

Appendix B2

HELIX: Response to Shute, Mihaly & Weinberger LLP
Comment Letter on the Otay Ranch Proctor Valley
Village 14 and Preserve Project

Memorandum

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Date: June 24, 2019

To: Sean Kilkenny, Dudek

Cc: David Hubbard, Gatzke Dillon & Ballance LLP
Liz Jackson and Rob Cameron, Jackson Pendo Development Company

From: Shelby Howard and Barry Jones

Subject: Response to Shute, Mihaly & Weinberger LLP Comment Letter on the Otay Ranch Proctor Valley Village 14 and Preserve Project

HELIX Proj. No.: JPD-08

Message:

The Shute, Mihaly & Weinberger LLP comment letter (comment letter) dated June 19, 2019 for the Otay Ranch Village 14 and Planning Areas 16/19 Project (Proposed Project) provided 3 comments related to the Quino checkerspot butterfly (QCB) analysis provided in the Proposed Project's Draft Environmental Impact Report (EIR). We reviewed the QCB comments provided in the comment letter and determined that there is not any new information related to QCB that would alter the analysis, conclusions, or mitigation measures set forth in the Proposed Project EIR. Below is our response to each of the 3 main QCB comments provided in the comment letter:

The EIR Presents a Fundamentally Flawed Description of the Project's Environmental Setting. The comment letter suggests that the 2016 QCB surveys were conducted in a drought year, adult QCB are essentially unobservable in drought years, and that the EIR dismisses 2017 sightings as "incidental", irrelevant, and excluded from the EIR impact analysis.

Below average rainfall occurred in 2015, which is one of the reasons why QCB surveys were repeated in 2016 for the Proposed Project. As noted in the EIR and in the Responses to Comments on the EIR, the 2015-2016 rainfall season produced an above average QCB host plant expression and QCB adults were documented in the vicinity of the Proposed Project site during the 2016 survey period. The 2015-2016 rainfall season was close to an average rainfall year and consistent rainfall amounts occurred prior to and during the 2016 survey effort. The EIR correctly noted that no QCB were observed during the 2016 QCB surveys on the Proposed Project and that QCB were incidentally sighted by others adjacent to the Proposed Project in

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2017. As noted on page 2.4-47 of the EIR, the 2017 QCB sightings were described as incidental because they were made during a general reconnaissance of the area and not pursuant to a focused or protocol survey. The 2017 QCB sightings were not documented on the Project site, but were taken into consideration in the EIR analysis and in the Responses to Comments on the Draft EIR. Please refer to the HELIX memo¹ provided on June 20, 2019 detailing the responses on the 2019 survey data. The EIR and Responses to Comments on the Draft EIR drew specific references to the Proctor Valley region being included in the metapopulation structure for the species and that it provides potential habitat for QCB to potentially expand into. Finally, the mitigation for the proposed project requires compensatory mitigation for impacts to potential QCB habitat.

The EIR Fails to Comply with the County’s Previously Adopted Mitigation for QCB. The comment letter indicates that the Dudek report on PEIR mitigation “program compliance” lacks any analysis to support its conclusions and that the USFWS has adopted the only established methods for determining QCB occupancy of a site. The basis for the Dudek conclusion in the program compliance report that QCB do not occupy the Proposed Project site is based on the 2016 protocol QCB surveys conducted for the site, as described in detail in the EIR. The comment letter suggests there is only one method for establishing QCB occupied habitat, which is to apply a 1-km radius from previous QCB sightings. It is acknowledged that using a 1-km radius from previous QCB sightings is a method for identifying potential occupancy, but is not to our knowledge the standard for determining occupied habitat by the County for project review under CEQA.

The comment letter suggests that the Proposed Project clearly violates the PEIR’s mitigation measures. However, as the comment letter cites, the PEIR mitigation measure related to QCB habitat preservation includes a key component (“or approved HCP/MSCP standards”), which was not elaborated on in the comment letter. The intent of the PEIR mitigation measure for 100 percent preservation of occupied QCB habitat builds in the flexibility for incorporating measures from consultation with USFWS. The Dudek program compliance report correctly notes that the project applicant will consult with the USFWS to determine if incidental take authorization will be required and will comply with all terms and conditions imposed by USFWS. Complying with all terms and conditions to be imposed by USFWS ensures consistency with the PEIR’s mitigation measures.

The EIR’s Assertion that Proctor Valley Is Not a Core Area for QCB Recovery Is Wrong. The comment letter indicates that “in 2009, USFWS finalized an Update to the Quino Recovery Plan” and that the EIR fails to analyze the Project’s inconsistency with this purported update to the QCB Recovery Plan. However, the statement that USFWS finalized an update to the QCB

¹ HELIX Environmental Planning, Inc. (HELIX). 2019. Response to USFWS 2019 QCB Survey Data for the Otay Ranch Proctor Valley Village 14 and Preserve Project. Memo from Shelby Howard and Barry Jones (HELIX) to Sean Kilkenny (Dudek). June 20.

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Recovery Plan is not accurate. In 2009, the USFWS completed a 5-Year Review for the QCB (5-Year Review), which is required by section 4(c)(2) of the federal Endangered Species Act. The 5-Year Review includes a number of recommendations for actions over the next 5 years, including considering an update to the QCB Recovery Plan. However, the comment letter is incorrect to suggest that in 2009, the USFWS provided an Update to the QCB Recovery Plan. There was not a Recovery Plan update included with the 5-Year Review and the QCB Recovery Plan has not been updated at this time. The EIR correctly analyzed the Proposed Project's consistency with the 2003 QCB Recovery Plan.

The comment letter also discussed the Proposed Project impacts on landscape connectivity within QCB recovery units, which would create a significant impact. The EIR does describe the project as occurring within a larger metapopulation dynamic within southern San Diego County, analyzed connectivity with areas identified as core areas in the 2003 Recovery Plan, and determined that the Proposed Project would not have a significant impact because the preserve design associated with the Proposed Project would maintain adequate connectivity for wildlife species, including QCB. Furthermore, the EIR concluded that the Proposed Project would preserve contiguous habitat with other larger blocks of open space, would provide hilltopping, nectaring resources, and host plant patches for QCB, and would maintain metapopulation dynamics for the QCB.

In conclusion, there is not any new information related to QCB provided in the comment letter that would change the QCB analysis or conclusions in the EIR. Please let us know if you have any questions.

