

WISHTOYO FOUNDATION/VENTURA COASTKEEPER

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CENTER FOR BIOLOGICAL DIVERSITY

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BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the matter of Clean Water Act Section
401 Water Quality Certification and Waste
Discharge Requirements for Newhall Land
& Farming Company, Proposed Resource
Management and Development Plan and
Spineflower Conservation Plan Issued
September 14, 2012

(Los Angeles Regional Water Quality
Control Board Order No. R4-2012-0139)

**PETITION FOR REVIEW AND
RECONSIDERATION**

Water Code § 13320; 23 Cal. Code Regs. §§
2050 and 3867

INTRODUCTION

In accordance with section 13320 of the California Water Code and sections 2050 and 3867 of Title 23 of the California Code of Regulations, Wishtoyo Foundation, Wishtoyo Foundation's Ventura Coastkeeper Program, and the Center for Biological Diversity ("Petitioners") hereby petition the State Water Resources Control Board ("State Board") to reconsider and review the September 14, 2012 final decision of the California Regional Water Quality Control Board for the Los Angeles Region ("Regional Board") approving the Clean Water Act Section 401 Water Quality Certification ("401 Cert") and Waste Discharge Requirements ("WDR") for the Newhall Land & Farming Company, Proposed Resource Management and Development Plan and Spineflower Conservation Plan ("Project"), Los Angeles County, Order No. R4-2012-0139 ("401 Cert/WDR").

Petitioners seek State Board review in order to rectify the Regional Board's issuance of a 401 Cert/WDR that fails to ensure the Project's discharge will comply with applicable Clean Water Act and other applicable water quality requirements and that fails to implement the Water Quality Control Plan for the Los Angeles Region ("Basin Plan"). These failures are due to the Regional Board's misplaced reliance on a legally inadequate Environmental Impact Report ("EIR"); the failure of the Regional Board to adequately analyze the Project's impacts on the Santa Clara River's water quality, aquatic life, and riparian habitat; the Regional Board's omission of 401 Cert/WDR provisions necessary to protect the Santa Clara River's water quality aquatic life, and riparian habitat; and the Regional Board's inclusion of mitigation measures unsupported by the record as sufficiently tailored to mitigate the Project's impacts on Santa Clara River habitat associated with sediment yield reduction from the Project area. As a result, Petitioners, the Santa Clara River's beneficial uses, the southern California steelhead, and all aquatic, avian, and terrestrial wildlife dependent on the Santa Clara River's water quality and provision of riverine habitat have been irreparably harmed.

BRIEF PROJECT BACKGROUND

The Newhall Ranch development, one of the largest single residential developments ever proposed in California, would create a new urban center of about 20,000 residences and approximately 60,000 residents on the approximately 12,000-acre Newhall Ranch in northwestern Los Angeles County along the Santa Clara River just upstream of Ventura County line. The Santa Clara River is Southern California's last free flowing river, and remains in a relatively undisturbed state. The development and associated regulatory approvals which are the subject of this petition threaten to adversely impact the River's water quality, sediment provision, Chumash Native American natural cultural resources, and habitat for wildlife, including federally and state listed endangered species dependent upon an ecologically healthy Santa Clara River such as the southern California steelhead and unarmored threespine stickleback.

After Los Angeles County's approval of the Newhall Ranch Specific Plan in 2003, the California Department of Fish and Game ("CDFG," now known as the Department of Fish and Wildlife) began processing the approvals for the Newhall Ranch Resource Management and Development Plan ("RMDP") and the Newhall Ranch Spineflower Conservation Plan. With the U.S. Army Corps of Engineers, CDFG prepared a Joint Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") for the RMDP, the Newhall Ranch Spineflower Conservation Plan, the Master Streambed Alteration Agreement and Incidental Take Permit associated with these plans (collectively, the "Project"). CDFG was the lead agency under the California Environmental Quality Act (CEQA) and the Corps was the lead agency under the National Environmental Policy Act (NEPA), for the purpose of analyzing environmental impacts of the RMDP (State Clearinghouse No. 2000011020). CDFG certified its portion of the final EIS/EIR (the "CDFG EIR") as adequate pursuant to CEQA on December 3, 2010, and the Corps issued its record of decision on the final EIS/EIR on August 31, 2011.

The Corps' approval was issued in connection with Newhall Land and Farming Company's ("Newhall Land" or "Applicant" or "Discharger") application for a permit pursuant to Clean Water Act section 404 (dredge or fill permit) for activities on nearly 14,000 acres of Newhall Ranch and adjoining areas. Newhall Land also submitted an application to the California Regional Water Quality Control Board for the Los Angeles Region ("Regional Board") for water quality certification pursuant to the Regional Board's authority under section 401 of the Clean Water Act, and report of waste discharge pursuant to the Regional Board's authority under the California Water Code. Order R4-2012-0139 adopted by the Regional Board on September 14, 2012, granted with conditions, Newhall Land's application for a water quality certification pursuant to section 401 of the Clean Water Act and imposed waste discharge requirements (WDRs) pursuant to California Water Code section 13263.

1. NAME AND CONTACT INFORMATION OF PETITIONERS

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2. THE ACTION OR INACTION OF THE REGIONAL BOARD BEING PETITIONED INCLUDING A COPY OF THE ACTION BEING CHALLENGED AND OF ANY DOCUMENT ISSUING CERTIFICATION THAT IS REFERRED TO IN THE PETITION:

Petitioner seeks review of the Regional Board's September 14, 2012 approval of the Clean Water Act Section 401 Water Quality Certification and Waste Discharge

Requirements for the Newhall Land & Farming Company, Proposed Resource Management and Development Plan and Spineflower Conservation Plan, Santa Clarita, Los Angeles County, Order No. R4-2012-0139 (“401 Cert/WDR”). A copy of the Order is attached to this petition as Attachment 1.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED:

September 14, 2012.

4. A STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR IMPROPER AND POINTS AND AUTHORITIES IN SUPPORT THEREOF:

a. The Regional Board Relied on the Legally Inadequate CDFG EIR

The Order relies on the CDFG EIR for its environmental analysis, and also incorporates as certification conditions many of the mitigation measures identified in the CDFG EIR. (*See* Order at 8-38; August 7, 2012 Regional Board Hearing Transcript at 57-59, 115-116.) Petitioners and several other groups challenged the CDFG EIR in January 2011. On September 20, 2012, the reviewing court issued a Statement of Intended Decision in this case (*Center for Biological Diversity v. California Department of Fish and Game*, Los Angeles County Superior Court Case Number BS 131347). The Statement of Intended Decision describes multiple inadequacies in the CDFG EIR and would grant the Petition for Writ of Mandate requested by Petitioners and the other groups. As of this date, the court has not issued a final ruling, but Petitioners have requested that the certification of the CDFG EIR be set aside.

In relying on the CDFG EIR, the Regional Board was acting as a CEQA responsible agency. As a responsible agency, the Regional Board must assume that the CDFG EIR is adequate. (Pub. Resources Code § 21167.3; 14 Cal. Code Regs. § 15231.) However, this presumption of adequacy no longer applies if the EIR has been adjudged not to comply with the requirements of CEQA. (14 Cal. Code Regs. § 15231(a).) At the September 14, 2012 Regional Board meeting, CDFG’s regional manager addressed the

Regional Board about the Project but failed to disclose that the CDFG EIR was subject to a pending legal challenge and that a hearing was scheduled in this matter for the following week. (September 14, 2012 Regional Board Hearing Transcript at 51-55.)

The CDFG EIR is inadequate under CEQA and does not constitute a valid CEQA document on which the Regional Board may rely. Not only does the EIR fail to comply with CEQA with respect to the Project as it was defined in the CDFG EIR, it fails to describe and analyze the environmental impacts of the project such as the sub-lethal impacts that the project's discharges of copper concentrations in storm water will have on migrating federally endangered southern California steelhead downstream of the Project Area and in the Santa Clara River Estuary. As such, the 401 Cert/WDR fails to address the sub-lethal impacts that the Project's storm water discharges containing copper will have on the Santa Clara River's endangered populations of southern California steelhead. The CDFG EIR is inadequate in other ways relevant to the Regional Board's responsible agency role as well, including its analysis of alternatives. (*See* Statement of Proposed Decision, attached as Attachment 2.)

The CDFG EIR is therefore not a valid CEQA document on which the Board may rely. (23 Cal. Code Regs. § 3856(f).) Because the court's ruling in *Center for Biological Diversity v. California Department of Fish and Game* is not yet final, Petitioners request that the State Board hold action on this Petition in abeyance until there is a final ruling in that case pursuant to 23 Cal. Code Regs. section 3869(c). Should certification of the CDFG EIR be set aside as Petitioners have requested, the Regional Board will have acted in reliance on an EIR that has been adjudged inadequate, and its order must also be set aside.

b. The Record Does Not Support the Regional Board's Decision Adopting the 401 Cert/WDR

The federal Clean Water Act requires that any applicant for a federal license or permit to conduct an activity that may result in discharges of pollutants to navigable

waters of the United States provide the federal licensing agency with a certification, or a waiver of certification, from the state agency having jurisdiction over the navigable waters that the discharge will comply with applicable Clean Water Act and other applicable water quality requirements (water quality certification). Clean Water Act § 401, 33 U.S.C. §1341. The Porter-Cologne Water Quality Control Act (Water Code § 13000, et. seq.) requires any person who proposes to discharge waste that could affect the quality of waters of the state to submit a report of waste discharge. Wat. Code §13260(a). California Water Code section 13263 authorizes the Regional Board to issue waste discharge requirements that implement any relevant water quality control plan. State Water Board regulations addressing water quality certification do not limit or prevent regional boards from issuing waste discharge requirements for activities subject to water quality certification.

In issuing its order, the Regional Board failed to act in accordance with relevant governing law, acted arbitrarily and capriciously, without substantial evidence, and without adequate findings. Specifically, but without limitation, the Regional Board failed to make sufficient findings “to bridge the analytical gap between the raw evidence and ultimate decision” in approval of the 401 Cert/WDR. (*Topanga Assn. for Scenic Cmty. v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974).) The Board acted arbitrarily and capriciously because the ultimate decision of adopting the 401 Cert/WDR is not supported by the findings, the findings are not supported by the weight of the evidence in the administrative record, and the administrative record does not support the ultimate decision adopting the 401 Cert/WDR, thus resulting in an abuse of discretion. (*See id.*; Code Civ. Proc. § 1094.5.)

During the June 7, 2012, August 7, 2012, and September 14, 2012 Regional Board hearings, Wishtoyo Foundation and its Ventura Coastkeeper Program’s (“VCK”) testimony before the Regional Board and its staff with accompanying projected and distributed power point presentations, alerted the Regional Board that the EIR’s

hydrological models and sediment yield reduction calculations were flawed. Specifically, VCK pointed out that the EIR utilized an outdated 100 year flood magnitude from 1994 (60,000 cfs at County line downstream of the Project), instead of the 2009 USGS updated magnitude (73,000 cfs at County line downstream of the Project) to analyze the Project's hydromodification based impacts on downstream Santa Clara River riparian habitat. In addition, VCK demonstrated that the EIR drastically underestimated the magnitude of project area's annual sediment yield, and drastically overestimated the magnitude of the total annual discharge of sediment from the Santa Clara River, which resulted in the calculation for the actual sediment yield reduction to the Santa Clara River as a result of the Project being between 2.58% and 4.58%, which is well above the EIR's projection of 0.52% and the EIR's threshold of a significance of 1%.

VCK testified that the EIR's failure to use updated 2009 magnitude of the 100 year flood in its models precluded a sufficiently adequate analysis of the project's hydromodification impacts on downstream riparian habitat due to scour of riparian vegetation and the Santa Clara River's banks. VCK also testified that without adequately tailored mitigation measures in the 401 Cert/WDR, the sediment yield reduction of greater than 1% to the Santa Clara River from the Project Area that will be caused by the Project threatens to deprive Ventura County beaches of sand needed for replenishment, and also threatens to mine the Santa Clara River bed, scour its banks, and in the process degrade its riparian habitat that many of the River's aquatic and avian endangered species rely upon for survival.

As indicated most prominently in the Regional Board Hearing transcript from August 7, 2012 (*see* pages 119-122, 125-126), the Regional Board's inclusion of mitigation measures in the 401 Cert/WDR are unsupported by the record as being adequate to mitigate the Project's adverse significant impacts to Santa Clara River channel habitat, Santa Clara River riparian habitat, and to Ventura County beaches from reductions in Santa Clara River sediment yield and increased River flows during storm

events. Without a sufficiently reliable analysis as to the hydromodification and sediment yield reduction impacts from the Project, the 401 Cert's/WDR's mitigation measures are arbitrary and capricious, and cannot be deemed adequate to mitigate these significant impacts. Furthermore, nothing in the record indicates that the 401 Cert/WDR's adaptive management provisions provide adequate assurances that the Project's hydromodification and sediment yield impacts to the Santa Clara River's habitat can be repaired or mitigated *after* these impacts have occurred. Therefore, the Regional Board acted arbitrarily and capriciously because the ultimate decision of adopting sediment yield and hydromodification mitigation measures in the 401 Cert/WDR is not supported by the findings of the Regional Board, the Regional Board's hydromodification and sediment yield findings are not supported by the weight of the evidence in the administrative record, and the administrative record does not support the ultimate decision adopting the 401 Cert/WDR without conditions that adequately mitigate the Project's sediment yield reduction and hydromodification impacts. Thus, in adopting the 401 Cert/WDR, the Regional Board abused its discretion.

c. Failure to Adequately Respond to Public Comments

The Regional Board further failed to respond adequately to factually and legally specific comments from public interest organizations concerning the most highly significant matters at issue and failed to condition the 401 Certification as required by the Clean Water Act.

In 401 Cert/WDR written comments submitted on April 10, 2012 and during the June 7, 2012 and August 7, 2012 Regional Board hearing, Wishtoyo Foundation and its Ventura Coastkeeper Program notified the Regional Board and Regional Board staff that the Regional Board needed to analyze the sub-lethal impacts of the copper contained in the Project's storm water discharges on migrating federally endangered southern California steelhead downstream of the Project Area in the Santa Clara River. VCK also requested that the Regional Board condition the 401 Cert/WDR to mitigate the sub-lethal

impacts that the Project's storm water discharges containing copper will have on the Santa Clara River's endangered populations of southern California steelhead.¹

In its written comments and June 7, 2012 and August 7, 2012 Regional Board hearing testimony, VCK provided the Regional Board with sufficiently reliable and substantial evidence to support this mitigation request, including: that the CDFG EIR predicted that the concentration of dissolved copper in the Project's storm water discharges to the Santa Clara River will increase to 8.3 – 9.5 micrograms per liter; that the CDFG EIR presented data that existing observed concentrations of dissolved copper in the Santa Clara River during storm events within the Project Area range between 3.3 to 22.6 micrograms per liter; and that both the projected concentration of dissolved copper in Newhall's storm water discharges and in the Santa Clara River adjacent to the Project area during storm events exceeds the steelhead smolt sub-lethal toxicity thresholds of 0.75 - 2.1 micrograms per liter as documented by a National Oceanic and Atmospheric Administration ("NOAA") published study VCK provided to the Regional Board.² The EIR documents that the Santa Clara River flows from the Project Area to the Estuary during precipitation events. The CDFG EIR also documents that the Santa Clara River, as close as 3.5 miles downstream of the Project to the Santa Clara River Estuary, is designated as southern California steelhead critical habitat under the Endangered Species Act, and is utilized by juvenile steelhead for migration during and after storm events.

Despite VCK's written comments and public testimony accompanied by slide presentations during Regional Board meetings, the Regional Board and its staff failed to

¹ VCK requested the Regional Board to adopt enforceable end of pipe numeric dissolved copper limits that protect migrating southern California steelhead from the Project's storm water discharges.

² NOAA Technical Memorandum NMFS-NWFSC-83: An Overview of Sensory Effects on Juvenile Salmonids Exposed to Dissolved Copper: Applying a Benchmark Concentration Approach to Evaluate Sublethal Neurobehavioral Toxicity, October 2007, Scott A. Hecht, David H. Baldwin, Christopher A. Mebane, Tony Hawkes, Sean J. Gross, and Nathaniel L. Scholz.

analyze the sub-lethal impacts of copper contained in the Project's storm water discharges on southern California steelhead, and accordingly failed to condition the 401 Cert/WDR to mitigate the sub-lethal impacts that the Project's storm water discharges containing copper will have on the Santa Clara River's endangered populations of southern California steelhead. The Regional Board's failure to analyze the Project's sub-lethal impacts on steelhead, and to condition the 401 Cert/WDR to protect the Santa Clara River's southern California steelhead populations, and thus also the Santa Clara River's water quality dependent beneficial uses provided in the Water Quality Control Plan for the Los Angeles Region "Basin Plan,"³ constitute a failure to comply with its Clean Water Act § 401 duties to certify that Project's discharge will comply with applicable Clean Water Act and other applicable water quality requirements.

5. HOW THE PETITIONERS ARE AGGRIEVED:

Petitioner Wishtoyo Foundation, a nonprofit organization that protects Chumash Native American cultural, natural cultural resources, and the environment all people depend upon, and its Ventura Coastkeeper Program that protects the ecological integrity and water quality of Ventura County's inland and coastal waterways, have direct interest in protecting, *inter alia*, the water quality and ecological integrity of the Santa Clara River in Ventura and Los Angeles County. Wishtoyo Foundation and its Ventura Coastkeeper Program represents approximately 700 members in Los Angeles and Ventura County, including in the Santa Clara River watershed, and is dedicated to

³ The Beneficial Uses for the waters that will receive polluted storm water discharges from the Project include: agriculture supply (AGR), municipal and domestic supply (MUN), groundwater recharge (GWR), water contact recreation (REC 1), non-contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), estuarine habitat (EST), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), migration of aquatic organisms (MIGR) and spawning, reproduction and development (SPWN). (*See* Basin Plan, pp. 2-1 - 2-5.)

making southern California's inland and coastal waterways healthy again for people and aquatic life.

Wishtoyo Foundation and its members are aggrieved by the 401 Cert/WDR's inadequacy and, thereby, the Project's future discharge that will irreparably harm the ecological integrity, water quality, beneficial uses, and southern California steelhead populations of the Santa Clara River. In particular, Wishtoyo Foundation's members directly benefit from their use and enjoyment of downstream waters, including the Santa Clara River estuary, in the form of Chumash cultural utilization, hiking, swimming, photography, wildlife viewing watching, water quality monitoring, and recreating on floatable craft.

The Regional Board's failure to rely upon a valid CEQA document, failure to ascertain whether its mitigation measures were sufficiently tailored to address the Project's hydromodification and sediment yield impacts on the Santa Clara River's habitat and Ventura County beach replenishment, and failure to analyze the sub-lethal impacts of the Project's storm water discharges on southern California steelhead in conditioning and approving the 401 Cert/WDR for this Project has enormous consequences for the region and its residents. Pollutants such as copper that the EIR projected will be conveyed in the Project's storm water runoff at levels determined by NOAA to impart sub-lethal impacts on juvenile salmonid, into a reach of the Santa Clara River that the EIR demonstrates already exhibits concentrations of copper above the NOAA study's sub-lethal endpoints for juvenile salmonid, constitute a threat to migrating juvenile steelhead, and the multi-stakeholder and resources intensive steelhead recovery effort in the Santa Clara River watershed led by federal and state agencies, concerned residents, Native Americans, and environmental nongovernmental organizations over the last decade. Furthermore, the sediment yield reduction of greater than 1% to the Santa Clara River from the Project Area that will be caused by the Project threatens to deprive Ventura County beaches of sand needed for replenishment, and also threatens to mine the

Santa Clara River bed, scour its banks, and in the process degrade its riparian habitat that many of the River's aquatic and avian endangered species rely upon for survival. In addition, hydromodification impacts on downstream Santa Clara River riparian habitat and river channel habitat as a result of stormwater runoff from the Project area combined with the current and actual magnitude of the 100 year flood at County line, threaten to irreparably harm the Santa Clara River's aquatic life, habitat, and beneficial uses as designated in the Basin Plan.

Petitioner Center for Biological Diversity (the "Center") is a national nonprofit environmental organization dedicated to protecting imperiled species and their habitats through science, policy, education, and environmental law. The Center and its members have an interest in maintaining and enhancing the water quality and hydrological integrity of the Santa Clara River for the benefit of endangered, threatened, and rare fish, wildlife, and plants, including the unarmored threespine stickleback, southern California steelhead, arroyo toad, least Bell's vireo, willow flycatcher, and yellow-billed cuckoo.

The Center and its members are aggrieved by the Regional Board's reliance on the legally inadequate CDFG EIR, which fails to adequately evaluate and mitigate the Project's significant environmental effects and analyze feasible, less environmentally damaging alternatives to the Project. The Center and its members are further aggrieved by the 401 Cert/WDR's failure to adequately address the Project's discharges that will irreparably harm the ecological integrity, water quality, and beneficial uses of the Santa Clara River.

In sum, these documented facts demonstrate some of the considerable negative impacts on Petitioners' members and the environment that will occur as a result of the Regional Board's failure to issue a 401 Cert/WDR that is adequately protective of the Santa Clara River's water quality and habitat.

6. THE ACTION PETITIONERS REQUEST THE STATE BOARD TO TAKE:

Petitioners seek an Order by the State Board that:

1.) Overturns the Regional Board's approval of the Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for the Newhall Land & Farming Company, Proposed Resource Management and Development Plan and Spineflower Conservation Plan, Santa Clarita, Los Angeles County, Order No. R4-2012-0139.

2.) Remands the matter to the Regional Board with specific direction to remedy each of its violations of law as described herein.

3.) Stays all Project activities pursuant to the 401 Cert/WDR until the deficiencies in the CDFG EIR and the 401 Cert/WDR have been addressed.

7. A STATEMENT OF POINTS AND AUTHORITIES FOR ANY LEGAL ISSUES RAISED IN THE PETITION, INCLUDING CITATIONS TO DOCUMENTS THAT ARE REFERRED TO:

The statement of points and authorities is incorporated in Petitioners' statement of reasons. *See* section 4., *supra*.

8. LIST OF OTHER INTERESTED PERSONS⁴

Friends of the Santa Clara River
Attn: Ron Bottorff
660 Wendy Drive
Newbury Park, CA 91320

Heal the Bay
Attn: Kirsten James
1444 9th Street
Santa Monica, CA 90401

Santa Clarita Organization for Planning the Environment
Attn: Lynne Plambeck
P.O. Box 1182
Canyon Country, CA 91386

⁴ Petitioners are aware that numerous individuals submitted form letters to the Regional Board in support of the Project. These individuals are not included on this list.

9. A STATEMENT THAT COPIES OF THE PETITION HAVE BEEN SENT TO THE REGIONAL BOARD AND TO THE APPLICANT/DISCHARGER:

A true and correct copy of this petition was sent to the Regional Board and the Applicant/Discharger Newhall Land and Farming Company in care of its counsel of record in the Regional Board proceeding, by being deposited in the United States mail with First Class postage prepaid on October 12, 2012 addressed to the following recipients:

Mr. Samuel Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Newhall Land and Farming Company
Attention: Mark J. Dillon
Gatzke Dillon & Ballance LLP
2762 Gateway Road
Carlsbad, California 92009

10. COPY OF REQUEST FOR PREPARATION OF RECORD

A copy of the request to the Regional Board's Executive Officer to prepare the staff record, including a tape recording or transcript of any pertinent Regional Board meeting, is attached to this Petition as Attachment 3.

11. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD:

The issues relevant to this Petition were raised by Petitioner in comment letters dated April 10 and April 20 (Ventura Coastkeeper), April 9 (Center), and through oral testimony accompanied by power point presentations presented at the June 7, 2012, August 7, 2012, and September 14, 2012 Regional Board hearings. Petitioners could not raise objections related to the Los Angeles Superior Court's findings of inadequacy in the CDFG EIR and the court's September 20, 2012 Statement of Intended Decision because

this matter was still pending at the time of the Regional Board's September 14, 2012 order.

12. SUMMARY OF PARTICIPATION BY PETITIONERS

Petitioners submitted written comments and participated in the Regional Board proceedings in this matter where there were opportunities for public participation. *See* section 11., *supra*.

CONCLUSION

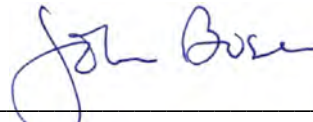
For the reasons stated in this Petition, Petitioners respectfully request the State Board to set aside the Regional Board's Order No. R4-2012-0139 issuing a Clean Water Act Section 401 water quality certification and WDR to Newhall Land & Farming Company for the Newhall development and accompanying Resource Management and Development Plan and Spineflower Conservation Plan Project.

Respectfully submitted via electronic mail.

Dated: October 12, 2012



Jason Weiner
Counsel for Wishtoyo Foundation/
Ventura Coastkeeper



John Buse
Counsel for Center for Biological
Diversity

ATTACHMENT 1

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

ORDER No. R4-2012-0139

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION
AND WASTE DISCHARGE REQUIREMENTS (WDR) FOR:**

**NEWHALL LAND & FARMING COMPANY, PROPOSED RESOURCE
MANAGEMENT AND DEVELOPMENT PLAN AND SPINEFLOWER
CONSERVATION PLAN, SANTA CLARITA, LOS ANGELES COUNTY
(File No. 11-168)**

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Attachments:

- 1. Clean Water Act Section 404 Permit Final LEDPA Project Description**
- 2. RMDP Maintenance Manual**
- 3. Clean Water Act Section 404 Permit Mitigation Plan dated May 26, 2011**
- 4. RMDP Biological Mitigation Measure (BIO 2)**
- 5. Draft Surface Water Diversion Plan**

FINDINGS.

The California Regional Water Quality Control Board, Los Angeles Region, (Regional Board), finds the following.

A. REGULATORY AUTHORITY

1. The federal Clean Water Act requires that any applicant for a federal license or permit to conduct an activity that may result in discharges of pollutants to navigable waters of the United States provide the federal licensing agency with a certification, or a waiver of certification, from the state agency having jurisdiction over the navigable waters that the discharge will comply with applicable Clean Water Act and other applicable water quality requirements (water quality certification). Clean Water Act § 401, 33 U.S.C. §1341.
2. Persons seeking water quality certification are required to file an application with the Regional Board and provide information set forth in regulations adopted by the State Water Resources Control Board (State Water Board). Title 23 Cal. Code Regs. §§ 3855-3861. The Executive Officer of the Regional Board (Executive Officer) or the Regional Board may issue a water quality certification after providing public notice.
3. The Porter-Cologne Water Quality Control Act (Water Code § 13000, et. seq.) requires any person who proposes to discharge waste that could affect the quality of waters of the state to submit a report of waste discharge. Wat. Code §13260(a). California Water Code section 13263 authorizes the Regional Board to issue waste discharge requirements that implement any relevant water quality control plan. State Water Board regulations addressing water quality certification do not limit or prevent regional boards from issuing waste discharge requirements for activities subject to water quality certification.
4. Newhall Land and Farming Company (Newhall Land or Discharger) submitted an application for a permit pursuant to Clean Water Act section 404 (dredge or fill permit) for activities on nearly 14,000 acres of land to the United States Army Corps of Engineers (Corps). Newhall Land also submitted an application to the Regional Board for water quality certification pursuant to the Regional Board's authority under section 401 of the Clean Water Act, and report of waste discharge pursuant to the Regional Board's authority under the California Water Code. This Order grants with conditions Newhall Land's application for a water quality certification pursuant to section 401 of the Clean Water Act and imposes waste discharge requirements (WDRs) pursuant to California Water Code section 13263, consistent with State Water Board regulations. This Order includes conditions and requirements to comply with the Clean Water Act and the California Water Code.

B. PERMIT PARTIES AND RELATED APPROVALS

1. Newhall Land filed an application for Clean Water Act section 401 water quality certification and a Report of Waste Discharge (ROWD) on October 5, 2011, for the discharge of dredged and fill material to waters of the United States, in connection with implementation of the Newhall Ranch Resource Management and Development Plan (RMDP).
2. The RMDP provides for resource management and development in an area encompassing 13,650.7 acres in northwestern Los Angeles County, including the 11,999-acre Newhall Ranch Specific Plan (NRSP) area. Implementation of the RMDP will allow development of a master planned community within the NRSP area, with interrelated villages that provide housing, commercial/industrial uses, and related public facilities and open space. This development is intended to meet long-term housing demands and provide additional jobs in the region to help address demographic growth trends. The RMDP site includes roadway infrastructure improvements within areas adjacent to the NRSP necessary for traffic circulation. The five villages included are: Landmark Village, Mission Village, Homestead South Village, Homestead North Village and Potrero Village, as depicted on Figure 1, incorporated herein by this reference.
3. The RMDP also includes mitigation and conservation measures for the long-term management of sensitive biological resources within the RMDP boundaries, including state and federally protected plant and wildlife species. The RMDP includes a Spineflower Conservation Plan component, which will permanently protect and manage a system of preserves for the San Fernando Valley spineflower, which is listed under the California Endangered Species Act as endangered. The California Department of Fish and Game (CDFG) issued a spineflower incidental take permit (Permit No. 2081-2008-012-05) and a multi-species incidental take permit (Permit No. 2081-2008-013-05) for the RMDP on December 3, 2010. The U.S. Fish and Wildlife Service (USFWS) issued a biological opinion for the RMDP on June 7, 2011, which found that the RMDP will not jeopardize the survival or recovery of federally listed species or adversely modify critical habitat designated under the federal Endangered Species Act.
4. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a ~~take~~ will result from any act authorized or required by this Order, the Discharger must obtain authorization for an incidental take from appropriate authorities prior to taking action. The

Discharger is responsible for meeting all requirements of the applicable Endangered Species Act for the discharge authorized by this Order.

5. The Santa Clara River and tributary drainages will be affected by the project. The tributary drainages which will be affected are in Chiquito Canyon, Lion Canyon, Long Canyon, Potrero Canyon, San Martinez Grande Canyon, Magic Mountain Canyon, Middle Canyon, Exxon Canyon, Dead-end Canyon, Humble Canyon, Off-haul Canyon, Mid-Martinez Grande Canyon, and Ayers Canyon; and several unnamed small canyons.
6. The Corps issued a Clean Water Act section 404 provisional permit for fill of waters of the United States associated with the RMDP on August 31, 2011, contingent on the Regional Board's issuance or waiver of water quality certification (Permit No. 2003-01264-AOA or Corps Permit).
7. The CDFG issued a master Streambed Alteration Agreement for the RMDP on December 3, 2010 (Agreement No. 1600-2004-0016-R5 or CDFG MSA).
8. The RMDP includes construction of a Water Reclamation Plant (WRP) adjacent to the Santa Clara River; the Regional Board adopted an NPDES permit and Waste Discharge Requirements to the Newhall Ranch Sanitation District for the WRP (Order No. R4-2007-0046) effective October 27, 2007. Construction of this new wastewater facility has not yet begun. Newhall Ranch Sanitation District has submitted to the Regional Board a ROWD for renewal of the NPDES and Waste Discharge Requirements.
9. Clean Water Act section 401 authority to issue water quality certification lies with states and, in California, with the Regional Water Quality Control Boards. Clean Water Act section 401 requires states to act on an application for water quality certification within one year of submittal of a complete application. The Regional Board may deny, deny without prejudice, or issue the water quality certification with conditions.
10. California Water Code section 13263 requires the Regional Water Quality Control Boards to prescribe WDRs for any proposed or existing discharge unless WDRs are waived pursuant to Water Code section 13269.
11. **Water Quality Control Plan.** The Regional Water Board adopted a Water Quality Control Plan for the Los Angeles Region (Basin Plan) on June 13, 1994 that designates beneficial uses, establishes water quality objectives to protect the beneficial uses, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. There have been a number of amendments (including total maximum daily loads) to the Basin Plan that have been adopted subsequent to the 1994 adoption. In addition, the Basin Plan incorporates State Water Board policies including Resolution No. 88-63, which established state policy that all waters,

with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply. Beneficial uses applicable to the receiving surface waters are itemized in the attached Table 1a, Basin Plan Beneficial Uses – Surface Waters. Beneficial uses applicable to the receiving groundwaters are itemized in Table 1b, Basin Plan Beneficial Uses – Groundwaters. The United States Environmental Protection Agency (USEPA) adopted water quality criteria that apply in California (the California Toxics Rule and some criteria in the National Toxics Rule) to discharges to navigable waters. The Regional Board is required to implement the California Toxics Rule. This Order is in compliance with the Basin Plan, and amendments thereto, and the California Toxics Rule.

12. Clean Water Act section 305(b) requires each state to report biennially to USEPA on the condition of its surface water quality. Under Clean Water Act section 303(d), each state must review, make necessary changes, and submit a list of impaired waters to USEPA (the 303(d) list). The USEPA has issued guidance to states which requires the two reports to be integrated. For California, this combined report is called the California 303(d)/305(b) Integrated Report (Integrated Report). The 2010 Integrated Report included changes to the 2006 Clean Water Act section 303(d) list of impaired water bodies and Clean Water Act section 305(b) report on the quality of waters in California. On October 11, 2011, USEPA issued its final decision on the waterbodies and pollutants included by California in its Integrated Report. The USEPA-approved list serves as the State's most recent list of impaired waterbodies. The list (hereinafter referred to as the 2010 303(d) List) was prepared in accordance with Clean Water Act section 303(d) to identify specific impaired waterbodies where water quality standards are not expected to be met after implementation of technology-based effluent limitations on point sources.

Santa Clara River is on the 2010 303(d) List. The following pollutants were identified as impacting the receiving waters:

- i) Santa Clara River Reach 7 (Bouquet Canyon Rd to above Lang Gauging Station) —Coliform Bacteria;
- ii) Santa Clara River Reach 6 (West Pier Hwy 99 to Bouquet Canyon Rd.) — Coliform Bacteria, Chlorpyrifos, Diazinon, Toxicity, Iron, Copper; Chloride
- iii) Santa Clara River Reach 5 (Blue cut to West Pier Hwy 99 Bridge) — Coliform Bacteria and Iron; Chloride
- iv) Santa Clara River Reach 3 (Freeman Diversion to A Street)—Total Dissolved Solids and Toxicity; Ammonia, Chloride
- v) Santa Clara River Reach 1 (Estuary to Hwy 101 Bridge)—Toxicity; and

vi) Santa Clara River Estuary— Chem A¹, Coliform Bacteria, Toxaphene, Toxicity, and Nitrogen/Nitrate.

13. **TMDLs.** Once a water body has been deemed impaired, a Total Maximum Daily Load (TMDL) must be developed for the impairing pollutant(s). A TMDL is an estimate of the total load of pollutants from point, non-point, and natural sources that a water body may receive without exceeding applicable water quality standards (including a “margin of safety”). The TMDL allocates the loads among current and future pollutant sources to the water body. The 2010 303(d) List includes a List of Water Quality Limited Segments Being Addressed by EPA Approved TMDLs. Several TMDLs have been adopted by the Regional Board and approved by USEPA for the Santa Clara River:

- i) Santa Clara River Bacteria TMDL in effect March 21, 2012. This TMDL addressed fecal-indicating bacteria in the Santa Clara River estuary and reaches 3, 5, 6 and 7. The single sample target for *E. coli* is 235/100ml expressed in allowable exceedance days and the geometric mean target is 126/100ml.
- ii) Santa Clara River Chloride TMDL. The Regional Board adopted the TMDL in 2002. The State Water Board remanded the TMDL in 2003. The Regional Board revised the TMDL in July 2003 in response to the remand. In 2004, the Board amended the TMDL to update the interim waste load allocations, and in 2006 to revise the implementation schedule. The Regional Board most recently revised the TMDL and adopted conditional site specific objectives in December 2008. This TMDL is in effect as of April 6, 2010. The site specific objectives in the revised TMDL are conditioned on implementation of salt reduction/export projects by County Sanitation Districts of Los Angeles County (CSDLAC). CSDLAC is not implementing the required salt reduction/export projects; therefore, the water quality objectives for chloride are the current levels in the Basin Plan, which are 100 mg/L. The TMDL requires several interim deliverables prior to the final compliance deadline of May 4, 2015, including an EIR and a facilities plan to comply with final limits, which were due on May 4, 2011. CSDLAC did not submit an EIR or an adequate facilities plan and on May 27, 2011, the Executive Officer issued Notices of Violations (NOVs) for failure to complete these tasks. In response to the NOVs, CSDLAC submitted a letter stating it would prepare an EIR and facilities plan to comply with an effluent limit of 100 mg/L, while at the same time pursuing an alternative compliance approach. On January 6,

¹ The 2010 TMDL for the Santa Clara River estuary which was incorporated into the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands made the finding that the estuary was not impaired by Chem A compounds; however, the 303(d) list has not yet been updated to reflect the non-impairment.

2012, CSDLAC issued a Notice of Preparation of an EIR for facilities to comply with the 100 mg/L limit

iii) Santa Clara River Nutrients TMDL, in effect March 24, 2004. This TMDL addressed ammonia, nitrate and nitrite in reaches 3, 7 and 8.

C. **BACKGROUND/HISTORY.**

1. The Los Angeles County Board of Supervisors approved the NRSP, and certified the Newhall Ranch Specific Plan Program Environmental Impact Report (EIR) on May 27, 2003. At the same time, the Board of Supervisors approved the Newhall Ranch Specific Plan Resource Management Plan (RMP). The RMP set forth, at a conceptual level, mitigation and management standards for sensitive biological resources located within the boundary of the approved NRSP.
2. Newhall Land applied to the Corps for a Clean Water Act section 404 permit in June 2003. Since then, Newhall Land has provided the Corps with extensive information regarding the proposed RMDP and potential alternatives, in order to ensure that the Corps will issue a Clean Water Act Section 404 permit for the least environmentally damaging practicable alternative (LEDPA), as required by Clean Water Act section 404(b)(1) and federal regulations. The Corps' Clean Water Act section 404(b)(1) alternatives analysis evaluated both off-site and on-site alternatives to the proposed project through an iterative process that gave particular consideration to high-value aquatic resources found within the RMDP area.
3. In July 2003 and February 2004, the Corps, CDFG, and Regional Board staff participated in field delineations of wetland and non-wetland waters of the United States and CDFG's streambed and riparian jurisdiction. A total of 10 site visits by the agencies were conducted to refine the delineations. In 2010, these delineations were revised and updated. CDFG asserts jurisdiction over 965.7 acres of aquatic resources and riparian areas within the RMDP site, which includes all of the 660.1 acres of waters of the United States present. Typical delineations to determine waters of the United States and, therefore, jurisdiction under the Clean Water Act, limit the boundaries to the visible Ordinary High Water Mark, however, for the RMDP site, the limits of the waters of the United States were mapped conservatively at the top of the stream bank to be coterminous with CDFG's riparian jurisdiction in the RMDP sites smaller streams. Only along portions of the Santa Clara River and small portions of larger drainages, such as Chiquito Canyon, was adjacent riparian vegetation outside of the stream bank not mapped as waters of the United States.

4. In 2004, the Corps, and CDFG, (in coordination with USFWS, USEPA, and Regional Board staff), developed seven development alternatives to be analyzed for environmental impacts, with graduated levels of minimization and avoidance of impacts to higher function and value streams and associated habitats, for the Corps' analysis of the RMDP. The Corps' first stage of analysis for on-site alternatives included the seven alternatives, including Newhall Land's proposed project which was Alternative 2, a no-fill alternative, and various other configurations designed to increase avoidance of waters of the United States. In addition, avoidance of CDFG's riparian jurisdiction and conservation of spineflower resources was also considered as part of CDFG's permitting responsibilities.
5. Referring to the seven alternatives, the Corps and CDFG prepared a Joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the RMDP. The CDFG was the lead agency under the California Environmental Quality Act (CEQA) and the Corps was the lead agency under the National Environmental Policy Act (NEPA), for the purpose of analyzing environmental impacts of the RMDP (State Clearinghouse No. 2000011020). CDFG approved the final EIS/EIR on December 3, 2010, and the Corps approved the final EIS/EIR on August 31, 2011.
6. In addition to complying with NEPA, the Corps conducted an analysis pursuant to the Clean Water Act Section 404 (b)(1) Guidelines. The Corps initially prepared an alternatives analysis that evaluated three off-site alternatives and seven on-site alternatives as described above. From these alternatives, the Corps identified Alternative 3 as the Initial LEDPA and then directed Newhall Land to make additional modifications to Alternative 3 to increase avoidance of impacts to waters of the United States along the Santa Clara River, reduce impacts to a high-value spring complex in Middle Canyon, increase spineflower preserve acreage, and create larger riparian corridors in the five major tributary drainages. The Corps also considered various "sub-alternatives" that focused on the practicability of additional avoidance of impacts to waters of the United States in specific high-value resource areas and tributaries within the RMDP area. The Corps identified practicable additional avoidance of impacts to waters of the United States in Potrero Canyon and San Martinez Grande Canyon, further reducing permanent impacts by approximately 18 acres. The Corps chose this modified Alternative 3 as the "Draft LEDPA." The Draft LEDPA entailed 66.3 acres of permanent impacts and 32.2 acres of temporary impacts to waters of the United States, compared to 93.3 acres of permanent impacts and 33.3 acres of temporary impacts to waters of the United States for the proposed project.
7. The Corps coordinated with the USEPA Region 9, CDFG, and the Regional Board on its consideration of alternatives. Among other points, both USEPA Region 9 and the Regional Board staff especially expressed concern with the conclusion in the Draft LEDPA that avoidance in the Potrero Canyon

Drainage was not practicable under the Clean Water Act Section 404(b)(1) Guidelines. As a result of these discussions, proposed impacts in Potrero Canyon were reduced by 18.4 acres of waters of the United States, including 3.5 acres of wetlands in the middle reach of Potrero Canyon. This avoidance was achieved primarily by reconfiguring the development areas in Potrero Canyon and relocating the proposed manufactured open space to be adjacent to the drainage. The resulting project significantly minimizes impacts to Potrero Canyon. The Corps determined that the resulting project configuration was the "Final LEDPA" because no additional avoidance of waters of the United States was practicable in light of cost, logistics and the overall project purpose.

8. The Corps issued a provisional Clean Water Act section 404 permit for the Final LEDPA on August 31, 2011 (404 permit). The provisional 404 permit is made final by the issuance of this Order, which includes a Water Quality Certification with conditions pursuant to section 401 of the Clean Water Act. The 404 permit authorizes permanent impacts to 47.9 acres of waters of the United States (45.4 acres less than the proposed project), including 5.1 acres of wetlands (15.4 acres less than the proposed project). These impacts are associated with bank protection along water courses; drainage facilities such as storm drains or outlets and partially lined open channels; grade control structures; bridges and drainage crossings; building pads; and water quality control facilities. The 404 permit also authorizes temporary impacts to 35.3 acres of waters of the United States (2 acres more than the proposed project), including 11.8 acres of wetlands (0.6 acres more than the proposed project), associated with the construction of bank protection along water courses; utility crossings; construction of a WRP adjacent to the Santa Clara River; water quality control facilities; regular and ongoing maintenance of all flood, drainage, and water quality protection structures and facilities on the RMDP site; and temporary haul routes for grading equipment and geotechnical survey activities. The 404 permit requires Newhall Land to provide mitigation of these impacts through restoration of temporary impact areas and enhancement, restoration, and creation of 132.2 acres of waters of the United States, consisting of 35.2 acres of wetland waters and 97 acres of non-wetland waters within the Santa Clara River and its tributaries. These mitigation requirements result in a minimum of 2.4:1 mitigation ratio for permanently impacted waters and 1:1 ratio for temporary impacts. To account for temporal loss of habitat functions and services, the permit specifies that 54.9 acres of compensatory mitigation be implemented prior to any development impacts to waters of the United States, including 19.3 acres of wetlands creation in Lower Potrero Canyon, 15.9 acres of wetland creation in the Santa Clara River at Mayo Crossing, and 19.7 acres of habitat enhancement in portions of the upper Salt Creek watershed. The 404 permit is valid for 20 years.
9. Overall, the Final LEDPA will avoid permanent or temporary impacts to approximately 87 percent (576.9 acres) of the total 660.1 acres of waters of

the United States present on the RMDP site, compared to 80 percent avoidance under the proposed Project.

10. Newhall Land will preserve and protect in perpetuity approximately 612.2 acres of waters of the United States, including 271.8 acres of wetlands and approximately 271,861 linear feet of existing waters of the United States in Castaic Creek, the Santa Clara River and tributary drainages within the RMDP area. Conservation easements or deed restrictions shall provide mitigation for impacts associated with the RMDP, in addition to the creation, restoration and enhancement of waters of the United States. The purpose of the conservation easements or deed restrictions is to preserve in perpetuity high quality habitat for certain species and to preserve wildlife habitat and habitat values (conservation values) of great importance to the people of the State of California.
11. On August 6, 2012, Newhall Land entered into a preliminary floodplain conservation agreement with the California Coastal Conservancy to protect floodplain values associated with property owned by Newhall Land downstream of the RMDP site (Newhall/Conservancy Agreement). The Newhall/Conservancy Agreement will further the goals of the Conservancy's Santa Clara River Parkway Project (Parkway Project). Under the Newhall/Conservancy Agreement, Newhall Land will record a restrictive covenant for floodplain protection over 439 acres of land located in Ventura County as shown on Exhibit 1 to the Newhall/Conservancy Agreement labeled, "Figure 2, Newhall Land Ventura County Property Floodplain Area." The 439 acres required under the Newhall/Conservancy Agreement include the 80 acres of upland floodplain required to be placed under a restrictive covenant under Section 3.1-6 of this Order. The Newhall/Conservancy Agreement requires the restrictive covenant to be consistent with the terms of that covenant required by Section 3.1-6 of this Order.

Farm areas covered by the restrictive covenant that are scoured by flooding will not be reclaimed for farm purposes except as needed for water wells, pipelines, utility lines, outfall structures, roads and other infrastructure. Newhall Land reserves the right to conduct habitat restoration and enhancement activities on the lands covered by the restrictive covenant.

Under the Newhall/Conservancy Agreement, Newhall Land also will provide public access for a pedestrian trail from the Newhall Ranch Specific Plan Regional Trail terminus at the Los Angeles County – Ventura County line on the north side of the Santa Clara River south of SR 126, downstream along the north bank of the River to the downstream limit of the Newhall Ranch property.

The Newhall/Conservancy Agreement is conditioned upon the Regional Board's approval of this Order, including resolution of any and all challenges

to such approval. Newhall Land's obligations under the agreement will take effect upon commencement of the development activities authorized under this Order.

12. CDFG issued the CDFG MSAA for the RMDP on December 3, 2010 (Agreement No. 1600-2004-0016-R5). The CDFG MSAA authorizes permanent impacts to 77.55 acres of resources within CDFG jurisdiction and temporary impacts to 50.14 acres.
13. The EIR for Landmark Village was approved by the County of Los Angeles Department of Regional Planning on October 4, 2011. The Regional Board is a responsible agency under CEQA for the Landmark Village EIR and has considered the environmental documentation of the lead agency. Regional Board staff commented on the draft EIR on January 22, 2007 and the comments were considered in the final EIR.
14. The EIR for Mission Village was approved by the County of Los Angeles Department of Regional Planning on October 25, 2011. The Regional Board is a responsible agency under CEQA for the Mission Village EIR and has considered the environmental documentation of the lead agency. Regional Board staff commented on the draft EIR on January 4, 2011 and the comments were considered in the final EIR.
15. The County of Los Angeles will be required to conduct additional environmental analysis under CEQA for additional villages or phases of the project.
16. The California Rapid Assessment Method (CRAM) is a standardized, cost-effective tool for assessing the health of wetlands and riparian habitats. This Order requires the use of CRAM for assessments of impacts to waters of the United States and for assessments of restored, created or enhanced waters in order to measure their efficacy.
17. **Stormwater Mitigation Plan.** Newhall Land prepared the Newhall Ranch Specific Plan Sub-Regional Stormwater Mitigation Plan (NRSP Sub-Regional SWMP), a comprehensive stormwater mitigation plan for the RMDP using a watershed-based approach that addresses pollutants of concern and hydrologic conditions of concern that can affect aquatic and riparian habitat and natural resources. In April 2008, the Los Angeles County Department of Public Works submitted the NRSP Sub-Regional SWMP to the Regional Board for review. The Regional Board Executive Officer determined, based on this review, that the NRSP Sub-regional SWMP was consistent with the 2001 Los Angeles County MS4 Permit (Order No. 01-182) and adequately covered the requirements for the Regional BMP substitution under the Development Planning Program, Regional Storm Water Mitigation Program provision (§ 4.D(9)) of the Los Angeles County MS4 Permit. The NRSP Sub-Regional

SWMP was developed by Newhall Land in cooperation with Los Angeles County, consistent with the requirements of the Los Angeles County MS4 Permit and the Standard Urban Stormwater Mitigation Plan (SUSMP). It sets forth the urban runoff management program that will be implemented for the NRSP subregion. The Plan identifies the site design, source control, low impact development, treatment control, and hydromodification control best management practices (BMPs) that will be incorporated into each development area within the NRSP subregion to protect beneficial uses in the Santa Clara River and its tributaries. The NRSP Sub-Regional SWMP was accepted by the Los Angeles Regional Board Executive Officer in May 2008. As such, the NRSP Sub-Regional SWMP is enforceable as it substitutes for the standard Development Planning Program requirements contained in the Los Angeles County MS4 Permit. Subsequently, a Newhall Ranch LID Performance Standard was developed, in consultation with USEPA Region 9 and the Regional Board (discussed in more detail in Part 1, Section 3.0 Provisions paragraph 13) which further clarifies the LID standards that will be applied to the build-out of the NRSP.

Tiered Review Process. Three levels of stormwater plan preparation have been established for the build-out of the NRSP. These levels include the NRSP Sub-Regional SWMP, which is a programmatic-level stormwater management plan that applies to the entire NRSP area (Tier 1); the Project Water Quality Technical Report, which provides the project-level stormwater plan for each of the villages within the NRSP area (Tier 2); and the final Project SUSMP, which will be prepared prior to the recordation of any final subdivision map (except those maps for financing or conveyancing purposes only) or the issuance of any grading or building permit, whichever comes first (Tier 3).

Project Water Quality Technical Report (WQTR). The Project WQTR, Tier 2, is prepared to ensure consistency with the terms and content of the NRSP Sub-Regional SWMP for each project within the subregion (i.e., Landmark Village, Mission Village, Homestead, and Potrero Valley). The Project WQTR provides more specific information and detail concerning how the provisions of the NRSP Sub-Regional SWMP will be implemented within the area covered by the Project WQTR, based upon the proposed land uses from the tentative tract maps filed with the County of Los Angeles (this level of detail is usually at a scale of 1" = 100'). At a minimum, each Project WQTR provides supplemental and site specific information concerning: (1) how site design, source control, low impact development, treatment control, and hydromodification control BMPs will be implemented at the project level for the area in question; (2) stormwater BMP sizing and locations within the subject project area; and (3) operation and maintenance responsibility for stormwater BMPs within the relevant project area. Newhall Land is required to prepare and submit to the Executive Officer for review a Project WQTR and Drainage Concept Report for each subsequent development area within

the RMDP site as a condition of this permit. Regional Board staff reviewed and concurred with the Tier 2 Project Water Quality Technical Reports for the Landmark Village and Mission Village projects within the NRSP subregion.

18. Los Angeles County has land use and grading plan approval authority over each individual village of the NRSP. The Landmark Village and Mission Village subdivisions represent the first phases of development and were approved by Los Angeles County on February 21, 2012 and May 16, 2012, respectively. Later phases of development will be submitted for Los Angeles County approval, with development of these areas occurring over an estimated 20 year time frame. A preliminary development schedule is shown in attached Table 2, Project Development Phasing.
19. As part of Newhall Land's local environmental review process, Newhall Land retains a qualified environmental consulting firm to conduct a Phase I site assessment according to applicable ASTM standards. The tasks performed in the Phase I site assessment are expanded to include soil analysis and sampling for pesticides of areas within the RMDP that either presently or historically have been used for agricultural activities. The pesticide sampling includes Organochlorine pesticides (OCP), including DDT and degradation products, by EPA Method 8081; Organophosphate pesticides (OPP) by EPA Method 8141; and Chlorinated herbicides (CH) by EPA Method 8151.

Phase I assessments, expanded to include this soil sampling and analysis, have been conducted for the Landmark Village, Mission Village, and Homestead development areas. To date, no samples exceed either U.S. EPA Preliminary Remediation Goals (PRGs) or California Human Health Screening Levels (CHHSLs). Prior to development within the RMDP that presently or historically have been used for agricultural activities, this Order requires Newhall Land to submit for Executive Officer approval and implement a workplan for soil sampling and analysis for pesticides and herbicides in those areas.

20. The Board of Supervisors of the County of Los Angeles included the following as conditions of approval for Landmark Village and Mission Village Tracts of Newhall Ranch. Prior to obtaining its first building permit within Newhall Ranch:
 - A. The subdivider shall be required to complete all of its obligations for sending wastewater to the Valencia Water Reclamation Plant (~~WRP~~) as required by the Agreement for Coordination of Wastewater Management Facilities dated January 9, 2002 (CSD Contract No. 3868), and shall provide a letter to Regional Planning from Santa Clarita Valley Sanitation District certifying that such obligations have been satisfied,

- B. At the subdivider's sole cost, and for purposes of further treating wastewater that will be sent to the Valencia WRP from Newhall Ranch to a chloride concentration level of or less than 100 mg/l for up to 6,000 equivalent units, the subdivider shall complete the construction of interim chloride and demineralization facilities to the satisfaction of the Santa Clarita Valley Sanitation District, when facilities shall consist of, at a minimum: (1) a 1.2-acre demineralization facility to be constructed adjacent to the existing Valencia WRP; (2) a 1.6-acre brine disposal well facility located within the Valencia Commence Center, north of Castaic Creek; and (3) associated lines to and from the Valencia WRP to be constructed in existing road rights-of-way primarily within the project's utility corridor. For purposes of this condition and Condition No. 53, "equivalent dwelling units" shall represent a wastewater equivalency determination based on an equivalency formula used by the Santa Clarita Valley Sanitation District.

The subdivider or designed shall grant any necessary easement(s) acceptable to the Santa Clarita Valley Sanitation District and the Newhall Ranch Sanitation District for use of the utility corridor to facilitate the construction and operation of the Newhall Ranch WRP.

- C. Prior to obtaining a building permit(s) for any construction that would result in Newhall Ranch's exceeding 3,000 equivalent dwelling units, the subdivider or its designee shall complete site grading and bank protection of the Newhall Ranch WRP site and the utility corridor. Further, prior to obtaining a building permit(s) that would result in Newhall Ranch's exceeding 4,000 equivalent dwelling units, the subdivider or its designee shall start construction of the initial phase of the Newhall Ranch WRP, and the construction of this initial phase of the Newhall Ranch WRP shall be completed on or before the date that construction of the 6,000th equivalent dwelling unit within Newhall Ranch is completed.

Interim Wastewater Treatment. The wastewater generated by the first 6,000 dwelling units of the NRSP will be treated on an interim basis by the Santa Clarita Valley Sanitation District (SVCSD) at the existing Valencia WRP pursuant to the terms of an Interconnection Agreement entered into on January 9, 2002, between Newhall Land and the former Los Angeles County Sanitation District Nos. 26 and 32 (now known as the SCVSD). The Valencia WRP discharges tertiary-treated wastewater to the Santa Clara River pursuant to Order No. R4-2009-0074 and NPDES Permit No. CA0054216, which set forth WDRs, including effluent limitations, and a monitoring and reporting program that apply to the discharges of effluent from the facility. In conjunction with the interim treatment of wastewater generated by the first 6,000 dwelling units of the NRSP at the Valencia WRP, Newhall Land will

construct interim chloride reduction facilities which would operate until the first phase of the Newhall Ranch WRP is constructed. The chloride reduction facilities will consist of: (a) a 1.2-acre demineralization facility using reverse osmosis or an equivalent process, to be constructed adjacent to the existing Valencia WRP; (b) a 1.6-acre brine disposal well facility located within the Valencia Commerce Center; and (c) associated lines to and from the Valencia WRP. The purpose of the chloride reduction facilities is to treat the effluent generated by the first 6,000 dwelling units of the NRSP to meet chloride concentration levels of 100 milligrams per liter or less prior to discharge into the Santa Clara River. Newhall Land will obtain necessary permits for construction and operation of the chloride reduction facilities and Newhall WRP, including a Class I non-hazardous Underground Injection Control permit from USEPA for two injection wells to dispose of brine for the proposed interim chloride facilities and the reverse osmosis system that will be part of the Newhall WRP.

21. **Recycled Water.** Newhall Land plans to maximize the use of recycled water on the project area. Plans include the use of up to 478 acre-feet per month (February through November) and up to 340 acre-feet per month (December and January) of tertiary-treated effluent for landscape irrigation and other uses in an average wet year. However, during wet weather, when the demand for recycled water is low, Newhall Ranch WRP will discharge effluent to the Santa Clara River. The Discharger will apply for WDRs with the Regional Water Board and submit an engineering report with the California Department of Public Health (CDPH), after the Newhall Ranch WRP treatment design is complete. The production, distribution, and reuse of recycled water for direct, non-potable applications will be regulated under separate Water Recycling Requirements. Prior to the operation of the Newhall Ranch WRP, and in times when the demand for recycled water exceeds the amount the Newhall Ranch WRP can provide, treated effluent from the Valencia Water Reclamation Plant will be used to supplement the recycled water supply so that the recycled water customers do not experience a shortage in service.
22. **Buffers.** The RMDP design includes Open Space Buffers along portions of the Santa Clara River consisting of both riparian areas and development setbacks.

Open Space Buffer riparian areas are open space between waters of the United States and the top of the buried bank stabilization that protect sensitive habitat and wildlife corridors and provide opportunities to establish and enhance areas of native habitats. The landward edge of the riparian areas is essentially coterminous with the river trail fencing. The riparian areas buffers mitigate the effects of urban land use on the natural environment and can intercept eutrophic pollutants and pesticides from urban runoff. Buffers may also provide for expansion of wetlands, waters of the United States and riparian

zones. Recreational trails, as allowed by CDFG, and storm drain outfalls and maintenance roads may be located within the riparian buffer.

Open Space Buffer development setbacks are additional open space areas between residential or commercial development and the Open Space Buffer riparian areas. Facilities allowed within the development setbacks include the river trail, fencing, landscaping, utilities, water quality treatment facilities, and roadways. The function of the development setback is to minimize the effects of urban land uses on the Open Space Buffer riparian areas.

In a few locations along the Santa Clara River, Open Space Buffer riparian areas and/or development setbacks are not incorporated into the RMDP design. These locations include: 1) buried bank stabilization where the Chiquito Canyon drainage confluences with the Santa Clara River, at the northern abutment of the Long Canyon Bridge, and at SR-126 intersection improvements at Long Canyon Road; 2) the utility corridor west of San Martinez Grande; 3) the Long Canyon Road and Commerce Center Drive bridges; and 4) the Newhall Ranch WRP immediately upstream of the Ventura County line.

Except at the locations noted in the paragraph above, where development is less than 50 vertical feet above the Santa Clara River (Landmark Village and portions of Homestead South), the RMDP design includes Open Space Buffers between waters of the United States² and development, ranging in width from 220 feet to more than 900 feet, with an average width of approximately 550 feet. At the upper mesa development areas in Mission, Homestead South and Potrero Villages, where development is separated from the Santa Clara River by a minimum of 50 vertical feet, the RMDP design includes Open Space buffers ranging in width from 150 feet to more than 2,000 feet, with an average width of approximately 850 feet.

23. Newhall Land is authorized to permanently impact 47.9 acres of waters of the United States, including 5.1 acres of wetlands, associated with discharges of fill material for bank protection to protect land development projects along water courses (including buried soil cement, buried gunite, grouted riprap, ungrouted riprap, and gunite lining); drainage facilities such as storm drains or outlets and partially lined open channels; grade control structures; bridges and drainage crossings; building pads; and water quality control facilities (sedimentation control, flood control, debris, and water quality basins), all as described in **Attachment 1**, 404 Permit Final LEDPA Project Description and the Corps' Section 404 Permit No. SPL-2003-01264-AOA.

² Waters of the United States as defined in the Newhall Ranch RMDP 404 Permit issued by the Corps on August 31, 2011.

24. Newhall Land is authorized to temporarily impact 35.3 acres of waters of the United States, including 11.8 acres of wetlands, associated with the construction of bank protection to protect land development projects along water courses (including buried soil cement, buried gunite, grouted riprap, ungrouted riprap, and gunite lining); utility crossings; activities associated with construction of a Water Reclamation Plant (WRP) adjacent to the Santa Clara River and associated bank protection; water quality control facilities (sedimentation control, flood control, debris, and water quality basins); and temporary haul routes for grading equipment and geotechnical survey activities, all as described in **Attachment 1**, 404 Permit Final LEDPA Project Description and the Corps' Section 404 Permit No. SPL-2003-01264-AOA.
25. Newhall Land is authorized to construct 35 outlets to and in the Santa Clara River; construct two bridges in the Santa Clara River (Long Canyon bridge and the Commerce Center Drive bridge); construct three bridges and 13 culvert road crossings in tributary drainages; and construct other infrastructure including roads, utilities and flood control structures, all as described in **Attachment 1**, 404 Permit Final LEDPA Project Description and the Corps' Section 404 Permit No. SPL-2003-01264-AOA.

D. RMDP PROJECT DESCRIPTION (Corps Final LEDPA)

1. The RMDP will facilitate the development of approximately 19,517 residential units, 5.45 million square feet of commercial uses and public facilities such as parks, schools and libraries on approximately 2,570 acres. Of the 13,651 acres within the RMDP project property, approximately 5,084 acres will be graded, with approximately 2,356 acres related to residential and commercial development; approximately 235 acres related to public facilities; approximately 552 acres related to roads and other infrastructure such as electrical substations; and the remaining 1,975 acres restored as manufactured open space (stabilized slopes revegetated with native vegetation) and recreational areas. This restored manufactured open space consists of approximately 700 acres of contoured slopes that will be planted with native vegetation, approximately 110 acres of utility corridor with restricted native vegetation (native shrub and grasses), approximately 200 acres of golf course (recreational planning unit overlay of approved residential planning areas in Potrero Canyon), 90 acres of parks and recreational areas, and approximately 875 acres of parkways and other landscaped areas. The remaining 8,566 acres will be preserved as natural open space, for a total of approximately 10,528 acres of open space. The grading of the RMDP site will take place in a balanced cut-and-fill process.
2. Approximately 60 percent of the 5,084 acres that will be graded have been historically disturbed. The disturbed areas consist of approximately 1,285

acres of past agricultural operations, 916 acres of grazing land (California annual grassland), and 825 acres of disturbed areas (roads and oil facilities).

3. The RMDP as approved by the Corps (i.e., the Final LEDPA) includes the construction of two bridges across the Santa Clara River. Approximately 26,851 linear feet of buried bank stabilization will be installed in upland and riparian areas along approximately one half of the north bank (19,158 linear feet) and one-third of the south bank (7,693 linear feet) of the Santa Clara River. Twenty-five storm drain outlets will be installed along the north bank and ten outlets on the south bank of the river, and an outfall from the proposed Newhall Ranch WRP to the Santa Clara River will also be constructed. Geofabric bank protection or equivalent will be installed on the north side of the Santa Clara River between San Martinez Grande Canyon and Chiquito Canyon in connection with a utility corridor.
4. Within tributary drainages to the Santa Clara River, the RMDP includes the construction of three bridges over tributaries and 13 culvert road crossings over tributaries. The RMDP includes conversion of 47,195 linear feet of tributary channel to buried storm drain and installation of 67,537 linear feet of bank stabilization outside of waters of the United States along tributary drainages. As a mitigation measure, the 404 permit requires restoration of waters of the United States within 39,792 linear feet of the major tributary drainages. The RMDP avoids impacts to a total of 155,074 linear feet of tributaries. The combined avoidance and restoration of tributary drainages totals to 194,866 linear feet of tributary drainages within the RMDP Project site in the post-development condition, which is approximately 80 percent of the total 242,061 linear footage of jurisdictional drainages currently on the RMDP site. As required by the 404 permit, Newhall Land must preserve, stabilize, and reconstruct tributary drainages, which will, increase acres of tributary drainages from the existing 188.91 acres to 216.75 acres post-project. Dynamically stable channels (where neither long-term erosion and/or deposition is expected to occur, and where restored and/or enhanced vegetation communities would be supported), will be created within the Lion Canyon, Long Canyon, Chiquito Canyon, San Martinez Grande Canyon, Potrero Canyon, including adjacent wetlands, and the Salt Creek drainages.
5. The RMDP Project Description, included as **Attachment 1**, provides a complete description of the RMDP infrastructure and associated development as determined to be the LEDPA pursuant to the Corps' 404(b)(1) Alternatives Analysis.

E. VILLAGE LEVEL PROJECT DESCRIPTIONS

E.1 LANDMARK VILLAGE

1. **Los Angeles County Approved Development.** The Landmark Village portion of the RMDP, as approved by the Los Angeles County Board of Supervisors as outlined above, will be developed on approximately 294 acres located in the central portion of the NRSP area, west of the confluence of Castaic Creek with the Santa Clara River, north of the River and south of SR-126 (Landmark Village Project), all of which will be graded. Development proposed for the Landmark Village Project tract map site includes a mix of housing types; mixed-use/commercial facilities; open space and recreation facilities; and infrastructure uses (e.g. parks, a fire station, elementary school, utilities, roads, etc.).

Residential development will occupy approximately 129 acres of the Landmark Village Project site, while mixed use/commercial uses will occupy approximately 35 acres. Schools, park, open space, recreation and public service uses will occupy approximately 75 acres, and roads and a park and ride facility will occupy approximately 55 acres.

In addition to the proposed development on the Landmark Village tract map site, the Landmark Village Project includes the development of off-site infrastructure and soil borrow areas. The location of off-site Project areas are depicted on *Figure 1, Village Phasing Plan*. These features are considered part of the Landmark Village Project area and include:

- 181-acre Adobe Canyon borrow site and associated haul roads. The borrow site is located south of the Santa Clara River.
- Four debris basins for stormwater flows collected by the tract map's storm drainage system. The basins will be located in an area approximately 120 acres in size directly north of SR-126 and east and west of Chiquito Canyon.
- One potable water tank and one recycled water tank.

2. **Project Grading.** Off-site grading is required at several locations to develop the tract map site. The Adobe Canyon borrow site will be used to obtain soil to elevate the tract map site above the floodplain, and grading in Chiquito Canyon is required for the construction of debris basins and water tanks. Project-related grading will require the removal and recompaction of approximately 4.2 million cubic yards of soil material, and up to 5.8 million cubic yards of soil import from the Adobe Canyon borrow site. Approximately 1.2 million cubic yards will be excavated from the Chiquito Canyon grading site and placed as fill in the adjacent canyons or be transported and stockpiled on the project site and/or tract map site. Approximately 98% of the Landmark Village area, or approximately 369 acres, will be graded, including 294 acres for the development and 75 acres of revegetated open space.

3. **Waters Affected by the Project.** There are approximately 2.48 acres of waters of the United States on the Landmark Village Project site, including 0.87 acres of

waters in the Santa Clara River and 1.61 acres of waters within an on-site tributary drainage. The Landmark Village Project avoids these waters of the United States to the extent practicable. Of the 0.87 acres of waters of the United States within the Santa Clara River mainstem, the Landmark Village Project will result in permanent impacts to 0.06 acres. Of the 1.61 acres of waters of the United States located within the Agricultural Ditch tributary drainage, the Landmark Village Project will result in 1.37 acres of permanent impacts.

There are no wetland waters of the United States associated with the Santa Clara River on the Landmark Village Project site. There are no wetland waters associated with the Agricultural Ditch tributary drainage. Additional information about impacts to the jurisdictional resources of the Santa Clara River and the on-site tributary drainage follows.

4. **Santa Clara River – Proposed Infrastructure and Impacts.** The Landmark Village Project will construct approximately 11,232 linear feet of soil cement bank stabilization along the north bank of the Santa Clara River as shown on *Figure 2, Santa Clara River Major Features* and summarized in Table 3. The bank stabilization will result in approximately 0.06 acres of permanent impacts and 0.42 acres of temporary impacts to waters of the United States within the Santa Clara River. The Landmark Village Project also includes the installation of two public trail viewing platforms and 12 stormwater drainage outfalls that will discharge to the Santa Clara River. The installation of those facilities will not result in impacts to waters of the United States.
5. **Tributaries – Proposed Features and Impacts.** There are no major tributaries to the Santa Clara River located on the Landmark Village Project site. A minor tributary known as “Agricultural Ditch” extends across the project site. Approximately 1,479 feet of this drainage channel will be converted to a buried storm drain, resulting in 1.37 acres of temporary impacts to waters of the United States and 0.06 acres of permanent impacts. Development of the Landmark Village Project will preserve approximately 329 feet of this drainage channel, which contains 0.18 acres of waters. Tributary drainage impacts are summarized in Table 4 and shown on *Figure 3, Modified, Converted, and Preserved Tributary Drainages*.

E.2 MISSION VILLAGE

1. **Los Angeles County Approved Development.** The Mission Village, as approved by the Los Angeles County Board of Supervisors as outlined above, encompasses approximately 1,260-acres located in the northeast corner of the NRSP area, south of the Santa Clara River and SR-126 and west of Interstate 5 (Mission Village Project), as shown on *Figure 1, Village Phasing Plan*. Development proposed for the Mission Village Project includes a mix of housing types; mixed-use, office and commercial facilities; open space and recreation areas; and infrastructure uses (*e.g.* parks, a fire station, library, school, utilities, roads, etc.). The Mission Village Project also includes regional access

improvements, including the construction of the Commerce Center Drive Bridge, which will connect the existing northern terminus of Commerce Center Drive at SR-126 with the proposed southern extension of Commerce Center Drive onto the Mission Village Project.

Residential development will occupy approximately 389 acres of the Mission Village Project, while mixed use and commercial uses will occupy approximately an additional 57 acres. School, park, recreation and other public service uses will occupy approximately 56 acres, and utility and road facilities will occupy approximately 164 acres. In total, proposed development will involve grading of approximately 666 acres, or approximately 49 percent, of the Mission Village Project.

In addition to the proposed on-site development (*i.e.*, on the Mission Village tract map site) the Mission Village Project includes the development of off-site access and utility improvements, as shown on *Figure 1, Village Phasing Plan*. These features are considered part of the Mission Village Project area. Off-site facilities include:

- An extension of Magic Mountain Parkway to provide regional access between the project site and I-5.
- A new Southern California Edison substation located south of the Mission Village area.
- Three water tanks, two debris basins, one water quality basin, and minor grading to facilitate on-site development and access routes.

2. **Open Space.** The Mission Village project includes approximately 693 acres of open/recreation space, including 85.8-acres of spineflower preserves, approximately 40 acres of parks and recreation centers, 275.9 acres of open space including 212.6 acres of river.
3. **Project Site Grading.** The Mission Village Project will result in approximately 27.9 million cubic yards of grading (27.9 million cubic yards of cut and 27.9 cubic yards of fill), including grading required for a sanitary sewer system and pump stations, potable and reclaimed water systems, and drainage improvements. The site is a balanced cut-fill development area, with minimal import or export required. Approximately 73% of the Mission Village area, or approximately 995 acres, will be graded, including 666 acres for the development and 328 acres of revegetated open space.
4. **Waters Affected by the Project.** There are approximately 173.81 acres of waters of the United States within the Mission Village Project site, including 151.45 acres of waters of the United States in the Santa Clara River and 22.36 acres of waters of the United States within tributary drainages. Of the 151.45 acres of waters of the United States within the Santa Clara River mainstem, the Mission Village Project will avoid 170.53 acres and result in permanent impacts to 2.36

acres. Of the 22.36 acres of waters of the United States located within tributary drainages, the Mission Village Project will avoid 3.10 acres, including 0.77 acres in Exxon Canyon, 2.19 acres in Middle Canyon, and 0.14 acres in Unnamed Canyon D. The project will result in 15.05 acres of permanent impacts to waters of the United States located in tributary drainages.

Of the waters of the United States within the Mission Village Project area, there are approximately 43.98 acres of wetland waters of the United States, including 41.85 acres of wetlands in the Santa Clara River and 2.13 acres of wetland waters of the United States within tributary drainages (Middle Canyon). Of the 41.85 acres of wetlands within the Santa Clara River mainstem, the Mission Village Project will avoid 40.15 acres and result in permanent impacts to 1.70 acres. The Mission Village Project avoids all of the 2.13 acres of wetlands located within Middle Canyon. Additional information about impacts to the jurisdictional resources of the Santa Clara River and tributary drainages follows.

5. **Santa Clara River – Proposed Infrastructure and Impacts.** The infrastructure associated with the Mission Village Project includes the Commerce Center Drive bridge and approximately 1,866 linear feet of soil cement bank stabilization along the south bank of the Santa Clara River as shown on *Figure 2, Santa Clara River Major Features*. The bridge and bank stabilization will result in approximately 2.23 acres of permanent impacts and 5.26 acres of temporary impacts to waters of the United States within the Santa Clara River. The conversion of drainages to storm drains and displacement of drainages by development will require the fill of an additional 0.12 acres of waters within the river. The Mission Village Project also includes the installation of three stormwater drainage outfalls that will discharge to the Santa Clara River, which will require fill of an additional 0.10 acres of waters within the river.

In total, the Mission Village Project will cause 2.36 acres of permanent impacts to waters of the United States in the Santa Clara River, including 1.7 acres of wetlands. The Project will also result in 5.26 acres of temporary impacts to waters of the United States, including 1.61 acres of wetlands. Impacts to the Santa Clara River associated with the Mission Village Project are summarized in Table 3.

6. **Tributaries – Proposed Features and Impacts.**

Lion Canyon. The Mission Village project includes the stabilization of the mainstem of Lion Canyon and filling of the minor branches of the drainages. This will result in 2.61 acres of permanent impacts and 2.18 acres of temporary impacts to waters of the United States in Lion Canyon as depicted on *Figure 4, Lion Canyon Detail*. No impacts to wetland waters will occur in the Lion Canyon drainage.

Of the 2.61 acres of permanent impacts, 1.26 acres are related to conversion of 2,595 feet of existing creek channel to buried storm drain. Other impacts to Lion

Canyon include the installation of one road crossing culvert; and displacing creek channels to accommodate proposed development. The installation of grade control structures, debris basins and a regional water quality basin will also result in permanent impacts to jurisdictional resources. Permanent impacts to waters of the United States resulting from modifications to creek channels, grade control structures, and debris/water quality basins are summarized in Table 5.

Waters located in portions of the Lion Canyon drainage that are currently unstable and subject to erosion and head cutting, will be temporarily impacted by modifying existing channels to create a new and restored soft bottom channel. The new creek channel will be designed to stabilize the channel, maintain sediment equilibrium, enhance habitat, and protect the channel bed and banks from hydromodification. Long-term stabilization of the creek channel will be accomplished by installing approximately 26 step-pool grade control structures along 5,835 feet of the restored creek channel. Development in Lion Canyon will include installation of four debris basins and one regional water quality basin.

A typical grade control structure proposed for the RMDP is illustrated on *Figure 4, Lion Canyon Detail*. The design consists of three structural elements: a sill; a drop; and a stilling pool. The sill is a relatively narrow, linear feature, perpendicular to stream flow and typically extends across the entire width of the drainage (in some cases in the range of 50 to 400 feet in total width). The sill may be constructed using soil cement or buried riprap rock, with the area upstream of the sill being planted with riparian vegetation. The sill is designed to control stream sinuosity, training the flow within the boundaries of the channel bank protection. At the low point of the sill, a drop structure (approximately 3 to 15 feet high) is constructed using soil cement or exposed grouted, or ungrouted, riprap rock facing. This portion of the structure is not vegetated, and dissipates energy over the armored drainage feature. The requirements for grouting the drop portion of the structure is mainly dependent upon the flow energy needing to be dissipated. The stilling pool is used to further reduce flow velocity to preclude scouring of the downstream channel, and is constructed out of grouted or ungrouted riprap rock and gravel. These methods of channel bed stabilization were selected over the traditional vertical concrete drop structures as their elements: allow for and promote establishment of native vegetation; do not create a barrier to wildlife movement; do not require any routine maintenance; and the visual appearance mimics the natural environment.

Upon completion of stabilization and bank protection construction and restoration of disturbed areas, the Lion Canyon drainage will provide approximately 2.1 acres of waters of the United States mitigation area, and approximately 1.7 additional acres of California Department of Fish and Game Streambed Alteration Agreement mitigation capacity within the resulting bed and bank. These post-development areas are indicated on *Figure 4, Lion Canyon Detail*.

Minor Tributaries. In addition to impacts in Lion Canyon, the Mission Village Project will result in permanent impacts to approximately 15.05 acres of waters of the United States in minor tributaries located on the Mission Village Project site as shown on *Figure 3, Modified, Converted, and Preserved Tributary Drainages*. No temporary or permanent impacts to wetland waters will occur in the minor tributaries. Impacts to the minor tributaries are described below and summarized on Table 4.

Exxon Canyon. Portions of this tributary will be converted to buried storm drains to accommodate proposed development. Approximately 1,754 feet of this drainage channel will be converted to a buried storm drain, resulting in 0.44 acres of permanent impacts to waters of the United States. Development of the Mission Village Project will preserve 1,788 feet of this drainage channel, which contains 0.77 acres of waters.

Middle Canyon, Unnamed Canyon D. A majority of Middle Canyon Drainage will be filled, with approximately 7,443 feet converted to buried storm drain and 143 feet of the lower section of the drainage preserved. Similarly, approximately 1,241 feet of Unnamed Canyon D will be converted to storm drain, with 250 feet preserved at the confluence with the Santa Clara River.

Dead End Canyon and Magic Mountain Canyon. Each of these tributaries will be substantially converted to buried storm drains to accommodate proposed development. The entire lengths of these canyons will be filled: including approximately 1,931 feet of Dead End Canyon, and approximately 6,111 feet of Magic Mountain Canyon within Mission Village.

Unnamed Canyon 1, and Unnamed Canyon 2. The two off-site tributaries within the Magic Mountain Parkway roadway extension at the eastern boundary of the Mission Village project area will be substantially converted to buried storm drains to accommodate proposed development. Specifically, the entire lengths of the canyons will be filled: approximately 4,647 feet of Unnamed Canyon 1; and approximately 416 feet of Unnamed Canyon 2.

E.3 UTILITY CORRIDOR/WRP OUTFALL/SR 126 BRIDGE WIDENING

1. **Project Characteristics.** The RDMP includes the development of utility service systems to serve urban development on the NRSP area. Utility systems that will result in permanent and temporary impacts to waters of the United States include a utility corridor, the treated wastewater outfall of the Newhall Ranch WRP, and widened bridges and culverts located along Highway 126 (–SR-126”) adjacent to the Project site, generally shown on *Figure 1, Village Phasing Plan*.
2. **WRP.** Los Angeles County approved the NRSP, and, as an individual project, the WRP development. The Regional Board adopted Waste Discharge Requirements for the Newhall Ranch Sanitation District (Order No. R4-2007-0046) effective October 27, 2007. The development of the WRP includes buried

soil cement flood protection along the Santa Clara River and involves filling of two on-site minor tributary drainages as further described below.

3. **Utility Corridor.** The Los Angeles County approved subdivision maps for both the Landmark Village and Mission Village tracts, described above, including the primary electrical, sewer, water, gas and communication lines serving the NRSP area that will be installed in a utility corridor generally located parallel to the south side of SR-126 and north of the Santa Clara River. The corridor will extend approximately three miles between Castaic Creek to the east and the WRP to the west, and will be approximately 100 feet wide. The corridor will cross several tributaries to the Santa Clara River, including (from east to west) Castaic Creek, Chiquito Canyon, Mid-Martinez Canyon, San Martinez Canyon, and Off-Haul Canyon as shown on *Figure 3, Modified, Converted, and Preserved Tributary Drainages*.

Trenching or where necessary, directional boring, will be used to install utility lines across the tributaries, and a 30 to 50-foot wide construction corridor will be required. Utility lines across watercourses will be located below scour depth and weighted or cemented in place, where appropriate, or co-located with bed stabilization features that provide scour protection. Following completion of construction activities, temporary impact areas will be restored to channel grade and re-vegetated with native riparian and upland species as appropriate.

Permanent access for the maintenance of utilities will be provided outside the limits of the streambed and associated habitats.

Buried soil cement or geofabric (turf reinforcement mat or other suitable non-degradable erosion material) bank protection will be provided along the utility corridor route. Approximately 4,300 linear feet of geofabric bank protection, designed to be planted with native vegetation, will be installed between the San Martinez Grande Canyon and Chiquito Canyon river confluences. Due to the relatively large width of the Santa Clara River in this area, the upland terraces along the north bank, are remote from high velocity flood flows, and therefore, not subject to riverbed geomorphological changes and excessive bank erosion forces. Based on the low velocity of flow expected in this area, the utility corridor bank will be protected with a vegetation covered geotextile fabric instead of buried soil cement. For the remaining approximately 3,130 linear feet of the utility corridor downstream of the San Martinez Grande confluence, the flood flow velocities necessitate armored bank lining flood protection. From the available methods of armoring stream banks for flood protection, buried soil cement has been selected as the environmentally preferred alternative for the following reasons: it allows complete soil covering of the hard structure; establishment of native vegetation on the soil cover; it does not require routine maintenance or vegetation clearing; it uses onsite soil materials for construction; and, in the event the soil cement becomes exposed, it has the appearance of an un-

vegetated natural river bank. The respective areas of bank protection are shown on *Figure 2, Santa Clara River Major Features*.

4. **WRP Outfall**. An effluent outfall pipeline approximately 30 inches in diameter will be constructed from the WRP, through bank stabilization, to an energy dissipater and pilot channel within the bed of the Santa Clara River. The approved WRP is to be located on the south side of SR-126, adjacent to the Santa Clara River and near the Los Angeles County/Ventura County jurisdictional line, and will be constructed on agricultural and other previously disturbed land.

The outfall pipe will terminate on the river-side of proposed bank stabilization, similar to a typical storm drain outfall. An energy dissipater will be provided at the pipe outlet to minimize erosion-related impacts, with a narrow pilot channel formed in the riverbed to direct the discharge out to the active flow channel. An adjacent walkway will be used to conduct discharge inspections and to obtain water samples required under the NPDES permit for the WRP. The pilot channel will be excavated and lined with either concrete, gunite, turf reinforcement mat, rock, or if velocities are low enough, compacted soil. The channel and walkway will be maintained periodically to restore functions lost due to storm damage, vegetative growth, or soil erosion from WRP discharge. Maintenance will be limited to hand cutting vegetation along the path, maintaining the outlet and energy dissipater, and restoration of the functions of the pilot channel.

5. **Project Grading**. The WRP and utility corridor will result in approximately 78% of the area, or approximately 130 acres, being graded, including 97 acres for development and 33 acres of revegetated open space.
6. **SR 126 Bridge and Culvert Widening**. The RMDP indicates that three existing bridge/culvert road crossings along SR-126 will be widened by the California Department of Transportation to accommodate increased traffic resulting from the build out of the NRSP area. The SR 126 projects will be subject to project specific CEQA and NEPA review.

The Castaic Creek Bridge will be widened from six to eight lanes and the San Martinez Grande Bridge will be widened from four to six lanes. The Chiquito Canyon culvert will be widened from four to six lanes. Depending on California Department of Transportation final design decisions on the SR 126/Chiquito Canyon interchange, the culvert may be revised to include three independent bridge decks and a separate trail bridge. The proposed extension of the existing culvert and bridge decks, piers and channel scour protection will incorporate design guidelines to minimize the alteration of existing hydrologic conditions, or cause negative affects upstream or downstream of the project. Water quality control of roadway runoff must meet applicable California Department of Transportation requirements.

7. **Water Resources Affected by the Project.**

Utility Corridor and WRP. The utility corridor and WRP site will be located predominately outside of waters of the United States, however, the construction of the corridor and WRP site and their associated bank protection will result in temporary and permanent impacts to waters of the United States, including wetland and non-wetland waters of the United States in the Santa Clara River, and non-wetland waters in two minor tributaries. Impacts resulting from the construction of the utility corridor and WRP are summarized on Tables 3 and 4.

Santa Clara River. The approximately 7,430 linear feet of soil cement flood and erosion protection related to the utility corridor and WRP site directly impacts the Santa Clara River. Impacts include 1.81 acres of permanent impact to waters of the United States, including wetlands, and 3.35 acres of temporary impact to waters of the United States. Of these impacts, 1.37 acres of the permanent impacts and 2.36 acres of the temporary impacts are to wetlands.

Minor Tributaries. In addition to impacts in the Santa Clara River, the utility corridor and WRP site will result in permanent impacts to 1.53 acres of waters of the United States that are provided by minor tributaries located on the WRP project site as shown on *Figure 3, Modified, Converted, and Preserved Tributary Drainages*. No temporary or permanent impacts to wetland waters will occur in the minor tributaries. Impacts to the minor tributaries are described below and summarized on Table 4.

Mid-Martinez Grande Canyon, and Off-Haul Canyon. These tributaries will be converted to buried storm drains in their entirety to accommodate the utility corridor and WRP. The entire lengths of the following drainages within the Utility Corridor and WRP project area will be filled: approximately 550 feet of Mid-Martinez Grande Canyon, consisting of 0.12 acres of waters of the United States; and approximately 450 feet of Off-Haul Canyon, consisting of 0.70 acres of waters.

WRP Outfall. The WRP outfall pipe and associated energy dissipater and pilot channel into the bed of the Santa Clara River will be constructed in a river terrace, outside of waters of the United States.

SR 126 Bridge and Culvert Widening. Temporary and permanent impacts to waters of the United States resulting from the construction of improvements to SR-126 are summarized on Tables 3 and 4. Due to the public safety and protection of property issues that could occur should a culvert or bridge become obstructed during high-flow events, extensive maintenance may be required at these facility locations. The California Department of Transportation will conduct the maintenance and will require separate permitting for activities impacting waters of the United States. Proposed maintenance measures include visual inspections, debris removal, vegetation clearing, and pier wall or culvert inlet/outlet headwall repair, all of which would occur within the temporary impact zone required for the original structure construction.

E.4 HOMESTEAD SOUTH VILLAGE

1. **Proposed NRSP Village Development.** The tentative tract map for the Homestead South Village portion of the Newhall Ranch master planned community has not been submitted to Los Angeles County for subdivision approval, and therefore detailed land use planning is not available for this planning area nor has the project-level EIR for the Homestead South Village been completed. Under the RMDP, a land use plan consistent with the NRSP was used in the impacts analysis. Under the RMDP, Homestead South Village will be developed on approximately 1,635 acres located in the central portion of the NRSP site. The Homestead South Village Project site is generally located south of the Santa Clara River, west of the Mission Village Project site and north of the Potrero Village site. A small portion of the Homestead South Village Project site will be located north of the River and south of SR-126. Development proposed for the Homestead South Village includes a mix of housing types; mixed-use/commercial facilities; open space and recreation facilities; and infrastructure uses (e.g. parks, high school and elementary school, utilities, roads, etc.).

Residential development will occupy approximately 487 acres of the Homestead South Village Project site. School, park, open space, recreation and public service uses will occupy approximately 1,238 acres, and roads will occupy approximately 90 acres.

Project Grading. The Homestead South Village Project will result in approximately 25 million cubic yards of grading in a balanced cut-fill grading operation (25 million cubic yards of cut and 25 cubic yards of fill). Approximately 64% of the Homestead South Village area, or approximately 1,126 acres, will be graded, including 724 acres for the development and 402 acres of revegetated open space.

2. **Waters Affected by the Project.** There are approximately 193.73 acres of waters of the United States within the Homestead South Village Project site, including 179.78 acres of waters of in the Santa Clara River and 13.95 acres of waters within the on-site tributary drainages. Of the 179.78 acres of waters of the United States within the Santa Clara River mainstem, the Homestead South Village Project will result in permanent impacts to 1.16 acres. Of the 13.95 acres of waters of the United States located within the on-site tributary drainages, the Homestead South Village Project will result in 2.99 acres of permanent impacts.

Of the waters of the United States within the Homestead South Village Project site, there are approximately 108.09 acres of wetland waters in the Santa Clara River. There are no wetland waters in the on-site tributary drainages. Of the 108.09 acres of wetlands within the Santa Clara River mainstem, the Project will avoid permanent impacts to 98.28 acres and result in permanent impacts to 1.16 acres. Additional information about impacts to waters of the United States provided by the Santa Clara River and tributary drainages follows.

3. **Santa Clara River – Proposed Infrastructure and Impacts.** Infrastructure to be provided for the Homestead South Village Project includes the Long Canyon Bridge and approximately 6,070 linear feet of soil cement bank stabilization along the south bank of the Santa Clara River. Construction of the Project will also require the use of a temporary haul road across the River and the implementation of habitat restoration activities. These project-related actions will result in 1.16 acres of permanent impacts and 2.49 acres of temporary impacts to waters of the United States within the river. The Homestead South Village Project also includes the installation of six stormwater drainage outfalls that will discharge to the Santa Clara River, however, those facilities will not result in impacts to waters of the United States. Impacts to the Santa Clara River associated with the Homestead South Village Project are summarized in Table 3.

4. **Tributaries – Proposed Features and Impacts**

Long Canyon. The Homestead South Village Project will result in 5.23 acres of permanent impacts and 0.01 acres of temporary impacts to waters of the United States in Long Canyon. No impacts to wetland waters will occur in the Long Canyon drainage.

Approximately 8,742 feet of Long Canyon drainage that is currently unstable and subject to erosion and head cutting will be permanently impacted by filling, with the area regraded to accommodate a channel with grade control structures and four road crossing culverts within the new channel. In addition, approximately 961 feet of creek bed associated with the southern fork of Long Canyon will be converted to buried storm drain. Permanent impacts to waters resulting from modifications to the creek channel are summarized in Table 6. The design of a typical grade control structure is illustrated on *Figure 4, Lion Canyon Detail*, and as previously described for Lion Canyon above.

The re-graded and reconstructed Long Canyon drainage will provide approximately 23.4 acres of waters of the United States mitigation area, and approximately 40.7 additional acres of California Department of Fish and Game Streambed Alteration Agreement mitigation capacity within the resulting bed and bank. These post-development areas are indicated on *Figure 5, Long Canyon Detail*, and described in further detail in the RMDP Biological Mitigation Measure (BIO-2) Plan included as **Attachment 4**.

Lion Canyon West Fork. The Homestead South Village Project and the Mission Village Project tract map boundaries have the mainstem of Lion Canyon drainage on their border, and for purposes of the project description, all impacts associated with the stabilization of the Lion Canyon mainstem have been incorporated into the Mission Village description. The Homestead South Village Project will result in 2.07 acres of permanent impacts in the west fork of Lion Canyon as shown on *Figure 4, Lion Canyon Detail*. No impacts to wetland waters will occur in the Lion Canyon drainage. The west fork of the Lion Canyon drainage within the Homestead South Village tract will be permanently impacted by converting

approximately 3,500 feet of the existing creek channel, consisting of 2.07 acres of waters of the United States, to buried storm drain. There are no temporary impacts to Lion Canyon within the Homestead South Village project. Permanent impacts to waters resulting from modifications to the creek channel are summarized in Table 5.

Minor Tributaries. The Homestead South Village Project will result in permanent impacts to 0.92 acres of waters of the United States provided by minor tributaries located within the Project area. No impacts to wetland waters will occur in the minor tributaries. Impacts to the minor tributaries are described below and summarized on Table 4.

Humble Canyon, Unnamed Canyon B, and Unnamed Canyon C. Portions of these tributaries will be converted to buried storm drains to accommodate proposed development. A small portion of Humble Canyon will be filled, with approximately 421 feet converted to buried storm drain, consisting of 0.14 acres of waters of the United States. Approximately 5,116 feet of the remaining drainage, including of 1.77 acres of the drainage headwaters, will be preserved. The headwater of Unnamed Canyon B will be filled, with approximately 1,004 feet of the drainage converted to buried storm drain, with resulting permanent impact to 0.45 acres of waters of the United States. Approximately 568 feet of the lower drainage, downstream to the Santa Clara River confluence, containing 0.27 acres of waters, will be preserved. Similarly, approximately 402 feet of Unnamed Canyon C will be converted to storm drain, resulting in 0.18 acres of permanent impact to waters of the United States, with approximately 869 feet of drainage, consisting of 0.49 acres of waters of the United States, being preserved downstream to the confluence with the Santa Clara River.

Ayers Canyon. A road culvert will be installed in a portion of this on-site tributary, which includes 0.15 acres of waters of the United States. Ayers Canyon remains preserved except for the culvert crossing, with approximately 2,363 feet of drainage remaining, including 2.42 acres of waters of the United States preserved.

E.5 HOMESTEAD NORTH VILLAGE

1. **Project Characteristics.** The tentative tract map for the Homestead North Village portion of the RMDP has not been submitted to Los Angeles County for subdivision approval, and therefore detailed land use planning is not available for this planning area nor has the project-level EIR for Homestead North Village been completed. Under the RMDP, a land use plan consistent with the NRSP was used in the impacts analysis. The Homestead North Village portion of the RMDP will be developed on approximately 1,600 acres located in the northwestern portion of the NRSP area. The Homestead North Village site is generally located north of SR-126 and west of the Landmark Village Project site. Development proposed for the Homestead North Village Project includes a mix of housing types; mixed-

use/commercial facilities; open space and recreation facilities; and infrastructure uses (e.g. parks, utilities, roads, etc.).

Residential development will occupy approximately 295 acres of the Homestead North Village Project site, while mixed use/commercial uses will occupy approximately 77 acres. Park, open space, recreation and public service uses will occupy approximately 1,153 acres, and roads will occupy approximately 75 acres.

Project Grading. The Homestead North Village Project will result in approximately 13 million cubic yards of grading in a nearly balanced cut-fill grading operation (13 million cubic yards of cut and 12.5 million cubic yards of fill). Approximately 500,000 cubic yards of export are associated with non-RMDP Project development and improvements to SR-126 east of the project site. Approximately 48% of the Homestead North Village area, or approximately 762 acres, will be graded, including 465 acres for the development and 297 acres of revegetated open space.

2. **Waters Affected by the Project.** There are approximately 22.69 acres of waters of the United States in tributary drainages located within the Homestead North Village Project site. The tributaries on the Project site do not contain any wetland waters. The Project site does not include any waters of the United States associated with the Santa Clara River. The Homestead North Village Project will result in 11.74 acres of permanent impacts to waters of the United States. Additional information about impacts to the waters follows.

3. **Tributaries – Proposed Features and Impacts.**

Chiquito Canyon. There are 12.21 acres of waters of the United States in Chiquito Canyon on the Homestead North Village Project site. The Project will result in 4.70 acres of permanent impacts and 3.40 acres of temporary impacts to waters of the United States in Chiquito Canyon.

Portions of the Chiquito Canyon drainage that are currently unstable and subject to erosion and head cutting, will be permanently impacted by converting approximately 2,571 feet of existing creek channel, consisting of 0.84 acres of waters of the United States, to buried storm drain; the installation of three road crossing culverts; the installation of approximately 13,257 linear feet of bank stabilization along approximately 4,080 feet of the mainstem of the drainage; the installation of grade control structures; and by proposed development. Permanent impacts to waters of the United States resulting from modifications to the creek channel are summarized in Table 7.

Waters of the United States located in portions of the Chiquito Canyon drainage will be temporarily impacted by the creation of modified/restored soft bottom channels and the construction of grade control structures/debris basins. Temporary impacts to waters of the United States resulting from proposed modifications are described in Table 7. The design of a typical grade control

structure is illustrated on *Figure 4, Lion Canyon Detail*, and as previously described for Lion Canyon above.

Upon completion of stabilization and bank protection construction and restoration of disturbed areas, the Chiquito Canyon drainage will provide approximately 9.8 acres of waters of the United States mitigation area, and approximately 19.2 additional acres of California Department of Fish and Game Streambed Alteration Agreement mitigation capacity within the resulting bed and bank. These post-development areas are indicated on *Figure 6, Chiquito Canyon Detail*, and described in further detail in the RMDP Biological Mitigation Measure (BIO-2) Plan included as **Attachment 4**.

San Martinez Grande Canyon. There are 2.55 acres of waters of the United States in San Martinez Grande Canyon on the Homestead North Village Project site. The Project will result in 0.22 acres of permanent impacts and 1.06 acres of temporary impacts to waters of the United States in San Martinez Grande Canyon. Portions of the San Martinez Grande Canyon drainage that are currently unstable and subject to erosion and head cutting, will be permanently and temporarily impacted by installing approximately 7,307 linear feet of bank stabilization; the installation of one roadway bridge and one road culvert; and the installation of grade control structures. Permanent and temporary impacts to waters of the United States in San Martinez Grande Canyon are summarized in Table 8. The design of a typical grade control structure is illustrated on *Figure 4, Lion Canyon Detail*, and as previously described for Lion Canyon above.

Upon completion of stabilization and bank protection construction and restoration of disturbed areas, the San Martinez Grande Canyon drainage will provide approximately 6.8 acres of waters of the United States mitigation area, and approximately 11.1 additional acres of California Department of Fish and Game Streambed Alteration Agreement mitigation capacity within the resulting bed and bank. These post-development areas are indicated on *Figure 7, San Martinez Grande Canyon Detail*, and described in further detail in the RMDP Biological Mitigation Measure (BIO-2) Plan included as **Attachment 4**.

Minor Tributaries. The minor tributaries located on the Homestead North Village Project site provide a total of 7.92 acres of waters of the United States. No wetland waters are provided in the on-site minor tributaries. The Homestead North Village Project will result in permanent impacts to 6.82 acres of waters of the United States. The project will not result in any temporary impacts to waters of the United States. Impacts to the minor tributaries are described below and summarized on Table 4.

Homestead Canyon, and Mid-Martinez Canyon. Approximately 609 feet of Homestead Canyon drainage, consisting of 0.22 acres of waters of the United States, will be converted to buried storm drains to accommodate proposed development. The entire Mid-Martinez Canyon drainage within the Homestead

North Village project site will be filled, with approximately 3,796 feet converted to buried storm drain, consisting of 1.84 acres of waters of the United States.

Off-Haul Canyon. A substantial portion of Off-Haul Canyon will be converted to buried storm drains to accommodate proposed development. Approximately 5,314 feet of the drainage will be converted to buried storm drain, with resulting permanent impact to 4.76 acres to waters of the United States. Approximately 3,014 feet of the headwaters of Off-Haul Canyon, including 0.32 acres of waters of the United States within the tract boundary, will be preserved.

Unnamed Canyon A. Approximately 1,293 feet of Unnamed Canyon A drainage, consisting of 0.78 acres of waters of the United States, will be preserved, with no impacts from the project.

E.6 POTRERO VILLAGE

1. **Project Characteristics.** The tentative tract map for the Potrero Village portion of the RMDP has not been submitted to Los Angeles County for subdivision approval, and therefore detailed land use planning is not available for this planning area nor has the project-level EIR for Potrero been completed. Under the RMDP, a land use plan consistent with the NRSP was used in the impacts analysis. The Potrero Village portion of the Newhall Ranch master planned community will be developed on 3,000 acres located south of SR-126 and north of the High Country open space area that is to be established on the NRSP area. Development proposed for the Potrero Village Project includes a mix of housing types; mixed-use/commercial facilities; open space and golf and recreation facilities; elementary school; visitor service center in the High Country; and infrastructure uses (*e.g.* parks, utilities, roads, etc.).
2. Residential development will occupy approximately 900 acres of the Potrero Village Project site, while commercial uses will occupy approximately 38 acres. School, park, open space, recreation and public service uses will occupy approximately 1,550 acres, and roads will occupy approximately 104 acres.

Project Grading. The Potrero Village Project will result in approximately 26 million cubic yards of grading in a balanced cut-fill grading operation (26 million cubic yards of cut and 26 million cubic yards of fill). Approximately 57% of the Potrero Village project area, or approximately 1,703 acres, will be graded, including 1,275 acres for the development and 427 acres of revegetated open space. The remaining area will be preserved as natural open space.

Waters Affected by the Project. There are approximately 164.21 acres of waters of the United States within the Potrero Village Project site, including 123.71 acres of waters of the United States in the Santa Clara River and 40.50 acres of waters of the United States within the on-site tributary drainages. The Potrero Village project does not impact the 114.35 acres of waters of the United States within the Santa Clara River mainstem other than impacts that may result from the

restoration of an existing river crossing, which will occur after all construction has been completed. Of the 40.50 acres of waters of the United States located within the on-site tributary drainages, the Potrero Village Project will result in 2.06 acres of permanent impacts.

Of the waters of the United States within the Potrero Village Project site, there are approximately 102.59 acres of wetland waters in the Santa Clara River. There are 7.28 acres of wetland waters within the Potrero Canyon drainage, primarily consisting of cis-montane alkali marsh wetlands. The project does not impact any of the 95.31 acres of wetlands within the Santa Clara River mainstem. Within Potrero Canyon drainage, there are 0.49 acres of permanent impacts, and 1.61 acres of temporary impacts; to wetlands associated with grade control structures, bank protection and road crossings. Additional information about impacts to waters of the United States provided by the Santa Clara River and tributary drainages follows.

3. **Tributaries – Proposed Features and Impacts**

Potrero Canyon. Portions of the Potrero Canyon drainage will be permanently impacted by the construction of three road crossing culverts and one roadway bridge; creek channel bed stabilization of approximately 13,743 feet of the mainstem of Potrero drainage, including approximately 31,097 linear feet of bank stabilization within the reach; the installation of no more than 60 grade control structures; a water quality control basin and debris basins; and the creation of manufactured open space areas. Permanent impacts to waters of the United States in Potrero Canyon are summarized in Table 9.

Waters of the United States located in portions of the Potrero Canyon drainage that are currently unstable and subject to erosion and head cutting, will also be temporarily impacted by proposed road culverts and bridge, bank stabilization, and the installation of grade control structures. Temporary impacts to waters of the United States resulting from proposed modifications are described in Table 9. The design of a grade control structure specific to Potrero Canyon is illustrated on *Figure 8, Potrero Canyon Detail*. The specific design for Potrero consists of a sill, a drop, and a stilling pool pursuant to the Potrero Creek Stream Stabilization Criteria, as required by the Corps permit. Stream stabilization measures used in Potrero Creek will conform to the following design criteria.

1. Not more than 60 Step-Pool Grade Control Structures (GCS) shall be located along the Potrero Creek drainage within the RMDP project area.
2. Height: The average height of the GCS (the elevation of the drop stabilized by each structure) shall be 4 feet, with no structures greater than 5 feet high and a target height of 3 feet.
3. The grade control structures shall be located to minimize impacts or to avoid localized aquatic vegetation or habitats, stabilize existing headcuts, and be sited in conjunction with road crossings. The

preferred grade control design shall be a 3-foot-high step pool structure and constructed using ungrouted boulders.

4. Neither grouted riprap nor soil cement will be used in the drop structures to avoid the introduction of cement based materials into sensitive habitats within Potrero Canyon drainage.

The Potrero Canyon drainage will provide approximately 14.0 acres of waters of the United States mitigation area, and approximately 84.3 additional acres of California Department of Fish and Game Streambed Alteration Agreement mitigation capacity within the resulting bed and bank. These post-development areas are indicated on *Figure 8, Potrero Canyon Detail*.

Salt Canyon. The Potrero Village Project will result in 0.22 acres of permanent impacts and 7.28 acres of temporary impacts to waters of the United States in Salt Canyon. Permanent impacts will result from the construction of approximately 1,841 linear feet of bank stabilization along the eastern bank of Salt Creek for flood protection of the High Country Visitor Serving Center development area. Temporary impacts to waters will result from restoration activities along approximately 7,392 linear feet of Salt Creek. Of the 7.28 acres of temporary impacts, 1.14 acres of impact will occur in wetland waters.

F. **RMDP Facility Maintenance**

1. **Santa Clara River and Tributary Feature Maintenance.** All infrastructure facilities associated with the RMDP Project will be subject to periodic maintenance activities, with visual inspection being the least invasive activity. The RMDP Maintenance Manual included as **Attachment 2**, provides detailed requirements for the operation and maintenance of the facilities. A summary of proposed maintenance activities is provided below.
2. **Bridges and Road Crossings.** Vegetation and sediment will only be removed to maintain minimum vertical clearance beneath bridge and adequate water conveyance through culverts in the area approximately 25 feet upstream and 25 feet downstream of the structure. Impacts from maintenance will be in the same footprint as the original construction impacts. Work areas will be restored to pre-maintenance conditions in accordance with a restoration plan.
3. **Bank Stabilization.** Newhall Land or the Los Angeles County Flood Control District (LACFCD), or other responsible entity, will perform periodic visual inspections of the buried soil cement bank protection. Bank stabilization will be repaired as needed to maintain structural integrity. Work areas will be limited to the repair site and a 30-foot radius around the work area. Impacts from maintenance will be in the same footprint as the original construction impacts and will not result in any additional fill of waters of the United States. Work areas will be restored to pre-maintenance conditions in accordance with a restoration plan.

4. **Storm Drains.** Newhall Land or LACFCD, or other responsible entity will remove outfall sediment as needed using light equipment or hand crews to create a swale up to 75 feet long and 10 feet wide to prevent obstruction of flow. Maintenance will occur in the same footprint as the original permanent construction impacts. Each outfall could result in the periodic dredging of approximately 150 cubic yards of sediment, which if managed on-site will be spread at the maintenance site outside of jurisdictional areas. Placement of fill in waters of the United States is not anticipated and would require additional permitting.
5. **Drainages Modified and Restored.** Waters of the United States created in Lion Canyon will be allowed to function as a natural stream course environment, with no routine maintenance anticipated. However, pursuant to the provisions of a required Geomorphology Monitoring and Management Plan (described in Part 1, Section 3.0, Provision No. 27 below), Newhall Land or LACFCD, or other responsible entity will conduct routine inspections to ensure proper function of the structures. If the specified design standards are not achieved, supplemental activities will be required, including: removal or placement of sediment to modify the channel bed invert; modification of grade control structures; or augmentation of riparian vegetation. These actions will be taken within the original construction impact footprint.
6. **Debris Basins.** Newhall Land or LACFCD, or other responsible entity will conduct periodic removal of sediment and woody vegetation to maintain basin capacity and function. Heavy equipment, light equipment and/or hand crews may be used. In most locations, the basins will not be located within waters of the United States, however, where located in waters of the United States, impacts from maintenance will be in the same footprint as the original construction impacts. Sediment that is periodically removed will be directed to a legal point of disposal (e.g., landfill, sediment disposal site, or other beneficial re-use). Sediments will not be discharged into jurisdictional waters.
7. **Grade Control Structures.** Grade control and step pool structures will be primarily self-maintaining with a limited need for sediment removal and vegetation control. Pursuant to the provisions of a required Geomorphology Monitoring and Management Plan (described in Part 1, Section 3.0, Provision No. 27 below), Newhall Land or LACFCD, or other responsible entity will conduct routine inspections to ensure proper function of the structures. Sediment will be removed when a structure does not function properly or causes nuisance conditions.
8. **Water Quality/Detention Basins.** Newhall Land or LACFCD, or other responsible entity will conduct routine maintenance including removal of trash and debris; pruning and/or removal of large shrubs or trees that interfere with

basin operation subject to bird nesting requirements; removal of invasive vegetation; removal of sediment buildup exceeding 50% of forebay capacity; and removal of sediment from facility when it exceeds a depth of six inches. Water quality basins are generally located in upland locations that are not waters of the United States locations, and maintenance will not result in additional impacts to waters of the United States. Although the basins are intended to treat runoff from developed areas and should not generate substantial quantities of sediment, periodic maintenance may require sediment removal from the basin forebay. Sediment will be removed and directed to a legal point of disposal or beneficial reuse. In addition, to maintain adequate infiltration functions, reconstruction of the basin subdrain may occur on an infrequent basis.

G. OTHER CONSIDERATIONS

This Order sets forth waste discharge requirements (WDRs) and provides Clean Water Act section 401 water quality certification pursuant to Water Code section 13263. The Regional Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from this Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes over the life of the RMDP.

1. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring “no overall loss” and achieving a “...long-term net gain in the quantity, quality, and permanence of wetland acreage and values....” Senate Concurrent Resolution No. 28 states that “[i]t is the intent of the legislature to preserve, protect, restore, and enhance California’s wetlands and the multiple resources which depend on them for benefit of the people of the State.” Section 13142.5 of the California Water Code requires that the “[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas.”
2. On January 27, 2005, the Regional Board adopted Resolution No. 2005-002 regarding the Regional Board’s regulation of hydromodification. This policy reiterates the Regional Board’s existing authority to regulate hydromodification within the Los Angeles Region, and expresses the intent of the Board to evaluate the need for and to develop as appropriate new policies or other tools to control adverse impacts from hydromodification on the water quality and beneficial uses of water courses in the Los Angeles Region. The alteration away from a natural state of stream flows or the beds or banks of rivers, streams, or creeks, including ephemeral washes, which results in hydrogeomorphic changes, is generally referred to in this resolution as a hydromodification. Resolution No. 2005-002 represented an initial step in the process of first, heightening awareness about the potential impacts of hydromodification on water quality and beneficial uses and evaluating existing laws and regulations and the methods employed by Regional Board staff when reviewing proposed hydromodification projects and, second,

strengthening, if necessary, controls and policies governing hydromodification that negatively affect water quality and beneficial uses.

3. Pursuant to Water Code section 13263(g):
 - a. ~~No discharge of waste into waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.~~
4. As set forth in Water Code section 13263(e), the Regional Board will periodically review this Order. The Executive Officer will periodically provide a report to the Regional Board at least every five years and, as necessary, at other intervals per the pace of village development. The Executive Officer will consider new environmental analyses under CEQA, changed environmental conditions and new information of environmental contamination or water quality impairment. The Regional Board may revise the requirements of this Order as necessary to protect water quality, pursuant to CWC section 13263(e) or to implement any new or revised water quality standards and implementation plans or policies adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.
5. This Project is filed with the Regional Board under WDR Order No. xxx and 401 file number **11-168 WDR**.
6. The Regional Board has notified Newhall Land and Farming and other interested agencies and persons of its intent to prescribe WDRs for this discharge.
7. A tentative Order was released for public comment on March 9, 2012. Written comments were accepted until 5:00 p.m. on April 20, 2012.
8. The Board, in public meetings on June 7, 2012, August 7, 2012, and September 14, 2012 heard and considered all comments pertaining to the discharge.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

1. The California Environmental Quality Act (~~CEQA~~), Pub. Res. Code §21000 et. seq., requires public agencies when approving or carrying out projects that could impact the quality of the environment to consider potential environmental impacts of their actions. Where a project may be carried out or approved by more than one public agency, one public agency – the lead agency - will be responsible for preparing an environmental impact report or negative declaration for the project. Other agencies are considered responsible agencies. As described in this Order, the Los Angeles County Board of Supervisors is the lead state agency for purposes of CEQA to approve the Newhall Ranch land use activities. The CDFG

- is the lead state agency for purposes of CEQA for approval of activities subject to the Fish and Game Code. The Corps is the lead federal agency for purposes of NEPA for approval of the Clean Water Act section 404 permit. The Regional Board is a responsible agency for purposes of CEQA.
2. The project subject to this Order has been subject to significant review under CEQA. The Los Angeles County Board of Supervisors approved the Newhall Ranch Specific Plan, and certified the Newhall Ranch Specific Plan Program Environmental Impact Report (EIR), on May 27, 2003. At the same time, the Board of Supervisors approved the Newhall Ranch Specific Plan Resource Management Plan (RMP). The RMP set forth, at a conceptual level, mitigation and management standards for sensitive biological resources located within the boundary of the approved NRSP.
 3. The Corps and CDFG prepared a Joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The CDFG was the lead agency under CEQA and the Corps was the lead agency under NEPA, for the purpose of analyzing all environmental effects of the RMDP (State Clearinghouse No. 2000011020). CDFG approved the final EIS/EIR on December 3, 2010, and the Corps approved the final EIS/EIR on August 31, 2011.
 4. The final EIS/EIR for the RMDP identified significant impacts to the environment including permanent dredge and fill impacts to 66.3 acres of waters of the United States and temporary dredge and fill impacts to 32.2 acres of waters of the United States and water quality impacts. The final EIS/EIR identified mitigation measures to reduce water quality impacts to “less than significant” and compensatory mitigation that includes created or restored aquatic or riparian habitat to eliminate or minimize dredge and fill impacts.
 5. The Regional Board is a responsible agency under CEQA for the RMDP and has considered the environmental documentation of the lead agency, CDFG. Regional Board submitted comments on the EIS/EIR to the Corps and CDFG on August 25, 2009 and August 3, 2010, which were considered in the final EIS/EIR.
 6. The final EIS/EIR identified potential significant impacts to Water Quality. The requirements of this Order; the requirements of the Los Angeles County MS4 permit including the Stormwater Management Program; and the requirements of the NPDES permit and Waste Discharge Requirements for the Newhall Ranch Sanitation District’s WRP, incorporate mitigation measures identified in the final EIS/EIR to reduce impacts to water quality to less than significant.
 7. The final EIS/EIR for the RMDP identified potential significant impacts to Jurisdictional Waters and Streams. The requirements of this Order; the requirements the Corps Permit; and the requirements of the CDFG MSAA, incorporate mitigation measures identified in the final EIS/EIR to reduce impacts to jurisdictional waters and streams to less than significant.

8. CDFG made a Statement of Overriding Considerations for the final EIS/EIR for impacts to air quality; noise; agricultural resources; land use; visual resources; hazards, hazardous materials, and public safety; and solid waste, finding that the project's benefit is substantial and overrides the unavoidable impacts.
9. The EIR for Landmark Village was approved by the County of Los Angeles Department of Regional Planning on October 4, 2011. The Regional Board is a responsible agency under CEQA for the Landmark Village EIR and has considered the environmental documentation of the lead agency. Regional Board staff commented on the draft EIR on January 22, 2007 and the comments were considered in the final EIR.
10. The EIR for Landmark Village identified potential significant impacts to 'Water Quality' and 'Floodplain Modification' and identified mitigation measures to reduce the impacts to less than significant. The requirements of this Order; the requirements of the Los Angeles County MS4 permit including the Stormwater Management Program; and the requirements of the NPDES permit and Waste Discharge Requirements for the Newhall Ranch Sanitation District's WRP, incorporate the mitigation measures identified in the final EIS/EIR to reduce impacts to water quality to less than significant. The requirements of this Order; the requirements the Corps Permit; and the requirements of the CDFG MSAA, incorporate mitigation measures identified in the final EIS/EIR to reduce impacts to floodplain modification to less than significant.
11. The County of Los Angeles made a Statement of Overriding Considerations for the EIR for Landmark Village for impacts to biota, visual qualities, noise, air quality; agricultural resources; and solid waste services finding that the project's benefit is substantial and overrides the unavoidable impacts.
12. The EIR for Mission Village was certified by the County of Los Angeles Department of Regional Planning on October 25, 2011 and final map conditions were issued on May 15, 2012. The Regional Board is a responsible agency under CEQA for the Mission Village EIR and has considered the environmental documentation of the lead agency. Regional Board staff commented on the draft EIR on January 4, 2011 and the comments were considered in the final EIR.
13. The EIR for Mission Village identified potential significant impacts to 'Water Quality' and 'Floodplain Modification' and identified mitigation measures to reduce the impacts to less than significant. The requirements of this Order; the requirements of the Los Angeles County MS4 permit including the Stormwater Management Program; and the requirements of the NPDES permit and Waste Discharge Requirements for the Newhall Ranch Sanitation District's WRP, incorporate the mitigation measures identified in the final EIS/EIR to reduce impacts to water quality to less than significant. The requirements of this Order; the requirements the Corps Permit; and the requirements of the CDFG MSAA,

incorporate mitigation measures identified in the final EIS/EIR to reduce impacts to floodplain modification to less than significant.

14. The County of Los Angeles made a Statement of Overriding Considerations for the EIR for Mission Village for impacts to visual qualities, air quality; agricultural resources; and solid waste services finding that the project's benefit is substantial and overrides the unavoidable impacts.
15. The County of Los Angeles will be required to conduct additional environmental analyses under CEQA for additional villages or phases of the project. The Regional Board may revise this Order, including the addition of mitigation measures, after consideration of the environmental analysis for those future projects to assure protection of water quality.
16. This Order includes the requirement for a monitoring and reporting program to assure compliance with the mitigation measures and other terms of this Order. In addition, as set forth in the Attachments, which are incorporated by reference into this Order, this Order requires mitigation measures and compensatory mitigation to reduce the water quality impacts to "less than significant" and to require sufficient compensatory mitigation to replace waters impacted by dredge and fill.

IT IS HEREBY ORDERED that Newhall Land, in order to meet the provisions contained in Division 7 of the Water Code and regulations adopted thereunder and for certification that the proposed discharges will comply with the Clean Water Act and other applicable water quality standards, pursuant to the Regional Board's authority under Water Code sections 13263 and 13267 and Clean Water Act section 401, 33 U.S.C. § 1341, shall comply with the following.

1.0 Standard Conditions: Pursuant to section 3860, Title 23, California Code of Regulations (23 CCR), the following three standard conditions shall apply to the Project:

- a. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and 23 CCR section 3867 et seq.;
- b. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought;

- c. This Order is conditioned upon total payment of any fee required pursuant to 23 CCR division 3, chapter 28 and owed by Newhall Land.

2.0 Prohibitions

1. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the State. At no time shall Newhall Land use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the State.
2. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the State. Designated spoil and waste areas shall be visually marked prior to any excavation and/or construction activity, and storage of the materials shall be confined to these areas.
3. All waste or dredged material removed shall be relocated to a legal point of disposal if applicable. A legal point of disposal is defined as one for which Waste Discharge Requirements have been established by a California Regional Water Quality Control Board, and which is in full compliance therewith.
4. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses, f) cause or contribute to trash or debris pollution.
5. Unauthorized non-storm water discharges into the MS4 system, the Santa Clara River or other waters of the State, are prohibited.
6. This Order does not authorize the discharge of waste by Newhall Land related to any activities other than those specifically described in this Order.

3.0 Conditions.

General Conditions:

1. **Compliance with Porter Cologne Water Quality Control Act.** Newhall Land shall comply with water quality objectives, prohibitions, and policies set forth in the *Water Quality Control Plan, Los Angeles Region (1994)*, as amended.

Newhall Land shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan (and water quality standards therein) and other implementation plans adopted or approved pursuant to the Porter Cologne Water Quality Control Act. Any discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality objectives and water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act.

2. **Water Quality Objectives.** Newhall Land shall not cause or contribute to exceedances of water quality objectives in the Basin Plan or water quality objectives set forth in the California Toxics Rules in the waters of the State and of the United States.
3. **Recycled Water.** In order to minimize the discharge of treated effluent to waters of the State and of the United States Newhall Land shall ensure that treated effluent from the Newhall Ranch WRP is used for irrigation and other appropriate purposes within the RMDP, consistent with Finding 20 of this Order. Newhall Land shall report to the Regional Board annually the volume of treated effluent from the Newhall Ranch WRP reused for such purposes.
4. **Compliance with Federal Permit Issued for RMDP.** Newhall Land shall conduct all activities in accordance with the terms and conditions of the Corps Section 404 Permit for the RMDP, Permit No. SPL-2003-01264-AOA, and with all specifications of the Newhall Ranch RMDP Final Mitigation and Monitoring Plan for Impacts to waters of the United States, or any subsequently approved plan.
5. **Compliance with CDFG Permit Issued for RMDP** Newhall Land shall conduct all activities in accordance with the terms and conditions of the MSAA issued by CDFG for the RMDP, Agreement No. 1600-2004-0016-R5.

Conditions associated with Construction Activities: The following terms shall be applicable to all activities conducted within the boundaries of the RMDP, including but not limited to, construction activities.

6. **Project Biologist.** Newhall Land shall utilize the services of a biologist with expertise in aquatic and terrestrial species known to the Santa Clara River within the RMDP site and expertise in riparian assessments, and who shall possess the requisite state and federal authorizations to conduct the surveys and monitoring activities described below. The biologist shall be available on site during construction or sediment and/or vegetation removal activities including during any vegetation clearing activities, including those activities conducted in debris/detention basins. The project biologist shall have the authority to stop the

work, as necessary. The project biologist shall be available upon request from this Regional Board staff for consultation within 24 hours of request for consultation.

7. **Restoration Biologist.** Newhall Land shall utilize the services of a restoration biologist with expertise in riparian assessments and habitat restoration during all construction or maintenance activities where clearing involves areas to be partially cleared or protected in place (i.e. some vegetation is to remain in the same reach or in an adjacent reach) and for monitoring/reporting on compensatory mitigation and restoration activities. The restoration biologist shall be available as necessary to ensure that all protected areas are marked properly and ensure that no vegetation outside the approved work area is removed. The restoration biologist shall have the authority to stop the work, as necessary. The restoration biologist shall be available upon request from this Regional Board staff for consultation within 24 hours of request for consultation.
8. **Measures During Construction.** In order to protect water quality during construction, Newhall Land shall comply with General NPDES Permit for Construction Stormwater Discharges (Order No. 2009-0009-DWQ; NPDES No. CAS000002 adopted September 2, 2009; effective July 1, 2010), as amended or reissued, or other legally applicable standard. Newhall Land shall implement BMPs during construction of the RMDP infrastructure improvements and NRSP build-out to prevent and/or reduce erosion and the transport of sediment and other potential pollutants from the project site. These BMPs shall be designed and implemented to the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT). Any Stormwater Pollution Prevention Plan (SWPPP) prepared to comply with the Construction General Permit shall identify and apply proper construction, implementation, and maintenance of BMPs to reduce or eliminate pollutants in stormwater discharges and authorized non-stormwater discharges from the construction sites during construction.
9. **WQTR.** Newhall Land will prepare and submit to the Executive Officer for review a Project Water Quality Technical Reports (WQTR) and Drainage Concept Report which addresses LID standards for each subsequent development area within the RMDP. Newhall Land shall implement the requirements of the approved WQTR and Drainage Concept Report in all construction and maintenance activities.
10. **Planning and Development (LID) Standards.** Each development area within the RMDP shall incorporate the following measures. Development areas within the RMDP site shall comply with all applicable regulatory requirements of the Los Angeles County MS4 Permit in place at the time of the preparation of the WQTR unless an equivalent requirement in this WDR is more stringent. Project design features shall be selected and sized to retain the volume of stormwater

runoff produced from a 1.1 inch storm event³ (LID design volume) to reduce the percentage of Effective Impervious Area (EIA) to 5 percent or less of the total project area within the Newhall Ranch Specific Plan. When it has been demonstrated that 100 percent of the LID design volume cannot be feasibly⁴ infiltrated, then biofiltration shall be provided for 1.5 times the portion of the LID design volume that is not retained. Runoff from all EIA shall be treated with effective treatment control measures that are selected to address the pollutants of concern and are sized to capture and treat 80 percent of the average annual runoff volume. Each Village-level project shall achieve the LID Performance Standard cumulatively, considering the retention volume and equivalent biofiltration volume⁵ provided by the project itself and by all previous development phases within the RMDP area. The LID Performance Standard shall be implemented as follows:

Institutional, commercial, multi-family residential, recreation, and park land use parcels shall implement retention or biofiltration BMPs within the parcel footprint. Runoff from roofs, patios, and walkways in single family residential parcels shall be dispersed over landscaped areas to retain runoff. Runoff from the remaining developed area and that which is not retained within the parcel footprints shall flow through the storm drain system to the regional infiltration/biofiltration facilities. Based on an assessment of feasibility, one of three BMP strategies shall be applied to each project (i.e. village) as follows:

- a. If it is feasible to infiltrate all of the runoff produced from the 1.1 inch storm from the developed area (i.e., soil infiltration rates are at least 0.5 inches per hour, and no other technical infeasibility concerns exist), infiltration BMPs shall be used. Infiltration BMPs include bioretention (without an underdrain), permeable pavement, infiltration galleries, infiltration basins or trenches, or an equivalent infiltration BMP.
- b. If it has been demonstrated in the Project WQTR and Drainage Concept Report that the BMP strategy of subsection (a), of this condition, is infeasible, and if the project has low soil infiltration rates (i.e., the soil infiltration rate is less than 0.5 inches per hour), but no other technical infeasibility concerns exist, bioinfiltration BMPs shall be used. Bioinfiltration facilities are similar to bioretention facilities with an underdrain, but they include storage below the underdrain to maximize the volume infiltrated. These facilities shall retain a portion of the runoff from the 1.1 inch design storm, then biofilter 1.5 times the remaining runoff from the 1.1 inch design storm.

³ The 85th percentile, 24-hour storm depth is equal to 1.1 inches as determined from the Los Angeles County 85th Percentile 24-hr Rainfall Isohyetal Map (February 2004)

⁴ Feasibility shall be based on the approved Ventura County Technical Guidance Manual for Stormwater Quality Control Measures (7-13-2011).

⁵ Biofiltration volume shall be equated to retention volume at a ratio of 1.5 (biofiltration) to 1.0 (retention).

- c. If it has been demonstrated in the Project WQTR and Drainage Concept Report that the BMP strategies of subsection (a). and (b), of this condition, are infeasible, , then biofiltration BMPs shall be used. These BMPs shall biofilter the runoff produced from the 1.5 times the 1.1 inch design storm.

Runoff from roadways shall be retained or biofiltered in retention or biofiltration BMPs sized to capture the design storm volume or flow, per the guidance in USEPA's Managing Wet Weather with Green Infrastructure: Green Streets.

No more than 5% of the total project area shall be treated using conventional treatment methods that address the pollutants of concern. Media filters (or equivalent BMPs that address the pollutants of concern) shall be sized to capture and treat 80% of the average annual runoff volume from the allowable EIA.

Regional facilities shall be implemented to infiltrate or biofilter the runoff volume from the 1.1 inch design storm volume that has not been retained or biofiltered within parcels, single family lots, or road right of ways. Additionally, regional facilities shall be designed to provide extended detention treatment for the additional runoff volume required to provide 80% capture and treatment of the average annual runoff volume for the tributary area to the regional facility per the Newhall Ranch Specific Plan Sub-Regional Stormwater Mitigation Plan treatment performance standard.

For each village-level project within the RMDP, Newhall Land shall implement hydromodification controls to prevent accelerated stream erosion and to protect stream habitat, as follows:

- a. For discharges to the Santa Clara River, RMDP projects shall incorporate site design and LID BMPs per this LID Standard to limit impervious area and disconnect imperviousness to avoid and minimize hydromodification impacts.
- b. For discharges from RMDP projects to the drainages tributary to the Santa Clara River, the erosion potential (Ep) of stormwater discharges from the Project shall be maintained within 20% of the target value⁶ in the tributary drainages that will receive post-development flows. The target Ep shall consider changes in sediment supply. The hydromodification performance standard shall be met for all of the RMDP projects from the point of discharge to the tributary drainage channel downstream to the confluence of the tributary drainage with the Santa Clara River, and shall be achieved through on-site or in-stream controls, or a combination

⁶ The target Ep value is 1 unless a more appropriate value is derived. The target Ep value shall match the long term cumulative sediment load transported in the post-development condition to that of the pre-condition.

thereof. An equivalently effective, similarly geomorphically-referenced approach may be developed and applied in the future in place of the erosion potential approach.

11. **Chloride.** For purposes of further treating wastewater (to a chloride level of 100 mg/l or less for up to 6000 equivalent dwelling units) from Newhall Ranch that will be sent to the Valencia WRP, Newhall Land, or its successor, shall complete construction of interim chloride and demineralization facilities to the satisfaction of the Regional Board prior to discharging sewage from Newhall Land to the Valencia WRP or other publicly owned treatment works. The interim chloride and demineralization facilities shall be sufficient to ensure that any wastewater discharge attributable to Newhall Ranch does not result in discharge to the Santa Clara River of effluent containing chloride in concentrations exceeding 100 mg/l. If sewage from Newhall Land does not already meet the chloride limit of 100mg/L, an equivalent volume of effluent shall be removed from the combined Newhall/Valencia partially treated waste stream and shall be treated at the interim chloride and demineralization facility to meet 100 mg/L chloride prior to discharge.

Dischargers of wastewater from Newhall Land to Valencia WRP shall not exceed the flow from 6000 equivalent dwelling units.

Newhall Land, or its successor, shall complete the construction of the Newhall Ranch WRP with a capacity to treat wastewater generated by at least 6,000 equivalent dwelling units on or before the date that construction of the 6,000th equivalent dwelling unit within Newhall Ranch is completed.

12. **Buffers** Newhall Land shall provide Open Space Buffers, consisting of riparian buffers and development setbacks, along portions of the Santa Clara River, consistent with the design of the approved RMDP and with Finding 21 of this Order.
13. **Water Quality Monitoring during Work Within or Adjacent to Flowing Streams** The objectives of the water quality monitoring are to assess BMP effectiveness and to ensure that water quality is not impacted as a result of the construction activities, dewatering discharge or surface water diversion within or adjacent to flowing streams. BMPs are to be implemented in association with project activities to avoid exceeding water quality standards. For each project area within a tributary drainage, three (3) sampling stations: upstream of project, within project; and downstream of project reach, shall be established. For projects along the Santa Clara River, at least three (3) sampling stations shall be established: upstream of any construction related stormwater or dewatering water discharge point, points at each tributary confluence where grading has, is or will occur in the tributary's watershed; and downstream of the most downstream construction related stormwater or dewatering water discharge point. The testing

parameters required will be as follows: Surface water monitoring shall be Surface Water Ambient Monitoring Program (SWAMP) compliant.

- pH
- temperature
- dissolved oxygen
- turbidity
- total suspended solids (TSS)

Downstream TSS shall be maintained at ambient levels. Where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20%. Where natural turbidity is greater than 50 NTU, increases shall not exceed 10%.

These constituents shall be measured at least once prior to the construction activity and then monitored on a daily basis during the first week of construction activity, and then on a weekly basis, thereafter, until the work is complete within or adjacent to flowing streams. If no surface flow is present, then such conditions shall be documented. Analyses must be performed using approved USEPA methods, where applicable, or using methods approved by the Executive Officer. Any violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection. Newhall Land shall submit results of the analyses to the Regional Board, to the attention of the 401 Program Unit, within 30 days of each subsequent sampling event. A map or drawing indicating the locations of sampling points shall be included with each submittal.

14. **Surface Water Diversion Requirements and Water Quality Monitoring.** All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, Newhall Land shall develop and submit a project specific Surface Water Diversion Plan (plan) to the Executive Officer. The plan shall be consistent with the Aquatic Species Project / Surface Water Diversion Plan submitted with the application (Attachment 5) and shall include the proposed method and duration of diversion activities, structure configuration, construction materials, equipment, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. Contingency measures shall be a part of this plan to address various flow discharge rates. The plan shall be submitted 21 days prior to any surface water diversions. Surface water monitoring shall be Surface Water Ambient Monitoring Program (SWAMP) compliant.

If surface flows are present, then upstream and downstream monitoring for the following shall be implemented pursuant to Condition 11 above:

- pH
- temperature
- dissolved oxygen
- turbidity
- total suspended solids (TSS)

Downstream TSS shall be maintained at ambient levels. Where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20%. Where natural turbidity is greater than 50 NTU, increases shall not exceed 10%.

Analyses must be performed using approved USEPA methods, where applicable, or methods approved by the Executive Officer. These constituents shall be measured at least once prior to diversion and then monitored for on a daily basis during the first week of diversion, and then on a weekly basis, thereafter, until the in-stream work is complete.

Photographs shall be taken at each station during sampling to demonstrate the condition of the stream.

Newhall Land shall submit results of the analyses to the Regional Board, to the attention of the 401 Program Unit, within 30 days of each subsequent sampling event. A map or drawing indicating the locations of sampling points shall be included with each submittal.

Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.

15. **Aquatic Nuisance Species Control.** Newhall Land shall develop and implement a Plan for Hazard Analysis and Critical Control Points (HACCP Plan) in order to implement prevention and control of aquatic nuisance species and instruct construction and maintenance personnel in HACCP Plan provisions. The draft HACCP Plan shall be submitted to the Regional Board 401 Certification Unit staff within two months after issuance of this Order. To reduce the potential for the spread of New Zealand mud snails, or other aquatic nuisance species of concern, during Project clearing and construction, all heavy equipment proposed for use on the Project site shall be verified cleaned (including wheels, tracks, undercarriages, and bumpers, as applicable) before delivery to the Project site. Equipment must be documented as mud snail free upon delivery to the Project site initial staging area, including: (1) vegetation clearing equipment (skid steer loaders, loaders, dozers, backhoes, excavators, chippers, grinders, and any hauling equipment, such as off-road haul trucks, flat bed, or other vehicles); (2) earth-moving equipment (scrapers, dozers, excavators, loaders, motor-graders,

compactors, backhoes, off-road water trucks, and off-road haul trucks); and (3) all Project-associated vehicles (including personal vehicles) that, upon inspection by the project biologist, are deemed to present a risk for spreading mud snails. Equipment shall be cleaned at existing construction yards or at a wash station and equipment that has been in mudsnail impacted areas shall be required to dry out in the sun for a period of no less than 48 hours prior to use in other areas. - The biological monitor shall document that all construction equipment (as described above) has been properly cleaned and dried prior to working within the Project work site. Any equipment/vehicles determined to not be free of mud snails shall immediately be sent back to the originating construction yard for washing and proper drying, or wash station where rinse water is collected and disposed of in either a sanitary sewer or other legal point of disposal. Equipment/vehicles moved from the site must be inspected, and re-washed and re-dried as necessary, prior to re-engaging in construction activities in the Project work area. A written daily log shall be kept for all vehicle/equipment washing that states the date, time, location, type of equipment washed, methods used, and location of work.

16. **Weed (including weed seed) Control.** To reduce the potential for the spread of weeds (including weed seeds) during Project clearing and construction, all heavy equipment proposed for use on the Project site shall be verified cleaned (including wheels, tracks, undercarriages, and bumpers, as applicable) before delivery to the Project site. Equipment must be documented as weed free upon delivery to the Project site initial staging area, including: (1) vegetation clearing equipment (skid steer loaders, loaders, dozers, backhoes, excavators, chippers, grinders, and any hauling equipment, such as off-road haul trucks, flat bed, or other vehicles); (2) earth-moving equipment (scrapers, dozers, excavators, loaders, motor-graders, compactors, backhoes, off-road water trucks, and off-road haul trucks); and (3) all Project-associated vehicles (including personal vehicles) that, upon inspection by the project biologist, are deemed to present a risk for spreading weeds. Equipment shall be cleaned at existing construction yards or at a wash station. The biological monitor shall document that all construction equipment (as described above) has been cleaned prior to working within the Project work site. Any equipment / vehicles determined to not be free of weeds shall immediately be sent back to the originating construction yard for washing, or wash station where rinse water is collected and disposed of in either a sanitary sewer or other legal point of disposal. Equipment/vehicles moved from the site must be inspected, and re-washed as necessary, prior to re-engaging in construction activities in the Project work area. A written daily log shall be kept for all vehicle/equipment washing that states the date, time, location, type of equipment washed, methods used, and location of work.
17. **Invasive Plant Removal.** Revegetation and/or mitigation plans which include removal of non-native species such as giant reed (*Arundo donax*), salt cedar (*Tamarix* sp.), tree tobacco (*Nicotiana glauca*), castor bean (*Ricinus communis*), shall be subject to the following standards: (1) First priority shall be given to

those vegetation community patches that support or have a high potential for supporting special-status species, particularly endangered or threatened species; (2) All non-native species removals shall be conducted according to CDFG-approved exotics removal program; and (3) Removal of non-native species in patches of native vegetation communities shall be conducted in such a way as to minimize impacts to the existing native riparian plant species. The exotics control program may utilize methods and procedures in accordance with the provisions in the Upper Santa Clara River Watershed Arundo/Tamarisk Removal Plan Final EIR, dated February 2006, or alternative methods and procedures approved by the agencies.

18. **Invasive Aquatic Species Control.** Newhall Land shall retain a project biologist to develop an Exotic Wildlife Species Control Plan for the control of bullfrog, African clawed frog, and crayfish. A copy of the Plan shall be provided to the Executive Officer. The program will require the control of these species during construction within the River corridor and modified tributaries (bridges, diversions, bank stabilization, drop structures). The Plan shall include a description of the species targeted for eradication, the methods of harvest that will be employed, the disposal methods, and the measures that would be employed to avoid impacts to sensitive wildlife (e.g., stickleback, arroyo toad, nesting birds) during removal activities (i.e., timing, avoidance of specific areas). Annual monitoring shall occur for the first five years after construction of Project facilities. After five years, bi-annual monitoring shall occur in perpetuity to determine if additional control is necessary. Newhall Land will fund an endowment, approved by CDFG, for monitoring in perpetuity. Monitoring will be conducted within sentinel locations along the River Corridor SMA and where the Project provides potential habitat for these species (e.g., future ponds and water features). Control shall be conducted within Project facilities where monitoring results indicate that exotic species have colonized an area. Results of control efforts shall be submitted in accordance with the Annual Report described below.
19. **Pesticides.** Application of pesticides must be supervised by a certified applicator and must be in conformance with manufacturer's specifications for use. Compounds used must be appropriate to the target species and habitat. Pesticide utilization shall be in accordance with State Water Resources Control Board Water Quality Order Nos. 2011-0004-DWQ and 2004-0009-DWQ (or subsequent Orders). Any pesticides proposed for use which are not approved under this Order will be subject to separate certification.
20. **Soil Reuse – Santa Clara River.** Newhall Land shall salvage and replace soils, when on-site soils are conducive to restoration of temporary impact areas and mitigation creation sites along the Santa Clara River. Salvaging the topsoil from native habitats impacted by the project will help improve edaphic conditions for native seed germination, plant growth, and native vegetation establishment within

the mitigation areas, as well as to help preserve soil biota.- Newhall Land shall ensure that salvaged soils to be placed in bank protection excavation areas will have comparable grain size distribution and similar soil profiles to the existing River (e.g., having soil profile similar to the Santa Clara River).

21. **Soil Reuse – Tributary Drainages.** Newhall Land shall salvage soils to be used when on-site soils are conducive to the establishment of specific vegetation types or are critical to providing suitable channel substrate conditions. In instances where soil characteristics may be critical to the resulting habitat supported by the reconstructed channel (e.g., Long Canyon), soil salvage from the impacted drainage, and replacement of those soils in the newly created channel, shall be implemented to the extent feasible. Soil salvage shall be implemented in these instances to provide comparable grain size distribution within the constructed channel bottom, and to create a similar soil profile as found in the stream course prior to being impacted. Recreating the physical soil profile in constructed channels shall be achieved through salvaging of soils or where onsite soils are not suitable for salvage, by preparation and amendment of soil materials for the creation of a soil profile with similar percolation and water retention characteristics as the impacted channel. If soil is imported and/or amended for the purpose of reuse, the soils shall also have a similar visual appearance to the channel before impact.
22. **Wet Excavations.** Newhall Land shall obtain all legally required authorizations prior to any excavation below the seasonal high water table, including, if appropriate, coverage under the General Waste Discharge Requirements for Discharges of Groundwater from Construction Dewatering to Surface Waters. (R4-2008-0032 or subsequent authorizations) or General Waste Discharge Requirements for Discharges to Groundwater (93-010 or subsequent authorizations).
23. **Limitations during rainfall.** Newhall Land shall not conduct any construction activities within waters of the State during a rainfall event. Newhall Land shall maintain a five-day (5-day) clear weather forecast before conducting any operations within waters of the State. If any Project activities are to be held within five (5) days of a predicted rainfall event, Newhall Land shall stage materials necessary to prevent water degradation on site, and shall ensure that all stabilization procedures are completed prior to the rainfall event. If rain is predicted after operations have begun, grading activities must cease immediately and the site must be stabilized to prevent impacts to water quality and minimize erosion and runoff from the site.
24. **Vegetation Clearing.** During construction, all protected areas shall be marked properly by a Project Biologist (see provision 3. 6) to ensure that no vegetation outside the specified areas is removed. The biologist shall have the authority to stop the work, as necessary.

25. **Project Phasing.** Active construction sites shall comply with interim soil stabilization requirements of the Construction General Permit (Order No. 2009-0009-DWQ; NPDES No. CAS000002 adopted September 2, 2009; effective July 1, 2010), as amended or reissued, and applicable South Coast Air Quality Management District Rule 403 requirements. The following types of BMPs shall be implemented as needed during construction to provide erosion control: physical stabilization through application of hydraulic mulch, soil binders, straw mulch, bonded and stabilized fiber matrices, compost blankets, and erosion control blankets (i.e., rolled erosion control products); limiting the area and duration (<14 days) of exposure of disturbed soils; soil roughening of graded areas (through track walking, scarifying, sheepsfoot rolling, or imprinting) to slow runoff, enhance infiltration, and reduce erosion; vegetative stabilization through temporary seeding and mulching to establish interim vegetation; and wind erosion (dust) control through the application of water or other dust palliatives as necessary to prevent and alleviate dust nuisance.
26. **Geomorphology Monitoring and Management, Tributaries.** Newhall Land shall prepare and implement a Geomorphology Monitoring and Management Plan (GMM Plan) to ensure that the modified/re-engineered drainages along the major tributaries (Long, Lion, Potrero, Chiquito, and San Martinez Grande Canyons) comply with the mitigation objectives and design goals outlined in the Newhall Ranch Tributary Channel Design Guidelines.
- a. A copy of the GMM Plan prepared for each major tributary drainage shall be provided to the Executive Officer.
 - b. The GMM Plan shall include the measures to be implemented to ensure the integrity of the structural elements and a state of "constrained dynamic equilibrium", and shall specify the following: (1) a framework to collect baseline data to characterize conditions immediately after construction; (2) a post-development monitoring program; (3) a framework to develop erosion and sedimentation threshold parameters and performance standards that activate adaptive management measures across a series of potential future scenarios; and, (4) contingency plans and appropriate remedial measures in the event that management efforts are not successful.
 - c. GMM Plan elements shall include: as-built survey for the completed channels to include a full longitudinal profile, cross-sections, and all in-channel structures; map of the channel floodplain and valley toe and identify channel migration zones; additional survey, visual inspection and channel migration assessment in years 1, 3, 5, 10, and 20 following construction and after a flow event exceeding the 10-year recurrence interval including a determination of whether remedial actions or more detailed studies are required; and after all flood events exceeding the 5-year recurrence interval flow, then a qualified geomorphologist or civil engineer shall conduct an inspection of the channel to evaluate for signs

of erosion, "knickpoints" or ~~head cuts~~", flanking of structures, and piping or erosion around the project structures.

- d. In addition to the measures identified above, the GMM Plan shall describe the potential remedial techniques to prevent, mitigate, abate, or control undesirable geomorphic response. These measures will include (but will not be limited to) the following: 1) Repair, maintenance or replacement of creek structures and development improvements; 2) Stabilization (either partial or total) of eroded areas or failures of the creek slopes by removal and replacement with appropriate materials; 3) Construction of erosion control measures that, where feasible, will consist of bio- engineering techniques; 4) Placement of subsurface drainage devices; 5) Slope correction; and 6) Construction of additional surface ditches and/or ponds, sediment traps, or backfill of eroded channels.
- e. Notification of proposed remedial techniques to the Regional Board prior to site activity must be made and applicable approvals and additional permits or certifications from the Regional Board must be obtained prior to implementing remedial actions.

27. **Geomorphology Monitoring and Management, Santa Clara River, Downstream Effects.** Newhall Land shall prepare a Geomorphological Monitoring and Management Program (Downstream Effects Monitoring Program) to specifically analyze downstream effects within the Santa Clara River (downstream of project tributaries and in reaches between project tributaries). Newhall Land shall utilize the services of an experienced geomorphologist with expertise in flashy and sandy rivers like the Santa Clara River to prepare the Geomorphological Monitoring and Management Program plan within six (6) months of the effective date of this Order for Executive Officer approval. The monitoring program shall at a minimum, perform annual monitoring to analyze river contours, elevations, aggradation and erosion, and any downstream impairments or changes to the Santa Clara River flow regimes as a result of the RDMP. The plan shall also identify triggers or geomorphological change action levels and identify the additional actions and schedule which Newhall Land will take if action levels are exceeded.

28. **Soil Analysis.** Within six months of the adoption of this Order, Newhall Land or its designee shall submit a workplan for Executive Officer approval that sets forth soil analysis/sampling criteria to be used in development areas within the RMDP that either presently or historically have been used for agricultural activities. Sampling shall be in accordance with DTSC protocol for residential and school sites and shall use the California Human Health Screening Levels (CHHSLs). Newhall Land or its designee shall implement the approved workplan. If sample results exceeds the CHHSL for the applicable land use, then the RMDP Final EIS/EIR Mitigation Measure PH-12 shall be implemented to remediate the area prior to development.

29. **Dust control.** Dust control activities shall be conducted in such a manner that will not produce impacts to downstream runoff.
30. **Construction Plans.** Construction plans shall include necessary design features and construction notes to ensure protection of vegetation communities and special-status plant and aquatic wildlife species adjacent to construction. In addition to applicable erosion control plans and performance under South Coast Air Quality Management District Rule 403d dust control, the Project stormwater pollution prevention plan (SWPPP) shall include BMPs as described in Provision Nos. 8 and No. 29 above. Construction plans shall provide location and details for any dust control fencing along Project boundaries. Together, the implementation of these requirements shall ensure protection of adjacent habitats and wildlife species during construction. At a minimum, the following measures/restrictions shall be incorporated into the SWPPP, and noted on construction plans where appropriate, to avoid impacting special status species during construction. In addition, invasive or exotic plants shall not be planted in development areas within 200 feet of native vegetation communities, natural areas and natural or constructed drainages.

Conditions associated with Ongoing Operations and Maintenance: The following terms shall be applicable to all activities conducted within the boundaries of the RMDP, including but not limited to, ongoing operations and maintenance activities.

31. **Protection of Water Quality.** Newhall Land shall implement all appropriate Stormwater Best Management Practices (BMPs) to avoid adverse impacts to water quality. Newhall Land shall demonstrate to the Executive Officer that an Operation and Maintenance Plan for ongoing maintenance provisions for all structural BMPs for each development area within the RMDP site has been prepared. The RMDP shall not result in indirect impacts to beneficial uses of downstream water bodies or cause or contribute to violation of applicable water quality objectives or water quality criteria in downstream water bodies, either during construction or during operation subsequent to the construction activities (post-development operation and maintenance).
32. **Post-Construction Measures.** In order to protect water quality following the completion of construction, Newhall Land shall implement all water quality measures described in the NRSP Sub-Regional SWMP, as amended, to protect water quality and comply with the Los Angeles County MS4 Permit. Newhall Land shall prepare and submit to the Executive Officer, for review a Water Quality Technical Report and Drainage Concept Report for each subsequent development area within the RMDP site, which shall provide detailed, site-specific information about the water quality measures to be implemented in that development area, including site design, source control, low impact development (LID), treatment control, and hydromodification control BMPs to effectively manage wet-weather and dry-weather water quality and quantity by limiting or

managing pollutant sources and changes in flow rates, velocities, and shear stresses consistent with Finding 17. Newhall land shall implement the water quality measures for each project within the RMDP site.

33. **Maintenance.** Newhall Land or any other entity authorized by Newhall Land to perform maintenance of RMDP water quality, flood control, road crossings, bridges, storm drain outlets, WRP outlet, utility crossings, and recreational trail facilities, shall comply with all specifications and requirements of the Maintenance Plan of the RMDP and the Maintenance Plan for Structures or any subsequently approved Plan, including those pertaining to notification, biological surveys/species protection, biological impacts, re-vegetation of temporarily impacted areas, and reporting. Any agreement between Newhall Land and any other entity authorizing the performance of maintenance, or any agreement transferring ownership or operation of any of the facilities encompassed in the RMDP, shall include a provision requiring compliance with all specifications and requirements of the Maintenance Plan of the RMDP and the Maintenance Plan for Structures, or any subsequently approved Plan.
34. **Maintenance Plan for Structures.** In addition to the Newhall Ranch RMDP Maintenance Manual, Newhall Land shall develop a Maintenance Plan for Structures, for any structures within waters of the United States and of the state such as culverts, buried bank stabilization, grade control structures, etc. The Maintenance Plan for Structures shall include a plan for restoration of bank stabilization or grade control structures as needed, including restoration of scoured areas to ensure the integrity of these structures in perpetuity and avoid any lengths of drainage or river areas with lengthy sections of scoured out areas that expose the buried bank stabilization.
35. **Biological Surveys for Maintenance.** Prior to start of any maintenance clearing, project biologists shall perform pre-clearing biological resource surveys and photo documentation including sensitive/endangered species focused surveys on specific reaches. No work shall commence without confirmation of findings or no findings of sensitive/endangered species from the project biologists. These surveys are also meant to minimize impact on any resources that may potentially use or benefit from the channel. During construction, project biologists shall be available for consultation for any issues that may arise.
36. **Storm Drain and Receiving Water Quality Monitoring.** Representative and rotating outfall-based water quality monitoring shall be conducted to determine impacts of the NRSP over time. Water samples will be taken at least four (4) times a year to include at least twice in wet weather and once in dry weather. Parameters to be considered will include at a minimum:
 - pH
 - temperature
 - dissolved oxygen

- turbidity
- total suspended solids (TSS)
- *E. coli*
- Chloride
- Ammonia as nitrogen (NH₃-N)
- Nitrate as nitrogen (NO₃-N)
- Nitrite as nitrogen (NO₂-N)
- Total phosphorus
- Metals
- Organochlorine pesticides
- Organophosphorus pesticides
- Pyrethroid pesticides
- PAHs
- Volatile organics

Newhall Land will develop a Storm Drain monitoring plan and submit the plan to the Executive Officer for approval within 6 months of the effective date of this Order. The Storm Drain Monitoring plan will include sampling the first storm of the wet season that produces at least 0.25" of rain for the seasonal first flush.

Benthic macroinvertebrates will be assessed in the receiving waters. Newhall Land will develop a plan for the assessment of benthic macroinvertebrates and submit the plan to the Executive Officer for approval within 6 months of the effective date of this Order.

Analyses must be performed using approved USEPA methods, where applicable, or a method approved by the Executive Officer. Newhall Land shall submit results of the analyses to the Regional Board with annual reporting including comparisons to applicable water quality standards and to the estimated annual pollutant concentrations for stormwater discharges presented in the RMDP final EIR. A map or drawing indicating the locations of sampling points shall be included with each submittal.

If data demonstrate exceedances of water quality standards or significant pollutant contributions contributing to exceedances of water quality standards in the receiving waters, increased monitoring may be required and the WDR may be revised to require additional or modified BMPs or effluent benchmarks or limits.

3.1 Mitigation for Impacts to Waters of the United States

1. Newhall Land shall enhance, restore and create 132.2 acres of waters of the United States, including 35.2 acres of wetlands and 97 acres of non-wetland waters in the Santa Clara River and its tributaries, to mitigate for authorized permanent and temporary impacts to waters of the United States, as described in

the Corps' Clean Water Act Section 404 Permit Mitigation Plan (404 Permit Mitigation Plan) (**Attachment 3**). Permanent impacts shall be mitigated at a minimum of 2.4:1 mitigation ratio, including mitigation in advance of impacts as described below, and temporary impacts shall be actively restored in accordance with the 404 Permit Mitigation Plan and MSAA Mitigation Measure BIO-2. (**Attachments 3 and 4**).

2. In addition to, and in conjunction with, the requirements of the Corps Permit and MSAA Mitigation Measure BIO-2. Newhall Land shall conduct CRAM assessments of waters to be impacted and of restored, created or enhanced waters.
3. At least 54.9 acres of compensatory mitigation shall be implemented prior to any development impacts to waters of the United States, including 19.3 acres of wetlands creation in Lower Potrero Canyon, 15.9 acres of wetland creation in the Santa Clara River at Mayo Crossing, and 19.7 acres of habitat enhancement in portions of the upper Salt Creek watershed.
4. Newhall Land shall preserve and protect in perpetuity approximately 612.2 acres of waters of the United States that are not permanently impacted, including 271.8 acres of wetlands and approximately 271,861 linear feet of existing waters of the United States in Castaic Creek, the Santa Clara River and tributary drainages within the RMDP area, as required by the CDFG MSAA. The preservation areas will be preserved in perpetuity through deed restrictions, conservation easements or restrictive covenants that will run with the land and bind subsequent land owners and that are recorded in the appropriate County Recorder's office. Newhall Land must provide endowment funding for perpetual management of the preservation area. Newhall Land shall record the required deed restrictions, conservation easements, or restrictive covenants according to the schedule set forth in the CDFG MSAA and provide notice to the Executive Officer within 30 days of recording.
5. Newhall Land shall place restrictive covenants for flood protection on an additional approximately 119 acres of Ventura County floodplain downstream of the RMDP, consisting of approximately 89 acres of waters of the United States and 30 acres of adjacent upland floodplain area in the Santa Clara River. Newhall Land shall record the restrictive covenants, subject to concurrence by the Regional Board, in the Ventura County Recorder's office. The restrictive covenants shall run with the land and bind subsequent land owners. The Discharger shall provide notice to the Executive Officer within 30 days of recording the restrictive covenants.
6. For mitigation of floodplain loss and to provide further downstream floodplain protection, Newhall Land shall record conservation easements, restrictive covenants, or deed restrictions for floodplain protection for the 80 acres of upland floodplain area adjacent to the Santa Clara River, downstream of the project area. The 80 acres of upland floodplain area covered by the conservation easements,

restrictive covenants, or deed restrictions shall be in addition to the 30 acres of upland floodplain area required to be placed under conservation easements, restrictive covenants, or deed restrictions by Condition 5 for a total of 110 acres of upland floodplain area plus 89 acres of waters of the United States. Farm areas covered by the 80 acres of upland floodplain under conservation easement, restrictive covenant, or deed restriction, that are scoured by flooding will not be reclaimed for farm purposes except as needed for water wells, pipelines, utility lines, outfall structures, roads and other infrastructure. Newhall Land shall record conservation easements, restrictive covenants, or deed restrictions, subject to concurrence by the Regional Board, in the appropriate County Recorder's office that will run with the land and bind subsequent land owners. Prior to any disturbance to waters of the United States, the Discharger shall record the conservation easements, restrictive covenants, or deed restrictions and provide notice to the Executive Officer within 30 days of recording.

7. The conservation easements, restrictive covenants, or deed restrictions required by this Condition shall prohibit any development within the restricted area with the exception of structures for agricultural activities including farming, ranching, orchards and vineyards; installation of agricultural water wells; structures related to the Santa Clara River Corridor River Parkway Project; installation of pipelines or utility lines of any kind; legal water diversions; outfall structures; other infrastructures; or activities associated with habitat restoration and enhancement. These exceptions must not increase the base flood elevation (as defined by the Federal Emergency Management Agency) above that existing at the time of recordation, whether within the restricted area or upstream or downstream of the restricted area or contribute to increased risk of downstream flooding, whether or not resulting from increased base flood elevation. For purposes of the conservation easements, restrictive covenants, or deed restrictions, the term "development" shall be defined to mean 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.
8. Newhall Land shall restore all temporarily impacted waters of the United States with appropriate native vegetation after construction is complete in those areas, as required by the 404 Permit Mitigation Plan (**Attachment 3**).
9. All mitigation areas shall be preserved and maintained as habitat in perpetuity in accordance with the Corps Permit and the CDFG MSA, including provisions for endowment funding and transfer of property ownership to a Natural Lands Management Organization (NLMO). Newhall Land shall record conservation easements, restrictive covenants, or deed restrictions in the County Recorder's office that will run with the land and bind subsequent land owners.

3.2 Reporting

1. **Subnotification.** Subnotification of permitted activities as required by the CDFG MSAA and the Corps Permit shall also be submitted to the Regional Board.
2. **Annual Mitigation Monitoring and Reporting.** Pursuant to California Water Code section 13267, Newhall Land shall submit to the Regional Board Executive Officer an **Annual Project and Mitigation Monitoring Report (Annual Report)** by April 1 of each year for each year the Order is in effect. The Annual Reporting outline shall be submitted to the Regional Board within 60 days of the issuance of this Order. The outline should include all relevant information to meet reporting requirements and also include any technical or field checklists which will be utilized. Upon receipt, the Executive Officer will have 30 days to comment or approve of the Annual Report outline.
3. The Annual Report shall primarily consist of a summary status report on all RMDP construction, maintenance, and waters of the United States and waters of the State compensatory mitigation projects initiated in the prior year and shall provide copies of annual monitoring reports for any active restoration and compensatory mitigation projects associated with authorized activities under the RMDP. The Annual Report shall describe in detail all of the permitted activities (construction and maintenance) performed during the previous year and all restoration and compensatory mitigation efforts implemented to date. The Annual Reports shall describe the status of other agreements (e.g., mitigation banking); any delays in the mitigation process; and summary of upcoming mitigation implementation. At a minimum the Annual Reports shall include the following documentation:
 - a) Overall status of active projects, including a detailed schedules to complete authorized work;
 - b) Dates of activities completed during the prior year period, through February of the reporting year, including construction, maintenance, and mitigation;
 - c) Acreage of areas impacted in the prior year period;
 - d) Schedule of proposed activities for the subsequent 18 months, beginning in February of the reporting year, including construction, maintenance, and mitigation;
 - e) Acres of areas to be impacted during the subsequent 18 months;
 - f) Description of activities in or adjacent to flowing waters, including results of required water quality monitoring;
 - g) Results of storm drain and receiving water monitoring;
 - h) Results of Geomorpholgy monitoring in tributaries and the Santa Clara River;
 - i) Narrative and photo documentation of any BMP installations during project activities and immediately after activities as well as periodically during the activities, including storm events. In addition, an evaluation of

the effectiveness of BMPs utilized shall be provided based on field observations;

- j) Documentation of estimates of volumes of vegetation removed from the project areas, including representative photos;
- k) Description of any stream diversions performed in the prior year period, including results of required water quality monitoring and representative photos;
- l) Description of any dewatering discharge conducted in the prior year period and summary of discharge water quality monitoring, including maps of discharge locations, dates of discharge, and discharge volumes.;
- m) Overview of any revegetation effort and its success in meeting performance criteria, including percent survival by plant species and percent cover; the method used to assess these parameters; CRAM and HARC evaluations, when appropriate; and all information stipulated in the Mitigation Plan as well as any site specific mitigation plan pursuant to the Corps 404 Permit or CDFG MSAA.
- n) Color photo documentation of the immediately pre- and post-project and mitigation site conditions as well as periodic photo documentation of post-project and mitigation site conditions between project activities;
- o) Discussion of any monitoring activities and exotic plant control efforts;
- p) Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of actual project and new mitigation areas;
- q) Biological information including: baseline biological surveys and exotic / invasive wildlife species control efforts;
- r) Documentation of estimates of volumes of trash removed from maintenance areas;
- s) Documentation of estimates of volumes of sediment removed from maintenance areas;
- t) Copies of all revised permits related to this project;
- u) Results of exotic invasive animal species control efforts, both summarized in tabular form and with location maps;
- v) Description of all outreach activities in the previous year;
- w) Reuse of treated effluent from the Newhall Ranch WRP during the previous year;
- x) A certified statement of the compliance status with the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) ensuring ~~no~~ overall loss"; and
- y) A certified statement from Newhall Land that all information reported in the Annual Report is complete and accurate. This Report will include a summary of compliance with all requirements of this Order.

The Annual Reports shall describe the status of other agreements (e.g., mitigation banking) or any delays in the mitigation process. The CDFG MSAA "Mitigation Accounting Report" form may be used to provide the summary of mitigation activities.

1. **Compensatory Mitigation Implementation Reporting.** Within 45 calendar days of complete implementation for each mitigation site, Newhall Land shall submit to the Executive Officer a memo indicating the following:
 - a. Date(s) all mitigation (grading, planting and irrigation infrastructure) was installed and monitoring was initiated;
 - b. Schedule for future mitigation monitoring, implementation and reporting pursuant to the 404 Permit Mitigation Plan and site-specific mitigation;
 - c. Color photographs taken at the mitigation site before and after grading, planting and placement of irrigation infrastructure; and
 - d. One copy of "as built" drawings for the mitigation site (all sheets must be signed, dated, to-scale, and no larger than 11 x 17 inches).
 - e. As-built construction drawings with an overlay of waters of the United States that were impacted;
 - f. Dated and labeled color photographs of waters of the United States that were permanently and temporarily impacted (including latitude and longitude coordinates);
 - g. A summary of all project activities which documents that authorized impacts to waters of the United States and waters of the State were not exceeded.
 - h. For active exotic invasive plant species control sites, the Annual Report Outline shall include an assessment of exotic invasive plant removal; a description of the relative cover of native vegetation, bare areas, and exotic invasive species vegetation; colonization by native plants; and photographs.
 - i. Conclusions and recommendations from the project and/or restoration biologist, either affirming plan interim or final goals are met, or suggesting remedial actions or adaptive management efforts where goals are not met.
2. **Five-Year Review Report.** Newhall Land shall provide a status report to the Executive Officer on April 1 (**5-Year Report**) of the fourth year of each five year period that this Order is in effect, with the first 5- Year Report due April 1 in the fourth year after the effective date of this Order. In this manner, the initial 5-Year Report will contain summary data for the year this Order goes into effect and the three subsequent years of activity, for a total of four years. Subsequent 5-Year Reports will contain five years of summary data, as the information for the reporting year of the prior 5-Year Report will also be included. Newhall Land may meet this requirement by submitting the **Annual Mitigation Monitoring and Reporting** described above on or before April 1 together with each annual report it submitted in the prior years for that five year review report period, however all summary tables, descriptions, and figures shall be comprehensive of the entire five year report review period.

3. All applications, reports, or information submitted to the Regional Board shall be signed:
 - (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates.
 - (b) For a partnership, by a general partner.
 - (c) For a sole proprietorship, by the proprietor.
 - (d) For a municipal, State, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

4. Each and any report submitted in accordance with this Order shall contain the following completed declaration;

I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the _____ day of _____ at
 _____.

 _____ (Signature)
 _____ (Title)''

3.3 Administrative

1. **Other permits.** Newhall Land shall submit to this Regional Board 401 Certification Unit staff copies of any other final regulatory agency permits and agreements required for this project. These documents shall be submitted prior to any discharge to waters of the State. All activities not included in this Order, and which may require a permit, must be reported to the Regional Board for appropriate permitting, including individual water quality 401 Certifications for projects within the RMDP Project site that are not covered by this Certification. Newhall Land shall adhere to the most stringent conditions indicated with either this Certification, the CDFG's MSAA, or the Corps Section 404 Permit.

2. **On Site Documents.** Newhall Land and all contractors employed by Newhall Land shall have copies of this Order, including attachments, and all other regulatory approvals for this project on site at all times and shall be familiar with all conditions set forth therein.
3. **Access.** Newhall Land shall allow the Regional Board and its authorized representative reasonable entry to the premises under its control, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Order, or as otherwise authorized by the California Water Code.
4. **Communications.** All communications regarding this project and submitted to this Regional Board shall identify the Project File Number **11-168 WDR**. Submittals shall be sent to the Executive Officer where identified and to the 401 Certification Unit.
5. **Transfer permitted.** Coverage under this Order may be transferred to the extent the underlying federal permit may legally be transferred. Newhall Land or any subsequent transferor must notify the Executive Officer at least 30 days before the date of the proposed transfer date, and the notice must include a written agreement between the existing and new party containing a specific date of coverage, responsibility for compliance with this Order, and liability between the parties. The transferee may be required to file an ROWD or application for CWA Section 401 Water Quality Certification for any new impact associated with the transfer of this Order. Upon transfer, the term “Newhall Land” and “Discharger” as used in this Order shall apply to the transferee.
6. **Long-Term Financial Assurance and/or Responsibility.** Newhall Land shall ensure that any maintenance, restoration, mitigation, monitoring and reporting, and other obligations related to mitigation and stormwater controls that require long term implementation or maintenance imposed by this Order, shall be supported by a demonstration of financial assurance or transfer and assumption of responsibility to an appropriate entity, subject to approval by the Executive Officer. An appropriate entity may include, without limitation, a special district or an agency of the County of Los Angeles. Where financial assurance is used, the financial assurance may be in the form of a performance bond, escrow account, letter of credit or other appropriate instruments, subject to the approval of the Executive Officer. Newhall Land must notify the Executive Officer at least 30 days before the date of a transfer of obligations imposed by this Order, and the notice must include a written agreement between the existing and new party containing a specific date of transfer of obligations.
7. **Additional Project Information Review.** Newhall Land must provide additional information as required by the Regional Board to determine compliance of activities with this Order. Activities may require additional review if the work exceeds certain thresholds of impact. For projects that exceed the following thresholds, Newhall Land shall provide information similar to a pre-construction

notification for a 401 Water Quality Certification for 60-day review. Any change to the project that would have a significant or material effect on the findings, conclusions or conditions of this certification must be submitted to the Executive Officer for prior review and written approval.

Project Exceeds Authorized Boundary of Impacts (Original Footprint)

For any work resulting in temporary or permanent impacts within the ordinary high water mark outside the authorized impact boundaries, Newhall Land shall submit a new proposed scope of work to the Executive Officer for confirmation that the project areas is within the scope of this Order and may be required by the Executive Officer to reapply for supplemental WDRs with all pertinent information for consideration. The authorized impact boundaries are shown on the figures attached to this Order, and for drainages converted to storm drain, the defined project impacts include the entire width of the stream channel, with an upper and lower boundary defined for each jurisdictional area. For impacts along the margin of a stream channel, such as the river and larger tributaries, the authorized impact area is a defined lateral limit as shown on the figures attached to this Order.

Maintenance Exceeds Authorized Boundary of Impacts (per Maintenance Manual) or Project Design Feature Is Modified Due to a Failure

For any work resulting in temporary or permanent impacts within the ordinary high water mark outside the authorized impact boundaries, as further defined in the RMDP Maintenance Manual, Attachment 2, or in the event that a project feature fails to meet the design objectives and a significantly altered or new design is necessary, Newhall Land shall submit a new proposed scope of work to the Executive Officer for confirmation that the project areas is within the scope of this Order and may be required by the Executive Officer to reapply for supplemental WDRs with all pertinent information for consideration.

Project Deviates from the Pre-Approved Surface Water Diversion Plan

If water diversion is planned to occur in a manner which deviates from a Pre-Approved Water Diversion Plan, Newhall Land shall submit the new plan to the Executive Officer for review and approval. The Executive Officer is authorized to approve changes to a Surface Water Diversion Plan provided that the changes are consistent with this Order.

Emergency Activities

In addition, for emergency maintenance in any reach covered by this Order as discussed above, Newhall Land shall request an emergency certification under Regional General Permit 63 (RGP 63). Emergency is defined as, "a sudden, unexpected, occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as

fire, flood, earthquake, or other soil or geologic movement, as well as such occurrences as riot, accident, or sabotage."

8. **Project Modification.** Any modifications of the project as proposed and described in this Order, shall require submittal of a new Report of Waste Discharge (ROWD) and appropriate filing fee, at least 120 days prior to commencing the discharge. In addition, Newhall Land shall file a ROWD for the proposed project, should any person discharge waste, or propose to discharge waste, other than into a community sewer system, which could affect the quality of the waters of State as required by section 13260(a) of the California Water Code.
9. **Project Abandonment.** The terms of this Order continue to apply upon abandonment of all or any portion of the NRSP or RMDP by Newhall Land. Newhall Land may be required to restore those areas affected by its activities.

4.0 Enforcement

1. Newhall Land or its agents shall report any noncompliance with this Order. Any such information shall be provided electronically to the Executive Officer or delegatee within 24 hours from the time Newhall Land becomes aware of the circumstances. A written submission shall also be provided within five days of the time Newhall Land becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
 - a) In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law.
 - b) In response to a suspected violation of any condition of this Order, the State Water Board or Regional Board may require the holder of any permit or license subject to this Order to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board or Regional Board deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - c) In response to any violation of the conditions of this Order, the State Water Board or Regional Board may add to or modify the conditions of this Order as appropriate to ensure compliance.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:
 - a) Violation of any term or condition contained in this Order;
 - b) Obtaining this Order by misrepresentation, or failure to disclose fully all relevant facts;
 - c) Endangerment to public health or environment that can only be regulated to acceptable levels by Order modification or termination.
3. **Additional Reports.** The Dischargers shall furnish, within a reasonable period of time, any information the Regional Board may request to determine whether or not cause exists for modifying, revoking and reissuing, or terminating this Order. The Dischargers shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.
4. **Discharge a Privilege.** All discharges of waste into the waters of the State are privileges, not rights. In accordance with California Water Code section 13263(g), these requirements shall not create a vested right to continue to discharge and are subject to rescission or modification.

5.0 Term

1. This Order shall take effect upon Regional Board adoption.
2. Except as provided for in Findings G. 4, and H. 15, and Provisions 3. 35, 3.3 5, 3.3 7, and 4. 2 this Order (or as revised) shall remain in effect for the duration of the Section 404 Permit issued for the RMDP (Permit No. 2003-01264-AOA), but not longer than 20 years.
3. The Regional Board may revise the requirements of this Order at any time as necessary to protect water quality, pursuant to California Water Code section 13263(e).

The Regional Board may add to or modify the conditions of this Order due to

- a. Acquisition of newly-obtained information that demonstrate the need for new requirements in order to ensure protection of water quality standards or would have justified the application of different conditions if known at the time of Order adoption;
- b. To address changed conditions of the project identified in required reports or by the project proponent;
- c. to incorporate revised conditions as a result of new regulation or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.

I, Samuel Unger, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on September 14, 2012.

Ordered by:

Samuel Unger
Executive Officer

TABLES

**Table 1a: Basin Plan Beneficial Uses
Surface Waters**

Receiving Water Name	Beneficial Use(s)
Santa Clara River Reach 5 (WBD No. 180701020403) Project Discharge Point	<u>Existing</u> : industrial service supply (IND), industrial process supply (PROC), and agricultural supply (AGR); groundwater recharge (GWR); freshwater replenishment (FRSH); water contact (REC-1) and non-contact water recreation (REC-2); rare, threatened, or endangered species (RARE); warm freshwater habitat (WARM), wildlife habitat (WILD), and wetland ¹ habitat (WET). <u>Potential</u> : Municipal and domestic water supply (MUN).*
Santa Clara River Reach 4a and 4b (WBD No. 180701020802 and 180701020403)	<u>Existing</u> : IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, RARE; migration of aquatic organisms (MIGR); WARM, WILD, WET. <u>Potential</u> : MUN.
Santa Clara River Reach 3 (WBD No. 180701020903, 180701020902 and 180701020803)	<u>Existing</u> : IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, RARE, MIGR, WARM, WILD, and WET. <u>Potential</u> : MUN.
Santa Clara River Reach 2 (WBD No. 180701020903 and 180701020904)	<u>Existing</u> : IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, RARE, MIGR, WARM, WILD, and WET <u>Potential</u> : MUN.
Santa Clara River Reach 1 (WBD No. 180701020904)	<u>Existing</u> : IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, RARE, MIGR, WARM, COLD, WILD, and WET. <u>Potential</u> : MUN.
Santa Clara River Estuary (WBD No. 180701020904)	<u>Existing</u> : navigation (NAV), REC-1, REC-2, commercial and sport fishing (COMM), estuarine habitat (EST), marine habitat (MAR), WILD, WET, RARE, MIGR, spawning, reproduction, and/or early development (SPWN).

* The potential municipal and domestic supply (p* MUN) beneficial use for the waterbody is consistent with the State Water Resources Control Board Order No. 88-63 and Regional Water Board Resolution No. 89-003; however, the Regional Water Board has only conditionally designated the MUN beneficial use of the surface water and at this time cannot establish effluent limitations designed to protect the conditional designation.

¹ Waterbodies designated as WET may have wetlands habitat associated with only a portion of the waterbody. Any regulatory action would require a detailed analysis of the area.

**Table 1b: Basin Plan Beneficial Uses
Groundwaters**

Receiving Water Name	Beneficial Use(s)
<p>Santa Clara River Valley East (DWR Basin No. 4-4.07)</p> <p>Project Discharge Point</p>	<p>South Fork – <u>Existing</u>: Municipal and domestic water supply (MUN), industrial service supply (IND), industrial process supply (PROC), and agricultural supply (AGR);</p> <p>Placerita Canyon – <u>Existing</u>: MUN, IND, PROC, AGR</p> <p>Santa Clara/Bouquet & San Francisquito Canyons - <u>Existing</u>: MUN, IND, PROC, AGR</p> <p>Castaic Valley – <u>Existing</u>: MUN, IND, PROC, AGR</p> <p>Saugus Aquifer – <u>Existing</u>: MUN</p>

**Table 2
Newhall Ranch
Project Development Phasing**

Phase	Village	Anticipated Time Frame ⁽¹⁾⁽²⁾
1	Landmark Village	3-5 years
2	Mission Village	3-5 years
3	WRP / Utility Corridor	3-5 years
4	Homestead Village South	3-5 years
5	Homestead Village North	5-10 years
6	Potrero Village	10-15 years

(1) Phasing time frames would begin with the approval of the Project 401 Certification/ WDR.

(2) Time Frames indicate the approximate time frame for development to commence. Any given area could take from 3 to 5 years to complete.

**Table 3
Santa Clara River
Proposed RMDP Features and Impacts**

Feature Description	Quantity or Linear Feet	Fill of Waters of the United States (including wetlands)		Fill of Wetlands ⁽¹⁾	
		Temp Impact (ac.)	Perm Impact (ac.)	Temp Impact (ac.)	Perm Impact (ac.)
Landmark Village					
River Bank Stabilization / Flood Protection	11,232	0.42	0.06	0	0
Storm Drain Outlets	12	0	0	0	0
Subtotal		0.42	0.06	0	0
Mission Village					
Commerce Center Drive Bridge	1	2.78	2.08	1.45	1.57
River Bank Stabilization / Flood Protection	1,866	2.48	0.15	0.16	0.05
Drainage Converted to Buried Storm Drain ⁽²⁾	--	0	0.04	0	0.01
Storm Drain Outlets	3	0	0.01	0	0
Drainage Displaced by Development ⁽²⁾	--	0	0.08	0	0.07
Subtotal		5.26	2.36	1.61	1.70
Utility Corridor / SR-126 Widening					
River Bank Geofabric Stabilization / Flood Protection	4,300	0	0	0	0
River Bank Stabilization / Flood Protection	3,130	2.37	1.37	2.36	1.33
SR 126 Bridge over Castaic Creek	1	0.98	0.44	0	0
SR 126 Widening at Chiquito Canyon Confluence	1	0	0	0	0
SR 126 Widening at San Martinez Grande Canyon Confluence	1	0	0	0	0

Feature Description	Quantity or Linear Feet	Fill of Waters of the United States (including wetlands)		Fill of Wetlands ⁽¹⁾	
		Temp Impact (ac.)	Perm Impact (ac.)	Temp Impact (ac.)	Perm Impact (ac.)
Subtotal		3.35	1.81	2.36	1.37
Newhall Ranch WRP Bank Protection Construction Impacts					
Santa Clara River	4,625	2.53	0.39	2.53	0.39
Subtotal		2.53	0.39	2.53	0.39
Homestead South Village					
Long Canyon Bridge	1	1.72	1.16	1.22	1.16
River Bank Stabilization / Flood Protection	6,070	0.13	0	0	0
Haul Route and Restoration / Mitigation	2	0.64	0	0.14	0
Subtotal		2.49	1.16	1.36	1.16
Potrero Village					
Haul Route and Restoration / Mitigation	--	1.65	0	1.17	0
Subtotal		1.65	0	1.17	0
GRAND TOTAL		15.70	5.78	9.03	4.62

~~e-1)~~ Wetland impact acreage is a subset of the waters impact acreage.

~~e-2)~~ Impacts related to Bridge Abutment, parallel to Santa Clara River bank.

**Table 4
Minor Tributary Drainages
Proposed Features and Impacts**

Tributary	Feature			Permanent Fill of Waters of The United States (Ac.)	Preserved Waters (Ac.)	Preserved Waters (lf)
	Converted to Buried Storm Drain (linear feet)	Debris Basins (No.)	Regional Water Quality Basins (No.)			
Landmark Village						
On-Site Tributaries						
Agricultural Ditch	1,479	0	0	1.37	0.18	329
Subtotal	1,479	0	0	1.37	0.18	329
Mission Village						
On-Site Tributaries						
Dead End Canyon	1,931	0	0	1.30	0	0
Exxon Canyon	1,754	0	0	0.44	0.77	1,788
Middle Canyon	7,443	1	1	5.59	2.19	143
Magic Mountain Canyon	6,111	4	1	6.37	0	0
Unnamed Canyon D	1,241	1	0	0.69	0.14	250
Subtotal on-site	18,480	6	2	14.39	3.1	2,181
Off-Site Tributaries						
Unnamed Canyon 1	4,647	3	0	0.33	0	0
Unnamed Canyon 2	416	1	0	0.33	0	0
Subtotal off-site	5,063	4	0	0.66	0	0
Subtotal	23,543	10	2	15.05	3.10	2,181
Utility Corridor / SR-126 Widening						
Mid-Martinez Canyon	550	0	0	0.12	0	0
Subtotal	550	0	0	0.83	0	0

Newhall Ranch WRP						
Off-Haul Canyon	450	0	0	0.70	0	0
Subtotal	450	0	0	0.70	0	0
Homestead South Village						
Ayers Canyon Culvert Road Crossing	0	0	0	0.15	2.42	2,363
Humble Canyon	421	5	0	0.14	1.77	5,116
Unnamed Canyon B	1,004	0	0	0.45	0.27	568
Unnamed Canyon C	402	3	0	0.18	0.49	869
Subtotal	5,327	8	0	0.92	4.95	8,916
Homestead North Village						
Homestead Canyon	609	1	0	0.22	0	0
Mid-Martinez Canyon	3,796	1	0	1.84	0	467
Off-Haul Canyon	5,314	6	0	4.76	0.32	3,014
Unnamed Canyon A	0	0	0	0	0.78	1,293
Subtotal	9,719	8	0	6.82	1.10	4,774
Grand Total	37,568			25.69	9.33	16,200

Table 5
Lion Canyon
Proposed Features and Impacts

Feature (Linear Feet or Number of Features)	Fill of Waters of the United States	
	Temp Impact (ac.)	Perm Impact (ac.)
Mission Village		
Grade Stabilized - Earthen Channel Bottom (5,835 lf)	1.94	0.64
Buried Storm Drain (2,595 lf)	0	1.26
Displaced by Development	0	0.38
Road Culvert (1)	0	0.03
Grade Control Structures (26)	0.24	0.30
Debris Basins (4), Regional Water Quality Basin (1)	0	0
Subtotal	2.18	2.61
Homestead South Village		
Buried Storm Drain (3,500 lf) (West Fork)	0	2.07
Subtotal	0	2.07
Total	2.18	4.68

Table 6
Homestead South Village Project - Long Canyon
Proposed Features and Impacts

Feature (Linear Feet or Number of Features)	Fill of Waters of the United States	
	Temp Impact (ac.)	Perm Impact (ac.)
Channel to be Regraded / Reconstructed (8,742 lf)	0.01	3.94
Buried Storm Drain (961 lf)	0	0.67
Road Culverts (4)	0	0.12
Water Quality Treatment Basins	0	0.50
Total	0.01	5.23

Table 7
Homestead North Village - Chiquito Canyon
Proposed Features and Impacts

Feature (Linear Feet or Number of Features)	Fill of Waters of the United States	
	Temp Impact (ac.)	Perm Impact (ac.)
Bank Stabilization – Earthen Channel Bottom (4,080 lf)	3.10	0.60
Buried Storm Drain (2,571 lf)	0	0.84
Road Culverts (3)	0	0.17
Drainage Displaced by Development	0	1.29
Grade Control Structures	0.30	0.29
Water Quality Treatment Basins / Open Space	0	1.51
Total	3.40	4.70

Table 8

**Homestead North Village - San Martinez Grande Canyon
Proposed Features and Impacts**

Feature (Linear Feet or Number of Features)	Fill of Waters of the United States	
	Temp Impact (ac.)	Perm Impact (ac.)
Bank Stabilization – Earthen Channel Bottom (7,307 lf)	0.95	0.04
Road Culverts (2)	0.09	0.09
Grade Control Structures	0.02	0.09
Total	1.06	0.22

**Table 9
Potrero Village - Potrero Canyon
Proposed Features and Impacts**

Feature (Linear Feet or Number of Features)	Fill of Waters of the United States		Fill of Wetlands	
	Temp Impact (ac.)	Perm Impact (ac.)	Temp Impact (ac.)	Perm Impact (ac.)
Bank Stabilization - Earthen Channel Bottom (13,743 lf)	3.57	0.04	0.99	0
Road Culverts (3) and Road Bridge (1)	0.12	0.42	0.07	0.07
Open Space	0	0.08	0	0
Grade Control Structures (60)	1.98	1.52	0.56	0.42
Total	5.67	2.06	1.61	0.49

(1) wetland impact acreage is a subset of the waters impact acreage

Table 10
Salt Creek Visitor Center / Restoration
Proposed Features and Impacts

Feature (Linear Feet or Number of Features)	Fill of Waters of the United States		Fill of Wetlands	
	Temp Impact (ac.)	Perm Impact (ac.)	Temp Impact (ac.)	Perm Impact (ac.)
Bank Stabilization (1,841 lf)	0	0	0	0
High Country Salt Creek Trail	0	0.22	0	0.01
Restoration / Mitigation	7.28	0	1.14	0.0
Total	7.28	0.22	1.14	0.01

ATTACHMENT 2

EIS/EIR was prepared at the direction of the Corps of Engineers and the CDFG to analyze the direct, indirect, secondary, and cumulative impacts associated with the project-specific infrastructure improvements and maintenance activities in or adjacent to the Santa Clara River and its tributary drainages located within the approved Specific Plan, Entrada and Valencia Commerce Center planning areas.² The EIR includes the Draft EIR (April 2009), Final EIR (June 2010) and the Addendum/Additional Information (November 2010).

The project contains two components. The Resource Management and Development Plan ("RMDP" or "Development Plan") is a conservation, mitigation and permitting plan addressing sensitive biological resources within the 11,999 acre Specific Plan area. The Spineflower Conservation Plan ("SCP") applies to portions of the RMDP study area and its purpose is to design preserves for the Spineflower, which grows naturally on the applicant's land holdings.

In addition, the state actions requested from CDFG for the RMDP and SCP include the issuance of a long-term Master Stream Bed Alteration Agreement pursuant to Fish and Game Code sections 1602 and 1605, and authorization for Incidental Take Permits ("ITP") for, *inter alia*, San Fernando Valley Spineflowers pursuant to the California Endangered Species Act ("CESA"), Fish & Game Code section 2091 subdivisions (b) and (c).³

Petitioners are a group of non-profit organizations. Petitioner Center for Biological Diversity ("CBD") is a non-profit, public interest corporation with over 6000 members and has offices throughout California. The CBD and its members are dedicated to protecting native species and habitats of western North America. Petitioner Friends of the Santa Clara River ("Friends") is a non-profit organization whose members include residents of Santa Clarita. The Friends is dedicated to the preservation and improvement of water quality and biodiversity in the Santa Clara River watershed. Petitioner Santa Clarita Organization for Planning the Environment ("SCOPE") is a non-profit organization, with members who reside in Santa Clarita. SCOPE is concerned with the protection of the environment, ecology and quality of life in the Santa Clarita Valley. Petitioner Wishtoyo Foundation is a non-profit public interest organization from Ventura County with over 700 members, including members of the Chumash tribe. The

second units). These residences would be built on 2,391 acres. The Specific Plan also permits mixed use development, including about 67 acres of commercial and 249 acres of business park locations. Build-out was projected to occur over approximately twenty years, depending upon economic and market conditions.

Individual Newhall Ranch developments will be developed over time and the applicant is currently processing development applications to implement projects within the Specific Plan. Many of these development projects will require work in or near the Santa Clara River and its tributaries. Accordingly, the applicant requested a Master Streambed Alteration Agreement and Incidental Take Permits from the CDFG. The Newhall Ranch Project incorporated by reference the environmental documents prepared by Los Angeles County for its approval of the Specific Plan.

² The U.S. Army Corps of Engineers, Los Angeles District was the lead agency for the preparation of the EIS in accordance with the National Environmental Policy Act ("NEPA"). Because the proposed project involves discharges of fill material into waters of the United States, the Corps was required to ensure that the proposed project was the least damaging practicable alternative ("LEDPA"). (AR 2640).

³ The applicant also submitted an application for issuance of an Incidental Take Permit ("ITP") for the western yellow-billed cuckoo, southwestern willow flycatcher and least Bell's vireo, and for special status wildlife species the arroyo,

Wishtoyo Foundation's mission is to preserve, protect and restore Chumash culture, including that of their ancestors, the Tataviam tribe. Through its Ventura County Coastkeeper program, the Wishtoyo Foundation seeks to protect, preserve and restore the ecological integrity and water quality of Ventura County's inland and coastal waters and watersheds. Petitioner California Native Plant Society ("CNPS") is a non-profit corporate of nearly 10,000 members and includes, as part of its mission, the preservation of California's botanical heritage.

Respondent CDFG is the department within the government of California charged with the statutory duties under the California Fish and Game Code to manage the state's diverse fish, wildlife and plant resources, and the habitats upon which they depend. CDFG is the lead agency under CEQA for the Project. CDFG is the permitting authority under the California Endangered Species Act and has authority to issue Streambed Alteration Agreements under the Fish and Game Code.

Real Party in Interest, Newhall Land and Farming Company ("Newhall") is the developer identified with the Newhall Ranch project. Newhall is the sole applicant seeking permits, agreements and authorizations in order to implement the development project.

As stated in the relevant EIRs, "[t]he overall purpose/objective of the Project is to implement the approved Newhall Ranch Specific Plan, and thereby help to meet the regional demand for jobs and housing in Los Angeles County; and at the same time, implement the Resource Management and Development Plan to address the long-term management of sensitive biological resources and develop infrastructure needed to implement the approved Specific Plan."

In December 2010, CDFG issued a number of approvals relating to the Newhall Ranch development. These included the Newhall Ranch RMDP and the SCP, a Master Streambed Alteration Agreement, and permits that authorized project applicant and Real Party in Interest Newhall Land and Farming Company ("Newhall") to "take" Spineflowers, a protected species, pursuant to CESA. The RMDP would be relied upon by the developer to obtain federal and state permits to implement infrastructure improvements required to facilitate a build-out of the approved Specific Plan. The Project as revised and approved by CDFG is similar to Alternative 3 in the EIR, with some increased avoidance along the Santa Clara River and additional Spineflower preserve acreage and larger riparian corridors along major tributaries.

The RMDP encompasses the same areas of the Specific Plan site, except that it includes the Sal Creek area in Ventura County, adjacent to the Specific Plan. The Project as finally approved by CDFG is marginally different from the project proposed by the developer. As finally approved, the RMDP consists of development-related infrastructures in the Santa Clara River and tributary drainages located in the RMDP areas, which are needed to implement the approved Specific Plan. These include two bridges and new road crossing culverts, bank stabilization projects along portions of the Santa Clara River and its tributaries, including cement, rock riprap and gunite slope linings. Tributaries of the Santa Clara are also modified, using buried storm drains and re-graded channels.

The final version of the SCP component of the Project is comprised of a conservation and management plan proposed by the applicant as a way in which to "maximize the long-term

persistence of core occurrences of Spineflower.” The San Fernando Spineflower has been documented across the entire Project area. According to the CDFG, under the approved project, there would be seven Spineflower preserves collectively occupying 226.45 acres. CDFG asserts that its final proposal “protects” 15.40 acres of occupied Spineflower habitat and reduces the area of impacted habit by one and a half acres. As finalized, the ITP allows a taking of over 24% of existing Spineflower acres.

The Specific Plan, Entrada and VCC development projects facilitated under the CDFG’s approved project include 8,355 single family residential houses, 10,972 multi-family homes and 5.41 million square feet of commercial space. This figure is slightly smaller than the proposed development approved under the Specific Plan. In particular, net developable acreage under the final approved Newhall Ranch Project is 2,551 acres – 899 acres less than under Newhall’s proposed project. And, the approved project reduces the number of residential units by 1,658 and the commercial space available by 2.9 percent.

The approvals issued with regard to the Newhall Ranch project are not ancillary or tiered aspects of the now almost decade-old Newhall Ranch Specific Plan (“Specific Plan”).⁴ Rather, they are new independent discretionary decisions authorize a number of significant environmental events, including the modification of the Santa Clara River and its floodplain, the elimination of existing habitats for fish, wildlife, and plants, including the San Fernando Valley Spineflower and the residential development of locations that may contain Native American burial grounds or unique cultural resources. As the Project may produce significant environmental effects, the CDFG prepared an environmental impact report under the California Environmental Quality Act (“CEQA”). Pub. Res. Code § 21080, subd. (d).

Petitioners challenge the legal adequacy of this CEQA process and CDFG’s approvals on a number of grounds, including *inter alia*, that the agency abused its discretion both under CEQA and failed to comply with certain other statutory duties under the Fish and Game Code. Respondent generally argues that it has not abused its discretion, that it has complied with its legislative mandates and that the EIR and other approvals are supported by substantial evidence in the record.

After considering the parties’ briefs, the augmented administrative record and judicially noticed materials,⁵ and having conducted an extensive trial on the Petition, the Court rules as follows:

⁴ The certified environmental documentation for the approved Specific Plan included and anticipated that implementation of the proposed project components would require federal and state permitting and the exercise of additional discretion by other agencies. The County’s approvals were challenged in court and in August 2000, the Court issued a writ of mandate and judgment ordering the County to set aside the Newhall Ranch Specific Plan Program EIR and to conduct additional analyses. In response to the writ, the Los Angeles County Board of Supervisors set aside the approval of the entire Specific Plan. In 2003, a revised EIR was certified and additional findings and overriding considerations were made. In August 2003, the County filed a return to the writ and in October 2003 the writ was discharged. In December 2003, certain parties filed an appeal, and on March 29, 2004, a settlement was reached and the appeal dismissed.

⁵ Petitioners request Judicial Notice of four exhibits. Exhibit B is the municipal storm water permit (MS4) for Ventura County. Exhibit C is a copy of the guidelines to implementation of the Ventura storm water MS4 permit. Exhibit D is the Biological Opinion for the Newhall Resource Management and Development Plan regarding the UTS. This document is not adduced to negate the Respondent’s claim that the Project will not result in the taking of

Statement of Facts

The Newhall Ranch project covers over 11,999 acres of rugged undeveloped and agricultural land in the northwestern portion of Los Angeles County.⁶ The project area is located 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/Ventura County line to the west. The Los Padres National Forest is located to the North of the Project area, the Angeles National Forest is to the north and east, and the Santa Susana Mountains are to the south.

At the heart of project is the Santa Clara River, which borders the Newhall Ranch area.⁷ The Santa Clara River and State Road 126 traverse the northern portion of the Specific Plan site. The River extends five and one-half miles east to west across the Specific Plan site. Throughout its thousands of acres, the project site is crisscrossed by over forty miles of Santa Clara River stream tributaries.

The Santa Clara River is one of the largest rivers in otherwise arid Southern California. The river runs 116 miles from its headwaters on the north slope of the San Gabriel Mountains near Acton to its confluence with the Pacific Ocean near Oxnard and Ventura. The river is one of the largest watersheds on the Southern California coast, draining an area of 1,624 square miles, with elevations from sea level to over 8,800 feet.

The Santa Clara is the largest river system in Southern California that remains in a relatively natural state. Many large coastal southern California Rivers (the Los Angeles, Santa Ana, and San Gabriel rivers) have been confined to concrete channels in their lower reaches to provide flood protection for the surrounding urban areas. This has eliminated riparian vegetation and crippled the fluvial geomorphic processes that maintain a functioning riparian-floodplain

the UTS. Instead, it is adduced to illuminate what will be required by the proposed mitigation measure that requires supervision by a US Fish and Wildlife Service during construction. Petitioners seek judicial notice under Evidence Code sections 452 and 453 and argue that this information is relevant to the action. Respondent opposes this request for judicial notice and argues that this extra-record evidence should not be allowed.

The Court grants the request for judicial notice for Exhibit B and C. The MS4 permit and its implementation were discussed extensively in the administrative proceedings. Ventura County's alternative LID standards were fully considered (although ultimately rejected). The Petitioners comments and briefing repeatedly referenced the Ventura MS4 permit. In fact, a draft of the MS4 permit was cited in Petitioners' original comments to the Draft EIR. Thus, the MS4 permit and its implementation guidelines were before the agency during its review and should have been included in the administrative record. These materials are relevant to the present action.

The Court also grants judicial notice of Exhibit D for the limited purpose of establishing the efficacy of the claim in the mitigation discussions that the Project will be constructed in a manner that avoids the taking of any UTS. What is left open, however, is whether that absence of a "take" is how that word is defined by the U.S. Fish and Wildlife Service or how that word is defined by the California Fish and Game Code.

⁶ The boundary of the RMDP component encompassed the previously approved Specific Plan site and the 1,517-acre Salt Creek conservation area adjacent to Newhall Ranch.

⁷ The Santa Clara River has been designated as an "Aquatic Resource of National Importance."

ecological system. The Santa Clara River, therefore, is significant in the region because it retains many of the natural attributes that have otherwise been lost.

The Santa Clara River originates in the San Gabriel Mountains and flows in a westerly direction through Ventura County before discharging to the Pacific Ocean, about 84 miles from its origin. Major tributaries in the Santa Clara watershed include Castaic and San Francisquito Creeks in Los Angeles County and Sespe, Piru and Santa Paula Creeks in Ventura County.

The river has some perennial flow in its eastern most stretches in the Angeles National forest, but then flows intermittently westward within Los Angeles County.⁸ The braided Santa Clara River main stem consists of sandy and gravelly soils and is highly permeable over much of its length, which results in surface water infiltration into the groundwater basin.

Like other rivers in Southern California, the Santa Clara River has highly variable, flashy flows. Most of the river's flow takes place during the wet season, and major storms account for most of the river's wet season flow. Water flows in the River range between 253,000 acre-feet and 561 acre feet. And, annual peak flow ranges from 68,800 cubic feet per second to 109 cubic feet per second.

The Santa Clara, however, is different from other rivers in the area in other respects. Unlike many of the other rivers in the area, its river bed is not a cement channel. And, although there is a major diversion dam near Santa Paula in Ventura County that impedes fish passage, the Santa Clara River is not impounded by numerous dams.

The Santa Clara and its watershed provide a regionally important north-south connection and the river itself provides an aquatic habitat linkage from the coast and estuary to upstream habitats in the mainstream and its tributaries. For example, the watershed has the potential to support recovery of southern California coast steelhead and provides critical habitat for other rare and endangered species. The watershed also acts as a movement corridor for a number of native species that require access to large areas to survive. Also the Santa Clara River is the habitat for a state and federally protected fish species, the Unarmored Threespine Stickleback.⁹

The Newhall Ranch project property contains a wide variety of landscapes and vegetation types, including mature riparian forests, oak woodlands, sagebrush, grasslands, freshwater wetlands, alkaline marshes, steep hillsides and mountainous terrain covered by chaparral, as well as agricultural lands.

Newhall Ranch is home to a diverse range of wildlife, fish and plants, including endangered species. Recently re-introduced California Condors use the Ranch as habitat, and at least three

⁸ Ninety percent of watershed consists of mountainous terrain with steep, rocky ridges and deep canyons. Only ten percent of the watershed consists of narrow alluvial valleys. The project area is within a gently sloping alluvial valley that extends downstream from Castaic Creek to the Los Angeles/Ventura county line.

⁹ According to a 1976 study, the stickleback requires a nature stream course, including "clean, free-flowing perennial streams and ponds surrounded by native vegetation."

other birds protected under federal and/or state law -- the Southwestern willow flycatcher, the least Bell's vireo and the yellow-billed cuckoo -- nest in the vegetation. Other rare fish and wildlife found on Newhall Ranch or in the downstream reaches of the Santa Clara River include the California red-legged frog, the arroyo toad, the golden eagle and Southern Steelhead.

Newhall Ranch is also home to one of only two known populations of the San Fernando Spineflower -- a low-growing plant that was thought to be extinct until it was re-discovered near the former Ahmanson Ranch property in 1999. The San Fernando Spineflower is listed as an endangered species under the California Endangered Species Act, and is a candidate species for listing under the federal Endangered Species Act. Where, as in the case of the Spineflower, there are only two known areas of occurrence, and there is a relatively small range, any significant change -- such as drought or fire -- makes it susceptible to extinction.

In addition to its diverse and productive flora and fauna, the Newhall Ranch and its environs were occupied by native tribes, including the Tataviam. These Native Americans people used this area extensively and, as evidenced by recent excavations, villages and burial sites can be found there. According to at least one expert, a village center for the Tataviam was located at the center of the Newhall Ranch project area.

The Newhall Ranch Project -- with the long-term Master Streambed Alteration Agreement for proposed construction activities within the Specific Plan Boundary -- includes a number of aspects that may result in substantial environmental impacts for the river, its tributaries and streambed and the floodplain generally. For example, the RMDP infrastructure would be placed in the Santa Clara River and major tributaries would be modified, with engineered channels for these drainages. Several minor tributaries would be converted to storm drains which would be buried and development may amplify storm runoff. In addition, as development replaces landscapes with impervious surfaces on formerly undeveloped landscapes, the capacity of the remaining land surface to capture and filter rainfall is reduced. As a larger percentage of rainfall becomes runoff during any given storm, this water reaches stream channels more quickly and at higher velocities. This peak discharge rate, which is higher than before development for the same size rainfall event, scours and alters streambeds, re-shapes stream channels and alters habitat. This process is called referred to as hydro-modification. The Project's significant impact on increased runoff intensities and altered sediment transport is part of the environmental assessment at issue here.

In addition, as currently discussed, the Project includes an Incidental take Permit for construction activities that will impact species during implementation of the Specific Plan. The Specific Plan area is one of the only two places in the world where the San Fernando Spineflower is known to exist. The authorization of a "taking" of this endangered species outside of designated Spineflower preserves is an integral part of Petitioners' challenge to the agency approvals at issue in this litigation.

Petitioners argue that CDFG has failed to comply with this legal mandate in a number of ways. In addition, Petitioners assert that the agency has failed to meet its statutory mandates with regard to CESA. These issues will be discussed in full below.

Petitioner filed the Instant Petition for Writ of Mandate on June 15, 2011.¹⁰

Statement of Issues

Both Respondent and Petitioner have set forth the Statement of CEQA Issues pursuant to the Public Code Section. While both statements are somewhat useful as guides for the topics required to be considered, neither party has really identified with any particularity exactly what issue or contention it wants the Court to decide. For example, while the Petitioner asserts that one issue presented is whether “Respondents adequately consulted with Native American trustee agencies before approving the project,” the Court is unable to ascertain whether to treat that as a claim that Respondents failed to proceed in a manner according to law or whether they mean to say that without such consultation, there is no substantial evidence in the record to support the findings that were made regarding cultural impacts of the proposed project. Similarly, the Respondent CDFG’s statement of issues asks only whether the agency’s actions “abused its discretion” or “complied with the substantive and procedural requirements of CEQA and NEPA.” This is hardly a roadmap of the particular arguments asserted in defense of the agency’s actions. Given that neither party’s statements of issues are particularly helpful, the Court will hopefully identify all of the contentions of both parties and assay to render a complete and thorough decision.

Both sides appear to generally agree, however, that the underlying issue presented in this case is whether the EIR and the environmental review process employed by Respondent in this instance complies with CEQA. Under CEQA Guidelines:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Standard of Review

Two provisions of CEQA govern the standard of review applied in this proceeding. Section 21168 of the Public Resources Code applies where the underlying agency action being challenged was “made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and the discretion in the determination of facts is vested in the public agency. Such actions must be brought as administrative mandamus proceedings under Code of Civ. Proc. Section 1094.5. Friends of the Old Trees v. Dep’t of Forestry & Fire Protection, 52 Cal. App. 4th 1383, 1389 (1997). Section 21168.5 governs review of all other agency actions challenged for alleged non-compliance with CEQA. These challenges are filed as ordinary or traditional mandamus actions under Code of Civ. Proc. 1085. Id.

¹⁰ A number of related cases have also been filed challenging additional permits and approvals related to the Newhall Ranch Specific Plan.

Review under administrative mandamus and review under traditional mandamus share many of the same characteristics. *Id.* Under either section, the reviewing court shall determine whether the Respondent agency abused its discretion by failing to proceed in a manner required by law, or because its determination or decision is not supported by substantial evidence.” Laurel Heights Improvement Association v. Regents of the University of California, 47 Cal. 3d 376, 392 (1988)(“Laurel Heights I”); Madrigal v. City of Huntington Beach, 147 Cal. App. 4th 1375, 1381 (2007).

Challenges to an agency’s failure to proceed in a manner required by CEQA are subject to a less deferential standard than challenges to an agency’s factual conclusions. Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova, 40 Cal. 4th 412, 235 (2007). In reviewing these claims, the Court must “determine *de novo* whether the agency has employed the correct procedures,” including ensuring that the EIR is sufficient as an informational document. *Id.*; Dry Creek Citizens Coalition v. County of Tulare, 70 Cal. App. 4th 20, 26 (1999).

Substantial evidence is defined as “enough relevant evidence and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” 14 CCR § 15384(a). In applying the substantial evidence standard, “the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision.” Topanga Ass’n for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 514 (1974).

A court may not set aside an agency’s approval of an EIR on the ground that an opposite conclusions would have been equally or more reasonable. . . . We have neither the resources nor the scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so.”

Laurel Heights I, supra, 47 Cal. 3d at 393.

But, that is not to say that the mere inclusion of some evidence in the record constitutes a basis for judicial deference. Rather, the law requires that there be “substantial” evidence to support the agency’s findings before judicial deference is required. Substantial evidence is not conjecture, nor is it speculation or unsubstantiated opinion or narrative. “Evidence which is clearly erroneous or inaccurate or evidence of social or economic impacts which do not constitute or are not caused by physical impacts” does not constitute substantial evidence. 14 CCR § 15384(a). Arguably, where an agency relies on such unscientific or inaccurate or erroneous information, they have failed to proceed in a manner according to law as it no longer serves its purpose as an informative document. See Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm’rs., 91 Cal. App. 4th 1344, 1355 (2001) (a clearly inadequate or unsupported study is entitled to no judicial deference); Save Our Peninsula Committee, v. Monterey County Bd. of Supervisors, 87 Cal. App. 4th 99, 117-118 (2001).

The EIR is the heart of the environmental control process. CEQA describes the report’s purpose -- to provide the public and governmental decision-makers . . . with detailed information of the project’s likely effect on the environment; to describe ways of

minimizing significant effects; to point out alternatives to the project. The EIR process facilitates CEQA's policy of supplying citizen input. By depicting the project's unavoidable effects, mitigation measures and alternatives, the report furnishes the decision-maker information enabling it to balance the project's benefit against environmental cost. The report should function as an environmental "alarm bell."

County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185, 191 (1977).

Persons challenging an EIR bear the burden of proving that it is legally inadequate and that the agency abused its discretion in certifying it. Cherry Valley Pass Acres and Neighbors v. City of Beaumont, 190 Cal. App. 4th 316, 327-28 (2010).

Analysis

Trying to arrange and organize the myriad claims and challenges in this lawsuit without the benefit of statements of issues is a difficult task. The Court attempts to do so below.

1. The Respondent Performed Its Duties under CEQA as the Lead Agency.

CEQA should be interpreted so as to "afford the fullest protection to the environment within the reasonable scope of the statutory language." Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247 (1972). Consistent with that mandate, an agency cannot satisfy its CEQA obligations by merely "considering" the environmental impacts of a proposed project. See Burger v. County of Mendocino, 45 Cal. App. 3d 322, 326 (1975). Rather, CEQA compels the government first to identify the significant environmental effects of the projects and then mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives. Sierra Club v. State Board of Forestry, 7 Cal. 4th 1215, 1233 (1994).

The "identification" prong of this mandate requires the lead agency to produce comprehensive environmental documents and, if necessary to do so, to consult with trustee or other responsible agencies as to matters within their expertise or jurisdiction.¹¹ Pub. Res. Code §§ 21080.3, 21080.4. That consultation occurs both with regard to the proper scope of the EIR and as to its substance. In particular, lead agencies must include in their EIRs information related to the environmental impacts that are anticipated by responsible agencies and trustee agencies as to matters within their expertise or jurisdiction. See, e.g., Save San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission, 10 Cal. App. 4th 908 (1992)(lead agencies may be required to conduct appropriate analyses requested by responsible agencies). In addition, both responsible and trustee agencies have the opportunity to advise lead agencies as to appropriate mitigation measures for environmental impacts subject to their authority.

¹¹ The lead agency is the public agency which has the principal responsibility for carrying out or approving a project. Given the magnitude of this project and the significant environmental impacts associated with the Newhall Ranch Specific Plan, CDFG served as the lead agency rather than the County of Los Angeles.

In addition, when acting as a lead agency for a project requiring an EIR, a state agency must consult with and seek comments not only from every responsible agency and trustee agency of the draft EIR, but also from *inter alia* "any other state, federal and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project. Pub. Res. Code § 21104, subd. (a). CEQA also instructs lead agencies to work with "Appropriate Native Americans as identified by the Native American Heritage Commission ("NAHC") to mitigate project impacts on Native American burial sites.

CDFG is the lead agency under CEQA with respect to the Newhall Ranch project because of its permitting authority under the California Endangered Species Act ("CESA") and its authority to issue Streambed Alteration Agreements under the Fish and Game Code.

A review of the agencies that CDFG consulted with a number of private consultants retained by the applicant, and a number of federal, state and local governmental entities and the Native American Heritage Commission ("NAHC"). (AR 116089).

Petitioners complain, however, that the lead agency failed to work with *all of the Chumash contacts* identified by the NAHC. Additionally, many of the persons with whom CDFG claim to have been contacted do not recall receiving correspondence from the lead agency. "[W]ithout the proper consultation with Chumash tribal members, adequate identification and mitigation" of existing cultural resources was not possible. Petitioners also complain that the NAHC was not provided with the draft EIR for comments.

These objections are without merit. The record shows that the lead agencies have consulted with a list of Native American individuals or organizations that may have had knowledge with the cultural resources in the Project area. And, to the extent that the lead agencies sent a notice of completion to the State Clearinghouse and provided an online searchable version of the Draft EIR, the NAHC was provided with a copy. There is no requirement under CEQA that tribal members recall receiving correspondence with there is competent evidence in the record that requests were sent to them. And, while the Court concludes *infra* that the examination of cultural resources in the Project area was wholly inadequate and does not constitute substantial evidence, that inadequacy was simply exacerbated by the consultant's failure to consult with Chumash tribal members.

2. The Respondent Adequately Considered Public Comments.

Petitioners also object that the EIR fails to address adequately comments submitted to the Draft EIR. Aside from the specific lack of substantial evidence with regard to certain responses discussed below, Petitioners object that with regard to certain comments, nothing was responded to or evaluated. For example, David Magney Environmental Consultants, on behalf of the Friends of the Santa Clara River and the California native Plant Society commented that there had been no analysis of bryophytes or lichens at the Project site within the Draft EIR. In response, the Final EIR referred to "33 plant surveys."

Respondent countered that it did adequately consider these comments. (AR 13627). In response to David Magney's comments, the applicant's expert conducted a "reconnaissance-level" filed

survey for bryophytes, including special status taxa. These surveys failed to disclose any special status bryophytes. A similar effort was conducted in response to Magney's comments regarding lichens. While 26 lichen taxa were found on the site, none of these qualified as special status species. Based on this response and this information, the proposed Project is not likely to have a significant impact on any special status bryophytes or lichen. Nothing by way of a further response is required by CEQA.

3. The Respondent Did not Need to Re-Circulate the Final EIR Due to Changes in the Greenhouse Gas Impacts Analysis.

EQA requires recirculation and opportunity for comment before certification of an EIR when "significant new information" is added. The law on when recirculation is required was settled in Laurel Heights Improvement Assn. v. Regents of University of California 6 Cal.4th 1112 (1993) (Laurel Heights II). In that case, the court concluded that "the addition of new information to an EIR after the close of the public comment period is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." Id. at 1129.

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. On the other hand, recirculation is required, for example, when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented; (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt; or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless.

Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, 205 Cal. App. 4th 552, 588-589 (2012)(citing Laurel Heights II, *supra*, 6 Cal.4th at pp. 1129-1130)(depublished August 8, 2012).

The substantial evidence standard governs the lead agency's decision not to recirculate an EIR, with reasonable doubts resolved in favor of the administrative decision. Laurel Heights II, *supra*, 6 Cal.4th at p. 1135.)

Petitioners argue that the Draft EIR's greenhouse gas analysis was fundamentally and basically inadequate. A number of responses to the DEIR challenged the original methodology for analyzing the significance of the Project's greenhouse gas impacts. In response, four and a half pages of the DEIR's analysis were replaced with a new analysis. Petitioners argue that this "new information" required a recirculation of the Final EIR so that the public would have a full opportunity to evaluate the new information.

Respondent challenges the Petitioners' characterization of the greenhouse gas analysis revisions in the Final EIR as "new" information. Rather, they note merely that the final EIR's greenhouse gas and global climate change analysis was not "significant" or "new" information. In this case, the Final EIR made no substantial changes to the proposed Project, nor was the significance findings set forth in the Draft EIR altered. Rather, the modifications simply "amplified" the original determination that impacts relative to global climate change would be less than significant. The public was afforded a full and fair opportunity to review and comment on the modifications made to the greenhouse gas inventories and the significance assessments during the final 30 day public review period, which was extended by 15 days.

Given that the Court is granting a writ of mandate pursuant to CEQA to require a different baseline analysis of greenhouse gases to be performed in this case, the re-circulation issue will be fully remedied without requiring any further findings on this issue. See, e.g., Sutter Sensible Planning, Inc. v. Board of Supervisors of Sutter County, 122 Cal. App. 3d 813 (1981)(EIR re-circulated after original document found to be inadequate).

4. The Respondent Failed to Evaluate a Proper Range of Project Alternatives.

An EIR must "[d]escribe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

The Respondent identified a number of off-site alternatives and seven on-site alternatives to the Newhall Ranch Project. The first alternative is the No Action/No Project alternative. This is a description of what would occur were the CDFG to decide not to approve the permits and other approvals associated with the proposed Project. Alternative 2 is the applicant's proposed project. This option would allow construction of the proposed RMDP infrastructure and would facilitate development of the Specific Plan and the VCC and a portion of the Entrada planning area. The five other "build" alternatives address a broad range of different configurations of the RMDP infrastructure and Spineflower preserves. These five alternatives oppose a range of proposed permitting activities – each one of which reduces the RMDP infrastructure and increases the size of the Spineflower preserves.

Petitioners object that the EIR impermissibly "hews" so closely to the Specific Plan – a document created by another agency – that the Respondent has failed to independently perform its reviewing, analytical, and judgment functions. See Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco, 106 Cal. App. 3d 893, 908-910 (1980). For example, the RMDP sought to implement the basic objectives of the basic plan, including a major new community with interrelated villages that allows for residential, commercial and industrial development." Its basic "economic objective" was to provide the developer with "flexibility to respond to changing economic and market conditions over the life of Newhall Ranch" and to provide a tax base. (AR 2433).

Petitioners note that the assertion that a development of this size and scope is required to provide housing for the growing population of Los Angeles is unsupported by substantial evidence as of the date of this EIR. As of 2010, there were 30,000 or more approved but un-built housing units in the Santa Clarita Valley and several thousand graded but vacant lots. (AR 10453).

Nonetheless, a huge, unmet demand for housing continued to be asserted both as a purpose for the Newhall Ranch Project and in the statement of overriding considerations. Unbelievably, Respondent continues to assert that “the northern Los Angeles County region has experienced *and continues to experience significant growth* and overall regional need for development to accommodate that growth” as late as 2012 when it filed its opposition brief.¹² (Opposition Brief at 3)(emphasis added). And, Petitioners similarly fail to understand what “flexibility” means when looking at basic economic objectives of a project.

Petitioners also assert that there is no substantial evidence to support the Respondent’s claim that Alternative 6 would preclude the “development of inter-related villages” that provide a balance of land uses. This alternative reduces only 5.26 percent of the residential units and 3.89 percent of the commercial space compared to the Specific Plan.¹³ This amount is so minimal that it can hardly be said to defeat inter-related villages and a balance of land uses. Nor does such a minor reduction in the number of residential units increase costs so significantly as to render this alternative economically infeasible. Moreover, this claimed “inter-related villages” does not have the same meaning as the “balance of land uses” purpose that is part of the basic objectives of the Specific Plan. By adding purposes that are defined so as to make what is practicable appear impracticable, Petitioners assert that the EIR fails to comply with CEQA.

Respondent counters that it did not “hew” to the Specific Plan and that it approved a project with fewer environmental impacts than the one originally proposed. Throughout the relevant environmental approvals and certified reports in this case, CDFG continues to extol its efforts to “reduce” from what was set forth in the 2003 Specific Plan the dire environmental consequences of that Project. For example, CDFG notes that the Approved Project is “different from, and more environmentally sensitive than Newhall’s Proposed Project.” CDFG proclaims that it managed to reduce the Specific Plan for a 14,000 net developable square acre project by 899 acres. And, CDFG notes that it reduced the number of housing units allowed by 8 percent.

The avoidance of monumental impacts by narrowing ever so slightly the magnitude of a gigantic project, however, is not, however, what the law requires. Nor is not the proper legal measure against which Respondent’s efforts should be considered. The legal propriety of environmental review is not a function of the number of pages of paper generated or the length of time that a

¹² The Population, Housing and Employment (existing conditions) data in the administrative record is from the Revised Newhall Ranch Specific Plan and was prepared in March 1999. (AR 64616). Employment projections were dated on predictions made in 1987. (AR 64630).

¹³ Alternative 6 would increase the size of the proposed Spineflower preserve from 167.6 to 891.2 acres. And, under this alternative, no additional development would be facilitated in the Valencia Commerce Center planning area and certain infrastructure improvements would be reduced. Alternative 6, however, still provides for 20,212 residential dwelling units on the Specific Plan site and Entrada planning area and over 5.7 million square feet of non-residential uses. (AR 6885).

project has been considered and reviewed.¹⁴ Rather, the law requires not only that public agency decision-makers document and consider the environmental implications of their actions, but also that the refrain from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid these effects. Thus, the agency must first identify the significant environmental effects and then mitigate those adverse effects through the imposition of mitigation measures or through the selection of feasible alternatives. And, public agencies must deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects.

To determine feasible alternatives, the first question that needs to be asked is whether there is substantial evidence in this record to support the decade-long claim that the region “continues to experience significant growth and overall regional need for development to accommodate that growth” necessitating over 19,000 new residential units and over 5 million square feet of commercial space. As discussed later, the record contains no substantial evidence to support this claim. Nor is there any information in the record to support the contention that developer “flexibility” to accommodate such growth in the future is needed.

Census information submitted by Petitioners shows county-wide population growth of less than 4 percent, with housing growth during the same period in excess of 40 percent. The Petitioners have also placed in the record uncontroverted evidence that there are tens of thousands of already approved, developable acres in northern Los Angeles County without the addition of a single lot from the Newhall Ranch Specific Plan. Yet, the development purpose stated mandates 19,227 additional residential units and over five million additional square feet of commercial space. The need for or demand for this developable acreage – currently or in the future – is unsupported by any substantial evidence in the record. The CDFG failed to consider the “no project” alternative in light of then-existing evidence regarding current and future demand retail and commercial space in this corner of Los Angeles County.

An analysis of mitigation that entertains nothing other than going forward (albeit with some minor changes) with a development plan that is – with the passage of time – no longer based on substantial evidence is contrary CEQA. Adding the concept of “flexibility” in light of future economic conditions does not cure this inherently flawed analysis.

When this Project is reconsidered upon remand, additional and current information regarding the need (now and in the future) for the scale and scope of the Project in light of realistic Specific Plan build-out needs to be placed into the record for consideration by decision-makers and the public. While some discretion needs to be afforded the lead agency, it must first do its job to ensure that the claims upon which its decision rest are supported by substantial evidence.

5. Respondent’s Analysis of Significant Environmental Impacts and the Feasibility of Proposed Mitigation Fail to Comply with CEQA.

¹⁴ The purpose of CEQA is not to “generate paper” but to compel government at all levels to make decisions with environmental consequences in mind.” Bozung v. Local Agency Formation Commission, 13 Cal. 3d 263, 283 (1975).

Petitioners also assert that in four separate areas, CDFG has abused its discretion by either failing to proceed in a manner required by law or making findings that are not supported by substantial evidence in the record.

The Court will consider these four areas individually.

a. The EIR's Water Quality and Hydro-modification Analysis

Petitioners object that the Respondent abused its discretion in analyzing the significance of the Newhall Ranch Project on the Santa Clara River and its floodplain. Petitioners challenge this aspect of the EIR on a number of grounds, each of which will be discussed below.

First, Petitioners assert that the analysis upon which the decision-makers relied to conclude that the hydro-modification impacts to the Santa Clara River are less than significant failed to proceed in a manner required by law and/or was not supported by substantial evidence.¹⁵ Specifically, Petitioners assert that the Respondent's finding that stream erosion and stream habitat will not be significantly impacted by the Newhall Ranch Project is based on an incorrect baseline.¹⁶ Petitioners claim that the suspended sediment yield rate used to calculate the pre-project baseline condition is incorrect and, as a result, the EIR underestimates the Project's impact on reducing sediment yield.

As a conceptual matter, the determination of whether impacts are "significant" requires a "baseline" set of environmental conditions against which to compare a project's anticipated impacts. While simple in concept, in practice, the determination of the proper baseline has been confounding and illusive. Adding to the difficulty of setting a proper baseline is the fact that the "environment" changes over time, as does our understanding of environmental conditions. When a project is proposed for the first time, a typical argument focuses on whether the proper baseline consists of current conditions or reasonably foreseeable future conditions that would occur without the project. The general rule, as set forth in the CEQA guidelines, requires that the existing environmental conditions should normally constitute the baseline against which agencies should assess the significance of project impacts.

In the recent past, the supply of sand in the Santa Clara River has been reduced by human activity, including the construction of dams within the watershed and the mining of floodplain sand and gravel. The 2007 Stillwater Study report used sediment data compiled over the 30 years by the Ventura County Watershed Protection District to qualify how sand retained by the dams affects beach formation and maintenance.

¹⁵ Counsel for defendants asserted that plaintiffs had failed to exhaust their administrative remedies on all the issues they raised on appeal. We conclude that the letters from the California Regional Water Quality Control Board and the Coastal Conservancy raised and presented these issues at the administrative level. (AR 8571, 9202). Therefore, the exhaustion requirement set forth in Cal. Pub. Res. Code section 21177, subdivision (a) has been satisfied.

¹⁶The EIR includes a stand-alone assessment of the potentially significant hydrology impacts associated with the proposed Project and alternatives, without reliance on the previously certified Newhall Ranch environmental documentation. However, that earlier documentation did identify and analyze existing flood conditions, potential flood impacts and mitigation measures.

Based on the 2007 Stillwell Report, the EIR determined that approximately 15,988 tons per square mile per year of coarse sediment is currently produced in the Santa Clara watershed and roughly 1,171 tons per square mile per year of suspended sediment is produced from the watershed area upstream from the gauge at the LA/Ventura County line – which is where the project is located. In support of that “baseline,” Respondent cites the text of the Stillwell Report. In that text, the Stillwater report notes that roughly 1,171 tons/sq. mi./yr of suspended sediment “originates from the area upstream of the gauge at the Los Angeles/Ventura county line.” (AR 101,186). The Newhall Ranch project occurs entirely within Los Angeles County. Thus, the portion of the project that is proposed for development (which is that portion relevant to the issue of the Project’s impact on sediment supply) falls within the Upper Santa Clara area.

Accordingly, the EIR contains substantial evidence as to the sedimentation rate selected as baseline for the project. Substantial evidence “shall include facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.” Pub. Res. Code § 21082.2, subd. (c). The 2007 Stillwell Study shows that the relevant portions of the Newhall Ranch Project lie within the area upon which this baseline yield rate was supplied. That same study establishes the suspended sediment rate of 1,171 tons per square mile per year at the county line.

As supported by substantial evidence in the record, the baseline selected by Respondent for understanding the hydro-modification effects of the Newhall Ranch Project supports the agency’s conclusion that there are no significant effects on sediment yield due to the project.¹⁷ The EIR used the total sediment yield rate to determine the existing sediment supply for the entire watershed, and the amount of sediment reduction that would result from Project development.¹⁸ The computation of these figures showed that the amount of reduction in sediment attributable to the Project was .52% -- below the EIR’s significance criterion. (AR 2980-81, 8600, 9203). Thus, there is substantial evidence in the record to support the conclusion that the project will not result in a significant impact on sediment delivery downstream.

Second, Petitioners assert that the EIR’s analysis of the impacts of a 100-year flood on the Newhall Ranch project is unsupported by substantial evidence in the record.

In order to avoid flooding impacts along the Santa Clara River, those areas along the river that are proposed for development would be elevated above the 100-year and 50-year capital floodplain, thereby removing development from those flood hazards. The floodplain

¹⁷ Petitioners point to a map (figure 4.6) in the Stillwell Study to argue for a different measure of suspended sediment yield in that portion of the Santa Clara River covered by the project. (AR 101187). The Stillwell Study, however, cannot be fairly read to support that contention. While the map shows that some slight portion of the project may be located in the Lower Santa Clara River sub-watershed, the location of the County line on that map allows the Court to conclude that the portion of the project boundary that would be developed is only in land delineated within the Upper Santa Clara subwatershed – not the Lower Santa Clara River sub-watershed as Petitioners’ argue. Thus, Petitioners contention that the EIR “dramatically underestimates the Project’s effects in reducing sediment yield form the Project area is not supported by the Stillwell Study.

¹⁸ The EIR calculated the total amount of existing watershed-wide sediment by multiplying the total watershed size (1,624 sq. mi.) by the combined sediment yield rate (17,158 tons/sq.mi./year), which equals 27.86 million tons per year. (AR 8599-600).

modification proposed in the Specific Plan included three bridge crossing over the Santa Clara River, bank stabilization along portions of the banks and removal of mostly agricultural acreage from the floodplain by raising the land areas and installing elevated bank protection. It was concluded that the proposed Specific Plan would alter flows in the Santa Clara River, however, the effects would only be expected during infrequent flood events, such as 50-year and 100 year flood events.

In this EIR, the CDFG assessed the river hydrology and flood effects using a 1994 report by the Corps of Engineers.¹⁹ That 1994 report used the 100-year peak flow rate of 60,000 cubic feet per second. (AR 9224). This is the same flow rate that the Federal Emergency Management Agency (“FEMA”) used in updating the Santa Clara River Flood Insurance Study. Petitioners contend that this figure was not the most current or updated peak flow rate of 66,000 cubic feet per second, which was promulgated by Ventura County in 2006.

Petitioners’ objection on this point is without merit. While there is a study that projects an 11 percent higher stream flow during a 100-year flood event, that fact does not render the earlier data upon which Respondent relied of no value or otherwise not substantial evidence. Where, as here, earlier data is still currently used and adopted, it can constitute substantial evidence. This is not the same situation as there was in Berkeley Keep Jets Over the Bay, *supra*, 91 Cal. App. 4th at 1355. There is no evidence of using misleading information with regard to this figure, as in that case. Rather, what we have is a difference of scientific opinion between two sources of information.²⁰ A difference of expert opinion – both opinions being supported by substantial evidence – does not a CEQA challenge make.

Third, Petitioners complain that the Project did not consider the implementation of certain proposed development standards for Ventura County as a measure by which to mitigate the impacts associated with the post-development increase in storm water run-off. Petitioners argue that the Low Impact Development (“LID”) performance standards set forth in the Ventura County Municipal Stormwater Permit are the best management practices for the capture, treatment and release of storm water runoff. The Ventura MS4 permit requires that, unless technically infeasible, the Effective Impervious Area of the total Project area must be less than five percent. This level is achieved by rendering at least 95 % of impervious surfaces “ineffective” by retaining the storm runoff volume onsite using varied methodologies. In

¹⁹ The 1994 Corps’ Study, entitled “Santa Clara River Adopted Discharge Frequency Values” is based upon a frequency analysis of stream flow data along the Santa Clara River. Six of the seven recurrence intervals were obtained from the 1994 study; the seventh -- the Los Angeles County capital flood -- is obtained from the previously published rates from the Department of Public Works.

²⁰ Nor did the EIR “mostly ignore” the question as to the use of 60,000 cfs as the 100-year flood flow rate. The EIR evaluated that information and rejected the claim that the Project’s channel design did not have sufficient freeboard to allow for a 11% increase in the peak flow rate. There is typically in excess of five feet of freeboard from the 100-year water surface elevation to the top of the proposed bank protection. Using 66,000 cfs would increase surface water elevation by only .8 feet. Thus, the engineered channels will convey the 100-year flood events and the Project will not create a flooding hazard. And, as CDFG used a valid measure for the 100-year flow, the EIR similarly contains substantial evidence upon which it evaluated the impacts on velocity, scour, incision, sediment loading and fluvial geomorphology downstream in Ventura County of such an event.

addition, the Ventura MS4 permit requires hydromodification control criteria specific to each tributary and drainage affected by the Project.

Rather than consider Ventura County's LID performance standards and ascertain whether these measures were feasible alternatives to the mitigation strategies set forth in the EIR, the Respondent instead used the technical capability screening criteria established by the Los Angeles Department of Power and Water's LID Manual at the Specific Plan scale. (AR 8034). Respondent contends that it was not required to adopt the Ventura County LID standards because the Project lies within LA County, not Ventura.

The Court agrees. While there may be alternative mitigation strategies available under Ventura County LID standards, a mitigation strategy predicated on LA County regulations must stand if it supports the conclusion that the Project's stormwater/water quality impacts have been mitigated to less than significant. While CEQA requires a consideration and evaluation of "specific suggestions" for mitigating a significant environmental impact unless the suggested mitigation is facially unfeasible, that "consideration" occurred in this case. Los Angeles Unified School District v. City of Los Angeles, 58 Cal. App. 4th 1019, 1029 (1997). There is substantial evidence in the record that the Horner suggestion was reviewed and assessed. (AR 8035). Whether experts agree as to what practicable mitigation measures are possible is not the issue. The issue is whether there is substantial evidence in the record to support CDFG's conclusion that stormwater discharges/water quality impacts have been mitigated to less than significant levels.

Fourth, Petitioners object to the EIR's analysis of the Project's cumulative impact on water quality. Petitioners assert that the EIR was required to consider the cumulative impact of the increase in dissolved copper discharged into the Santa Clara River as a result of the Newhall Ranch project on steelhead salmon breeding grounds downstream.

The EIR acknowledges that the Project's storm water discharges into the Santa Clara River will increase to 8.4 -9.3 micrograms per liter the concentration of dissolved copper during storm events. Trace metals are commonly found in storm water. Many of the artificial surfaces of the urban environment contain metals, which enter storm water as these surfaces corrode or decay. Metals, such as copper, are of concern because they can be toxic to aquatic organism. This concentration level causes juvenile salmonids to lose their smell, to reduce their swimming speed and to lose their ability to locate spawning grounds, to reproduce and to avoid prey. (AR 122904, 122918, 122935).

The southern steelhead was listed as federally endangered in 1997 and within the Santa Clara watershed, the River and its tributaries from Piru Creek below Santa Felicia Dam to the River's confluence with the Pacific Ocean has been designated as critical habitat. And, a recovery team has been formed and is currently working on a draft Recovery Plan for the southern steelhead. The Southern Steelhead has specific habitat requirements for each life history stage (egg, fry, juvenile, smolt and adult).

There is no substantial evidence in the record of any historical presence of southern steelhead in the Project area nor are the existing conditions along the Santa Clara River in the project area

suitable as habitat for southern steelhead. Thus, it is unremarkable that the EIR concludes that the increase in dissolved copper during storm events will have no significant impact on southern steelhead, as there are none in the area of the river above the Dry Gap. The Dry Gap is a part of the Santa Clara River – approximately 3.5 miles downstream of the Los Angeles County/Ventura County line – where the River is dry most of the year and water is present only when rainfall events create storm water runoff in the River. This Dry Gap extends downstream of the Piru Creek confluence with the Santa Clara and the lower limit of the Piru groundwater basin,²¹ between the communities of Piru and Fillmore.

The EIR acknowledges, however, that the Project has the potential to affect southern steelhead individuals and habitat downstream of the Project area. “However,” the study notes, “due to the approximately five mile distance from documented occurrences of southern steelhead at Piru Creek and the intervening Dry Gap, these potential secondary effects would be substantially attenuated before they could affect any downstream habitat and individuals.” (AR 7481). Thus, the EIR concludes that the proposed project is not expected to have any significant secondary cumulative impacts.

Petitioners challenge that assumption. While in ordinary circumstances, the “Dry Gap” is dry, there is no substantial evidence in the record to suggest that the Gap inhibits or prevents the discharge of concentrated dissolved copper into the lower reaches of the Santa Clara River during storm events. As has been amply documented, the flashy flows of the Santa Clara have breached the Dry Gap, taking storm run off along with its sub-lethal levels of dissolved copper into the lower reaches of the Santa Clara River where Southern Steelhead smolt are found. (AR 10936-37). The EIR fails to consider, much less evaluate, whether the dissolved copper discharged from the Project Area (which is four times over the steelhead smolt sub-toxicity levels) over the Dry Gap and into the lower reaches of the Santa Clara would adversely affect restored habitat for endangered steelhead smolt.

The Respondent’s response that a storm large enough to breach the Dry Gap would dilute the dissolved copper to levels safe for Steelhead smolt is unsupported by any substantial evidence in the record.²² (AR 19811-19). And, while it may be intuitive that any discharges that would pass over the Dry Gap during high flows would comprise only a very small portion of the average

²¹ The Piru groundwater basin underlines the dry gap. On the upstream side of the eastern limit of this groundwater basin, the alluvial fill is thin and the underlying bedrock lies at a shallow depth. As a result, the water table is shallow, and little or no leakage occurs from the river to the underlying shallow groundwater. On the downstream side of this boundary, the alluvium is thicker and the underlying bedrock is much deeper. Thus, the water table is deeper and sediment can rapidly infiltrate the entire flow of the river – thus the presence of the “Dry Gap.”

²² In modeling exercises, the concentration of dissolved copper was predicted to increase proposed conditions when compared to existing conditions. (AR 19819, 19843). That the post-Project dissolved copper concentrations will comply with local applicable regulatory standards, however, is not substantial evidence to support the finding that the project’s impacts will have a less than significant effect on endangered Steelhead habitat and smolt. See Communities for a Better Environment v. California Resources Agency, 103 Cal. App. 4th 98, 113-14 (2002). Nor is it any answer to simply conclude that so long as the newly created discharges are within the range of already existing concentrations of dissolved copper there can be no substantial effects. (AR 12076). These existing “ranges” are known to cause sub-lethal effects in the smolt (AR 11251-55, 11263-11317).

flow of the river, there is no substantial evidence to support the conclusion that the dissolved copper discharges in these events would not have a significant impact on steelhead smolt.

And, by ignoring the Ventura Coastkeeper's request for such an analysis to develop substantial evidence of that claim, the EIR fails to meet the legal requirements of being an informational document.²³ Laurel Heights II, *supra*, 6 Cal. 4th at 1124. While an agency is not required to evaluate every impact study suggested by interested groups, they are required to assess whether the Proposed Project's run-off will result in a substantial environmental impact by destroying an adjacent and environmentally sensitive downstream habitat that years of recovery efforts have established for the endangered Southern Steelhead. The EIR must address foreseeable significant environmental impacts created by the Project supported by fair argument. See Laurel Heights II, *supra*, 6 Cal. 4th at 1124. Compare CFG 12075-76, 12080-81, 11121, 11161, 4230-46, 7479-81, 122906-15, 123745-47. In this case, assessing the impact of project-related dissolved coppers into a restored Steelhead habitat downstream when storm surges breach the dry gap is reasonably feasible to study. (AR 10821). The failure to do so renders the EIR inadequate as an informational document.

- b. The CDFG's Analysis of Mitigation Measures for the Endangered San Fernando Spineflower Is Legally Impermissible and the Agency's Proposed Mitigation Measures Are Unsupported by Substantial Evidence as Adequate Mitigation.

One of the most significant environmental impacts of the Newhall Ranch Project is the elimination of almost one quarter of one of the two remaining habitats of the San Fernando Valley Spineflower in the world.²⁴ The Spineflower Conservation Plan ("SCP"), a separate component of the Project analysis, was prepared to support mitigate measures relied upon in the Newhall Ranch Project EIR and to "facilitate the conservation of San Fernando Valley Spineflower on all of Newhall's land holdings that contain Spineflower populations. (DFG 57, 83-84, 3619).

The SCP provides for the establishment of seven preserves representing five of the six general locations in which naturally occurring Spineflower exists; the sixth location (on the site of the Valencia Commerce Center) would be entirely destroyed to allow development at that site.

²³ Newhall contends that CDFG was not required to respond to Ventura Coastkeeper's "late" comments and, therefore, no matter how legally deficient the Final EIR, it doesn't violate CEQA. (Newhall Opposition at 24). While the cases do suggest that late comments may not obligate a response, once the agency "picks up the cudgel" and provides responses, CEQA once again requires that the document be adequate as a matter of law. (AR 12075-95).

²⁴ Newhall included existing conservation easements within the Spineflower preserves. These easements were established to mitigate *past* Newhall activities that affected Spineflower. (DFG 118215). While the coordinated management of easements as part of the plan may provide some additional conservation benefit, that is not how the EIR and SCP considered these areas. Rather, they were counted toward the newly-conserved Spineflower range as if they were new dedications. (DFG 229). This discounting of the existing easements altered the calculation of the percentage of Spineflower acres that will be "taken" under the permit. Thus, the approved Project will "take" considerably more than 24% of the acreage occupied by Spineflower outside of existing conservation easements. This is erroneous as there is no substantial evidence to justify the use of mitigation for past impacts to mitigate the new impacts of the Project.

(DFG 860, 862). Thus, despite its “conservation” title, the SCP allows Newhall to obtain a permit from the CDFG under Fish and Game section 2081(b) to “take” or destroy spineflowers outside of these disparate established preserves. (DFG 791, 12). In connection with the issuance of the permit to take, CDFG concluded that the SCP would result in the loss of approximately 24% of the area occupied by the San Fernando Valley Spineflower. (DFG 238-40, 860-906).

The SCP provides for the establishment of seven “preserves” -- small parcels of land separated from one another by intervening development -- to offset this loss of natural habitat. (AR 862). These mitigation efforts are proposed as a way in which the San Fernando Valley Spineflower can be maintained or increased within the preserves and the native species within spineflower preserves can be maintained or enhanced. (AR 797-804). A number of subsidiary objectives are also included in the SCP, including limitations of access, installation of fencing and signage and ecological restoration within preserve areas and general management measures to respond to wildfires and mudslides within preserve areas. (AR 924-26, 931-34).

Petitioners object that there is a complete absence of substantial evidence in the record to support the viability of these preserves as mitigation measures. Without any basis upon which to conclude that the Spineflower will grow and prosper in these isolated “parcels” – the Respondent’s conclusion that the Newhall Ranch Project significant impacts on the endangered San Fernando Spineflower can be fully mitigated. The Spineflower has only recently been re-discovered. There is little known about it, including the conditions under which it grows and propagates. There is little known or understood about various threats to Spineflower survival, including pests and other invasive diseases.

In response, the CDFG and Newhall retort that they’ve “studied” the Spineflower and they are relying on “best evidence” to find that the preservation scheme proposed in this case fully mitigates the loss of existing resources as a result of the project. Cited as “substantial” or “best evidence” are the volumes of observations of the Spineflower conducted by a consultant for the developer. Spineflower populations were mapped annually each spring from 2002 to 2006 using GPS equipment. Existing conditions within and adjacent to Spineflower populations were noted. Spineflower “vigor” was assessed by measuring the diameter of plants. Soils in which Spineflowers grow were recorded and slopes were measured.

Despite the myriad of observations and “surveys,” there is little useful information regarding Spineflower habitat performed as a result of these “studies.”²⁵ In fact, attempts to correlate these observed conditions in order to understand Spineflower habitat were unavailing.²⁶ There was no

²⁵ As noted by the agency in 2007, the public needed assurances that the data gathering, analysis and recommendations provided to the Department ... are based upon objective, impartial expertise.” (AR 114949). The Court is not substituting its expertise for that of the respondent, nor is it making a judgment as to the quality of that information. Nor is it simply demanding that a different or another test be preformed. Rather, there is simply no information in the current record on critical questions that are essential to any proposal that includes in its title the “conservation” of the San Fernando Valley Spineflower. While “gaps” in the science may have to await further study, knowing why the plant grows where it does and whether it will survive under the proposed conservation plan is not fairly described as an informational “gap.”

²⁶ As reported in the relevant environmental reports, a habitat suitability index was developed in order to evaluate the entire study area and to identify and design Spineflower preserve areas within the study area. A habitat

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correlation found between ground cover and Spineflower density. There was no relationship between native plant cover and Spineflower density, other than where high shrubs abounded. Perhaps the problem, as identified in the Dudek 2006 study, was the lack of sufficient data. Nor do these observations *study* seed dispersion and seed banks or others aspect of Spineflower propagation.²⁷ As one CDFG scientist noted, the current plan had “[i]nadequate provisions for pollinators and seed dispersers.” (AR 117027). And, although voluminous, the vast majority of Spineflower “studies” in the record are nothing more than reports based on walking surveys of Spineflower territory – with no analysis of the meaning of the myriad of observations.²⁸

The record does include a handful of studies conducted on the Spineflowers in the Ahmanson Ranch area.²⁹ These studies included a soils analysis, an analysis of slope and Spineflower occurrence, and the effect of removing competing vegetation on the size and survivability of Spineflower. These studies, however, did not uncover how the Spineflower is pollinated. Studies conducted in 2002 showed that honeybees were effective pollinators, but that ants may be effective and the Spineflower may be capable of self-pollination. And, nothing is currently known about dispersal of Spineflower seeds. While the appearance of new Spineflower

suitability index was developed using the following datasets: vegetation, soils, geology, elevation, slope and aspect. Each of the six data layers was intersected with the Spineflower occurrence data to determine the number of Spineflower individuals within each individual attribute of each dataset. The results of this study, however, were inconclusive. Either the existing habitat data was not refined enough to inform scientists as to the actual habitat features that the Spineflower is suited to, or these aspects of habitat didn't influence where Spineflowers grow. In either event, the applicant and the Respondent failed to produce any data capable of predicting those areas in which the Spineflower would be able to thrive and endure.

²⁷ Two pollinator studies on the Spineflower were conducted – one at Ahmanson and one at Newhall, but the work undertaken at Newhall was incomplete. (AR 107171). According to one CDFG staff member: “More work was needed at [N]ewhall because it was done in 2004 and the year crapped out. They were not able to do much of the proposed work (ended up with only three small study sites) and Newhall has not invited them back.” (AR 117049). Thus, this information was not unavailable; it was made impossible because the applicant declined to provide the researchers with necessary access. For this reason, Respondent's reliance on Environmental Council of Sacramento v. City of Sacramento, 142 Cal. App. 4th 1018, 1082 (2006) is misplaced. This information was not unknowable nor was it unreasonable to expect that it be developed. Nor is this a case in which competing experts disagreed; this is a case in which experts were not afforded access necessary to allow the necessary science to be performed. The applicant's refusal to allow this research to go forward in advance of project approval kept substantial evidence out of this record; not the scientific “knowability” of these facts.

²⁸ As acknowledged in one such “study,” the survey was conducted on foot and took approximately one hour. All species encountered were identified and recorded. (AR 39444). As another former “consultant” for Newhall admitted to Respondent, the estimates provided in these surveys were “just a guess” and “not scientific.” (AR 116694). Not surprisingly, as admitted in the Spineflower Conservation Plan, “Many gaps remain in the understanding of the ecology of the Spineflower, making it difficult to prevent its extirpation and to design efficacious monitoring protocols.” (AR 800, 116780). While the agency now feels as if its being “punished” for its candor, quite the contrary is true. The agency is not being “punished” by being required to comply with the law.

²⁹ From 2000 until 2007, portions of the Specific Plan area were surveyed and populations of Spineflower were detected. (AR 817-820). From these observations, nothing much can be gleaned. For example, in the final Spineflower Conservation Plan, CDFG was still hypothesizing regarding the impact of climactic conditions on the Spineflower. (AR 821). And despite a pre-approval proposal from a third-party independent biologist to conduct a Spineflower habitat study, the applicant rejected a proposal to fund that study – electing instead to include it as part of the post-approval SCP management plan. (AR 122159).

populations at Laskey Mesa suggests the presence of a seed bank, no such research has been performed in the Project area.³⁰ Seed banks are critical to maintaining genetic diversity among isolated populations. And, key to biodiversity and preserving the Spineflower in the Project area is an understanding of how close together Spineflower populations must exist in order to propagate successfully.

Without empirical evidence upon which to rely, the agency adopted the applicant's proposal to "preserve" Spineflowers in discrete preserves located at different locations within the Specific Plan area.³¹ The claim that this is a viable mitigation strategy was made despite the fact that certain of the proposed Spineflower preserve areas contain additional habitat not known to be occupied by Spineflower.³² And, there was no substantial evidence by which to identify suitable habitat for the Spineflower, based on the unsatisfactory results of the habitat suitability index. The HIS "did not produce statistically suitable data. As a result, "an alternative method" of evaluating the applicant's proposed preserve areas was employed.

The "alternative method" employed was to simply draw margins around reported occurrences of natural Spineflowers, call them "preserves" and argue that if the surrounding habitat is suitable, Spineflower expansion can occur.³³ Without any underlying scientific understanding of the Spineflower, the applicant merely protected many of the areas in which Spineflower presently is

³⁰ Seed bank is stored seed material and exists in the soil of Newhall's properties. This seed bank will be destroyed or made unavailable as a result of development outside of the Spineflower preserves. (AR 937). There is nothing in the existing EIR to suggest that seed salvage from these areas is necessary, it is only an experimental aspect of the SCP. (AR 935). Newhall has no obligation to preserve seed bank material that will be destroyed with the development of the Newhall Ranch project.

³¹In addition to being separated from each other, 48 percent of the preserve acres are within 200 feet of development. (AR 117026, 118200, 120082). Some of the preserves have buffers of 80 to 100 feet. (AR 120082). This proximity to development provides little protection or buffer to the Spineflowers and reduces the viability of the preserves and the effectiveness of natural pollinators. Without adequate separation, the Spineflowers are vulnerable to Argentine ants, an invasive exotic species. (AR 120083, citing the Suarez study). A 300 foot buffer to protect the Spineflower from Argentine ants and other impacts was recommended by the CDFG's own expert. (AR 116682). Substantial evidence in the record does not support the current design of the Spineflower preserves. As one staff biologist warned, because of lack of connectivity to open space, three of the five preserves offered by the applicant would result in a loss of species and function over time. (AR 117026).

³² Even if you one can assume that the mitigation plan is supported by some substantial scientific evidence and there was a basis to conclude that some preserves would be sufficient to preserve the San Fernando Spineflower in this area, one of the proposed "preservation" areas is subject to ground clearing by its owner, Southern California Edison. The 27-acre Entrada Spineflower Preserve has a 175-foot-wide utility easement owned by Southern California Edison. And, although the total size of the easement is relatively small, in support of that easement Edison maintains dirt roads and conducts other maintenance activities that are wholly inconsistent with the preservation of any wildflower. Edison has taken the position that it will not abide any constraints on its activities within their existing easements. (AR 118215). For this reason, CDFG staff members recognized the impossibility of protecting or preserving Spineflowers within the Entrada preserve. "And if push comes to shove, those [spineflowers] cannot be permanently protected because public utilities can invoke a 1913 exception (give us ten days' notice and scrape them all off without permits or mitigation)." (Id.) As noted by the Respondent's own staff, "We probably can never fix the poor connectivity (utility corridor) leading to Entrada – unless Entrada is never built, which seems unlikely." (AR 117086). Despite the complete vulnerability of these Entrada preserve Spineflowers, the Respondent counts those acres to support its finding that the Spineflower "taking" was fully mitigated. (AR 931). The inclusion of such an illusory "preserve" is misleading and unsupported by substantial evidence.

found and asserted (without any substantial evidence in the record) that these locations provided a supportive habitat that would allow for the “long term persistence of Spineflower within the project study area.”³⁴ (AR 856, 974). And the agency counted on “[f]urther analysis” in order to ascertain “the spineflower’s physical and biological habitat requirements *at a finer scale*.”

The Court agrees with Petitioner -- the record in this case fails to contain substantial evidence upon which the findings of mitigation through existing Spineflower preserves can rest.³⁵

There is a valid question of law as to whether an on-site or off-site preservation scheme of the type proposed as partial mitigation in this case ever mitigates the impact of developing land on an endangered species.³⁶ Once a resource – particularly a wildflower as rare and endangered as the San Fernando Valley Spineflower -- is eliminated, the loss of that resource is not truly mitigated simply by the preservation of patches in controlled settings. That is particularly true in this case where, even with preservation, there is a substantial net loss of the resource. Only the creation or restoration of new Spineflower land can mitigate for the loss of existing wildflower habitat. And, given the nearly extinct status of the Spineflower and the limited likelihood of developing new habitat in which it would thrive, this option is arguably unavailable in this instance. Compare *Mira Mar Mobile Community v. City of Oceanside*, 119 Cal. App. 4th 477, (2004)(preservation of new coastal sage scrub may mitigate loss of habitat).

While there are many descriptions, there is no examination of the habitat and propagation of the San Fernando Valley Spineflower in this record. (AR 117049). Thus, there is no substantial evidence in the record to support the respondent’s hope that the identified preserves will afford a new habitat in which the Spineflower will be conserved. CDFG staff biologists complained that the preserves were not being designed using the “best evidence” regarding this rare plant.³⁷ Rather, staff biologists advised that given the lack of scientific information, the “best we can do with what we have now is argue for inclusion of more undisturbed natural habitats inside the preserves and hopefully the connectivity areas (which remain inadequate), more diversity of

³⁴ One aspect of the existing Spineflower habitat that was not replicated was the species’ current proximity to undeveloped open space. In the final SPC, the agency notes that while efforts will be taken to connect these preserves to open space areas, those “open spaces” include passive and active use parks and trails and, given that “[d]evelopment plans are not currently available for open areas,” there is no information regarding such uses adjacent to the proposed Spineflower preserves. (AR 860).

³⁵ For the same reasons that the Respondent has failed to comply with CEQA, the Spineflower Mitigation Plan and Incidental Take Permit (“ITP”) do not meet the requirements of CESA. CESA compels applicants to fully mitigate the take of threatened or endangered species. Where, as here, the proposed mitigation measures are unsupported by substantial evidence, they fail to meet the requirement in CESA that they be “roughly proportional in extent to the impact of the authorized taking on the species.” Fish & Game Code § 2081(b)(2).

³⁶ Part of the Spineflower ITP requires the creation of an “endowment” to fund management of the only other Spineflower occurrence at upper Las Virgenes Canyon in perpetuity. (DFG 655-56).

³⁷ To the extent that there was some effort at obtaining scientific evidence regarding Spineflower by the CDFG staff, it has been largely ignored. For example, CDFG staff (at least in the earliest stages of this analysis) advocated that large buffers of a couple of hundred feet were necessary to protect native Spineflowers from invasions by Argentine ants and other development-related threats. Current buffers set forth in the Final EIR ignore this recommendation. (AR 120087).

species and micro-habitats – this is what will likely provide the best chance for pollinator and possible dispersal agents to access the sites.” (AR 117049).

It is no defense for the CDFG to assert that no one knows anything about the Spineflower, so we don't have to do anything more. The department's own staff acknowledged that “best available information” did not support the plan that the agency finally agreed to.³⁸ CEQA requires a lead agency to use its best efforts to find out and disclose all it *reasonably* can. That includes listening to staff concerns and using staff expertise to inform an assessment of the impacts of the proposed project. And, while the law does not require that *every* recommended test be performed, *some* must be. Compare Laurel Heights II, *supra*, 6 Cal. 4th at 1123. For example, a habitat characterization study was requested in 2010, but remained unfunded by the applicant. (DFG 122159). See Laurel Heights I, *supra*, 47 Cal. 3d at 392 (EIR is an “alarm bell whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”)

Nor can it be fairly argued, as does the CDFG, that it doesn't need to understand propagation and seed dispersion as it is not trying to colonize unoccupied habitat with Spineflower seeds or seedlings. While the existing plants will survive for some period, a mitigation strategy will not preserve the species unless these preserves have been created in a way that allows Spineflowers to propagate. Without knowing what conditions are required for that occurrence – including how isolated preserves can be without eliminating critical biodiversity -- the Respondent is simply taking a shot in the dark and hoping it all works out for the best. (AR 120086). As one of the Respondent's scientist warned in an e-mail -- “Preserves surrounded by development will become zoos and we will watch species blink out and these areas will likely degrade based upon the best available information we have on habitat fragments, isolation, etc.”³⁹ (AR 116673).

The CDFG's boast that the outcome could have been so much worse is not an adequate response to a challenge to the evidentiary sufficiency of the Final SCP. (See CDFG's Opposition at 19)(noting that the final product increased preserves from the amount originally proposed by

³⁸ As one CDFG biologist admitted: “Example: around 50 % of the acreage in the applicants' proposed Airport Mesa Preserve (that would be in Mission Village) is either grubbed, terraced or ag fields. Shrubs were scraped off on the grubbed areas and likely are going to recover very slowly, if ever. The terraced area is likely very ruderal. Ag fields have no habitat [for Spineflower] at all. The relatively natural remaining habitats are fragmented by the existing disturbances and roadway, and not located in the preserve's interior – which is small (habitat more than 300 feet from the edge). So, the effective preserve size for pollinators who likely need more than one just Spineflower and grasses is quite small. The whole preserve is supposedly 45 acres – interior habitat is more like 8 acres – and almost none of that isn't grubbed or terraced. . . . We've suggested therefore adding more intact habitat in the west – which likely supports pollinators needs -- but even that area would all be downslope of massive development – I do not know how to deal with that – yet.” (AR 117049). Some small measure of these recommendations were taken into account in the final SPC, but the absence of substantial evidence underlying the Spineflower Preserve mitigation strategy was not cured.

³⁹ As one CDFG biologist noted, “Newhall's eyes are on the prize at all times. Constant strategic thinking. I[n] contrast, we [CDFG] react. Its inherent in our overworked/burnt out/overwhelmed condition. But, I think that WE MUST CLEARLY DECIDE WHAT WE REALLY WANT . . . and then do everything we can to get there.” (AR 117023). As that same staff member warned, if [CDFG] takes a short cut at this pivotal time and concurs with the proposed project, (1) the development will be “highly impactful to sensitive resources . . . (2) we will be sued; and (3) we will be in a very weak position to defend our CEQA documents and permits.” (AR 117009).

Newhall Land). Nor is enough to say that a number of small preserves reduces the possibility of a catastrophic event affecting all of the preserves when, as in this case, there is nothing in the record to support the claim that the current area of Spineflower habitat is more vulnerable than the restrictive acreage under the SCP.

Nor is the promise of future research a sufficient remedy to this problem. Although the ITP requires the applicant to conduct “a breeding and pollination study, as well as a population genetics study, to document the genetic diversity of the Newhall Ranch spineflower population” and to conduct a “habitat characterization study,” CEQA does not permit a project’s analysis of significant environmental effects to be deferred like this -- after project approval. See Stanislaus Natural Heritage Project v. County of Stanislaus, 48 Cal. App. 4th 182, 206 (1996).⁴⁰ While an agency can rely on a mitigation measure that defers some amount of environmental problem solving until after project approval, it cannot do so without first establishing that full mitigation can be achieved in the manner described in the EIR. Riverwatch v. County of San Diego, 76 Cal. App. 4th 1428, 1447 (1999). Without even a rudimentary understanding of the habitat of the Spineflower, its genetic diversity and the manner in which it breeds and pollinates, there is no substantial evidence in the record that full mitigation can be achieved by establishing the proposed seven Spineflower preserves.

Finally, the ongoing monitoring and management plan does not assure that the Spineflower preserves will thrive. While the EIR calls for “active management activities” if there is a downward population decline in the Preserve areas, there is no scientific basis upon which the agency could assess the ecological factor(s) that are responsible for the decline. And, the promise of a future study by a “qualified botanist/biologist” to complete a study of breeding and pollination biology of the Spineflower – including seed physiology – shows the gross lack of critical information regarding the sustainability of these preserves. Without information as to the basic ways in which these plants germinate, it is folly to assert that the preserves proposed by CDFG will ensure the survival of this endangered species.

As the mitigation strategy proposed for the San Fernando Spineflower is unsupported by any substantial evidence in the record, it fails to comply with CEQA.

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⁴⁰CDFG’s effort to distinguish Stanislaus from the facts presented here is unavailing. In Stanislaus, the County approved an EIR for a 25 year project when water for the project had not been assured beyond the first five years. It did so even though it did not know the source that would be used in the future or the substantial environmental effects that might be expected when that future water source was identified. In this case there is the same lack of information regarding the critical environmental consequences of a proposal – in this case, a mitigation measure. As in Stanislaus, when an agency approves a project under a cloud of uncertainty, the fundamental purpose of the EIR as an informational document intended to inform the public and responsible officials of the environmental consequences of their decision before they are made is defeated. No one reading the SCP or the EIR in this case can possibly know whether the proposed Project will extinguish one half of the remaining habitat of the endangered Spineflower. Such an EIR fails to protect not only the environment, but also informed self-government. Laurel Heights II, supra, 6 Cal. 4th at 1123. While CEQA does not guarantee that the choice here would be to preserve that endangered species, the decision not to do so should be considered before, not after, that decision is made.

c. The EIR's Assessment of the Project's Greenhouse Gas Emissions.

Petitioners also challenge the baseline used in order to analyze the cumulative impact of greenhouse gas emissions associated with the project. Under CEQA, cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The Guidelines define the "cumulative impact from several projects" as the "change in the environment which results from the incremental impact of the project when added to "other closely related past, present, and reasonably foreseeable probable future projects."

The EIR is required to discuss the cumulative impacts of a project when "the project's incremental effect is cumulatively considerable. The discussion should be guided by standards of practicality and reasonableness, but several elements are necessary. These necessary elements include a list of past, present and probable future projects producing related or cumulative impacts, including those projects outside the control of the agency, or a summary of projections contained in an adopted general plan or related planning document which evaluates regional or area-wide conditions contributing to the cumulative impact. "Any such planning document shall be referenced and made available to the public at a location specified by the lead agency."

When looking at greenhouse gas emissions and asking whether the project may result in a significant cumulative contribution to climate change, a lead agency must consider the "extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting." Guidelines § 15064.4(b)(1). This baseline must focus on impacts to the existing environment, not hypothetical situations. County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 955 (1999).

As the Supreme Court has observed, "A long line of Court of Appeal decisions holds, in similar terms, that the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework."

Communities for a Better Environment v. South Coast Air Quality Management Dist., 48 Cal. 4th 310, 320-321 (2010).

Similarly, the Guidelines direct that the lead agency "normally" use a measure of physical conditions at the time a notice of preparation is published or when the environmental analysis is commenced. Id. at 327. According to CEQA Guidelines § 15125, subdivision (a), "an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time that the notice of preparation is published" This environmental setting will "normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant."

In the context of global climate change analysis, lead agencies shall also consider "the extent to which the project may increase or reduce [greenhouse gas] emissions as compared to the *existing* environmental setting." CEQA Guidelines § 15064.4, subdivision (b)(1)(emphasis added). It is

only against this baseline that any significant environmental effects can be determined. County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 955 (1999).

“[T]he relevant issue to be addressed in an EIR is not the relative amount of impact resulting from a proposed project when compared to existing environmental problems caused by past projects, but rather (whether the additional impact associated with the project) should be considered significant in light of the serious nature of existing problems.”

City of Long Beach v. Los Angeles Unified School District, 176 Cal. App. 4th 889, 905-906 (2009).

Petitioners assert that the EIR’s analytic approach impermissibly ignored the serious nature of existing problems regarding greenhouse gases and, instead, used an unrealistic future hypothetical scenario in making the determination of whether the Project’s emissions were significant. (Plaintiffs’ Consolidated Reply at 28). This, they contend, is error. See Sunnyvale West Neighborhood Assn. v. City of Sunnyvale, 190 Cal. App. 4th 1379, 1380 (2010).

Respondent challenges that charge and asserts that CEQA does not dictate that all significance determinations be assessed using existing environmental conditions as a baseline. Instead, CDFG asserts that CEQA allows the environmental impacts of a project to be evaluated using realistic measures of environmental effects for a long-term project, even if those estimates are admittedly hypothetical at the present. See Neighbors for Smart Rail v. Exposition Metroline Construction, 205 Cal. App. 4th 552, 570 (2012)(*petition for review granted August 8, 2012*). So long as the “hypothetical” measure is a realistic one, it can constitute substantial evidence of a baseline sufficient to measure the impact of a project over a “no build” alternative.⁴¹ Id. Compare CBE, *supra*, 48 Cal. 4th at 322 (NO_x emissions estimates not realistic).

To assess the Petitioners contention requires an understanding of the hypothetical measure used in this case as the baseline for the analysis of the cumulative effect of greenhouse gases associated with this project. In this EIR, CDFG evaluated the potential direct, indirect and secondary global climate change impacts resulting from the Project and proposed alternatives by simply amassing a quantitative emissions category and then considering whether the addition of this proposed Project impedes the achievement of mandates set forth in California’s greenhouse gas emissions legislation. So long as the additional greenhouses gasses generated from this Project do not impede compliance with a new regulatory scheme, the impacts are deemed to be not significant.

⁴¹ As a petition for review has been granted, *Smart Rail* has been de-published and is no longer citable. However, even if it were controlling authority, that case cannot be read as a universal endorsement of the use of an AB 32 hypothetical baseline for an analysis of significant greenhouse gas impacts. The facts presented here are distinguishable from the environmental analysis in that decision. The Project in this case uses a baseline that is distinct from the project future condition used in *Smart Rail*. In that latter decision, the projected conditions relied on traffic improvements that had been committed to and official demographic data. In that case, the reliability of the projections and inevitability of the changes on which those projections were based was considered and found to allow informed decision-making. In this case, however, the projected conditions employed are not supported by substantial evidence. In fact, Respondent bemoans the absence of any such “scientific or regulatory consensus.”

Whether or not a proper baseline determination has been proffered by the expert is not a question of “substantial evidence.” Rather, the question presented here is whether the Respondent’s analysis has proceeded in a manner required by law by using a realistic measure of the impact of the current project on the environment. Thus, the standard of review on the propriety of the baseline methodology employed is *de novo*.

To estimate the greenhouse emissions from the Newhall Ranch project, the CDFG used a number of models and other resources to estimate project-related greenhouse emissions. CDFG then looked at Assembly Bill 32, which mandated that the California Air Resources Board (“CARB”) determine the amount of statewide greenhouse gas emissions in 1990, and set the 2020 limit equivalent to that level. In that regard, CARB determined that the 1990 greenhouse gas emissions level (and the 2020 cap) was 427 million tons of carbon dioxide. Such a target necessitated a reduction of 174 million tons of carbon dioxide by 2020. Consistent with that goal, CARB estimated that it would be able to achieve this goal through a number of measures, including anti-idling measures and implementation of tail-pipe emissions standards.⁴²

At the time of this EIR, CARB had also begun to obtain recommendations regarding the appropriate significance criteria to use in environmental documentation prepared pursuant to CEQA. It had not, however, recommended the use of Assembly Bill 32’s goals as a basis upon which to evaluate whether the project had significant climate change impacts.

CDFG’s consultant, ENVIRON, identified, quantified and disclosed existing greenhouse gas emissions in the Project area as compared those to projected post-Project emissions. (DFG 7674, 7702, 26377-82). According to the EIR, existing site activities produce 10,272 metric tons of carbon dioxide equivalents per year. (DFG 7705). After this massive new housing project is completed, ENVIRON estimated that the Project that will produce 269,000 metric tons of carbon dioxide equivalents per year. (Id.) Rather than a “no change” situation, the Project under consideration here results in a net increase of approximately 250,000 metric tons of carbon dioxide equivalents per year.⁴³ (Id.)

But, a magnitude change of this size did not support a finding that the project would have a significant climate change impact. Instead, the agency asked whether this numeric increase would impede the State of California’s compliance with AB 32’s emissions mandate. If the legislature’s mandate could be reached, then it could be concluded that the Project would not significantly affect the environment.⁴⁴ This “significance determination” is based on the

⁴² Regulatory emphasis on tail-pipe emissions is understandable given the fact that transportation accounts for 40 percent of California’s greenhouse gasses.

⁴³ The estimates provided used by ENVIRON were those associated with Projective Alternative 2. The Project ultimately adopted by CDFG was “more akin” to Alternative 3, but not exactly.

⁴⁴ Specifically, ENVIRON took the hypothetical “business as usual (BAU)” emission estimate that was created by the California Air Resources Board (CARB) to measure *statewide* compliance with the legislative goal of AB 32 and applied it to conclude that the Newhall Ranch Project would not create significant environmental impacts from its 20-fold increase in greenhouse gas emissions.

unsubstantiated assumption that new development that is 29% below “business as usual” (or “BAU”) is consistent with California’s near-term emissions reduction objectives, and therefore, would not result in a cumulatively considerable environmental impact on global warming.⁴⁵

It is this second step that Petitioners contend is contrary to the Guidelines and to CEQA. The Court agrees. While lead agencies are generally afforded discretion when determining the significance of impacts, the use of an improper baseline interferes with the EIRs ability to assess the impacts of a proposed project. In cases in which a project is being proposed for undeveloped pieces of property (such as in this case), the baseline has been existing environments, rather than some hypothetical impacted future environment that might occur without the project. See, e.g., Environmental Planning and Information Council v. County of El Dorado, 131 Cal. App. 3d 350, 352 (1982); County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 952 (1999).

The question to be answered in an EIR is not whether this project will result in non-compliance with a state-wide legislative objective, but rather whether the project will have adverse environmental effects and whether those impacts can be avoided or substantially lessened by way of feasible mitigation. A baseline analysis of impacts on the existing environment, therefore, is required to inform decision-makers of the magnitude (or significance) of the cumulative environmental impact Newhall Ranch Project on greenhouse gas emissions. Whether such a project would assist or defeat (or, more likely, have no effect on) the state’s efforts at reducing these levels is not the proper question.

In contravention of CEQA, the EIR presumes, without any substantial evidence in the record to support the claim, that because the Scoping Plan states that California’s overall emissions must be reduced to 29% below “business as usual” to meet legislative targets, that new developments (such as this one) need only reduce greenhouse gasses to 29% below “business as usual” to fully mitigate its impacts under CEQA.⁴⁶ In fact, given that opportunities for reducing emissions from the already built environment present greater challenges, there is no legitimate basis upon which to presume that expectations for minimizing emissions from new developments should be greater. In fact, as recognized by the Attorney General, “new development must be more GHG-efficient than this average, given past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit.” (AR 12225).

As the EIR acknowledges, CARB is already fully engaged in a multi-front effort, including regulation of tail-pipe emissions from the largest single source of greenhouse gases, in order to achieve these 2020 goals. The 29% below “business as usual threshold” adopted by Respondent

⁴⁵ The EIR’s claim that AB 32 is a relevant reduction mandate in the CEQA context is based on a quotation that says no such thing. (AR 20340). The quotation states only that new provisions to CEQA ought to be enacted to encourage “developers to submit applications and local governments to make land use decisions” that will help the state achieve its climate goals under AB 32”) Given that the land use decision made by the local government in this instance occurred years before the passage of AB 32, that goal certainly did not inform any aspect of the decision made by Los Angeles County in this case.

⁴⁶ As noted in Rialto Citizens for Responsible Growth v. City of Rialto, 208 Cal. App. 4th 899, 939-40 (2012), “Assembly Bill 32 did not provide thresholds or methodologies for analyzing a project’s impacts on global climate change.”) Nor are there appellate decisions expressly approving the use of AB 32’s thresholds to assess environmental significance.

as a significance threshold will be largely achieved through compliance with existing and anticipated regulatory requirements. Thus, the 31% below “business as usual” conditions promised by this Project – in effect – awards emission reduction “points” to the applicant for mitigation already required by local or state law. (AR 122807).

In addition, the “methodology” employed in this case did not even use the entire mandate under CARB’s implementation of AB 32 to assess environmental significance. Rather, the agency “cherry picked” CARB’s thresholds. There are two different aspects of the CARB greenhouse gas targets in its plan. Not only does CARB propose a 30 percent reduction of the state’s BAU’s projected emissions in 2020, but it also proposes a ten percent reduction from *actual* 2002-2004 average emissions. Using the “actual” 2002-2004 greenhouse gas level as a “baseline” – which CARB also proposes using as a measure of compliance with AB 32 -- the Project would be environmentally significant as it fails to meet AB 32’s requirement of decreasing greenhouse gases from 2002-2004 levels by 10 percent.

Ironically, using a BAU measure of statewide greenhouse emissions to measure CEQA significance will defeat the very goal of AB 32. By partially importing a regulatory measure intended to address a legislative mandate and using it as a measure of significance in an EIR approval process, project planners are making the achievement of AB 32’s mandates more difficult. New developments of the type under consideration here must actually reduce greenhouse gas emissions from the business as usual baseline in order to allow “past and current sources of emissions,” which are substantially less efficient than this Project pre-development, to continue to exist and emit. (DFG 122806, 121707, 122806-07).

Admittedly, the absence of federal guidance and the paucity of legal decisions on the subject of how to appropriately measure greenhouse gas effects render the task of the lead agency particularly problematic. And, into this uncertainty, the law does afford the agency some reasonable discretion. The agency’s discretion, however, is bounded by the underlying rationale of CEQA – to provide decision-makers with a fair and accurate environmental analysis of a proposed project. It is no answer to say, as did CDFG, that our expert provided this analysis and his “expert opinion” constitutes substantial evidence. Here, the agency adopted an expert’s opinion predicated on one aspect of CARB’s hypothetical baseline without requiring that expert to investigate and verify the assumptions upon which the baseline generated. Where, as here, the expert’s analysis of environmental significance is not “adequately supported by facts and analysis contained in the EIR,” it is inadequate as a matter of law. Communities for a Better Environment v. City of Richmond, 184 Cal. App. 4th 70, 83 (2010).

As time has progressed, there has emerged greater consensus in the State of California regarding how global climate change should be analyzed and which significance criteria ought to be used.⁴⁷

⁴⁷ Under an analysis by the California Air Pollution Control Officer’s Association, the only two standards that they believe to be effective in reducing emissions and highly consistent with AB 32 are a threshold of zero, or a quantitative threshold designed to capture 90 percent or more of likely future discretionary projects. A 40,000 to 50,000 ton project would have low consistency with AB 32. The project in this case would result in well over 300,000 tons of greenhouse gas emissions. (AR 120044).

In further proceedings in this case, that growing guidance will assist decision makers in the evaluation of greenhouse gas emissions from this proposed Project.

d. The EIR's Assessment of the Project's Impact on Native American Cultural Resources Is Not Supported by Substantial Evidence.

Cultural resources, both historic and prehistoric, are known to exist on the Project site and in the surrounding areas. Under CEQA, the lead agency must determine if these are either significant resources or a unique archeological resource, and if so, whether impacts to that resource are significant. Under CEQA, a project may have a significant effect on the environment if it may cause a "substantial adverse change in the significance of an historical resource." Under CEQA, an EIR must also evaluate any impacts on unique archeological resources.

The Upper Santa Clara River Valley region, including the present-day site of the Newhall Ranch project, was occupied by an ethnolinguistic group known as the Tataviam. The Tataviam people are thought to have inhabited the upper Santa Clara River drainage from about Piru eastward to just beyond Vasquez Rocks/Agua Dulce, and southward as far as the crests of the San Gabriel and Santa Suzanna Mountains. (DFG 6663). The Tataviam were hunter gatherers with subsistence emphasizing yucca, acorns, juniper berries, sage seeds and islay. They also hunted small game and larger game, such as deer and rabbit.

During the historic period, Tataviam villages existed near modern Piru and San Francisquito, near Newhall, in Elizabeth Lake and Near Castaic Junction. (Id.) A mixed Tataviam/Chumash population lived near modern Rancho Camulos. (Id.)

In general terms, the prehistory of the Upper Santa Clara River appears to parallel that of the Southern California coastal region. The earliest evidence of human habitation dated from about 7,000 to 7,000 years before present.

With regards to the Specific Plan area, the EIR asserts that it "was found to have a very low density of archeological remains." That claim is predicated on a survey conducted in 1993 and 1994 and a search of archival records in 1995.⁴⁸ The survey entailed walking over the surface of the land at 15 to 20 meter intervals and looking for archeological "sties or isolates." While occasionally cut banks allowed a sub-surface examination to be made, little information was obtained. A similar survey was re-conducted in 2004. Once again, nothing much was found. That is not surprising given the passage of hundreds of years, the accumulation of soils and

⁴⁸ That search of records – claimed to be substantial evidence to support the expert's opinion – established that the Tataviam tribe was extinct. Adopting that conclusion, W & S opined that the Tataviam Tribe was extinct. W & S later apologized in 2007 when it discovered that the Tataviam tribe was not extinct. Obviously, literary searches that are established by their results to be grossly inaccurate do not constitute substantial evidence upon which experts reasonably rely. Not surprisingly, this same consultant found that Chumash people did not occupy the Specific Plan area, despite a 2002 ethnographic history showing intermarriage and co-occupation of this territory by members of the Chumash and Tataviam tribes. (AR 10527). Peer review, without more, does not transform less than substantial evidence into substantial evidence.

sediment, particularly after the San Francisquito Dam disaster in 1928 inundated the valley and its environs, and the use of the land for activities such as grazing.⁴⁹

To get below the surface and examine likely locations of archeological remains, the applicant's consultants excavated eight sites in the Specific Plan area in September 2004. With regard to CA-LAN 2233, 13 test pits were excavated. Middle period deposits at that site extended to a depth of 55 inches. (AR 114413). Two sites, CA-LAN-2133 and -2233 were deemed eligible for listing in the National Register of Historic Places as likely to yield information important in prehistory or history.⁵⁰ Other excavations were conducted, but these sites were deemed ineligible for NRHP and were not found to constitute unique archeological resources.⁵¹ There was no attempt by the applicant's expert to perform random test pit sampling or to engage in any other inquiry to ascertain the scope or breadth of tribal occupation in the Specific Plan area.

In 1996, Caltrans began a widening project on SR-126, which runs through the Specific Plan area. The road crew discovered a large number of human remains. An independent archeological team from Caltrans commenced excavations of the area. A total of 45 burials were recovered during these excavation sessions. These discoveries triggered a far more extensive excavation of the area previously explored by the applicant's expert.

The investigation undertaken by the Caltrans archeologists uncovered far more extensive complexes at the excavated sites, including both habitation and cemetery areas. As with the records search, it appears that the applicant's expert's archeological excavations were inaccurate, incomplete and partial. The cemetery areas discovered by Caltrans dated back to 2,000 to 1,640 radiocarbon years BP. At the burial sites, Caltrans archeologists unearthed patterned internments that may indicate kin relationships. A limited number of artifacts were located along with the burials, including stone tools, coiled basket remnants, bone tools and shell beads. The data collected suggest that residence at the complex went on for several hundred years. And, DNA analysis supports the conclusion that the occupants were dissimilar to coastal inhabitants. It is assumed that this settlement was occupied by ancestral Tataviam.

And, beneath the cemetery was a second component of even earlier occupation in the Millingstone era. This component was not discovered by the applicant's consultant. The Millingstone component of the site included traditional features of milling pieces and stone implements in addition to bone tools.

⁴⁹ The survey did identify *historical* sites on the Specific Plan site and adjacent thereto. On site are historic remains of an 1839 rancho, the Rancho San Francisco, which is listed as a California Historical Landmark. This site is not included in the development plan and the land has been donated to the Archeological Conservancy.

⁵⁰ CA LAN 2133 had already been identified during a survey related to a pipeline project. (AR 114408).

⁵¹ While Petitioners have complained that the EIR fails to provide specific information regarding the location of Native American cultural sites, that omission is not the basis upon which the Court finds that the W & S studies fail to provide substantial evidence to support the claim that the Specific Plan area was not densely occupied by native peoples. While an EIR must disclose "all that it reasonably can," the disclosure of ancient cultural sites is not reasonable. As a general practice, archeological reports are not included in environmental documents because their publication would expose discovered resources from unauthorized exploration or vandalism. Additional access, however, may have been provided upon request by any interested individuals, had it been requested. Nothing more is required under CEQA.

As noted by the Caltrans archeologists, this site provided unique and valuable insights into a temporal and functional mode of a prehistoric community in the Santa Clara Valley, an area in which there has been scant knowledge prehistory. The Millingstone component had not previously been encountered in the Santa Clara River valley to date and demonstrated an important aspect of a widespread tradition that extended from the coast to the inland valleys. The critical and important discovery of the Millingstone component was missed entirely by the limited test pit excavations conducted by the applicant's consultant. Such incomplete and inadequate archeological evidence does not constitute substantial evidence sufficient to support the findings upon which the decision-makers relied.

As presently proposed, CA-LAN -2233 is located in the "Homestead" portion of the Specific Plan site. The tract map proposes that the area be developed as a park, with "burial-in-place treatment of the archeological site. However, this treatment may no longer be feasible in the future. Accordingly, the EIR proposes that a "data recovery project" be implemented at this site in order to "collect and preserve" the scientific information contained therein. (AR 14418, 114431).

As temporal as the "burial in place" mitigation is for CA-LAN 2233, there are no protection-in-place strategy for CA-LAN -2133.⁵² (AR114431). That unique archeological resource is located in a portion of the Specific Plan that has an "Open Area" land use designation, with preliminary development plans indicating that a new road would be constructed in the vicinity of the site. This planned road construction may disturb and damage this resource and would cause substantial adverse changes to the integrity and significance of the resources – thus rendering the "planned avoidance treatment" noted in the EIR as wholly impracticable. Nonetheless, the only mitigation measure required if "preservation in place" of the site is not feasible is to excavate "a statistically valid sample" and to process, analyze and curate recovered artifacts. In addition, if human remains are exhumed, the coroner is called and excavation is postponed until the remains are reburied.

The EIR's proposed mitigation efforts fail to comply with CEQA's preferred method of mitigation and fail to explain why roads or other project improvements cannot be designed so as to not interfere with this unique archeological site or native burial grounds.⁵³ See, e.g., Madera

⁵² While the particular land use decisions regarding these locations will ultimately be refined during the tract map process of the project in the future, that fact does not entitle the Respondent to fail to mitigate presently known significant impacts on cultural resources. The failure to do so in this case constitutes a failure to proceed in a manner required by law.

⁵³ Petitioners asserted this claim in their opening brief and complained that the EIR failed to identify the basis for selecting a particular mitigation measure and failed to state whether a greater degree of mitigation could be achieved by implementing one method of preservation in place over another. They did not wait until the Reply brief to argue that the EIR violated CEQA's procedural requirements by failing to analyze and select preservation in place mitigation measures for the cultural resources affected by the project. Respondent's sur-rebuttal brief, therefore, was unnecessary. And, it was not necessary to direct the court's attention to the recent decision Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, 204 Cal. App. 4th 1480 (2012). The Court was already aware of that decision. And, since the date of the sur-reply, that decision has been de-published as a petition for review has been granted by the Supreme Court.

Oversight Coalition v. County of Madera, 199 Cal. App. 4th 48, 85, 87 (2011); Ballona Wetlands Land Trust v. City of Los Angeles, 201 Cal. App. 4th 455, 469 (2011).

Moreover, the EIR's analysis of mitigation strategies for yet undetected cultural resources is vague and non-specific – due to its assumption that the Specific Plan area is largely devoid of unique cultural resources. Visual surveys of the ground, literary reviews conducted by the applicant's consultant in this case and limited excavations guided not by random selection but instead by expected outcomes do not constitute substantial evidence that this Project area was largely unoccupied.

The Caltrans discovery of extensive and "rich" cultural resources within the confines of the Project area demanded further scientific analysis be performed in order to provide a reasonable and good faith assessment of the archeological character of the Specific Plan area. Rather than engage in that necessary inquiry, the applicant performed yet another pointless (and not surprisingly) inconclusive surface survey. The applicant's failure to engage in sufficient and reasonably diligent examination of the project area results in a record wholly lacking in substantial evidence regarding the baseline of cultural resources likely to be impacted by the Newhall Ranch project and subsequent build-out of the Specific Plan.

Given that there is no substantial evidence upon which to conclude that the Specific Plan area is not one in which there are significant and unique archeological resources present, there is no factual basis upon which to know whether the impact of the Project on these unknown resources can be adequately mitigated using the proposed measures (including monitoring and planned contingencies for unanticipated discoveries). Unless and until there is substantial evidence in the record to support the assertion that the Specific Plan area has a very low density of significant or unique archeological remains, no effective mitigation strategy can be proposed.⁵⁴ Moreover, the mitigation measures for those sites known to contain unique resources do not evidence any preference for preserving the artifacts and sites in place. Rather, each of the proposed measures calls for the eventual excavation and recovery of artifacts and human remains.⁵⁵

It is no defense to assert, as does Respondent, that the Tataviam tribe has agreed to support the Project. (AR 47125-47128). While theoretically the Native Americans whose ancestral ties would make them the most likely to oppose an EIR that fails to adduce sufficient substantial evidence in which to make a full and reasoned analysis assessment of the Project's impact on cultural resources, they are not indispensable parties to this challenge. And, Chumash tribal members, whose ancestors may also be buried at sites in the Specific Plan area, have lodged significant objections to the Project.

⁵⁴ According to this oral history, the entire Newhall Ranch Project area was occupied by Tataviam and Chumash tribal members. This information was provided on August 3, 2010, during the public comment period on the final EIR. The EIR's response to this information was to stand on the conclusion reached by its own expert based on a conclusion reached before significant new discoveries were made by Caltrans archeologists. Ignoring competent contrary evidence suggesting extensive and long-lasting occupation on Project lands does not constitute "accepted standards of practice."

⁵⁵ Petitioners also object that the EIR failed to consider Project's impact on the California Condor and, collaterally, cultural practices involving the Condor. That claim is discussed *infra*.

Nor can a full understanding of the magnitude and quality of the cultural resources lying just beneath the surface of the Specific Plan area be postponed until a later time. (AR 9141). Without a correct baseline of cultural resources at the Project site which is supported by substantial evidence, it cannot be concluded that this proposed project will not have significant impacts or that those impacts cannot be avoided or otherwise specifically mitigated.

6. The 2008 Bankruptcy and Statement of Overriding Considerations

As part of the objections to the Project's purposes and analysis of the feasibility of alternatives, Petitioners object that the Final EIR fails to contain substantial evidence supporting the Respondent's contention that the current applicant has the financial resources necessary to ensure the implementation of the proposed Project or to ensure that the proposed mitigation strategies will be fully implemented. Petitioners also object that the statement of overriding considerations put forth by Respondent is without support by substantial evidence in the record.

A consideration each one of those challenges will be discussed separately:

The recent history of this particular project is described in a newspaper article in the record as the "poster child for the housing crash." (AR 13667). LandSource Communities Development, Inc. held a portfolio of properties, but its "crown jewel" was the vast tract of land under consideration in this application. In 2008, LandSource filed for bankruptcy protection when its increasingly worthless portfolio could no longer support the debt it had accrued.

In early June 2009, Barclay's Bank LLC, for itself and other banks and financial institutions, proposed an amended joint chapter 11 plan for reorganization of LandSource.⁵⁶ On July 20, 2009, the Bankruptcy Court entered an order confirming the plan. Under the reorganization plan, LandSource emerged as Newhall Land Development LLC.

Based on the information disclosed as part of the reorganization plan (but otherwise unexplored by Respondent), Newhall Land Development LLC has working capital of more than \$ 90 million and "it will have additional resources and financial flexibility necessary to focus on planning and developing the Newhall Ranch Specific Plan and the remainder of the Valencia community." Based again on the bankruptcy documents, Newhall Land Development LLC is "backed" by a group of "investment funds" and will be managed by Emile Haddad, the CEO of Five Point Communities Management, Inc., the newly formed management company jointly owned by Mr. Haddad and Lennar. Haddad recently resigned as Lennar's Chief Investment Officer to assume his new position at Five Point.

Respondent's confidence in Lennar as the lynchpin of the Project's financial is inexplicable, particularly in light of the allegations contained in a number of actions filed in the Bankruptcy court. In one, it is alleged that Lennar, as a co-owner of LandSource, knew that LandSource was insolvent and knew that LandSource would incur debts beyond its ability to pay. Lennar is

⁵⁶ Barclay's also alleged that it was misled by the 2006 appraisals on the property conducted by CB Richard Ellis, Inc. (AR 10357).

alleged to have known that the 2006 appraisals overstated the value of LandSource's properties and that LandSource's assets were grossly inflated. Nevertheless, Lennar is alleged to have promoted the 2007 re-capitalization of LandSource (which gave Lennar over \$700 million in distributions). And, when LandSource required additional capital shortly thereafter, Lennar walked away from the option agreements and purchase contracts upon which those recapitalization agreements rested. In short, it is alleged that LandSource painted a fraudulent picture of its corporate health in order to induce an equity payout to Lennar under the guise of a recapitalization." (AR 10400). Respondent's expectation that Lennar will come to Newhall Ranch's rescue in the future to fund the mitigation measures identified in the EIR is unsupported by any substantial evidence in the record.

Equally puzzling is Respondent's confidence in "financial security requirements" to ensure that the proposed Project and identified mitigation measures, if adopted, are implemented, enforced and monitored. (AR 18736). There is no detail provided regarding the nature and/or magnitude of those "financial security requirements" other than requirements that Newhall land, or its designee, "post bonds or other CDFG-approved financial assurance mechanisms."⁵⁷ Without any idea of what the applicant would have to provide – much less its current ability to post such bonds or an "CDFG-approved financial assurance mechanism" – the Respondent's response to the applicant's dramatic change of fortune is legally inadequate.⁵⁸

In addition to the inadequacy of the Respondent's response to the bankruptcy of the LandSource in 2008 and the vague assumption that Newhall Land Development LLC has the financial capacity to undertake the vast number of obligations inherent in this Project, the Final EIR also fails to provide any substantial evidence to support the statement of overriding considerations contained in the Final EIR. A "statement of overriding considerations" must be supported by substantial evidence in the record. Koster v. county of San Joaquin, 47 Cal. App. 4th 29, 32 (1996).

In this case, the Statement of Overriding Considerations incorporated specifically "Los Angeles County Specific Plan Benefits." In so doing, the Respondent noted that "the northern Los Angeles County region has experienced and continues to experience significant growth resulting in a high demand for housing and jobs, and the overall need for large-scale non-residential and commercial development to accommodate approved and planned growth in the region." While identical to the claims supporting the adoption of the Specific Plan in 2003, there is no substantial evidence to support a claim of unmet regional demand for housing or commercial space. In fact, Census Bureau information submitted to the Respondent shows the opposite. As of 2008, building permits were less than 19% of the number of permits issued in 2000. (AR 13529). In Los Angeles County, from 2002 to 2009, the rate of housing units built exceeded population growth. In Los Angeles County, population grew by 3.5 % from 2000 to 2009, but housing units grew at a rate of 42.2 percent.

⁵⁷ In the ITP, the applicant is required to "establish the financial security (e.g., letter of credit, escrow account or surety bond) to satisfy the undisclosed "costs" of "site-wide monitoring and research" before the initial "take," and to again to provide financial security to satisfy undisclosed "costs" associated with the implementation of the monitoring, management and enhancement of the Spineflower preserves at the various plan locations. (AR 643-44).

⁵⁸ In fact, the Bankruptcy record contains allegations that one of the reorganized entity's subsidiaries failed to comply with agreed-upon mitigation measures for the first phases of the Newhall Ranch Specific Plan. (AR 10416).

Not surprisingly, this overbuilding of housing accompanied by a credit crisis beginning in 2008 has led to a “storm” in the housing market that has been described in the record as “unprecedented in our lifetime.” (AR 18733) An economic downturn that resulted in significant drops in median value of housing units, median income and per capita income is unmentioned in the 2010 Final EIR. Instead, the now unrealistic scenarios of 2003 are adopted without analysis as the reason to allow the significant and unavoidable environmental impacts of the proposed Project to be allowed. The current or future need for an additional 2,551 acres of residential space is unsupported by substantial evidence.

Equally unsupported by substantial evidence is the claim of unmet demand for an additional 5.41 million square feet of commercial space in this part of the Valley. Census Bureau statistics demonstrates a precipitous decline in economic activity in Los Angeles County. For example, from 2002 to 2009, the total number of business firms in the county fell from by two thirds, as did retail sales. (AR 13528). There is no substantial evidence in the record to support the claim in 2010 that remained unmet demand for commercial and/or retail space provided benefits of the project that outweigh its unavoidable adverse environmental impacts.

Where, as in this case, the statement of overriding conditions is unsupported by substantial evidence in the record, it fails to pass CEQA muster. See Sierra Club v. Contra Costa County, 10 Cal. App. 4th 29, 32 (1992).

7. The Respondent Failed to Prevent the Taking of a Fully Protected Fish.

Both as part of its CEQA claim and as a separate claim, Petitioners object that the CDFG approved a project that violates state law prohibitions on the taking of fully protected species.

The Fish and Game Code states that “fully protected fish or parts thereof may not be taken or possessed at any time except under permits authorizing take for necessary scientific research or other circumstances not relevant in this case. Fish & G. Code § 5515(a)(1). Section 86 of the Fish & Game Code defines “take” as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.”⁵⁹

⁵⁹ Respondent’s contention that this objection is not ripe is without merit. Obviously, the Respondent felt it necessary to issue an Incidental Take permit because the Newhall Ranch project entailed the removal of endangered San Fernando Spineflowers. Similarly, if the Project will require (as a mitigation strategy) the capture and relocation of UTS, the permit shall issue, even in advance of the actual implementation of the mitigation plan. The law does not require an endangered species to be unlawfully taken before a claim can be made.

And, while Petitioners may not ordinarily prosecute violations of Fish & Game Code § 5515, a claim for the violation of the public trust or for ordinary mandate requiring the CDFG to perform its statutory duties may be brought by interested members of the public with a beneficial interest in the agency’s actions.

Further, the principal issue which is currently ripe for adjudication is whether the proposed mitigation of the Project’s impacts on the UTS will result in the taking of a fully protected species without first obtaining a permit. This issue is a well-defined and concrete controversy that goes to the heart of the adequacy of the EIR.

The Unarmored Threespine Stickleback (“UTS”) is a California fully protected species. Therefore, activities resulting in the take of the species are prohibited.⁶⁰

Petitioners allege that the implementation of the Newhall Ranch Plan could adversely affect individual UTS during construction work within the Santa Clara River. A letter from an Emeritus Professor of Biological Sciences at California State Polytechnic University, Dr. Jonathan Baskin, describes this phenomenon and notes that the EIR fails to analyze fully the impact on the Unarmored Threespine Stickleback from the construction that is planned to occur in the Santa Clara River. For example, the proposal to channelize portions of the Santa Clara River, including hard siding and narrowing of the low flow channel of the river (especially at bridges), could lead to significant reduction in the backwater places where the UTS takes refuge during high flow events. Without such refuge, the UTS will no longer be able to survive in certain reaches of the Santa Clara River. While the EIR notes that these impact are less than substantial, even less that substantial events of this kind are impermissible for a fully protected species. Additionally, Petitioners argue that the construction projects contemplated by the Project will result in the “take” of UTS from the water flowing through the construction site. (AR 13645).

The record, however, is not barren on the issue of the UTS. With regard to the concern regarding the maintenance of adequate refuge during high flow events, two hydraulics studies were performed to evaluate post-project flows and velocities in 2 year, 5 year, 10 year, 20 year, 50 year and 100 year floods, and a focused ichthyology study to ascertain whether the River’s flow regime would result in significant adverse impacts on refugia habitat for the UTS. The hydrology study, by Pacific Advanced Civil Engineering, Inc., concluded that the Project would result in minor localized changes in the flow levels at certain locations in the river, but that these changes were not significant. In addition, freshwater fish specialists, Entrix, took this hydrologic information and determined that the flood control structures and bridges contemplated by the Project would not significantly diminish the amount of usable refugia habitat in the River during storm events – and would in some cases actually increase the amount of such habitat.

As for the inevitability of a “take” of UTS during the construction process, the Respondent agrees that the actual construction work would, if unmitigated, have a significant effect on the UTS. In response, therefore, the EIR recommended a number of mitigation measures, including surveys to identify the presence of UTS and other protected fish, suspending construction if spawn or juvenile fish are present, and providing alternative diversion flows and methods to maintain fish passage for aquatic species and other methods. However, the very “mitigation” methods recommended to be conducted with supervision by a U.S. Fish and Wildlife Service biologist, such as block netting and fish relocation) falls within the meaning of a illegal “taking” under the California Fish and Game Code. Accordingly, while the proposed mitigation strategies designed by Dr. Camm Swift may not occasion a take under federal law, it would cause a taking of the UTS under California law.

⁶⁰ Take, as defined under state law (Fish and Game Code § 86) includes both the killing and capturing of the UTS. As one staff biologist admitted in internal CDFG memos, it would be “difficult” to fully avoid taking the UTS. (AR 117004, 11709).

Thus, where there is a mitigation proposal that by its very terms constitutes an illegal taking of the UTS under state law, the strategy fails to be a reasonable and realistic alternative. Without the issuance of an ITP, the mitigation measure cannot be implemented. Therefore, there is no substantial evidence to support the mitigation strategy on which Respondent relies to conclude that the construction processes associated with the Project will not result in an illegal taking of the UTS.

8. Project Impacts on the California Condor Have Been Fully Examined.

The Petitioners also object to the adequacy of the Respondent's evaluation of the Project's potential impact on the California condor. The California condor is a California fully protected species. Any activities resulting in the "take" of a Condor, including injury or mortality, are prohibited.

The California condor is found in varying habitat and climate tolerances. Suitable habitat contains adequate food supply, pen areas, and reliable winds and air movement to allow for long duration soaring during forage. Flights over vast areas have been measured over several hundred linear miles of travel each day. Most condors, however, forage within 50 to 70 kilometers of nesting areas, with core foraging areas ranging from 2500 to 2800 square kilometers. California Condors have the largest home range of any terrestrial bird in North America.

California condor populations have precipitously declined since the early 1900s. An early estimate of population size showed that just over 40 birds remained in the early 1960s and only 30 existed by 1970. The final groups of California condor were removed for captive breeding in 1986-87. Since that time, from January 1992 to the present, California Condors have been re-introduced into suitable habitat near the proposed Landmark Village. These released birds have been observed foraging out onto private land near the Landmark Village area.

The California condor was listed as endangered with critical habitat designated. This critical habitat does not fall within the boundary of the Newhall Ranch Specific area. In fact, the closest known nest to the Landmark Village area is approximately 25 miles. The Landmark Village area has no potential nesting opportunities and, because of limited prey and reduced wind and thermals, that area does not contain the essential elements that define suitable California condor habitat.

While the Condor will fly over the Santa Clarita Valley, they rarely land for roosting and foraging.⁶¹ (AR 4767). And, most of these flights are at fairly high altitudes above the ground when moving between Hopper National Wildlife Refuge and Newhall Ranch and beyond. They are not likely, therefore, to suffer injury or mortality due to construction activities associated with the Project. And, while some secondary impacts (such as the animal's collection of micro-trash) may be foreseeable, those cumulative effects have been accounted for and there is substantial evidence to support the Respondent's claim that they have been effectively mitigated.

⁶¹ As of 2007, no Condors had recently landed within the Project area. In 2008, a radio-tagged condor was tracked to the Specific Plan area. (AR 118348). In 2009, Condors were observed feeding on a cow carcass at the Newhall Land property. (AR 43785).

Thus, experts concluded, based on scientific observations and analysis, that the Proposed Newhall Ranch project and the Specific Plan build-out would alter the landscape, but would not result in significant impacts to the California condor and its resurging population, nor would it adversely impact critical habitat with mitigation.

While the Petitioners disagree with that opinion, there is substantial evidence in the record to support it. Thus, the Petitioners' claim that Respondent failed to adequately consider the possibility of a 'taking' of the Condor is simply unsupported by the record in this case.

In addition, as there is substantial evidence in the record to support Respondent's conclusion that the California Condor will not be adversely impacted by the Newhall Ranch project or the build-out of the Specific Plan area, the project would not be expected to have any adverse impact on the Chumash's ability to participate in sacred ceremonies featuring the Condor (assuming that the existence of Condor-specific practices were established). In addition, CEQA does not require the Respondent to analyze the cultural and religious impacts on the Chumash associated with the California Condor. See Christward Ministry v. Superior Court, 184 Cal. App. 3d 180, 197 (1986).

Conclusion

For the reasons stated above, the Court grants the Writ of Mandate.

Counsel for Petitioners is to submit to this Department a proposed judgment and a proposed writ within 10 days with a proof of service showing that copies were served on Respondent and Real Party by hand delivery or fax. The Court will hold these documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.

The parties shall meet and confer forthwith in order to arrive at a schedule with regard to the return of the writ and the filing of objections (if any) to the return. If no agreement can be reached, the Petitioner shall inform the Court of that fact and the Court will select its own schedule for the return and objections thereto.

The administrative record is ordered returned to the party who lodged it to be preserved without alteration until a final judgment is rendered and to forward it to the Court of Appeal in the event of appeal.

DATED: SEPTEMBER 20, 2012

ANN I. JONES

ANN I. JONES, JUDGE OF THE SUPERIOR COURT

ATTACHMENT 3



October 12, 2012

Mr. Samuel Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Request to Prepare Staff Record Order No. R4-2012-0139: Clean Water Act Section 401 Water Quality Certification (“401 Certification”) and Waste Discharge Requirements (“WDR”) for the Newhall Land & Farming Company, Proposed Resource Management and Development Plan and Spineflower Conservation Plan (“Project”), Santa Clarita, Los Angeles County

Dear Mr. Unger:

Wishtoyo Foundation, Wishtoyo Foundation’s Ventura Coastkeeper Program, and the Center for Biological Diversity have petitioned the State Water Resources Control Board for reconsideration of the above-referenced Regional Board order. A copy of that petition is enclosed. On their behalf, this is to request preparation of the staff record pursuant to Section 3867(d) (9) of Title 23 of the California Code of Regulations.

Thank you for your attention to this request and please call with any questions.

Yours sincerely,

Sincerely,

Jason Weiner
Staff Attorney
Wishtoyo Foundation &
is Ventura Coastkeeper Program
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