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16 March 2010

Samuel Dea
Supervising Regional Planner
Special Projects
Department of Regional Planning
Room 1362, 320 West Temple Street
Los Angeles, California 90012

Subject: Comments on Landmark Village Recirculated Draft EIR 2010

Dear Mr. Dea:

David Magney Environmental Consulting (DMEC) is providing these comments on behalf of the Friends of the Santa Clara River and the California Native Plant Society (a member organization of the Friends), and the Sespe Institute, Inc., all California nonprofit corporations.

DMEC herein provides comments on the Landmark Village Recirculated Draft Environmental Impact Report (DEIR). DMEC is focusing its review on the biological and wetland resources of the project site and how the proposed project will impact those resources.

Issues raised in this letter:

- Adequacy of the assessment of Landmark Village's biological resources;
- Adequacy of the assessment of special-status species;
- Feasibility of the proposed mitigation measures;
- Feasibility of the San Fernando Valley Spineflower Conservation Plan;
- Adequacy of impact to the Santa Clara River; and
- Feasibility of wetland mitigation plan.

Inadequacy of Biological Resources Assessment

The assessment of biological resources is addressed in Section 4.5 of the DEIR. Issues reviewed below include the assessment, or lack of assessment of plants, animals, special-status species, terrestrial mollusks, bryophytes, and lichens.

Inadequacy of Basic Biota Assessment

There need to be baseline lists of plants and animals occurring on the project site within the Biota section of the DEIR. There are no such lists available within the Biota section or anywhere else in the DEIR and thus it is not possible to evaluate if the significance impact assessments on all species known or possibly occurring within the project site have been adequately conducted. The absence of baseline plant and animal species list does not conform to the required Biota EIR format required for Los Angeles County¹. Lists of species observed in the project impact area are a critical part of any

¹ County of Los Angeles Department of Regional Planning Biota Report Guidelines (p.3)

biological assessment and a standard part of any biological resources section of a CEQA document, which can be provided as a technical appendix. Including such lists is considered minimum professional standards (CDFG 2009², CNPS 2001³).

The DEIR authors have done an inadequate job of assessing the impact significance of the Landmark Village project on locally rare plants. The authors state in their response to the comment letter (27 January 2007) on the first draft Landmark Village EIR by DMEC (response 13, p. 2.E-358) that many potentially significantly impacted plant species flagged by Mr. Magney for analysis are not considered sensitive under CEQA because they are not federally, state, or CNPS-listed. This statement is not necessarily true. CEQA requires that ALL species be assessed for the significance of the project impacts on their survival, not only the species on recognized lists. There are hundreds of potentially locally rare species that have not yet been added to the CNPS list because the resources do not exist to assess their status (CNPS 2008).

Terrestrial Mollusks Not Assessed

It does not appear that any effort was made to assess the project impacts on the native terrestrial mollusk fauna. No mention is made of either literature or field surveys to assess their baseline status on the property. With no baseline status assessed then no impacts of the project on the native terrestrial mollusk fauna is possible and this significant aspect of the biota is completely ignored.

Species of *Helminthoglypta* (Shoulderband Snails) certainly occur on the Landmark Village site, as this genus of terrestrial snail occurs in a number of natural habitats throughout California. There are 104 species of *Helminthoglypta* known to occur in California, with 26 Gastropoda taxa (species and subspecies) known to occur in mainland Los Angeles County and 12 Gastropoda species known to occur in adjacent Ventura County (Roth and Sadeghain 2003, Magney 2005⁴, 2009⁵). Of these, 12 species (taxa) are considered sensitive by the CNDDDB (2004). By 2006, CNDDDB listed 18 species of *Helminthoglypta* and 104 mollusk taxa, as sensitive (CNDDDB 2006⁶), and the same number of *Helminthoglypta* but 110 mollusk taxa by early 2009 (CNDDDB 2009a⁷). This regular increase in the number of mollusks considered rare by the CNDDDB is a reflection of the new data becoming available about this interesting and important group of wildlife species, which have often been ignored or given very little attention by the resource agencies and environmental consultants (mostly because of their lack of knowledge with this faunal group).

² California Department of Fish and Game (CDFG). 2009. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities State of California. 24 November 2009. The Resource Agency, State of California, Sacramento, California.

³ California Native Plant Society (CNPS). 2001. Botanical Survey Guidelines. Board of Directors, Sacramento, California. See www.cnps.org for complete text of guidelines.

⁴ Magney, D.L. 2005. Atlas of California Native Terrestrial Snails in Ventura County. 16 March 2005. David Magney Environmental Consulting, Ojai, California. Prepared for County of Ventura, Resource Management Agency, Planning Division. Ventura, California.

⁵ Magney, D.L. 2009. Terrestrial Snails of Los Angeles County. 20 August 2009. David Magney Environmental Consulting, Ojai, California. Published through the Sespe Institute (www.sespeinstitute.com)

⁶ California Natural Diversity Database (CNDDDB). 2006. Special Animals. February. (Quarterly publication, mimeo.) California Department of Fish and Game, Biogeographic Data Branch, Sacramento, California.

⁷ California Natural Diversity Database (CNDDDB). 2009a. Special Animals. March. California Department of Fish and Game, Biogeographic Data Branch, Sacramento, California.

The native terrestrial mollusks known to occur in Los Angeles County (excluding those occurring only on Santa Catalina and San Clemente Islands) include:

- *Anadenulus cockerelli*
- *Catinella rehderi*
- *Catinella vermeta*
- *Cochlicopa lubrica*
- *Deroceras monentolophus*
- *Glyptostoma gabrielense*
- *Haplotrema caelatum*
- *Hawaiiia minuscula*
- *Helminthoglypta fontiphila*
- *Helminthoglypta petricola sangabrielis*
- *Helminthoglypta petricola zechae*
- *Helminthoglypta traskii pacoimensis*
- *Helminthoglypta traskii traskii* (sensitive species – CNDDDB 2009)
- *Helminthoglypta tudiculata angelena*
- *Helminthoglypta tudiculata convicta*
- *Helminthoglypta tudiculata imperforata*
- *Helminthoglypta uvasana*
- *Helminthoglypta vasquezi*
- *Herpeteros angelus*
- *Hesperarion hemphilli*
- *Oxyloma sillimani*
- *Paralaoma caputspinulae*
- *Pristiloma gabrielinum*
- *Punctum californicum*
- *Punctum minutissimum*
- *Sterkia hemphilli*
- *Zonitoides arboreus*

Of the 38 native terrestrial mollusks known to occur in Los Angeles County, 28 occur on the mainland and are listed above. One species is currently tracked by the CNDDDB (2009), *Helminthoglypta traskii* ssp. *traskii*, which almost certainly occurs on Newhall Ranch and the Landmark Village site. Most of the other mainland taxa certainly qualify as rare and should be considered as such (Magney 2009), regardless of the fact that the CNDDDB has not yet added them to their list. Those that are rare (based on existing population and distribution data) are in **bold** typeface.

In addition to the native mollusks of Los Angeles County, there are an additional 16 nonnative species, including *Helix aspersa* and *Agriolimax reticulatus* (which is an old name for *Deroceras reticulatum*).

The discovery of the new species of *Pyrgulopsis* onsite, and the fact that at least one species of *Helminthoglypta*, or another terrestrial land snail, almost certainly occurs on Newhall Ranch, is strong evidence that surveys for terrestrial Gastropods should have been conducted as part of the assessment. Those rare terrestrial species that have potential to occur on Newhall Ranch, based on general

proximity and habitat suitability, include: *Anadenulus cockerelli*, *Deroceras monentolophus*, *Glyptostoma gabrielse*, *Haplotrema caelatum*, *Helminthoglypta fontiphila*, *Helminthoglypta petricola sangabrielis*, *Helminthoglypta petricola zechae*, *Helminthoglypta traskii traskii*, *Helminthoglypta tudiculata angelena*, *Helminthoglypta tudiculata convicta*, *Helminthoglypta tudiculata imperforata*, *Helminthoglypta vasquezi*, *Herpeteros angelus*, *Hesperarion hemphilli*, *Oxyloma sillimani*, and *Pristiloma gabrielinum*.

Helminthoglypta traskii traskii has been collected from sites nearby in Ventura County, such as: near Santa Paula, Santa Rosa Valley 2 miles from Simi Valley, and *Helminthoglypta tudiculata convicta* has been collected from Bardsdale (near Fillmore) along the Santa Clara River (SBMNH 2009⁸). The fact that these two species of *Helminthoglypta* have been found in the Santa Clara River Valley in habitats that are also found on Newhall Ranch strongly suggest that they are present and that impacts to them should be addressed in the DEIR.

Since the likelihood of one or more species of rare terrestrial mollusks being present on the Landmark Village site is high, focused surveys for them should have been part of the assessment of biological resources. The DEIR is inadequate in that it failed to assess project-related impacts to special-status mollusks that have potential to occur onsite.

The mollusk guild in the cumulative impact analysis of the DEIR Biota discussion (p. 4.4-380) does not include the special-status terrestrial mollusk species listed above that are likely to occur on the Landmark Village project site. These species must be surveyed for on the project site in order to assess the significance of the proposed project on the mollusk guild. As presented in the DEIR, the statement that there will be no significant impacts on the mollusk guild on the project site is incorrect as there may be both significant direct and cumulative impacts on special-status mollusk species.

Bryophytes Not Assessed

While the bryophyte flora of Los Angeles County is not well known, significant efforts have been made to document the bryophyte flora for portions of the County, such as for the Santa Monica Mountains (Sagar & Wilson 2007⁹). The moss flora of California was recently published (Malcolm et al. 2009¹⁰), which documents all the moss taxa known to occur in the state at the time of that publication.

A preliminary checklist of bryophytes known or likely to occur in Los Angeles County has been published by the Sespe Institute (Magney and Huff 2010¹¹). This checklist includes 207 mosses, liverworts, and hornworts that are known or likely to occur in Los Angeles County. It also indicates that taxa that are rare in the county.

It does not appear that any effort was made to assess the project impacts on the bryophyte flora. No mention is made anywhere in the DEIR or technical appendices of either literature or field surveys to assess their baseline status on the property. With no baseline status assessed then no impacts of the

⁸ Santa Barbara Museum of Natural History Malacology online database, accessed 7 August 2009.

⁹ Sagar, T., and P. Wilson. 2007. Bryophytes of the Santa Monica Mountains. In *Flora and Ecology of the Santa Monica Mountains*, edited by D.A. Knapp. Southern California Botanists, Fullerton, California.

¹⁰ Malcolm, B., N. Malcolm, J. Shevock, and D. Norris. *California Mosses*. Micro-Optics Press, Nelson, New Zealand.

¹¹ Magney, D.L., and C.L. Huff. Preliminary Checklist of Los Angeles County Bryophytes. 16 March 2010. Sespe Institute, Inc., Ojai, California. <http://www.sespeinstitute.com>.

project on the non-vascular plant flora is possible and this significant aspect of the biota is completely ignored.

The CNDDDB tracks 30 bryophyte taxa (CNDDDB 2009b¹²), up from 28 in 2004¹³, with more species almost certainly to be added in the near future as more data are submitted. DMEC recently found a potentially undescribed species of *Syntrichia* moss in Ventura County (T. Hallingbäck pers. comm.¹⁴), and there are new records of at least 5 moss species in the Santa Monica Mountains not previously known in the Southwest (floristic) Region of California (Wishner 2008¹⁵, 2009¹⁶). These are examples of why it is necessary to conduct surveys for bryophytes as part of the CEQA/NEPA environmental review process. It is possible that one or more species of rare bryophytes occur on Newhall Ranch and impacts to them may be considered significant. Lacking ANY surveys for bryophytes precludes any ability to perform an adequate impact assessment.

The DEIR is inadequate in that it failed to assess project-related impacts to special-status bryophytes that have potential to occur onsite.

Lichens Not Assessed

It does not appear that any effort was made to assess the project impacts on the lichen flora. No mention is made of either literature or field surveys to assess their baseline status on the property. With no baseline status assessed then no impacts of the project on the non-vascular plant flora is possible and this significant aspect of the biota is completely ignored.

The CNDDDB tracks nine (9) lichen taxa (CNDDDB 2009b¹⁷, up from six (6) in 2004¹⁸, with more species almost certainly to be added in the near future as more data are submitted based on recent research on California lichens (Magney 1999¹⁹, Knudsen 2005a²⁰, Knudsen 2005b²¹, Knudsen &

¹² California Natural Diversity Database (CNDDDB). 2009. Special Plants, Bryophytes, and Lichens List. April. California Department of Fish and Game, Biogeographic Data Branch, Sacramento, California.

<http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/SPPlants.pdf>.

¹³ California Natural Diversity Database (CNDDDB). 2004. Special Vascular Plants, Bryophytes, and Lichens List. September. California Department of Fish and Game, Biogeographic Data Branch, Sacramento, California.

¹⁴ Hallingbäck, Tomas. Bryologist, Swedish University of Agricultural Sciences, ArtDatabanken, P. O. Box 7007, SE-750 07 Uppsala, SWEDEN, email: tomas.hallingback@artdata.slu.se, 22 May 2009 regarding identity of *Syntrichia* moss found at Mandalay Beach, Oxnard, California.

¹⁵ Wishner, C. 2008. Bryophyte Inventory – Ash-Hidden Valley. 23 July 2008. Prepared for David Magney Environmental Consulting, Ojai, California. 12 pages. Chicago Park, California.

¹⁶ Wishner, C. 2009. Bryophyte Inventory: Plot Plan RPPT 2008-00190, APN 4448-018-018, Tuna Canyon Road, Topanga (Dix Canyon), Santa Monica Mountains, County of Los Angeles, California. Chicago Park, California. Prepared for: Will Wild, Caballero Ranch Homes, Mission Hills, California.

¹⁷ California Natural Diversity Database (CNDDDB). 2009. Special Plants, Bryophytes, and Lichens List. April. California Department of Fish and Game, Biogeographic Data Branch, Sacramento, California.

<http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/SPPlants.pdf>.

¹⁸ California Natural Diversity Database (CNDDDB). 2004. Special Vascular Plants, Bryophytes, and Lichens List. September. California Department of Fish and Game, Biogeographic Data Branch, Sacramento, California.

¹⁹ Magney, D.L. 1999. Preliminary List of Rare California Lichens. *California Lichen Society Bulletin* 6(2):22-27. See <http://128.32.109.44/red.html> or http://ucjeps.berkeley.edu/rlmoe/cals6_2.html.

²⁰ Knudsen, Kerry. 2005a. Lichens of the Santa Monica Mountains, Part One. *Opuscula Philolichenum* 2:27-36. <http://clade.acnatsci.org/lendemerpaper6.pdf>

Magney 2006²², Knudsen & La Doux 2006²³, Knudsen 2008a²⁴, Knudsen 2008b²⁵, and Kocourková & Knudsen 2008²⁶). DMEC recently found a potentially undescribed species of *Placopyrenium* lichen in Ventura County (Kerry Knudsen pers. comm.²⁷). Knudsen recorded at least 63 lichen species in the Santa Monica Mountains, some of which were not previously known in the Southwest (floristic) Region of California (Knudsen 2005a). These are examples of why it is necessary to conduct surveys for lichens as part of the CEQA/NEPA environmental review process. It is quite possible that one or more species of rare lichen occur on Newhall Ranch and impacts to them may be considered significant. Lacking ANY surveys for lichens precludes any ability to perform an adequate impact assessment.

The DEIR is inadequate in that it failed to assess project-related impacts to special-status lichens that have potential to occur onsite.

Inadequacy of Mitigation Measures

DMEC found numerous deficiencies in the mitigation plans and found that many of proposed plans would result in both direct and indirect potentially significant impacts to biological resources onsite.

Inadequacy of the RMDP/SCP & EIS/EIR

Various proposed mitigation measures included in the Landmark DEIR refer to the Newhall Ranch Management and Development Plan and the Spineflower Conservation Plan (RMDP/SCP)²⁸. As previously stated in a comment letter to the California Department of Fish and Game (CDFG) on behalf of the FSCR in response to the RMPD/SCP and EIS/EIR, DMEC found the mitigation measures given to be insufficient resulting in plans that would lead to impacts to biological resources onsite.

²¹ Knudsen, Kerry. 2005b. Biodiversity of Lichens at Palomar Mountain State Park, California. 11 July 2005. Herbarium, University of California, Riverside. Prepared for California Department of Parks and Recreation, Sacramento, California.

²² Knudsen, K., and D.L. Magney. 2006. Rare Lichen Habitats and Rare Lichen Species of Ventura County, California. January 2006. *Opuscula Philolichenum* 3:49-52.

²³ Knudsen, Kerry, and Tasha La Doux. 2006. Lichen Flora of the Southwestern Mojave Desert: Key's Ranch, Joshua Tree National Park, San Bernardino County, California, USA. *Evansia* 22(3):103-109.

²⁴ Knudsen, Kerry. 2008a. Biodiversity of Lichens and Lichenicolous Fungi at Cabrillo National Monument. June 2008. Herbarium, University of California, Riverside. Prepared for U.S. Dept. of Interior, National Park Service, San Diego, California.

²⁵ Knudsen, Kerry. 2008b. Biodiversity of Lichens on San Miguel Island. Herbarium, University of California, Riverside. Prepared for U.S. Dept. of Interior, National Park Service, Ventura, California.

²⁶ Kocourková, Jana, and Kerry Knudsen. 2008. Four New Lichenicolous Fungi from North America. *Evansia* 25(2):62-64.

²⁷ Knudsen, Kerry. Lichenologist, Curator of Lichen Herbarium, University of California at Riverside. Emails dated 31 May and 10 June 2008, and 12 March and 11 August 2009 regarding rare lichens, including *Placopyrenium* sp. nova found on the Ash property in Hidden Valley, and *Placocarpus americanus* (new species) found in the Conejo Valley in the Santa Monica Mountains.

²⁸ Dudek. 2009. Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan and EIS/EIR. 4.5 & Apx 1 (April 2009)

In summary, DMEC (2009²⁹) found that the RMPD/SCP & EIS/EIR failed to adequately assess all project-related impacts to the biological resources onsite and failed to provide adequate and/or feasible mitigation to reduce the significant impacts to a level of less than significant. The proposed SPC fails to protect San Fernando Valley Spineflower (SFVS) occurrences and would put it at risk of extinction, or at least local extirpation in the long term. Other specific issues covered in this comment letter included: the inadequacy of the assessment of Newhall Ranch biological resources; the inadequacy of the assessment of special-status species; the inadequacy of impact assessment on wetland resources and functions; the feasibility of wetland mitigation plan; and feasibility of the SCP. A copy of DMEC's 2009 comment letter on the RMPD/SCP & EIS/EIR is attached as an appendix to this letter and incorporated herein. Many of the same issues have also been restated in this letter due to their relevance to the issues raised in the Landmark Village Draft Recirculated EIR.

The RMPD/SCP & EIS/EIR has not been certified by the CDFG as only the draft has been issued to date. Therefore there is no legitimate mitigation plan that would compensate for the proposed impacts to Special-status species and waters of the U.S.

Elimination of Loophole for Modifying Mitigation Success Criteria

Mitigation Measure LV 4.4-34 (page 4.4-254) states, "In a sub-notification letter, the applicant may request modification of success criteria on a project by project basis. Acceptance of such request will be at the discretion of CDFG and the Corps".

This language raises concerns that the biological criteria for success of any given mitigation project could retroactively be changed for any unspecified reason. DMEC recognizes that biological systems are dynamic and that initial conditions for success criteria may be altered by unforeseeable changes in the biological nature of the mitigation project. However, any request for modification of previously agreed upon or required success criteria for wetland mitigation projects must be prepared and submitted by a qualified biologist and available for public review to assure that success criteria are modified only for scientifically valid reasons and not for project expediency.

No Biological Basis for 1:1 Acreage CDFG Jurisdictional Impacts Mitigation Ratios

Mitigation Measure 4.4-29 states that mitigation for CDFG jurisdictional impacts on riparian habitats in the Santa Clara River and tributaries will be on a 1:1 basis for mitigation initiated two years prior to disturbance. Greater mitigation ratios are proposed for almost all vegetation types of High and Medium Reach values (Table 4.4-12, pp. 4.4-251-252), implying the reality that greater mitigation ratios will be needed to successfully restore impacted vegetation types to self-sustaining levels as outlined in the Mitigation Measure LV 4.4-34. The biological basis for the proposed mitigation ratios for the various vegetation types needs to be explained, as there is no scientific or legal rationale for these ratios given in the DEIR. There is no biological or legal justification given for why a 1:1 mitigation ratio is acceptable for projects started 2 years prior to disturbance and a higher mitigation ratio will be required after this time period.

²⁹ DMEC. 2009. Comments on Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan and EIS/EIR. (25 August 2009)

The project applicant appears to be creating a loophole to justify creating less mitigation than will be required to fully mitigate in-kind impacts on riparian habitats. The only biological justification for a 1:1 ratio is if the ecological function of the created/restored mitigation wetlands is found to be self-sustaining as outlined in the Mitigation Measure LV 4.4-34. The monitoring and evaluation of whether the created/restored mitigation site is self-sustaining cannot be accomplished within a 2 year time span, as LV 4.4-34 requires a minimum of three years without active manipulation for a mitigation site to be considered self-sustaining. The 1:1 mitigation ratio for projects started 2 years prior to impact should be disallowed, as it has no biological or legal basis. All mitigation should be required at least at the levels proposed in Table 4.4-12.

Inadequacy of Exotic Invasive Plant Removal as Proposed Mitigation

Mitigation Measure LV 4.4-36 (Pages 4.4-254, 255) proposes that “as an alternative to the creation/restoration of vegetation communities to compensate for permanent removal of riparian vegetation communities, in the Santa Clara River, the applicant may control invasive exotic plant species within the Upper Santa Clara River Sub-Watershed for a portion of the Santa Clara River mitigation required under LV 4.4-29.”

Controlling invasive exotic plant species is not adequate compensation for permanent removal of riparian vegetation communities unless the applicant demonstrates through an objective quantitative analytical method such as HARC or HGM that the ecological function of the permanently removed riparian vegetation types are exactly replaced by equivalent enhanced ecological function of the river by the exotic invasive plant removal. If the ecological function of the permanently removed riparian vegetation community is not compensated for exactly then there will be a net loss of the riparian vegetation community. This outcome would not be the compensatory mitigation required by CEQA³⁰ and thus the substitution of exotic plant removal for direct creation/restoration of vegetation communities would not be adequate mitigation for permanent removal of riparian vegetation communities as the applicant seeks.

Furthermore, the applicant seeks to be absolved of responsibility for maintaining the removal of the invasive exotic plant species for after 5 years following initial treatment. In order to be adequate mitigation, the enhanced ecological value created by the proposed exotic invasive plant control would need to be maintained in perpetuity (or otherwise shown to be self-sustaining) in addition to being shown to be of equivalent ecological function to the permanently removed riparian vegetation types. The applicant must provide adequate permanent financial resources and scientific expertise commensurate with permanent exotic invasive species control if the proposed Mitigation Measure LV 4.4-36 is going to be legal under CEQA (CEQA Guidelines §15370).

Control of Exotic Species Invasions in Mitigation Areas

Exotic species control is an essential function of maintaining the ecological integrity of the proposed mitigation areas.

Mitigation measure LV 4.4-27 (Page 4.4-250) states that, “The Project applicant will retain a qualified biologist to develop an Exotic Wildlife Species Control Plan and implement a control program for

³⁰ CEQA Guidelines §15370



bullfrog, African clawed frog, and crayfish”. This measure proposes that monitoring and control of Bullfrog, African Clawed Frog, and Crayfish shall continue for 5 years.

There is no biological evidence presented that the ecological threats posed by these and other species that would presumably be included in the Exotic Wildlife Species Control Plan will end after 5 years. This mitigation measure should assume as a baseline condition that exotic wildlife control will be required in perpetuity and require an endowment of adequate financial resources needed for perpetual implementation of the Exotic Wildlife Species Control Plan.

Proposed mitigation measure 4.4-51 (Page 4.4-257) states that monitoring for Argentine Ant invasion of mitigation areas will continue for 5 years. There is no biological evidence presented that the ecological threats posed by Argentine Ant invasions will end after 5 years.

This mitigation measure should assume as a baseline condition that Argentine Ant invasion and control will be required in perpetuity and require an endowment of adequate financial resources needed for perpetual monitoring and control of Argentine Ant invasions of mitigation areas.

Inadequacy of the Measures Proposed as Mitigation for the San Fernando Valley Spineflower

Mitigation measures referring to the San Fernando Valley Spineflower incorporated in the Landmark Village Recirculated DEIR were taken from the Specific Plan (SP 4.6-65 through 4.6-80). These measures were further detailed in the 2009 Draft Spineflower Conservation Plan³¹ (SCP). In a previous comment letter regarding the RMPD/SCP, DMEC found the SCP to be extremely defective and would presumably lead to further impacts to known spineflower populations.

One of the main insufficiencies that DMEC found in regards to the SCP is that the spineflower population dynamics are still relatively unknown. We would argue that given that a subpopulation of the spineflower was found approximately 300 feet to the south of the Landmark Village project sites disturbance boundary and more than 500 feet away from the project itself (as stated on Page 4.4-61, Landmark Village Recirculated Draft EIR), there is a likelihood that the plant might occur within the Landmark Village project site in the future. Therefore, disturbance to these areas could potentially impact dormant spineflower occurrences.

DMEC critiqued the measures addressed in the SCP. To read DMEC’s full comments regarding the specifics of the SCP, please refer to DMEC comment letter attached to this letter, and referenced herein.

Impacts to Santa Clara River and Inadequacy of Wetland Mitigation Measures

The Landmark Village project site is located directly adjacent to the Santa Clara River. Several mitigation measures are proposed for wetland habitats to be created or enhanced as mitigation for wetlands destroyed by the Landmark Village project.

³¹ Dudek. 2009. Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan and EIS/EIR. 4.5 & Apx 1 (April 2009)

EPA Recommends Denial of the RMDP/SCP Project

In a comment letter³² addressed to the Army Corps of Engineers, the United States Environmental Protection Agency (EPA) responded to the public notice of the Newhall Ranch Management and Development Plan. A copy of EPA's letter has been attached the appendences of this letter and is incorporated herein. The EPA letter it states:

“[T]he Santa Clara River is Southern California's longest free-flowing river. The Santa Clara is home to 12 federally endangered plant and animal species and another 25 species of special concern. The river also supports an aquifer that provides drinking water to half of the residents in the Santa Clarita Valley. For these reasons, we are defining the Santa Clara River as an aquatic resource of national importance. Several of the drainages in the Newhall Ranch project area are significant tributaries to the Santa Clara River that provide important watershed functions (e.g., aquatic habitat, water and sediment supply and retention, and groundwater recharge). Modifications of these tributaries have the potential to cause adverse impacts to the Santa Clara River. Given the available information and the potential impacts to the Santa Clara River and its tributaries, EPA has determined that the project as presently proposed may result in significant and unacceptable impacts to aquatic resources of national importance and therefore recommends denial of the project. This letter follows the field level procedures outlined in the August 1992 Memorandum of Agreement between the EPA and the Department of Army, Part IV, paragraph 3(a) regarding section 404(q) of the CWA.”

The Corps must approve the project under the regulations of the Clean Water Act. As a result of the EPA's opposition (with oversight authority over the Corps), the authors of the Newhall DEIR cannot rely on the Corps previous permit application as EPA has stated strongly that it is inadequate.

Potentially Significant Impacts the Santa Clara River and Tributaries

The Santa Clara River is an important river not only on a regional and statewide level, but also on a national level. In the EPA letter referenced above it states; “The Santa Clara River is an Aquatic Resource of National Importance (ARNI) because it is Southern California's longest free-flowing river and is home to 12 federally endangered plant and animal species plus another 25 species of special concern. The River also supports an aquifer that provides drinking water to half of the residence in the Santa Clarita Valley.”

The proposed Landmark Village project would result in 5.43 acres of permanent impacts (fill) and an additional 2.82 acres of temporary impacts (disturbance) to drainages under the jurisdiction of the Corps (Page 4.4-188, Landmark Village Recirculated Draft EIR). A description taken from the Biota Section is included below:

“Areas to be permanently filled include 1.97 acres of agricultural drains, 1.95 acres within Chiquito Creek, 0.13 acre of a seasonal tributary to Chiquito Creek, 0.78 acre within the Santa Clara River, and 0.60 acre of tributaries to the Santa Clara River. Temporary impacts (resulting from haul routes, utility corridor, and bank stabilization) would occur to 1.36 acres of Chiquito Canyon Creek, 0.09 acre of an agricultural drain, 1.35 acres of the

³² United State Environmental Protection Agency (EPA). 2009. Pubic Notice (PN) 2003-01264-AOA for the proposed Newhall Ranch Management and Development Plan, Los Angeles County, California. (24 August 2009)

Santa Clara River, 0.03 acre of tributaries to the Santa Clara River, and approximately 1.36 acres of Castaic Creek (Castaic Creek was not delineated in the field; the approximate acreage was estimated using Geographic Information Systems [GIS]).”

In addition to jurisdictional waters, riparian vegetation is also included under the CDFG jurisdiction. The proposed Landmark Village project would result in the permanent conversion of 22.4 acres of associated riparian vegetation. The loss of this riparian vegetation is considered significant.

DMEC believes that the mitigation measures given to address these losses in both Corps and CDFG jurisdictional wetlands are inadequate and will still result in significant impacts that are not fully mitigated.

Mitigation Rule Not Followed

There is no approved (by the Corps) compensatory mitigation plan that would compensate for the proposed impacts to waters of the U.S. To deem a Section 404 application complete, there must be a compensatory mitigation plan in place. Without an accepted mitigation plan in place, there is not enough information; therefore, it is premature to say whether the mitigated impacts will be below the level of significance. However, we can comment on the suggested mitigation measures included in this and other **draft** reports made available by the applicant.

The Landmark Village Recirculated Draft EIR Biota Section (Page 4.4-117) the authors state:

“This buffer analysis does not presume that the project’s indirect effects on sensitive biological resources in the river corridor will be avoided completely. Therefore, in combination with the 100-foot setback, the Specific Plan’s Resource Management Plan provides standards by which biological resources will be managed during construction and for the life of the community, including provisions for (1) restoration and enhancement of disturbed areas; (2) restrictions on pedestrian and vehicular access to the river corridor; (3) design standards for transition areas between development and the river; (4) conveyance of conservation easements; and (5) preparation of a financial plan and the long-term management of the riparian resources by the Center for Natural Lands Management.”

As previously stated in this letter, the RMPD/SCP & EIS/EIR has not been approved under the regulations of the Clean Water Act by the Corps or EPA. Therefore, an accepted/approved compensatory mitigation plan that would compensate for the proposed impacts to waters of the U.S. is lacking, and it is highly presumptuous for Newhall Ranch to assume that their application and proposed mitigation plan would be approved by the regulatory agencies, particularly since the EPA has found the EIS prepared by the Corps for the project inadequate.

Any mitigation plan must fully assure to replace in-kind losses. The removal of invasive plants is not an accurate way to mitigating the impacts to waters/wetlands of the U.S. While the removal of such species is beneficial, this actions in no way replaces the lost of functions of lost water/wetlands. The losses must be replaced in-kind; therefore, there should be equivalent vegetation created before the mitigation would be considered adequate.

The Landmark Village DEIR states that impacts to jurisdictional resources can be reduced to below a level of significance with mitigation is consistent with the findings of the Newhall Ranch Specific Plan Program EIR. However, said stated already in this letter, the EIS/EIR released for public review

in 2009 did not provide feasible mitigation measures to compensate for impacts to jurisdictional waters.

In addition, a compensatory mitigation plan cannot be created until the impacts to jurisdictional waters are accurately assessed, which they are not currently.

Jurisdictional Waters Not Properly Assessed

A major criticism of a previous project document submitted by the project applicant, the Landmark Village DEIR 2007³³, was that impacts to wetland functions were not adequately addressed (DMEC 2007, Page 11). The suggestion was made that the Hydrogeomorphic (HGM) method (Smith et al. 1995) could be used to objectively determine and measure wetland functionality and assessment of project-related impacts to wetland functionality in the project area.

In the comment section, the authors responded to this suggestion by simply stating the methods in which they derived their suggested buffer width (Page 2.E-376, Landmark Village Recirculated Draft EIR³⁴). However, they did not respond directly our initial comment on the use of HGM as an adequate determination of how wide the buffers widths need to be to protect wetland functions.

Again, DMEC suggests that our comments on the use of adequate wetland determination be readdressed with our current position that a new wetland assessment is needed in order to measure current riparian functions and project related impacts.

The investigators of wetland assessment for the Newhall EIS/EIR have used a modified version of the HGM method to assess baseline wetland functionality and estimate project-related impacts to this functionality on the project site. They call their methodology the Hybrid Assessment of Riparian Condition (HARC). The details of what the HARC is, justifications for its use, and how it is implemented to measure wetland functionality are discussed on Page 4.6-32-4.6-37 in Section 4.6 (Jurisdictional Waters and Streams) of the Newhall EIS/EIR.

The assumptions and methods used to develop and implement the HARC appear sound. The Newhall EIS/EIR authors state that it can be used to determine both baseline wetland functionality and estimated project impacts to this functionality.

For whichever project alternative is adopted, DMEC recommends requiring that the HARC or comparable HGM methodology be used to estimate baseline wetland functionality and the mitigation needed to create or restore equivalent functionality to impacted wetlands. All of the assumptions, implementation procedures, and outputs of the HARC or comparable methodology must be made available for external review by the public to ensure that the process is transparent and the results are scientifically valid.

DMEC also stated in our previous comment letter: “URS’s wetland delineation was verified by the U.S. Army Corps of Engineers (Corps) on 4 February 2004” (DMEC 2007³⁵, Page 10). We suggested that the wetland delineation be updated to show current conditions since verifications are only valid for a period of two (2) years, per Clean Water Act regulations and Corps policy, especially since the

³³ DMEC. 2007. Landmark Village Draft EIR Comments. (30 January 2007)

³⁴ Impact Sciences, Inc. 2010. Landmark Village Recirculated Draft EIR, Volume II (Comments, Responses, etc.) (November 2007). Page 2.E-376

³⁵ DMEC. 2007. Landmark Village Draft EIR Comments. (30 January 2007)

current riparian functions since the 2005 flood event would have surely altered the riparian areas along the Santa Clara River.

DMEC reaffirms the suggestion and advises that the Corps requests reverification of jurisdictional waters for Section 404(b)(1) Permit authorization. A mitigation plan cannot be created until the impacts to jurisdictional waters are properly assessed. No application should be deemed complete until it is clear where the jurisdictional water/wetland boundaries are onsite and then appropriate mitigation measures can be determined for the proposed impacts.

During the reverification of jurisdictions wetlands, DMEC also believes that all wetlands shall be assessed in the field since a portion of Castaic Creek was not delineated in the field, but instead estimated using Geographic Information Systems [GIS]. This is especially important due to the fact that the proposed project will result in impacts to Castaic Creek; the estimated impacts using GIS are approximately 1.36 acres (Page 4.4-188, Landmark Village Recirculated Draft EIR).

Proposed Buffered Size Inadequate

The DEIR suggests that riparian buffers along the Santa Clara River should range from a minimum of 100 to 150 feet in width, depending on the quality of the upland habitat (a larger buffer width required if the upland habitat is of low quality). This suggestion was partially based on a study by Impact Sciences (1997³⁶) that focused on bird surveys, in which vegetation analyses, focused bird surveys, and small mammal trapping along the Santa Clara River and adjacent uplands were conducted. However in their analysis of the appropriate buffer width, the focus was partially based on the riparian bird and small mammal use of high and low quality upland habitat and upland/riparian ecotone.

While protecting quality wildlife habitat is essential in determining adequate buffer size, it is only represents one element of the functions and characteristics of riparian buffers. DMEC believes in order to determine buffer width, you must also look at filtration (nitrogen, phosphorous, and other contaminants), reduction in erosion and sedimentation, other factors influencing aquatic habitat (woody debris, liter, temperature, and light), and the social and cultural aesthetics values places on riparian areas.

As DMEC³⁷ suggested in its critique of the previous project DEIR, HGM methods should be used to quantify and qualify riparian functions. The widths of buffers needed to maintain wetland functions vary considerably based on the specific function under consideration. Since HGM is a holistic approach, identifying and measuring 14 different wetland functions, the buffer width that protects all wetland functions would be identified and recommended.

Robins³⁸ (2002) reviewed the scientific literature on the buffer widths along riparian ecosystems that are needed to conserve specific riparian ecosystem functions. He found that a 300-foot-wide buffer zone likely encompasses enough area for conserving many riparian ecosystem functions. A 300-foot-wide buffer zone is likely adequate for maintaining channel complexity (stream meander and inputs of large wood debris to the riparian watercourse), filtration of sand and silt, removal of fecal coliform,

³⁶ Impact Sciences, Inc. 1997. North Valencia Annexation Buffer Study. Draft. Prepared for Newhall Land and Farming Company (April 28, 1997)

³⁷ DMEC. 2007. Landmark Village Draft EIR Comments. (30 January 2007)

³⁸ Robins, James D. 2002. "Stream Setback Technical Memo" 26. Napa, California: Jones & Stokes Associates, Sacramento, California.

and moderation of water temperature and microclimate (e.g. provision of shade and control of summer stream temperatures essential for maintaining the population dynamics of salmonid fishes). In a review of the effect of riparian buffer width on nitrogen removal, Mayer et al.³⁹ (2006) noted that riparian buffers greater than 50 meters (150 feet) were the most consistent in removing significant amounts of nitrogen entering the riparian ecosystems studied.

Riparian ecosystem buffers provide habitats for many species of plants, reptiles, birds, and mammals. Robins (2002) notes that 60% of amphibian species, 16% of reptiles, 34% of birds, and 12% of mammals in the Pacific Coast ecoregion are classified as “riparian obligate” species (i.e. are dependent on riparian ecosystems, such as the Santa Clara River, for their survival). In California, more than 225 species of mammals, birds, reptiles, and amphibians are dependent upon riparian ecosystems for their survival (RHJV 2004⁴⁰). As the ecological needs of plant and animal species varies widely, Robins found a wide variety of buffer widths cited as necessary for maintenance of species in riparian ecosystems. The consensus of the scientific studies reviewed by Robins is that a 300-foot-wide buffer zone is likely adequate for protecting a wide variety of plant and animal species. Among the specific recommended buffer width/ranges cited by Robins for conserving habitat for specific groups are 160 feet or greater for riparian mammal habitat, 98-540 feet for reptile and amphibian habitat, 130-1,600 feet for bird habitat, and 30-100 feet for riparian ecosystem plant diversity. For bird habitat the recommended buffer width applies specifically to breeding bird communities in bottomland heartwoods, an ecosystem type found in the Southeastern U.S. and not typical of the Santa Clara River. The majority of bird habitat studies related to riparian buffer width reviewed by Robins recommend a buffer width/range of 130-325 feet for adequately conserving bird habitat.

Therefore, DMEC recommends a 300-foot-wide buffer zone for the Santa Clara River, which is consistent with the above discussion on protecting a number of riparian functions. For the main and secondary tributaries, DMEC recommends a 100-foot-wide buffer zone. This is in contrast to the 50-foot-wide buffer as recommended by Impact Sciences (1997⁴¹) for the main tributaries, and the 25-foot buffer for the secondary tributaries. Those narrower buffer zones are simply too narrow to provide adequate protection for most of the 14 riparian wetland functions, as identified by the two southern California HGM riverine regional models (Lee et al. 2001⁴², Lee et al. 2003⁴³).

³⁹ Mayer, P.M., S.K. Reynolds, M.D. McCutchen, and T.J. Canfield. 2006. Riparian Buffer Width, Vegetative Cover, and Nitrogen Removal Effectiveness: A Review of Current Science and Regulations. EPA/600/R-05/118. Cincinnati, OH, U.S. Environmental Protection Agency.

⁴⁰ RHJV (Riparian Habitat Joint Venture). 2004. The Riparian Bird Conservation Plan. California Partners in Flight. Version 2.0. http://www.prbo.org/calpif/pdfs/riparian_v-2.pdf

⁴¹ Impact Sciences, Inc. 1997. North Valencia Annexation Buffer Study. Draft. Prepared for Newhall Land and Farming Company (April 28, 1997)

⁴² Lee, L.C., P.L. Fiedler, S.R. Stewart, R.R. Curry, D.J. Partridge, J.A. Mason, I.M. Inlander, R.B. Almay, D.L. Aston, and M.E. Spencer. 2001. Draft Guidebook for Reference Based Assessment of the Functions of Riverine Waters/Wetlands Ecosystems in the South Coast Region of Santa Barbara County, California. Santa Barbara County Water Agency, Santa Barbara, California.

⁴³ Lee, L.C., P.L. Fiedler, S.R. Stewart, D.J. Partridge, J.A. Mason, E.M. Inlander, and M.C. Rains. 2003. Draft Operational Guidebook for Assessment of the Functions of Riverine Waters/Wetlands in the Santa Margarita Watershed, Riverside & San Diego Counties, California. San Diego Regional Water Quality Control Board, Technical Publication. San Diego, California.

Preservation of a buffer zone around main tributaries, high-gradient streams, is important because these streams are the first point where sediments, nutrients, and potential contaminants enter the riparian ecosystem (Robins 2002). The majority of studies on sediment and nutrient removal by riparian buffers cited by Robins recommend that buffer widths should be in the range of 30-100 feet to maintain this essential riparian ecosystem function. This finding is consistent with the recommended 100-foot-wide buffer for the high-gradient stream tributaries of Santa Clara River. Furthermore, the Ventura County General Plan includes a policy establishing a 100-foot-wide riparian wetland buffer zone.

As stated above, Impact Sciences suggests that riparian buffer widths should range from a minimum of 100 to 150 feet, depending on the quality of the upland habitat. In which “a larger buffer width required if the upland habitat is of low quality”.

However, as shown on Figure 4.4-7, Riparian Habitat Buffer (Page 4.4-119, Landmark Village Recirculated Draft EIR), one area of reduced buffer width (only 90-feet wide) is characterized by disturbed sandy soils and areas of sparse, disturbed riparian vegetation. By their rationale, this low quality habitat should require a larger buffer width to compensate for adequate habitat.

The DEIR also states that habitat enhancement in areas where the buffer is narrower could compensate for the smaller buffer. Thus, habitat enhancement in areas where the buffer is narrower could compensate for the smaller buffer. As previously stated, DMEC believes that removal of invasive plants is not an accurate way to mitigating the impacts to waters/wetlands of the U.S.

Inadequate Attention Paid to Federal Floodplain Development Policy in Analyzing Project Alternatives

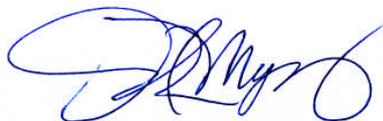
The Landmark Village project described in the DEIR would result in the net loss of the 100-year floodplain of the Santa Clara River. In their critique of the Newhall Ranch Management and Development Program (RDMP) DEIR/EIS the EPA cites President’s Floodplain Management Executive Order 11988 and the draft Floodplain Management Executive Order as regulations ordering that federal agencies “shall avoid placing fill in the floodplain to achieve flood protection to the extent practicable.” This critique is directly applicable to net loss of Santa Clara River floodplain that will be caused by the currently proposed Landmark Village project.

Section 5.0 of the DEIR (Project Alternatives of the Landmark Village DEIR) presents two alternative development scenarios that would either eliminate (Alternative 3: FEMA Floodplain Avoidance, p.5.0-6) or reduce (Alternative 4: Cluster Alternative, p.5.0-21) the impacts of the proposed project on the 100-year floodplain of the Santa Clara River. These alternative development scenarios are both rejected without any reference to the EPA’s critique of the RMDP of which the Landmark Village project site is part. In light of the EPA’s recommended rejection of the RMDP based in part on inadequate avoidance of the floodplain, the project applicants should reconsider Project Alternatives 3 and 4 in order to comply with federal floodplain development policy.

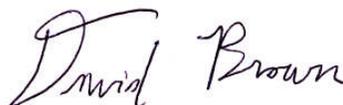
In summary, DMEC finds that the DEIR fails to adequately assess all project-related impacts to the biological resources onsite and fails to provide adequate and/or feasible mitigation to reduce the significant impacts to a level of less than significant. Time constraints have limited our ability to comment on additional inadequacies of the DEIR in describing, assessing, and mitigation for other biological resource issues.

Thank you for considering our concerns with the adequacy of the DEIR.

Sincerely,

A blue ink signature of David L. Magney.

David L. Magney
President

A black ink signature of David Brown.

David Brown, M.S.
Biologist

A black ink signature of Callen Huff.

Callen Huff
Biologist

cc: Ron Botoroff, Friends of the Santa Clara River
Greg Suba, California Native Plant Society
Sespe Institute, Inc.

Attachments:

DMEC. 2007. Landmark Village Draft EIR Comments. (30 January 2007)
United State Environmental Protection Agency (EPA). 2009. Pubic Notice (PN) 2003-01264-AOA for the proposed Newhall Ranch Management and Development Plan, Los Angeles County, California. (24 August 2009)