



United States Department of the Interior

FISH AND WILDLIFE SERVICE
 Ventura Fish and Wildlife Office
 2493 Portola Road, Suite B
 Ventura, California 93003



IN REPLY REFER TO:
 2009-FA-0122

August 25, 2009

Dennis Bedford
 California Department of Fish and Game
 4949 Viewridge Avenue
 San Diego, California 92123

Aaron O. Allen, Chief
 Regulatory Division
 U.S. Army Corps of Engineers
 2151 Alessandro Drive, Suite 110
 Ventura, California 93001

Subject: Comments on the Draft Joint Environmental Impact Statement and Draft Environmental Impact Report for the Proposed Newhall Ranch Project, Los Angeles County, California

Dear Mr. Bedford and Dr. Allen:

We are writing in response to the California Department of Fish and Game's (CDFG) and the U.S. Army Corps of Engineers' (Corps) request for comments on the Draft Joint Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) (Corps/CDFG 2009) for the Newhall Ranch Project (Project). Under the preferred alternative (Alternative 2), the proposed project consists of the development of up to 22,610 residential units, approximately 9.40 million square feet of commercial, industrial and business park space, and three bridges over the Santa Clara River on approximately 11,999 acres in a portion of the Santa Clara River Valley within northwestern Los Angeles County, between the city of Santa Clarita to the east and the Los Angeles County/Ventura County jurisdictional boundary line to the west. The project applicant and owner of the Project area is The Newhall Land and Farming Company (applicant).

The DEIS/EIR and revised biological assessment (BA) (URS 2009) identify that the federally endangered unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), arroyo toad (*Bufo californicus*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), California condor (*Gymnogyps californianus*), and Riverside fairy shrimp (*Streptocephalus wootoni*), and the federally threatened California red-legged frog (*Rana aurora draytonii*), coastal California gnatcatcher (*Polioptila californica californica*), and vernal pool fairy shrimp (*Branchinecta lynchi*) may occur or have the potential to occur within the project area. Designated critical habitat for the least Bell's vireo lies within the proposed Project area (59 Federal Register (FR) 4845).

The U.S. Fish and Wildlife Service’s (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any endangered or threatened species. Section 3(18) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species.

3

Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If the subject project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act. On February 27, 2008, the Corps requested that we initiate formal consultation for Alternative 2, pursuant to section 7 of the Act. In a letter dated July 24, 2009, we acknowledged that we have enough information to initiate formal consultation and expect to have biological opinion completed by October 7, 2009.

4

Due to the scope and complexity of the DEIS/EIR, this letter does not reflect a comprehensive review of the document on our part. We are providing our comments based upon a review of sections addressing biological resources, those that may be associated with biological resources, project activities that have potential to affect federally listed species, other special status species, and our concerns for listed species within our jurisdiction related to our mandates under the Act.

5

In addition to the federally listed species noted above we have concerns for the San Fernando Valley spineflower (*Chorizanthe parryi* var. *fernandina*). This species is listed as endangered under the California Endangered Species Act and is a candidate species under the Federal Act. The San Fernando Valley spineflower currently is known from two disjunct localities: the first is in the southeastern portion of Ventura County on a site now known as Upper Las Virgenes Canyon Open Space Preserve (formerly known as Ahmanson Ranch), and the second locality is on Newhall Ranch. These two sites are separated by approximately 17 miles. Investigations of historical locations and seemingly suitable habitat within the range of the species have not revealed any other occurrences.

6

The DEIS/EIR evaluates both the proposed Project (Alternative 2) and six other alternatives to the proposed Project, namely the No Action/No Project alternative (Alternative 1) and five “build” alternatives (Alternatives 3 through 7). Each of the “build” alternatives would result in grading within certain areas of the Project site; thus, impacts to sensitive species in those areas would not be avoided. The Service believes that “build” alternatives should be incorporated into

7

the final EIS/EIR that take into account the habitat requirements and life histories of sensitive species that currently exist within and in the vicinity of the Project area, and strive to minimize impacts to those species.

7
Continued

The description of alternatives indicates that Alternative 7 (Avoidance of 100-Year Floodplain, Elimination of Two Planned Bridges, and Avoidance of Spineflower) would result in reduced impacts to special status habitats (riparian, chaparral, and sage scrub habitats); reduce the number of bridges over the Santa Clara River from three to one bridge; result in the avoidance of the 100-year flood plain; and avoid regarding or realignment of major tributaries to the Santa Clara River. As stated in the DEIS/EIR, Alternative 7 was designed to achieve maximal avoidance of the cumulative area occupied by San Fernando Valley spineflower within the Project area. This alternative would designate San Fernando Valley spineflower preserves with 300 feet of expansion area surrounding the cumulative area occupied by this species, and provide a total of 660.6 acres of preserves, thereby protecting 98.2 percent of the cumulative area currently known to be occupied by the San Fernando Valley spineflower.

As noted previously, Alternative 7 would result in the construction of only one bridge over the Santa Clara River at Long Canyon Road, and would avoid impacts to sensitive habitat along the Santa Clara River. The sensitive habitat that would be avoided by Alternative 7 is a spring complex beside Middle Canyon that supports populations of two taxonomically undescribed taxa: a spring snail (*Pyrgulopsis sp. nova*) and a sunflower (*Helianthus sp. nova*). A description of the spring snail has been completed by Dr. Robert Hershler of the Smithsonian Institution and a description of the sunflower has been completed by Dr. David Keil at California Polytechnic State University, San Luis Obispo; these descriptions are currently in the process of being published in professional journals.

8

We recommend that Alternative 7 be further considered in order to reduce the level of impacts to biological resources and the necessary mitigation efforts associated with the level of impact. This alternative was also categorized as the "Environmentally Superior Alternative" in the executive summary for the DEIS/EIR (Table ES-2).

A substantial remaining concern is that the DEIS/EIR did not adequately address potential impacts of the proposed action on the federally endangered California condor (*Gymnogyps californianus*). California condors are known to roost, forage, and feed within the Project area, and impacts to the species should be more fully evaluated in the final EIS/EIR. To ensure the most recent information regarding California condor use of the Project area is considered and incorporated into the final EIS/EIR, we recommend coordinating with our office and with Jesse Grantham, the Service's California condor recovery program coordinator. Mr. Grantham can be reached at (805) 644-5185.

9

We appreciate the opportunity to provide comments on the proposed project and look forward to working with the CDFG and the Corps to address and minimize the Project's potential effects on federally listed species and sensitive habitats. If you have any questions regarding these

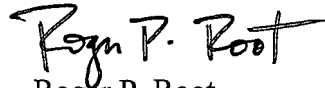
10

Dennis Bedford and Aaron O. Allen

4

comments and how they can be efficiently addressed and incorporated into the final EIS/EIR, please contact Chris Dellith of my staff at (805) 644-1766, extension 227.

Sincerely,



Roger P. Root
Assistant Field Supervisor

cc:

Jesse Grantham, U.S. Fish and Wildlife Service

10
Continued

REFERENCES CITED

- URS. 2009. Revised biological assessment for the Newhall Ranch resource management and development plan. Prepared for Newhall Land and Farming Company. Santa Barbara, California. Dated May 14, 2009.
- U.S. Army Corps of Engineers and California Department of Fish and Game. 2009. Draft joint environmental impact statement and environmental impact report, Newhall Ranch resource management and development plan and spineflower conservation plan. Dated April 2009.

FYI

-----Original Message-----

From: Roger_Root@fws.gov [mailto:Roger_Root@fws.gov]

Sent: Tuesday, August 25, 2009 5:44 PM

To: Allen, Aaron O SPL; dbedford@dfg.ca.gov

Cc: Chris_Dellith@fws.gov; Jesse_Grantham@fws.gov; Jane_Touth@fws.gov

Subject: USFWS Comments on the Newhall Ranch DEIS/EIR

Aaron and Dennis,

Our comment letter on the Newhall Ranch DEIS/EIR is attached. If you have any questions regarding our comments, please contact Chris Dellith at (805) 644-1766, extension 227.

Thank you,

Roger

Roger Root

Assistant Field Supervisor

Ventura Fish and Wildlife Office

U.S. Fish & Wildlife Service

2493 Portola Rd. Suite B

Ventura, CA 93003

(805) 644-1766, x336; FAX: (805) 644-3958

(See attached file: FED, LA, CDFG, ACOE, Newhall Ranch Draft EIS EIR Comment Letter, 2009-FA-0122.pdf)

005. Letter from U.S. Fish and Wildlife Service, dated August 25, 2009

Response 1

The comment restates and summarizes information contained in the Draft EIS/EIR related to the Project location, Project applicant, and development characteristics of the proposed Project. Because the comment does not raise a significant environmental issue, no further response is provided.

Response 2

The comment restates and summarizes information presented in the Draft EIS/EIR and in the U. S. Army Corps of Engineers' (Corps) Biological Assessment for the proposed Project by listing the threatened and endangered species that have potential to occur within the Project area, and designated critical habitat within the Project area. Because the comment does not raise a significant environmental issue, no further response is provided.

Response 3

The comment describes the U.S. Fish and Wildlife Service's (USFWS) responsibilities related to administering the federal Endangered Species Act (ESA), and defines the types of activities that constitute "take" of listed species and are prohibited under the ESA. The Corps and the California Department of Fish and Game (CDFG) are aware of the applicable ESA requirements, and the Corps requested formal Section 7 Consultation with the USFWS on February 27, 2008, to ensure compliance with this statute. The comment does not raise a significant environmental issue or address the content or adequacy of the Draft EIS/EIR, therefore, no further response is provided.

Response 4

The comment summarizes the process by which the USFWS authorizes the incidental take of federally-listed species, and identifies the Section 7 and Section 10 permitting processes. Further, the comment indicates that as of July 24, 2009, the USFWS had sufficient information to initiate formal Section 7 consultation with the Corps. The consultation process is discussed further in **Response 9**, below. Because the comment does not raise a significant environmental issue, no further response is provided.

Response 5

The comment indicates that due to the scope and complexity of the EIS/EIR, the USFWS' comments reflect a review of the sections of the document pertaining to biological resources or federally-listed species, rather than a comprehensive review of the entire EIS/EIR. This comment is an introduction to comments that follow. Each of the following comments is addressed separately in **Responses 6 through 10**, below.

Response 6

The comment states that the USFWS has concerns for the San Fernando Valley spineflower, and restates and summarizes the information contained in the Draft EIS/EIR related to the regulatory status and known distribution of this plant.

Section 4.5 (Biological Resources) of the Draft EIS/EIR evaluated the impacts of implementing the applicant's proposed Spineflower Conservation Plan (SCP) in the context of the applicant's proposed development plan and a range of alternative development plans. The proposed Project (Alternative 2) would set aside 68.6 percent of occupied spineflower habitat occurring on the proposed Project site within a series of five spineflower preserves that would be managed in accordance with the SCP. Other alternatives (Alternatives 3 through 7) analyzed in the Draft EIS/EIR would set aside higher proportions of spineflower cumulative occupied habitat in Preserves. Project impacts to spineflower and mitigation strategy are summarized in **Section 4.5** (Biological Resources) of the Draft EIS/EIR, and Section 8.0 of the Draft SCP. Please also see revised **Section 4.5** of the Final EIS/EIR; and the revised SCP found in **Appendix F1.0** of the Final EIS/EIR.

As described in **Section 4.5** (Biological Resources) of the Draft EIS/EIR impacts of the proposed Project (Alternative 2) to San Fernando Valley spineflower individuals would be significant and unavoidable under Alternative 2. However, the analyses concluded that the mitigation measures recommended in **Section 4.5** (Biological Resources) of the Draft EIS/EIR would reduce the loss of individual San Fernando Valley spineflower to a less-than-significant level under Alternatives 3, 4, 5, 6, and 7. In addition, the mitigation proposed in the Draft EIS/EIR was determined to be adequate to reduce secondary impacts on the spineflower to a less-than-significant level under all alternatives.

The comment does not raise any specific issues regarding the analysis provided by the EIS/EIR, therefore, a more specific response is not provided. However, the comment will be included as part of the administrative record, and will be made available to the decision makers prior to a final decision on the proposed project.

Response 7

The comment restates and summarizes information previously presented in the Draft EIS/EIR related to the number and nature of "build" alternatives evaluated, and suggests that the Final EIS/EIR should contain "build" alternatives that take into account the life history requirements of sensitive species to minimize impacts.

The analysis provided in **Section 4.5**, Biological Resources, of the Draft EIS/EIR considered the life history characteristics of the plants and wildlife present in the Project area. The Draft EIS/EIR also evaluated a range of reasonable alternatives as required under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). Based on the consideration of each species' life histories the Draft EIS/EIR concluded that impacts of the proposed Project (Alternative 2) would be significant and unavoidable to the San Fernando Valley spineflower, western pond turtle and San Emigdio blue butterfly. However, under Alternatives 3 through 7, all impacts to biological resources would be reduced to less-than-significant levels with implementation of the proposed mitigation measures.

Response 8

The comment restates and summarizes information contained in the Draft EIS/EIR related to the development characteristics of Alternative 7 and its avoidance of impacts to special status habitats (riparian, chaparral, and sage scrub habitats) within the 100-year floodplain of the Santa Clara River, as well as avoidance regarding realigning major tributaries to the river. The comment states that Alternative

7 provides 300 feet of expansion area surrounding cumulative occupied San Fernando Valley spineflower habitat within the preserves and would protect 98.2 percent of the cumulative occupied habitat in the Project area. The comment also states that Alternative 7 would avoid the Middle Canyon spring complex that supports two undescribed taxa, the undescribed sunflower, and undescribed spring snail. The comment further states that Alternative 7 was identified as the Environmentally Superior Alternative in the Draft EIS/EIR, and recommends that this alternative be further considered in an effort to lessen biological impacts and reduce mitigation requirements.

Section 4.5.5, Biological Resources, of the Draft EIS/EIR presented an analysis of the impacts of the proposed Project and Alternatives on the biological resources that occur in the project area including the riparian resources that occur within the tributary drainages of the Santa Clara River. As described in **Response 8**, the Draft EIS/EIR concluded that with the exception of the San Fernando Valley spineflower, western pond turtle, and San Emigdio blue butterfly (which would be considered significant and unavoidable under Alternative 2), impacts to biological resources from the proposed Project would be less than significant with mitigation. Under Alternatives 3 through 7, all impacts to biological resources would be reduced to less-than-significant levels with implementation of the proposed mitigation measures.

Response 9

The comment states a concern regarding the California condor, which is known to roost, forage, and feed within the Project area and asserts that analysis of this species in the Draft EIS/EIR is inadequate. The commentor states that the condor should be more fully evaluated in the Final EIS/EIR and recommends coordination with the Ventura USFWS office and Jesse Grantham, the USFWS' California condor recovery program coordinator, to ensure that the Final EIS/EIR incorporates the most recent information.

The CDFG and Corps incorporated the most current data available through January 2009 during the preparation of the Draft EIS/EIR documenting the use of the site by California condor (see **Subsection 4.5.5.3**, Impacts to Special-Status Species). This included recent information provided by the USFWS regarding the detection of California condors in the Potrero area of the RMDP/SCP (Root 2008). As described in **Subsection 4.5.5.3**, Impacts to Special-Status Species, of the Draft EIS/EIR, until April 2008, California condors had not been known to nest or land within the Project area within the last 25 years (Bloom Biological 2007A, 2008). However, in April 2008, wildlife biologist Chris Niemela observed a California condor feeding on a dead calf in a Potrero side canyon (Carpenter 2008) (**Figure 4.5-5**, Listed and California Fully Protected Wildlife Species Occurrences). The USFWS also provided information that California condors fitted with GPS transmitters had landed on Newhall Ranch on several days from April through July 2008 (Root 2008). In January 2009, up to five California condors were detected feeding on a dead calf in the middle section of Potrero Canyon south of Potrero Mesa between January 27 and 30 (Niemela 2009). A follow-up visit by Chris Niemela was conducted at the request of the USFWS to photodocument the calf carcass and site where the feeding occurred.

Based on the information available to the CDFG and Corps at the time the Draft EIS/EIR was published, the analysis included in **Subsection 4.5.5.3**, Impacts to Special-Status Species, of the Draft EIS/EIR provided an adequate level of information regarding potential impacts to California condors resulting from implementation of the proposed Project or Alternatives. The Draft EIS/EIR concluded, based on the existing information, that impacts to individuals and secondary impacts to California condors would be significant absent mitigation. The Draft EIS/EIR also concluded, based on existing information, that

impacts to foraging habitat would be adverse but not significant, due to low prey densities in the Project area (*i.e.*, cattle carcasses). Although impacts to foraging habitat were determined to be adverse but not significant, to further reduce or minimize the loss of foraging habitat and avoid impacts to California condor individuals, the Draft EIS/EIR identified a series of mitigation measures that would provide for the dedication of open space where this species could continue to forage, and measures that would prevent the loss of individual birds. (See Draft EIS/EIR, pp. 4.5-715-716 in **Subsection 4.5.5.3** for a description of the mitigation measures.) With the implementation of these mitigation measures, the Draft EIS/EIR concluded that impacts to California condors would be reduced to less-than-significant levels.

In response to the comment, the CDFG and Corps contacted the USFWS condor expert to incorporate any new information collected subsequent to release of the Draft EIS/EIR for public review related to the behavior or distribution of the condor on or near the proposed RMDP/SCP development area. A review of the updated 2009 condor flight data provided by the USFWS indicated that the RMDP/SCP development area and the proposed mitigation lands in the High Country Special Management Area (SMA), Salt Creek area, and River Corridor SMA are located under a commonly used flight path for the California condor between the Sespe Wilderness area to the northwest and the San Gabriel Mountains National Forest to the southeast of the Project area. In addition, California condors routinely overfly the area and are known to feed in portions of the development area where grazing currently occurs and cattle carcasses are sometimes available. The data also suggest that condors would be expected to continue to opportunistically feed on cattle carcasses or other large mammal carcasses (*e.g.*, mule deer) within the proposed RMDP/SCP development area and proposed mitigation lands. The review of the 2009 USFWS flight data, in addition to coordination with USFWS staff, also suggests that the condor is expanding its use of the region and can be expected to continue overflights of the Santa Clarita Valley and adjacent National Forests to the north and southwest of the Project area.

The updated 2009 USFWS information regarding California condor overflights and use of the proposed Project area for foraging will be incorporated into the Final EIS/EIR. While this information is useful and continues to expand the additional data on the ecology and behavior of this species, the data do not provide information that would alter the significance conclusion in the Draft EIS/EIR that loss of foraging habitat would be adverse but not significant. As recommended in the comment, the Project applicant will continue to coordinate with the USFWS regarding updated information for California condor use of the Project area. In addition, as described in **Subsection 4.5.2.1**, Federal Authorities and Administering Agencies, in February 2008 the Corp requested initiation of the required consultation with the USFWS per section 7 of the federal ESA. The section 7 consultation and Biological Opinion process includes an evaluation of whether a project is likely to jeopardize the continued existence of any endangered or threatened species or result in the "destruction or adverse modification" of critical habitat and requires the inclusion of reasonable and prudent measures in the implementation of a project or agency action in order to minimize any impact (16 U.S.C. § 1536). The section 7 consultation requested the Biological Opinion of the USFWS on impacts to five federally listed species, including the California condor. This process will ensure that potential impacts to the California condor are fully addressed.

Response 10

The Corps and CDFG appreciate the USFWS' on the proposed Project.