



California Native Plant Society

East Bay Chapter
Conservation Committee

March 5, 2009

City of Antioch
Mindy Gentry, Planning Department
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Antioch, CA 94531
(925) 779-7035
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Re: Draft Environmental Impact Report for the Roddy Ranch Project

Dear Ms. Gentry:

The East Bay Chapter of the California Native Plant Society (EBCNPS) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for Roddy Ranch. We appreciate the time you spent collecting and delivering germane information in order to strengthen our understanding of this complicated project. The California Native Plant Society (CNPS) is a non-profit organization of more than 10,000 laypersons, professional and academic botanists organized into 33 chapters throughout California. The mission of the CNPS is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat through scientific activities, education, and conservation.

EBCNPS finds that DEIR for the proposed Roddy Ranch project is inadequate in identifying all the impacts of this project and in mitigating for acknowledged impacts, and that it fails to uphold the principles of the 2003 General Plan for the City of Antioch.

The proposed Roddy Ranch fails to serve the needs of a community that is suffering greatly. In January of 2009, RealtyTrac¹ reported over 500 new foreclosures in Antioch, for that single month. Antioch's current residents need guidance and support on their existing homes, not a luxury housing development for millionaires.

We have organized our comments into general and specific considerations.

General Considerations

Planning Issues

By approving this project, the Roddy Ranch area of Horse Valley will be immutably destroyed. The flourishing communities of plants and animals, many of which are

¹ RealtyTrac, Antioch Foreclosures – Trends and Information, www.realtytrac.com, accessed March 4, 2009

extremely rare, will be likely be eliminated. What great public need does this executive housing project serve that justifies eliminating some of our best habitat in the East Bay area?

The City Council's heavy-handed decision not to participate in the Eastern Contra Costa County's Habitat Conservation Plan process sent a resounding message that Antioch is not a team player, and that the few members of the City Council have the ability to make executive decisions regarding the future of its land use. EBCNPS believes that if the City of Antioch wants to "join" the HCP and benefit from this process, a new EIR for the process would be required since the impact of Antioch's development was not defined in the original plan. The Eastern Contra Costa County Habitat Conservation Plan (HCP) represents 10 years of work and regional planning in which the City of Antioch failed to participate³. Antioch should be required to pay all of the associated fees and manage the lead on the Supplemental EIR (SEIR) process that would need to take place in order for Antioch to enjoin the contract. Additionally, Antioch needs first to impress upon the Steering Committee and Public Advisory Committee that it intends to impose the standards of the HCP as it did in the Aviano project. Mitigation ratios of 3:1 would be required for the entire 540 acres (based on the HCP principle which clearly states that "open space" inside a development is impact) thus requiring a minimum mitigation of 1620 acres for the Roddy Ranch development⁴. The acres proposed for mitigation of this project are well under 50% of the required HCP precedent.

Significant and unavoidable impacts of build out were identified in the 2003 City of Antioch General Plan. Many of those impacts are germane to this specific plan. Text from the General Plan is presented below because some mitigations that were made, specifically to allow the Roddy Ranch project, need to be revisited and questions need to be reconciled.

"In adopting the City of Antioch General Plan, the City Council made findings of overriding considerations that address the unavoidable significant air quality and transportation and circulation impacts. The findings indicate that the benefits associated with improvement of the jobs/housing imbalance, diversification and expansion of the City's housing stock, implementation of "Smart Growth" principles to reduce demand on transportation systems, improvements to roadways, protection of significant environmental features, and maintenance of public services and facilities performance standards would override the unavoidable significant impacts associated with build out."

³ Jones and Stokes. 2005. *Draft EIS/EIR for the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan*. Oakland, CA

⁴ This number will actually be much greater since impact of fuels maintenance is not adequately vetted in the DEIR. Fuel management is required in fire prone areas, and this project will thus have an additional 20-50 acres of impact that require mitigation.

Our economy in 2003 was in much better condition than today. We would ask the City to reconsider whether these statements remain valid, as they apply to the current DEIR. A formal letter from the City identifying why “expansion of the City’s housing stock” at this moment in time is so important when so many residences are currently vacant. We would also like to understand how approving and building out this sprawl development, before completing developments closer to the existing City, would “reduce demand on transportation systems.” Roddy Ranch represents classic leapfrog development. What happens, for instance, if all the projects in the Sand Hill area do not come to fruition? How will this affect service costs to this outlying community that the City is considering approving?

The Project Proponent’s Lack of Commitment to Biological Resources

The track record of the project applicant needs to be considered, particularly if the proponent has a record of work for the City. In our Notice of Preparation comment letter of 8/28/08, EBCNPS asked for documentation of the project proponent’s compliance with the requirement for the MMRP agreements with respect to the approval of the Roddy Ranch golf course. In this case, after we contacted both the City of Antioch and the County of Contra Costa, none of the staff were able to produce the compliance reporting documents that were required. This should be reported and reflected properly in the applicant’s CEQA analysis for this adjacent project.

The impacts of this project to our environment would be grave. Please note that the list below indicates areas of controversy that were identified by the applicant. We reprint this list in our comment letter to emphasize that few projects that we review have such extensive impacts as Roddy Ranch.

2.2 POTENTIAL AREAS OF CONTROVERSY

Potential areas of controversy are listed below and are evaluated in **Chapter 4.0, Setting, Impacts, and Mitigation Measures**, of this EIR.

<u>Environmental Topic</u>	<u>Areas of Controversy</u>
<i>Aesthetics</i>	Light and glare impacts, as well as effects of grading on the elevation of the existing hillsides, especially adjacent to Deer Valley Road.
<i>Agricultural Resources</i>	Conversion of agricultural resources to non-agricultural uses.
<i>Air Quality</i>	Air quality impacts as a result of increased traffic.
<i>Biological Resources</i>	Potential loss of threatened and endangered plants and special-status species, reduction in migratory and permanent habitat.
<i>Cultural Resources</i>	Impacts to cultural resources on the site.
<i>Geology, Soils, and Mineral Resources</i>	Geologic and soil related hazards; including soil erosion.
<i>Hazards and Hazardous Materials</i>	Wildland fire and mining hazards.
<i>Hydrology and Water Quality</i>	Increases in site runoff/flooding, degradation of water quality, and hydrological impacts to biological resources.
<i>Land Use and Planning</i>	Growth inducement, including the potential characterization of the project as leapfrog development.
<i>Noise and Vibration</i>	Increases in noise levels due to construction activities and new land uses.
<i>Population and Housing</i>	Population growth impacts.
<i>Public Services</i>	Impacts to parks, open space, and recreation areas including the Black Diamond Mines Regional Park. Need for additional trails, parkland, and recreation facilities in the City. Increases in population and its impact to emergency services, particularly fire response times.
<i>Public Utilities</i>	Increases in population and its impact on the demand for utilities.
<i>Traffic and Circulation</i>	Potential increases in traffic, potential impacts to surrounding infrastructure and levels of service.

We note that the botanical surveys undertaken for this project were excellent. We appreciate the consultant utilizing our NOP comment letter list as well as indicating attention to Dianne Lake's *Rare and Unusual Plants of the East Bay*. Multiple years of surveys were incorporated into this EIR, including a plant community list and complete inventory of flora onsite. Because of the surveys, important information has come to light regarding the project proponent's stewardship of the biological resources at the project area.

EBCNPS has long known that impacts to the bottomland soils occur regularly by the landowner "disking" or plowing areas where wildflowers or other vegetation exist. We note that the consultant also finds that survey areas were disked.

Appendix D-2 by Zentner and Zentner reports a five-fold decrease in the numbers of *Blepharizonia plumosa*, a rare plant, in their 2006 surveys against the earlier 1998 surveys by Sycamore and Associates. While the applicant currently disks soils in the

project area, it is unlikely that the applicant was regularly disking this area before 1998. We ask that this historical survey provide guidance for the EIR process since it is anticipated that the applicant's management has negatively affected this rare plant population (metapopulation).

Based on the most recent surveys, it appears that the applicant has reduced the existing population of this rare sunflower by eliminating populations "C", "D", and "E" from more than 2,000 individuals to 13 surveyed in a total of two years! The elimination of these populations is evidence that the project proponent should **not** be considered qualified to manage this land for biological resources. There are additional rare and CEQA-protected plants including *Convolvulus simulans* and possibly other native forbs and grasses that have occurred prior to disking in this area, thus it is possible that these populations may also have been reduced.

We therefore ask that, *should the project be improved in some form and therefore require mitigation*, any conservation easement or fee-title exchanges occur in conjunction with the FEIR and MMRP approvals. We ask that these documents be prepared and a willing easement holder/land owner who has experience managing resources be identified. We would recommend the Eastern Contra Costa Conservancy as an intermediary to help indicate landowners or managers of reasonable qualifications.

Specific Considerations

Project Alternatives

Section 2.5 lists Alternative 2 to the Project as the "Biological Resources Alternative". EBCNPS believes that there are environmentally superior alternatives. Eliminating seven lots, or approximately 1% of the residences in this plan, and calling that a "Biological Resources Alternative is absurd. Under this alternative, 99% of the land impacts would still be approved. EBCNPS seeks an environmentally superior alternative that would have substantial benefits to the ecology of the landscape. We offer the following suggestions to create a **true** biologically superior alternative:

1. Remove the 7 lots and convert them to open space;
2. Remove any lots that impact waters of the State, which should be defined as all Section 404 wetlands in addition to the "runoff" from the golf course;
3. Remove all the lots in the west phase since this project component [phase] is contiguous with dedicated open space and easement that will be impacted by edge effects of the project.

Jurisdictional Wetland Delineation and Mapping

Appendix D-3 defines its purpose below.

"This report and accompanying map present a delineation of jurisdictional "waters of the

U.S.” (including wetlands) of the Roddy Ranch Property in Contra Costa County. As defined in the Clean Water Act, “waters of the U.S.” include coastal waters, rivers, streams (including intermittent streams), lakes, ponds, and wetlands. Any discharge of fill or dredged material into waters of the U.S. is subject to regulation by the Army Corps of Engineers (“Corps”) under Sections 404 and 10 of the Clean Water Act.”

EBCNPS maintains that wetland acreage has not been accurately characterized and will require consultation and approval by the Army Corps of Engineers. A 36-acre seasonal wetland has been formed by golf course run-off, and now serves as habitat. This wetland must be identified to the Regional Water Quality Board, which would need to approve any filling in order for permits to be granted. We believe that destruction of one of the largest seasonal wetlands in Contra Costa County is not acceptable for this project and we ask the applicant to justify why, in a state where approximately 90% of historic wetlands have been eliminated, this significant wetland is to be buried.

While the US Army Corps of Engineers holds permitting power over jurisdictional wetlands, CEQA addresses impacts to the physical environment, including aquatic habitat. In this case, the applicant is significantly impacting habitat with wetland values. Under the Keene-Nejedly California Wetlands Preservation Act, wetlands are defined as:

“...streams, channels, lakes reservoirs, bays, estuaries, lagoons, marshes, and the lands underlying and adjoining such waters, whether permanently or intermittently submerged to the extent that such waters and lands support and contain significant fish, wildlife, recreational, aesthetic, or scientific purposes.” (Pub. Res. Code §5812)

Loss of these wetlands must be considered under CEQA and clearly identified for the public and for the decision-makers. The DEIR seems to provide more insight about the conundrum of “jurisdictional” wetlands than it does define that a 36-acre seasonal wetland will forever be destroyed in this project.

Drainage and Flooding

The applicant has been disking the project area’s soils regularly, a process that can affect the water infiltration rate. This change in infiltration rates can destroy a soil’s ability (and therefore seasonal wetlands’ ability) to pond and collect water. The DEIR reports that NRCS soil data indicate that on-site surficial soils are in the ‘C’ or ‘D’ hydrologic category in the low-lying valley areas of the site. Thus, the document concludes “most of the rainfall at the project site would be expected to transform into surface ponding or runoff during storm events”. In fact, the project site sits in Zone ‘A’ Federal Emergency Management Agency (FEMA) flood areas that are defined as 100-year flood elevations. Therefore, regardless of category defined by federal agencies (between ponding and flooding probabilities), this area is inextricably linked to water, hydrology, and wetlands. Since the landscape is regularly altered by the current landowner, the data for this DEIR fails to accurately present the environmental conditions of the site. We believe that surveys for wetlands, rare plants, and animals

should be repeated prior to disking by the landowner. In fact, historical information indicates that this area was once one of the richest vernal pool complexes in the County.

Communications, Power and Service Line Corridors

Maintenance and development of these areas would have impacts on flora and fauna in perpetuity. Corridors for rare plant dispersal and wildlife movement will be permanently impacted by these service areas. EBCNPS finds this to be a permanent impact requiring permanent mitigation. This precedent is also established by the HCP, and therefore additional acreage needs to be added in addition to the 1620 acres for site development.

Fire Safety and Maintenance

This topic has been of great concern all over the West. In working regularly with this issue in the East Bay hills, we have become aware of many constraints and costs that have been incurred by the cities and land management agencies as imposed by SB3169 and insurance companies. The City and Castle Companies have come to an agreement that a “Homeowner’s Association shall maintain all streets, open space, parks, and common space within the Roddy Ranch development”.⁵ It is not clear in this agreement who is liable for fire safety and fuels management of the development which can be an extensive and costly process requiring a plan and an EIR.⁶

Policy 11.5.2a indicates that “fuel modification may be permitted to extend beyond the boundaries of the site for which wildland fire protection is being provided only if the adjacent owner provides written permission... and the off-site fuel modification will not significantly impact sensitive habitat areas.” EBCNPS finds that any adjacent areas with rare plant or plant communities, such as Diablo sage scrub, blue oak woodland, and alkali grasslands (for example) require additional review before any maintenance is legally permissible, leaving new residents at risk before a plan is put into place.

We believe this plan and implementation should be required of the applicant.

Mitigation and Monitoring Reporting Program

A Mitigation Monitoring and Reporting Program (MMRP) must be prepared to comply with the requirements of state law (PRC Section 21081.6). This report must be prepared and vetted at the same time as the EIR process so that the public and regulatory agencies can comment upon its adequacy.

As updated by AB3180, PRC Section 15097(e) states that an agency “may adopt standardized policies and requirements to guide individually adopted monitoring and reporting programs,” and these standards may describe, but are not limited to:

⁵ City of Antioch Resolution No. 2008/110

⁶ Fuel Management EIR’s are currently being undertaken by the City of Oakland, the East Bay Regional Park District, City of Berkeley and others.

Enforcement procedures for noncompliance, including provisions for administrative appeal.

Given the track record of the Castle Companies, it is reasonable for the City to ask for all MMRP compliance reports to be posted on a publicly accessible website [i.e. www.roddeyranchmitigation.com]. Non-compliance with reporting procedures would allow the City to enforce fines or other appropriate penalties, such as withholding an occupancy permit or building permit (given the tiered structure of the RDA), or other penalty for each offense. We recommend that the City take full advantage of this legal framework insuring that MMRP's are properly executed.

Conclusions and Determinations

EBCNPS and other local community-based organizations believe that the Roddy Ranch project is one of the most destructive projects proposed for Contra Costa County. The EIR fails to disclose the full scope of impacts associated with the project, and there are troubling aspects of the proponent's lack of stewardship of the project site. Together these include:

*The destruction of nearly 40 acres of wetlands that provide habitat for native flora and fauna. We urge the local, state, and federal water agencies to consider this impact "unmitigable" and therefore unable to be permitted.

*Loss of substantial populations of rare flora, including *Blepharizonia plumosa*.

*Disruption of important corridors for native plant dispersal and wildlife movement.

*No information on compliance of prior MMRP's agreements as required. Given this fact, we can only believe that the project proponent will fail to follow any approved MMRP.

*Increased human activity in this area, along with an increase in structures at risk, creating a higher fire liability that the City will need to manage. The cost and impact of this state-mandated protection is not considered in the environmental review. We have seen many cases in which a city is suddenly burdened (financially and staff time) with large fuels management operations. This can lead in turn to increased property taxes to cover these costs.

In summary, EBCNPS finds that this project is unacceptable for Antioch. The impacts are too grave for the purported short-term benefits. It is also unthinkable that, in this time of heavy foreclosures and economic disaster for the residents of Antioch, the City government should support a project that may end up imposing an increased fiscal burden on Antioch while the applicant continues to prosper.

EBCNPS Conservation Committee

Thank you for your consideration of the above comments. Please do not hesitate to contact me with questions at (510) 734 0335.

Sincerely,



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CC:
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