

## Late Letter (LL)-5

**Shute, Mihaly & Weinberger, LLC  
on behalf of Endangered Habitats League  
December 21, 2018**

### **(Take Authorization)**

#### 1. Introduction

The comment letter submitted by Shute, Mihaly & Weinberger on behalf of EHL, dated December 21, 2018, is a late letter that does not require a written response from the County.

Under CEQA Guidelines Section 15105, the County was legally required to provide a 45-day public review period on the Draft EIR. The public comment period for the Draft EIR began on March 1, 2018 and ended on April 16, 2018. All comment letters received after expiration of the public review and comment period ending on April 16, 2018, are considered late comments.

A lead agency is required to consider comments on the Draft EIR and to prepare written responses if a comment is received within the public comment period. (Pub. Resources Code, §21091(d); CEQA Guidelines, §15088.) When a comment letter is received after the close of the public comment period, however, a lead agency does not have an obligation to respond. (Pub. Resources Code, §21091(d)(1); Pub. Resources Code, §21092.5(c).) Accordingly, the County is not required to provide a written response to late comment letters, including the December 21, 2018, letter from Shute, Mihaly & Weinberger. (See, CEQA Guidelines, §15088(a)).

Nonetheless, for information purposes, the County has elected to respond to this late letter, but without waiving its position that written responses to late comment letters are not required by law.

#### 2. The letter is reiterating and expanding upon issues raised in previous comment letters.

The comment restates similar comments raised during public review and does not raise any new issue under CEQA. Take authorization is beyond the scope of CEQA. The issue of “take” falls under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA) and is governed by rules and standards different from those in CEQA. Please refer to Response to Comment Letters A-3 (CDFW) and O-6 (EHL). Specifically, please refer to **Response to Comments A-3-15, A-3-16, A-3-23, A-3-24**, as well as **Response to Comments O-6-5, O-6-29, O-6-33, O-6-71, O-6-74, O-6-82, and O-6-94**. Please also refer to **Thematic Response – Baldwin Letter and PV1, PV2, PV3**.

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