



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



December 1, 2014

Ms. Christina Taylor
Orange County Public Works
300 N. Flower Street, 3rd Floor
Santa Ana, CA 92703-4048
christina.taylor@ocpw.ocgov.com

Subject: Comments on the Notice of Preparation of an Environmental Impact Report for the Preserve at San Juan Project, Orange and Riverside Counties, CA (SCH# 2006051110)

Dear Ms. Taylor:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Preparation (NOP) for The Preserve at San Juan Draft Environmental Impact Report (DEIR). The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act, [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning (NCCP) program.

The Preserve at San Juan Project is a proposed residential development in Orange and Riverside counties, California, involving the development of 72 single-family residential lots on primarily undeveloped land, with minimum residential lot sizes of 1 acre. The project area includes 583.3 acres, with development on 75.5 acres and 507.8 acres remaining as open space. The proposed project includes off-site improvements to Long Canyon Road, development of 24.5 acres of vineyards, a fuel modification zone of at least 170 feet, and on-site and off-site improvements to Elsinore Valley Municipal Water District infrastructure. The new on-site water distribution facilities would include a 12-inch distribution line that would be constructed throughout the developed portions of the project site. Finally, 715,000 and 525,000 gallon water storage tanks would be installed.

The Department offers the following comments and recommendations to assist the County of Orange (County) in avoiding or minimizing potential project impacts on biological resources.

Specific Comments

1. It should be noted that the Southern Orange County NCCP was not approved by the Department; consequently, take of CESA-listed species is not authorized. The Department considers adverse impacts to a species protected by the CESA, for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085). Consequently, if the project, project

construction, or any project-related activity during the life of the project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, the Department recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the project CEQA document addresses all project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

Part of the project area is within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). The MSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. The Department recommends that the Draft EIR (DEIR) address potential impacts to the MSHCP including covered species, Criteria Area, and areas identified as Public-Quasi Public lands under the plan. The County of Orange is the lead agency for the proposed project but is not signatory to the MSHCP, therefore, in order to participate in the MSHCP they would need to act as a Participating Special Entity (PSE). If the County chooses to act as a PSE and obtain take through the MSHCP then the following MSHCP policies and procedures will apply to this project: Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2), Protection of the Narrow Endemic Plant Species (MSHCP Section 6.1.3), and Urban/Wildland Interface Guidelines (MSHCP section 6.1.4). If the project is not processed through the MSHCP for covered species, then the project may be subject to the Federal Endangered Species Act (FESA). In acknowledgement of the MSHCP, the Department recommends that the DEIR analyze the Project's consistency with the MSHCP regardless of whether the project is processed with the County as a PSE or not.

2. The DEIR should include a list of CESA- and FESA-listed species and locally sensitive species that are on or near the project site, or which could be affected by the project or its alternatives. The FESA-listed endangered arroyo toad (*Anaxyrus californicus*), state special species of special concern Arroyo chub (*Gila orcutti*), and the rapidly declining partially armored threespine stickleback (*Gasterosteus aculeatus microcephalus*) inhabit San Juan Creek. The DEIR should include a detailed discussion of these species and information pertaining to their local status and distribution. The assessment should address potential impacts the project would have on these and other aquatic species downstream of the project site. The analysis of impacts to biological resources and habitat types should also include detailed maps and tables summarizing specific acreages and locations of all habitat types.
3. The Department has responsibility for wetland and riparian habitats. It is the policy of the Department to strongly discourage development in wetlands or conversion of wetlands to uplands. We oppose any development or conversion which would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, project mitigation assures

there will be “no net loss” of either wetland habitat values or acreage. Development and conversion include but are not limited to conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks which preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife populations. Mitigation measures to compensate for impacts to mature riparian corridors must be included in the DEIR and must compensate for the loss of function and value of a wildlife corridor.

- a. The project area supports aquatic, riparian, and wetland habitats; therefore, a jurisdictional delineation of the creeks and their associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the U. S. Fish and Wildlife Service wetland definition adopted by the Department.¹ Please note that some wetland and riparian habitats subject to the Department’s authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers.
 - b. The Department also has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream, or use material from a streambed. For any such activities, the project applicant (or “entity”) must provide written notification to the Department pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, the Department determines whether a Lake and Streambed Alteration Agreement (LSA) with the applicant is required prior to conducting the proposed activities. The Department’s issuance of a LSA for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. The Department as a Responsible Agency under CEQA may consider the County’s final Environmental Impact Report for the project. To minimize additional requirements by the Department pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA (refer to www.wildlife.ca.gov/habcon/1600).
5. It is anticipated that the proposed project would result in increased traffic volumes on highways and roads adjacent to the proposed project area. The DEIR should discuss the need for any road improvements that would be necessary to off-set increased traffic volumes resulting from the proposed project. Furthermore, the DEIR should identify any on- and/or off-site impacts to sensitive species or habitats that would result from any proposed road improvements associated with the project, specifically with regard to the potential for increased road mortality to mountain lion (*Puma concolor*), a specially protected species in California.

¹ Cowardin, Lewis M., et al. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.

6. All construction and post-construction best management practices (BMPs) should be located within the development footprint (i.e., included in the impact analysis as loss of habitat). The DEIR should include a figure depicting the location of BMPs in relation the development footprint.
7. Native plants should be used to the greatest extent feasible in landscaped areas adjacent to and/or near mitigation/open space areas and/or wetland/riparian areas. The applicant should not plant, seed, or otherwise introduce invasive exotic plant species to landscaped areas adjacent and/or near native habitat areas. Exotic plant species not to be used include those species listed on the California Invasive Plant Council's (Cal-IPC) Invasive Plant Inventory. This list includes such species as: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom (see <http://www.cal-ipc.org>). In addition, landscaping adjacent to native habitat areas should not use plants that require intensive irrigation, fertilizers, or pesticides. Water runoff from landscaped areas should be directed away from mitigation/open space and/or wetland/riparian areas and contained and/or treated within the development footprint.
8. Because the proposed project would create a significant amount of ground disturbance, concern exists over the impacts the project will have on storm water quality and general hydrology in the surrounding area. Given Governor Brown's Drought State of Emergency Declaration, issued January 17, 2014, the final DEIR should analyze the efficacy of Low Impact Development (LID) options to minimize storm water impacts, including:
 - a. Site layout with regard to sensitive resources, including off site native habitat.
 - b. The use of pervious surfaces (crushed aggregate, turf block, unit pavers, pervious concrete and asphalt) as alternatives to impervious surfaces.
 - c. Structure roof spouts emptying over pervious surfaces.

If it is anticipated that runoff cannot be dispersed through LIDs, the DEIR should consider directing runoff to facilities designed to detain and treat runoff, such as detention or bioretention basins. Storm water impacts should be explored throughout the project footprint as well as off-site native habitat.

General Comments

1. To enable the Department to adequately review and comment on the proposed project from the standpoint of the protection of plants, fish and wildlife, we recommend the following information be included in the DEIR.
 - a. A complete discussion of the purpose and need for, and description of, the proposed project, including all staging areas and access routes to the construction and staging areas.
 - b. A range of feasible alternatives to ensure that alternatives to the proposed project are fully considered and evaluated; the alternatives should avoid or otherwise minimize impacts to sensitive biological resources. Specific alternative locations should be evaluated in areas with lower resource sensitivity where appropriate.

Biological Resources within the Project's Area of Potential Effect

2. To provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. The DEIR should include the following information.
 - a. Per CEQA Guidelines, section 15125(c), information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis should be placed on resources that are rare or unique to the region.
 - b. A thorough, recent floristic-based assessment of special status plants and natural communities, following the Department's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see <http://www.dfg.ca.gov/habcon/plant/>). The Department recommends that floristic, alliance- and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity. The Manual of California Vegetation, second edition, should also be used to inform this mapping and assessment (Sawyer et al. 2008¹). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
 - c. A current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. The Department's California Natural Diversity Data Base in Sacramento should be contacted at www.wildlife.ca.gov/biogeodata/ to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code.
 - d. An inventory of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive fish, wildlife, reptile, and amphibian species. Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service.

Analyses of the Potential Project-Related Impacts on the Biological Resources

3. To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR.

¹ Sawyer, J.O., T. Keeler-Wolf and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society Press, Sacramento.

- a. A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address: project-related changes on drainage patterns on and downstream of the project site; the volume, velocity, and frequency of existing and post-project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-project fate of runoff from the project site. The discussions should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary, and the potential resulting impacts on the habitat, if any, supported by the groundwater. Mitigation measures proposed to alleviate such impacts should be included.
- b. Discussions regarding indirect project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR.
- c. The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.
- d. A cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Mitigation for the Project-related Biological Impacts

4. The DEIR should include measures to fully avoid and otherwise protect Rare Natural Communities from project-related impacts. The Department considers these communities as threatened habitats having both regional and local significance.
5. The DEIR should include mitigation measures for adverse project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.
6. For proposed preservation and/or restoration, the DEIR should include measures to perpetually protect the targeted habitat values from direct and indirect negative impacts. The objective should be to offset the project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

7. The Department recommends that measures be taken to avoid project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Title 50, § 10.13, Code of Federal Regulations). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Proposed project activities (including, but not limited to, staging and disturbances to native and nonnative vegetation, structures, and substrates) should occur outside of the avian breeding season which generally runs from February 1- September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the avian breeding season is not feasible, the Department recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300 feet of the disturbance area (within 500 feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.
8. The Department generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful.
9. Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.

We appreciate the opportunity to comment on the referenced NOP. Questions regarding this letter and further coordination on these issues should be directed to Jennifer Edwards at (858) 467-2717 or via email at jennifer.edwards@wildlife.ca.gov.

Sincerely,



Gail K. Sevens
Environmental Program Manager
South Coast Region

cc: Jesse Bennett (U.S. Fish and Wildlife Service)
Scott Morgan (State Clearinghouse)

