A-3 CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Comment Letter A-3

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April 16, 2018

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Subject: Comments on the Draft Environmental Impact Report for the Otay Ranch Village 14 and Planning Areas 16/19 Project (SCH# 2016121042)

Dear Mr. Matson:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Draft Environmental Impact Report (DEIR) for the Otay Ranch Village 14 and Planning Areas 16/19 Project (Project). The following statements and comments have been prepared pursuant to the Department's authority as a Trustee Agency with jurisdiction over natural resources affected by the Project (California Environmental Quality Act [CEQA] Guidelines § 15386), and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed Project that come under the purview of the California Endangered Species Act (Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning (NCCP) program. The County of San Diego (County) participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP). A-3-1

The Department issued NCCP Approval and Take Authorization per Section 2800 *et seq.*, of the California Fish and Game Code for the County MSCP SAP on March 17, 1998, and for the City of Chula Vista MSCP SAP on January 11, 2005. The MSCP is a comprehensive, long-term habitat conservation planning program that addresses the needs of multiple species and the preservation of natural vegetation communities within the southwestern subregion of San Diego County. The MSCP also addresses the loss of covered species and their habitats due to the direct, indirect, and cumulative impacts associated with land development. The County and City MSCP SAPs and associated Implementing Agreements and permits are the means by which these jurisdictions are obligated to assemble the MSCP Preserve and to mitigate for impacts to covered species and their habitats. The Department offers the following recommendations and comments to assist the County in minimizing and mitigating Project impacts to biological resources, and to assure that the Project is consistent with the MSCP and SAPs. A-3-2

The 1,369-acre Project site is located within Proctor Valley, just east of the City and immediately south of the unincorporated community of Jamul. It is part of the broader 23,000-acre Otay Ranch General Development Plan/Subregional Plan (GDP/SRP) and includes the proposed construction of 1,119 single-family residential units, a Village Core consisting of mixed-uses, a fire station, parks, and an elementary school. In addition, the Project includes off-site infrastructure and improvements to Proctor Valley Road. A-3-3

Conserving California's Wildlife Since 1870

According to the Biological Resources Technical Report (Dudek 2018; BTR), the Project site supports numerous sensitive native vegetation communities including chaparral, coastal sage scrub, and riparian. In addition, 49 special status flora and fauna species occur on the Project site including the federally endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Quino checkerspot butterfly (*Euphydryas editha quino*; Quino), federally threatened California gnatcatcher (*Polioptila californica californica*), federally threatened/state endangered Otay tarplant (*Deinandra conjugens*), state fully protected golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), and federal candidate spadefoot toad (*Spea hammondii*). A-3-4

Specific Comments

MSCP Conditions/Baldwin Letter

DEIR Section 2.4.2.3 *Regional Regulations* summarizes adopted regulatory plans and policies applicable to the Project including the County MSCP SAP and inclusion of the Otay Ranch GDP/SRP in the plan. This section, however, makes no mention of the "Baldwin Letter" and its inclusion in both the County and City of Chula Vista MSCP SAPs. In 1995, the Department received the Baldwin Letter (Attachment 1), which summarizes the results of then ongoing negotiations among the County, City of Chula Vista (City), the Department, the U.S. Fish and Wildlife Service (Service), and the Baldwin Company (owner of the Otay Ranch property at that time). The Department and the Service (collectively, referred to as the Wildlife Agencies) responded to the Baldwin Letter in a letter dated February 22, 1996 (Attachment 2). One of the elements identified in these letters was the need to eliminate development entitlements, and enact corresponding designation as "MSCP Preserve" for parcels in central Proctor Valley, which were part of the Village 14 development. Specifically, those areas to eliminate development entitlements were PV1 (approximately 10 acres containing approximately 20 dwelling units), PV2 (approximately 70 acres on the east side of Village 14, designated "L2" by the Otay Ranch GDP/SRP, containing approximately 35 dwelling units), and PV3 (approximately 119.2 acres in the southern portion of Village 14 designated as "LMV 3" and "LMV 2" by the Otay Ranch GDP/SRP and containing approximately 290 dwelling units). A-3-5 A-3-6 A-3-7 A-3-8

The County adopted their MSCP SAP on October 22, 1997, which included the Baldwin Letter as an attachment within Section 3 *South County Segment* of the plan. Therefore, the relevance of the Baldwin Letter should be obvious as to the Wildlife Agencies' intentions and the need to address preserve design considerations for the MSCP Preserve, which was linked to a commitment at that time to issue permits expeditiously for impending projects in Otay Ranch. As stated in the Baldwin Letter, signed by Mr. Kim Kilenny of The Baldwin Company, "the Otay Ranch GDP/SRP will be amended, to **eliminate** development entitlements from PV1 (10 acres), PV2 (70 acres), and PV3 (119.2 acres) and to designate such areas as part of the MSCP Preserve" (i.e., no take authorized; bold added for emphasis). The County MSCP SAP reflects the "no take" designation for these three parcels on Figures 1-2 *South County Segment* and 1-3 *South County Segment*. Figure 1-3 further qualifies these three areas as "Otay Ranch Areas Where No 'Take Permits' Will Be Issued." In 1998, the Final MSCP Subregional Plan (MSCP Plan) was adopted and incorporated the terms of the Baldwin Letter: Figure 3-2 *Average Habitat Conservation in MHPA* shows PV1, PV2, and PV3 as 100 percent conserved and Figure 3-3 *Public and Private Ownership in MHPA* shows the three parcels as Multiple Habitat Planning Area. The MCSP Plan states, "Preserve boundary lines are shown for the Lake Hodges and South County segments." It A-3-9 A-3-10 A-3-11 A-3-12 A-3-13

goes on to state that development and conservation on private land within the Metro-Lakeside-Jamul segment "will proceed based on preserve design criteria, implemented through a Biological Mitigation Ordinance (BMO)…" [p. 3-7].

The DEIR's BMO analysis for impacts to PV1, PV2, and PV3 is not appropriate and is inconsistent with the MSCP Plan. In fact, Section 1.8 *Take of Covered Species* of the County MSCP SAP states that take of covered species through a BMO analysis is only applicable to the Metro-Lakeside-Jamul segment, not the South County Segment. Areas not authorized for take within the South County segment "may be authorized only after such an area has become part of the Segment Plan through the appropriate amendment process." As stated above, the MSCP Plan also incorporated this requirement. Although a lengthy BMO analysis is included in Appendix A of the DEIR, which indicates an additional 24.6 acres of mitigation is required, the Project apparently does not propose incorporating this additional mitigation. Instead, the Project proposes to mitigate impacts to PV1, PV2, and PV3 using only the Otay Ranch Resource Management Plan (RMP) conveyance requirement of 1.188 acres of conservation for every one acre of impact. Therefore, it is unclear why the BMO analysis is included in the DEIR. By applying the 1.118-acre conveyance requirement, the DEIR is apparently concluding that PV1, PV2, and PV3 are "take" authorized, but if applying the BMO, then these areas are not "take" authorized. In either case, the Department's continued position is that PV1, PV2, and PV3 were designated Hardline Preserve pursuant to the approved MSCP Plan. This designation was necessary to achieve the preserve design standards required under Section 2800 *et seq.*, of the California Fish and Game Code (i.e., NCCP Act). Issuance of the NCCP permit required a conservation strategy analysis, which included preservation of the PV-associated acres. As such, a BMO analysis is inappropriate.

There has been speculation that absent a BMO analysis the applicant could pursue separate Endangered Species Act (ESA) and/or California Endangered Species Act (CESA) permits in order to receive approval to develop PV1, PV2, and PV3. This is also inappropriate. The issue is not the isolated take of listed species on these parcels, but rather the spatial value of these properties within the matrix of conserved land near the Project, and their importance to the design and function of the overall MSCP Preserve. Any Project development of PV1, PV2, and/or PV3 would require use of the Boundary Line Adjustment (BLA) process and concurrence by the Wildlife Agencies. We understand that the County's position may be that PV1, PV2, and PV3 are not take authorized, and would support the Project applicant seeking alternative means (i.e., ESA/CESA authorizations) for take of listed species on these parcels. Again, the Department strongly disagrees with this approach, as it is inconsistent with the MSCP approval history. We have communicated our position and concerns to the County regarding the Project's proposed development of the three PV parcels. We are therefore disappointed that the County would release the DEIR with Project alternatives that are inconsistent with the MSCP Plan/County SAP, and without engaging us in pre-project meetings to discuss the merits of the applicant's position. Lastly, we note that early designation of these PV areas as "Not Take Authorized" was recognized as a necessary provision until the City of Chula Vista and the County updated their respective General Plans. In 2001, the County adopted General Plan Amendment 98-003, which reduced the density of Village 13 and 15 by removing the development rights from portions of those villages; the Otay Ranch Company requested these changes. While the Village 14 changes were not incorporated in 2001, as Village 14 was owned by the Otay Land Company, the briefing document for that County action states: "All the component parts of the November 10, 1995 letter related to the expansion or reduction of developable areas, are included in

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the MSCP program as adopted by the County of San Diego **(including those areas not owned by The Otay Ranch Company)**" (bold added for emphasis; Attachment 3).

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As stated above, because PV1, PV2, and PV3 are Preserve pursuant to the MSCP Plan, the County would need to process a BLA before development as proposed in the DEIR could proceed. A BLA requires a different analysis than the BMO. A BLA not only requires making the Preserve whole on an acre-for-acre basis but also generally requires that the added acreage have the same or better function and values as those areas removed from the Preserve. With that in mind, PV1 is considered important Quino habitat and its conservation contributes to enhanced corridor connectivity and function for both Quino and California gnatcatcher. In addition, development of PV1 requires a stream crossing and introduces substantial edge effects to the Preserve. Noteworthy is that less than 200 meters from the northern boundary of PV1 is the only known late summer/fall water source within Proctor Valley. U.S. Geological Survey (USGS) staff have placed cameras at the pool edge and documented numerous animal species drinking from it including 220 observations of southern mule deer (*Odocoileus hemionus*). Deer are an important prey species for mountain lion (*Puma concolor*), which has also been documented in the Project Area. In 2016, a drought year, date-stamped photographs show water in the pool as late as 25 August. Encroachment on this valuable water source from the proposed development of PV1 would be considered significant to habitat function and value well beyond the boundary of PV1. PV2 connects Department-owned and managed Rancho Jamul Ecological Reserve to BLM public land and Otay Ranch Preserve. It also supports at least one pair of California gnatcatcher and numerous sensitive plant occurrences. PV3 is important for maintaining connectivity and providing substantially improved preserve design (i.e., less edge effects) between the Otay Mountain/Marron Valley Core Resource Area and the Sweetwater Reservoir/San Miguel Mountain/Sweetwater River Core Resource Area (Figure 2-2 in MSCP Plan Volume 1) for species such as California gnatcatcher and Quino. Development of PV3 would severely reduce the significant block of habitat that generally provides for unrestricted movement along a lower elevation route to upper Otay Reservoir as well as a broader connection to the more rugged ridgeline north of Lower Otay Reservoir. Development of PV3 would also introduce substantial edge effects to the Preserve by adding development into a large block of conserved land – this requirement was a primary objective in the negotiated conditions of the Baldwin Letter. Lastly, the MSCP Plan identified all three parcels as having "Very High" and "High" habitat value (see Figure 2-3 *Habitat Evaluation Map*). The conservation value of these three PV parcels, and the cumulative benefits of their location among identified Preserve lands, is dramatically higher than would be achieved from the Project's proposed removal of development within a 100-foot distance as part of a Preserve Edge Plan.

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The Department would also like to emphasize that the balancing provisions of the Baldwin Letter (i.e., increased development densities in the City of Chula Vista) have been enacted. In total, the Baldwin Letter reduced development in Villages 13, 14, and 15 by approximately 750 units and added a total of approximately 1,230 units to Villages 1, 2, 4, 10, and 11. Although development in the County has been slower to proceed compared to the City of Chula Vista, the City has processed and approved project developments consistent with the Baldwin Letter, and in doing so has received public comment letters from Rob Cameron, representative for the Village 14 Project, which made reference to the "Baldwin Letter Agreement" (Attachment 4). In summary, the Wildlife Agencies have honored the

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negotiations and outcome of the Baldwin Letter and require the County/Project to do likewise.

The Department disagrees with the statement that "Further reduction in the proposed Development Footprint of PV1, PV2, and PV3 would limit the ability of the Project to achieve the density and land use policies set forth in the County's General Plan and Otay Ranch GDP/SRP" (BTR Appendix A, p. 10). This statement contradicts the good faith effort by the Wildlife Agencies to retain land value and development units resulting from implementing the provisions of the Baldwin Letter. The Department further recognizes, and the MSCP clearly indicated, that the City of Chula Vista and County of San Diego would amend their General Plans to reflect the changes in the Baldwin Letter. As stated previously, the City of Chula Vista has honored the agreement and revised their General Plan accordingly in 1998, prior to completing their Subarea Plan.

The Wildlife Agencies provided a comment letter on the County's General Plan Update dated January 30, 2009, which, among other comments, stated "The GP should include a policy that all existing and planned NCCP/HCP conserved lands that contribute to biological preservation will be redesignated to open space-conservation (OC) as part of the GP planning and implementation program." Therefore, we believe the County should have made the revisions to the Village 14 PV1, PV2, and PV3 lands during the 2011 General Plan Update to reflect the adopted MSCP and the conditions of the Baldwin Letter, however, the County neglected to do so. If it had been the County's intent to negate the MSCP conservation of PV1, PV2, and PV3, there were no conversations, meetings, letters, or emails with/to the Wildlife Agencies in this regard. We find statements in the Village 14 DEIR suggesting that development must now occur on these parcels in order to be in compliance with the 2011 General Plan inappropriate and misleading. Regardless of past inaction, the County committed through their MSCP SAP to perform the necessary steps to implement the Baldwin Letter. The designations of PV1, PV2, and PV3 as Preserve remain a County obligation.

As stated previously, in 2001, the County adopted General Plan Amendment 98-003, which reduced the density of Village 13 and 15 by removing the development rights from portions of those villages; the Otay Ranch Company requested these changes. Another effort toward validating the conserved status of PV1, PV2, and PV3 was the County's approval of GPA 00-01(2) on August 7, 2002. GPA 00-01 (2) states, "the Board of Supervisors hereby approves General Plan Amendment 00-01(2) amending Volume 2 of the Otay Subregional Plan by amending Section II.B (Preserve Conveyance Plan) of the Otay Ranch Resource Management Plan, Phase 2 Preserve Initial Conveyance Area Map as shown in Revised Attachment B1 and directs staff of the County Department of Planning and Land Use to work with the City of Chula Vista to incorporate the changes into a revised Resource Management Plan document." Revised Attachment B1, also identified as Exhibit 14, from the August 7, 2002, document is provided as Attachment 5 to this letter. The Department appreciates that obtaining a supportable conveyance schedule of Otay Ranch preserve lands has proven difficult. The County subsequently approved GPA 06-012 on December 5, 2007, "consisting of an amendment to Volume 2 of the Otay Ranch Subregional Plan **by deleting text references** to the Preserve Conveyance Plan and eliminating the Coastal Sage Scrub Restoration Requirement …" (bold added for emphasis). There were no changes to lands that had been identified as required for conservation, and Attachment B1, referenced above, therefore remains relevant. Furthermore, the GPA 06-012 Resolution states that the

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"environmental analysis … found that there are no changes in the project or in the circumstances under which it is undertaken which involve significant new environmental impacts which were not considered in … the Multiple Species Conservation Program Joint Environmental Impact Report/Environmental Impact Statement dated January 1997 …." Therefore, the conservation assumptions of the MSCP remain intact. The Department also notes that the elimination of the Coastal Sage Scrub restoration requirement included in GPA 06-012 was one aspect of the Baldwin Letter, which we continue to honor. A-3-49 Cont. A-3-50

Summarizing, the Department notes that nothing has transpired that would negate the commitment and expectation that PV1, PV2, and PV3 were identified as necessary conservation pursuant to the MSCP and would become Otay Ranch/MSCP Preserve. The Department strongly disagrees with the DEIR assertion that the Project is entitled to develop PV1, PV2, and PV3. We have provided documentation that shows these three areas were specifically not authorized for development in the documents analyzed by the County, adopted by the County, or in the NCCP and HCP permits issued by the Department and Service, respectively. In addition, the Department finds that the following statements made in the DEIR Section 3.1.3.2.3 *Conflict with Habitat Conservation Plan or Natural Community Conservation Plan* that the Village 14 project "is consistent with the MSCP Plan, MSCP County Subarea Plan, and Otay Ranch RMP," and that the "Proposed Project would not conflict with any applicable Habitat Conservation Plan or NCCP" are clearly inaccurate. A-3-51 A-3-52 A-3-53 A-3-54

Notwithstanding the above, the Department recognizes that RMP Phase 2 needs additional updating, and the County and City are continuing to work on this effort. The Wildlife Agencies continue to support flexibility in the manner in which the Otay Ranch Preserve is assembled. The Department's position in this regard was confirmed as early as December 1999, in our letter (Attachment 6) to Mr. Gary Pryor, then Planning Director of the County Department of Planning and Land Use. The Department's letter stated, "We do not object to the revised Otay Ranch Conveyance Plan provided the habitat preservation goals specified in the MSCP are met and the management of the mitigation lands is provided for." The Department continues to be available to work with the County concerning conveyance issues. A-3-55 A-3-56 A-3-57 A-3-58

MSCP and Otay Ranch Specific Plan Implementation

In a joint comment letter dated May 21, 2015, for the Village 13 DEIR, the Wildlife Agencies raised concerns regarding implementation of both the MSCP and the Otay Ranch Specific Plan. In that letter we recommended the County and the City of Chula Vista meet with us to revise the Otay Ranch RMP to reflect current land conditions and improvements to management and monitoring techniques that have occurred since RMP approval. The Department reiterates this concern and recommendation. A-3-59

In addition, our previous letter raised concerns regarding a deficit in acreage to build-out the Otay Ranch Preserve. As described in Section II. B (*Otay Ranch Preserve Conveyance*) of the RMP, the assumption has been that a conveyance obligation of 1.188 acres conveyed per every acre developed in the Otay Ranch Specific Plan was sufficient to build out the Otay Ranch Preserve (a component of the MSCP Preserve). Recent analysis by the City reflected in Table 4 of the RMP, however, suggests that this ratio will not be sufficient to complete conveyance of the 11,375-acre Otay Ranch Preserve. An updated analysis by the City that incorporated completed or pending projects identified the conveyance requirement A-3-60 A-3-61

would result in an 869-acre deficit. According to the City, this deficit is believed to largely be due to an underestimate of the common use areas in the existing GDP/SRP and the coarse scale used to estimate the conveyance obligation.

According to the DEIR, the proposed Project will convey approximately 777 acres to the Otay Ranch Preserve. Combining the open space acreages purchased by the Department (620 acres) and the Service (168 acres) with the Project's conveyance requirement, the total contribution to the Preserve from Village 14 and Planning Areas 16/19 is 1,565 acres. This is 303 acres less than the 1,868 acres projected by the Otay Ranch RMP Phase 2 for these developments (see Exhibit 9, p. 61). The Project deficit of 303 acres validates concerns raised by the Wildlife Agencies in 2015. We recommend that the County address the 303-acre deficit associated with the Project prior to final approval of the Project. The Department remains available to discuss this matter.

Department-owned Lands/Off-site Impacts

The Project is proposing off-site impacts to 85.4 acres including 45.2 acres of Department-owned and managed lands. These lands are designated Ecological Reserve and "are maintained for the primary purpose of developing a statewide program for protection of rare, threatened, or endangered native plants, wildlife aquatic organisms, and specialized terrestrial or aquatic habitat types" (California Code of Regulations Title 14 Section 630). The DEIR does not address how the Project will acquire development rights on the off-site property not under its ownership. As proposed, this includes not only Department-owned and managed land but lands owned by the City of San Diego (34.5 acres) and private land (0.8 acre).

The Department cannot provide Ecological Reserve–designated land for roadways or other infrastructure that facilitates development without first completing a Land Conversion Evaluation (LCE) in conjunction with the California Wildlife Conservation Board. The LCE is a required process that evaluates the Department's risk associated with a land transfer/sale. This is to ensure that the change from Ecological Reserve to another purpose (i.e., conversion from wildlife habitat to the proposed use) is not detrimental to the Department's original purpose regarding acquisition of that property. The Department must also ensure that the conversion will be appropriately mitigated to offset the loss of the actual land and to adjacent Department-owned lands. The Ecological Reserve properties in Proctor Valley were purchased using both state and federal (public) funds; therefore, the Department has a responsibility to the public to ensure that any land use changes on those properties are evaluated and adequately mitigated. This process is similar to a BLA in that the Department must look at both the acreage and the functions and values of the lands being sold/exchanged/acquired. The portion of the Ecological Reserve adjacent to the Project Area provides raptor foraging habitat; host plant, nectar resources, and possible location(s) for Quino checkerspot butterfly; habitats occupied by California gnatcatcher and San Diego fairy shrimp; a location of burrowing owl; and important habitat facilitating wildlife movement and use for species such as deer and mountain lion. Please note that impacts to Department-owned lands cannot be mitigated at the Otay Ranch conveyance ratio of 1.188:1, as replacement of the Ecological Reserve's functions and values would be required, as opposed to a general Otay Ranch land impact consideration.

The DEIR (p. 2.4-96) states, "Since the Otay Ranch RMP specifically excludes mobility element roads from the conveyance requirements (City of Chula Vista and County of San Diego 1996), permanent impacts to sensitive vegetation communities within Department-owned lands

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associated with improvements to Proctor Valley Road would not require mitigation." This is not an accurate statement. Department lands are not subject to the development provisions of the Otay Ranch RMP, nor exempt from required mitigation. Additionally, please note that Policy 6.6 of the Otay Ranch RMP Phase 1 states "CEQA mitigation requirement for impacts associated with infrastructure shall be reviewed by the appropriate jurisdiction and the Preserve Owner/Manager if such improvements are located within the preserve." Since the Project proposes improvements to Proctor Valley Road on Department-owned land, the Department is an appropriate jurisdiction under the RMP Policy. Similarly, the DEIR needs to recognize that impacts proposed to City of San Diego Cornerstone Bank lands must be offset to the satisfaction of the City of San Diego (which is not signatory to the Otay Ranch RMP). Lastly, there are both land value (as conservation bank) and biological value considerations in evaluating and mitigating impacts to City of San Diego lands. Habitat types, presence of sensitive species, and locations of the mitigation lands must all be considered.

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The majority of impacts to California gnatcatcher are associated with the Proctor Valley Road improvement on lands within the MSCP Preserve owned by the Department, City of San Diego, and City of Chula Vista. As proposed, these off-site improvements would directly affect seven of the 11 (64%) California gnatcatcher pairs documented in the Project Area. The DEIR relies on County SAP coverage for this species; however, the majority of the take is on Preserve lands not owned by the Project applicant. We recommend the Final EIR include a revised impact analysis for this species, and include consideration of this species in addressing impacts to lands owned by the Department and City of San Diego, which are not subject to the Otay Ranch 1.188:1 provision.

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The Department requests that the Final EIR clarify if there are segments of existing Proctor Valley Road and/or existing utilities on the Ecological Reserve that would be removed, and if so, how the Project would ensure that these areas be restored to pre-Project conditions. Abandonment of portions of Proctor Valley Road that occur on the Ecological Reserve would also include the removal of an existing steel barrier installed to prevent unauthorized uses such as off-road vehicles from entering conserved lands. We recommend the new sections of Proctor Valley Road include equivalent or better protective measures to ensure that adjacent lands will be protected, and that maintenance of these protections will be a responsibility of the Preserve Owner Manager (POM). The Project also proposes to install utility infrastructure on and adjacent to the Ecological Reserve. Again, impacts on Department-owned lands cannot be simply offset using the 1.188:1 mechanism, and will require careful analysis of the habitats and species present.

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Roads are vectors for nonnative invasive weed species. We recommend the Final EIR include measures beyond the Preserve Edge Plan's proposed 100-foot buffer to ensure that adjacent conserved lands are adequately protected from Project-induced edge effects that could cause the introduction and spread of invasive, nonnative weeds. Presumably, the POM will be the entity with the long-term responsibility to maintain these preventative measures, but this should be clarified in the Final EIR.

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Infrastructure within the Preserve

The Project includes improvements to Proctor Valley Road within areas designated 100 percent conserved (i.e., Hardline Preserve). Section 1.9.3 *Infrastructure* of the County's SAP provides requirements associated with development of infrastructure in the Preserve. Section 1.9.3.2

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provides a list of the required findings the County must meet to receive/provide take authorization associated with infrastructure projects. The first finding the County must make is that the Project is consistent with adopted plans including the MSCP Plan and its SAP. Although the DEIR states that the Project is consistent with the County SAP, as stated above, the Department does not agree since the Project includes development of PV1, PV2, and PV3.

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A second finding the County must make per Section 1.9.3.2 is that feasible mitigation measures are incorporated into the Project and that a feasible less damaging alternate alignment is considered. The DEIR does not include any alternate alignments that are primarily on take authorized lands, and thus would minimize impacts to off-site conserved lands. The Department recommends that the Final EIR include an alternative that confines the majority of the Proctor Valley Road improvements to take authorized areas.

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Cornerstone Lands

The DEIR (p. 2.4-94) states, "potentially significant impacts to sensitive vegetation communities within the City of San Diego Cornerstone Lands would be mitigated to **less than significant**." The Department disagrees with this conclusion. Proctor Valley Road was not excluded from the Cornerstone Conservation Bank Agreement signed in July of 1997; therefore, any loss of acreage within the Cornerstone Lands resulting from the construction of Proctor Valley Road must be deducted from the available conservation credits. We recommend this deduction of credit should also include a minimum 100-foot buffer surrounding the road to mitigate for indirect impacts to covered species. In addition, the City of San Diego's Cornerstone Conservation Bank must be made whole by the addition of land back into the Preserve. Previous projects that have had to meet this requirement, such as SDG&E's Sunrise Powerlink, mitigated at a ratio of 2 acres of conservation for every 1 acre of impact. The DEIR does not disclose this requirement. Instead, the DEIR states (p. 2.4-200), "The MSCP City of San Diego Subarea Plan excludes certain utilities and public facilities from the MHPA within Cornerstone Lands, including Proctor Valley Road. As such, construction of Proctor Valley Road within the Preserve system is not precluded based on the City's Cornerstone Lands Conservation Bank Agreement (City of San Diego 1997)." Although not precluded, this does not mean take is authorized without the deduction of those available credits from the bank and making the Preserve whole. The Project should not only mitigate at a minimum 2-to-1 ratio (possibly higher for some habitat types or impacts to certain highly sensitive species), mitigation must be directly adjacent to the impacted Cornerstone Lands. Therefore, by itself, the RMP conveyance obligation to the Otay Ranch Preserve is not sufficient to mitigate impacts to City of San Diego Cornerstone Lands to less than significant. The Final EIR should acknowledge that the County must meet and coordinate with the City of San Diego to resolve this issue.

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Alternatives

The DEIR includes four alternatives, besides the Proposed Project and the No Project alternatives, including the Land Exchange alternative, which was identified as the Environmentally Preferred Alternative. As stated in the DEIR, the Department had met with the County and Project applicant to discuss a land exchange proposed by the Project applicant in order to cluster development south along Proctor Valley Road. However, the DEIR does not discuss the biological value and function of the lands proposed for the exchange. Much of the Department-owned land the applicant was requesting for an exchange is considered by the

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Department to be high quality, mature growth chamise chaparral, free of invasive weed species, and located in an important but more broadly defined wildlife movement corridor. These lands are adjacent to San Diego National Wildlife Refuge (SDNWR) and provide connectivity to BLM lands and the Rancho Jamul Ecological Reserve to the east. The Project lands proposed for the land exchange mostly support degraded nonnative grasses and forbs along with pioneering scrub elements adjacent to existing development. Although these lands would provide connectivity between the Refuge and Rancho Jamul, they would not support the same habitat values and functions without significant and costly restoration. Therefore, a 1:1 acre-for-acre land exchange is not considered an equitable trade. In addition, as stated previously, the Department must complete a Land Conversion Evaluation, a lengthy process, that is required before State lands can be sold or exchanged.

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Golden Eagle

As we stated in our January 20, 2017, NOP letter, the Project is located within the Rancho San Diego (now referred to as San Miguel) golden eagle nesting territory identified in Table 3-5 of the final MSCP Subregional Plan. The Subregional Plan expected the nesting territory to remain viable because development would result in less than 10 percent impact to habitat within the territory. Because the DEIR predicates the Project's take for golden eagle on compliance with the County's SAP and the MSCP Subregional Plan, we recommend the County conduct GIS analysis of the San Miguel territory to confirm that 90 percent of the habitat within the territory will remain undeveloped, and therefore viable, based on current and future MSCP implementation. This analysis should be included in the Final EIR. If more than 10 percent of the territory has been or will be lost to development due to MSCP implementation, then, we recommend the County work with the Wildlife Agencies to identify measures to reduce impacts to golden eagle.

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Preliminary golden eagle data collected by the U.S. Geological Survey (USGS in review) suggests that indirect effects due to fragmentation of habitat within the territory may result in a greater percentage of the mapped territory becoming unusable for eagles, which may cause abandonment of the territory. As proposed, the Project would create a potential development barrier between Otay Ranch RMP lands to the south and SDWNR lands to the northwest, further fragmenting the territory. The USGS data also show that golden eagles avoid habitat within 300 feet of urban development, rendering it unsuitable. Therefore, habitat within 300 feet of developed areas should be included in the GIS analysis and included as part of the 10 percent take allotment referred to in Table 3-5. In addition, we recommend the DEIR include these indirect and cumulative effects when assessing whether the Project has a significant effect on golden eagle, and whether the impact has been reduced to less than significant. Additional direct, indirect, and cumulative effects that should be included in this analysis include the implementation of the Otay Ranch Trails Plan and future development such as Village 13. The DEIR mentions these other impacts but fails to provide a thorough biological analysis of their effects on golden eagle that rely on Proctor Valley for foraging and nesting.

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The DEIR concludes the Project will mitigate its impacts on golden eagle to less than significant because it is consistent with the Otay Ranch GDP/SRP and the County SAP. However, as stated previously, the Department does not agree that the Project is consistent with the County SAP. In addition, the DEIR does not address how the existing mitigation measures in the Otay Ranch GDP/SRP that was adopted on October 28, 1993, have been (or will be) complied with in

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order to minimize impacts to golden eagle and help ensure that the San Miguel territory remains viable as anticipated by the MSCP.

The Otay Ranch GDP/SRP required the development and implementation of a long-term raptor management plan for the entire Otay Ranch. The Department is unaware of any raptor management or monitoring efforts that have taken place on Otay Ranch since Ogden (1992a) prepared the Otay Ranch Raptor Management Study as part of the Otay Ranch GDP/SRP. This study included management and monitoring recommendations to maintain and enhance raptor species diversity and abundance on the Otay Ranch Preserve. These recommendations included monitoring, habitat enhancement, protection of raptor habitat from human disturbance, and development of an environmental awareness program. In addition, existing portions of the Preserve and areas yet to be conveyed have substantially degraded since they were approved for dedication in the late 1980s. This includes portions of Wolfe Canyon, areas adjacent to the Pio Pico campground, and areas adjacent to Proctor Valley Road. These areas have been heavily impacted by public trespass, off-road vehicles, and other unauthorized recreational uses. The DEIR should address these unauthorized uses in the Preserve, since they may result in a lower quality of habitat value conveyed into the Preserve than was expected/required under the Otay Ranch RMP. This could have implications to habitat use by golden eagle and other species, including species not addressed by the Otay Ranch RMP or the MSCP, such as Quino and Hermes copper butterfly.

The Department disagrees with the conclusion that 89 acres of chaparral habitat (DEIR p. 2.4-38) within the Project footprint is not suitable golden eagle foraging habitat. This habitat is embedded within a matrix of vegetation communities that is being utilized by foraging eagles as shown by telemetry data collected by USGS (Tracey et al. 2016, 2017). According to USGS (R. Fisher, personal communication, April 2, 2018), golden eagles sometimes forage on the ground and prefer areas with vegetative cover such as coastal sage scrub and chaparral habitats; this cover is also important for the prey species themselves. Based on a recent reconnaissance visit along Proctor Valley Road and Department-owned lands in Proctor Valley by Department staff on April 4, 2018, the on-site chaparral habitat in the Project footprint was not found to be generally comprised of a dense closed canopy as stated in the DEIR. Instead, the chamise chaparral was low growing (3-4 -feet tall) with openings that would allow animal movement. Additionally, black-tailed jackrabbits were observed in these openings. Black-tailed jackrabbit is a favored prey species of golden eagle and are known to occur throughout the Project Area, further supporting the Department's position that the entire Project Area is suitable golden eagle foraging habitat.

In addition, although the DEIR (p. 2.4-39) claims that the "overall Development Footprint likely supports relatively few breeding pairs" of jackrabbits, there is no evidence provided to substantiate this claim. Instead, as stated above, black-tailed jackrabbits were documented in many locations in the Project Area and Department staff observed them throughout the valley on a recent site visit. Indeed, anecdotal observations indicate their numbers may be rebounding, perhaps due to fencing installed along the length of Proctor Valley Road, which has prevented off-road vehicle activity and allowed noticeable habitat recovery over the past few years (R. Fisher, personal communication, April 4, 2018). Because the on- and surrounding off-site habitats are similar, we would expect the likelihood of black-tailed jackrabbits breeding on and off the Project site to be relatively similar. These observations further support the Department's opinion that the entire Project Area supports suitable golden eagle foraging habitat.

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The DEIR states, "Based on the available and accessible evidence, it is not clear that any individual eagles currently rely on the Project Area as foraging habitat consistently or perennially." It goes on to state that "Therefore, developing the Proposed Project would not significantly compromise the ability of any current breeding pairs to sustain themselves". Again, the DEIR does not provide sufficient evidence to substantiate this claim. USGS personnel have only trapped a sub-set of the golden eagle population that occurs within the County. Although USGS has not captured a golden eagle within the Mt. Miguel territory, this does not prove a pair is not occupying that area (R. Fisher, personal communication, April 4, 2018) and/or that the territory is not capable of supporting a pair of eagles in the future. According to Dr. Fisher, transmitter-equipped golden eagle individuals appear to be avoiding the Mt. Miguel territory, suggesting it is occupied, and the territorial pair is defending the area. During the Department's visit on April 4, 2018, a golden eagle was observed within the territory riding the thermals above Mt. Miguel.

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Quino Checkerspot Butterfly

Based on negative protocol survey results in 2015 and 2016, the DEIR concludes that Quino do not occur within the Project Area, but does state that the "species has been observed within and adjacent to the Project Area" (p. 2.4-77). The DEIR also states that suitable habitat is present in the Project Footprint/Area and there is the potential for future occupation. The 2015 and 2016 Quino flight seasons had very low numbers throughout the range due to drought, and many areas that were unoccupied in 2016 were subsequently occupied in 2017. Indeed, the 2017 spring season, presumably fueled by above-normal rainfall following multiple years of drought, created the most favorable conditions for Quino since 2012. As a result, very high numbers of Quino were observed, particularly in nearby areas. Unfortunately, in 2017, protocol surveys were not performed on Village 14, qualified USFWS biologists were not allowed to survey the property during the peak of the flight season, and an excellent opportunity to obtain better information on the status of Quino on the property was lost. Based on the presence of Quino host plant and nectar resources and information discussed further below, the Department believes the DEIR is significantly undervaluing the Village 14 property relative to Quino checkerspot butterfly.

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Appendix D of the BTR states, "The host plants on site are very patchy in distribution within a matrix of chaparral and sage scrub communities. Given the scattered QCB resources across the Development Footprint in an exceptional year for QCB [Quino] host plants (2015) and in an above-average year for QCB host plants (2016), neither the Development Footprint nor the Conserved Footprint is expected to support a core population of QCB." The Department notes that 2015 and 2016 were below average years for Quino adults and larval host plant expression (E. Porter, USFWS, personal communication, 2018), and the Department strongly cautions against such a bold conclusion in the BTR after only three years of data. In recognition that the property has not been evaluated in a relatively high rainfall year, the property could in fact support much higher amounts of host plant and other resources in high rainfall years, and owing to the metapopulation dynamics of this species, those "good years" could be extremely important to the local population. The Department also notes that "exceptional" is a relative designation, not a scientific one, and without data from 2017, which was a very good rain year throughout the County, it would be difficult to support this claim without additional long-term data. In addition, discussions with the County regarding their Quino Amendment have resulted in designating the SDNWR/Proctor Valley Area as a core population, and highlight the importance of the area in the metapopulation dynamics of the species. Lastly, the habitat

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described as "patchy in distribution within a matrix of chaparral and sage scrub communities" may in fact be highly suitable for Quino in the local landscape, and the Department further notes that 502.4 acres of the Project Area are located within designated critical habitat by the Service. Discounting the Proctor Valley area as currently unoccupied and not a core is also not consistent with recent discussions between the Wildlife Agencies and the County for the proposed MSCP Quino Amendment.

The BTR discusses three years of host plant surveys, but does not incorporate the maximum extent into the analysis of Project impacts. The Department recommends that the Final EIR include a figure that shows the cumulative maximum extent of all Quino host plants. Project impacts and associated mitigation should be based on this maximum extent analysis. The Department further disagrees with the analysis in the DEIR that the RMP 1.188:1 mitigation requirement is sufficient to reduce impacts to Quino to less than significant. Quino was not a species addressed in the Otay Ranch RMP and is not a covered species under the County SAP; therefore, direct impacts to the species' habitat should require more mitigation than what is required under the Otay Ranch GDP/SRP. We recommend additional mitigation be required and that the mitigation lands support host plant resources and hilltoping areas. The Department recommends additional mitigation should be at a minimum 3:1 ratio, similar to mitigation requirements included in previously issued HCPs covering Quino.

Mitigation measure M-BI-8 states, "If take authorization is required for impacts to Quino checkerspot butterfly, the Proposed Project shall demonstrate, to the satisfaction of the Director of Planning & Development Services (or his/her designee) and prior to the issuance of the first grading permit that impacts suitable Quino checkerspot butterfly habitat, that it has secured from any necessary take authorization. Take authorization may be obtained through the Section 7 Consultation or Section 10 incidental take permit requirements." Federal take under ESA includes both harm and harass, which includes the take of suitable habitat. Due to the substantial impacts to Quino host plants and numerous recent sightings directly adjacent to the Project Area, there is a high likelihood that they would be impacted by on- and/or off-site development. The Department recommends obtaining take authority under Section 10 of the FESA in order to avoid violations of Section 9 of the Endangered Species Act, which would also be significant without mitigation under CEQA.

If the applicant seeks take for Quino through Section 7 of ESA, via the U.S. Army Corps of Engineers permitting process, a destruction or adverse modification determination for impacts to critical habitat must be made during consultation. The Federal Register states, the "destruction or adverse modification" definition focuses on how Federal actions affect the quantity and quality of the physical or biological features in the designated critical habitat for a listed species and, especially in the case of unoccupied habitat, on any impacts to the critical habitat itself. Specifically, the Service will generally conclude that a Federal action is likely to "destroy or adversely modify" designated critical habitat if the action results in an alteration of the quantity or quality of the essential physical or biological features of designated critical habitat, or that precludes or significantly delays the capacity of that habitat to develop those features over time, and if the effect of the alteration is to appreciably diminish the value of critical habitat for the conservation of the species. It is reasonable to conclude based on the above definition that the Project will result in the destruction or adverse modification of critical habitat, yet the Project does not offer any reasonable or prudent alternatives to impacts to such a large swath of critical habitat. The Department believes this is a significant shortcoming in the DEIR.

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The DEIR correctly states that in 2017 Service staff documented multiple Quino individuals adjacent to and interspersed within the Project Area, yet somehow dismisses these sightings as incidental (p. 285). The DEIR's speculation about an incidental nature to the sightings does not negate the fact that Quino were present on the site. Appendix D of the BTR states, "Based on the information gathered from the 2014, 2015, and 2016 surveys, the Project site, including the Development Footprint and the Conserved Footprint, did not support occupied QCB habitat. Several incidental QCB sightings were documented in 2017 by USFWS adjacent to the Development and Conserved Footprints, but not within the Project Boundary. With the exception of these areas adjacent to the Development Footprint, absent future occupation of the site by QCB, implementation of the proposed Project would not impact QCB individuals or occupied QCB habitat." In addition to the USFWS sightings, in a limited survey effort on April 5, 2018, Department staff (certified by USFWS to survey for Quino) observed two Quino adults on Department-owned land in immediate proximity to the Village 14 property (Attachment 7: Quino Checkerspot Locations, Proctor Valley). Furthermore, Department staff subsequently observed one of these two Quino fly from Department-owned land onto the adjacent Village 14 property. Since there have been numerous recent sightings of Quino intermixed with the Project Area, and currently there are no barriers to flight between suitable habitats within the Project Area and Preserve land directly adjacent, the Department believes it is reasonable to expect that Quino occupy the Project Area. Additionally, the preliminary measures developed under the effort to add Quino checkerspot as a covered species to the MSCP consider sightings, distance from the sightings, and presence of host plant and suitable nectar resources. These facts if applied to the Village 14 circumstances would warrant Quino to be of high concern for a development project, if not conclude the habitat was actually occupied. Neither the DEIR nor the BTR and associated appendices discuss the possibility of Quino traversing property boundaries, although that likelihood seems obvious.

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Due to the abundance of host plant and nectar resources within the Project Area, and recent observations in close proximity to the Project Area, the Department recommends that the Final EIR include a revised Quino analysis that incorporates the value of the Project site in terms of its habitat and site resources (e.g., larval host plant and adult nectar resources), along with the property's geographic location between known population centers at Village 13/Otay Lakes/south of Otay Lakes and preserve lands encompassing San Miguel/Sweetwater Reservoir which the Department believes are critical to keeping a viable Quino population. Central Proctor Valley is could quite possibly be critically important for maintaining the meta-population dynamics exhibited by Quino, especially within the vicinity of the Project Area. Attachment 8 summarizes Quino locations in the broader area, and illustrates why this portion of Proctor Valley appears to provide an essential movement corridor between the Otay Lakes core population and the SDNWR/Proctor Valley core population and other populations located north of San Miguel Mountain. Again, this highlights the importance of PV3, as discussed above. Impacts to Quino were not analyzed under the Otay Ranch GDP/SRP, the MSCP Plan, the County's SAP, or earlier associated environmental documents; therefore, direct effects to this broad connection between areas north/northwest and south/southeast of Village 14 have not been analyzed and/or mitigated under the regional planning efforts. Although the Project may seek approval through Section 7 of the ESA for impacts to Quino, the resulting Biological Opinion and associated Jeopardy/Non-Jeopardy decision may not be sufficient to mitigate impacts to Quino to less than significant for purposes of CEQA, which must assess the cumulative impacts to this species.

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Burrowing Owl

The BTR (p. 66) states that no burrowing owls were observed during focused surveys conducted in 2014, and Figure 3-3 shows the areas within the Project Area that were surveyed. The report goes on to say that "burrowing owl sign consisting of white wash, feathers, and pellets at one location in the central portion of the Project Area" was observed during rare plant surveys in spring 2015. The BTR depicts the observed burrow on Figures 4-1l and 4-1m but not on Figure 3-3. Based on comparisons of these figures, it appears that the occupied burrow was outside the areas surveyed in 2014. In addition, burrowing owl has been observed during the breeding season in the vernal pool restoration area on City of San Diego Cornerstone lands within the Project Area (R. Fisher, personal communication, April 4, 2018). Department staff recently visited the restoration area and observed numerous ground squirrel burrows. It is our opinion that this area could support breeding owls. Because the protocol surveys are out-of-date and seem to exclude areas that support suitable burrowing owl habitat, the DEIR has not substantiated the claim that burrowing owl "does not occur regularly within the Project Area" (p. 2.4-42). The Department appreciates the DEIR incorporation of mitigation measure M-BI-13 to minimize impacts to burrowing owl if occupied burrows are detected during a preconstruction survey; however, if occupied habitat will be impacted by the Project, then a burrowing owl habitat enhancement plan must also be prepared to mitigate Project impacts to occupied habitat. A passive relocation plan is not sufficient to mitigate impacts to occupied burrowing owl habitat to less than significant. The habitat enhancement plan must improve suitable burrowing owl habitat within the RMP Preserve lands.

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Otay Tarplant

The BTR states, "Additionally, USFWS describes Otay tarplant as found on clay soils in grasslands, open coastal sage scrub, and maritime succulent scrub. The habitat within the Project Area lacks clay soils and these vegetation communities; therefore, it is not suitable for Otay tarplant" (p. 22). The Department disagrees with the statement that the Project Area lacks clay soils, as do statements made in the BTR itself (p. 2), which describes the soil types within Project Area: "including Diablo–Olivenhain complex, 9% to 30% slopes; Diablo clay, 15% to 30% slopes; Diablo clay, 9% to 15% slopes." The presence of claypan vernal pools within the Project Area also indicates that suitable clay soils are present. Furthermore, coastal sage scrub is one of the dominant habitats within the Project Area impacted by the Project. Although focused surveys were conducted for Otay tarplant, the species is an annual plant that exhibits extreme variability from year to year. According to the San Diego Management and Monitoring website "Large (inter) annual fluctuations in the number of standing plants of Otay tarplant in a given population have been documented; two examples include from 1 to >5,400 standing plants at a site on Otay Mesa, and from ~100 to 50,000 at a site in Rice Canyon. In a given year, the observable plants are only the portion of the individuals from the seed bank that germinated that year." In addition, as noted earlier, the years in which surveys were conducted were drought years with below normal precipitation. Therefore, the presence of Otay tarplant within the Project Area is likely, given suitable habitat is present. We recommend preconstruction surveys for Otay tarplant be conducted in suitable habitats. If Otay tarplant is identified within the impact area including off-site locations, then avoidance and/or minimization measures should be provided consistent with the MSCP Plan. If impacts cannot be avoided

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and/or minimized, then mitigation above the required RMP conveyance obligation should be included in the Final EIR.

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San Diego Button Celery and Vernal Pools

The DEIR and BTR discuss impacts to vernal pool habitat and note, "The Proposed Project avoids all vernal pools/features that are known to be occupied by San Diego fairy shrimp. Consequently no significant impacts to San Diego fairy shrimp are expected." Yet occupation by the San Diego fairy shrimp is not the only criteria that determines if a "seasonably wet feature" qualifies as a "vernal pool." Vernal pools are seasonally wet habitats with high levels of biological diversity that are generally defined by a suite of mostly rare endemic plant and animal species (Sawyer et al. 2009). San Diego vernal pools are important for a number of species besides fairy shrimp including San Diego button-celery (*Eryngium aristulatum* var. *parishii),* which is both a state and federal endangered species. Although appendices to the BTR recognize that San Diego button-celery occurs in the Project Area, the DEIR fails to include this species in the impacts analysis. For example, BTR Appendix F, which addresses vernal pools states, "San Diego button-celery was found adjacent to Feature B2, which supported San Diego fairy shrimp," and BTR Appendix I 2, states, "Approximately 85 individuals were mapped at vernal pools north of the project site during the 2015 focused plant surveys. However, this species was not observed on site during focused surveys in 2014, 2015, or 2016." Although San Diego button-celery was not identified on site during rare plant surveys conducted in a 3-year period, this is not sufficient to discount the potential for the plant given its historic and current presence within the Project Area. Dudek (1992) observed the species during the previous Otay Ranch studies, which is recorded in CNDDB, and Department staff noted its presence on Department-owned land near the proposed Proctor Road alignment during our April 4, 2018 site visit. We recommend these occurrences be added to the special-status plant figures in the Final EIR. The Final EIR should also include a discussion of San Diego button-celery and identify avoidance and minimization measures, such as pre-construction surveys, and appropriate species-specific mitigation above the required acreage conveyance.

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There are many pools in the Proctor Valley area that have been documented prior to and after the 2014-2015 vernal pool surveys conducted by Helix and included in the BTR. However, it appears these additional pools were not included in the fairy shrimp analysis. The 2014-15 winter was very dry; San Diego County experienced 49 percent less rain than normal (https://www.sdcwa.org/annual-rainfall-lindbergh-field). Therefore, one year of focused wet season fairy shrimp surveys, especially in a dry year, may not accurately represent fairy shrimp occupancies within the Project Area. Areas that may pond under normal to high precipitation conditions may have not ponded in 2014-15. Therefore, the impact analysis provided for vernal pools may be underestimating impacts to the species. In any case, compliance with MSCP requires that impacts to vernal pools, regardless of occupancy by fairy shrimp, should be avoided to the maximum extent practicable. The DEIR does not include an analysis and discussion of vernal pool avoidance beyond those pools that were found to be occupied by San Diego fairy shrimp. There were numerous pools that had "*Branchinecta* species unknown," and therefore could potentially be occupied, as well as many sensitive plant species, both listed and unlisted. These vernal pools should also be included in the impacts analysis and avoided to the maximum extent practicable. For those that cannot be avoided, additional minimization and/or mitigation measures should be provided to ensure consistency with the MSCP Plan.

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The DEIR does not include any analysis of the vernal pool watersheds within the Project Area, with the exception of those within the City of San Diego Cornerstone lands. Many vernal pools and their associated watersheds are important for species other than fairy shrimp including sensitive species such as western spadefoot toad and numerous associated plants. The DEIR does not include avoidance and/or minimization measures for the vernal pool watersheds impacted by the Project. Avoidance and minimization measures or mitigation should also be provided for impacts to vernal pool habitat on off-site Department-owned land. The Department recommends a minimum of 2 to 4 acres of conservation for every 1 acre of impact. The Final EIR vernal pool impact analysis should also include the quantity (acres) and quality of the off-site vernal pools impacted/conserved and their associated watersheds, and proposed mitigation beyond what is included in mitigation measure M-BI-7.

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Mitigation measure M-BI-7 states in relation to take of San Diego fairy shrimp, "Note this measure will not apply to off-site areas under the jurisdiction of the City of San Diego or the City of Chula Vista. Take for San Diego fairy shrimp is provided by the City of San Diego's Vernal Pool Habitat Conservation Plan (VPHCP) and the City of Chula Vista's SAP." The City of San Diego VPHCP states, "As part of the development entitlement process for approved covered and future projects, owners of private properties and third-parties must submit a site-specific management and monitoring plan that is consistent with the requirements of the VPHCP, VPMMP, and the City's LDM Biology Guidelines for approval by the City and Wildlife Agencies." The DEIR does not discuss how the Project would be consistent with these documents, and therefore qualify for take under the San Diego VPHCP. This analysis should be included in the Final EIR, and coverage under the City of San Diego VPHCP will require approval from the Wildlife Agencies. Lastly, to be consistent with the Chula Vista SAP, mitigation for impacts to vernal pools must meet the higher mitigation ratios given above (i.e. minimum 2:1), regardless of their occupation by San Diego fairy shrimp.

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Western Spadefoot Toad

As correctly identified in the DEIR, spadefoot toad is not a covered species under the County's SAP; however, the DEIR fails to note that the Service received a petition to list this species under the ESA, and that this petition is currently under review. According to the DEIR, the Project Area supports 57 pools with the potential to support spadefoot toad and 16 are occupied. The Project will directly impact eight of these occupied pools and conserve the remaining eight. The DEIR concludes that this mitigation coupled with construction Best Management Practices is sufficient to reduce impacts to less than significant. The Department disagrees with this assessment. As with Quino, since this species is not covered under the MSCP Plan or the County SAP, direct impacts were not previously analyzed in the associated CEQA documents. Therefore, the impacts' analysis requires more species-specific information regarding the pools that will be impacted and those that will be conserved. Therefore, we recommend that the Final EIR provide more information regarding the quantity (size/acreage) and quality of the occupied pools being impacted and conserved. This analysis should include a discussion of the watershed and connectivity among and between the conserved pools, as well as provide consideration of their distribution across the Preserve. The Final EIR should ensure that post-construction, the conserved occupied pools will pond and will be maintained. We also recommend that the mitigation be revised to include habitat enhancement for conserved pools, if they are identified as degraded.

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Wildlife Corridors and Crossings

The DEIR states that Project impacts to wildlife movement/habitat linkages would be less than significant because the functions and values of the corridors identified in the Otay Ranch Wildlife Corridors Studies (Ogden 1992b) would be maintained (p. 2.4-88). This statement is highly speculative and short-sighted as it does not appear to fully recognize the fact that existing conditions are limited vehicle traffic, traveling at relatively low speeds (due to the irregular, dirt road surface). Moreover, "corridors" defined in 1992 would have been difficult to clearly delineate because of the existing, unrestricted conditions at that time did not concentrate wildlife movement into discrete areas of movement. The proposed improvements to Proctor Valley Road will result in significantly higher traffic speeds and volume, and essentially bisect very large blocks of undeveloped, very high quality habitat on each side of Proctor Valley Road, including portions of Department-owned lands, BLM Public Lands, and existing and future MSCP Preserve. For some species, this presents a low concern; for example, most birds are expected to be able to fly over the road during seasonal dispersal. Many species, however, will be more challenged to either survive attempted road crossings or to find safe passage using culverts or undercrossings. Large and small wildlife species are also likely to attempt crossing the road at-grade at numerous locations and will likely continue to do so since there is line of sight to native habitat. A-3-185 A-3-186 A-3-187 A-3-188 A-3-189

The magnitude of the improved Proctor Valley Road impact warrants much greater attention to identifying not only the major corridors determined during the 1992 study, but also analysis and planning at a much finer scale to identify and protect, and/or create, locations for travel routes for use by wildlife occupying habitat in proximity to the road. Locations of undercrossings must also occur at sufficiently close distances that they would be able to be used by various wildlife. Directional fencing must also be integrated with undercrossings and roadway design to prevent/minimize wildlife from getting onto Proctor Valley Road. Presently, the DEIR only identifies crossings at major points along Proctor Valley Road, and seemingly ignores the obvious fact that wildlife living in proximity to the road will be killed. While identification of major corridors in the 1992 study was important, it does not equate to wildlife only utilizing such locations, or that preserving those corridors equates to providing a safe Preserve overall. Absent much greater recognition, coordination with the roadway design, and provisions for planning and implementing actions at a much finer scale, this would be expected to result in a substantial amount of preventable road kill. The Department strongly recommends a plan be required to be undertaken to identify appropriate locations for undercrossings/culverts, and that associated fencing be designed to maximize effectiveness of the undercrossings. A model for this approach is a recent study undertaken for nearby State Route 94 (CBI 2016). The Final EIR should also further clarify that once designed and implemented as part of project/roadway construction, whether the POM will be responsible for monitoring and adaptive management of the fencing/roadway design. The Department emphasizes that monitoring of roadways, corridors, undercrossings, and roadkill is a very important element of Preserve monitoring and adaptive management. The Project will directly impact a portion of L3 through construction of an internal access road that will connect Planning Areas 16 and 19. The DEIR states that an alternate route for L3 would be provided. This route should also be analyzed for incorporation of culverts or undercrossings, and associated fencing. Monitoring must also be a requirement for this area of the Preserve. A-3-190 A-3-191 A-3-192 A-3-193 A-3-194 A-3-195

Although the DEIR cumulative effects analysis included potential projects in the near future, there was no discussion of how those projects were likely to affect landscape connectivity or A-3-196

wildlife corridors. Development of Village 13 and implementation of the Otay Trails Plan could affect regional wildlife movement and connections to Proctor Valley. Human and domestic animal activity should be accounted for both at the edge of the development, and on trails within the retained open space. Prior studies have found that bobcats are detected less frequently on recreational trails with high human use (George and Crooks 2006), and bobcat and coyote relative abundance is higher in open space areas without recreation (Reed and Merenlender 2011). The improvements to Proctor Valley Road and construction of internal connector roads will result in additional fragmentation in the area and increase risk of wildlife-vehicle collisions. For example, recent studies have found mortality hotspots for ecologically important mesocarnivores such as bobcats along secondary roads (Lyren *et al.* 2008, Jennings and Lewison 2013). According to Dr. Megan Jennings (personal communication, April 10, 2018), local expert on wildlife movement/corridors in San Diego County, these effects would result in cumulative impacts to connectivity and wildlife corridors in the area, and require that existing lands providing connectivity be considered more carefully in broader subregional and temporal contexts.

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The analysis of indirect and cumulative effects in the DEIR failed to fully evaluate and mitigate the potential impacts to wildlife species and wildlife movement once the Project is completed and the area is in use, specifically the edge effects of increasing development and human activity adjacent to open spaces. An analysis of 25 studies describing edge effects determined that negative edge effects are biologically significant at distances up to 300 meters (~1,000 feet) in terrestrial systems (Environmental Law Institute 2003). This is far beyond the 100-foot buffer the DEIR included as mitigation for Project-related edge effects.

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An additional threat to wildlife using the habitat adjacent to the proposed Project Area is the risk of exposure to toxicants, particularly anticoagulant rodenticides (Hosea 2000, Brakes and Smith 2005). Predators such as raptors (Stone *et al.* 2003) and mammalian carnivores are most at risk as their prey populations can be affected. The DEIR directs the reader to the Preserve Edge Plan for details on toxic substances and other indirect effects associated with the Project; however, no mitigation measures are proposed in the DEIR other than incorporating a 100-foot buffer between development and the Preserve.

A-3-202

A-3-203

The DEIR (p. 2.4-102) states, "The Otay Ranch RMP does not provide guidance regarding the specific design requirements for crossings (City of Chula Vista and County of San Diego 1993b);" however, these documents incorporate the Otay Ranch Wildlife Corridors Studies (Ogden 1992b). This document states the following: 1) "Any road crossings of Corridor 1 through Proctor Valley need to be bridged (p. 4-16). It also includes the design criteria for these bridge crossings: 1) the length-to-width ratio must be equal or less than one; 2) the bridge should be at least 12 feet tall, preferably higher; and 3) there should be an open place or gap between the two directions of traffic to allow light to filter below to promote vegetation growth." Only the southernmost wildlife crossing is consistent with these requirements. Therefore, the Department recommends that the other crossings be redesigned to be consistent with the RMP.

A-3-204

The DEIR states that the "The Development Footprint does not encroach upon the Proctor Valley regional wildlife corridor (R1). Where R1 crosses Proctor Valley Road, a wildlife crossing would be provided" (p. 2.4-104). However, this wildlife crossing is not in alignment with the R1 corridor identified in Ogden (1992b). More discussion and justification should be provided in the Final EIR as to why the undercrossing was moved further to the north of the area identified in Ogden (1992b). Lastly, the DEIR (p. 2.4-105) states, "The L4 corridor follows the Proctor Valley

A-3-205

A-3-206

drainage and would largely be avoided by the Proposed Project, with the exception of the road crossing connecting the small area of development to the west (R12)." R12 development occurs entirely within the PV1 parcel, which as discussed previously, the Department considers Hardline Preserve. By removing development on PV1, the L4 corridor would remain intact.

A-3-206 Cont.

Other Comments

1. DEIR Figure 2.4-10 depicts sensitive species detected in the Project Area and notes their color designation on subsequent figures provided in the document. The colors used to identify the sensitive plant species make the figures difficult to interpret. For example, San Diego County needle grass and San Diego County viguiera are not distinguishable, and San Diego sagewort and graceful tarplant are very similar to needle grass and viguiera and are almost indistinguishable from one another. Ashy spike-moss and western ponysfoot are also very similar in color. We recommend these figures be revised in the Final EIR with more distinct colors for these species. A-3-207
2. In areas where San Diego County needle grass occurs, if it is 10 percent or greater in cover, the Department recommends the native vegetation community be considered native grassland, which is sensitive under the County SAP. The DEIR does not discuss native grassland or the density of needle grass where it occurs. The Final EIR should include such a discussion/analysis. If appropriate, the Final EIR should also include a required mitigation for impacts to this sensitive vegetation community. A-3-208
3. During the April 4, 2018 reconnaissance visit, Department staff observed improvements to portions of Proctor Valley Road that are located on Department-owned land designated Ecological Reserve. These improvements included placement of asphalt on the roadbed and extensive grading, likely beyond County right-of-way. Fencing that was installed to protect natural resources throughout Proctor Valley, was placed outside the right-of-way on Department-owned lands. Currently, the road has been graded up to the fencing, with some dirt spoils smothering adjacent native vegetation. Any Project impacts associated with Proctor Valley Road improvements in these areas should mitigate the loss of habitat outside County ROW, within Department-owned lands. In addition, the County should cease all placement of asphalt on Proctor Valley Road, especially on the portions located on Department-owned land, without more comprehensive planning and review as it appears the use of asphalt is resulting in greater erosion into the Preserve in some areas. Illegal dumping is also occurring along Proctor Valley Road. We recommend more signage and patrols occur along the road to dissuade illegal uses in the Preserve. A-3-209 A-3-210
4. The DEIR Table 5-5 states that golden eagles were observed in the Project Area. These observations were not included on the sensitive species Figures 4.1-a through 4.1-cc. We recognize that these observations were included in an appendix to the BTR but we recommend these observations be included on a figure in the Final EIR. We also recommend that the Final EIR include more detailed information regarding the on-site golden eagle observations such as dates observed, number of individuals, and observed behaviors. A-3-211 A-3-212
5. Please quantify in acres the County GIS mapping inconsistencies discussed in the DEIR (p. 1-39), and clarify if these will result in a reduction in RMP Preserve lands. A-3-213
6. The Specific Plan includes a Preserve Edge Plan, which depicts the fuel modification zones associated with the Project (Exhibit 1 of the Plan). A similar figure depicting the fuel modification zones should have been included in the DEIR to facilitate review by the public. A-3-214
7. The BTR (p. 13) mentions that the two Preserve trail options would be located within existing disturbed trails. Please clarify if unauthorized uses within native habitats created A-3-215

these trails and therefore, their formalization requires mitigation. Also, please quantify the acreage associated with these two trails.

8. Either Section 3.1.3 *Land Use and Planning* and Section 2.4.1 *Biological Resources* should include a figure showing the open space designation and the underlying landowner. Currently, the DEIR does not include a figure that represents the actual/current MSCP Preserve lands adjacent to the Project. Designating areas as Not A Part (NAP), especially when the land is owned by a public entity such as the Federal government or the Department, is misleading. Exhibit 4 in the Preserve Edge Plan provides a somewhat thorough depiction of open space land ownership adjacent to the Project. This figure (or a similar graphic) should be included in the Final EIR.
9. Table 5 of the Project's Specific Plan identifies the conveyance obligation in a concise, easy to follow manner. A similar table should be included in the Final EIR.
10. Figure 3.1.3-7 does not depict the most recent Otay Trails plan prepared by the County. This figure should be updated using the most current trail alignments proposed within this plan, and the cumulative impacts analysis in Section 2.4 *Biological Resources* should be updated to include these trail alignments.
11. Portions of the Project are adjacent to lands owned and managed by the Bureau of Land Management. The Final EIR should confirm that the Project is in conformance with BLM public land adjacency guidelines.
12. An American badger den was reportedly found in the Project impact area, and the Biology Technical Report indicated it was likely active although an individual was not seen. As this is an MSCP-covered species, but apparently extremely rare within south San Diego County, we recommend that USGS be allowed to inspect the burrow and provide recommendations as to how to ensure the species can be safely relocated out of the construction footprint.

We appreciate the opportunity to comment on the referenced DEIR. Questions regarding this letter and further coordination on these issues should be directed to David Mayer at (858) 467-4234 or david.mayer@wildlife.ca.gov.

Sincerely,

Edmund Pert
Regional Manager
South Coast Region

ec: Mendel Stewart, Karen Goebel, U.S. Fish and Wildlife Service, Carlsbad
Scott Morgan (State Clearinghouse)

Attachment

A-3-215 Cont.
A-3-216
A-3-217
A-3-218
A-3-219
A-3-220
A-3-221

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A-3-222