

**FINAL ENVIRONMENTAL IMPACT REPORT  
FOR THE CITY OF MENIFEE  
(State Clearinghouse Number 2017081069)**

**for**

**“Rockport Ranch Project”**

**General Plan Amendment No. 2016-287  
Change of Zone No. 2016-288  
Specific Plan No. 2016-286  
Tentative Tract Map No. 2016-285 (TR 37131)**

*Lead Agency:*

**City of Menifee**

29844 Haun Road

Menifee, CA 92586

951.672.6777

Point of Contact: Ryan Fowler, Senior Planner

[rfowler@cityofmenifee.us](mailto:rfowler@cityofmenifee.us)

*Prepared by:*

**Matthew Fagan Consulting Services, Inc.**

42011 Avenida Vista Ladera

Temecula, CA 92591

951-265-5428

**March 2020**

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Appendix A – Draft EIR and Draft EIR Appendices

Appendix B – Draft EIR Comment Letters

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Appendix D – Revised Cultural Resources Assessment Report

Appendix E – State Water Resources Control Board Groundwater Information Sheet Salinity, EMWD Well Test Results for Menifee and the Project Site, and Food and Agriculture Organization of the United Nations Water Quality for Agriculture

Appendix F – Preconstruction Biology Reports

Appendix G – Stop work order dated November 09, 2016, from the City of Menifee



Appendix H –Technical Memorandum from Carlin Environmental Consulting, Inc., February 10, 2020

Appendix I – Limited Phase II Environmental Site Assessment, Geotech Inc., March 26, 2020

Appendix J – RTC Supplemental Memo, LSA Associates, Inc., November 27, 2019

## 1.0 INTRODUCTION

The Final Environmental Impact Report (Final EIR) for the proposed Rockport Ranch Project - General Plan Amendment No. 2016-287; Change of Zone No. 2016-288; Specific Plan No. 2016-286; and Tentative Tract Map No. 2016-285 (TR 37131); SCH# 2017081069 (Project) - has been prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines and the City of Menifee policies for implementing CEQA.

The following is an excerpt from the CEQA Guidelines Section 15132 that states: “The Final EIR shall consist of:

- (a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.
- (b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or, as a minimum, a table showing where each of the subjects is discussed. When the Lead Agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency’s existing review and budgetary process.
- (c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.
- (d) No document prepared pursuant to this article that is available for public examination shall include a “trade secret” as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

The Final EIR includes all of these required components.

In accordance with § 15088 of the State CEQA Guidelines, the City of Menifee, as the lead agency for the proposed Project, evaluated comments received on the Draft EIR (State Clearinghouse No. 2017081069) and has prepared responses to the comments received. The preceding Table of Contents provides of a list of all persons, organizations, and public agencies commenting on the Draft EIR. Section 2.0 includes the Responses to Comments received by the City of Menifee on the Draft EIR. 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 EIR. This Response to Comments document is part of the Final EIR, which includes the EIR pursuant to § 15132 of the State CEQA Guidelines.

The Final EIR, including responses to comments, will be sent to commenting agencies and individuals. This satisfies the requirement of Section 21092.5 of CEQA to send responses to the public agency comments received on the Draft EIR at least 10 days prior to Project approval. This document includes responses to all written and verbal comments received on the Draft EIR.

## BACKGROUND

On September 5, 2017, the City of Menifee publicly noticed (Notice of Preparation) its decision to prepare an environmental impact report (EIR) for the Project by noticing the State Clearinghouse, related agencies, other government agencies and surrounding property owners within a 600-foot radius from the Project site boundaries as well as the entire Tierra Shores community.

On September 14, 2017, the City of Menifee held a duly noticed public scoping meeting regarding the preparation of the EIR to discuss and hear from the public on the potential environmental impacts. The scoping meeting was noticed in the Notice of Preparation which was sent at least ten (10) days prior to the public meeting.

Between September 5, 2019 and October 21, 2019, the State-mandated forty-five (45)-day public review period for the Draft Project EIR (Draft EIR) took effect, which was publicly noticed by a publication in a newspaper of general circulation, notice to owners within 600 feet of the Project site boundaries and the entire Tierra Shores Community, related agencies and government agencies, and other interested parties. Copies of the Draft EIR were sent to the State Clearinghouse, related agencies and government agencies, and a copy placed at the City Hall public counter, as well as a copy placed at both the Paloma Valley Library and the Sun City Library.

Comments and testimony are responded to through the Response to Comments Section as part of the Final EIR and the Response to Comments to be distributed to all public agencies and other interested parties that submitted comments on the Draft EIR at least 10 days prior to certification of the Final Project EIR (Final EIR) in accordance with CEQA.

No evidence of new significant impacts, as defined by CEQA Guidelines Section 15088.5, have been received by the City after circulation of the Draft EIR which would require re-circulation.

The Draft EIR for the Rockport Ranch Project, dated September 2019 and Final EIR for the Rockport Ranch Project, dated March 2020 provide an assessment of the environmental impacts associated with the Rockport Ranch Project and have been prepared in accordance with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and State regulations in Title 14 of the California Code of Regulations, Section 15000 *et seq.*

As set forth in more detail in the Responses to Comments and Errata, none of the clarifications or amplifications set forth herein change the significance conclusions presented in the Draft EIR or substantially alters the analysis presented for public review. Furthermore, the Draft EIR circulated for public review was fully adequate under CEQA such that meaningful public review was not precluded. Thus, the clarifications provided in the Responses to Comments and Errata do not constitute significant new information that might trigger recirculation.

## 2.0 COMMENTS AND RESPONSES

### Comment Letter No. 1

Rincon Band of Luiseño Indians (9-24-19)

**From:** Destiny Colocho <[DColocho@rincon-nsn.gov](mailto:DColocho@rincon-nsn.gov)>  
**Sent:** Tuesday, September 24, 2019 1:05 PM  
**To:** Ryan Fowler <[rfowler@cityofmenifee.us](mailto:rfowler@cityofmenifee.us)>  
**Cc:** Cheryl Madrigal <[CMadrigal@rincon-nsn.gov](mailto:CMadrigal@rincon-nsn.gov)>; Deneen Pelton <[DPelton@rincon-nsn.gov](mailto:DPelton@rincon-nsn.gov)>  
**Subject:** Rockport Ranch Project-Rincon Band Response to Notice of Draft EIR

Dear Mr. Fowler,

This letter is written on behalf of the Rincon Band of Luiseño Indians. Thank you for providing us with the Public Notice of the Availability of the Draft Environmental Impact Report (DEIR) for the above referenced project. The identified location is within the Territory of the Luiseño people.

1a

1. We understand that the project will consist of 79.68 acres and will comprised of residential land use and open space land use. In addition, a cultural resource assessment was conducted in December 2017 by Laguna Mountain Environmental, Inc. The assessment was negative for cultural resources within the proposed project site, however, 58 archaeological sites have been recorded within a one-mile radius of the proposed project site, 47 of which are prehistoric sites.

1b

2. Upon review of the DEIR, the information provided by the City of Menifee, and our internal records, we have concluded that the draft mitigation measures (SC-CUL-1 through SC-CUL-9) address Rincon's concerns pertaining to inadvertent discoveries. In addition, we understand that these measures are the City's Standard Conditions and include the following:

1. Protocols for discovery of Human Remains
2. Non-Disclosure of Reburial Location
3. Protocols for inadvertent archaeological discoveries
4. Options for Cultural Resource disposition, to include preservation in place
5. Archaeological Monitoring
6. Luiseno Monitoring - Pechanga
7. Luiseno Monitoring - Soboba
8. An Archaeological Report
9. Paleontological monitoring.

1c

3. We have no further concerns pertaining to potential discovery of cultural resources and human remains during ground disturbing activities for this project. However, we request that a copy of the Archaeological Report be provided to the Rincon Band upon completion.

1d

If you have any questions or concerns please do not hesitate to contact me.

1e

Thank you for the opportunity to protect and preserve our cultural assets.

Sincerely,

**Destiny Colocho, RPA**  
Tribal Historic Preservation Officer  
Cultural Resource Department  
Rincon Band of Luiseño Indians  
1 West Tribal Road | Valley Center, CA 92082  
Office: 760-297-2635 | Cell: 760-705-7171  
Fax: 760-692-1498  
Email: [dcolocho@rincon-nsn.gov](mailto:dcolocho@rincon-nsn.gov)

**Responses to Letter No. 1**

- 1a These are introductory statements that do not require a response but will be considered by the City's decision-makers prior to taking action on the proposed entitlements.
- 1b This comment reiterates information from the Environmental Impact Report (EIR). No additional response is required.
- 1c This comment reiterates Cultural Resources information from the EIR. No additional response is required.
- 1d Comment noted. A copy of the Archaeological Report will be provided. No further response is required.
- 1e The last paragraph is a closing statement that does not require a response.

**Comment Letter No. 2**

Paul Cramer (9-25-19)

**From:** <[cramerusc@gmail.com](mailto:cramerusc@gmail.com)>  
**Date:** September 25, 2019 at 2:07:13 PM PDT  
**To:** <[rfowler@cityofmenifee.us](mailto:rfowler@cityofmenifee.us)>  
**Subject:** Rockport EIR Notice

Ryan

1. My name is Paul Cramer, I represent the owners of the property east of Briggs Rd. I am not writing in support or opposition for this project but only to inform the city of Menifee. | 2a

2. Currently the property to the east of Briggs Rd across the street from the Rockport project is a working chicken ranch with a maximum population of 500,000 birds when fully populated under AP zoning. The owners of this property have every intention of operating this as a ranch themselves or through a tenant for the foreseeable future. While under operation there will be significant truck traffic and odor from the property that might affect the residents of this future project. | 2b

If you have any further questions please don't hesitate to contact me. | 2c

Regards,

Paul Cramer  
Woodcrest, LLC  
[cramerusc@gmail.com](mailto:cramerusc@gmail.com)

**Responses to Letter No. 2**

2a These are introductory statements that do not require a response.

2b Comment noted. This concern is addressed under Threshold e. (Would the Project involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?), in the Agriculture and Forestry Resources Subchapter of the EIR (p. 4.3-30). A Standard Condition is in place that states the following:

**SC-AG-1** The Project applicant shall comply with Assembly Bill 2881 and City of Menifee Ordinance No. 625. Disclosure shall be provided prior to the close of escrow on the sale of individual homes. This shall be obtained by including the following disclosures on the title report:

1. The property is located within 1 mile of farmland as designated on the most recent Important Farmland Map; and
2. Residents could be subject to inconvenience or discomfort resulting from accepted farming activities as per provisions of the City's Right-to-Farm Ordinance.

Further, this comment describes a potential impact of the existing environment on the project, not a potential impact on the environment, and therefore is not required to be analyzed under CEQA. (*See, California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369.)

2c These are closing statements that do not require a response.

**Comment Letter No. 3**

Riverside County Fire Department (10-15-19)

**From:** Reinertson, Adria@CALFIRE <[Adria.Reinertson@fire.ca.gov](mailto:Adria.Reinertson@fire.ca.gov)>  
**Sent:** Tuesday, October 15, 2019 3:08 PM  
**To:** Ryan Fowler <[rfowler@cityofmenifee.us](mailto:rfowler@cityofmenifee.us)>  
**Cc:** Sonya Rivera-Bu <[sriverabu@cityofmenifee.us](mailto:sriverabu@cityofmenifee.us)>  
**Subject:** Rockport Ranch DEIR Review

Ryan,

Strategic Planning has reviewed the DEIR for Rockport Ranch and we do not have any specific comments. Thank you.

3a



**Adria Reinertson**

Deputy Fire Marshal/Office of the Fire Marshal  
CAL FIRE/Riverside County Fire Department  
Direct: 951-955-5272 | Main: 951-955-4777  
2300 Market St., Ste 150, Riverside, CA 92501  
[adria.reinertson@fire.ca.gov](mailto:adria.reinertson@fire.ca.gov) | [www.rvcfire.org](http://www.rvcfire.org)



**Responses to Letter No. 3**

3a        Comment noted. No further response is required.

**Comment Letter No. 4**

South Coast Air Quality Management District (SCAQMD) (10-18-19)



**South Coast  
Air Quality Management District**

21865 Copley Drive, Diamond Bar, CA 91765-4178  
(909) 396-2000 • [www.aqmd.gov](http://www.aqmd.gov)

SENT VIA E-MAIL AND USPS:

October 18, 2019

[rfowler@cityofmenifee.us](mailto:rfowler@cityofmenifee.us)

Ryan Fowler, Senior Planner  
City of Menifee  
29844 Haun Road  
Menifee, California 92586

**Draft Environmental Impact Report (Draft EIR) for the Proposed  
Rockport Ranch (SCH No.: 2017081069)**

South Coast Air Quality Management District (South Coast AQMD) staff appreciates the opportunity to comment on the above-mentioned document. The following comments are meant as guidance for the Lead Agency and should be incorporated into the Final EIR.

4a

**South Coast AQMD Staff's Summary of Project Description**

The Lead Agency proposes to construct 305 residential units totaling 549,000 square feet, and 21.18 acres of roads and easements on 79.68 acres (Proposed Project). The Proposed Project will also include 20.1 acres of open space. The Proposed Project is located on the southwest corner of Briggs Road and Old Newport Road within the City of Menifee. Construction of the Proposed Project is estimated to begin in 2018 and will last approximately three years<sup>1</sup>. Upon review of the Draft EIR and aerial photographs, South Coast AQMD staff found that the Proposed Project will be located within 500 feet of an existing farm operation<sup>2</sup>.

4b

**South Coast AQMD Staff's Summary of the Air Quality Analysis**

In the Air Quality Analysis Section, the Lead Agency quantified the Proposed Project's construction and operational emissions and compared those emissions to South Coast AQMD's recommended regional and localized air quality CEQA significance thresholds. Based on the analysis, the Lead Agency found that air quality impacts from the Proposed Project would be less than significant and that no mitigation for air quality impacts was included<sup>3</sup>. Additionally, the Lead Agency stated that the Proposed Project will be located in close proximity to an existing egg ranch, which may have potential odor impacts on residents living at the Proposed Project<sup>4</sup>. Although operation of the Proposed Project, as a residential development, will not result in odors, the Lead Agency has included Standard Condition SC-AG-1 in the Draft EIR to reduce potential land use conflicts from the established egg ranch operation<sup>5</sup>. SC-AG-1 requires that the Project applicant disclose to prospective residents that the property is located within one mile of farmland and that they may be subject to the inconvenience or discomfort from these farming activities<sup>6</sup>. Lastly, the Lead Agency included in the Draft EIR discussions on applicable South Coast AQMD rules<sup>7</sup>, including Rule 403 – Fugitive Dust<sup>8</sup>, Rule 431.2 – Sulfur Content of Liquid Fuels<sup>9</sup>, Rule 1113 – Architectural

4c

<sup>1</sup> Draft EIR, Air Quality, Page 4.4-13.

<sup>2</sup> *Ibid.* Page 4.4-20.

<sup>3</sup> *Ibid.* Pages 4.4-20 through 4.4-21.

<sup>4</sup> *Ibid.* Page 4.4-20.

<sup>5</sup> *Ibid.* Page 4.4-20.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.* Page 4.4-21.

<sup>8</sup> South Coast AQMD Rule 403 – Fugitive Dust. Accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/rule-iv/rule-403.pdf>.

<sup>9</sup> South Coast AQMD Rule 431.2 – Sulfur Content of Liquid Fuels. Accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/rule-iv/rule-431-2.pdf>.

Ryan Fowler

October 18, 2019

Coatings<sup>10</sup>, Rule 1186 - PM10 Emissions from Paved and Unpaved Roads and Livestock Operations<sup>11</sup>, and Rule 1186.1- Less Polluting Sweepers<sup>12</sup>.

4c cont.

South Coast AQMD Rule 402, Consultation, and Air Quality Complaints

*Rule 402 - Nuisance*

In addition the South Coast AQMD Rules that were discussed in the Draft EIR, the Lead Agency should include a discussion to demonstrate compliance with South Coast AQMD Rule 402 – Nuisance<sup>13</sup> in the Final EIR.

4d

*Consultation*

Additionally, since the Proposed Project will disturb soils which contain concentrations of methane<sup>14</sup>, South Coast AQMD staff recommends that the Lead Agency consult with South Coast AQMD's Engineering and Permitting staff in advance to determine whether or not any permits, plans, or compliance actions will need to be filed and approved by South Coast AQMD prior to start of soil disturbing activities during construction of the Proposed Project. Any assumptions used in the Air Quality Analysis in the Final EIR will be used as the basis for permit conditions and limits for the Proposed Project. Should there be any questions on permits, please contact South Coast AQMD's Engineering and Permitting staff at (909) 396-3385. For more general information on permits, please visit South Coast AQMD's webpage at: <http://www.aqmd.gov/home/permits>.

4e

*Air Quality Complaints*

To protect public health in the South Coast Air Basin, the public can make a complaint about air quality problems by calling 1-800-CUT-SMOG (1-800-288-7664), emailing to [cut\\_smog@aqmd.gov](mailto:cut_smog@aqmd.gov), or filing out a complaint through the South Coast AQMD's On-Line Complaint Reporting System, available at <http://www3.aqmd.gov/webappl/complaintsystemonline/NewComplaint.aspx>. An air quality complaint is any injury, detriment, nuisance, or annoyance occurring as a result of air contaminants or other materials, including (but not limited to) smoke, dust, or odors<sup>15</sup>. To facilitate a good-faith effort at full disclosure and provide useful information to prospective residents at the Proposed Project, South Coast AQMD staff recommends that the Lead Agency include this information in SC-AG-1 in the Final EIR for disclosure to prospective residents.

4f

Conclusion

Pursuant to California Public Resources Code Section 21092.5(a) and CEQA Guidelines Section 15088(b), South Coast AQMD staff requests that the Lead Agency provide South Coast AQMD staff with written responses to all comments contained herein prior to the certification of the Final EIR. In addition, issues raised in the comments should be addressed in detail giving reasons why specific comments and suggestions are not accepted. There should be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice (CEQA Guidelines Section 15088(c)). Conclusory statements do not facilitate the purpose and goal of CEQA on public disclosure and are not meaningful, informative, or useful to decision makers and to the public who are interested in the Proposed Project. Further, when the Lead Agency makes the finding that the recommended revisions to SC-AG-1

4g

<sup>10</sup> South Coast AQMD. Rule 1113 – Architectural Coatings. Accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/r1113.pdf>.

<sup>11</sup> South Coast AQMD. Rule 1186 – PM10 Emissions from Paved and Unpaved Roads and Livestock Operations. Accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1186.pdf>.

<sup>12</sup> South Coast AQMD. Rule 1186.1 – Less Polluting Sweepers. Accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1186-1-less-polluting-sweepers.pdf>.

<sup>13</sup> South Coast AQMD. Rule 402 – Nuisance. Accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/rule-iv/rule-402.pdf>.

<sup>14</sup> Draft EIR. Section 4.9 Hazards and Hazardous Materials. Pages 4.9-1 through 4.9-28.

<sup>15</sup> South Coast AQMD. Accessed at: <http://www.aqmd.gov/home/air-quality/complaints>.

Ryan Fowler

October 18, 2019

are not feasible, the Lead Agency should describe the specific reasons for rejecting them in the Final EIR (CEQA Guidelines Section 15091). | 4g cont.

South Coast AQMD staff is available to work with the Lead Agency to address any air quality questions that may arise from this comment letter. Please contact Alina Mullins, Assistant Air Quality Specialist, at [amullins@aqmd.gov](mailto:amullins@aqmd.gov) or (909) 396-2402, should you have any questions. | 4h

Sincerely,

*Lijin Sun*

Lijin Sun, J.D.

Program Supervisor, CEQA IGR

Planning, Rule Development & Area Sources

LS:AM  
RVC190906-05  
Control Number

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**Responses to Letter No. 4**

- 4a These are introductory statements that do not require a response.
- 4b This is a summary of the Project Description that does not require a response.
- 4c This is a summary of the Air Quality Analysis that does not require a response.
- 4d Rule 402 states: "A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property. The provisions of this rule shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals."  
(<http://www.aqmd.gov/docs/default-source/rule-book/rule-iv/rule-402.pdf>)
- While not specifically called out in the DEIR, p. 4.4-21 of the DEIR states that "SCAQMD Rules that are currently applicable during construction activity for this Project include but are not limited to:" Rule 402 is a standard condition and the Project would be required to comply with this Rule during all phases of Project development.
- 4e According to an e-mail discussion between Ryan Fowler, Senior Planner, City of Menifee and Angela Han, Air Quality Engineer, dated November 14, 2019 (and provided as Appendix C to this Final EIR), the Project is subject to SCAQMD Rule 1166 (Excavation Plan Applications. This e-mail spells out the two types of Rule 1166 plans: 1) Various Locations Plan and 2) Site Specific Plan. While not specifically called out in the DEIR, p. 4.4-21 of the DEIR states that "SCAQMD Rules that are currently applicable during construction activity for this Project include but are not limited to:" Rule 1166 is a standard condition and the Project would be required to comply with this Rule that prior to ground disturbance, the applicant would apply for and obtain approval of a Rule 1166 Plan (because of the former dairy site and methane concentrations).
- 4f Comment noted, the complaint information contact language will be added to Standard Condition SC-AG-1 and provided in Section 3.0 Errata of this Final EIR.
- 4g Please reference responses 4.d through 4.f.
- 4h The last paragraph is a closing statement that does not require a response.



**Comment Letter No.5**

U.S. Fish and Wildlife Service / California Department of Fish and Wildlife (FWS/CDFW) (10-18-19)



U.S. Fish and Wildlife Service  
Palm Springs Fish and Wildlife Office  
777 East Tahquitz Canyon Way, Suite 208  
Palm Springs, California 92262  
760-322-2070  
FAX 760-322-4648



California Department of Fish and Wildlife  
Inland Deserts Region  
3602 Inland Empire Blvd., Suite C-220  
Ontario, California 91764  
909-484-0167  
FAX 909-481-2945

In Reply Refer To:  
FWS/CDFW-WRIV-20B0007-20CPA0001

October 18, 2019  
*Sent by email*

Mr. Ryan Fowler  
Senior Planner  
City of Menifee  
Planning Department  
29844 Haun Road  
Menifee, California 92586  
rfowler@cityofmenifee.us

Subject: Draft Environmental Impact Report Rockport Ranch Project State Clearinghouse No.  
2017081069

Dear Mr. Fowler:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (CDFW), hereafter referred to jointly as the Wildlife Agencies, have reviewed the Draft Environmental Impact Report (DEIR) for the City of Menifee's (City) Rockport Ranch Project (Project), which CDFW received September 11, 2019. Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect fish and wildlife resources.

5a

As discussed below, the Wildlife Agencies are concerned that the DEIR has not adequately identified or assessed the inconsistencies between the proposed Project and Sections 6.1.2 and 6.1.3 of the Western Riverside County Multiple Species Habitat Conservation Plan, as required by Section 15125(d) of the CEQA Guidelines. We request revision of the DEIR to address the following:

5b

1. Adequacy of the baseline assessment of biological resources, specifically for listed fairy shrimp species and for the sensitive plant species.
2. The preparation of an assessment to demonstrate that if present, impacts to listed fairy shrimp and sensitive plant species will be mitigated to less than significant, if the Project will not avoid impacting those resources.

5c

**WILDLIFE AGENCY ROLES**

The primary concern and mandate of the Service is the protection of fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.).

5d

CDFW is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has

Mr. Fowler (FWS/CDFW-WRIV-20B0007-20CPA0001) SCH No. 2017081069

2

jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

5d cont.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. For example, as proposed, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.)

5e

The Wildlife Agencies have also reviewed this Project to determine consistency with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). On June 22, 2004, the Service issued a section 10(a)(1)(B) permit for the MSHCP. CDFW also issued Natural Community Conservation Plan (NCCP) Approval and Take Authorization for the MSHCP per Section 2800, *et seq.*, of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the two permits.

5f

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements. To obtain additional information regarding the MSHCP please go to: <http://rctlma.org/epd/WR-MSHCP>.

5g

#### PROJECT DESCRIPTION SUMMARY

The proposed 79.68-acre Project site is located north of Holland Road, west of Briggs Road and south of Newport Road in the City of Menifee, Riverside County. The Project is the development of 305 residential units, associated infrastructure (culverts, storm drains, etc.), recreational facilities (parks), and stormwater detention/water-quality treatment features (a lake and a pond). A Zone Change from Agriculture to Residential is required.

5h

#### COMMENTS AND RECOMMENDATIONS

The Wildlife Agencies offer the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect effects on fish and wildlife resources. Comments and recommendations are also offered on the proposed Project's consistency with the MSHCP.

5i

#### MSHCP Implementation and Permittee Obligations

The City is the Lead Agency, an MSHCP permittee and has signed the Implementing Agreement of the MSHCP. As an MSHCP Permittee, the City must ensure that proposed actions, in this case Project approvals, are consistent with the MSHCP and its associated Implementing Agreement. The Project occurs within the Menifee/Sun City Plan Area.

5j



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MSHCP policies and procedures that apply to the proposed Project include the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2), protection of Narrow Endemic Plant Species (MSHCP section 6.1.3), and Additional Survey Needs and Procedures for burrowing owl (MSHCP section 6.3.2).

5k

*Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2)*

The Project's "MSHCP Consistency Analysis and Habitat Assessment" report (MCAHA; DEIR Appendix D1) states "No potential jurisdictional waters were identified on the project site" (MCAHA Section 6.2, p. 12). Further, *Biological Resources* sub-item "b." of the DEIR states:

5l

*"Suitable riparian/riverine habitats for the species listed under 'Purpose' Volume 1, Section 6.1.2 of the MSHCP are not present on the Project site. Other kinds of sealed aquatic features that could provide suitable habitats for endangered and threatened species of fairy shrimp are not present on the Project site."*

However, multiple figures within the MCAHA (i.e., Figures 4, 5, 6, 7, 10, 12) depict three large floodwater-retention basins located on the central and southern parts of the Project site's western boundary, a large area of ponding located at the southern end of the Project site, and a drainage ditch along the eastern perimeter of the Project site (Briggs Road). Furthermore, Figure 4.3-1 (DEIR, p. 4.3-15) depicts an additional floodwater-retention basin in the northwest corner of the Project site. Given the depiction of these features on figures in the DEIR and associated Appendices, the Wildlife Agencies question the conclusion that there are "no potential jurisdictional waters identified on the Project site."

5m

The Wildlife Agencies were unable to locate a discussion or analysis of the ponding, water-holding, or water flow features identified on the Project site in the DEIR. The detention basins and setting ponds, and other areas of ponding, have the potential to support listed species of fairy shrimp as well as the threatened spreading navarretia (*Navarretia fossalis*), the Wildlife Agencies recommend that the City complete further analyses and present the results in the final EIR (FEIR), or in a revised and recirculated DEIR.

5n

Habitat for fairy shrimp species on the federal list of threatened and endangered species includes (aside from natural water bodies) stock ponds, ephemeral ponds, and other human-created depressions. Any ponding feature (natural or anthropogenic) that holds standing water (~3 cm or deeper) for more than 24 hours (USFWS 2017) is considered to be potential fairy shrimp habitat by the Wildlife Agencies. The multiple water-holding and water-conveying features located on the Project site should have been assessed or surveyed for listed species of fairy shrimp as part of compliance with Section 6.1.2 of the MSHCP.

5o

To implement and demonstrate consistency with Section 6.1.2 of the MSHCP, and therefore Section 15125(d) of the CEQA Guidelines, the Wildlife Agencies recommend that listed species fairy shrimp protocol-level surveys (USFWS 2017) be completed on the Project site

5p



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and that results be presented in the FEIR or in a revised and recirculated DEIR.

5p cont.

*Protection of Narrow Endemic Plant Species (MSHCP section 6.1.3)*

The Project site is located within Narrow Endemic Plant Species Survey Area 4 (NEPSSA-4) of the MSHCP, requiring surveys for Munz's onion, San Diego ambrosia, many-stemmed dudleya, spreading navarretia, California Orcutt grass, and Wright's trichocoronis. The Wildlife Agencies were unable to locate focused plant survey results within the DEIR. Instead, the DEIR concludes (based on a single site visit conducted on January 26, 2016) that due lack of observance of sensitive plant species during the site visit, the site's high level of disturbance, and widespread distribution of "ruderal" plant species, NEPSSA species are not present on the Project site.

5q

The Wildlife Agencies are concerned by this conclusion, given that San Diego ambrosia has been found in several disturbed sites, including dirt access roads and roadsides (e.g., along Pujol Street in Temecula), and spreading navarretia has been detected in roadside vernal pools shaped by road construction activities. Both plant species are somewhat cryptic and navarretia is small and low-growing. Both species are easily overlooked outside of their respective blooming periods (May and June, for spreading navarretia; May – July for San Diego ambrosia). To ensure the species are detectable, a reference site should be visited to verify species phenology. The Wildlife Agencies request that NEPSSA species surveys be conducted during the relevant blooming periods.

5r

To implement and demonstrate consistency with Section 6.1.3 of the MSHCP, and therefore Section 15125(d) of the CEQA Guidelines, the Wildlife Agencies recommend that focused surveys for spreading navarretia and San Diego ambrosia during the respective blooming periods be conducted and that reference sites be visited to verify species phenology. We request that survey results be presented in the FEIR or in the revised and recirculated DEIR.

5s

*Additional Survey Needs and Procedures for burrowing owl (MSHCP section 6.3.2)*

Appendix D1 and the *Biological Resources* section of the DEIR, identifies that the Project site contains suitable habitat for burrowing owls, and an owl-occupied burrow was documented in January, 2016. The City has conditioned the Project through Mitigation Measure BIO-1 (MM-BIO-1) to complete a 30-day preconstruction survey. The Wildlife Agencies appreciate the City's incorporation of this mitigation measure, however, we recommend that the City revise MM-BIO-1 and condition the measure to include the following (edits are in bold and ~~struckthrough~~):

MM-BIO-1: A 30-day preconstruction survey for burrowing owl is required by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) to confirm the continued presence of burrowing owl within the survey area. The survey shall be conducted by a qualified biologist no more than 30 days prior to ground disturbance in accordance with MSHCP survey requirements to avoid direct take of burrowing owl. If burrowing owls are determined to occupy the Project site or the immediate vicinity, CDFW, the Service, the Western Riverside County Regional Conservation Authority, and the City

5t

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of Menifee Community Development ~~will~~ shall be notified, within three business days of the discovery of the owl(s), and avoidance measures will be implemented, as appropriate, pursuant to the MSHCP, the California Fish and Game Code, the MBTA, and the mitigation guidelines prepared by the CDFW (2012).

The following measures are recommended in CDFW guidelines to avoid impacts on an active burrow:

- No disturbance should occur within 50 meters (approximately 160 feet) of occupied burrows during the non-breeding season.
- No disturbance should occur within 75 meters (approximately 250 feet) of occupied burrows during the breeding season.

5t cont.

For unavoidable impacts, passive or active relocation of burrowing owls would need to be implemented through the development of a Burrowing Owl Protection and Relocation Plan approved by the Service, CDFW, and the Western Riverside County Regional Conservation Authority. ~~by a qualified biologist outside the breeding season, in accordance with procedures set by the MSHCP and in coordination with the CDFW.~~

Because of the frequency with which burrowing owls have been detected on planned development sites in the City in recent years, and to avoid delays in the Project's construction timeline, the Wildlife Agencies recommend the City condition the issuance of the Project's grading permit on completion of a Service- and CDFW-approved Burrowing Owl Protection and Relocation Plan.

5u

Fish and Game Code section 1600 et seq.

CDFW requires notification for work undertaken in or near any river, stream, or lake that flows at least episodically, including ephemeral streams, desert washes, and watercourses with a subsurface flow. Fish and Game Code section 1602 states, "An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur". Upon receipt of a complete notification, CDFW determines if the activities may substantially adversely affect existing fish and wildlife resources.

5v

Though the site appears to have been subject to regular ground disturbance, the DEIR does identify water conveyance within discreet features: the "drainage ditch" along the eastern perimeter of the Project site. Given presence of the "drainage ditch" onsite, CDFW recommends that the City include the following new mitigation measure in the DEIR to ensure compliance with Fish and Game Code section 1602:

5w

*To ensure compliance with Fish and Game Code section 1602 the project applicant shall provide either of the following: Written correspondence from the California Department of*



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*Fish and Wildlife stating that notification pursuant to Section 1602 of the Fish and Game Code is not required for the project; or a copy of a California Department of Fish and Wildlife executed Lake or Streambed Alteration Agreement, authorizing activities within areas subject to Fish and Game Code section 1602.*

5w cont.

Please note that CDFW's issuance of a Lake or Streambed Alteration (LSA) Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the CEQA document should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA>.

5x

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDB at the following email address: [CNDDB@wildlife.ca.gov](mailto:CNDDB@wildlife.ca.gov). The types of information reported to CNDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

5y

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

5z

## SUMMARY AND CONCLUSIONS

The DEIR has not adequately identified or assessed inconsistencies between the proposed Project and Sections 6.1.2 and 6.1.3 of the MSHCP, as required by Section 15125(d) of the CEQA Guidelines. To implement and demonstrate consistency with the MSHCP, the Wildlife Agencies recommend the completion of listed species fairy shrimp surveys (USFWS 2017) and focused surveys for NEPSSA species and that the results of these surveys be presented in the FEIR or in the revised and recirculated DEIR. The Wildlife Agencies also have concerns about the delineation of MSHCP riparian / riverine / vernal pool resources on the Project site and request a site visit and field meeting to review the delineation and assess onsite conditions.

5aa

In summary, the Wildlife Agencies request that the City:

5bb

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- (a) Require the completion of the surveys referenced above for listed fairy shrimp species and for the threatened spreading navarretia and the endangered San Diego ambrosia;
- (b) Prepare a Determination of Biologically Superior or Equivalent Preservation (DBESP), as required by the MSHCP, for proposed Project impacts to MSHCP riparian / riverine / vernal pool resources and any NEPSSA plant species that are present, if the Project will not avoid impacting those resources; and
- (c) Update the EIR, accordingly.

5bb cont

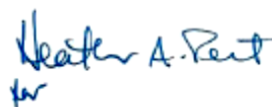
We appreciate the opportunity to comment on the DEIR and look forward to continuing to work with the City on this Project. If you have any questions or comments regarding this letter, or to schedule the site visit/field meeting, please contact James Thiede of the Service at [james\\_thiede@fws.gov](mailto:james_thiede@fws.gov) or 760-322-2070 x 419 and Carly Beck of CDFW at [carly.beck@wildlife.ca.gov](mailto:carly.beck@wildlife.ca.gov) or 909-945-3294.

5cc

Sincerely,

KARIN  
CLEARY-ROSE  
for  
Brian Croft  
Acting Assistant Field Supervisor  
U.S. Fish and Wildlife Service  
Palm Springs Fish & Wildlife Office

Digitally signed by  
KARIN CLEARY-ROSE  
Date: 2019.10.18  
14:45:12 -07'00'



Scott Wilson  
Environmental Programs Manager  
California Department of Fish and Wildlife  
Inland Deserts Region

ec:  
State Clearinghouse  
James Mace, U.S. Army Corp of Engineers  
Jason Bill, Santa Ana Regional Water Quality Control Board  
Marc Brown, Santa Ana Regional Water Quality Control Board  
Heather Pert, CDFW Lake and Stream Alteration Program  
Charles Landry, Regional Conservation Authority

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#### REFERENCES

[CDFW 2012]. California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. March 2012. 36 pages. Sacramento, California.

Matthew Fagan Consulting Services, Inc. 2019. Draft Environmental Impact Report for the "Rockport Ranch Project". Prepared for the City of Menifee. August 2019. 837 pages. Temecula, California.

LSA Associates Inc. 2016. MSHCP Consistency Analysis and Habitat Assessment, Rockport Ranch Project, City of Menifee, Riverside County, California. April 2016. 24 pages. Riverside, California.

[USFWS 2017]. U.S. Fish & Wildlife Service. 2017. Survey Guidelines for the Listed Large Branchiopods. November 2017. 24 pages. Sacramento, California.

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**Responses to Letter No. 5**

- 5a These are introductory statements that do not require a response but will be considered by the City's decision-makers prior to taking action on the proposed entitlements.
- 5b Please reference responses to comments 5n, 5q, and 5r as they pertain to the adequacy of the baseline assessment of biological resources, specifically for listed fairy shrimp species and for the sensitive plant species.
- 5c Please reference responses to comments 5n, 5q, and 5r as it pertains to the preparation of an assessment to demonstrate that if present, impacts to listed fairy shrimp and sensitive plant species will be mitigated to less than significant, if the Project will not avoid impacting those resources.
- 5d This is a summary of the Wildlife Agency Roles that does not require a response.
- 5e Comment noted. No further response is required.
- 5f Comment noted. No further response is required.
- 5g Comment noted. No further response is required.
- 5h This is a summary of the Project Description that does not require a response.
- 5i Comment noted. No further response is required.
- 5j Comment noted. No further response is required.
- 5k This is a summary of information in the EIR that does not require a response.

*In support of the following responses, a field visit was conducted by LSA biologist Denise Woodard on November 11, 2019 to assess the current site conditions, and a current (November 19, 2019) database search of the California Department of Fish and Wildlife's Natural Diversity Data application Rarefind 5 online edition (CDFW CNDDB, v 5.2.14, <https://www.wildlife.ca.gov/Data/CNDDB/>) was conducted. Current and historic aerial photographs (Google Earth 2019 and NETRonline Historic Aerials 2018) were also reviewed.*

- 5l Please see responses to comments 5m and 5n.
- 5m The water holding features on the Project site include dairy affluent detention ponds and associated conveyance features. These features were created in uplands for the sole source of managing affluent from dairy activities. All water associated with these features is retained on the Project site. The features are considered to be isolated features with no connectivity to natural drainage features or other water conveyance systems, such as storm drains. Aerial photograph review also showed no evidence of natural water features on the Project site prior to the construction of the dairy. For these reasons, the subject water holding features would not be subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (CWA), the Regional Water Quality Control Board (RWQCB) under Section 401 of the CWA, or the California Department of Fish and Wildlife (CDFW) under Sections 1600 et seq. of the

California Fish and Game Code.

In addition, because these features are artificially created and not associated with a natural waterway, these features would not be subject to protection under the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Section 6.1.2.

- 5n The Project site, including water holding features, was almost completely devoid of vegetation at the time of the 2016 survey. All the water holding features on the project site were isolated and associated with nuisance flows and detention of affluent related to the dairy activities. These features were subject to a persistent and ongoing artificial inundation regime containing dairy affluent. For these reasons, the water holding features were not considered suitable habitat for fairy shrimp. For these same reasons, along with fact that no native plant communities were present and no native plant species were found, the site was found to be absent of vernal pools, and absent of suitable habitat for vernal pool plants and MSHCP narrow endemic plants. Therefore, the onsite water holding features are not considered suitable to support fairy shrimp or spreading navarretia and further detail is provided in the following:

Fairy Shrimp. The MSHCP calls for habitat assessments for three sensitive species of fairy shrimp: Santa Rosa Plateau fairy shrimp (*Linderiella santarosae*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool fairy shrimp (*Branchinecta lynchi*). Santa Rosa Plateau fairy shrimp occurs only on the Santa Rosa Plateau of extreme southwest Riverside County. A fourth sensitive species of Southern California, San Diego fairy shrimp (*Branchinecta sandiegonensis*) is found primarily in coastal areas of Orange and San Diego Counties. It has been found as far inland as the Wildomar area of southwest Riverside County but is not expected in the Project area. These sensitive fairy shrimp species inhabit vernal pools as well as stock ponds, large road ruts, or other similar habitats that pond water long enough to allow growth and reproduction. To provide fairy shrimp habitat, a feature must regularly pond water for at least 18 days for vernal pool fairy shrimp (Eriksen, C., and D. Belk. 1999. *Fairy Shrimps of California's Puddles, Pools, and Playas*. Mad River Press, Inc., Eureka, California) and two months for Riverside fairy shrimp (U.S. Fish and Wildlife Service 2012. *Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Riverside Fairy Shrimp; Final Rule*. Federal Register 77: 72070-72140).

The water holding features on the Project site are not considered to be suitable habitat for special status fairy shrimp based on the following:

- The onsite water holding features were used to retain dairy cattle urine and feces, as well as other affluent from dairy activities up until about 2014/2015. During active dairy use, the water holding features are considered unsuitable for fairy shrimp due to poor water quality and an artificial inundation regime.
- A fairy shrimp habitat assessment was conducted at the time of the field survey conducted for the April 2016 MSHCP Consistency Analysis and Habitat Assessment report. At that time the 2016 field survey, the Project site had been almost entirely devoid of vegetation. Due to the high level of disturbance and short period from the decommissioning of the dairy, and habitat requirements of special status fairy shrimp, the onsite water holding features were not considered suitable for fairy shrimp in 2016.
- The 2019 field visit found that one of the water holding features (a detention pond)

was inundated with water, and appears to be inundated on a regular basis. Newly developing riparian vegetation was noted growing along the banks of the detention pond. Riparian plant species identified include mule fat (*Baccharis salicifolia*), Goodding's willow (*Salix gooddingii*) and tamarisk (*Tamarix ramosissima*). Because of the frequent and long-term inundation of this feature, it is not considered suitable for fairy shrimp. The newly developing riparian habitat is not considered extensive enough to support MSHCP riparian bird species riparian birds, including least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and yellow-billed cuckoo (*Coccyzus americanus*). These species generally require riparian forest habitat composed of willow and cottonwood species with a dense understory.

No water was present in any of the other water holding features. The vegetation in the remainder of the water holding features was dominated by dense (100 percent or greater cover), nonnative, ruderal plant species. Dominant species identified include, white amaranth (*Amaranthus albus*), Australian saltbush (*Atriplex semibaccata*), prickly lettuce (*Lactuca serriola*), stinknet (*Oncosiphon piluliferum*), Russian thistle (*Salsola tragus*), and cheeseweed mallow (*Malva parviflora*). Hydric (water-loving) plant species were also present in the portions of the water features that retained water more regularly. The hydric plant species identified are all nonnative and include Australian salt bush, common knotweed (*Polygonum aviculare*), curly dock (*Rumex crispus*), and annual rabbitsfoot grass (*Polypogon monspeliensis*). These hydric plant species are not vernal pool endemic plant species.

Spreading Navarretia. Spreading navarretia is found in saline alkaline soils of vernal pools and depressions and ditches in areas that once supported vernal pools. The MSHCP account for this species states that it "is primarily restricted to the alkali floodplains of the San Jacinto River, Mystic Lake and Salt Creek in association with Willows, Domino and Traver soils" and that "in western Riverside County, spreading navarretia has been found in relatively undisturbed and moderately disturbed vernal pools, within a larger vernal floodplains dominated by annual alkali grassland or alkali playa."

Although the Project site contains mapped saline-alkaline soils, the entire Project site has been utilized for dairy farming activities since at least 1996 through 2014/2015. Based on the high level of soil disturbance and associated dominance of dense, nonnative plant species, along with the unsuitable site conditions described above for fairy shrimp, the Project site is not considered suitable habitat for spreading navarretia.

Because suitable habitat is not present for special status fairy shrimp species and spreading navarretia, focused surveys are not required.

No additional analysis is required.

5o Please see response to comment 5n.

5p Please see response to comment 5n.

5q A Narrow Endemic Plant Species Survey Area 4 (NEPSSA) 4 plant habitat assessment was conducted as part of the Project April 2016 MSHCP Consistency Analysis and Habitat Assessment report. This report found habitat on the Project site to be unsuitable for NEPSSA 4 plant species including Munz's onion, San Diego ambrosia, many-stemmed



dudleya, spreading navarretia, California orcutt grass, Wrights's trichocoronis at that time. Based on current site conditions, and additional information provided in response to comment for 5m and 5n, the site is still considered unsuitable for these NEPSSA plant species. Therefore, based on the lack of suitable habitat, no further study (i.e., focused survey) is required under the MSHCP. Please also see response to comment 5r below as well as response to comment 9s in Letter #9. No additional analysis is required.

- 5r According to the April 2016 MSHCP Consistency Analysis and Habitat Assessment report, habitat was found to be absent for the subject NEPSSA 4 plant species. The following further supports these results for the subject species:

Spreading Navarretia. See response to comment 5n.

San Diego Ambrosia. San Diego ambrosia is found in open floodplain terraces on Garretson gravelly fine sandy loams, or in the watershed margins of vernal pools or alkali playas on Las Posas loam in close proximity to Willow silty alkaline soils. Occurs in sparse annual vegetation.

No Garretson gravelly fine sandy loams, Las Posas loam soils, or Willow silty alkaline soils are present on the Project site. In addition, there are no California Natural Diversity Database (CNDDB) records for this species within a 3-mile radius of the Project site. The vegetation on the Project site is currently dense ruderal vegetation as detailed in response to comment 5n. Due to the lack of suitable soils and vegetation, habitat on the Project site is not considered suitable for the San Diego ambrosia.

Because there is not suitable habitat for Spreading navarretia and San Diego ambrosia, focused surveys are not required.

No additional analysis is required.

- 5s See responses to comments 5m, 5n, 5q and 5r.
- 5t The changes and recommended measures will be incorporated into Section 3.0 Errata of this Final EIR, as outlined.
- 5u A CDFW approved Burrowing Owl Protection and Relocation Plan is required by the MSHCP in the event that the burrowing owl is determined to be present. A Burrowing Owl Protection and Relocation Plan will only be prepared if the burrowing owl is determined to be present during the 30-day preconstruction survey identified in comment 5t as mitigation measure MM-BIO-1. See also responses to comments 7x and 7y in Letter #7 and response to comments 9o, 9p, and 9aa-9cc in Letter #9.
- 5v The water holding features on the Project site are not are not subject Fish and Game Code Section 1600 et. Seq. See response to comment 5m. Therefore, a notification under Fish and Game Code Section 1602 is not required.
- 5w See response to comments 5m and 5v.
- 5x Comment noted. No further response is required.
- 5y Comment noted. No special status species or protected natural communities are present.

- 5z Comment noted. All required fees will be paid. No further response is required.
- 5aa See response to comment 5bb for clarification of impacts to fairy shrimp, NEPSSA plants, and fairy shrimp.
- 5bb Habitat on the Project site is considered unsuitable for listed fairy shrimp, spreading navarretia and San Diego ambrosia. See responses to comments 5n, 5q, and 5r. Due to lack of suitable habitat, the Project will have no effects to subject species. Therefore, further study and the preparation of a DBESP are not required.
- 5cc The last paragraph is a closing statement that does not require a response.

**Comment Letter No.6.1**

Jan L. Westfall - Letter (10-21-19)

**Jan L. Westfall**

29896 Blue Water Way  
Menifee, CA 92584

Tel. 619-940-2880

October 21, 2019

City of Menifee,  
Attn: Ryan Fowler, Senior Planner  
29844 Haun Road  
Menifee, CA 92586  
(951) 723-3740  
[rfowler@cityofmenifee.us](mailto:rfowler@cityofmenifee.us)

Re: Comments on Draft Environmental Impact Report (DEIR):  
*General Plan Amendment No. 2016-287*  
*Change of Zone No. 2016-288*  
*Specific Plan No. 2016-286*  
*Tentative Tract Map No. 2016-285 (TR 37131)*  
*Collectively "Rockport Ranch" or "the project"*  
Request for Notice

Dear Mr. Fowler,

I am writing to comment on the Draft Environmental Impact Report prepared in connection with the Rockport Ranch project and the planning applications referenced above.<sup>1</sup> These comments supplement the concerns raised at the Scoping Meeting held on September 14, 2017, and a comment letter submitted by the undersigned dated October 4, 2017.

6a

In keeping with my earlier comments, I remain concerned by the unmitigated loss of agricultural land, the depletion of the underground aquifer through creation of the man-made lake, and possible environmental issues related to methane and/or nitrates remaining in the soil following cessation of dairy activities.

6b

**A. Conversion of the property from Agriculture to Specific Plan**

Both the Initial Study and the CEQA Environmental Checklist form acknowledged the impact to agricultural resources were "potentially significant." The IS further acknowledged CEQA checklist items V.2 a, b and e would have a "potentially significant impact." (DEIR pages 126, 754). Nonetheless the DEIR concludes "the Project is not forecasted to cause any

6c

<sup>1</sup> Draft Environmental Impact Report available at <http://www.cityofmenifee.us/DocumentCenter/View/8640/Draft-EIR---8-2019>. References to the DEIR and attachments shall be to PDF page numbers in the online documents.

significant adverse impacts to agricultural resources or resource value. No unavoidable impact to agricultural resources will result from implementing the Project.” DEIR page 26. | 6c cont.

The DEIR suggests this conclusion based entirely on the Agricultural Land Evaluation And Site Assessment (LESA), Appendix B to the DEIR. LESA refers to a methodology with quantitative results than can be useful in conducting a CEQA analysis, and is intended to provide lead agencies with “an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process.” Instruction Manual for the California Agricultural Land Evaluation And Site Assessment Model prepared by California Department of Conservation, (citing Public Resources Code Section 21095) available at <https://www.conservation.ca.gov/dlrp/Documents/lesamodl.pdf>. Select pages of the Instruction Manual are attached hereto as Exhibit A. LESA methodology can be helpful, but standing alone does not provide a definitive determination of the impact of conversion of agricultural land. | 6d

The LESA model assigns quantitative ratings to six factors: two land evaluation factors and four site assessment factors. If either score is less than 20, the effect is “not considered significant.” See Exhibit A, page 12. The ratings assigned to the Rockport Ranch project are described in the DEIR beginning on pages 4.3-7. Although the LESA analysis involves several factors, I would like to focus on the water resources component. | 6e

Per the DEIR, the project’s LESA score is 40.357, with Land Evaluation (LE) factors (a combination of Land Capability Classification and Storie Index factors) having a total of 22.357 and Site Assessment (SA) factors having a total of 18. This latter number is critical because since it is below 20, this suggests a finding that the project impact is not significant, even though the combined number would suggest a different result. | 6f

Some of the SA factors are purely quantitative -- Project Size and the amount of surrounding land dedicated to farmland (Surrounding Agriculture). These numbers seem correct. Protected Resource Land is given a score of zero. However, the Water Resource Availability is more problematic. | 6g

Without providing a table indicating the other options available, the report concludes the “Project site is classified as Option 11.” See Exhibit A, page 7 for a listing of all options. Option 11 is defined as land where irrigated production is feasible; but physical and economic restrictions exist. In drought years, irrigated production is not feasible.” The report goes on to explain, | 6h

“This is because the well that supplies water on site contains high levels of Total Dissolved Solids (TDS) over 2,000 parts per million (ppm), which is considered severe and will restrict crop growth. The well water would need to be filtered or supplemented with potable City water and then blended. Both options are cost prohibitive for agricultural production.” DEIR page 143, Appendix B page 12.

But irrigation need not be limited to potable water. The Eastern Municipal Water District (Menifee’s water provider) is widely viewed as an industry leader in use of recycled or reclaimed | 6i

water. Appendix B1.<sup>2</sup> The EMWD regularly uses 100 percent of its recycled water supply within its 555-square mile service area. EMWD is one of the largest by-volume recyclers in the nation. About 75 percent of EMWD's recycled water is sold to agricultural, irrigation, landscaping and industrial customers – at reduced rates. Reclaimed water is currently used in the cultivation of potatoes, lettuce, carrots, tomatoes, strawberries, sugar beets, grain crops, citrus, avocado, grapes, sod farms, fiber, fodder, seed crops and ornamental nursery stock within the EMWD's coverage zone. See Exhibit B2. Because of the reclaimed water program, irrigation during drought years is both physically possible and economically practical.<sup>3</sup> Completely missing from the LESA analysis is any recognition that the project site is connected to the EMWD's reclaimed water lines, and that use of reclaimed water for irrigation purposes is not just possible, but required whenever possible. Section 5.602 of the EASTERN MUNICIPAL WATER DISTRICT ADMINISTRATIVE CODE, amended by Resolution No. 2015-034 on May 8, 2015 sets forth "(a) Mandatory Use Requirements Policy [to wit]:

6i cont.

(1) "Recycled water (or other non-potable) supplies shall be used to the maximum extent possible for any approved use." Approved recycled water uses listed below include, but are not restricted to: . . . . • Agricultural irrigation...Exhibit B4

Given the EMWD's strong program to make reclaimed water economically feasible for agriculture, to summarily reject the possibility that irrigation could be used during drought years seems incorrect. With reference to the viability of agriculture, nitrates do not necessarily preclude use of the water for agriculture, as nitrates are found in fertilizers commonly used for agriculture. Given the volume of water predicted to evaporate from the man-made ornamental lake on an annual basis, an alternative and perhaps better use of that precious resource might be agriculture, or at least irrigation of a community garden.

6j

Based on the conclusion that irrigation in the project area is not feasible, the LESA and the DEIR conclude the final Water Resource Score for the project site is 30. Review of a more complete table reflecting Water Resource Scoring (Exhibit A, page 7) suggests a more appropriate score for the project is likely to be 100 – Irrigated production is feasible in both drought and non-drought years, and there are no physical or economic restrictions. If this seems overly generous, at a minimum it must be recognized that irrigated production is feasible in both drought and non-drought years, even if physical and/or economic restrictions exist. If just economic restrictions exist, the score should be 95 (option2) (or 90 if economic restrictions apply in non-drought years, i.e. option 3). Or if for some reason both physical and economic restrictions are deemed to exist in drought years—the lowest possible score that should be assigned for this factor is 65 (not 30). This small change completely changes the LESA analysis.

6k

Using the revised water resource availability score, the SA score is either 28.5, 27.75 or 23.25 (meaning both the LE and SA scores are above 20) and the overall score would be either 50.857, 50.107or 45.607. This minor adjustment to the LESA analysis requires a completely

6l

<sup>2</sup> Exhibits B1 –B4, attached hereto are available at the EMWD website, <https://www.emwd.org/recycled-water-service-and-related-pages>.

<sup>3</sup> It should be noted that the Abacherli Dairy was listed as the Eastern Municipal Water District's fourth largest agricultural customer in a 2014 offering circular. See Exhibit B3.



different conclusion – using either of these numbers yields a conclusion the conversion of this farmland is **significant**. See Exhibit C for a recalculation of the final LESA score using these alternative assumptions, and Exhibit A, page 12 for LESA scoring thresholds.

6l cont.

The revised LESA indicates the conversion of the farmland to development is significant, and mitigation is appropriate. I would simply ask the Planning Department and the City Council to reconsider the findings in this area, and consider mitigation measures, which could include conservation of nearby farmland, or a retooling of the project to include an agricultural component—such as to create a community garden in lieu of the man-made lake. In considering mitigation, the City should be conscious that preservation of farmland is an important goal in Riverside county and in the state of California.

6m

#### B. Groundwater issues

Although the Menifee Valley fortunately is situated over a large aquifer, recent droughts have demonstrated that the aquifers are not unlimited. The Planning Division and City Council should seriously consider whether it is an appropriate use of California's most precious natural resource to continue approving new subdivisions with ornamental lakes that lose large amounts of water to evaporation each year. As noted, the relatively small lake proposed for this project is itself predicted to lose 6,100,384 gallons to evaporation annually; when loss from seepage is included, the annual figure for lost water is predicted to be 13,635,579 gallons. DEIR Appendix J4, page 1.

6n

The LESA also raises questions about the groundwater on the project site. The LESA indicates the well water is unusable for irrigation because of the nitrates built up during the dairy era. If the aquifer that the well draws from is polluted with Nitrates that is a serious environmental problem that does not appear to be adequately addressed in the DEIR. The LESA hints at environmental health risks caused by the presence of high levels of methane in the soil. These could be substantially exacerbated by the grading required for creation of the lakes, and suggest the proposed lake could become contaminated and cause an increased health risk. High concentrations of nitrates in the soil and groundwater of a former dairy is not surprising, and typically accompanies high methane levels in soil (which is documented in the Methane report, Appendix H). But the presence of nitrates in the well water (and possibly in the aquifer) do not appear to be addressed at all in the appendices devoted to water quality and hydrology issues (Appendices J1, J2a, J2b, J3 and J4), or more generally in environmental review of the site<sup>4</sup>. Moreover, the review of Methane issues primarily concerns construction and grading, but does not address potential negative effects of Methane in the soil over the long term. Negative effects of Methane and Nitrates in the soil can be expected to last for decades, and cannot be limited to just a grading issue as discussed in the Methane appendix. Issues related to methane and nitrates are illustrated in articles attached hereto as Exhibit D.

6o

<sup>4</sup> Please note that the EMWD "will serve" letter (Appendix J3), dated March 12, 2018 with a one year expiration notice, has expired.

### C. Impact on Cultural Resources

Possible cultural resources of Native Americans are being addressed through participation of tribal monitors in the cultural assessments. My concern is with the limited analysis provided of the historic period, from the late nineteenth century when there was dry farming and ranching in the area. This is particularly relevant as a structure was apparently located on the southern part of the property dating back to 1901 (the remains of which may have been destroyed in preparation for the new project). Although some specific context for the project site is provided in Appendix E-1, Cultural Resources Assessment, including a one page summary of Menifee Valley History, no information is provided on whether the project site was part of one of the early farms or ranches referenced. A few of the early ranchers in the historic period are mentioned—such as Robert Kirkpatrick and William Newport—a title search could have easily provided information as to early owners/settlers on the site. As the Callie Kirkpatrick elementary school (located on part of Robert Kirkpatrick’s original holdings) is not far from the project, it is possible the site formed part of the 3000 acres under Kirkpatrick’s control. In addition, the history of the Dairy (and ranch house) that operated on the property for at least 37 years and elsewhere in Riverside County for nearly a century is relevant to this analysis.

6p

The review of the trees on the site also seems to ignore the historical context, evaluating the trees only for their value as unique or native trees, and based on age. But the arborist’s analysis does not take into account the more nuanced definition of a heritage tree in Menifee’s Municipal Code Section 9.86.020: “Heritage trees such as those with certain characteristics (age, size, species, location, historical influence, aesthetic quality or ecological value) receive special attention and preservation efforts.” In particular, the Eucalyptus trees along the south of the property—which are simply described as volunteers—no doubt have developed from the extensive eucalyptus tree planting in the nineteenth century. An issue of Rural Californian, Volume 31, page 105 references William Kirkpatrick demonstrating the excellent growth of his Eucalyptus. See Exhibit E.

6q

### D. Alternatives Analysis

The alternatives analysis reflects findings that the project will cause no significant environmental effects. This is problematic as discussed above. Also, the chief rationale for rejecting the lower density project is that it is economically unfeasible – but it has not been analyzed to a sufficient degree to make such a determination. Moreover, no real attempt has been made to develop an agriculture related alternative or a lower density alternative. An Environmental Impact Report (“EIR”) should include a reasonable range of alternatives that could attain most of the basic objectives of the project while avoiding or lessening the significant effects of the project. The alternatives analysis is “the core of the EIR.” *In re Bay Delta*, (2008) 43 Cal. 4th 1143. This DEIR has not provided a range of alternatives as required.

6r

**E. Request for future notice.**

We request all notices of documents or hearings related to this proposed project and urge the Agency to reconsider the DEIR in light of the above. | 6s

Sincerely,



Jan L. Westfall

Cc: Sarah Manwaring, City Clerk ([smanwaring@cityofmenifee.us](mailto:smanwaring@cityofmenifee.us))

Exhibits A – Attached.



### **Responses to Letter No. 6.1**

- 6a These are introductory/summary statements that do not require a response but will be considered by the City's decision-makers prior to taking action on the proposed entitlements.
- 6b Comment noted. These concerns are addressed in the various responses to comments below, specifically in responses to comments 6d through 6m (agricultural lands), 6n and 6o (aquifer) 6o (nitrates); additionally the commenter may want to review responses to comments in Comment Letter #7, under 7hh (agricultural lands), and 7s, 7kk, and 7ll (methane).
- 6c These are reiterations of information stated in the Initial Study and DEIR that do not require a response.
- 6d The LESA Manual was created to "...develop an amendment to Appendix G of the State CEQA Guidelines, for adoption pursuant to Section 21083, to provide lead agencies an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process." The methodology available in Appendix G prior to LESA was to review the Farmland Mapping and Monitoring Program (FMMP) Maps. Some lead agencies still use the FMMP method, some use the optional LESA method, and some use both depending on circumstances. In this case the EIR uses the LESA model because it provides a state-suggested methodology to qualitatively assess the potential agricultural resources of the Project site and surrounding area to assist the City in determining the significance of impacts to those resources that could result from the proposed Project.
- The LESA Manual prepared by the State Department of Conservation provides a detailed methodology to assess the quality of agricultural land. It is not just considered "helpful," but is considered to contain sufficient information as to be definitive regarding the value of agricultural land. Further, the CEQA process affords the City a significant amount of discretion to determine the appropriate significance thresholds including the loss of agricultural land. The Introduction Section of the LESA Manual provides detailed information and history as to its creation, function, value, and Agencies that use this model. The LESA model analysis provided in the Draft EIR (pp. 4.3-7 through 4.3-28) follows the methodology from the LESA Handbook as described by the LESA study prepared by Tom Dodson & Associates (DEIR Appendix B). The LESA Model Handbook can be found at: <https://www.conservation.ca.gov/dlrp/Documents/lesamodl.pdf>
- 6e This is information about the DEIR and LESA that does not require a response.
- 6f The commenter's interpretation of the model is misleading. These are two criteria work together, not independently, but each plays a key role in the determination of significant impacts. The LESA model does not equivocate that failure to obtain a score of 20 or greater must occur for both Land Evaluation (LE) and Site Assessment (SA) factors for a project to be categorized as a significant adverse impact. This comment implies that because the score for the combined components exceeded 40 points, the impact should be considered a significant adverse impact. This is clearly not consistent with the rating scheme contained in the LESA model and as clearly explained in the DEIR on p. 4.3-27:

"Table 4.3-7, *Final LESA Score Sheet* ...provides the factor scores and the factor

weights, as well as the weighted factor scores. When combined, the score for this Project is 40.357. Under the LESA threshold guidelines, 40.357 is not considered to be a significant impact from loss of agricultural resources because the sub-scores for the Land Evaluation and the Site Assessment weighted factor ratings are not both individually greater than 20.” As stated on p. 31 of the State LESA manual...” a total LESA score of 40-59 points is considered significant only if the LE and SA sub-scores are each greater than or equal to 20 points.” (p. 31, CDC 1997)

6g The commenter agrees with the quantitative data and conclusions of the EIR regarding the SA portion of the LESA model but questions the “qualitative” assumptions about water availability within the SA analysis. The following responses to comments 6h through 6j address the commenter’s specific comments about water availability and demonstrate that the original analysis in the DEIR regarding agricultural resources is correct according to the LESA model methodology.

6h This is information from the EIR and LESA report regarding well water availability and cost relative to agriculture which is addressed in responses to comments 6i and 6j below. The selection of Option 11 in terms of water availability was made by Tom Dodson & Associates (TDA) in their LESA study for the Project based on available information and knowledge about the physical limitations of using local well water with high nitrate levels for agriculture. In addition, the commenter does not provide evidence that reclaimed water available from EMWD can be used directly for crops but actually depends on the level of total dissolved solids and other physical and chemical constituents in the reclaimed water that might negatively impact the growth of crops. TDA took actual limitations of local well and reclaimed water into consideration when determining the most appropriate water resources availability score as shown in Table 5 of the LESA model handbook (page 20, CDC 1997).

6i A dairy is generally considered to be one of the most intensive and financially positive agricultural activities. The previous dairy at the Project site could no longer operate due to costs, and it closed in 2014 even with being able to operate with its own water supply. The issue of water availability in this comment identifies alternative water supplies but does not provide actual evidence as to whether they are economical or of adequate quality to meet water quality and water volume demands for agricultural activities. For example, this comment implies that water with 2,000 parts per million (ppm) of Total Dissolved Solids (TDS) is suitable for agricultural purposes - this comment is not accurate. Irrigating with high TDS water can destroy otherwise suitable agricultural soils whether the water comes from local wells or from reclaimed sources. Note that Colorado River water used in the Imperial Valley typically has less than 1,000 ppm TDS and to prevent poisoning the soil requires an elaborate subdrain system and the Salton Sea as a cheap final disposal point for the saline drainage.

Recycled water may be available as indicated in this comment but use of such water is much more expensive than most agricultural activities can afford unless very high value crops are selected. Also note that the recycled water quote referenced in this comment refers to an agricultural operation that has opted to remain in production and where potable water could provide an alternative. The Project site is not required to use recycled water unless a new owner chooses to purchase the land and change the General Plan land use designation. It should be noted that, as long held agricultural land slowly develops with rural and suburban land uses, the costs to continue farming, especially water and property taxes, often increase to the point where continued or new farming is no

longer financially feasible. In addition, as non-farming uses move into farming areas, there are unavoidable conflicts with adjacent users, traffic, etc. which can be reduced but never eliminated by implementing “right to farm” ordinances such as is in place in Menifee.

- 6j The commenter has not provided any evidence that reclaimed water could actually be used to successfully irrigate crops on the Project site without blending with potable or other lower TDS water. Typically farming does not yield the kind of financial margins to afford using more expensive groundwater, imported water, or other local supplies of water that would have to be blended with high TDS well or reclaimed water to use successfully on local crops.

The commenter also indicates that high nitrate water is actually good for crops. While nitrogen in the form of nitrate can assist in plant growth, there are many variables that affect if or to what degree high concentrations of nitrate can actually benefit crops in relatively arid conditions as are present in the Project area. Local wells and reclaimed water with nitrates often also have high TDS levels which is toxic for most plants and crops (see also response to comment 6i above). In this case, the nitrates are not in the form of fertilizer but rather salts which make agriculture difficult if not impossible with the water available onsite. Unfortunately, the nitrates have built up in the soil over time from cow waste related to the dairy operation.

As indicated in the previous comment, if agriculture was economically viable at this location, a farmer could have purchased the land and continued to conduct agricultural activities. Between the closure of the previous dairy and the present, no such use was proposed. Given the adjacent land uses, the owners chose to pursue a non-agricultural land use (primarily residential) through approval of a Specific Plan that would provide a reasonable rate of return on the value of the land. The opinion regarding alternative uses will be made available to the decision-makers prior to a decision on this Project.

- 6k The commenter makes a statement but provides no evidence why the water availability score for the Project site should be Option 1 (100 points) rather than Option 11 (30 points) as selected in the TDA LESA report (Table 5, EIR Appendix B). The discussion in responses to comments 6h through 6j above demonstrate that the comments regarding unqualified use of local well or EMWD reclaimed water are inaccurate and not appropriate upon which to base a conclusion that the area has no physical or economic restrictions regarding water availability for continued agricultural use of the site. The comments contradict the previous dairy’s failure and closure. The LESA evaluation relied upon the soils and routinely available water resources used by agriculture, typically private agricultural wells. The analysis in this comment draws conclusions without evaluating what crops could be grown on these soils and whether the cost of recycled water could be sustained by agricultural activities. The comment also ignores the question of whether the content of the recycled water may not be appropriate for a specific crop both in terms of nitrate concentrations or TDS levels. Fundamentally, this comment provides a different basis for analysis that conflicts with the score contained in the DEIR. This information is available to the decision-makers, but the City finds that the analysis and findings in the LESA report are appropriate and no changes to the Draft EIR and LESA model study are required.

- 6l The commenter makes incorrect conclusions based on inaccurate assumptions about water availability that are explained in detail in responses to comments 6i through 6k above. The LESA study (DEIR Appendix B) and the DEIR analysis (DEIR pp. 4.3-7

through 4.3-27) made the correct assumptions, calculations, and conclusions regarding water availability in terms of physical and economic restrictions based on evidence presented in the LESA report and the DEIR. Therefore, no changes are warranted to either of those documents and no changes in the conclusion of the DEIR regarding agricultural resources.

- 6m As outlined in response 6l above, the commenter's conclusion regarding significant agricultural resources is incorrect – the preceding responses demonstrate the TDA report and DEIR conclusions are correct that the Project will not have significant impacts on agricultural resources so no mitigation is needed or required. For reference, there are no local agricultural land banks where land can be permanently retained in agriculture available locally. The nearest one approved by the State is found in Central California. In addition, information on water use, evaporation, etc. relative to the proposed lake component of the Project is addressed on pp. 4.18-26 through 4.16-28 of the DEIR.
- 6n This is information about the DEIR and opinion of the commenter that does not require a response. These topics are discussed in the DEIR. Please see Subchapter 4.18, Utilities and Service Systems, DEIR pp. 4.18-26 through 4.18-28. Also see response to comment 6o for more information on lake water usage.
- 6o These issues are not within the *LESA* purview, but are instead part of water supply, water quality and hazardous conditions discussed under DEIR Subchapters 4.9, Hazards and Hazardous Materials, 4.10, Hydrology and Water Quality, and 4.18, Utilities and Service Systems. The primary drawback to continued agricultural use of the site is the TDS/nitrate levels of the water from the well. In this case the nitrates are not fertilizer but salts which make agriculture difficult with the water onsite. Those nitrates have also built up in the soil over time from cow waste. Therefore, the soil onsite is not very conducive to agriculture. However, nitrates (salts) are not a public health issue as far as the lake is concerned. The Project is proposing to stub the recycled line along Tres Lagos in the event there are times when the well water does not provide sufficient supply to fill and maintain lake levels. Lastly, the Lake/Wet-Pond Water Supply Technical Memo (Appendix J4 of the DEIR) addresses seepage loss which is water directly charging the aquifer. Additional information/discussion regarding salinity and agricultural water quality is provided in Appendix E of this Final EIR (State Water Resources Control Board Groundwater Information Sheet Salinity, EMWD Well Test Results for Menifee and the Project Site, and Food and Agriculture Organization of the United Nations Water Quality for Agriculture). Project development would involve remediation of buried cow waste onsite by removal or mixing with inert sandy imported soil to dilute the methane-producing materials. This remediation will occur as part of grading which will minimize any potential for human impacts related to methane production (DEIR pp. 4.9-12 through 4.12-18). In addition, Mitigation Measures HAZ-2 through HAZ-8 specifically address potential impacts from methane onsite. See response to comment 7kk in Letter #7 for more details regarding methane.
- 6p The commenter is incorrect, the cultural resources assessment for the Project did evaluate potential historic resources on the Project site. Pages 4.6-25 and 4.6-26 of the DEIR state..." No evidence of prehistoric or historic cultural material was observed at the Project site. The existing structures on the property are not of historic age. As stated in the IS, the Project site does not satisfy any of the criteria for a historic resource defined in Section 15064.5 of the State CEQA Guidelines. In addition, the Project site is not listed with the State Office of Historic Preservation or the National Register of Historic Places...

The location of an historic-age structure, plotted on a 1901 topographic map, was paved and covered with a thin layer of fill. The structure is noted on the 1901 maps but was probably removed decades ago as there is no history of the structures removal.” Based on available information, the cultural resource assessment concluded no historic resources would be impacted by Project development.

- 6q According to the Rockport Ranch Development Project, Menifee, prepared by Arborist Consulting Services, January 30, 2018 (*Arborist Letter/Report* DEIR Appendix D3), as included on pp. 4.5-17 and 4.5-18 of the DEIR:

*“The Arborist Letter/Report analyzed the trees on site based on six (6) criteria: age/size, species, location, historical influence, aesthetic quality and ecological value. Each criterion is discussed in detail, below.*

- **Age/size:** *The estimated age of the mature trees is between 30-40 years old, which would not characterize as old enough to qualify as a heritage tree characteristic.*
- **Species:** *The trees found on-site are non-native, cultivated trees. Heritage trees typically are species such as native oaks or other native trees. Therefore, the trees existing on the property do not qualify in this category.*
- **Location:** *No tree on the property is located within a significant grove or near a historical point of interest. The trees on the north end of the property are located as landscaping trees for the residential homes. The 2 Eucalyptus at the southern end of the property are volunteer trees. Therefore, the trees would not qualify under the location criteria.*
- **Historical Influence:** *The site has no historical structures or influence. As noted above, the trees are either cultivated or volunteer, which does not qualify under this category.*
- **Aesthetic Quality:** *The trees present value for landscaping. However, they are not part of a significant old grove forest which raises the aesthetic quality. The 2 Eucalyptus trees at the southern property line have no aesthetic quality due to their location and isolation.*
- **Ecological Value:** *As the trees are non-native species there is relatively little ecological value. Therefore, the trees do not quality under this category. The Project arborist interpreted “ecological value” to mean native trees with habitat value for wildlife, root value for soil retention, and/or value in soil replenishment and health.*

*Although the trees found on-site are mature, they are non-native species less than 50 years old, which is the typical threshold for cultural significance. Due to the lack of historical significance of the property, and the species found on-site, the Arborist concluded that none of the existing trees would be classified as “Heritage Trees.”*

In addition, the cultural resources assessment indicated...” The trees and landscaping associated with these structures also date from 1981 or after, and do not qualify as heritage trees” (DEIR p. 4.6-25). Therefore, the Project arborist report and cultural resources assessment concur that the site does not contain heritage or historically significant trees. The City has determined that there is adequate analysis as it pertains conformance with Municipal Code Section 9.86.020 and applicability to the onsite trees’ historical context. No additional analysis is required.

- 6r The DEIR has analyzed a reasonable range of alternatives that could attain most of the basic objectives of the Project while avoiding or lessening the significant effects of the Project. The City, as Lead Agency finds that this analysis is detailed pursuant to CEQA State Guidelines Section 15126.6 (Consideration and Discussion of Alternatives to the Proposed Project). Section 15126.6 states:

*An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553 and Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376).*

The Existing General Plan Land Use Designation Alternative analyzed in the DEIR in Chapter 5, Alternatives, examines developing the Project site under the existing Agricultural General Plan Land Use designation. All three of the alternatives in the Draft EIR were evaluated at the level of detail required under CEQA including the degree to which an alternative reduced or eliminated a significant environmental impact of the Project and if or to what degree the alternative met the objectives of the Project. Therefore, the level of analysis of the alternatives is sufficient and no additional analysis is required.

- 6s Comment noted. The City will continue to provide all notices of documents or hearings related to this proposed Project No further response is required.

**Comment Letter No. 6.2**

Jan L. Westfall - Exhibits attached to Letter 6.1 (10-21-19) (provided in Appendix B on CD attached to this FEIR)

No responses required.

**Comment Letter No. 7**

Southwest Regional Council of Carpenters (SRCC) (10-21-19)

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**VIA U.S. MAIL & E-MAIL**

October 21, 2019

Ryan Fowler, Senior Planner  
City of Menifee  
29844 Haun Road  
Menifee, CA 92586

*Email Delivery to:* rfowler@cityofmenifee.us

RE: Comments to the Rockport Ranch Project Draft Environmental Impact Report, SCH No. 2017081069 (GPA No. 2016-287, CZ No. 2016-288, SP No. 2016-286 and TR 37131)

Dear Mr. Fowler,

On behalf of Southwest Regional Council of Carpenters ( “Commenters” or “Southwest Carpenters”), my Office is submitting these comments on the City of Menifee’s ( “City” or “Lead Agency”) Draft Environmental Impact Report (“DEIR”) (SCH No. 2017081069) for the Rockport Ranch Project (“Project”).

7a

The Project proposes to construct a mix of single-family homes and single-family courtyard residential development with open space and trails on a 79.68-acre Rockport Ranch property, which is located in the City of Menifee, on the southwest corner of Briggs Road and Old Newport Road (APNs 364-190-004, and 364-190-005). DEIR, p. 1-1. The Project Site is the location of the former Abacherli Dairy. DEIR, p. 3-9.

7b

The residential development totals 38.4 acres of the Project Site. DEIR, p. 3.2. The Project proposes 305 residential lots, 96 single-family courtyard residential units and 209 single-family residential units) 20.1-acres of private recreational open space and trails and 21.18-acres of road and easements. DEIR, p. 3-3.

7c

The Project proposes to implement a General Plan Amendment (GPA No. 2016-287), Change of Zone (CZ No. 2016-288), Specific Plan (SP No. 2016-286), and Tentative Tract Map (TR No. 2016-285 also referred to as TR 37131), herein collectively referred to as the “Project”) to allow development of a Specific Plan subdivision which includes

7d



City of Menifee – the Rockport Ranch Project  
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305 residential units as well as recreation facilities. DEIR, p. 1-1. The proposed GPA would revise the Land Use Designation from Agriculture (AG) to Specific Plan (SP).

7d cont.

*Id.*

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states, including in southern California, and has a strong interest in well-ordered land use planning and addressing the environmental impacts of development projects.

7e

Individual members of the Southwest Carpenters live, work, and recreate in the City of Menifee and surrounding communities and would be directly affected by the Project's environmental impacts. Commenters expressly reserve the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

7f

Commenters incorporate by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties).

7g

Moreover, Commenter requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("CEQA"), Cal Public Resources Code ("PRC") § 21000 *et seq.*, and the California Planning and Zoning Law ("Planning and Zoning Law"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

7h

**I. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**A. Background Concerning the California Environmental Quality Act**

7i

CEQA has two basic purposes. First, CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project. 14

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California Code of Regulations (“CCR” or “CEQA Guidelines”) § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’ [Citation.]” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

7i cont.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines § 15002(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081. CEQA Guidelines § 15092(b)(2)(A–B).

7j

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position.’ A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added) (quoting *Laurel Heights*, 47 Cal.3d at 391, 409 fn. 12). Drawing this line and determining whether the EIR complies with CEQA’s information disclosure requirements presents a question of law subject to independent review by the courts. (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131.) As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

7k

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A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

7k cont.

The preparation and circulation of an EIR are more than a set of technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449 – 450)

7l

**B. CEQA Requires Revision and Recirculation of an Environmental Impact Report When Substantial Changes or New Information Comes to Light**

Section 21092.1 of the California Public Resources Code requires that “[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report” in order to give the public a chance to review and comment upon the information. CEQA Guidelines § 15088.5.

7m

Significant new information includes “changes in the project or environmental setting as well as additional data or other information” that “deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative).” CEQA Guidelines § 15088.5(a). Examples of significant new information requiring recirculation include “new significant environmental impacts from the project or from a new mitigation measure,” “substantial increase in the severity of an environmental impact,” “feasible project alternative or mitigation measure considerably different from others previously analyzed” as well as when “the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” *Id.*

7n



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An agency has an obligation to recirculate an environmental impact report for public notice and comment due to “significant new information” regardless of whether the agency opts to include it in a project’s environmental impact report. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply “the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information.”]. If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

7o

C. The DEIR Fails to Describe the Project Site’s Existing Environmental Baseline Condition

An EIR must describe existing environmental conditions in the vicinity of the proposed project, which is referred to as the “environmental setting” for the project. 14 Cal Code Regs §15125. This description of existing environmental conditions ordinarily serves as the “baseline” for measuring the changes to the environment that will result from the project and for determining whether those environmental effects are significant. 14 Cal Code Regs §§15125, 15126.2(a). As the California Supreme Court has noted, to provide the impact assessment that is a fundamental purpose of an EIR, the EIR “must delineate environmental conditions prevailing absent the project, defining a ‘baseline’ against which predicted effects can be described and quantified.” *Neighbors for Smart Rail v Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 447.

7p

The DEIR provides an inaccurate and unstable existing condition of the Project Site. The existing condition described in the DEIR is different than the Initial Study. DEIR, p. 4.1-4. Here, the Project Applicant illegally began demolition of the concrete and fill from the prior dairy operations in or about October 2016. DEIR, p. 4.1-4~5. The grading and demolition of the concrete and fill area of the Project Site were completed in November 2017. *Id.* It was not until September 2017 that the demolition and grading permits were approved and it was not until October 2017, just one month before the completion of the demolition and grading, that the construction BMPs were installed. *Id.*

7q

The DEIR acknowledges that the existing condition of the Project Site is different for the DEIR than that discussed in the Initial Study. DEIR, p. 4.1-4. As a result of the

7r

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illegal demolition and grading activity that occurred prior to the completion of the DEIR, the Project Site was irreversibly altered, with many impacts such as biological resources and hazards, unanalyzed and unmitigated.

7r cont.

However, the DEIR cannot have it both ways, by using baseline information from both before and after the October 2016 - November 2017 illegal prior activity. For example, the methane monitoring results in Table 4.9-1 were obtained in February 2016 before the illegal demolition and grading began on the Project Site in October 2016. Also, the burrowing owl surveys were conducted before the illegal activity began. Thus, these results are outdated and no longer reflect the actual existing conditions of the Project Site.

7s

Next, the DEIR justifies its changed existing condition and the prior illegal activity by citing to and relying on *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1452-53. DEIR, p. 4.1-4~5. However, in *Riverwatch*, the existing condition information set forth in the DEIR was not changed from the Initial Study. Moreover, the court relied on the enforcement actions of the enforcing agencies like the Army Corps of Engineers and concluded that in that particular case based on those facts that CEQA did not require any further accounting for prior illegal activity. *Riverwatch*, *supra*, 76 Cal.App.4th at 1453.

7t

Here, the DEIR does not provide any information on whether any enforcement action was taken regarding the Project Applicant's prior illegal activity. In fact, the City, which is also the lead agency for this Project and the DEIR, and also would be the enforcing agency in this action, appears to take the position that the prior illegal activity only had "a de minimis impact." DEIR, p. 4.6-6~7.

7u

Based on the information admitted in the DEIR, and the change in the Project's existing condition from the time of the Initial Study to the DEIR, the DEIR fails to provide an accurate existing condition of the Project.

7v

D. The DEIR Fails to Adequately Disclose and Mitigate the Project's Significant Impacts on Biological Resources.

7w

1. *The DEIR Fails to Adequately Analyze the Project's Significant Impacts on Burrowing Owls.*

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Burrowing owls and their nests and eggs are protected from “take” (meaning destruction, pursuit possession, etc.) under the Migratory Bird Treaty Act (MBTA) of 1918 and under Sections 3503, 3503.5, and 3800 of the California Fish and Game Code. The DEIR acknowledges that activities that cause destruction of active nests, or that cause nest abandonment and subsequent death of eggs or young, may constitute violations of one or both of these laws.

7w cont.

The DEIR admits that at least one burrowing owl and burrow were observed during a survey in 2016. DEIR, p. 4.5-22. However, after the survey was done, the Project Applicant illegally began demolition of the concrete and fill from the prior dairy operations in or about October 2016. It was not until September 2017 that the demolition and grading permits were approved and it was not until October 2017, just one month before the completion of the demolition and grading, that the construction BMPs were installed. DEIR, p. 4.1-4~5. No other surveys were conducted after the illegal demolition and grading were completed in November 2017. As a result, the DEIR fails to adequately analyze the Project’s impacts on burrowing owls.

7x

2. *The DEIR Improperly Defers Mitigation of the Project’s Significant Impacts on Burrowing Owls.*

Moreover, the DEIR fails to adequately mitigate the Project’s significant impacts on burrowing owls by improperly deferring the adoption of specific performance standards that the mitigation measures are designed to achieve.

7y

Section 15126.4(a)(1)(B) of the CEQA Guidelines states “[f]ormulation of mitigation measures shall not be deferred until some future time.” While specific details of mitigation measure may be deferred, an agency is required to (1) commit itself to mitigation, (2) adopt specific performance standards the mitigation will achieve, and (3) identify the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. See *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671.

7z

As explained above, the DEIR admits that at least one burrowing owl and burrow were observed during a survey. DEIR, p. 4.5-22. There is no question that any “take” of burrowing owls or their nests and eggs violate the MBTA and the applicable sections of the California Fish and Game Code.

7aa



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The DEIR's biological resource mitigation measures MM-BIO-1 and MM-BIO-2 are vague and fail to adopt specific performance standards to ensure mitigation of the Project's potentially significant impacts to burrowing owls. While MM-BIO-1 sets recommendations that no disturbances should occur within a certain distance during either breeding or nonbreeding seasons, it does not state for how long such avoidance of impacts must occur during construction and how much construction could be delayed. DEIR, p. 4.5-25. MM-BIO-2 similarly requires a survey during the nesting season and requires avoidance buffers if active bird nests are found. However, both MM-BIO-1 and MM-BIO-2 defer the mitigation of impacts to burrowing owls by failing to specify when and how relocation, if any, would take place especially given prior occurrence of burrowing owl in the Project Site. Moreover, relocation appears inevitable since any type of avoidance buffers cannot be maintained in perpetuity since the entire Project Site will be completely redeveloped into the Project according to the proposed Specific Plan. Finally, the DEIR fails to analyze how any extent of relocation or disturbance of burrowing owls or their burrows would constitute a take. Based on the vague analyses and improper deferrals contained in MM-BIO-1 and -2, the DEIR's conclusion that the Project's biological impacts would be reduced to an insignificant level is unsupported.

7bb

E. The DEIR Fails to Adequately Analyze and Mitigate the Project's Significant Agricultural Impacts.

1. *The DEIR Fails to Adequately Analyze and Mitigate the Project's Significant Loss of Important Farmland.*

According to Appendix G of the CEQA Guidelines, the Project would have a significant impact if it would: a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (DEIR refers to these types of Farmland as Important Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use. DEIR, p. 4.3-9.

7cc

The DEIR admits that the County of Riverside has designated the Project Site as Farmland of Local Importance, Prime Farmland, and Farmland of Statewide Importance. DEIR, p. 4.3-10. This mere fact establishes that the Project meets the CEQA threshold of significance regarding converting Important Farmland to non-agricultural use and supports a conclusion of a significant cultural impact that requires mitigation.

7dd

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However, the DEIR follows its own threshold of significance by applying the LESA Model and concludes that the Project would not have a significant impact on agricultural resources. Not only is the LESA Model scoring not required under CEQA Appendix G, but it is also highly discretionary and variable. Even the DEIR's LESA scoring was mere 2 points away from being considered significant impact – the Final LESA Score for the project was 40.357, which would have been considered significant impact if both the LE factors and SA factors were individually greater than 20. Here, the DEIR determined that while the LE factors totaled 22.357, the SA factors totaled 18 which was below the threshold of 20. The only thing that the DEIR's LESA Score illustrates is that even under its wide variability, the Project was just a smidgen below even the LESA's own threshold of significance.

7ee

As a result of its less than significance conclusion, the DEIR proposes no mitigation by, for example, proposing to conserve other farmland within the City.

7ff

2. *The DEIR Fails to Adequately Analyze and Mitigate the Project's Cumulative Agricultural Impacts.*

Moreover, the DEIR's cumulative agricultural impacts analysis was flawed because it was based on the erroneous notion that a conclusion of a less than significant impact means the Project cannot cause cumulative impacts to agricultural resources. CEQA requires the analysis of whether the Project will cause an incremental contribution to a cumulative effect.

7gg

An EIR must discuss cumulative impacts when the project will make a "cumulatively considerable" incremental contribution to a significant cumulative effect. 14 Cal Code Regs §15130(a). A project's incremental contribution is cumulatively considerable if it is significant when viewed in connection with the effects of other past, current, and probable future projects. 14 Cal Code Regs §15065(a)(3). Under these provisions of the CEQA Guidelines, a lead agency may determine that the project will not have a significant cumulative impact because its incremental contribution to a cumulative effect is not cumulatively considerable. 14 Cal Code Regs §15130(a).

7hh

Therefore, the DEIR must analyze how much Important Farmland has been converted near the Project to analyze the extent of cumulative impact the Project would have.

7ii

F. The DEIR Fails to Adequately Analyze and Mitigate the Project's Significant Hazards Impacts.

7jj

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1. *The DEIR Fails to Adequately Analyze the Levels of Methane Contamination Existing on the Project Site.*

The EIR admits that the Project Site contains significant methane contamination due to the prior dairy use on the Project Site. According to the DEIR, for a typical dairy operation, there is variable organic material beneath the surface due to the significant quantities of manure and urine produced by the livestock. DEIR, p. 4.9-12. Approximately 85% of the Project site was utilized for previous livestock activities and will require an evaluation and/or mitigation for methane. DEIR, p. 4.9-13.

7jj cont.

The DEIR provides methane monitoring results in Table 4.9-1 which show existing methane levels of up to 50,000 ppm (parts per million). However, the methane monitoring results were incomplete as there were many results that were “not read” or indicate “fail.” DEIR, Table 4.9-1. As a result, the DEIR presents an incomplete set of methane monitoring data. The DEIR fails to explain why the incomplete or “not read” results could not be done again. In conclusion, the DEIR fails to provide a complete, reliable methane monitoring results to inform the public about the extent of methane contamination existing on the Project Site.

7kk

However, the DEIR acknowledges the prior illegal grading that was commenced in 2016 to 2017 without a permit could have changed the baseline for these levels. *Id.* at p. 4.9-17~18. Because the methane monitoring results in Table 4.9-1 were obtained in February 2016, these results are outdated and do not reflect the actual existing conditions of the Project Site. As a result, the DEIR not only fails to adequately analyze the Project’s hazards impacts but fails to adequately mitigate such impacts.

7ll

2. *The DEIR Improperly Defers the Formulation of Hazards Mitigation Measures.*

The DEIR improperly defers the formulation of Hazards Mitigation Measures MM-HAZ-3, -4, -6, -7 and -8. In effect, the deferral of formulation of these mitigation measures treats the remediation of the methane contamination on the Project Site as an afterthought rather than an important component of the Project that it is. As such, the DEIR must be revised and recirculated as suggested below.

7mm

MM-HAZ-3 provides that “[d]uring grading operations, the grading contractor shall not import fill from other portions of the site (identified as Area 2 and Area 3 in Figure 4.9-1, Livestock Related Activity) that has *significant* manure or organic content into this area.” DEIR, p. 4.9-23. However, the use of the term “significant” is vague

7nn



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and lacks adequate performance standards since there is no way that a contractor could know what level is considered “significant” manure content. 7nn cont.

MM-HAZ-4 provides that “[p]rior to grading in Area 2, any near-surface highly organic material (which includes former manure stockpiles), shall be *skimmed* from these areas and removed off-site or placed in *an onsite, non-structural location such as a park.*” DEIR, p. 4.9-23. Similar to MM-HAZ-3, MM-HAZ-4’s use of vague and indefinable terms such as “skimmed” and “location such as a park” lack concrete and specific performance standards to guide the contractors. How much removal of organic material is “skimming” and what areas “on-site” are considered as “a park” where highly organic material could be disposed of at? 7oo

Next, MM-HAZ-6 requires that “[p]rior to the issuance of a grading permit, a remediation plan shall be submitted to and approved by the Engineering Department. During grading operations, remedial removals in former stock pond areas shall be monitored by the Project Geotechnical Consultant, during grading in Area 3. Organics that produce methane may have been flushed deep into the native soils.” DEIR, p. 4.9-23. However, the DEIR improperly defers the formulation of a remediation plan and does not provide specific performance standards that such a plan must meet. Moreover, the DEIR should have fully and accurately analyzed the extent of the methane contamination present on the Project Site and prepare a remediation plan *before* the Project is approved, so appropriate agencies and the public could weigh in and improve the adequacy of such a plan. 7pp

MM-HAZ-7 provides that “[r]emedial removals *as deep as 12 feet below* the former stock ponds shall be required. This will be coordinated with the information contained in the Project Geotechnical Evaluation, prepared by GEOTEK, Inc., March 2016 in order to provide appropriate remedial removal depths to provide *a suitable foundation material.* The organic content of fill materials beneath residential structures shall be less than 1% of the total fill mass. This shall be reflected in any and all grading plans.” DEIR, p. 4.9-23. First, MM-HAZ-7’s use of “as deep as 12 feet below” and “*a suitable foundation material*” are vague and confusing and fails to provide adequate specific performance standards. Moreover, because the March 2016 Project Geotechnical Evaluation was prepared prior to the illegal prior activity of grading and demolition, it no longer reflects an accurate existing condition at the Project Site. 7qq

Finally, MM-HAZ-8 requires that “[a] minimum of 30 days after grading has been conducted Area 3 must be tested for methane on a lot-by-lot basis. A final report shall 7rr

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be prepared and submitted to the City Building and Safety Department for review and approval. Recommendations for methane remediation shall be designed per County of Riverside Protocols (2004, or most recent) prior to the issuance of any subsequent building permits.” DEIR, p. 4.9-23. However, MM-HAZ-8 improperly defers methane testing in Area 3 and defers the preparation of a final report until after project approval. The April 2016 methane monitoring showed methane concentrations as high as 50,000 ppm in Area 3, where the stock pond and desilting basin areas are located. As a result of the illegal prior grading and demolition activity which occurred October 2016 to November 2017, the April 2016 methane monitoring data, which was already incomplete, is outdated.

7rr cont.

The DEIR must present a complete and accurate methane monitoring information before project approval. Because remediation of the methane contamination is part of the Project, any and all information pertaining to the remediation must be fully analyzed and circulated for public input.

7ss

G. The DEIR Improperly Defers the Formulation of Public Services Mitigation Measures

MM-PS-1 provides that “[p]rior to the recordation of a final map, the Project developer shall establish a funding mechanism, such as a safety services tax or payment of an in-lieu *[sic]* fee to mitigate its impacts to the City’s General Fund for Public Safety Services.” However, MM-PS-1 fails to specify how much the tax or in-lieu fee would be, which fails to ensure that the Project’s public services impacts would be mitigated to a less than significant level.

7tt

MM-PS-2 provides “[t]o assure that the future Project development incorporates *defensible space concepts*, the design of each tract shall be reviewed with the Community Development Department prior to approval of any tentative tract maps, conditional use permits, or other entitlements and the approved maps shall incorporate defensible space measures approved by the Sheriff’s Department.” However, the MM-PS-2 fails to explain or establish what kind of “defensible space concepts” should be incorporated into the Project and what type of defensible space concepts would be sufficient to earn the approval by the Sheriff’s Department.

7uu

As a result of the improperly deferred mitigation measures, the DEIR’s conclusion that the Project would have less than significant public services impacts is unsupported.

7vv



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II. THE PROJECT IS INCONSISTENT WITH THE CITY'S GENERAL PLAN

The City's General Plan's Goal OSC-6 states "[h]igh value agricultural lands available for long-term agricultural production in limited areas of the City." DEIR, p. 4.3-8. The General Plan Policy OSC-6.1 requires that the City "[p]rotect both existing farms and sensitive uses around them as agricultural acres transition to more developed land uses." *Id.* at p. 4.3-9.

7ww

However, the Project would convert over 70 acres of Important Farmland to residential uses without any mitigation or off-site conservation. As a result, the Project is inconsistent with the General Plan's Goal OSC-6 and Policy OSC-6.1.

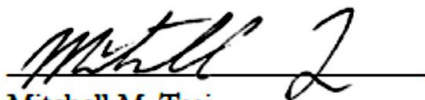
7xx

III. CONCLUSION

Commenters request that the City revise and recirculate the Project's environmental impact report to address the aforementioned concerns. If the City has any questions or concerns, feel free to contact my office.

7yy

Sincerely,



Mitchell M. Tsai

Attorneys for Southwest Regional  
Council of Carpenters

**Responses to Letter No. 7**

- 7a These are introductory statements regarding whom the commenter represents that do not require a response.
- 7b This is a summary of the Project Description that does not require a response.
- 7c This is a summary of the Project Description that does not require a response.
- 7d This is a summary of the proposed entitlements related to the Project Description that does not require a response.
- 7e This is a description of the Southwest Carpenters that does not require a response.
- 7f This is a description of the Southwest Carpenters and the CEQA process for accepting later comments that does not require a response.
- 7g Comment noted the CEQA process for accepting later comments. No further response is required.
- 7h Comment regarding receiving future notices of actions or meetings noted. The City will provide all notices related to this proposed Project to the Commenter. No further response is required.
- 7i The commenter states approving the Project would be in violation of CEQA then provides information regarding the CEQA process that does not require a response. The EIR does meet the statutory and regulatory requirements of CEQA as outlined in the State CEQA Guidelines, and as demonstrated by the following specific responses to specific comments made by the commenter. The commenter's references to a "project's impacts reaching an ecological point of no return" are not applicable to this Project on this site as will be demonstrated in the following specific responses.
- 7j The commenter provides references to the need for lead agencies to reduce environmental damage and (for EIRs) to examine mitigation measures and alternatives to a proposed project. The EIR does propose feasible mitigation for identified significant impacts and does evaluate a reasonable range of alternatives (DEIR Chapter 5). The rest of the general information regarding CEQA does not require a response.
- 7k The commenter refers to "abuse of discretion" and the need for "independent review" by a lead agency as established in various CEQA court cases. This general information regarding CEQA does not require a response.
- 7l The commenter provides general information regarding the goals and intent of CEQA but does not make any statements that require a specific response. Responses to comments made specifically about this Project and EIR are provided below.
- 7m The commenter cites CEQA regarding the process when significant new information is discovered or presented in terms of recirculating the EIR for additional public comment. The following responses demonstrate that the information provided by the commenter does not represent significant new information under CEQA and does not trigger the need for recirculation of the EIR.

- 7n The commenter provides additional citations regarding significant new information under CEQA but does not make any specific comments about this Project or EIR that require a specific response. See also response to comment 7m above regarding “significant new information”.
- 7o The commenter provides additional citations regarding significant new information under CEQA but does not make any specific comments about this Project or EIR that require a specific response. See also response to comment 7m above regarding “significant new information”.
- 7p The commenter refers to CEQA requirements to describe existing or baseline conditions but does not make a specific comment about this Project or EIR so no specific response is required.
- 7q The commenter is incorrect – the DEIR does provide sufficient information regarding the project description and the existing or baseline conditions on the site, as evidenced by the detailed discussion in Section 4.1.2 on the EIR Baseline (DEIR pp. 4.1-3 through 4.1-5). The following information merely clarifies or explains the information already provided in the DEIR and thus does not constitute significant new information requiring recirculation of the DEIR.

The commenter has mischaracterized the existing conditions on the site over time and has referred to demolition of some of the onsite improvements as “illegal” which is also inaccurate. The commenter failed to acknowledge the DEIR went into great detail on the previous demolition activities on the site and provided a detailed chronology of the related events (DEIR pp. 4.1-4 and 4.1-5). The landowner consulted with the City in July 2016 and it was determined the proposed demolition activities were appropriate under the existing agricultural permit of the site. Once those activities expanded beyond the limits of the agricultural permit the work was halted until the owner could obtain a separate demolition permit from the City and install water quality protection measures. The commenter mischaracterizes the demolition as “illegal” but that is inaccurate as outlined in the DEIR project description and baseline discussions. The DEIR clearly states the existing conditions of the site changed from the time the IS was prepared for the NOP and the DEIR was prepared (i.e., the approved demolition was completed) (DEIR p. 4.1-4).

The commenter indicates the differences between the project description in the Initial Study (IS) that was part of the Notice of Preparation and the DEIR differ which makes the CEQA documents deficient in some way or triggers the need to recirculate the DEIR. That is an incorrect characterization of the CEQA requirements for describing the proposed Project. The CEQA requirements for the project description in an IS are much less stringent than for an EIR and in fact the State CEQA Guidelines do not even use the term “baseline” when describing the contents of an IS (CEQA Guidelines §§ 15063(d), 15365 [initial study]; 15125 [EIR]; *Lighthouse Field Beach Rescue v. City of Santa Cruz* 2005) 131 Cal.App.4<sup>th</sup> 1170). Once it has been determined that an EIR will be prepared, that document is considered the “heart and soul” of the CEQA process and the information in that document takes precedence over any previous information.

Regardless of those past activities, the DEIR analysis was based on the condition of the site that existed at the time the DEIR was prepared which is a reasonable approach for baseline conditions under CEQA Guidelines § 15125. The commenter seems to indicate the site conditions prior to removal of the concrete structures were substantially better than

after the demolition (i.e., the site contained important biological resources) but the commenter provides no evidence of this and the statement is in fact not true. The condition of the site before and after demolition of the concrete structures is essentially the same – the entire property was extensively disturbed by dairy operations and improvements. Based on the erroneous assumption about environmental conditions on the site, the commenter also states the DEIR analysis is flawed and should be revised and recirculated to account for different baseline conditions (i.e., site prior to demolition).

The DEIR used the appropriate baseline for the analysis of environmental impacts (i.e., those at the time the DEIR was prepared and after demolition activities). For informational purposes, even if the DEIR had evaluated impacts of the Project using pre-demolition conditions on the site, the analysis and conclusions of the DEIR would have been the same since the overall condition of the site did not change as a result of the demolition (i.e., site contains no significant environmental resources and demolition activities were limited). This conclusion is appropriate for each of the environmental issues evaluated in the DEIR (e.g., biological resources, cultural resources, air quality, aesthetics, water quality, soils and geology, etc.).

It should also be noted that even if the demolition was “illegal” as conjectured by the commenter, a lead agency does have discretion to treat ongoing activities as part of the existing environmental baseline even when those activities have not been previously authorized by a permit or review under CEQA. (*Fat v. County of Sacramento* (2002) 97 Cal.App.4<sup>th</sup> 1270, 1280.) In fact, courts have held that a CEQA document does not in fact need to analyze prior illegal activity:

*Riverwatch* addressed the question of prior illegal activity in detail. In that case, the county issued a major use permit for development of a rock quarry, and an association of residents and taxpayers called Riverwatch challenged the adequacy of the EIR. The trial court granted the petition for writ of mandate and directed the county to vacate its approval of the project. Among other things, the trial court found that the EIR had failed to properly consider the impact of prior illegal activity at the project site. (*Riverwatch*, supra, 76 Cal.App.4<sup>th</sup> at p. 1434.) The Court of Appeal affirmed in part and reversed in part. (Id. at p. 1435.) It disagreed with the trial court that the EIR should have developed an environmental baseline that accounted for prior illegal activity. The Court of Appeal noted that “in general preparation of an EIR is not the appropriate forum for determining the nature and consequences of prior conduct of a project applicant.” (Id. at p. 1452.) It cited Bloom and section 15125, subdivision (a) of the Guidelines in support of the general rule that “environmental impacts should be examined in light of the environment as it exists when a project is approved.” (*Riverwatch*, supra, at p. 1453.)

(Id. [citing *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4<sup>th</sup> 1428].)

Finally, it should also be noted that the characteristics of the Project (e.g., units, grading, utilities, etc.) did not change appreciably from what was described in the IS compared to the DEIR. The main difference was in the description of the chronology of the past demolition activities which as noted above do not change the overall analysis or conclusions of the DEIR.

- 7r The first comment reiterates information contained on p. 4.1-4 of the DEIR so no response is required. The second comment represents the commenter’s opinions on the effects of

the “illegal grading demolition” that occurred prior to the completion of the DEIR. These are discussed in response to comment 7q above and responses to comments 7s through 7v below.

- 7s The commenter continues to mischaracterize the past demolition activities as well as their descriptions in the IS and EIR – these issues are explained in detail in response to comment 7q above.

As clarification, the "pond fill" operations occurred in only one of the ponds (the northerly-most pond) on the Project site. The fill operation consisted of pre-mobilization methane investigation of the pond by the Applicant's methane consultant. The determination from those tests was that the methane content of the ground surface within the pond would need venting and notifications to future property owners, but that the total release of methane would be low. The actual fill operation commenced with the scraping of existing concrete foundations and slabs from the dairy's cattle storage and processing areas, collecting that material in a localized stockpile (onsite) where it was pulverized to 3'-5' maximum-sized pieces, and transporting that material to the pond for placement in the deep depths of the pond (relative to future grades). Survey staking was performed to ensure that the maximum height of the fill operation would be below the maximum elevation allowed for this pulverized concrete material based on the maximum depth of future proposed utility runs. Approximately 1,500-2,500 cubic yards (CY) of soil was imported to the site to mix with the concrete to allow for proper compaction. That soil was mixed with the pulverized concrete and the compounded material was compacted within the pond in an area that turned out to be a smaller footprint than the estimated area it was thought to take. The compacted fill area ended up being completely located away from future residential footprints and entirely beneath future roadways or finish grade slope or open space areas. Methane venting will still be placed as needed based on investigations by geotechnical and environmental consultants prior to grading plan approval and mobilization on the residential rough grading and infrastructure improvements operations.

A 30-day pre-construction survey was required for the burrowing owl prior to any ground disturbance, as outlined in Mitigation Measure MM-BIO-1 on p. 32 of the Initial Study dated September 2017 and DEIR p. 4.5-26 dated August 2019. The preconstruction biology reports are attached to this FEIR as Appendix F. Therefore, the analysis contained in the DEIR as it pertains to methane monitoring and burrowing owl surveys is still applicable. (Note – this information was based on the *Methane Related Services for the Former Abacherli Dairy Site, City of Menifee, Riverside County, California*, prepared by Carlin Environmental Consulting, Inc., February 2016 (MRS, DEIR Appendix H) which conducted testing.

It should also be noted that the following technical studies in the DEIR appendices were prepared prior to demolition activities (started October 2016) which provides environmental baseline information on the site prior to demolition and thus evaluate “worst case” conditions on the site (i.e., prior to demolition activities) alluded to by the commenter:

- MSHCP and burrowing owl reports in April 2016 (Appendix D);
- Geotechnical and soils reports in Feb-March 2016 (Appendix F);
- Phase I Environmental Site Assessment for hazmat in February 2016 (Appendix G); and
- Methane Study in February 2016 (Appendix H).



- 7t The first comment reiterates information contained on p. 4.1-5 of the DEIR so no response is required. As discussed in response to comment 7q above, the minor differences between the existing conditions on the site between preparation of the Initial Study for the Notice of Preparation and actual preparation of the EIR are irrelevant. The EIR is the “heart of CEQA” and the EIR properly disclosed the actual impacts of the Project based on the appropriate baseline which reflected the physical realities on the site at the time preparation of the EIR began. As stated in the *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4<sup>th</sup> 1428 case, the generally accepted legal principle is that environmental impacts should be examined in light of the environment as it exists **when a project is approved**.
- 7u The commenter’s continued incorrect characterization of the past onsite demolition activities as “illegal” is inaccurate and is fully addressed in response to comment 7q above. It is correct the EIR did not provide detailed information on specific enforcement actions related to the demolition in the EIR. As outlined in response to comment 7q above, even if there were illegal activities in the past on the site, the lead agency is not required to address them in a later EIR. However, for informational purposes attached in Appendix G of this FEIR is a stop work order dated 11-09-2016 from the City requiring that permits be obtained. Said permits were obtained and as such the landowner was not subject to any penalties and/or fines. The second portion of the comment is a reiteration of p. 4.6-6 and 4.6-7 of the DEIR. Based on the information in responses to comments 7q, 7s, and 7t the City affirms its position that the prior “illegal activity” had only a “*de minimus* impact.”
- 7v The comment pertains to the adequacy of the existing condition, which changed between the issuance of the NOP and circulation of the DEIR. Please reference responses to comments 7q and 7s through 7u above.
- 7w See responses to comments 5t and 5u in responses to Comment Letter #5.
- 7x The commenter does not provide any evidence regarding “illegal” demolition activities and the characterization of the timing of burrowing owl surveys is not accurate relative to MSHCP requirements ([https://www.wrc-rca.org/species/survey\\_protocols/Birds/Burrowing%20Owl%20Survey%20Instructions%20complete.pdf](https://www.wrc-rca.org/species/survey_protocols/Birds/Burrowing%20Owl%20Survey%20Instructions%20complete.pdf)). A burrowing owl habitat assessment was conducted as part of the April 2016 MSHCP Consistency Analysis and Habitat Assessment report. A focused survey was conducted in March/April 2016 and documented in a letter report dated April 11, 2016 addressed to Rod Jones. A single burrowing owl was observed during the habitat assessment in January 2016, but no burrowing owls were found during the March/April 2016 focused burrowing owl survey conducted within the appropriate MSHCP survey protocol time period (March 1-August 31). In addition, a MSHCP 30-day burrowing owl pre-construction survey was conducted in September 2017 prior to City approved demolition activities, as outlined in Mitigation Measure MM-BIO-1 on p. 32 of the Initial Study, dated September 2017. The preconstruction biology reports are attached to this FEIR as Appendix F. No owls were observed during the 30-day pre-construction survey conducted in September 2017. For more information on the timing of burrowing owl surveys relative to CEQA mitigation requirements, see response to comment 7y below.
- 7y The Project conducted a focused burrowing owl survey and a 30-day pre-construction survey for demolition activities in September 2017 in accordance with MSHCP burrowing owl survey protocol (Mitigation Measure MM-BIO-1, p. 32 of the Initial Study). The Project

will conduct an additional 30-day preconstruction survey before any future ground-disturbing activities according to adopted MSHCP survey protocols. If burrowing owls are determined to be present, the Project proponent would need to inform and coordinate with the City of Menifee and the Wildlife Agencies immediately per the requirements of Mitigation Measure MM-BIO-1 (DEIR p. 4.5-26). The preparation of a Burrowing Owl Protection and Relocation Plan would be necessary prior to initiating ground disturbance. Any active burrow avoidance buffers would be identified in the Plan in coordination with the City of Menifee and the Wildlife Agencies. The Department of Fish and Wildlife has reviewed the DEIR and provided comments on Mitigation Measure MM-BIO-1; they had no concerns about deferred mitigation. Minor revisions to MM-BIO-1 text per the CDFW (see comment 5t in Comment Letter #5) are provided in Section 3.0 Errata of this FEIR; these changes do not change the original direction/intent of MM-BIO-1. The preconstruction biology reports are attached to this FEIR as Appendix F.

Regarding the issue of deferral of mitigation, burrowing owl can quickly occupy a site utilizing existing small mammal burrows, so timely surveying is essential to determine actual impacts to the species. The MSHCP acknowledges this critical timing issue by establishing a series of surveys for this species to be conducted depending on site conditions and the time of year. A habitat assessment can occur during any time of the year to determine if a site has any conditions present that would support occupancy by burrowing owl. If a site has conditions conducive to supporting occupancy, a focused survey must be prepared during the owl's breeding period (March 1-August 31). If owls are found to be present, then specified actions must be taken to safely relocate the birds or delay grading of the site until after the birds have left the site. Even if owls are not found on a site during a focused survey, or if a habitat survey determined the site could support owls but was not occupied at that time, then a pre-construction survey must still be prepared just prior to the start of grading due to the high mobility of the species (i.e., it can quickly occupy a formerly unoccupied site). Finally, a Burrowing Owl Protection and Relocation Plan must be prepared if burrowing owl is determined to be present during the 30-day preconstruction survey as required in Mitigation Measure MM-BIO-1. These sequential steps help assure that the most timely and accurate information is available regarding potential occupancy of a site by burrowing owl. The CEQA process allows for such sequential investigations to provide the greatest overall protection of sensitive environmental resources such as the burrowing owl. It should also be noted the Department of Fish and Wildlife reviewed the DEIR and provided comments on Mitigation Measure MM-BIO-1, and they had no concerns about deferred mitigation. For these reasons, it can be clearly concluded that no mitigation relative to the burrowing owl has been deferred but rather the most accurate information has been provided at the most appropriate time to best protect this species. Therefore, no mitigation has been deferred, as there are clear performance standards and specific requirements if burrowing owls are found.

- 7z The Project has not deferred mitigation as explained in response to comment 7y above.
- 7aa The commenter has provided no evidence regarding take of burrowing owl. See response to comments for 7w, 7x, 7y, and 7z for additional information regarding mitigation and the timing of burrowing owl surveys relative to the MSHCP, significant impacts to burrowing owl, and deferral of mitigation under CEQA.
- 7bb Appropriate avoidance and minimization measures for the burrowing owl will be incorporated by the Project. See response to comment 5t in responses to Comment

Letter #5.

7cc This is information about the DEIR that does not require a response.

7dd The issue is not cultural impacts but agricultural impacts. The County's designations for the Project site are superseded by the closure of the site for historic agricultural use due to unsustainability and the LESA report which provides more detailed information than what is available from the County. Detailed discussions of impacts to agricultural resources as documented in the LESA report and the DEIR are addressed in previous responses to comments 5d and 5f through 5m in Letter #5. The EIR correctly concludes potential Project impacts to agricultural resources are less than significant based on available information.

7ee According to Public Resources Code 21095. (a), the LESA Manual was created to "...develop an amendment to Appendix G of the state guidelines, for adoption pursuant to Section 21083, to provide lead agencies an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process." (<http://www.search-california-law.com/research/ca/PRC/21095./Cal-Pub-Res-Code-Section-21095/text.html>) The methodology available in Appendix G prior to LESA was to review the Farmland Mapping and Monitoring Program (FMMP) Maps. LESA was developed per Public Resources Code 21083 as an optional method to assist lead agencies in determining impacts to agricultural resources. Some lead agencies use FMMP, some use LESA, and some use both to help determine significant impacts to agricultural resources. For a more complete discussion of the LESA model analysis for the Project site and this EIR, see the previous responses to comments 5d and 5f through 5m in Letter #5.

The LESA Manual is a detailed evaluation methodology identified by the Department of Conservation to assess the quality of agricultural land. It is considered to contain sufficient information as to be definitive regarding the value of agricultural land. The Introduction Section of the LESA Manual provides detailed information and history as to its creation, function, value, and Agencies that use this Model. The LESA Manual can be viewed at: <https://www.conservation.ca.gov/dlrp/Documents/lesamodl.pdf>

7ff Refer to response to comment 6f regarding the LESA evaluation. There are no agricultural land mitigation banks known within the City or western Riverside County. Regardless, without demonstrating a significant impact, mitigation is not required.

7gg The commenter is correct in stating that a less than significant project impact can still have an incremental impact that, when combined with impacts from other projects, could contribute to a significant cumulative impact. The erroneous statement in the DEIR has been corrected and a more detailed explanation of the cumulative impact and analysis for agricultural resources is contained in Section 3.0 Errata of this Final EIR and is summarized in response to comment 7hh.

7hh The DEIR does indicate the Project site contains "Important Farmland" which includes Prime Farmland. However, as stated in the DEIR (p. 4.3-30):

"The City is focusing on developing land in an economically productive way that would serve the growing population. Thus, Menifee's future development emphasizes mixed-use, commercial, industrial, and residential projects rather

than supporting the continuation of agricultural uses, which are becoming less economically viable...The Project-specific LESA indicated that the Project will have a less than significant impact due to the conversion of agricultural lands."

The cumulative study area for agricultural resources is the City of Menifee (City). There is only one (1) parcel within the City that has a General Plan Designation of Agriculture. That one parcel is the Project site, which encompasses 79.68 acres. The City encompasses approximately 29,813 acres (General Plan Exhibit LU-4, Land Use Buildout Summary – reference:

[https://www.cityofmenifee.us/DocumentCenter/View/1015/Exhibit\\_LU-4\\_BuildoutSummary\\_HD0913?bidId=](https://www.cityofmenifee.us/DocumentCenter/View/1015/Exhibit_LU-4_BuildoutSummary_HD0913?bidId=)

As a percentage of the entire City acreage, this represents 0.27 percent of the City. As noted above, the LESA analysis shows that the change to a non-agricultural Land Use Designation represents a less than significant project-specific impact. Since this less than significant project specific impact does not incrementally contribute to other similar agricultural impacts in the City to create a cumulatively considerable impact there is also no significant cumulative impact.

The DEIR has been revised to add this language for clarification; this change is reflected in Section 3.0 Errata of this Final EIR.

- 7ii The DEIR does evaluate potential cumulative impacts of loss of important agricultural land in the City as it relates to the proposed Project (DEIR Section 4.3.6 on p. 4.3-30). For additional information, please see response to comment 7hh above.
- 7jj This is a summary of the information on pp. 4.9-12 and 4.9-13 of the DEIR that does not require a response.
- 7kk Regarding the "not read" or "fail" results from the *Methane Related Services for the Former Abacherli Dairy Site, City of Menifee, Riverside County, California*, prepared by Carlin Environmental Consulting, Inc., February 2016 (MRS, DEIR Appendix H), each probe was tested twice, a representative reading was obtained for each probe over a relatively symmetrically oriented distribution of probes.

To clarify, "not read" means that the probe was either lost or damaged and at the time Carlin Environmental did not feel it was necessary to replace that probe. Further, Carlin Environmental considers the available data significantly representative of site conditions regardless of a missing probe. Again, note that all methane testing will be repeated 30 days after rough grading per Mitigation Measures MM-HAZ-8 (DEIR p. 4.9-23).

To clarify, "fail" means that the soil conditions around the probe where an air sample was extracted was an area of limited soil permeability thus there was limited soil vapor available for extraction and methane measurement by the instrumentation. Said another way, no air was available in the probe due to tight soil conditions. Again, regardless of a failed reading, Carlin Environmental considers the available data significantly representative of site conditions. Again, note that all methane testing will be repeated 30 days after rough grading.

The initial methane monitoring results are not germane to long-term exposure to future inhabitants. When organics exist in soil, in this case a by-product of a dairy operations, its

bacteria will produce methane and water if those bacteria are existing in a depleted oxygen environment. In general terms, any organic laden material buried more than 3 – 4 feet where there is indigenous bacteria and adequate water will produce methane. It is a standard in the industry and particularly in Riverside County to modify the possibility that methane could be produced beneath future developments by modifying standard rough grading activities. These modifications typically include, but may not be limited to, removal and relocation of organic laden material. The effect of these modifications is to be tested 30 days after rough grading activities have been completed. This is a Riverside County requirement for addressing methane concentrations on dairy properties. At the time of the 2016 *MRS*, the methane data presented in the *MRS* provided an adequate depiction of the methane setting and provided adequate information in preparing a set of recommendations for future development.

In summary, the existing *MRS* adequately describes the methane setting; this is particularly true due to the fact that the site will be tested again 30 days after grading. Further, this future testing will be completely representative of the potential exposure of methane to future inhabitants and methane mitigation measures, which will be incorporated into each structure, and will be designed based on this future testing. Additionally, CEQA Guidelines Section 15151, Standards for Adequacy of an EIR ([https://www.califaep.org/docs/2020\\_ceqa\\_book.pdf](https://www.califaep.org/docs/2020_ceqa_book.pdf)) states that:

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

- 7II The first comment is a reiteration of information contained on p. 4.9-17 and 4.9-18 of the DEIR so no response is required. The following information is summarized from the report entitled "Methane Related Services for the Former Abacherli Dairy Site, City of Menifee" prepared by Carlin Environmental Consulting in February 2016 (DEIR Appendix H) with clarifications provided by Excel Engineering. As clarification, the "pond fill" operations occurred in only one of the ponds (the northerly-most pond) on the Project site. The fill operation consisted of pre-mobilization methane investigation of the pond by the Project's methane consultant. The determination from those tests was that the methane content of the ground surface within the pond would need venting and notifications to future property owners, but that the total release of methane would be low. The actual fill operation commenced with the scraping of existing concrete foundations and slabs from the dairy's cattle storage and processing areas, collecting that material in a localized stockpile (on-site) where it was pulverized to 3'-5' maximum-sized pieces, and transporting that material to the pond for placement in the deep depths of the pond (relative to future grades). Survey staking was performed to ensure that the maximum height of the fill operation would be below the maximum elevation allowed for this pulverized concrete material based on the maximum depth of future proposed utility runs. Approximately 1,500-2,500 cubic yards (CY) of soil was imported to the site to mix with the concrete to allow for proper compaction. That soil was mixed with the pulverized concrete and the compounded material was compacted within the pond in an area that turned out to have a

smaller footprint than what was originally anticipated. The compacted fill area ended up being completely located away from future residential footprints and entirely beneath future roadways or finish grade slope or open space areas. Methane venting may still be needed based on investigations by a Methane consultant 30 days after grading and prior to final building approval and completion of infrastructure improvements.

Thus, it should be anticipated that elevated concentrations of methane will be found in the testing that will be conducted 30 days after rough grading per Mitigation Measures MM-HAZ-8 (DEIR p. 4.9-23). Carlin Environmental Consulting, Inc. prepared a Technical Memorandum (Memo), dated February 10, 2020, to provide additional information for use in responding to these comments. The Memo is included as Appendix H to this Final EIR. According to the Memo, if elevated concentrations are found in this future testing, the maximum mitigation required beneath future structures in this area will be implemented. Maximum mitigation measures include a methane barrier underlain by permeable vent pipe. These vent pipes will be connected to solid vent pipes through the roof of future structures. Additional measures will include utility trench dams and conduit seals. This is not considered deferred mitigation but rather provides appropriate performance standards based on conditions found when specific buildings are proposed in specific locations. Maximum mitigation measures include a methane barrier underlain by permeable vent pipe. These vent pipes will be connected to solid vent pipes through the roof of future structures. Additional requirements will include utility trench dams and conduit seals. This is not considered deferred mitigation, as the mitigation measures set forth clear performance standards and specific measures that must be taken based on actual testing prior to development.

According to the plans provided by Excel Engineering (plans dated 9-14-2017) and communications with Geotek, Inc. Soil, concrete and asphalt was removed from the former dairy operations area and placed as compacted fill in the northern former pond (Figure 2 of the Memo [Appendix H]). The plans indicate that the asphalt was placed only within the north pond in a narrow strip. According to the plans these deposits will be below any proposed utilities and a minimum of 8 feet below finish grades (a minimum of 3 feet where asphalt is utilized). Limited removals (less than a few feet) were made beneath these two areas. Without further testing it is likely that these materials would be moderately permeable to future gas migration.

As stated above, additional investigations during future site development are recommended. Regardless of results, methane mitigation measures will be required in the foundations of all future dwellings in the former/existing stock pond areas.

7mm Mitigation Measures MM-HAZ-3, MM-HAZ-4, MM-HAZ-6, MM-HAZ-7, (as revised to provide clarification [additions are underlined, and deletions are ~~strikethrough~~]) and MM-HAZ-8 read as follows:

**MM-HAZ-3** During grading operations, the grading contractor shall not import fill from other portions of the site (identified as Area 2 and Area 3 on Figure 4.9-1, *Livestock Related Activity*) that has significant manure or organic content into this area. “Significant” manure content in engineered fills in Riverside County is dictated by the geotechnical engineering portion of the grading code which requires certification that the organic content of engineered fill is a maximum of 1%.



- MM-HAZ-4** Prior to grading in Area 2, any near surface highly organic material (which includes former manure stockpiles), shall be “skimmed” by the grading contractor from these areas and removed off-site or placed in an onsite, non-structural location such as a park, or other non-habitable spaces. These locations will be determined at the time of grading permit issuance. During rough grading activities, in accordance with geotechnical standards and codes, all organic materials will be removed (skimmed) within a 1% tolerance. This organic material should be transported offsite or placed in non-structural fill areas by the geotechnical engineer of record.
- MM-HAZ-6** Prior to the issuance of a grading permit, a remediation plan shall be submitted to and approved by the Engineering Department. During grading operations, remedial removals in former stock pond areas shall be monitored by the Project Geotechnical Consultant, during grading in Area 3. The geotechnical engineer shall monitor soil conditions as they are moved, replaced and recompactd. The soils engineer representative is monitoring for organic content, moisture content, soil mixing, and soil recompaction density. Organics that produce methane may have been flushed deep into the native soils.
- MM-HAZ-7** Remedial removals may be required to be as deep as 42 10 feet below the former stock ponds. This will be coordinated with the information contained in the Project Geotechnical Evaluation, prepared by GEOTEK, Inc., March 2016 in order to provide appropriate remedial removal depths to provide a suitable foundation material. The organic content of fill materials beneath residential structures shall be less than 1% of the total fill mass. This shall be reflected on any and all grading plans.
- MM-HAZ-8** A minimum of 30 days after grading has been conducted Area 3 must be tested for methane on a lot-by-lot basis. A final report shall be prepared and submitted to the City Building and Safety Department for review and approval. Recommendations for methane remediation shall be designed per County of Riverside Protocols (2004, or most recent) prior to the issuance of any subsequent building permits.

The commenter expressed that the DEIR improperly defers the formulation of these mitigation measures, that they are “an afterthought rather than an important component of the Project that it is” and that the DEIR must be revised and recirculated. As a result of this comment, Mitigation Measures MM-HAZ-3, MM-HAZ-4, MM-HAZ-6, and MM-HAZ-7 have been refined. This refinement has only resulted in clarifications to these Mitigation Measures; therefore, recirculation of the DEIR, pursuant to State CEQA Guidelines Section 15088.5, is not required. The existing MRS adequately describes the methane setting; this is particularly true because the site will be tested again 30 days after grading, per Mitigation Measures MM-HAZ-8 (DEIR page 4.9-23). Further, this future testing will

be completely representative of the potential exposure of methane to future inhabitants and methane mitigation measures, which will be incorporated into each structure, and will be designed based on this future testing. Based on this information, the mitigation has been modified in response to comments to clarify them and better explain the performance standards to be implemented in the future when testing beneath specific building locations is conducted.

These clarifications do not represent deferral of mitigation and do not trigger the need to recirculate the EIR as it is not significant new information and do not change the conclusions of the EIR.

- 7nn Significance analysis is contained in the analysis of Threshold “b” of the DEIR (pp. 4.9-12 through 4.9-19). A definition of “significant” has been added to MM-HAZ-3 for clarification. All work described in MM-HAZ-3, as revised (see response to comment 7mm), shall be performed in accordance with County and City standards at the time of ground disturbance. According to the Mitigation Monitoring and Reporting Program (Section 4.0 of this FEIR), monitoring shall be performed by the Grading Contractor and City of Menifee Engineering/Public Works. This will assure that any thresholds are not exceeded and that all work is conducted per the appropriate protocols. No additional clarification is needed.
- 7oo Language has been added to MM-HAZ-4 to define skimming and to clarify locations for organic materials. All work described in MM-HAZ-4, as revised (see response to comment 7mm), shall be performed in accordance with County and City standards at the time of ground disturbance. According to the Mitigation Monitoring and Reporting Program (Section 4.0 of this FEIR), monitoring shall be performed by the Grading Contractor and City of Menifee Engineering/Public Works Department. This will assure that any thresholds are not exceeded and that all work is conducted per the appropriate protocols. No additional clarification is needed.
- 7pp All work described in MM-HAZ-6, as revised (see response to comment 7mm), shall be performed in accordance with County and City standards at the time of ground disturbance. According to the Mitigation Monitoring and Reporting Program (Section 4.0 of this FEIR), monitoring shall be performed by the Project Geotechnical Consultant and City of Menifee Engineering/Public Works Department. A remediation plan for methane contamination present on the Project Site cannot be prepared until there is ground disturbance. At that time the appropriate agency or agencies would weigh in and improve the adequacy of the plan, including review of previously approved CEQA documentation and technical studies as well as prior public input through the regulating agency or agencies prior to approval of the plan. This is done as part of the regulatory process and not as part of the discretionary or entitlement process. This will assure that any thresholds are not exceeded and that all work is conducted per the appropriate protocols.
- 7qq All work described in MM-HAZ-7, as revised (see response to comment 7mm), shall be performed in accordance with County and City standards at the time of ground disturbance. According to the Mitigation Monitoring and Reporting Program (Section 4.0 of this FEIR), monitoring shall be performed by the Project Geotechnical Consultant and City of Menifee Engineering/Public Works Department. This will assure that any thresholds are not exceeded and that all work is conducted per the appropriate protocols. Please reference response to comment 7ll as it pertains to work performed in the holding pond area. No additional clarification is needed.

- 7rr All work described in MM-HAZ-8 shall be performed in accordance with County and City standards at the time of ground disturbance. According to the Mitigation Monitoring and Reporting Program (Section 4.0 of this FEIR), monitoring shall be performed by the Grading Contractor and City of Menifee Engineering/Public Works Department. This will ensure that any thresholds are not exceeded and that all work is conducted per the appropriate protocols. There is no deferral of mitigation, because the mitigation measures impose clear performance standards based on monitoring results. Please reference response to comment 7ll as it pertains to work performed in the holding pond area. No additional clarification is needed.
- 7ss Please reference responses to comments 7mm through 7rr.
- 7tt This comment reiterates the language contained in Mitigation Measure MM-PS-1. The amount of this fee will be determined prior to the issuance of a final map, which will allow for the assessment of fees based on the fee amounts that are current at that time. To include a specific fee amount at this time may result in an inaccurate assessment of fees needed to mitigate Public Service impacts to a less than significant level. Fees will be assessed and will be paid at a rate determined by the City that will reduce these Public Service impacts.
- 7uu Defensible space theories have been developed by Crime Prevention Through Environmental Design (CPTED) and are recognized in the City's General Plan Goals (Goal CD-3.9 under Community Design Element) and by the Sheriff's Department. CPTED theories contend that law enforcement officers, architects, city planners, landscape and interior designers, and resident volunteers can create a climate of safety in a community right from the start. CPTED's goal is to prevent crime by designing a physical environment that positively influences human behavior. The theory is based on four principles: natural access control, natural surveillance, territoriality, and maintenance (<https://www.ncpc.org/resources/home-neighborhood-safety/crime-prevention-through-environmental-design-training-program/>). These are established concepts that allow for safety in development. Since the exact plotting of structures are not known at this time, the implementing project stage of development is the most appropriate time to review for these concepts. Mitigation Measure MM-PS-2 will be revised in Section 3.0 Errata to include a link to the Crime Prevention Through Environmental Design Guidebook, where defensible space concepts are outlined. This additional information would be to provide clarification and does not require recirculation of the DEIR under CEQA.
- 7vv The DEIR (p. 4.14-11) includes the following discussion regarding MM-PS-2 and explains that defensible space concepts are reviewed at the Tentative Map stage, when plotting is known in greater detail:

*"The City development review process and building permit plan check process include review by the Community Development Department to ensure incorporation of defensible space concepts in site design and construction. This is reflected in Mitigation Measure MM-PS-2, which requires all Project development to incorporate defensible space concepts (Defensible space, is defined by Crime Prevention Through Environmental Design (CPTED) as an area that citizens feel they own, respect, and wish to defend.), and that the design of each tract be reviewed with the Sheriff's Office prior to approval of any tentative tract maps, conditional use permits or other entitlements."*

Mitigation is not being deferred; it is being implemented at the appropriate milestone of Project development. Mitigation Measure MM-PS-2 identifies that the mitigation will occur prior to approval of any tentative tract maps, conditional use permits or other entitlements (DEIR p. 4.14-13).

7ww The commenter mentions General Plan (GP) Goal OSC-6 and GP Policy OSC-6.1 but fails to acknowledge the City's intent to protect existing farms and surrounding agricultural uses only until such time as they can "transition to more develop land uses" (GP Policy OSC-6.1, DEIR p. 4.3-9). The City's GP and GP EIR acknowledge the fact that prime agricultural soils and land will be eventually lost through conversion to non-agricultural uses. The City does not consider this to be a significant long-term impact and no mitigation is required.

7xx As outlined above, the eventual loss of prime agricultural land is not considered a significant impact by the City (see response to comment 7ww above) as documented in the GP and GP EIR. The Project includes a General Plan Amendment for proposed land use changes to non-agricultural use because continued farming/dairy use has become economically infeasible. The analyses in the EIR demonstrate the Project is consistent with the goals and intent of the General Plan. As stated on p. p. 4.3.3 of the DEIR: According to the GPEIR (p. 5.2-13):

*"The City is focusing on developing land in an economically productive way that would serve the growing population. Thus, Menifee's future development emphasizes mixed-use, commercial, industrial, and residential projects rather than supporting the continuation of agricultural uses, which are becoming less economically viable. Considering the small size of the areas mapped as farmland and the economic and regulatory constraints on agriculture in western Riverside County discussed above, along with the currently approved Specific Plans and individual projects, some of these properties would not be available for agricultural use, and it is unlikely that any of these areas would remain in agricultural production even without adoption of the Menifee General Plan."*

The proposed GPA would make the proposed Project consistent with the land use designations of the GP. The analyses in appropriate sections of the EIR demonstrate the Project is consistent with the goals and intent of the General Plan (e.g., agriculture, land use, etc.). In addition, the LESA report documents why the Project will have less than significant impacts on agriculture which is why no mitigation is proposed for the loss of agricultural land. The above-referenced conclusion from the GP EIR would therefore apply to the proposed Project.

7yy Based on the information contained in the responses above, the City, in exercising its discretion as lead agency has determined that the DEIR does not meet the criteria listed in State CEQA Guidelines Section 15088.5 (Recirculation of an EIR Prior to Certification) that would necessitate a revised and recirculated EIR.

**Comment Letter No.8**

Pechanga Band of Luiseño Mission Indians (10-21-19)



**PECHANGA CULTURAL RESOURCES**  
*Temecula Band of Luiseño Mission Indians*

Post Office: Box 2183 • Temecula, CA 92593  
Telephone (951) 770-6300 • Fax (951) 506-9491

October 21, 2019

**VIA E-MAIL and USPS**

Ryan Fowler, Senior Planner  
City of Menifee  
29844 Haun Road  
Menifee, CA 92586

**Re: Pechanga Tribe Comments on the Draft Environmental Impact Report for the  
Rockport Ranch –TR 37131 Project**

Dear Mr. Fowler,

This comment letter is written on behalf of the Pechanga Band of Luiseño Indians (hereinafter, "the Tribe"), a federally recognized Indian tribe and sovereign government. The Tribe requests to be directly notified of all public hearings and scheduled approvals concerning this Project. Please also incorporate these comments into the record of approval for this Project. 8a

The Tribe submits these comments concerning the Project's impacts to cultural resources in conjunction with the environmental review of the Project and to assist the City of Menifee in developing appropriate avoidance and preservation standards. The project location is within the Luiseño traditional land use area, and there is a high potential to find subsurface cultural resources during earth moving activities for the proposed project. 8b

The Tribe agrees with the majority of the proposed mitigation measures, with minor edits but do not agree that paleontological mitigation measures to be incorporated within the cultural section of the DEIR and request relocating it to a more appropriate section of the document such as geology, for cultural resources as presented in the DEIR for this project and request that they will be incorporated with the proposed editions and deletions into the final EIR and added as conditions of approval for the Project. 8c

**PECHANGA CULTURAL AFFILIATION TO PROJECT AREA**

The Pechanga Tribe asserts that the Project area is part of 'Atáaxum (Luiseño), and therefore the Tribe's, aboriginal territory as evidenced by the existence of 'Atáaxum place names, *tóota yixélval* (rock art, pictographs, petroglyphs), and an extensive Luiseño artifact record in the vicinity of the Project. This culturally sensitive area is affiliated with the Pechanga Band of 8d

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Neal Ibanez

Vice Chairperson:  
Bridgett Barcello

Committee Members:  
Andrew Masiel, Sr.  
Darlene Miranda  
Evie Gerber  
Richard B. Searce, III  
Robert Villalobos

Director:  
Gary DuBois

Coordinator:  
Paul Macarro

Cultural Analyst:  
Tuba Ebru Ozdil

Planning Specialist:  
Molly E. Escobar

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Luiseno Indians because of the Tribe's cultural ties to this area as well as extensive history with both this Project and other projects within the area. | 8d cont.

The Pechanga Tribe's knowledge of our ancestral boundaries is based on reliable information passed down to us from our elders; published academic works in the areas of anthropology, history and ethno-history; and through recorded ethnographic and linguistic accounts. Of the many anthropologists and historians who have presented boundaries of the Luiseno traditional territory, few have excluded the Menifee area from their descriptions (Drucker 1955; Sparkman 1908; Kroeber 1925; Smith and Freers 1994), and such territory descriptions correspond with that communicated to the Pechanga people by our elders. While historic accounts and anthropological and linguistic theories are important in determining traditional Luiseno territory, the most critical sources of information used to define our traditional territories are our songs, creation accounts, and oral traditions. The Tribe welcomes the opportunity to meet with the City to further explain and provide documentation concerning our specific cultural affiliation to lands within your jurisdiction.

8e

**PROJECT IMPACTS TO CULTURAL RESOURCES  
AND PROPOSED MITIGATION MEASURES**

The proposed Project is located in Menifee, a very sensitive region of Luiseno territory. The Pechanga Band is not opposed to this Project; however, we are opposed to any direct, indirect and cumulative impacts this Project may have to tribal cultural resources and any impacts that could be avoided by consultation with the Tribe.

8f

The Tribe requests that the following mitigation measures be incorporated into the final Environmental Impact Report (FEIR) in the Traditional Cultural Resources section or any other applicable documents, such as development and grading plans (strikeouts are deletions, underlines are additions). We would be happy to discuss our request for implementation of mitigation measures for this project further with the City.

8g

SC-CUL-1 (Human Remains). If human remains are encountered, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the Riverside County Coroner has made the necessary findings as to origin. Further, pursuant to Public Resource Code Section 5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. If the Riverside County Coroner determines the remains to be Native American, the Native American Heritage Commission shall be contacted within the period specified by law (24 hours). Subsequently, the Native American Heritage Commission shall identify the "most likely descendant." The most likely descendant shall then make recommendations and engage in consultation

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concerning the treatment of the remains as provided in Public Resources Code Section 5097.98. | 8h cont.

SC-CUL-2 (Non-Disclosure of Location Reburials). It is understood by all parties that unless otherwise required by law, the site of any reburial of Native American human remains or associated grave goods shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, pursuant to the specific exemption set forth in California Government Code 6254 @., parties, and Lead Agencies, will be asked to withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code 6254 @.

8i

SC-CUL-3 (Inadvertent Archeological Find). If during ground disturbance activities, unique cultural resources are discovered that were not assessed by the archaeological report(s) and/or environmental assessment conducted prior to project approval, the following procedures shall be followed. Unique cultural resources are defined, for this condition only, as being multiple artifacts in close association with each other, but may include fewer artifacts if the area of the find is determined to be of significance due to its sacred or cultural importance as determined in consultation with the Native American Tribe(s).

- I. All ground disturbance activities within 100 feet of the discovered cultural resources shall be halted until a meeting is convened between the developer, the archaeologist, the tribal representative(s) and the Community Development Director to discuss the significance of the find.
- II. At the meeting, the significance of the discoveries shall be discussed and after consultation with the tribal representative(s) and the archaeologist, a decision shall be made, with the concurrence of the Community Development Director, as to the appropriate mitigation (documentation, recovery, avoidance, etc.) for the cultural resources.
- III. Grading of further ground disturbance shall not resume within the area of the discovery until an agreement has been reached by all parties as to the appropriate mitigation. Work shall be allowed to continue outside of the buffer area and will be monitored by additional Tribal monitors if needed.
- IV. Treatment and avoidance of the newly discovered resources shall be consistent with the Cultural Resources Management Plan and Monitoring Agreements entered into with the appropriate tribes. This may include avoidance of the cultural resources through project design,

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in-place preservation of cultural resources located in native soils and/or re-burial on the Project property so they are not subject to further disturbance in perpetuity as identified in Non-Disclosure of Reburial Condition.

- V. **If the find is determined to be significant and avoidance of the site has not been achieved, a Phase III data recovery plan shall be prepared by the project archeologist, in consultation with the Tribe, and shall be submitted to the City for their review and approval prior to implementation of the said plan.**

- VI. ~~V.~~ Pursuant to Calif. Pub. Res. Code § 21083.2(b) avoidance is the preferred method of preservation for archaeological resources and cultural resources. If the landowner and the Tribe(s) cannot agree on the significance or the mitigation for the archaeological or cultural resources, these issues will be presented to the City Community Development Director for decision. The City Community Development Director shall make the determination based on the provisions of the California Environmental Quality Act with respect to archaeological resources, recommendations of the project archeologist and shall take into account the cultural and religious principles and practices of the Tribe. Notwithstanding any other rights available under the law, the decision of the City Community Development Director shall be appealable to the City Planning and/or City Council.”

8j cont.

SC-CUL-4 (Cultural Resources Disposition). In the event that Native American cultural resources are discovered during the course of grading (inadvertent discoveries), the following procedures shall be carried out for final disposition of the discoveries:

- I. One or more of the following treatments, in order of preference, shall be employed with the tribes. Evidence of such shall be provided to the City of Menifee Community Development Department:
- i. Preservation-In-Place of the cultural resources, if feasible. Preservation in place means avoiding the resources, leaving them in the place where they were found with no development affecting the integrity of the resources.
  - ii. Reburial of the resources on the Project property. The measures for reburial shall include, at least, the following: Measures and provisions to protect the future reburial area from any future impacts in perpetuity. Reburial shall not occur until all legally required cataloging and basic recordation have been completed,

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- with an exception that sacred items, burial goods and Native American human remains are excluded. Any reburial process shall be culturally appropriate. Listing of contents and location of the reburial shall be included in the confidential Phase IV report. The Phase IV Report shall be filed with the City under a confidential cover and not subject to Public Records Request.
- iii. If preservation in place or reburial is not feasible then the resources shall be curated in a culturally appropriate manner at a Riverside County curation facility that meets State Resources Department Office of Historic Preservation Guidelines for the Curation of Archaeological Resources ensuring access and use pursuant to the Guidelines. The collection and associated records shall be transferred, including title, and are to be accompanied by payment of the fees necessary for permanent curation. Evidence of curation in the form of a letter from the curation facility stating that subject archaeological materials have been received and that all fees have been paid, shall be provided by the landowner to the City. There shall be no destructive or invasive testing on sacred items, burial goods and Native American human remains. Results concerning finds of any inadvertent discoveries shall be included in the Phase IV monitoring report.

8k cont.

SC-CUL-5 (Archeologist Retained). Prior to issuance of a grading permit the project applicant shall retain a Riverside County qualified archaeologist to monitor all ground disturbing activities in an effort to identify any unknown archaeological resources.

The Project Archaeologist and the Tribal monitor(s) shall manage and oversee monitoring for all initial ground disturbing activities and excavation of each portion of the project site including clearing, grubbing, tree removals, mass or rough grading, trenching, stockpiling of materials, rock crushing, structure demolition and etc. The Project Archaeologist and the Tribal monitor(s), shall have the authority to temporarily divert, redirect or halt the ground disturbance activities to allow identification, evaluation, and potential recovery of cultural resources in coordination with any required special interest or tribal monitors.

8l

The developer/permit holder shall submit a fully executed copy of the contract to the Community Development Department to ensure compliance with this condition of approval. Upon verification, the Community Development Department shall clear this condition.

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In addition, the Project Archaeologist, in consultation with the Consulting Tribe(s), the contractor, and the City, shall develop a Cultural Resources Management Plan (CRMP) in consultation pursuant to the definition in AB52 to address the details, timing and responsibility of all archaeological and cultural activities that will occur on the project site. A consulting tribe is defined as a tribe that initiated the AB 52 tribal consultation process for the Project, has not opted out of the AB52 consultation process, and has completed AB 52 consultation with the City as provided for in Cal Pub Res Section 21080.3.2(b)(1) of AB52. Details in the Plan shall include:

- a. Project grading and development scheduling;
- b. The Project archeologist and the Consulting Tribes(s) shall attend the pre-grading meeting with the City, the construction manager and any contractors and will conduct a mandatory Cultural Resources Worker Sensitivity Training to those in attendance. The Training will include a brief review of the cultural sensitivity of the Project and the surrounding area; what resources could potentially be identified during earthmoving activities; the requirements of the monitoring program; the protocols that apply in the event inadvertent discoveries of cultural resources are identified, including who to contact and appropriate avoidance measures until the find(s) can be properly evaluated; and any other appropriate protocols. All new construction personnel that will conduct earthwork or grading activities that begin work on the Project following the initial Training must take the Cultural Sensitivity Training prior to beginning work and the Project archaeologist and Consulting Tribe(s) shall make themselves available to provide the training on an as-needed basis;
- c. The protocols and stipulations that the contractor, City, Consulting Tribe(s) and Project archaeologist will follow in the event of inadvertent cultural resources discoveries, including any newly discovered cultural resource deposits that shall be subject to a cultural resources evaluation.

8l cont.

SC-CUL-6 (Native American Monitoring [Pechanga]). Tribal monitor(s) shall be required on-site during all ground-disturbing activities, including grading, stockpiling of materials, engineered fill, rock crushing, etc. The land divider/permit holder shall retain a qualified tribal monitor(s) from the Pechanga Band of Luiseño Mission Indians. Prior to issuance of a grading permit, the developer shall submit a copy of a signed contract between the above-mentioned Tribe and the land divider/permit holder for the monitoring of the project to the Community Development Department and to the Engineering Department. The Tribal

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Monitor(s) shall have the authority to temporarily divert, redirect or halt the ground-disturbance activities to allow recovery of cultural resources, in coordination with the Project Archaeologist.

8m cont.

**SC-CUL-7** (Native American Monitoring [Soboba]). Tribal monitor(s) shall be required on-site during all ground-disturbing activities, including grading, stockpiling of materials, engineered fill, rock crushing, etc. The land divider/permit holder shall retain a qualified tribal monitor(s) from the Soboba Band of Luiseno Indians. Prior to issuance of a grading permit, the developer shall submit a copy of a signed contract between the above-mentioned Tribe and the land divider/permit holder for the monitoring of the project to the Community Development Department and to the Engineering Department. The Native American Monitor(s) shall have the authority to temporarily divert, redirect or halt the ground-disturbance activities to allow recovery of cultural resources, in coordination with the Project Archaeologist.

8n

**SC-CUL-8** (Archaeology Report – Phase III and IV). Prior to final inspection, the developer/permit holder shall prompt the Project Archeologist to submit two (2) copies of the Phase III Data Recovery report (if required for the Project) and the Phase IV Cultural Resources Monitoring Report that complies with the Community Development Department's requirements for such reports. The Phase IV report shall include evidence of the required cultural/historical sensitivity training for the construction staff held during the pre-grade meeting. The Community Development Department shall review the reports to determine adequate mitigation compliance. Provided the reports are adequate, the Community Development Department shall clear this condition. Once the report(s) are determined to be adequate, two (2) copies shall be submitted to the Eastern Information Center (EIC) at the University of California Riverside (UCR) and one (1) copy shall be submitted to the Consulting Tribe(s) Cultural Resources Department(s).

8o

**SC-CUL-9** (Paleontologist Required). This site is mapped as having a high potential for paleontological resources (fossils) at shallow depth. Therefore, prior to issuance of grading permits:

The permittee shall retain a qualified paleontologist approved by the City of Menifee to create and implement a project-specific plan for monitoring site grading/earthmoving activities (project paleontologist).

8p

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The project paleontologist retained shall review the approved development plan and shall conduct any pre-construction work necessary to render appropriate monitoring and mitigation requirements as appropriate. These requirements shall be documented by the project paleontologist in a Paleontological Resource Impact Mitigation Program (PRIMP). This PRIMP shall be submitted to the Community Development Department for review and approval prior to issuance of a Grading Permit.

Information to be contained in the PRIMP, at a minimum and in addition to other industry standard and Society of Vertebrate Paleontology standards, are as follows:

- ~~A. The project paleontologist shall participate in a pre-construction project meeting with development staff and construction operations to ensure an understanding of any mitigation measures required during construction, as applicable.~~
- ~~B. Paleontological monitoring of earthmoving activities will be conducted on an as-needed basis by the project paleontologist during all earthmoving activities that may expose sensitive strata. Earthmoving activities in areas of the project area where previously undisturbed strata will be buried but otherwise disturbed will not be monitored. The project paleontologist or his/her assign will have the authority to reduce monitoring once he/she determines the probability of encountering fossils has dropped below an acceptable level.~~
- ~~C. If the project paleontologist finds fossil remains, earthmoving activities will be diverted temporarily around the fossil site until the remains have been evaluated and recovered. Earthmoving will be allowed to proceed through the site when the project paleontologist determines the fossils have been recovered and/or the site mitigated to the extent necessary.~~
- ~~D. If fossil remains are encountered by earthmoving activities when the project paleontologist is not onsite, these activities will be diverted around the fossil site and the project paleontologist called to the site immediately to recover the remains.~~
- ~~E. If fossil remains are encountered, fossiliferous rock will be recovered from the fossil site and processed to allow for the recovery of smaller fossil remains. Test samples may be recovered from other sampling sites in the rock unit if appropriate.~~
- ~~F. Any recovered fossil remains will be prepared to the point of identification and identified to the lowest taxonomic level possible by knowledgeable paleontologists. The remains then will be curated~~

8p cont.

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~~(assigned and labeled with museum\* repository fossil specimen numbers and corresponding fossil site numbers, as appropriate; places in specimen trays and, if necessary, vials with completed specimen data cards) and catalogued, an associated specimen data and corresponding geologic and geographic site data will be archived (specimen and site numbers and corresponding data entered into appropriate museum repository catalogs and computerized data bases) at the museum repository by a laboratory technician. The remains will then be accessioned into the museum\* repository fossil collection, where they will be permanently stored, maintained, and, along with associated specimen and site data, made available for future study by qualified scientific investigators.~~

~~\* The City of Menifee must be consulted on the repository/museum to receive the fossil material prior to being curated.~~

~~G. A qualified paleontologist shall prepare a report of findings made during all site grading activity with an appended itemized list of fossil specimens recovered during grading (if any). This report shall be submitted to the Community Development Department for review and approval prior to building final inspection as described elsewhere in these conditions.~~

~~All reports shall be signed by the project paleontologist and all other professionals responsible for the report's content (e.g. Professional Geologist, Professional Engineer, etc.), as appropriate. Two wet signed original copies of the report shall be submitted directly to the Community Development Department along with a copy of this condition, deposit based fee and the grading plan for appropriate ease processing and tracking.~~

8p cont.

#### Pechanga Tribe's Comments Regarding Sections 4.6 and 4.17

The Pechanga Tribe understands that the Project has been conducting the environmental studies for some time, however; the Tribe requests that the Final EIR acknowledge the Tribe's following comments and concerns.

8q

Section 4.6.2.3.c **Late Prehistoric Period** states that "An intrusion of Shoshonean- speakers into the region occurred around 1500 BP." The report goes on, in section 4.6.2.3.d **Ethnohistoric Period**, that "The Shoshonean inhabitants of the region were called Luiseños by Franciscans friars who named the San Luis Rey River and established the San Luis Rey Mission in the heart of the Luiseño territory. The above statements are a misclassification of the Luiseño language. The Luiseño languages are within the Californian Uto-Aztecan branch while the Shoshonean languages are of the Northern Uto-Aztecan branch therefore making them two distinct language

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sub-groups within in the Uto-Aztecan Language Family.<sup>1</sup> While historic accounts and anthropological and linguistic theories are important in determining traditional Luiseño territory, the Pechanga Tribe asserts that the most critical sources of information used to define our traditional territories are our songs, creation accounts, and oral traditions. The Luiseño have never migrated into the area. Linguistic theory and archaeological data now support the view that the Luiseño were in California before the “Shoshonean Intrusion” occurred. Therefore, the Tribe would like to assert that the “Shoshonean Wedge” theory is no longer supported by current research and all mention of the “Shoshonean Intrusion” be removed from the cultural report for this project.

8r cont.

Section 4.6.2.3.d **Ethnohistoric Period** states that the “surviving ceremonies include initiation for cult candidates, installation of religious chiefs, funerals, and clothes burning.” This explanation of the surviving cultural practices is an extreme misunderstanding of the religious and cultural beliefs and practices. Additionally, that section of the report makes the statement that the Luiseño pre-European contact population ranged from 5,000 to 10,000. Non-Luiseño may see the Luiseño religious practices as strange, and though the Luiseño people are a small population in the world today the Tribe estimates that their numbers reached into the hundreds of thousands prior to European invasion. The Luiseño religious practices have occurred far longer than more commonly known religions. Therefore, though today, by non-native standards, the Luiseño religion may be small in practice and strange and meets one dictionary definition of the word cult, it is offensive. While the term is often used in anthropological literature to describe indigenous population’s religions, the Tribe views this as a derogatory term and demeans Tribal beliefs. The modern western inference of the term “cult” is associated with a primitive, lesser than, or marginalized connotation. This label devalues Luiseño religious beliefs and practices. While anthropological scholars and researchers understand this ethnographic terminology, the layperson, in particular the lead agency and landowners who review this document, is led to believe Luiseño cosmology and beliefs are less than western mainstream religions. The Tribe requests that the words “cult” be removed from the discussion of Luiseño religion.

8s

Further, the Tribe requests that the mention of the establishment of the La Jolla Reservation be switched to the establishment of the Pechanga Reservation as it is the closest reservation to the Menifee area and would have had a larger impact to the Project area.

8t

In section 4.17.1 **Introduction** and 4.17. 4 **Potential Impacts** in the response to the Impacts to cultural resources; it states that “Because the Project site has experienced severe ground disturbances in the past, any buried archaeological resources would have already been uncovered or destroyed.” The Tribe finds this statement untrue for a couple different reasons. Firstly, the Project area has not been severely disturbed. The Tribe fully understands that the area has been disturbed, however, archaeological resources are known to be in deep deposits within a mile of the Project area, depths of 8-10 feet. Additionally, the Tribe must make note that a Tribal

8u

<sup>1</sup> For further clarification, the Glottolog organization (<http://glottolog.org/resource/languoid/id/luis1253>) has language classification charts.

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Cultural Resource does not always mean an archaeological resource. While archaeological resources are a part of Tribal Cultural Resources, often the resources are intangible. Therefore the "Impacts to cultural resources (which could include tribal cultural resources) were addressed in the Cultural Resources Section of the IS" is incorrect.

8u cont.

The Pechanga Tribe looks forward to working together with the City of Menifee in protecting the invaluable Pechanga cultural resources. Please contact Ebru Ozdil, Cultural Analyst, at 951-770-6313 or at [eozdil@pechanga-nsn.gov](mailto:eozdil@pechanga-nsn.gov) if there are any questions or concerns. Thank you.

8v

Sincerely,



Ebru Ozdil  
Cultural Analyst

Cc Pechanga Office of the General Counsel

*Pechanga Cultural Resources • Temecula Band of Luiseño Mission Indians  
Post Office Box 2183 • Temecula, CA 92592*

*Sacred Is The Duty Trusted Unto Our Care And With Honor We Rise To The Need*



**Responses to Letter No. 8**

- 8a Comment noted. The City will provide all notices related to this proposed Project to the Tribe and these comments are being incorporated in the record of approval for this Project.
- 8b The commenter indicates the entire area is part of their traditional tribal use area and thus is sensitive for tribal cultural resources. The commenter states there is a high potential to find subsurface cultural resources during Project grading. Although the site has been extensively disturbed by past dairy operations, the cultural resource assessment did indicate a potential to find artifacts during grading, so several mitigation measures were recommended and included in the EIR.
- 8c As discussed during a telephone conversation with Ebru Ozdil, Cultural Analyst for the Tribe on November 8, 2019, it was pointed out that the paleontological resources threshold was contained within the Cultural Resources Section of the Initial Study Checklist (Subchapter 8.3, Initial Study of the DEIR) at the time of the issuance of the Notice of Preparation (NOP, Subchapter 8.1, Notice of Preparation / NOP Distribution List of the DEIR). This was acknowledged verbally by Ebru Ozdil and no change was requested to the location of this discussion. Therefore, the discussion and mitigation measures will remain in the Cultural Resources Section (Subchapter 4.6) of the DEIR.
- 8d The commenter expands on the statements made in comment 8b so refer to response to comment 8b for additional information.
- 8e The commenter expands on the statements made in comment to comment 8b regarding traditional tribal lands so refer to response 8b for additional information.
- 8f Direct and indirect impacts to Tribal resources are analyzed in Subchapters 4.6 (Cultural Resources) and 4.17 (Tribal Cultural Resources) of the DEIR. According to p. 4.17-8 of the DEIR, Consultation was conducted with the Pechanga Band of Mission Indians. The Pechanga Band of Mission Indians requested and was provided a copy of the *Cultural Resources Assessment Report for the Rockport Ranch Project Menifee, California*, prepared by Laguna Mountain Environmental, Inc., December 2017, on August 17, 2017. City Staff met with the Pechanga Band of Mission Indians on November 3, 2017, as the City has regular, on-going meetings with the Tribes, and this Project had been formally submitted to the City prior to the formal consultation period being initiated.
- As a result of the consultation process Standard Conditions SC-CUL-1 through SC-CUL-8 (formerly Mitigation Measures MM-CUL-1 through MM-CUL-4) shall be applied to the Project. Implementation of these standard conditions identified above will ensure that in the event that native cultural resources are discovered during ground-disturbing activities all construction activities around the find will be halted, a qualified archaeologist will be notified, uncovered resources will be evaluated, and local tribes will be notified if the find is determined to be prehistoric or historic in nature.
- 8g Comment noted. Standard Conditions will be revised per the Tribe's requests and presented in Section 3.0 Errata of this Final EIR.
- 8h No changes requested to this Standard Condition; no revisions will be made.



- 
- 8i No changes requested to this Standard Condition; no revisions will be made.
- 8j Comment noted. This Standard Condition will be revised per the Tribe's requests and presented in Section 3.0 Errata of this Final EIR.
- 8k No changes requested to this Standard Condition; no revisions will be made.
- 8l No changes requested to this Standard Condition; no revisions will be made.
- 8m No changes requested to this Standard Condition; no revisions will be made.
- 8n No changes requested to this Standard Condition; no revisions will be made.
- 8o No changes requested to this Standard Condition; no revisions will be made.
- 8p Comment noted. No revisions will be made. Please reference discussion in response to comment 8c.
- 8q Comment noted. A revised Cultural Resources Assessment Report has been prepared to address the Tribe's concerns. The Report is provided as Appendix D to the Final EIR, which also provides revisions to the EIR text (see Section 3.0, Errata).
- 8r Comment noted. This language has been removed from the Cultural Resources Assessment Report and will be revised in Section 3.0 Errata of this Final EIR.
- 8s Comment noted. This language has been removed from the Cultural Resources Assessment Report and will be revised in Section 3.0 Errata of this Final EIR.
- 8t Comment noted. This language has been revised in the Cultural Resources Assessment Report and will be revised in Section 3.0 Errata of this Final EIR.
- 8u This sentence has been modified to read: "*Impacts to ~~cultural~~ archaeological resources (which could include tribal cultural resources) were addressed in the Cultural Resources Section of the IS.*" This addresses the differences between archaeological and cultural resources in this particular instance. This revision will be reflected in Section 3.0 Errata of this Final EIR. It should be noted potential impacts to Tribal Cultural Resources (TCRs) are more similar to the "traditional tribal land use areas" referred to by the commenter in comment 8b. These potential resources are addressed in Section 4.17 of the DEIR (pp. 4.17-1 through 4.17-15. While the entire Menifee Valley area is within the traditional Luiseno tribal lands, the cultural resources report for the Project site clearly indicates the site has been extensively disturbed by past dairy operations and in some areas past disturbance is quite deep. Despite this past disturbance, the cultural report and DEIR included a number of standard conditions (SC-CUL-1 through SC-CUL-8) which address tribal concerns about potential onsite impacts. None of the tribal correspondence, including this commenter's letter, provided separate additional mitigation for TCRs other than recommending modifications to the standard conditions for cultural resources which have been incorporated into the EIR and documented in the Errata Section of the Final EIR.
- 8v These are closing statements that do not require a response.

**Comment Letter No.9**

SRCC – Supplemental Letter (11-1-19)

P: (626) 381-9248  
F: (626) 389-5414  
E: mitch@mitchtsailaw.com



**Mitchell M. Tsai**  
Attorney At Law

155 South El Molino Avenue  
Suite 104  
Pasadena, California 91101

**VIA U.S. MAIL & E-MAIL**

November 1, 2019

Ryan Fowler, Senior Planner  
City of Menifee  
29844 Haun Road  
Menifee, CA 92586

*Email Delivery to:* rfowler@cityofmenifee.us

RE: Supplemental Comments to the Rockport Ranch Project Draft Environmental Impact Report; SCH No. 2017081069 (GPA No. 2016-287, CZ No. 2016-288, SP No. 2016-286 and TR 37131)

Dear Mr. Fowler,

On behalf of Southwest Regional Council of Carpenters (“Commenters” or “Southwest Carpenters”), my Office is submitting these comments on the City of Menifee’s (“City” or “Lead Agency”) Draft Environmental Impact Report (“DEIR”) (SCH No. 2017081069) for the Rockport Ranch Project (“Project”). These comments supplement our previous comments which were submitted on October 21, 2019.

9a

The Project proposes to construct a mix of single-family homes and single-family courtyard residential development with open space and trails on a 79.68-acre Rockport Ranch property, which is located in the City of Menifee, on the southwest corner of Briggs Road and Old Newport Road (APNs 364-190-004, and 364-190-005). DEIR, p. 1-1. The Project Site is the location of the former Abacherli Dairy. DEIR, p. 3-9.

9b

The residential development totals 38.4 acres of the Project Site. DEIR, p. 3.2. The Project proposes 305 residential lots, 96 single-family courtyard residential units and 209 single-family residential units) 20.1-acres of private recreational open space and trails and 21.18-acres of road and easements. DEIR, p. 3-3.

9c

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The Project proposes to implement a General Plan Amendment (GPA No. 2016-287), Change of Zone (CZ No. 2016-288), Specific Plan (SP No. 2016-286), and Tentative Tract Map (TR No. 2016-285 also referred to as TR 37131), herein collectively referred to as the “Project”) to allow development of a Specific Plan subdivision which includes 305 residential units as well as recreation facilities. DEIR, p. 1-1. The proposed GPA would revise the Land Use Designation from Agriculture (AG) to Specific Plan (SP). *Id.*

9d

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states, including in southern California, and has a strong interest in well-ordered land use planning and addressing the environmental impacts of development projects.

9e

Individual members of the Southwest Carpenters live, work, and recreate in the City of Menifee and surrounding communities and would be directly affected by the Project’s environmental impacts. Commenters expressly reserve the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

9f

Commenters incorporate by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v. City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the Project’s environmental documentation may assert any issue timely raised by other parties).

9g

Moreover, Commenter requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (“CEQA”), Cal Public Resources Code (“PRC”) § 21000 *et seq*, and the California Planning and Zoning Law (“Planning and Zoning Law”), Cal. Gov’t Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency’s governing body.

9h

## **I. EXPERT**

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This comment letter includes comments from a biological resources expert Scott Cashen, M.S. concerning the DEIR. His comments, attachments, and Curriculum Vitae (“CV”) are attached hereto and are incorporated herein by reference.

9i

Mr. Scott Cashen, M.S. is an environmental biologist with 26 years of professional experience in wildlife ecology and natural resources management. He has served as a biological resources expert for over 125 projects in California. His experience and scope of work in this regard has included assisting various clients with evaluations of biological resource issues, reviewing environmental compliance documents prepared pursuant to the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act, and submitting written comments in response to CEQA and NEPA documents. His work has included the preparation of written and oral testimony for the California Energy Commission, California Public Utilities Commission, and Federal courts.

9j

Mr. Cashen has knowledge and experience with numerous taxa, ecoregions, biological resource issues, and environmental regulations. As a biological resources expert, Mr. Cashen is knowledgeable of the various agency-promulgated guidelines for field surveys, impact assessments, and mitigation. Mr. Cashen has led field investigations on several special-status species, including ones focusing on the yellow-legged frog, red-legged frog, desert tortoise, steelhead, burrowing owl, California spotted owl, northern goshawk, willow flycatcher, Peninsular bighorn sheep, red panda, and various forest carnivores.

9k

Mr. Cashen is a recognized expert on the environmental impacts of renewable energy development. He has been involved in the environmental review process of over 80 solar, wind, biomass, and geothermal energy projects. Mr. Cashen’s role in this capacity has encompassed all stages of the environmental review process, from the initial document review through litigation support. Mr. Cashen has provided expert witness testimony on several of the Department of the Interior’s “fast-tracked” renewable energy projects. His testimony on those projects helped lead agencies to develop project alternatives and mitigation measures to reduce environmental impacts associated with the projects.

9l

Mr. Cashen was a member of the independent scientific review panel for the Quincy Library Group project, the largest community forestry project in the United States. As a member of the panel, Mr. Cashen was responsible for advising the U.S. Forest Service on its scientific monitoring program, and for preparing a final report to

9m



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Congress describing the effectiveness of the Herger-Feinstein Forest Recovery Act of 1998. | 9m cont.

Mr. Cashen’s educational background includes a B.S. in Resource Management from the University of California at Berkeley, and an M.S. in Wildlife and Fisheries Science from the Pennsylvania State University. | 9n

## II. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

### A. The DEIR Failed to Adequately Establish the Environmental Setting Regarding the Occurrence of Burrowing Owls on the Project Site

The DEIR recognizes that the Project Site is located within the “Burrowing Owl Survey Area” in the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”). DEIR, p. 4.5-18. According to Mr. Cashen, the MSHCP requires applicants to conduct burrowing owl surveys “utilizing the protocols identified in the CDFG Staff Report on Burrowing Owl Mitigation.” Exhibit B, p. 2. These protocols require a minimum of three survey visits, at least three weeks apart, between April 15 and July 15. *Id.* | 9o

However, according to Mr. Cashen, the DEIR’s burrowing owl surveys failed to comport with the MSHCP’s burrowing owl survey protocols. Exhibit B, p. 2. The DEIR replied only on two surveys, both of which were outside of the April 15 to July 15 timeframe required by the MSHCP. *Id.* As a result, the DEIR failed to establish an adequate baseline for the existence of burrowing owls on the Project Site. | 9p

### B. The DEIR Omitted Material Information and Failed to Adequately Analyze and Mitigate the Project’s Impacts on Biological Resources

The DEIR omitted issue areas “a. through e.” of CEQA Guidelines Appendix G related to biological resources by concluding that no further analysis was required. DEIR, p. 4.5-1. However, according to Mr. Cashen, the DEIR’s omission of issue areas a, c, in particular, and, in particular, is unsupported by substantial evidence. Exhibit B, p. 3. | 9q

#### 1. *The DEIR Improperly Omitted Analysis of Biological Resources Issue Area A of Appendix G*

Issue Area “a” of Appendix G requires an analysis of whether the Project would have a substantial adverse effect, either directly or through habitat modification, on any | 9r



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species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. CEQA Guidelines, Appendix G. 9r cont.

First, the Initial Study (“IS”) erroneously concluded that the only special-status species that would be discussed in the EIR is burrowing owl by stating that “[t]he Project site is not within any other MSHCP survey areas, within a criteria cell, or within or near any MSHCP Special linkage areas.” IS, p. 29. However, according to Mr. Cashen, the Project site is located within the MSHCP’s Narrow Endemic Plant Species Survey Area (“NEPSSA”). Exhibit B, p. 3 citing DEIR, p. 4.5-18. As a result, the IS’s conclusion that the Project Site is not within any other MSHCP survey areas is incorrect and omitted analyses of numerous other special-status species including narrow endemic plants. 9s

Next, Mr. Cashen states that the MSHCP does not delineate survey areas for Riverside Fairy Shrimp, Santa Rosa Plateau Fairy Shrimp, and Vernal Pool Fairy Shrimp and as a result, the surveys for these species are required for all projects, like the Project, which contains potential habitat for these species. Exhibit B, p. 5-6. However, both the IS and DEIR omit any analysis of the Project’s impacts on these protected species. 9t

Finally, the MSHCP does not cover impacts to special-status bats and as a result, does not delineate survey areas for such bats. According to Mr. Cashen, three special-status bat species (western red bat, western yellow bat, and hoary bat) have the potential to occur at the Project site. Exhibit B, p. 7. However, neither the IS nor the DEIR analyzed the Project’s potential impacts to special-status bats. 9u

As a result, the DEIR’s analysis regarding special-status species is also limited only to burrowing owl. 9v

*2. The DEIR Improperly Omitted Analysis of Biological Resources Issue Areas C and D*

Issue area “c” of the CEQA Guidelines Appendix G requires the lead agency to determine whether the Project would have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. CEQA Guidelines, Appendix G. 9w

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According to Mr. Cashen, the IS's conclusion that there are no jurisdictional waters on the Project Site is unsupported by any data or analysis, especially with respect to waters of the state. As a result, the IS and the DEIR improperly omitted analysis of Issue Area "c."

9x

The CEQA Guidelines Appendix G Issue Area "d" requires the lead agency to determine whether the Project will interfere substantially with the movement of any native resident or migratory fish or wildlife species or with onestablished native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. CEQA Guidelines, Appendix G. However, according to Mr. Cashen, the IS fails to analyze the Project's potential impacts on nursery sites of wildlife taxa besides nesting birds and wildlife movements or wildlife movement corridors. Exhibit B, p. 8. As a result, the City has failed to provide substantial evidence that issue area "d" requires further analysis in the DEIR.

9y

C. The DEIR Fails to Adequately Mitigate the Project's Impacts on Biological Resources

1. *The DEIR Fails to Implement the MSHCP's Best Management Practices*

According to Mr. Cashen, the MSHCP obligates the City to require compliance with the Standard Best Management Practices set forth in Appendix C of the MSHCP. Exhibit B, p. 8, citing MSHCP, pp. 6-48, -49. However, the DEIR fails to incorporate mitigation measures or mechanisms to implement the MSHCP's Best Management Practices. *Id.*

9z

2. *The DEIR's MM-BIO-1 is Vague and Improperly Defers Mitigation*

According to Mr. Cashen, MM-BIO-1 is vague and improperly defers specific actions that will need to be taken to avoid negative impacts on burrowing owls that occupy the Project Site or "immediate vicinity," which is undefined and subjective. Exhibit B, p. 9.

9aa

Moreover, MM-BIO-1's citation to the CDFW guidelines to avoid impacts on an active burrow is incorrect as CDFW guidelines recommend a 500-meter buffer, rather than a 50 or 75-meter buffer required by MM-BIO-1. Exhibit B, p. 9.

9bb

Finally, MM-BIO-1's relocation procedure is vague because it fails to cite any specific performance criteria for relocation such as the relocation procedures set by the MSHCP. Exhibit B, p. 10.

9cc

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D. CEQA Requires Revision and Recirculation of an Environmental Impact Report As a Result of the Omission of Biological Resources Impacts Analysis

CEQA Guidelines require recirculation when a draft EIR is "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." 14 Cal Code Regs §15088.5. This test for recirculation was based on *Mountain Lion Coalition v. Fish & Game Comm'n* (1989) 214 Cal.App.3d 1043, where the court found that the draft EIR's wholesale omission of any cumulative impacts analysis required recirculation of the final EIR.

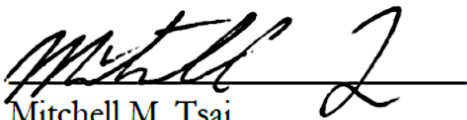
9dd

III. CONCLUSION

Commenters request that the City revise and recirculate the Project's environmental impact report to address the aforementioned concerns. If the City has any questions or concerns, feel free to contact my office.

9ee

Sincerely,



Mitchell M. Tsai  
Attorneys for Southwest Regional  
Council of Carpenters

**Attached:**

Biological Expert, Scott Cashen, M.S. – C.V. (**Exhibit A**);  
Letter from Scott Cashen to Mitchel M. Tsai re Comments on the Draft  
Environmental Impact Report for the Rockport Ranch Project with Exhibits (October  
29, 2019) (**Exhibit B**)

9ff

## **EXHIBIT A**



**Scott Cashen, M.S.**  
**Senior Wildlife Ecologist**

---

Scott Cashen has 25 years of professional experience in natural resources management. During that time he has worked as a field biologist, forester, environmental consultant, and instructor of Wildlife Management. Mr. Cashen focuses on CEQA/NEPA compliance issues, endangered species, scientific field studies, and other topics that require a high level of scientific expertise.

Mr. Cashen has knowledge and experience with numerous taxa, ecoregions, biological resource issues, and environmental regulations. As a biological resources expert, Mr. Cashen is knowledgeable of the various agency-promulgated guidelines for field surveys, impact assessments, and mitigation. Mr. Cashen has led field investigations on several special-status species, including ones focusing on the yellow-legged frog, red-legged frog, desert tortoise, steelhead, burrowing owl, California spotted owl, northern goshawk, willow flycatcher, Peninsular bighorn sheep, red panda, and various forest carnivores.

Mr. Cashen is a recognized expert on the environmental impacts of renewable energy development. He has been involved in the environmental review process of over 80 solar, wind, biomass, and geothermal energy projects. Mr. Cashen's role in this capacity has encompassed all stages of the environmental review process, from initial document review through litigation support. Mr. Cashen has provided expert witness testimony on several of the Department of the Interior's "fast-tracked" renewable energy projects. His testimony on those projects helped lead agencies develop project alternatives and mitigation measures to reduce environmental impacts associated with the projects.

9gg

Mr. Cashen was a member of the independent scientific review panel for the Quincy Library Group project, the largest community forestry project in the United States. As a member of the panel, Mr. Cashen was responsible for advising the U.S. Forest Service on its scientific monitoring program, and for preparing a final report to Congress describing the effectiveness of the Herger-Feinstein Forest Recovery Act of 1998.

**AREAS OF EXPERTISE**

- CEQA, NEPA, and Endangered Species Act compliance issues
- Comprehensive biological resource assessments
- Endangered species management
- Renewable energy development
- Scientific field studies, grant writing and technical editing

**EDUCATION**

M.S. Wildlife and Fisheries Science - The Pennsylvania State University (1998)

*Thesis: Avian Use of Restored Wetlands in Pennsylvania*

B.S. Resource Management - The University of California, Berkeley (1992)



## PROFESSIONAL EXPERIENCE

### Litigation Support / Expert Witness

Mr. Cashen has served as a biological resources expert for over 100 projects subject to environmental review under the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA). As a biological resources expert, Mr. Cashen reviews CEQA/NEPA documents and provides his clients with an assessment of biological resource issues. He then submits formal comments on the scientific and legal adequacy of the project's environmental documents (e.g., Environmental Impact Statement). If needed, Mr. Cashen conducts field studies to generate evidence for legal testimony, or he can obtain supplemental testimony from his deep network of species-specific experts. Mr. Cashen has provided written and oral testimony to the California Energy Commission, California Public Utilities Commission, and U.S. district courts. His clients have included law firms, non-profit organizations, and citizen groups.

### REPRESENTATIVE EXPERIENCE

#### Solar Energy

- Abengoa Mojave Solar Project
- Avenal Energy Power Plant
- Beacon Solar Energy Project
- Blythe Solar Power Project
- Calico Solar Project
- California Flats Solar Project
- Calipatria Solar Farm II
- Carrizo Energy Solar Farm
- Catalina Renewable Energy Project
- Fink Road Solar Farm
- Genesis Solar Energy Project
- Heber Solar Energy Facility
- Imperial Valley Solar Project
- Ivanpah Solar Electric Generating
- Maricopa Sun Solar Complex
- McCoy Solar Project
- Mt. Signal and Calxico Solar
- Panoche Valley Solar
- San Joaquin Solar I & II
- San Luis Solar Project
- Stateline Solar Project
- Solar Gen II Projects
- SR Solis Oro Loma
- Vestal Solar Facilities
- Victorville 2 Power Project
- Willow Springs Solar

#### Geothermal Energy

- Casa Diablo IV Geothermal Project
- East Brawley Geothermal
- Mammoth Pacific 1 Replacement
- Orni 21 Geothermal Project
- Western GeoPower Plant

#### Wind Energy

- Catalina Renewable Energy Project
- Ocotillo Wind Energy Project
- SD County Wind Energy Ordinance
- Searchlight Wind Project
- Shu'luuk Wind Project
- Tres Vaqueros Repowering Project
- Tule Wind Project
- Vasco Winds Relicensing Project

#### Biomass Facilities

- CA Ethanol Project
- Colusa Biomass Project
- Tracy Green Energy Project

#### Other

- DRECP
- Carnegie SVRA Expansion Project
- Lakeview Substation Project
- Monterey Bay Shores Ecoresort
- Phillips 66 Rail Spur
- Valero Benecia Crude By Rail
- World Logistics Center

9gg  
cont.

## Project Management

Mr. Cashen has managed several large-scale wildlife, forestry, and natural resource management projects. Many of the projects have required hiring and training field crews, coordinating with other professionals, and communicating with project stakeholders. Mr. Cashen's experience in study design, data collection, and scientific writing make him an effective project manager, and his background in several different natural resource disciplines enable him to address the many facets of contemporary land management in a cost-effective manner.

### REPRESENTATIVE EXPERIENCE

#### *Wildlife Studies*

- Peninsular Bighorn Sheep Resource Use and Behavior Study: (CA State Parks)
- "KV" Spotted Owl and Northern Goshawk Inventory: (USFS, Plumas NF)
- Amphibian Inventory Project: (USFS, Plumas NF)
- San Mateo Creek Steelhead Restoration Project: (Trout Unlimited and CA Coastal Conservancy, Orange County)
- Delta Meadows State Park Special-Status Species Inventory: (CA State Parks, Locke)

#### *Natural Resources Management*

- Mather Lake Resource Management Study and Plan – (Sacramento County)
- Placer County Vernal Pool Study – (Placer County)
- Weidemann Ranch Mitigation Project – (Toll Brothers, Inc., San Ramon)
- Ion Communities Biological Resource Assessments – (Ion Communities, Riverside and San Bernardino Counties)
- Del Rio Hills Biological Resource Assessment – (The Wyro Company, Rio Vista)

#### *Forestry*

- Forest Health Improvement Projects – (CalFire, SD and Riverside Counties)
- San Diego Bark Beetle Tree Removal Project – (SDG&E, San Diego Co.)
- San Diego Bark Beetle Tree Removal Project – (San Diego County/NRCS)
- Hillslope Monitoring Project – (CalFire, throughout California)

9gg  
cont.

## Biological Resources

Mr. Cashen has a diverse background with biological resources. He has conducted comprehensive biological resource assessments, habitat evaluations, species inventories, and scientific peer review. Mr. Cashen has led investigations on several special-status species, including ones focusing on the foothill yellow-legged frog, mountain yellow-legged frog, desert tortoise, steelhead, burrowing owl, California spotted owl, northern goshawk, willow flycatcher, Peninsular bighorn sheep, red panda, and forest carnivores.

### REPRESENTATIVE EXPERIENCE

#### *Biological Assessments/Biological Evaluations ("BA/BE")*

- Aquatic Species BA/BE – Reliable Power Project (*SF Public Utilities Commission*)
- Terrestrial Species BA/BE – Reliable Power Project (*SF Public Utilities Commission*)
- Management Indicator Species Report – Reliable Power Project (*SF Public Utilities Commission*)
- Migratory Bird Report – Reliable Power Project (*SF Public Utilities Commission*)
- Terrestrial and Aquatic Species BA – Lower Cherry Aqueduct (*SF Public Utilities Commission*)
- Terrestrial and Aquatic Species BE – Lower Cherry Aqueduct (*SF Public Utilities Commission*)
- Terrestrial and Aquatic Species BA/BE – Public Lands Lease Application (*Society for the Conservation of Bighorn Sheep*)
- Terrestrial and Aquatic Species BA/BE – Simon Newman Ranch (*The Nature Conservancy*)

9gg  
cont.

#### *Avian*

- Study design and Lead Investigator - Delta Meadows State Park Special-Status Species Inventory (*CA State Parks: Locke*)
- Study design and lead bird surveyor - Placer County Vernal Pool Study (*Placer County: throughout Placer County*)
- Surveyor - Willow flycatcher habitat mapping (*USFS: Plumas NF*)
- Independent surveyor - Tolay Creek, Cullinan Ranch, and Guadacanal Village restoration projects (*Ducks Unlimited/USGS: San Pablo Bay*)
- Study design and Lead Investigator - Bird use of restored wetlands research (*Pennsylvania Game Commission: throughout Pennsylvania*)
- Study design and surveyor - Baseline inventory of bird species at a 400-acre site in Napa County (*HCV Associates: Napa*)

- Surveyor - Baseline inventory of bird abundance following diesel spill (*LFR Levine-Fricke: Suisun Bay*)
- Study design and lead bird surveyor - Green Valley Creek Riparian Restoration Site (*City of Fairfield: Fairfield, CA*)
- Surveyor - Burrowing owl relocation and monitoring (*US Navy: Dixon, CA*)
- Surveyor - Pre-construction burrowing owl surveys (*various clients: Livermore, San Ramon, Rio Vista, Napa, Victorville, Imperial County, San Diego County*)
- Surveyor - Backcountry bird inventory (*National Park Service: Eagle, Alaska*)
- Lead surveyor - Tidal salt marsh bird surveys (*Point Reyes Bird Observatory: throughout Bay Area*)
- Surveyor - Pre-construction surveys for nesting birds (*various clients and locations*)

#### Amphibian

- Crew Leader - Red-legged frog, foothill yellow-legged frog, and mountain yellow-legged frog surveys (*USFS: Plumas NF*)
- Surveyor - Foothill yellow-legged frog surveys (*PG&E: North Fork Feather River*)
- Surveyor - Mountain yellow-legged frog surveys (*El Dorado Irrigation District: Desolation Wilderness*)
- Crew Leader - Bullfrog eradication (*Trout Unlimited: Cleveland NF*)

9gg  
cont.

#### Fish and Aquatic Resources

- Surveyor - Hardhead minnow and other fish surveys (*USFS: Plumas NF*)
- Surveyor - Weber Creek aquatic habitat mapping (*El Dorado Irrigation District: Placerville, CA*)
- Surveyor - Green Valley Creek aquatic habitat mapping (*City of Fairfield: Fairfield, CA*)
- GPS Specialist - Salmonid spawning habitat mapping (*CDFG: Sacramento River*)
- Surveyor - Fish composition and abundance study (*PG&E: Upper North Fork Feather River and Lake Almanor*)
- Crew Leader - Surveys of steelhead abundance and habitat use (*CA Coastal Conservancy: Gualala River estuary*)
- Crew Leader - Exotic species identification and eradication (*Trout Unlimited: Cleveland NF*)



Mammals

- Principal Investigator – Peninsular bighorn sheep resource use and behavior study (*California State Parks: Freeman Properties*)
- Scientific Advisor – Study on red panda occupancy and abundance in eastern Nepal (*The Red Panda Network: CA and Nepal*)
- Surveyor - Forest carnivore surveys (*University of CA: Tahoe NF*)
- Surveyor - Relocation and monitoring of salt marsh harvest mice and other small mammals (*US Navy: Skagg's Island, CA*)
- Surveyor – Surveys for Monterey dusky-footed woodrat. Relocation of woodrat houses (*Touré Associates: Prunedale*)

Natural Resource Investigations / Multiple Species Studies

- Scientific Review Team Member – Member of the scientific review team assessing the effectiveness of the US Forest Service's implementation of the Herger-Feinstein Quincy Library Group Act.
- Lead Consultant - Baseline biological resource assessments and habitat mapping for CDF management units (*CDF: San Diego, San Bernardino, and Riverside Counties*)
- Biological Resources Expert – Peer review of CEQA/NEPA documents (*various law firms, non-profit organizations, and citizen groups*)
- Lead Consultant - Pre- and post-harvest biological resource assessments of tree removal sites (*SDG&E: San Diego County*)
- Crew Leader - T&E species habitat evaluations for Biological Assessment in support of a steelhead restoration plan (*Trout Unlimited: Cleveland NF*)
- Lead Investigator - Resource Management Study and Plan for Mather Lake Regional Park (*County of Sacramento: Sacramento, CA*)
- Lead Investigator - Biological Resources Assessment for 1,070-acre Alfaro Ranch property (*Yuba County, CA*)
- Lead Investigator - Wildlife Strike Hazard Management Plan (*HCV Associates: Napa*)
- Lead Investigator - Del Rio Hills Biological Resource Assessment (*The Wyro Company: Rio Vista, CA*)
- Lead Investigator – Ion Communities project sites (*Ion Communities: Riverside and San Bernardino Counties*)
- Surveyor – Tahoe Pilot Project: Validation of California's Wildlife Habitat Relationships (CWHR) Model (*University of California: Tahoe NF*)

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## Forestry

Mr. Cashen has five years of experience working as a consulting forester on projects throughout California. Mr. Cashen has consulted with landowners and timber operators on forest management practices; and he has worked on a variety of forestry tasks including selective tree marking, forest inventory, harvest layout, erosion control, and supervision of logging operations. Mr. Cashen's experience with many different natural resources enable him to provide a holistic approach to forest management, rather than just management of timber resources.

### REPRESENTATIVE EXPERIENCE

- Lead Consultant - CalFire fuels treatment projects (*SD and Riverside Counties*)
- Lead Consultant and supervisor of harvest activities – San Diego Gas and Electric Bark Beetle Tree Removal Project (*San Diego*)
- Crew Leader - Hillslope Monitoring Program (*CalFire: throughout California*)
- Consulting Forester – Forest inventories and timber harvest projects (*various clients throughout California*)

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cont.

## Grant Writing and Technical Editing

Mr. Cashen has prepared and submitted over 50 proposals and grant applications. Many of the projects listed herein were acquired through proposals he wrote. Mr. Cashen's clients and colleagues have recognized his strong scientific writing skills and ability to generate technically superior proposal packages. Consequently, he routinely prepares funding applications and conducts technical editing for various clients.

### PERMITS

U.S. Fish and Wildlife Service Section 10(a)(1)(A) Recovery Permit for the Peninsular bighorn sheep

### PROFESSIONAL ORGANIZATIONS / ASSOCIATIONS

The Wildlife Society

Cal Alumni Foresters

Mt. Diablo Audubon Society

### OTHER AFFILIATIONS

Scientific Advisor and Grant Writer – *The Red Panda Network*

Scientific Advisor – *Mt. Diablo Audubon Society*

Grant Writer – *American Conservation Experience*

## TEACHING EXPERIENCE

Instructor: Wildlife Management - The Pennsylvania State University, 1998

Teaching Assistant: Ornithology - The Pennsylvania State University, 1996-1997

## PUBLICATIONS

Gutiérrez RJ, AS Cheng, DR Becker, S Cashen, et al. 2015. Legislated collaboration in a conservation conflict: a case study of the Quincy Library group in California, USA. Chapter 19 *in*: Redpath SR, et al. (eds). *Conflicts in Conservation: Navigating Towards Solutions*. Cambridge Univ. Press, Cambridge, UK.

Cheng AS, RJ Gutiérrez RJ, S Cashen, et al. 2016. Is There a Place for Legislating Place-Based Collaborative Forestry Proposals?: Examining the Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project. *Journal of Forestry*.

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cont.

## **EXHIBIT B**

*Scott Cashen, M.S.—Independent Biological Resources Consultant*

October 29, 2019

Mr. Mitchell M. Tsai  
155 South El Molino Avenue, Suite 104  
Pasadena, CA 91101

**Subject: Comments on the Draft Environmental Impact Report for the Rockport Ranch Project**

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Dear Mr. Tsai:

This letter contains my comments on the Draft Environmental Impact Report (DEIR) prepared by the City of Menifee ("City") for the Rockport Ranch Project ("Project"). The Abacherli Family Trust ("Applicant") proposes to implement a General Plan Amendment, Change of Zone, Specific Plan, and Tentative Tract Map to allow development of a Specific Plan subdivision that includes 305 residential units on the 79.68-acre Rockport Ranch property in the City of Menifee, California.

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I am an environmental biologist with 26 years of professional experience in wildlife ecology and natural resources management. I have served as a biological resources expert for over 125 projects in California. My experience and scope of work in this regard has included assisting various clients with evaluations of biological resource issues, reviewing environmental compliance documents prepared pursuant to the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act, and submitting written comments in response to CEQA and NEPA documents. My work has included the preparation of written and oral testimony for the California Energy Commission, California Public Utilities Commission, and Federal courts. My educational background includes a B.S. in Resource Management from the University of California at Berkeley, and a M.S. in Wildlife and Fisheries Science from the Pennsylvania State University. A true and correct copy of my current curriculum vitae is attached hereto.

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I have particular knowledge of the biological resource issues associated with the Project through my work on several other projects in the region. The comments herein are based on my review of the environmental documents prepared for the Project, a review of scientific literature pertaining to biological resources known to occur in the Project area, and the knowledge and experience I have acquired during more than 26 years of working in the field of natural resources management.

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## ENVIRONMENTAL SETTING

### Burrowing Owl

The Project site is within the “Burrowing Owl Survey Area” designated in the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”).<sup>1</sup> The Applicant’s consultant, LSA Associates, Inc. (“LSA”), detected a burrowing owl at the Project site on 26 January 2016. LSA subsequently conducted focused surveys for burrowing owls at the Project site on 17, 20, and 22 of March, and 3 April 2016.<sup>2</sup> No burrowing owls were detected during those surveys, which led LSA and the City to conclude that burrowing owls were no longer present at the site.<sup>3</sup>

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The MSHCP requires applicants to conduct burrowing owl surveys “utilizing the protocols identified in the CDFG Staff Report on Burrowing Owl Mitigation.”<sup>4</sup> LSA did not adhere to those survey protocols, which require a minimum of three survey visits, at least three weeks apart, between 15 April and 15 July.<sup>5</sup> LSA did not conduct any surveys during this time frame. Because LSA’s surveys terminated before some burrowing owls have selected their nest burrows, the survey data do not provide reliable information on the presence, abundance, and distribution of burrowing owls at the Project site.<sup>6</sup> This precludes proper understanding of the environmental setting, and thus, the severity of the Project’s impacts on the regional burrowing owl population. This is important because the MSHCP has failed to achieve the species-specific objective of having at least five Core Areas that support a combined total breeding population of approximately 120 burrowing owls, with no fewer than five pairs in any one Core Area.<sup>7</sup> Indeed, in 2017, only 11 pairs were documented on conserved land, and only one of the Core Areas satisfied the objective of having at least five breeding pairs.<sup>8</sup>

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## PROJECT IMPACTS

The DEIR lists the six questions posed in the Biological Resources section of the Initial Study (“IS”). It then states: “[b]ased on the analysis in the IS it was determined that the questions pertaining to issue areas a. through e., related to the biological resources (in the questions asked

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<sup>1</sup> DEIR, p. 4.5-18.

<sup>2</sup> DEIR, Appendix D1 (*MSHCP Consistency Analysis and Habitat Assessment*), Table A.

<sup>3</sup> *Ibid*, p. 12 and DEIR, p. 4.5-25.

<sup>4</sup> MSHCP, Vol II-B, p. B-68.

<sup>5</sup> California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 28.

<sup>6</sup> *Ibid*, p. 6 and Appendix D. See also Biological Monitoring Program. 2018. Western Riverside County MSHCP Biological Monitoring Program 2015–2017 Western Burrowing Owl (*Athene cunicularia hypugaea*) Pair Count Report. Prepared for the Western Riverside County Multiple Species Habitat Conservation Plan. Riverside, CA. p. 19.

<sup>7</sup> Western Riverside County Regional Conservation Authority. 2019. Western Riverside County Multiple Species Habitat Conservation Plan. 2018 Annual Report. p. 7-77 and Table 7-2.

<sup>8</sup> Biological Monitoring Program. 2018. Western Riverside County MSHCP Biological Monitoring Program 2015–2017 Western Burrowing Owl (*Athene cunicularia hypugaea*) Pair Count Report. Prepared for the Western Riverside County Multiple Species Habitat Conservation Plan. Riverside, CA. p. 12.



above) would not require any further analysis in the Draft Environmental Impact Report (DEIR)."<sup>9</sup> This is spurious reasoning because, as described below, the IS fails to provide substantial evidence that issue areas a, c, and d do not require any further analysis in the DEIR. 9mm cont.

**Issue Area A: Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?**

The IS's assessment of impacts to special-status species is limited to the burrowing owl. It then states: "[t]he Project site is not within any other MSHCP survey areas, within a criteria cell, or within or near any MSHCP Special Linkage areas."<sup>10</sup> There are three problems with this statement: 9nn

First, the Project site is located within the MSHCP's Narrow Endemic Plant Species Survey Area ("NEPSSA").<sup>11</sup> Therefore, the IS's statement that the Project site is not within any other MSHCP survey areas is incorrect. 9oo

Second, the MSHCP does not delineate survey areas for the Riverside fairy shrimp, Santa Rosa Plateau fairy shrimp, and vernal pool fairy shrimp because surveys are required for all projects that contain potential habitat for those species.<sup>12</sup> 9pp

Third, the MSHCP does not cover impacts to special-status bats. As a result, the MSHCP does not delineate survey areas for bats. Special-status bats have the potential to occur at the Project site (as described further below). Because the IS failed to assess impacts to special-status bats, the City does not have the basis for its conclusion that "Issue Area A" requires no further analysis in the DEIR. 9qq

Narrow Endemic Plant Species

The Applicant did not conduct focused botanical surveys for narrow endemic plants (or any other special-status plant species). According to the DEIR:

Suitable soils and/or habitat conditions for six (6) NEPSSA species do not occur on site; therefore, focused surveys are not required, pursuant to Section 6.1.3 (Protection of Narrow Endemic Plant Species) of the MSHCP Guidelines. In addition, none of these species was observed during the January 2016 field survey. Table 4.5-3, MSHCP Narrow Endemic Plant Survey Species, below, details habitat suitability for each of these species within the study area.<sup>13</sup> 9rr

<sup>9</sup> DEIR, p. 4.5-1.

<sup>10</sup> IS, p. 29.

<sup>11</sup> DEIR, p. 4.5-18.

<sup>12</sup> MSHCP, Vol I, Appendix E. *See also* Western Riverside County Regional Conservation Authority. 2019 Apr 15. MSHCP Permittee Training [PowerPoint Presentation]. Available at: <[http://www.wrc-rca.org/wp-content/uploads/WRC-MSHCP-Training\\_Permittees\\_04.15.19\\_FINAL.pdf](http://www.wrc-rca.org/wp-content/uploads/WRC-MSHCP-Training_Permittees_04.15.19_FINAL.pdf)>.

<sup>13</sup> DEIR, p. 4.5-21.

Table 4.5-3 acknowledges that the Project site contains suitable soil conditions (i.e., alkaline soils) for three of the NEPSSA plants (i.e., spreading navarretia, California Orcutt grass, and Wright's trichocoronis). However, it eliminates them from further consideration based on the following rationale:

- Spreading navarretia: "vernal pools and depressions and ditches that once supported vernal pools are absent."
- California Orcutt grass: "vernal pools are absent."
- Wright's trichocoronis: "alkali playa, alkali annual grasslands and vernal pools area absent."

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The DEIR fails to provide substantial evidence that vernal pools are absent from the Project site. According to the DEIR: "[s]tanding water was observed on the site in several locations on the dates of geotechnical exploration, due to inclement weather. Additionally, several basins, approximately 5 feet to 20 feet in depth, are located in the western and southwestern portions of the site and collect storm water."<sup>14</sup> Even if these features technically do not qualify as "vernal pools," they may replicate the habitat conditions provided by vernal pools. This is important because the NEPSSA plants are not limited exclusively to vernal pools; they also occur in vernal pool-like habitats. For example, spreading navarretia may occur in man-made depressions and ditches that have the same hydrological dynamics as vernal pool habitat and playa.<sup>15</sup>

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The DEIR suggests that there is no potential habitat for Wright's trichocoronis due to the absence of alkali playa and alkali annual grasslands. However, dominant vegetation at the Project site includes Malabar sprangletop (*Leptochloa fusca*),<sup>16</sup> which is an annual grass species<sup>17</sup> associated with alkaline soils.<sup>18</sup> Therefore, the Project site appears to contain alkali annual grasslands. Based in the photographs provided in the DEIR, the Project site also appears to contain alkali playa.<sup>19</sup>

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According to the MSHCP: "given the underlying soils and the possible presence of a seed bank in those soils, even the areas of lower quality areas have the potential to support Narrow Endemic Plant Species if allowed to remain undisturbed (e.g., if farmed fields are allowed to go fallow, flood control activities cease, etc.). Therefore, site-specific focused surveys for Narrow Endemic Plant Species shall be required within the Narrow Endemic Plant Species survey areas where appropriate soils and Habitat are present."<sup>20</sup> Because the DEIR fails to provide sufficient evidence that there is no potential habitat for Narrow Endemic Plant Species at the Project site,

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<sup>14</sup> DEIR, p. 4.5-5 and -6.

<sup>15</sup> U.S. Fish and Wildlife Service. 2009. *Navarretia fossalis* (Spreading navarretia), 5-Year Review: Summary and Evaluation. p. 1.

<sup>16</sup> DEIR, p. 4.5-6.

<sup>17</sup> Smith JP Jr. 2012. *Leptochloa fusca*. In: Jepson Flora Project (eds.) *Jepson eFlora*. Available at: <[http://ucjeps.berkeley.edu/eflora/eflora\\_display.php?tid=80455](http://ucjeps.berkeley.edu/eflora/eflora_display.php?tid=80455)>. (Accessed on October 28, 2019).

<sup>18</sup> CABI. 2019. Invasive Species Compendium [online]. Datasheet for *Leptochloa fusca* (sprangletop). Available at: <<https://www.cabi.org/isc/datasheet/119826>>.

<sup>19</sup> DEIR, Figure 4.5-1, photos 7, 10, and 12.

<sup>20</sup> MSHCP, p. 6-29.

the City does not have the basis for its conclusion that there would be no impacts to special-status plants.

| 9vv cont.

Riverside Fairy Shrimp, Santa Rosa Plateau Fairy Shrimp, and Vernal Pool Fairy Shrimp

The MSHCP requires mapping of stock ponds, ephemeral pools, and other aquatic features.<sup>21</sup> It further requires an assessment to determine the effects of the Project on vernal pools and associated protected species in accordance with MSHCP Section 6.1.2.<sup>22</sup> If the mapping identifies potential habitat for the Riverside fairy shrimp, vernal pool fairy shrimp, or Santa Rosa Plateau fairy shrimp, and the proposed project design does not incorporate avoidance of the identified habitat, the MSHCP requires: (a) focused surveys for the species, and (b) the implementation of avoidance and minimization measures in accordance with the species-specific objectives.<sup>23</sup>

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The Project site contains several aquatic features (e.g., ponds)<sup>24</sup> that would be impacted by development of the Project.<sup>25</sup> The DEIR fails to map these aquatic features in accordance with the requirements of the MSHCP.<sup>26</sup> The DEIR also fails to assess the potential for the aquatic features to provide habitat for the Riverside fairy shrimp, vernal pool fairy shrimp, or Santa Rosa Plateau fairy shrimp.<sup>27</sup> Indeed, the only reference I could find to these species in the Project's CEQA documents is in the IS, which makes the conclusory statement that: "seasonal aquatic features that could provide suitable habitats for endangered and threatened species of fairy shrimp are not present on the Project site."<sup>28</sup> This statement: (a) is not supported by data, analysis, or any other information provided in the IS; and (b) does not satisfy the requirements of the MSHCP, which requires a description of the criteria used to make the determination of "no suitable habitat."<sup>29</sup> As described below, the aquatic features at the Project site may provide potential habitat for the Riverside fairy shrimp and vernal pool fairy shrimp. Because the Applicant has not conducted focused surveys for these species, the Project does not comply with the provisions of the MSHCP, and the City does not have the basis for its conclusion that there would be no impact to endangered and threatened species of fairy shrimp.

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<sup>21</sup> MSHCP, p. 6-22.

<sup>22</sup> DEIR, pp. 4.5-14 and -15.

<sup>23</sup> MSHCP, p. 6-23.

<sup>24</sup> DEIR, Appendix O (*Rockport Ranch Specific Plan*), pp. 1-8 and 1-10. See also DEIR, Figure 4.5-1, photos 5, 6, 7, 10, and 12.

<sup>25</sup> DEIR, Appendix P (*Project Plans*).

<sup>26</sup> See DEIR, Figure 4.5-1 (which suggests the entire Project site is comprised of Ruderal/Highly Disturbed vegetation).

<sup>27</sup> See DEIR, Appendix D1 (*MSHCP Consistency Analysis and Habitat Assessment*), which is limited to an assessment of habitat for burrowing owl and Narrow Endemic Plant Survey Species.

<sup>28</sup> IS, p. 30.

<sup>29</sup> Western Riverside County Regional Conservation Authority. 2019 Apr 15. MSHCP Permittee Training [PowerPoint Presentation]. Available at: <[http://www.wrc-rca.org/wp-content/uploads/WRC-MSHCP-Training\\_Permittees\\_04.15.19\\_FINAL.pdf](http://www.wrc-rca.org/wp-content/uploads/WRC-MSHCP-Training_Permittees_04.15.19_FINAL.pdf)>. p. 62.



*Riverside Fairy Shrimp*

Riverside fairy shrimp are generally restricted to vernal pools and other non-vegetated ephemeral pools greater than 12 inches deep.<sup>30</sup> However, they can persist in extremely variable environments.<sup>31</sup> For example, they have been detected in artificial basins, stock ponds, man-made holes, and road ruts.<sup>32</sup> The California Natural Diversity Database (“CNDDB”) has several records of Riverside fairy shrimp within five miles of the Project site.<sup>33</sup> This includes detection of the species approximately two miles from the Project site in an abandoned stock pond on a property that was dry-farmed for several decades and with no vernal pool indicator plants.<sup>34</sup> Because the Project site appears to contain aquatic habitats comparable to other sites where Riverside fairy shrimp have been detected, the City does not have the basis for its conclusion that there is no potential for impacts to this species.

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*Vernal Pool Fairy Shrimp*

Despite the moniker, vernal pool fairy shrimp are not limited to “vernal pools;” they also occur in vernal pool-like habitats such as seasonal wetlands and pools.<sup>35</sup> Indeed, vernal pool fairy shrimp occur in a wide range of habitats, including degraded or otherwise poor-quality habitats such as stock ponds, roadside ditches, and pools created by tire tracks.<sup>36</sup>

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The vernal pool fairy shrimp is associated with inland mesas and valleys containing alkaline soils in the Western Riverside County vernal pool region.<sup>37</sup> The Project site contains alkaline soils<sup>38</sup> within an inland valley in the Western Riverside County vernal pool region.<sup>39</sup> Because the Project site appears to provide potential habitat for the vernal pool fairy shrimp, the City does not have the basis for its conclusion that there would be no impacts to this species.

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<sup>30</sup> U.S. Fish and Wildlife Service. 2008. Riverside Fairy Shrimp (*Streptocephalus woottoni*), 5-Year Review: Summary and Evaluation. p. 4.

<sup>31</sup> *Ibid.*, p. 5.

<sup>32</sup> California Natural Diversity Database. 2019 Oct 1. RareFind 5. California Department of Fish and Wildlife.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, EO Index 92969.

<sup>35</sup> U.S. Fish and Wildlife Service. 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. U.S. Fish and Wildlife Service, Portland, Oregon. pp. II-196 and -197. *See also* California Natural Diversity Database. 2019 Oct 1. RareFind 5. California Department of Fish and Wildlife.

<sup>36</sup> California Natural Diversity Database. 2019 Oct 1. RareFind 5. California Department of Fish and Wildlife.

<sup>37</sup> U.S. Fish and Wildlife Service. 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. U.S. Fish and Wildlife Service, Portland, Oregon. p. II-197.

<sup>38</sup> DEIR, Table 4.5-3.

<sup>39</sup> U.S. Fish and Wildlife Service. 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. U.S. Fish and Wildlife Service, Portland, Oregon. Figure III-16a.

### Special-Status Bats

The Project site contains trees that provide potential roosting habitat for three special-status bat species:<sup>40</sup>

1. The western red bat is a California Species of Special Concern that is ranked High Priority by the Western Bat Working Group ("WBWG").<sup>41</sup> This species roosts primarily in the foliage of trees or shrubs.<sup>42</sup> Day roosts are commonly in edge habitats adjacent to streams or open fields, in orchards, and sometimes in urban areas.<sup>43</sup>
2. The western yellow bat is a California Species of Special Concern that is ranked High Priority by the WBWG.<sup>44</sup> This species commonly roosts in palms, including ornamental palms used in landscaping.<sup>45</sup>
3. The hoary bat is ranked Medium Priority by the WBWG.<sup>46</sup> This species roosts primarily in foliage of both coniferous and deciduous trees, usually at the edge of a clearing.

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The structures (i.e., four residences, a milking building, and a work shop building) located in the northeast portion of the Project site provide potential roosting habitat for additional special-status bat species. These include the pallid bat (California Species of Special Concern), Townsend's big-eared bat (California Species of Special Concern), and fringed myotis (WBWG High Priority), among others.

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Bat roosts provide sites for mating, rearing of young, and hibernation; they promote social interactions and the digestion of food; and they provide protection from predators and adverse weather.<sup>47</sup> The availability of suitable roost sites is the limiting factor for most bat populations.<sup>48</sup> The MSHCP does not cover bat species. As a result, impacts to potential roosting habitat at the Project site constitutes a potentially significant impact that was not disclosed or analyzed in the DEIR (or IS).

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<sup>40</sup> California Department of Fish and Wildlife. California Interagency Wildlife Task Group. 2014. CWHR version 9.0 personal computer program. Sacramento, CA. See also Western Bat Working Group. 2005 (Update). Species Accounts. Available at: <<http://wbwg.org/western-bat-species>>.

<sup>41</sup> California Department of Fish and Wildlife, California Natural Diversity Database. 2019 Aug. Special Animals List. 67 pp.

<sup>42</sup> Western Bat Working Group. 2005 (Update). Species Accounts: Western Red Bat. Available at: <<http://wbwg.org/western-bat-species>>.

<sup>43</sup> *Ibid.*

<sup>44</sup> California Department of Fish and Wildlife, California Natural Diversity Database. 2019 Aug. Special Animals List. 67 pp.

<sup>45</sup> California Department of Fish and Wildlife. California Interagency Wildlife Task Group. 2014. CWHR version 9.0 personal computer program. Sacramento, CA. See also Western Bat Working Group. 2005 (Update). Species Accounts. Available at: <<http://wbwg.org/western-bat-species>>.

<sup>46</sup> California Department of Fish and Wildlife, California Natural Diversity Database. 2019 Aug. Special Animals List. 67 pp.

<sup>47</sup> Kunz TH. 1982. Roosting Ecology of Bats. In: Kunz TH, editor. Ecology of Bats. Plenum Publishing Corp. New York (NY). p. 1.

<sup>48</sup> *Ibid.* See also Western Bat Working Group. 2005 (Update). Species Accounts. Available at: <<http://wbwg.org/western-bat-species>>.



**Issue Area C: Would the Project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?**

The current CEQA guidelines direct lead agencies to assess whether the project would have a substantial adverse effect on federally protected wetlands *or state protected wetlands*.<sup>49</sup> The Water Board's wetland definition differs slightly from the Clean Water Act definition in that, under the Water Board's definition, an area can also be classified as a wetland if it is devoid of any vegetation, but wetland hydrology and soils are present.<sup>50</sup> In addition, the Porter-Cologne Act defines "waters of the state" very broadly, such that it includes artificial wetlands that are now a relatively permanent part of the natural landscape, and that are not subject to ongoing operation and maintenance.<sup>51</sup> As reported by the Water Board: "[i]f an aquatic feature meets the wetland definition, the burden is on the applicant to demonstrate that the wetland is not a water of the state."<sup>52</sup>

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The IS makes the conclusory statement that there are no jurisdictional waters on the Project site.<sup>53</sup> However, it fails to provide any data or analysis substantiating that conclusion, especially with respect to waters of the state. As a result, the City has not provided substantial evidence that "Issue Area C" requires no further analysis in the DEIR.

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**Issue Area D: Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?**

The IS's analysis of this issue is limited to the potential for the Project to impact nesting birds; there is no analysis of impacts to nursery sites of other wildlife taxa. In addition, there is no analysis of wildlife movement, or wildlife movement corridors. As a result, the City has not provided substantial evidence that "Issue Area D" requires no further analysis in the DEIR.

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**MITIGATION ISSUES**

**Best Management Practices**

The MSHCP obligates the City to require compliance with the Standard Best Management Practices set forth in Appendix C of the MSHCP.<sup>54</sup> The DEIR fails to incorporate a mitigation

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<sup>49</sup> Association of Environmental Professionals. 2019. 2019 California Environmental Quality Act (CEQA) Statute and Guidelines. p. 316. Available at: [http://resources.ca.gov/ceqa/docs/2019\\_CEQA\\_Statutes\\_and\\_Guidelines.pdf](http://resources.ca.gov/ceqa/docs/2019_CEQA_Statutes_and_Guidelines.pdf).

<sup>50</sup> State Water Resources Control Board. 2019. State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. Staff Report Including the Substitute Environmental Documentation. p. 54.

<sup>51</sup> *Ibid*, p. 59.

<sup>52</sup> *Ibid*, p. 60.

<sup>53</sup> IS, p. 30.

<sup>54</sup> MSHCP, pp. 6-48 and -49.

measure or other mechanism that ensures implementation of the MSHCP's Best Management Practices.

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#### MM-BIO-1

MM-BIO-1 requires a preconstruction survey for burrowing owls no more than 30 days prior to ground disturbance to avoid direct take of burrowing owls. Whereas this condition is consistent with the MSHCP, it is not consistent with the California Department of Fish and Wildlife's ("CDFW") current guidelines for take avoidance surveys. Specifically, CDFW's Staff Report on Burrowing Owl Mitigation recommends an initial survey no less than 14 days prior to initiating ground disturbance activities, and a final survey within 24 hours of ground disturbance.<sup>55</sup> Because LSA's burrowing owl survey data are outdated and did not adhere to CDFW's survey protocol, a single preconstruction survey up to 30 days prior to ground disturbance is insufficient to ensure take of burrowing owls is avoided.

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MM-BIO-1 states:

If burrowing owl are determined to occupy the Project site or immediate vicinity, the City of Menifee Community Development Department will be notified, and avoidance measures will be implemented, as appropriate, pursuant to the MSHCP, the California Fish and Game Code, the MBTA, and the mitigation guidelines prepared by the CDFW (2012).

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This condition is vague and improperly defers the specific actions that will be taken to avoid negative impacts to burrowing owls that occupy the Project site or "immediate vicinity" (which is subjective and not defined).

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According to MM-BIO-1: "[t]he following measures are recommended in the CDFW guidelines to avoid impacts on an active burrow:

- No disturbance should occur within 50 meters (approximately 160 feet) of occupied burrows during the non-breeding season.
- No disturbance should occur within 75 meters (approximately 250 feet) of occupied burrows during the breeding season."

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This information is incorrect. CDFW guidelines recommend a 500-meter (1,640-foot) buffer between occupied burrows and activities causing a high level of disturbance (e.g., construction activities), regardless of season.<sup>56</sup> Because the DEIR allows the Applicant to install no-disturbance buffers that are substantially (85% to 90%) less than the buffers recommended by CDFW, it does not ensure Project activities would avoid causing significant impacts to burrowing owls.

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<sup>55</sup> California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. pp. 29 and 30.

<sup>56</sup> *Ibid.*, p. 9.

MM-BIO-1 concludes with the following statement:

For unavoidable impacts, passive or active relocation of burrowing owls would need to be implemented by a qualified biologist outside the breeding season, in accordance with procedures set by the MSHCP and in coordination with the CDFW.

9nnn

This condition is overly vague because it fails to cite the relocation procedures set by the MSHCP, nor are those procedures readily available to the public. This makes it impossible for the public to evaluate the probability that there will be significant impacts to owls that are relocated from the Project site. As reported by the CDFW, relocation of burrowing owls is a potentially significant impact under CEQA.<sup>57</sup> The DEIR fails to disclose and assess impacts associated with relocating burrowing owls from the Project site, nor could I find in the MSHCP an assessment of impacts associated with the relocation of burrowing owls. As a result, the burrowing owl relocation proposed in the DEIR constitutes an unexamined, potentially significant impact.

9ooo

This concludes my comments on the DEIR.

9ppp

Sincerely,



Scott Cashen, M.S.  
Senior Biologist

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<sup>57</sup> *Ibid*, pp. 10 and 11.

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**Responses to Letter No. 9**

- 9a These are introductory statements that do not require a response but will be considered by the City's decision-makers prior to taking action on the proposed entitlements.
- 9b This is a summary of the Project Description that does not require a response.
- 9c This is a summary of the Project Description that does not require a response.
- 9d This is a summary of the Project Description that does not require a response.
- 9e This is a description of the Southwest Carpenters that does not require a response.
- 9f This is a description of the Southwest Carpenters that does not require a response.
- 9g Comment noted. No further response is required.
- 9h Comment noted. The City will provide all notices related to this proposed Project to the Commenter. No further response is required.
- 9i Comment noted. No further response is required.
- 9j This is information about biologist Scott Cashen that does not require a response.
- 9k This is information about biologist Scott Cashen that does not require a response.
- 9l This is information about biologist Scott Cashen that does not require a response.
- 9m This is information about biologist Scott Cashen that does not require a response.
- 9n This is information about biologist Scott Cashen that does not require a response.
- 9o The commenters statement that the MSHCP requires applicants to conduct burrowing owl surveys utilizing the protocols identified in the CDFG Staff Report on Burrowing Owl Migration is incorrect. The MSHCP has very specific protocols for burrowing owl surveys<sup>1</sup>. The MSHCP approved protocols require four (4) separate survey days during the March 1 through August 31 time period. The burrowing owl surveys for the Project were conducted on March 17, 20, 22 and April 3 of 2016 and were conducted in accordance with accepted MSHCP guidelines (*Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area*, Riverside County Environmental Programs Department<sup>1</sup>, March 29, 2006). The reference in the 2016 focused survey report to the "Burrowing Owl Survey Protocol and Mitigation Guidelines, The California Burrowing Owl Consortium, April 1993" is an editorial error and is documented in the Errata section of the FEIR. As a general note all of the burrowing owl surveys conducted for this Project followed the appropriate established MSHCP survey requirements.

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<sup>1</sup> The BUOW survey procedures posted on the RCA website are from the RCA staff report dated November 7, 2005 but the Board of Supervisors action on this item was taken on March 26, 2006 and no changes were made to the procedures. The procedures clearly state the breeding season is from March 1 to August 31 (page 2 of 3). RCA Website address for the burrowing owl survey procedures can be found at:  
[https://www.wrc-rca.org/species/survey\\_protocols/Birds/Burrowing%20Owl%20Survey%20Instructions%20complete.pdf](https://www.wrc-rca.org/species/survey_protocols/Birds/Burrowing%20Owl%20Survey%20Instructions%20complete.pdf)

- 9p See response to comment 9o. A focused burrowing owl survey dated April 2016 was completed for the Project within the appropriate MSHCP survey protocol time period (March 15-August 31). See response to comment 7x in responses to Comment Letter #7 for information on the timing of different kinds of burrowing surveys. significant impacts, and deferral of mitigation.
- 9q Please reference responses to comments 9r through 9v. No additional analysis is required.
- 9r This is information regarding CEQA that does not require a response.
- 9s A habitat assessment was conducted for MSHCP NEPSSA plant species (*MSHCP Analysis*, Appendix D1 of the DEIR). This report found habitat on the Project site to be unsuitable for NEPSSA 4 plant species including Munz's onion, San Diego ambrosia, many-stemmed dudleya, spreading navarretia, California orcutt grass, Wrights's trichocoronis. See response to comment 5q in responses to Comment Letter #5.
- 9t See response to comment 5n in responses to Comment Letter #5.
- 9u The LSA biological staff determined the site does not have conditions that would support local bat species (i.e., lack of trees or other roosting locations) and the following information from their RTC Supplemental Memo dated November 27, 2019 (FEIR Appendix J) substantiates this conclusion regarding potential Project impacts to the subject bats.

Western red bat. The western red bat is classified as California Species of Special Concern and roosts in the foliage of trees and shrubs, commonly in edge habitats along streams or open fields, and sometimes in orchards or urban areas. Often associated with riparian habitats, particularly those containing sycamores and cottonwoods. The Project site is almost exclusively vegetated by ruderal herbaceous forbs and grasses. The Project site contains limited newly emergent riparian habitat, and individual ornamental trees associated with an existing residence that provides marginally suitable habitat for the western red bat. Because habitat for this bat is very limited and considered to be of low quality, the Project biologist concluded the Project will not have significant impacts to this bat species.

Western yellow bat. The western yellow bat is classified as a California Species of Special Concern and is found mostly in desert and desert riparian areas of the southwest US, but also expanding its range with the increased usage of native and non-native ornamental palms in landscaping. Individuals typically roost amid dead fronds of palms in desert oases but have also been documented roosting in cottonwood trees. Suitable riparian areas are not present. Ornamental palms are associated with a residence on the Project site. These palms are lacking skirts typically used by bats for roosting and are considered to be unsuitable habitat for the Western yellow bat. Because no suitable habitat is present for this bat, the Project biologist concluded the Project will have no effects on this species.

Hoary bat. The hoary is a classified as a California Special Animal and prefers open habitats with access to trees for roosting, and water. The Project site contains limited newly emergent riparian habitat and individual ornamental trees associated with an existing residence that provide marginally suitable habitat for the hoary bat. Because



habitat for this bat is very limited and considered to be of low quality, the Project biologist concluded the Project will not have significant impacts to this bat species.

These nonlisted special-status bat species have no official status but may be considered under CEQA in order to evaluate potential adverse effects to biological resources. Project effects to these non-listed bat species are not significant because habitat is limited or absent for these species. Since there is no potential for significant impacts regarding these species, this does not constitute significant new information and does not trigger the need to recirculate the EIR.

- 9v The Project does not affect other special status species. The DEIR provides text, figures, and tables explaining what plant and wildlife species were observed on the site (DEIR pp. 4.5-5 through 4.5-12, Figure 4.5-2 on p. 4.5-18, and Table 4.5-3 on pp. 4.5-21 and 4.5-22); this information is also provided in the *MSHCP Analysis*, Appendix D1 of the DEIR. Also see responses to comments 9o, 9p, 9t, and 9u.
- 9w This paragraph provides information on CEQA Guidelines and does not require a response.
- 9x The Initial Study conclusion (Initial Study pp. 30 and 31) that no potential jurisdictional waters were identified on the proposed Project site was taken directly from the *MSHCP Analysis*, Appendix C1 of the Initial Study (LSA Report Section 6.2, p. 12). The *MSHCP Analysis* based its conclusions on multiple site visits. Also see response to comment 5m in responses to Comment Letter #5.
- 9y The Project is located within an area of encroaching development and is not located within a MSHCP conservation area or MSHCP designated wildlife linkage or corridor (DEIR p. 31, LSA Report Section 6.1, p. 8). The Project study area does not support regional wildlife movement, wildlife corridors, or nursery sites; therefore, the Project will have no effects related to this topic.
- 9z See response to comment 9aa.
- 9aa To comply with the requirements of the MSHCP, a 30-day pre-construction survey is required be conducted as identified on p. 4.5-26 of the DEIR. If burrowing owls are determined to be present, the Project proponent would need to inform and coordinate with the City of Menifee and the Wildlife Agencies immediately per the requirements of Mitigation Measure MM-BIO-1. The preparation of a Burrowing Owl Protection and Relocation Plan would be necessary prior to initiating ground disturbance. Any active burrow avoidance buffers would be identified in the Plan in coordination with the City of Menifee and the Wildlife Agencies. The Department of Fish and Wildlife has reviewed the DEIR and provided comments on Mitigation Measure MM-BIO-1 but they had no concerns about deferred mitigation. Minor revisions to MM-BIO-1 text per the CDFW (see response to comment 5t in Comment Letter #5) are provided in Section 3.0 Errata of this FEIR; these changes do not change the original direction/intent of MM-BIO-1.
- 9bb Per the requirements of the MSHCP, if burrowing owls are determined to be present, the Project proponent would need to inform and coordinate with the City of Menifee and the Wildlife Agencies immediately. The preparation of a Burrowing Owl Protection and Relocation Plan would be necessary prior to initiating ground disturbance. Any active burrow avoidance buffers would be identified in the Plan in coordination with the City of

Menifee and the Wildlife Agencies. Additionally, the Department of Fish and Wildlife has reviewed the DEIR and provided comments on Mitigation Measure MM-BIO-1; they recommended the 50-meter buffer requirement for occupied burrows during the non-breeding season and 75-meter buffer requirement for occupied burrows during the breeding season. Minor revisions to MM-BIO-1 text per the CDFW (see response to comment 5t in Comment Letter #5) are provided in Section 3.0 Errata of this FEIR; these changes do not change the original direction/intent of MM-BIO-1.

9cc Per the requirements of the MSHCP, if burrowing owls are determined to be present, the project proponent would need to inform and coordinate with the City of Menifee and the Wildlife Agencies immediately. The preparation of a Burrowing Owl Protection and Relocation Plan would be necessary prior to initiating ground disturbance. Any active burrow avoidance buffers would be identified in the Plan in coordination with the City of Menifee and the Wildlife Agencies. Minor revisions to MM-BIO-1 text per the CDFW (see response to comment 5t in Comment Letter #5) are provided in Section 3.0 Errata of this FEIR; these revisions merely clarify and do not change the original direction/intent of MM-BIO-1 by adding information regarding owl relocation procedures if needed.

9dd The commenter states the EIR should be recirculated to add significant new information on impacts to biological resources. The responses to all of the comments raised by the commenter, plus responses to comments in Letters #5 and #7 regarding biological resources, conclude there is not significant new information that would change the conclusions of the EIR regarding significant impacts or require new or substantially modified mitigation. The Western Riverside County Multi-Species Habitat Conservation Plan (WRCMSHCP) serves as a comprehensive, multi-jurisdictional Habitat Conservation Plan (HCP) pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act and the Natural Communities Conservation Plan, focusing on the conservation of species and their associated habitats in western Riverside County. The WRCMSHCP allows participating jurisdictions to authorize the take of both the plant and wildlife species identified within the WRCMSHCP area. Regulation of the “take” of threatened, endangered, and rare species is authorized by the Wildlife Agencies (USFWS and CDFW), which allow “take authorization” for otherwise lawful actions (e.g., public and private development) in exchange for the assembly and management of a coordinated WRCMSHCP Conservation Area. The City is obligated to abide by specific conditions as described in Section 13.8 of the WRCMSHCP. Through Project compliance with MSHCP, as detailed in these responses, the Project will not result in substantial cumulative impacts.

The analysis in the Draft EIR, as well as the additional clarifications and information provided in the Final EIR in response to specific questions on the Draft EIR regarding biological resources (Letters #5, #7, and #9) demonstrate the Project will have less than significant impacts on biological resources with implementation of Mitigation Measures MM-BIO-1 and MM-BIO-2 including Species of Special Concern listed by the California Department of Fish and Wildlife. Since no new or substantially different significant impacts in this regard have been identified, the responses in the Final EIR does not constitute significant new information and thus do not trigger the need to recirculate the Draft EIR under CEQA.

9ee Based on the information contained in the responses above, the City, in exercising its discretion as lead agency has determined that the DEIR does not meet the criteria listed in State CEQA Guidelines Section 15088.5 (Recirculation of an EIR Prior to Certification) that would necessitate a revised and recirculated DEIR.

- 9ff Comment noted – Attachments to the Letter are included.
- 9gg This is information about biologist Scott Cashen that does not require a response.
- 9hh This is a summary of the Project Description that does not require a response.
- 9ii This is information about biologist Scott Cashen that does not require a response.
- 9jj This is information about biologist Scott Cashen that does not require a response.
- 9kk This paragraph provides information on the Project and does not require a response.
- 9ll See response to comment 9o. A burrowing owl habitat assessment was conducted as part of the April 2016 MSHCP Consistency Analysis and Habitat Assessment report. A focused survey was conducted in March/April 2016 and documented in a letter report dated April 11, 2016 addressed to Rod Jones. A single burrowing owl was observed during the habitat assessment in January 2016. No burrowing owls were found during the March/April 2016 focused burrowing owl survey conducted within the appropriate MSHCP survey protocol time period (March 15 - August 31). In addition, a MSHCP 30-day burrowing owl pre-construction survey was conducted in September 2017 prior to City approved demolition activities. No owls were observed during the 30-day pre-construction survey.
- 9mm This is information about the EIR and opinion of the commenter that does not require a response.
- 9nn The Initial Study based its assessment of impacts to special-status species on the information provided in the *MSHCP Analysis*, Appendix C1 of the Initial Study. The Tables and information covered in the *MSHCP Analysis* were not carried over and listed in detail in the Initial Study; however, this information was carried over and listed in detail in the DEIR text (DEIR pp. 4.5-5 through 4.5-12, Figure 4.5-2 on p. 4.5-18, and Table 4.5-3 on pp. 4.5-21 and 4.5-22). The DEIR did evaluate Project impacts on listed or otherwise sensitive biological resources that had a potential to occur on the Project site.
- 9oo Regardless of the statement in the Initial Study, the information in the DEIR takes precedence and the EIR did evaluate potential impacts to Narrow Endemic Plant Species per the MSHCP (DEIR pp. 4.5-18 through 4.5-22) and as documented in the MSHCP Consistency Analysis Report (DEIR Appendix D).
- 9pp According to the Project Biologist, the onsite water holding features are not considered suitable to support fairy shrimp or spreading navarretia and were not considered suitable habitat. See response to comment 5n in Letter #5. Additionally, the Initial Study p. 30 states:

*“Suitable riparian/riverine habitats for the species listed under ‘Purpose’ in Volume 1, Section 6.1.2 of the MSHCP are not present on the Project site. Other kinds of seasonal aquatic features that could provide suitable habitats for endangered and threatened species of fairy shrimp are not present on the Project site.”*

No potential habitat was observed so no surveys were required.

- 9qq See response to comment 9u.
- 9rr A general vegetation survey plus a focused survey of for Narrow Endemic Plant Species was conducted as part of the MSHCP consistency analysis (DEIR Appendix D) and concluded there would be no significant impacts to sensitive plants. See also response to comment 5r in responses to Comment Letter #5.
- 9ss See response to comment 5r in Letter #5.
- 9tt See responses to comments 5n and 5r in Letter #5.
- 9uu Table 4.5-3 in the DEIR (pp. 4.5-21 and 4.5-22) clearly states the following regarding habitat suitability and the potential for *Wright's trichocoronis* to occur on the Project site...**None**. Although alkaline soils are present, alkali playa, alkali annual grasslands, and vernal pools are absent.
- 9vv The DEIR did examine potential impacts to plants and Narrow Endemic Plant Species per the MSHCP. See responses to comments 9s, 9oo and 9rr.
- 9ww The Project MSHCP Consistency Analysis Report and the DEIR (p. 4.5-15 plus Table 4.5-3, Narrow Endemic Plant Species) address the potential for vernal pool and vernal pool-related species on the Project and found evidence of neither. See also response to comment 5r in Letter #5.
- 9xx This comment provides information on MSHCP Guidelines and about the EIR. It provides the opinion of the commenter. See response to comment 5n in Letter #5.
- 9yy See response to comment 5n in Letter #5.
- 9zz There is no evidence of fairy shrimp present on the Project site (Initial Study page 30). See response to comment 9pp.
- 9aaa There is no evidence of local bat species present on the Project site. See response to comment 9u above as well as response to comment 5n in Letter #5.
- 9bbb The site does not contain trees or other habitat suitable to support local bat species. See response to comment 9u.
- 9ccc See response to comments 9u.
- 9ddd The site does not contain trees or other habitat suitable to support local bat species and there is no evidence of any bat species present on the Project site due to the amount of human activity and disturbance present. See also response to comment 9u.
- 9eee This paragraph provides information on CEQA Guidelines and does not require a response.
- 9fff The Initial Study conclusion (Initial Study pp. 30 and 31) that no potential jurisdictional waters were identified on the proposed Project site was taken directly from the *MSHCP Analysis*, Appendix C1 of the Initial Study. The *MSHCP Analysis* based its conclusions on site visits. Also see response to comment 5m in Letter #5.

- 9ggg The IS (Issue area D) adequately identified, analyzed and provided mitigation (Mitigation Measure MM-BIO-2) for the potentially identified migratory resources (IS p. 31). In addition, the IS adequately evaluated potential impacts related to wildlife movement, corridors, or nursery sites (IS p. 31). The IS concluded impacts were less than significant and no mitigation was necessary for this issue because of the location and disturbed nature of the site. Therefore, no additional analysis in the EIR was required.
- 9hhh According to p. 4.5-18 of the DEIR: "The Project is located within the Sun City/Meniffee Area Plan of the MSHCP but is not located within a Criteria Area or Conservation Area, or adjacent to a Criteria Area or Conservation Area. Since the Project is not located within a Criteria Area or Conservation Area, or adjacent to a Criteria Area or Conservation Area, it is not subject to the Property Owner Initiated Habitat Evaluation and Acquisition Negotiation Strategy (Section 6.1.1 of the MSHCP Guidelines), Urban/Wildlands Interface Guidelines (Section 6.1.4 of the MSHCP Guidelines), or Fuels Management (Section 6.4 of the MSHCP Guidelines). Lastly, no riparian/riverine/vernal pool resources are present; therefore, no analysis is required per Section 6.1.2 (Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools) of the MSHCP Guidelines."
- In addition, according to p. 4.5-27 of the DEIR: "There are no significant biology resources located within the Project site and the Project can be implemented consistent with the criteria identified in the MSHCP, with adherence to Standard Conditions SC-BIO-1 and SC-BIO-2, and incorporation of Mitigation Measures MM-BIO-1 and MM-BIO-2." No additional Best Management Practices are required.
- 9iii The EIR does provide adequate mitigation for potential impacts to burrowing owl as documented in the Errata Section of the FEIR which contains modifications and clarifications to several mitigation measures based on comments on the EIR by two resource agencies and other groups. Please reference responses to comments 9o and 9ll.
- 9jjj This paragraph provides information from the DEIR and does not require a response.
- 9kkk This mitigation measure has been developed in conjunction with the CDFW at the time of circulation of the DEIR. As shown in response 5t (see Comment Letter #5), at the recommendation of the FWS and CDFW, Mitigation Measure MM-BIO-1 has been refined to meet their requirements. Please reference responses to comments 9aa through 9bb. No additional clarification is needed.
- 9lll This paragraph provides information from the DEIR and does not require a response.
- 9mmm Please see response to comment 9kkk. No additional clarification is needed.
- 9nnn This paragraph provides information from the DEIR and does not require a response.
- 9ooo Please see response to comment 9kkk. No additional clarification is needed.
- 9ppp The comment is a closing statement that does not require a response.



**Comment Letter No.10**

Better Neighborhoods (1-8-20)



17901 Von Karman Ave, Suite 600  
Irvine, CA 92614  
(949) 556-8714  
[www.better-neighborhoods.com/](http://www.better-neighborhoods.com/)

January 8, 2020

Mr. Ryan Fowler  
Senior Planner,  
29844 Haun Rd.  
Menifee, CA 92586  
Email: [rfowler@cityofmenifee.us](mailto:rfowler@cityofmenifee.us)

Re: Rockport Ranch Specific Plan – Menifee

Dear Mr. Fowler,

Thank-you for the opportunity to offer questions and comments regarding Rockport Ranch Specific Plan (the “Project”).

10a

Better Neighborhoods is an organization established to help people have a voice in local development decisions as prominent as that of planners and developers. Our aim is to encourage smart growth consistent with the needs of the community while protecting the natural environment and places of historic and aesthetic significance, supporting California’s need for affordable housing and balancing the desire for growth with the need for features that make cities livable.

10b

We are concerned primarily with two issues the Project raises. First, the City appears to have no protocols or procedures in place regarding farmland conversion, which is regulated at both the state and federal level. Second, cryptic hints throughout the draft Environmental Impact Report (the “DEIR” or “Report”), suggest the City has been less than frank regarding Applicant’s land holdings and plans for contiguous development of which Rockport Ranch may be but one component.

10c

**Farmland Conversion**

The City seems to have no regard for the important public policy and legal requirement of preserving agricultural land as set forth in Gov. Code, § 51220, subd. (a), Pub. Resources Code, § 10201, subd. (c), and Civ. Code, § 815. There is no evidence to show the City even consulted the Department of Conservation, the Department of Agriculture, the federal Department of Agriculture

10d

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nor indeed the excellent Farm Aid organization, which connects farmers and local governments to an extensive network of organizations across the country that help farmers find the resources they need to access new markets, transition to more sustainable and profitable farming practices and survive natural disasters and pressure from developers to sell. All provide various programs, including grants, toward the worthy goal of farmland conservation. Why has the City no legal protocols to apply when faced with a proposal for farmland conversion? If the City fails to consult or even notify these authorities, how can the agencies possibly fulfill their mandate? What support would authorities offer in this case? The City is legally bound to make this inquiry. Why hasn't it?

10d  
cont.

In addition to federal and state laws regarding farmland conservation, the Menifee General Plan sets out the following goals:

LU-1.1: Concentrate growth in strategic locations to help preserve rural areas (emphasis added), create place and identity, provide infrastructure efficiently, and foster the use of transit options.

10e

LU-1.4: Preserve, protect, and enhance established rural (emphasis added), estate, and residential neighborhoods by providing sensitive and well-designed transitions (building design, landscape, etc.) between these neighborhoods and adjoining areas.

In view of such worthy goals, what support has the City offered toward retaining the 79 acres of good farmland at issue?

The City's commitment to farmland preservation appears weak, to say the least. When we searched the terms, "agriculture, farm, rural," in the City of Menifee General Plan Vision 2030, there was no mention of any of them! Nor was there any mention of agriculture in the Economic Development Element ED-1: Diverse & Robust Economy statement. It looks very much as if the City finds no value in agriculture, an attitude that may help explain why there is a crisis among farmers, who struggle in isolation with little or no support from local government.

10f

A developer, on the other hand, enjoys nothing but help and encouragement. Note the number of times – four, in fact – that the Report reiterates the same, tired pro-farmland conversion goals and unsupported presumptions of agricultural failure despite the Project site's location in the midst of some of the most renowned farmland anywhere in the world (including ideal conditions for growing lemons, avocados and vineyards, among other things):

10g

According to the GPEIR (p. 5.2-13): "The City is focusing on developing land in an economically productive way that would serve the growing population. Thus, Menifee's future development emphasizes mixed use, commercial, industrial, and residential projects rather than supporting the continuation of agricultural uses, which are becoming less economically viable. Considering the small size of the areas mapped as farmland and the economic and regulatory constraints on agriculture in western Riverside County discussed

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above, along with the currently approved Specific Plans and individual projects, some of these properties would not be available for agricultural use, and it is unlikely that any of these areas would remain in agricultural production even without adoption of the Menifee General Plan.” (Report, p. 4.3-3).

10g  
cont.

One would be hard-pressed to find a more hostile view of farming and the City’s legal obligation to preserve farmland!

The Report delivers a blow not only to farmland conservation laws and policy, it also tells anyone still in the business of agriculture that they can expect no support from local government if/when they are pressured to sell.

10h

This negativity is most evident in the death knell summary of the Land Evaluation and Site Assessment (LESA) analysis:

The result of the LESA analysis for this site in Menifee was an overall LESA score of 40.357. According to the LESA Model scoring thresholds, agricultural resource impacts associated with a LESA score of 40.357, which is not considered to be a significant impact, because the Land Evaluation Score and the Site Assessment scores are not both greater than 20. The conversion of the project site to residential use is, therefore, not considered a significant adverse impact to agricultural resources. (Appendix B, Agricultural Land Evaluation and Site Analysis, p. 2).

10i

However, as the same study indicates a little further on, “Not considered in the rating are availability of water for irrigation, local climate, size and accessibility of mapped areas, distance to markets and other factors that might determine the desirability of growing certain plants in a given locality. Therefore, the index should not be used as the only indicator of land value.”

10j

As we learn later in the Report, the Project site enjoys two highly productive water wells, near perfect growing weather and proximity one of America’s most important ports, Los Angeles. How would the LESA value change if these crucial features were considered?

10k

Artificially lowering the Project site LESA score meant that conservation easements were not considered.

The California Farmland Conservancy Program (CFCP) is a statewide grant program that supports local efforts to establish agricultural conservation easements and planning projects for the purpose of preserving important agricultural land resources. (emphasis added).

10l

CFCP provides grants to qualifying applicants, primarily land trusts, to purchase agricultural conservation easements. Each easement project must meet standards for the State’s investment, including a willing seller, documented development pressure, local government support, and match funding. Agricultural conservation easements involve extensive

10m



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negotiation and relationship-building between the participants. The use of agricultural conservation easements represents a long-term commitment by landowners, local governments, and land trusts to conserve and steward agricultural land resources. CFCP also provides policy planning grants to develop and evaluate local and regional land conservation strategies and potential conservation projects. (The California Department of Conservation, see <https://www.conservation.ca.gov/dlrp/grant-programs/cfcp>, accessed Dec. 6/19).

10m  
cont.

Why didn't the City partake of this excellent resource?

The City must broaden its artificially narrow view of the Project site's agricultural potential and examine properly and fully whether and how the state conservancy program would apply. Agricultural conservation easements (ACEs) may mitigate the direct loss of farmland, and a lead agency errs by failing to consider ACEs as a potential mitigation measure for this direct loss. *Friends of Kings River v. County of Fresno*, 232 Cal. App. 4th 105, 181 Cal. Rptr. 3d 250, 2014 Cal. App. LEXIS 1114 (Cal. App. 5th Dist. December 8, 2014).

10n

Although the Riverside County General Plan Final EIR originally required mitigation that would establish an Agricultural Mitigation Land Bank, shortly after EIR certification a CEQA decision by the California Court of Appeal held that a mitigation measure of this nature does not actually avoid or reduce the loss of farmland subject to development (*Friends of the Kangaroo Rat v. California Department of Corrections* (August 18, 2003) Fifth Appellate District Number F040956). Therefore, the Agricultural Land Mitigation Bank was not a valid form of mitigation for farmland conversion impacts. Accordingly, the County of Riverside deleted the EIR Mitigation Measure, and found farmland conversion impacts significant and unavoidable. Since then, two other California appellate courts have issued conflicting rulings on whether preservation of offsite farmland mitigates conversion of farmland on a project site to non-agricultural uses. The three rulings are unpublished and are not legal precedents but do include arguments that might be used in future legislation or court opinions on this topic. One of the rulings: *County of Santa Cruz v. City of San Jose* (2003; WL No. 1566913) by the Sixth District Appellate Court found that preservation of offsite farmland does not mitigate conversion of farmland by a project because it does not create new farmland or offset the loss of farmland due to the project. The other ruling, *South County Citizens for Responsible Growth v. City of Elk Grove* (2004; WL No. 219789) by the Third District Court disagreed with the earlier two rulings. The last ruling stated that conservation fees can mitigate for the loss of agricultural lands by diminishing development pressures due to the conversion of farmland and reducing the domino effect created by projects. The question of whether offsite preservation of farmland mitigates conversion of farmland to non-agricultural uses has yet to be settled by the courts or the legislature. (General Plan Draft EIR, p. 6-2).

10o

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Happily, as you can see from decisions, such as *Friends of Kings River v. County of Fresno, supra*, there is now more recent authority regarding agricultural conservation easements:

Offsite agricultural conservation easements (ACEs) may appropriately mitigate for the direct loss of farmland when a project converts agricultural land to a non-agricultural use, even though an ACE does not replace the onsite resources. ACEs preserve land for agricultural use in perpetuity. Civ. Code, §§ 815.1, 815.2; Pub. Resources Code, § 10211. The permanent protection of existing resources off-site is effective mitigation for a project's direct, cumulative, or growth-inducing impacts because it prevents the consumption of a resource to the point that it no longer exists. If agricultural land is permanently protected off-site at, for example, a 1:1 replacement ratio, then at least half of the agricultural land in a region would remain after the region has developed its available open space. By thus preserving substitute resources, ACEs compensate for the loss of farmland within the definition of mitigation in Cal. Code Regs., tit. 14, § 15370, subd. (e), which includes compensating for the impact by replacing or providing substitute resources or environments. There is no good reason to distinguish the use of offsite ACEs to mitigate the loss of agricultural lands from the offsite preservation of habitats for endangered species, an accepted means of mitigating impacts on biological resources. *Masonite Corp. v. County of Mendocino*, 218 Cal. App. 4th 230, 159 Cal. Rptr. 3d 860, 2013 Cal. App. LEXIS 590, 2013 WL 3865101 (Cal. App. 1st Dist. July 25, 2013).

10p

Because farmland conversion is a permanent transformation, the City must reconsider LESA with the additional factors – water, climate, market access – set out above to make a fair and proper determination regarding the applicability of conservation easements. This is particularly important in view of the domino effect farmland conversion likely would have on all agricultural uses in the City.

The land which is best for agriculture happens to be best for building too. But it is limited – and once destroyed, it cannot be regained for centuries.

10q

In the last few years, suburban growth has been spreading over all land, agricultural or not. It eats up this limited resource and, worse still, destroys the possibility of farming close to cities once and for all. But we know ... that it is important to have open farmland near the places where people live. Since the arable land which can be used for farming lies mainly in the valleys, it is essential that the valley floors within our urban regions be left untouched and kept for farming. ...

Preserve all agricultural valleys as farmland and protect this land from any development which would destroy or lock up the unique fertility of the soil. Even when valleys are not cultivated now, protect them; keep them for farms and parks and wilds.



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Keep town and city development along the hilltops and hillsides. And in the valleys, treat the ownership of the land as a form of stewardship, embracing basic ecological responsibilities. (Chapter 4, Agricultural Valleys, A Pattern Language, Towns, Buildings, Construction, Christopher Alexander, Sarah Ishikawa and Murray Silverstein, pp. 27-28). See also Ian McHarg (Design With Nature, New York: Natural History Press, 1969). In his "Plan for the Valleys" (Wallace-McHarg Associates, Philadelphia, 1963), he shows how town development can be diverted to the hillsides and plateaus, leaving the valleys clear. The pattern is supported also by the fact that there are several possible practical approaches to the task of implementation (McHarg, pp. 79-93).

10q  
cont.

These are classic, time-tested planning principles the City seems to have forgotten. Have they been supplanted, one wonders, and, if so, why and with what?

**Is Rockport Ranch but a portion of a much larger plan?**

A second concern is that the City did not refute the following statement in the Report taken from a letter by challenger Jan L. Westfall:

Project proponent owns additional contiguous properties which are not being used for agriculture and may be used for development. The Project may not be segmented into individual pieces for purposes of the review and thus avoid analysis of the totality of the Project. (Report, p. 4.11-2, letter from Jan L. Westfall 10/4/17).

10r

What is the basis of this contention? Is there any substance to it? Has the City inquired? What, if any, other developments is the Applicant planning? Are alternative sites available and have they been considered?

10s

**Illegal Demolition**

We were shocked to learn of the outrageous events of 2016, when, according to page 4.5-3 of the Report, the Applicant undertook demolition of concrete and fill at the site without a permit. A City inspector who happened to be passing by the site on Briggs Road inspected the operation and promptly issued a Stop Work notice. More outrageous still is the Report's assertion at pages 4.5-3-4, "Had the demolition work not been completed ahead of the entire Project, it would have occurred during the site preparation/grading of the Project site."

10t

Why were the parties so certain the Project would be approved?

10u

Is it usual in Menifee for work to commence on a Project that is still at the proposal stage?

10v

The Report then goes on to assure us that courts have held that "a CEQA document does not need to analyze prior illegal activity." Maybe so, but illegal activity must weigh heavily against a Project if not precluding it altogether. What penalties are applied to a Project in these circumstances? What

10w

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penalties/disciplinary measures are applied to City staff who facilitate such illegal activity? How will both the Applicant and the City restore good faith and trust after this outrage? | 10w  
cont.

#### Project Description

The Rockport Ranch Project would convert an estimated 79.68 acres of prime farmland to a gated subdivision with 38.4 acres of single-family homes and multi-family apartments in clusters thereby increasing the area's density to 3.82 dwelling units per acre. The Project would also include 20.1 acres of open space in two categories: passive open space (landscaping, bio-retention basins, open turf areas and a large lake) and recreational open space (trails, community pool area, tot lots and barbeque stations). | 10x

The proposal is conditioned on the adoption/approval of the Rockport Ranch - Planning Application Nos. General Plan Amendment No. (GPA) 2016-287, Change of Zone No. (CZ) 2016-288, Specific Plan No. (SP) 2016-286, and Tentative Tract Map No. (TR) 2016-285 (TR 37131). GPA No. 2016-287 would change the Project site's designation in the General Plan Land Use Element from Agriculture (AG) to Specific Plan (SP). CZ No. 2016-288 would change the site's zoning from Heavy Agriculture - 10- Acre Minimum (A-2-10) to Specific Plan (SP). | 10y

The new Specific Plan would follow guidelines for landscape and architectural design, infrastructure plans and "phasing of development and administrative procedures." Phasing how? Which development and administrative procedures? "Figure 3-13, Phasing Plan. Phases 1 through 7 pertain to the Project phasing internal to the Project. This phasing is more applicable to the *marketing phasing* of the Project." (emphasis added). (Report, p. 4.4-2). Does this mean completion on the Project would depend on unpredictable market forces? What conditions would the City apply to such a perilous undertaking? | 10z

Existing infrastructure such as water, sewer, storm drain and roadways would also be expanded. Southern California Edison overhead distribution lines along Briggs Road and Old Newport Road would be relocated. New flood control facilities would be built along with water quality basins to improve the quality of stormwater runoff. | 10aa

#### Surrounding Uses

The Project site is bounded as follows: Old Newport Road and Tierra Shores residential development to the north; Wilderness Lakes RV Resort to the south; Briggs Road, Ramona Egg Ranch and agricultural land to the east and The Lakes residential development to the west. | 10bb

#### Project Objectives

What legal tests does the City typically apply when asked to convert rare agricultural land to another use? Why weren't federal and state farmland authorities consulted? | 10cc

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Are there any special tests applied to a conversion favoring residential use? For example, would approval depend on whether the Project meets one or more housing targets described in the General Plan Housing Element and, if so, how is it measured? 10dd

According to the Report, the Project would provide a variety of housing opportunities through a range of unit types, sizes and bedroom counts, including 3-, 4-, 5-, and 6-bedroom units, as well as a range of affordability to accommodate a full spectrum of family demographics and the growing housing needs of the region. How well would the Project accommodate the need for low, very low and extremely low-income housing set out in Table 21: 2014–2021 Regional Housing Needs Allocation at page 60 of the City of Menifee General Plan Draft Housing Element 2013-2021? How well is the City generally meeting its housing goals? 10ee

How would Project development standards within the Specific Plan area compare with existing residential development and recreational opportunities? 10ff

How would existing residents feel about more than 20 acres of good farmland set aside for the exclusive enjoyment of a gated community? 10gg

What does it mean to “Develop a financing plan that provides for the efficient and timely provision of infrastructure and public services prior to and as development occurs” (emphasis added)? This implies, again, that Project completion would depend on market conditions and not on a solid, well-researched plan that has been fully and adequately financed? 10hh

According to the Report, the Project would implement a maintenance program to ensure all common areas are maintained to standards set forth in the City’s General Plan. Does this mean single-family owners would have to negotiate maintenance duties and expenses alongside the multi-family apartment dwellers? What about the two lakes? Who would be responsible for their maintenance? How would maintenance work as a practical matter? 10ii

How exactly was the figure of 305 residential units determined? How was the ratio of construction per lot calculated? What are the factors that determine acceptable density in the City? 10jj

Why ‘single-family courtyard’ – multi-family row housing, really - and not smaller, more modest single-family development to confer title free and clear of the aggravation of having to persuade neighbors with competing interests to approve maintenance and alterations?

Do everything possible to make the traditional forms of rental impossible, indeed, illegal. Give every household its own home, with space enough for a garden. Keep the emphasis in the definition of ownership on control, not on financial ownership. Indeed, where it is possible to construct forms of ownership which give people control over their houses and gardens, but make financial speculation impossible, choose these forms above all others. In all cases give people the legal power, and the physical opportunity to modify and repair their own places. Pay attention to this rule especially, in the case of high density apartments: build 10kk



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the apartments in such a way that every individual has a garden, or a terrace where vegetables will grow, and that even in this situation, each family can build and change, an add on to their house as they wish. (Chapter 79, Your Own Home, pp. 395-6, A Pattern Language, Towns Buildings Construction, Alexander, Christopher, New York: Oxford University Press, 1977).

10kk  
cont.

What planning and design principles and authorities guided the authors of the City Housing Element 2013-2021?

### Zoning

GPA No. 2016-287 proposes to amend the Project site's designation in the General Plan Land Use Element from Agriculture (AG) to Specific Plan (SP). CZ No. 2016-288 proposes to change the zoning classification of 79.68-acres on the southwest corner of Briggs Road and Old Newport/Rockport Road (APNs 364-190-004 and 364-190-005) from Heavy Agriculture – 10-Acre Minimum (A-2-10) to Specific Plan (SP). Were any other options available and considered? What if the Specific Plan zoning referred only to the actual amount of land sought for housing development leaving the rest as farmland?

10ll

"An internal system of trails has been proposed to add depth to the Circulation Plan. The trails will allow residents to walk and bike throughout the Project and will connect residents to the various open space areas located throughout the site." (Report, p. 3-9). How does a network of trails with swimming pools and manmade lakes fed by local water, for the exclusive use of residents of a gated community possibly offset the devastating environmental impact of farmland conversion?

10mm

The lake, with two main footprints connected by a box culvert to maintain one water surface level between the two, is intended to also serve as a wet pond for water quality treatment as well as serve the community's peak flow detention capacities to allow for release of storm water at predeveloped rates. The private storm drainage system will discharge into the lake/wet pond/detention basin system through hydraulically-designed forebays to provide velocity dissipation and settlement pre-treatment prior to the ultimate goal of the wet pond to settle out pollutants within the lake. (Report, p. 3-9).

The complexity of this system and its crucial multiple purposes should be investigated and explained much more fully. What are its weaknesses? Are there examples of similar features in the City?

Current zoning of the Project site is Heavy Agriculture (A-2-10), which permits heavy agricultural uses, including, but not limited to, nurseries, crops, grazing, processing and packaging, dairy farms, farms, menageries, etc. However, according to the Report, such uses are somehow not feasible:

10nn

Option 11 is defined as land where in non-drought years irrigated production is feasible; however, physical and economic restrictions exist. In drought years, irrigated production is

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not feasible. This is because the well that supplies water on site contains high levels of Total Dissolved Solids (TDS) over 2,000 parts per million (ppm), which is considered severe and will restrict crop growth. The well water would need to be filtered or supplemented with potable City water and then blended. Both options are cost prohibitive for agricultural production. (Report, p. 4.3-18-19).

10nn  
cont.

Would state agricultural and district water authorities concur with this negative assessment?

“Menifee’s future development emphasizes mixed use, commercial, industrial, and residential projects rather than supporting the continuation of agricultural uses, which are becoming less economically viable.” (Report, p. 4.3-29). Such a claim, which is unsupported by evidence, suggests dangerously that Menifee is somehow above federal and state laws to preserve farmland especially of the high quality featured at the Project site. Again, what are the obligations of local governments regarding farmland conversion? Must the City notify authorities when farmland is under threat of conversion? If not, how would authorities track crucial farmland?

10oo

As the Report notes:

Suburban, residential development on this site has the potential to create conflicts with the existing, adjacent agricultural uses, particularly the Ramona Egg Ranch located to the east of the Project site, across Briggs Road. There may be pressure to convert this adjacent, existing agricultural use to a non-agricultural use primarily due to the odors emanating from the Ramona Egg Ranch. The Project is subject to Assembly Bill 2881 – Right-to-Farm Disclosure, as discussed above. Mitigation can be achieved by providing disclosure to future residents that the property is located within 1 mile of farmland as designated on the most-recent Important Farmland Map. In addition, the Project is subject to City of Menifee Ordinance No. 625 (Right-to-Farm Ordinance). This Ordinance requires prospective buyers of property adjacent to agricultural land to be notified through the title report that they could be subject to inconvenience or discomfort resulting from accepted farming activities as per provisions of the City’s Right-to-Farm ordinance. (Report, p. 4.3-29).

10pp

Is this true - the City offers local farmers no protection or encouragement beyond a requirement to warn future residents that they will be co-existing with good and earnest souls who provide our food as if they are a blight on the landscape? Contrary to assertions at page 4.3-31 of the Report, it’s clear that this Project would almost certainly cause open hostility toward farmers, adversely impacting agricultural resources and the value of those resources. The Project’s impact on agricultural resources almost certainly would be devastating.

#### Aesthetics

Yes, an elite, much higher-density, gated housing subdivision would reduce the quality of the City’s notable scenic vistas, substantially damaging scenic resources, including, but not limited to, trees

10qq



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and rock outcroppings. The Project site previously featured a pastoral scene replete with grazing dairy cows – one many of the world’s greatest painters have sought to capture. On the other hand, how many gated subdivisions are featured in fine art? Yes, the Project would degrade the existing visual character or quality of the site and its surroundings and create a new source of substantial light and glare which would adversely affect day and nighttime views in the area.

10qq  
cont.

Six architectural styles are included in the Specific Plan and were chosen based on their historic usage and popularity with homeowners in California. The six architectural styles are: • California Bungalow; • California Craftsman; • California Ranch; • Cottage; • Farmhouse; and • Monterey. (Report, p. 3-23). When and how was this popularity tested?

10rr

The computer graphics on pages 3-25 and 6 are typical of luxury homes unaffordable to many if not most. How many scaled-down, single-family California Bungalows, for example, might fit in place of the far less private and autonomous multi-family ‘courtyard’ development?

10ss

How much of the Project would include barrier free/accessibility features? Has this crucial aspect of housing design been considered?

Another cited challenge was that many homes built today are not conducive to seniors aging in place. New homes often do not contain built-in modifications and universal design elements that would make the home barrier free and usable by residents of all ages and levels of ability. Many builders do not incorporate universal design features into new and existing homes because they claim that such improvements are too expensive. As a result, many adults will need to move from their homes when they experience age-related disabilities or mobility issues. (Housing Element, Special Needs Housing, p. 28).

10tt

Why must consumers bear all the risk and expense of having to move? Why not developers?

10uu

How well would the Project accommodate the changing demographics noted at page 8 of the Housing Element:

Traditionally, younger adults prefer apartments, condominiums, and smaller single-family units that are affordable. Middle-aged adults and families prefer larger homes that offer the space to more easily accommodate children. Seniors often prefer smaller units that are more affordable and easily maintained. Therefore, if Menifee’s existing population (specifically baby boomers) continue to age and younger families continue to migrate to the community, **this may increase the demand for smaller and more affordable housing products than built in recent years in Menifee.** (emphasis added).

10vv

Would there be any provision at the 79-acre Project site for California’s burgeoning homeless population?

10ww

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State law now requires that all jurisdictions allow at least one year-round emergency shelter in their community. Transitional housing must be allowed by right in all residential zones and treated in the same manner as other residential uses in the same zone. Moreover, permanent housing must also be treated in the same manner as transitional housing. Finally, all jurisdictions must identify sufficient land that could accommodate housing commensurate with the identified needs of homeless people. The Housing Plan has policies and implementation programs to comply with state law and improve the housing opportunities for homeless people living in Menifee. (Housing Element, 2013-2021, p. 29).

10ww  
cont.

What effort has the City made to fulfill the neighborhood involvement requirement under the Housing Element regarding the Project? How have nearby residents responded to the proposed Project?

10xx

HE-2.6 Neighborhood Involvement. Encourage resident participation in their neighborhood organizations to help identify local needs and implement programs to beautify, improve, and preserve neighborhoods. (Housing Element, p. 73).

Has the City been meeting its inclusion goals described below?

HE-3.3 Special Needs. Support the provision of community services and housing for people with special needs, such as disabled people, seniors, lower income families, and people without shelter.

HE-3.4 Preservation of Affordable Housing. Preserve affordable rental housing by working with interested parties and providing technical assistance, as feasible and appropriate.

HE-3.5 Collaborative Partnerships. Collaborate with non-profit groups, developers, the business community, special interest groups, and state and federal agencies to provide housing assistance.

HE-3.6 Fair Housing. Support and implement housing law in all aspects of the building, financing, sale, rental, or occupancy of housing based on protected status in accordance with state and federal law. (Housing Element, p. 74).

10yy

What about the City's fair housing obligations?

Housing for People with Disabilities State law requires that community care facilities serving six or less must be permitted by right in all residential zones similar to other residential uses in the same zone. The Riverside County Zoning Code, which the City uses until a substitute is adopted, does not clearly define or permit such facilities. Rather, the Zoning Code uses the term congregate care, which is very different in requirements than residential care facilities. Fair housing law requires local governments to implement a reasonable accommodation procedure to provide flexibility in the application of land

10zz

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use policies, zoning regulations, and City procedures to accommodate the needs of persons with disabilities. (emphasis added). Currently, the City makes reasonable accommodations through a variance on a case-by-case basis, which is not in keeping with fair housing law. (Housing Element, p. 78).

10zz  
cont.

Until the courts are willing to overrule housing policies that fail to address these worthy goals, we rely on local government alone to ensure such goals and policies are enforced. Surely within almost 80 acres the City would be able to address some if not most of its inclusion deficits, if any.

10aaa

How effective have Menifee's gated communities been in achieving the City's Housing Element inclusion goals?

10bbb

#### Air Quality

Given that the proposed density of single-family residences was not anticipated under the existing General Plan land use designation, the proposed land uses would wildly exceed population projections in the City's General Plan thus conflicting with and exceeding the assumptions used to develop the AQMP. Incredibly, the Report asserts that "This inconsistency can only be corrected when SCAQMD amends AQMP based on updated Southern California Association of Governments (SCAG) growth projections after the Project has been approved." (Report, p. 4.4-11). Why is the author so certain that a project to convert valuable farmland would be approved?

10ccc

"It should be noted that the Project impacts are within the SCAQMD standards with mitigation incorporated." (Report, p. 4.4-22). This is an incredible assertion unsupported by any evidence. The section on air quality wants review once district authorities provide comments.

#### Geology and Soils

The Project site is in a seismically active region with hard, granite bedrock susceptible to landslides that would menace structures downslope. Granite weathers into large boulders, creating a rockfall hazard.

Although subsidence has not been reported in Menifee, this hazard has been documented nearby in the San Jacinto Valley, from Hemet to Moreno Valley, and in Temecula and Murrieta. In the San Jacinto Valley and Temecula, the subsidence and related ground fissuring have been attributed to groundwater withdrawal. In Murrieta, rapid growth of the area led to large-scale application of landscape water to arid alluvial soils. This caused a rise in the water table and subsequent collapse of the soils, resulting in localized surface land subsidence and ground fissures, which cost millions of dollars in property damage to homes, schools, and infrastructure. (Report, p. 4.7-12).

10ddd

How does this Project site differ from those of Murrieta? Certainly, the Project would also qualify as sudden, rapid growth. Would the mitigation recommended for the Project have saved Murrieta?



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What is the actual risk of subsidence and lateral spreading at the Project site? Intention to comply with legal requirements is not an answer. | 10eee

Appendix F2 Soils Analysis 2-2016 does not disclose whether the Project site was tested for agricultural toxins beyond methane that might be dangerous if released during construction. Shouldn't it be more thoroughly tested? | 10fff

#### **Greenhouse Gas Emissions**

Why has the state air quality authority asked to be advised about the Project regarding air quality? What is the concern? | 10ggg

SB 375 makes regional and local planning agencies responsible for developing strategies to meet state GHG targets as part of the federally required metropolitan transportation planning process and the state-mandated housing element process. (Report, p. 4.8-12). What are the City's strategies for this purpose? | 10hhh

The CEC has further indicated that the 2020 Energy Code will require new residential developments to achieve zero-net energy use. What does this mean for the Project? In the absence of this information, it's premature to assert as the Report does that Project GHG emissions would be less than significant. | 10iii

According to the Report, the City has not yet adopted its own design review standards for evaluating a project's contribution to communitywide GHG emissions and currently follows SCAQMD guidance for determining whether a project supports state goals. Is this acceptable for a Project involving a 79-acre farmland conversion to a large-scale residential subdivision, which may be only a part of the Applicant's full and complete plan? | 10jjj

#### **Hazards/Hazardous Materials**

What is the risk of disturbing soil at the Project site containing methane during construction? What other agricultural toxins might the soil contain and what is the risk if they are released during construction? | 10kkk

"Should specific uses generate hazardous materials during the life of the Project, subsequent analysis may be required to ascertain impacts and mitigation, if required (i.e., medical wastes, chemical wastes, etc.)." (Report, p. 4.9-19). This is but another of the cryptic clues contained in the Report suggesting the Project represents only a portion of Applicant's actual plan for a private Potterville. The California Environmental Quality Act (CEQA) requires nothing less than full and frank disclosure. | 10lll

Section 4.9.5 of the Report discloses the presence of potential safety hazards for future residents of the Project posed by proximity to March Air Reserve Base/Inland Port Airport. Full disclosure is required before assessing the sufficiency of the proposed mitigation. What is the threat? | 10mmm

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### Hydrology/Water Quality

With respect to the reliability of water supply, regard should be had to the reasoning in *Manro v. City of Tulare*, 2016 Cal. App. Unpub. LEXIS 8074, 2016 WL 6426390 (Cal. App. 5th Dist. October 31, 2016):

The California Supreme Court set forth principles for assessing the sufficiency of an EIR's water-supply analysis in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 53 Cal. Rptr. 3d 821, 150 P.3d 709 (Vineyard Area Citizens). In that case, the EIR evaluated a community plan for a 22,000-unit residential development project and a specific plan for a portion of the larger project. (Id. at p. 422.) Various difficulties were involved in predicting whether the groundwater and surface water sources counted on by the developers would actually be available when needed. (Id. at pp. 422-424, 427-428.) As framed by the court, the question presented was "how firmly future water supplies for a proposed project must be identified or, to put the question in reverse, what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR for a land use plan." (Id. at p. 428.)

The court articulated four principles. First, "CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to 'evaluate the pros and cons of supplying the amount of water that the [project] will need.' [Citation.]" (*Vineyard Area Citizens, supra*, 40 Cal.4th at pp. 430-431.)

Second, for a large project that will be developed over a period of years, an EIR's analysis "cannot be limited to the water supply for the first stage or the first few years." (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 431.) "[T]he future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis" in lower-tier EIR's. (Ibid.)

Third, the water sources the EIR identifies "must bear a likelihood of actually proving available" and cannot be speculative or unrealistic. Further, the EIR must analyze the circumstances affecting the likelihood of the water's availability. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 432.)

Fourth, "where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies." It is not enough for the land use plan simply to provide that development will not proceed if the water proves unavailable, although that can be a legitimate technique where the EIR analyzes various alternatives but

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acknowledges that uncertainty remains. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 432.)

10nnn  
cont.

More thorough analysis is needed to assess the amount of water the Project would use, whether the amount is available and any vulnerabilities, including the potential impact if the proposed stormwater system doesn't work as planned.

According to the Report, a well test (conducted in April 2018) showed that the Project site's two wells could generate up to 243 gallons of water per minute (gpm) for 6 hours with only 3 feet of drawdown. In addition, no other potential source of water quality degradation (besides methane) has been identified at the Project site, except a potential for erosion and sedimentation during heavy precipitation. (Report, p. 4.10-9). Shouldn't the Project site be fully tested for agricultural soil toxins beyond methane? Why would water be available to supply the Project and two lakes but not a farm?

10ooo

The SWPPP and WQMP must address the hydrologic conditions of concern by maintaining pre-development flows once the Project is developed and treatment of the surface runoff from the site before discharge to the Canyon Lake/Salt Creek. The protection of water quality and future runoff volumes will be accomplished by reducing, to the extent feasible, the amount of impervious surface and through on-site retention. (Report, p. 4.10-11)

What would be "the extent feasible" in this case? What is meant by "on-site retention" in this case? Page 4.10-19 of the Report describes a very complex, perhaps unique drainage system as well as potentially very significant impacts caused by on- or off-site erosion and/or siltation. What is the likelihood of such occurrences? Is there an example of a drainage system similar to the one proposed here, elsewhere in the City?

#### Land Use and Planning

Applicant proposes conversion of an estimated 79 acres of prime farmland to construct a gated community likely intended to shelter an elite residential community. It's not clear whether the City has properly consulted state and federal agricultural authorities, whose mandate is to conserve and protect agricultural land. Despite its obligations to support this mandate, the City appears to offer little or no protection to local farmers, who are hardly mentioned in the 2030 Vision statement. This Project would have multiple unavoidable significant adverse impacts. Every farmland conversion threatens every remaining farmer in the City.

10ppp

The Project would also create a sudden spike in population which would in turn attract still more people anxious to offer goods and services to this elite gated community.

10qqq

Public services would require expansion further threatening agricultural uses.

10rrr

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Perhaps most concerning is that if it's this easy to obtain such a radical conversion it will likely prompt others to try until zoning and General Plan restrictions apply only to some and not to all equally. | 10sss

#### Noise

A quiet, rural, low-density community would suddenly become much higher density with all the noise that goes with urban encroachment. | 10ttt

#### Public Services

The Riverside Unit Riverside County Fire Department has already indicated that the Project would have a cumulative adverse impact on its ability to provide an acceptable level of service. It is therefore premature to conclude as the Report did at page 4.14-2 that fire services would be sufficient to accommodate the Project. | 10uuu

#### Recreation

There is no reason to assume residents of the proposed gated community would not also access City facilities despite private open space with swimming pool/s and lakes. The Report fails to contemplate this likelihood. | 10vvv

It would be odd if not loushe for the City to permit the dedication of more than 20 acres of rare farmland to private recreation, as the Project proposes. Unless this subdivision is not the only development planned at the Project site.

However, as future residential development is proposed (emphasis added), the Project would require developers to provide the appropriate amount of parkland or pay the in-lieu fees, which would contribute to future recreational facilities. Payment of these fees and/or implementation of new parks on a project-by-project basis would offset cumulative parkland impacts by providing funding for new and/or renovated parks equipment and facilities, or new parks. (Report, p. 4.14-25). | 10www

This is another of the Report's cryptic clues to a hidden agenda. To what future residential development does the above statement refer?

#### Transportation

Suburban, residential development on this site has the potential to create conflicts with the existing, adjacent agricultural uses; particularly the Ramona Egg Ranch located to the east of the Project site, across Briggs Road. The Project may increase hazards/incompatibility due to the interface between residential and agricultural uses (e.g. farm equipment). (Report, p. 4.16-79). | 10xxx

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While residential development is permitted in multiple areas of the City, farmers don't enjoy such luxury, and the law requires the City to protect agricultural land and uses. Farmland must therefore take priority in this case.

10xxx  
cont.

#### Alternatives

Incredibly, no alternatives to the Project were evaluated, considered or even proposed. The argument we are given against alternatives is the standard one: "fewer dwelling units would not generate sufficient funds to meet the goals of the Project proponent." (Report, p. 5-2). Surely there are alternatives that would meet Applicant's financial goals while preserving the farmland. What would multi-disciplinary Farm Aid experts suggest?

10yyy

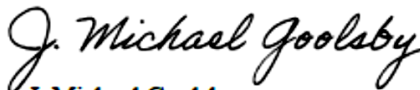
We have suggested hilltop and hillside development leaving the valley for agriculture. The suggestion is based on time-honored principles set out in a classic community design treatise by Christopher Alexander, a widely influential architect and design theorist now emeritus professor at the University of California, Berkeley. His theories about the nature of human-centered design have affected fields beyond architecture, including urban design, software, sociology and others. Alexander has designed and personally built over 100 buildings, both as an architect and a general contractor. A Pattern Language provides applicable community design best practices amply illustrated with helpful drawings and photos. If in doubt, the City may contact the author personally at UC Berkeley (see <https://ced.berkeley.edu/ced/faculty-staff/christopher-alexander>, accessed online Dec. 17, 2019).

10zzz

Agricultural land is so valuable, it would be prudent for the City to explore all options to preserve as much of it as possible.

10aaaa

Sincerely,



J. Michael Goolsby  
President and CEO  
Better Neighborhoods, Inc.

**Responses to Letter No. 10**

- 10a Comment noted. These are introductory statements that do not require a response under CEQA but will be considered by the City's decision-makers prior to taking action on the proposed entitlements.
- 10b Comment noted. These are introductory statements that do not require a response under CEQA
- 10c The DEIR relies on the City's General Plan EIR (*GPEIR*) and the Project-specific Land Evaluation and Site Assessment (*LESA*, DEIR Appendix B) as protocols and procedures regarding farmland conversion. According to p. 5.3-9 of the *GPEIR*:

*"The Land Evaluation and Site Assessment (LESA) system ranks lands for suitability and inclusion in the Farmland Protection Program. LESA evaluates several factors, including soil potential for agricultural use, location, market access, and adjacent land use. These factors are used to numerically rank the suitability of parcels based on local resource evaluation and site considerations."*

Based on conversations with the Project Applicant and City Staff (Ryan Fowler, Senior Planner), no applications have been submitted for development of any parcels contiguous to the proposed Project as of the time of the preparation of this FEIR. Should site specific applications be submitted to the City of Menifee, the City would assess environmental impacts at that time.

- 10d The City utilizes the California Department of Conservation's (CDC) Farmland Mapping and Monitoring Program (FMMP). This information was utilized in the Initial Study (DEIR Chapter 8) and Subchapter 4.3, Agricultural Resources of the DEIR. The Notice of Preparation (NOP, DEIR Chapter 8) and Notice of Completion (NOC) were received by the State Clearinghouse (SCH) on August 31, 2017. The CDC was included as part of distribution by the SCH. The SCH determines the appropriate Agencies to distribute the NOP and DEIR. It was their determination that the CDC was the appropriate agency for distribution. Additionally, the City of Menifee sent the Riverside Farm Bureau a copy of the DEIR for review. No comments were received from either Agency. The agencies indicated above are part of the established CEQA process for EIR review and comment for the City of Menifee as the lead agency under CEQA. The City as lead agency has specific steps and procedures it must follow to meet the legal requirements of CEQA. There is no legal requirement under CEQA to consult or coordinate with the federal (agency) Department of Agriculture or Farm Aid as a non-governmental organization (NGO) regardless of what kind of work they do relative to agriculture in California. If the City separately chooses to consult with these other organizations, it does not directly affect the processing of this EIR regarding agricultural resources and the determination of impacts to those resources.

Please also see response to comment 10c as it pertains to City protocols.

The remaining comments are opinions of the commenter which are not supported by factual evidence and do not require a response.

- 10e These two Goals LU-1.1 and LU-1.4 are not directly applicable to the Project. Goal LU-1.1



does encourage the City to “concentrate growth in strategic areas to help preserve rural areas” to the degree it can, but the City has no direct control over the long-term viability or timely conversion of farmland to non-agricultural uses of the farmer can no longer economically maintain their property. In addition, Goal LU-1.4 encourages the City to protect rural and other low-density residential areas and does not address farming or agricultural uses. As stated in the DEIR (p. 4.3-30):

*“The City is focusing on developing land in an economically productive way that would serve the growing population. Thus, Menifee’s future development emphasizes mixed-use, commercial, industrial, and residential projects rather than supporting the continuation of agricultural uses, which are becoming less economically viable.”*

- 10f Please refer to response to comment 10e as it pertains to the City’s adopted policy towards agricultural land.
- 10g Please refer to response to comment 10e as it pertains to the City’s adopted policy towards agricultural land. These are informational statements and opinion that do not require a response under CEQA.
- 10h Comment noted. These are opinions that do not require a response under CEQA.
- 10i Comment noted. These are informational statements, a reiteration of information from the Draft EIR, and opinion that do not require a response under CEQA.
- 10j This comment is not set within its proper context. This comment pertains to the “Storie Index,” which is a component of the “total Land Evaluation (LE) Factors” of the *LESA* analysis. A complete analysis of the significance of the agricultural resources on the site and their evaluation using the *LESA* Model is provided on pp 4.3-9 through 4.3-27 in the DEIR, as supported by the *LESA* study prepared by TDA for this Project (DEIR Appendix B). See also previous responses to comments 6d through 6m in Letter #6. No additional analysis is required.
- 10k The reference to the Los Angeles Ports is not applicable to the established methodology of the *LESA* model. The discussion of the Water Resource Availability Score is contained on p. 10 of the *LESA Report* (DEIR Appendix B). It is stated on p. 10:

*“In drought years, irrigated production is not feasible. This is because the well that supplies water on site contains high levels of Total Dissolved Solids (TDS) over 2,000 parts per million (ppm), which is considered severe and will restrict crop growth.”*

The commenter is asking for the *LESA* model to account for proximity to the LA ports which but provides no evidence why such a large study area would be appropriate to determine water availability. The comment regarding artificially lowering the *LESA* score is an opinion which is not supported by factual evidence.

No additional analysis is required.

- 10l Comment noted. The CPFC is a grant issuing organization and not a regulatory agency so there is no established role for them as part of the CEQA process for this Project.

- 10m Comment noted. The California Farmland Conservancy Program is a grant issuing organization and not a regulatory agency so there is no established role for them as part of the CEQA process for this Project. Please reference response to comment 10e as it pertains to the City's adopted policy towards agricultural land. Because the agricultural resource-related impacts were determined to be less than significant, no mitigation (such as the conservation easements) is necessary or warranted. No additional response is required.
- 10n The comment is an opinion which is not supported by factual evidence. Please reference response to comment 10e as it pertains to the City's adopted policy towards agricultural land. Regarding the court case raised by the commenter (Friends of Kings River et al), the petitioner raised numerous challenges to the adequacy of the EIR under CEQA and said the County should have required the acquisition of agricultural conservation easements (ACEs) as a mitigation measure for the loss of farmland resulting from the Project. The court agreed that ACEs could be a useful tool for local jurisdictions to help mitigate the significant loss of agriculture, but the EIR for this Project determined impacts in this regard were less than significant, so no mitigation is required. In addition, the City cannot unilaterally impose a conservation easement for farmland preservation or protection on a landowner without a significance determination and agreement by the landowner, otherwise that would be considered a regulatory taking requiring compensation. The landowner would have to voluntarily agree to allow a conservation easement on their property, and the property owner in this case has indicated that continued farming (i.e., dairy operation) is no longer economically viable so artificially consigning it to a conservation easement would not eliminate the negative financial conditions of continuing to farm the property.
- 10o Comment noted. The commenter is correct that court cases in this regard have had conflicting results. For more information on the use of conservation easements, see response to comment 10n above.
- 10p For more information on the use of conservation easements, see response to comment 10n above.
- 10q A complete analysis of the significance of the agricultural resources on the site and their evaluation using the LESA Model is provided on pp. 4.3-9 through 4.3-27 in the DEIR, as supported by the LESA study prepared by TDA for this Project (DEIR Appendix B). See also previous responses to comments 6d through 6m in Letter #6. It would render the well established LESA Model inapplicable to expand or modify its methodology without consultation with the California Department of Conservation (i.e., its author) regardless of how applicable one commenter's opinion may be.
- 10r Based on conversations with the Project Applicant and City Staff (Ryan Fowler, Senior Planner), no applications have been submitted for development of any parcels contiguous to the proposed Project as of the time of the preparation of this FEIR. Should site specific applications be submitted to the City of Menifee, the City would assess environmental impacts at that time. See also response to comment 10c above.
- 10s Based on conversations with the Project Applicant and City Staff (Ryan Fowler, Senior Planner), no applications have been submitted for development of any parcels contiguous to the proposed Project as of the time of the preparation of this FEIR. Should site specific applications be submitted to the City of Menifee, the City would assess environmental

impacts at that time. See also response to comment 10c above. Regarding alternative sites, the property owner does not own other property in the surrounding area of similar size, nor would moving the proposed Project to another site eliminate any of the identified significant impacts of the Project. Therefore an alternative site for this Project is infeasible and was not evaluated in the EIR.

- 10t According to Section 15002(a)(1) of the State CEQA Guidelines, the basic purpose of the Draft EIR is to “inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.” This is factual information about the Project setting. For more information regarding demolition activities on the site, see the previous response to comments 7q and 7s through 7u in Letter #7.
- 10u The EIR was prepared as an informational document for the public and the City decision-makers upon which to make informed decisions – there was no assumption of actual approval within the analysis of the EIR. For information regarding demolition activities on the site, see the previous response to comments 7q and 7s through 7u in Letter #7.
- 10v For information regarding demolition activities on the site, see the previous response to comments 7q and 7s through 7u in Letter #7.
- 10w This comment pertains to activities that were included as part of the baseline setting information for the Project. For information regarding demolition activities on the site, see the previous response to comments 7q and 7s through 7u in Letter #7.
- 10x Comment noted. These are informational statements that do not require a response under CEQA.
- 10y Comment noted. These are informational statements that do not require a response under CEQA.
- 10z All Projects are subject to multiple unpredictable market forces. This is not particular to this Project. No additional response is required.
- 10aa Comment noted. These are informational statements that do not require a response under CEQA.
- 10bb Comment noted. These are informational statements that do not require a response under CEQA.
- 10cc Please reference response to comments 10c through 10k. No additional response is required.
- 10dd The City does not have an established procedure for evaluating requests to convert agricultural land to non-agricultural uses, the decision to propose a particular land use change is driven by local market forces and individual landowner decisions regarding the economics of long-term farming versus conversion of their properties. Development of residential uses is mainly addressed in the Housing Element of the General Plan. The Initial Study that focused the issued to be evaluated in detail in the EIR determined that impacts of the housing proposed by the Project would be evaluated under Land Use (DEIR Section 4.11) and Population and Housing (DEIR Section 4.13). The analysis in the EIR regarding housing impacts of the Project, including its relationship to and consistency

with the Land Use and Housing Elements of the General Plan, were determined to be less than significant and no mitigation was required. required

- 10ee The first part of the comment is part of the DEIR and no response is required. This is a for-sale, market-rate Project. The homes are not expected to be developed for a few years and there is no solid estimate for what the market will be. There are smaller detached condos and a range of lot and home sizes so the Project would appeal to a range of incomes.

The latter part of the comment does not pertain to items discussed under CEQA and no response is required. The City is, and will continue to be, in compliance with all State housing element laws. For information regarding how the City is meeting its housing goals, refer to the City's General Plan Housing Element Annual Progress Report for 2019, which was presented to the Planning Commission on February 26, 2020 ([http://menifeeca.iqm2.com/Citizens/Detail\\_Meeting.aspx?ID=1782](http://menifeeca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1782)).

- 10ff As discussed on p. 4.11-15 (Land Use and Planning of the DEIR):

*"The Project site is bordered on the north by single-family homes, on the south by a recreational vehicle campground/park, on the west by a partially developed tract of single-family homes, Agricultural uses exist to the east of the Project site. Briggs Road represents an easterly "urban growth limit" to the City. The Project would be a continuation of the development pattern to the north and to the east and would represent a logical stopping point for suburban style development within the City.*

*Based on the surrounding development pattern, and the urban growth line provided by Briggs Road any land use conflicts with the General Plan or zoning from the Project are considered less than significant. Lastly, as discussed in Subchapter 4.3, Agricultural and Forestry Resources, due to the suburban pattern of development existing and planning in the Project vicinity, the current high value of the land and quality of the water supply available from the wells on site makes this site unsuitable for continuing agricultural use."*

As discussed on p. 4.15-16 (Recreation of the DEIR):

*"The City of Menifee has a standard of five acres of parkland per 1,000 residents. General Plan buildout would create demand for 407 acres of new parkland. The General Plan designates 725 acres of parkland. Again, the additional parkland required by the Project's 965 residents generated by the Project was not included in these General Plan parkland numbers.*

*The following is the formula used to determine the recreational facilities generated by a Project residential population of 965 residents, at 5 acres per 1,000 residents:*

$$\begin{aligned} 305 \text{ units} \times 3.164 \text{ persons/house} &= 965 \text{ residents} \\ (965/1000) \times 5 &= 4.83 \text{ acres} \end{aligned}$$

*The Project proposes 20.1 acres of private recreational open space and trails.*



*Landscaped open space consists of 8.9 acres for the development of paseos, passive landscape areas, and perimeter landscaping. The Project will also provide 11 combined acres for parks and recreational areas, tot lots, a pool, sidewalks/trails and lakes. The main purpose for the lake is retention/detention; however, passive recreational opportunities (walks, seating) will be provided. Sidewalks and trails are planned for access to all these features. Reference **Figure 3-5, Open Space Plan**, in Chapter 3 of this DEIR.*

*Open space and recreational facilities that are provided strictly for residents' private use, are maintained by a Homeowner's Association, and will not be dedicated to the City for general public use, are not granted any parkland credit under Quimby. It is a requirement of the City's Quimby Ordinance Section 9.55 that the land be, in fact, dedicated. Therefore, no parkland credit is being provided for these private facilities."*

As discussed on p. 4.15-17 (Recreation of the DEIR):

*"In order to mitigate any Project impacts that would increase the use of existing neighborhood and regional parks or other recreational facilities such that physical deterioration of the facility would occur or be accelerated, the Project would be required to pay in-lieu fees in order to comply with the Quimby Act (as implemented under Municipal Code Section 9.55) (**Standard Condition SC-REC-1**, as outlined in Subsection 4.15.5). Per Section 9.55, these fees are to be used only for the purposes of developing new or rehabilitating existing neighborhood or community park or recreational facilities.*

*The Project will also pay Development Impact Fees per Ordinance No. 17-232 (**Standard Condition SC-REC-2**, as outlined in Subsection 4.15.5). DIF's are used to pay for the following recreation resources: regional parks, and regional multipurpose trails."*

No additional response is required.

- 10gg This comment does not pertain to CEQA and does not require a response.
- 10hh This comment does not pertain to CEQA. All Projects are subject to multiple unpredictable market forces. This is not particular to this Project. No additional response is required.
- 10ii As discussed on p. 4.15-16 (Recreation of the DEIR):

*"The Project proposes 20.1 acres of private recreational open space and trails. Landscaped open space consists of 8.9 acres for the development of paseos, passive landscape areas, and perimeter landscaping. The Project will also provide 11 combined acres for parks and recreational areas, tot lots, a pool, sidewalks/trails and lakes. The main purpose for the lake is retention/detention; however, passive recreational opportunities (walks, seating) will be provided. Sidewalks and trails are planned for access to all these features."*

Further on p. 4.15-16 (Recreation of the DEIR):

*“Open space and recreational facilities that are provided strictly for residents’ private use, are maintained by a Homeowner’s Association, and will not be dedicated to the City for general public use, are not granted any parkland credit under Quimby.*

- 10jj The first part of this comment does not pertain to CEQA. The figure of 305 units was based upon market analysis performed by the Project Applicant. The factors used by the City to determine acceptable density are contained in the Project Objective (p. 3-1 of the DEIR). No additional response is required.
- 10kk The first part of this comment does not pertain to CEQA. The commenter is directed to the General Plan Housing Element to better comprehend the planning and design principles and authorities guiding the authors of the City Housing Element 2013-2021. No additional response is required.
- 10ll Alternatives to the Project are contained in Chapter 5, Alternatives of the DEIR. The alternatives considered in Chapter 5 include:
1. No Project Alternative (NPA);
  2. Existing General Plan Alternative (EGPA); and
  3. Reduced Project Intensity Alternative (RPIA).

The applicable text in the State CEQA Guidelines occurs in Section 15126 as follows:

*Section 15126.6 (a): Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.*

*Section 15126.6 (b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.*

The alternative suggested by the commenter was not considered for analysis due to the lack of feasibility of agricultural operations on the Project site.

- 10mm Please reference response to comments 10c and 10e as it pertains to the City’s adopted policy towards agricultural land. The EIR determined impacts to agriculture were less than significant despite statements to the contrary by the commenter. Projects are always encouraged to meet their parkland and trail requirements first before requesting offsite mitigation. In this case the Project will mitigate its own impacts in this regard. The rest of

this comment cites information from the EIR regarding the lakes and does not require a response under CEQA.

- 10nn The commenter is referring to zoning which is a land use designation. The actual feasibility of operating such uses may not be practical given current economic conditions regardless of the zoning. In addition, the LESA Model and the EIR determined the impact of the loss of agriculture represented by this Project was less than significant and no mitigation is required. The DEIR was distributed by the City of Menifee and the SCH to the appropriate reviewing Agencies, including the Department of Conservation, Riverside Farm Bureau, State and Regional Water Quality Control Boards, and Eastern Municipal Water Department; these Agencies had no comments on the information provided in Subchapter 4.3 of the DEIR regarding agriculture.
- 10oo Please reference responses to comments 10c and 10e pertaining to the City's adopted policy towards agricultural land. The DEIR covers the conversion of agricultural land in Subchapter 4.3, pp. 4.3-10 through 4.3-28. There is only one (1) parcel within the City that has a General Plan Designation of Agriculture. That one parcel is the Project site, which encompasses 79.68 acres. The City encompasses approximately 29,813 acres. As a percentage of the entire City acreage, this represents 0.27 percent of the City. See response to comment 7hh in Comment Letter #7 for more details. This additional information is also being added to the Errata in Section 3.0 of this Final EIR. See response to comment 10d regarding appropriate Agencies to distribute the NOP and EIR to.
- 10pp The first part of the comment reiterates language in the DEIR, and does not require a response. Please reference responses to comments 2b (see responses to Letter #2), and responses to comments 10c and 10e pertaining to the City's adopted policy towards agricultural land and the Project's impact on existing, adjacent agricultural activities. There is no evidence presented that future residents and existing agricultural uses in the area (i.e., the egg ranch) will "certainly" have land use conflicts, but the City's right-to-farm ordinance is intended to minimize such conflict by warning future residents of ongoing agricultural activities.
- 10qq This comment is an opinion which is not supported by factual evidence. The commenter is asked to please reference the DEIR pp. 4.2-21 through 4.2-23 for analysis regarding scenic vistas. Please also reference the Initial Study pp. 16 and 17 for analysis regarding trees and rock outcroppings and Initial Study pp. 18 and 19 for analysis regarding light and glare. Based on the analysis in the DEIR and the Initial Study, these issue areas were determined to be less than significant.
- 10rr The first part of the comment reiterates language in the DEIR, and does not require a response. The second part of this comment does not pertain to CEQA. No additional response is required.
- 10ss This comment does not pertain to CEQA. This comment also is an opinion which is not supported by factual evidence. Alternatives to the Project are contained in Chapter 5, Alternatives of the DEIR. The commenter is asked to please reference the DEIR p. 5-23 for a summary of the Reduced Project Intensity Alternative. No additional response is required.
- 10tt This comment does not pertain to CEQA. No additional response is required.

- 10uu This comment does not pertain to CEQA. No additional response is required.
- 10vv This comment is taken out of context as it pertains to the Project. The General Plan Housing Element is a long-range planning document. The emphasized language in the comment includes the word “may” leaving it ambiguous as to whether this condition will actually materialize in the future. No additional response is required.
- 10ww This comment does not pertain to CEQA. This comment is a City-wide question and does not pertain specifically to this Project. The state of California has declared a statewide housing crisis, as evidence by, *inter alia*, the adoption of the Housing Crises Act of 2019, in addition to other legislative enactments. The Project assists the City to comply with these laws, as well as existing state Housing Element law, and address the need for housing both regionally and statewide. No additional response is required.
- 10xx According to pp. 2-8 of the DEIR, the NOP was distributed to a list of interested agencies compiled by the City, the State Clearinghouse (SCH#2017081069), and surrounding property owners within a 500’ radius of the Project site, as well as the entire Tierra Shores community to the north. The City’s NOP distribution list and the surrounding property owners list are contained in Subchapter 8.1, Notice of Preparation / NOP Distribution List.
- The City held a Scoping Meeting at Menifee City Hall on Thursday, September 14, 2017 at 6:30 p.m. The date, time, and location of the scoping meeting was announced in the NOP. Eight (8) written responses were submitted in response to the NOP. Two (2) people provided comments at the scoping meeting. The sign-in sheet for the Scoping Meeting is provided in Subchapter 8.2, NOP Comment Letters and Scoping Meeting Comments. No additional response is required.
- 10yy The commenter is referencing the General Plan and not the specific Project. The General Plan Goals referenced by the commenter are the responsibility of the City and are implemented on a City-wide basis. The Project specifically implements Goals HE-3.3 and HE-3.6. No additional response is required.
- 10zz The Project cannot conflict with state law regarding persons with disabilities, homeless facilities, or with the State’s fair housing requirements. In addition, the City no longer uses the Riverside County Zoning Code. According to Table 2-2, Residential and Open Space Permitted, Conditionally Permitted, and Prohibited Land Uses, of the Rockport Ranch Specific Plan (SP, DEIR Appendix O), condominiums and townhomes and multi-family dwellings are a permitted use in Planning Area 1 (Courtyard Residential). As stated on p. 2-2 of the SP: “those uses not specifically listed in the table are subject to review based on the consistency within the purpose and intent of the land use categories and planning areas and are subject to the approval of the Community Development Director. The Director may refer uses or interpretation of permitted uses to the Planning Commission.” The commenter’s other comments regarding the City’s zoning code and Housing Element are not relevant to this Project or EIR, so no additional response is required.
- 10aaa This comment does not pertain to CEQA. No additional response is required.
- 10bbb This comment pertains to the City and does not pertain to CEQA. No additional response is required.
- 10ccc As stated on p. 4.13-8 of the DEIR: “The Project represents a 1.02% increase in population over estimated 2017 population and a 0.76% increase in population over

projected 2040 population in the City of Menifee and represents a 0.038% increase in population over estimated 2017 population and a 0.030% increase in population over the projected 2040 population in Riverside County.” This increase cannot be construed as wildly exceeding population projects in the General Plan or AQMP. The DEIR is written in a manner such that if the City approves the Project, as described in Chapter 2 of the DEIR (p. 2-1): “The City of Menifee (City) is serving as the Lead Agency for compliance with the California Environmental Quality Act (CEQA) based on its responsibility to approve the proposed GPA No. 2016-287, CZ No. 2016-288, SP No. 2016-286, and TR No. 2016-285 (TR 37131), the required entitlements for the Project.”

The Project is shown to be within SCAQMD standards as demonstrated in Subchapter 4.4, Air Quality of the DEIR. As stated on p. 4.4-21 of the DEIR: “The Project-specific evaluation of emissions presented in the preceding analysis demonstrates that after implementation of Standard Conditions SC-AQ-1 through SC-AQ-4, the Project would not result in exceedances of regional air quality thresholds during construction. Therefore, the Project construction-source air emissions would be considered a less than significant impact. Project operational-source emissions will exceed applicable SCAQMD regional thresholds for emissions. With the implementation of Mitigation Measure MM-AQ-1, any impacts, namely ROG, can be reduced to a less than significant level. All other criteria pollutants are below thresholds.” No additional response is required.

10ddd The first part of this comment is a factual statement about landslides and rockfalls. The second part of this comment contains a passage from p. 4.7-12 of the DEIR. Neither requires a response. The last portions are questions which are not applicable to the Project. No additional response is required.

10eee Subsidence is discussed on pp. 4.7-12 through 4.7-13 and p. 4.7-18 of the DEIR. Even though regional seismicity is an area-wide concern, the EIR determined that potential risks from subsidence were less than significant in this case as the City’s development review process requires new development to comply with applicable building standards and codes relative to expected seismic conditions like subsidence. According to the analysis contained on p. 4.7-18 of the DEIR: “As a standard condition of approval, the Project will be required to comply with the requirements of the most recent California Building Code (CBC) at the time of grading and building issuance (SC-GEO-1). This is a standard requirement and is not considered unique mitigation under CEQA.

In addition, Mitigation Measure MM-GEO-1 will be implemented; thereby, the Project will be required to comply with the design recommendations contained in the *Geo Evaluation* (DEIR Appendix F1). After incorporation of Standard Condition SC-GEO-1 and Mitigation Measure MM-GEO-1, impacts due to subsidence will remain less than significant.”

Lateral Spreading is discussed on pp. 4.7-13 and pp. 4.7-17 through 4.7-18 of the DEIR. Even though regional seismicity is an area-wide concern, the EIR determined that potential risks from lateral spreading were less than significant in this case as the City’s development review process requires new development to comply with applicable building standards and codes relative to expected lateral spreading conditions. According to pp. 4.7-17-4.7-18 of the DEIR: “As a standard condition of approval, the Project will be required to comply with the requirements of the most recent California Building Code (CBC) at the time of grading and building issuance (Standard Condition SC-GEO-1). This is a standard requirement and is not considered unique mitigation under CEQA.



In addition, Mitigation Measure GEO-1 will be implemented; thereby, the Project will be required to comply with the design recommendations contained in the *Geo Evaluation*.

After incorporation of Standard Condition SC-GEO-1 and Mitigation Measure MM-GEO-1, impacts due to liquefaction and lateral spreading will remain less than significant."

Project specific standard conditions and mitigation are identified to reduce impacts to a less than significant level.

- 10fff Agricultural toxins (beyond methane) are discussed in *Phase I Environmental Site Assessment 29875 Newport Road Menifee, Riverside County, California 92584*, prepared by GEOTEK, Inc., February 2016 (*Phase I ESA*, DEIR Appendix G1). According to p. 2 of the *Phase I ESA*: "This Phase I Environmental Site Assessment has not revealed evidence of a recognized environmental condition or concern in connection with the subject Site." In response to comments regarding the possible past use of agricultural chemicals on the site, a limited Phase II Environmental Site Assessment (soil investigation) was conducted by Geotech Inc. and is documented in their report dated March 26, 2020 (FEIR Appendix I). The Phase II report found that concentrations of organo-chlorinated pesticides (OCPs) on the site ranged from ND (non-detect) in four samples and up to 5.5 and 11 micrograms per kilogram in two samples as compared to a residential soil standard of 2,000 micrograms per kilogram (p. 2, Geotech 2020). Based on this additional information, there is no risk to construction workers or future residents of the site, so potential impacts in this regard are less than significant and no mitigation is required. This information does not change the analysis or conclusions of the EIR or require modified or additional mitigation. Therefore, this does not constitute significant new information and does not trigger the need to recirculate the DEIR.
- 10ggg It is standard for the NOP and EIR to be circulated to the California Air Resources Board and the South Coast Air Quality Management Board. No additional response is required.
- 10hhh As stated on p. 4.8-12 of the DEIR: "SB 375, the 2008 Sustainable Communities and Climate Protection Act, was signed into law in September 2008 and requires CARB to set regional targets for reducing passenger vehicle GHG emissions in accordance with the Original Scoping Plan. The purpose of SB 375 is to align regional transportation planning efforts, regional GHG emissions reduction targets and fair-share housing allocations under state housing law." According to p. 4.11-6 of the DEIR: *Regional Transportation Plan/ Sustainable Communities Strategy*: "On April 7, 2016, SCAG's Regional Council adopted the 2016-2040 Regional Transportation Plan/ Sustainable Communities Strategy (2016 RTP/SCS). The Plan is a long-range visioning plan that balances future mobility and housing needs with economic, environmental and public health goals. The Plan charts a course for closely integrating land use and transportation – so that the region can grow smartly and sustainably." Consistency with the 2016 RTP/SCS Goals is contained in Table 4.11-2 of the DEIR (pp. 4.11-12) and 2016 RTP/SCS Policies is contained in Table 4.11-3 of the DEIR (pp. 4.11-13). No additional response is required.
- 10iii The Project is required to comply with the most recent version of the Energy Code, as adopted by the City at the time of permit issuance. This will assure that compliance is obtained. No additional response is required.
- 10jjj The first comment pertains to the fact that the City does not have an adopted Climate Action Plan and relies on SCAQMD criteria. This is a true statement that does not require

a response. The methodology used in the *Air Quality and Greenhouse Gas Analysis for the Rockport Ranch Project, Menifee, California*, dated January 29, 2018, prepared by RECON Environmental, Inc. (AQ/GHG Analysis, DEIR Appendix C) is appropriate. Based on conversations with the Project Applicant and City Staff (Ryan Fowler, Senior Planner), there are no plans for development of any contiguous parcels. No additional response is required.

10kkk The risk of disturbing soil at the Project site containing methane during construction is discussed in Subchapter 4.9, Hazards, of the DEIR. Existing conditions, Project impacts and Standard Conditions and Mitigation Measures are provided which demonstrate that the Project will result in a less than significant impact with incorporation of these items. Agricultural toxins (beyond methane) are discussed in Response to Comment 10fff above which concluded there is no risk to construction workers or future residents of the site, so potential impacts in this regard are less than significant and no mitigation is required.

10III Based on conversations with the Project Applicant and City Staff (Ryan Fowler, Senior Planner), no applications have been submitted for development of any parcels contiguous to the proposed Project as of the time of the preparation of this FEIR. Should site specific applications be submitted to the City of Menifee, the City would assess environmental impacts at that time. No additional response is required.

10mmm The potential safety hazards due to the proximity of the Project site to the March Air Reserve base are outlined in the DEIR on pages 4.9-19 through 4.9-21, and also provided below. The Airport Land Use Commission has reviewed the Project and found it consistent with the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan.

*Approximately 65% of the Project site is located in the southerly limits of compatibility zone (Zone E) for the March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan. According to the March Air Reserve Base / Inland Port Airport Land Use Compatibility Plan, Zone E (Other Airport Environs) has low noise impacts (this area is beyond the 55-CNEL noise contour), and risk of accidents is low. There are also no restrictions for dwelling units per acre in this Zone and no hazards to flight. The runway for March Air Reserve Base/Inland Port Airport is located approximately 13 miles to the northwest of the Project site.*

*The Project is required to be reviewed by the Riverside County Airport Land Use Commission (ALUC) before being considered for approval by the City. If ALUC determines that a development plan is inconsistent with the Airport Land Use Plan, ALUC requires the local agency to reconsider its approval regarding land use compatibility. The local agency may overrule the ALUC by a two-thirds vote of its governing board if it makes specific findings that the proposed action is consistent with Section 21670 of the California Public Utilities Code (California Aeronautics Act).*

*As shown on Figure 5.8-4, Airport Compatibility Zones, Perris Valley Airport, of the GPEIR, the Project site is not located within any Compatibility Zones of the Perris Valley Airport. The runway is located approximately 6.8 miles to the northwest of the Project site. No impacts are anticipated.*

*An application was submitted to ALUC for General Plan Amendment (2016-287), Specific Plan (2017-286), Zone Change (2016-288), and Tentative Tract Map No. 37131 (2016-285). The Project was assigned File No. ZAP1283MA17. The ALUC Director found the Project to be consistent with the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan (March ALUCP) on September 28, 2017 (reference ALUC Letter).*

*The ALUC Letter stated the following:*

*"Under the delegation of the Riverside County Airport Land Use Commission (ALUC) pursuant to ALUC Resolution No.15-01 (as adopted on August 13, 2015), staff reviewed City of Menifee Case Nos. 2016-286 (Specific Plan), a proposal to establish a new "Rockport Ranch" Specific Plan with single-family residential and open space/recreation uses on 79.68 acres located at the southwest corner of Old Newport Road and Briggs Road, 2016-287 (General Plan Amendment), a proposal to amend the site's General Plan Land Use Element designation from Agriculture (AG) to Specific Plan (SP), and 2016-288, a proposal to change the zoning classification of the site from Heavy Agriculture - 10-Acre Minimum (A-2-10) to Specific Plan (SP).*

*The site is located within Airport Compatibility Zone E of the March Air Reserve Base/Inland Port Airport Influence Area (AIA). Within Compatibility Zone E of the March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan, residential density is not restricted.*

*As ALUC Director, I hereby find the above-referenced General Plan Amendment, Specific Plan, and Zone Change CONSISTENT with the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan ("March ALUCP").*

*This finding of consistency relates to airport compatibility issues and does not necessarily constitute an endorsement of the proposed General Plan Amendment, Specific Plan, and Zone Change. As the site is located within Compatibility Zone E, both the existing and proposed General Plan designation and zoning of this property are consistent with the March ALUCP."*

*Four conditions were contained in the ALUC Letter. These will be included as **Standard Condition SC-AES-1**, and **Mitigation Measures MM-HAZ-9** through **MM-HAZ-11**, which require that lighting installed be shielded, prohibited uses during operations, require disclosing proximity to airport, and set parameters for the design of above-ground basins, as outlined in Subsection 4.9.5 below.*

***Standard Condition SC-AES-1**, and **MM-HAZ-9** through **MM-HAZ-11** will be incorporated so that future residents of the Project will be aware of the potential impacts from the March Air Reserve Base/Inland Port Airport. This will ensure that any safety hazards for people residing or working in the Project area from the Project (being located proximity the March Air Reserve Base/Inland Port Airport) will be reduced to a less than significant level.*

10nnn This comment discusses several court cases which discuss water supply. Water usage is

discussed in Subchapter 4.18 Utilities and Service Systems Threshold 4.18.4.a and 4.18.4.b). Adequate water is available to serve the Project. The hydrologic and water quality systems designed for the Project have been prepared in conformance with local, state and federal requirements, and have been reviewed and approved by the City staff. No additional response is required.

10ooo (1<sup>st</sup> paragraph, 1<sup>st</sup> and 2<sup>nd</sup> sentences) The first comment reiterates language from p. 4.10-9 of the DEIR which does not require a response.

(1<sup>st</sup> paragraph, 3<sup>rd</sup> sentence) Agricultural toxins (beyond methane) are discussed in Response to Comment 10fff above which concluded there is no risk to construction workers or future residents of the site, so potential impacts in this regard are less than significant and no mitigation is required.

(1<sup>st</sup> paragraph, 4<sup>th</sup> sentence and indented 2<sup>nd</sup> paragraph) The commenter asks, "Why would water be available to supply the Project and two lakes but not a farm?" The future use of water for agriculture depends largely the actual type of agricultural use, and often requires year-round application of water such as for row crops, citrus, etc. In contract, maintaining a small lake feature within the Project would require initial filling then only infrequent flows to maintain the water surface level as a result of evaporation which varies during the year.

(3<sup>rd</sup> paragraph) The next comment reiterates language from p. 4.10-11 of the DEIR which does not require a response. The "extent feasible" reflects the portion of the Project site which does not include impervious surfaces. This will be further refined at the permit issuance stage of Project development. On-site retention describes retention facilities that are included on-site of the Project. The hydrologic and water quality systems designed for the Project have been prepared in conformance with local, state and federal requirements, and have been reviewed and approved by the City staff. On-site hydrological concerns have been addressed in Threshold c.i (pp. 4.10-18 through 4.10-22 and Threshold c.ii (p. 4.10-23) of the DEIR.

10ppp Please reference response to comments 10c through 10k. These are opinions that do not require a response under CEQA.

10qqq As stated on p. 4.13-8 of the DEIR: "The Project represents a 1.02% increase in population over estimated 2017 population and a 0.76% increase in population over projected 2040 population in the City of Menifee and represents a 0.038% increase in population over estimated 2017 population and a 0.030% increase in population over the projected 2040 population in Riverside County." Development will be incremental and will not result in a "sudden spike" in population.

10rrr Public services would require expansion. This is discussed in detail in Subchapter 4.14, Public Services of the DEIR. Please reference response to comments 10c through 10e as it pertains to the City's policies pertaining to agricultural resources. No additional response is required. Comment noted. These are opinions that do not require a response under CEQA.

10sss Comment noted. These are opinions that do not require a response under CEQA. The City of Menifee considers each project/application on a case by case basis and has established guidelines that must be followed for any general plan amendment or change of

zone application (<http://online.encodeplus.com/regs/menifee-ca/doc-viewer.aspx?secid=1069#secid-1069>).

10ttt Noise generated by the Project is discussed in the DEIR (pp. 4.12-15 through 4.12-29). Two Standard Conditions and one Mitigation Measure (DEIR pp. 4.12-30 and 4.12-31) are provided to reduce potential noise impacts to a less than significant level.

10uuu There is no statement on page 4.14-2 indicating that "...fire services would be sufficient to accommodate the Project." The information contained in the EIR regarding Fire Services is provided below. (EIR pp. 4.14-2)

*Comment Letter #5 was received from the Riverside Unit Riverside County Fire Department (dated 10/3/17) regarding public services in response to the NOP. Within this comment letter were the following comments pertaining to public services:*

- Station 76, which is located at 29950 Menifee Road, City of Menifee, provides fire protection to the Project.*
- The Project will contribute a cumulative adverse impact to the Fire Department's ability to provide an acceptable level of service due to an increased number of emergency and public service calls. Proportional mitigation shall be required via capital improvements and/or impact fees.*
- Additional review will be conducted upon receipt of building plans.*

*Response: The location of Station 76 and its relationship to the Project are duly noted. The analysis below will address Project impacts to fire services and facilities and will discuss any applicable mitigation. Fire Department review at the building plan submittal stage is a standard procedure.*

The Fiscal Impact Analysis prepared for the Project discusses net negative impact the Project will have and the EIR provides mitigation to off-set this impact. (EIR pg. 4.14-7)

*The FIA demonstrates the annual recurring revenues to the City's General Fund at Project build-out will equal \$362,875 compared to recurring fiscal costs of \$310,933, a net benefit to the City of approximately \$51,942. The largest sources of revenue will result from property tax (39.5%), property tax in lieu of VLF (20.5%), and sales tax (15.6%). Based upon the City's review of the FIA (FIA Review, **Appendix L2**), the City has determined that there will be a shortfall of revenues. The FIA Review states:*

*"A separate analysis was prepared for the City that illustrates the impacts to public safety from development. We prepared a tabular analysis that included information planned for FY 2017-18 and determined the appropriate set of General Fund revenues and expenditures on a per capita basis. SCG evaluated this cost per capita assuming a full build-out scenario and determine the proportionate share associated to the development of new residential properties. This report translates to (\$479) for each newly developed detached single family residential and (\$354) per multi-family residential unit needed to mitigate future impacts."*

*Given the net negative impact the Project will have on the City's General Fund, the developer shall establish a funding mechanism, such as a safety*



*services tax or payment of an in-lieu fee to mitigate its impact to the City's General Fund for Public Safety Services. This is included in **Mitigation Measure MM-PS-1**.*

10vvv This comment is addressed in p. 4.15-16 (Recreation of the DEIR):

*"Open space and recreational facilities that are provided strictly for residents' private use, are maintained by a Homeowner's Association, and will not be dedicated to the City for general public use, are not granted any parkland credit under Quimby. It is a requirement of the City's Quimby Ordinance Section 9.55 that the land be, in fact, dedicated. Therefore, no parkland credit is being provided for these private facilities."*

(Note: the Quimby Ordinance has been amended since circulation of the DEIR. This DEIR text will be modified in the Errata Section of this Final EIR.)

It is likely Project residents will primarily use recreational facilities within the gated community, although there may be some incremental use of City or regional facilities by Project residents. As long as the Project provides sufficient onsite facilities potential impacts to other recreational facilities are considered to be less than significant and do not require mitigation.

10www As discussed on p. 4.15-16 (Recreation of the DEIR):

*"The City of Menifee has a standard of five acres of parkland per 1,000 residents. General Plan buildout would create demand for 407 acres of new parkland. The General Plan designates 725 acres of parkland. Again, the additional parkland required by the Project's 965 residents generated by the Project was not included in these General Plan parkland numbers.*

*The following is the formula used to determine the recreational facilities generated by a Project residential population of 965 residents, at 5 acres per 1,000 residents:*

$$\begin{aligned} 305 \text{ units} \times 3.164 \text{ persons/house} &= 965 \text{ residents} \\ (965/1000) \times 5 &= 4.83 \text{ acres} \end{aligned}$$

*The Project proposes 20.1 acres of private recreational open space and trails. Landscaped open space consists of 8.9 acres for the development of paseos, passive landscape areas, and perimeter landscaping. The Project will also provide 11 combined acres for parks and recreational areas, tot lots, a pool, sidewalks/trails and lakes. The main purpose for the lake is retention/detention; however, passive recreational opportunities (walks, seating) will be provided. Sidewalks and trails are planned for access to all these features. Reference **Figure 3-5, Open Space Plan**, in Chapter 3 of this DEIR.*

*Open space and recreational facilities that are provided strictly for residents' private use, are maintained by a Homeowner's Association, and will not be dedicated to the City for general public use, are not granted any parkland credit under Quimby. It is a requirement of the City's Quimby Ordinance*

*Section 9.55 that the land be, in fact, dedicated. Therefore, no parkland credit is being provided for these private facilities."*

The Project is the only development proposed on the site. The next comment is a reiteration of p. 4.14-25 of the DEIR. No response is required. Based on conversations with the Project Applicant and City Staff (Ryan Fowler, Senior Planner), there are no plans for development of any contiguous parcels. No additional response is required. Any "future development" pertains to permits being issued for housing units, which will trigger the payment of fees.

(Note: the Quimby Ordinance has been amended since circulation of the DEIR. This DEIR text will be modified in the Errata Section of this Final EIR.)

10xxx The first comment is a reiteration of p. 4.16-79 of the DEIR. No response is required. The second comment is an opinion that does not require a response under CEQA.

10yyy Alternatives to the Project are contained in Chapter 5, Alternatives of the DEIR. The alternatives considered in Chapter 5 include:

1. No Project Alternative (NPA);
2. Existing General Plan Alternative (EGPA); and
3. Reduced Project Intensity Alternative (RPIA).

The applicable text in the State CEQA Guidelines occurs in Section 15126 as follows:

*Section 15126.6 (a): Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.*

*Section 15126.6 (b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.*

Contrary to this comment, 3 alternatives were considered for analysis on the Project site. The alternative suggested by the commenter was not considered for analysis due to the lack of feasibility of agricultural operations on the Project site.

10zzz The commenter offers opinions on where housing in the City should be built (i.e., on the hillsides) to leave the valley floor to support continued agriculture. These are opinions and the issue of continuing agriculture on this Project site has been addressed in the previous response to comments 6d through 6m in Letter #6. These opinions do not require additional responses under CEQA.

10aaaa Comment noted. These are opinions that do not require a response under CEQA but will be considered by the City's decision-makers prior to taking action on the proposed entitlements.

**Comment Letter No.11**

Governor's Office of Planning and Research (10-21-19)



Gavin Newsom  
Governor

STATE OF CALIFORNIA

Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Kate Gordon  
Director

October 21, 2019

Ryan Fowler  
Menifee, City of  
29844 Haun Road  
Menifee, CA 92586

Subject: Rockport Ranch  
SCH#: 2017081069

Dear Ryan Fowler:

The State Clearinghouse submitted the above named EIR to selected state agencies for review. The review period closed on 10/18/2019, and the comments from the responding agency (ies) is (are) available on the CEQA database for your retrieval and use. 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.

10a

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."

10b

**Check the CEQA database for submitted comments for use in preparing your final environmental document: <https://ceqanet.opr.ca.gov/2017081069/2>.** Should you need more information or clarification of the comments, **we recommend that you contact the commenting agency directly.**

10c

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.

10d

Sincerely,

**S r**

Scott Morgan  
Director, State Clearinghouse

cc: Resources Agency

**Responses to Letter No. 11**

- 11a      These are informational statements that do not require a response.
- 11b      Comment noted. No further response is required.
- 11c      Comment noted. No further response is required.
- 11d      These are informational statements that do not require a response.



### 3.0 ERRATA

Changes to the EIR are noted below. Underlining indicates additions to the text; striking indicates deletions to the text. The changes to the EIR do not affect the overall conclusions of the environmental document. These errata represent changes to the EIR to provide clarification, corrections, or revisions as needed as a result of public comments on the EIR, or due to additional information received during the public review period. These clarifications and corrections are not considered to result in any new or more severe impacts than identified in the EIR and are not otherwise deemed to warrant 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~~).

Draft EIR pages 4.3-30 and 4.3-31 in Agriculture and Forestry Resources, text is being revised for clarification based on the Comment Letter received on the Draft EIR from Mitchell M. Tsai, Attorney at Law, on behalf of Southwest Regional Council of Carpenters, Comments 7gg, 7hh, and 7ii. This revision is also reflected in Draft EIR Chapter 6, page 6-4. The modification is as follows:

The City is focusing on developing land in an economically productive way that would serve the growing population. Thus, Menifee's future development emphasizes mixed-use, commercial, industrial, and residential projects rather than supporting the continuation of agricultural uses, which are becoming less economically viable.

The Project-specific *LESA* indicated that the Project will have a less than significant impact due to the conversion of agricultural lands. **Standard Condition SC-AG-1** has been included proposed to reduce conflicts between the Project and existing agricultural uses in proximity of the Project site to a less than significant level. The Project site is not subject to the Williamson Act.

The cumulative study area for agricultural resources is the City of Menifee (City). There is only one (1) parcel within the City that has a General Plan Designation of Agriculture. That one parcel is the Project site, which encompasses 79.68 acres. The City encompasses approximately 29,813 acres (General Plan Exhibit LU-4, Land Use Buildout Summary -

[https://www.cityofmenifee.us/DocumentCenter/View/1015/Exhibit\\_LU-4\\_BuildoutSummary\\_HD0913?bidId=](https://www.cityofmenifee.us/DocumentCenter/View/1015/Exhibit_LU-4_BuildoutSummary_HD0913?bidId=)

As a percentage of the entire City acreage, this represents 0.27 percent of the City. As noted above, the *LESA* analysis shows that the change to a non-agricultural Land Use Designation represents a less than significant project specific impact. Since this less than significant project specific impact does not incrementally contribute to other similar agricultural impacts in the City to create a cumulatively considerable impact, there is also no significant cumulative impact.

~~Since the Project will not have any significant adverse impact to agricultural or forestry resources or resource values, it cannot make a cumulatively considerable contribution to such resources or values. The Project's cumulative~~

~~agricultural and forestry impacts are considered less than significant.~~

Draft EIR page 4.3-30 in Agriculture and Forestry Resources, Standard Condition SC-AG-1 text is being revised for clarification based on the Comment Letter received on the Draft EIR from the South Coast Air Quality Management District, Comment 4f. The modification is as follows:

- SC-AG-1**      **The Project applicant shall comply with Assembly Bill 2881 and City of Menifee Ordinance No. 625. Disclosure shall be provided prior to the close of escrow on the sale of individual homes. This shall be obtained by including the following disclosures on the title report:**
- 1. The property is located within 1 mile of farmland as designated on the most recent Important Farmland Map; and**
  - 2. Residents could be subject to inconvenience or discomfort resulting from accepted farming activities as per provisions of the City's Right-to-Farm Ordinance.**

To protect public health in the South Coast Air Basin, the public can make a complaint about air quality problems by calling 1-800-CUT-SMOG (1-800-288-7664), e-mailing to [cut\\_smog@aqmd.gov](mailto:cut_smog@aqmd.gov), or filing out a complaint through the South Coast AQMD's On-Line Complaint Reporting System, available at <http://www3.aqmd.gov/webappl/complaintsystemonline/NewComplaint.aspx>. (An air quality complaint is any injury, detriment, nuisance, or annoyance occurring as a result of air contaminants or other materials, including [but not limited to] smoke, dust, or odors.)

Draft EIR page 4.5-26 in Biological Resources, Mitigation Measure MM-BIO-1 is being revised for clarification based on the Comment Letter received on the Draft EIR from the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife, Comment 5t. This revision is also reflected in Draft EIR Chapter 1, pages 1-13 and 1-14, in **Table 1-2, Summary of Impacts and Mitigation Measures Discussed in This Draft EIR**. The modification is as follows:

- MM-BIO-1:**      **A 30-day preconstruction survey for burrowing owl is required by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) to confirm the continued presence of burrowing owl within the survey area. The survey shall be conducted by a qualified biologist no more than 30 days prior to ground disturbance in accordance with MSHCP survey requirements to avoid direct take of burrowing owl. If burrowing owl are determined to occupy the Project site or immediate vicinity, California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, the Western Riverside County Regional Conservation Authority, and the City of Menifee Community Development Department will shall be notified, within three business days of the**

**discovery of the owl(s), and avoidance measures will be implemented, as appropriate, pursuant to the MSHCP, the California Fish and Game Code, the MBTA, and the mitigation guidelines prepared by the CDFW (2012).**

**The following measures are recommended in the CDFW guidelines to avoid impacts on an active burrow:**

- **No disturbance should occur within 50 meters (approximately 160 feet) of occupied burrows during the non-breeding season.**
- **No disturbance should occur within 75 meters (approximately 250 feet) of occupied burrows during the breeding season.**

**For unavoidable impacts, passive or active relocation of burrowing owls would need to be implemented through the development of a Burrowing Owl Protection and Relocation Plan approved by the Service, CDFW, and the Western Riverside County Regional Conservation Authority by a qualified biologist outside the breeding season, in accordance with procedures set by the MSHCP and in coordination with the CDFW.**

Draft EIR, Biological Resources, Appendix D2; the reference in Appendix D2 on p. 1 under Methods, "The focused survey for burrows and owls was conducted in accordance with accepted protocol ("Burrowing Owl Survey Protocol and Mitigation Guidelines," The California Burrowing Owl Consortium, April 1993)." is an editorial error. The burrowing owl surveys for the Project were conducted in accordance with accepted MSHCP guidelines.

Draft EIR pages 4.6-27 to 4.6-28 and in Cultural Resources, and pages 4.17-11 to 4.17-12 in Tribal Cultural Resources, Standard Condition text is being revised based on the Comment Letter received on the Draft EIR from the Pechanga Band of Luiseño Mission Indians, Comment 8j. The modification is as follows:

**SC-CUL-3 (Inadvertent Archeological Find). If during ground disturbance activities, unique cultural resources are discovered that were not assessed by the archaeological report(s) and/or environmental assessment conducted prior to project approval, the following procedures shall be followed. Unique cultural resources are defined, for this condition only, as being multiple artifacts in close association with each other, but may include fewer artifacts if the area of the find is determined to be of significance due to its sacred or cultural importance as determined in consultation with the Native American Tribe(s).**

- i. **All ground disturbance activities within 100 feet of the discovered cultural resources shall be halted until a meeting is convened between the developer, the archaeologist, the tribal representative(s) and the Community Development Director to discuss the significance of the find.**
- ii. **At the meeting, the significance of the discoveries shall be discussed and after consultation with the tribal**

- representative(s) and the archaeologist, a decision shall be made, with the concurrence of the Community Development Director, as to the appropriate mitigation (documentation, recovery, avoidance, etc.) for the cultural resources.
- iii. Grading of further ground disturbance shall not resume within the area of the discovery until an agreement has been reached by all parties as to the appropriate mitigation. Work shall be allowed to continue outside of the buffer area and will be monitored by additional Tribal monitors if needed.
  - iv. Treatment and avoidance of the newly discovered resources shall be consistent with the Cultural Resources Management Plan and Monitoring Agreements entered into with the appropriate tribes. This may include avoidance of the cultural resources through project design, in-place preservation of cultural resources located in native soils and/or re-burial on the Project property so they are not subject to further disturbance in perpetuity as identified in Non-Disclosure of Reburial Condition.
  - v. If the find is determined to be significant and avoidance of the site has not been achieved, a Phase III data recovery plan shall be prepared by the project archeologist, in consultation with the Tribe, and shall be submitted to the City for their review and approval prior to implementation of the said plan.
  - vi. Pursuant to Calif. Pub. Res. Code § 21083.2(b) avoidance is the preferred method of preservation for archaeological resources and cultural resources. If the landowner and the Tribe(s) cannot agree on the significance or the mitigation for the archaeological or cultural resources, these issues will be presented to the City Community Development Director for decision. The City Community Development Director shall make the determination based on the provisions of the California Environmental Quality Act with respect to archaeological resources, recommendations of the project archeologist and shall take into account the cultural and religious principles and practices of the Tribe. Notwithstanding any other rights available under the law, the decision of the City Community Development Director shall be appealable to the City Planning Commission and/or City Council.”

Draft EIR pages 4.6-11 through 4.6-13 in Cultural Resources, text is being revised based on the Comment Letter received on the Draft EIR from the Pechanga Band of Luiseño Mission Indians, Comments 8q through 8t. The Cultural Resources Assessment prepared for the Project (Draft EIR Appendix E1) was also revised based on these comments and the revised report is attached to this Final EIR as Appendix D. The modifications are as follows:

**4.6.2.3.c      *Late Prehistoric Period***

~~Around 2000 BP, dramatic cultural changes occurred. An intrusion of Shoshonean speakers into the region occurred around 1500 BP. The Late~~

Prehistoric period is recognized archaeologically by smaller projectile points, the replacement of flexed inhumations with cremation, the introduction of ceramics and an emphasis on inland plant food collection and processing, especially acorns. Inland semi-sedentary villages were established along major water courses, and montane areas were seasonally occupied to exploit acorns and piñon nuts, resulting in permanent milling stations on bedrock outcrops. Mortars for acorn processing increased in frequency relative to seed-grinding basins. This period is known archaeologically as the San Luis Rey Complex.

#### **4.6.2.3.d Ethnohistoric Period**

This period refers to the brief time when Native American culture was initially being affected by Euroamerican culture and historical records on Native American activities were limited. Spanish explorers first encountered coastal villages of indigenous people in 1769 and later established the Mission San Luis Rey de Francia in 1798, 4 miles inland from the mouth of the San Luis Rey River. The ~~Shoshonean~~ inhabitants of the region were called Luiseños by Franciscan friars who named the San Luis Rey River and established the San Luis Rey Mission in the heart of Luiseño territory. Their territory encompassed an area from roughly Agua Hedionda on the coast, east to Lake Henshaw, north into the Hemet Region, and west through San Juan Capistrano to the coast.

The traditional Luiseño religion is a complex and deeply philosophical belief system with powerful religious leaders, elaborate ceremonies, and a veil of secrecy. Each ritual and ceremonial specialist maintained the knowledge of the full meaning of a ceremony in secrecy and passed on the knowledge to only one heir. The decimation of the population after European contact undoubtedly caused the loss of some religious specialists and brought about abbreviated versions of ceremonies, many of which are still practiced today. Surviving ceremonies include initiations ~~for cult candidates~~, installation of religious chiefs, funerals, and clothes burning.

When California became a sovereign state in 1849, the Luiseño were recruited more heavily as laborers and experienced even harsher treatment. Conflicts between Indians and encroaching Anglos finally led to the establishment of reservations for some Luiseño populations, including the ~~La Jolla-Pechanga~~ Reservation in ~~1875~~ 1822. Other Luiseños were displaced from their homes, moving to nearby towns or ranches. The reservation system interrupted Luiseño social organization and settlement patterns, yet many aspects of the original Luiseño culture still persist today. Certain rituals and religious practices are maintained, and traditional games, songs, and dances continue as well as the use of foods such as acorns, yucca, and wild game.

Draft EIR page 4.9-23 in Hazards and Hazardous Materials, mitigation measure text is being revised for clarification based on the Comment Letter received on the Draft EIR from Mitchell M. Tsai, Attorney at Law, on behalf of Southwest Regional Council of Carpenters, Comment 7mm. These revisions are also reflected in Draft EIR Chapter 1, pages 1-16 and 1-17. The modifications are as follows:

**MM-HAZ-3 During grading operations, the grading contractor shall not import fill from other portions of the site (identified as**



Area 2 and Area 3 on Figure 4.9-1, *Livestock Related Activity*) that has significant manure or organic content into this area. “Significant” manure content in engineered fills in Riverside County is dictated by the geotechnical engineering portion of the grading code which requires certification that the organic content of engineered fill is a maximum of 1%.

**MM-HAZ-4** Prior to grading in Area 2, any near surface highly organic material (which includes former manure stockpiles), shall be “skimmed” by the grading contractor from these areas and removed off-site or placed in an onsite, non-structural location such as a park, or other non-habitable spaces. These locations will be determined at the time of grading permit issuance. During rough grading activities, in accordance with geotechnical standards and codes, all organic materials will be removed (skimmed) within a 1% tolerance. This organic material should be transported offsite or placed in non-structural fill areas by the geotechnical engineer of record.

**MM-HAZ-6** Prior to the issuance of a grading permit, a remediation plan shall be submitted to and approved by the Engineering Department. During grading operations, remedial removals in former stock pond areas shall be monitored by the Project Geotechnical Consultant, during grading in Area 3. The geotechnical engineer shall monitor soil conditions as they are moved, replaced and recompacted. The soils engineer representative is monitoring for organic content, moisture content, soil mixing, and soil recompaction density. Organics that produce methane may have been flushed deep into the native soils.

**MM-HAZ-7** Remedial removals may be required to be as deep as 42 10 feet below the former stock ponds. This will be coordinated with the information contained in the Project Geotechnical Evaluation, prepared by GEOTEK, Inc., March 2016 in order to provide appropriate remedial removal depths to provide a suitable foundation material. The organic content of fill materials beneath residential structures shall be less than 1% of the total fill mass. This shall be reflected on any and all grading plans.

Draft EIR page 4.14-13 in Public Services, text is being added to Mitigation Measure MM-PS-2 for clarification based on the Comment Letter received on the Draft EIR from Mitchell M. Tsai, Attorney at Law, on behalf of Southwest Regional Council of Carpenters, Comment 7uu. These revisions are also reflected in Draft EIR Chapter 1, page 1-21. The modification is as follows:

**MM-PS-2** To assure that the future Project development incorporates defensible space concepts, the design of

each tract shall be reviewed with the Community Development Department prior to approval of any tentative tract maps, conditional use permits or other entitlements and the approved maps shall incorporate defensible space measures approved by the Sheriff's Office. The Crime Prevention Through Environmental Design Guidebook, where defensible space concepts are outlined can be accessed at:  
<https://www.ncpc.org/resources/home-neighborhood-safety/crime-prevention-through-environmental-design-training-program/>

Draft EIR page 4.15-16 in Recreation, and any other instance in the DEIR where this text is found, the text is being revised as the Quimby Ordinance has been amended. The modifications are as follows:

*"Open space and recreational facilities that are provided strictly for residents' private use, are maintained by a Homeowner's Association, and will not be dedicated to the City for general public use, are not granted any parkland credit under Quimby. It is a requirement of ~~the City's Quimby Ordinance~~ Section 9.55 of the City's Municipal Code that the land be, in fact, dedicated. Therefore, no parkland credit is being provided for these private facilities."*

Draft EIR page 4.17-2 in Tribal Cultural Resources, text is being revised based on the Comment Letter received on the Draft EIR from the Pechanga Band of Luiseño Mission Indians, Comment 8u. The modification is as follows:

*Impacts to ~~cultural~~ archaeological resources (which could include tribal cultural resources) were addressed in the Cultural Resources Section of the IS.*

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