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**Via Electronic Mail**

Charlton H. Bonham, Director  
Director's Office  
California Department of Fish and Wildlife  
P.O. Box 944209  
Sacramento, CA 94244  
Director@wildlife.ca.gov

Re: MSCP Amendments for Proposed Development of PV1, PV2, and PV3

Dear Director Bonham:

On behalf of Endangered Habitats League (“EHL”), we are writing to address issues raised in your November 26, 2018 letter to Kristin Gaspar and the San Diego County Board of Supervisors. EHL deeply appreciates the Department of Fish and Wildlife’s continued engagement with the County regarding the proposed Village 14 and Planning Areas 16/19 development (“Project”), and the obligation to uphold the terms and protections of the Multiple Species Conservation Program (“MSCP”) and the County’s associated Subarea Plan and Implementing Agreement. We would like to delineate where our assessment aligns with the Department’s as well as areas of difference.

Of significant concern to EHL is the Project’s current proposal to develop areas PV1, 2, and 3 – together comprising roughly 200 acres of environmentally-sensitive open space designated as “No Take Authorized” in the MSCP and Subarea Plan. As the Department recognized in earlier correspondence with the County, the MSCP designations for PV1-3 were intended to protect these areas from development along with other areas designated as MSCP preserve.

For these reasons, EHL agrees that MSCP does not permit County to use its Biological Mitigation Ordinance to circumvent the MSCP’s requirements and permit

development in PV1-3. EHL also agrees that the County cannot condition a Project approval on securing separate take authorizations from the Department and the US Fish and Wildlife Service. Such an approval would contravene the Subarea Plan and breach the County's obligations under the MSCP and Implementing Agreement.

In addition, we believe there is no legal way forward for the Project, as currently proposed, without first amending the MSCP and Subarea Plan to allow development of PV1-3 and to fully compensate the MSCP preserve for the loss of this protected habitat. We further note that no phase or portion of the Project may move forward absent such an amendment. Segmenting the project into smaller units and allowing some to proceed while the PV1-3 issue is resolved would violate the Implementing Agreement, as discussed in our prior correspondence to the County. And unless and until the County conducts full CEQA review of the proposed Project – which is inconsistent with the MSCP and therefore not covered by the MSCP program EIR – neither the County nor the Department can take any action to approve the project.

We agree that major amendment process is appropriate for considering any changes to Subarea Plan that would permit development in PV1-3, but we strongly disagree that the minor amendment process is authorized here. The Subarea Plan clearly limits minor amendments to utility improvements or areas specifically mapped for minor amendments, of which PV1-3 is not one. As the Subarea Plan states, “Within [mapped] major or minor amendment areas take of covered species may be authorized only after such an area has become part of the Segment Plan through the appropriate amendment process.” Subarea Plan at 1-19; *see also* MSCP Program Plan at 5-14 (“*For land that is not part of the plan*, the owners would need to process an amendment to the plan to include it in the plan. These amendments are referred to as Major Amendments or Minor Amendments.” Emphasis added.).

There is no ambiguity on this. Nothing in the MSCP or Subarea Plan authorizes minor amendments for modifying existing hardlined boundaries within the Subarea Plan. To further eliminate doubt, the Subarea Plan *requires* that amendments to designated preserve areas utilize the major amendment process. Subarea Plan section 1.14, “Amendments to the Subarea Plan,” expressly reads “For *all* dedicated or designated preserve areas, *major amendments will be necessary*.” Subarea Plan at 1-29 (emphasis added). As the Subarea Plan and MSCP Program Plan show, and as the Department acknowledged in its April 16, 2018 letter to the County, “PV1, PV2, and PV3 are Preserve pursuant to the MSCP Plan.” As such, the only way to remove PV1-3 from the preserve is through the major amendment process.

Although the County has stated it will not pursue a boundary adjustment, we want to emphasize that a boundary adjustment is likewise inappropriate as a way to address the proposed development of PV1-3. As we have outlined in previous correspondence with the County, boundary line adjustments are only available “in limited circumstances” and must comply with the MSCP Program Plan. Implementing Agreement at § 10.11. The MSCP Program Plan does not anticipate boundary line adjustments simply because a developer would like to build new development in preserve areas.

Notably, by proposing to develop PV1-3, the County and applicant are not proposing a minor change or adjustment to the MSCP. Rather, this development would result in a wholesale elimination of designated preserve in Proctor Valley – the development hundreds of acres that the plan intended to be left undeveloped, and the destruction of crucial habitat and linkage values within the MSCP preserve and surrounding undeveloped lands. Additionally, there is little chance that a boundary line adjustment to allow development of PV1-3 would “result in the same or higher biological value of the preserve,” as the MSCP requires. MSCP Program Plan § 5.4.2. Using the boundary line process is particularly egregious if applied to removing PV-3 from the preserve because PV-3 is in the middle of the preserve, not on the boundary. Such a large and impactful change to the MSCP does not fit within the “limited circumstances” that permit the minor boundary adjustment process to be used; it can only occur through a major amendment to the MSCP.

It is also essential that such a major change to the MSCP be considered in a transparent, public process with full environmental review. The MSCP does not guarantee any public process whatsoever for the Department’s approval of a boundary adjustment or a minor amendment – no doubt because such changes were never envisioned to encompass the kind of drastic changes proposed here.

The public must have a seat at the table in any consideration of whether PV1-3 should be removed from the designated preserve. The Department cannot approve any such change consistent with the MSCP absent a showing that the applicant will provide replacement preserve lands that would equal or exceed the species, habitat, and linkage values, and ecosystem functions, of the lands impacted by the proposed development. The public must have the opportunity to review and comment on the adequacy of any such proposal. The Department’s decision simply cannot be made behind closed doors, and it must precede any action by the County to approve development of PV1-3. Failure to do so would result in improperly piecemealed environmental review, and would result in a Project that is inconsistent with the MSCP.

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We therefore ask that the Department ensure full public involvement and CEQA review for the consideration of any proposal to allow development in PV1-3. Such a process would ensure compliance with both the spirit and letter of the MSCP.

Very truly yours,

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