

Letter O1



CENTER for BIOLOGICAL DIVERSITY

via email and first-class mail

July 28, 2014

Mark Slovick
 Department of Planning and Development Services
 5510 Overland Avenue, Suite 110
 San Diego, CA 92123

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RE: Comments on Lilac Hills Ranch Project Revised Draft Environmental Impact Report

Dear Mr. Slovick:

These comments are submitted on behalf of the Center for Biological Diversity (the Center), on the revised Draft Environmental Impact Report (DEIR) for the proposed Lilac Hills Ranch housing development (the project). The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has 775,000 members and e-activists, throughout California and the United States, including San Diego County.

O1-1

The project contemplates the development of a massive mixed use housing development on 608 acres of land in the semi-rural, largely agricultural, unincorporated areas of northern San Diego County (County). The project proposes 90,000 square feet of commercial, office, and retail space; 1746 residential units; a K-8 school; a recycling plant; a water reclamation facility; a fire department; and open space areas and manufactured slopes totaling 174.6 acres.¹ The project will support an anticipated population of over 4,470 people. In essence, the project contemplates the development of a new sprawl style development adjacent to wildlife corridors and pre-approved mitigation areas—in a largely rural area with no major job centers.

O1-2

It must be noted that the County, California Department of Fish and Wildlife, and other local agencies are in the process of finalizing a Multiple Species Conservation Program (MSCP) for the unincorporated areas of northern San Diego County (North County MSCP).² The project site is located within the proposed North County MSCP

O1-3

¹ DEIR, at 1-18.

² DEIR, at 1-39.

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O1-1 This comment is an introduction to comments that follow. No further response is required.

O1-2 The comment restates information contained in the FEIR, but does not raise an environmental issue within the meaning of CEQA. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project. However, because the comment does not raise an environmental issue with respect to the FEIR, no further response is required.

O1-3 The project would not preclude implementation of the goals and objectives identified in the draft North County MSCP. The suggestion that the Lilac Hills Ranch project would embody poor land use planning is contrary to the analysis presented in the FEIR, which concludes that the project would be consistent with the draft North County Plan and implement the goals and objectives of the MSCP. The analysis of the project's compliance with the MSCP can be found in subchapter 2.5.2.5 of the FEIR.

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Subarea Plan Area, and is within four hundred feet of pre-approved mitigation areas (PAMAs) located in the north (Keys Canyon) and west (I-15 corridor).³ The goal of the MSCP is to maintain and enhance biological diversity in the region and maintain viable populations of endangered, threatened, and key sensitive species and their habitats while promoting regional economic viability through streamlining the land use permit process. Accommodating a development of this massive scale and scope prior to completion of the North County MSCP embodies poor land-use planning that will decrease biological diversity and negatively impact sensitive species occurring on the site. Turning this process on its head, approval of the project at this premature juncture would dictate outcomes in the North County MSCP and potentially foreclose more thoughtful and sustainable regional planning. The Center urges the County to table the project until the County finalizes the North County MSCP so that a more informed determination can be made as to whether or not the project is consistent with the County's vision of conservation and sustainable land use future.

O1-3
cont.

The DEIR fails to adequately analyze a range of environmental impacts, mitigation measures, and alternatives. At a minimum, the DEIR must be revised and recirculated to remedy these deficiencies. However, because of the permanent and irreconcilable conflicts with the County of San Diego General Plan, the Valley Center and Bonsall Community Plans, and failure to comply with the California Environmental Quality Act (CEQA) as well as the California Endangered Species Act (CESA).

O1-4

O1-5

While the DEIR's shortcomings are numerous, this letter focuses specifically on the DEIR's analysis of the project's impacts on biological resources and water resources. While the project touts its purported consistency with "Smart Growth Principles," locating residential development far from jobs and meaningful public transit defies any rationale definition of smart growth. Development of this scale in a remote, biologically sensitive location is fundamentally incompatible with California's efforts to transition to a sustainable low-carbon future and should be flatly rejected as proposed.

O1-6

O1-7

I. THE DEIR FAILS TO PROPERLY ANALYZE IMPACTS TO BIOLOGICAL RESOURCES.

The DEIR fails in providing the level of analysis mandated by CEQA because it fails to address numerous aspects of how the project will affect wildlife, as well as providing a thorough analysis of the project's impacts to sensitive species. An EIR must include a description of the physical environmental conditions in the vicinity of the project at the time the environmental analysis is commenced with special emphasis placed on environmental resources that are rare or unique to that region and would be affected by the project. Guidelines § 15125 (a), (c). An "inadequate consideration and documentation" in an EIR "of existing environmental conditions renders it impossible for the FEIR to accurately assess the impacts the project will have on wildlife and wildlife habitat or to determine appropriate mitigation measures for those impacts." *San Joaquin*

O1-8

³ DEIR, at 1-39.

- O1-4 The comment addresses general subject areas, each of which received extensive analysis in the FEIR. The FEIR does analyze a full range of impacts, prescribes mitigation measures consistent with County guidelines and CEQA, and examines a reasonable range of alternatives. The comment does not raise any specific issue regarding that analysis and, therefore, no more specific response can be provided or is required. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project.
- O1-5 The comment expresses the opinions of the commentator. For details on General Plan consistency, refer to Appendix W of the FEIR. The remainder of this comment makes assertions that are further detailed in the remainder of the letter and responded to accordingly.
- O1-6 Comment noted.
- O1-7 Please see Global Response: Project Consistency with General Plan Land Use Element Policy LU-1.2 included in the introduction to these responses to comments.
- O1-8 The County does not agree that the FEIR failed in providing the level of analysis mandated by CEQA. In addition, the FEIR appropriately documents the baseline physical conditions of the site. Baseline physical conditions on the site were documented through the completion of various biological resource surveys conducted over 31 individual days from 2011 through 2012. The dates and type of surveys completed are documented in Table 1 of Appendix G of the FEIR. In addition, the FEIR relies on the best available scientific studies available to inform the analysis of project impacts to sensitive species. In addition, the FEIR's analysis of impacts to wildlife species, including special status species, was prepared according to County Guidelines for Determining Significance and fully documents and discloses the impacts from the project. Refer to subchapter 2.5 and Appendix G of the FEIR.

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Raptor/Wildlife Rescue Center v. County of Stanislaus, 27 Cal. App. 4th 713, 722 (internal citation omitted). Unfortunately the EIR fails this requirement.

O1-8
cont.

Given the fact that the project itself provides habitat for at least 50 special status plant and animal species it is critically important that impacts to biological resources be fully evaluated. These species include Federally listed threatened and endangered species such as the arroyo toad, southwestern willow flycatcher, least Bell's vireo, coastal California gnatcatcher, and Stephen's kangaroo rat. Additionally, the project site serves as potential habitat for California fully protected species including mountain lions and ringtails.

O1-9

The project site is located within the proposed North County MSCP Subarea Plan Area, and is within four hundred feet of pre-approved mitigation areas (PAMAs) located in the north (Keys Canyon) and west (I-15 corridor).⁴ Additionally, the project site contains ecologically valuable coastal sage scrub vegetation; coastal/valley freshwater marshes that are considered a category of RPO wetland;⁵ coastal live oak woodland;⁶ and large, relatively undisturbed areas of southern mixed chaparral.⁷

O1-10

O1-11

Currently the existing land use (primarily agricultural) is more consistent with maintaining the project site as undeveloped for rare and common species. Clearly these lands also provide not only a buffer to adjacent wildlife habitat, but rare and endangered species habitat, based on the number of occurrences of rare species that were documented on the project site. However, the Project site will significantly change the land use by introducing highly urbanized, high density housing directly adjacent to future PAMAs and eliminating much of the marginal habitat that currently allows for movement and persistence of rare and common plants and animals in the area. The document fails to address many of the insidious issues that accompany the development of a new village in a rural area, nor does it evaluate the effects of this village on natural areas. The DEIR fails to analyze the impacts to the biological resources from this proposal according to CEQA requirements.

O1-12

O1-13

O1-14

The DEIR identifies 50 special status wildlife species and 3 special status plant species that have been documented to occur on site demonstrates the ecological importance of the area. Placing a population of 4,700 people in a semi-rural area with diminishing natural communities including wetlands and coastal sage scrub ecosystems will have a significant impact on the numerous species that rely on this preserve to survive. The County has a heavy burden in demonstrating that their proposed project will not adversely impact any of these species or their habitats.

O1-15

The CEQA Guidelines require mandatory findings of significance when a project has the potential to substantially reduce the habitat of a fish or wildlife species, cause a

O1-16

⁴ DEIR, at 1-39.
⁵ DEIR, at 2.5-6.
⁶ DEIR, at 2.5-6.
⁷ DEIR, at 2.5-5.

O1-9 While the project site has some native habitat present, a majority of the site is agricultural land. For example, of the 505 acres to be affected by the project, 425.3 acres – more than 84 percent -- are located on land that is currently being used for agriculture, is disturbed, or is already developed. (See Biological Resources Report, Appendix G, Table 8.) Project impacts to the remaining habitat (approximately 79 acres) will be mitigated through a combination of on-site avoidance through preservation of habitat as well as off-site mitigation, pursuant to ratios established by the County Guidelines for Determining Significance and/or the requirements of the resource agency with jurisdiction over the impact (e.g., California Department of Fish and Wildlife). (*Ibid.*) In addition, the site does not provide habitat for all 50 special status species evaluated for the potential to occur. The potential for these special status species to occur on the site was considered in light of the ecological and distributional characteristics for each; only those species that had a reasonably high potential to occur on the site were evaluated in detail. This approach was appropriate given the relatively small amount of natural, undisturbed habitat on site and the large number of biological surveys conducted as part of the environmental review for the project. Refer to Attachments 9 and 11 of Appendix G of the FEIR for a list of sensitive plant and wildlife species, respectively, with the potential to occur on-site. These Attachments detail the likelihood of occurrence and the factual basis for this determination. The Biological Resources Report for the project concluded that the majority of these special status species had a low potential for occurrence on the site.

O1-10 The comment provides factual background information, but does not raise an environmental issue within the meaning of CEQA. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project. However, because the comment does not raise an environmental issue with respect to the FEIR, no further response is required.

O1-11 The comment provides factual background information, but does not raise an environmental issue within the meaning of CEQA. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project. However, because the comment does not raise an environmental issue with respect to the FEIR, no further response is required.

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	<p>O1-12 The existing agricultural lands on the project site are currently in active use. While there may be incidental use of these areas by wildlife, they do not represent habitats that are considered sensitive under the draft North County MSCP and County of San Diego Requirements for Biological Resources. The analysis of biological impacts associated with both the agricultural lands and natural habitats on site is consistent with adopted policies and guidelines of the County. Likewise the analysis of the project's consistency with the draft North County MSCP and wildlife movement corridors is consistent with County Guidelines for Determining Significance. Refer also to response to comment O1-9.</p> <p>O1-13 The project will result in a change in land use; however the project is not directly adjacent to the draft PAMA lands as stated by the commenter. West Lilac Road and residences separate the site from the closest PAMA lands located to the northeast of the project site. Draft PAMA lands located to the west follow the I-15 corridor (see FEIR Figure 2.5-1). In addition, approximately 217 acres or 35 percent of the project site will be part of the overall open space system (biological habitats, agricultural lands, park lands, and common open space (see FEIR Figure 1-9). In addition, the project fully compensates for impacted habitat in accordance with the County Guidelines for Determining Significance.</p> <p>O1-14 This comment makes a general statement about failure to address unspecified issues in the FEIR. The comment does not raise any specific issue regarding that analysis and, therefore, no more specific response can be provided or is required. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project.</p> <p>O1-15 The comment states incorrect information. The FEIR states that three special status plant species and thirteen special status wildlife species (not 50) were observed on the project site. All other special status species were determined to have a low potential to occur on the site. The Biological Resources Report identified impacts to habitat that supports these species and mitigation measures to compensate for the loss of habitat that may support plant and wildlife species. Refer also to response to comments O1-9 and O1-40.</p>
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fish or wildlife population to drop below self-sustaining levels, threaten or eliminate a plant or animal community, or reduce the number or restrict the range of an endangered, rare or threatened species. CEQA Guidelines § 15065(a). As described below this project will do all of these things has the potential to substantially reduce the habitat for numerous wildlife species, and manifestly reduce the number and/or restrict the range of several rare, threatened, and endangered species. The County is required under CEQA to fully disclose the impacts to rare and common plants and animals.

01-16
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a. The DEIR Needs to Fully Disclose Project Impactsp

A DEIR is required to be an informational document from which the public can properly weigh any adverse effects presented by a project. Pub. Res. Code §§ 21061; 21005(a) (“noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented...may constitute a prejudicial abuse of discretion...”). A lead agency “must use its best efforts to find out and disclose all that it reasonably can” and cannot simply hide behind its failure to gather and analyze the necessary information. Guidelines § 15144.

01-17

The DEIR needs to specifically discuss these mandated Guidelines with regards to the protected species at issue. First, an EIR must include description of the physical environmental conditions and baseline physical conditions as they exist at the time the notice of preparation is prepared or at the environmental analysis is commenced.⁸ Environmental analysis for the project began in 2011, therefore any baseline scientific information must pertain to this approximate time period. As well, substantial evidence needs to be provided as to the expected success of mitigation measures for sensitive species. Finally, the DEIR cannot simply conclude that following these measures will result in a less than significant impact, but needs to demonstrate this outcome through scientific data that takes into account the unique characteristics and habitat needs for the species at issue, and utilizes such information in determining impacts.

01-18

01-19

A full quantitative analysis of impacts to special-status species must be provided in this DEIR, and appropriate and effective avoidance and mitigation measures must be adopted. Every project must conduct and disclose project-level, species-specific, direct and cumulative analyses of impacts in an EIR and to mitigate those impacts providing analysis for that mitigation. The Endangered Species Act standards and definitions are not analogous to the CEQA standards for review, public disclosure, analysis of alternatives, and analysis of direct and cumulative impacts.

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A DEIR is required to provide full and detailed scientific evidence as to what the project’s impact will be, as well as providing detailed and enforceable mitigation measures to lessen these impacts. A DEIR cannot simply make conclusory statements that it complies with an existing plan, and that this alleged compliance is sufficient to protect sensitive species; such conclusory statements are insufficient to meet CEQA

01-23

⁸ CEQA Guidelines Section 15125(a).

01-16 The County does not agree that it must adopt Mandatory Findings of Significance for biological resource impacts. The FEIR identifies adequate mitigation to fully reduce impacts to biological resources to less than significant.

01-17 This comment is noted. The County has used its best efforts to disclose and analyze the potential impacts of the project. The comment does not raise any specific issue regarding that analysis and, therefore, no more specific response can be provided or is required. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project.

01-18 The FEIR adequately provides baseline physical conditions on the site through the completion of various biological resource surveys conducted over 31 individual days from 2011 through 2012. The dates, type of survey and conditions present are documented in Table 1 of Appendix G of the FEIR.

01-19 The FEIR found that impacts to sensitive species would be less than significant. As a result, no species specific mitigation is proposed and there is no need for additional analysis of the success of sensitive species mitigation. The FEIR includes adequate analysis and support for the conclusions of less than significant impacts to sensitive species as further detailed in the species specific response to comments O1-29 – O1-76.

01-20 A full quantitative analysis of special-status species is not required and cannot be provided, as the best available scientific information does not provide data on regional populations of sensitive species. The FEIR documents the results of various biological resource surveys conducted over 31 individual days from 2011 through 2012. The dates and type of survey are documented in Table 1 of Appendix G of the FEIR. Quantitative scientific studies identifying specific regional population numbers for individual species are not available; therefore significance conclusions are based on best available scientific information.

01-21 This comment is noted. The FEIR provides adequate analysis of the referenced issues.

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standards. Public Res. Code § 21082.2(c); *see also Village Laguna of Laguna Beach, Inc. v Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1034-1035.

The DEIR is fundamentally flawed as it fails to measure and fully disclose project impacts to sensitive species as many of the surveys were conducted when the project was proposed to be 518.3 acres instead of the current 608 acres. Specifically, the DEIS states that additional studies are being conducted for least Bell's vireo in the northern portion of the project, since it was not part of the project and therefore was not included in the original surveys dating May to July, 2011.⁹ Indeed, the Biological Resources Report verifies this statement as the original survey results discussed the proposed project as 518.3 acres instead of the current 608 acres.¹⁰ The DEIR cannot rely upon future analysis and mitigation to defer the disclosure of impacts. *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 306 (1988). The DEIR does not mention conducting an expanded survey to include the additional acres for the California coastal gnatcatcher even though surveys for the species were conducted during a similar period of time (July-August, 2011) when the project only encompassed 518.3 acres.¹¹ More importantly, 26 of the 31 survey trips were between February and August of 2011, which means that the vast majority of the surveys were completed relying on the fact that the project only included 518.3 acres at the time.¹² The DEIR essentially relies on outdated biological assessments in evaluating impacts on sensitive species and their habitats, as well as in determining associated avoidance and mitigation measures--without any information for 89.7 acres of the proposed project. By failing to assess and include potential additional impacts on species and habitats to accommodate the whole of the project DEIR has completely failed to meet the CEQA mandate that EIRs to be informational documents that allow the public to properly weigh adverse effects of the project. In order to satisfy CEQA requirements for full disclosure, new species and habitat surveys must be completed and the DEIR must be recirculated containing updated analyses on impacts to sensitive species and habitats covering all 608 acres of the proposed project.

b. The Proposed Project will Have a Significant Impact on Protected Plant Species

Three special-status plant species have been observed within the Project site:¹³

- Prostrate spineflower
- Southwestern spiny rush
- Engelmann oak

Although only the Engelmann oak is covered under the draft MSCP, all three species are on County List D of uncommon species and are California Native Plant

⁹ DEIR, at 2.5-1.

¹⁰ DEIR, Appendix G (Biological Resources Report), at Attachment 1.

¹¹ Biological Resources Report, at Attachment 2.

¹² Biological Resources Report, at 7-8.

¹³ DEIR, at 2.5-11.

01-22 This comment is noted. The FEIR provides adequate analysis of biological resource impacts per the requirements of CEQA and the ESA.

01-23 As further detailed in the remainder of these responses, the FEIR does not rely on conclusory statements to reach its conclusions. The FEIR conclusions for impacts to sensitive species are based on their likelihood of occurrence on-site, the suitability of the on-site habitat to support sensitive species, their relative abundance in the region, and the regional abundance of their preferred habitat. As most of the project site (approximately 76%) is marginal habitat (agricultural land, disturbed land, currently developed land) and the sensitive biological resource areas would be preserved on-site and off-site in conservation easements, the project would not result in a significant loss of habitat for the studied species. In addition, of the species with the potential to occur on-site, the FEIR demonstrates that a combination of the preservation of habitats suitable for these species, on-site or within draft PAMA lands, in combination with the abundance of species as documented in scientific literature, would result in less than significant sensitive species impacts. Additional species specific responses supporting this general description of the sensitive species impacts included in the FEIR are provided in the responses that follow.

01-24 The commenter is correct that the original biological resource survey were completed for a smaller 518.3 acre portion of the project site. However, updated biological surveys and habitat evaluations were conducted on the remainder of the project parcels that were added after August 2011. The survey dates and times that occurred during 2012 to cover these additional parcels are reported in the Table 1 of the Biological Resources Report. All land added was evaluated for the potential to support sensitive species or their habitat, but the majority of the land added was agricultural land that supported little, if any, native habitat. A patch of habitat was added that contained habitat with the potential to support the least Bell's vireo; therefore, this area was surveyed for vireo in 2014. The FEIR references these additional surveys in the introduction of subchapter 2.5. The Draft Final EIR has been updated with the results of the survey, which were negative. The Biological Resources Report and FEIR have adequately evaluated all 608 acres of the project site.

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RESPONSE

	<p>O1-25 The FEIR does not defer the disclosure of impacts because it adequately discloses the potential for least Bell's vireo to occupy the project site. The FEIR includes the results of a least Bell's vireo survey covering a majority of the project site (Attachment 1 of Appendix G of the FEIR). Survey results were not available for a small portion of the project site at the time of public review, however surveys have been completed for the entirety of the site and the results are included in the Final EIR, Appendix G. The result of the updated survey was negative for least Bell's vireo. This information does not alter the analysis, the impact conclusions, or result in new information that was not already disclosed during public review of the Draft REIR.</p> <p>O1-26 Updated surveys for the coastal California gnatcatcher were not completed because the additional project acreage included very little coastal sage scrub habitat (i.e., not enough to support gnatcatcher).</p> <p>O1-27 See response to comments O1-24 – O1-26.</p> <p>O1-28 See response to comment O1-24.</p> <p>O1-29 The project would only impact one of the three sensitive plant species observed on the site. These impacts to prostrate spineflower were evaluated and were determined to be less than significant because (1) the number of individuals being affect is low, and (2) available data indicate this plant is relatively abundant in its range. Refer also to response to comment O1-31.</p>
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Society rank 4.2 species. Appropriate evaluation of impacts (project specific and cumulative), avoidance measures, mitigation measures and management measures still need to be more accurately provided for all species. One large flaw in the DEIR is the failure to assess the change in hydrology that will occur from the proposed project implementation and its effects on the soils. Any decrease in the alkalinity of the soils will be detrimental not only to the onsite plants, but could also have detriment to the downstream populations. Changes in soil alkalinity can allow for additional invasions of non-native species too. Simple on-site avoidance of the documented populations fails to address this critical issue.

O1-29
cont.

O1-30

i. Prostrate spineflower

The DEIR notes that the prostrate spineflower was found on the project site in scattered patches, and acknowledges that direct impacts to southern mixed chaparral on-site could result in the direct loss of up to 100 individuals of prostrate spineflower.¹⁴ However, the DEIR states this loss would not be considered significant as the 100 individuals observed during surveys did not “appear to be great enough to consider this location a significant regional population,” based on its abundance and wide-range within the San Diego region and that it regularly occupies disturbed areas.¹⁵ The DEIR does not define a significant regional population. Furthermore, the study that the DEIR and the Biological Resource Report rely on is a 2001 study by Reiser and does not provide an up-to-date baseline against which to determine whether the 100 observed individuals would make up a regionally significant population within the DEIR.

O1-31

The DEIR fails to describe management measures necessary for the survival of the prostrate spineflower on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the prostrate spineflower by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-32

ii. Southwestern spiny rush

Similar to the prostrate spineflower, the DEIR fails to adequately analyze project impacts to the southwestern spiny rush. The DEIR notes that 20 individuals of southwestern spiny rush were observed in an on-site drainage course, and that additional populations could occur in riparian woodlands that were inaccessible. However, the DEIR states this loss would not be considered significant as the 20 individuals observed during surveys did not “appear to be great enough to consider this location a significant regional population,” based on its abundance and wide-range within the San Diego region.¹⁶ Again, the DEIR draws the conclusion that impacts of the Project will be less than significant on the southwestern spiny rush based on outdated scientific information by Reiser and without providing a quantified baseline to assess significance by.

O1-33

¹⁴ DEIR; at 2.5-11, 2.5-18; Biological Resources Report, at 80.

¹⁵ Biological Resources Report, at 80.

¹⁶ Biological Resources Report, at 80.

O1-30 While the proposed development would alter the existing hydrologic conditions on the site, the project has been designed to ensure that discharges in terms of volume and runoff rates would meet the pre-development conditions. As described in the FEIR and detailed in the project’s hydrology studies, the project has developed a comprehensive drainage plan as a means to reduce and slow increased project runoff and maintain on-site hydrology. On-site riparian areas are further protected from long-term runoff on-site through dedicated buffers and open space easements intended to preserve the integrity of wetland vegetation. In addition, the project’s drainage study provides calculations of anticipated increases of flow volumes and the HMP identifies the hydromodification measures to be employed by the project to reduce and eliminate potential impacts to receiving waters. The Drainage Study, Major SWMP and HMP concluded that the incorporation of the requisite LIDs, BMPs and hydromodification design features, including detention basins and sediment traps, would reduce impacts associated with excessive erosion or siltation, and flooding, on- or off-site flooding to less than significant. Given these project design features which would maintain the existing hydrologic condition, changes in soil alkalinity both on-site and at downstream areas would not be anticipated. In addition, it should be noted that there is no conclusive scientific evidence that shows urbanization increases soil alkalinity. Changes in soil alkalinity would depend on a variety of conditions and it would be highly speculative to assume the project would result in such changes.

O1-31 As noted in subchapter 1.4.5 of the FEIR, Prostrate spineflower (Chorizanthe procumbens) is not a state or federally listed species and is no longer a ranked species by CNPS due to it being common. It is, however, currently on List D of the County sensitive species list. The County Threshold for determining the significance of impacts to County List D plant species is “The project would impact the local long-term survival of a County List C or D plant species ...” According to the County Guidelines (p. 12), the term “local” is defined by the boundaries of the County’s multiple species conservation plans. For species in northern San Diego county, “local” is the North County Plan area. In addition, the Guidelines state, “Groups C and D Plants...include those species that are becoming less common, but are not yet so rare that extirpation or extinction is imminent without immediate action.

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	<p>O1-31 (cont.)</p> <p>These species tend to be prolific within their suitable habitat types.” The FEIR states, “This loss of individuals of prostrate spineflower would not be considered significant as the overall population numbers do not appear to be great enough to consider this location a significant regional population.” This is based on the benefits provided in the Conceptual Resources Management Plan. In this context, the term “regional” refers to the area covered by the Draft North County MSCP. The FEIR has indicated that the populations on-site are not considered a significant regional population, or in other words, the loss of the on-site population would not affect the survival of the species within the larger region (in this case, the North County MSCP Plan area).</p> <p>The evaluation of impacts to prostrate spineflower was based on the best available information. The referenced Reiser study from 2001 is the most recent analysis available for prostrate spineflower. A review of the literature did not find a more recent local baseline study for this species, and it would be infeasible for this project to do a new baseline study because species characteristic would not change with an updated baseline study. Therefore, the FEIR relies on the best available information. In addition, the referenced information from the Reiser study is that the species “regularly occupies disturbed areas.”</p> <p>O1-32 The prostrate spineflower observed on-site was located within southern mixed chaparral habitat. Of the 74.5 acres of southern mixed chaparral within the project, 26 acres would be preserved on-site within biological open space easements, with another 24.5 acres of off-site habitat preservation required as a condition of the project. As stated in subchapter 2.5 of the FEIR, “This plant is not a state or federally listed species and is no longer a ranked species by the CNPS due to it being too common, but is currently on List D of the County sensitive species list. This spineflower species was observed on-site in relatively low numbers (<100 individuals) and does not represent a regionally significant population based on the abundance and wide-range of this species within the San Diego region (Reiser 2001).” As impacts to the prostrate spineflower were not considered significant, no additional mitigation measures are required. In addition, the project provides permanent Biological Open Space areas that can continue to support the remaining population of this species on the site.</p>
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RESPONSE

	<p>O1-33 As discussed in the FEIR, the project would not directly impact southwestern spiny rush because the project would avoid disturbing the drainage course where the species was observed. These drainages would be preserved in biological open space on-site. The FEIR recognizes the possibility that indirect impacts to the 20 observed individuals may occur through indirect edge effects, but concludes the impacts would be less than significant due to the small population of the species on-site is not large enough to be considered a regionally significant population. (Appendix G, p. 80) The conclusions rely on adequate information, because the on-site populations, including any additional populations that could occur in riparian woodlands would all be preserved in on-site biological open space. A quantitative baseline for the regional population is not required because a quantitative baseline is not available in the scientific literature, and it would be infeasible for the project to do a quantitative baseline because time and funds would be prohibitive. The best available information was used to support the conclusions of the FEIR.</p>
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The DEIR fails to describe the numerous management measures necessary for the survival of the prostrate spineflower on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the prostrate spineflower by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

iii. Engelmann oak

The Engelmann oak is covered under the draft MSHCP, is a CNPS rank 4.2 species, and is on the County List D of uncommon species.¹⁷ The DEIR notes that three Engelmann oak trees were observed on-site associated with coast live oak riparian woodlands.¹⁸ However, the DEIR concludes that the population numbers are too low to consider this a significant regional population of the species based on the countywide abundance of this species.¹⁹ Again, the DEIR draws the conclusion that impacts of the Project will be less than significant on the Engelmann oak based on outdated scientific information by Reiser and without providing a quantified baseline to assess significance by.

The draft MSCP would conserve at minimum 69% of all Engelmann oak populations in North County.²⁰ The DEIR fails to address the proposed Project's consistency with this conservation requirement. Additional avoidance, minimization and mitigation measures need to be included that addresses the long-term persistence of this proposed covered species.

The DEIR also identifies numerous plant species with the potential to occur on site.²¹ This includes:

- Rainbow manzanita
- San Diego ambrosia
- Orcutt's brodiaea
- Peninsular spine flower
- Palmer's grappling hook
- Ramona horkelia
- Golden-rayed oentachaeta
- Narrow-petaled rein orchid

¹⁷ DEIR, at 2.5-11 and 2.5-18; Biological Resources Report, Attachment 9, at 5.

¹⁸ DEIR, at 2.5-11.

¹⁹ DEIR, at 2.5-11; Biological Resources Report, at 80.

²⁰ North County Covered Species,

http://www.sdcounty.ca.gov/pds/msep/docs/NCMSCP/North_County_Covered_Species.pdf (last visited July 22, 2014).

²¹ DEIR Appendix G, Attachment 9.

01-34 The Conceptual Biological Resources Management Plan for On-site Biological Resources for Lilac Hills Ranch included as Attachment 17 of the Biological Resources Report (Appendix G of the FEIR) recognizes the sensitive species that occur on the project site and includes management goals that would support the survival of sensitive species within the on-site biological open space. The management goals for the on-site biological open space include the following:

- Preserve and manage the open space lands to the benefit of the flora, fauna, and native ecosystem functions reflected in the natural communities occurring within the RMP land.
- Manage the land for the benefit of sensitive plant and wildlife species and existing natural communities, without substantive efforts to alter or restrict the natural course of habitat development and dynamics.
- Reduce, control, and where feasible, eradicate non-native, invasive flora and/or fauna known to be detrimental to native species and/or the local ecosystem.
- Maintain the character and function of certain agricultural areas within the wetland buffer and open space area. (Conceptual Resources Management Plan, p. 28).

As discussed in Response to Comment O1-31, the impacts to prostrate spineflower would be less than significant based in part on the benefits provided by the Conceptual Resources Management Plan.

01-35 The Biological Resources Report (Appendix G of the FEIR) recognizes that three Engelmann oak trees were observed on the site associated with coast live oak riparian woodlands, but that all three of the oak trees would be preserved within the proposed biological open space areas. The population of Engelmann oak is limited to the coast live oak riparian woodland habitat which constitutes 22.5 acres of the project site. Of these 22.5 acres, 21.4 acres would be preserved on-site and an additional 3.31 acres would be purchased off-site and placed in a conservation easement, resulting in a net gain in preserved Engelmann oak habitat. The avoidance of impacts to this species in combination with the small on-site population in relation to larger populations that exist in the local area, support the finding that impacts would be less than significant. A quantitative baseline for the regional population is not required because a quantitative baseline is not available in the scientific literature. The best available information was used to support the conclusions of the FEIR. See response to comment O1-33.

LETTER

RESPONSE

	<p>O1-36 An individual project is not responsible for ensuring the long-term persistence of species; rather this is a goal of regional habitat conservation plans. The FEIR adequately evaluates potential impacts to sensitive species and demonstrates compliance with the draft North County MSCP. Refer also to response to comment O1-34.</p> <p>O1-37 CEQA Guidelines Section 15125(a), requires an EIR to include a “description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published...This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” The FEIR has appropriately documented these baseline physical conditions of the site and based the analysis on these baseline conditions. CEQA does not require an EIR to carry out analysis that addresses a potential future condition of restored habitat, as indicated by the commenter. In addition, subchapter 2.9 of the FEIR does include a discussion of the significant irreversible environmental changes that would result from the project. Specifically, the FEIR states,</p> <p>“A total of 504.4 acres of the 608-acre site would be graded and developed, resulting in the permanent removal of on-site habitat as detailed in subchapter 2.5, Biological Resources.” (p 2.9-1).</p> <p>The comment also indicates that the project would have the potential to impact downstream locations of rare species, yet provides no basis for this assertion. The FEIR does address potential downstream impacts. Subchapter 2.5 of the FEIR recognizes the relationship between the on-site wetlands and downstream wetland habitats. The FEIR states,</p> <p>“The wetlands within the project site are important locally because they provide vegetated areas that help protect the watershed. They also provide a water source for local wildlife species and habitat that has both species diversity and structure to support a variety of plants and animals. Regionally, these wetlands and associated drainage courses protect the downstream watershed of Moosa Creek and ultimately the San Luis Rey River by moderating erosion, sedimentation, and stream flows. Overall, wetland functions and values of the drainage courses in the project area are generally high in the relatively undisturbed areas and lower in disturbed wetlands or areas affected by agriculture.”</p>
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LETTER

RESPONSE

	<p>O1-37 (cont.)</p> <p>The FEIR addresses wetland impacts and includes M-BIO-2, which requires preparation of a Resource Management Plan (RMP) to address any restoration, enhancement, and maintenance of open space. As detailed in M-BIO-2, the RMP shall address site preparation, irrigation system requirements, on-site culvert maintenance to allow for wildlife passage, plant palettes, installation procedure, and describe the maintenance and monitoring program for both the establishment mitigation areas and the enhancement mitigation areas per the project conceptual wetland revegetation plan (EIR Appendix G, Attachment 16) or requirements for habitat selection contained in the conceptual resource management plans (EIR Appendix G, Attachments 17 and 18). The RMP will include success criteria for the creation, restoration, and/or enhancement of native habitats. In addition, the RMP would be required to achieve the following goals:</p> <ol style="list-style-type: none">1. Preserve and manage the open space lands to the benefit of the flora, fauna, and native ecosystem functions reflected in the natural communities occurring within the RMP land.2. Manage the land for the benefit of sensitive plant and wildlife species and existing natural communities, without substantive efforts to alter or restrict the natural course of habitat development and dynamics.3. Reduce, control, and where feasible, eradicate non-native, invasive flora and/or fauna known to be detrimental to native species and/or the local ecosystem.4. Maintain the character and function of certain agricultural areas within the wetland buffer and open space area. (refer to MM-BIO-2) <p>In addition, the potential for downstream impacts resulting from sedimentation, erosion, and water quality impacts are addressed in subchapter 3.1.3, Hydrology and Water Quality of the FEIR.</p>
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Merely because these species were not documented on site at the time surveys were carried out, does not excuse the lead agency from analyzing impacts to these species. The DEIR must take into consideration that a major aspect of statutes such as CEQA, and the ESA, is not just to provide protection for currently existing plant populations, but also restore and enhance habitat so that these plant species can recover. The DEIR must therefore include, as part of its significance determination, analysis of the fact that if the proposed project is implemented, the project site will never be able to provide habitat for the majority of the above listed species. The project as proposed has potential to impact downstream locations of many of these rare species, yet an analysis of this aspect of the project was totally ignored and must be addressed.

O1-37
 cont.

This is of particular concern for species listed under the Endangered Species Act (ESA) and/or the California Endangered Species Act (CESA). In this instance, this includes the San-diego ambrosia (federally endangered) and Orcutt's brodiaea (federal species of concern). The rainbow manzanita, San Diego ambrosia, and Orcutt's brodiaea are also covered species under the draft MSCP.²²

O1-38

Both the ESA and CESA mandate protection of existing species, as well as providing a legislative prerogative that habitat be maintained and restored in order to fully restore endangered/threatened species populations and allow for adequate recovery that would create robust populations that no longer require Endangered Species Act protection. While this goal has also been incorporated into the MSCP, the project avoidance, minimization and mitigation measures as proposed fail to support this goal.

O1-39

The DEIR needs to assess how the project prevents or conflicts with this goal, which it does not. Therefore, the DEIR cannot accurately say that this proposed project will have a less than significant impact on special-status plant species.

c. The Proposed Project will Have a Significant Impact on Protected Wildlife Species

The DEIR identifies 14 special status wildlife species that have a high potential to be on site and has been observed on site or immediately adjacent to the Project site.²³ However, the DEIR fails to adequately analyze how the project will impact these species. CEQA mandates determinations of significance to be based on substantial evidence. Pub. Res. Code § 21082.2(a), Guidelines § 15064(a)(1). An EIR must also include description of the physical environmental conditions and baseline physical conditions as they exist at the time the notice of preparation is prepared or at the environmental analysis is commenced.²⁴ CEQA expressly provides against mere conclusory statements that are not supported by substantial evidence. Public Res. Code § 21082.2(c); *see also Californians*

O1-40

²² North County Covered Species, http://www.sdcounty.ca.gov/pds/mscp/docs/NCMSCP/North_County_Covered_Species.pdf (last visited July 22, 2014).

²³ DEIR, at 2.5-12 to 2.5-14; Biological Resources Report, at 76.

²⁴ CEQA Guidelines Section 15125(a).

O1-38 The FEIR analysis includes an adequate analysis under CEQA and the CESA and ESA. Attachment 9 to the Biological Resources Report (Appendix G of the FEIR) includes a list of sensitive plant species with the potential to occur on-site. This attachment is a table, listing the species, sensitivity status, habitat preference/requirements, whether the species was verified on-site, its potential to occur on-site, and the factual basis for the determination of occurrence potential. This Attachment (p. 2) identifies San Diego ambrosia and Orcutt's brodiaea as having a low potential to occur on-site. San Diego ambrosia is identified as low potential because the dense oak woodland habitats found in the on-site drainages are not conducive to this species and the willow scrub habitat where this species would most likely be found has been disturbed from agricultural activities. Orcutt's brodiaea is identified as having a low potential to occur because of the lack of suitable clay soils and lack of wet meadows, seeps, and vernal pool habitats preferred by this species. Rainbow manzanita is also listed as having a low potential to occur on-site because the project site is south of the known range for the species. Refer also to response to comment O1-37.

O1-39 The FEIR does include an analysis of project consistency with regional habitat conservation plans that are intended to achieve goals of the ESA and CESA. An individual project's conformance with regional habitat conservation plans can support regional efforts to restore endangered/threatened populations; however, an individual project is not required to singlehandedly incorporate measures that would increase or restore endangered or threatened species as is implied by the commenter. The project does include measures that support goals of the Draft MSCP. For example, M-BIO-1a through M-BIO-1h requires purchase of preservation habitat either on-site or off-site within Draft PAMA of the draft North County MSCP. M-BIO-3a and M-BIO-3b require wetland preservation, enhancement, and creation. M-BIO-4 requires a Revegetation Plan to ensure the success of wetland preservation, enhancement, and creation. CEQA Guidelines, Appendix G and the County Guidelines for Determining Significance require analysis of potential conflicts with Local Policies, Ordinances and adopted Habitat Conservation Plans, Natural Community

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for *Alternatives v. Department of Forestry*, 136 Cal.App.4th 1, 17 (“[C]onclusory statements do not fit the CEQA bill.”). However, many of the DEIR’s conclusions are not supported by substantial evidence and therefore fail to meet CEQA requirements, as discussed in further detail below.

The DEIR fails to provide an adequate level of analysis for protected and/or rare wildlife species. Fourteen special-status species were found within the project area or immediately adjacent to the area.²⁵ These species include:

- Belding’s orange-throated whiptail
- Coastal whiptail
- Coastal horned lizard
- Red-diamond rattlesnake
- Turkey vulture
- Western bluebird
- Cooper’s hawk
- Loggerhead shrike
- White-tailed kite
- Yellow warbler
- Yellow-breasted chat
- San Diego desert woodrat
- San Diego black-tailed jackrabbit
- Southern mule deer

Each of the fourteen species are found immediately adjacent to, or within the project area, and each has specific conservation measures that need to be achieved. The DEIR fails to analyze individual species and fails to state whether the Management Measures as given in the MSCP will be enforced. Enforceable mitigation measures are required under CEQA.

The DEIR needs to analyze impacts to each species covered under the proposed MSCP individually, as well as individually discussing mitigation measures.

i. Belding’s orange-throated whiptail

The DEIR states that six Belding’s orange-throated whiptail were observed on the Project site near coast live oak riparian woodland, coastal sage scrub, and southern mixed chaparral habitats.²⁶ The DEIR concludes that the Project will not significantly impact the species since these locations do not represent a significant regional population given its relatively wide range in San Diego County.²⁷ However, this conclusion is based on a 2006 report by Lemm, which is outdated and does not establish an updated, quantified

²⁵ DEIR, at 2.5-12 to 2.5-14.
²⁶ DEIR, at 2.5-12.
²⁷ DEIR, at 2.5-12.

O1-40
cont.

O1-41

O1-42

O1-39 (cont.)

Conservation Plans or other local, regional or state habitat conservation plans. Subchapter 2.5, subchapter 2.5.2.5 of the FEIR includes the project analysis demonstrating compliance with local policies, ordinances and plans. As these policies and plans provide for protections of habitat that would support special status plant species, the project’s compliance with these plans demonstrates that it would not adversely impact special status plant species. Refer also to response to comment O1-37 and O1-38.

O1-40

The FEIR provides a detailed assessment of the project’s potential impacts to special status wildlife species; therefore, the County does not agree that the FEIR provides merely conclusory statements in the analysis. Refer to subchapter 2.5 of the FEIR and Section 3.2.2.2 of the Biological Resources Report included as Appendix G for analysis of impacts to special status wildlife species. As stated in subchapter 2.5 of the FEIR, sensitive wildlife species would be primarily impacted through the loss of habitat including southern mixed chaparral (49.4 acres), coastal sage scrub (17.0 acres), southern coast live oak riparian woodland (1.1 acres), southern willow riparian woodland/scrub (0.8 acre) and agricultural lands (367.7 acres). (Biological Resources Report, Appendix G to the FEIR, Table 8.) Impacts to the non-agricultural habitat types would be mitigated at the following ratios – 3:1(southern coast live oak riparian woodland and southern willow riparian woodland/scrub), 2:1 (coastal sage scrub) or a 0.5:1(southern mixed chaparral). Ultimately, 75.7 acres of these habitat types will be conserved either on-site or off-site. Because agricultural habitats are not considered sensitive, impacts to them require no mitigation. With respect to the loss of 367.7 acres of agricultural “habitat,” the County’s Biological Resources Guidelines does not require mitigation for impact to agricultural land. Note, however, that the project would conserve an additional 43.8 acres of agricultural land as described in M-AG-1, to mitigate for direct impacts to agricultural resources.

The Biological Resources Report also describes how the project mitigation would support special status wildlife species. It states,

“Mitigation for upland and wetland habitats would also compensate for the loss of habitats that support special status wildlife species by providing conserved habitat within future PAMA lands that may also support these wildlife species” (p. 121)

LETTER

RESPONSE

	<p>O1-40 (cont.) The FEIR also evaluates cumulative impacts to special status wildlife species in subchapter 2.5.3. The analysis states,</p> <p>“In addition, all projects would be required to comply with sensitive habitat mitigation requirements of the County and Resource Agencies (e.g., NCCP, HLP Ordinance, and County Biological Guidelines), which would increase the cumulative amount of protected habitat that supports special status species. Thus the cumulative impact to these 13 species would be less than significant.”</p> <p>Further, the FEIR adequately provides baseline physical conditions on the site through the completion of various biological resource surveys conducted over 31 individual days from 2011 through 2012. The dates, type of survey and conditions present are documented in Table 1 of Appendix G of the FEIR.</p> <p>O1-41 See the responses below that are specific to each of the species. The County does not agree that the FEIR failed to analyze impacts to these species. Refer to response to comment O1-40 for additional details. Details of each of the referenced species, their occurrence on-site, and the type of habitat it was observed in is identified in Attachment 8 of Appendix G of the FEIR. In addition, the project mitigation measures that require preservation of habitats both on-site and off-site within future PAMA lands also support the long term survival of wildlife species because it would preserve the habitat needed for long term survival of the species.</p> <p>O1-42 The evaluation of impacts to Belding's orange-throated whiptail was based on the best available information, including site observations and literature review. The referenced Lemm (2006) report is the best available baseline population data from which to base the analysis. It would be infeasible for the project to prepare new baseline population data because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the preview of a local project such as this project. In addition, the analysis was completed according to the County Guidelines for Determining Significance and Report Format Requirements which do not require individual projects to complete updated regional baseline studies for individual species. The numbers of individuals documented on-site represent the population observed during surveys and are not intended</p>
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baseline population against which to measure the observed population. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Just as the DEIR notes regarding the coastal whiptail, habitats within the project site are likely to support additional individuals of this reptile species. The DEIR is also inconsistent with the Biological Resources Report, which concluded that up to four individuals of the lizard would be lost.²⁸ The DEIR must reconcile this inconsistency with the Biological Resource Report. Furthermore, the DEIR does not discuss the specific threats to the orange-throated whiptail, which includes issues that the proposed project will contribute to, such as predation from domestic cats.

O1-42
 cont.

The draft MSCP would require 66% of the orange-throated whiptail to be conserved.²⁹ The DEIR fails to describe management measures necessary for the survival of the lizard on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the orange-throated whiptail by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-43

ii. Coastal whiptail

The DEIR notes that one individual of the coastal whiptail was observed on-site near an orchard.³⁰ Similar to the orange-throated whiptail, the DEIR draws the conclusion that impacts to this reptile species will be less than significant given the relatively wide range of this lizard in the County based on the 2006 Lemm study. As discussed above, the outdated scientific information by Lemm does not provide a quantified baseline to assess significance by. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. The DEIR itself even notes that "habitats within the project site are likely to support additional individuals of this reptile species."³¹

O1-44

The DEIR fails to describe the numerous management measures necessary for the survival of the coastal whiptail on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the coastal whiptail by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-45

iii. Coastal horned lizard

²⁸ Biological Resources Report, at 76.

²⁹ North County Covered Species, http://www.sdcounty.ca.gov/pds/mscp/docs/NCMSCP/North_County_Covered_Species.pdf (last visited July 22, 2014).

³⁰ DEIR, at 2.5-12.

³¹ DEIR, at 2.5-12.

O1-42 (cont.)

to capture the complete number of individuals that may be present on-site. In addition, the fact that the habitats on-site may support additional individuals of the species is recognized in the FEIR.

The comment also indicates there is an inconsistency between the FEIR and the Biological Resources Report because the Biological Resources Report concluded that up to four individuals of the lizard would be lost. However, the Biological Resources Report does not state these individuals would be lost; rather it identifies whether the loss of 4 individuals (the amount observed on-site) would be considered a significant impact. The DEIR subchapter 2.5 also recognizes that this species was observed on-site and there would be impacts to the species (p. 2.5-18). The FEIR indicates that species loss would primarily occur through impacted habitat, but that the impacts would be less than significant due to the wide range of the species and the fact that the on-site population does not represent a regionally significant population. Impacts would also be less than significant due to the conservation of habitat that supports this species. As detailed in Table 8 of the Biological Resources Report, 26 acres of southern mixed chaparral would be conserved on-site and an additional 24.5 acres would be mitigated for in an off-site location. Therefore, the project conserves the primary habitat type for this species in accordance with County Guidelines for Determining Significance. The preservation of Biological Open Space areas on-site and native habitat areas off-site would continue to provide habitat for this species and help avoid and minimize indirect impacts to the species on-site and future impacts off-site.

Regarding predation from domestic cats, the FEIR recognizes that there would not likely be a significant population of the species remaining on-site; therefore, an analysis of impacts to the on-site population from predation by domesticated cats is not warranted. In addition, project design features such as barriers and buffers between development and adjacent Biological Open Space areas would reduce the risk of indirect off-site impacts on this species from various factors, including domestic cats.

LETTER

RESPONSE

	<p>O1-43 The County does not agree that additional analysis and mitigation for the orange-throated whiptail, or any of the other sensitive wildlife species, is required as noted by the commenter. The project incorporates mitigation measures that require preservation of habitats both on-site and off-site within future PAMA lands. Off-site mitigation within the future PAMA would also support the long term survival of wildlife species because it would preserve the habitat needed for long term survival of the species. An individual project is not responsible for ensuring the long-term persistence of species, rather a project should demonstrate compliance with regional conservation plans that are intended to ensure longer term survival of species. Refer also to response to comment O1-34.</p> <p>O1-44 The evaluation of impacts to coastal whiptail was based on the best available information including site observations and literature review. The referenced Lemm (2006) report is the best available baseline population data from which to base the analysis. It would be infeasible for the project to prepare new baseline population data because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the preview of a local project such as this project. In addition, the analysis was completed according to the County Guidelines for Determining Significance and Report Format Requirements which do not require individual projects to complete updated regional baseline studies for individual species. The numbers of individuals documented on-site represent the population observed during surveys and are not intended to capture the complete number of individuals that may be present on-site. The fact that the habitats on-site may support additional individuals of the species is recognized in the FEIR, as noted by the commenter. The preservation of Biological Open Space areas on the site and native habitat areas off-site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species.</p> <p>O1-45 Refer to response to comment O1-34. This response applies equally to the coastal whiptail.</p>
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The DEIR states that one individual of coastal horned lizard was observed just off-site in the southwestern portion of the project site in an open area adjacent to southern mixed chaparral.³² The DEIR acknowledges that the coastal horned lizard has high potential to occur on-site and therefore directly impacted through habitat loss.³³ However, the DEIR concludes that the site does not likely support a significant regional population of the lizard because suitable habitat is limited to undisturbed coastal sage scrub, oak woodlands, and southern mixed chaparral.³⁴ First, these identified habitats make up approximately 123.5 acres on the project site, which intrinsically accounts for a large area suitable for the coastal horned lizard.³⁵ Second, the DEIR draws the conclusion that the 123.5 acres of habitat is not significant within the region without citing to any scientific studies. This statement is therefore conclusory and violates CEQA requirements, as discussed above.

O1-46

The draft MSCP would require 78% of the coastal horned lizard to be conserved.³⁶ The DEIR fails to describe management measures necessary for the survival of the lizard on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the coastal horned lizard by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-47

iv. Red-diamond rattlesnake

The DEIR states that two individuals of red-diamond rattlesnake was observed just on-site near southern coast live oak riparian woodland and southern mixed chaparral.³⁷ However, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. The DEIR acknowledges that habitat in the project site likely supports additional individuals of this snake and that direct impacts to a variety of native vegetation communities and agricultural lands would likely impact the species, yet still concludes that the project will only impact up to two individuals.³⁸ The DEIR therefore does not draw its conclusions on impacts to this species based on substantial evidence. Furthermore, the DEIR draws the conclusion that impacts to this reptile species will be less than significant given the relatively wide range of this lizard in the County based on the outdated 2006 Lemm study. As discussed above, the outdated scientific information by Lemm does not provide a quantified baseline to assess significance by.

O1-48

³² DEIR, at 2.5-14.
³³ DEIR, at 2.5-14; Biological Resources Report, at 77.
³⁴ DEIR, at 2.5-14.
³⁵ Biological Resources Report, at Table 8: Habitat/Vegetation Communities, Impacts, and Mitigation.
³⁶ North County Covered Species, http://www.sdcounty.ca.gov/pds/msep/docs/NCMSCP/North_County_Covered_Species.pdf (last visited July 22, 2014).
³⁷ DEIR, at 2.5-12.
³⁸ DEIR, at 2.5-12; Biological Resources Report, at 76.

O1-46 The evaluation of impacts to coastal horned lizard was based on the best available information including site observations and literature review. In addition, the analysis was completed according to the County Guidelines for Determining Significance and Report Format Requirements which do not require individual projects to complete updated regional baseline studies for individual species. Both the FEIR and Biological Resources Report only state that southern mixed chaparral provides habitat for this species and does not base any conclusion on 123.5 acres referenced in the comment. The FEIR states in subchapter 2.5.1.3 that suitable habitat on-site is limited to undisturbed coastal sage scrub, oak woodlands, and southern mixed chaparral which occupies 100.5 acres of the project site. As the majority site is in active agriculture and would not support the species, the site does not likely support a significant regional population of this lizard species. Furthermore, of the appropriate habitat that is located on-site, the majority would either be preserved on-site or off-site in a biological open space easement. The preservation of southern mixed chaparral in Biological Open Space areas on the site and preservation of off-site southern mixed chaparral would continue to provide habitat for this species and help minimize impacts to the species. Specifically, while the project contains approximately 121 acres of appropriate habitat for the coastal horned lizard, approximately 52 acres would be retained on-site and an additional 63 acres would be conserved in an on-site or off-site biological open space easement. As a result there would be only a minor reduction (5 acres) in habitat available for the coastal horned lizard after project implementation. In addition, project design features such as barriers and buffers between development and adjacent Biological Open Space areas would reduce the risk of indirect impacts on this species.

O1-47 Refer to response to comment O1-43. This response applies equally to the coastal horned whiptail.

LETTER

RESPONSE

	<p>O1-48 The evaluation of impacts to red-diamond rattlesnake was based on the best available information including site observations and literature review. It would be infeasible for the project to prepare new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the preview of a local project such as this project. In addition, the analysis was completed according to the County Guidelines for Determining Significance and Report Format Requirements which do not require individual projects to complete updated regional baseline studies for individual species. The comment states that the FEIR concludes the project would only impact two individuals of the red-diamond rattlesnake. This is an incorrect statement. The FEIR states that two red-diamond rattlesnakes were observed on-site and that there are likely more on the project site. The FEIR draws its conclusion that the impacts to this species would be less than significant based on the wide range of this snake in San Diego County; the relatively few red diamond rattlesnake observed on site; the relatively small amount of red diamond rattlesnake habitat to be affected by the project; and the relative abundance of such habitat elsewhere in the County and throughout the rattlesnake's range.</p> <p>This conclusion is supported by the fact that the project would require preservation of habitats that support this species. Refer to response to comment O1-40 for additional details on the acreage of habitat that would be preserved that would support red-diamond rattlesnake. Preservation of Biological Open Space areas on the site and native habitat off-site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species. Project design features such as barriers and buffers between development and adjacent Biological Open Space areas would reduce the risk of indirect impacts on this species from various factors. The referenced Lemm (2006) report is the best available baseline population data from which to base the analysis. In addition, it should be noted that red-diamond rattlesnake is a "Group 2" species. The County's Guidelines for Determining Significance states, "...Group II Animals include those species that are becoming less common, but are not yet so rare that extirpation or extinction is imminent without immediate action. These species tend to be prolific within their suitable habitat types." (p. 12).</p>
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The draft MSCP would require 68% of the red-diamond rattlesnake to be conserved.³⁹ The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the red-diamond rattlesnake by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-49

v. Turkey vulture

The DEIR notes that four individuals of turkey vulture were observed roosting in an orchard.⁴⁰ However, the DEIR concludes that turkey vultures are commonly seen in San Diego County and therefore would not be significantly impacted by the Project through habitat loss.⁴¹ This conclusion is based on a 2004 study by Unitt, which is outdated and cannot be relied on per CEQA mandates. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away. The DEIR is also inconsistent with the Biological Resources Report, which concluded that three or more of the species would be displaced.⁴² The DEIR must reconcile this inconsistency with the Biological Resource Report.

O1-50

The DEIR fails to describe the numerous management measures necessary for the survival of the turkey vulture on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the turkey vulture by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-51

vi. Western bluebird

The DEIR notes that four individuals of western bluebird were observed in southern mixed chaparral on-site.⁴³ However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.⁴⁴ This conclusion is based on a 2004 study by Unitt, which is outdated and cannot be relied on as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were

O1-52

³⁹ North County Covered Species, http://www.sdcountry.ca.gov/pds/msep/docs/NCMSCP/North_County_Covered_Species.pdf (last visited July 22, 2014).
⁴⁰ DEIR, at 2.5-12.
⁴¹ DEIR, at 2.5-13 and 2.5-39.
⁴² Biological Resources Report, at 77.
⁴³ DEIR, at 2.5-12.
⁴⁴ DEIR, at 2.5-13 and 2.5-39.

O1-49 Refer to response to comment O1-43. This response applies equally to the Red-diamond rattlesnake.

O1-50 The evaluation of impacts to turkey vulture was based on the best available information including site observations and literature review. In addition, the analysis was completed according to the County Guidelines for Determining Significance and Report Format Requirements which do not require individual projects to complete updated regional baseline studies for individual species. The referenced 2004 study by Unitt is the best available information. Both the FEIR and Biological Resources Report state that direct impacts to vegetation could have impacts on turkey vultures through habitat loss, but that no direct loss of individuals of turkey vulture would be anticipated as these large birds would fly away from the direct disturbance. As described below, the project conditions of approval and the Migratory Bird Treaty Act would prohibit grading and disturbance of the site during the breeding and nesting season, assuring that young vultures would be able to fly away. Furthermore turkey vultures nest on steep nearly vertical rocky slopes and cliffs in crevasses in rocks, and would not be expected to nest on the project site. Both the FEIR and Biological Resources Report conclude that impacts to this species would be less than significant. The noted "inconsistency" between the FEIR and the Biological Resources Report is incorrect. Both documents recognize that four turkey vultures were observed (Subchapter 2.5 and Figure 3 of the Biological Resources Report).

In addition, Chapter 1.0, Table 1-3 identifies a project design considerations that would be implemented to further avoid impacts to raptors. The design consideration states,

"To ensure compliance with the Migratory Bird Treaty Act and Fish and Game Code, the following shall be implemented:

- Vegetation clearing shall take place outside of the nesting season, roughly defined as mid-February to mid-September. Vegetation clearing activities could occur within potential nesting habitat during the breeding season with written concurrence from the Director of Planning and Development Services (PDS), the U.S. Fish and Wildlife Service, and the California Department of Fish and Wildlife (CDFW) that nesting birds would be avoided. If vegetation removal is to take place during the nesting season, a

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	<p>01-50 (cont.)</p> <p>biologist shall be present during vegetation clearing operations to search for and flag active nests so that they can be avoided.</p> <ul style="list-style-type: none"> • Prior to any grading or native vegetation clearing during the nesting/breeding season for raptors (roughly from mid-February through mid-July), a “directed” survey shall be conducted to locate active raptor nests, if any. If active raptor nests are present, no grading or removal of habitat will take place within 500 feet of any active nesting sites. The project proponent may seek approval from the Director of PDS if nesting activities cease prior to July 15.” (p. 1-55) <p>This measure would ensure grading and clearing is done outside of the breeding season to avoid impacts to young birds or within nesting/breeding season with completion of a survey and biological monitoring. In addition, the preservation of Biological Open Space areas on the site and conservation of native habitat off-site would provide replacement habitat for this species which would ensure its long term survival. Project design features such as barriers and buffers between development and adjacent Biological Open Space areas would reduce the risk of indirect impacts on this species from various factors.</p> <p>01-51 The FEIR concludes that impacts to turkey vulture would be less than significant given the wide range of the species and the fact that the project site supports a very small number of turkey vulture individuals. The FEIR indicates that the on-site populations would likely be displaced because the birds would fly away from the project site during site disturbance. Therefore, the analysis does not support the need for additional measures to ensure the survival of the turkey vulture on the project site. Refer also to response to comment O1-50.</p>
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	<p>O1-52 The evaluation of impacts to western bluebirds was based on the best available information. It would be infeasible for the project to prepare new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the purview of a local project such as this project. In addition, the analysis was prepared according to County of San Diego Guidelines for Determining Significance for Biological Resources which state significant impacts are supported if a project would impact federal or state listed species, more than five percent of a County List A or B plant, or County Group 1 animals species; or a state species of special concern; or if the project would impact the long-term survival of a County List C or D plan, or County Group II animal. During biological surveys, western bluebirds were identified on-site in southern mixed chaparral habitat. Of the 74.5 acres of southern mixed chaparral within the project, 26 acres would be preserved on-site within biological open space easements, with another 24.5 acres of off-site habitat preservation required as a condition of the project. The FEIR also identifies the habitat preference of this species as open woodlands, farmlands and orchards (Attachment 11 of the Biological Resources Report). Both the FEIR and Biological Resources Report concluded that there could be potential impacts to this species, but that they would be less than significant. The significance conclusion is supported by evidence such as the preservation of on-site habitats, the prevalence of farmlands and orchards in the surrounding area that support western bluebirds, and mitigation measures that prohibit impacts to habitat during the breeding season to avoid impacts to young birds unless preconstruction surveys confirm that no young birds are present. Specifically, the project conditions of approval and the Migratory Bird Treaty Act would prohibit grading and disturbance of the site during the breeding and nesting season, assuring that young birds be fledged before grading and other habitat disturbance would commence. The preservation of Biological Open Space areas on-site and native habitat off-site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species. Project design features such as barriers and buffers between development and adjacent Biological Open Space areas would reduce the risk of indirect impacts on this species from various factors.</p>
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limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

O1-52
 cont.

The DEIR fails to describe the numerous management measures necessary for the survival of the western bluebird on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the western bluebird by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-53

vii. Cooper's hawk

Cooper's hawk is considered a Watch List species by CDFW. The DEIR states four individuals of this raptor species were observed on-site using coast live oak riparian woodland, orchards, and coastal sage scrub.⁴⁵ The Biological Resources Report also acknowledges that direct impacts to coast live oak riparian woodland, orchards, and coastal sage scrub will result in habitat loss for the hawk, and that up to four birds would be displaced.⁴⁶ However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.⁴⁷ This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

O1-54

Because the Cooper's hawk primarily forages on smaller songbirds, no analysis of the effects from the competition of introduced domestic cats from the proposed project is analyzed. Therefore the DEIR fails to meet CEQA mandates.

O1-55

The DEIR states that the Project would complete construction outside of the raptor breeding season (January 15- July 15) or conduct preconstruction nesting raptor surveys and complete avoidance measures as necessary. However, the DEIR has not developed avoidance measures in further detail, therefore it is impossible for the public to assess whether they are adequate at this point.

O1-56

The DEIR also acknowledges that 538.29 acres suitable for raptor forage will be directly impact as a result of the project, that would result in the direct loss of foraging

O1-57

⁴⁵ DEIR, at 2.5-12; Biological Resources Report, at 77.

⁴⁶ Biological Resources Report, at 77.

⁴⁷ DEIR, at 2.5-12 and 2.5-39.

O1-53 Refer to response to comment O1-34.

O1-54 The evaluation of impacts to Cooper's hawk was based on the best available information. It would be infeasible for the project to prepare a new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the purview of a local project such as this project. In addition, the analysis was prepared according to County of San Diego CEQA Guidelines and significance criteria which state significant impacts are supported if a project would impact federal or state listed species, more than five percent of a County List A or B plant, or County Group 1 animals species; or a state species of special concern; or if the project would impact the long-term survival of a County List C or D plant, or County Group II animal. Both the FEIR and Biological Resources Report concluded that there could be potential impacts to this species and acknowledge that direct impacts to coast live oak riparian woodland, orchards, and coastal sage scrub would result in habitat loss for the hawk. Of the 3.6 acres of coast live oak woodland on-site, the project would retain 3.3 acres within an on-site biological open space easement and would be required to conserve an additional 1.2 acres in an off-site location. Of the 19.6 acres of coastal sage scrub existing on-site, impacts would occur to 17 acres. To compensate for this impact, 34.2 acres of coastal sage scrub would be conserved at an off-site location protected by a biological conservation easement, in addition to the 2.6 acres that would be preserved on-site within the project biological open space. Agricultural land is the largest vegetation type on-site and does not require mitigation under the County's Biological Resources Guidelines due to its low value as habitat. However, the project will retain 24.6 acres of the agricultural land within the on-site biological open space easement Refer to FEIR, Appendix G, and Attachment 11 for a summary of these impact acreages. The significance conclusion is adequately supported by evidence such as the preservation of on-site native habitats, the prevalence of farmlands and orchards in the surrounding area that will continue to be available to support Cooper's hawk, and a mitigation measure that require impacts to habitat to occur outside of the breeding season to avoid impacts to young birds (or to avoid the breeding season based on preconstruction surveys).

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	<p>O1-54 (cont.) Specifically, the project conditions of approval and the Migratory Bird Treaty Act would prohibit grading and disturbance of the site during the breeding and nesting season, assuring that young birds be fledged before grading and other habitat disturbance would commence. The preservation of Biological Open Space areas on the site and native habitat off-site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species. In addition, the referenced 2004 Unitt study is the best available scientific information that addresses local populations of the species. The FEIR addresses breeding season protections/avoidance to ensure that breeding birds are protected.</p> <p>O1-55 See response to comments O1-97 and O1-98, below.</p> <p>O1-56 The breeding season restriction on habitat disturbance and preconstruction nest surveys with subsequent avoidance measures if nests are detected are standard mitigation measures that meet current mitigation standards for compliance with the Migratory Bird Treaty Act and County of San Diego. These standard mitigation measures are effective because they require specific project design measures to be implemented, as follows:</p> <ul style="list-style-type: none"> • Vegetation clearing shall take place outside of the nesting season, roughly defined as mid-February to mid-September. Vegetation clearing activities could occur within potential nesting habitat during the breeding season with written concurrence from the Director of Planning and Development Services (PDS), the USFWS, and the CDFW that nesting birds would be avoided. If vegetation removal is to take place during the nesting season, a biologist shall be present during vegetation clearing operations to search for and flag active nests so that they can be avoided. • Prior to any grading or native vegetation clearing during the nesting/breeding season for raptors (roughly from mid-February through mid-July), a “directed” survey shall be conducted to locate active raptor nests, if any. If active raptor nests are present, no grading or removal of habitat will take place within 500 feet of any active nesting sites. The project proponent may seek approval from the Director of PDS if nesting activities cease prior to July 15. <p>These measures ensure the protection of nesting migratory birds.</p>
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habitat for raptors.⁴⁸ It is unclear how the DEIR concluded 538.29 acres will be impacted, since the Project will impact 505.04 acres according to the Biological Resources Report.⁴⁹ Additionally, the DEIR is inconsistent in describing the total acreage of the project as 608.3 acres throughout the DEIR but 610.76 acres on page 2.5-19. The DEIR must reconcile these inconsistencies to determine the exact amount of forage habitat for raptors will be lost due to the project. In any case, the DEIR concludes that this loss in forage habitat is significant.⁵⁰

O1-57
 cont.

Please see below for discussions regarding the DEIR's proposed measures to mitigate impacts to raptor forage habitats.

O1-58

viii. Loggerhead shrike

The DEIR states one individual of loggerhead shrike was observed on-site in an orchard adjacent to southern mixed chaparral.⁵¹ The Biological Resources Report also acknowledges that direct impacts to orchards and native uplands and riparian habitats on-site could impact the bird through habitat loss, and that at least one bird would be displaced.⁵² However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.⁵³ This conclusion was made based on the 2004 Unit study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

O1-59

The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the loggerhead strike by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-60

ix. White-tailed kite

The white-tailed kite is a California fully protected species for nesting areas.⁵⁴ The DEIR states one pair of white-tailed kits were observed on-site in an orchard

O1-61

⁴⁸ DEIR, at 2.5-19.
⁴⁹ Biological Resources Report, Table 8.
⁵⁰ DEIR, at 2.5-19.
⁵¹ DEIR, at 2.5-13.
⁵² Biological Resources Report, at 77.
⁵³ DEIR, at 2.5-13 and 2.5-39.
⁵⁴ DEIR, at 2.5-12.

O1-57 The noted acreage inconsistency has been corrected in the FEIR in subchapter 2.5.2.1 "Almost all of the on-site habitats are suitable for raptor foraging. The project would directly impact 505.04 acres of the 608.3-acre site, which is 83 percent of the raptor foraging habitat on-site." This acreage correction does not affect the conclusions of the FEIR.

O1-58 Comment noted.

O1-59 The evaluation of impacts to loggerhead shrike was based on the best available information and according to County of San Diego Biological for Determining Significance for Biological Resources. The referenced Unitt study is the best available scientific study providing information about local populations of the species. It would be infeasible for the project to prepare a new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the purview of a local project such as this project. Furthermore, updated baseline studies on the status and distribution of this species over its entire range are not required to provide adequate disclosure of potential impacts of the project. Both the DEIR and Biological Resources Report concluded that there could be potential impacts to this species. Impacts to habitat are to be completed outside of the breeding season to avoid impacts to young birds or would be avoided during the breeding season based on preconstruction surveys. Specifically, the project conditions of approval and the Migratory Bird Treaty Act would prohibit grading and disturbance of the site during the breeding and nesting season, assuring that young birds be fledged before grading and other habitat disturbance would commence. Appendix G of the FEIR, Attachment 11 identifies the preferred habitat of loggerhead shrike as open foraging areas near scattered bushes and low trees and recognizes that the site contains suitable habitat for the species, with one observed in an orchard adjacent to southern mixed chaparral. The preservation of 104 acres of Biological Open Space areas on the site and native habitat off-site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species. In addition, the prevalence of surrounding agricultural lands provides open foraging areas to support the species. Project design features such as barriers and buffers between development and adjacent Biological Open Space areas would reduce the risk of indirect impacts on this species from various factors.

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	<p>O1-60 Refer to response to comment O1-34.</p> <p>O1-61 The evaluation of impacts to white-tailed kite was based on the best available information and according to County of San Diego Guidelines for Determining Significance for Biological Resources. The referenced Unitt study is the best available scientific study providing information about local populations of the species. It would be infeasible for the project to prepare a new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the purview of a local project such as this project. Furthermore, updated baseline studies on the status and distribution of this species over its entire range are not required to provide adequate disclosure of potential impacts of the project. Biological surveys completed are not intended to capture the full population that could occupy the site, rather provide evidence of their occurrence. Both the FEIR and Biological Resources Report concluded that there could be potential impacts to this species due to project disturbance of southern willow scrub and adjacent agricultural fields and orchards.</p> <p>However, 5.8 of the 6.1 acres of southern willow scrub would be preserved on-site in biological open space. In addition, 24.6 acres of agriculture would be preserved within the biological open space. This on-site preservation, in combination with the continued availability of habitats on and off-site, supports the conclusion that the project will have a less than significant impact on the white-tailed kite. In addition, construction is to be completed outside the breeding season to avoid impacts to young birds, or these impacts would be avoided based on pre-construction surveys. Project design features such as barriers and buffers between development and adjacent Biological Open Space areas would reduce the risk of indirect impacts on this species from various factors.</p>
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adjacent to southern mixed chaparral.⁵⁵ The Biological Resources Report also acknowledges that direct impacts to orchards and native uplands and riparian habitats on-site could impact the bird through habitat loss, and that at least one pair of birds would be displaced.⁵⁶ However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.⁵⁷ This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

O1-61
cont.

The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the white-tailed kite by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-62

x. Yellow warbler

The DEIR states one individual of yellow warbler was observed on-site in an coast live oak riparian woodland and willow scrub habitats.⁵⁸ The Biological Resources Report also acknowledges that direct impacts to coast live oak riparian woodlands and southern willow riparian woodland/scrub habitats on-site could impact the bird through habitat loss, and that at least one bird would be displaced.⁵⁹ However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.⁶⁰ This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

O1-63

⁵⁵ DEIR, at 2.5-12.
⁵⁶ Biological Resources Report, at 77.
⁵⁷ DEIR, at 2.5-12 and 2.5-39.
⁵⁸ DEIR, at 2.5-13.
⁵⁹ Biological Resources Report, at 77.
⁶⁰ DEIR, at 2.5-13 and 2.5-39.

O1-62 Refer to response to comment O1-34.

O1-63 The evaluation of impacts to yellow warbler was based on the best available information and according to County of San Diego Guidelines for Determining Significance for Biological Resources. The referenced Unitt study is the best available scientific study providing information about local populations of the species. It would be infeasible for the project to prepare a new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the purview of a local project such as this project. Furthermore, updated baseline studies on the status and distribution of this species over its entire range are not required to provide adequate disclosure of potential impacts of the project. Both the DEIR and Biological Resources Report concluded that there could be potential impacts to this species due to habitat loss. One yellow warbler was observed in coast live oak riparian woodlands habitat on-site (see Figure 2.5-2b). Other areas of riparian woodland and scrub on-site provide additional habitat for this species to occur (FEIR, subchapter 2.5). Of the 22.5 acres of southern coast live oak riparian woodland located on the project site, 21.4 acres would be preserved within on-site biological open space and an additional 3.31 would be conserved in an off-site conservation easement (Table 8, Appendix G). Approximately 35 acres of other 'scrub' habitats would be preserved on-site within biological open space. Impacts to the riparian habitat preferred by this species would be restricted to road crossings needed for project access with the majority of the riparian habitat on-site being preserved. The preservation of Biological Open Space areas and the creation/restoration/enhancement of riparian habitat on-site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species. In addition, the breeding season restriction on habitat disturbance with subsequent avoidance measures if nests are detected are standard mitigation measures that meet current mitigation standards for compliance with the Migratory Bird Treaty Act and County of San Diego. These standard mitigation measures are effective because they require specific project design measures to be implemented. These project conditions of approval and the Migratory Bird Treaty Act would prohibit grading and disturbance of the site during the breeding and nesting season, assuring that young birds be fledged before grading and other habitat disturbance would commence.

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The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the yellow warbler by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-64

xi. Yellow-breasted chat

The DEIR states five individuals of yellow-breasted chat was observed on-site in an coast live oak riparian woodland and willow scrub habitats.⁶¹ The Biological Resources Report also acknowledges that direct impacts to coast live oak riparian woodlands and southern willow riparian woodland/scrub habitats on-site could impact the bird through habitat loss, and that at least five birds would be displaced.⁶² However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.⁶³ This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

O1-65

The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the yellow-breasted chat by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-66

xii. San Diego desert woodrat

The DEIR states several nests of San Diego desert woodrat were found on-site.⁶⁴ However, the DEIR concludes that the impacts that would result from the Project would be less than significant since these locations do not represent a significant regional population given the relatively wide range of the species in the County.⁶⁵ However, this statement is not supported by scientific evidence and is therefore conclusory and fails to meet CEQA mandates.

O1-67

⁶¹ DEIR, at 2.5-13.
⁶² Biological Resources Report, at 77.
⁶³ DEIR, at 2.5-13 and 2.5-39.
⁶⁴ DEIR, at 2.5-13.
⁶⁵ DEIR, at 2.5-13; 2.5-39.

O1-63 (cont.)

In addition, impacts to habitat are to be completed outside of the breeding season to avoid impacts to young birds or would be avoided during the breeding season based on preconstruction surveys.

O1-64 Refer to response to comment O1-34.

O1-65 The evaluation of impacts to yellow-breasted chat was based on the best available information and according to County of San Diego Guidelines for Determining Significance for Biological Resources. The referenced Unitt study is the best available scientific study providing information about local populations of the species. It would be infeasible for the project to prepare a new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the purview of a local project such as this project. Furthermore, updated baseline studies on the status and distribution of this species over its entire range are not required to provide adequate disclosure of potential impacts of the project. Biological surveys completed are not intended to capture the full population that could occupy the site, rather provide evidence of their occurrence. Both the DEIR and Biological Resources Report concluded that there could be potential impacts to this species. Impacts to habitat are to be done outside of the breeding season to avoid impacts to young birds or would be avoided during the breeding season based on preconstruction surveys. The breeding season restriction on habitat disturbance with subsequent avoidance measures if nests are detected are standard mitigation measures that meet current mitigation standards for compliance with the Migratory Bird Treaty Act and County of San Diego. These standard mitigation measures are effective because they require specific project design measures to be implemented. These project conditions of approval and the Migratory Bird Treaty Act would prohibit grading and disturbance of the site during the breeding and nesting season, assuring that young birds be fledged before grading and other habitat disturbance would commence. Impacts to the riparian habitat preferred by this species would be restricted to road crossings needed for project access with the majority of the riparian habitat on-site being preserved. Therefore, the less than significant conclusion in the FEIR is supported by the on-site preservation of Biological Open Space areas and the creation/restoration/enhancement of riparian habitat on-

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	<p>O1-65 (cont.) site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species. Project design features such as barriers and buffers between development and adjacent Biological Open Space areas would reduce the risk of indirect impacts on this species from various factors. The County does not believe that the assumption that birds will fly away during disturbance is conclusory because the FEIR addresses breeding season protections/avoidance when this could be more difficult for the species. Furthermore, the commenter has not provided any evidence to the contrary.</p> <p>O1-66 Refer to response to comment O1-34.</p> <p>O1-67 The evaluation of impacts to San Diego desert woodrat was based on the best available information and according to County of San Diego Guidelines for Determining Significance for Biological Resources. The preferred habitat for the San Diego desert woodrat is coastal sage scrub and chaparral. Nests were observed on-site in southern mixed chaparral, coastal sage scrub, and southern coast live oak riparian woodland. (FEIR Appendix G, Attachment 11) Both the DEIR and Biological Resources Report concluded that there could be potential impacts to this species. However, the analysis determined that impacts would be less than significant. This is based on the relatively small population on-site and the fact that the suitable habitats would be largely preserved within biological open space areas. Specifically, 2.6 acres of coastal sage scrub, 26 acres of southern mixed chaparral, and 21.4 acres of southern coast live oak riparian woodland would be preserved on-site within biological open space. The preservation of Biological Open Space areas on-site and native habitat areas off-site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species.</p>
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Additionally, the DEIR acknowledges that at least two individuals of the species will be lost as the woodrat may not always be able to avoid construction equipment. Yet the DEIR fails to describe management measures necessary for the survival of San Diego desert woodrat on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the species by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-68

xiii. San Diego black-tailed jackrabbit

The DEIR states two individuals of San Diego black-tailed jackrabbit were observed on-site in coastal sage scrub and agricultural habitats.⁶⁶ However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County, based on a 2004 study by Jameson et al.⁶⁷ As discussed previously, outdated scientific information cannot be relied on as baseline or existing environmental conditions per CEQA mandates.

O1-69

Additionally, the DEIR acknowledges that at least two individuals of the species will be lost as the rabbit may not always be able to avoid construction equipment. Yet the DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the San Diego black tailed jackrabbit by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-70

xiv. Southern mule deer

The DEIR states a group of three mule deer were observed on-site adjacent to southern mixed chaparral.⁶⁸ The DEIR also acknowledges that riparian woodlands, coastal sage scrub, and southern mixed chaparral vegetation on-site provides habitat to the deer, and that presence of the species could be impacted by human activities and domestic pets.⁶⁹ However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County, based on a 2004 study by Jameson et al.⁷⁰ As discussed previously, outdated scientific information cannot be relied on as baseline or existing environmental conditions per CEQA mandates.

O1-71

⁶⁶ DEIR, at 2.5-13.

⁶⁷ DEIR, at 2.5-13 and 2.5-39.

⁶⁸ DEIR, at 2.5-13.

⁶⁹ DEIR, at 2.5-14.

⁷⁰ DEIR, at 2.5-13 and 2.5-39.

O1-68 Refer to response to comment O1-34.

O1-69 The evaluation of impacts to San Diego black-tailed jackrabbit is based on the best available information and according to County of San Diego Guidelines for Determining Significance for Biological Resources. Furthermore, it would be infeasible for the project to prepare a new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the purview of a local project such as this project. The project includes up to date project specific biological surveys which form the basis of the conclusions in the FEIR. However, the referenced Jameson study is the best available information from which to understand regional populations of this species. This study is not relied on as a baseline condition, since the site specific studies and surveys form the baseline condition for the project site. Both the DEIR and Biological Resources Report concluded that there could be potential impacts to this species due to habitat loss. The San Diego black-tailed jackrabbit prefers open areas of scrub, grasslands, agricultural fields and two individuals were observed on-site near coastal sage scrub and orchards (FEIR Appendix G, Attachment 11). However, the preservation of Biological Open Space areas on-site including approximately 35 acres of 'scrub' habitats and 24.6 acres of agricultural land would continue to provide suitable habitat for the species on-site. In addition, the project would conserve off-site native habitat that would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species.

O1-70 Refer to response to comment O1-34.

O1-71 The evaluation of impacts to southern mule deer was based on the best available information and according to County of San Diego Guidelines for Determining Significance for Biological Resources. The referenced Jameson study is the best available information on regional populations of the species and is adequate for purposes of supporting the conclusion of the analysis. The County of San Diego does not require individual projects to complete updated regional population distribution studies to support a project EIR. Furthermore, it would be infeasible for the project to prepare a new quantified baseline because it could take years to gather new data on the distribution of the species across its entire range, expensive to fund, and out of the purview of a local project such as this project. Both the DEIR and Biological Resources Report concluded that there could be potential impacts to this species.

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RESPONSE

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The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the southern mule deer by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

O1-72

d. The Proposed Project Fails to Analyze Impacts to Species That May Occur on Site.

Additionally, the DEIR lists over 37 species with the potential to occur on site due to the presence of suitable habitat. The DEIR must also analyze impacts to these species, given that the currently existing suitable habitat will be destroyed or severally reduced given project implementation. Without analyzing impacts to species that have the potential to occur on-site, the DEIR denies the public a full analysis of project impacts. Species with the potential to occur on site include:

- Golden eagle
- Northern harrier
- Coastal rosy boa
- San Bernardino ring-neck snake
- Southern Pacific pond turtle
- Sharp-shinned hawk
- Western least bittern
- Silvery legless lizard
- Hermes copper
- Monarch butterfly
- Arroyo toad
- Western burrowing owl
- Southwestern willow flycatcher
- Least Bell's vireo
- Coastal cactus wren
- Coastal California gnatcatcher
- Southern California rufous-crowned sparrow
- Grasshopper sparrow
- California leaf-nosed bat
- Pallid bat
- Townsend's western big-eared bat
- Western mastiff bat
- Pocketed free-tailed bat
- Big free-tailed bat
- Western yellow bat
- Small-footeyotis
- Long-eared myotis
- Fringed myotis

O1-73

O1-71 (cont.)

However, the less than significant conclusion is based on the small population observed on-site and the fact that 54.5 acres of riparian woodlands, coastal sage scrub, and southern mixed chaparral vegetation would be preserved on-site within biological open space, providing suitable on-site habitat for the species. The preservation of Biological Open Space areas on-site and native habitat areas off-site would continue to provide habitat for this species and help avoid and minimize indirect and future direct impacts to the species.

O1-72 Refer to response to comment O1-34.

O1-73 An evaluation of the potential for each of the sensitive wildlife species to occur on the site was completed and the results reported in the Biological Resources Report. Attachment 11 of the Biological Resources Report provides an extensive table documenting the sensitive wildlife species observed or with the potential to occur on the project site. This attachment includes sensitivity status, habitat preference, whether it was identified on-site, its potential to occur on-site and the factual basis for the determination of occurrence potential. These evaluations were done according to County of San Diego Guidelines for Determining Significance for Biological Resources. Specific habitat assessments were conducted for the least Bell's vireo, southwestern willow flycatcher, Stephen's kangaroo rat, Hermes copper butterfly, western burrowing owl, and arroyo toad. Attachments 1 – 6 and 11 to the Biological Resources Report include the results of these evaluations. Most species were considered to have a low potential for occurrence due to a lack of key habitat characteristics. The loss of suitable habitat for sensitive species, and species in general, with regards to the planning for preservation of larger and more viable patches of native habitat is the focus of the draft MSCP. The proposed project is not within an area of future preservation for habitat in the current draft North County MSCP document.

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- Long-legged myotis
- Yuma myotis
- Dulzura pocket mouse
- Northwestern San Diego pocket mouse
- Stephen's kangaroo rat
- Southern grasshopper mouse
- Ringtail
- Mountain lion

01-73
cont.

The DEIR fails to adequately analyze impacts to species with habitat on the project site, but not found during surveys. Negative surveys do not mean that the species does not utilize the habitat on the project site; it simply means that the species was not present at the time of the survey. The project will eliminate suitable habitat for sensitive, endangered, and threatened species, and contribute to continued habitat fragmentation and destruction. The elimination of marginal or immature habitat will prevent the species from ever using that habitat in the future during dispersal and/or colonization. These impacts must be addressed and mitigated.

01-74

This is especially important when analyzing impacts to threatened or endangered species (under either the ESA or CESA) that have the potential to occur on the premises. Here, this includes the coastal California gnatcatcher (federally threatened), Least Bell's vireo (federally endangered, state endangered), Southwestern willow flycatcher (federally endangered, state endangered), Stephen's kangaroo rat (federally endangered), and the Arroyo toad (federally endangered). Additionally, the ringtail and the mountain lion are both California fully protected species and may occur in the project area.

01-75

Both the ESA and the CESA are designed to not only protect species from going extinct, but also to recover species numbers and enlarge their habitat. Therefore, the DEIR needs to assess how the Lilac Hills Ranch project will interfere with this goal by limiting the future range of endangered or threatened species that have the potential to occur on site.

01-76

e. The DEIR Fails to Adequately Analyze Impacts to Wildlife Habitat Linkages and Corridors That Will Be Impacted by the Project.

The General Plan states that maintaining large, interconnected blocks of habitat containing sizable and diverse populations of sensitive species is superior to a fragmented landscape with undersized populations.⁷¹ The DEIR acknowledges native habitat connectivity will be reduced, esp. to the west and southwest as linked through patches of coastal sage scrub, southern mix chaparral, and riparian woodlands--thus fragmenting these habitats and reducing on-site habitat that supports local "stepping stone"

01-77

⁷¹ County of San Diego General Plan, at 5-5, available at: http://www.sdcounty.ca.gov/pds/gpupdate/docs/BOS_Aug2011/C.1-4_Conservation_and_Open_Space.pdf.

01-74 The impacts to species observed or considered to have a high potential to occur on the site were evaluated in the Biological Resources Report and DEIR in accordance with the County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements. Species that are not observed and are considered to have a low potential for occurrence on a site do not require further analysis. Furthermore, all impacted habitat was mitigated or preserved in accordance with County of San Diego Guidelines for Determining Significance.

01-75 Habitat assessments, focused surveys, and evaluations of the potential for occurrence for each of the threatened or endangered listed species referred to in the comment were performed and the results of this analysis included in the Biological Resources Report and summarized in the FEIR. An evaluation of the potential for mountain lion and ringtail to occur on site was made based on ecological requirements of the species, species distribution, and condition and location of habitat on the project site. None of these species was determined to have a high potential for occurrence on the project site.

01-76 The loss of suitable habitat for sensitive species, and species in general, with regards to the planning for preservation of larger and more viable patches of native habitat is the focus of the draft MSCP. The proposed project is not within an area of future preservation for habitat in the current draft MSCP document.

01-77 This comment is noted as it provides background information and restates information contained in the FEIR.