

SANTA MONICA MOUNTAINS CONSERVANCY

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March 24, 2019

SMMC Agenda Item 7(b) 6/1/20

Hai Nguyen
City of Santa Clarita
23920 Valencia Boulevard, Suite 302
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**Bouquet Canyon Residential Development
and Bouquet Canyon Road Realignment
Notice of Preparation
SCH No. 2018121009**

Dear Mr. Nguyen:

The Santa Monica Mountains Conservancy (Conservancy) offers the following comments on the proposed tentative tract map to facilitate the development of 461 housing units on 57.1 acres. The project is antithetical to the City's objectives to maintain land forms and obtain commensurately-scaled open space dedications. The project eliminates a substantial section of Bouquet Creek in its full natural form with alluvial scrub vegetation and eliminates a prominent ridgeline in order to generate fill material. As proposed, the project would result in unavoidable significant adverse biological and visual (aesthetic) impacts. As proposed the project would not provide any ecologically substantial open space area or open space area that remains connected to an un-channelized section of Bouquet Creek.

Bouquet Creek is known fish habitat for the federally endangered and state fully protected unarmored threespine stickleback. USFWS evaluated the presence of UTS in Bouquet Creek and 1998, 2003, and 2005 surveys concluded that UTS are abundant in the creek and successfully reproduced. Even under drought conditions, a refugium in the upper stream maintains a large population. "Take" of species that are "fully protected" is only authorized under the Fully Protected Fish Statute at Section 5515 of the California Fish & Game Code. The DEIR needs to ascertain whether the development would have significant adverse impacts on the unarmored threespine stickleback, a species of fish listed as "fully protected" under Section 5515 of the California Fish and Game Code and as an endangered species under the CESA. (14 Cal. Code Regs. Section 670.5). The DEIR should not contradict implicating California policy that protects its fish and wildlife. Yes the application of two different wildlife protection statutes exists – the Fully Protected Fish Statute and the CESA – to the same species, the unarmored threespine stickleback. The Draft Environmental Impact Report (DEIR) should not attempt to "harmonize" the two statutes as this would be unnecessary, illogical and inconsistent with the canons of statutory

interpretation including without limitation *expressio unius et exclusio alterius*, and other legal principles. (See *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921 (“*Pacific Lumber*”).

Section 5515 simply reflects a decision of the Legislature, as acknowledged by the CDFW, that fully protected species are entitled to greater protection than endangered and threatened species. To wit and in the instant matter, “***The Department is unable to authorize incidental take of "fully protected" species when activities are proposed in areas inhabited by those species.***” (“Other Protections and CESA Procedures on CDFW’s official Website, http://www.dfg.ca.gov/habcon/cesa/other_protects.html; (emphasis supplied)).

The DEIR needs to show that there is no adverse impact to UTS and/or its habitat, and any/all mitigation actions cannot result in take of UTS. As such, any take associated with the project and its mitigation authorized under ESA would undermine the fully protected statute.

Stream channelization is documented in the UTS Recovery Plan (USFWS 1985) as a threat to UTS, as it “increases water velocity in pools, eliminates shallow backwaters and reduces aquatic vegetation.” Therefore, the protection and restoration for the establishment of pools, shallow backwater areas, and aquatic vegetation in Bouquet Canyon Creek is important for preservation of the UTS population.

The Draft Environmental Impact Report (DEIR) must include alternatives that: 1) do not chop off the top of the prominent ridgeline for a linear park with a full length ridgeline road; 2) do not channelize any of the onsite length of Bouquet Creek except the minimum to allow the new bridge over the creek; and 3) do provide 10 acres of ungraded, permanently protected habitat that abuts a future un-channelized section of Bouquet Creek to provide habitat connectivity to National Forest lands. To provide the least damaging alternative for decision makers to analyze, the DEIR must include an alternative that fully encompasses all three of the above described parameters.

If the need for fill to construct a realignment of Bouquet Canyon Road is what is driving the project design, then the DEIR must state that fact. To compensate for the need to mine the prominent ridgeline for fill, the project should aggressively mitigate that adverse aesthetic impact by including many acres of ungraded onsite contiguous open space in public view corridors along either existing Bouquet Canyon Road or the proposed realignment of the road. Shy of such specific open space mitigation being required, the project must be conditioned to purchase at least ten contiguous acres of natural habitat along a nearby section of Bouquet

Canyon Road, or 100 natural acres in the watershed, prior to map recordation. The offsite
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habitat must have a recorded conservation easement or be dedicated in fee simple to a public agency. It must also provide the land interest holder with an upfront longterm monitoring payment of \$50,000 to generate annual visitation funding.

The DEIR must address the potential of growth-inducing impacts of the new road alignment providing access and utilities to the abutting large open space parcels to southeast. The DEIR must also address the potential adverse ecological impacts of street lighting and vehicle traffic on the private HOA open space area that abuts the road realignment.

The use of County correctional facility land to facilitate the proposed development appears to be a gift of public funds. What compensation will the County receive for the loss of its land to private uses and other public uses?

The DEIR must analyze whether the proposed new road alignment and large slope easements through the Plum LLC lots to the southeast will eliminate habitat that was mitigation for the adjoining existing housing development. Does the project description properly include these offsite components proposed on land that the applicant currently has no interest in?

The DEIR must address how the proposed project would surround all of the site with sections of existing or proposed Bouquet Canyon roadway. With exception the cement culvert carrying Bouquet Canyon Creek under the new road alignment the site would be biologically isolated.

The DEIR must carefully analyze what new barrier will be constructed between the correctional facility and the new road alignment. What adverse impacts will the additional traffic and closer proximity of traffic have on the youth in the correctional facility?

Does the project contain all the necessary infrastructure and long-term funding to address TMDL issues?

Please direct questions and future documents to Paul Edelman of our staff at the above letterhead address, at edelman@smmc.ca.gov, and 310-589-3200 ext. 128.

Sincerely,

IRMA MUÑOZ
Chairperson