

Heidi Whitman
July 31, 2026

Mayor Dane White and Members of the City Council
City of Escondido
201 North Broadway
Escondido, CA 92025

**Re:Appellant's Rebuttal to the August 5, 2026 Staff Report on Appeal of PL24-0067
(Agenda Item 9; Hamilton Lane and Bernardo Avenue; Resolution No. 2026-90)**

Dear Mayor White and Council Members:

I submit this rebuttal to the staff report prepared for the August 5, 2026 hearing on my appeal (Agenda Packet, pp. 105–113), and I respectfully request that it be entered into the administrative record for PL24-0067 and distributed to each Council member prior to the hearing. This rebuttal responds to the staff report section by section. It is supported by the stamped technical letter of W. Scott Snyder, PG 7356, CHG 748, Principal Hydrogeologist, Snyder Geologic, Inc., dated July 24, 2026 (“Snyder Letter”), which is in the record; by documents in the record of the Chatham Brothers Barrel Yard State Superfund Site (DTSC Site Code 400029); and by the transcript of a recorded June 25, 2026 meeting between residents, DTSC, and Regional Board staff (“June 25 Transcript”), which I am submitting with this rebuttal for entry into the record.

I. SUMMARY

The staff report asks the Council to deny the appeal on the strength of two late-arriving items: a four-sample soil screening commissioned by the developer, and a five-minute oral exchange during public comment at a Regional Water Board meeting. Neither is what it is presented to be. The soil screening sampled soil only in the upper two feet and soil gas at approximately five feet, at four locations across a six-acre parcel, and its own written limitations disclaim the site-wide conclusion staff draws from it. The Water Board exchange was not an agency review of the project; no written technical determination from any agency regarding this project exists, and neither DTSC nor the Regional Board has ever been provided the project plans for formal review. Indeed, two weeks after that Board meeting, in a recorded June 25, 2026 meeting with residents that included the same Regional Board geologist, DTSC's Southern California Division Chief stated that DTSC is “not involved thus far in the development or the [CEQA] analysis,” and DTSC's supervising engineer for the Chatham project stated that “what they need to do here is a phase one, phase two” and that DTSC does not “have any data to basically formulate an opinion on ... this site.” Meanwhile, the staff report does not respond to — or even acknowledge — the stamped analysis of a California Certified Hydrogeologist in the record identifying unanalyzed blasting risk, an uncharacterized subsurface, and specific data gaps. Nor does it disclose that DTSC's own Geological Services Unit objected in writing, in 2006, to the removal of this parcel's only

monitoring well, stating that “MW-57 is a critical deep well and should not be decommissioned to accommodate new residential housing.”

My request to this Council is narrow, and it is not my own. I am no longer asking the Council to order a full Environmental Impact Report. I am asking the Council to exercise the third option staff itself places before you at page 113 of the packet — continue the hearing and direct that additional studies be conducted — and to adopt, as conditions of any further consideration, the recommendations of the certified hydrogeologist retained by the residents, without addition. Those recommendations begin with the geotechnical investigation Mr. Snyder states “should be a minimum requirement of City Council,” and include monitoring wells on the site, deeper soil and soil vapor sampling, a soil management plan, and formal referral of the project plans to DTSC and the Regional Board. They also include two conclusions the Council should not overlook: that altering the bedrock aquifer by blasting “should be avoided,” and that, in his professional judgment, “I do not believe a stormwater basin should be approved for this project.”

II. THE STAFF REPORT DOES NOT ADDRESS THE EXPERT EVIDENCE IN THE RECORD

The only stamped, professionally certified hydrogeologic analysis of this project in the record is the Snyder Letter. Mr. Snyder is a California Professional Geologist and Certified Hydrogeologist with 30 years of experience, 25 in San Diego County, currently working under DTSC oversight on four projects. His letter, addressed to this Council, concludes among other things that (a) a balanced-grading design at this site, given the elevation change and the large bedrock outcrop at its center, appears to require significant bedrock blasting; (b) blasting in the fractured bedrock aquifer through which the Chatham plume moves could alter groundwater flow and cause plume migration; (c) no geotechnical report exists for the site; (d) no monitoring wells exist anywhere on the six-acre parcel, so groundwater quality directly beneath the site is unknown; and (e) DTSC has advised that a party who causes the plume to migrate to a new area may be named a responsible party.

The staff report responds to none of this. The word “blasting” does not appear in the staff report. The Council is being asked to make findings — including, under Government Code section 66474, findings that the site is physically suitable for the development and that the design is not likely to cause serious public health problems (addressed in Section VII below) — on a record in which the only certified hydrogeologic evidence stands un rebutted.

III. RESPONSE TO STAFF SECTION I: THE ADDENDUM ANALYSIS RESTS ON AN AERIAL PHOTOGRAPH AND AN INFERENCE THE WATER BOARD REJECTED IN WRITING

A. Staff's "changed circumstances" analysis under Guidelines section 15162(a)(2) consists of looking at aerial views of the ground surface.

Staff's entire analysis of whether circumstances have substantially changed since the 2007 Mitigated Negative Declaration is the following sentence: "Staff analyzed the Project under this criterion, and based on aerial views, the property appears to exist as it did when it was first approved by the City."

Source: Staff Report, Agenda Packet, p. 110.

The relevant circumstances at this site are not visible from the air. They are subsurface and regulatory, and they have changed substantially since 2007:

- (a) **Loss of all on-site monitoring.** When the 2007 MND was adopted, monitoring well MW-57 existed on the parcel — over the written objection of DTSC's Geological Services Unit, which had stated months earlier that this "critical deep well" should not be removed to accommodate residential housing. Staff's own report documents that MW-57 was decommissioned in November 2008 with destruction completed in January 2009 (Agenda Packet, pp. 110–111). The 2007 environmental document was therefore adopted under conditions — an on-site subsurface monitoring point — that no longer exist. Today there is no well anywhere on the six acres. The circumstances of that removal are addressed in Section III.B below.
- (b) **The plume is not behaving as assumed.** As detailed in the Snyder Letter (p. 3), wells across the plume — including P-11, MW-69, and MW-67, the well immediately upgradient of the project site — show concentration increases in 2023–2025 after earlier declines. The plume is "not stable," in Mr. Snyder's words.
- (c) **The State's vapor intrusion framework has changed.** In November 2025, DTSC's Human and Ecological Risk Office directed, for this very cleanup, that "risk management decisions" be made "on the basis of the attenuation factor of 0.03" rather than the historic 0.002 — a screening framework fifteen times more conservative than the one in effect in 2007, adopted precisely because vapor reaches indoor air more readily than previously assumed.
- (d) **California's regulatory trajectory for 1,4-dioxane has moved sharply downward,** including OEHHA's September 2025 draft Public Health Goal of 0.04 µg/L, against a current response level of 35 µg/L.

Sources: Staff Report, Agenda Packet, pp. 110–111; Snyder Geologic letter, July 24, 2026, p. 3; DTSC HERO comments transmitted with Conditional Approval of Semiannual Data Submittal,

April 2025, Former Chatham Brothers Barrel Yard (A. Aboughaida to E. Modiano), November 10, 2025, Comment 2c; OEHHA Draft Public Health Goal for 1,4-Dioxane, September 2025.

None of these changed circumstances are discussed anywhere in the staff report or the Addendum. An analysis that does not examine the subsurface at a Superfund-adjacent site, overlying an active contamination plume, cannot support a finding that subsurface circumstances are unchanged.

B.DTSC's own geologists objected in writing to removing MW-57 “to accommodate new residential housing,” calling it a “critical deep well.” The staff report does not disclose this.

The staff report treats MW-57 as a resolved paperwork item: “Documentation was provided which substantiated that the monitoring well had been decommissioned by the Department of Toxic Substances and Control (DTSC) on November 12, 2008,” followed by a County destruction permit, with the work completed January 16, 2009 (Agenda Packet, pp. 110–111). That passive framing — “decommissioned by DTSC” — suggests an agency determination that monitoring at this location had served its purpose. The underlying correspondence, which I am submitting with this rebuttal, shows the opposite.

First, and most importantly, DTSC's technical staff objected. In a November 16, 2006 memorandum from Ms. Onamia Chun of DTSC's Geological Services Unit to the DTSC project manager, the Unit stated: “MW-57 is a critical deep well and should not be decommissioned to accommodate new residential housing.” **That single sentence establishes two facts the staff report does not disclose to this Council: DTSC's geologists considered the well critical, and they understood its removal was being driven by residential development at this location — not by any scientific conclusion that monitoring here was complete.**

The Unit's concern extended to the proposed substitute. It noted that the replacement location then proposed, near shallow well MW-43, was “more than 800 feet from MW-57,” a distance the Unit “consider[ed] to be too far,” because it was “concerned data from groundwater samples will not provide data similar to the quality, quantity, and pollutant distribution found in MW-57.” That concern was never resolved. In the February 2007 response, the responsible parties' consultant simply withdrew the plan — “The Group no longer intends to install a replacement well 800 feet downgradient of the existing well MW-57” — and the wells whose installation DTSC ultimately approved in August 2008, wells 66 and 67, were sited off the parcel entirely. MW-67, the nearest deep well to the project site today, is the well that contains TCE and PCE and whose concentrations rose in 2025 (Snyder Letter, p. 3). The parcel was left with no equivalent monitoring point, and then with none at all.

The timing deserves the Council's attention. The Geological Services Unit's objection was written roughly six months before the City, on June 6, 2007, approved the predecessor residential subdivision at this location and adopted the very Mitigated Negative Declaration that the current Addendum supplements (Agenda Packet, p. 106). The environmental document on which this

project now rests was adopted while DTSC's own geologists were on record opposing the removal of this parcel's only monitoring well to make way for housing.

Second, the removal was requested by the property owner — a fact documented in the City's own environmental record. Appendix E to the Addendum contains the Hargis + Associates letter of May 21, 2009 memorializing the decommissioning. It states: “Monitor well MW-57 was located on a vacant land parcel on the south side of Hamilton Lane, between Bernardo Avenue and Our Country Road, owned by Mr. Jeff Badelt. At Mr. Badelt's request, and following the successful installation of replacement monitor well MW-67 north of the parcel, H+A recommended the decommissioning of monitor well MW-57” (Agenda Packet, p. 364). The same letter records that shallow well MW-56 was likewise removed at its own property owner's request — while MW-55, for which no such request is described and which DTSC deemed necessary, was retained. The pattern is plain, and it is in staff's own appendix: on this street, monitoring wells came out when landowners asked for them to come out.

Third, the mechanism that made that possible was a private access agreement, not an agency finding. The responsible parties' February 2007 response states that “DTSC, the Group and the property owner are in the process of negotiating an access/license agreement for this year,” and that “[t]he well will be decommissioned in accordance with the requirements of the access/license agreement.” The property owner was a party to that negotiation, and the agreement's terms — not the monitoring data — would determine the well's fate. The March 2007 correspondence confirms those terms. Paragraph 4 of the Site Access License Agreement, between the Chatham Site PRP Group as Licensee and the then-owners of this property, Badelt Enterprises LLC and Jennings Development LLC, as Licensor, provided that after a one-year irrevocable period, “Licensor or Licensee, in their sole and absolute discretion, may revoke this License” on sixty days' written notice, and that “[u]pon receipt of such notice Licensee shall, within the aforesaid 60-day period, proceed to perform the Well Closure activities.” The landowner could end groundwater monitoring on this parcel at will, and the responsible parties were then contractually obligated to destroy the well — whatever its monitoring value. Counsel for the PRP Group wrote that DTSC's prompt execution was “critical to ensure Licensor executes the License Agreement so that MW-57 can remain in service.” DTSC routed the matter through its own staff counsel and **a Deputy Attorney General, who directed that the correspondence be placed in the Department's site file.**

The chronology follows the contract. The agreement was executed on DTSC's behalf on March 14, 2007; the one-year irrevocable period expired in spring 2008; a technical memorandum recommending decommissioning followed on October 17, 2008; DTSC concurred on November 12, 2008; and destruction was completed on January 16, 2009. Notably, the responsible parties had already described the outcome as settled well before any of that — in February 2007 they wrote that MW-57 “will continue to be sampled quarterly in 2007 until its decommissioning.”

Fourth, the formal initiative to remove the well came from the responsible parties, not the agency. DTSC's November 12, 2008 letter is a concurrence with a “Technical Memorandum, dated October

17, 2008, recommending the decommissioning of Monitor Well MW-57.” DTSC agreed to a removal that others proposed and that its own Geological Services Unit had opposed on the record two years earlier.

Fifth, DTSC's own letter states the principle that should have governed. In the very same November 12, 2008 letter, DTSC refused a parallel request to decommission shallow well MW-55, because “it is the only monitoring well which is upgradient of the groundwater contamination at the Chatham yard, and should be kept for sampling to assure that no contaminants are in the groundwater at that location.” MW-57 was the only monitoring well on this six-acre parcel. Since its destruction in January 2009, nothing has “assure[d] that no contaminants are in the groundwater at that location” — DTSC's own words, in the same letter, for why a sole well at a location must be preserved.

Sixth, the removal occurred against a backdrop of unresolved deep-zone questions. In December 2007, DTSC's Geological Services Unit requested that the responsible parties “[s]ubmit a workplan fully delineating the vertical and lateral extent of groundwater contamination in the deep zone,” with well transects extending “to the limits of the groundwater contamination.” On June 16, 2008, the Chatham Site Responsible party PRP Group refused, calling the request “over-broad and unwarranted.” The parcel's deep monitoring well was thus proposed for removal during the same months in which the responsible parties were declining the agency's request to fully delineate the deep zone that well monitored.

The conclusion the record compels is the opposite of the one the staff report's framing suggests. **MW-57 was not removed because subsurface conditions at this parcel had been resolved. It was removed to accommodate residential development, under a private access agreement that made monitoring revocable at the landowner's discretion, over the written objection of DTSC's own geologists that it was a “critical deep well,” and without the equivalent replacement those geologists said would be required.** That happened seventeen years ago, and it is the direct reason no one today can say what lies in the groundwater beneath this parcel. At a minimum, before the Council acts, staff should obtain and place in the record the October 17, 2008 technical memorandum recommending decommissioning, the executed Site Access License Agreement, and any notice of revocation given under paragraph 4, so that the Council can see for itself why the parcel's only monitoring point ceased to exist.

Sources: Staff Report, Agenda Packet, pp. 106, 110–111; Chatham Site PRP Group, Responses to DTSC 11.16.06 Comments: Additional Characterization of Groundwater South of Hamilton Lane, February 19, 2007, transmitting Hargis + Associates, Inc. letter of February 9, 2007, Attachment 1 (Response to DTSC GSU Comments), Comments and Responses 1–2, quoting the November 16, 2006 memorandum of O. Chun, DTSC Geological Services Unit, to J. Cully, DTSC (submitted herewith); letter, S. P. McDonald, Luce, Forward, Hamilton & Scripps LLP, to D. A. Ragen, Deputy Attorney General, re License Agreement for MW-57, March 8, 2007, pp. 1–2; letter, D. A. Ragen to J. Cully, DTSC, March 16, 2007; email correspondence, L. McDaniel (DTSC Staff Counsel), C. T. Baesel, and D. A. Ragen, March 14, 2007 (all submitted herewith); DTSC letter, G. Holmes to E. Modiano, November 12, 2008 (submitted herewith); Chatham Site

PRP Group letter and memorandum responding to DTSC letter of May 16, 2008, June 16, 2008, incl. Response re Deep Zone Workplan (submitted herewith); DTSC email, J. Cully, re approval of installation of wells 66 and 67, August 13, 2008 (submitted herewith); Snyder Geologic letter, July 24, 2006, p. 3.

C. The 2007 MND imposed a mitigation measure requiring MW-57 to remain on site. The record does not establish that the conditions for its removal were ever met, and staff has now written the measure out of the monitoring program.

This is not merely a historical grievance. The 2007 IS/MND identified the project's proximity to the Chatham Barrel Yard as a hazards impact and adopted a specific mitigation measure in response: "Monitoring well MW57 is to remain onsite and be accessible to the Chatham Brothers RP Group for monitoring purposes until officially released. Upon release, it is to be removed per Regional Board and City of Escondido standards. Alternately, if a new replacement well is installed nearby and approved by the Regional Board and Department of Toxic Substances Control (DTSC), existing well MW57 can also then be released and removed per Regional Board and City of Escondido standards" (Agenda Packet, p. 214).

The measure permitted removal on one of two conditions: official release, or a nearby replacement well approved by both the Regional Board and DTSC. The 2007 Initial Study described what the Regional Board had in mind with precision: MW-57 "should remain or ... a replacement well, at a location 235 feet to the northwest, and within the proposed private street would be approved if it provides equivalent deep aquifer information" (Agenda Packet, p. 240). The contemplated replacement was 235 feet away, within the project's own private street — on this parcel — and conditioned on providing equivalent deep aquifer data.

That is not what happened. The replacement, MW-67, was installed "north of the parcel" (Agenda Packet, p. 364) — off site, not within the private street. Nothing in the record before this Council demonstrates that MW-67 provides "equivalent deep aquifer information"; DTSC's Geological Services Unit had already warned in November 2006 that a distant substitute would not "provide data similar to the quality, quantity, and pollutant distribution found in MW-57." The only DTSC document in the record touching the replacement's installation is an internal August 13, 2008 email approving a proposed screen interval, which notes that "[t]he data quality wasn't the best due to very high turbidity" and that "[n]o areas of flow into the well were evident from the video log." And no Regional Board approval of the replacement appears anywhere in the record, although the mitigation measure expressly requires it.

Staff's treatment of the measure is both circular and internally inconsistent. The Addendum states that the well "was decommissioned as documented in a letter provided by Chatham Site PRP Group dated May 21, 2009" and concludes: "This mitigation measure has been satisfied" (Agenda Packet, p. 214). The Revised Mitigation Monitoring and Reporting Program now before the Council recites the same measure and the same letter, but concludes instead: "This mitigation measure is not applicable," with "N/A" entered for responsible department, monitoring action, implementation schedule, and verification (Agenda Packet, p. 685). A measure cannot be both

satisfied and inapplicable, and the sole evidence offered for either proposition is a letter documenting that the well was destroyed. A mitigation measure that required the well to remain is not shown to be satisfied by proof that it was removed. The question the measure poses — whether the conditions for release were met — is one the record does not answer.

The practical consequence is that the only mitigation measure in the adopted environmental document that provided for groundwater monitoring on this parcel has been struck from the monitoring program, on a record that does not show its preconditions were satisfied, at the same hearing in which the Council is asked to find that no new environmental review is warranted. **If the Council upholds this approval as presented, no groundwater monitoring obligation of any kind will attach to this six-acre parcel.**

Sources: Agenda Packet, p. 214 (2007 IS/MND hazards mitigation measure and Addendum conclusion); p. 240 (2007 Initial Study description of Regional Board determination); p. 364 (Hargis + Associates letter, May 21, 2009, Addendum Appendix E); p. 685 (Revised Mitigation Monitoring and Reporting Program, Hazards); DTSC email, J. Cully to E. Modiano, transmitting comments of T. Johnson, August 13, 2008 (submitted herewith); November 16, 2006 comments of the DTSC Geological Services Unit, as quoted in the February 2007 responses (submitted herewith).

D. Staff's “no new information” analysis conflates knowledge that the Chatham site existed with knowledge of what has happened since 2007.

Staff reasons that because “the Chatham Barrel Yard was an existing, known, state Superfund site” in 2007, no new information of substantial importance exists (Agenda Packet, p. 110). But the existence of the site is not the new information. The new information is what Sections III.A through III.C above set out: the post-2007 concentration rebounds, the removal of the parcel's only monitoring point, the contraction of active extraction to a single well, and the State's revised vapor intrusion screening framework. **None of it could have been known in 2007, because none of it had happened, yet. These are changed circumstances that should trigger a phase 2 investigation.**

E. The Phase I Environmental Site Assessment collected no samples and cannot establish subsurface conditions.

Staff relies on the April 2025 Phase I ESA's conclusion that no conditions indicating hazardous substance impacts were identified (Agenda Packet, p. 110). A Phase I ESA is, by definition and by its own description in the staff report, a review of “regulatory records and historical information” and a “subject property reconnaissance” (Agenda Packet, p. 111). It involves no drilling, no sampling, and no laboratory analysis. It is not evidence of subsurface conditions in a fractured bedrock aquifer, and the fact that the same consultant subsequently returned to collect samples confirms that even the applicant recognized the Phase I could not answer the question.

F.Staff's reliance on Well 33-G3 repeats, nearly verbatim, an inference the Regional Board's own staff rejected in writing in 2014.

Staff cites the April 2025 Annual Report for the proposition that “the monitoring well nearest the Project site (33-G3) has no detectible Volatile Organic Compounds” (Agenda Packet, p. 110). Three points.

First, a non-detect at a single well in a fractured bedrock system does not establish the absence of contamination between wells. That is not my characterization; it is the Regional Board's. In January 2014, the Board's staff — the same Engineering Geologist whose June 2026 oral remarks staff now relies upon — rejected in writing the argument that one well's non-detect results demonstrated plume separation at this site. The Snyder Letter makes the same point as a matter of hydrogeology: in fractured bedrock, “portions of a groundwater plume may be missed if monitoring wells do not penetrate the fractures through which contaminated groundwater is flowing” (Snyder Letter, p. 3).

Second, staff omits the context of the well it cites. The nearest well to 33-G3, MW-67 — more than 500 feet away and immediately upgradient of the project site — contains TCE and PCE, and its concentrations increased in 2025 after declining from 2020 to 2024 (Snyder Letter, p. 3). The other wells used to contour the plume in the Five-Year Review figures are more than 1,000 feet from the project site. Mr. Snyder's professional conclusion is that those figures have been contoured “so as to give the impression that the TCE plume is largely absent beneath the site,” when in fact “the concentration beneath the site is not known” (Snyder Letter, p. 3).

Third, 33-G3's own operational record undermines its evidentiary weight. Its pump was documented as broken beginning in 2019 and listed “Pump Out of Order” in 2021; its totalizer was removed in early 2022; it was not sampled in the April 2024 annual round. The April 2025 Annual Report shows 33-G3's totalizer at 91,876 gallons — total — with annual production of roughly 53,000 gallons, against comparison wells producing hundreds of thousands to over a million gallons per year (e.g., Shibley 1 at approximately 1.7 million gallons). A well that draws almost no water samples almost no aquifer. It is a poor sentinel for a six-acre parcel with no wells of its own.

Sources: Annual Monitoring Submittal, April 2025, Chatham Site, Appendix F, Table F-1 (Regional Well Status Monitoring) and 2025-Q2 Annual Gauging Sheet; San Diego RWQCB staff memorandum (S. McClain), January 2014; Snyder Geologic letter, July 24, 2026, p. 3; Final Five-Year Remedy Review Report, Revision 1.0, July 8, 2024, Figures ES-3 through ES-5.

Staff also cites MW-39, “the well to the north,” at 1.3 micrograms per liter (Agenda Packet, p. 110). That figure is a detection of site-related contamination — confirmation that VOCs persist in the deep zone in the project vicinity, not evidence of their absence.

IV. RESPONSE TO STAFF SECTION II: THE GRADING RESPONSE ADDRESSES NOISE, NOT CONTAMINATION, AND DOES NOT MENTION BLASTING

Staff's entire response on grading is that construction activities are regulated by existing ordinances, "especially noise disturbances," and by stormwater best management practices (Agenda Packet, pp. 111–112). My appeal did not raise noise. It raised the movement of approximately 8,700 cubic yards of soil — characterized only to a depth of two feet at four locations — across a balanced site, meaning every yard of cut, including material from depths never tested, is redistributed as fill on the same lots where five families will live. No soil management plan exists. **The one Planning Commissioner who voted against the project cited exactly that absence.** Generic construction BMPs administered by the stormwater division are not a substitute for a soil management plan at a parcel adjoining a State Superfund site; the Snyder Letter recommends both a soil management plan and testing "to depths of maximum excavation ... prior to and during soil disturbance activities" (Snyder Letter, p. 5).

More fundamentally, the staff report never addresses how a balanced site is physically achievable here. Mr. Snyder visited the site on June 25, 2026 and concluded that, given the significant elevation change and the large bedrock outcrop at the center of the parcel, achieving balance without import or export "would be" likely to require "significant bedrock blasting" and burial of large bedrock pieces on site (Snyder Letter, pp. 1–2). No geotechnical report exists to answer the question. Blasting in the fractured bedrock aquifer that carries the Chatham plume is, in the assessment of the retained hydrogeologist, the single activity most capable of altering groundwater flow and causing plume migration — an outcome for which, per DTSC's advisement quoted in the Snyder Letter, the causing party may be named a responsible party (Snyder Letter, p. 2). The staff report is silent on all of it.

V. RESPONSE TO STAFF SECTION III: THE "BIOFILTRATION, NOT BIORETENTION" ARGUMENT IS A TERMINOLOGY POINT THAT ANSWERS NONE OF THE ENGINEERING CONCERNS

Staff devotes its stormwater response to the proposition that I mislabeled the basin: because the project proposes a lined "biofiltration" basin rather than an infiltration-oriented "bioretention" basin, staff reasons, "no further study was needed" (Agenda Packet, p. 112). The record does not support that leap, for three reasons.

First, the substantive concerns in the record are directed at the lined basin exactly as designed. The Snyder Letter analyzes "a single-layer 30-mil liner designed to prevent stormwater from infiltrating into the subsurface" — staff's own description of the design — and identifies the risks that flow from that design: a single liner with no redundancy; no quality assurance/quality control program specified for liner installation; no monitoring points beneath the basin to detect a breach; and no response plan for liner failure. If the liner is ever punctured during installation or fails in service, stormwater recharge would alter groundwater flow downgradient of the site and could alter the contaminant plume (Snyder Letter, p. 2). Not one of those concerns depends on whether

the basin is called “bioretention” or “biofiltration.” They arise because it is a lined basin sitting over a Superfund plume in fractured bedrock, protected by a single 30-mil membrane.

Second, staff’s own reasoning concedes the absence of a geotechnical analysis: “If the Project had included a bioretention basin, a geotechnical analysis would likely have been required. However, since the Project included a fully lined biofiltration basin, no further study was needed” (Agenda Packet, p. 112). The liner type has no bearing on the geotechnical questions — depth to bedrock, rippability, and whether excavating the basin to its design depth of approximately 6.5 feet requires blasting. Soil on this site has been characterized to two feet. The basin excavation goes more than three times deeper, into ground no one has tested, potentially by blasting no one has evaluated.

Third, whether the 2015/2018 MS4 standards were applied to the stormwater calculations (Agenda Packet, p. 112) is beside the point. The MS4 permit governs stormwater pollutant control performance. It does not evaluate liner failure consequences above a contaminated fractured bedrock aquifer, and it does not require the redundant liner, sub-basin monitoring, or failure response plan that the record’s only certified hydrogeologist states this setting demands (Snyder Letter, pp. 2, 5).

VI. RESPONSE TO STAFF SECTION IV: FOUR SHALLOW SAMPLES AND A PUBLIC-COMMENT EXCHANGE ARE NOT THE INVESTIGATION AND AGENCY REVIEW THE APPEAL REQUESTED

Staff’s concluding argument is that my two requests — further site testing and review by the responsible agencies — “have now happened” (Agenda Packet, p. 113). Neither has.

A. The voluntary soil study is a shallow screening whose own limitations disclaim the conclusion staff draws from it.

The Weis Environmental study (Attachment “7”) collected soil from “relatively shallow depths (upper two feet)” at four locations, and soil gas at “depths of approximately five feet” adjacent to those same four locations, on a 6.28-acre site — approximately one sampling location per 1.6 acres (Agenda Packet, pp. 1212–1213). It was commissioned by the property owner, performed without any agency-approved work plan or regulatory oversight, and did not investigate groundwater, perched groundwater, or any depth approaching the excavation depths of the project: the basin alone is excavated to approximately 6.5 feet, and grading cuts and utility trenches go deeper still. Non-detect results at two and five feet say nothing about the intervals this project will actually disturb, and nothing about the aquifer beneath them.

The report’s own Limitations section says as much: “Levels of contaminants measured at a given location may not be representative of conditions in other areas on the Site,” and its conclusions do “not represent a warranty that all areas of the Site are similar to those sampled” (Agenda Packet, p. 1216). Staff converts four shallow screening points, so qualified, into the site-wide conclusion that “further analysis is not warranted” (Agenda Packet, p. 107). The consultant’s fine print refuses the weight staff places on it. The Snyder Letter, reviewing this same 2026 evaluation, concludes

that “a more robust evaluation” is required, specifically “sampling of deeper soil and soil vapor ... as well as an evaluation of the potential for perched groundwater that may be contaminated,” with soil vapor tested “at various depths beneath each proposed residential building” (Snyder Letter, pp. 4–5).

Two further points confirm how little weight the study can carry. First, on June 25, 2026, when residents described this soil and soil gas testing to DTSC's own risk assessor — the staff toxicologist who has supported the Chatham project for over a decade — his response was: “I hadn't seen that or heard about it, so I'm not aware of it” (June 25 Transcript, Dr. Neuwirth, at 28:18). The study staff presents as resolving the environmental question was never provided to, reviewed by, or endorsed by the agency overseeing the adjacent Superfund cleanup. Second, the study's sampling locations did not include the southwest portion of the site where the stormwater basin and its trenching are proposed — an area a neighboring property owner reports encountering standing water approximately four feet below grade during excavation, an observation consistent with a localized perched groundwater condition that the Snyder Letter specifically recommends be investigated. No sampling in this project has ever examined it.

B. The June 10, 2026 Water Board exchange was not an agency review of the project, and the written record contradicts the characterization staff gives it.

What Attachment “8” actually documents is a brief oral exchange during the public comment portion of a Board meeting — not a technical review, not a staff report, not a written determination. Several features of that transcript deserve the Council's attention.

First, the Board's own Executive Officer framed the matter as open and prospective: “we are aware of the concerns and are coordinating with DTSC which is the lead agency. And at this point in time, we will just simply coordinate with them in terms of reviewing the issue” (Agenda Packet, pp. 1265–1266). An issue an agency is still “reviewing” has not been reviewed.

Second, the written record contradicts the suggestion that agency review of this project occurred. Regional Board staff confirmed in writing on May 5, 2026 that the Board had no involvement in the review of this project, and DTSC's Southern California Division Chief confirmed in writing on May 14, 2026 that DTSC was not notified of the development and has no review or decision-making role over it. Both writings are in the appeal record (Attachment “2” supplemental submissions). No document from either agency — before or since June 10 — memorializes any technical evaluation of this project's grading plan, blasting potential, basin design, or plans of any kind, because neither agency has ever been provided those plans. The Snyder Letter confirms the point: “It appears that neither DTSC or the Regional Board is aware that blasting of the bedrock may be required” (Snyder Letter, p. 2).

Third, the oral remarks themselves cannot bear the weight staff assigns them. Mr. McClain stated that “the groundwater contamination is no longer underneath that property” (Agenda Packet, p. 1266). There are no monitoring wells on the property; that statement cannot rest on any

measurement taken beneath the site. It is an inference from off-site wells — principally the same 33-G3 non-detect discussed in Section III.F above — and it is precisely the category of single-well inference the Board's own January 2014 memorandum, authored by the same geologist, rejected in writing. I would also note, respectfully, that Mr. McClain told the Board “we met with the City of San Diego, DTSC, nobody saw a threat to that project” (Agenda Packet, p. 1266). This project is in the City of Escondido. Whatever meeting is being recalled, the land use authority for this project was not identified correctly in the statement staff asks you to treat as the dispositive agency judgment.

Fourth, the balance of Mr. McClain's testimony corroborates the appeal rather than refuting it. He described a downgradient plume “almost a mile long” in “fractured bedrock” that is “very complex”; he confirmed “the deeper plume is still there”; and he acknowledged that area irrigation wells “have pulled it in different directions, which is something you typically don't see too often” (Agenda Packet, p. 1266). A mile-long plume in complex fractured bedrock, still present at depth, whose movement is unusually responsive to pumping stresses, is the exact hydrogeologic setting in which the Snyder Letter warns that uncontrolled blasting and unmonitored subsurface changes are dangerous — and in which conditions beneath an unmonitored parcel cannot simply be assumed. I note as well that the staff report's paraphrase — that the plume “had migrated south, away from the proposed Project site” (Agenda Packet, p. 107) — appears nowhere in the transcript; Mr. McClain in fact placed the project “just downgradient of the Yard” (Agenda Packet, p. 1266).

Finally, the reassurance that “we have wellhead treatment on all those wells” (Agenda Packet, p. 1266) should be weighed against what the same geologist stated on the record two weeks later: “they're not sampling for [1,4-dioxane], which does not have an MCL. The treatment on the wells are only to treat parameters that have MCLs” (June 25 Transcript, at 1:06:55). In other words, by the Board staff's own account, the wellhead treatment systems are neither designed for nor verified against 1,4-dioxane — a concern DTSC itself raised as early as its November 2013 comment letter, which flagged that GAC wellhead treatment “might not be optimized” for 1,4-dioxane removal.

Sources: Agenda Packet, Attachment “8” transcript, pp. 1265–1267; Staff Report, Agenda Packet, pp. 107, 113; appeal record correspondence, Attachment “2”; June 25 Transcript at 1:06:55; San Diego RWQCB staff memorandum (S. McClain), January 2014; DTSC comment letter, November 2013; Snyder Geologic letter, July 24, 2026, pp. 2–4.

C. Two weeks after the Board meeting, the same officials confirmed on the record that no agency has reviewed this project, that DTSC has no data on this site, and that what is needed is exactly the investigation this appeal requests.

On June 25, 2026, residents including myself and Laura Hunter of Escondido Neighbors United met by video conference with DTSC's Southern California Division Chief (Benjamin Stanphill), DTSC's supervising engineer, project manager, engineering geologist, and staff toxicologist for the Chatham site, and the same Regional Board Senior Engineering Geologist whose June 10 remarks the staff report relies upon. DTSC recorded and transcribed the meeting; the transcript

accompanies this rebuttal. Statements made at that meeting are irreconcilable with the account in the staff report.

On whether any agency has reviewed this project, DTSC's Division Chief stated: "DTSC is overseeing ... the Chatham Yard remediation as a whole; we are not involved thus far in the development or the [CEQA] analysis or anything that goes there," adding that if the developers "wanted to come to us and ... said, hey, here's our testing, we need DTSC to certify the site, that's something that we could look into, but none of them have done that so far. And until they do, we just end up not having an opinion really either way" (June 25 Transcript, at 42:32–44:24). He was careful to limit even DTSC's comfort to the data it holds — "DTSC does not see any evidence from the data that we have" (at 58:32) — and stated plainly: "we would not necessarily say that the Hamilton Lane development area is completely clean" (at 42:32).

On what should be done, DTSC's supervising engineer for the project stated: "Basically what they need to do here is a phase one, phase two ... that need[s] to be asked of the city who will be approving ... we don't have any data to basically formulate an opinion on ... this site ... the city should be able to provide that to you, like a phase one, phase two. We don't have that" (June 25 Transcript, Mr. Yemut, at 20:51–21:15). On the depths the project will disturb: "we don't know if these people [are] gonna go down to 30, 40, fifty feet. We don't know ... we don't know what they're gonna do, basically" (at 19:14). DTSC's supervising engineer thus identified, as the appropriate course, precisely the relief this appeal requests — a Phase I/Phase II investigation — and identified the City as the body that must require it.

On blasting, the Regional Board's geologist stated: "I don't think anybody's talked about blasting boulders" and "I haven't heard that they're blasting down to 40 feet" (June 25 Transcript, at 16:10, 16:49); no agency participant on the call was aware that the project file contemplates blasting. This directly corroborates the Snyder Letter's statement that "neither DTSC or the Regional Board is aware that blasting of the bedrock may be required" (Snyder Letter, p. 2). And on the consequence if construction alters contaminant pathways, DTSC's Division Chief offered only an after-the-fact remedy: "We would say that if contamination ... pathways are altered by the development, the responsible party or DTSC would need to address that in the remediation," with responsibility to be sorted out afterward — "they would all likely sue each other and that would determine who does it" — an answer he himself acknowledged "is not a satisfying answer" (at 44:39–45:45). The Council should not accept litigation after a release as the mitigation plan for a five-lot subdivision.

The June 25 meeting also clarified the June 10 statement on which staff's Section IV rests. Asked directly for the basis of the statement that "the groundwater contamination is no longer underneath that property," the Board's geologist qualified it: "I think what I said ... [t]he shallow plume. There was no contamination beneath the property [in] the shallow plume" — that is, non-detect results in off-site shallow wells screened to approximately 20 feet below ground surface — while acknowledging in the same exchange that MW-67 "has low concentrations that rebounded from non-detect to below the MCL at 40 feet below ground surface" (June 25 Transcript, at 46:39–

47:34). A shallow-zone inference from off-site wells, alongside an acknowledged rebound at depth at the adjacent well, on a parcel whose excavation and blasting depths DTSC says no one knows, is not a determination that the site is free of contamination. It is a description of the data gap the appeal asks the Council to close.

VII. THE REQUIRED SUBDIVISION MAP ACT FINDINGS CANNOT BE MADE ON THIS RECORD

Whatever the Council concludes about CEQA, it faces a separate and independent obligation. Government Code section 66474 provides that a legislative body *shall deny* approval of a tentative map if it makes any of the enumerated findings, including that “the site is not physically suitable for the type of development” (subdivision (c)) and that “the design of the subdivision or the type of improvements is likely to cause serious public health problems” (subdivision (f)). These findings are mandatory, and they are not governed by the deferential standard staff invokes for its CEQA determination. **A Council that cannot affirmatively make them must deny the map.**

Exhibit “E” to Resolution No. 2026-90 offers the following, in its entirety, for the public health finding: “The Project as designed is not anticipated to cause any public health problems. Further, the Project has been conditioned to prohibit the drilling of drinking wells on site as well as excavations. Therefore, the Project is consistent with this finding” (Agenda Packet, p. 1753). **Two sentences of conclusion, resting on a condition that is misdescribed.** The Project is **not** conditioned to prohibit excavations. It is a balanced cut-and-fill grading project moving approximately 8,700 cubic yards of soil, with a basin excavated to roughly 6.5 feet and utility trenching deeper still. The underlying condition, HYD-1, prohibits excavation only “without proper permits” (Agenda Packet, p. 685) — which is to say it prohibits nothing this Project proposes to do. A finding that rests on a prohibition the Project does not actually operate under cannot support approval.

The well prohibition is likewise narrower than the finding implies. It reaches “drinking wells” only. It does not prohibit irrigation or other water supply wells — the very wells that, in this plume, have been documented to draw contaminated groundwater to the surface, that carry 1,4-dioxane the wellhead systems are not designed to treat, and that the Regional Board's geologist described as having “pulled [the plume] in different directions, which is something you typically don't see too often” (Agenda Packet, p. 1266). The record's only certified hydrogeologist recommends that “[i]rrigation and water supply wells should be prohibited on the project development site by the City,” because such wells “have the potential to bring contaminated water to the surface and alter the flow patterns of the contaminated groundwater plume” (Snyder Letter, p. 5). As conditioned, the Project leaves that pathway open.

The physical suitability finding is no better supported. Exhibit “E” states that “all lots meet the standards required for residential development, and no unusual circumstances exist that would prohibit or constrain residential development on site,” resting the finding on slope categories, lot

size, lot width, and access (Agenda Packet, p. 1752). Every element of that analysis is above ground. On a parcel adjoining an active State Superfund site, overlying a mile-long plume in fractured bedrock, with no monitoring well and no subsurface characterization below two feet, the statement that “no unusual circumstances exist” is not a finding — it is the absence of one. Physical suitability for residential development on this parcel is precisely the question the investigation requested below would answer, and that no one has yet asked.

Sources: Government Code § 66474(c), (f); Resolution No. 2026-90, Exhibit “E” — Findings of Fact, Agenda Packet, pp. 1752–1753; Revised Mitigation Monitoring and Reporting Program, Agenda Packet, p. 685; Agenda Packet, Attachment “8” transcript, p. 1266; Snyder Geologic letter, July 24, 2026, p. 5.

VIII. THE RELIEF REQUESTED

The staff report itself identifies the correct path (Agenda Packet, p. 113): the Council may continue the hearing and direct staff to conduct additional studies. That is also the path DTSC's own supervising engineer for the Chatham site identified on the record — “what they need to do here is a phase one, phase two ... that need[s] to be asked of the city who will be approving” (June 25 Transcript, at 20:51). The Council's review is de novo; it owes no deference to the Planning Commission's 4–1 decision, and it has full authority to condition any further consideration of this project.

What follows is not my own list. It is the set of recommendations made by W. Scott Snyder, PG 7356, CHG 748, in his July 24, 2026 letter to this Council, adopted here without addition or enlargement. I respectfully request that the Council decline to adopt Resolution No. 2026-90 and instead continue the matter with direction that, before any approval:

1. **A geotechnical investigation be conducted for the development site** to better understand the geologic conditions in the subsurface. Mr. Snyder identifies significant concerns regarding the need for blasting for site grading, installation of utilities, and excavation for the bioretention basin, and states that this investigation “should be a minimum requirement of City Council” (Snyder Letter, p. 4).
2. **Altering the bedrock aquifer by blasting be avoided.** Mr. Snyder's conclusion is unqualified: the Chatham plume “is within this complex bedrock aquifer in the area of the development project and altering the bedrock aquifer by blasting should be avoided” (Snyder Letter, p. 2). To the extent blasting is nonetheless contemplated, the City should request DTSC's and the Regional Board's input and evaluation of its potential to alter groundwater flow in this complex bedrock aquifer system before any approval (Snyder Letter, pp. 2, 4, 5).
3. **The stormwater basin not be approved.** Mr. Snyder states plainly: “I do not believe a stormwater basin should be approved for this project” (Snyder Letter, p. 2). Should the Council nonetheless approve the project with the basin, he recommends that a redundant

(second) liner be installed, that monitoring points beneath the basin be required and monitored to detect possible failure, that a robust quality assurance/quality control program be developed and implemented during liner installation, and that a response plan be prepared to address potential failure of the basin. He further recommends that the basin be closely analyzed for potential fatal-flaw design elements, quality-control installation considerations, and ongoing monitoring needs, and that the City require this analysis and request a review of it by DTSC and the Regional Board (Snyder Letter, pp. 2, 5).

4. **Monitoring wells be drilled at the development site** to investigate whether the plume is present beneath the site and whether it poses a health risk to future residents, monitored on the same schedule as those for the Chatham site, together with an evaluation of the potential for shallow, perched contaminated groundwater (Snyder Letter, p. 5).
5. **A more robust evaluation of environmental conditions be conducted**, including sampling of deeper soil and soil vapor and an evaluation of the potential for perched groundwater that may be contaminated. Soil vapor specifically should be investigated with a greater number of sampling locations and variable depths and, at a minimum, tested at various depths beneath each proposed residential building (Snyder Letter, pp. 4, 5).
6. **A soil management plan be prepared** describing the precautions that would be taken to ensure contaminated soil is managed in a manner protective of neighboring properties, with testing of the soil in all areas of the proposed project to depths of maximum excavation prior to and during soil disturbance activities (Snyder Letter, p. 5).
7. **Irrigation and water supply wells be prohibited on the project development site by the City**, because such wells have the potential to bring contaminated water to the surface and alter the flow patterns of the contaminated groundwater plume (Snyder Letter, p. 5).
8. **The project design documents and investigation reports be evaluated, as a condition of any further consideration**, for the potential health risks to future site occupants and the threat that site construction activities may pose to the Chatham groundwater plume and the ongoing remediation; and that the City require the applicant to formally submit the project plans and investigation documents to DTSC and the Regional Board and request their technical input on activities that may be incompatible with the remediation or that could cause migration of the plume — while recognizing, per DTSC's own statement, that these agencies have no review or decision-making role over the development and that the decision rests with the City (Snyder Letter, pp. 2, 4, 5).
9. **A transparent accounting of historical water quality data be provided before approval**. Mr. Snyder reports that, as an environmental consultant with 30 years of experience, it is “nearly impossible” for him to determine how water quality has changed over time at wells on and around the project site from the documents available. He recommends that the City and DTSC require historical data for each well and each

chemical, over time, and that DTSC provide this information for review prior to consideration of approval (Snyder Letter, pp. 4–5).

IX. CONCLUSION

The staff report asks the Council to find, on the basis of an aerial photograph, four shallow samples, and five minutes of oral remarks, that a five-lot residential subdivision can be safely graded, blasted if necessary, and occupied atop an aquifer carrying a mile-long Superfund plume that no one has ever measured beneath this parcel. The reason no one has measured it is now documented: DTSC's own geologists warned in 2006 that this parcel's "critical deep well" should not be removed to accommodate residential housing, and it was removed anyway, with no equivalent replacement. The agencies themselves have now said the rest on the record: DTSC is not involved in this development or its CEQA analysis, has no data on this site, would "not necessarily say" the site is clean, has no authority to intervene, and believes what is needed is a Phase I and Phase II investigation required by "the city who will be approving." This Council is therefore the only public body that will ever evaluate these risks before families move onto this ground. What I am asking you to require is not my invention and not a delay tactic: it is the recommendation list of a California Professional Geologist and Certified Hydrogeologist, adopted here word for word, beginning with the geotechnical investigation he calls a minimum requirement of this Council. DTSC's own engineer has independently said the same thing in fewer words — a Phase I and a Phase II — and staff has already told you that you may order it. I respectfully ask that you do so.

Respectfully submitted,

Heidi Whitman
Appellant, PL24-0067
Escondido, CA

Enclosures/References: (1) Snyder Geologic, Inc., letter of W. Scott Snyder, PG 7356, CHG 748, dated July 24, 2026 (previously submitted to the City Clerk for the administrative record); (2) Transcript of June 25, 2026 recorded meeting, "Call with Public, DTSC and WB — Hamilton Lane Development / Chatham," transcription initiated by B. Stanphill, DTSC (submitted herewith for entry into the administrative record); (3) DTSC letter, G. Holmes, Unit Chief, to E. Modiano, Chatham Site PRP Group, re EISB Pilot Study Summary Report and recommendations for decommissioning Monitor Wells MW-55, MW-56, and MW-57, November 12, 2008 (submitted herewith); (4) Chatham Site PRP Group letter and memorandum responding to DTSC letter of May 16, 2008, including Response Regarding Deep Zone Workplan, June 16, 2008 (submitted herewith); (5) DTSC email, J. Cully to E. Modiano, re approval of installation of wells 66 and 67, August 13, 2008 (submitted herewith); (6) Correspondence regarding the Site Access License Agreement for MW-57, comprising the letter of D. A. Ragen, Deputy Attorney General, to J. Cully, DTSC, March 16, 2007; the letter of S. P. McDonald, Luce, Forward, Hamilton & Scripps LLP, to D. A. Ragen, March 8, 2007; and related email correspondence of March 14, 2007 (submitted herewith); (7) Chatham Site PRP Group, Responses to DTSC 11.16.06 Comments:

Additional Characterization of Groundwater South of Hamilton Lane, February 19, 2007, transmitting the Hargis + Associates, Inc. letter of February 9, 2007 and Attachment 1 thereto, quoting the November 16, 2006 comments of the DTSC Geological Services Unit (submitted herewith).