

<i>COMMENTS</i>	<i>RESPONSES</i>
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Joel Rojas - RPV Director of Planning  
 RPV City Council  
 Les Evans - RPV City Manager

Upon first hearing of the proposed Rancho Palos Verdes (RPV) / Palos Verdes Peninsula Land Conservancy (PVPLC) habitat projects, one presumes this to be a noble cause. Further observations & investigations finds RPV City Council actions in this regard questionable and clouded.

One concern is costs. We, the citizens want to know how much (\$\$\$) has already been spent on habitat projects? Specifically, what did it cost to research & compile the Draft EIR Report. Response should include all fees paid to URS. This should include all travel, fees etc. How many \$\$\$ have been spent with consultants & others to develop the project to date? What fees / costs have been incurred, to date, for compiling the NCCP Report? What amounts of RPV staff time has been consumed by these projects? Response should identify hours & hourly rates. What travel costs and other reimbursable expenses has the City incurred with this project.

DELONG 1

The DEIR is quite broad in it's proposed scope. To what extent will the PVPLC have interactions of any kind, planning, managing etc., of existing beaches & parks? It seems that the City's relationship with be PVPLC will be City wide. Clarification on these issues is important.

DELONG 2

What legal liabilities will the City incur with the purchase of proposed lands? Should any of the proposed land acquisition areas encounter land slippage, will the City be liable? What plans for liability coverage have been planned? Are costs for liability coverage identified? If so, where?

DELONG 3

One must question the City's relationship with the PVPLC. There seems to be little public information about the membership of the PVPLC and it's financial resources. The PVPLC Web site lists the PVPLC Board of Directors. Almost one half of the PVPLC Board of Directors (seven of sixteen) are not RPV residents.

DELONG 4

Page 1

**Comment 1**

The City began its NCCP program in 1997. Thus far (through May 31, 2004) the City has expended \$506,376 in total NCCP consultant costs. Of this total amount, \$229,523 has been paid by state and federal grants, leaving the City to pay \$276,853 of the cost. In addition, through June, 30, 2004, the City has expended \$75,000 on the use of a state lobbyist to assist with the land acquisition component of the NCCP. Therefore, through May 2004, the City has expended \$346,853 on NCCP related consultants. In terms of Staff time, one staff person spends approximately 10 to 20 hours on average per month on the NCCP.

**Comment 2**

Under the NCCP Subarea Plan, it is proposed that the Palos Verdes Peninsula Land Conservancy (PVPLC) will manage the City lands included in the Reserve and only those lands. It is not proposed that the PVPLC will plan or manage any of the City's intertidal areas or active parks located outside the Reserve.

**Comment 3**

First, potential liability and liability coverage issues are not environmental impacts that require review and analysis under the CEQA. CEQA Guidelines Section 15382 states: "Significant effect on the environment" means a substantial, or potential substantial adverse change in any of the physical conditions within the area affected by the project, including air, water, minerals, flora, fauna, ambient noise and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant."

The liability and liability issues raised in the comment are economic or social changes that are unrelated to any physical change in the environment resulting from adoption of the proposed NCCP. Therefore, the comment does not raise a significant environmental issue requiring a response.

Nonetheless, the following information is voluntarily provided.

The Government Claims Act, Government Code Sec. 810 et seq., limits municipal liability by providing a broad array of statutory immunities. Specific immunities that may be applicable in the context of managing public lands include, but are not limited to, immunity for:

- Public Improvement Design or Plans - when the Plan or design has been improved in advance by and authorized person or body.
- Failure to provide traffic devices in certain circumstances
- Effect of weather conditions on streets in certain circumstances
- Hazardous recreational activities

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The President, Bill Ailor, is a resident of Palos Verdes Estates. One wonders if Mr. Ailor has or has not petitioned Palos Verdes Estates to create a habitat preserve? There is undoubtedly land in PVE that has habitat potential?

A concern is that Councilman Stern was, probably remains, a member of the PVPLC. Mr. Stern has acknowledged that he was formerly an officer of the PVPLC. Whether or not other RPV Council persons are members of the PVPLC is unknown. The other four Council persons should attest whether they are presently, or have ever been a member of the PVPLC. Having RPV City Council as members of the PVPLC has potential for conflict of interest. To what degree could past or present affiliations with the PVPLC be effecting RPV Council actions? Could past or present affiliations with the PVPLC be effecting RPV Council fiduciary responsibilities?

DELONG 5

The City of Rancho Palos Verdes has committed \$1,000,000 in initial funding to the proposed PVPLC habitat project. Not included is the ongoing annual management costs. About \$875,000 of this money will come from Prop 12 & Prop 40 funds. These funds are for Recreation & Parks projects. The issue becomes which is best for the residents of RPV. Use of the Prop 12 & Prop 40 funds for development of youth activities, ball fields, soccer fields etc. or the appeasement of special interest groups that have a significant membership of non RPV residents.

DELONG 6

Why does the RPV council perceive that some 40 or so Coastal California Gnatcatcher mating pairs has greater significance than the youth of RPV? What is the greater responsibility? Why is not the current Forrestal preserve adequate for preservation of Coastal California Gnatcatcher?

DELONG 7

An issue that should be of concern to everyone is the PVPLC's capabilities. So far, it appears the PVPLC has done little to validate it's land management capabilities. When was the management agreement for the Forrestal property implemented? What has the PVPLC done to attest to it's land management capabilities. What action plans, if any, have been submitted by the PVPLC to the RPV Council defining action plans? What reports, if any, have been provided to the RPV Council documenting accomplishments? Has the RPV Council & City staff evaluated the downside risks should the PVPLC fail to perform? The PVPLC record, so far, is at best questionable.

DELONG 8

The debate that will follow this process will be significant. It will be interesting to observe what the citizens of Rancho Palos Verdes decide is most important to the majority of RPV residents.

**Comment 3 (continued)**

- Natural condition of any unimproved public property except when agency knows of a potential land failure and fails to warn affected property owners
- Unpaved roads and sidewalks
- Condition of paved walkways when entity attempts to provide adequate warning of any condition that constitutes a hazard
- Dangerous condition of public property when entity shows it acted reasonably
- Actions taken to contain gradual earth movement

Listing liabilities that may result from Reserve implementation would be speculative. Plans for liability coverage and costs for such coverage are beyond the scope of the EIR, and instead are policy determinations for consideration by the City Council.

**Comment 4**

Questions about the PVPLC membership should be directed to the PVPLC.

**Comment 5**

This is not an environmental issue that requires analysis under CEQA. Such questions of the City Council should be made directly to the Council in an appropriate forum.

**Comment 6**

Annual costs are estimated at \$313,000 per year (2003 dollars).

**Comment 7**

The California gnatcatcher is listed as threatened under the federal Endangered Species Act. Any project that impacts gnatcatcher occupied habitat must receive an incidental take permit from the U.S. Fish and Wildlife Service. Approval of the Subarea Plan by the USFWS will result in a city-wide take permit to allow for covered projects to proceed, including the development of recreation areas outside the Reserve. The small population size of the gnatcatcher on the peninsula makes the population vulnerable to local extirpation. The proposed Reserve design and habitat restoration will maintain and increase the habitat carrying capacity of the population and increase the likelihood that the population will be sustained in the long-term. This is a coordinated effort to comply with Federal law.

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Draft EIR Concerns

Section Two

2.3.1.2 Item 2 - Private Lands

Proposal is that seven (7) local Homeowners Associations (HOA) will donate 136.6 acres to the proposed preserve. Seven HOA's are not identified.

*Upon what basis is there belief that the seven HOA's can or will donate the 136.6 acres to the project?*

*Has there been any discussions with said HOA's concerning these acres?*

*Has city determined that HOA's hold land title & are free to donate said land?*

*Does the City know whether or not said land can be donated for proposed project?*

DELONG 9

2.3.1.3 - Priority Acquisition Areas.

The proposal is to purchase 684.5 acres of land considered important to proposed preserve.

*The proposal contemplates City, LA County, California State & PVPLC funds.*

*What assurances is that any of the proposed funds, other than the RPV participation, will be available?*

*It appears that PVPLC has minimal funds and contributions will be "In Kind Services".*

*What assurance are there that, presuming RPV obtains the necessary funds, that the PVPLC will be able to produce it's portion of the funding?*

DELONG 10

2.3.2 - Reserve Management

The plan states that the City would enter into an agreement with the PVPLC to have the PVPLC manage the reserve lands.

*The plan is void of any information concerning the proposed relationship between the City & the PVPLC.*

*What oversight would the CITY have over the PVPLC's activities?*

*What would be the City's responsibilities?*

*What would be the PVPLC's responsibilities?*

*Would who have legal responsibility should anyone be injured?*

*Who would be responsible should PVPLC actions (or lack of) cause fire or other damage to adjacent properties.*

*Who would be responsible should there be further land slippage in the "Slide" area that caused damage to other properties?*

*Would City have authority to cancel agreement for "Cause"?*

DELONG 11

**Comment 8**

The Management Agreement for the Forrestal Preserve was implemented in June of 2001. The PVPLC has chaired an advisory committee that has been meeting on a monthly or biweekly basis since that time to finalize the Forrestal Management Plan. The committee's recommendations, including recommendations for trails will be forwarded to the City Council for review and approval within the calendar year. The Conservancy's first annual report to the City on the Forrestal Preserve was submitted in May of 2003, and the second in May of 2004.

**Comment 9**

The seven Homeowner Associations (HOA's) were identified because they own relatively large parcels of open space that contain CSS habitat adjacent to the proposed Reserve. It is not being proposed that the HOA's donate land, but simply enroll certain areas of their open space in the NCCP. By doing so, the HOA's would retain ownership and control of their open space while the City/PVPLC would be allowed to perform periodic active management activities (i.e. weeding, biological monitoring) on their properties. The seven HOA's have been contacted about the proposal and discussions have occurred with most of the identified HOA's.

**Comment 10**

The City's contribution to the acquisition effort has actually been budgeted. Contributions from the state and federal governments must be approved by the contributing agencies. Although state and federal officials have conceptually approved the creation of a Reserve through City contributions and land acquisition, including the identification of the \$17 million state and \$2 million federal contributions, official approval for the funding will occur at a later date, after the Plan has been approved by the City. The PVPLC's annual contribution will consist of \$50,000 in cash payments and \$75,000 worth of in-kind services. A legal agreement between the City and PVPLC will be drafted and presented to the City Council for approval that will legally bind the PVPLC to its share of its funding responsibilities.

**Comment 11**

The existing management agreement for the Forestall property will be the template for the larger Reserve management agreement between the City and the PVPLC. The implementing agreement will also legally bind the signatories to specific responsibilities. The implementing agreement will address the City's and PVPLC's responsibilities. A draft implementing agreement will be available to the public when the Plan and EIR are released.

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2.3.3 - Mitigation Requirements  
*The three paragraphs in this section are without factual definition.  
 Upon what basis does the City presume that there no State oversight of how project funds are used or projects validated?* } DELONG 12

Paragraph 2 states there are 21 identified City projects & 9 private projects.  
*What are these projects?  
 Why are those projects not identified?  
 What are the costs for these projects?  
 Why are project costs not identified?* } DELONG 13

2.3.4 - Permitting Process  
 Proposal states City would obtain 50 year authorization to "take" species covered by Subarea plan.  
*What does the use of the phrase "take" imply?  
 Terms used are ambiguous.* } DELONG 14

There is reference to "wetlands"  
*What wetlands are included in plan?  
 Are any existing City parks or beaches included in plan?* } DELONG 15

Section Three  
 3.1 - Project Location  
 Paragraph 2 states there are approximately 20 sensitive species within the Subarea Plan area.  
*There is no reference to these supposed 20 species .  
 Where are these species located?  
 Are species located on private property?  
 Subsequent comments (Par 3.4.1) identifies four (4) species.  
 Why is there a difference?* } DELONG 16

Section states there is approximately 8,661 acres of land in RPV. Section also states that land use is dominated by homes & neighborhood oriented commercial.  
*Report is exceptionally vague on impact of supposed sensitive species on existing land use.* } DELONG 17

**Comment 12**

The funds being sought after from the state are specifically allocated for acquisition of parks and open space.

**Comment 13**

See tables 5.1-3 and 5.1-4 for a listing of covered projects. The projects listed in the Subarea Plan are private and public projects that have occurred since 1995 or are reasonably expected to occur within the life of the Subarea Plan (50 years) which have impacted or could impact CSS habitat. A description of each project is contained in section 3.1.6 of the Subarea Plan. The costs of the private projects are not known. Information about the costs of the past or current City projects may be obtained in the City's Department of Public Works. Most of the proposed projects identified are not budgeted and therefore there is no cost information for said projects.

**Comment 14**

"Take" has a specific meaning under Federal law, which defines it as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in any such conduct. 16 U.S.C. 1532 (19). Further, eliminating threatened species habitat can constitute take. Actions that lead to the mortality or displacement of a listed species require a take permit.

**Comment 15**

About 2.5 acres of riparian scrub has been mapped in the city. Additional undocumented wetlands may occur in the Plan area. Developed parks are not within the Reserve. Vegetated portions of beaches are included in the Reserve (bluffs), but typical recreational use is considered a compatible land use.

**Comment 16**

See Section 5.1.1.2 for detailed description of sensitive species and their distribution.

**Comment 17**

Sensitive species constrain certain land uses due to laws that regulate the take of listed species and their habitats.

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3.2 - Background / History  
 Par 2 states that the City has entered into an NCCP agreement that would encompass the **entire** city.  
*What does this mean?*  
*Is there any possibility that individual property owners might be required to plant specified plant species on their property?*  
*Is there any possibility that individual property owners might be required to adhere to some future code concerning plantings?*

DELONG 18

3.3 - Objectives  
 In essence, it is stated that the City's objective is to acquire properties, contribute City owned lands & have the PVPLC manage these reserves.  
*These objectives are ambiguous & lack credibility.*  
*The lack of any specificity dilutes any presumed project credibility*

DELONG 19

3.4.1 - Covered Species  
 In essence, it is stated that the plan is intended to provide for the "take" of covered species and their habitats associated with developments.  
*What does this mean?*  
*What are the implications & ramifications?*  
*What does "take" mean when used in these statements?*  
*What is meant - habitats associated with developments?*  
 Par 2.3.4 also discusses "Take" process. *Is this redundant?*

DELONG 20

- Four supposedly Endangered or Threatened species are identified:
- \* Palos Verdes Blue Butterfly
  - \* El Segundo Blue Butterfly
  - \* California Coastal Gnatcatcher
  - \* Lyon's Pentachaeta.

3.4.3 - Mitigation Requirements  
 This segment states that the City has identified 21 City projects & 9 private projects which would result in unavoidable loss of 48.9 acres of CCS and 174.3 acres of non-grassland within or outside the proposed reserve.  
 This section continues using various numbers without any substantiation data.  
*There should be clarification as to what projects are being considered.*  
*Why will acreage be lost.*

DELONG 21

**Comment 18**

The NCCP Plan covers the entire city, but the focus is toward areas that support covered species. Habitat restoration and management will be limited to Reserve lands. Certain invasive exotic species may not be allowed to be planted as part of any proposed development projects adjacent to the Reserve. No restrictions on landscaping for private residences are being proposed.

**Comment 19**

The Subarea Plan document details the specific roles and responsibilities of the City and PVPLC.

**Comment 20**

See response to DeLong comment 14. The city is requesting a take permit for the covered species so that projects listed in the Plan are covered under the take permit. Habitats within development disturbance areas will be allowed to be removed or modified under the take permit.

**Comment 21**

The Subarea Plan provides details of each covered project.

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<p><i>The lack of documentation demonstrates should be a concern.</i></p> <p>3.4.5.1 - Public Use Master Plan                      The first sentence - "Before the Reserve is open to the public for compatible passive recreation".  <i>What does compatible passive recreation mean?</i>  <i>The implication is that public use will be limited.</i>  <i>What trails are contemplated?</i>  <i>Will any trails be open to equestrians / horses?</i>  <i>Will there be any trails for bicyclists?</i></p> <p>3.4.5.3.1 - Habitat Restoration Plan                      PVPLC to develop plan for restoring 5 acres annually.                      Section 5.1.4 Mitigation Measures - Page 5-27 states there are 692 acres available for habitat restoration at a proposed cost of \$20,000 acre.</p> <p><i>692 acres at 5 acres annual equates to an 138 year project.</i>  <i>At \$20,000 per acre, restoration cost is \$13,840,000. Where will this money come from?</i></p> <p>3.4.5.3.2 - Targeted Exotic Removal Plan                      This section presents a plan for removal of exotic species.  <i>This matter appears ludicrous.</i>                      Section 5.1.1.1.8 refers to plant associations that occur on highly disturbed sites along roadsides , footpaths, parking lots etc. This section begins on page 5-6 continues with a map on page 5-7 and further continues to page 5-13. In these pages sixteen (16) species are identified. Only three (3) are listed as endangered. One specie, Lyon's pentachaeta has not been reported in RPV.</p> <p><i>Since Lyon's pentachacta is mentioned several times in the report, it would appear that there is a plan to introduce Lyon's pentachaeta to the proposed reserve. Is this assumption correct? If this is not proposed to be introduced to the reserve, why is there mention of this specie?</i></p> <p>5.1.1.2 - Sensitive Species                      This section discusses that only recently has the El Segundo blue butterfly been documented in RPV.</p>	<p><b>Comment 22</b>                      Passive recreation includes activities that tend to be constructed and do not involve the use or creation of certain of facilities or buildings such as hiking, biking, horse riding, etc. The city has a Conceptual Trails Plan that will be modified to be consistent with the Subarea Plan. Trails for hiking, biking, and horse riding will be allowed in the Reserve.</p> <p><b>Comment 23</b>                      Comment noted.</p> <p><b>Comment 24</b>                      The Plan proposes to revegetate 5 acres per year over 50 years. A minimum of 250 acres would be restored. Additional restoration would be implemented if development projects resulted in mitigation funds for restoration or additional funding sources allow for more restoration.</p> <p><b>Comment 25</b>                      The opportunity to establish new populations of covered species is provided by the Plan. The wildlife agencies would need to concur that introductions of a listed species is appropriate.</p>
<p>DELONG 21 (cont'd)</p> <p>DELONG 22</p> <p>DELONG 23</p> <p>DELONG 24</p> <p>DELONG 25</p>	

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Two questions:

*If the El Segundo blue butterfly has only recently been observed in RPV, it must not be native & why is a nonnative specie being introduced into the reserve habitat?*

*If the El Segundo blue butterfly has been recently observed in RPV, then one can conclude it is a growing specie. Why then is the El Segundo blue butterfly on the endangered list?*

DELONG 26

**Comment 26**

El Segundo blue butterfly is a native species limited to coastal areas of Los Angeles County. Suitable habitat for El Segundo blue butterfly is limited within RPV and elsewhere.

Page 5-13 discusses the Palos Verdes Blue Butterfly. Discussion continues that the Palos Verdes Blue Butterfly is know to occur only at the Naval Fuel Depot in San Pedro. Discussion continues that Milk Vetch / Deerweed are native only to the Northeastern portion of the Palos Verdes Peninsula.

*As there is frequent mention of the Palos Verdes Blue Butterfly in the DEIR, one can conclude that the PVPLC plans to introduce the non native Palos Verdes Blue Butterfly along with needed food sources to the preserve area.*

*If natural (native) habitat are critical, why are not native species being introduced?*

DELONG 27

**Comment 27**

RPV historically supported populations of the native PV blue butterfly. Reintroduction of this species is a key goal of the Plan. Creation of suitable habitat in conserved and managed Reserve areas is the first step towards reintroduction.

**Comment 28**

See response to DeLong comment 7. Active habitat management can not occur on private property without permission. Publicly owned lands are where most conservation actions can occur. The Forestall Property is being managed for the benefit of the gnatcatcher and other sensitive species, and is not 600-acres in size but instead is approximately 160 acres in size.

Page 5-14 / 5-15 mention the Coastal California Gnatcatcher. The states that the Coastal California Gnatcatcher is not an Endangered species. Although the report states that the Coastal California Gnatcatcher is a "Threatened" species, there is no substantive information relating to the Coastal California Gnatcatcher other than an apparent presumption if more land was set aside the Coastal California Gnatcatcher would thrive.

*The fallacy of the presumption is that all lands being considered are now "open" lands. A presumption that the State of California does not fund the preserve, little is likely to change. The preponderance of now "open" lands will remain "open" lands.*

*The Forestall property is some 600 + acres. Why has the PVPLC not taken actions to build sanctuary for the Coastal California Gnatcatcher in this existing preserve?*

DELONG 28

**Comment 29**

Pacific pocket mouse is not known to occur in the Plan area and there are no specific plans to introduce this species due to a lack of potentially suitable habitat.

Page 5-15 also mentions the Pacific (Little) Pocket Mouse.

*Although the report identifies the Pacific (Little) Pocket Mouse as "Endangered, the presumption is that there is no plan to introduce the Pacific (Little) Pocket Mouse to the proposed Reserve. If this is not the case, please explain why a non native animal will be introduced?*

DELONG 29

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**Comment 30**

The Reserve lands are delineated in several figures in the Plan and EIR. Habitat management activities will be restricted to Reserve lands.

Other Issues

A year or so ago, the City landscaped portions of Abalone Cove. Shortly after project completion, it was decided that the plantings were not habitat compliant. Flowers were removed & replaced with *compliant* plantings.

The DEIR seems to say that the City / PVPLC concept envisions the entire City as a part of the Reserve. One can easily envision a scenario that residents will, in time, have to obtain RPV / PVPLC landscaping approval.

DELONG 30