UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
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AUG 6 2010

OFFICE OF THE
REGIONAL ADMINISTRATOR

Colonel R. Mark Toy
District Engineer, Los Angeles District
U.S. Army Corps of Engineers
P.O. Box 532711
Los Angeles, California 90053-2325

Subject: Final Environmental Impact Statement (FEIS) for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan, Santa Clarita, California. (CEQ # 20100224)

Dear ~~Colonel Toy~~: Mark –

The U.S. Environmental Protection Agency (EPA) has reviewed the above referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Our comments were also prepared in accordance with the provisions of the Federal Guidelines promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act (CWA).

EPA reviewed the Draft Environmental Impact Statement (DEIS) for Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan (Project) and provided comments on September 1, 2009. We rated the document EO-2, Environmental Objections – Insufficient Information based on potential impacts to aquatic resources of national importance that should be avoided. I appreciate the efforts of the U.S. Army Corps of Engineers (USACE) and the project applicant Newhall Land and Farming Company (Newhall) to coordinate with EPA staff prior to and during the review of the Project FEIS, including several meetings and phone calls. Nevertheless, based on our review of the FEIS, many issues regarding the significant environmental impacts identified in our comments on the DEIS remain unresolved.

The FEIS identifies Modified Alternative 3 as the USACE's Preferred Alternative (Section 5.0-73) and Draft Least Environmentally Damaging Practicable Alternative (LEDPA). This alternative would result in substantial impacts to waters of the United States (WUS) and the 100-year floodplain of the Santa Clara River. EPA believes that many of those impacts may be avoidable, and we continue to be particularly concerned about the proposed development impacts in Potrero Canyon. The FEIS has not demonstrated that additional avoidance and minimization of impacts to jurisdictional waters are impracticable. Furthermore, the Draft Mitigation Plan does not meet the minimum federal requirements for a mitigation plan as set forth at 40 CFR Part 230. A major feature of the proposed mitigation plan is assessing mitigation credit for "reconstructed"

drainage channels on top of fill. We do not believe that the Corps has shown that these flood control facilities will replace the ecological functions provided by the existing natural features. In addition, the quality of the Santa Clara River is impaired at the site of the proposed project, and the FEIS does not provide adequate assurance that surface water quality will be protected from the project's stormwater discharges. We share concerns raised by the Los Angeles Regional Water Quality Control Board that more detailed information about the effects of the proposed project on water quality, and storm water management site plans, are necessary in order to determine that the project will protect water quality and not exacerbate existing water quality impairments. We concur with the USACE's finding that, from among the alternatives analyzed, Alternative 7 is the environmentally superior alternative, with "the lowest level of environmental impact in nearly all environmental resource categories." For these reasons, we do not consider Modified Alternative 3 to be the LEDPA.

In addition to the impacts on aquatic resources, we have concerns regarding impacts to the San Fernando Valley Spineflower and the lack of habitat connectivity among the Preserves proposed in Modified Alternative 3. EPA also continues to have concerns regarding air quality during construction, as well as roadway congestion and transportation impacts of the project. While the proposed project includes some elements of sustainable design, the environmental impacts that will result from the project, as a whole, are not consistent with the principles of sustainable growth. Principles for ensuring that housing and transportation goals are met while protecting the environment are identified in the Sustainable Communities Partnership Agreement signed by EPA, the Department of Housing and Urban Development, and Department of Transportation in June 2009. Examples of emission-reducing Green Building guidance resources are provided in our enclosed detailed comments. We recommend that additional emission reduction measures be included in the record of decision (ROD).

We appreciate the opportunity to review the FEIS. We anticipate receiving a draft CWA Section 404 permit and decision document from your office some time after the close of the comment period for the FEIS. We hope the attached detailed comments on the FEIS will help the Corps make a stronger permit decision that is more environmentally protective and more clearly in compliance with the CWA. This permit remains a candidate for our respective headquarters' review pursuant to our 1992 interagency agreement on CWA 404(q) procedures, and our decision to recommend such review is required within 15 days from our receipt of the draft permit. When the ROD is released, please send one electronic copy on CD to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 947-8702, or have your staff contact James Munson, the lead reviewer for this project. James can be reached at (415) 972-3800 or munson.james@epa.gov.

Sincerely,

Jared Blumenfeld

Enclosures: Detailed Comments

cc: Aaron Allen, U.S. Army Corps of Engineers
Diane Noda, U.S Fish and Wildlife Service
LB Nye, Los Angeles Regional Water Quality Control Board
Ed Pert, California Department of Fish and Game
Dennis Bedford California Department of Fish and Game
Jill Whynot, South Coast Air Quality Management District
Matt Carpenter, Newhall Land and Farming Company
William Gonzalez, Fernandeno Tataviam Band of Mission Indians

ENVIRONMENTAL PROTECTION AGENCY'S DETAILED COMMENTS ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE NEWHALL RANCH RESOURCE MANAGEMENT AND DEVELOPMENT PLAN AND SPINEFLOWER CONSERVATION PLAN; AUGUST 6, 2010

Alternatives

The FEIS does not Demonstrate that No Reasonable nor Practicable Alternatives Exist

The National Environmental Policy Act (NEPA) requires an Environmental Impact Statement (EIS) to examine all reasonable alternatives to the proposed action. According to Council on Environmental Quality (CEQ) guidance, in determining the scope of alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant, and may include alternatives that are outside the legal jurisdiction of the lead agency"[1]

Similarly, alternatives must be considered pursuant to the Clean Water Act (CWA) Section 404(b)(1) Guidelines. Those Guidelines require the U.S. Army Corps of Engineers (USACE, Corps) to analyze whether there "is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (40 CFR 230.10(a)). An alternative will be considered "practicable" if it is "available and capable of being done, taking into consideration cost, existing technology, and logistics in light of the project purpose," (40 CFR 230.3(q)). The applicant Newhall Land and Development (Newhall) has decided to retain Alternative 2 as its proposed alternative, for continuity with Los Angeles County's Specific Plan approval; however, Newhall has asked the USACE to approve Modified Alternative 3, as defined in the FEIS[2] (page 3.0-148). The Guidelines require the USACE to select the "least environmentally damaging practicable alternative" (LEDPA) based on alternatives' avoidance, minimization, and, finally, mitigation for unavoidable impacts to waters of the U.S. (WUS). Based on the information provided in the FEIS, Newhall has not demonstrated compliance with the CWA Section 404(b)(1) Guidelines.

The USACE has identified Modified Alternative 3 (a modified version of the Draft EIS Alternative 3), as the Draft LEDPA; however, the USACE has also identified Alternative 7 as environmentally superior. EPA believes that further avoidance of waters than would be achieved under Modified Alternative 3 is reasonable, necessary, and practicable. As proposed, Modified Alternative 3 would install 26,539 linear feet of bank stabilization on the Santa Clara River. The FEIS also states that Modified Alternative 3 would result in the permanent fill of 66.3 acres of WUS (Page: 3.0-56), and would modify 54,001 linear feet of tributary, which is 41,091 linear feet more tributary modification than Alternative 7 (Table 5.0-1). Similarly, Modified Alternative 3 would convert 56,291 linear feet of tributary channel into buried storm drain, resulting in the burial of 36,961 linear feet more buried tributary than Alternative 7. Modified Alternative 3 would eliminate the planned Santa Clara River bridge crossing at Potrero Canyon, re-grade and realign major tributary drainages, and facilitate the development of 19,812 residential units and 5.4 million square feet of commercial area on approximately 2587 acres.

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[1] Council on Environmental Quality, NEPA's 40 Most Asked Questions: #1 http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm

[2] *Per telephone conversation with Aaron Allen, North Coast Branch Chief USACE*

Potrero Canyon

We continue to be particularly concerned about the proposed development impacts in Potrero Canyon. While Modified Alternative 3 reduces direct impacts to Potrero Canyon from 32.8 acres to 22.9 acres, the FEIS has not demonstrated that additional avoidance and minimization of impacts to jurisdictional waters are impracticable.

Newhall's alternatives analysis broke out the costs and impacts to WUS associated with development of each of the five villages at Newhall Ranch (*i.e.* various "sub-alternatives"), including Potrero Canyon (PC) Village. This includes a "no-fill" alternative for development of Potrero Canyon (sub-alternative PC-4) at a cost of $1.04 billion.[3] In comparison, Newhall's initial proposal, Alternative 2, would develop Potrero Canyon Village at a cost of approximately $917 million with 32.8 acres of fill in WUS,[4] and Modified Alternative 3 (Draft LEDPA) would develop Potrero Canyon Village at a cost of $847 million, filling 22.9 acres of WUS.[5] The cost increases of "no-fill" sub-alternative PC-4, relative to this component in Alternative 2 and 3, are approximately $127 million and $197 million, respectively.

Newhall maintains that the no-fill sub-alternative PC-4 is impracticable because these cost increases are unreasonable, and it would not allow achievement of the project purpose. EPA's analysis of the facts does not support these conclusions. Inclusion of sub-alternative PC-4 in the overall project would represent an increase of approximately 4.5%[6] in the overall project costs of Alternative 3. Newhall does not discuss why this incremental fractional cost (specific to Potrero Village) threatens the economic viability of the entire Newhall Ranch development. Newhall also does not demonstrate why 89.8 acres for residential and commercial development is necessarily lost under PC-4 within the context of a 1,590 acre village development footprint that has not yet undergone specific land planning and which may contain room for accommodating additional acreage for residential and commercial use by relocating the 455.5 acres of "manufactured" open space (and also perhaps the 362.9 acres of natural open space) provided for by PC-4.[7] Newhall also does not adequately explain why PC-4, which provides for 709.7 acres of residential and commercial development (as opposed to 799.5 under Modified Alternative 3), prevents achievement of the project purpose when the Specific Plan (the cornerstone of the project purpose) neither dictates a specific acreage number with regard to residential and commercial development in Potrero Village, nor requires a specific number of residential units to be built at Potrero Village. We

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[3] Specifically, $1,044,099,187. This alternative is referred to as "Sub-Alternative PC-4."

[4] Specifically, $917,435,000. See "Practicability Analysis – Additional Studies," Appendix 10, pp. 4-5, to FEIS, Appendix F10.

[5] If the Draft LEDPA were approved, Newhall estimates $847,220,029 in site development costs specific to Potrero Canyon Village. See Hunsacker & Associates Technical Memorandum, "Newhall Ranch 404B1 Cost Analysis Procedures, dated June 5, 2010, Table 1 (referred to as Sub-Alternative PC-1 of the Revised Initial LEDPA (the Draft LEDPA)).

[6] How EPA arrived at 4.5 percent: Newhall proposed development of Potrero Canyon at a cost of $917 million in the DEIS. For $127 million more, the FEIS acknowledges that Potrero Canyon could be developed without impacts to WUS under the no-fill alternative (PC-4). $127 million amounts to 4.5% of the total $2.8 billion cost of the Draft LEDPA (specifically, $2,839,620,057. See "Evaluation of Revised Initial LEDPA – Cost Detail," Appendix 9 to FEIS, Appendix F10).

[7] FEIS Appendix F10, Figure 10-8 ("Protrero Canyon Special Study Area PC-4").

urge the Corps to reconsider the practicability of the Potrero Canyon "no-fill" sub-alternative PC-4 as part of the LEDPA for the overall project.

Consideration of revenues

The FEIS Economic Evaluation indicates that the USACE intends to decide economic viability based solely on cost estimates, without any consideration of the revenues the operation will generate while incurring the costs over a 20-year phased building schedule. Comparing costs to expected revenue would add critical context to the cost numbers and allow for more informed decision making. EPA made similar reasoning in its April 3, 2009 request to USACE Headquarters under Section 404(q) concerning the proposed Section 404 permit for the Potash Corporation of Saskatchewan Phosphate Division ("PCS").

For additional information pertaining to waters of the U.S., please contact Eric Raffini, EPA Wetlands Regulatory Program, at (415) 972-3544, or email raffini.eric@epa.gov.

Recommendations:

- The USACE should require more rigorous analysis of the proposed final 404(b)(1) decision document and the practicability of additional impact avoidance from the applicant. In particular, "costs" should be examined in a more balanced way that takes into consideration not just outgoing but incoming funds and compares the impact of incremental cost increases of sub-alternatives against the costs of the overall project (the permit action).
- We continue to recommend that the USACE consider a hybrid of Alternative 7 and the Spineflower Conservation plan and the practicability of avoiding fill in Potrero Canyon Village.

Compensatory Mitigation for Impacts to Waters of the U.S.

Compensatory Mitigation Plan is Deficient

Under the Draft LEDPA, Newhall would create at least 66.3 acres of compensatory mitigation, of which 7.7 acres are wetlands, and restore 32.2 acres of temporarily impacted waters. The Draft Mitigation Plan included as part of the Section 404(b)(1) Alternatives Analysis (Appendix F1.0) does not meet the minimum federal requirements for a mitigation plan as set forth at 40 CFR Part 230. A complete compensatory mitigation plan must contain the following twelve elements: objectives; site selection criteria; site protection instruments; baseline information; credit determination methodology; mitigation work plan; maintenance plan; ecological performance standards; monitoring requirements; long-term management plan; adaptive management plan; and financial assurances (§230.94(c)).

Although the goals of the mitigation plan are to provide a "framework mitigation document that guides mitigation planning and implementation through all development phases," and to "ensure that there is no net loss of acreage or functions/values from the implementation of the RMDP," the plan does not contain sufficient detail on the proposed mitigation sites to assess whether these goals will be met. Instead, the mitigation plan presented in the FEIS is a conceptual-level planning document that defines the overall mitigation approach for the build-out of Newhall

Ranch. According to the document, detailed site-specific information that describes the mitigation approach for each site will be submitted as part of the construction notification for each phase of the Resource Management and Development Plan (RMDP). This is inconsistent with FEIS Mitigation Measure BIO-2 which states that "detailed information" regarding USACE mitigation can be found in the Draft Mitigation Plan.

For example, under the proposed plan (Section 2.2.2), Newhall would create 36.4 acres of advanced "mitigation credits" at two locations on the project site: Salt Creek Canyon and Mayo Crossing. Other than providing acreage figures of the proposed mitigation sites, there is little information regarding the goals or objective of performing mitigation at these sites. In the Salt Creek drainage, the plan states that approximately 20.4 acres of jurisdictional area will be created, but the plan does not explain the factors considered during site selection, how the acreage amount was formulated, nor how the project will address the needs of the surrounding watershed. The plan includes no information on 15.9 acres of proposed advanced mitigation at the Mayo Crossing site.

According to the phasing approach presented in the plan, mitigation performed at Salt Creek and Mayo Crossing will provide mitigation credit for the first four phases of project development including Landmark Village, Mission Village, the Utility Corridor/WRP, and Homestead South. Given that the applicant has already proceeded to develop project-level plans for Landmark Village (including preparation of the DEIR), the level of detail contained in the mitigation plan for these two proposed mitigation sites is not commensurate with the scope and scale of the impacts associated with these projects.

Mitigation Credit for Reconstructed Stream Channels

A major feature of the proposed mitigation plan is assessing mitigation credit for "reconstructed" drainage channels on top of fill. Under the Draft LEDPA, 61.8 acres of on-site tributary drainages would be permanently filled to accommodate site development. Some of these drainages will be converted to buried storm drain (56,291 linear feet) while others (54,001 linear feet) will be "reconstructed" on top of 30 feet of compacted fill material. These new "reconstructed drainages" will integrate flood control and grade stabilization (*i.e.*, a combination of drop control structure and bank stabilization) and are "designed to maintain sediment equilibrium and protect the channel bed and banks from hydromodification effects."

The Draft Mitigation Plan provides up to 91.8 acres of "mitigation credit" for these areas and claims that "mitigation would be designed in tandem with the recreated drainage channels," such that the design process would, "replace impacted functions and values." Under this scenario, the project is presented as essentially self-mitigating and not requiring any additional compensatory mitigation other than what is proposed.

Although we agree that these reconstructed drainages may result in an increase in Corps-jurisdictional area, we do not believe that the Corps has shown that these flood control facilities will replace the ecological functions provided by the existing natural features.

In particular, the USACE has not shown that:

(1) The subsurface hydrology will support establishment of self-sustaining riparian vegetation;

(2) Reconstructed channels that contain up to 98 10-foot high grade control structures, and are confined behind bank stabilization, are ecologically equivalent to natural ephemeral tributaries;
(3) The Hybrid Assessment of Riparian Condition (HARC) methodology is a valid tool for predicting post-project function since it is untested and lacks appropriate reference set data.

These conclusions reiterate concerns from our letter dated 8/24/09 and should be addressed in the ROD and draft CWA Section 404 permit.

Cismontane Alkali Marsh

Under the Draft LEDPA, the 4.6 acre cismontane alkali marsh (CAM) wetland in middle Potrero Canyon would be eliminated. This wetland area is a result of sheet flow that escapes the current stream channel during rain events. To compensate for impacts to this vegetation community, the mitigation plan states that an additional 19-acre CAM wetland could be established in lower Potrero Canyon adjacent to an existing wet meadow.

First, there is not enough information contained in the plan to determine whether wetland establishment in this location would be successful. Although groundwater depth may be similar to the existing wetland, the site will lack sheet flow from the stream channel. Although the surrounding sub-watershed may provide an additional source of surface hydrology, it is uncertain whether this will sustain a 19-acre wetland.

Second, the FEIS and 404(b)(1) analysis are equivocal as to whether this restoration will be completed. Under the mitigation phasing approach, the USACE asserts that restoration within Potrero Canyon is not needed (Section 2.1.1.6). Furthermore, the Corps' draft 404(b)(1) Alternatives Analysis states that this mitigation "could be implemented," while the applicant's 404(b)(1) analysis states that the proposed mitigation "would be linked" to the existing wetland. Because development in Potrero Canyon represents the last phase of the RMDP, and is not expected to occur for twenty years, it is important that the FEIS clearly specify mitigation requirements.

Mitigation Requirements

On March 31, 2008, EPA and the USACE issued revised regulations governing compensatory mitigation for authorized impacts to wetlands, streams, and other waters of the U.S. under Section 404 of the CWA (33 C.F.R. Parts 325 and 332). These regulations were designed to improve the effectiveness of compensatory mitigation to replace lost aquatic resource functions and area, expand public participation in compensatory mitigation decision making, and increase the efficiency and predictability of the mitigation project review process.

While the DEIS originally stated that the applicant would comply with the 2008 mitigation regulation, Section 4.6 of the FEIS includes new language stating that because the applicant filed its Section 404 permit application in 2003, the Corps has determined that the project is not subject to the rule. Instead, the Corps will evaluate the applicant's mitigation proposal against previously issued mitigation guidance (Corps' Regulatory Guidance Letter No. 02-02 and the Los Angeles District's 2004 Mitigation Guideline and Monitoring Requirements).

Because implementation of the RMDP would involve various phases over a 20 year period, the applicant has requested a long-term Section 404 permit for its proposed discharges of fill material. According to the Draft Mitigation Plan, site-specific mitigation plans will be prepared as part of the preconstruction notification for each individual development component of the RMDP. EPA disagrees with the Corps' assessment and believes that due to the extended period of project build-out and long-term Section 404 permit, site-specific mitigation plans should comply with current regulations. However, EPA also believes that the mitigation, as proposed, is not consistent with pre-rule mitigation policies and guidance.

Recommendations:

- The ROD should include detailed mitigation plans that include the twelve elements specified at 40 CFR 230 for each area proposed for compensatory mitigation (including Salt Creek and Mayo Crossing).
- The USACE should not approve the use of reconstructed flood control channels as compensatory mitigation for permanent impacts to waters of the U.S.
- If there are unavoidable impacts to the CAM wetland in Potrero Canyon, the ROD should clearly state the applicant's mitigation obligation to compensate for these impacts.
- The ROD should require site-specific mitigation plans to meet all federal and State compensatory mitigation requirements that are in effect at the time of submittal or preconstruction notification.

Floodplain, Executive Order 11988

Floodplain Management Executive Order 11988 was adopted to avoid impacts associated with the occupancy and modification of floodplains. The FEIS states that Modified Alternative 3 would result in a net loss of 109.6 acres of the Santa Clara River FEMA 100-year floodplain. The EPA considers the loss of 109.6 acres of FEMA floodplain to be inconsistent with the intent of Executive Order 11988.

The FEIS references a 14-year-old Flood Insurance Rate Map (FIRM) map, illustrated in 1996, that was revised by Sikand Engineering. A Letter of Map Revision (LOMR) is mentioned, but little detail is given as to the revisions made nor if it was FEMA approved (page 4.1-29). The ROD should include a floodplain assessment based on the most current FEMA FIRM. Per *FIRM 06037C0800F Los Angeles County Unincorporated & Incorporated 09/26/2008*, the project area could affect the Zone A 100 year floodplain of tributaries to the Santa Clara River. The Santa Clara River floodplain is, itself an established Zone A 100 year floodplain. EPA is concerned that the project could increase flood risk to communities such as Piru, Fillmore, El Rio, Santa Paula, and Ventura, downstream of the Project, due to fill-related floodway modifications. Work in the floodway requires a "no-rise" certification (Title 44 Vol. 1 Part 60 Section 60.3(d)(3)). For more information, go to: http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/no_rise.shtm.

Recommendations:

- The USACE should refrain from permitting a project alternative that would result in the loss of 109.6 acres of the FEMA floodplain and, instead, consider alternatives that avoid fill or that increase FEMA floodplain area.

- Conduct an engineering analysis to comply with no-rise certification.

Bank Stabilization

Modified Alternative 3 would call for over 14 miles of bank stabilization (page 3.0-150). Riprap and buried riprap should be avoided on channel banks to the maximum extent practicable. The EPA recognizes the need to prevent erosion at bridge abutments and outfall locations to reduce future maintenance and repair of these structures; however, we strongly encourage the USACE to not permit the use of riprap to reinforce tributary confluences along the Santa Clara River, and the associated maintenance roads that would be constructed. Riprap bank protection reduces the habitat functions and values provided by natural vegetated banks and should be reserved for areas where there is little to no allowance for erosion. It is often ineffective and results in unintended stream alterations downstream; buried bank stabilization also results in soil being washed away downstream. EPA recommends the USACE include in the LEDPA and ROD a commitment to minimize the use of riprap and hard armoring, and to use alternative techniques that incorporate natural functionality with modern engineering to prevent erosion.

Recommendation:

- The USACE should explore alternative techniques that incorporate natural functionality with modern engineering to prevent erosion, such as bioengineering, hydroseeding, controlled planting, and construction of engineered log placement. For more information, go to: http://www.marylandstreams.org/PDF/FEMAriprapalternatives.pdf.

Water Quality, Stormwater, and Low Impact Development

EPA has fundamental concerns that the project will not protect surface water quality in the Santa Clara River from stormwater runoff. According to Table 4.4-15 of the FEIS, even after incorporation of project design features, post-development average annual stormwater runoff volume from the project will increase by 257% (1,302 acre-ft to 3,356 acre-ft). In its scoping comments on the DEIS, EPA recommended that the USACE commit to increasing the use of low impact development (LID) techniques, to reduce the potential impacts of stormwater discharges on jurisdictional waters. In response, the FEIS includes an analysis (Appendix 4.4) that states that the project will comply with the LID performance standard established by the Los Angeles County Department of Public Works (LACDPW), with the implication that this should be considered sufficient use of LID. As discussed below, we continue to have concerns with the level of LID incorporated into the project, and the impacts of stormwater discharges.

One of our major concerns is that the FEIS does not provide sufficient details or commitments to determine whether the Project will comply with applicable State water quality standards. The applicant has proposed a three-tier approach to managing stormwater across the Specific Plan area. Tier 1, included as part of the FEIS, involves the preparation of a programmatic Newhall Land Specific Plan Sub-Regional Stormwater Mitigation Plan, April 2008 (Sub-Regional Plan) including conceptual Best Management Practices (BMPs) to manage and treat stormwater runoff. According to this Sub-Regional Plan, specific information regarding Project Design Features, source control BMPs, and LID strategies will be developed at a later stage of project development as part of the Water Quality Technical Report and Drainage Concept Report (Tier 2).

Subsequently, Tier 3 will involve the preparation of a project-level urban stormwater mitigation plan that will be submitted to LACDPW for review and approval prior to construction. The Tier 2 and Tier 3 reports have not yet been developed and are not included as part of the FEIS.

Although the Tier 1 Sub-Regional Plan includes information on an array of standard BMPs that may be implemented, there is no village scale-specific information on how these conceptual BMPs will be applied nor any guarantee that they will be implemented at the project level (tract-scale level). Without this level of detail, the FEIS does not contain adequate assurances that impacts to surface water quality of the Santa Clara River will be addressed.

Prior to issuing the Section 404 permit for the Project, the Corps will need a certification pursuant to section 401 of the CWA from the California Regional Water Quality Control Board, Los Angeles Region (LA Regional Board) that the project will comply with applicable water quality standards. It is EPA's understanding that the LA Regional Board will incorporate its 401 certification into adopted Waste Discharge Requirements. The L.A. Regional Board's November 26, 2007 letter describes the achievements that must be attained by Tier 2 and Tier 3 implementation. The FEIS does not provide assurances that these achievements will be attained. Based on the LA Regional Board's 11/26/07 letter, the Tier 2 Plan will need to be submitted in order for the Regional Board to consider whether the Project qualifies for a 401 certification.

Consistent with the 2008 National Research Council report entitled Urban Stormwater Management in the United States, EPA is recommending stormwater management measures which infiltrate, evapotranspire, or harvest and reuse urban stormwater to reduce pollutant loads in the stormwater discharges and minimize changes in stream hydrology associated with urbanization. Such techniques are often referred to as LID or green infrastructure. In addition to water quality improvement and benefits for stream hydrology, numerous other benefits have been identified from LID, including increased groundwater recharge, water conservation, air quality improvement, and reduced energy use. The LACDPW LID Standards Manual (County LID Manual) includes recommendations similar to those of EPA, notably that LID tools mimic pre-development hydrology. The County LID Manual recommends BMPs that promote infiltration as the first priority, followed by reuse of stormwater where infiltration is not feasible.

One disadvantage of the County LID Manual is that it does not include specific offsite mitigation requirements if use of LID is found to be technically infeasible at a project site. Where LID is technically infeasible, offsite mitigation should be required within the same sub-watershed as the project site to address the volume that could not be addressed by LID techniques. This approach has been adopted by several southern California Regional Water Quality Control Boards in renewed municipal stormwater permits for Ventura County, Orange County, Riverside County, and San Bernadino County.

Table 3 (Appendix F4.4.03, Page 2) of the FEIS summarizes the performance of the proposed stormwater BMPs for the project, which are claimed to be equivalent to the requirements of the County LID Manual. However, this level of performance does not reflect the full potential of LID strategies. Table 3 (Appendix F4.4.03, Page 13) shows that of the 48 percent of the stormwater captured by the hypothetical LID BMPs required by the County LID Manual for the design storm (85th percentile 24-hour storm, or 0.75 inch of rain), only about 34 percent would actually be infiltrated, with the remainder discharged. Such performance would be far short of what is required

by recently adopted southern California municipal stormwater permits, and would necessitate the implementation of alternative compliance measures such as offsite mitigation projects. We also question whether this level of performance represents what is truly technically feasible.

A report by Dr. Richard Horner entitled *Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices* for Ventura County shows that infiltration of the entire stormwater design should be feasible for a largely residential development such as the Newhall Ranch Specific Plan area. The Horner report also shows the substantial reduction in pollutant loadings to receiving waters achieved by infiltration of stormwater as opposed to discharge.

The water quality model referenced in Section 4.4 (Page 4.4-85) of the FEIS does not accurately predict post-development conditions. To estimate pollutant loads and concentrations in stormwater runoff, this model was developed and included as part of the Sub-Regional Plan. The model is conceptual and is based largely on assumptions regarding the placement and effectiveness of BMPs and the Project Design Features. However, because the locations of vegetated swales, bioretention areas, and other LID strategies were unknown, the model assumed that all runoff would be treated through dry-extended detention basins. This assumption does not realistically reflect the true post-project condition that would be achieved with reasonable use of LID techniques. This model provides little value, but illustrates why it is important that the FEIS provide commitments that village scale-specific LID performance criteria be met to ensure that post development stormwater runoff does not contribute to water quality impairments.

Recommendations:

- The ROD should provide a village-scale quantitative estimate of the benefits of LID practices in promoting infiltration, capture/reuse, and evapotranspiration of storm flows while reducing discharges.

- The ROD should commit to management of the full 85th percentile 24-hour storm via LID unless this can be shown to be technically infeasible.

- Where LID is demonstrated to be technically infeasible, offsite mitigation projects should be required within the same sub-watershed to infiltrate, capture/reuse, and/or evapotranspire the volume that cannot be feasibly addressed by LID tools onsite.

- The ROD should provide detailed hydraulics or hydrology modeling on post-development or alternative scenarios that utilize LID principles.

- The ROD should include Tier 2 Water Quality Technical Reports (WQTR) including the level of detail specified in the LA Regional Board's November 26, 2007 letter.

- WQTRs should include schematic drawings that describe how parks and open space areas combined with on-site controls provide for overall water quality treatment and improvements for storm water runoff.

- WQTRs should describe the long-term plan for maintenance of water quality control measures and any maintenance agreements with property owners and homeowners associations.

- WQTRs should describe which site design techniques will be utilized to reduce storm water post-development runoff. For instance: reducing residential street widths from the standard practice of 36 feet to 26 feet, revisiting open space ordinances, providing vegetated open channel or dry swales at street right-of-way, minimizing the parking demand ratios for large retailers, and single-family homes, reducing overall imperviousness in parking lots, amending parking lot codes, and redirecting rooftop runoff to pervious areas to the maximum extent practicable.

Class I Injection Well Area Permit

In October 2008, Newhall submitted an application to EPA Region 9 for a Class I Non-Hazardous Underground Injection Control (UIC) Permit for injection wells to be utilized for disposal of brine from the proposed Newhall Ranch Water Reclamation Plant (WRP). Newhall submitted a revised UIC application to EPA in November 2008, and March 2009.

The WRP will use a Reverse Osmosis (RO) system to treat and reduce chloride concentrations in effluent discharge to the Santa Clara River. During the winter season, the brine concentrate generated from the RO system is proposed to be disposed of through underground well injection. The applicant has proposed two potential injection well sites. In April 2009, and in February and July 2010, EPA expressed significant concerns regarding the various proposed injection well locations because these proposed sites do not adequately protect groundwater quality. Based on the applications to date, proposed reinjection wells would not meet EPA's groundwater protection requirements and thus could not be permitted. Newhall has indicated it will revise its proposed injection well locations to address EPA's concerns.

Water Resources

In the recent past, California has experienced increased challenges trying to meet its water consumption needs. Section 4.3 notes that, in June 2008, the Metropolitan Water District of Southern California (MWD) issued a "Water Supply Alert" in Southern California urging local agencies to aggressively pursue conservation measures"(page 4.3-95). EPA questions the USACE response to comments that states that neither the "Proposed Project nor the alternatives studied would result in significant water resource impacts" (Page: RTC-006-30). Newhall and the USACE should encourage the Valencia Water Company (page: RTC-006-30) to approve the use of "purple pipe" infrastructure for residential and commercial development that could use recycled water for flushing toilets or any other non-potable water uses now or in the future.

Additional measures available to reduce water usage include high efficiency toilets, faucets, showers, and appliances in all commercial and residential developments. For additional information, we recommend referring to the EPA Water Conservation Guidelines website: http://www.epa.gov/WaterSense/pubs/guide.html.

Recommendation:

- The USACE should include in the final LEDPA/ROD a commitment to installation of "purple pipe" infrastructure for Project residential and commercial development that could

use recycled water for flushing toilets or any other non-potable water uses now or in the future.

Air Quality

The general conformity determination should be revised in the ROD to reflect no construction related emissions in 2008 or 2009. EPA agrees that the project emissions were included in the 2007 AQMP emissions inventories, and therefore conform to the SIP. However, the USACE needs to request a letter from the SCAQMD confirming that the project conforms to the 2007 AQMP, *i.e.*, confirming the information that is included in the general conformity determination.

Recommendations:

- Table 4.7-3 should be updated to include the following:
  - The NO2 standard has been changed to 0.100 ppm on a 1-hour basis, and the 0.053 ppm annual arithmetic mean was retained.
  - The lead standard was changed to 0.15 ug/m3 on a rolling three month average.
  - The SO2 standard was changed to 0.075 ppm on a 1-hour basis, and the 0.030 ppm annual arithmetic mean and the 0.14 ppm 24 hour standard were revoked.

  - The Federal Attainment Status section third paragraph on page 4.7-19 should be revised to say "the South Coast Air Basin is now designated as "extreme" nonattainment for 8-hour ozone and has until 2024 to achieve the national standard." This action was effective June 5, 2010.
  - Page 4.7-20, the South Coast Air Basin is "attainment/maintenance" for NO2.

- Table 4.7-4 should be revised to reflect this attainment/nonattainment status:
  - 8-hour ozone: extreme
  - NO2: attainment/maintenance
  - CO: attainment/maintenance

Biological Resources

EPA encourages the applicant and USACE to implement full conservation easements for the High Country Special Management Areas (SMA) upon permit approval to ensure preservation of SMA and to solidify the project's conservation commitment. EPA is concerned that this conservation measure is contingent upon issuance of sufficient building permits and that the High Country HMA would not be fully realized if building permits were delayed or not permitted.

Recommendation:

- The ROD should include a commitment to full implementation of conservation areas prior to the start of construction activities.

Riparian areas of the Santa Clara River consist of mature native riparian vegetation and are a part of the contiguous riparian corridor along the river. These riparian areas are critical for several

reasons, including nesting, foraging, cover, and migration, and should be preserved to the maximum extent practicable. Page 3.0-149 of the FEIS includes plans for 26,539 linear feet of buried bank stabilization that will be installed along the Santa Clara River.

Recommendation:

- The ROD should commit to the preservation of established riparian vegetation. Preservation opportunities should weigh heavily when deciding construction methods, project design, and strategic placement of bank stabilization.
- The ROD should utilize engineering techniques that incorporate preservation of riparian habitats into bank stabilization methods. See http://www.marylandstreams.org/PDF/FEMAriprapalternatives.pdf

Federally Listed Species

The FEIS notes that, in February 2008, the Corps initiated formal consultation with the U.S. Fish and Wildlife Service (FWS) under section 7 of the Endangered Species Act for impacts to the following threatened or endangered species, which indicates that the Corps has determined that its action is likely to adversely affect these species and/or their designated critical habitat: least Bell's vireo, unarmored threespine stickleback, arroyo toad, southwestern willow flycatcher, California red-legged frog, coastal California gnatcatcher, and California condor (page: 2.0-29). The consultation is not yet complete. As part of the LEDPA determination, the USACE must determine that the proposed project will not jeopardize the continued existence of listed species (40 CFR 230.10(b)(3)).

Recommendations:

- We encourage the Corps to relocate, reduce, or eliminate portions of the project that would adversely affect threatened, endangered, or candidate species or their potential habitat.
- We recommend that USACE reconsider its Draft LEDPA determination in light of ongoing consultation with the Fish and Wildlife Service.
- Based on the conclusions of the FEIS impacts assessment on biological resources, including protected species and their habitats, the EPA concurs with the conclusion that Alternative 7 would have substantially less impacts to biological resources. We continue to recommend the USACE consider a modified Alternative 7 that includes the Spineflower Preserves.

Spineflower Preservation

Modified Alternative 3 would result in 643.77 acres less Spineflower Preserve than Alternative 6, and 413.16 less acres than Alternative 7 (Revised Alternatives Section 3.0). EPA is concerned with lack of connectivity provided by the preserve areas as defined in Modified Alternative 3 (Figure 3.0-54).

Recommendation:

- The USACE should revise the LEDPA in the ROD to increase the size of the Spineflower preserves to promote connectivity and viable species habitat.

Green Building

EPA commends the applicant's commitment to ensure that all residential, commercial, and public buildings exceed building permit standards; however, we have concerns as to the timeline of these standards in light of the changes that may occur over the long lifespan of this project. The FEIS states that all residential buildings on the Project applicant's land holdings that are facilitated by approval of the proposed Project shall be designed to ensure that all buildings operate at levels (15%) better than the standard required by the version of Title 24 applicable at the time the building permit applications are filed (Page 8.0-131).

Recommendation:

- If there is likely to be a long delay between permit application submittal and approval, EPA recommends modifying the wording in GCC-1 and GCC-2 (Page 8.0-131) to commit to building designs that operate at 15% better than standards at the time of *permit approval* rather than when the project permit applications are filed.
- The ROD should include commitments to maximize the use of green building design. Based on the scale of the project, Newhall should commit to additional measures that target greenhouse gas emission reductions, energy conservation, water conservation, and indoor air quality. For questions on green building, please contact USEPA Residential Green Building Coordinator Leif Magnuson, EPA at (415) 972-3286 or by email at magnuson.leif@epa.gov.
- If further GHG emissions mitigation is needed, the applicant should commit to an even higher percentage of designed building energy use reduction, such as 40%. The following describes the goals of the new California Advanced Homes program: "The California Public Utilities Commission (CPUC) has directed the Investor Owned Utilities (IOUs) to encourage residential new construction to meet two visionary goals. The goals are for 50% of residential new construction to be built at least 20% better than the 2008 Title 24 Energy Code during 2011 and 10% of residential new construction to be built at least 40% better than the 2008 Title 24 Energy Code during 2011. (http://www.sce.com/NR/rdonlyres/C9EE365D-E210-49DE-8144-6E7B20BE5658/0/2010_CAHPHandbook.pdf)

Water Conservation

In our September 1, 2009 letter regarding the DEIS, EPA provided comments related to water conservation in which we encouraged the USACE to refer to the Shappell Homes Alamo Creek development in Danville, California as an example of an implemented and aggressive conservation approach to meet the demands of the local water supplier. EPA disagrees with the FEIS statement that "the comments don't relate to the adequacy of the environmental analysis in the DEIS (Page: RTC-006-58)." The comment relates directly to the impact of residential water use.

The Shappell homes project in Danville, CA was undertaken to mitigate the water demand that the new development would place on available water supplies in the East Bay Municipal Utility District (BMUD) territory. EBMUD, as a condition of approving the projects' access to new water supplies, required Shappell pay EBMUD over $6000 per new home to sponsor new conservation

projects within the existing water utility service area to offset the increased water demand posed by the proposed new development.

For the Shappell Homes project, EBMUD established a water budget for the entire project of 0.45 million gallons per day (mgd) (for 1,090 homes) with the stipulation that if the entire developments' water usage exceeded that amount by 20% or more in a given year, the homeowners' association would be fined and given access to individual homeowners' water bills so that the association could determine whether high users should pay more of the fine. Each residence's water meter actually had a water budget assigned to it based on house size, number of bedrooms, bathrooms, etc. For details, see page 109 of the following article: http://www.eid.org/doc_lib/02_dist_info/ccdocs/WaterConsvSustDevmt.pdf

For more information on the Shappell Homes project, contact Richard Harris, Water Conservation Manager, EBMUD at 510-287-1901.

Traffic

EPA comments on the DEIS included recommendations that USACE further substantiate the assumption that commuters would only travel an average of 10.7 miles each way to work when the SCAQMD regional average is 16-18 miles. Following our review of the FEIS, EPA continues to have concerns regarding the accuracy of model output of trip generation and distribution data. This is critical because this information was used as the basis for assessing roadway congestion and transportation-related impacts to environmental resources in the FEIS. Specifically, we have continuing concerns that the projected automobile emissions, as presented in the FEIS, continue to be artificially low. We also have concerns as to whether induced demand due to roadway expansion was included in traffic estimates presented in the FEIS.

The great majority of work trips generated by the project community will occur during peak congestion periods, and so are of special concern with respect to local and regional traffic congestion. The project area is essentially exurban, close enough to job centers in Los Angeles that they can be reached via a long commute. Hence jobs in the greater Los Angeles metropolitan area will provide strong work trip attraction. The closest employers outside of the Santa Clarita Valley are approximately 12 miles from the project site and downtown Los Angeles is approximately 35 miles away.

EPA is concerned with the preexisting imbalance in the Santa Clarita valley between the number of jobs and working residents; additional excess housing may lead to an increase in residents commuting from the Santa Clarita area to job locations. While Newhall Ranch will deliver both housing and jobs, it will not deliver a sufficient number of jobs to employ all of its working residents, and so it will not help to resolve the strong jobs-housing imbalance in the region.

In order to reduce commute distances, jobs and housing must be income matched. Failing this, residents will need to out-commute to find appropriate jobs elsewhere, while employees will be forced to in-commute to the project area. Consequently, the highway expansion funded in part by the Project will accommodate vehicle travel generated by the Project; however, the Project will also induce demand for additional vehicle travel from existing development.

Recommendation:

- EPA recommends the assumptions built into the travel model be delineated in the ROD. In particular, the ROD should describe how the model takes into account an income- stratified jobs and housing balance in the estimate of commuting distance and estimated emissions. For example, do jobs at the proposed nearby employment center provide income opportunities commensurate with anticipated resident incomes? Further, USACE should update the traffic projections and related mitigation measures in the ROD to reflect accurate commuting distances.
- The ROD should describe how the traffic model accounts for induced demand (both on the expanded roadway and the already-congested surrounding roadway and highway network), and confirm that impacts to environmental resources (*e.g.* emissions, noise) accurately reflect the increased volume of traffic anticipated due to induced demand.

National Historic Preservation Act and Executive Order 13007

Activities that involve ground disturbance or new construction will trigger historic preservation considerations. Tribal cultural artifacts are often found near rivers and waterways suitable to meet the needs of historic habitation. As stated in a comment letter to Newhall from the Fernandeno Tataviam Band of Mission Indians dated June 21, 2009, "The area along the (Santa Clara River[8]) and adjacent uplands is known to contain Native American Cultural Resources and has been documented as a traditional habitation area for close to 8,000 years." The project has a high probability of artifact disturbance due to the proposed disturbance of over 80 thousand linear feet of ground adjacent to the Santa Clara River and many of its tributaries.

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act (NHPA). Historic properties under the NHPA are properties that are included in the National Register of Historic Places (NRHP) or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, to consult with the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO).

Executive Order 13007, Indian Sacred Sites (May 24, 1996), requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian Religious practitioners, and to avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site.

Consultation with Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States' government-to-government relationships with Indian tribes. President Obama directed all federal agencies to develop an action plan to implement

[8] Name of river confirmed by Rudy Ortega Fernandeno Tataviam Band of Mission Indians 7/30/2010

this Executive Order by February 3, 2010. For more information, refer to: http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president.

Recommendation

- EPA recommends the ROD describe the process and outcome of government-to-government consultation between the USACE and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in relation to the proposed action and selection of a preferred alternative.