal.App.5th 683, 692 and *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, Keep Scott Valley Rural claims the County has drawn the project objectives so narrowly that it precluded consideration of a reasonable range of potentially feasible alternatives. In *We Advocate Through Env't Review*, the case involved the proposed reuse of a bottling plant, and the EIR identified the objectives of the project as to, among other things, "site the proposed facility at the Plant," use the "full production capacity of the existing Plant," have the Plant be operational "as soon as possible" and to modify the "existing facilities at the Plant." (*Id.* at 692.) The court determined that these alternatives were drawn too narrowly because they effectively rendered the proposed project the only alternative that could meet the project objectives, thereby preventing the serious consideration of any alternatives that could have reduced the project's significant impacts. (*Id.*)

Similarly, in *North Coast Rivers Alliance*, the primary project was defined as the "eradication" of an invasive pest. Because the objective was so narrowly defined, the EIR did not include alternatives that considered control of the pest. (*Id.* at p. 654.)

Here, in contrast, the Project objectives did not constrain the alternatives analysis so that the proposed Project was the only feasible option for approval. In fact, the County's findings recommend the Reduced Density alternative, which was developed in response to a request from the Planning Commission and revises the proposed Project to reduce the number of camp occupants. Where, as here, the Findings propose adoption of an alternative to the Project, the facts confirm that the project objectives were not drawn so narrowly that they precluded adoption of an alternative.

4. The EIR Adequately Analyzes the Project's Environmental Impacts

An EIR is adequate where, when reviewed as a whole, it provides a reasonable, good faith disclosure and analysis of the project's potential impacts. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 408; *see also* CEQA Guidelines, §§ 15144, 15145, 15151.) Perfection is not required. (*See Laurel Heights, supra*, at p. 408.) The question is whether the EIR provides sufficient detail for

decision-makers and the public to understand the "environmental consequences of the project" and to meaningfully consider the issues raised. (*See In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1175.) Here, the EIR meets this standard and satisfies CEQA.

A. Although Keeo Scott Valley Rural and Its Expert May Disagree with the Conclusions, the EIR's Analysis of Noise Impacts Is Adequate.

Keep Scott Valley Rural claims the impact analyses in the Draft EIR are largely inadequate, but they do not cite any specific examples other than "noise," which they indicate is "described in detail by the comment letter submitted by Dale La Forest & Associates on August 8, 2022."

Mere disagreement among experts does not render the analysis of an EIR inadequate. (*Laurel Heights*, 47 Cal.3d at p. 409.) The EIR and its conclusions are adequate as long as they are supported by substantial evidence in the record, which CEQA defines as "enough relevant information that a reasonable mind might accept as sufficient to support the conclusion reached." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564, 570-71.) Substantial evidence "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Res. Code, § 21080, subd. (e)(1).) Hence, the lead agency is entitled to rely on the fact-based opinions of its experts. All conflicts in the evidence are resolved in favor of the lead agency, and all legitimate and reasonable inferences are indulged in to uphold findings, if possible. (*Western States*, 9 Cal.4th 570-71.)

"Challenges to the scope of an EIR's analysis, the methodology used, or the reliability or accuracy of the data underlying an analysis, must be rejected unless the agency's reasons for proceeding as it did are clearly inadequate or unsupported." (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 851.) Upon review, the issue is "not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence that supports the [lead agency's conclusions]." (*Id.*)

The EIR includes a detailed analysis from a third-party consultant regarding noise impacts utilizing the applicable noise standards of the Siskiyou County General Plan. (EIR §§ 3.4, 4.12.) The analysis discussed the generally accepted standards of measuring noise as well as variables such as the time of day when the noise occurs. (*Id.*) It identified the types of noise that would likely occur from this project and the impacts of temporary noise levels associated with construction and from the guests and employees of the camp. (*Id.*) Additionally, the EIR considered the various types of noise in relation to the location of the

project and proximity to a residential subdivision. (*Id.*) The anticipated duration of the noise and the fact that it would occur during daytime hours was also considered. (*Id.*)

"Long-term noise level measurements were conducted at four locations at various times" to determine existing noise conditions. (EIR § 3.4.2.) Based upon the information available, the analysis predicted noise levels associated with camp activity, long-term traffic, groundborne vibration, and short-term construction noise. The methodology and findings of the analysis are described in section 3.4-15 to 3.4-24. The 2nd Partial Recirculated Draft EIR revised the analysis in Sections 3.4 and 4.0 to account for differences in traffic counts and information that was not available for the original analysis. (2nd Partial Recirculated Draft EIR at ES-1, 1-1, 2-18, 3.4-1, 3.4-21, 3.26, and Appendix E.)

The County is entitled to rely on the fact-based opinions developed by the expert noise consultant who prepared the report for the EIR. Although Keep Scott Valley Rural may disagree with the conclusions of the County's expert, that does not render the EIR's analysis inadequate. As shown above, the County's expert conducted extensive testing and modeling in the Project area, and his opinions are based on this data. Consequently, the noise analysis is adequate, and the County properly relies on it.

B. The County Was Not Required to Adopt a Noise Ordinance or General Plan Standard to Regulate Construction Noise When Local Conditions Do Not Warrant Such Regulation.

According to Keep Scott Valley Rural, the County has failed to adequately analyze the construction noise impacts of the Project using an appropriate threshold of significance because the County has not adopted a noise ordinance or General Plan standard regulating construction noise.

"A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect." (CEQA Guidelines, § 15064.7, subd. (a).) Agencies are "encouraged to develop and publish [their own] thresholds of significance" based on local conditions. (*Id.* at subd. (b); *see also Save Cuyama Valley v. County of Santa Barbara*, (2013) 213 Cal.App.4th 1059, 1068.) Siskiyou County is very rural with a widely dispersed population. (*See* <https://ucanr.edu/urs/common/public/fileaccess.cfm?grantnum=268&propnum=6697&filenum=17171>.) Under the Inverse Square Law of physics, noise dissipates exponentially over distance, so that for each doubling of distance from a point source, the sound pressure level decreases by approximately 6 dB. (This Law represents a "worst-case" noise scenario where there are no physical barriers between the noise source and the receptors that would block the sound wave.) (<https://www.wkcgroup.com/tools-room/inverse-square-law-sound->

[calculator/](#).) The County has not determined that these local conditions warrant adoption of an ordinance or a General Plan standard regulating construction noise.

The facts of this matter prove that the County had a sound basis for this decision. Construction equipment such as backhoes, scrapers, and pneumatic tools generally emit sounds of 85 dB at 50 feet. The nearest residence to the Camp site is located over 900 feet away from where the construction will occur. (Final EIR, App. E, p. 19.) Over 900 feet, the sound emitted by the construction equipment will be no more than 59.9 dB (outdoors) or 24.9 dB (indoors with windows closed), both of which are within the 60 dB standard set by the Noise Element of the County's General Plan. Given the County's rural and dispersed population, the distance between the locations where construction noise will be generated and the places where receptors are located is great enough that the County has determined local conditions do not require regulation of construction noise. This conclusion is supported by substantial evidence, so Keep Scott Valley Rural's contention that the County erred by failing to adopt a threshold of significance regulating construction noise lacks merit.

Moreover, as explained above, the EIR adequately analyzed all aspects of the Project's potential to generate noise. The EIR included a detailed description of how noise is measured, provided representative noise levels for indoor and outdoor activities, recognized the subjective nature of the human response to noise, identified thresholds of significance, and analyzed all aspects of the noise generated by the Project under those thresholds. (See 2nd Partial Recirculated Draft EIR at 3.4-1, 3.4-21, 3.26, and Appendix E.)

C. The Project Does Not Conflict with Any NMFS-Approved Kidder Creek "Instream and Riparian Habitat Improvements Project," as No Such Plan Exists.

Keep Scott Valley Rural claims "[t]he Project is inconsistent with the existing NMFS/NOAA instream and riparian habitat improvements project NMFS pointed this out in their comment letter and outlined an approach that could be taken in coordination with NMFS and the GSA in order for the Project to be consistent with the plan."

Keep Scott Valley Rural has misstated both the facts and the contents of the NMFS letter. First, NMFS commented on the Notice of Preparation with suggestions for topics the County might wish to include in the contents of the EIR, but it did not comment on the Draft EIR, the Partially Recirculated Draft EIR, or the Second Partially Recirculated Draft EIR. (EIR, 2.1-10.)

Second, there is no "existing NMFS/NOAA instream and riparian habitats improvements project," as the NMFS letter on the NOP itself acknowledges. NMFS' 2019

letter indicates that it "is interested to partner with Siskiyou County, the Scott River GSA, and the project applicant in undertaking the following activities on lower Kidder Creek, activities identified as part of an initial phase of Kidder Creek restoration after resolution of the Barker Diversion take case in October 2015." (EIR, 2.1-10.) As this language plainly demonstrates, there is no existing habitat improvement project for Kidder Creek. Rather, NMFS is suggesting that it *would like to undertake a project on lower Kidder Creek*, and it seeks to partner with the County, the Scott River GSA and the Project applicant on such a project. In sum, the source Keep Scott Valley Rural cites reveals the falsity of its claim that NMFS' comment letter "pointed out" an inconsistency between the Project and any existing NMFS habitat project or plan on lower Kidder Creek.²

5. The County Adequately Responded to All the Comments Submitted on the Draft EIR, the Partially Recirculated Draft EIR, and the Second Partially Recirculated Draft EIR.

Citing CEQA Guidelines section 15088, Keep Scott Valley Rural incorrectly claims that the County has failed to respond adequately "to NMFS' comments." CEQA Guidelines section 15088, subdivision (a), only requires the lead agency to respond in writing to "comments on environmental issues received from persons who reviewed the draft EIR."

As noted above, although NMFS submitted comments on the Notice of Preparation, it did not submit comments on the Draft EIR, the Partially Recirculated Draft EIR, or the Second Partially Recirculated Draft EIR. Nothing in CEQA requires the lead agency to issue written responses to comments on a Notice of Preparation, to which section 15088 does not apply. Where, as here, NMFS' comments were directed to the Notice of Preparation, the County was not obligated to respond to them in writing. (See CEQA Guidelines § 15082.)

Furthermore, Keep Scott Valley Rural's claim that "[t]he County ignored the National Marine Fisheries Service ("NMFS") direction to coordinate with the Scott Valley Groundwater Sustainability Agency ("GSA")" misstates the facts. NMFS has no authority

² In 2018, Scott River Watershed Council did apply to the National Fish & Wildlife Foundation for a grant for a proposed project to "restore priority Coho habitat in the Scott River watershed." That grant application acknowledged that Lower Kidder Creek has "impaired conditions" with "significant areas of disconnection in an average water year" (that is, the creek dries out in reaches) and is not presently occupied by Coho salmon. (See <https://static1.squarespace.com/static/5fbadbe960151b0e314912a4/t/5fc17c8dbc819f1cf410f3d1/1606515866900/SR+Watershed+Westside+Planning.pdf>, at pp. 48-49.) A stream reach that is dry for part of the year cannot constitute habitat for a fish species during those dry periods. (*Weyerhaeuser Co. v. United States Fish & Wildlife Serv.* (2018) 139 S.Ct. 361, 369 n.2 (2018) [an area qualifies as habitat only if it is capable of being occupied by the species].)

or jurisdiction over groundwater and cannot require the County to "coordinate" with the local GSA. Therefore, NMFS cannot "direct" to the County to this effect.

Essentially, Keep Scott Valley Rural appears to take issue with the County's findings that the water supplies for the Project are adequate and the Project will not cause a significant impact on hydrological resources. However, as Keep Scott Valley Rural acknowledges, the County undertook a Supplemental Groundwater and Surface Water Analysis for Kidder Creek Orchard Camp ("Pearson Study"). (FEIR, p. 2.1-14 – 2.1-15 & App. L.) The County's findings thus are supported by an in-depth expert study appended to the EIR, concluding that the increase in the size of the camp will have no impact on groundwater or surface water resources. (FEIR, p. 2.1-14.) These findings are also consistent with the Scott Valley Groundwater Sustainability Plan, which has determined that the basin is not in a state of overdraft. (Scott Valley Groundwater Sustainability Plan, Ch. 2, pdf p. 87.)

NMFS does not have expertise in local groundwater basin management, nor does it have any jurisdiction over this matter. Even if it did, though, the County would be entitled to rely on its own experts. As explained above, the Final EIR need only acknowledge the conflicting opinions, if any, and explain why the suggestions were rejected with supporting data. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940.) This is precisely what the County did in its response to the NMFS letter, in which the County explained why it disagreed with NMFS and was electing to rely on the conclusions reached by the water experts who prepared the report for the EIR. "An EIR is an informational document, not a settlement agreement or a memorandum of understanding," and agencies are not bound to accept suggestions submitted by third parties, particularly when they are not based on facts. (*Banning Ranch*, 2 Cal.5th at p. 940.)

6. Neither the General Plan nor the Scott Valley Area Plan Preclude the Expansion of Kidder Creek's Religious Use of Its Property.

First, Keep Scott Valley Rural's claims that the County should find the Project is precluded by the Scott Valley Area Plan must be rejected because construing the Scott Valley Area Plan to prohibit Kidder Creek's religious use of the camp property for assemblies would violate the Religious Land Use and Institutionalized Persons Act. As is abundantly evident from the Project described in the EIR – including the Project objective of furthering its ministry – Kidder Creek Orchard Camp is a religious land use. As such, Kidder Creek Orchard Camp is protected by the land use provisions of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc, *et seq.* RLUIPA protects religious institutions such as Kidder Creek Orchard Camp from discrimination in local zoning and landmarking laws.

RLUIPA was enacted by Congress based on its recognition that religious assemblies, especially smaller or unfamiliar ones, may be illegally discriminated by local agencies' application of their zoning codes and in their highly individualized and discretionary processes of land use regulation such as requiring a religious institution to obtain a conditional use permit. When zoning codes permit religious assemblies only with discretionary permission from the local agency, illegal discrimination against religious assemblies may result.

For this reason, RLUIPA prohibits zoning laws that have the effect of:

- (1) treating churches or other religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions;
- (2) discriminating against any assemblies or institutions on the basis of religion or religious denomination;
- (3) totally excluding religious assemblies from a jurisdiction; or
- (4) unreasonably limiting religious assemblies, institutions, or structures within a jurisdiction.

Ignoring these protections, Keep Scott Valley Rural urges the County to interpret the Scott Valley Area Plan to prohibit the religious assemblies of Kidder Creek Orchard Camp, or to unreasonably limit the camp's religious assemblies based on the neighbors' perceived negative reactions to them. This is just the sort of finding that RLUIPA expressly bars. The County cannot properly adopt an interpretation of the Scott Valley Area Plan that would effectively preclude use of the Kidder Creek property for established religious purposes or unreasonably limit the number of participants.

Second, Keep Scott Valley Rural's claims that approval of the Project would "undermine the core objectives and policies of the SVAP" is not a basis for overturning the County's determination that the Project is consistent with the Plan.

Although CEQA does not impose any requirement that an EIR or a project be consistent with the relevant plans, the EIR must identify and discuss any inconsistencies between a proposed project and the governing plans. (*The Highway 68 Coalition v. County of Monterey* (2017) 14 Cal.App.5th 883, 893-94; *Stop Syar Expansion v. Cty. of Napa* (2021) 63 Cal.App.5th 444, 460; CEQA Guidelines, § 15125, subd. (d).) The "law does not require perfect conformity between a proposed project and the applicable . . . plan" and an agency's determination of consistency with its own plan is accorded great deference. (*Stop Syar Expansion*, 63 Cal.App.5th at p. 461.) This decision "can be reversed only if it is based on

evidence from which no reasonable person could have reached the same conclusion." (*Id.*) Moreover, neither CEQA or any other law requires agencies to identify or discuss "potential" inconsistencies. (*Id.* at pp. 462-63.)

The party challenging the agency's determination that the Project is consistent with the general plan bears the burden to prove, based on all of the evidence in the record, that the determination was unreasonable. (*Stop Syar Expansion, supra*, 63 Cal.App.5th at p. 461.) No CEQA analysis is required if the project is found to be consistent with the relevant plans. (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1566.)

Keep Scott Valley Rural claims the County has erred by finding that the proposed Project is a "recreational use" that is consistent with the Plan, and it contends that the use proposed by the Project is too "intensive" to meet Policy-31 and Policy-32 of the Plan. Policy-31 permits small-scale "recreation uses" and "public or quasi-public uses." Policy-32 indicates that such uses must be "clearly compatible with the surrounding and planned uses of the land."

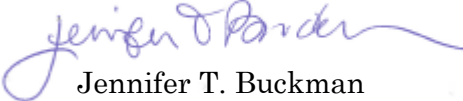
Keep Scott Valley Rural has not provided evidence to support their claims of inconsistency. The Project seeks to increase the occupancy level of the current recreational camp for temporary camping, hiking, and special events such as weddings. (*See* Draft EIR §§ 3.0, 4.0-51.) The policies cited contain no numerical limit on the number of persons for a recreational use to qualify as "small-scale." As explained in the Initial Study, the relevant policies and County Code provisions permit recreational facilities in any zoning district with approval of a use permit. (Initial Study, § 4; Siskiyou County Ordinance § 10-6.1502.) Here, as shown in the County's Findings, the Project proposes to accommodate (under the Reduced Occupancy alternative, with which the Project proponent has agreed) up to 622 people, for temporary periods, on a property that is 580 acres in size. Based on this evidence, it was reasonable for the County to conclude that the Project constituted a small-scale recreational or quasi-public use. Keep Scott Valley Rural has not met its burden to show the agency's findings were "based on evidence from which no reasonable person could have reached the same conclusion." (*Stop Syar Expansion, supra*, 63 Cal.App.5th at p. 461.)

7. Conclusion

As indicated above, this relatively simple project to allow Mount Hermon to modernize and expand Kidder Creek Orchard Camp so that it can more effectively serve its ministry and accommodate more guests, and upgrade existing safety features, has been undergoing CEQA review for more than eleven (11) years – even though this land use is indisputably subject to RLUIPA. With adoption of the Reduced Occupancy alternative and

the Mitigation Monitoring and Reporting Program, all of the Project's potentially significant impacts have been reduced below a level of significance. Although Keep Scott Valley Rural continues to raise objections, none of these raises significant new environmental effects of the Project, and recirculation is not warranted. (CEQA Guidelines, § 15088.5, subd. (a) [New information added to an EIR is not "significant" and does not trigger recirculation unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement].) Consequently, Mount Hermon respectfully requests that the County end this drawn-out environmental review process, certify the EIR, and consider the Project on its merits.

Sincerely,



Jennifer T. Buckman

c: Edward Kiernan, County Counsel
Andy Warken
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