



**San Bernardino Valley  
Audubon Society**

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*via electronic mail*

October 24, 2014

Kim Stater  
City Planner  
27215 Base Line  
Highland, CA 92346  
[kstater@cityofhighland.org](mailto:kstater@cityofhighland.org)

Re: Draft Harmony Specific Plan Project

Dear Ms. Stater:

These comments are submitted on behalf of the Center for Biological Diversity (“the Center”), San Bernardino Valley Audubon Society (“SBVAS”) regarding the draft Harmony Specific Plan Project (SPR-011-001). The environmental impacts analysis for the Harmony Specific Plan (“Project”) makes clear that if the Project is allowed to move forward it will result in significant environmental impacts. 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. The Center and SBVAS have submitted detailed comments on these impacts through the public comment process for the Environmental Impact Report for the Project. Those comments are incorporated into this letter and have also been attached for your reference. For the reasons detailed below and noted in prior comments, we urge approval of the Specific Plan be denied, or at the very least substantial revisions be made to the Project to better mitigate or avoid its 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.

### **I. The Specific Plan Fails to Adequately Protect the Site's Many Biological Resources**

The draft Specific Plan includes Site Opportunities and Constraints Map (Exhibit 3-4) that indicates location of threatened and endangered species observations, federally designated critical habitat for the San Bernardino kangaroo rat and the Santa Ana sucker, as well as rare plant communities (Riversidean alluvial fan sage scrub, southern willow scrub) and geologic features. This map illustrates how exceptional the site is because of the number of federally and state endangered and threatened plants and animals that occupy the site, the federally designated critical habitat, which is key to species recovery<sup>1</sup>, and the rare plant communities. This site harbors some of the remaining unique pieces of southern California's natural heritage that make southern California one of the world's biodiversity hotspots.<sup>2</sup>

The draft Specific Plan fails to recognize (except for the map), plan for or disclose the outstanding plants and animals, including non-listed but rare species on the site. The draft Specific Plan is mute on the value of the landscape, the rare and endangered species, nor does it impress the value of the adjacent Santa Ana River. Indeed the Open Space element is relegated to a single paragraph. Clearly the Specific Plan needs to be vastly improved to disclose, protect and conserve these unique landscapes, plants and animals for future generations.

### **II. The Specific Plan Should Include Greater Access to Public Transit & Reducing Residents' Daily Vehicles Miles Traveled**

The draft Specific Plan includes discussion on encouraging bike and pedestrian walkways while also reducing traffic congestion within the Project site. While the Specific Plan anticipates the inclusion of two public transit stops within the Project site, greater access to public transit is needed. The Project's location and phased development plan will require early residents to travel daily outside of the Project site for groceries, jobs and other needs. This increase in traffic will not lower quality of life within and around the community, increased traffic will also degrade local air quality. Therefore, the Specific Plan should include further measures to encourage use of public transit and shared vehicle use. The size and scope of the Project warrant greater incorporation and accessibility to public transit.

As the draft Environmental Impact Report made clear, the Project will result in significant air quality impacts that exceed federal air quality standards. Yet, the Project fails to include all feasible measures to reduce these negative air quality impacts. Californians,

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<sup>1</sup> <http://www.biologicaldiversity.org/publications/papers/bioscience2005.pdf>

<sup>2</sup> <http://www.cepf.net/resources/hotspots/North-and-Central-America/Pages/California-Floristic-Province.aspx>

particularly those that live in San Bernardino County, are already feeling the serious health consequences of poor air quality. Increase air pollution has been linked to asthma, heart disease and even death. Rather than approving projects that only add to this important public health program, we urge the City of Highland to support projects will improve air quality for the local community.

Thank you for the opportunity to submit comments on the Harmony Specific Plan. 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 approval of the Harmony Specific Plan, we strongly urge the Project not be approved in its current form.

Sincerely,



Aruna Prabhala  
Staff Attorney  
Center for Biological Diversity  
351 California St, Suite 600  
San Francisco, CA 94104  
Ph: (415) 436-9682 ext. 322  
[aprabhala@biologicaldiversity.org](mailto:aprabhala@biologicaldiversity.org)



Drew Feldman  
Conservation Chair  
San Bernardino Valley Audubon Society

## **Attachments**

Comments on RDEIR for Harmony Project submitted by Center for Biological Diversity, San Bernardino Valley Audubon Society and Sierra Club (June 4, 2014)

Comments on DEIR for Harmony Project submitted by Center for Biological Diversity, San Bernardino Valley Audubon Society and Sierra Club (October 13, 2014)

# **Attachment 1**



San Bernardino Valley  
Audubon Society



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*via electronic mail and USPS*

June 4, 2014

Kim Stater  
City Planner  
27215 Base Line  
Highland, CA 92346  
[kstater@cityofhighland.org](mailto:kstater@cityofhighland.org)

Re: 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 Geronio Chapter of the Sierra Club regarding the Draft Environmental Impact Report (“DEIR”) for the Harmony Specific Plan Project (SPR-011-001). The Project is anticipated to result in many significant environmental impacts that will degrade the current ecosystem on the Project site and also reduce the health and quality of life in the surrounding community. For the reasons detailed below, we urge approval of the Project be denied t, or at the very least substantial revisions to the DEIR 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 Geronio Chapter of the Sierra Club focuses on issues within the inland empire, including San Bernardino County.

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

The proposed Harmony project is located at the confluence of the mainstem of the Santa Ana River, below Seven Oaks Dam, and Mill Creek and shares a northeastern boundary with the San Bernardino National Forest. Because of its strategic location, 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.<sup>1</sup>

The impacts of this large development project will be severe, particularly given the size and scope of the proposed development as well as the location of the project within a regionally critical wildlife movement corridor (see discussion below). Unfortunately, the DEIR's analyses of direct, indirect, and cumulative impacts to biological resources are woefully inadequate, as described in further detail below.

### **A. Rare Plant Communities**

Despite the fact that 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 have difficulty in actually evaluating what's on the proposed project site and therefore the accuracy of the impact analysis. While the vegetation community descriptions do not follow currently used community classification hierarchy and is not mapped using the State of California's Vegetation Alliances and Associations<sup>2</sup>, it appears that the proposed Harmony project would result in the overall direct loss of or impacts to the following sensitive and rare plant communities:

- Riversidian Alluvial Fan Sage Scrub (RAFSS)<sup>3</sup>
- Riversidian Upland Sage Scrub, and
- Two or three types of riparian - Southern Cottonwood Willow Riparian Forest and Southern Willow Scrub / Mulefat Scrub

While the DEIR describes a "Riversidean Sage Scrub" and a "Southern Willow Scrub/Mulefat Scrub", current plant community classifications do not recognize these types of communities<sup>4</sup> and there is no cross walk to current classifications in the DEIR. However, they seem to all fall

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

<sup>2</sup> [http://www.dfg.ca.gov/biogeodata/vegcamp/natural\\_comm\\_list.asp](http://www.dfg.ca.gov/biogeodata/vegcamp/natural_comm_list.asp)

<sup>3</sup> [http://www.sbcounty.gov/museum/exhibits/etiwandafan/alluvialfan\\_sagescrub.htm](http://www.sbcounty.gov/museum/exhibits/etiwandafan/alluvialfan_sagescrub.htm)

<sup>4</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=24716&inline=1>

into vegetation types are rare plant communities tracked by the California Department of Fish and Wildlife (CDFW)<sup>5</sup>.

The Vegetation Map (DEIR at PDF pg. 172) also maps 668 acres of “disturbed RSS”, however, in the description of the plant community, it states that “the disturbed RSS is composed of California buckwheat (*Eriogonum fasciculatum*), primarily in the central portion of the site. California buckwheat is typically used to re-vegetate areas that have been disturbed and is one of the early pioneer species encountered during natural recovery of a native RSS plant community. Other areas of disturbed RSS are dominated by brittle bush (*Encelia farinosa*) and California sagebrush (*Artemisia californica*)”. (DEIR at PDF pg. 173). This description suggests that these areas are recovering from disturbance with no mention of any non-native species. This recovering habitat indeed has value now and will continue to mature, potentially providing greater habitat value, if left undisturbed. Therefore it appears that the DEIR downplays the value and uniqueness of this plant community type by labeling it as “disturbed”.

The lack of accuracy for a rare plant communities makes accurate impact analysis, including avoidance, minimization and if necessary, substantial mitigation impossible based on the descriptions in the DEIR. The fact that almost half of the on-site plant communities acreage is made up of rare plant communities points to the fact that the proposed project is poorly sited in an area rich with highly imperiled plants and animals. These rare plant communities are classified as sensitive by the State of California and require special protection, because they are being lost at an alarming rate locally, regionally, and state-wide. The DEIR downplays the existing these unique on-site resources and fails to avoid adverse impacts to these sensitive plant communities. Furthermore the proposed project fails to avoid or minimize impacts to these rare plant communities and the DEIR proposes woefully inadequate mitigation. At a minimum the mitigation ratio for these rare plant communities and the rare species that they support is 5:1. Even with this more reasonable mitigation ratio, we note that the project will cause a net loss to the rare communities and the species they support<sup>6</sup>.

In addition to the inadequate mitigation ratio, there are several problems with the mitigation as proposed. First, it only proposes mitigation for RAFSS, and is completely mute on Riverside Upland Sage Scrub mitigation, which is also a rare and decreasing community. It also fails to adequately evaluate the impacts to the riparian areas, by dismissing all impacts because no direct impacts are proposed (see indirect impacts below). The mitigation as proposed is also inadequate for the following reasons:

- 1) It is our understanding that very few credits remain in the Cajon Creek Conservation Bank, too few to mitigate for this large of an impact as the project is currently proposed.
- 2) The Riverside-Corona RCD does not operate in the same *county* in which the project is proposed. Mitigation needs to occur in the same area to offset the local impacts, not export it.
- 3) It is unclear why “restoration and long-term management of mature RAFSS to intermediate habitat” would be considered as a mitigation measure at all. Mature RAFSS

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<sup>5</sup> [IBID](#)

<sup>6</sup> Moilanen et al. 2009



is just as valuable habitat to a certain suite of species as intermediate habitat. A mitigation measure needs to insure that ecological processes remain intact in order to sustain “intermediate habitat” RAFSS.

4) It is unclear that adequate amounts of “low quality” RAFSS is available for enhancement, and certainly it would need to be acquired and enhanced at a much greater “mitigation ratio” than acquisition of undisturbed RAFSS.

Additionally, it is not at all clear that adequate mitigation is even available for acquisition to “offset” the permanent impact. A supplemental EIR must propose a reasonable avoidance, minimization and mitigation scenario. Indeed, the recovery Riversidian Upland Sage Scrub and the other numerous on-site valuable biological resources, suggest that this area is more suitable for the establishment of a mitigation bank, not another housing development.

## **B. Rare Plants**

The DEIR fails to identify the extent and number of Santa Ana River woolly star plants on the proposed housing development site. Instead it states “The small population of SARWS found along the western boundary of the proposed Project property would be avoided throughout Project implementation. This population of SARWS is located west of Greenspot Road in an area that is not planned for development. Since the existing populations of SARWS occur in a portion of the site that would not be developed, there would be **no direct impact to this species from Project development**” (emphasis original from DEIR at PDF pg. 193).

While the “mitigation” for the Santa Ana River Woolly Star is non-development of its habitat, the DEIR fails to evaluate the indirect effects. Also, in order to secure the area from future development, a conservation easement held by a 3<sup>rd</sup> party conservation entity, should be established on all areas that support rare resources including the SARWS area. Additionally, ongoing monitoring of the population needs to be included 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 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 DEIR 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.

The DEIR discusses the endangered Santa Ana River woolly star and slender-horned spineflower in the context of the improvements and expansion of Garnet Street, including the section that goes over Mill Creek (DEIR at PDF pg. 195). It is unclear what the scope of the improvements and expansion are. It is unclear if surveys were done for these species or any rare species. Indeed this area is not included in the vegetation map or as part of the project. If road

improvements are part of the project, then a clear, comprehensive proposed action should be identified and adequate surveys and analyses provided. The brief paragraphs about this road's improvements are confusing and are a completely inadequate impact analysis.

### **C. Rare Animals**

A dozen rare animals were documented to occur on the proposed project site, including the federally protected southwestern willow flycatcher, which is also protected under the State Endangered Species Act as an endangered flycatcher and the federally and State endangered least Bell's vireo (DEIR at PDF pg. 180-181). Both of these endangered species were documented as nesting on the proposed project site (DEIR at PDF pg. 200-201). Additionally, the federally endangered San Bernardino kangaroo rat also is present on the proposed project site (DEIR at PDF pg. 180) as is the State fully protected white tailed kite (DEIR at PDF pg. 181). Eight other species of concern were also documented to occur on the site. Another twelve rare and endangered species were evaluated to have high to moderate potential to occur on the proposed project site. (DEIR at PDF pg. 180-181). The documented occurrence of and potential for so many rare species highlights the biological significance of this site.

#### **i. Southwestern Willow Flycatcher and Least Bell's Vireo**

Even with the documented occurrences of these rare and endangered species, the DEIR fails to appropriately analyze the impacts of the proposed project, and indeed in many instances downplays the species impacts. For example, the nesting southwestern willow flycatcher and least Bell's vireo impact analysis consist of two sentences each – for the southwestern willow flycatcher the DEIR states “There would be **no direct impacts to SWWF** as a result of the proposed Project. Indirect impacts could occur if access to the area is open and recreational and other unauthorized uses were to occur.” (DEIR at PDF pg. 200 – original emphasis) and for the least Bell's vireo it states “There would be no direct impacts to LBVI as a result of the proposed Project. Indirect impacts could occur if access to the Morton Canyon area is open and if unauthorized uses occur.” (DEIR at PDF pg. 201). In both of these cases, the DEIR fails to evaluate the impacts to the species from the proposed project, based on the fatal flaw that no impacts would occur from construction and presence of a housing tract in the surrounding habitat. Direct impacts from non-leashed outdoor pets (including cats), invasion by non-native species, fire-clearance requirements, water quality impacts from runoff including but not limited to fertilizers and herbicides etc. are simply unaddressed in the DEIR. Additionally indirect impacts are not analyzed either including but not limited to edge effects (see comments below). The Center shares the concerns about the survey methodology and failure to report incidental sightings of least Bell's vireo on the proposed housing tract site that were submitted by San Bernardino Valley Audubon Society on May 4, 2014 and incorporate those comments here.

#### **ii. San Bernardino Kangaroo Rat**

As with the birds, impact analysis for the federally endangered San Bernardino kangaroo rat is also woefully inadequate. For example, the analysis of impacts for this species is “The proposed Project may result in direct impacts to SBKR from the loss of RAFSS habitat and in

indirect impacts from release of storm water into the RAFSS habitat or from recreational and unauthorized uses within conserved RAFSS areas. With **implementation of mitigation measures MM BIO 1 and MM BIO 2 potential direct and indirect impacts to SBKR are reduced to less than significant levels.**” (DEIR at PDF pg. 199 – emphasis original). MM BIO 1 fails to address the direct and indirect impacts because it simply proposes non-development of certain areas “31.8 acres of the RAFSS habitat supporting Santa Ana River woolly star along the site’s western boundary as well as the riparian habitats in Morton Canyon” (DEIR at PDF pg. 216). The San Bernardino kangaroo rat found on site was not even located in these areas. BIO 1 also proposes to restrict access and put up barrier/fences. It is unclear what types of barrier/fences are envisioned for installation and what the impact of the barrier/fences and the barrier/fences installation and maintenance will be. BIO 2 proposes inappropriate acquisition/restoration for RAFSS (discussed above). The DEIR fails to discuss other direct impacts from non-leashed outdoor pets (including cats), invasion by non-native species, fire-clearance requirements, water quality impacts from runoff, the use of rodenticides in the developed areas, and other direct impacts. . Additionally indirect impacts are not analyzed either including but not limited to edge effects (see comments below).

Part of the project falls within the federally designated critical habitat for the San Bernardino kangaroo rat. The DEIR fails to identify how many acres of critical habitat 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” or of 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 (5<sup>th</sup> Cir. 2001)*. The failure of the DEIR to analyze adverse modification of Critical Habitat for the San Bernardino kangaroo rat (and the Santa Ana sucker – see below) is unfathomable. The DEIR has abjectly failed to provide the public and decision makers with the information necessary to make an informed opinion as to the project’s likely impacts to biological resources.

These omissions alone render the EIR inadequate and require recirculation. This new information, not analyzed in the EIR, shows a new, substantial environmental impact resulting from the project. CEQA Guidelines §15088.5.

### **iii. Santa Ana Sucker Fish**

While the DEIR mentions the Santa Ana sucker fish and its critical habitat, the DEIR fails to analyze downstream impacts to this federally threatened species (or its critical habitat – see below). The U.S. Geological Survey has documented impacts to fish in the downstream portions of Santa Ana River from effluents containing organic wastewater compounds and urban runoff<sup>7</sup>. The proposed project will add additional pollutants into the Santa Ana sucker critical habitat, and the DEIR fails to analyze the impacts from this activity. In addition, new threats

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<sup>7</sup> <http://pubs.usgs.gov/of/2009/1097/pdf/OF2009-1097.pdf>

from the introduction on non-native algae from urban runoff into sucker habitat have been identified<sup>8</sup> and need to be evaluated in the DEIR.

Additionally it appears in Figure 5.4-2 (DEIR at PDF pg. 184) that the project boundary overlaps federally designated critical habitat for the Santa Ana Sucker. This acreage is not identified in the DEIR. A supplemental EIR needs to be produced that evaluates both direct and indirect impacts to critical habitat for the Santa Ana sucker fish and should be focused on avoidance and minimization.

**iv. California Gnatcatcher**

The shortcomings in the surveys for and identification of the California gnatcatcher are well documented in San Bernardino Valley Audubon Society's letter dated May 4, 2014 and we incorporate those comments fully here.

While we recognize that critical habitat designation for the California gnatcatcher was removed from the proposed project area in 2007, it does not relieve the DEIR from avoiding, minimizing and mitigating impacts to the Riversidian Upland Sage Scrub community, upon which the California gnatcatcher relies for habitat needs.

**v. White Tailed Kite**

The DEIR documents the presence of the state fully protected (Cal. Fish & Game Code § 3511) white tailed kite on the proposed project site (DEIR at PDF pg. 181). No analysis is provided of the impacts to this species from the proposed housing tract, despite the fact that the kite will be displaced from foraging in the area which will impact it.

**vi. Mountain Yellow Legged Frog – Southern California Distinct Population Segment**

The DEIR dismisses the potential presence of the State and federally endangered mountain yellow-legged frog stating,

“Suitable habitat for the Sierra Madre yellow-legged frog (*Rana muscosa*) populations in the San Gabriel and San Bernardino Mountains include white alders, willows, sycamore, cottonwoods, conifers, and maples. The riparian habitat needs to extend at least 80 meters (262 feet) from the centerline of the stream to provide adequate areas for feeding and movement of yellow-legged frog, with a canopy overstory not exceeding 85 percent to allow sunlight to penetrate the canopy and reach the stream in order to provide basking areas for the species. While Morton Creek supports the necessary riparian vegetation and provides a year around source of water, the canyon is very steep and the stream confined to a very narrow corridor, well short of the requisite 80 meters from centerline to bank.”

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<sup>8</sup> <http://www.pe.com/local-news/topics/topics-environment-headlines/20140414-santa-ana-river-invasive-red-algae-clouds-fish-habitat.ece>

(DEIR at PDF pg. 176). No citation for the 80 meter from centerline of stream is provided. Indeed, the U.S. Fish and Wildlife Service’s five year review on the species states “in mountain yellow-legged frog occupied habitat, riparian zone widths ranged from 8 to 25 m (26 to 82 ft), with canyon walls typically rising steeply on either side. The riparian zone, with the associated vegetation canopy, is necessary to maintain the prey base needed for the nutritional requirements of the mountain yellow-legged frog.”<sup>9</sup> The DEIR appears to be at odds with the habitat science that U.S. Fish and Wildlife Service has documented for this critically endangered species. Morton Creek appears to provide all the habitat requirements for this species. Indeed the mountain yellow legged frog is known from streams in the general area of the proposed housing development<sup>10</sup>. Without targeted surveys for this highly imperiled species, the DEIR is incomplete in its environmental review.

**vii. Other Species of Special Concern**

The DEIR notes numerous other sensitive species either occur or have moderate to high potential to occur on site (DEIR at PDF pgs. 177-179 and 180-181). These species are regionally declining and this proposed project will only lead to further declines in these species, pushing them closer to extinction risks.

*a. Burrowing Owl*

Although on-site habitat was identified on the proposed project site for burrowing owl, the DEIR and appendices do not document protocol level surveys being implemented for burrowing owls in compliance with State of California requirements<sup>11</sup>. The DEIR also fails to incorporate the most recent guidance for burrowing owls from the California Department of Fish and Wildlife<sup>12</sup>. Because burrowing owls are in decline throughout California, and their “stronghold” in the Imperial County is documented to be declining severely, the burrowing owls on this proposed project site (and on other development projects) become even more important to species conservation efforts. The recirculated or supplemental DEIR needs to evaluate the potential impact of the proposed project on this regional distribution of owls.

Although habitat acquisition specifically for burrowing owls as part of a mitigation strategy is not addressed in the DEIR, it needs to be. Mean burrowing owl foraging territories are 242 hectares in size, although foraging territories for owl in heavily cultivated areas is only 35 hectares<sup>13</sup>. Mitigation acreage will need to be required – calculated using the mean foraging territory size times the number of owls that use the proposed project site.

The DEIR fails to identify if “passive relocation” will be used if burrowing owls are ultimately found on the proposed housing development site. While “passive relocation” does minimize immediate direct take of burrowing owls, ultimately the burrowing owls’ available

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<sup>9</sup> [http://ecos.fws.gov/docs/five\\_year\\_review/doc4001.pdf](http://ecos.fws.gov/docs/five_year_review/doc4001.pdf)

<sup>10</sup> CNDDDB 2014

<sup>11</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83842>

<sup>12</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>

<sup>13</sup> <http://www.fws.gov/mountain-prairie/species/birds/wbo/Western%20Burrowing%20Owlrev73003a.pdf>

habitat is reduced, and “relocated” birds are forced to compete for resources with other resident burrowing owls and may move into less suitable habitat, ultimately resulting in “take”.

b. *Golden Eagle*

The golden eagle (*Aquila chrysaetos*)—one of the largest raptors in North America—is protected under the federal Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.), and is also a fully protected species under California law (Cal. Fish & Game Code § 3511). Take of any eagle without a permit is prohibited under Federal law (16 U.S.C. § 668 et seq.). Take of golden eagles is also unlawful under California law and no permit may be authorized except in the context of an NCCP approved by the Department of Fish and Wildlife (see below) — without such an approval “take” of any golden eagle violates the law.

The DEIR documents that a golden eagle was seen on the proposed housing development site and “can be presumed to use the Project site for foraging” (at PDF pg.204). While no nesting was documented on the proposed site, the fact still remains that the loss of significant amounts of foraging habitat will decrease carrying capacity of the landscape and could result in a potential loss of habitat needed to support a nesting pair, which would impact reproductive capacity of golden eagles in the area. Because eagles have great fidelity to their nests and use the same nests for decades if not longer, the DEIR does not present information on nest locations. Indeed current federal guidance on eagle inventory and monitoring<sup>14</sup>, that the State of California also supports, identifies the minimum inventory and monitoring effort recommended for determining and evaluating potential golden eagle use of habitat including nest sites, roosts, and territories, and the rationale for identifying and evaluating foraging locations. It also outlines the minimum monitoring techniques to ascertain occupancy and reproductive success at territories.

Golden eagles have been documented to avoid areas that are developed in their territory.<sup>15</sup> Preferred prey species for golden eagles (black tailed jack rabbits and cottontails) were documented on the proposed housing development site (DEIR at PDF pg. 176). The DEIR does not clearly analyze the impacts to golden eagles under the Bald Eagle and Golden Eagle Protection Act, which prohibits, except under certain specified conditions, the take, possession, and commerce of such birds. “Take” of golden eagles by the project must be permitted under the Bald and Golden Eagle Protection Act. We believe, due to the impact to established golden eagle territories that the project must acquire a take permit under the Bald Eagle and Golden Eagle Protection Act. Impacts to golden eagle foraging, nesting and breeding activities and its habitat must be fully addressed in the EIR but were not, once the impacts are fully identified and analyzed, the EIR must include alternatives that would avoid these impacts, as well as minimization and mitigation measures.

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<sup>14</sup>[http://www.fws.gov/southwest/es/oklahoma/documents/te\\_species/wind%20power/usfws\\_interim\\_goea\\_monitoring\\_protocol\\_10march2010.pdf](http://www.fws.gov/southwest/es/oklahoma/documents/te_species/wind%20power/usfws_interim_goea_monitoring_protocol_10march2010.pdf)

<sup>15</sup> Walker et al. 2005

**viii. Need for a Habitat Conservation Plan and a Natural Communities Conservation Plan**

The impacts to the fully protected status species – the white-tailed kite and golden eagle - in conjunction with other federally and state-listed species and numerous other highly imperiled species that will all be negatively affected by this proposed project strongly suggests that the proposed project should undergo a project specific federal Habitat Conservation Plan (HCP) and a state Natural Communities Conservation Plan (NCCP), which would allow for “take” of fully protected species including the white tailed kite and the golden eagle, as well as other listed and non-listed but declining species of concern. A project specific HCP/NCCP is necessary because a fully protected species will be affected by the proposed project. The project can not rely on the Wash Plan (DEIR at PDF pg. 190), which has been envisioned for well over a decade, and is not even at the public review stage. Nor can it rely on the San Bernardino Valley MSHCP (DEIR at PDF pg. 190) because it is at a very preliminary stage at best.

**ix. Off-Site Roadway Improvements**

The DEIR discusses in “off-site roadway improvements” in several different places in the DEIR (PDF pg 195 and 198), but we failed to locate a map that shows the project boundaries for these proposed “improvements” nor do we find a map that indicates the types of plant communities and habitats in these areas. The DEIR also fails to accurately describe the existing conditions. It appears no San Bernardino kangaroo rat trapping was done in this area, despite it being in federally designated critical habitat and that the species has been trapped there in the past (DEIS at PDF pg. 198-199). We are very concerned about road widening and bridge widening across Mill Creek and the direct and indirect impacts to sensitive habitats and plant communities including federally designated critical habitat. As discussed above the DEIR fails to identify the amount of federally designated critical habitat that will be impacted here or anywhere on the proposed housing tract. A comprehensive environmental review is requisite for this component of the DEIR and should be included in a supplemental or revised EIR.

**x. Design Features**

The DEIR discusses that CDFW considers elderberry trees as a valuable resource (DEIR at PDF pg.192), with which we agree. However, the section does not document the number of elderberries that will be impacted nor does it identify the replacement ratio or survivorship requirements for them.

**xi. Missing Biological Assessment**

Because of the number of “listed” species that have potential for impact from the proposed housing tract, consultation with and seeking of permits for the “take” of endangered species from State and federal wildlife agencies (i.e. U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife) is requisite. As part of that process, typically a Biological Assessment is produced, but we fail to see such a document provided in the Appendices.

## **xii. Mitigation Measures**

MM BIO 3 only addresses impacts to migratory birds during the construction phase of the proposed project, but fails to address the on-going impacts resulting from a housing tract development displacing migratory bird habitat, as well as placing migratory birds into harm's way.

Moreover, indirect and off site impacts from the proposed project are not adequately identified or analyzed. The project will adversely affect an additional unknown number of acres of important habitats for imperiled species adjacent to the project area. It is important to bear in mind that "conservation" lands will still be seriously degraded by fuel modification and edge effects. The project is also directly in the path of a critical regional wildlife corridors connecting the San Bernardino and Crafton Hills. (See Movement Corridors below).

## **xiii. Movement Corridors**

The DEIR provides a map of the "existing wildlife corridors" (DEIR at PDF pg. 209) and cites the SC Wildlands Linkages as well as the County of San Bernardino's map "A Plan for Open Space and Trails for San Bernardino County". However, the linkages on the DEIR map do not align with the SC Wildlands linkages, and instead are more aligned with the proposed open space component of the proposed housing development. Indeed San Bernardino County's General Plan Open Space Element – Valleys and Mountains <sup>16</sup>– identifies broad wildlife corridors through the proposed project area that also are not aligned with the proposed wildlife linkage and corridors. The supplemental DEIR needs to more accurately incorporate

### **D. Edge Effects**

The EIR fails to evaluate indirect impacts to sensitive habitats, including impacts associated with the establishment of fuel modification zones, unpermitted recreational activities, the introduction of non-native plants, the introduction of pets, noise, and the loss and disruption of essential habitat due to edge effects.

The DEIR's "analysis" is inadequate and fails to quantify the effects and to adequately demonstrate how the design features will minimize impacts. The EIR fails to identify and properly evaluate impacts to species and ecosystems from invasive exotics species. Many exotic plant species invade disturbed areas and then spread into wildlands, carried by wind, fire, vehicle tires, etc.<sup>17</sup> Moreover, landscaping with exotic species within the housing units can easily be a vector for introducing invasive exotics into adjacent habitats, regardless of whether the slopes directly adjacent to natural areas are planted with natives.

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<sup>16</sup> <http://cms.sbcounty.gov/Portals/5/Planning/ZoningOverlaymaps/OpenSpaceValleyMtn.pdf>

<sup>17</sup> Bossard et al 2000



The discussion on invasive species also completely neglects to mention invasive nonplant species. The best available data on edge effects for southern California habitats document the collapse of native ant population due the invasion of argentine ants up to 200 m (650 ft) from irrigated areas<sup>18</sup>, and predation by house cats which decimate small vertebrate populations within 100 to 300 meters (radius of 32 ha home range reported by Hall et al. 2000)<sup>19</sup>.

Fuel modification could affect and degrade the biological resources in the areas proposed to maintain endangered species habitat. Maintaining appropriate, fully protected areas between these areas and soil-disturbing activities is critical to sustaining aquatic and riparian ecosystems<sup>20</sup>. Most of the current literature about estimating appropriate widths of riparian buffer strips takes into account the complexity of landscapes.

Watersheds are at serious risk of additional degradation from the proposed project. The DEIR fails to provide for reasonable, feasible mitigation measures to avoid and minimize adverse impacts to biological resources. For affected sensitive habitat and vegetation types, the EIR should have prioritized avoidance, followed by onsite habitat replacement at a mitigation ratio calculated to ensure success, followed by onsite restoration and enhancement, followed by off-site mitigation. The DEIR also fails to specify that the identification and purchase of mitigation areas, with establishment of effective long-term management, would occur prior to any grading.

Specific, feasible, and enforceable mitigation measures for impacts associated with fuel modification zones, unpermitted recreational activities, the introduction of non-native plants, the introduction of pets, noise, and the loss and disruption of essential habitat due to edge effects are available but were not incorporated in the EIR, including but not limited to the following:

- minimum 300-foot setbacks between developed area, including roads and fuel modification, and sensitive habitat areas;
- conditions prohibiting non-leashed outdoor pets (including cats)
- requiring, where appropriate, walls or fences that will inhibit domestic animals from harassing and harming native species including “cat-proof” fencing to prevent feral and house cats from accessing sensitive habitat
- capture programs to control feral cats
- techniques to control non-native invasive species
- prohibiting the use of rodenticides, pesticides and other toxic chemicals around homes
- requiring the use of native vegetation in landscaping

### **E. The Project Must Comply with the Endangered Species Act**

The project is subject to the Endangered Species Act (“Act”), and must fully comply with the Act’s provisions. Section 9 of the Endangered Species Act of 1973, and Federal regulations issued pursuant to section 4(d) of the Act, prohibit take of endangered and threatened species

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<sup>18</sup> Suarez et al. 1998

<sup>19</sup> Bock et al. 2002

<sup>20</sup> Erman et al. 1996; Reid and Hilton 1998

without a special exemption. 16 U.S.C. 1531 et seq. Section 7 of the Act requires Federal agencies to consult with the United States Fish and Wildlife Service (“USFWS”) should it be determined that their actions may affect federally listed threatened or endangered species. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct. Harm is further defined by USFWS to include significant habitat modification or degradation that actually kills or injures a listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by USFWS as an action that creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), such incidental taking is not considered to be a prohibited taking under the Act provided that such taking is in compliance with the Incidental Take Statement.

Approval of the proposed project will result in harm and harassment of the San Bernardino kangaroo rat by direct destruction of critical habitat. It will result in harm and harassment of the least Bell’s vireo and southwestern willow flycatcher and possibly the California gnatcatcher. These impacts of the sort that the Ninth Circuit has previously held constitute “take” of listed species. *Palila v. Hawaii Department of Land and Natural Resources*, 852 F.2d 1106, 1108 (9th Cir. 1988). (sheep grazing within the woodland habitat of the endangered Palila bird in Hawai’i caused habitat modification that constituted “take” under the ESA); *Forest Conservation Council v. Rosboro Lumber Co.*, 50 F.3d 781, 788 (9th Cir. 1995) (testimony of a biologist who declared that proposed timber harvest was reasonably certain to injure a northern spotted owl pair by significantly impairing their essential behavioral patterns, including breeding, feeding, and sheltering, if proved at trial, would demonstrate the reasonable certainty of harm necessary for an injunction under the ESA); *Marbled Murrelet.*, 83 F.3d at 1067-68 (enjoining logging of trees used by threatened seabird for nesting).

Just as in *Forest Conservation Council* and *Marbled Murrelet*, destruction of critical habitat on the site will significantly impair essential behaviors of listed species. This is not changed by the number of individual birds or the age of the trees. As the *Marbled Murrelet* court emphasized, “In this circuit, we have repeatedly held that an imminent threat of future harm is sufficient for the issuance of an injunction under the ESA.” 83 F.3d at 1064 (citations omitted). Private landowners, corporations, state or local governments, or other non-Federal landowners who wish to conduct activities on their land that might incidentally harm (or “take”) wildlife that is listed as endangered or threatened must first obtain an incidental take permit from the U.S. Fish and Wildlife Service. To obtain a permit, the applicant must develop a Habitat Conservation Plan (HCP), designed to offset any harmful effects the proposed activity might have on the species. No incidental take statement has been issued, and no Habitat Conservation Plan is present to allow for take of threatened species. The project cannot proceed in violation of the Endangered Species Act.

## **F. The DEIR Improperly Defers CEQA Mandated Environmental Review**

Many of the inadequacies of the DEIR identified in these comments can be attributed to the fact that the DEIR improperly defers identification and analysis of Harmony Specific Plan Development impacts, as well as formulation of specific mitigation measures, to later stages of project development. This deferral frustrates informed decision-making and violates CEQA.

“An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences.” CEQA Guidelines § 15151. *See Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association*, 42 Cal. 3d 929 (1986) (“the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.”); *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners*, 91 Cal.App.4th 1344 (2001); *Stanislaus Natural Heritage Project v. County of Stanislaus*, 48 Cal. App. 4th 182 (1996).

The DEIR also fails to adequately analyze the interface with adjacent Forest Service land area. No impact on illegal trails or other impacts to adjacent Forest Service land is fully disclosed. Failure to include information resulting from the Harmony project frustrates informed decision making regarding the project and denies the public’s an ability to comment on impacts resulting from the project.

## **II. The Analysis of the Project’s GHG Emission Impacts is Fundamentally Flawed and Incomplete**

The Project’s GHG emission impacts analysis relies on a legally impermissible comparison to make its significance determination rather than using existing environmental conditions. Only by using this misleading analysis and vague significance threshold of whether “the proposed Project generate greenhouse gas emissions, either, directly or indirectly that may have a significant impact on the environment,” the DEIR able to conclude that the Project’s GHG emissions are less than significant. (DEIR 5.7-31; 5.7-63-64.) However, to the extent the DEIR relies on 2020 “business as usual” or “No Action Taken” projections as a baseline for assessing the significance of greenhouse gas emissions under the Plan, it does so erroneously. (DEIR 5.37-62.)

### **A. The DEIR Uses an Improper Baseline For its GHG Significance Analysis**

Existing physical conditions in the project area are, with very limited exceptions, the baseline against which CEQA requires environmental effects to be measured. On the other hand, as described in the DEIR, the 2020 “No Action Taken” or NAT projection does not represent either existing physical conditions or a reasonable projection of future physical conditions.<sup>21</sup>

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<sup>21</sup> The California Supreme Court recently held that lead agencies may forgo a comparison with existing physical conditions, and instead rely solely on a comparison with projected future *physical conditions*, only where the existing conditions comparison would be misleading or without any informational value. *See Neighbors for Smart*

Rather, it represents a set of hypothetical development assumptions predicated on an alternate future scenario in which none of the state, regional, and local laws requiring greenhouse gas reductions taking effect after 2008 exist. (DEIR 5.7-34.) The DEIR relies *solely* on the NAT concept when making its significance determination and ignores completely the existing environmental conditions on the site.

The NAT concept is imported from the Scoping Plan for the Global Warming Solutions Act (“AB 32”), which outlines a general strategy for California to meet AB 32’s target of reducing GHG emissions to 1990 levels by 2020. The Scoping Plan notes in passing that reaching this statewide goal “means cutting approximately 30 percent from business-as-usual emissions levels projected for 2020.” Scoping Plan at ES-1. However, the Scoping Plan provides no further detail or analysis on the relative expected reductions from existing and new land use development to meet AB 32’s overall emission reduction objectives.

This particular method of assessing the significance of GHG emissions has been criticized by numerous public agencies. For example, when the California Air Pollution Control Officers Association (CAPCOA) issued a “CEQA & Climate Change” white paper intended to serve as a resource to assist lead agencies in analyzing greenhouse gas impacts under CEQA, CAPCOA determined that significance analysis relying on reductions from project business-as-usual emissions, had “low” GHG emission reduction effectiveness and consistency with state emission reduction targets. (CAPCOA 2008). Similarly, the California Resources Agency cautioned against using the Scoping Plan’s “business as usual” objective to determine significance under CEQA in its Final Statement of Reasons. The Resources Agency specifically warned that “a comparison of the project against a ‘business as usual’ scenario as defined by [CARB] in the Scoping Plan . . . would confuse ‘business as usual’ projections used in [CARB’s] Scoping Plan with CEQA’s separate requirement of analyzing project effects in comparison to the environmental baseline.” *See* Resource Agency’s Final Statement of Reasons (available at [http://ceres.ca.gov/ceqa/docs/Final\\_Statement\\_of\\_Reasons.pdf](http://ceres.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf) (last checked December 17, 2013).)

Additionally, the Attorney General has argued that because the “business as usual” approach “would award emission reduction ‘points’ for undertaking mitigation measures that are already required by local or state law,” it results in “significant lost opportunities” to require meaningful mitigation. *See* Letter from California Attorney General to SJVACD re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA at 1, 3 (Nov. 4, 2009). The analysis done in the DEIR flies in the face of the findings in the Scoping Plan, which recognize that local governments “are essential partners” in achieving California’s emissions reduction goals, further highlighting the lack of legitimacy of the DEIR’s significance criteria. Scoping Plan at 26; *see also Californians for Alternatives to Toxics v. Dept. of Food & Agric.*, 136 Cal. App. 4th 1, 17 (2005) (compliance with existing environmental laws or regulations is not sufficient to support a finding that a project will not have significant environmental impacts).

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*Rail v. Exposition Metro Line Construction Authority*, 57 Cal. 4th 439, 445 (2013). Nothing in *Neighbors*, however, suggests a comparison with hypothetical future *projects* is ever permissible.

Aside from failing to ensure actual, meaningful reductions in GHG emissions, the EIR adoption of a NAT baseline for some cities is legally impermissible. Such significance analysis violates a fundamental tenet of CEQA, which requires that a project's impacts should be compared to actual, existing pre-project conditions rather than to a hypothetical, illusory conditions. (*Communities for Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322 [CBE].) As CEQA case law makes clear, “[a]n EIR must focus on impacts to the existing environment, not hypothetical situations.” *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale* (2010) 190 Cal.App.4th 1351, 1373; Guidelines § 15125(a) [existing physical conditions “normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant”].) The 2020 NAT projection cannot legally occur, and thus cannot be considered an adequate proxy for either existing or future physical conditions—the conditions against which CEQA requires impacts to be evaluated. *See Save Our Peninsula Committee*, 87 Cal. App. 4th at 121 (“the impacts of the project must be measured against the ‘real conditions on the ground.’”). Any assessment of the Project significance in relation to this baseline is therefore invalid as a matter of law.

### **B. The DEIR’s Significance Threshold for its GHG Analysis is Improperly Vague**

The DEIR relies on a threshold of “would the propose Project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment,” or more specifically, “consistency with Southern California Association of Governments 2012 Regional Transportation Plan/Sustainable Communities Strategy.” (DEIR 5-31.) Neither significance threshold includes a clear or quantifiable threshold on which the public can use to understand or consider the true impacts of the Project. Thresholds may be drawn from existing environmental standards, such as other statutes or regulations, compliance with the law is not enough to make a finding of less than significant under CEQA. *Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1107. However, “[c]ompliance with the law is not enough to support a finding of no significant impact under the CEQA,” and instead “the EIR’s discussion of impacts must “provide[] sufficient information and analysis to allow the public to discern the basis for the agency’s impact findings. Thus the EIR should set forth specific data, as needed to meaningfully assess whether the proposed activities would result in significant impacts.” *Sierra Club v. Tahoe Reg’l Planning Agency* (2013) 916 F. Supp. 2d 1098, 1146-1147.

Instead, the DEIR simply fails to provide an evidentiary basis—grounded in actual physical conditions—for its conclusion that the DEIR will reduce greenhouse gas emissions to a less than significant level. The goal of AB 32 is to reduce California greenhouse gas emissions to 1990 levels by 2020. Health & Saf. Code § 38550. Recent science, however, indicates that far steeper reductions are necessary to avoid the most significant impacts of climate change. Even to stabilize atmospheric CO<sub>2</sub> concentrations at 450 ppm and limit global average temperature increases to 2°C—a level at which devastating effects may still occur<sup>22</sup>—

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<sup>22</sup> Recognizing this fact, scientists and international climate negotiators have begun to explore pathways for limiting average global temperature increases to less than 1.5°C. *See, e.g., J. Hansen, et al., Assessing ‘‘Dangerous Climate*

industrialized countries will have to reduce emissions by 25-40% below 1990 levels by 2020.<sup>23</sup> Many scientists believe that avoiding the worst impacts of climate change will require reducing the concentration of CO<sub>2</sub> in the atmosphere to 350 ppm or below, which will require even steeper and more rapid reductions.<sup>24</sup> The EIR must analyze the cumulative significance of the Project's emissions in light of reductions needed to avoid contributing to these physical impacts, not just measure them against the AB 32 Scoping Plan and the state's renewable generation goals.

### **C. The EIR Fails to Adopt Any Mitigation Measures to Reduce the Project's GHG Emissions**

Mitigation of a project's environmental impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41. Therefore, it is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." Pub. Res. Code § 21002. Here however, the DEIR concludes that "no mitigation measures are proposed since the Project's design meets the AB 32 reduction target for GHG emissions." (DEIR 5.7-63.) This is despite the DEIR acknowledging the Project will result in 79,779 to 82,817 new emissions of GHG. Nevertheless, the DEIR goes on to state that the Project's GHG impacts are "less than significant without the implementation of mitigation measures." (DEIR 5.7-63.)

Although the Project includes a curtailed list of measures directed at reducing emissions and "promoting sustainability," these strategies are severely limited and do not include many feasible mitigation measures. The meager steps incorporated into the Project includes no enforcement mechanisms and leaves many feasible mitigation measures out completely. Mitigation measures to reduce vehicle miles traveled, energy use, waste, water consumption, greater use of solar power, LEED certification and others could all lower the Project's impact on climate change. CAPCOA has identified existing and potential mitigation measures that could be applied to projects during the CEQA process to reduce a project's GHG emissions. (CAPCOA 2010). The California Office of the Attorney General also has developed a list of reduction mechanisms to be incorporated through the CEQA process. (California Office of the Attorney General 2010). These resources provide a rich and varied array of mitigation measures to be incorporated into the Project. Potential mitigation measures include the use of carpool or HOV lanes, ease of access to public transit, alternative construction materials, onsite energy generation, and additional on site mitigation. Rather than evaluate the many available mitigation measures for development projects, the DEIR refuses to analyze or adopt any mitigation

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*Change*": *Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature*, 8 PLOS ONE e81648 (Dec. 2013); *see also* M. Steinacher, *Allowable carbon emissions lowered by multiple climate targets*, 499 NATURE 197 (2013) (considering multiple climate mitigation goals results in lower allowable emissions than temperature target alone)

<sup>23</sup> M. den Elzen & N. Höhne, *Reductions of greenhouse gas emissions in Annex I and non-Annex I countries for meeting concentration stabilisation targets*, 91 CLIMATIC CHANGE 249 (2008); *see also* United Nations Environment Programme, *The Emissions Gap Report 2013*, available at <http://www.unep.org/emissionsgapreport2013/> (describing remaining carbon budget and reductions necessary to preserve likely chance of keeping global temperature increase below 2°C).

<sup>24</sup> J. Hansen, et al., *Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?*, 2 OPEN ATMOS. SCI. J. 217 (2008)

measures. The DEIR approach to GHG emission analysis is misleading and grossly inadequate, leaving the public and decision makers unaware of enormity of the Project's climate change impact and available measures to reduce that impact.

### **III. The DEIR's Analysis of the Project's Air Quality Impacts is Inadequate and Additional Mitigation Measures Should be Adopted**

The DEIR's air quality impacts analysis is flawed because it fails to take into account all sources of air quality impacts resulting from the Project and also determines the significance of air quality impacts without relying on existing conditions as the baseline for comparison. Californians experience the worst air quality in the nation, with annual health and economic impacts estimated at 8,800 deaths and \$71 billion per year. (ALA 2013). The Project will further degrade the region's air quality by generating considerable emissions from the construction phase through ongoing operations.

Nonetheless, the DEIR is vague on which long term operational air quality impacts are included into the analysis and how the assumptions underlying the data were made. Most importantly, the DEIR makes many of its air quality impacts conclusion based on whether the Project will result in less air quality impacts compared to different variations of the Project and other local, regional and statewide plans. (DEIR 5.3-7-22.) For example, the DEIR claims that the Project will "likely reduce vehicle miles traveled (VMT) within the sub-region" because the Project will improve the jobs-to-housing balance in the City" that would have existed under existing entitlements for the Project. However, as noted above, the "physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published . . . will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." CEQA Guidelines § 15125(a) (emphasis added). Comparisons between air quality impacts of alternatives for the Project and the proposed Project should not be used to analyze the Project's air quality impacts. Instead, *existing environmental conditions* on the site, which are only vaguely discussed, should be the basis for analyzing the Project's air quality impacts. To not fully disclose and rely upon existing conditions when measuring the Project's anticipated air quality impacts is misleading to the public and violates CEQA. See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 57 Cal. 4th 439, 445 (2013).

Despite the DEIR's attempts to minimize the Project's air quality impacts, it is clear that the Project's air quality impacts will result in significant impacts. Therefore, "the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified." *Napa Citizens for Honest Gov't v. Napa County Bd. Of Supervisors*, 91 Cal.App.4th 342, 360 (2001). CEQA requires that agencies "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). As noted above, 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). Only when the mitigation measures are "truly infeasible" can the lead agency reject mitigation measures for significant impacts. *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal. 4th 341, 369.

Here, despite acknowledging that “the proposed Project has the potential to violate air quality standards or contribute substantially to an existing or projected air quality violation,” the Project includes only four mitigation measures all focused on construction related air quality impacts. (DEIR 1.9; 5.3-22.) Instead, the Project includes a number of design features intended to “reduce or avoid for potential impacts to air quality.” (DEIR 5.3-9.) However, these Project design features do not qualify as mitigation measures required under CEQA. Mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development.” *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261. The design features lack any enforceability and provide few specifics. (DEIR 5.3-9.) Instead, the design features are described briefly as vague goals for the Project. When the design features will be implemented, consequences if the design features will be implemented, potential harmful environmental impacts from the design features, effectiveness of the design features and important specifics on implementation of the design features are all missing.

Similarly, the DEIR also fails to assure that the four mitigation measures proposed for the Project’s impacts to air quality are enforceable, as required by CEQA. *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles*, 83 Cal.App.4th 1252, 1261 (2000). Without the incorporation of the mitigation measures through permit conditions, agreements, or other measures the DEIR mitigation measures are insufficient and inadequate. Surprisingly, none of the mitigation measures are directed at operation emissions, even though the Project is anticipated to exceeds the DEIR’s significance threshold for five criteria air pollutants during operation of the Project. (DEIR 5.3-16.)

The EIR also fails to analyze and adopt all feasible mitigation measures that would reduce the admittedly significant air quality impacts. Each mitigation measure that could reduce the Project’s significant impacts must be analyzed in the EIR. Nonetheless, The DEIR fails to perform even a cursory analysis of available mitigation measures for reducing air quality impacts, such as those provided by the California Air Pollution Control Officer’s Association and California Office of the Attorney General to reduce greenhouse gas emissions, which also facilitate the reduction of criteria pollutants. (Attorney General 2010; CAPCOA 2008). Those mitigation measures, as well as others, should be analyzed as a means to reduce the significant air quality impacts and fully adopted if feasible.

#### **IV. The Analysis of the Project’s Transportation Impacts is Insufficient and Incomplete**

The DEIR fails to disclose the true magnitude of traffic impacts, defers important analysis, and relies upon speculative infrastructure improvements—failing to accurately describe the Project and current baseline conditions—to allow the Project to proceed. The DEIR acknowledges that the Project will contribute significant new VMT and traffic impacts to the area, leading to significant reductions in levels of service on nearby roads unless off-site roadway improvements are completed. (DEIR 1-30.; 5.16-45) Although the DEIR details potential off-site roadway improvements that will ease the Project’s significant traffic impacts,



these off-site roadway improvements are *potential* improvements whose construction schedule is uncertain. As the DEIR acknowledges, “the timing of these improvements to be constructed by Caltrans or regional transportation agencies, such as SANBAG, is unknown and, since no fee program exists that require neither the City, as lead agency, nor the Project proponent to contribute fair share fees or implement the required freeway mainline improvements, impacts to the freeway mainlines both within five miles and beyond five miles of the Project site will be **significant and unavoidable until improvements are constructed.**” (DEIR 5.16-105, emphasis in original) Rather than completing analysis and adopting mitigation measures in light of this uncertainty, the DEIR relies heavily on these anticipated yet uncertain off-site improvements for its impacts and mitigation of traffic impacts. However, CEQA does not permit the deferral of analysis and mitigation to some future time as analyzed by other environmental documents. *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296.

The DEIR impermissible reliance of future off-site improvements leaves the true impacts and costs of the Project uncertain. Decision makers must decide to approve the Project without assurance that the mitigation measures and Project design features focused on reducing traffic impacts may not actually occur or occur in the form described in the DEIR. The scope of the Project’s traffic impacts also remains uncertain because of the DEIR’s inadequate and incomplete analysis. As the DEIR notes, the Project may have to include fees to mitigate for “Project-related traffic at locations within the City not analyzed specifically in the Project specific Traffic Impact Analysis.” (DEIR 1-30.) This incomplete and deferred analysis undermines the public and decision makers ability to make well-informed decision on the true impacts of the Project and whether approval of the Project is appropriate at this time. All required off-site traffic improvements should be approved and in the process of completion prior to any Project construction.

Similarly, onsite mitigation measures and Project decision features are also uncertain and vague, with additional details promised later on. (*See* DEIR 5.16-102.) Despite the uncertainty of these mitigation measures, the DEIR still concludes that “the Project will serve to greatly enhance alternative transportation infrastructure in the Project area and by its design and development will ensure high quality and performance and safety of such facilities” with little evidence to support such claims. (DEIR 5.16-102.) Instead, the DEIR is required to provide adequate assurance that anticipated traffic improvements and mitigation measures are completed prior to completion of the Project. Many of the traffic improvements and mitigation measures are simply ideas that may or may not proposed and may not be completed.

It is also important to note, that even if the traffic improvements are completed and all mitigation measures are adopted, the Project will still result in significant negative traffic impacts. The Project will bring more car, exhaust fumes, air pollution and decrease health in the community. While additional bicycle paths and pedestrian paths within the Project site are positive steps, those Project design features cannot and will not negate the unavoidable, harmful environmental impacts of the Project. Therefore, the traffic impact analysis done in the EIR is inadequate and suggests approval for this Project should be denied.

## **V. The Analysis of the Project's Other Impacts is Incomplete and Inadequate**

In addition to the defective impacts analysis described above, the DEIR fails to adequately analyze the Project's impacts to population and housing, growth inducement and cumulative impacts.

### **A. The DEIR Fails to Adequately Analyze Impacts to Population and Housing, and Growth Inducement**

The DEIR's conclusion that the Project will not significantly increase population is not supportable. (DEIR 1-25.) According to the DEIR, "the Project proposes between 3,467 and 3,632 dwelling units with and without the Neighborhood Commercial Overlay, respectively. Using the City's average household size of 3.41 persons per household from the *2012 Draft Housing Element*, the Project population would range from 11,822 to 12,385." (DEIR 5.13-4.) "The Project also includes between 62,073 to 225,423 square feet of neighborhood commercial, with and without the Neighborhood Commercial Overlay, respectively." Id.

The EIR claims that there is no significant impact on direct population growth because "City of Highland included the development of the Harmony Specific Plan in the data provided to SCAG... the Project's population growth has been planned for and evaluated within other regional plans." (DEIR 5.13-4.) However, this fails to account for the Project's changes to growth projections based on land use, and the cumulative increase in population from other housing developments. The EIR also fails to analyze the indirect population growth from the Project. The Project's infrastructure will encourage growth in areas previously unserved by public services. These indirect impacts are ignored in the DEIR's analysis. The DEIR also it fails to recognize the significant growth inducing aspects of extending roads, water, sewer, electricity, and telecommunications to the now largely rural area.

### **B. The Project's Cumulative Impacts Analysis is Skewed and Incomplete**

The cumulative impacts analysis in the DEIR is inadequate and requires further analysis. Courts have emphasized that the cumulative impacts analysis is an integral part of the EIR process. A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision maker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval. *Citizens to Preserve the Ojai v. County of Ventura*, 176 Cal. App. 3d 421, 431. A proper cumulative impacts analysis must be prepared "before a project gains irreversible momentum." *City of Antioch v. City Council*, 187 Cal.App.3d 1325, 1333. As noted above, the DEIR repeatedly attempts to diminish and skew the impacts analysis by relying on impermissible baseline, deferring analysis of certain impacts, failing to include all sources of impacts and relying on uncertain future conditions to reduce significant impact. These same issues arise in the cumulative impacts analysis for biological resources, air quality, greenhouse gas emissions, land use and plan, population and housing, and transportation. (See DEIR 7.1-1-38.)

To satisfy the requirements of CEQA, a cumulative impacts analysis must include: (1) a list of past, present and foreseeable future projects producing related impacts, including projects outside the agency's control, or a summary of a planning document that evaluates regional or area wide conditions; (2) a summary of the expected environmental effects to be produced by those projects; and (3) a reasonable analysis of the cumulative impacts of the relevant projects, together with an examination of reasonable options for mitigating or avoiding any significant cumulative effects. Guidelines § 15130(b); *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 428-29. The DEIR fails to meet this bar throughout its cumulative impact analysis.

## **VI. The Project Description is Overly Vague and Incomplete**

The EIR fails to provide an adequate project description. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-93; *San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) While an EIR is not designed to freeze a project in the mold of the original proposal, "[o]n the other hand, a curtailed or distorted description of the project may 'stultify the objectives of the reporting process.'" (*Dry Creek Citizens, supra*, 70 Cal.App.4th at 28.); *See also County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185 (1977) (an enigmatic or unstable project description impedes public input). The EIR contains an incomplete project description that fails to provide the public and decision makers with the necessary information in order to analyze impacts and mitigation measures. (DEIR 1-3-4.) For example, off-site improvements necessary for the Project's impact analysis are not included within the Project description.

The EIR further fails to describe critical components of the Project that are likely needed to address fire hazards and transportation impacts from the Project, including potential modification of or construction of a bridge over Mill Creek. Without a full analysis of the components of the offsite improvements needed by the Project it is impossible to determine what the full impacts of the Project will ultimately be. Deferral of such analysis until later in the approval process and environmental review of the Project is improper and a violation of CEQA. An agency cannot simply release a draft report "that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review." *Mountain Lion Coalition v. California Fish and Game Comm'n*, 214 Cal.App.3d 1043, 1053 (1989). Similarly, failure to describe the offsite improvements also fails to provide for the analysis of the feasibility of those measures for mitigation of impacts from the needed offsite improvements. The EIR's incomplete Project description improperly therefore masks Project's impacts and mitigation measures necessary to address the Project's impacts.

## **VII. The EIR Fails to Analyze a Reasonable Range of Alternatives as Required by CEQA**

The EIR failed to consider a meaningful analysis of reasonable alternatives to the Project in order to lessen or avoid the Project's significant impacts. CEQA mandates that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code §

21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d). A rigorous analysis of reasonable alternatives to the project must be provided to comply with this strict mandate. The EIR fails to meet this requirement on two levels: the DEIR analysis of the alternatives proposed is inadequate and the DEIR fails to include a reasonable range of alternatives.

The DEIR relies on a skewed analysis of five alternatives, none of which fully address all of the Project's significant impacts or are fully analyzed. (DEIR 8.6.) The little analysis of the alternatives that is completed provides no quantitative analysis on the differences between the Project's impacts and the alternatives' impact, leaving the public and decision makers ill informed. For example, the DEIR acknowledges that air quality impacts for Alternative 1, 2, 4 and 5 will all be less than the air quality impacts associated with the Project. (DEIR 1.34.) However, the DEIR provides little information or analysis beyond concluding that the impact will be less. The public and decision makers are left to wonder: how much less the impacts will be, will the reductions in impacts vary greatly between the alternatives, how significant are the reductions between the Project and alternatives. This type of inadequate analysis that lacks quantitative analysis fails to inform the public and decision makers of the true impacts of the Project and viability of alternatives to the Project that may reduce those impacts. *See Laurel Heights Improvement Ass'n v. Regents of University of California*, 47 Cal.3d 376, 404 (1988).

Similarly, the DEIR characterizes Alternative 4 and 5 as having the same or some cases greater environmental impacts as the Project for numerous factors despite Alternative 4 and 5's smaller plans for development and reduced footprint. Many of these conclusions defy logic and rely on incomplete explanations with little data or analysis. (DEIR 8.7) The DEIR argues that alternatives with lower GHG emissions than the Project would result in *greater* GHG impacts because the Project's would result in greater *percentage* reduction of GHG emission from a hypothetical NAT version of the Project. (DEIR 1.36.) This analysis clearly skews the alternatives' environmental impacts analysis by making alternatives that will result in less environmental impacts appear more harmful to the environment. Additionally, the DEIR's rejection of Alternatives 4 and 5 despite their reduced environmental impact because of a supposed "failure" to meet Project's objectives remains unsubstantiated and unjustified. "Without meaningful analysis of alternatives in the EIR, neither courts nor the public can fulfill their proper roles in the CEQA process." *Laurel Heights Improvement Ass'n v. Regents of University of California*, 47 Cal.3d 376, 404 (1988).

Instead of providing a reasonable range of alternatives that fully mitigate or at least significantly limit the environmental impacts of the Project, the EIR skews the analysis of the proposed alternatives and leaves out other viable and feasible alternatives. The DEIR limited range of alternatives improperly narrows the alternatives analysis and violates CEQA. *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437, 1456-57 (2007). The EIR must consider a reasonable range of alternatives including, but not limited to, the following: increased density, mixed use development, transportation oriented design surrounding existing transit nodes or transit corridors within or adjacent to the Project area; a low carbon alternative; conversion of the land into a conservation or mitigation bank; and mixed use development combined with greater preservation and enhancement of existing wildlife habitat. As courts have made clear, "[a] potential alternative should not be excluded from consideration merely because

it ‘would impede to some degree the attainment of the project objectives, or would be more costly.’ *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437, 1456-57 (2007) (quotations omitted).

Although “an EIR need not consider every conceivable alternative to a project,... it must consider a reasonable range of potentially feasible alternatives that will foster informed decision decision-making and public participation.” Guidelines § 15126.6(a). Additionally, the “key to the selection of the range of alternatives is to identify alternatives that meet most of the project’s objectives but have a reduced level of environmental impacts.” *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1089. The DEIR cannot create overly narrow Project objectives in order to avoid adequate analysis of alternatives.

As it is currently drafted, the DEIR’s alternatives analysis is improperly narrow and skewed to Project adoption. In order to adequately inform the public and decision makers as well as meet CEQA’s mandates, the DEIR’s alternative analysis should be expanded to include additional alternatives. The DEIR should also include quantitative and meaningful comparison between the Project’s impacts and proposed alternatives’ likely impacts. Under CEQA, “the public agency bears the burden of affirmatively demonstrating that, notwithstanding a project’s impact on the environment, the agency’s approval of the proposed project followed meaningful consideration of alternatives and mitigation measures.” *Mountain Lion Foundation v. Fish & Game Com.* (1997), 16 Cal. 4th 105, 134. The DEIR clearly fails to meet this burden.

## **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,

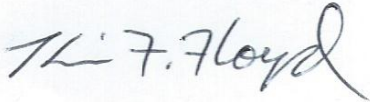


Aruna Prabhala  
Staff Attorney  
Center for Biological Diversity  
351 California St, Suite 600  
San Francisco, CA 94104

Ph: (415) 436-9682 ext. 322  
[aprabhala@biologicaldiversity.org](mailto:aprabhala@biologicaldiversity.org)



Drew Feldman  
Conservation Chair  
San Bernardino Valley Audubon Society



San Geronimo Chapter  
Sierra Club

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\* not included as a PDF because it is a book.



# **Attachment 2**



**San Bernardino Valley  
Audubon Society**



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*via electronic mail and USPS*

October 13, 2014

Kim Stater  
City Planner  
27215 Base Line  
Highland, CA 92346  
[kstater@cityofhighland.org](mailto: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.<sup>1</sup>

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 Associations<sup>2</sup>. "Cross walks" to current vegetation classifications are still missing in the RDEIR.

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

<sup>2</sup> [http://www.dfg.ca.gov/biogeodata/vegcamp/natural\\_comm\\_list.asp](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 support<sup>3</sup>.

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 3<sup>rd</sup> 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

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<sup>3</sup> 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 (5<sup>th</sup> 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 comments<sup>4</sup>. 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

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<sup>4</sup> <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 3<sup>rd</sup> 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 NO<sub>2</sub> 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, PM<sub>10</sub>, or those under 10 microns in diameter, and "fine" particles, PM<sub>2.5</sub>, 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.

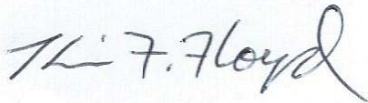
Sincerely,

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

Aruna Prabhala  
Staff Attorney  
Center for Biological Diversity  
351 California St, Suite 600  
San Francisco, CA 94104  
Ph: (415) 436-9682 ext. 322  
[aprabhala@biologicaldiversity.org](mailto:aprabhala@biologicaldiversity.org)



Drew Feldman  
Conservation Chair  
San Bernardino Valley Audubon Society



Kim Floyd  
Conservation Chair  
San Geronio Chapter  
Sierra Club