

# David Magney Environmental Consulting

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George Abrahams  
Citizens for Open Space  
P.O. Box 26048  
Los Angeles, California 90026

**Subject: Comments on General Plan Amendment and Biological Resources for Elysian Valley  
EVN-2015-3200-ND (Case No: CPC-2015-3199-ZC-GPA)**

Dear Mr. Abrahams:

Per your request, David Magney Environmental Consulting (DMEC) is providing these comments on behalf of Citizens for Open Space.

DMEC herein provides comments on the Negative Declaration (ND) prepared by the City of Los Angeles to facilitate a land use zoning change from Open Space to Commercial Manufacturing for one property in Elysian Valley on the west bank of the Los Angeles River. DMEC is focusing its review on the biological resources of the project site and how the proposed land use change may impact those resources.

The proposed development project is located at 2971 Partridge Avenue and 2993 Allesandro Street. The City is claiming that the property was “incorrectly designated for Open Space purposes in the Silver Lake-Echo Park – Elysian Valley Community Plan Update of 2004”. The eastern edge of the property is approximately 100 feet west of existing mature riparian wetland habitat in the banks of the Los Angeles River.

DMEC is an independent private environmental consultancy, owned and operated by Mr. David L. Magney. DMEC has been in business since July 1997, specializing in biological resource assessments, CEQA/NEPA, wetlands permitting and mitigation planning, and vegetation mapping.

**David L. Magney**, President of DMEC, is a biologist and geographer, and a CNPS Certified Consulting Botanist, and an ISA Certified Arborist, specializing in botanical resources and wetlands. Mr. Magney has been consulting full time since 1985, working for Dames & Moore, Jones & Stokes Associates, Fugro West, Inc., and ENSR before establishing DMEC. Mr. Magney is considered an expert on the flora of Ventura and Santa Barbara Counties, and has been “certified” as a qualified biologist by Ventura County Planning Division, Los Angeles County Regional Planning (SEATAC), and Santa Barbara County. Mr. Magney has also been determined to be an approved biologist by the City of Los Angeles. He serves on the Los Angeles County Environmental Review Board, and was the City of Rancho Palos Verdes’ Consulting Biologist for several years, and has served as an Expert Witness as a botanist for the U.S. Department of Justice. Mr. Magney’s CV is available at [www.magney.org](http://www.magney.org). Mr. Magney has worked extensively in Los Angeles County and has conducted work within the City of Los Angeles.

DMEC finds it hard to believe that the City is just now finding out that it made an error in 2004, and that the property owner(s) did not complain about the error at that time. Regardless, the change from an Open Space designation to a Commercial Manufacturing zoning is an extreme land use change.

The City is relying upon a MND initiated in 2003, 13 years old now. There is no evidence in the record in the 2003 MND or the 2016 ND that ANY assessment of potential impacts to biological resources was ever truly made, and almost certainly by a qualified biologist. The City cannot rely on such faulty and unsubstantiated claims of no significant impact if no assessments were ever made. Furthermore, an EIR would have been a more appropriate document at the time, and, since the proposed land use change would be negative for the environment (open space to high density industrial), that change warrants the highest level of public review.

### **Inadequacy of Biological Resources Assessment**

The assessment of biological resources for this area of the City, Elysian Valley, is non-existent. The City believed that the proposed land use change would have absolutely no effect on biological resources and decided to preclude any assessment whatsoever. DMEC believes this decision was made in error for the reasons described briefly below. While a land use change in itself does not result in impacts of the environment, but the allowed uses under the land use zoning changes could, without any environmental review if development occurred according to allowable uses. Only a building permit, with is ministerial, would be required. Issues that DMEC believes should be assessed include:

- direct and indirect impacts on wetland functions
- direct impacts to nesting birds
- indirect impacts on nesting and foraging birds in the Los Angeles River
- bird strikes on building windows
- indirect impacts on wildlife movement
- indirect impacts on wildlife as a result in changes in local wind patterns

Each of these potential impacts should have been assessed during the CEQA review process.

### **Inadequacy of Basic Biota Assessment**

There needs to be baseline lists of plants and animals occurring on the project site and vicinity (Los Angeles River) as part of the MND within the Biota section (or supporting document). A list of plant species and plant communities within the area is necessary to determine if there will be impacts to them and associated wildlife species. Lists of species observed in the project impact area are a critical part of any biological assessment and a standard part of any biological resources section of a CEQA document, which can be provided as a technical appendix. Including such lists is considered minimum professional standards (CDFG 2009<sup>1</sup>, CNPS 2001<sup>2</sup>).

DMEC assessed the California Department of Fish and Game's California Natural Diversity Data Base (CNDDDB) and found that there are special status species in the vicinity of the project site. The project site is contained within the radius of CNDDDB records for burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), and southwestern willow flycatcher (*Empidonax traillii extimus*). It is less than 1,000 feet from the radius for a bank swallow (*Riparia riparia*) occurrence. It is close to two observations of least Bell's vireo (*Vireo bellii pusillus*), one of which is about 1,500 feet from the

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<sup>1</sup> California Department of Fish and Game (CDFG). 2009. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities State of California. 24 November 2009. The Resource Agency, State of California, Sacramento, California.

<sup>2</sup> California Native Plant Society (CNPS). 2001. Botanical Survey Guidelines. Board of Directors, Sacramento, California. See [www.cnps.org](http://www.cnps.org) for complete text of guidelines.

Cornfield Arroyo Seco Specific Plan and Redevelopment Plan, Draft Environmental Impact Report. Biological Resources Section. September 2011.

project site. It is about 4,700 feet from an observance of hoary bat (*Lasiurus cinereus*). It is also close a special status plant — just under a mile from the extent of an observation of Greata's Aster (*Symphyotrichum greatae*).

Within a five mile buffer there are more special-status species (See Figure 1, CNDDDB Special-status Species Map):

- Four mammals including three bats: Western Yellow Bat (*Lasiurus xanthinus*), Western Mastiff Bat (*Eumops perotis californicus*), Big Free-tailed Bat (*Nyctinomops macrotis*), and San Diego Desert Woodrat (*Neotoma lepida intermedia*).
- One herpetofauna: Coast Horned Lizard (*Phrynosoma blainvillii*).
- Twelve plants: Lucky Morning-glory (*Calystegia felix*), Mesa Horkelia (*Horkelia cuneata* var. *puberula*), White Rabbit Tobacco (*Pseudognaphalium leucocephalum*), San Bernadino Aster (*Symphyotrichum defoliatum*), Many-stemmed Dudleya (*Dudleya multicaulis*), Prostrate Vernal Pool Navarretia (*Navarretia prostrate*), Parish's Brittlestem (*Atriplex parishii*), Round-leaved Filaree (*California macrophylla*), Robinson's Pepper-grass (*Lepidium virginicum* var. *robinsonii*), Plummer's Mariposa Lily (*Calochortus plummerae*), Davidson's Saltscale (*Atriplex serenana* var. *davidsonii*), and Nevin's Barberry (*Berberis nevinii*).
- Three terrestrial communities: Southern Sycamore Riparian Woodland, California Walnut Woodland, and South Coast Live Oak Riparian Forest.

DMEC reviewed the eBird online database and found that 170 bird species have been reported in the Frogtown and Elysian Valley area (eBird 2015<sup>3</sup>). Of these, 22 species are listed in the CNDDDB Special Animals List (CNDDDB 2015<sup>4</sup>). These include: Double-crested Cormorant, Great Egret, Allen's Hummingbird, Rufous Hummingbird, Costa's Hummingbird, Nuttall's Woodpecker, Peregrine Falcon, Cooper's Hawk, Sharp-shinned Hawk, Swainson's Hawk, White-tailed Kite, Osprey, Yellow-breasted Chat, Yellow-headed Blackbird, Merlin, Bank Swallow, Black Swift, Vaux's Swift, Loggerhead Shrike, Yellow Warbler, Chipping Sparrow, and Willow Flycatcher.

DMEC also reviewed the California Department of Fish and Wildlife BIOS database and found several additional records of bird species of special concern recorded in the area surrounding the project site: Clark's Marsh Wren, Fulvous Whistling Duck, Least Bittern, Mountain Plover, Oregon Vesper Sparrow, Purple Martin, Redhead, Tricolored Blackbird, and Wood Stork (BIOS database 2015<sup>5</sup>).

To summarize, the Los Angeles River in the vicinity of Elysian Valley contains significant biological resources, including numerous special-status species that should be protected. The property under review now is situated next to both the Los Angeles River and Marsh Park. That fact is the primary reason this land was designated as Open Space in the first place, and is still valid today. Maintaining existing zoning is consistent with the goals outlined in the Los Angeles River Master Plan and Revitalization Plan, which should not be sabotaged by rezoning the Partridge property.

<sup>3</sup> eBird website: <http://ebird.org/ebird/ca/hotspot/L634308> accessed 4 February 2015.

<sup>4</sup> California Natural Diversity Database (CNDDDB). 2015. Special Animals. January. California Department of Fish and Wildlife, Biogeographic Data Branch, Sacramento, California.

<sup>5</sup> Schoenig, S. 2008. Bird Species of Special Concern [ds463]. California Department of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved 4 February 2015 from <https://map.dfg.ca.gov/bios/>

## Impacts to Los Angeles River Not Considered

The project site is located directly adjacent to the Los Angeles River. While the river is channelized and is confined within concrete-lined banks, substantial health riparian and freshwater marsh habitats have re-established to serve several wetland functions, as defined by the U.S. Army Corps of Engineers (Corps) wetland function models generally known as the Hydrogeomorphic Assessment Method or HGM (Smith et al. 1995<sup>6</sup>, Lee et al. 1997<sup>7</sup>, DMEC 2001<sup>8</sup>).

Rivers like the Los Angeles River have 14 general wetland functions, as defined by the HGM approach used by the Corps and U.S. EPA (Smith et al. 1995, Lee et al. 1997, DMEC 2001). The 14 wetland functions are named and described briefly in Table 1, HGM Model Wetland Functions<sup>9</sup>. Those functions are vital to the health of the river and downstream habitats. Developments like that proposed may decrease one or more of those functions and should be assessed as part of the CEQA review process.

The ND also fails to address the importance of the Los Angeles River and associated riparian habitats as a wildlife corridor and as a Significant Ecological Area (SEA). The Los Angeles County General Plan defines SEAs as “ecologically important land and water systems that support valuable habitat for plants and animals, and are often integral to the preservation of rare, threatened or endangered species and the conservation of biological diversity in the County”<sup>10</sup>.

These areas are classified as one or more of the following: (a) habitats for rare and endangered species of plants and animals, (b) restricted natural communities — ecological areas that are scarce on a regional basis, (c) habitats restricted in distribution in the county, (d) breeding or nesting grounds, (e) unusual biotic communities, (f) sites with critical wildlife and fish value, and (g) relatively undisturbed habitats. The area of the Los Angeles River adjacent to the project site is in a heavily urbanized area in which habitat is scarce, and as such it meets criteria b, c, d, and f as described above, if not others.

No effort of any sort was given to potential project-related impacts on the biological resources and wetland functions of the Los Angeles River. The natural vegetation in the river is only about 100 feet from the project site. There is a reasonable chance that the existing biological resources and a few of the 14 wetland functions would be adversely affected by the proposed development.

Several special-status species are known to occur in the immediate vicinity of the project site, including: American Badger, Greata’s Aster, Bank Swallow, Burrowing Owl, Hoary Bat, Least Bell’s Vireo, and Southwestern Willow Flycatcher.

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<sup>6</sup> Smith, R.D., A. Ammann, C. Bartoldus, and M.M. Brinson. 1995. An Approach for Assessing Wetland Functions Using Hydrogeomorphic Classification, Reference Wetlands, and Functional Indices. (Wetlands Research Program Technical Report WRP DE.) Waterways Experiment Station, U.S. Army Corps of Engineers, Vicksburg, Mississippi.

<sup>7</sup> Lee, L.C., M.C. Rains, J.A. Mason, and W.J. Kleindl. 1997. Guidebook to Hydrogeomorphic Functional Assessment of Riverine Waters/Wetlands in the Santa Margarita Watershed. Peer review draft. February. The National Wetland Science Training Cooperative, Seattle, Washington. Prepared for U.S. Environmental Protection Agency, Region IX, San Francisco, California.

<sup>8</sup> David Magney Environmental Consulting (DMEC). 2001. Wetland Functional Assessment of the Odyssey Program Middle School Project, Malibu, California. December 2001. (PN 00-0301.) Ojai, California. Prepared for Odyssey Program, Malibu, California.

<sup>9</sup> From Lee et al. 2001.

<sup>10</sup> Los Angeles Department of Regional Planning (LADRP). 2011. Draft General Plan. County of Los Angeles, Los Angeles, California.



**Table 1. HGM Model Wetland Functions**

Function		Definition
<b>Hydrology</b>		
1	Energy Dissipation	The transformation and/or reduction of the kinetic energy of water as a function of the roughness of the landscape and channel morphology, and vegetation.
2	Surface and Subsurface Water Storage and Exchange	The presence of soil and/or geologic materials within the creek ecosystem, including the hyporheic zone, that have physical characteristics suitable for detention, retention, and transmission of water.
3	Landscape Hydrologic Connections	The maintenance of the natural hydraulic connectivity among source areas of surface and subsurface flow to riverine waters/wetlands and other down gradient waters/wetlands.
4	Sediment Mobilization, Storage, Transport, and Deposition	The mobilization, transport, and deposition of sediment as determined by characteristics (morphology) of the channel as well as the timing, duration and amount of water delivered to the channel.
<b>Biogeochemistry</b>		
5	Cycling of Elements and Compounds	Short- and long-term transformation of elements and compounds through abiotic and biotic processes that convert chemical species (e.g. nutrients and metals) from one form, or valence, to another.
6	Removal of Imported Elements and Compounds	The removal of imported nutrients, contaminants, and other elements and compounds in surface and groundwater.
7	Particulate Detention	The deposition and retention of inorganic and organic particulates (>0.45µm) from the water column, primarily through physical processes.
8	Organic Matter Transport	The export of dissolved and particulate organic carbon from a wetland. Mechanisms include leaching, flushing, displacement, and erosion.
<b>Plant Community</b>		
9	Plant Community	The physical characteristics and ecological processes that maintain the indigenous living plant biomass.
10	Detrital Biomass	The process of production, accumulation, and dispersal of dead plant biomass of all sizes.
<b>Faunal Support / Habitat</b>		
11	Spatial Structure of Habitats	The capacity of waters/wetlands to support animal populations and guilds through the heterogeneity of structure of vegetative communities.
12	Interspersion and Connectivity of Habitats	The capacity of waters/wetlands to permit aquatic, semi-aquatic, and terrestrial organisms to enter and leave a riverine ecosystem via large, contiguous plant communities to meet life history requirements.
13	Distribution & Abundance of Vertebrate Taxa	The capacity of waters/wetlands to maintain characteristic density and spatial distribution of vertebrates (aquatic, semi-aquatic and terrestrial).
14	Distribution & Abundance of Invertebrate Taxa	The capacity of waters/wetlands to maintain the density and spatial distribution of invertebrates (aquatic, semi-aquatic and terrestrial).

### Buffers to L.A. River Habitats Needed

The ND gives no consideration as to the importance of a riparian buffer along the Los Angeles River. The area between the project site and the river, in addition to being a recreation area with a bicycle path, is an important riparian buffer that provides necessary ecological and wetland functions. Riparian areas provide habitat for diverse groups of wildlife for multiple phases of

their life history. They provide many benefits to biological resources such as providing food for terrestrial and aquatic species and providing habitat and cover during breeding seasons<sup>11</sup>. They are also important connectivity for wildlife, as the river is essentially the only means by which animals can travel between nearby hills (Griffith Park and Elysian Park) and the Pacific Ocean.

Riparian ecosystem buffers provide habitats for many species of plants, reptiles, birds, and mammals. Robins (2002<sup>12</sup>) notes that 60% of amphibian species, 16% of reptiles, 34% of birds, and 12% of mammals in the Pacific Coast ecoregion are classified as “riparian obligate” species (i.e. are dependent on riparian ecosystems, such as the Los Angeles River, for their survival). In California, more than 225 species of mammals, birds, reptiles, and amphibians are dependent upon riparian ecosystems for their survival (RHJV 2004<sup>13</sup>). As the ecological needs of plant and animal species varies widely, Robins found a wide variety of buffer widths cited as necessary for maintenance of species in riparian ecosystems. The consensus of the scientific studies reviewed by Robins is that a 300-foot-wide buffer zone is likely adequate for protecting a wide variety of plant and animal species.

Among the specific recommended buffer width/ranges cited by Robins (2002) for conserving habitat for specific groups are 160 feet or greater for riparian mammal habitat, 98-540 feet for reptile and amphibian habitat, 130-1,600 feet for bird habitat, and 30-100 feet for riparian ecosystem plant diversity. For bird habitat the recommended buffer width applies specifically to breeding bird communities in bottomland heartwoods, an ecosystem type found in the Southeastern U.S. and not typical of the Los Angeles River. The majority of bird habitat studies related to riparian buffer width reviewed by Robins recommend a buffer width/range of 130-325 feet for adequately conserving bird habitat. DMEC used ArcGIS and an aerial photograph to measure the distance between the easternmost portion of the project site and the river, and determined that they are approximately 215 feet apart, meaning that the project site is within the buffer range.

Maintaining a buffer between urban areas and river habitats should be a priority. In addition to the issues concerning bird species, the project could impact the riparian buffer in significant ways. A 56-foot-tall structure will alter local wind patterns, as well as catch debris and dust onsite. East-west winds will then deposit this debris into the river and adjacent riparian habitat<sup>14</sup>. Excavation could further exacerbate this issue, especially considering the history of the site. According to the MND, the site has been used for various industrial and commercial uses since 1947. A nearby parcel, the Taylor Yard (Parcel G-2) had soil contaminants such as arsenic, lead, TPH, VOCs, carcinogenic polycyclic aromatic hydrocarbons (cPAHs), and others (CDM Smith 2014<sup>15</sup>). It is possible that there are similar soil contaminants in the Elysian Valley project site, and excavation and construction would result in these contaminants being introduced to the Los Angeles River and riparian buffer zone.

The MND does not take into account potential impacts of this project to the Los Angeles River, and the importance of maintaining a riparian buffer. Because the project site is within a buffer zone, surveys should be conducted to ensure that activities related to construction, such as

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<sup>11</sup> Draft Riparian Buffers Focused Issues Report for the Calleguas Creek Watershed, 2003

<sup>12</sup> Robins, J.D. 2002. Stream Setback Technical Memo. 18 October 2002. Jones & Stokes Associates, Inc., Oakland, California. Prepared for Charles Wilson, Napa County Conservation Development & Planning Department, Napa, California.

<sup>13</sup> RHJV (Riparian Habitat Joint Venture). 2004. The Riparian Bird Conservation Plan. California Partners in Flight. Version 2.0. [http://www.prbo.org/calpif/pdfs/riparian\\_v-2.pdf](http://www.prbo.org/calpif/pdfs/riparian_v-2.pdf)

<sup>14</sup> Giroux, Hans 2015. Letter on the Impacts on Noise and Air Quality of the Frogtown Development Project. February 2, 2015

<sup>15</sup> CDM Smith. 2014. Final Remedial Action Plan: Taylor Yard Parcel G-2, Los Angeles, California. Denver Colorado, February 3 2014.

excavation of the parking garage, do not introduce dust, debris, and contaminants into the river and nearby biotic communities. There are likely other potential impacts to the buffer zone associated with construction, and surveys should be conducted to determine this.

In summary, DMEC finds that the ND fails to assess all/**any** project-related impacts to the biological resources onsite and fails to provide adequate and/or feasible mitigation to reduce the significant impacts to a level of less than significant. Time constraints have limited our ability to comment on additional inadequacies of the ND in describing, assessing, and mitigation for other biological resource issues. The City should conduct surveys of baseline conditions of the project site and adjacent Los Angeles River for biological resources and recirculate the CEQA document for public review.

It is ironic that the designation of the property to Open Space was initiated specifically to protect and enhance wetland functions and related biological resources of the Los Angeles River, and now the City wishes to remove a significant parcel immediately adjacent to the river from ever being restored to natural habitat simply because some land conservancies are not currently considering purchasing the property. A full analysis of the biological resources of the area and consideration of project alternatives that would protect or even improve biological resources of the Los Angeles River and Elysian Valley is warranted before any land use zoning changes are made that would lessen or eliminate the potential for improving habitat conditions along the Los Angeles River.

Thank you for considering our concerns with the adequacy of the ND.

Sincerely,



David L. Magney, CCB

President

Certified Consulting Botanist #001/ISA Certified Arborist WE-7674A

Attachments: Figure 1 – CNDDDB Special-status Species Map

Figure 1. CNDDDB Special-status Species Map

