



January 5, 2022

Ms. Laurie Walsh, Regional Water Quality Control Board, San Diego Region  
Mr. Sean McClain, Regional Water Quality Control Board, San Diego Region  
Mr. David Mayer, California Department of Fish and Wildlife

**Via Email**

**RE: Request for Involvement of Resource Agencies in proposed plan to increase stormwater flows into Felicita Park without proper analysis of impacts to water and natural resources**

Dear Ms. Walsh and Messrs. McClain and Mayer:

Escondido Neighbors United (ENU) is a community group of residents living in the Escondido area. We are writing to seek your engagement in an issue that threatens Felicita Creek from a proposed- drainage 'improvement' project being pursued by the City of Escondido on behalf of KB Home, developer of Oak Creek.

As you are aware, ENU has worked for many years to secure cleanup and remediation of the Chatham Barrel Yard contamination site. We have also provided the San Diego Water Board with an extra set of eyes regarding impacts to Felicita Creek from discharges of wastes caused by KB Home failure to properly manage stormwater at the Oak Creek development. We also have a vested and enduring interest in the protection and enhancement of Felicita Park and, of course, the creek and all the wildlife that depends on it.

As many of our members live adjacent to the creek downstream from the development site, we also have a concern about public safety if flooding is increased.

The bottom line is we believe, that due to potentially significant impacts identified in the recent *Oak Creek Downstream Impact Analyses: Felicita Park* report, which were **not** discussed in the FEIR, an updated CEQA analysis, and updated regulatory permits will be needed.

The County of San Diego has raised concerns about potential significant and adverse impacts to park from unregulated and illegal discharges since 2013. They have been consistent and clear in the requirements and many letters are in the record as evidence.

Unfortunately, also consistent is KB Home's recalcitrance and refusal to conduct these necessary actions. KB Home didn't want to do what was required by the terms of the

development agreements and permits, and sued the City of Escondido.<sup>1</sup> Now, the City of Escondido has, unfortunately, capitulated to the demands of KB Home, and is moving to condemn areas of the park, use public resources to do what KB Home had previously agreed to, and plans to implement a drainage project that will increase stormwater flows into Felicita County park.

It should be noted that the property owner, the County of San Diego has filed its objections to this action. ENU opposes this condemnation action and this project unless studies are conducted, and design including mitigations measures to ensure that Felicita Creek's beneficial uses are protected are included in the final project.

The San Diego Water Board and the California Department of Fish and Wildlife have both the regulatory authority, and the moral authority to ensure that this project protects the beneficial uses of Felicita Creek. A study was conducted to evaluate the impacts in Felicita Creek from the proposed drainage improvements.<sup>2</sup> The study concluded that flows will increase and there will be some areas in Felicita Creek that will experience a higher erosive force. However, the study was silent on what effects the changes in the flows into Felicita Creek will have on water quality and biological resources. These are topics which your agencies must address.

ENU also is concerned that the permits issued by your agencies were developed under incomplete information and need to be re-done.

Last, we are very concerned about the potential impacts to the Chatham Plume of contamination from the project (also unanalyzed) and risks to downstream homes from increased flows.

**We are writing you to seek the involvement and attention of the Regional Water Quality Control Board and the California Department of Fish and Wildlife in this important matter.**

We need your assistance immediately since **this issue will go to court in early February** if not resolved.

### **Key issues and facts**

Once again, the Oak Creek development threatens downstream uses and residents' safety.

- 1. The eminent domain action against the County Park and the drainage action proposed is unstudied and unmitigated and could cause major impacts downstream.**

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<sup>1</sup> <http://escondidoneighborsunited.blogspot.com/2020/08/more-bad-behavior-by-kb-home-at-oak.html>

<sup>2</sup> Oak Creek Downstream Impact Analysis; Felicita Park, prepared by Hunsaker & Associated, dated September 2019

The City of Escondido is pursuing a condemnation action of parkland in order to install drainage pipes that will greatly increase (60%) drainage from road and Oak Creek in the northeast corner of the park.

The County has raised potential results of this action.

*“If modifications to the proposed infrastructure are necessary in order to reduce hazards of flood and inundation and/or risk of damage to sensitive habitat or significant historic or prehistoric sites, such as additional deceleration features, that would cause a change in the easement area, modification of the easement together with the requirements of the State Parks Preservation Act and or conditions of the Land & Water Conservation Fund Grant may be required. Accordingly, the impact analysis must be completed prior to conveyance of property rights.”<sup>3</sup>*

## **2. Reasonable requests for information and mitigation from the County have been ignored and actively fought by the developer.**

In good faith, the County has made reasonable requests of the Oak Creek Developer (KB Home) which they have repeatedly refused. The County has asked that critical studies be done to evaluate scouring and impacts to cultural and biological resources **and** for a mitigation plan to avoid any impacts be done prior to putting our park at risk.

The County writes,

*“However, the City subsequently clarified that the existing culvert is 72 inches and the project proposes the addition of a 60 inch pipe; accordingly, further analysis will be required to demonstrate the potential impacts of the proposed project. These requirements include:*

- *Further analysis must be done to determine the potential impacts of the proposed drainage improvements including flood and inundation hazards, impacts to sensitive habitat and/or impacts to significant prehistoric or historic site lands must be provided.*
- *A scour analysis to determine the extent of scouring as a result of changes in hydrology,*
- *Based on the scour analysis, BMPs are required to mitigate changes due to the hydrology. BMPs may include on-going management requirements that must be identified prior to issuance of the watercourse permit*
- *Surveys must be conducted to identify the extent of any biological or cultural resource impacts. This must include at the site of the culvert and all the way downstream to where the changes were identified in the hydrology study.*

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<sup>3</sup> County letter to April 5, p. 3.

- *Once surveys are complete, analysis to determine how the project and changes to hydrology would impact resources. If necessary, mitigation measure will be required.”<sup>4</sup>*

**3. ENU is concerned that additional scouring of 60% higher concentrated flows could impact the Chatham contamination plume which underlies the Park.**

ENU members are further concerned that the amount of new flow and scouring could dig deeper into the plume of contamination from Chatham Barrel Yard which continue to underlie the whole area where contamination daylights (is released into the air) in the creek in the park.

**4. Increases and concentration of drainage are unanalyzed and potentially significant threats to water quality, cultural, recreational, and biological resources of the park.**

Now we know that this project will radically increase and concentrate drainage going into a small section of the creek and into the main channel and then downstream impacts. There is a high likelihood that such increases will threaten the water quality, cultural, recreational, and biological resources of the park.

**5. Project threatens cultural resources and impacts to the park is an equity and environmental justice issue.**

The cultural resources of the park are significant. In addition, a large number of park users are families of color and rely on Felicita Park for nature-based experiences. This is not just any park. It is on the National Historic Register of Historic Places<sup>5</sup> and is a precious asset to our local region. It deserves our respect and protection. Further, a review of the Hunsaker & Associates downstream flow study done by Rick Engineering dated September 3, 2021 notes that several areas of potential cultural artifacts are vulnerable to damage resulting from increased erosion due to flows through the park.<sup>6</sup>

**6. State policy does not allow conversion of parkland to non-park uses.**

Both the conditions of the State Land & Water Conservation fund and the Federal Park Preservation Act must be considered<sup>7</sup> and have not been.

**7. County evaluation of hydrology study found significant omissions and errors and applications not made.**

The review from Rick Engineering found errors, omissions, and insufficiencies in the hydrology study done to assess the increases in flow rates. The Rick review identified

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<sup>4</sup> County to City, April 5, 2021, pg.3

<sup>5</sup> County to City, November 12, 2021

<sup>6</sup> Rick review, September 3, 2021, p.5

<sup>7</sup> County to Escondido, April 5, 2021, p.2

inconsistent design data<sup>8</sup> flow analysis is incorrect and could not be verified.<sup>9</sup> In addition, the impacts may be amplified by the project in lower, more frequent storm events such as 2-year storms (or less) through 10 -year event.

#### **8. New information triggers additional environmental review prior to permitting for this project.**

Per County comments, due to potentially significant impacts identified in the *Oak Creek Downstream Impact Analyses: Felicita Park* report, which were not discussed in the FEIR, an updated CEQA analysis and, potentially, updated regulatory permits will be needed. Necessary mitigation measures that change the public park uses must also be disclosed to the public in advance.<sup>10</sup>

The increase in flow rates has also been identified as potential to increase erosion of the creek bed and banks.<sup>11</sup> This will add to the sediment load downstream from which we have yet to recover the last set of violations by KB Home.

Further, ENU is very concerned about impacts to the Chatham plume must also be fully evaluated and potential public safety issues for residents downstream.

#### **9. Downstream residents could be at risk with significant increases in flows.**

Please watch these [2016 videos](#)<sup>12</sup> of current conditions without additional flows from Oak Creek detention pond or concentration and increase of flows due to this project. The Rick study states that *“delivery of the middle range of flows through the culvert will result in increased flows for **all storm events resulting in flow rates exceeding 173 cfs, not just the 100-year storm event.**”*<sup>13</sup> (emphasis added)

#### **10. Project in inadequately designed for safety and maintenance.**

The Rick review outlines several areas that are deficient in the project design related to safety and maintenance.<sup>14</sup>

#### **11. KB Home is a known bad faith actor and cannot be trusted related to storm water issues.**

KB Home should be well-known to you by now.<sup>15</sup> The first complaint against their exceedingly storm water management failures was in October 2019 by a resident. They continued through March 2020.<sup>16</sup> In the 2019-2020 rainy season, the Regional Board

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<sup>8</sup> Rick review, p. 6

<sup>9</sup> Rick review, p.3

<sup>10</sup> County to Escondido, November 19, 2019, page 2

<sup>11</sup> Rick review, p. 5

<sup>12</sup> <http://escondidoneighborsunited.blogspot.com/2016/01/status-of-flood-water-levels-in.html>

<sup>13</sup> Rick Report p. 5

<sup>14</sup> Rick Report, p.6

<sup>15</sup> <http://escondidoneighborsunited.blogspot.com/2019/>

<sup>16</sup> <http://escondidoneighborsunited.blogspot.com/2020/03/stormwater-failures-continue-at-oak.html>

issued a *Notice of Violation* and the city issued a *Stop Work Order* due to significant failings of storm water BMPs.<sup>17</sup>

## **12. Community opposes this unregulated, unassessed proposal.**

Escondido Neighbors United, Environmental Center of San Diego, Escondido Chamber of Citizens, North County Equity and Justice Coalition, and the Sierra Club North County Group have all raised concerns about this project.

**In closing, we are asking your agencies to get involved with this issue.** Due to errors and omissions in FEIR and new information available on culvert sizes and lack of downstream impact analysis and mitigation means CDFW and RWQCB permitting may need revision to be accurate and effective. The County has identified several potential significant impacts that could trigger an updated CEQA analysis and updated regulatory permits.<sup>18</sup>

Impacts related to storm water, water quality, beneficial uses, and natural resources are anticipated to be impacted. Both of your agencies have authority to protect water quality and should be issuing or updating permits for the project. Additionally, both your agencies should have the opportunity to review and provide comments on environmental documents. Please require this analysis be done. The technical expertise that can be provided by your agencies is critical to ensure that the project does not adversely affect the environment.

**In the event the County fails in its attempts to secure necessary studies,** we request that you intervene and require them. Some specific action your agencies can take include:

- Require a groundwater study to determine what effect the increased flows may have on the remedial efforts that have been on-going for over 30 years to mitigate the groundwater plume from the Chatham Barrel site.
- Require a biological study to determine how the increased flows and discharge would affect the existing wildlife currently residing in and around Felicita Creek.
- Require a hydrologic study to determine the effect of the increased flows that will discharge into Felicita Creek. This is critical as the change of land use from open space to residential will result in increased flows and peak flows due to the increase in impermeable surfaces, and 'urban ooze' from landscape overwatering and other activities, and the increase in pollutants typically used in and around residences (including pet wastes and vegetation allowed to enter the storm drain system).

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<sup>17</sup> <http://escondidoneighborsunited.blogspot.com/2020/01/oak-creek-receives-notice-of-violation.html>

<sup>18</sup> Letter to City of Escondido, November 19, 2019, p. 2

- Ensure that Tribal representatives are involved in the evaluation of permits needed for this project. The area in and around Felicita Park has significant Tribal cultural resources, and your agencies must ensure that they are protected.

Felicita Park is a precious asset to our local region and deserves our respect and protection. Downstream neighbors deserve safety.

Please help protect our water quality, natural resources, and our public safety from this dangerous and unanalyzed project.

Sincerely,

Escondido Neighbors United

*Doreen Reagle*

*Maria Armpalu*

*Tina Iki*

*Pamela Heatherington*

*Brenda Townsend*

*Carrigan James*

*Ron Forster*

*Laura Hunter*

*Lucero Sanchez*

*Christine Nava*

Cc

Department of Toxic Substances Control

County of San Diego