

FINAL
ENVIRONMENTAL IMPACT REPORT
SCH No. 2005071104

DEEP CREEK PROJECT

LEAD AGENCY:

COUNTY OF SAN BERNARDINO

385 North Arrowhead Ave.

San Bernardino, CA 92415-0182

Contact: Matthew Slowik, MURP, MPA, Senior Planner

(909) 387-4372

CONSULTANT:

RBF CONSULTING

3300 E. Guasti Road, Suite 100

Ontario, CA 91761

Contact: John Gifford

Project Manager

(909) 974-4900

July 2011

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4.0 **Supplemental Responses to Comments InformationS-1**

Appendices

A. Additional Notice of Preparation Letters



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I.0 INTRODUCTION

In accordance with the California Environmental Quality Act (CEQA) Guidelines and the County of San Bernardino policies for implementing CEQA, RBF Consulting has prepared the Draft Environmental Impact Report (Draft EIR) for the proposed Deep Creek project.

The following is an excerpt from the *CEQA Guidelines* Section 15132:

“The Final EIR shall consist of:

- (a) The Draft EIR or a version of the draft.
- (b) Comments and recommendations received on the Draft EIR either verbatim or in summary.
- (c) A list of persons, organizations, and public agencies commenting on the Draft EIR.
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
- (e) Any other information added by the Lead Agency.”

This Responses to Comments document, together with the original Draft EIR text (as amended by the minor corrections shown in Section 3.0, Errata), include all of the above required components to make up the Final EIR. Each comment letter is followed by the corresponding response(s). A response is provided for each written and verbal comment raising significant environmental issues, as received by the County during the Draft EIR public review period.

It should be noted that responses to comments also resulted in various editorial clarifications and corrections to the original Draft EIR text. Added or modified text is shown in Section 3.0, Errata, by underlining (example) while deleted text is shown by striking (~~example~~). The additional information, corrections, and clarifications are not considered to substantively affect the conclusions within the Draft EIR.

I.1 BACKGROUND

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 San Bernardino 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, a 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 the basis 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"). 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 ordered 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.

The Superior Court of the State of California, County of San Bernardino, and the Court of Appeal determined that the project may have significant environmental effects pertaining to traffic and biological impacts. Therefore, the County prepared an EIR for the proposed project. The EIR addressed potentially significant impacts associated with Transportation and Circulation and Biological Resources based upon court direction, written responses to this Notice of Preparation ("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 County of San Bernardino completed a Notice of Preparation (NOP) for the project on July 31, 2007, to identify the potential environmental impacts of the project. The County of San Bernardino distributed the NOP, which was filed with the State of California Office of Planning and Research on July 31, 2007 (refer to Appendix A, Notice of Preparation of the Draft EIR). The comment period closed on August 29, 2007, following the State-mandated 30-day Notice of Preparation review period.

Subsequent to the circulation of the NOP, 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. Therefore, a revised NOP was circulated on February 3, 2009 to provide opportunity for public comment and input regarding the expanded scope of the EIR, which including both traffic and biological resources, pursuant to the March 2008 ruling of the Court of Appeal

(refer to Appendix A, Notice of Preparation of the Draft EIR). The Revised NOP comment period closed on March 4, 2009, following the State-mandated 30-day Notice of Preparation review period.

The Draft EIR for the proposed project was distributed to trustee and responsible agencies, members of the public, other interested parties, and the California Office of Planning and Research, State Clearinghouse on March 25, 2010. This began the 45-day public review period, which ended on May 10, 2010. Section 3.0 of this document includes any additional or clarifying information resulting from preparation of the Responses to Comments as well as any minor revisions (additions or deletions) to the text of the Draft EIR.

Subsequent to the close of the public comment period for that Draft EIR, the County has made changes to Section 4.2, *Biological Resources*, of the Draft EIR. The revised Section 4.2 supersedes and replaces Section 4.2, *Biological Resources*, which was included in the March 25, 2010, Draft EIR.

The County elected to recirculate the revised Section 4.2 for public review and comment. Pursuant to Section 15088.5(c) of the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3), only Section 4.2 of the Draft EIR was recirculated. Pursuant to Section 15088.5(f)(2) of the CEQA Guidelines, the County (i) requested that reviewers limit their comments to the revised Section 4.2, (ii) responded to previously submitted comments on all portions of the previously circulated Draft EIR, except those made with respect to the now-superseded Section 4.2, and (iii) responded to comments made during the recirculation period to the revised Section 4.2.

Additionally, certain issues have previously been adjudicated, such as the evaluation and mitigation of potential impacts to the California desert tortoise and Mohave ground squirrel, and ultimately may be determined by the courts not to be subject to additional judicial review.



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2.0 RESPONSES TO COMMENTS

Comment Letter No. 1



ARNOLD SCHWARZENEGGER
GOVERNOR

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



CYNTHIA BRYANT
DIRECTOR

Memorandum

Date: April 7, 2010
To: All Reviewing Agencies
From: Scott Morgan, Acting Director
Re: SCH # 2005071104
Lewis Operating Corp., LHC Alligator, LLC (Deep Creek) Project

Please be advised, on March 25, 2010 the Environmental Impact Report (EIR) for the above referenced project was sent to your agency for review without CDs. Please accept the attached CDs to complete the Draft EIR for your review. We apologize for any inconvenience this may have caused. All other information remains the same.

1.1

RECEIVED
APR 13 2010
LAND USE SERVICES DEPT.
ADVANCE PLANNING DIVISION

cc: Matthew Slowik
San Bernardino County Land Use Services Department
385 N. Arrowhead, 1st Floor
San Bernardino, CA 92415-0182

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

Notice of Completion Supplementary Document M

See NOTE below
SCH 2005071104

Mail to: State Clearinghouse, 1400 Tenth Street Sacramento, CA 95814 916/445-0613

Project Title: LEWIS OPERATING CORP, LHC ALLIGATOR, LLC (DEEP CREEK) PROJECT
Lead Agency: San Bernardino County Land Use Services Department
Street Address: 385 N. Arrowhead, 1st Floor
City: San Bernardino, CA **Zip:** 92415-0182
Contact Person: Matthew Slowik
Phone: (909) 387-4147
County: San Bernardino

Project Location
County: San Bernardino **City/Nearest Community:** Apple Valley
Cross Streets: Deep Creek Rd. and Ocotillo Way **Zip Code:** 92308 **Total Acres:** 249
Assessor's Parcel No.: 0438-012-58; 0438-163-01, 02, 20 & 31 **Section:** 20 **Twp.:** T4N **Range:** R3W **Base:** SBBM
Within 2 Miles: State Hwy #: n.a. **Waterways:** Mojave River
Airports: _____ **Railways:** A.T.S.F. R.R. **Schools:** n.a.

Document Type
CEQA: NOP-EIR Supplement/Subsequent NEPA NOI Other: Joint Document
 Early Cons EIR (Prior SCH) EA Final Document
PROPOSED Neg. Dec Other _____ Draft EIS Other
 Draft EIR SCH#2005071104 FONSI

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MAR 25 2010

Local Action Type
 General Plan Update Specific Plan Rezone Annexation
 General Plan Amendment Master Plan Prezone Redevelopment
 General Plan Element Planned Unit Development Use Permit Coastal Permit
 Community Plan Site Plan Land Division (Subdivision, Parcel Map, Tract Map, etc.) Other: Env. Review

Development Type
 Residential: Units 202 Acres 249 Water Facilities: Type: _____
 Office: Sq. ft. _____ Acres _____ Employees _____ Transportation/FC: Type: _____
 Commercial: Sq. ft. _____ Acres _____ Employees _____ Mining: Mineral _____
 Industrial: Sq. ft. _____ Acres _____ Employees _____ Power: Type: _____
 Educational _____ Waste Treatment Type: _____
 Recreational _____ Hazardous Waste: Type _____ Other _____

Project Issues Discussed in Document
 Aesthetic/Visual Flood Plain/Flooding Schools/Universities Water Quality
 Agricultural Land Forest Land/Fire Hazard Septic Systems Water Supply/Groundwater
 Air Quality Geologic/Seismic Sewer Capacity Wetland/Riparian
 Archeological/Historical Minerals Soil Erosion/Compaction/Grading Wildlife
 Coastal Zone Noise Solid Waste Growth Inducing
 Drainage/Absorption Population/Housing Balance Toxic/Hazardous Land Use
 Economic/Jobs Public Services/Facilities Traffic/Circulation Cumulative Effects
 Fiscal Recreation/Parks Vegetation Other: Biological Res.

Present Land Use/Zoning/General Plan Use
 AG-SCp (Agricultural w/Primary Sign Control Overlay)
Project Description
 General Plan Amendment to change the land use district from AG-SCp (Agricultural with a Primary Sign Control Overlay) to RS-20m (Single Residential- 20,000 square foot minimum lot size). Tentative Tract Map (#16569) to create 202 single family residential lots and 6 lettered lots on 249 acres.

State Clearinghouse Contact: (916) 445-0613 **SL**
 State Review Began: 3-25 2010
 SCH COMPLIANCE 5-10 2010

Please note State Clearinghouse Number (SCH#) on all Comments
 SCH#: 2005071104
 Please forward late comments directly to the Lead Agency
 AQMD/APCD 3/3/24
 (Resources: 3, 27)

Project Sent to the following State Agencies

<input checked="" type="checkbox"/> Resources	State/Consumer Svcs
<input type="checkbox"/> Boating & Waterways	General Services
<input type="checkbox"/> Coastal Comm	Cal EPA
<input type="checkbox"/> Colorado Rvr Bd	ARB - Airport Projects
<input type="checkbox"/> Conservation	ARB - Transportation Projects
<input checked="" type="checkbox"/> Fish & Game # <u>6</u>	ARB - Major Industrial Projects
<input type="checkbox"/> Delta Protection Comm	SWRCB: Div. Financial Assist.
<input type="checkbox"/> Cal Fire	SWRCB: Wtr Quality
<input checked="" type="checkbox"/> Historic Preservation	SWRCB: Wtr Rights
<input checked="" type="checkbox"/> Parks & Rec	<input checked="" type="checkbox"/> Reg. WQCB # <u>6U</u>
<input type="checkbox"/> Central Valley Flood Prot.	<input type="checkbox"/> Toxic Sub Ctr-CTC
<input type="checkbox"/> Bay Cons & Dev Comm.	Yth/Addit Corrections
<input checked="" type="checkbox"/> DWR	Corrections
<input type="checkbox"/> Cal BMA	
<input type="checkbox"/> Resources, Recycling and Recovery	
<input type="checkbox"/> Bus Transp Hou	Independent Comm
<input type="checkbox"/> Aeronautics	Energy Commission
<input type="checkbox"/> CHP	<input checked="" type="checkbox"/> NAHC
<input checked="" type="checkbox"/> Caltrans # <u>8</u>	<input checked="" type="checkbox"/> Public Utilities Comm
<input type="checkbox"/> Trans Planning	<input checked="" type="checkbox"/> State Lands Comm
<input type="checkbox"/> Housing & Com Dev	<input type="checkbox"/> Taboe Rgl Plan Agency
<input type="checkbox"/> Food & Agriculture	
<input type="checkbox"/> Health Services	Conservancy
	Other: _____

Response No. 1

**Scott Morgan, Acting Director
Governor's Office of Planning and Research**

- 1.1 This letter is from the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit. It confirms the project's compliance with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act (CEQA).

Comment Letter No. 2



Mojave Desert Air Quality Management District
14306 Park Avenue, Victorville, CA 92392-2310
760.245.1661 • fax 760.245.2699
Visit our web site: <http://www.mdaqmd.ca.gov>
Eldon Heaston, Executive Director

March 26, 2010

Matthew Slowik, Senior Planner
San Bernardino County Land Use Services Department/Advance Planning Division
385 North Arrowhead Ave., First Floor
San Bernardino, CA 92415-0182

Project: Draft Environmental Impact Report for the Lewis Operating Corp. Deep Creek (Apple Valley) Project: General Plan Amendment and Tentative Tract Map (TTM #16569)

Dear Mr. Slowik:

The Mojave Desert Air Quality Management District (District) has reviewed the Draft Environmental Impact Report for the Lewis Operating Corp. Deep Creek (Apple Valley) Project: General Plan Amendment and Tentative Tract Map (TTM #16569). This document has been prepared to meet the State requirements of the California Environmental Quality Act based on Court determination, evaluating the proposed projects potential impact(s) upon traffic/circulation and biological resources. The Deep Creek project will allow for the development of 202 single-family residential lots and 6 lettered lots on approximately 249 acres, between Rock Springs Road and Tussing Ranch Road, east of Deep Creek Road, in the unincorporated Apple Valley Area.

We have reviewed the project and, based on the information available to us at this time, we have no comments. The District supports improved transportation system efficiency; such development is expected to produce commensurate regional environmental and air quality benefits.

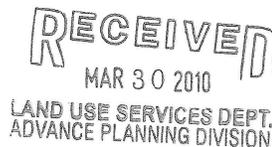
Thank you for the opportunity to review this planning document. If you have any questions regarding this letter, please contact me at (760) 245-1661, extension 6726, or Tracy Walters at extension 6122.

Sincerely,

Alan J. De Salvio
Supervising Air Quality Engineer

TW/AJD

Deep Creek DEIR.doc



} 2.1

City of Adelanto	Town of Apple Valley	City of Barstow	City of Blythe	City of Hesperia	City of Needles	County of Riverside	County of San Bernardino	City of Twentynine Palms	City of Victorville	Town of Yucca Valley
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Response No. 2

Alan J. De Salvio
Mojave Desert Air Quality Management District

- 2.1 This letter is from the Mojave Desert Air Quality Management District (MDAQMD). The letter identifies that MDAQMD has no comments on the proposed project.

Comment Letter No. 3

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5380
Web Site www.nahc.ca.gov
e-mail: ds_nahc@pacbell.net

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MAY 11 2010



May 6, 2010

Mr. Matthew W. Slowik, MURP, MPA, Senior Planner
COUNTY OF SAN BERNARDINO LAND USE SERVICES DEPARTMENT
385 North Arrowhead Avenue
San Bernardino, CA 92415-3223

Re: SCH#2005071104 CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the LEWIS OPERATING CORP, LHC ALLIGATOR, LLC (DEEP CREEK) Project located in the southwestern Mojave Desert; near the cities of Hesperia and Apple Valley; San Bernardino County, California. Also a General Plan Amendment including provisions required by California Government Code §65352.3

Dear Mr. Slowik:

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources. (Also see *Environmental Protection Information Center v. Johnson* (1985) 170 Cal App. 3rd 604). The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amended in 2009) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following.

The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources were not identified within the APE. Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the nearest tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached list of Native American contacts. The attached Native American contacts are tribal governments culturally affiliated to the project area or APE; therefore, contacts and consultation with them complies with California Government code §65352.3.

Consultation with tribes and interested Native American tribes, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 [f]) *et seq*, 36 CFR

3.1

Part 800.3, the President's Council on Environmental Quality (CSQ; 42 U.S.C. 4371 *et seq.*) and NAGPRA (25 U.S.C. 3001-3013), as appropriate. The 1992 *Secretary of the Interior's Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including *cultural landscapes*.

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery. Discussion of these should be included in your environmental documents, as appropriate.

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of 'historic properties of religious and cultural significance' may also be protected the under Section 304 of the NHPA or at the Secretary of the Interior' discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C, 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibly threatened by proposed project activity.

CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens. Although tribal consultation under the California Environmental Quality Act (CEQA; CA Public Resources Code Section 21000 – 21177) is 'advisory' rather than mandated, the NAHC does request 'lead agencies' to work with tribes and interested Native American individuals as 'consulting parties,' on the list provided by the NAHC in order that cultural resources will be protected. However, the 2006 SB 1059 the state enabling legislation to the Federal Energy Policy Act of 2005, does mandate tribal consultation for the 'electric transmission corridors. This is codified in the California Public Resources Code, Chapter 4.3, and §25330 to Division 15, requires consultation with California Native American tribes, and identifies both federally recognized and non-federally recognized on a list maintained by the NAHC

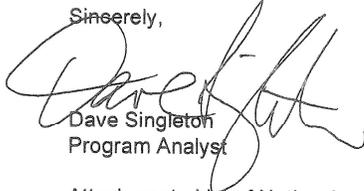
Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. . Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

3.1
Cont.

Again, Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,



Dave Singleton
Program Analyst

Attachment: List of Native American Tribal Government Contacts

Cc: State Clearinghouse

} 3.1
Cont.

Native American Contacts
May 6, 2010
San Bernardino County

Ramona Band of Cahuilla Mission Indians
Joseph Hamilton, Chairman
P.O. Box 391670 Cahuilla
Anza, CA 92539
admin@ramonatribes.com
(951) 763-4105
(951) 763-4325 Fax

San Fernando Band of Mission Indians
John Valenzuela, Chairperson
P.O. Box 221838 Fernandefio
Newhall, CA 91322 Tataviam
tsen2u@hotmail.com Serrano
(661) 753-9833 Office Vanyume
(760) 885-0955 Cell Kitanemuk
(760) 949-1604 Fax

San Manuel Band of Mission Indians
James Ramos, Chairperson
26569 Community Center Drive Serrano
Highland, CA 92346
(909) 864-8933
(909) 864-3724 - FAX
(909) 864-3370 Fax

Morongo Band of Mission Indians
Robert Martin, Chairperson
12700 Pumarra Road Cahuilla
Banning, CA 92220 Serrano
Robert_Martin@morongo.
(951) 849-8807
(951) 755-5200
(951) 922-8146 Fax

Chemehuevi Reservation
Charles Wood, Chairperson
P.O. Box 1976 Chemehuevi
Chemehuevi Valley CA 92363
chair1cit@yahoo.com
(760) 858-4301
(760) 858-5400 Fax

Serrano Nation of Indians
Goldie Walker
6588 Valaria Drive Serrano
Highland, CA 92346
(909) 862-9883

Fort Mojave Indian Tribe
Tim Williams, Chairperson
500 Merriman Ave Mojave
Needles, CA 92363
(760) 629-4591
(760) 629-5767 Fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106 and federal NAGPRA. And 36 CFR Part 800.3.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2005071104; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the LEWIS OPERATION CORP, LHC ALLIGATOR, LLC (DEEP CREEK) PROJECT; located on 249-acres in the southwestern Mojave Desert near

Response No. 3

**Dave Singleton, Program Analyst
Native American Heritage Commission**

- 3.1 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is required as part of this Final EIR. However, if human remains are encountered on or offsite, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner will notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 48 hours of notification by the NAHC. The MLD may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

Comment Letter No. 4

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

PUBLIC UTILITIES COMMISSION

320 WEST 4TH STREET, SUITE 500
LOS ANGELES, CA 90013



April 16, 2010

RECEIVED
APR 19 2010
AND USE SERVICES DEPT.
ADVANCE PLANNING DIVISION

Matthew Slowik
San Bernardino County Planning Department
385 N. Arrowhead, 1st Floor
San Bernardino, CA 92415-0182

Dear Mr. Slowik:

Re: SCH# 2005071104; -Lewis Operating Corp, LHC Alligator, LLC (Deep Creek) Project

The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings.

The Commission's Rail Crossings Engineering Section (RCES) is in receipt of the *Notice of Completion & Environmental Document Transmittal-DEIR* documentation from the State Clearinghouse for the proposed housing development. RCES had previously sent comments to the Notice of Preparation, but our agency was not listed as having commented in section 10.00.

RCES is concerned that the new development at Deep Creek Road and Ocotillo Way will require the modification to the existing Deep Creek Road grade separation (DOT# 027141M) to accommodate the increased traffic volumes under the crossing when mitigation measure TRA-10 is implemented in response to impact 4.1-2f: Deep Creek Road/Rock Springs Road.

When the County is ready to construct a second eastbound through lane and construct a second westbound through lane at Deep Creek Road/Rock Springs Road, RCES should be consulted to evaluate any design proposals near the Deep Creek Road grade separation. Modifications to crossings including widening of an existing grade separation, are within the scope of Commission General Order (GO) 88-B: "Rules for Altering Public Highway-Rail Crossings." A request for authorization must be submitted to RCES. One of the primary prerequisites for a GO 88-B request is concurrence of all parties (railroad, local agency and Commission) to the proposed changes.

If you have any questions, please contact Bill Lay, Utilities Engineer at 213-576-1399, bll@cpuc.ca.gov, or me at rxm@cpuc.ca.gov, 213-576-7078.

Sincerely,

Rosa Muñoz, PE
Utilities Engineer
Rail Crossings Engineering Section
Consumer Protection & Safety Division

C: John Shurson, BNSF

4.1

4.2

Response No. 4

**Rosa Munoz, PE, Program Analyst
California Public Utilities Commission**

- 4.1 The omission of your agency on the list of commentors was an oversight. Refer to Section 3.0, *Errata*, of this document.
- 4.2 As stated in Chapter 4.1 of the Draft EIR, the Project Applicant will be required to pay their proportionate fair share to construct a second eastbound through lane and a second westbound through lane at the intersection of Deep Creek Road and Rock Springs Road. Once funds are collected from various entities for the improvements to the intersection, the intersection would be improved as defined in the South/East Apple Valley Local Area Transportation Facilities Plan. As required by GO-88B, prior to construction of these improvements, the Town of Apple Valley and the County of San Bernardino would consult with the Commission's Rail Crossings Engineering Section to evaluate the design proposal and to request authorization for development of the proposed improvements.

Comment Letter No. 5



State of California - The Resources Agency
DEPARTMENT OF FISH AND GAME

ARNOLD SCHWARZENEGGER, Governor

<http://www.dfg.ca.gov>
Inland Deserts Region (IDR)
407 West Line Street
Blahop, CA 93514
(760) 872-1171
(760) 872-1284-Fax



May 6, 2010

Mr. Matthew Slowik
San Bernardino County Land Use Service Department
385 N. Arrowhead, 1st Floor
San Bernardino, CA 92415
Phone: (909) 387-4147

Subject: Proposed Draft Environmental Impact Report (DEIR) for the development of proposed Lewis Operating Corp, LHC Alligator, LLC (Deep Creek) Project involving an amendment of the general plan and approval of Tentative Tract Map #16569 to create 202 single family residential lots and 6 lettered lots on 249 acres. SCH # 2005071104.

Dear Mr. Slowik:

The Department of Fish and Game (Department) has reviewed the Draft Environmental Impact Report (DEIR) for the above referenced project. The proposed Lewis Operating Corp, LHC Alligator, LLC (Deep Creek) Project (project) would amend the general plan to change the land use from AG-SCp (Agricultural with a primary sign control overlay) to RS-20m (single residential-20,000 square foot minimum lot size), and adoption of Tentative Tract Map #16569 to construct 202 single family residential lots and 6 letter lots on 249 acres. The proposed project is located at the cross streets of Deep Creek Road and Ocotillo Way, in unincorporated Apple Valley, San Bernardino County (APN# 0438-012-59; 0438-163-01, 02, 20 and 31).

The Department is providing comments on the DEIR as the State agency which has statutory and common law responsibilities with regard to fish and wildlife resources and habitats. California's fish and wildlife resources, including their habitats, are held in trust for the people of the State by the Department (Fish and Game Code §711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitats necessary for biologically sustainable populations of those species (Fish and Game Code §1802). The Department's Fish and wildlife management functions are implemented through its administration and enforcement of Fish and Game Code (Fish and Game Code §702). The Department is a trustee agency for fish and wildlife under the California Environmental Quality Act (see CEQA Guidelines, 14 Cal. Code Regs. §15386(a)). The Department is providing these comments in furtherance of these statutory responsibilities, as well as its common law role as trustee for the public's fish and wildlife

In order for the Department to adequately assess the potential impacts the proposed project may incur, copies of the focused surveys and associated field notes should be included in the CEQA document and submitted for Departmental review for desert tortoise, Mojave ground squirrel (MGS) and burrowing owl.

} 5.1

Conserving California's Wildlife Since 1870

Several mitigation measures identified in the Initial Study (IS) were not included in the DEIR including IV-1 and IV-4. If additional desert tortoise or MGS focused protocol surveys were performed, please update the DEIR to include additional discussion and submit copies of the studies for Departmental review. If habitat it being assumed (as provisioned by mitigation measure IV-2 of the IS) than an incidental take permit pursuant to Fish and Game Code § 2080 must be applied for. CEQA requires the lead agency to support their finding that the project will or will not have a significant impact on the environment. Without these surveys, the Department cannot support your findings. In addition, if the site does contain occupied habitat, the developer is at risk of taking a Threatened species without an Incidental Take Permit, which is a violation of Fish and Game Code §2080.

5.2

As identified in the IS, "Because the age of the biological Resource Assessment prepared for the project site exceeds one year, and did not include a survey of the 'zone of influence' typically required by the USFWS, there is a potential that the desert tortoise may occupy the project site. This would be a potentially significant impact." The DEIR should include a discussion of this particular aspect of the IS, including if zone of influence (ZOI) transects were included in an updated survey, the results, mapping of the surveys or an explanation of why transects were not surveyed (accompanied by correspondence between the regulatory agencies addressing such).

5.4

The Department requests additional information on the timing and execution of the focused burrowing owl surveys that were performed in conjunction with MGS surveys. In addition, the Department requests the applicant to incorporate the following guidelines to address potential impacts to burrowing owl within the CEQA document:

5.5

A 30-day pre-construction survey for burrowing owl may be required as mitigation for the project, this mitigation is not adequate to reduce impacts to burrowing owl to less than significant levels if an owl is found. Also, owls may only be passive relocated at certain times of the year. The relocation process may need to be performed months prior to construction. Since burrowing owls are found on site to insure impacts are less than significant.

5.6

1. As compensation for the direct loss of burrowing owl nesting and foraging habitat, the project proponent shall mitigate by acquiring and permanently protecting known burrowing owl nesting and foraging habitat at the following ratio;
 - a) Replacement of occupied habitat with occupied habitat at 1.5 times 6.5 acres per pair or single bird;
 - b) Replacement of occupied habitat with habitat contiguous with occupied habitat at 2 times 6.5 acres per pair or single bird; and/or
 - c) Replacement of occupied habitat with suitable unoccupied habitat at 3 times 6.5 acres per pair or single bird.

5.7

The project proponent shall establish a non-wasting endowment account for the long-term management of the preservation site for burrowing owls. The site shall be managed for the benefit of burrowing owls. The preservation site, site management, and endowment shall be approved by the Department.

5.7
Cont.

2. All owls associated with occupied burrows, that will be directly impacted (temporarily or permanently) by the project, shall be relocated and the following measures shall be implemented to avoid take of owls:

a) Occupied burrows shall not be disturbed during the nesting season of February 1 through August 31, unless a qualified biologist can verify through non-invasive methods that either the owls have not begun egg laying and incubation or that juveniles from the occupied burrows are foraging independently and are capable of independent flight.

b) Owls must be relocated by a qualified biologist from any occupied burrows that will be impacted by project activities. Suitable habitat must be available adjacent to or near the disturbance site or artificial burrows will need to be provided nearby. Once the biologist has confirmed that the owls have left the burrow, burrows should be excavated using hand tools and refilled to prevent reoccupation.

c) All relocation shall be approved by the Department. The permitted biologist shall monitor the relocated owls a minimum of three days per week for a minimum of three weeks. A report summarizing the results of the relocation and monitoring shall be submitted to the Department within 30 days following completion of the relocation and monitoring of the owls.

5.8

3. A Burrowing Owl Mitigation and Monitoring Plan shall be submitted to the Department for review and approval prior to relocation of owls. The Burrowing Owl Mitigation and Monitoring Plan shall describe proposed relocation and monitoring plans. The plan shall include the number and location of occupied burrow sites and details on adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation of artificial burrows (numbers, location, and type of burrows) shall also be included in the plan. The Plan shall also describe proposed off-site areas to preserve to compensate for impacts to burrowing owls/occupied burrows at the project site as required under Condition 1.

5.9

In a letter from the Department addressed to Mr. Matthew Slowick, dated August 23, 2007, the Department provided guidance for developing the CEQA documentation.

Section 2, B of the Department's letter identifies the need to discuss the potential impacts the proposed project may pose based on an increase in raven

5.10

populations. Subsequent the Department's letter, the United States Fish and Wildlife (USFWS) has developed a raven monitoring program. Please refer to the USFWS for additional guidance.

} 5.10
Cont.

Section 3, C informs the applicant that should the proposed project have a potential for "take" of a species covered under the California Endangered Species Act (CESA), then an Incidental Take Permit will need to be obtained. Additionally if a permit is sought, then Biological Mitigation monitoring and reporting proposals in conjunction with a raven management plan will need to be submitted for review and approval.

} 5.11

Section 4 indicates that under Section 1600 *et. Seq.* of the Fish and Game Code, require the project applicant to notify the Department of any activity that will divert, obstruct or change the natural flow of the bed, channel or bank (including riparian habitat) of a river, stream or lake or use material from a streambed prior to the applicant's commencement of the activity. Although the IS indicates that the "... drainage corridor proposed for the Tentative Map is on the alignment proposed for improvement in the Apple Valley West/Desert Knolls Master Plan of Drainage" it is uncertain as to what (if any) this effect this may have on biological resources. Additional discussion is requested.

} 5.12

In conclusion, the Department finds the provided document inadequate as written. The proposed document should be revised to include an adequate discussion of biological resources potentially affected by the project, an analysis of potential impacts to these biological resources, adequate mitigation measures to offset any identified impacts and current biological surveys performed by qualified individuals. The revised document should then be re-circulated including submission of the document to the State Clearinghouse.

} 5.13

Questions regarding this letter and further coordination on these issues should be directed to Mr. Eric Weiss, Environmental Scientist at (760) 246-8828.

Sincerely,


Tonya Moore
Senior Environmental Scientist

cc: Eric Weiss, DFG
State Clearinghouse

Response No. 5

Tonya Moore, Senior Environmental Scientist California Department of Fish and Game

- 5.1 Although the California desert tortoise occurs in the local area, no desert tortoise were detected onsite or within the surrounding properties during protocol survey conducted between July 21, 2010, and July 26, 2010. Surveys were conducted onsite and at 200, 400, and 600 meters from the project boundary, and no desert tortoise sign was found within these transects. Protocols established by the U.S. Fish and Wildlife Service for desert tortoise surveys were followed, except that the survey was conducted outside of the specified survey season. Approval was granted by the U.S. Fish and Wildlife Service for conducting this survey outside of the normal survey season. The lack of desert tortoise sign suggests that the site is not currently occupied by desert tortoise. To assure that the California desert tortoise has not entered the site prior to ground disturbance activities, a focused trapping survey will be conducted prior to any ground disturbing activities to conclusively rule out the presence of the species onsite at that time. Refer to Mitigation Measures BIO-1 to BIO-4 of the revised and recirculated Chapter 4.2, *Biological Resources* of the Draft EIR. Refer to Appendix A of this Final EIR.

The Mohave ground squirrel was listed by California as a threatened species on June 27, 1971. According to the West Mojave Plan Environmental Impact Report/Environmental Impact Statement and according to the Mohave ground squirrel Partnership Workshop, the subject property is located within the extreme southern periphery of the Mohave ground squirrel range. In 2006, the project site was evaluated for the potential of Mohave ground squirrel by O'Farrell Biological Consulting, which concluded that, the habitat on the project site is not suitable for Mohave ground squirrel. CDFG concurred with this assertion and the site survey for Mohave ground squirrel conducted by Tom Dodson & Associates corroborated these findings. Although the project site was not identified as containing suitable habitat for Mohave ground squirrel, out of an abundance of caution, a focused trapping survey will be conducted prior to any ground disturbing activities to conclusively rule out the presence of the species onsite at that time. Refer to Mitigation Measures BIO-1 to BIO-4 of the revised and recirculated Chapter 4.2, *Biological Resources* of the Draft EIR. Refer to Appendix A of this Final EIR.

The burrowing owl is not listed under the State or Federal Endangered Species Act, but is considered both a Federal and State "Species of Concern". The proposed residential development project may disrupt the integrity or continuity of habitat suitable for, and presumably occupied by, the burrowing owl. Evidence of burrowing owl was found on the project site in the southeastern quarter of the parcel. Seven burrows were found in this area that had old sign including white wash, castings, and feathers near the burrow entrances. Therefore, the southeastern quarter of the project site should be assumed to provide suitable burrowing owl habitat that could become occupied. There was indication of occupation of the site by burrowing owl; however, the project site is not currently occupied.

The proposed project may disrupt the integrity or continuity of habitat suitable for burrowing owl. Implementation of mitigation measures BIO-5 through BIO-6 identified in the recirculated

and revised Chapter 4.2, *Biological Resources of the* Draft EIR would reduce impacts to a level of less than significant. Refer to Appendix D of the Draft EIR for the burrowing owl survey.

5.2 Refer to Response 5.1.

5.3 Refer to Response 5.1.

5.4 Refer to Response 5.1.

5.5 Refer to Response 5.1.

5.6 This mitigation measure has been included into the EIR. Refer to Mitigation Measures BIO-5 through BIO-10 as identified in the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR.

5.7 Refer to Response 5.6.

5.8 Refer to Response 5.6.

5.9 Refer to Response 5.6.

5.10 The presence of ravens is a concern for populations of desert tortoise. As stated in response 5.1, no desert tortoise sign was found on or surrounding the project site. Therefore, the presence of ravens at the project site would not create impacts to desert tortoise.

It should be noted that ravens are also attracted to refuse. The project proposes the development of single family residences, which would generate trash. However, trash would be collected in enclosed bins and collected on a weekly basis by a trash service. No open landfills or collection pits are proposed. Therefore, it is not anticipated that ravens would be attracted to the site.

5.11 Refer to Response 5.10. The project site does not contain or support desert tortoise or Mohave ground squirrel. Since the site does not contain desert tortoise, it is not anticipated that ravens would be attracted to the site, and thus, there would not be a need for a Raven Management Plan. In addition, a Take Permit is not required as part of project implementation. Best Management Practices (BMPs) would be in place to avoid or minimize situations that would attract ravens.

5.12 Subsequent to the preparation of the Draft EIR, a Jurisdictional Delineation was prepared for the proposed project site. Based on a detailed review of current site conditions, the Jurisdictional Delineation determined that approximately .10 acre of Regional Board and CDFG unvegetated jurisdictional drainage is located onsite. Due to the isolated nature of the drainage, no Corps jurisdiction is located onsite. Therefore, the project applicant will be required to obtain a Regional Water Quality Waste Discharge Requirement and a CDFG Streambed Alteration Agreement. Refer to Section 3.0, *Errata* of this document. Refer to Appendix C of the Final EIR.

5.13 Subsequent to the close of the public comment period for that Draft EIR, the County has made changes to Section 4.2, *Biological Resources*, of the Draft EIR. The revised Section 4.2 supersedes

and replaces Section 4.2, *Biological Resources*, which was included in the March 25, 2010, Draft EIR.

The County elected to recirculate the revised Section 4.2 for public review and comment. Pursuant to Section 15088.5(c) of the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3), only Section 4.2 of the Draft EIR was recirculated. Pursuant to Section 15088.5(f)(2) of the CEQA Guidelines, the County (i) requested that reviewers limit their comments to the revised Section 4.2, (ii) responded to previously submitted comments on all portions of the previously circulated Draft EIR, except those made with respect to the now-superseded Section 4.2, and (iii) responded to comments made during the recirculation period to the revised Section 4.2.

Additionally, certain issues have previously been adjudicated, such as the evaluation and mitigation of potential impacts to the California desert tortoise and Mohave ground squirrel, and ultimately may be determined by the courts not to be subject to additional judicial review.

Refer to the revised and recirculated Chapter 4.2, *Biological Resources*, of the Draft EIR for additional information.

Comment Letter No. 6

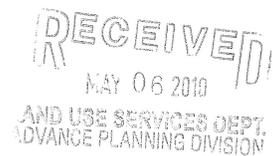


Town of Apple Valley

14955 Dale Evans Parkway • Apple Valley, California 92307

May 4, 2010

Mr. Matthew W. Slowik
Senior Planner
San Bernardino County, Land Use Services Department
Advanced Planning Division
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0182



Re: General Plan Amendment and Tentative Tract Map 16569
(SCH#2005071104) generally located on the east side of Deep Creek
Road, between Breezy Lane and Roundup Way.

Dear Mr. Slowik:

The Town of Apple Valley appreciates the opportunity to comment on the proposal noted above. The Town of Apple Valley last commented on this project on September 21, 2005, which is provided as an attachment to this letter. The Town's concerns regarding this project have not changed and the comments summarized in the September 2005 letter address these issues. The Town is encouraged that many of the original concerns that were provided in the original letter to the County on this project, dated November 19, 2003, have been addressed and revised. The Town would request that the County consider modifying the Conditions of Approval to include the remaining concerns outlined in the attached letter.

6.1

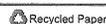
Again, thank you for your time and consideration in this matter. If you have any questions regarding this matter, please contact me at (760) 240-7000 Ext. 7204.

Respectfully,

Lon Lamson
Assistant Director of Community Development

Attachment: Letter to John Schatz dated September 21, 2005

c: Ken Henderson, Asst. Town Manager of Economic and Community
Development





Town of Apple Valley

14955 Dale Evans Parkway • Apple Valley, California 92307

September 21, 2005

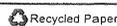
Mr. John Schatz
Senior Associate Planner
San Bernardino County, Land Use Services Department
Current Planning Division
15456 West Sage Street
Victorville, CA 92392

Re: Tentative Tract Map No.16569; generally located on the east side of Deep Creek Road, between Breezy Lane and Roundup Way.

Dear Mr. Schatz:

The Town of Apple Valley appreciates the opportunity to comment on the proposal noted above. Also, thank you for the opportunity to discuss this project with you at our meeting on September 16, 2005. The proposal (generally located on the east side of Deep Creek Road, between Breezy Lane and Roundup Way) is located within the Town's Sphere of Influence and, as such, any development within this area, as it relates to the potential impact such development may have upon the residents of the area, is very important to the Town. Our previous letter, dated November 19, 2003, identified some concerns about the proposed project. The Town of Apple Valley is encouraged to see that many of the previous issues of concern have been addressed in the revised project. After careful review of the revised project, and the draft County of San Bernardino there are still a few Town staff concerns that should be addressed by modifications to the draft County of San Bernardino Conditions of Approval.

- Condition No. 92B addresses the fair share contribution for the traffic signal at Deep Creek and Bear Valley Roads. The Condition should be modified to state that the fair share contributions should be paid to the Town of Apple Valley. The installation of this traffic signal will be either undertaken by the Town or a future developer in the Deep Creek/Bear Valley Roads area, which would be under the direction of the Town. } 6.1
- Condition No. 95 should be modified to require the payment of Quimby fees to the Town of Apple Valley prior to the issuance of building permits. The fees shall be those adopted by the Town of Apple Valley for development within the Apple Valley Parks and Recreation Service Area. } 6.2
- Condition No. 42 should be modified to require that the project connect to the Town of Apple Valley sewer system. The Town of Apple Valley would like to see this area connected to the Town's sewer system with the } 6.3



SBCO Land Use Services Dept. - TTM No.16569
September 26, 2005
Page 2

understanding that this area, within the Town's Sphere of Influence, will be annexed to the Town in the future.

} 6.3
Cont.

- Condition No. 66 should be modified to require that a right-of-way dedication of not less than eighty (80) feet be provided for Deep Creek Road. This is requested so the road improvements would be consistent with the Town of Apple Valley Circulation Element of the General Plan, which indicates that Deep Creek Road is a secondary road which requires an eighty (80)-foot right-of-way.
- Add a condition that requires the developer to construct and dedicate a twelve (12)-foot Equestrian Trail easement within the right-of-way, which would be in addition to parkway landscaping and sidewalk requirements. The trail should include a four (4) to five (5)-foot high white vinyl rail fence located between the trail and the street, at a minimum distance of three (3) feet from the curb. The Town of Apple Valley foresees that Deep Creek Road will be an integral part of the Equestrian Lifeline Trail system.

} 6.4

} 6.5

The previous modifications made to this project, and changes to the Conditions of Approval enhancing as stated above, bring this project closer to the Town's high standards of prolonging the integrity of the rural town atmosphere and providing quality development in which Apple Valley takes great pride in preserving.

Again, thank you for your time and consideration in this matter. If you have any questions regarding this matter, please contact Ms. Lori Lamson, Principal Planner, at (760) 240-7000 Ext. 7204.

Respectfully,

ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT


Kenneth J. Henderson,
Director

- cc: Bruce Williams, Town Manager
Charles LaClaire, Assistant Director of Community Development
Brad Miller, Town Engineer
Dennis Cron, Director of Public Services
Jennifer Clark, Park and Recreation Manager
Orlando Acevedo, Administrative Assistant

Response No. 6

Lori Lamson, Assistant Director of Community Development Town of Apple Valley

- 6.1 As stated in Chapter 4.1 of the Draft EIR, the County is responsible for collecting fees associated with fair share contributions from each development project within its jurisdiction. Depending on the location of the proposed improvement, the County would either implement the improvements themselves (if the improvement is the responsibility of the County) or give the funds to the appropriate jurisdiction (if the improvements are another jurisdiction's responsibility). The intersection of Deep Creek Road and Bear Valley Road are within the jurisdiction of Apple Valley, and therefore, funds associated with improvements to this intersection would be coordinated with the Town of Apple Valley.
- 6.2 The Project Applicant would be required to pay Quimby Act fees to the Town of Apple Valley prior to the issuance of building permits, as a standard Condition of Approval for the project.
- 6.3 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is required as part of this Final EIR. However, as stated in the previously prepared Initial Study for the project, wastewater services would be provided by individual septic systems on each residential lot. The average lot size for the project would be 43,051 square feet. This meets the standards of the Lahontan Regional Water Quality Control Board, which requires a minimum of lot size of ½ acre for the use of individual septic systems. In addition, at this time, the Project Applicant is not applying for annexation into the Town of Apple Valley, and therefore, once developed, the project would remain in the jurisdiction of the County.
- 6.4 The County of San Bernardino *General Plan* designates Deep Creek Road as a secondary highway with an 88 foot right of way. Therefore, any improvements to Deep Creek Road would meet this minimum standard.
- 6.5 The development of an equestrian trail is not part of the proposed project description. The development of an equestrian trail is also a design issue, not a traffic issue, and therefore does not fall within the purview of this CEQA analysis. If requested by the County, the addition of an equestrian trail within the proposed development footprint can be added as a condition of approval and as part of the final map process.

Comment Letter No. 7

DEPARTMENT OF PUBLIC WORKS

FLOOD CONTROL • LAND DEVELOPMENT & CONSTRUCTION
SOLID WASTE MANAGEMENT • SURVEYOR • TRANSPORTATION



COUNTY OF SAN BERNARDINO

825 East Third Street • San Bernardino, CA 92415-0835 • (909) 387-8104
Fax (909) 387-8130

GRANVILLE M. "BOW" BOWMAN, P.E., P.L.S.
Director of Public Works

May 5, 2010

File: 10(ENV)-4.01

County of San Bernardino
Land Use Services Department
Attn: Matthew Slowik, Senior Planner
Advance Planning Division
385 North Arrowhead Avenue
San Bernardino, CA 92415

RE: NOTICE OF AVAILABILITY OF DRAFT EIR FOR THE LEWIS OPERATION CORP. DEEP CREEK (APPLE VALLEY) PROJECT: GENERAL PLAN AMENDMENT AND TENTATIVE TRACT MAP (TT# 16569) IN UNINCORPORATED SAN BERNARDINO COUNTY

Dear Mr. Slowik:

Thank you for giving the San Bernardino County Department of Public Works (DPW) and Flood Control District (District) the opportunity to comment on the above-referenced project.

Environmental Management Division, Dan Ilkay, Stormwater Program Mgr, NPDES, (909) 387-8119:
The San Bernardino County General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Phase II Permit) mandates the incorporation of post construction best management practices to mitigate project water quality impacts. The County of San Bernardino has adopted a Water Quality Management Plan (WQMP) to provide project designers a documented procedure for complying with these requirements. The Draft EIR should include reference to the preparation and adherence to the WQMP design criteria. Additionally, the project site plan within the document should be amended to show site design and WQMP features.

7.1

Section 9.7 of the Draft EIR does not adequately address water quality impacts generated from the proposed project. This section needs to include reference to the new development and redevelopment section of the Phase II General Permit. Furthermore, to satisfy the applicable permit requirements, it is necessary to include measures to be taken to minimize project impacts from impervious surface additions to site hydrology, runoff flow rates, velocities and pollutant loads. Further explanation is necessary, detailing efforts to reduce pollutant loading from the project based on the maximum extent practicable (MEP) standard. The designated entity responsible for maintenance of water quality features should be identified, including any proposed funding mechanisms. Reference to the preparation of the project Water Quality Management Plan should also be included within this section.

7.2

Traffic Division, Ed Petre, Public Works Engineer III, 909-387-8239:

On page 4.1-71, Cumulative Intersection Improvements #4: Ocotillo Way would be barricaded at the easterly terminus to preclude dirt road usage.

Page 5.0-2, Dirt Roads: This section states that people use Ocotillo Way. The aerials show that there are residences just to the east of the project. Please address the impacts that blocking this road will have on these residents in particular, and future development in general, east of the proposed project near Ocotillo Way.

7.3

GREGORY C. DEVEREAUX
County Administrative Officer

Board of Supervisors
BRAD MITZELFELT First District
PAUL BIANE Second District
JOSIE GONZALES Fifth District
NEIL DERRY Third District
GARY C. OVITT Fourth District

LUSD – Matthew Slowik
May 5, 2010
Page 2 of 2

Land Development Division, Michael Roser, Engineering Technician IV, (760) 843-4367:

There is concern regarding the occurrence of a blue line stream that transects the project. This tributary is part of the Apple Valley West/Desert Knolls Master Plan of Drainage D-01, which is a proposed Regional Facility. Comments from California Fish and Game will also be required. Since this is a Tract, we will review it more in depth once we receive the project notice.

7.4

Environmental Management Division, Linda Mawby, Associate Planner, (909) 387-1848:

In relation to the blue line stream as noted on the USGS Apple Valley South 7.5' Quad: Please also address the need to identify "waters of the U.S." that will be affected by this project.

7.5

"Waters of the U.S." will require regulatory permits through the Army Corps of Engineers, the Regional Water Quality Control Board and the California Department of Fish and Game.

Flood Control Planning Division, Harold Zamora, Public Works Engineer III, (909) 387-8120:

The Planning Division has reviewed the Notice of Availability of Draft EIR for the Lewis Operating Corporation Deep Creek (Apple Valley) Project in the Unincorporated Apple Valley Area.

Our preliminary comments are as follows:

1. The Project location is within the Apple Valley West/Desert Knolls Master Plan of Drainage (MPD) study limits and is located along a proposed regional facility (Line D-01). This system directly traverses the project limits and, therefore, a complete set of detailed plans are required for District approval.

7.6

2. The width of the "Drainage corridor" stated in the Draft EIR report (104') is not consistent with the construction of the proposed regional facility identified in the MPD. Currently, the MPD addresses a 120-foot wide (120') drainage reservation for the said facility. A hydrology and hydraulic report will be required for District approval.

7.7

Water Resources Division, Andrea Flasher, Engineering Tech IV, (909) 387-8213:

The Water Resources Division recommends the utilization of the July 1994 Master Plan of Drainage, Apple Valley West/Desert Knolls, prepared by Williamson & Schmid, in the design and preparation of drainage facilities.

7.8

If you have any questions or require additional information, please contact the specific Division that provided the comment, as listed above.

Sincerely,



NARESH P. VARMA, P.E., Chief
Environmental Management Division

NPV:LM:mb/CEQA Comments Deep Creek (Apple Valley) Lewis Homes.doc

cc: Linda Mawby
GMB/ARI Reading File

Response No. 7

**Naresh Varma, PE, Chief, Environmental Management Division
County of San Bernardino Department of Public Works**

- 7.1 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is required as part of this Final EIR. However, as a condition of approval for the proposed project, a Water Quality Management Plan is required to be prepared. The Water Quality Management Plan would adhere to the County's Water Quality Management Plan design criteria.
- 7.2 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is required as part of this Final EIR. However, please refer to the previously prepared Initial Study for the proposed project for a discussion of water quality impacts. As a condition of approval for the proposed project, the applicant will be required to apply for a National Pollutant Discharge Elimination System (NPDES) permit from the Lahontan Regional Water Quality Control Board. The Project Applicant would also be required to prepare a Storm Water Pollution Prevention Plan (SWPPP). By following Best Management Practices (BMPs) as specified by the NPDES permit and SWPPP during construction, implementation of the project would reduce impacts to a level of less than significant.
- 7.3 The project proposes to improve Ocotillo Way from Deep Creek Road to its eastern terminus. The project does not propose to barricade the eastern terminus of Ocotillo Way. Ocotillo Way ends into railroad tracks just east of the project site. The railroad tracks are elevated approximately 10 feet above the street grade. Therefore, average traffic could not utilize Ocotillo Way east of the project site. Therefore, the project would not inhibit use of Ocotillo Road when compared to current conditions.
- 7.4 Refer to Response 5.12. Refer to Appendix C of the Final EIR.
- 7.5 Refer to Response 5.12. Refer to Appendix C of the Final EIR.
- 7.6 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is required as part of this Final EIR. However, as stated in the previously prepared Initial Study for the proposed project, the Apple Valley West/Desert Knolls Master Plan of Drainage was utilized in the preliminary design of drainage facilities, and, as a condition of approval, will be utilized in final design and preparation of project drainage facilities.
- 7.7 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary. However, as stated in the previously prepared Initial Study for the proposed project, the Apple Valley West/Desert Knolls Master Plan of Drainage was utilized in the preliminary design of drainage facilities, and, as a condition of approval, will be utilized in final design and preparation of project drainage facilities. In

addition, as a condition of approval, the project applicant would be required to submit a hydrology and hydraulic report for District approval.

- 7.8 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary. However, as stated in the previously prepared Initial Study for the proposed project, the Apple Valley West/Desert Knolls Master Plan of Drainage was utilized in the preliminary design of drainage facilities, and, as a condition of approval, will be utilized in final design and preparation of project drainage facilities.

Comment Letter No. 8

Slowik, Matt - LUS - Advance Planning

From: Petre, Ed
Sent: Monday, April 19, 2010 9:23 AM
To: Varma, Naresh
Cc: Mawby, Linda; Slowik, Matt - LUS - Advance Planning
Subject: Deep Creek Project (Lewis Homes) APN 438-012-59

Naresh,
Regarding the Draft EIR for this project, the Traffic Division has one comment:

1. 4.1-71,Cumulative Intersection Improvements: Ocotillo Way would be barricade at the easterly terminus to preclude dirt road usage.
Page 5.0-2, Dirt Roads: This section states that people use this road. The aerials show that there are residence just to the east of this project. What is the solution?

} 8.1

Thanks
Ed Petre
County of San Bernardino - Traffic Division
909-387-8239

Response No. 8

Ed Petre
County of San Bernardino Traffic Division

8.1 Refer to Response 7.3.

Comment Letter No. 9

Deep Creek Agricultural Association
20326 Siesta Lane
Apple Valley, CA 92308-8309

RECEIVED
MAY 05 2010
LAND USE SERVICES DEPT
ADVANCE PLANNING DIVISION

April, 29, 2010

Matthew Slowick
Senior Planner
385 North Arrowhead Ave., 1st Floor
San Bernardino, CA 92415-0182

RE: Notice of Preparation of EIR for Lewis Operating Corp; SCH#2005071104
General Plan Amendment and Tentative Tract 16569

Dear Mr. Slowick,

Once again, I bring to your attention a problem that I personally called you about twice and followed up with a letter dated February 23, 2007. and again, on September 4, 2007. I did not receive the current notice of EIR preparation for the second time now, even though I am the President of the Deep Creek Agricultural Association and have been for years. I obtained my copy from a member of the association again !

A few points / errors I would like to bring to your attention regarding the EIR.

2.6 Incorporation by reference

The old outdated 1998 Apple Valley General plan was used to prepare this EIR. If you read the current General plan you will clearly realize the effort and planning the Town of Apple Valley has invested into the Deep Creek area. This project is totally inconsistent with the towns plan. Do not certify this EIR when old outdated information was used to prepare it.

} 9.1

3.3 Background and history

The 1990 County denial letter on this project was not even mentioned or included in the EIR. How can you have a history without the history? The August 20, 1990 denial letter from the county, clearly states that the environmental consequences of this amendment are potentially numerous and significant. The issues include archeological, biological and cultural resources, public services (fire and police protection, schools), water quantity and quality, open space, air quality, transportation/circulation, aesthetics, demographics, soils, agriculture, noise, and hazards. It needs to be included.

} 9.2

3.5 Project objectives

Statement 1 states to create balance between the project and greater densities of the Town of Apple Valley. That statement is wrong and needs to be removed. The Town of Apple Valley as a whole, does not have greater densities then this proposed tract.

Statement 3 states, to avoid more intense urbanization by providing homes with significantly larger lots than found in typical new county subdivisions. This tract does not provide lots that are **significantly larger** than found in typical new county subdivisions. That is just wrong and needs to be removed.

} 9.3

Traffic existing east from this project on Ocotillo Way will be driving on Mockingbird Road, a dirt road and then onto Tussing Ranch Road, a dirt road. All schools for this project are east of the project. Of the hundreds of school kids that will live in this tract, many will be driven down Mockingbird Road by family members. Two trips a day per student. This additional traffic is unprecedented for those roads, wash board will be the norm. The impact on air quality will be far greater then the Mockingbird and Tussing Ranch Road residents have ever seen at their front doors before. How an air quality EIR is not required is beyond belief.

} 9.4
} 9.5

And the proposed answer to this new problem under Cumulative intersection improvements #4 page 4.1-71 is to Construct a barricade at the easterly terminus of paved Ocotillo Way to preclude dirt road usage to everyone, including twenty five plus home owners who use this road daily and have for years. This will cause residents to drive an additional mile north to Tussing Ranch road and they will not have secondary emergency access anymore. If a fire blocked the intersection of Tussing Ranch Road and Mocking Bird Road hundreds of residents would be unable evacuate or summon an ambulance, etc. Please see that the all agencies are notified of this permanent road closure proposal.

} 9.6

I am asking you as a Senior Planner, in the Advanced Planning Division not to certify this EIR because of the above mentioned issues.

I can be reached at 760-963-3435 anytime, if needed.
Email, Irim@aol.com

Thank you,
Ian Bryant 
President, Deep Creek Agricultural Association

Response No. 9

**Ian Bryant, President
Deep Creek Agricultural Association**

9.1 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary. However, the Draft EIR relied on the most recently approved Town of Apple Valley *General Plan* that was in place during the release of the Notice of Preparation for the proposed project.

CEQA Guidelines Section 15125(d) requires that an EIR discuss any inconsistencies between the proposed project and applicable general plans and regional plans. The project site is located within unincorporated San Bernardino County. While project is within the Town of Apple Valley's Sphere of Influence, the Project Applicant is not initiating proceedings for annexation into the Town of Apple Valley. Therefore, the previously prepared Initial Study analyzes the proposed project's consistency with the County of San Bernardino's *General Plan*, pursuant to CEQA Guidelines Section 15125(d).

9.2 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary. However, a copy of the 1990 letter in question was attached to the Draft EIR as part of Appendix A. Refer to Appendix A, *Notice of Preparation and Comment Letters* of the Draft EIR for a copy of the 1990 letter referenced.

9.3 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary.

9.4 Refer to Response 7.3.

9.5 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary. However, air quality impacts were analyzed in the previously prepared Initial Study, and all impacts were found to be less than significant after the implementation of mitigation measures. Traffic trips have not changed since the preparation of the Initial Study, and therefore, air quality is considered to have been adequately addressed.

9.6 Refer to Response 7.3.

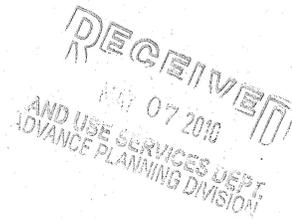
Comment Letter No. 10

Johnson Sedlack
ATTORNEYS AT LAW

Raymond W. Johnson, Esq. AICP	26785 Camino Seco, Temecula CA 92590	E-mail: EsqAICP@Wildblue.net
Carl T. Sedlack, Esq., Retired	www.johnson-sedlack.com	
Abigail A. Broedling, Esq.		Abby.JSLaw@Gmail.com
Kimberly Foy, Esq.		Kim.JSLaw@Gmail.com
		Telephone: 951-506-9925
		Facsimile: 951-506-9725

May 5, 2010

Matthew Slowick
Senior Planner
385 North Arrowhead Ave., 1st Floor
San Bernardino, CA 92415-0182



VIA FACSIMILE, E-MAIL AND US MAIL

RE: Notice of Preparation of EIR for Lewis Operating Corp; SCH#2005071104
General Plan Amendment and Tentative Tract 16569

Dear Matt:

This firm presents the following comments on behalf of project neighbors.

The DEIR is insufficient in that it does not address several potentially significant impacts. These impacts are different than those evaluated in the original Initial Study and Mitigated Negative Declaration for the project which were rescinded. First is the issue of noise impacts. In the original case, the court ruled that noise impact analysis was adequate because Petitioners did not point to specific homes that would be impacted by noise. Since the original case, several new homes have been constructed within the area that would be affected by construction noise. In addition, the changed traffic patterns will result in increase traffic noise. As a result there will be significant noise impacts that must be evaluated.

} 10.1
} 10.2

Additionally, at the time of the original case, there was no requirement to evaluate the impacts of the project on global climate change. Because of these new requirements, combined with altered traffic patterns, which will result in increased traffic on dirt roads, the DEIR must consider air quality impacts including global climate change.

} 10.3

Additionally, there are changed circumstances relative to land use impacts. Since the original Initial Study, both the County and the City have adopted new General Plans. The

} 10.4

land use impacts must be evaluated based upon the current plans, not General Plans that were replaced years ago.

} 10.4
Cont.

Thank you for consideration of these comments.

Sincerely,

Johnson & Sedlack



By:
Raymond W. Johnson, Esq. AICP
Attorneys for Petitioner

RAYMOND W. JOHNSON, Esq., AICP
26785 Camino Seco
Temecula, CA 92590
(951) 506-9925
(951) 506-9725 Fax
(951) 775-1912 Cellular

Johnson & Sedlack, an Environmental Law firm representing plaintiff environmental groups in environmental law litigation, primarily CEQA.

City Planning:

Current Planning

- Two years principal planner, Lenexa, Kansas (consulting)
- Two and one half years principal planner, Lee's Summit, Missouri
- One year North Desert Regional Team, San Bernardino County
- Thirty years subdivision design: residential, commercial and industrial
- Thirty years as applicants representative in various jurisdictions in: Missouri, Texas, Florida, Georgia, Illinois, Wisconsin, Kansas and California
- Twelve years as applicants representative in the telecommunications field

General Plan

- Developed a policy oriented Comprehensive Plan for the City of Lenexa, Kansas.
- Updated Comprehensive Plan for the City of Lee's Summit, Missouri.
- Created innovative zoning ordinance for Lenexa, Kansas.
- Developed Draft Hillside Development Standards, San Bernardino County, CA.
- Developed Draft Grading Standards, San Bernardino County.
- Developed Draft Fiscal Impact Analysis, San Bernardino County

Environmental Analysis

- Two years, Environmental Team, San Bernardino County
 - Review and supervision of preparation of EIR's and joint EIR/EIS's
 - Preparation of Negative Declarations
 - Environmental review of proposed projects
- Eighteen years as an environmental consultant reviewing environmental documentation for plaintiffs in CEQA and NEPA litigation

Representation:

- Represented various clients in litigation primarily in the fields of Environmental and Election law.
Clients include:
 - Sierra Club
 - San Bernardino Valley Audubon Society
 - Sea & Sage Audubon Society
 - San Bernardino County Audubon Society
 - Center for Community Action and Environmental Justice
 - Endangered Habitats League
 - Rural Canyons Conservation Fund
 - California Native Plant Society
 - California Oak Foundation
 - Citizens for Responsible Growth in San Marcos
 - Union for a River Greenbelt Environment
 - Citizens to Enforce CEQA
 - Friends of Riverside's Hills
 - De Luz 2000
 - Save Walker Basin
 - Elsinore Murrieta Anza Resource Conservation District

Education:

- B. A. Economics and Political Science, Kansas State University 1970
- Masters of Community and Regional Planning, Kansas State University, 1974
- Additional graduate studies in Economics at the University of Missouri at Kansas City
- J.D. University of La Verne. 1997 Member, Law Review, Deans List, Class Valedictorian, Member Law Review, Published, Journal of Juvenile Law

Professional Associations:

- Member, American Planning Association
- Member, American Institute of Certified Planners
- Member, Association of Environmental Professionals

Johnson & Sedlack, Attorneys at Law

26785 Camino Seco
 Temecula, CA 92590
 (951) 506-9925

12/97- Present

Principal in the environmental law firm of Johnson & Sedlack. Primary areas of practice are environmental and election law. Have provided representation to the Sierra Club, Audubon Society, AT&T Wireless, Endangered Habitats League, Center for Community Action and Environmental Justice, California Native Plant Society and numerous local environmental groups. Primary practice is writ of mandate under the California Environmental Quality Act.

Planning-Environmental Solutions

26785 Camino Seco
 Temecula, CA 92590
 (909) 506-9825

8/94- Present

Served as applicant's representative for planning issues to the telecommunications industry. Secured government entitlements for cell sites. Provided applicant's representative services to private developers of residential projects. Provided design services for private residential development projects. Provided project management of all technical consultants on private developments including traffic, geotechnical, survey, engineering, environmental, hydrogeological, hydrologic, landscape architectural, golf course design and fire consultants.

San Bernardino County Planning Department

Environmental Team
 385 N. Arrowhead
 San Bernardino, CA 92415
 (909) 387-4099

6/91-8/94

Responsible for coordination of production of EIR's and joint EIR/EIS's for numerous projects in the county. Prepared environmental documents for numerous projects within the county. Prepared environmental determinations and environmental review for projects within the county.

San Bernardino County Planning Department

General Plan Team
 385 N. Arrowhead
 San Bernardino, CA 92415
 (909) 387-4099

6/91-6/92

Created draft grading ordinance, hillside development standards, water efficient landscaping ordinance, multi-family development standards, revised planned development section and fiscal impact analysis. Completed land use plans and general plan amendment for approximately 250 square miles. Prepared proposal for specific plan for the Oak Hills community.

San Bernardino County Planning Department

North Desert Regional Planning Team
 15505 Civic
 Victorville, CA
 (619) 243-8245

6/90-6/91

Worked on regional team. Reviewed general plan amendments, tentative tracts, parcel maps and conditional use permits. Prepared CEQA documents for projects.

Broadmoor Associates/Johnson Consulting

229 NW Blue Parkway
Lee's Summit, MO 64063
(816) 525-6640

2/86-6/90

Sold and leased commercial and industrial properties. Designed and developed an executive office park and an industrial park in Lee's Summit, Mo. Designed two additional industrial parks and residential subdivisions. Prepared study to determine target industries for the industrial parks. Prepared applications for tax increment financing district and grants under Economic Development Action Grant program. Prepared input/output analysis of proposed race track. Provided conceptual design of 800 acre mixed use development.

Shepherd Realty Co.

Lee's Summit, MO

6/84-2-86

Sold and leased commercial and industrial properties. Performed investment analysis on properties. Provided planning consulting in subdivision design and rezoning.

Contemporary Concepts Inc.

Lee's Summit, MO
Owner

9/78-5/84

Designed and developed residential subdivision in Lee's Summit, Mo. Supervised all construction trades involved in the development process and the building of homes.

Environmental Design Association

Lee's Summit, Mo.

Project Coordinator

6/77-9/78

Was responsible for site design and preliminary building design for retirement villages in Missouri, Texas and Florida. Was responsible for preparing feasibility studies of possible conversion projects. Was in charge of working with local governments on zoning issues and any problems that might arise with projects. Coordinated work of local architects on projects. Worked with marketing staff regarding design changes needed or contemplated.

City of Lee's Summit, MO

220 SW Main
Lee's Summit, MO 64063
Community Development Director

4/75-6/77

Supervised Community Development Dept. staff. Responsible for preparation of departmental budget and C.D.B.G. budget. Administered Community Development Block Grant program. Developed initial Downtown redevelopment plan with funding from block grant funds. Served as a member of the Lee's Summit Economic

Development Committee and provided staff support to them. Prepared study of available industrial sites within the City of Lee's Summit. In charge of all planning and zoning matters for the city including comprehensive plan.

Howard Needles Tammen & Bergendoff

9200 Ward Parkway
Kansas City, MO 64114
(816) 333-4800
Economist/Planner

5/73-4/75

Responsible for conducting economic and planning studies for Public and private sector clients. Consulting City Planner for Lenexa, KS.

Conducted environmental impact study on maintaining varying channel depth of the Columbia River including an input/output analysis. Environmental impact studies of dredging the Mississippi River. Worked on the Johnson County Industrial Airport industrial park master plan including a study on the demand for industrial land and the development of target industries based upon location analysis. Worked on various airport master plans. Developed policy oriented comprehensive plan for the City of Lenexa, KS. Developed innovative zoning ordinance heavily dependent upon performance standards for the City of Lenexa, KS.

Response No. 10

**Raymond Johnson, Esq., AICP
Johnson and Sedlack**

10.1 Without additional information as to how the Draft EIR is insufficient, no further response is possible.

10.2 The noise analysis included as part of the previously prepared EIR relied on cumulative development projections made in the original Traffic Impact Analysis. Therefore, the noise analysis included an assessment of impacts to residences that were anticipated to be built in the future. As stated in the Initial Study, noise impacts associated with the proposed project would be less than significant with the implementation of mitigation. Refer to Section XI, *Noise*, of the Initial Study for additional information.

Similarly, although the Traffic Impact Analysis was updated since the preparation of the Initial Study, the number of trips did not increase or change, and thus, no traffic patterns were changed. Therefore, no change in traffic noise has occurred since the originally prepared Initial Study.

10.3 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary. However, since the preparation of the Mitigated Negative Declaration, the County of San Bernardino, as part of a settlement agreement, has implemented a Greenhouse Gas Emissions Reduction Plan. The Greenhouse Gas Emissions Reduction Plan includes a reduction target and mitigation measures designed to meet the target. All applications for projects within the County would be required to adhere to the mitigation measures and reduction measures outlined in the Plan.

Additionally, the Mojave Desert Air Quality Management District (MDAQMD) submitted a letter to the County in response to receiving and reviewing the Draft EIR. The comment letter stated that MDAQMD had no comments on the project.

10.4 This comment does not pertain to the adequacy of the traffic and/ or biological resources analysis, and therefore, no further response is necessary. However, the Draft EIR relied on the most recently approved Town of Apple Valley *General Plan* and County of San Bernardino *General Plan* that was in place during the release of the Notice of Preparation for the proposed project.

CEQA Guidelines Section 15125(d) requires that an EIR discuss any inconsistencies between the proposed project and applicable general plans and regional plans. The project site is located within unincorporated San Bernardino County. While project is within the Town of Apple Valley's Sphere of Influence, the Project Applicant is not initiating proceedings for annexation into the Town of Apple Valley. Therefore, the previously prepared Initial Study analyzes the proposed project's consistency with the County of San Bernardino's *General Plan*, pursuant to CEQA Guidelines Section 15125(d).

Comment Letter No. 11

Deep Creek Agricultural Association
Ellen (Edwards) Gundling, Secretary
20326 Siesta Lane
Apple Valley, Ca. 92308-8309
(760) 240-8121
e.gundling@gmail.com



April 12, 2010

To: County of San Bernardino Land Use Services Department

Re: Notice of availability of the draft environmental impact report for the Lewis Operating Corp. Deep Creek (Apple Valley) project: General Plan Amendment and Tentative Tract Map (TTM #16569)-SCH #2005071104

Dear Dena M. Smith, Director et al:

The "Deep Creek Agricultural Association", DCAA, in conjunction with its members and concerned citizens in the south Apple Valley un-incorporated area, and the Town of Apple Valley concerned residents in the surrounding area are asking, at this time, for the County of San Bernardino to re-consider the application (TTM #16569)-SCH #2005071104 and that it be presented before the current Board of Supervisors for further consideration. The current application should be null and void.

At this time, and considering the corruption and deception and lack of perspective given this project by the former Bill Postmus (acting as Chairman of the Board of Supervisors) when this project was first passed through to the Planning Department, we are asking the current Board of Supervisors to consider and listen to the taxpaying citizens of San Bernardino County who adamantly contest the advancement of the project as mentioned above. This is the only possible remedy to a project that was biased from the start and subjected DCAA to hire an attorney to represent the vast number of persons that are strongly opposed to a condensed development in an agricultural zone. Without merit, the original CEQA report was presented to the Planning Department, and therefore had cause for legal representation by DCAA to determine the validity of said report and findings.

The Lewis Operating Corp. Deep Creek Project will severely impact the environment to include TRAFFIC and BIOLOGICALS. At this time we are asked to respond to traffic and biological studies only, even though other concerns were overlooked in the CEQA report and were considered "less than significant", even though all other issues were passed over without considerable attention. Among those other issues were: air quality, ground water pollution (considering our private wells), open space in correspondence to existing property in the area, aesthetics, and property size in coordination with the Town of Apple Valley and being in their sphere of influence.

We do not feel that the General Plan should be amended to change these 249 acres from agricultural land of Statewide Importance to rural residential. The 240 acres directly to

} 11.1
} 11.2
} 11.3

Mockingbird Ave (also a dirt road) as is Ocotillo Rd. Mockingbird Ave. at this time cannot accommodate heavy traffic as the air quality is questionable with current traffic/circulation needs. Mockingbird Ave. leads to Tussing Ranch Road (dirt) which is the east/west corridor to schools, shopping, fire and rescue, police etc. If access is granted to an additional 202 residential homes and families, Mockingbird Ave. and Tussing Ranch Road would suffer greatly as well as posing a danger to existing residents along these dirt roads. Grading of these two dirt roads, Tussing Ranch/Mockingbird is done by the County of San Bernardino road dept. Apple Valley yard. Tussing Ranch Road is half County and half Town of Apple Valley because it is on the border of both entities, even though the County does all the grading. Tussing Ranch is subject to flooding during the rainy season and it takes, sometimes days or weeks, for the County crew to come out on the repairs needed to access the dirt road. There have been several roll-overs on Tussing Ranch Road and two fatalities in the past years attesting to the fact that the road should only be used at a minimum.

} 11.6
Cont.

Tussing Ranch Road at Kiowa Rd. is presently marked by a four-way stop (new in the last year). There is no lighting at this intersection.

} 11.7

Tussing Ranch Road at Deep Creek Rd. is not a controlled intersection. There is only one stop sign for west bound traffic and north/south does not slow down or stop at the very dangerous downhill approach where Tussing Ranch Road exits.

} 11.8

Deep Creek Road (approximately 100 yards to the south of this T-intersection) is often flooded covering most of the road and takes days, if not weeks, to evaporate and make it a safe passable roadway. There have also been several accidents occur at this point when the water freezes up and cars approaching at 55 MPH attempt to circumvent this situation.

} 11.9

Deep Creek Road , to the north, intersects Bear Valley Road at another T-intersection, also not controlled by a signal nor a stop sign to the east/west bound traffic along the six lanes of Bear Valley Road. There have also been accidents at this intersection and a left turn proves dangerous, if not fatal, at this time.

} 11.10

Deep Creek Road at Rock Springs Road crosses under the (ATSF) railroad tracks and is narrow at best and cannot accommodate any turn lanes to the east/west.

} 11.11

Rocksprings Road crossing at the Mojave River is subject to flooding numerous times each year and is completely closed to through traffic at times. Several years ago the whole road was washed out and the 15 mile detour lasted nine months at best and traffic was diverted to Bear Valley Road. Continual flooding occurs on the new crossing of the Mojave River as the road remains just above ground and is not sufficient to handle the considerable traffic expected (one lane in each direction) with the advancement of this project.

} 11.12

Any monies toward a "fair share" contributions to any and all of these streets, intersections, and roadways seems to be a futile attempt to force the advancement of development in an area that is not well suited to dense populations.

} 11.13

} 11.14

Biological Resources:

Wild animal access, flyway, green belt, recreation area, equine property, drainage, septic issues, water table and pollution of well water for drinking, airborne pathogens created

} 11.15

during construction and from wood burning fireplaces, these are just a few of the biological issues that should be further addressed by the County of San Bernardino. Because of the over grazing of this land by cattle and burros the airborne dust created in the air is oftentimes abhorring, and further grading would make it nearly impossible to live in direct line to the north/east of this project.

} 11.15
Cont.

The burrowing owl lives along the eastern part of the project along the (BNSF) tracks, and I see no admission or concern for free space on the plans submitted in the letter dated March 18, 2010. Desert tortoises have been present on my property and surrounding lands in the area. More attention is needed in this area. Also Mojave ground squirrels are in abundance in the area in question, as well as coyote and their dens and pups. Free roaming space is needed to protect these species to make for a better balance of nature for future generations.

} 11.16

} 11.17

} 11.18

The Mojave River is a known flyway for migrating birds of many species. Great-blue Heron, Marsh hawks, Canadian geese, Red-tail hawks, Kestrels, etc. live in and around the vicinity and depend on open space to forage for food, be it animal or plant.

} 11.19

Please consider these concerns of mine, our organization (DCAA), and others as you represent the taxpaying citizens of this most pristine, rural area of the fragile desert. Make it your intention to prove this plan null and void. Direct any comments to me at the address above or by telephone or e-mail. Thank you for your time and attention.

} 11.20

I remain,

Ellen Gundling

Ellen (Edwards) Gundling

Response No. 11

Ellen Gundling
Deep Creek Agricultural Association

- 11.1 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary.
- 11.2 The Superior Court of the State of California, County of San Bernardino, and the Court of Appeal determined that the project may have significant environmental effects pertaining to traffic and biological resources impacts. Therefore, the County prepared an EIR for the proposed project that analyzed only potential traffic and biological resources impacts. The EIR addressed potentially significant impacts associated with Transportation and Circulation and Biological Resources based upon court direction, written responses to this Notice of Preparation (“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.
- 11.3 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary.
- 11.4 Site access to the proposed project is planned at three locations along Deep Creek Road: at Ocotillo Way, at “H” Street, and at an additional south project access site, “K” Street. As identified in tables 4.1-7 and 4.1-10 of the Draft EIR, the intersections listed above would operate at a LOS B during the AM and PM hours for forecast year 2015 and would operate at LOS B during the AM and LOS C during the PM hours for forecast year 2030. These intersections would be fully improved, including paving and constructing designated turn lanes.
- 11.5 As identified in tables 4.1-7 and 4.1-10 of the Draft EIR, Deep Creek Road at Ocotillo Way, “H” Street, and an additional south project access site, “K” Street, would operate at a LOS B during the AM and PM hours for forecast year 2015 and would operate at LOS B during the AM and LOS C during the PM hours for forecast year 2030. These intersections would be fully improved, including paving and constructing designated turn lanes. There is no access to the project site planned to the south, east, or north of the site. These roadway designs have been reviewed by the County traffic engineer.
- 11.6 Refer to Response 11.4.
- 11.7 Several improvements to the intersection of Deep Creek Road and Tussing Ranch Road would occur should the project be approved. Tussing Ranch Road would be paved, and the intersection would include a traffic signal and additional turn lanes to improve both the capacity and safety of the intersection. These roadway designs have been reviewed by the County traffic engineer.

- 11.8 It is not anticipated that project generated traffic would utilize the intersection of Tussing Ranch Road and Kiowa Road, as access to this intersection would not be directly available from the project site. Improvements to Tussing Ranch Road would not extend to Kiowa Road, and therefore, no improvements are planned at the intersection of Tussing Ranch Road and Kiowa Road.
- 11.9 Refer to Response 11.7.
- 11.10 Roadway design and traffic impact analysis both utilize the concept of a design hour (typically represented by normal weekday conditions) that is expected to occur many times (usually 30-50) per year. Flooding would be expected far less frequently. Any project impact is therefore less than significant. Refer to Chapter 5, *Additional Traffic and Biological Resources Related Issues* of the Draft EIR.
- 11.11 Several improvements are proposed at the intersection of Bear Valley Road and Deep Creek Road. The construction of improvements at this intersection would decrease the delay times at the intersection by providing a traffic signal, additional through lanes that would facilitate more efficient travel through the intersection. The traffic signal would result in the reduction of the existing delay times at the intersection. The additional through lane would result in an increase of capacity for traffic traveling through the intersection, allowing more cars to pass through the intersection during each signal cycle, thereby reducing the potential delay for vehicles approaching the intersection.
- 11.12 The construction of improvements at the intersection of Deep Creek Road and Rock Springs Road would decrease the delay times at the intersection by providing additional through lanes that will facilitate more efficient travel through the intersection. The additional through lanes would result in an increase of capacity for traffic traveling through the intersection, allowing more cars to pass through the intersection during each signal cycle, thereby reducing the potential delay for vehicles approaching the intersection. As based on the South/East Apple Valley Local Area Transportation Facilities Plan, the payment of the developer fee by the Project Applicant toward the physical improvements at this intersection would reduce impacts.
- 11.13 Flooding is expected to occur too infrequently to be considered significant to affect the roadway's capacity. Recent improvements to Rock Springs Road have been designed with improved road protection and flow capacity to eliminate the potential of the roadway being washed out and therefore impassible for significant periods of time; refer to Appendix C, *Traffic Impact Analysis*. Roadway design and traffic impact analysis both utilize the concept of a design hour (typically represented by normal weekday conditions) that is expected to occur many times (usually 30-50) per year. Flooding would be expected far less frequently. Any project impact is therefore less than significant. Refer to Chapter 5, *Additional Traffic and Biological Resources Related Issues* of the Draft EIR for additional information.
- 11.14 Pursuant to the Traffic Impact Fee Program, the County collects fees from new development to not only cover the developments fair share of needed local roadway improvements needed to

maintain adequate levels of service throughout the County, but also collects fees to defray the cost of certain regional roadway improvements necessitated by the demand created by new development.

11.15 The Draft EIR fully analyzed all potential biological resources impacts as required by CEQA. Refer to the revised and recirculated Chapter 3.2, *Biological Resources*, of the Draft EIR for additional information.

11.16 Refer to Response 5.1.

11.17 Refer to Response 5.1.

Impacts to coyotes were not analyzed as part of the Draft EIR, as common coyotes are not defined as a State and/or Federal listed endangered or threatened species. Therefore, analysis of coyotes is not required as part of CEQA.

11.19 In addition, all migratory bird species that are native to the U.S. or its territories are protected under the Federal Migratory Bird Treaty Act (MBTA), as amended under the Migratory Bird Treaty Reform Act of 2004 (FR Doc. 05-5127; USFWS 2004). The MBTA is generally protective of migratory birds but does not actually stipulate the type of protection required. In common practice, USFWS places restrictions on disturbances allowed near active raptor nests.

Mitigation Measure BIO-9 of the revised and recirculated Chapter 4.2, *Biological Resources* of the Draft EIR requires that all grubbing, brushing, and/or tree removal be conducted outside of the State identified nesting season (February 15 through September 1). The site would be evaluated by a qualified biologist prior to initiation of ground disturbance to determine the presence or absence of nesting birds. Bird nests would be avoided during the nesting season.

11.20 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary.

Comment Letter No. 12

 APPLE VALLEY EQUINE HOSPITAL, A.P.C.
R. M. LENHART, D.V.M.

10083 DEEP CREEK RD.
APPLE VALLEY, CA 92308
(760) 247-4226

RE-TRACT # (TTM 16569)
-SCH# 2005071104 3/26/10

MATTHEW SLOWIK

RECEIVED
MAR 31 2010
LAND USE SERVICES DEPT.
ADVANCE PLANNING DIVISION

IF THIS A SEWER SYSTEM
WASTE DISPOSAL - you get
my vote - if this is
septic on our 50-100 ft
water table on the granite
river bed - No OOD
o o o
Poor water planning!



12.1

Response No. 12

R.M. Lenhart, DVM
Apple Valley, CA

- 12.1 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary. However, the County Environmental Health Services Department requires percolation tests to determine compliance siting criteria for the use of individual septic tank disposal systems. Adherence to applicable requirements pertaining to the design, siting, construction, and maintenance of septic systems would reduce potential impacts to less than significant.

Comment Letter No. 13

County Of San Bernardino
Land Use Services Dept..
385 N.Arowhead Ave..
San Bernardino CA. 92415-0128
ATT:Mathew Slowik

RECEIVED
APR 07 2010
LAND USE & ADVANCE PLANNING DEPT. DIVISION

Patrica A.Turner
10180 Deep Creek Rd.
Apple Valley CA.92308
April,6,2010

Regarding:General Plan Amendment: #TTM #16569 - SCH#2005071104

This letter is being written in regard to proposed zone change of land in this area to which we strongly object too. The land in this area has been zoned for farm use for several years. Most all of the property in this area is 2 1/2 A or larger. The people who bought in this area did so to have farm animal and privacy etc. If you go along with this big money corp. and change the zoning. It will really upset the people in this area and confirm the peoples idea that with money etc. you can buy anything in San Bernardino Co. Especially since this County has a past history of this,

Further, what about flooding, as large portion of the ground will be covered by black top roads, buildings and concrete. This is ground that now soaks up rain and snow etc that prevents flooding. The plot map shows drainage into a sump pit in N/W corner. What happens when this gets full? The people living below this will be flooded out. But then again if you don't have big dollars & pull the Govt. does not care. All so regarding sewage only so much can be taken care of by the ground in this area. So it will affect the water table. Most people in the area have wells. So what happens then. Will the Govt. or the tract development take care of them?

How about traffic, all the roads in this area are two lane country type. This will cause some real problems. Especially Rock Sp. RD. crossing which floods when it rains etc, due to the Road Dept, design of the crossing.

If you change the zoning it is only a matter of time till people in the tract start to complaining about the smell, noise etc of farm animals & roads etc. then what? So what then, do you make these people get rid of their farm animals & business etc. in the name of Govt. & big money. Forget the rights and well being of these citizens who were here first.

SO PLEASE VOTE NO ON THIS ZONE CHANGE. There are lots of areas to put this tract in. Plus the Town of Apple Valley has a Ordinance of 1-house per 1/2 A.

Thanks for your time:

Patrica A Turner



13.1

13.2

13.3

13.4

Response No. 13

**Patricia Turner
Apple Valley, CA**

- 13.1 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary. However, the project would require the construction of a drainage corridor to handle onsite stormwater runoff. In addition, curbs and gutters would be required as part of development to direct stormwater flows. Adherence to these standards and the SWPPP would reduce potential impacts to a level of less than significant.

The County Environmental Health Services Department requires percolation tests to determine compliance siting criteria for the use of individual septic tank disposal systems. Adherence to applicable requirements pertaining to the design, siting, construction, and maintenance of septic systems would reduce potential impacts to less than significant.

- 13.2 Improvements to local and regional roads would be constructed as part of the proposed project. Refer to Table 4.1-11, *Cumulative Roadway Improvement Summary (2030)* in Chapter 4.1 of the Draft EIR.

Flooding is expected to occur too infrequently to be considered significant to affect the roadway's capacity. Recent improvements to Rock Springs Road have been designed with improved road protection and flow capacity to eliminate the potential of the roadway being washed out and therefore impassible for significant periods of time; refer to Appendix C, *Traffic Impact Analysis*. Roadway design and traffic impact analysis both utilize the concept of a design hour (typically represented by normal weekday conditions) that is expected to occur many times (usually 30-50) per year. Flooding would be expected far less frequently. Any project impact is therefore less than significant. Refer to Chapter 5, *Additional Traffic and Biological Resources Related Issues* of the Draft EIR for additional information.

- 13.3 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary.
- 13.4 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary.

Comment Letter No. 14

Ellen Gundling
20326 Siesta Lane
Apple Valley, CA 92308-8309

2009 APR 23 AM 4: 28

Brad Mitzelfelt
Supervisor, First District
San Bernardino County
9329 Mariposa Road, Suite 205
Hesperia, CA 92344

February 23, 2009

Dear Mr. Mitzelfelt:

This is in receipt of your post card dated 2/19/2009 thanking me for contacting your office and assigning Andy Silva in order to assist me with my inquiry.

As you may well be aware of, I am contacting you in reference to a prolonged matter with the County of San Bernardino regarding a zone change to Agriculture Land in the south Apple Valley area.

For your reference I am enclosing a copy of the last correspondence I received from the County of San Bernardino-Advance Planning Division dated January 29, 2009.

This has been an ongoing issue since the purchase of the 242 acres, referred to as the "Deep Creek" project, by the Lewis Operating Corp., LHC Alligator, LLC in December of 1989.

In 1990, the County of San Bernardino flatly denied a request by the above mentioned company to change the land use from Agriculture to Residential. The vote by the Board of Supervisors, at the time, was unanimous and they flatly out denied the project.

Not much has changed in the Deep Creek area over the years as far as land use, and the current residents are content with the rural atmosphere and the zoning quality that we had agreed upon when purchasing our property.

We resent the fact that our Agriculture Zoning could be in jeopardy because of the intrusion of a large developer trying to optimize an opportunity to create a condensed housing tract of 202 homes on approximately 240 acres.

I am including a map (San Bernardino County) of our area for a comparison study. I will also be sending the same map to Advance Planning Dept. in San Bernardino. The property in question (PIQ) is highlighted in yellow (Lewis Operating Company). The property of 240 acres directly north of the (PIQ), where I reside, is a study in comparison that should be considered in any decision that the County makes regarding this proposed project.

14.1

There are currently 20 homes and one Equine Hospital located on the 240 acres directly north of (PIQ), indicated in red, (hospital in red, circled in blue). We share an average of 6.87 ½ acres each (see graph listed on enclosed map). This is in no way comparable to the proposed zone change requested by The Lewis Co. (residential) to include 202 homes on a little over ½ acre each.

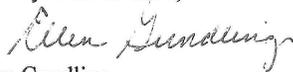
It seems highly unfair to subject the current residents to this unscrupulous endeavor asked by The Lewis Co. We now enjoy a crime free neighborhood with little impact to resources. This would definitely impact our neighborhood and will not be met without high criticism.

On file with the County of San Bernardino County are numerous letters of concern regarding this property and issues such as traffic, water quantity and quality, open space, air quality, aesthetics, demographics, soils, agriculture, noise, public services, cultural resources, archeological, biological, etc. Please refer to all correspondence on this issue and consider all aspects that this project would burden.

It is highly questionable that a project of this size does not require a full blown Environmental Impact Report. It is also sad that the numerous members of Deep Creek Agricultural Association had to retain legal advice in order to make sure mistakes were not made and directives were followed by all County of San Bernardino employees.

We are counting on you to look into this matter with all due diligence and get back to us with your best intentions. Please consider each and every letter on file and if you have any questions feel free to contact me or any members of the Deep Creek Agricultural Association.

Thank you in advance,



Ellen Gundling
(760) 240-8121

14.2

Comparison chart of 240 acres north of (PIQ)
South Apple Valley, CA (Deep Creek)

Homes	Acres	Total Acreage
3	20	60
4	10	40
6	5	30
8	2 ½	20
1	1 ¼	1 ¼

22 homes on 151 ¼ acres = 6.87 ¼ average acres

Deep Creek Agricultural Association
Comparison of 240 acres to the north of The Lewis Co.
“Deep Creek” project to be considered by the
County of San Bernardino, CA.

Response No. 14

**Ellen Gundling
Apple Valley, CA**

- 14.1 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary.
- 14.2 This comment does not pertain to the adequacy of the traffic and/or biological resources analysis, and therefore, no further response is necessary.

**SCREENCHECK
FINAL
ENVIRONMENTAL IMPACT REPORT
SCH No. 2005071104**

DEEP CREEK PROJECT

**RECIRCULATED CHAPTER 4.2,
BIOLOGICAL RESOURCES COMMENT
LETTERS**

Comment Letter No. 15



JERRY BROWN
GOVERNOR

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



January 21, 2011

Matthew Slowik
San Bernardino County Land Use Services Department
385 N. Arrowhead, 1st Floor
San Bernardino, CA 92415-0182

Subject: Lewis Operating Corp, LHC Alligator, LLC (Deep Creek) Project
SCH#: 2005071104

Dear Matthew Slowik:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on January 20, 2011, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,


Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

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

15.1

**Document Details Report
State Clearinghouse Data Base**

SCH# 2005071104
Project Title Lewis Operating Corp, LHC Alligator, LLC (Deep Creek) Project
Lead Agency San Bernardino County

Type EIR Draft EIR
Description Note: Re-circulated Ch. 4.2 Biological Resources

General Plan Amendment to change the land use district from AG-SCp (Agricultural with a Primary Sign Control Overlay) to RS-20m (Single Residential - 20,000 square foot minimum lot size). Tentative Tract Map (#16569) to create 202 single family residential lots and 6 lettered lots on 249 acres.

Lead Agency Contact

Name Matthew Slowik
Agency San Bernardino County Land Use Services Department
Phone 909 387-4147 **Fax**
email
Address 385 N. Arrowhead, 1st Floor
City San Bernardino **State** CA **Zip** 92415-0182

Project Location

County San Bernardino
City Apple Valley
Region
Lat / Long
Cross Streets Deep Creek Road / Ocotillo Way
Parcel No. 0438-012-59, 0438-163-01; 02, 20 & 31
Township 4N **Range** 3W **Section** 20 **Base** SBBM

Proximity to:

Highways
Airports
Railways ATSF
Waterways Mojave River
Schools
Land Use AG - SCp (Agricultural w/ Primary Sign Control Overlay)

Project Issues Traffic/Circulation; Vegetation; Wildlife; Cumulative Effects; Biological Resources

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Game, Region 6; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Caltrans, District 8; Regional Water Quality Control Bd., Region 6 (Victorville); Department of Toxic Substances Control; Native American Heritage Commission; Public Utilities Commission; State Lands Commission

Date Received 12/07/2010 **Start of Review** 12/07/2010 **End of Review** 01/20/2011

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

Response No. 15

**Scott Morgan, Acting Director
Governor's Office of Planning and Research**

- 15.1 This letter is from the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit. It confirms the project's compliance with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act (CEQA).

Comment Letter No. 16

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: ds_nahc@pacbell.net



December 27, 2010

Mr. Bryant Slovick

San Bernardino County Land Use Services Department

385 No. Arrowhead, 1st Floor
San Bernardino, CA 92415-0182

Re: Tribal Consultation Per Government Code §§ 65352.3, 65352.4 and 65560 (SB 18/Sacred Lands File Search) for Project- General Plan Amendment to Change Land Use District from AG-SCp (Agriculture) to RS (Single Residential); Tentative Tract Map 16569; SCH#2005071104; located in the Apple Valley; San Bernardino County, California;

Dear Mr. Slovick:

Government Code §65352.3, .4 and .5 requires local governments to consult with California Native American tribes identified by the Native American Heritage Commission (NAHC) for the purpose of protecting, and/or mitigating impacts to cultural places that might be impacted by a General Plan or Specific or modifications thereof. Attached is a Native American Tribal Consultation list of tribes with traditional lands or cultural places located within the requested plan, the Area of Potential Effect (APE).

As a part of consultation, the NAHC recommends that local governments conduct record searches through the NAHC and California Historic Resources Information System (CHRIS) (Contact the Office of Historic Preservation at (916) 445-7000 to find the nearest CHRIS Information Center) to determine if there are any recorded archaeological sites are located within the area(s) affected by the proposed action, in the California Historical Resources Information System (CHRIS) Inventory.

A NAHC Sacred Lands File search was conducted based on the project site information included in your request; **Native American cultural resources were NOT identified** within ½-mile of the APE. Also, the absence of archaeological items and/or Native American cultural resources does not mean they do not exist at the subsurface level and ground-breaking activity may expose them.. Consultation with local Native American is the best and recommended manner for identifying specific sensitive cultural areas with which your agency should become familiar. Early consultation with the Native American tribes on the attached list is the best way to find out if the proposed project may impact Native American cultural resources. Local governments should be aware that records searches do not preclude the existence of and the discovery of sacred sites or a cultural place of special religious and cultural significance to local Native American tribes. ~~And please note that a tribe or tribal members may be the only source of information regarding the existence of a sacred site or a cultural place.~~

If you have any questions, please contact me at (916) 653-6251.

Sincerely,

Dave Singleton, Program Analyst

Attachment: Native American Tribal Government Contacts

16.1

**Native American Tribal Consultation List
San Bernardino County
December 27, 2010**

Ramona Band of Cahuilla Mission Indians
Joseph Hamilton, Chairman
P.O. Box 391670 Cahuilla
Anza, CA 92539
admin@ramonatribe.com
(951) 763-4105

Morongo Band of Mission Indians
Robert Martin, Chairperson
12700 Pumarra Rroad Cahuilla
Banning, CA 92220 Serrano
(951) 849-8807
(951) 755-5200

San Manuel Band of Mission Indians
James Ramos, Chairperson
26569 Community Center Drive Serrano
Highland, CA 92346
(909) 864-8933
(909) 864-3724 - FAX

Serrano Nation of Indians
Goldie Walker
P.O. Box 343 Serrano
Patton, CA 92369
(909) 862-9883

Soboba Band of Mission Indians
Scott Cozaet, Chairperson
P.O. Box 487 Luiseno
San Jacinto, CA 92581
dhill@soboba-nsn.gov
(951) 654-2765

Gabrieleno/Tongva San Gabriel Band of Mission
Anthony Morales, Chairperson
PO Box 693 Gabrielino Tongva
San Gabriel, CA 91778
GTTribalcouncil@aol.com
(626) 286-1632
(626) 286-1758 - Home
(626) 483--3564 cell

Gabrielino Tongva Nation
Sam Dunlap, Chairperson
P.O. Box 86908 Gabrielino Tongva
Los Angeles, CA 90086
samdunlap@earthlink.net
(909) 262-9351 - cell

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable only for consultation with Native American tribes under Government Code Section 65352.3.

Response No. 16

**Dave Singleton, Program Analyst
Native American Heritage Commission**

16.1 Refer to Response 3.1.

Comment Letter No. 17



State of California –The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Inland Deserts Region
12550 Jacaranda Ave.
Victorville, CA 92395
www.dfg.ca.gov

EDMUND G. BROWN, Jr. Governor
JOHN McCAMMIAN, Director



January 19, 2011

Mr. Matthew Slowik
San Bernardino County Land Use Service Department
385 N. Arrowhead, 1st Floor
San Bernardino, CA 92415
Phone: (909) 387-4147

Subject: Re-circulated chapter 4.2 Biological Resources of the Draft Environmental Impact Report (DEIR) for the development of proposed Lewis Operating Corp. SCH # 2005071104.

Dear Mr. Slowik:

The Department of Fish and Game (Department) has reviewed the Re-circulated chapter 4.2 Biological Resources of the Draft Environmental Impact Report (DEIR) for the above referenced project. The proposed Lewis Operating Corp, LHC Alligator, LLC (Deep Creek) Project (project) would amend the general plan to change the land use from AG-SCp (Agricultural with a primary sign control overlay) to RS-20m (single residential-20,000 square foot minimum lot size), and adoption of Tentative Tract Map #16569 to construct 202 single family residential lots and 6 letter lots on 249 acres. The proposed project is located at the cross streets of Deep Creek Road and Ocotillo Way, in unincorporated Apple Valley, San Bernardino County (APN# 0438-012-59; 0438-163-01, 02, 20 and 31).

The Department is providing comments on the Re-circulated DEIR as the State agency which has statutory and common law responsibilities with regard to fish and wildlife resources and habitats. California's fish and wildlife resources, including their habitats, are held in trust for the people of the State by the Department (Fish and Game Code §711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitats necessary for biologically sustainable populations of those species (Fish and Game Code §1802). The Department's Fish and wildlife management functions are implemented through its administration and enforcement of Fish and Game Code (Fish and Game Code §702). The Department is a trustee agency for fish and wildlife under the California Environmental Quality Act (see CEQA Guidelines, 14 Cal. Code Regs. §15386(a)). The Department is providing these comments in furtherance of these statutory responsibilities, as well as its common law role as trustee for the public's fish and wildlife

Under the provided mitigation measures:

Mitigation Measure BIO-4: Currently, a bank for Mohave Ground squirrel and/or desert tortoise does not in existence within San Bernardino County. As such, the condition



17.1

Conserving California's Wildlife Since 1870

should stipulate that compensatory mitigation shall be provided in perpetuity for each species at the approval of the appropriate regulatory agencies.

17.1
Cont

If impacts to federally listed or state listed species are anticipated an Incidental Take Permit pursuant to Fish and Game Code § 2080 should be obtained. CEQA requires the Lead Agency to support their finding that the project will or will not have a significant impact on the environment.

17.2

Lastly, in a letter from the Department addressed to Mr. Matthew Slowick, dated August 23, 2007, the Department provided guidance for developing the CEQA documentation. The following guidance should be addressed:

Section 2, B of the Department's letter identifies the need to discuss the potential impacts the proposed project may pose based on an increase in raven populations. Subsequent the Department's letter, the United States Fish and Wildlife (USFWS) has developed a raven monitoring program. Please refer to the USFWS for additional guidance.

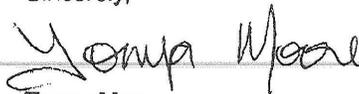
17.3

Section 4 indicates that under Section 1600 et. Seq. of the Fish and Game Code, require the project applicant to notify the Department of any activity that will divert, obstruct or change the natural flow of the bed, channel or bank (including riparian habitat) of a river, stream or lake or use material from a streambed prior to the applicant's commencement of the activity. Although the IS indicates that the "... drainage corridor proposed for the Tentative Map is on the alignment proposed for improvement in the Apple Valley West/Desert Knolls Master Plan of Drainage" it is uncertain as to what (if any) this effect this may have on biological resources. Additional discussion is requested.

17.4

Questions regarding this letter and further coordination on these issues should be directed to Mr. Eric Weiss, Environmental Scientist at (909) 980-8607.

Sincerely,



Tonya Moore
Senior Environmental Scientist

cc: Eric Weiss, DFG
State Clearinghouse

Response No. 17

**Tonya Moore, Senior Environmental Scientist
Department of Fish and Game**

- 17.1 Clarification has been added to Mitigation Measure BIO-4. Refer to Section 3.0, *Errata*, of this document.
- 17.2 As stated in the recirculated and revised Chapter 4.2, *Biological Resources*, of the Draft EIR, implementation of the proposed project would not result in significant and unavoidable impacts. Therefore, a Take Permit is not required. Refer to recirculated and revised Chapter 4.2, for additional information.
- 17.3 Refer to Response 5.10.
- 17.4 Subsequent to the preparation of the recirculated and revised Chapter 4.2, *Biological Resources*, a Jurisdictional Delineation Update, dated February 18, 2011, was prepared for the proposed project site. As stated in the Jurisdictional Delineation Update, approximately .10 acre of CDFG unvegetated jurisdictional drainage is located onsite. Therefore, the project applicant will be required to consult with and successfully obtain a CDFG Streambed Alteration Agreement (SAA).

Comment Letter No. 18

From Johnson Sedlack 1.951.506.9725 Mon Jan 24 14:21:08 2011 PST Page 2 of 9

Johnson Sedlack
ATTORNEYS AT LAW

Raymond W. Johnson, Esq. AICP 26785 Camino Seco, Temecula CA 92590 E-mail: EsqAICP@Wildblue.net
Carl T. Sedlack, Esq., Retired
Abigail A. Broedling, Esq.
Kimberly Foy, Esq.

Abby.JSLaw@Gmail.com
Kim.JSLaw@Gmail.com
Telephone: 951-506-9925
Facsimile: 951-506-9725

January 24, 2011

Matthew Slowik
County of San Bernardino
Land Use Services Department
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0182

VIA US MAIL and FAX (909-387-3223)

Re: *Comments on Draft EIR for Deep Creek (Apple Valley) Project, Tentative Tract Map No. 16569*

Dear Mr. ~~Slowik~~ ^{MATT} and County of San Bernardino Land Use Services Department:

The following comments are submitted on behalf of Deep Creek Agricultural Association regarding the Draft EIR and Recirculated Draft EIR for the Deep Creek (Apple Valley) Project.

The project is described as a proposal for the development of 202-single family residential lots and 6 lettered lots on a 249-acre site located between Rock Springs Road and Tussing Ranch Road, east of Deep Creek Road, in the unincorporated Apple Valley area. The project includes Tentative Tract Map No. 16569 and a General Plan Amendment to change the land use designation of the site from AG-SCP (Agricultural with a Primary Sign Control Overlay) to RS-20m (Single Family Residential-20,000 square foot minimum lot size). Lot sizes under the project will average approximately 43,051 square feet, within the median lot size being 43,948 square feet. Sixty-eight lots located on the upper terrace will measure less than one acre in size.

The project site is currently vacant and is covered mostly by grasslands and scattered Joshua Trees. Existing land uses adjacent to and nearby the project site include "scattered" single family dwellings to the north, a horse ranch to the south, BNSF Railroad and large single-family residential lots to the east, and large single family and vacant parcels to the west.

The Draft EIR (DEIR) finds that the project will have a significant and unavoidable cumulative impact on traffic/circulation but claims that all other potential impacts can be mitigated to levels below significance thresholds. The Recirculated Draft EIR (RDEIR) which is limited to a discussion of biological impacts finds that impacts can be mitigated to levels below significance thresholds.

Page 1 of 8

From Johnson Sedlack 1.951.506.9725 Mon Jan 24 14:21:08 2011 PST Page 3 of 9

For the reasons set forth below, the conclusions of the DEIR and RDEIR are not supported by substantial evidence and additional analysis and mitigation is required.

Biological Impacts

It is stated in the RDEIR that “development of the project area would change the current land use from undeveloped land to residential uses. Proposed development would affect the majority of the project site. As such, *existing biological resources that are present on the site would largely be eliminated* with project implementation, particularly with the *mass grading* of the site in preparation for the proposed development.”

18.1

With respect to plant species, the RDEIR identifies that the project site has 4.5 acres of Joshua Tree Woodland. As noted in the RDEIR, Joshua Trees are protected by both the California Desert Native Plant Act which provides that it is unlawful to harvest “all Joshua trees” “unless a person has a valid permit.” The County of San Bernardino Development Code includes Section 88.01.060-Desert Native Plant Protection Ordinance- which is intended to supplement and coordinate with the Desert Native Plants Act. The Code requires a project applicant to obtain a Tree or Plant Removal Permit prior to removal of Joshua trees from a project site. The RDEIR claims “development of the proposed project site would be required to be consistent with all local policies or ordinances protecting biological resources,” thus impacts are “considered to be less than significant, and no mitigation is required.” First, the requirement that the applicant comply with State and local laws regarding the removal of desert plant species must be made a requirement of the project; in other words, the requirement that the applicant obtain the appropriate permit must be adopted as a mitigation measure to ensure enforceability (*see*, p. 3.0-12 “Required Permits and Approvals”). Second, there is no claim in the RDEIR that compliance with State and local laws regarding removal of desert plant species is intended as mitigation under CEQA for the loss of the species either on a project-specific or cumulative basis; obtaining a permit merely means that the removal of the species will not be deemed a criminal act. The removal in its entirety of 4.5 acres of plant species protected by State and local law must be considered a significant impact of the project for which mitigation under CEQA must be adopted.

18.2

The RDEIR also concludes that appropriate on-site habitat was identified for three special status plant species: Booth’s evening-primrose, desert cymopterus, and short-joint beavertail. Although none of these particular species were observed during the one-day survey conducted on May 2, 2008, there is no mitigation identified for impacts due to the loss of these plant species should these species now occur on the project site, particularly when, *e.g.*, the RDEIR states that short-joint beavertail is known to occur in Joshua Tree Woodland communities of which the project site currently has 4.5 acres. The RDEIR notes there is “nominal habitat” for this species at the project site. Mitigation for potential impacts to sensitive plant species is thus required.

18.3

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With respect to wildlife species, the RDEIR states that four burrowing owl burrows were identified during the focused biological survey and that “the southeastern quarter of the project site should be assumed to provide suitable burrowing owl habitat that could become occupied.” To ensure that impacts are less-than-significant to this species of special concern, Mitigation Measure BIO-5 must be revised to prohibit all construction activities until the Mitigation Monitoring Plan is submitted to CDFG and the formulation of other aspects of the Mitigation Plan can be completed.

18.4

For desert tortoise and Mohave ground squirrel, BIO-4 related to the purchase of credits in a habitat conservation plan is inadequate and uncertain within the meaning of CEQA. There is no showing that through the purported consultation process with resource agencies that adequate mitigation can be formulated; a suitable “habitat conservation bank” must be identified in advance of the project approval and the necessary funds must be identified and conditioned on the project prior to project approval. It also must be determined prior to project approval that the Fish & Wildlife Service and Calif. Department of Fish and Game will participate in the consultation process and will assist the private developer in formulating adequate mitigation. In short, the formulation of mitigation must occur prior to project approval when genuine flexibility remains.

18.5

Finally, the discussion of cumulative biological impacts is not supported by substantial evidence and is contradicted by the evidence. The RDEIR as much as admits that cumulative impacts are significant as it states among other things “the loss of 5 acres of Joshua tree habitat considered suitable for burrowing owl within the project area associated with the development of the property *would reduce the biological habitat within the immediate area*. This reduction of potential habitat and introduction of suburban uses with the project area could be considered a cumulatively considerable impact *in conjunction with the significant amount of growth that has occurred within the Victor Valley region.*” [emphasis added] The claim that impacts are less than significant because “even though impacts may alter existing local conditions, they would not substantially diminish or result in the permanent loss of an important resource on a population or region-wide basis” is contrary to CEQA’s requirements for the evaluation of cumulative impacts and is not supported by any evidence. Furthermore, any reliance on a *not-yet-adopted* habitat conservation plan is obviously improper. Thus, due to the loss of suitable habitat, cumulative impacts for both plant and wildlife species must be considered significant and adequate mitigation adopted. It is important to note that *no mitigation* is provided for the loss of Joshua Trees apart from the alleged requirement that the applicant obtain a permit to remove the trees. The project does not, for instance, propose to preserve, relocate, or otherwise off-set the loss of any of the Joshua Tree Woodland which by itself is a protected species and which is known to be habitat for protected species. The *cumulative* loss of this habitat, regardless of whether it is permissible for the applicant to “take” the species for the *particular project*, must be considered significant.

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Traffic Impacts

The project relies upon the payment of fair share fees for the mitigation of traffic impacts. Fair share mitigation fees are not necessarily adequate mitigation under CEQA. In order to be adequate mitigation, fair share fees must be tied to a reasonable plan of actual mitigation that the agency commits itself to implementing. Here, the payment of fair share fees is inadequate because the necessary improvements are either not part of an existing fee program (e.g., pp. 4.1-69-70), there is a lack of evidence of adequate funding under the program, or there is an absence of evidence that the improvements will actually be made under the program. For instance, from pages 4.1-69-70 it appears that some of the improvements are not even “anticipated to be in place in 2030.”

18.7

Land Use Impacts

The project has potential land use impacts due to conflicts with adopted land use plans such as the Town of Apple Valley General Plan and the County of San Bernardino General Plan.

The DEIR fails to consider the project’s consistency with the recently-adopted 2009 Town of Apple Valley General Plan Update. According to this document, it is the intent of the General Plan that the land use designations of the lands included in the Town’s sphere of influence (“sphere lands”) will remain in effect after adoption of the General Plan. The project on the other hand proposes to *amend* the County’s General Plan to allow the project to construct a high-density residential development. This is inconsistent with the intent of the Town’s General Plan Update to *retain* the land use designations for the sphere lands.

Moreover, it is a specific aim of the Town’s General Plan to preserve the Town’s “rural character as it grows.” To this end, the General Plan adopts certain policies to retain the rural, equestrian, and desert character of the Town. The Draft EIR fails to discuss the project’s consistency with any of the Town’s General Plan Policies and Goals and the proposed project is inconsistent with the General Plan’s policies and goals including,

18.8

General Plan Land Use:

Goal 1: “Town shall respect its desert environment.”

Policy 1.B. New development shall be designed to minimize grading, and avoid mass grading to the extent possible.

Policy 1. C. Natural drainage channels shall be designed with soft bottoms whenever possible.

Policy 1 D. Areas of biological or aesthetic significance shall be protected from development.

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Single Family Residential Goals:

Policy 1 A. The *most intense* land use designation shall be 2 units per acre.

Policy 1 B. The Town shall encourage single-family neighborhoods with an equestrian orientation.

Policy 1 D. Development projects are encouraged to design varied front yard setbacks and lot patterns reflective of the sites topography and natural features.

Policy 1 E. The Town shall encourage new development that emulates the character of existing neighborhoods, and shall discouraged walled communities in inappropriate areas.

Policy 1 H. (Regarding density restrictions for General Plan Amendments in the Deep Creek Area)

The high-density project which will involve “mass grading”, the development of the entire site, and no preservation of biological resources, is inconsistent with the above goals and policies. Furthermore, the project conflicts with the policies and goals relative to the Deep Creek Area.

Furthermore, the DEIR fails to discuss the project’s consistency with the 2007 San Bernardino General Plan to include the Land Use Policies and Goals related to the Desert Region including Goal D/LU 1 “Maintain land use patterns in the Desert Region *that enhance the rural environment...*” This project which proposes a high-density suburban development in an area surrounded by rural and agricultural uses is inconsistent with this and other policies of the San Bernardino General Plan related to preservation of rural lands.

Growth Inducing Impacts

CEQA requires that the direct and indirect effects of proposed actions be assessed and disclosed. Indirect effects are generally defined as those that are caused by a project, but unlike direct effects, occur later in time or are farther removed in distance. The CEQA Guidelines define indirect impacts as:

“Indirect or secondary effects that are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. *Indirect or secondary effects may include growth-inducing effects* and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.” CEQA Section 15358(a)(2).

Section 15126.2(d) of the CEQA Guidelines states that a growth-inducing impact could occur if:

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18.10

}
18.11

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“... the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects that would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in the service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristics of some projects that may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.”

It is noted that the project involves the extension of a large waterline to service the project. The DEIR’s conclusions regarding Growth Inducing Impacts are not supported by substantial evidence to the extent that the Project by introducing a high-density land use and major infrastructure into an area typified by large lot, rural residential and agricultural uses meets at least the following criteria as set forth in the DEIR for growth-inducing impacts: “(1) Remove an impediment to growth (e.g., establish an essential public service or provide new access to an area; ... (4) Establish a precedent-setting action (e.g., a change in zoning or a general plan amendment); ...and (5) Develop or encroach on an isolated or adjacent area of open space (distinct from an ‘infill’ type of project).”

With respect to Criteria (1), the proposed project would involve the extension of a major waterline onto the site from the Jess Ranch development. This is a growth-inducing action as even the DEIR acknowledges the extension of the waterline “may facilitate construction of currently undeveloped properties” and may “facilitate growth through an increase in onsite residential density.” The conclusion of the DEIR that the project does not remove a barrier to growth because, e.g., the waterline would “accommodate existing residential development ... by providing an alternative and secure supply of water” says nothing of the growth that will be facilitated as a result of the waterline. As discussed at length elsewhere in the DEIR, the surrounding properties consist of large-acre lots and “scattered” residential development. Providing a new source of water for a hand-full of existing homes (assuming these homes could feasibly access this new water source) does not address the fact that the new infrastructure is likely to facilitate future growth. Similarly, there is nothing to support the notion that the extension of the waterline will not be growth-inducing because even though according to the DEIR it may facilitate construction of currently undeveloped properties “such growth would represent a continuation of the present pattern of development.” There is no evidence to show that this project is part of larger pattern of development. On the contrary, this project by providing the infrastructure necessary to support future development could be the catalyst for higher density development.

18.11
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In addition, the DEIR states that since the proposed project would require transportation infrastructure improvements, “these improvements ... would remove barriers to growth within the proposed project area.” By definition this constitutes a growth-inducing impact.

With respect to Criteria (4), the project also meets the criteria of establishing a precedent setting action by approving a general plan amendment to change the site from agricultural to single-family residential. The DEIR acknowledges the project is “inconsistent with the County General Plan.” The adoption of an amendment to the General Plan to change the site’s land use designation arguably removes inconsistency from a land use perspective but says nothing of the *growth-inducing* effects that the change of zoning will have on the area.

Finally, the project meets the criteria of encroachment on open space (Criteria 5). The DEIR concedes the project would change the site from agricultural to residential but claims that the change is consistent with a pattern of development that is occurring in the project area. Again, there is nothing to support the conclusion that the project is just one of many high density projects in the area; the existing surrounding land uses are agricultural and large-lot, rural residential. The Town of Apple Valley in its General Plan establishes density restrictions for the Deep Creek Area.

For these reasons, the conclusions of the DEIR with respect to growth-inducing impacts are not supported by substantial evidence. Impacts are significant and mitigation is required.

Alternatives

CEQA requires that a lead agency consider a “reasonable range of project alternatives” which are designed to meet basic project objectives and lessen significant environmental impacts. The DEIR fails to satisfy this mandate; moreover, contrary to CEQA, the project objectives are drawn in such a way to preclude adoption of any alternative.

The Project Objectives are so narrowly drawn that it is difficult to imagine any alternative satisfying the objectives apart from the proposed project. This is best exemplified by the second project objective “maintain a minimum lot size of approximately ¼ of an acre, with an average lot size approaching one acre” (p. 1.0-10, 1.0-11). *Not one* of the three project alternatives could possibly satisfy this objective.

The first project objective is based on faulty assumptions. The existing zoning adjacent to and near the project site is *historically* and *by design* characterized by large-acre lots. (*See* Table 3-1.) The project in fact would create *inconsistent* zoning, not correct a problem or fill in gaps with existing zoning as is implied. Furthermore, there is no evidence that there are “greater densities” in the Town of Apple Valley such that the proposed project would be more consistent with the densities supported by the Town. In fact, the Town of Apple Valley in its 2009 General Plan Update does not support high density development for the Deep Creek area as is implied. The

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General Plan Update provides that the land use designations of the lands included in its sphere of influence shall remain unchanged, and specifically establishes density *restrictions* for the area known as Deep Creek. Thus while there may be higher-density uses in some areas of the Town, this is *not* the case for the Deep Creek Area and it is in fact the intent of the new General Plan to *preserve* the lower density nature of the Deep Creek area.

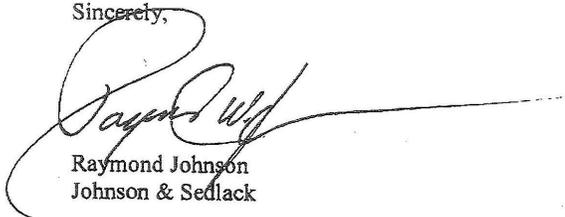
The fourth project objective precludes the adoption of any alternative because it essentially states that is an objective of the project to develop homes which are actually *inconsistent* with surrounding zoning. The project with its high density residential development is inconsistent with surrounding zoning, thus, *only the project*, and not the no-project or the reduced density alternative, can satisfy this objective. That is, the lower density alternatives which involve large lots cannot possibly satisfy a project objective which basically states as a goal to develop homes with *small* lots.

The fifth project objective is likewise self-serving in that none of the project alternatives other than the proposed project would provide "enhanced infrastructure."

Since none of the alternatives are designed to meet basic project objectives, and since the project objectives are by themselves flawed and based on incorrect information, the alternatives analysis fails to satisfy the substantive requirements and information-disclosure provisions of CEQA.

Thank you for your consideration of the above comments.

Sincerely,



Raymond Johnson
Johnson & Sedlack

8.12
Cont.

Response No. 18
Raymond Johnson, Esq. AICP
Johnson & Sedlack Attorneys at Law

- 18.1 CEQA requires a lead agency to analyze impacts to sensitive, threatened, and/or endangered species. While the Draft EIR does state that existing biological resources that are present on the site would largely be eliminated with project implementation, that does not imply that all or any of those resources are sensitive, threatened, or endangered. Implementation of Mitigation Measures BIO-1 through BIO-10 would reduce impacts to sensitive, threatened, or endangered species to a level of less than significant. Refer to the recirculated and revised Chapter 4.2, *Biological Resources*, of the Draft EIR.
- 18.2 Joshua trees are not a Federally or State protected endangered species, threatened species, or species of concern; however, they are a biologically valuable resource to wildlife in the region and are hence regulated under the County Development Code Ordinance prohibiting the removal of Joshua trees without a required finding by the review authority concerning the tree's location or condition (Section 88.01.050). This Ordinance also requires that all transferable Joshua trees that are proposed for removal be transplanted or stockpiled for future transplanting whenever possible. As a condition of approval, the project applicant would be required to comply with the County of San Bernardino Desert Native Plant Protection Ordinance. The removal of any trees listed under Section 88.01.060 would be required to comply with Section 88.01.050, which requires the project applicant to apply for a Tree or Plant Removal Permit prior to removal from the project site. CEQA does not require the inclusion of all conditions of approval as mitigation within the EIR.
- 18.3 As stated in recirculated and revised Chapter 4.2, *Biological Resources*, of the Draft EIR, none of the plant communities were identified during the site visit. While these species have historically occurred onsite, grazing and onsite agricultural uses is most likely the cause of the disappearance of the species. Therefore, no significant impacts would occur.
- 18.4 As stated in Mitigation Measure BIO-5 of the recirculated and revised Chapter 4.2, *Biological Resources*, of the Draft EIR, prior to ground disturbance, focused breeding season surveys for burrowing owl shall be conducted in accordance with Guidelines approved by CDFG. If, and only if, burrowing owls are observed during the surveys, then a Burrowing Owl Mitigation and Monitoring Plan shall be submitted to CDFG for review and approval. If no burrowing owls are observed during the survey, no additional coordination with CDFG would be necessary.
- 18.5 Refer to Response 17.1. It should also be noted that CDFG submitted a letter on the recirculated and revised Chapter 4.2, *Biological Resources*.
- 18.6 As stated in the Draft EIR, the cumulative impacts associated with the proposed project and surrounding areas where similar types of development are occurring or proposed would be considered potentially significant due to a loss of biological habitat within the Victor Valley region (associated with development), and a potential threat to the threatened, endangered, and special status species that depend on these resources. In addition, the lack of an adopted comprehensive habitat mitigation plan (West Mojave Plan) further compounds the potential for

habitat and species losses within the Victor Valley region. Once this Plan is adopted by Federal, State, and local agencies, it is anticipated that cumulative impacts to biological resources within the Victor Valley would be better defined and mechanisms to reduce habitat loss would be in place; further reducing these impacts. In this regard, cumulative impacts associated with biological resources are considered adverse but not significant with implementation of the proposed project. Though the impacts may alter existing local conditions, they would not substantially diminish, or result in the permanent loss of an important resource on a population. In addition, refer to Response 18.2.

- 18.7 This comment does not pertain to the adequacy of the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR. However, refer to Response 6.1.
- 18.8 This comment does not pertain to the adequacy of the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR. However, refer to Response 10.4.
- 18.9 Biological impacts related to implementation of the proposed project were fully analyzed in the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR. As stated in the recirculated and revised Chapter 4.2, *Biological Resources*, no significant and unavoidable impacts would occur to biological resources.
- 18.10 This comment does not pertain to the adequacy of the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR. However, project impacts associated with land use were analyzed previously in the Mitigated Negative Declaration prepared for the project on November 22, 2005. As stated in the judgement, with respect to all other allegations beyond biological resources and traffic of Deep Creek in the Action (including land use), the Court ruled in favor of the County. Therefore, land use impacts are not required to be analyzed again.
- 18.11 This comment does not pertain to the adequacy of the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR. However, as stated in Chapter 6, *Growth Inducing Effects* of the Draft EIR, implementation of the proposed project would result in less than significant growth inducing impacts, since it would remove only a few obstacles to growth in the form of a drainage corridor, water line, and traffic infrastructure improvements. Implementation of the proposed project would also only marginally increase the population and would marginally increase economic expansion. Therefore, implementation of the proposed project would create less than significant growth-inducing impacts.
- 18.13 This comment does not pertain to the adequacy of the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR. However, each of the alternatives were carefully selected to be compliant and consistent with the requirements of Section 15126.6 of the *CEQA Guidelines*.

Comment Letter No. 19

Slowik, Matt - LUS - Advance Planning

From: irim@aol.com
Sent: Monday, January 24, 2011 12:05 PM
To: Slowik, Matt - LUS - Advance Planning
Subject: sch#2005071104

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

From: IRIM <IRIM@aol.com>
To: Irim <Irim@aol.com>
Sent: Mon, Jan 24, 2011 6:06 am
Subject: (no subject)

January 24, 2011

Matthew Slowick
Senior Planner
385 North Arrowhead Ave., 1st Floor
San Bernardino, CA 92415-0182

Dear Mr. Slowick,

Regarding the Lewis recirculated 4.2 of the DEIR.
SCH # 2005071104

After reviewing the document my comments are:

On page 4.2-2 states, surrounding lots ranging from 2.5 to 5 acres in size. This is not true. Many surrounding parcels are much larger than 5 acres. In fact, 10-20 acre parcels are very common for the area. How could anyone state this? Just look at any parcel map for the area.

} 19.1

On page 4.2-39 #1 states, chain link fencing was installed around the portion of the property used for grazing. Chain link fencing is not installed around the grazing portion of the property. 90% plus of the total .govhas five strand barbed wire fencing. Animals 12" and under would never know there was a large animal grazing fence around the property. Once again no one checked this. All you have to do is stand and look at the property and you can clearly see there is no chain link fence! Is that too much to ask? If such little effort was used in the preparation of this document, what credibility does the document have ?

} 19.2

#2 States, "Steep vertical walls" there are no steep vertical walls. The bluff was graded to a 2 to 1 county standard years ago. The thousands of animal foot prints on the slope clearly shows that both native and grazing animals have no problem traversing the slope and it does not impede their east-west movement. The statement "steep vertical walls" is used to promote an agenda. And that agenda is to get this EIR approved. Statements like this have no place in this report.

} 19.3

#4 States, High canine densities along the parcel boundaries are significant because wildlife tends to avoid encounters with dogs. However, many native animals will eat non native food intended for other animals, including farm feed and domestic dog food. Dogs being attacked by coyotes are very common and the Apple Valley Animal Control can confirm this. (760-240-7000 ext.7555)

} 19.4

#5 Confirms the cattle feed lot just to the south. This additional feed source next to the project supports many wild animals in the area.

} 19.5

Mr. Slowick, I am not an expert in all of this. However, when such basic items like not having a chain link fence around the property when the experts say there is one, leaves no credibility to the document. The authors of the document, probably

} 19.6

have never been to this property. What other items have they falsified? It is not an over site when thousands of feet of chain link fence does not exist and there are no steep walls! It is intentional. It is your responsibility to see that this is carried out in a fair manner. When I point out to you the blatant lies in this report I am asking you, the Senior Planner in the Advanced Planning Division, not to certify this EIR because of the above mentioned issues.



**19.6
Cont**

I can be reached at 760-963-3435 anytime.
Email, lrim@aol.com

Thank you,

Ian Bryant
President, Deep Creek Agricultural Association

Response No. 19
Ian Bryant, President
Deep Creek Agricultural Association

- 19.1 This comment does not pertain to the adequacy of the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR. However, many of the parcels, particularly further east and further west of the project site are approximately 2.5 to 5 acres in size. The description of the surrounding land uses in the recirculated and revised Chapter 4.2, *Biological Resources*, is not intended to be construed as parcel sizes directly adjacent to the project site. In general, parcel sizes in the vicinity of the project site are approximately 2.5 to 5 acres in size.
- 19.2 The description of chain link fencing onsite was an oversight. The project site currently contains barbed wire fencing around the entire site. Refer to Section 3.0, *Errata*, of this document.
- 19.3 The commentor is correct that the bluff was previously graded to a 2 to 1 ratio, per County standards. As stated in the recirculated and revised Chapter 4.2, *Biological Resources* of the Draft EIR, walls bisect the property in an east-west direction. While these walls may allow the movement of some wildlife, the site is comprised of fallow field, a bluff or eroded cliff, desert dune habitat, and a knoll with Joshua tree woodland habitat. Based on irrigation equipment and residual furrows, the majority of the property appears to have been cultivated in the past, except the southeastern knoll, which doesn't appear to have ever been tilled. More recently, the property has been heavily grazed, apparently by the adjacent cattle farm to the south. The quality of the habitat within the project area ranges from moderate to highly disturbed. The general disturbances on site have occurred from regular discing for agriculture and/or weed abatement and grazing. In addition to the disturbed nature of the site, and the lack of suitable habitat, the wall further inhibits general wildlife movement.
- 19.4 Domestic pet food can attract wild animals. However, these animals are generally larger in nature, such as coyotes, which are not endangered species. In addition, as stated above, the disturbed nature of the site and lack of suitable habitat for species generally inhibits wildlife movement across the site.
- 19.5 As stated above, domestic pet food (including cattle feed) can attract wild animals. However, these animals are generally larger in nature, such as coyotes, which are not endangered species. In addition, as stated above, the disturbed nature of the site and lack of suitable habitat for species generally inhibits wildlife movement across the site.
- 19.6 Refer to Responses 19.3 through 19.5.

**SCREENCHECK
FINAL
ENVIRONMENTAL IMPACT REPORT
SCH No. 2005071104**

DEEP CREEK PROJECT

ERRATA

3.0 ERRATA DRAFT PROJECT EIR TEXT

Changes to the Draft EIR are noted below. Underlining indicates additions to the text; striking indicates deletions to the text. The changes to the Draft EIR do not affect the overall conclusions of the environmental document. These errata reflect minor County staff and agency initiated technical questions to the Draft EIR. These clarifications and modifications are not considered to result in any new or more severe impacts than identified in the Draft EIR, and are not otherwise deemed to warrant Draft EIR recirculation pursuant to *CEQA Guidelines* §15088.5. Changes are listed by page and where appropriate by paragraph. Added or modified text is shown by underlining (example) while deleted text is shown by striking (~~example~~).

Chapter 4.2, BIOLOGICAL RESOURCES

Page 4.2-34, Mitigation Measure BIO-4

Mitigation Measure BIO-4

~~The developer shall mitigate for impact to the desert tortoise and/or Mohave ground squirrel by purchase of credits on a habitat conservation bank approved for each/both species. The amount, location, and condition of any such property shall be established through consultation with and approval by the United States Fish and Wildlife Service and the California Department of Fish and Game. As established through consultation with the agencies, the developer shall provide funds (e.g., endowment) to contribute to the maintenance of mitigation lands. Prior to the issuance of grading permits, the developer shall provide to the county evidence that it has satisfactorily met the permit and/or other requirements established by either agency.~~A focused trapping survey will be conducted for both desert tortoise and Mohave ground squirrel prior to any ground disturbing activities in order to conclusively rule out the presence of these species onsite. If either desert tortoise and/or Mohave ground squirrel is found within the project area during they survey consultation with USFWS under the federal Endangered Species Act and the CDFG review under Section 2081 of the state Fish and Game Code must be initiated. This may consist of a 2081 Take Permit or a 2080.1 Consistency Determination where the CDFG finds that the Biological Opinion issued by the USFWS satisfies all the mitigation requirements for the CDFG. The applicant will comply with all conditions and mitigation measures imposed by the agency issuing the take permit, including contribution purchasing conservation credits.

Page 4.2-35, Mitigation Measure BIO-5

Mitigation Measure BIO-5

Prior to any ground disturbance and at the appropriate time of year (February 1 through August 31), focused breeding season surveys for burrowing owl shall be conducted in accordance with the Burrowing Owl Survey Protocol and Mitigation Guidelines approved by CDFG (the "Protocol"), as then applicable. If burrowing owls are observed during those surveys, a Burrowing Owl Mitigation and Monitoring Plan (the "Plan") shall be submitted to CDFG ~~for review and approval prior to relocation of owls.~~ The Plan shall describe any proposed relocation and monitoring plans. The Plan shall include the number and location of occupied burrow sites and details on adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available for nearby relocation, details regarding the creation of artificial burrows (numbers, location, and types of burrows) shall also be included in the Plan. The Plan shall also describe proposed off site areas to compensate for impacts to burrowing owls/occupied burrows at the project site. No ground disturbing activities will take place prior to CDFG's approval of the Plan.

Page 4.2-39, #1

1. ~~Chain link~~ Barbed wire fencing was installed around the ~~portion of the property used for grazing.~~ This fencing would impede movement across the site by coyotes, bobcats, skunks, and other common local wildlife.

Chapter 10, ORGANIZATIONS AND PERSONS CONSULTED

Page 10.0-1, Third Heading

COMMENTING AGENCIES

CALIFORNIA PUBLIC UTILITIES COMMISSION

320 West 4th Street

Los Angeles, CA 90013

Contact: Rosa Munoz, PE

**SUPPLEMENTAL
RESPONSES
TO
COMMENTS
INFORMATION**

The purpose of this section is to add additional clarification and information to certain previously addressed Responses to Comments. Not all Responses to Comments have added clarification, and therefore, were wholly answered in the previous section.

- 17.1 Clarification has been added to Mitigation Measure BIO-4. Refer to Section 3.0, *Errata*, of this document.

The commentor correctly notes that Mohave Ground Squirrel and desert tortoise are not presently available through the West Mojave Plan, which is currently restricted to use by federal agencies. Conservation lands can, however, be purchased independent of the West Mojave Plan subject to CDFG or USFWS approval in conjunction with a take permit. The essential point is that Recirculated Chapter 4.2 of the EIR concluded that the Project site does not contain suitable habitat for the Mohave ground squirrel and no desert tortoises were found on site. Out of an abundance of caution, a focused trapping survey will be conducted for each species prior to any ground disturbing activities in order to conclusively rule out the presence of these species on site. If either species is found within the project area during their survey consultation with USFWS under the federal Endangered Species Act and the CDFG review under Section 2081 of the state Fish and Game Code must be initiated. This may consist of a 2081 Take Permit or a 2080.1 Consistency Determination where the CDFG finds that the Biological Opinion issued by the USFWS satisfies all the mitigation requirements for the CDFG. The applicant will comply with all conditions and mitigation measures imposed by the agency issuing the take permit, including contribution purchasing conservation credits.

- 17.2 As stated in the recirculated and revised Chapter 4.2, *Biological Resources*, of the Draft EIR, implementation of the proposed project would not result in significant and unavoidable impacts. Therefore, a Take Permit is not required. Refer to recirculated and revised Chapter 4.2, for additional information.

As the commentor notes, California Fish and Game Code Section 2080 provides that “[n]o person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species.” Under Section 86 of the Fish and Game Code, “Take” means: hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” As identified in Section 4.2 of Revised Chapter 4.2, a total of 44 sensitive plant and wildlife species were identified as being known to exist, may exist, or have been seen in the vicinity of the project site. After a general site survey was conducted, it was determined that species specific surveys were necessary for eight species because potential suitable habitat was found on the project site. Specifically, the project site was surveyed for the presence or absence of Booth’s evening primrose desert cymopterus, short-joint beavertail, prairie falcon, desert tortoise, Mojave River vole, Mohave ground squirrel, and burrowing owl. The remaining 36 species were not found to have suitable habitat onsite and, therefore, were not surveyed. As stated in Revised Chapter 4.2, the proposed project site is not occupied by any of the eight identified species, nor does it contain suitable habitat for seven of the eight. With respect to the desert tortoise and Mohave ground squirrel, refer to Mitigation Measures BIO-1 through BIO-4. The proposed project may disrupt the integrity or continuity of habitat suitable for the borrowing owl.

Mitigation Measures BIO-5 and BIO-6 would reduce those impacts to a level of less than significant. In addition, the Project applicant has agreed to make the following revisions to Mitigation Measure BIO-5 in order to ensure that all feasible steps are taken to reduce any possible impacts:

BIO-5: Prior to any ground disturbance and at the appropriate time of year (February 1 through August 31), focused breeding season surveys for burrowing owl shall be conducted in accordance with the Burrowing Owl Survey Protocol and Mitigation Guidelines approved by CDFG (the "Protocol"), as then applicable. If burrowing owls are observed during those surveys, a Burrowing Owl Mitigation and Monitoring Plan (the "Plan") shall be submitted to CDFG ~~for review and approval prior to relocation of owls.~~ The Plan shall describe any proposed relocation and monitoring plans. The Plan shall include the number and location of occupied burrow sites and details on adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available for nearby relocation, details regarding the creation of artificial burrows (numbers, location, and types of burrows) shall also be included in the Plan. The Plan shall also describe proposed off site areas to compensate for impacts to burrowing owls/occupied burrows at the project site. No ground disturbing activities will take place prior to CDFG's approval of the Plan.

17.4 Subsequent to the preparation of the recirculated and revised Chapter 4.2, *Biological Resources*, a Jurisdictional Delineation Update, dated February 18, 2011, was prepared for the proposed project site. As stated in the Jurisdictional Delineation Update, approximately .10 acre of CDFG unvegetated jurisdictional drainage is located onsite. Therefore, the project applicant will be required to consult with and successfully obtain a CDFG Streambed Alteration Agreement (SAA).

Subsequent to the preparation of the Revised Chapter 4.2, a Jurisdictional Delineation Update, dated February 18, 2011, was prepared for the proposed project site. Drainage for the Project site was mapped to indicate the extent of the drainage using the presence of benches, drift, and change in particle size distribution. One drainage area was noted within the boundaries of the project site, flowing from the southeast corner of the site. No water was present within the ephemeral drainage during the site visit; however, evidence of hydrology was noted. The drainage ranged in width from 10 to 20 feet, and measured approximately 265 feet in total length. The drainage appears to sheet flow across the project site and is considered isolated.

Based on the results of the February 18, 2011, field observation, it has been determined that approximately 0.10-acre of Regional Water Quality Control Board ("Regional Board") and California Department of Fish and Game ("CDFG") unvegetated jurisdictional drainage is located on-site. Due to the isolated nature of the drainage, no Corps of Engineers ("Corps") jurisdiction is located on-site. Refer to Table 1, Appendix "C" to Revised Chapter 4.2, for a summary of the jurisdictional acreages on-site.

Prior to commencement of any construction activities within the delineated jurisdictional areas, the applicant will consult with and obtain any necessary approvals from the Regional Board and CDFG. These approvals are required as a result of the determination that approximately 0.10 acres of jurisdictional drainage is located on site. However, the Revised Chapter 4.2, which included within its scope the delineated 0.10 acres, found that there would be no impacts to biological resources as a result of the proposed project. Therefore, while the consultation and approvals are required as mitigation for the loss of the 0.10 acres of jurisdictional drainage, they are not required as mitigation for potentially significant impacts on biological resources

- 18.5 Refer to Response 17.1. It should also be noted that CDFG submitted a letter on the recirculated and revised Chapter 4.2, *Biological Resources*.

The commentor correctly notes that Mohave Ground Squirrel and desert tortoise are not presently available through the West Mojave Plan, which is currently restricted to use by federal agencies. Conservation lands can, however, be purchased independent of the West Mojave Plan subject to CDFG or USFWS approval in conjunction with a take permit. The essential point is that Recirculated Chapter 4.2 of the EIR concluded that the Project site does not contain suitable habitat for the Mohave ground squirrel and no desert tortoises were found on site. Out of an abundance of caution, a focused trapping survey will be conducted for each species prior to any ground disturbing activities in order to conclusively rule out the presence of these species on site. If either species is found within the project area during their survey consultation with USFWS under the federal Endangered Species Act and the CDFG review under Section 2081 of the state Fish and Game Code must be initiated. This may consist of a 2081 Take Permit or a 2080.1 Consistency Determination where the CDFG finds that the Biological Opinion issued by the USFWS satisfies all the mitigation requirements for the CDFG. The applicant will comply with all conditions and mitigation measures imposed by the agency issuing the take permit, including contribution purchasing conservation credits.

- 18.6 As stated in the Draft EIR, the cumulative impacts associated with the proposed project and surrounding areas where similar types of development are occurring or proposed would be considered potentially significant due to a loss of biological habitat within the Victor Valley region (associated with development), and a potential threat to the threatened, endangered, and special status species that depend on these resources. In addition, the lack of an adopted comprehensive habitat mitigation plan (West Mojave Plan) further compounds the potential for habitat and species losses within the Victor Valley region. Once this Plan is adopted by Federal, State, and local agencies, it is anticipated that cumulative impacts to biological resources within the Victor Valley would be better defined and mechanisms to reduce habitat loss would be in place; further reducing these impacts. In this regard, cumulative impacts associated with biological resources are considered adverse but not significant with implementation of the proposed project. Though the impacts may alter existing local conditions, they would not substantially diminish, or result in the permanent loss of an important resource on a population. In addition, refer to Response 18.2.

The comment incorrectly characterizes the conclusions of Revised Chapter 4.2 of the EIR. First, Joshua trees are not a Federally or State protected endangered species, threatened species, or species of concern; they are, however, a biologically valuable resource to wildlife in the region and are hence regulated under the County Development Code Ordinance prohibiting the removal of Joshua trees without a required finding by the review authority concerning the tree's location or condition (Section 88.01.050). This Ordinance also requires that all transferable Joshua trees that are proposed for removal be transplanted or stockpiled for future transplanting whenever possible. As a condition of approval, the project applicant will be required to comply with the County of San Bernardino Desert Native Plant Protection Ordinance. The removal of any trees listed under Section 88.01.060 would be required to comply with Section 88.01.050, which requires the project applicant to apply for a Tree or Plant Removal Permit prior to removal from the project site. CEQA does not require the inclusion of all conditions of approval as mitigation within the EIR.

In addition, the discussion of the West Mojave Plan was included in the Revised Chapter 4.2 to describe the regional context and planning activities that impact the analysis of cumulative impacts. The EIR did not rely on the West Mojave Plan in concluding that the Project's cumulative impacts would be less than significant. That conclusion is based on an evaluation of whether the Project's potential impact on biological resources would be substantial in light of both the resources themselves and how the resource fit into a regional or local context. Substantial impacts would be those that substantially diminish or result in the loss of an important biological resource, or those that would conflict with local, State, and/or Federal resource conservation plans, goals, or regulations. Impacts can be locally adverse but not significant because, although they would result in an adverse alteration of existing conditions, they would not substantially diminish or result in the permanent loss of an important resource on a population- or region-wide basis. Thus, Revised Section 4.2 concluded that while the Project may adversely alter existing conditions, to the extent that the character of the Project site will be changed, it would not substantially diminish or result in the permanent loss of an important resource on a population- or region-wide basis.