



**San Bernardino Valley
Audubon Society**



via electronic mail and USPS

October 13, 2014

Kim Stater
City Planner
27215 Base Line
Highland, CA 92346
kstater@cityofhighland.org

Re: Recirculated Draft Environmental Impact Report for Harmony Specific Plan Project (SPR-011-001)

Dear Ms. Stater:

These comments are submitted on behalf of the Center for Biological Diversity (“the Center”), San Bernardino Valley Audubon Society and the San Geronimo Chapter of the Sierra Club regarding the Recirculated Draft Environmental Impact Report (“RDEIR”) for the Harmony Specific Plan Project (SPR-011-001). While some of the revisions made in the RDEIR address the concerns raised in comments on the DEIR, many issues remain inadequately analyzed and mitigated. Alongside the continuing deficiencies in the RDEIR’s analysis, the Project still poses significant environmental impacts. If allowed to move forward, the Project is anticipated to degrade the current ecosystem on the Project site, while also reducing the overall health and quality of life in the surrounding community. For the reasons detailed below, we urge approval of the Project be denied, or at the very least substantial revisions be made to the RDEIR to better analyze, mitigate or avoid the Project’s significant environmental impacts.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has 775,000 members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in San Bernardino County.

The San Bernardino Valley Audubon Society (“SBVAS”) is a local chapter of the National Audubon Society, a 501(c)3 corporation. The SBVAS chapter area covers almost all of Riverside and San Bernardino Counties and includes the project area. SBVAS has about

2,000 members. Part of the chapter's mission is to preserve habitat in the area, not just for birds, but for other wildlife, and to maintain the quality of life in and around San Bernardino County.

The Sierra Club is a national nonprofit organization of over 732,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Over 193,500 Sierra Club members reside in California. The San Gorgonio Chapter of the Sierra Club focuses on issues within the inland empire, including San Bernardino County.

I. The RDEIR Still Fails to Adequately and Appropriately Analyze Impacts to Biological Resources, Including Endangered Species, State Fully Protected Species, and Federally Designated Critical Habitat.

Because of the proposed project's strategic location at the confluence of the mainstem of the Santa Ana River and Mill Creek and sharing a northeastern boundary with the San Bernardino National Forest, we still believe the proposed project site is better suited for fire-safe, mitigation and restoration opportunities than a new housing development in an area where one in 490 houses are already in foreclosure.¹

Unfortunately, the RDEIR's additional data and analyses of direct, indirect, and cumulative impacts to biological resources are still inadequate, as described in further detail below.

A. *Rare Plant Communities*

The RDEIR now recognizes that at least three rare plant communities occur in site: Riversidean alluvial fan sage (RAFSS) scrub, Riversidean Sage Scrub (RSS), and riparian habitats (Appendix P.1 at pg.1), although the "riparian habitats" actually represent a number of rare riparian plant community types that are identified as Southern Cottonwood Willow Riparian Forest and Southern Willow Scrub / Mulefat Scrub. As stated in our original DEIR comments, our scoping comments (submitted on 8/21/12) requested that current protocols and classification hierarchies be used in the EIR with regards to plant communities, they were not, so we still have difficulty in actually evaluating what's on the proposed project site and therefore the accuracy of the impact analysis. The vegetation community descriptions still do not follow currently used community classification hierarchy and still are not mapped using the State of California's Vegetation Alliances and Associations². "Cross walks" to current vegetation classifications are still missing in the RDEIR.

¹ <http://www.realtytrac.com/statsandtrends/foreclosuretrends/ca/san-bernardino-county>

² http://www.dfg.ca.gov/biogeodata/vegcamp/natural_comm_list.asp

We still take strong issue with the mischaracterization of the “disturbed RSS”, which may have some level of disturbance from past land use and fire, but which appears to be recovering from those disturbances as discussed in our DEIR comments at pg.3. This plant community still provides habitat as noted in Appendix P.2 (at PDF pg 3 – Appendix P.2 has no page numbers) where a pair of least Bell’s vireos and a juvenile “were observed foraging in the riparian habitat as well as the adjacent buckwheat (*Eriogonum fasciculatum*) dominated Riversidean sage scrub (RSS) plant community...”. Clearly this “disturbed RSS” has value now and would continue to mature, potentially providing greater habitat value in the future. The RDEIR wrongly determines that no mitigation is required for this rare plant community that is foraging habitat for the federally and state threatened least Bell’s vireo (RDEIR at pg. 5.4-35c).

Inadequate mitigation ratios

The RDEIR proposes inadequate mitigation ratios for impacts to rare communities and species habitat. For example, to offset impacts to the San Bernardino kangaroo rat which uses RAFSS, the proposed mitigation ratio is 2:1 for intermediate RAFSS and 1:1 for mature RAFSS (RDEIR at 1-9). Impacts to riparian areas are also proposed to be inadequately mitigated at 2:1 (RDEIR at 1-10). No mitigation is required for impacts to RSS! The proposed ratios are wholly inadequate to offset the impacts. At a minimum the mitigation ratio for these rare plant communities and the rare species that they support is 5:1. At a minimum the RSS needs to be mitigated at 1:1 because the project site will forever be unavailable as habitat for the suite of species that calls RSS home. Even with these more reasonable mitigation ratios, we note that the project will cause a net loss to the rare communities and the species they support³.

The RDEIR is unclear on the *need* to impact these rare communities. For example, 23.9 acres of “intermediate RAFSS” and 36.7 acres of “mature RAFSS” is proposed for impact. These communities occur at the edges of the proposed project (Figure 5.4-6) for the most part, and avoidance through project reconfiguration could eliminate the direct impact to this rare plant community and the species that depend on it, including the San Bernardino kangaroo rat. Avoidance of impact would greatly benefit the species and reduce the mitigation costs, uncertainties and permitting requirements. Therefore, we urge the City to require avoidance of these rare resources through project redesign.

B. Rare Plants

The RDEIR still fails to evaluate the indirect effects to the Santa Ana River woolly star (SARWS). It also fails to secure the area from future development through requiring a conservation easement to be established on all areas that support rare resources including the SARWS area and held by a 3rd party conservation entity. Additionally, ongoing monitoring of the population needs to be included as part of the avoidance obligation from indirect impacts to assure that it is “avoided throughout Project implementation”. Establishing a baseline population and range now is the only way to determine if avoidance is

³ Moilanen et al. 2009

occurring, and mitigation measures need to be included that trigger adaptive management if the population declines because of direct or indirect impacts from the proposed housing tract.

While the SARWS is the only federally and state listed plant currently found on the proposed project site, three other rare species were also located on site. A complete analysis of indirect impacts to these species was also not provided in the RDEIR and was also dismissed because the areas where they occur will not be developed (see Indirect Impacts below). A similar baseline and adaptive management strategy as discussed above for the Santa Ana River woolly star needs to be put in place for these species as well.

Because CDFW considers elderberry trees as a valuable resource, our DEIR comments requested that a reckoning on the number and location of elderberry trees/shrubs be identified and analyzed for project impacts. The RDEIR fails to address this issue, leaving the public and the agencies in the dark about project impacts.

C. Rare Animals

The RDEIR updates the presence and successful breeding of the least Bell's vireo on the site, but is mute on the status of the southwestern willow flycatcher and the California gnatcatcher. While we support consultation with the wildlife agencies on these species, a stronger and more recent baseline on presence/breeding for all the listed species should have been included. Also additional avoidance measures need to be included. Clearly comprehensive species specific surveys following agency approved protocols have resulted in new documentation of least Bell's vireo on the site – the only rare avian species for which surveys were implemented.

The RDEIR fails to address the inadequacy of the surveys and impact analysis for the federally endangered San Bernardino kangaroo rat (SBKR). We remain highly concerned about impacts to this species and the failure to adequately avoid, minimize and if necessary mitigate impacts to the SBKR. Outstanding issues on barriers/fencing, access restrictions, use of rodenticides, non-leashed outdoor pets (including cats), invasion by non-native species, fire-clearance requirements, water quality impacts from runoff and other direct impacts remain at issue. The RDEIR does not address a key concern identified in our comments on the DEIR - how many acres of SBKR critical habitat (and now possibly federally designated Santa Ana sucker critical habitat as well) will be directly and indirectly impacted by the development? The purpose of critical habitat is not just to protect occupied habitat, but to provide for *recovery* of listed species. Listed species are already well down the path to extinction and absent adequate habitat to re-establish the species population numbers that critical habitat provides, will likely continue their decline towards extinction. No analysis of the impact to Critical Habitat is included. Critical habitat should be analyzed at the planning stage not only to prevent any "take" of or jeopardy to the species, but also to promote recovery of the listed species. *See Sierra Club v. U.S. Fish & Wildlife Service, 2001 U.S. App. LEXIS 3936 (5th Cir. 2001)*. The failure of the RDEIR to analyze adverse modification of Critical Habitat for the San Bernardino kangaroo rat (and the Santa Ana sucker) remains a glaring omission in the impact analysis and renders the RDEIR and the DEIR still highly

inadequate. This new information, not analyzed in the EIR, shows a new, substantial environmental impact resulting from the project. CEQA Guidelines §15088.5.

The RDEIR still fails to analyze downstream impacts to this federally threatened Santa Ana sucker (or its critical habitat). Downstream existing project impact have been documented by the U.S. Geological Survey and others as noted in our original DEIR comments⁴. The RDEIR fails to address our DEIR comments about the lack of analysis of the direct impact to federally designated critical habitat for the Santa Ana Sucker which appears in Figure 5.4-2 of the original DEIR. As with our comments above on avoidance, it seems that a reconfiguration of the proposal to remove direct impacts to the critical habitat is beneficial for the species and the project.

The RDEIR remains mute on the impacts to the state fully protected white-tailed kite (Cal. Fish & Game Code § 3511) which was documented to occur on the proposed project site in the DEIR (at PDF pg. 181). We believe the impacts to this species (and others) could be addressed through a Natural Communities Conservation Planning effort, which should be undertaken for this proposed project site in light of the numerous rare species documented to occur there, and the requisite wildlife agency permitting process that is required.

The RDEIR fails to address the issues identified in our DEIR comments regarding the State and federally endangered mountain yellow-legged frog. We still believe that the proposed project area provides habitat for this highly imperiled species and that absent the required surveys, the environmental review has inadequate data to state that the frog is not present. (see our comments on the DEIR)

The RDEIR fails to address issues with other species of special concern that were raised in our DEIR comments. Concerns about burrowing owls, golden eagles, and other rare species still remain and need to be addressed more comprehensively in the environmental review.

D. Mill Creek Bridge

Appendix P.4 gives a very generalized and inadequate description of this project that will impact federally designated critical habitat for the SBKR and the SAS. As detailed further below, the proposed project appears to be reliant upon the “future” bridge. Therefore, it needs to be fully analyzed in the environmental review for this project, not piecemealed into a future environmental review.

E. Migratory Birds

The RDEIR is mute on the impact analysis of the proposed project on migratory birds after project construction – another issue identified in our comments on the DEIR. Direct

⁴ <http://pubs.usgs.gov/of/2009/1097/pdf/OF2009-1097.pdf> ; <http://www.pe.com/local-news/topics/topics-environment-headlines/20140414-santa-ana-river-invasive-red-algae-clouds-fish-habitat.ece>

impacts associated with this include loss of habitat, domestic cats and building strikes and a number of indirect impacts will also occur

F. Movement Corridors

The RDEIR has improved the wildlife movement corridor in the general project area and discusses some safeguards to maintain effectiveness, which we support. As with other onsite conservation, the RDEIR fails to require securing the area from future development through requiring a conservation easement to be established on all areas that support rare resources including the movement corridor area and held by a 3rd party conservation entity.

II. The Project Fails to Adequately Disclose or Analyze the Likely Environmental Impacts of the Mill Creek Bridge which the Project will Likely Rely Upon

CEQA “forbids piecemeal review of the significant environmental impacts of a project. Agencies cannot allow environmental considerations to become submerged by chopping a large project into many little ones — each with a minimal potential impact on the environment — which cumulatively may have disastrous consequences.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012), 211 Cal. App. 4th 1209, 1210.) A new bridge over Mill Creek is inextricably linked to the Project and therefore should have been fully analyzed in the RDEIR. As we noted in our comments on the DEIR, the Project is the key impetus behind the construction of a bridge over Mill Creek and the majority of the users of the bridge will be Harmony residents and visitors.

However, the RDEIR simply ignores this link and leaves analysis of the environmental impacts of the bridge to some future date and some future environmental report by the City of Highland. The likely location of the bridge suggests it will have an impact on RAFSS habitat and much of the wildlife found on the Project site. While the RDEIR notes these potential impacts, the analysis is cursory with little information. (RDEIR 7.12a.) These impacts should be fully disclosed and analyzed in the RDEIR so they can be taken into account *prior* to the approval of the Project. Delaying analysis of the bridge leaves the true environmental impact of the Project uncertain. Any conclusions on the overall cumulative impacts of the Project remain incomplete because an inadequate analysis of the bridge’s environmental impacts has been completed so far. In order for the RDEIR to comply with CEQA, a complete and thorough analysis of the bridge’s likely impacts to air quality, biological resources, traffic, greenhouse gas emissions, noise and other potential environmental impacts must be completed. It is insufficient for the RDEIR to defer analysis of a component of the Project to some future date while allowing the remaining portions of the Harmony Project to move forward.

III. The RDEIR Fails to Fully Analyze and Adequately Mitigate the Project's Significant Air Quality Impacts

The RDEIR acknowledges that the Project will result in significant air quality impacts and exceed federal air quality standards, yet fails to fully mitigate these significant environmental impacts. Californians, particularly those that live in San Bernardino County, experience some of the worst air quality in the nation. Poor air quality and increased air pollution has been linked to substantial public health impacts including asthma, heart disease and death. In light of these potential serious consequences for surrounding communities, it is critical that air quality analysis be rigorous and considers all feasible mitigation measures. The RDEIR is required to fully analyze the Projects' direct, indirect, and cumulative contribution to deteriorating air quality.

The RDEIR notes, the Project will result in NO₂ levels that exceed federal standard during construction. (RDEIR 5.3-18-20.) The Project is also anticipated to have cumulative considerable increase in emissions due to operational-related VOC, CO, PM-10 and PM-2.5. However, the RDEIR fails to fully disclose, analyze or mitigate for the significant public health hazards from these air pollutants.

Particulate matter (PM) is a category of pollutant which includes the respirable particles suspended in the the air. PM is classified into "coarse" particles, PM₁₀, or those under 10 microns in diameter, and "fine" particles, PM_{2.5}, or those under 2.5 microns in diameter, and comes from a variety of sources including diesel exhaust, windblown dust from agriculture and construction and motor vehicles. Because the human respiratory system's ability to filter out harmful particles decreases as particles size decreases, the smallest particles lodge deepest in the lungs and are especially dangerous. PM can contain at least 40 toxic chemicals including heavy metals, nitrates, sulfates, and aerosols, as well as soot, soil, and dust.

PM is associated with extreme health consequences. PM causes premature death, aggravates asthma, increases coughing, painful breathing, and chronic bronchitis, and decreases lung function. Lung inflammation caused by inhaling PM can also lead to changes in heart rhythm, constriction of blood vessels, blood coagulation, and increased risk of heart attacks. Unlike what is believed about some other air pollutants, there is no "safe" level of PM pollution: even very low levels of PM lead to health impacts. (Environmental Working Group, Particle Civics, How Cleaner Air in California Will Save Lives & Money, at p. 25 ("EWG 2002")). One study found that in Riverside County alone, 353 deaths per year are due to current PM10 levels, and 42,149 asthma attacks per year are due to current PM10 levels. (EWG 2002 at 19). The EIR's failure to address basic information on the link between air quality, health impacts, and impacts to biological resources render it inadequate. This and other information must be analyzed in a revised EIR so that the project's air quality impacts can be analyzed in the full environmental context.

Similarly, repeated exposure to ozone pollution for several months may cause permanent lung damage. Children, the elderly, and those with respiratory problems are most

at risk, but anyone who spends time outdoors may be affected. Even at very low levels, ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to pneumonia and bronchitis. Therefore, a revised RDEIR must analyze these indirect impacts on the surrounding environment and public from the Project's anticipated air pollution.

CEQA's substantive mandate is clear, "each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Pub. Res. Code § 21002.1(b) (emphasis added). Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). There are numerous mitigation measures that could be adopted to reduce the significant air quality impacts associated with this project. Many of the mitigation measures outlined to reduce the significant impacts associated with greenhouse gas emissions can reduce criteria pollutants.

The RDEIR should also thoroughly investigate all potential mitigation measures and alternatives that could reduce air pollutant emissions levels and alleviate any potential significant impact. The RDEIR makes no attempt to analyze mitigation measures or alternatives that would alter the size of the Project in order to reduce its air quality impacts. Alternatives that propose different uses for the Project other than massive housing construction would result in substantially less air quality impacts and should have been analyzed by in the RDEIR. As more and more Californians suffer from the serious health impacts associated with deteriorating air quality, the City of High should be working on reducing air emissions rather than eagerly approving Project that will only deteriorate air quality further. By failing to fully analyze potential mitigation and alternatives that would reduce this significant environmental impact, the RDEIR violates CEQA and requires further revision.

Conclusion

Thank you for the opportunity to submit comments on this proposed Project. We look forward to working to assure that the Project and environmental review conforms to the requirements of state law and to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. In light of many significant, unavoidable environmental impacts that will result from the Project, we strongly urge the Project not be approved in its current form. Please do not hesitate to contact the Center with any questions at the number listed below. We look forward to reviewing the City's responses to these comments in the Final EIR for this Project once it has been completed.

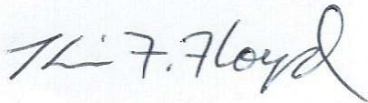
Sincerely,

A handwritten signature in black ink, appearing to read "Anne Parker". The signature is fluid and cursive, with a large initial "A" and "P".

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