

3.2 ORIGINAL COMMENT LETTERS

Copies of original comments letters submitted to CDFW on the Newhall Ranch RMDP/SCP Project AEA that raise environmental issues are provided herein as Section 3.2. A list of commenters raising environmental issues is provided in Table 3-2. The comment letters are presented in the same order as are responses in Section 3.1:

- ▲ Federal Agencies
- ▲ State Agencies
- ▲ Local Agencies
- ▲ Native American Governments
- ▲ Organizations
- ▲ Individuals

Some letters included detailed attachments (e.g., whole reports) that are too lengthy to reproduce in Section 3.2. All attachments to comment letters have been incorporated into the CD Appendices accompanying this Responses to Comments Document.

As noted at the beginning of Chapter 3 and listed in Section 3.1.8, a number of letters were also received that expressed only opposition to or support for the proposed Newhall RDMP/SCP without environmental issues. These letters are also incorporated into the CD Appendices (see Final AEA Appendix 25).

Comment Letter No. F1

U.S. Department of Homeland Security
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, CA. 94607-4052



FEMA

December 28, 2016

Betty Courtney
California Department of Fish and Wildlife
Comments on Newhall Ranch Draft AEA
3883 Ruffin Road
San Diego, California 92123

Dear Ms. Courtney:

This is in response to your request for comments regarding the Extension Public Review Period Draft Additional Environmental Analysis for Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan EIR (SCH No. 2000011025).

Please review the current effective countywide Flood Insurance Rate Maps (FIRMs) for the County of Los Angeles (Community Number 065043), Maps revised January 6, 2016. Please note that the County of Los Angeles, California is a participant in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.

A summary of these NFIP floodplain management building requirements are as follows:

- All buildings constructed within a riverine floodplain, (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM), must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.
- If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any *development* must not increase base flood elevation levels. **The term *development* means any man-made change to improved or unimproved real estate, including but not limited to buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials.** A hydrologic and hydraulic analysis must be performed *prior* to the start of development, and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.

1

2

www.fema.gov

Comment Letter No. F1

Betty Courtney
 Page 2
 December 28, 2016

- All buildings constructed within a coastal high hazard area, (any of the "V" Flood Zones as delineated on the FIRM), must be elevated on pilings and columns, so that the lowest horizontal structural member, (excluding the pilings and columns), is elevated to or above the base flood elevation level. In addition, the posts and pilings foundation and the structure attached thereto, is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components.
- Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA's Flood Map Revision Application Packages, please refer to the FEMA website at <http://www.fema.gov/business/nfip/forms.shtm>.

2

Please Note:

Many NFIP participating communities have adopted floodplain management building requirements which are more restrictive than the minimum federal standards described in 44 CFR. Please contact the local community's floodplain manager for more information on local floodplain management building requirements. The Los Angeles County floodplain manager can be reached by calling George De La O, Senior Civil Engineer at (626) 458-7155.

If you have any questions or concerns, please do not hesitate to call Michael Hornick of the Mitigation staff at (510) 627-7260.

3

Sincerely,



GB
 Gregor Blackburn, CFM, Branch Chief
 Floodplain Management and Insurance Branch

cc:

George De La O, Senior Civil Engineer, Los Angeles County Watershed Management Division
 Garret Tam Sing/Salomon Miranda, State of California, Department of Water Resources,
 Southern Region Office
 Michael Hornick, NFIP Compliance Officer, DHS/FEMA Region IX
 Alessandro Amaglio, Environmental Officer, DHS/FEMA Region IX

www.fema.gov

Comment Letter No. S1



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

February 14, 2017

Betty Courtney
Department of Fish and Game, Region 5
3883 Ruffin Road
San Diego, CA 91350

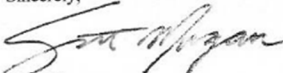
Subject: Additional Environmental Analysis for the Newhall Ranch 2010 RMDP/SCP EIR
SCII#: 2000011025

Dear Betty Courtney:

The State Clearinghouse submitted the above named Other Document to selected state agencies for review. The review period closed on February 13, 2017, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,


Scott Morgan
Director, State Clearinghouse

1
2

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Comment Letter No. S1

**Document Details Report
State Clearinghouse Data Base**

SCH# 2000011025
Project Title Additional Environmental Analysis for the Newhall Ranch 2010 RMDP/SCP EIR
Lead Agency Fish & Game #5

Type Oth Other Document
Description Note: Extended Per Lead

Five Point LLC, the project applicant, responded to the Supreme Court decision with a proposal to CDFW to modify the previously approved project in two aspects. As to the GHG issue addressed by the court, the project applicant has committed to achieve zero net GHG emissions for the project with implementation of 13 mitigation measures, mitigation measure 2-1 through 2-13) described in the draft AEA, that will reduce, mitigate, and offset 100 percent of the project's GHG emissions. With respect to unarmored threespine stickback, the project applicant has proposed modified design and construction methods for bridges and bank stabilization in or near the Santa Clara River to obviate the need for the two prior mitigation measures of focus for the Supreme Court, consistent with Fish and Game Code section 5515.

Lead Agency Contact

Name Betty Courtney
Agency Department of Fish and Game, Region 5
Phone 661-263-8306 **Fax**
email
Address 3883 Ruffin Road
City San Diego **State** CA **Zip** 91350

3

Project Location

County Los Angeles
City Santa Clarita
Region
Lat / Long
Cross Streets I-5 and SR 126
Parcel No.

Township	Range	Section	Base

Proximity to:

Highways 5, 126
Airports
Railways
Waterways
Schools
Land Use

Project Issues Biological Resources; Other Issues

Reviewing Agencies Resources Agency; Cal Fire; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 7; Regional Water Quality Control Board, Region 4; Native American Heritage Commission; State Lands Commission

Date Received 11/03/2016 **Start of Review** 11/03/2016 **End of Review** 02/13/2017

Note: Blanks in data fields result from insufficient information provided by lead agency.

Comment Letter No. S2

Courtney, Betty@Wildlife

From: Nye, LB@Waterboards <LB.Nye@waterboards.ca.gov>
Sent: Monday, February 13, 2017 5:02 PM
To: Wildlife Newhall Ranch
Cc: McChesney, Frances@Waterboards; Matt.Carpenter@fivepoint.com
Subject: Comments on Newhall Ranch Draft AEA
Attachments: Los Angeles Water Board AddEA comment letter Feb 13, 2017.pdf

Please find attached comments on the Newhall Ranch draft additional Environmental Analysis from the Los Angeles Regional Water Quality Control Board.

I 1

Please contact me if you have any questions.

I 2

Thank you,

LB Nye

LB Nye, PhD
Senior Environmental Scientist
California Regional Water Quality Control Boards, Los Angeles Region



Comment Letter No. S2



EDRUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

February 13, 2017

California Department of Fish and Wildlife
Comments on the Newhall Ranch Draft AEA
c/o Betty Courtney
3883 Ruffin Road
San Diego, CA 92123

COMMENTS ON THE DRAFT ADDITIONAL ENVIRONMENTAL ANALYSIS FOR THE
NEWHALL RANCH RESOURCE MANAGEMENT AND DEVELOPMENT PLAN AND
SPINEFLOWER CONSERVATION PLAN ENVIRONMENTAL IMPACT REPORT (SCH No.
2000011025)

Dear Ms. Courtney:

Los Angeles Regional Water Quality Control Board staff has reviewed the Draft Additional Environmental Analysis for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan Environmental Impact Report (Draft Additional EA) with attention to the revisions to the project's bridge and bank stabilization designs and the revised mitigation measures for unarmored threespine stickleback.

3

Staff has found the analysis to be sufficient and believe the "no water contact" construction methods will provide additional protection of water quality.

4

We look forward to continuing to work with you as the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan are implemented.

5

Sincerely,

Renee Purdy

Renee Purdy

cc:

Frances McChesney, State Water Resources Control Board
Matt Carpenter, Vice President Environmental Resources Fivepoint

IRMA MUÑOZ, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/lasangeles

♻️ RECYCLED PAPER

2016 301460

 FILED
 Dec 13 2016
 Drew C. Logan, Registrar - Recorder/County Clerk
 Electronically signed by SHERIK SMITH



**Extension of Public Review Period for the
 Draft Additional Environmental Analysis
 for the
 Newhall Ranch Resource Management and Development Plan
 and Spineflower Conservation Plan Environmental Impact Report
 (SCH No. 2000011025)**

The California Department of Fish and Wildlife (CDFW) (formerly California Department of Fish and Game) announces the extension of the public comment and review period for the previously released Draft Additional Environmental Analysis (AEA) for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan (RMDP/SCP) Final Environmental Impact Report (EIR) (SCH No. 2000011025). CDFW previously released the Draft AEA for public circulation, review, and comment between November 3, 2016 and January 6, 2017. The review period has been extended to February 13, 2017.

CDFW certified the RMDP/SCP EIR in December 2010 in connection with various approvals under the Fish and Game Code for the Newhall Ranch project located in northern Los Angeles County. A detailed description of the project as a whole is provided in the previously certified December 2010 RMDP/SCP EIR and CDFW's related approval documents from that time, including findings adopted by CDFW. A description of the project as modified is included in the Draft AEA specifically.

As stated in CDFW's related notice on November 3, 2016, CDFW prepared the Draft AEA in response to two important issues recently addressed by the California Supreme Court in *Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204. The Supreme Court decision addresses the project and the RMDP/SCP EIR specifically and, in issuing its decision, the court held: (1) for purposes of the California Environmental Quality Act (CEQA) that CDFW's 2010 significance determination regarding project greenhouse gas (GHG) emissions was not supported by substantial evidence and (2) CDFW's approval of the project in 2010 with two biological resource mitigation measures calling, if necessary, for collection and relocation of unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), violated Fish and Game Code section 5515. Unarmored threespine stickleback is a freshwater fish native to California designated as endangered by federal and state law, and as fully protected under the Fish and Game Code. The Draft AEA is specifically responsive to these two issues.

Five Point LLC (formerly, The Newhall Land and Farming Company), the project applicant, responded to the Supreme Court decision with a proposal to CDFW to modify the previously approved project in two respects. As to the GHG issue addressed by the court, the project applicant has committed to achieve zero net GHG emissions for the project with implementation of 13 mitigation measures, Mitigation Measures 2-1 through 2-13 described in the Draft AEA, that will reduce, mitigate, and offset 100 percent of the project's GHG emissions. With respect to unarmored threespine stickleback, the project applicant has proposed modified design and construction methods for bridges and bank stabilization in or near the Santa Clara River to obviate the need for the two prior mitigation measures of focus for the Supreme Court, consistent with Fish and Game Code section 5515.

Public Review Period

The public review period for the Draft AEA began on November 3, 2016, and has been extended to February 13, 2017. Written comments limited to issues addressed in the Draft AEA must be postmarked or received by e-mail by CDFW no later than February 13, 2017. Written comments sent to CDFW by regular mail should be sent to the following address:

California Department of Fish and Wildlife
 Comments on Newhall Ranch Draft AEA
 c/o Betty Courtney
 3883 Ruffin Road
 San Diego, CA 92123

THIS NOTICE WAS POSTED
 ON December 13 2016
 UNTIL January 12 2017
 REGISTRAR - RECORDER/COUNTY CLERK

1

Comment Letter No. L1

Written comments transmitted to CDFW by E-mail should be sent to the following address: newhallranch@wildlife.ca.gov. Please put "Comments on Newhall Ranch Draft AEA" in the subject line. If you would like a CD containing the Draft AEA, please send an E-mail request to this address.

The Draft AEA is available electronically to review and download at CDFW's web page: www.wildlife.ca.gov/regions/5/newhall/DraftAEA

Copies of the Draft AEA are available for public review at CDFW's South Coast Regional Office at the address shown above and several other public locations:

- Old Town Newhall Library, 24500 Main Street, Santa Clarita, CA 91321
- Stevenson Ranch Library, 25950 The Old Road, Stevenson Ranch, CA 91381
- Valencia Library, 23743 West Valencia Boulevard, Santa Clarita, CA 91355
- Sylmar Library, 14561 Polk Street, Sylmar, CA 91342
- E.P. Foster Library, 651 East Main Street, Ventura, 93001
- Castaic Library, 27971 Sloan Canyon Road, Castaic, CA 91384
- Department of Fish and Wildlife, Los Alamitos Office, 4665 Lampson Avenue, Los Alamitos, CA 90702
- Department of Fish and Wildlife Habitat Conservation Planning Branch, 1700 Ninth Street, 2nd Floor, Sacramento, CA 95811.

Information regarding CDFW's environmental review and permitting effort for the project, various other project documents, contact/ mailing information, and a list of repository sites where documents are available for public review is also available at the CDFW web site: www.wildlife.ca.gov/regions/5/newhall/DraftAEA

2016 301460



FILED

Dec 13 2016

Dean C. Lopez, Registrar-Recorder/County Clerk

Electronically signed by SPERON SMITH

1



COUNTY OF LOS ANGELES **Comment Letter No. L2**

FIRE DEPARTMENT
 1320 NORTH EASTERN AVENUE
 LOS ANGELES, CALIFORNIA 90063-3294

DARYL L. OSBY
 FIRE CHIEF
 FORESTER & FIRE WARDEN

January 3, 2017

Betty Courtney, Analyst
 California Department of Fish and Wildlife
 Newhall Ranch Draft Aea
 3883 Ruffin Road
 San Diego, CA 92123

Dear Ms. Courtney:

EXTENSION OF PUBLIC REVIEW PERIOD FOR THE DRAFT ADDITIONAL ENVIRONMENTAL ANALYSIS, "NEWHALL RANCH RESOURCE MANAGEMENT/DEVELOPMENT PLAN," SCH NO. 2000011025, PROJECT GREENHOUSE GAS EMISSIONS WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE FOR COLLECTION AND RELOCATION OF UNARMORED THREESPINE STICKLEBACK, VIOLATED FISH AND GAME CODE SECTION 5515, LOCATED IN NORTHERN LOS ANGELES COUNTY, FFER 201600202

1

The Extension of Public Review has been reviewed by the Planning Division, Land Development Unit, Forestry Division, and Health Hazardous Materials Division of the County of Los Angeles Fire Department.

The following are their comments:

PLANNING DIVISION:

We have no further comments.

2

LAND DEVELOPMENT UNIT:

The Fire Prevention Division Land Development Unit has no comments regarding this project. The Newhall Ranch Resource Management/Development Plan has no impact to our Fire Prevention requirements.

3

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

- | | | | | | | | |
|--------------|-----------|------------------|----------------------|-----------|----------------------|-----------------------|------------------|
| AGOURA HILLS | BRADBURY | CUDAHY | HAWTHORNE | LA HABRA | LYNWOOD | PICO RIVERA | SIGNAL HILL |
| ARTESIA | CALABASAS | DIAMOND BAR | HIDDEN HILLS | LA MIRADA | MALIBU | POMONA | SOUTH EL MONTE |
| AZUSA | CARSON | DUARTE | HUNTINGTON PARK | LA PUENTE | MAYWOOD | RANCHO PALOS VERDES | SOUTH GATE |
| BALDWIN PARK | CERRITOS | EL MONTE | INDUSTRY | LAKEWOOD | NORWALK | ROLLING HILLS | TEMPLE CITY |
| BELL | CLAREMONT | GARDENA | INGLEWOOD | LANCASTER | PALMDALE | ROLLING HILLS ESTATES | WALNUT |
| BELL GARDENS | COMMERCE | CLENDORA | IRWINDALE | LAWDALE | PALOS VERDES ESTATES | ROSEMEAD | WEST HOLLYWOOD |
| BELLFLOWER | COVINA | HAWAIIAN GARDENS | LA CANADA-FLINTRIDGE | LOMITA | PARAMOUNT | SAN DIMAS | WESTLAKE VILLAGE |
| | | | | | | SANTA CLARITA | WHITTIER |

Comment Letter No. L2

Betty Courtney, Analyst
January 3, 2017
Page 2

Should any questions arise regarding the above comment please contact Juan Padilla of the Fire Prevention Division Land Development Unit at (323) 890-4243 or at Juan.Padilla@fire.lacounty.gov.

3

FORESTRY DIVISION – OTHER ENVIRONMENTAL CONCERNS:

The statutory responsibilities of the County of Los Angeles Fire Department's Forestry Division include erosion control, watershed management, rare and endangered species, vegetation, fuel modification for Very High Fire Hazard Severity Zones or Fire Zone 4, archeological and cultural resources, and the County Oak Tree Ordinance.

4

HEALTH HAZARDOUS MATERIALS DIVISION:

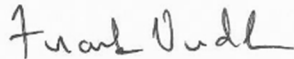
The Health Hazardous Materials Division of the Los Angeles County Fire Department has no comments regarding the draft additional environmental analysis for the Newhall Ranch Resource Management/Development Plan pertaining to the project site.

5

If you have any additional questions, please contact this office at (323) 890-4330.

6

Very truly yours,



FRANK VIDALES, CHIEF, FORESTRY DIVISION
PREVENTION SERVICES BUREAU

FV:ac

Comment Letter No. L3



OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM McDONNELL, SHERIFF



January 17, 2017

Ms. Betty Courtney
California Department of Fish and Wildlife
3883 Ruffin Road
San Diego, California 92123

Dear Ms. Courtney:

**REVIEW COMMENTS
DRAFT ADDITIONAL ENVIRONMENTAL ANALYSIS
NEWHALL RANCH RESOURCE MANAGEMENT AND DEVELOPMENT PLAN
AND SPINEFLOWER CONSERVATION PLAN ENVIRONMENTAL IMPACT REPORT
(STATE CLEARINGHOUSE NO. 2000011025)**

The Los Angeles County Sheriff's Department (Department) is in receipt of the Draft Additional Environmental Assessment (AEA), dated November 3, 2016, for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan (RMDP/SCP) Environmental Impact Report (EIR).

1

The EIR for the RMDP/SCP was certified by the California Department of Fish and Wildlife (CDFW) in 2010. However, subsequent court decisions compelled CDFW to re-evaluate certain analyses contained therein. Accordingly, the Draft AEA contains follow-up analyses and revisions pertaining to greenhouse gas (GHG) emissions and the unarmored threespine stickleback (Stickleback).

2

Environmental information pertaining to GHG and the Stickleback are not germane to the Department's statutory responsibilities to the proposed Project. Accordingly, the Department has no comment on the Draft AEA.

3

However, when circulating environmental documents for review and comment, the Department respectfully requests that Facilities Planning Bureau (FPB) be included on the direct distribution list. FPB will coordinate the submittal of the requested review comments on behalf of the Department. FPB contact information is as follows:

4

211 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

A Tradition of Service
— Since 1850 —

Comment Letter No. L3

Ms. Courtney

-2-

January 17, 2017

Tracey Jue, Director
Los Angeles County Sheriff's Department
Facilities Planning Bureau
4700 Ramona Boulevard, Fourth Floor
Monterey Park, California 91754

Attention: Lester Miyoshi, LHMIyosh@lasd.org

Should you have any questions regarding this matter, please contact me at (323) 526-5657, or Mr. Miyoshi, of my staff, at (323) 526-5664.

Sincerely,

JIM McDONNELL, SHERIFF



Tracey Jue, Director
Facilities Planning Bureau

4
5

Comment Letter No. L4

Wildlife Newhall Ranch

From: Mike Marshall <MMARSHALL@santa-clarita.com>
Sent: Monday, February 13, 2017 9:21 AM
To: Wildlife Newhall Ranch
Subject: Comments on Newhall Ranch Draft AEA
Attachments: Signed Comment Letter CDFW RMDP-SCP 2-13-17.pdf

Ms. Courtney,

In response to the request for comments on the Draft Additional Environmental Analysis for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan, please find the attached comments from the City of Santa Clarita. The City appreciates the opportunity to provide comments. A hardcopy of the attached letter is forthcoming via US Mail. Please let me know if you should have any questions.

1

Mike Marshall
Associate Planner
City of Santa Clarita
(661) 286-4045
mmarshall@santa-clarita.com

Comment Letter No. L4



City of
SANTA CLARITA

23920 Valencia Boulevard • Suite 300 • Santa Clarita, California 91355-2196
Phone: (661) 259-2489 • FAX: (661) 259-8125
www.santa-clarita.com

February 13, 2017

California Department of Fish and Wildlife
Attention: Betty Courtney
3883 Ruffin Road
San Diego, CA 92123

Sent Via Email to newhallranch@wildlife.ca.gov

Subject: Comments on Draft Additional Environmental Analysis for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan Environmental Impact Report (SCH No. 2000011025)

Dear Ms. Courtney:

The Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan (RMDP/SCP) area consists of 2,570 net developable acres within a 13,650 acre project area. The proposed project is comprised of 19,517 residential units, approximately 5.45 million square feet (msf) of commercial uses, and supporting public facilities, including schools, fire station, library, recreational amenities, and 8,500 acres of open space. The proposed project is to be implemented with the development of Entrada and Valencia Commerce Center (VCC). VCC consists of 3.4 msf of mixed use, commercial, and business park uses, in conjunction with the build-out of the VCC planning area. Finally, the Entrada planning area would include 1,725 residential units and additional mixed use and commercial uses with various public facilities and open space areas.

2

The City of Santa Clarita (City) appreciates the opportunity to comment on the above-referenced Draft Additional Environmental Analysis. The City submits the following additional comments addressing greenhouse gas emissions and biology in response to the Draft Additional Environmental Analysis for the RMDP/SCP area.

3

Greenhouse Gas Emissions

The project is located outside of the jurisdiction of the City and is therefore not subject to the City's Climate Action Plan. However, the City is interested in ensuring that the project commitment to reduce, mitigate, or offset 100% of the greenhouse emissions from the project and its construction effectively meets or exceeds the requirements of the Community Climate Action Plan, as adopted by the County of Los Angeles (County), requiring reduction of greenhouse emissions by at least 11% below 2010 levels by the year 2020. Please confirm that the project's net-zero program will meet the goal established by the Community Climate Action Plan.

4



Comment Letter No. L4

Newhall Ranch CDFW Draft AEA Response
February 13, 2017
Page 2 of 2

The City urges the County to take appropriate steps to ensure that the project meets its stated goal of reducing, mitigating, or offsetting 100% of the net greenhouse gas emissions from the project and its construction. The project applicant has stated that this goal shall be achieved through upholding green building and design standards, encouraging sustainable commuting, preserving natural resources, promoting electric vehicle use, expanding access to environmentally sustainable transit alternatives, and investing in offsite greenhouse gas reduction programs. The City encourages the County to ensure that specific measures are taken so that each of these initiatives are implemented in order to achieve stated project goals.

5

Biology

The City supports the adopted “no water contact” construction methods for the Long Canyon Road bridge and two temporary haul-route bridges for the Landmark Village project, and the construction of the Commerce Center Drive bridge and bank stabilization. It is the City’s belief that eliminating construction activity within the wetted channel of the Santa Clara River will eliminate the need for stream diversion and other activities that may have led to significant impacts upon unarmored threespine stickleback populations. The City strongly encourages the County to ensure that the project applicant adheres to applicable regulations of all affected agencies including, but not limited to, Fish & Game Code Section §§ 5515(a), prohibiting the take of fully protected species.

6

7

Thank you for the opportunity to submit these comments. If you have any questions, please contact Mike Marshall, Associate Planner, at (661) 255-4045.

8

Sincerely,



Thomas B. Cole
Director of Community Development

TC:MM:cc

S:\CD\PLANNING\DIVISION\CURRENT\County Monitoring\2017\Newhall Ranch\CDFW Comments\Recirculated EIR Comments 2-13-17.doc

cc: Leadership Team
James Chow
Mike Marshall

Comment Letter No. NA1**Courtney, Betty@Wildlife**

From: Kimia Fatehi <kfatehi@tataviam-nsn.us>
Sent: Friday, February 10, 2017 2:19 PM
To: Wildlife Newhall Ranch
Cc: Rudy Ortega
Subject: Comments on Newhall Ranch RMDP Draft Additional Environmental Analysis
Attachments: 2017-02-10_Newhall_Ranch_DAEA_Comments.pdf

Good Afternoon,

Please view the attached letter by the Fernandefio Tataviam Band of Mission Indians (Tribe) with comments on Newhall Ranch RMDP Draft Additional Environmental Analysis.

1

Respectfully,
Kimia

Kimia Fatehi
Director, Public Relations
Officer, Tribal Historic and Cultural Preservation
Fernandefio Tataviam Band of Mission Indians
1019 Second Street, Suite 1
San Fernando, California 91340
Mobile: (949) 235-2838
Office: (818) 837-0794
Website: <http://www.tataviam-nsn.us>

**Fernandeño Tataviam Band of Mission Indians
Sovereign Indian Nation**

Comment Letter No. NA1



Rudy J. Ortega Jr.
Tribal President

February 10, 2017

*By E-mail
to newhall ranch@wildlife.ca.gov*

California Department of Fish and Wildlife
Comments on Newhall Ranch Draft AEA
c/o Betty Courtney
3883 Ruffin Road
San Diego, CA 92123

*Re: Comments of the Fernandeño Tataviam Band of Mission Indians on
the Newhall Ranch Draft Additional Environmental Analysis*

Dear Ms. Courtney:

We, the Fernandeño Tataviam Band of Mission Indians (“Tataviam” or “Band”), appreciate the opportunity to provide comments on the Draft Additional Environmental Analysis (“AEA”) for the Newhall Ranch Resource Management and Development Plan/Spineflower Conservation Plan Environmental Impact Report, State Clearinghouse Number 20000011025. Since the mid-1990s when the Newhall Land and Farming Company (“Newhall”) began processing the Newhall Ranch Specific Plan, Tataviam has worked closely with Newhall and the regulatory agencies to ensure that the all components of the Newhall project were properly analyzed for potential impacts on tribal cultural resources, and that such impacts, if identified, were mitigated to the fullest extent feasible. We are proud of the service we have provided in this regard.

2

3

In 2007, the Band entered into an agreement with Newhall, which mandates that Newhall implement substantial measures to protect significant cultural resources on the Project site. The agreement also requires that Newhall retain Tataviam tribal monitors to oversee construction of the project as well as mitigation for project-related impacts to cultural resources. Under the agreement, the Band will act as tribal consultant for this Project and provide special expertise regarding Native American heritage and interests. The Band will also act as the primary liaison between the project applicant and the wider Native American community.

4

1019 Second Street, Box 1, San Fernando, California 91340
(818) 837-0794 | FAX (818) 837-0796 | www.tataviam-nsn.us

Fernandeño Tataviam Band of Mission Indians – Sovereign Indian Nation

Comment Letter No. NA1

In its role as tribal consultant, Tataviam has participated in the preparation of the Programmatic Agreement and Historic Properties Treatment Plan (“HPTP”) for cultural sites CA-LAN-2233 and CA-LAN-2133, which was adopted in 2011 by the Army Corps of Engineers pursuant to the National Historic Preservation Act. We are confident that the Project can be implemented while preserving in place sites 2233 and 2133; but if one or both sites cannot be feasibly preserved in place, we are equally confident that the adopted HPTP provides the appropriate means of recovering the cultural data currently contained within these two sites. We are glad to see that nothing in the Draft AEA disturbs or undermines the agreements in place.

5

We have closely reviewed the Draft AEA and find it to be thorough with respect to the two issues it addresses: (i) greenhouse gas (GHG) emissions and (ii) “take” avoidance of unarmored threespine stickleback. We are satisfied that the Project will implement the proposed reductions in GHG emissions will benefit everyone who lives in the Santa Clarita Valley, including the Band, its citizens, and the wider Native American community. Likewise, we support the construction modifications for the two bridges, temporary haul crossings, and bank stabilization, as these eliminate contact with the wetted channel of the Santa Clara River and avoid impacts on the unarmored threespine stickleback. This “no water contact” approach benefits all resources that use or depend upon the river, which is consistent with the lifeways of the Tataviam and the wider Native American community.

6

7

Finally, we have concluded that the proposed modifications to the bridge construction methods will have no new or additional impacts on cultural sites or tribal resources. To the contrary, the changes reduce the Project’s impacts across all environmental categories to levels below those initially studied and disclosed in the 2010 EIS/EIR. We consider the project substantially improved – not just from a tribal resource perspective, but from an overall ecological perspective.

8

Thank you for your time and consideration of our comments.

9

Sincerely,



Rudy Ortega, Jr.

Tribal President

Fernandeño Tataviam Band of Mission Indians

Comment Letter No. NA2

Wildlife Newhall Ranch

From: Sam Cohen <scohen@santaynezchumash.org>
Sent: Monday, February 13, 2017 3:39 PM
To: Courtney, Betty@Wildlife; Wildlife Newhall Ranch; newhall.ranch@wildlife.ca.gov; Wildlife Tribal Liaison; specialprojects@planning.lacounty.gov; daranda@planning.lacounty.gov
Cc: Sam Cohen; Jason Weiner; CourtCoyle@aol.com; Natalie Landreth
Subject: New Hall Ranch Draft AEA Comments of the Santa Ynez Band of Chumash Indians (SCH No. 2000011025)
Attachments: Newhall.Ranch.Draft.AEA.SYChumash.Comments.02-13-17.pdf

Please accept the attached comments.

I

1

Sam Cohen
Government Affairs and Legal Officer
Santa Ynez Band of Chumash Indians
P.O. Box 517
Santa Ynez, CA 93460
Cell: 805-245-9083
Main: 805-688-7997
Fax: 805-686-9578

Comment Letter No. NA2

SANTA YNEZ BAND OF CHUMASH INDIANS

P.O. BOX 517 • SANTA YNEZ • CA • 93460

Tel: 805.688.7997 • Fax: 805.686.9578

www.santaynezchumash.org**BUSINESS COMMITTEE**

KENNETH KAHN, CHAIRMAN
 RAUL ARMENTA, VICE CHAIRMAN
 GARY PACE, SECRETARY-TREASURER
 MAXINE LITTLEJOHN, COMMITTEE MEMBER
 MIKE LOPEZ, COMMITTEE MEMBER

**February 13, 2017**

California Department of Fish and Wildlife
 Comments on Newhall Ranch Draft AEA
 c/o Betty Courtney
 3883 Ruffin Road
 San Diego, CA 92123

Re: Santa Ynez Band of Chumash Indians Comments on Draft Additional Environmental Analysis for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan Environmental Impact Report (SCH No. 2000011025) ("Newhall Ranch Draft AEA" or "Newhall")

Dear Ms. Courtney and to whom it may concern within the California Department of Fish and Wildlife ("DFW" or "CDFW") and Other Local, State and Federal Lead Agencies with Project jurisdiction:

The Santa Ynez Band of Chumash Indians ("Tribe"), a federally-recognized tribe, provides the following comments on the Newhall Ranch Draft AEA regarding consultation (including AB 52), cultural resource identification, impact assessment and mitigation adequacy, and expressly requesting consultation.

I. AB 52 APPLICABILITY

The Tribe received a Notification of Newhall Ranch Resource Development and Conservation Plan/Spineflower Conservation Plan Draft Additional Analysis dated November 3, 2016 (the day of release of the AEA)("Notification"). That form letter stated that CDFW's goal was to understand Tribal interests related to the Draft AEA and to work collaboratively to resolve any concerns and requested "preliminary input" by January 6, 2017, or during the public comment period for the Project which began November 2, 2016 (and was originally set to conclude January 6, 2017, but later extended to February 13, 2017). Thus, the Tribe's request for consultation as stated in the CDFW letter is timely made through this comment letter.

The Tribe, however, notes that consultation should have been initiated by the Agency *prior to* the draft AEA being scoped, developed and released for public review. Had timely consultation occurred, the Tribe and other Chumash entities could have provided information and made requests to influence how the AEA was scoped and what subjects it should cover to address tribal concerns. Such subjects may have included items additional to those developed in response to the two important issues addressed by the California Supreme Court in *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 1014. The way that consultation is being handled to date, however, has forced the Tribe into commenting on the

2

3

Comment Letter No. NA2

inadequacies of a document that has already been drafted and circulated for public (and tribal comment) versus the Tribe playing an earlier and constructive role in the development of the AEA.

Moreover, the Tribe asks, why was the AEA not conducted according to AB 52 (tribal cultural resources and CEQA)? AB 52 became operative prior to the AEA being released. Why was no Notice of Preparation (NOP) circulated? There is no bar to such a notice being circulated for additional environmental review and some jurisdictions are proactively implementing AB 52 to include further environmental documentation, even when those actions that may not technically require a NOP. Here, if the agency issued a NOP, there would be no debate that AB 52 and its provisions requiring tribal consultation regarding the type of environmental document to be produced would apply, that cultural landscapes must be considered and that tribes may have expertise regarding environmental resources of cultural value to them. Please explain how the agency considered or satisfied AB 52 with respect to this AEA, particularly noting the high level of interest by local tribes and the great public controversy regarding the Project?

3

II. SB 18 CONSULTATION APPLICABILITY

SB 18 requires that local agencies that adopt or amend General and Specific Plans must consult with affiliated tribes concerning open space plans and other aspects of land use planning. The Tribe notes that the Landmark Village Project part of the Newhall Development requires both a General Plan amendment No. 00-196 and a Specific Plan amendment No. 00-196. Please explain whether the Project has complied with the requirements of SB 18 for both actions, and if not, why not. Even if an earlier action on a plan amendment might have been grandfathered, new actions to approve such amendments should be subject to current legal requirements.

4

III. OTHER CALIFORNIA STATE AND CDFW CONSULTATION OBLIGATIONS

Independent of any AB 52 requirement to consult, the Tribe notes the obligation of all state agencies, including CDFW to consult with the Tribe generally and specifically on actions such as those proposed at Newhall:

Executive Order B-10-11:

IT IS FURTHER ORDERED that it is the policy of this Administration that every state agency and department subject to my executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

5

We also note DFW Tribal Communication and Consultation Policy No. 2014-07 dated Oct. 2, 2014, that DFW seeks to establish and maintain a respectful and effective means of communicating and consulting with Tribes and will seek in good faith to:

Comment Letter No. NA2

1. Communicate and consult with Tribes about fish, wildlife, and plant issues and seek tribal input regarding the identification of potential issues, possible means of addressing those issues, and appropriate actions, if any, to be taken by the Department;
2. Assess the potential impact of Proposed Activities on Tribal Interests and ensure to the maximum extent feasible that tribal concerns are considered before such activities are undertaken and that such impacts are avoided or minimized whenever practicable;
3. Provide timely and useful information relating to Proposed Activities that may affect Tribal Interests;
4. Communicate with and engage with Tribes at the earliest possible stage in the decision-making process;
5. Communicate with Tribes in a manner that is considerate and respectful;
6. Provide Tribes with meaningful opportunities to respond and participate in decision-making processes that affect Tribal Interests;
7. Acknowledge and respect California Native American cultural resources regardless of whether those resources are located on or off Tribal Lands;
8. Acknowledge and respect both the confidential nature of information concerning cultural practices, traditions, beliefs, tribal histories, and Tribal Lands and that state law protects the confidentiality of certain tribal cultural information (Gov. Code, § 6254(r)). The Department will take all lawful and necessary steps to ensure confidential information provided by a Tribe is not disclosed without the prior written permission of the Tribe;
9. Encourage collaborative and cooperative relationships with Tribes in matters affecting fish, wildlife, and plants;
10. Assist the efforts of Tribes to develop sustainable programs, policies, and practices with regard to fish, wildlife, and plants;
11. Acknowledge and seek ways to accommodate the limited financial and staffing resources of Tribes and the Department to ensure effective communication and consultation; and
12. Identify and recommend means to remove procedural impediments to working directly and effectively with Tribes.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=122905&inline>

This policy is the foundation of CDFW's efforts to work cooperatively, communicate effectively, and consult with tribes. It establishes a formal process for engaging in government-to-government consultations. The policy implements and builds on Executive Order B-10-11 and the California Natural Resources Agency Tribal Consultation Policy. However, the previous "consultation" efforts in Newhall, the current AEA and the process used to develop it, do not

5

Comment Letter No. NA2

appear to satisfy either consultation policy. Therefore, the consultation processes must be reinitiated and the AEA revised to consider and address ongoing tribal concerns.

5

In addition we request consultation with the CDFW Tribal Liaison to actively coordinate the communication and consultation efforts of CDFW as to Newhall.

IV. INTEREST OF SANTA YNEZ

What would be gained through consultation with Santa Ynez? The Tribe being able to directly address the agencies in explaining its tribal interests and concerns about the Project is vital to a legitimate CEQA process.

6

The interest of California Tribes in full preservation-in-place analysis and a transparent consideration of the feasibility of each method of preservation, flows from their deep passion for their ancestors and their traditional lands. Many tribes, including Santa Ynez, were separated, some forcibly, from all or part of their homelands and traditional areas over the last several centuries during the "settling" of the West.¹

Off-reservation sacred places, burial grounds, gathering areas, ceremonial places and villages are now under the jurisdiction of local and state agencies for which CEQA is the primary legal mechanism for identifying, evaluating and mitigating potentially adverse impacts. Thus, tribes, including Santa Ynez, often find themselves trying to have their cultural and religious items, places and views adequately integrated into the CEQA process, as has been historically the case in the Newhall Project, which is located in Chumash ancestral lands. If consultation had been properly initiated, the Tribe would have raised these concerns prior to release of the draft AEA.

V. THE TRIBE HAS RAISED PERSISTANT CULTURAL RESOURCE IDENTIFICATION AND TREATMENT CONCERNS THAT HAVE NOT BEEN ADDRESSED TO DATE

7

The Tribe has long expressed concerns about how the project identified and proposes to treat resources of concern to the Tribe. These concerns have been expressed in amicus letters to the California Supreme Court (see two attached letters) and in a declaration from former Santa Ynez Tribal Chairman Vincent Armenta in federal court (see attached declaration). The applicant and agency, parties in both of those legal proceedings, were aware of the Tribe's concerns but have made no timely effort to seek the Tribe's views and expertise prior to releasing the AEA.

Notwithstanding the state appellate court opinion on remand, the Tribe continues to assert these concerns and substantial evidence regarding these concerns. The agency has not timely engaged the Tribe in consultation to discuss these issues regarding how to ensure cultural resources of importance to the Chumash will be adequately considered and protected in the CEQA process,

¹ See, for example, *Early California Laws and Policies Related to California Indians*, California Research Bureau, Kimberlcy Johnston-Dodds, September 2002
 <<http://www.library.ca.gov/crb/02/14/02-014.pdf>> Also see, *AN AMERICAN GENOCIDE: The United States and the California Indian Catastrophe, 1846-1873*, Benjamin Madley, Yale University Press, 2016.

Comment Letter No. NA2

prior to scoping or releasing the draft AEA. The AEA merely states that, "For purposes of CEQA compliance related to CDFW's review of and action on the project, the AEA augments the environmental information developed in the 2010 Final EIR, CDFW will take into account the combination of the 2010 Final EIR with its supporting materials and the AEA when it considers related action in the future." (AEA, pages 1-4 to 1-5). Please explain how the agency has considered Tribal concerns in the AEA and how it intends to specifically understand and address the Tribe's concerns prior to taking action on the Project in the future?

The Tribe remains concerned about the adequacy of the cultural resources mitigation measures for the Project. The Newhall Opinion on remand, affirming that court's prior holdings regarding cultural resources, appears to interpret CEQA Guidelines section 15126.4 (Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects) to allow: 1) that a preservation-in-place method need not be acceptable to culturally-affiliated tribes and 2) that feasibility determinations for that method or a contingent measure that is not preservation-in-place can be done at some future time after project approval, without the use of standards to ensure the determination is supported by substantial evidence or tribal participation. Thus, the Opinion may disproportionately impact Chumash resources specifically and California Tribes and tribal entities more generally, by appearing to "bless" a shortcutting of a full analysis of each of the potential methods to achieve preservation in place,² the determination of feasibility of preservation measures and the appropriateness of a project's contingent measures (if any). The Tribe hereby requests the Project's cultural resource (and other) mitigation measures be revised to require any post-approval actions *be made in an open, transparent and accountable process and by a party without an inherent bias (the applicant or its agents)*. These issues are of vital importance to Santa Ynez (and likely other California Tribes) for the following reasons:

First, while CEQA addresses trustee, responsible and lead agencies, until the promulgation of AB 52 in late 2014, it did not directly address tribal governments. This often created a situation where the cultural resource section of environmental documents defaulted to consider only the views of "credentialed" archaeologists or academics interested in "scientific" values rather than to also reflect the views of the people who are in fact culturally-affiliated with those same resources and usually for the cultural or religious (not scientific) value of the resources - which can result in different mitigation measures. Mitigation that might be appropriate to mitigate impacts to *archaeological* values (i.e., excavation or capping), may not be appropriate to

² CEQA Guidelines section 15126.4 states that preservation-in-place maintains the relationship between the artifacts and their archaeological context *and may also avoid conflict with the religious or cultural values of groups associated with the site*. It also states that specific methods of achieving preservation-in-place *may* include but are not limited to: 1) planning construction to avoid sites, 2) incorporating sites into parks or open space, 3) covering sites with sterile soil and building tennis courts or similar facilities, or 4) dedicating sites into permanent conservation easements. These four methods, and others that might be conceived given a project's and site's facts and environmental context, can be very different from one another and may offer comparative advantages and disadvantages. Such factors should be evaluated in an environmental document and, along with the affiliated tribe's views on the methods, be taken into consideration by the decision maker. *Madera Oversight Coalition v. County of Madera*, 199 Cal.App.4th 48 (2011).

Comment Letter No. NA2

mitigate impacts to the *cultural* values of the resource. Further, because there are no "accepted" standards of cultural resource management practice (contrary to the statement in the Opinion (page 12)), the cultural resource mitigation required on projects can vary widely. This overreliance on unaffiliated, "scholarly" consultants working off of unpromulgated, inconsistent standards resulted, in part, in a systemic lack of integration of tribal values and perspectives into projects, their environmental documents and mitigation,³ including as exhibited in the Newhall Project. Such omissions, and their unmitigated cumulative effects on tribal resources, also resulted in the passage of AB 52.

Second, CEQA standards and documents continue to often be poorly harmonized with federal processes such as the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), as occurred previously in Newhall, despite the CEQA Guidelines preference for coordination of those statutory processes and environmental documents (CEQA Guidelines section 15226 (Joint Activities)). This disconnect often manifests itself in the CEQA documents coming first in time, and only later, the federal documents. This includes cultural resource management documents such as Historic Property Treatment Plans (HPTs) which then - often years after the project has already been approved under CEQA - form part of the puzzle about what can be preserved and how, and what is feasible. Moreover, CEQA's preference for preservation-in-place can offer a stronger, substantive protection for cultural resources compared to the federal frameworks which may be largely procedural. The agencies should not be allowed to continue to engage in uncoordinated and deferred joint activity analysis that creates a perfect storm: reducing the substantive protection for sites, unfairly placing the tribes outside of determinations of feasibility and leaving tribes potentially without a timely CEQA remedy. Please explain what steps are being made to update the NEPA, NHPA and ESA aspects of the Project and what efforts will be made to consult with affiliated tribes on the federal side and how these will be coordinated with state actions.

Third, we are concerned about not just *when* determinations of feasibility of preservation-in-place methods are made, but *by whom* and *on what basis*. If feasibility determinations are made post-project approval, and outside the "public" CEQA process, there should be clear performance standards set out *prior to project approval* for how feasibility is to be determined and supported by substantial evidence. In Newhall, these standards were not clear from the answers to the petition for review or the mitigation measures themselves, which we understand remain unchanged. Moreover, such determinations should be made *by the lead agency*, not the project applicant: To allow the applicant to make the determinations, would be for an agency to improperly yield its independent judgment to a private entity and one with an inherent bias in making such findings. Those determinations, likely would be based on maximizing project profits - not maximizing the public good. Tribal interests, which might otherwise be considered by a lead agency including pursuant to government-to-government relations, would also be shortchanged.

³ See, for example, *How the archaeologists stole culture: A gap in American environmental impact assessment practice and how to fill it*, Dr. Tom King, Environmental Impact Assessment Review 18(2)L117-133, March 1998
<https://www.researchgate.net/publication/248536857_How_the_archeologists_stole_culture_A_gap_in_American_environmental_impact_assessment_practice_and_how_to_fill_it>

Comment Letter No. NA2

Fourth, sometimes an effort is made by agencies or applicants during the CEQA process to pit one tribal entity against another, or have one tribal entity agree to speak on behalf of other tribal entities without authorization from those entities, efforts that are typically not made regarding other types of governmental entities. To help prevent this tribal "forum shopping", it is important that evaluations and mitigations that address the culturally-appropriate treatment of cultural items *be required in the CEQA documents themselves* - and recognize that *the treatments may differ* given the resources encountered and the cultural practices of the tribes affiliated with those resources, which in Newhall, are both the Tataviam and Chumash. Yet, no provisions were made in the Newhall mitigation measures for the appropriate treatment of any Chumash materials that may be encountered on the Newhall Project despite Chumash monitors having been used during site work on an earlier road project at one of the sites in the Project area.

7

Finally, when the negotiation of these treatment protocols is deferred to post-project approval or at the time of late discoveries, it frequently disenfranchises all the tribes and creates a void that archaeologists or academics are once again invited *to fill with approaches other than preservation-in-place methods*, such as sampling, partial or full data recovery excavation (all three of which are different) or other methods (sometimes euphemistically called "contingencies") that primarily benefit archaeologists and applicants. Make no mistake: such contingent measures rarely result in preservation-in-place. Moreover, whether preservation-in-place will in fact occur is not an allowable "detail" to be deferred or a substantially confirming measure that may be "substituted" pursuant to CEQA. In Newhall, the contingent mitigation for cultural resources may result in desecrations and spiritual violations for tribes, the impacts of which continue to fail to be analyzed in the EIR or AEA.

VI. PROJECT CHANGES MAY AFFECT CULTURAL RESOURCES OF CONCERN TO TRIBES AND MUST BE CLEARLY DESCRIBED AND REFLECTED IN THE AEA ANALYSIS

The Tribe understands that the Superior Court's writ in the state litigation was narrow to revising the EIR to address the stickleback and greenhouse gas (GHG) issues mentioned above. The Tribe also is generally supportive of protective mechanisms for the stickleback and improvements to control GHG. However, to the extent the Project now will be changed to address GHG effects, i.e. a building or road is placed somewhere new that may have direct, indirect or cumulative effects to cultural resources, or, to the extent the proposed modifications to Newhall Ranch's GHG reduction measures and design and construction process for the Santa Clara River bridges and streambank stabilization efforts could impact burials or other cultural resources, then there may be new, unanalyzed cultural resource impacts that should have also been considered in the AEA. The AEA merely states that the revised project will be in "essentially" identical to that in the 2010 FEIR (AEA, page 3-37). Are these in the same locations or not? Please explain how the revised Project differs from the prior Project in more specific detail relative to Project component locations.

8

It is well known that villages, burial areas, sacred sites and resource procurement locations are

Comment Letter No. NA2

also found in, along or not far from wetland areas or other water sources. CEQA unambiguously states that if project mitigation may cause additional environmental effects, those effects must also be discussed in the environmental document. CEQA Guidelines section 15126.4(a)(1)(D). Yet, the AEA, section 4.1, does not indicate that any cultural resource professionals contributed to the new analysis.

Also, please explain whether any prior or new cultural surveys cover these areas and explain why such surveys may not have been done to examine, or previous surveys updated, to reflect current conditions. It is well known that environmental conditions change over time, such as through erosion, bioturbation, etc., and that survey methodology evolves over time, therefore cultural surveys require regular updating to reflect current conditions and methods. Accordingly, the Tribe requests that all such surveys be updated and based off on contemporary survey techniques that include the participation of knowledgeable, affiliated tribal monitors and representatives.

8

VII. AUTHORITY TO IDENTIFY AND INTERPRET CULTURAL RESOURCES

CEQA provides that certain historical resources are presumed to be historically or culturally significant for the purposes of CEQA. See PRC Sec. 21084.1. Additionally, CEQA provides that, even if a resource has not been identified as significant pursuant to one of these mechanisms, a lead agency has the discretion to determine whether the resource may be a historical resource for the purpose of CEQA. Id. The CEQA Guidelines further clarify the authority of a lead agency to determine the presence of historically significant resources:

9

Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant to in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resources, provided the lead agency's determination is supported by substantial evidence in light of the record.

CEQA Guidelines at 14 CCR sec. 15064.

Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing in CRHP, which include the following:

- (A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- (B) Is associated with the lives of persons important in our past.
- (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- (D) Has yielded, or may be likely to yield, information important in prehistory or history.

CEQA Guidelines at 14 CCR at Sec. 15064.5

Thus, there is authority to identify resources of historic significance even if such historic resources have not been previously identified. In fact, in light of the recommendations regarding

Comment Letter No. NA2

the protection of traditional tribal uses, the lead agency also appears to have an obligation to evaluate ongoing traditional tribal uses as significant historic resources in the CEQA process.

Specifically, the Tribe requests that culturally-appropriate methods for identification occur, including but not limited to: conducting an updated NAHC Sacred Lands File search, old maps searches, search of any THPO databases; having a qualified and affiliated Tribal Monitor/Representative on the initial pedestrian survey; looking (around) for resources of tribal concern which may also include natural features, viewscapes, sacred water sources, phenomena, essence of place, intangible or ceremonial aspects, landscape values; the Tribe providing input on appropriate boundaries; and the agency working with Tribal Preservation Consulting Services (Tribal Preservation Departments, THPOs, THPO CRM programs, etc.)

Tribal perspectives about significance also must be considered; these may include that: an individual artifact may have cultural value or has value as a component of larger place (landscape, district); may show indication of individual artisan (painting, incising, etching, fingerprints); and must consider cultural, spiritual or religious value for affiliated people.

Tribal perspectives about integrity must also be considered: resources may not need to be in “original” location; Ancestor remains may be in any state of completeness or decomposition; “disturbed” sites can still have cultural value; resources may not need to be intact; natural decay may be okay, part of a cultural process; and objects may be “associated” even if at some distance.

Finally, regarding eligibility, the Tribe expects that testing will be considered an adverse effect/impact; that noninvasive testing tools will be considered first such as Ground Penetrating Radar, Geoarchaeology, Historic Human Remains Detection Canines, historical and current aerial photography, LiDAR, etc.; that eligibility will be assessed under all Criteria - A, B, C and D; that value to the Tribal Community will be considered; and that ethnographic studies and regional syntheses can help provide context as an evaluation tool – not necessarily just as after-the-fact mitigation measure, at the very start of project application and before the draft environmental document published.

VIII. CULTURAL LANDSCAPES

A historic property may be a cultural landscape and it may be based on traditional uses of natural resources. The Department of State Parks has interpreted historic resources to include “cultural landscapes” and has looked to federal guidance interpreting the National Historic Preservation Act (16 U.S.C. sec. 470, et seq.) to define what resources may be designated a cultural landscape. See www.parks.ca.gov/default.asp?page_id=22854 (examples such as Golden Gate Park and Lake Shasta). Consistent with federal guidance, the State Parks website explains that the term “cultural landscape is an umbrella term that includes four general landscape types: historic designated landscapes, historic sites, and ethnographic landscapes which are defined in the National Park Service, Preservation Brief 36, Protecting Cultural Landscapes (Brief 36). Id. Brief 36 defines a cultural landscape to be a “geographic area, including both cultural and natural resources and the wildlife and domestic animals therein, associated with a historic event, activity,

9

10

Comment Letter No. NA2

or person or exhibiting other cultural or aesthetic values.” In the definition of ethnographic landscape, Brief 36 also notes that subsistence activities are often a component of the landscape.

After reviewing the various types of cultural landscapes, State Parks identifies a list of themes in California history that are recognized as cultural resource deficiencies in the State Parks System. With regard to significant properties, State Parks offers the following themes:

- Settlement and Subsistence Patters;
- Special Adaptations and Environmental Management;
- Trade and Movement; and
- Ideology (e.g. sacred sites, petroglyph and pictograph sites, intaglios).

California State Parks website at www.parks.ca.gov/default.asp?page_id=22854.

The California Environmental Resources Evaluation System (CERES) has also issued guidelines for monitors and consultants working with Native American cultural, religious, and burial sites, which describe the scope of historical resources. Guidelines for Monitors/Consultants Native American Cultural, Religious, and Burial Sites, <http://ceres.ca.gov/nahc/guidelines4mon.html>. Consistent with State Parks interpretation of cultural landscapes, these guidelines advise that historic resources can include Native American graves and artifacts; traditional cultural landscapes; natural resources used for food, ceremonies or traditional crafts; and places that have special significance because of the spiritual power associated with them. Id.

The protections of historic and cultural resources under CEQA and the National Historic Preservation Act are interrelated, and as noted above, California State Parks looks to federal policy documents with respect to evaluating historic and cultural resources. Similarly, the National Parks Service guidelines for cultural resources management also illustrate the connection between cultural landscapes and traditional uses. The National Parks Service recognizes that “[e]thnographic resources are basic expressions of human culture and the basis for continuity of cultural systems” and they are not limited to things commonly thought of as cultural resources. See NPS-28, Cultural Resource Management Guideline, issued pursuant to Director’s Order #28. “A cultural system ... includes traditional arts and native languages, religious beliefs and subsistence activities.” Id. “Ethnographic resources are variations of natural resources and standard cultural resource types. They are subsistence and ceremonial locales and sites, structures, objects, and rural and urban landscapes assigned cultural significance by traditional users.” Id. When natural resources acquire meaning according to different cultural constructs of a particular group, they become ethnographic and thus cultural resources as well, and the heritage significance of the natural resources may be related to religious, healing, and subsistence. Id.

These authorities, and others such as cultural landscape publications on the ACHP website, must be considered regardless of whether AB 52 is found to apply to the AEA. Natural resources with cultural value relevant to the Newhall site include arroyo willow, juncus, tule, clay and river rock sources and other resource locations must be considered in the AEA. More detail about them can be provided through consultation between CDFW and the Tribe. The Tribe expects to see such analysis be applied to the whole of the Project, any recent Project changes and to the Project’s mitigation.

10

Comment Letter No. NA2

IX. FIFTH CIRCUIT CA COURT OF APPEALS DECISION THAT PROTECTS
TRADITIONAL CULTURAL PLACES (TCPs) AS PART OF THE CEQA AFFECTED
ENVIRONMENT

MADERA OVERSIGHT COALITION CASE CITATION AND ABSTRACT:

http://www.narf.org/nill/bulletins/state/documents/madera_oversight_v_madera.html

Court of Appeal, Fifth District, California.

MADERA OVERSIGHT COALITION, INC., et al., Plaintiffs and Appellants,

v.

COUNTY OF MADERA, Defendant and Appellant;

Tesoro Viejo, Inc., et al., Real Parties in Interest and Appellants.

No. F059153.Sept. 13, 2011.

* * *

CEQA requires consideration of project impacts on either archaeological sites or historical sites deemed to be historical resources. If the project will cause a substantial adverse change to the characteristics of an historical resource that conveys its significance or justifies its eligibility for inclusion in the California Register, the project is judged to have a significant effect upon the environment, according to Section 15064.5 of the CEQA guidelines. Five of the seven resources in the Project Area are considered historical resources: CA-MAD-295/827, 826, 2392, 2394 and P-20-002308. In addition, there are areas that are of special religious or social significance to the Native Americans (e.g., Traditional Cultural Properties) in the Project Area. [¶] Based on the current project design, all historical resources and the sites of special religious or social significance within the Project Site may be impacted by the proposed development, either directly or indirectly.

* * *

2. Specific rules for historical resources of an archaeological nature

Guidelines section 15126.4 , subdivision (b) addresses mitigation measures related to impacts on historical resources. When the particular historical resource is archaeological in nature, the discussion contained in the EIR is governed by subdivision (b)(3) of that guideline, which provides in part:

“Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archeological site:

“(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

11

Comment Letter No. NA2

*84 “(B) Preservation in place may be accomplished by, but is not limited to, the following:

- “1. Planning construction to avoid archaeological sites;
- “2. Incorporation of sites within parks, greenspace, or other open space;
- “3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
- “4. Deeding the site into a permanent conservation easement.

“(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall **653 be prepared and adopted prior to any excavation being undertaken....” FN16

FN16. These provisions apply to archaeological sites that are historical resources. Archaeological sites that are not historical resources are subject to different requirements. For example, when a site meets the definition of a unique archaeological resource and is not an historical resource, it is treated in accordance with the provisions in section 21083.2 , not Guidelines section 15126.4 , subdivision (b)(3). (Guidelines, § 15064.5 , subd. (c)(3).) As a result, unique archaeological sites that are not historical resources are subject to less stringent requirements regarding mitigation of impacts.

The AEA does not describe how the Project is consistent with this case.

X. UNDRIP

In December 2010, the United States announced support for the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**. In announcing this support, President Obama stated: “The aspirations it affirms—including the respect for the institutions and rich cultures of Native peoples—are one we must always seek to fulfill...[W]hat matters far more than any resolution or declaration – are actions to match those words.” The UNDRIP addresses indigenous peoples’ rights to maintain culture and traditions (Article 11); and religious traditions, customs, and ceremonies (Article 12); to participate in decision making in matters which would affect their rights (Article 18); and to maintain spiritual connections to traditionally owned lands (Article 25).

Assembly Joint Resolution 42 as filed with the Secretary of State August 11, 2014, expresses the Legislature’s endorsement of the principles of the United Nations Declaration on the Rights of Indigenous Peoples. The measure, among other things, calls for increased awareness, sensitivity, and respect for issues of sovereignty related to the heritage of Native Americans and indigenous peoples. The consultation and CEQA processes used for Newhall do not appear consistent with UNDRIP principles, please explain.

11

12

Comment Letter No. NA2

CONCLUSION

The Tribe appreciates your consideration of our comments on the Newhall Ranch Draft AEA and our request that the Newhall site be considered as a traditional cultural landscape to the Chumash. We hereby incorporate by reference Wishtoyo Foundation's and Mati Waiya's prior submitted comments on the EIR's deficiencies, including the content of those comments regarding the EIR's deficiencies as to the identification of, analysis of, and mitigation for Chumash cultural resources at CA-LAN-2133, 2233, 2235, and throughout the project site, and their additional comments on the Newhall Ranch Draft AEA and any litigation pertaining thereto.

The Tribe also looks forward to beginning meaningful consultation regarding cultural resource identification methods, the Project's impacts, appropriate mitigation and the sufficiency of the environmental documents with each of the permitting agencies.

Sincerely,



Kenneth Kahn,
Tribal Chairman

13

Comment Letter No. NA2

Copy:

Julianne Polanco, SHPO, OHP
Cynthia Gomez, Executive Secretary, NAHC
Terrie Robinson, General Counsel, NAHC
Valerie Hauser, Director Office of Native American Affairs, ACHP
Nathan Voegeli, Tribal Liaison, CDFW
ACOE
Los Angeles County Department of Regional Planning