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April 18, 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 – responses to fifth late comment letter from  
Keep Scott Valley Rural

Dear Hailey:

As you know, this firm represents Mount Hermon Association, Inc., which operates the Kidder Creek Orchard Camp. This letter responds to the fifth comment letter received from the attorney for Keep Scott Valley Rural Association, dated April 17, 2023, and supplements the prior response to their previous four late-filed letters.

**1. The EIR Was Not Required to Analyze Wildfire Risks When the Project Will Improve Risks as Compared to the Baseline Conditions Existing When the Notice of Preparation Was Issued.**

To analyze the proposed impacts of the Project, the County must compare the effects of the Project against the baseline environmental conditions. Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published. (CEQA Guidelines, § 15125, subd. (a).) This environmental setting normally constitutes the baseline physical conditions against which a lead agency determines whether an impact is significant. (*Id.*) The baseline includes regulatory conditions 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.) The purpose of this requirement is to present the public and the lead agency's decisionmakers with "the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts." (CEQA Guidelines, § 15125, subd. (a); *see also id.* at § 15162.2, subd. (a) ["In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced."].)

The Notice of Preparation for the Draft EIR for this Project was issued nine (9) years ago, in 2016. Thus, the Project's impacts on potential wildfires are properly analyzed under

the physical and regulatory conditions in effect in 2016. The then-applicable version of Appendix G, which was used as the basis for the Initial Study for this Project, included the following question in Section VIII.g: Will the project "g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?"<sup>1</sup>

Here, the Project will improve the implementation of the local emergency response plan and camp emergency evacuation plan, as compared to existing conditions, by adding an additional point of ingress and egress from the camp site. The Project will add another access point to facilitate an evacuation of the camp, should any become necessary. The Project will also modernize many existing buildings, which will necessarily incorporate current fire safety codes, including building materials. Based on these facts, which are undisputed, the Project will improve the site's wildfire safety and facilitate the implementation of the adopted emergency response plan and emergency evacuation plan.

Further, the County has obtained expert reports and opinions from the Office of Emergency Services and Cal-Fire confirming that the emergency response plan and emergency evacuation plan for the camp site are adequate to ensure safety and reduce wildfire risks to a less-than-significant level for camp visitors. Thus, the County has adequately analyzed and disclosed "the impact the project will have on the new residents' ability to evacuate and on emergency personnel's ability to protect and service the residents and their property consistent with the adopted plan." (*League to Save Lake Tahoe v. Cty. of Placer* (2022) 75 Cal.App.5th 63, 136.) The County is entitled to rely on the opinions of informed experts in the fire safety and emergency services matters. (*Laurel Heights*, 47 Cal.3d at p. 409; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 564, 570-71; *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940; Pub. Res. Code, § 21080, subd. (e)(1).)

The record contains no factual basis for Keep Scott Valley Rural's unsupported assertions that the Project would have a significant impact related to interference with an adopted emergency response plan or emergency evacuation plan or wildfire risk. In fact, the undisputed evidence in the record establishes the contrary, that the Project will improve existing conditions, reduce wildfire risks, and facilitate implementation of these plans.

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<sup>1</sup> While Keep Scott Valley Rural Association claims that CEQA has "always" required evaluation of "wildfire risk," the very authority that Keep Scott Valley Rural cites, Section VIII.g. of Appendix G of the State CEQA Guidelines, demonstrates the falsity of its assertion: as shown above, this section of Appendix G contains no mention of wildfire. Risk of wildfire was added to the list of impacts to be analyzed in Guideline section 15162.2 in December 2018 and to Appendix G in June 2019.

Furthermore, as Keep Scott Valley Rural admits, Appendix G of the CEQA Guidelines was not modified to include specific questions about wildfire until 2019 – which was more than three (3) years *after* the Notice of Preparation of the EIR for this Project was issued. This new regulation was not in effect when the County commenced preparation of the EIR, and the County was not required to restart the environmental review process to incorporate it. Presumably, this simple fact explains why Keep Scott Valley Rural Association did not raise "wildfire risk" as an environmental issue during any of the four public review periods on this Project, even though their prior counsel, an experienced CEQA attorney, submitted a timely comment letter on their behalf. Contrary to the suggestion made by their new counsel, CEQA is not a never-ending game of "bring me a rock" in which local agencies scramble to incorporate new regulatory standards, each time restarting the environmental review process. To the contrary, CEQA is intended to promote informed development, not to delay and obstruct projects. A local agency abrogates its CEQA responsibility by delaying the environmental review process for years and then insisting on further delays to incorporate new regulatory standards that were enacted during the process.

Keep Scott Valley Rural's attempt to incorporate the Attorney General's new guidance on "best practices" for local agencies to mitigate wildfire risks into this Project is similarly unavailing. The Attorney General issued this guidance on October 10, 2022, when this Project had already been in environmental review for more than *a decade*. Obviously, the 2022 guidance was not in effect six (6) years earlier, when the Notice of Preparation was issued in 2016. Moreover, the guidance is just that: a suggestion, not a regulation or a mandate. And even if it were a mandate, this Project would advance the guidance by allowing for modernization of the camp buildings with new, more fire-safe materials and adding an additional point of ingress and egress from the campsite to facilitate any emergency evacuations that might be needed in the future. Ironically, although Keep Scott Valley Rural is raising the issue of wildfire safety, it is the Project opponents who have kept the Project in environmental review, and prevented these fire safety improvements, for the last 12 years.<sup>2</sup>

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<sup>2</sup> The circumstances under which Keep Scott Valley Rural are raising wildfire safety claims for the first time now, when the Project has been undergoing environmental review for more than a decade, strongly suggest that these are merely a pretense being used by neighbors opposed to a project to turn CEQA into "a weapon of obstruction." (*Jenkins v. Brandt-Hawley* (2022) 86 Cal.App.5th 1357, 1388.) Under the Religious Land Use and Institutionalized Persons Act, the lead agency cannot allow such pretext from hostile neighbors to preclude projects – such as this one – intended to further religious purposes.

**2. The Scott Valley Area Plan Cannot Preclude the Expansion of Kidder Creek's Religious Use of Its Property.**

As previously noted, it is undisputed that Kidder Creek Orchard Camp is a religious land use, and, as such, it is protected by from discrimination in the application of local zoning laws by the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc, *et seq.*

Keep Scott Valley Rural claims that the County cannot properly find the proposed Project is a "recreational use" consistent with Policy-31 and Policy-32 of the Scott Valley Area Plan. Among other things, Keep Scott Valley Rural contends that approval of the Project would "undermine the core objectives and policies of the SVAP." But RLUIPA prohibits the County from adopting an interpretation of the Scott Valley Area Plan as urged by Keep Scott Valley Rural, because such an interpretation would effectively place unreasonable limits on Mount Hermon's ministry numbers and preclude Mount Hermon from using the Kidder Creek property for the religious purpose of serving its ministry. Moreover, as shown in the prior comment letter, the County's findings of consistency with Scott Valley Area Plan are based on substantial evidence, and Keep Scott Valley Rural cannot demonstrate that "no reasonable person could have reached the same conclusion." (*Stop Syar Expansion, supra*, 63 Cal.App.5th at p. 461.) Therefore, these claims also lack merit.

**3. The EIR Was Not Required to Analyze Impacts That the Initial Study Found Could Be Mitigated to a Less-Than-Significant Level.**

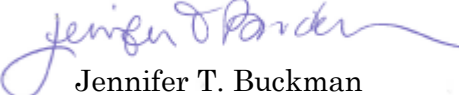
Keep Scott Valley Rural continues to contend, incorrectly, that "[t]he DEIR has been unorthodoxly coupled with a Mitigated Negative Declaration ('MND')." As noted in the prior response, this claim lacks any factual support. Because the County never adopted the Mitigated Negative Declaration that was proposed in 2016, the CEQA analysis has not been "split" between a Mitigation Negative Declaration and EIR. Rather, the County has properly relied on the Initial Study to assist in determining which impacts were less than significant and did not require analysis in the EIR. (*Ocean Street Extension Neighborhood Assn. v. City of Santa Cruz* (2021) 73 Cal.App.5th 985, 1002 [lead agency properly uses the Initial Study to "assist in preparing an EIR if one is required, by focusing the EIR on significant effects"].) By attaching the Initial Study as an appendix describing why some categories of impacts were determined not to be potentially significant, 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, supra*, 73 Cal.App.5th at p. 1002.) Contrary to Keep Scott Valley Rural's claim, CEQA does not require the County to perform an "an exhaustive analysis" in the EIR for each category of impact. (*Id.* at p. 1006.)

**4. This Environmental Review Process Has Exhaustively Analyzed All of the Project's Environmental Impacts**

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. Keep Scott Valley Rural and other opponents of the Project seem to be on a quest for the County to produce a perfect EIR. But CEQA does not mandate perfection. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 408.) An EIR is adequate when, reviewed as a whole, it provides a reasonable, good-faith disclosure and analysis of the project's potential impacts. (*Id.*; see also CEQA Guidelines, §§ 15144, 15145, 15151.) As long as 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, it passes muster under CEQA. (*See In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1175.)

Here, the Project has been undergoing environmental review for more than a decade. Every conceivable aspect of the Project and its potential environmental impacts has been exhaustively analyzed (some impacts multiple times), all appropriate mitigation measures have been adopted, and an alternative refining the Project by reducing its occupancy has been proposed so that the Project will not have *any* significant and unavoidable environmental impacts. None of the comments made after the close of the public review period have contained new information of significant environmental impacts caused by the Project. (*See* CEQA Guidelines, § 15088.5, subd. (a).) While the EIR may not achieve perfection, it is certainly adequate under CEQA. And the Mount Hermon ministry has certainly waited long enough for the County to consider this Project.

Sincerely,

  
Jennifer T. Buckman

c: Edward Kiernan, County Counsel  
Andy Warken  
Tim Lloyd