



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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GAVIN NEWSOM, Governor
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October 28, 2019

Mr. David Sibbet
County of San Diego Planning and Development Services
5510 Overland Avenue, Ste. 310
San Diego, CA 92123

Subject: Draft Habitat Loss Permit for the North County Environmental Resources Project, San Diego County, California

Dear Mr. Sibbet:

The California Department of Fish and Wildlife (Department) has reviewed the proposed North County Environmental Resources project (Project) draft Habitat Loss Permit (HLP). The Project was previously referred to as the ADJ project in records and meetings. The comments provided in this letter are based on information provided in the draft HLP and associated documents, including the Biological Resources Technical Report (BTR) prepared by BLUE Consulting Group, dated December 14, 2012 and revised March 10, 2013; meetings and discussions with County staff; our knowledge of sensitive and declining vegetation communities in the County; and our participation in regional conservation planning efforts including the County's draft North County Multiple Species Conservation Plan (MSCP).

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA), Sections 15386 and 15381, respectively. The Department is responsible for the conservation, protection, and management of the State's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA), and administers the Natural Community Conservation Planning (NCCP) program. The County has signed a Planning Agreement with the Department and the U.S. Fish and Wildlife Service (USFWS) for the development of the North County MSCP, an NCCP/HCP that is currently in preparation for unincorporated lands in north San Diego County.

The Project site consists of six parcels totaling 138.12 acres, located at 25568 Mesa Rock Road and adjacent to the west side of the I-15, within unincorporated San Diego County. The Project proposes recycling facilities and operations that would result in a total impact of 20.52 acres, of which 13.75 acres support sensitive plant communities, including 11.82 acres of Mafic southern mixed chaparral (SMC), 1.91 acres of coastal sage scrub (CSS), and 0.02 acre of willow scrub. The remaining 6.77 acres of impacts consists of previously developed/disturbed areas associated with borrow pit activities and public access. In addition, of the 20.52 total acres, 12.88 were previously impacted by unauthorized grading, including 6.48 acres of SMC and 0.92 acre of CSS.

While the proposed Project site supports CSS, protocol surveys for the federally threatened coastal California gnatcatcher (*Polioptila californica californica*, gnatcatcher) indicated that the site was unoccupied; however, there are documented gnatcatcher locations within approximately 2/3 of a mile from the Project site. Portions of the Project site occur within Pre-Approved Mitigation Area (PAMA) identified in the draft North County MSCP. All of the biological open space provided on site will be located within PAMA.

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The Department offers the following comments on the proposed Project and associated draft HLP in order to assist the Project in avoiding, minimizing, and adequately mitigating Project-related impacts to biological resources, and to ensure that the project is consistent with ongoing regional habitat conservation planning efforts:

- 1) Biological surveying, particularly for nesting birds, should occur with 3 days (72 hours) prior to potentially impactful activities. Where activities will occur adjacent to potential gnatcatcher or raptor nesting habitat, surveys should occur within 300 ft. and 500 ft. of such habitat, respectively. We recommend the draft HLP Conditions of Approval regarding biological monitoring be updated to reflect these criteria.
- 2) If nesting birds are found within the vicinity of the construction activities, it is the responsibility of the Lead Agency and project applicant to identify and implement appropriate buffers and other avoidance and minimization measures to ensure the project does not result in the destruction of bird nests and eggs. State law does not provide an avenue for the Department to approve of or concur on the adequacy of nest avoidance measures to avoid take. Therefore, the Department cannot concur that brushing, clearing, and/or grading may occur during the breeding season. This determination lies with the Lead Agency. As such, the Department requests that all language referring to such concurrence be removed from the draft HLP Conditions of Approval.
- 3) The Department would also like to make the Project applicant aware of potential permitting issues for the take of federally listed species. As stated above, the Project site supports CSS and gnatcatcher has been recorded within 2/3 of a mile of the project site. The Planning Agreement for the draft North County MSCP expires January 31, 2020. Due to limited forward progress made on draft North County MSCP planning efforts, the HLP process may not be available after that date. The Planning Agreement may not be updated until the County Board of Supervisors commits continued staff time to, and approves funding and additional resources for, the development of the draft North County MSCP. In the interim, without an active Planning Agreement, new HLPs, as provided for via the USFWS 4(d) rule for take of gnatcatcher, would not be available and previously issued ones may not be valid. Additional protocol-level gnatcatcher surveys to confirm the site is not occupied may also be then required. If the site were then determined to be occupied, it the Project would need to pursue an incidental take permit through the USFWS.

Thank you for the opportunity to comment on the subject draft HLP. If you have any questions, please contact Carol Williams of the Department at Carol.Williams@wildlife.ca.gov or (858) 637-5511.

Sincerely,



Gail K. Sevens
Environmental Program Manager
South Coast Region

ec: Jonathan D. Snyder, USFWS