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Via Electronic Mail

Mark Wardlaw, Director  
Dept of Planning and Development  
Services  
County of San Diego  
5510 Overland Ave Third Floor  
San Diego CA 92123  
E-Mail: mark.wardlaw@sdcounty.ca.gov

Re: Development of PV-1, PV-2, and PV-3 under the San Diego  
Multiple Species Conservation Plan.

Dear Mr. Wardlaw:

On behalf of the Endangered Habitats League, we write to address the County’s current proposal to approve the Otay Ranch Village 14 project conditioned on a future amendment of the San Diego Multiple Species Conservation Plan (“MSCP”) to allow take in development areas PV-1, PV-2, and PV-3. As you know, the MSCP currently designates PV-1, -2, and -3 as “No Take Authorized” areas. Under the MSCP Program Plan, the County’s Subarea Plan, and associated Implementing Agreement, permitting a project that develops PV-1, -2, and -3 may not occur until *after* a major amendment to the MSCP allowing incidental take within these areas has been approved.

Approving the current development proposal without first obtaining an amendment to the MSCP to allow incidental take across the entire proposed project area would violate County’s obligation to comply with the MSCP. Together, PV-1, -2, and -3 represent approximately 200 acres of undeveloped land currently designated as “preserve” in the MSCP Subarea Plan. *See* MSCP Subarea Plan at 1-3 (explaining that Figure 1-2 depicts “green ‘preserve’ areas”) and Figure 1-2 (mapping PV-1, -2, and -3 as green areas). By designating these lands as “No Take Authorized” areas, the Subarea Plan further affirms that developing them is inconsistent with and would violate the MSCP. *See id.* at Figure 1-2.

Under the MSCP Subarea Plan, removing protections from designated preserve areas like PV-1, -2, and -3 can only occur through a “major amendment” to the Subarea Plan. *See id.* § 1.14 (For changes to “all dedicated *or designated* preserve areas, major amendments will be necessary.”) (emphasis added). The major amendment process requires public input and thorough review from the wildlife agencies. The County must apply to the wildlife agencies for a Take Authorization Amendment, complete CEQA and NEPA review, and, ultimately, obtain the wildlife agencies’ determinations that an amended take authorization complies with the federal and state Endangered Species Acts. *See id.* at Figure 1.4.

While some have suggested that a “boundary line adjustment” could be utilized to permit development of PV-1, -2, and -3, the boundary line adjustment process is plainly inappropriate for such a large change to the designated MSCP preserve. Under the County’s Implementing Agreement, adjustments to the preserve boundary may only occur “in limited circumstances” and require compliance with the boundary line adjustment criteria in the MSCP Program Plan. IA at § 10.11. The Program Plan only identifies using the boundary line adjustment process to *enlarge* the preserve (e.g. following a property owner’s request) or to respond to unforeseen circumstances or new information that was unavailable with the MSCP was prepared. MSCP Program Plan § 5.4.2. The MSCP Program Plan does not anticipate boundary line adjustments merely because a developer would like to build new development in preserve areas, and we are unaware of any circumstance where a boundary line adjustment was used to develop hundreds of acres of designated preserve land.

Moreover, it is highly unlikely that any boundary line adjustment allowing development of PV-1, -2, and -3 would “result in the same or higher biological value of the preserve,” as the MSCP requires. *Id.* Changes to the preserve’s biological values must be assessed through multiple enumerated factors, including effects on “significantly and sufficiently conserved habitats” and on “habitat linkages and function of preserve areas.” *Id.* As has been previously documented, PV-1, -2, and -3 sit within high value habitat and provide key habitat linkages, including a linkage between San Miguel Mountain and the Jamul Mountains. There is little chance that adjustments to the preserve’s boundary elsewhere would suffice to counteract the loss of these important habitat areas.

The “boundary” adjustment process is particularly unsuitable for developing the nearly 130 acres in PV-3. These acres do not sit along the preserve’s boundary. Rather, they are wholly *within* the preserve. Consequently, allowing take on that parcel would not “adjust” the existing preserve boundary. It would cut a hole in the middle of currently-contiguous preserve, eliminating take protections in PV-3 and dramatically reducing the habitat values of the surrounding preserve land. Such a large

and impactful change to the MSCP does not fit within the minor boundary adjustment process. It can only occur through a major amendment to the MSCP.

Finally, even if it were permissible to use the boundary line adjustment process to allow take on PV-1, -2, and -3—which it is not—that adjustment could not occur until the County initiates CEQA review to fully evaluate the environmental impact of such a change. *See* MSCP Program Plan § 5.4.2 (the “take authorization holder,” i.e., the County, is responsible for complying with CEQA for any boundary line adjustment). As we noted in our April 16, 2018 letter on this project, the MSCP EIR’s impact analysis and adopted mitigation assumed that PV-1, -2, and -3 would be “100% conserved land.” Amending the MSCP to allow take in these areas would undermine this fundamental assumption of the original MSCP EIR and, as a result, require additional environmental review. The County cannot convert these conserved lands to development without first analyzing the impacts from loss of previously adopted mitigation, loss of habitat connectivity in the MSCP preserve and surrounding lands, and resulting harm to the numerous special-status species protected under the MSCP.

If the County intends to consider approving a development project that includes PV-1, -2, and -3, it must do so by following the lawful major amendment process set forth in the MSCP, and, as stated above, such approval must be completed before the project is approved. The County cannot avoid this requirement by conditioning a project approval on future compliance with the MSCP. Moreover, because the project’s residential and commercial components depend on prerequisite roadway and other infrastructure improvements, and because mitigation measures for PV-1, -2, and -3 are necessarily integrated with mitigation measures for the remainder of the project, the applicant cannot obtain third-party beneficiary take otherization for any of the proposed project activity absent a major amendment to the MSCP that allows development of PV-1, -2, and -3. *See* IA at § 17.1.

EHL remains willing to work with the County to ensure that the legal requirements for any amendment are fulfilled and that the MSCP’s foundational species and habitat protections remain intact.

Mark Wardlaw  
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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Edward T. Schexnayder

cc: Land Use and Environment Group  
Calif Dept of Fish and Wildlife  
US Fish and Wildlife Service  
Interested parties

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