

Revised and Recirculated

**NOTICE OF PREPARATION
SCH # 2005071104**

Deep Creek EIR

LEAD AGENCY:

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NOTE TO THE READER: The County of San Bernardino has revised and recirculated this Notice of Preparation (“NOP”) to reflect an expanded scope for the Deep Creek Focused EIR, which will now also address biological resources, pursuant to a March 2008 Court of Appeal opinion, as discussed further below. For convenience to the reader, revisions to the NOP are indicated by striking text for deletions (~~example~~) and underlined text for additions (example).

I. PROJECT DESCRIPTION IN BRIEF

On June 9, 2003 Lewis Operating Corporation (“Applicant”) submitted an application to the County of San Bernardino (“County”) for approval of a General Plan Amendment, tentative tract map, and related entitlements (collectively the “Application”) to allow development of 202 residential lots on approximately 249 acres (the “Project”) in the unincorporated area of the County and within the sphere of influence of the Town of Apple Valley.

II. PROJECT LOCATION AND SETTING

The Project site is located in western San Bernardino County, east of the City of Hesperia, and south of the Town of Apple Valley. The Project site is located within the Apple Valley Sphere of Influence, and is located approximately 10 miles east-northeast of the interchange of Interstate 15 (I-15) and State Route 395. The Project is located east of Deep Creek Road and north of Round Up Way, between Deep Creek Road and the Burlington Northern and Santa Fe (BNSF) Railway tracks (See attached Vicinity Map).

Direct local access to the Project site is currently provided by Ocotillo Way, which is an unpaved roadway. Access to the site from I-15 can be achieved by traveling east on Main Street, east on Rock Springs Road, and north on Deep Creek Road.

The Project site is currently used for cattle grazing, and is mostly covered by grasslands and scattered Joshua trees. The natural community is moderately disturbed by grazing livestock.

The Project site sits on alluvium that has been terraced by mass grading and agricultural activities, altering the natural character of the Project area, and is located approximately one mile east of the Mojave River. The Project site drains to the northeast. The Project site is situated within an area of rural residential use, agricultural operations, and land that has been generally disturbed. The adjacent land is primarily vacant, with scattered residential uses. A single metal building is located on-site and the site is partially fenced. Cattle operations are located directly south of the Project site.

III. BACKGROUND AND HISTORY

An Initial Study/Mitigated Negative Declaration (the “MND”) was prepared by County staff for the Project for the purpose of complying with the California Environmental Quality Act (“CEQA”). The MND included various technical studies and other available information. As required by CEQA, the Draft MND was circulated for public review for thirty days (from July 21, 2005, through August 19, 2005). Comments were received from members of the public, including comments regarding land use compatibility, traffic impacts, and impacts to agricultural resources. On October 6, 2005, the County Planning Commission recommended that the County Board of Supervisors adopt the MND and approve the Application. On November 22, 2005, the Board of Supervisors, by unanimous vote, voted to adopt the MND and approve the Application. The previously adopted MND, its related technical studies, the Application, and

other information related to approval of the Application are available for review at the County Land Use Services Department address shown below (Page 4).

On December 21, 2005, Deep Creek Agricultural Association (“Deep Creek”), an unincorporated association of individuals with concerns related to the Project, filed *Deep Creek Agricultural Association v. County of San Bernardino (Lewis Operating Corporation et al.)*, in the San Bernardino County Superior Court as Case No. SCV 133 201 (the “Action”). The Action was commenced with a Petition for Writ of Mandate seeking to set aside the approval of the Application, alleging a series of substantive and procedural failures to comply with CEQA. Among the claims asserted by Deep Creek in the Action were allegations that the County had failed to identify or properly mitigate environmental effects of the Project, including those related to land use, air quality, traffic, loss of agricultural land, water quality, sewage, biological resources, and noise.

On September 13, 2006, the Superior Court heard the arguments of the parties in the Action and announced its ruling. On November 2, 2006, judgment (the “Judgment”) reflecting the previously-announced ruling was signed by the Court and subsequently entered. The Judgment was entered in favor of Deep Creek on its claim that the traffic analysis was insufficient. The Court ruled that Deep Creek had “provided substantial evidence that a fair argument exists that the Project does not comply with [CEQA] because [the County] has inadequately studied the Project’s traffic impacts.” With respect to all other allegations of Deep Creek in the Action, the Court ruled in favor of the County.

The judgment vacated all Project approvals and directed that, if the County was to exercise “its lawful discretion to re-approve the Project,” the County must first prepare an environmental impact report (“EIR”) to “address the potential traffic impacts of the Project.” The Judgment also stated that, pursuant to Public Resources Code § 21168.9, the only required additional analysis to be contained in the [EIR]...shall be an analysis of the potential traffic effects of the Project.”

Deep Creek filed a timely appeal of the Judgment to the Court of Appeal of the State of California, Fourth Appellate District (the “Court of Appeal”), and a cross-appeal was filed with respect to the Superior Court’s judgment in favor of Deep Creek on the traffic analysis. Among the claims asserted by Deep Creek in the appeal were allegations that the Superior Court erred in requiring the County only to assess traffic impacts of the Project, and that the County should have been order to further identify and/or properly mitigate certain environmental effects of the Project. On March 24, 2008, the Court of Appeal determined that, in addition to assessing traffic impacts, the County must also provide additional analysis of the Project’s impacts upon biological resources.

Consistent with Section 15070 (b)(1) of the CEQA Guidelines, the Applicant had agreed to all revisions in the original Project plans and mitigation measures reflected in the MND. The Project Description set forth below for the EIR which is the subject of this Notice of Preparation consists of the Project as approved by the Board of Supervisors on November 22, 2005, and includes those revisions and mitigation measures set forth in the MND. Therefore, consistent with the ruling of the Court of Appeal, Section 15006 (d) of the CEQA Guidelines, and that Project Description, the scope of the EIR to be prepared for approval of the Project has been narrowed to an analysis of the Project’s impacts on traffic and biological resources.

IV. PROJECT CHARACTERISTICS

The Applicant seeks (1) a General Plan Amendment to change the official land use district from AG-SCp (Agricultural with a primary sign control overlay) to RS-32m (Single Family Residential with a 32,000-square foot minimum parcel size), and (2) Tentative Tract 16569 for 202 single-family residential lots and six lettered lots to be developed in four phases on approximately 249 acres in an unincorporated area of San Bernardino County. Wastewater services will be provided by individual septic systems on each residential lot. The size of lots will average approximately 43,051 square feet, with the median lot size being approximately 43,948 square feet. Of the proposed 202 lots, 68 lots located on the upper terrace of the Project site will measure less than one acre in size (0.74 acre minimum).

The Applicant also proposes to construct a drainage corridor trending in a north-south direction through the western half of the Project site in order to alleviate drainage impacts. Additionally, approximately 25,300 linear feet of new streets and a perimeter wall surrounding the Project will be constructed.

The Project would be developed in four phases: Phase I- 54 lots; Phase II- 60 lots; Phase III- 46 lots; and Phase IV- 42 lots.

Characteristics unrelated to traffic and biological resources are included for informational purposes only and are not subject to further consideration by the County pursuant to the ruling of the Court of Appeal.

V. POTENTIAL ENVIRONMENTAL EFFECTS OF THE PROJECT

The Court of Appeal has determined that the Project may have significant environmental effects pertaining to traffic and biological resources. Therefore, the County has initiated preparation of an EIR focused on these two issues. The EIR will address these two issues to comply with the direction of the Court of Appeal, but will also consider written responses to this NOP, public and agency comments on the NOP, public scoping meeting comments, consultation with potentially affected agencies, results of available technical studies, and research conducted throughout the EIR process. The following is a discussion of the potential environmental effects that will be further analyzed in the EIR.

Transportation and Circulation: The EIR will summarize the results of a Traffic Impact Analysis (TIA) prepared for the EIR, which will address potential impacts to local roadways, intersections and state highways, as well as Congestion Management Plan (CMP) requirements. The analysis will also address the local issue of potential through-traffic on existing residential streets and potential traffic calming or other measures to minimize effects on existing neighborhoods. The EIR will also address construction-related issues such as traffic control and hauling associated with site grading. Mitigation measures will be identified, including the Project's fair share of improvements needed for existing or cumulative conditions.

Biological Resources: The EIR will summarize the results of the revised Botanical and Habitat Survey and the Focused Biological Survey prepared for the proposed Project. The EIR will address potential impacts to biological resources, potential for sensitive habitats, and sensitive species. If necessary, mitigation measures will be identified to reduce potential impacts.

Additional Environmental Topics: The EIR will include a discussion of alternatives to the proposed Project, but that discussion will be conducted consistent with Section 15126.6 of the CEQA Guidelines which provides that alternatives discussed are those which, among other requirements, must "avoid or substantially lessen any of the significant effects of the project."

Because the only potential significant effects of the Project have been determined by the Court to be those related to traffic and biological resources, the alternatives discussion will be limited to the alternatives, if any, which would avoid or substantially lessen the significant traffic and biological resources effects, if any, of the Project. Similarly, the Court specifically found that there were no significant cumulative effects of the Project which would be the responsibility of the County. Therefore, the discussion of cumulative effects will be limited to potential cumulative traffic and biological resources effects. Where consistent with the Court's ruling limiting the EIR analysis to traffic and biological issues, the EIR also will address growth-inducing impacts, significant irreversible environmental changes that would be involved in the proposed action should it be implemented, and effects found not to be significant.

VI. ENVIRONMENTAL REVIEW PROCESS

The County previously circulated the Project's NOP between July 31, 2007, and August 29, 2007, indicating a focus on traffic impacts. This revised NOP has been circulated to provide opportunity for public comment and input regarding the EIR's expanded scope, which now also includes biological resources, pursuant to the March 2008 ruling of the Court of Appeal. The County requests that comments on this revised NOP be limited to biological resources and traffic, or any new input or comments that were not identified in previously submitted NOP comments. Following completion of the 30-day NOP public review period, the County will incorporate, if and where appropriate and consistent with the limitations of the ruling of the Court of Appeal, relevant information into the EIR, including relevant technical studies. Subsequently, a Draft EIR will be circulated for public review and comment for the required 45-day public review period. All individuals that have so requested will be placed on a Notice of Availability list for the Draft EIR. In addition, the Draft EIR and related materials will be available for review at the County of San Bernardino Land Use Services Department, 385 North Arrowhead Avenue, First Floor, San Bernardino, California, 92415. Following receipt of all written comments on the Draft EIR, the County will prepare Responses to Comments as part of the Final EIR.

Questions or comments regarding this NOP should be directed to Matthew Slowik, County of San Bernardino Land Use Services Department, 385 North Arrowhead Avenue, First Floor, San Bernardino, California, 92415, telephone (909) 387-4372.

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