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EDMUND G. BROWN JR., Governor
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October 7, 2014

Mr. Robert Hingtgen
County of San Diego
Planning & Development Services (PDS)
5510 Overland Avenue, Suite 310
San Diego, California 92123
Robert.Hingtgen@sdcounty.ca.gov

Subject: Comments on the Draft Environmental Impact Report and Draft Habitat Loss Permit for the Shadow Run Ranch Project, County of San Diego (SHADOW RUN RANCH; PDS2001-3100-5223, PDS2000-3300-00-030, PDS2000-3710-00-0205, LOG NO. PDS2000-3910-0002035; SCH#2002061066), California

Dear Mr. Hingtgen:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced draft environmental impact report (EIR) and draft Habitat Loss Permit (HLP) for the Shadow Run Ranch Project (SCH# 2002061066) dated March 2014. The comments provided herein are based upon information provided in the draft EIR (and associated reference materials including the Biological Resources Survey Report for the Shadow Run Ranch Project Prepared by Vincent N. Scheidt, Final March 2014), our knowledge of sensitive and declining vegetation communities, and ongoing regional habitat conservation planning in the County of San Diego (County).

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; §§15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the State of California's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA, Fish and Game Code §2050 et seq.) and other sections of the Fish and Game Code. The Department is also responsible for the administration of the Lake and Stream Alteration Agreement Program (Fish and Game Code §1600 et seq.). The Department also administers the Natural Community Conservation Planning (NCCP) program (NCCP, Fish and Game Code §2800 et seq.). The County is a participant in the NCCP program. Currently, the County is actively pursuing its draft North County Multiple Species Conservation Program (NC-MSCP) which, although not yet completed, has undergone substantial negotiation and is anticipated to receive approvals in the next one to two years (County of San Diego, 2013). The Project site is located within unincorporated San Diego County within the boundaries of the NC-MSCP. Within the NC-MSCP, the site is located in the Upper San Luis Rey (Planning Unit 20) and entirely within the draft Pre-Approved Mitigation Area (PAMA). One of the main goals for Planning Unit 20 is to maintain/improve connectivity along the San Luis Rey River between the Pala Reservation and Hellhole Canyon Open Space Preserve, which includes maintaining linkages through natural and agricultural lands for wildlife movement of large and medium-sized mammals between San Luis Rey River and Palomar Mountain (County of San Diego, 2009).

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1. The County concurs with the comment. The comment provides an overview of the proposed project, the draft North County Multiple Species Conservation Plan (NC-MSCP) and the role of the California Department of Fish and Wildlife (CDFW) as a Responsible and Trustee Agency. No changes to the EIR are required in response to the comment.

Comments Letter A

Response to Comments Letter

The Shadow Run Ranch property is located on the north side of State Route (SR) 76 just west of the intersection with Adams Drive within the unincorporated community of Pala/Pauma in north San Diego County. The Project proposes a major subdivision (TM 5223RPL4) of 44 residential lots on 248.2 acres (APNs 111-080-07, -08, -09, -10, -18, & -19, APN 111-070-12 & -13, and portions of APN 111-080-14, -15, & -16). The proposal includes a Major Use Permit (MUP 00-030) for a Planned Residential Development, which would cluster the residential lots on 2-acre minimum lots in order to maximize the overall open space of the project. Forty-seven lots are proposed on the 248.2-acre site, consisting of 44 residential lots ranging in size from 2.01 to 7.35 acres, one biological open space lot (91.31 acres), one agricultural lot (39.12 acres), and one recreation lot (7.96 acres). The project's main access will be directly off SR-76 approximately 1,400 feet west of Adams Drive. A secondary access is proposed to connect with Adams Drive. On-site circulation will utilize proposed private roads. Annexation to the Yuima Municipal Water District is also proposed for potable water and fire services. The residential lots will have on-site wastewater treatment systems.

Elevations on the property range between approximately 770-feet MSL at the site's southwestern corner and 1,620 feet MSL at the site's highpoint near the northeastern corner. Existing land uses on-site include active agriculture (154 acres of crops), which covers the majority of the property, several trailers and single-family homes, which are located on the southern portion of the site, a reservoir located near the northeastern property corner, and various dirt roads that cross the property. Areas of native upland vegetation are found on the northeastern and western portions of the site. The site is situated on the southern flanks of Palomar Mountain, and the native vegetation on the northern and western portions of the site is continuous with the large block of habitat associated with Palomar Mountain and the Cleveland National Forest. Frey Creek runs along the western property boundary. Several other drainages cross the property in a north-south direction, all of which are tributaries to the San Luis Rey River located just south of the project site across Highway 76. Land uses on surrounding parcels include active agriculture (to the west and southeast), scattered homes (to the southeast), and undisturbed areas to the north, south, and southwest. All adjoining lands are under private ownership. No preserved lands adjoin or are contiguous with the project site. The Pauma Indian Reservation is located immediately to the east of the site, and the Pala Indian Reservation adjoins part of the western property and the Cleveland National Forest is located a short distance to the north of the property.

The Shadow Run Ranch property contains developed as well as native upland/wetland habitats and agricultural-related and developed uses. The Project proposes to directly impact 1.2 acres of coastal sage scrub (CSS) and 3.0 acres of coast live oak woodland (CLOW) habitats and mitigate at a 2:1 and 3:1 mitigation to impact ratio, respectively. Previous impacts 2.3 acres of CSS and 0.14 acre of CLOW are proposed to be mitigated at a 3:1 and 4:1 ratio, respectively. Impacts to upland and wetland habitats are proposed to be mitigated on-site (total mitigation of 9.4 acres of CSS and 9.6 acres of CLOW).

The Department offers the following comments and recommendations in the enclosure to assist the County 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 (i.e., that it would not preclude the preserve assembly or prevent the achievement of the biological goals anticipated under the North County MSCP). We appreciate the opportunity to comment on this draft EIR/HLP and look forward to further coordination among the County and Department to discuss and resolve the issues associated

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2. The County appreciates the guidance provided by CDFW with respect to avoiding, minimizing, and mitigating project-related impacts to biological resources, and ensuring that the project is consistent with the NC-MSCP. Furthermore, the County looks forward to coordinating with the CDFW to resolve any issues should they arise.

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with the Project, including those raised in this letter. If you have questions regarding our comments on the Project, please contact Randy Rodriguez (858) 637-7100 or Randy.Rodriguez@wildlife.ca.gov.

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Sincerely,


Gail K. Sevens
Environmental Program Manager
South Coast Region

cc: State Clearinghouse, Sacramento
Michelle Moreno, U.S. Fish and Wildlife Service

Enclosure

Comments Letter A

ENCLOSURE

Comments/Recommendations Shadow Run Ranch Project Draft EIR/HLP

1. The draft EIR and biology report indicate that there is an existing riparian corridor along the site associated with Frey Creek that runs in a northeast-southwest direction along the western property boundary. There are also several other drainages that cross the property in a north-south direction, all of which are tributaries to the San Luis Rey River located just south of the Project site across SR 76. Based on the information provided in the draft EIR, the Project would impact State jurisdictional wetland areas, which is proposed to be mitigated on-site.
- a. The Department has responsibility for the conservation of wetland and riparian habitats. It is the policy of the Department to strongly discourage development in wetlands or conversion of wetlands to uplands. The Department opposes any development or conversion which would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, project mitigation assures there will be "no net loss" of either wetland habitat values or acreage. Development and conversion include but are not limited to conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent or perennial, should be retained and provided with substantial setbacks to preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife and plant populations. Mitigation measures to compensate for impacts to mature riparian corridors should be included in the final EIR and must compensate for the loss of function and value as a wildlife corridor.
- b. The Department has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream, or use material from a streambed, the project applicant (or "entity") must provide written notification to the Department pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, the Department then determines whether a Lake and Streambed Alteration (LSA) Agreement is required. The Department's issuance of a LSA for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. As a Responsible Agency under CEQA, the Department may consider the County's final EIR for the project. To minimize additional requirements by the Department pursuant to section 1600 et seq. and/or under CEQA, the final document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of an SAA.
- c. The Project biology report indicates that wetland mitigation is proposed to occur within the conserved open space along existing on-site drainages. Mitigation, if on-site to offset the Project's impact to State jurisdictional areas, would need to be viable and managed under a conservation easement. The Project proposes a 200-foot buffer along most of the length of Frey Creek to protect on-site wetlands (page 2.48 of the draft EIR). Specifically, the Project proposed a 100-foot native vegetation buffer, a 100-foot agricultural (citrus) buffer, and a 100-foot limited building zone (LBZ) along the entire length of Frey Creek, with the exception of a pinch point on Lots 33-35 where the buffer would narrow to only 100 feet of native vegetation and a 100-foot LBZ. The Department

Response to Comments Letter

3. The County concurs with the comment. The project will have small but measurable impacts to state jurisdictional wetlands, consisting of 0.015 acre (258 lineal feet) of non-wetland waters of the United States and state wetlands, as stated in Impact BI-4 discussed in Section 2.4.2.7, Criterion 2, pages 2-53, and summarized in Sections 2.4.4.2, Impacts to Riparian Habitat or Sensitive Natural Communities, page 2-61, and 2.4.4.3, Impacts to Federal Jurisdictional Wetland and Waterways, page 2-62 of the DEIR. The data were corrected to 0.015 acres (258 lineal feet) in Sections 2.4.2.7 and 2.4.4.2. The correction was made because data from a previous design was mistakenly used. The change represents a correction of already discussed impacts and is not a new impact. The DEIR provides mitigation for this impact as Mitigation M-BI-3 in Section 2.4.4.3 on page 2-64 of the DEIR. In order to mitigate this impact to a level below significance, mitigation shall require preparation and implementation of an approved final Wetland Mitigation Plan (WMP), a conceptual version of which has been provided in the biological report (Attachment D of Appendix C). The DEIR also states in Section 2.4.5.3, page 2-64 that: "[b]ecause the project will impact state wetlands and state and federal 'waters,' it will likely be necessary to obtain certain Regulatory Agency permits. To that end, it is recommended that the applicant provide to the Director of Planning & Development Services proof of notification of the ACOE and the California Regional Water Quality Control Board (CRWQCB) regarding Clean Water Act Section 404/401 Permits, or evidence that such notification is not required. Also recommended prior to recordation of the Final Map shall be proof provided to the Director that the applicant has obtained a 1600-series Streambed Alteration Agreement with the CDFW, or proof that such an agreement is not required. The details of any additional mitigation for impacts to jurisdictional wetlands and waterways will be established through the permitting process required to obtain 404-401 and 1600-series documents from the regulatory agencies."
4. The County recognizes that the CDFW has responsibility for the conservation of wetlands and riparian habitats. The project has been designed to avoid and minimize impacts to wetlands and wetland habitat values. As stated in DEIR Section 2.4.2.5, Criterion 2, page 2-49 the project would impact 0.015 acre of non-wetland waters of the United States and state wetlands in the form of three crossings that would occur over a non-vegetated, man-made drainage swale. The data were corrected to 0.015 acres (258 lineal feet) in Sections 2.4.2.7 and 2.4.4.2 of the DEIR. Flowage will be carried beneath this crossing in an appropriately-sized culvert. Because the improved crossing will impact waters and state wetlands, complete mitigation will be provided within Frey Creek at a 1:1 or higher ratio, meaning that no less than 0.015-acre (258 lineal feet) of waters/wetlands will be created, enhanced, or restored in a conserved and managed natural area. As previously detailed in the response to comment 3, a final WMP shall be made a specific condition of project approval and Final Map recordation. The Plan will be prepared by a County-approved revegetation practitioner. The initial WMP shall be consistent in form and content to the conceptual WMP outline provided in the project Biology Technical Report and the County's Revegetation Plan Guidelines. The Regulatory Agencies will be asked for guidance during the preparation of this WMP as a part of required agency permitting. No changes were made to the DEIR as a result of the comment.

5. The County concurs with the comment, and recognizes that the applicant or “entity” must provide written notification to CDFW, who will then determine if a Lake and Streambed Alteration Agreement (Sec. 1600) for wetland impacts is required for the project. As detailed in DEIR Section 2.4.5.3, page 2-64 prior to recordation of the Final Map, proof shall be provided to the Director of PDS that the applicant has obtained a 1600-series Streambed Alteration Agreement with the CDFW, or proof that such an agreement is not required. Wetland impacts are fully identified in the DEIR as Impact BI-4 in Section 2.4.4.3 on page 2-62. Riparian corridors will be maintained by the full replacement (“no net loss”) of riparian areas on the site. No changes were made to the DEIR documentation as a result of this comment.
6. The County concurs with this comment. The wetland mitigation is proposed to occur within the conserved open space that will be protected by an open space easement, as stated in revised DEIR Section 2.4.5.3, page 2-64. The mitigation area will be required to be viable and will be managed under Resource Management Plan (RMP). The paragraph was clarified to note that Frey Creek, the location of the proposed mitigation, will be protected by a conservation easement.
7. The project “pinch point” reduces the buffer from 300 feet to 200 feet (100 feet of native vegetation and 100 feet of structural limited building zone (LBZ) on Lot 33 and parts of Lots 32 and 35 due to limited design options. This reduction is practical in this location because Frey Creek is physically separated from development by an essentially vertical cliff 37 to 55 feet in height. Wildlife movement is associated with the creek bed below while development will be located above and away from the creek set back from the top of the cliff. Therefore no wildlife passage associated with the creek below will be affected. The buffer width except for the pinch point is 300 feet along the length of Frey Creek, including a 100-foot LBZ, and a native vegetation buffer that is a minimum of 200 feet and in some places, much more. The County’s Resource Protection Ordinance specifies that a 200-foot buffer is adequate. Therefore the reduced buffer will not impact biological resources or the Frey Creek corridor. The following text was added to the discussion in Section 2.4.2.5 under Criterion 5, page 2-50, for clarification:
“The development area on Lots 33-35 will be adjacent to a steep cliff on the west and between 37 and 55 feet higher than the creek. Therefore the narrowed buffer will not impact wetlands due to the physical separation between sensitive areas and proposed development.”

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recommends that for alt on-site jurisdictional areas, the proposed 200-foot width be maintained along the entire length of Frey Creek to best protect habitat for the CESA- and federal endangered species act (ESA)-listed least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) and maintain local wildlife movement in the area in all areas, including from the edge of limits where any mitigation is proposed.

- d. Any proposed on-site mitigation areas should complement preserved areas on-site. For example, where breaks within the riparian corridor occur, the creation should strive to fill in these gaps to create one continuous canopy through the conserved area. To the extent possible, where native trees need to be replaced for the Project (to meet County requirements), they should be included adjacent to the on-site conserved lands to further buffer these lands from project edge effects and to maximize the overall use of open space areas by wildlife.
2. The final EIR should disclose whether any suitable habitat for cactus wren and/or southwestern pond turtle exist on-site and any potential impacts to these state species of special concern. The cactus wren (*Campylorhynchus brunneicapillus*) has been known to occur in the area southeast of the Project site and the biology report (Table 4-Observed Species List-Flora) notes the presence of *Opuntia* (cactus) species on-site but does not discuss its potential to provide nesting and foraging habitat for cactus wren. The southwestern pond turtle (*Emys marmorata*) is the state's only native freshwater turtle and can occur in streams, ponds and other small bodies of water and lake habitat, all of which exist on-site.

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8. The County concurs with this comment. The required wetland mitigation will complement the preserved areas along Frey Creek. By providing wetland mitigation within the Frey Creek floodplain, the project will fill in gaps in the habitat and generally improve the hydrology of the floodway. No changes were made to the DEIR documentation as a result of this comment.
9. The County concurs with the comment. The site was surveyed for the presence of the San Diego Cactus Wren on November 18, 2014. The memo covering the additional survey work carried out is attached to this letter and is included as new Attachment F to Appendix C of the EIR. Specifically the purpose of the survey was to inspect all accessible stands of *Opuntia* cactus and open water. This distinctive species is not anticipated on this site due to a lack of suitable habitat with the exception of a few thickets in the far northern portion of the property 2,750 feet from any proposed development. Most of the *Opuntia* found onsite consists of *O. ficus indica* and hybrids with unsuitable structure. *Opuntia littoralis*, the native species, occurs onsite but only in the aforementioned thickets at the extreme north end of the site, well within dedicated biological open space. No San Diego Cactus Wren were detected during the field survey and none are expected due to the limitations of the habitat. The site is considered unoccupied by the San Diego Cactus Wren. In addition the following text was added in DEIR Section 2.4.2.3 under Criterion 3, page 2-46 as a result of this comment:

"The project site was surveyed for the presence of the San Diego Cactus Wren, and no evidence of the species was found. Limited habitat for this bird species is found on the extreme north of the property, within a proposed open space area and approximately 2,750 feet (0.52 miles) from any development area. The site was determined to be unoccupied by the San Diego Cactus Wren. Criterion 3 is not exceeded, and impacts are less than significant. No mitigation is necessary."

10. The County concurs with the comment. A focused search for the Southwestern Pond Turtle (SWPT) and SWPT habitat was completed by the project biologists on November 18, 2014. The memo covering the additional survey work carried out is attached to this letter and is included as new Attachment F of the biological report for the project (Appendix C of the EIR). The species was not anticipated on this site due to a general lack of habitat. All potential habitat areas, including the water reservoir and upper reaches of Frey Creek, were surveyed and no SWPTs were found. The reservoir supports no turtles and little vegetation, and the upper reaches of Frey Creek are beneath a closed canopy. Therefore the site is considered unoccupied by the SWPT. In addition, the following text was added in DEIR Section 2.4.2.3 under Criterion 3 as a result of this comment:

The project site was surveyed for the presence of the Southwestern Pond Turtle, a California Species of Concern. The site supports limited areas of Southwestern Pond Turtle habitat. These areas were searched and no evidence of this species was found. Criterion 3 is not exceeded. Impacts are less than significant and no mitigation is necessary.

3. To increase potential habitat and functionality of on-site riparian areas/corridors, the Department recommends that any Project-graded slopes and fuel clearing areas be planted with compatible, low-fuel natives (e.g., cacti and other succulents) to minimize the potential for invasive species to spread into the proposed on-site mitigation/open space areas and into adjacent natural lands. In addition, we recommend that native plants (endemic to the local area) be used to the greatest extent feasible in landscaped areas adjacent to and/or near mitigation/open space areas and/or wetland/riparian areas to avoid degradation of native habitats. The California Invasive Plant Council provides a list of exotic plants species (Invasive Plant Inventory [Cal-IPC; <http://www.cal-ipc.org/>]) that should be avoided in landscaped areas. We recommend this measure be incorporated into the final EIR or that the final EIR identify other measures to address the potential degradation of native habitats from the use of invasive species in the landscaped areas.
4. All areas on-site proposed for mitigation must demonstrate that they would be viable over time and not impacted from the edge effects from project development. Some open space areas proposed on-site (e.g., open space adjacent to Lots 14-20) may not be acceptable for mitigation due to their proximity to development on multiple sides, lack of connectivity to other conserved lands, or overall small size compared to the developed area of the site. The final EIR/HLP should clearly identify which areas on-site are proposed for mitigation and would be managed under the resource management plan for the Project.

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11. The County concurs with the comment. The project's Concept Landscape Plan (CLP) will utilize only indigenous, native riparian species in the Frey Creek open space and will not use any invasive species anywhere on the project site. The EIR has been modified in Sections 2.4.5.3, page 2-64 and 7.1.3, page 7-4, to reflect this information. Reference to the landscape plan has also been added to Section 1.2.1 of the DEIR, page 1-2. During County of San Diego review of final project design and engineering, the applicant will be required to obtain approval of a Landscape Plan. That review will ensure that plants on the current California Invasive Plant Council list will be avoided.
12. The County concurs with this comment. The habitat within the open space adjacent to lots 14-20 is not considered mitigation because the majority of the area has been developed with a road, graded slopes, and structures. The under story has also been managed to minimize recruitment by natives. However, this area is being conserved to avoid direct impacts to mature oaks that line the drainage bisecting the area. The project will not be seeking mitigation credits within this open space for the reasons noted above. No changes were made to the DEIR documentation as a result of this comment.
13. The project's EIR Figure 2-4-3, "Open Space, Fencing, and Signage Plan," as well as the Tentative Map and/or Grading Plan for the project, clearly define all proposed on-site open space areas. The Resource Management Plan (RMP) identifies all areas that are proposed to be managed, as shown in Figure 4 of that plan and on Figure 2-4-3 of the EIR. This includes all of Lot 46 (Open Space Lot), and portions of Lots 12-14, 17-20, 28-30, and 32-34 that contain biological open space, as shown. These areas will be fenced and/or signage will be employed. The RMP can be found as Attachment A to the biological resources report of the Project, which is Appendix C of the EIR.

5. Federal ESA- and CESA-listed endangered species are known or have the potential to occur within the Project site (i.e., least Bell's vireo, southwestern willow flycatcher, and arroyo toad). Section 1.3 of the draft EIR assumes presence for the least Bell's vireo and southwestern willow flycatcher, both of which are listed as endangered under ESA and CESA. Therefore, based on the potential direct and indirect impacts that may occur to these listed species and/or designated critical habitats as a result of the proposed Project, it may be necessary for the applicant to obtain federal "take" authorization for these species/critical habitats through a Section 7 consultation (if a federal nexus exists, such as through involvement of the U.S. Army Corps of Engineers). For ESA listed species, if a federal nexus is not involved, it may be necessary for the applicant to obtain "take" authorization for the species alone through development of a Habitat Conservation Plan, pursuant to section 10 of the ESA.

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14. No LBV or SWWF has been observed on the site during any of the field surveys conducted over the course of several years, however, the riparian habitats have been considered potentially "occupied" for LBV, SWWF and other riparian species during the breeding season to avoid the need for focused field surveys (Section 2.4.1.4 of the DEIR, page 2-41). A potentially significant impact was identified (BI-1) for this potential occupancy (Section 2.4.2.3 of the DEIR, page 2-45). However, the project has been designed to avoid direct and indirect impacts to Federal ESA and CESA-listed species including the Least Bell's Vireo (LBV) and Southwestern Willow Flycatcher (SWWF), which are assumed to potentially occur in the Frey Creek floodway.

Direct impacts will be reduced to less than significant prevented by dedicating an open space easement along Frey Creek and its riparian areas which precludes the removal of riparian resources in potential habitat areas (Section 2.4.5.3 of the DEIR, page 2-64). Indirect impacts will be prevented by providing adequate biological buffering between future residential development and potential habitat. For example a minimum of 300 feet along buffer is maintained along Frey Creek, with the exceptions discussed in response no. 7 above. Fencing and signage will also be used to control access to open space areas. Monitoring, reporting, and repair of fences or signage, as provided in the RMP (Attachment A of Appendix C) will ensure that the integrity of the habitat in the open space area is maintained. In addition, seasonal grading restrictions will be implemented through project conditions to ensure conformance with the federal Migratory Bird Breeding Act (MBTA) and various relevant sections of the California Fish and Game Code. This will include management activities that may need to be performed in the open space. For these reasons direct or indirect impacts to LBV and SWWF are less than significant.

Two Arroyo Toad (AT) surveys were completed pursuant to the current survey protocol and the site was determined to be "unoccupied" by AT as a resident, breeding species (Section 2.4.2.3 of the DEIR). Although AT dispersal and aestivation could occur onsite from the nearby San Luis Rey River, this would be restricted to the Frey Creek floodway and adjoining natural areas. All of the potential dispersal and aestivation areas will be conserved and managed, preventing any direct or indirect "take" of this species. No changes were made to the DEIR documentation as a result of this comment.

6. Since the NC-MSCP has not yet been completed, any take authorization for impacts to CESA-listed species including the least Bell's vireo, southwestern willow flycatcher, and California yellow-billed cuckoo (*Coccyzus americanus occidentalis*) would have to be achieved through CESA (see Fish and Game Code, §§ 2080, 2085). If the applicant intends to have take of any CESA-listed species addressed through a 2080.1 consistency determination (CD; least Bell's vireo, southwestern willow flycatcher, and potentially yellow-billed cuckoo), it is important that the final EIR and supporting documentation contain a mitigation program that would fully mitigate for impacts to those state-listed species. Moreover, for the Department to evaluate and potentially issue a CD, it is important that the federal biological opinion for the project contain measures to clearly demonstrate that the state take would be fully mitigated under CESA. As part of the mitigation required under CESA, a biological conservation easement over the protected lands would be required along with adequate secured funding to ensure that the mitigation land would be managed, maintained, and monitored for listed species in perpetuity by qualified personnel. 15
7. As a condition of any CESA take authorization for the Project, the land manager and entity that would hold conservation easements for any mitigation area would need to be approved by the Department. This review and approval process may occur when the 2081(b) CESA application (or 2080.1 CD request) is provided to the Department. The Department is not currently interested in managing the conserved lands associated with this Project. For purposes of CESA compliance, ownership of the conserved lands by a home owner's association would not be appropriate. For purposes of CESA compliance (where there is not adopted NCCP), a biological conservation easement (held by a bona fide conservation entity) would be required over the on- and off-site mitigation lands regardless of who ultimately would have fee title. 16
8. A final site-specific resource management plan (RMP) should be developed and implemented for the proposed on- and off-site mitigation areas as a condition of HLP approval to ensure the long-term conservation of the mitigation sites. The final RMP should provide measures and demonstrate that adequate funding would be provided to protect and manage the resources on the on-site and off-site mitigation lands in perpetuity. The RMP should include biological goals, management objectives, and specific tasks to achieve the objectives, provisions to monitor populations of sensitive and/or listed species, control for invasive plants, provide adequate fencing, limit public access, and address any other relevant land/species management issues (e.g., potential for cowbirds to impact nests of riparian birds on-site and the need for potential trapping). The RMP for the on- and off-site mitigation lands would require approval by the Department and the U.S. Fish and Wildlife Service (Service) as part of the County's HLP process. 17
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15. The project will not result in any impacts to state-listed species, including LBV, SWWF, or California Yellow-billed Cuckoo (YBC). The site contains no habitat suitable for YBC as described in the footnotes following Table 7 in the Biological Resources Technical Report, and all potential habitat for LBV and SWWF has been avoided by design and mitigation (see DEIR Sections 2.4.1.4, 2.4.2.3, 2.4.2.11, 2.4.4.1, 2.4.4.4, and 2.4.5.1). Avoidance includes open space, easement protection, fencing and signage, and restrictions of noise-generated activities such as grading to the non-breeding season. This restriction will apply to management activities that may need to be performed in the open space. For this reason, specific mitigation measures, other than avoidance, are not required. All potential habitat will be conserved in managed open space. No changes were made to the DEIR documentation as a result of this comment.
16. Please see response nos. 14 and 15 above. Take authorization is not required for these species due to avoidance of direct and indirect impacts. An open space easement will be provided to protect resources in open space areas. No changes were made to the DEIR documentation as a result of this comment.
17. As previously detailed in response nos. 14 and 15, the project would not require take authorization pursuant to the CESA. However, a land manager is required by the RMP, included as Attachment A of the biological report for the project (Appendix C). A specific land manager will be named in the final RMP, which will be routed to the CDFW and USFWS for review prior to approval of the RMP. The RMP can be found as Attachment A of Appendix C of the EIR. No changes were made to the DEIR documentation as a result of this comment.
18. The County concurs with this comment. An open space easement will be provided to protect biologically sensitive areas. The holder of the open space easement will be qualified to hold and manage conserved lands and will be approved by the Department, per conditions of the Resource Management Plan. A final site-specific RMP will include all on-site mitigation areas. The plan will include the factors noted in the comment. Specifically, biological goals, management objectives, specific work tasks, and funding sources will be identified. Specific tasks to be included are habitat monitoring, control of invasive plants, fencing, and signage installation and maintenance. Wildlife Agency approvals of the final RMP will be required as part of the County's CEQA mitigation and monitoring process. No changes were made to the DEIR documentation as a result of this comment.
19. The County concurs with this comment. A Conceptual RMP was included as Attachment A of the Biological Resources Report. Resource management elements and goals were provided in Chapter 5 of the CRMP. The final, site-specific RMP will include all onsite mitigation areas. The plan will include the factors noted in the comment. Specific biological goals, management objectives, work tasks, and funding sources will be identified. Specific tasks to be included are habitat monitoring, control of invasive plants, fencing, and signage installation and maintenance. Wildlife Agency approvals of the final RMP will be required as part of the County's HLP process. No changes were made to the DEIR documentation as a result of this comment.

9. The draft EIR and biology technical report document the use of Frey Creek onsite as wildlife connection through the site down to the San Luis Rey River. The Project is proposed to provide a 200-foot buffer along the majority of Frey Creek (see measure 4.1E on page 34). The biological technical report (page 28) also notes that many species of wildlife are dependent on the ecological functions provided by the Shadow Run Ranch site. Numerous large mammals occur on-site, such as mountain lion (*Felis concolor*), mule deer (*Odocoileus hemionus*), bobcat (*Lynx rufus*), coyote (*Canis latrans*), and gray fox (*Urocyon cinereoargenteus*). AU of these species are expected to utilize the wildlife corridor provided by Frey Creek. Various rodents and lagomorphs, scores of riparian and other birds, reptiles, and amphibians are also known to use resources found on the Project site. The final EIR should provide an analysis of the pre- and post-project width and functionality of the Frey Creek wildlife corridor, including identifying any potential project features that may constrict wildlife movement, and how the proposed Project would help achieve NC-MSCP goals for the Upper San Luis Rey River Linkage and connect with areas to the east that are included as part of the County's East County MSCP (County of San Diego, 2009 and 2013).
10. The Department recommends that the Service be contacted to discuss potential impacts to the ESA-listed endangered arroyo toad (*Anaxyrus californicus*), including the potential to impact any aestivation areas.
11. The final EIR should discuss the potential for the CESA-listed endangered California yellow-billed cuckoo to occur on-site. If suitable habitat exists on-site, the Department recommends that protocol surveys for this species be conducted in all areas of suitable habitat within and adjacent to the project site and the results of these surveys included in the final EIR and supporting documents. If it is determined that the area is occupied by yellow-billed cuckoo, all impacts to occupied habitat should be mitigated with in-kind habitat at appropriate ratios. Any take of yellow-billed cuckoo that results from the Project is prohibited, except as authorized by state law (see Fish and Game Code, §§ 2080, 2085).

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20. The DEIR analyzes wildlife movement in Section 2.4.2.9, page 2-53. Frey Creek, a primary movement corridor on the site, will be protected in open space. Enhancements to this area will include discontinuation of agriculture and related management activities, such as pruning and picking, that currently take place in the creek; as well as installation of fences and signage that will deter intrusions where no deterrent currently exists. For example, at some points agriculture extends to the creek bed of Frey Creek. With the cessation of agriculture in the creek bed area, the wildlife corridor will be expanded by a minimum of 200 feet. The upper reaches of Frey Creek will be within the open space easement and no development is proposed near this area. A 300-foot agricultural/biological buffer will be maintained between development and the creek. One pinch point, where the buffer is reduced to 200 feet, will not be a detriment to wildlife movement because of the elevation differences between development and the creek. Details about the 200 foot buffer are provided in response no. 7 above. The project will contribute to the NC-MSCP Upper San Luis Rey Linkage and improve connection to areas to the east that are part of the County's East County MSCP Subarea Planning Area because it will provide protections of the linkage where none exist, it has no detrimental effect on the existing linkage, and it widens the linkage at some points. The DEIR discussed the NC-MSCP in Section 2.4.2.11, page 2-55. No changes to the DEIR are required as a result of the comment.
21. The County acknowledges the comment. Two Arroyo Toad (AT) surveys were completed pursuant to the current survey protocol and the site was determined to be "unoccupied" by AT as a resident breeding species. Although AT dispersal and aestivation could occur onsite from the nearby San Luis Rey River, this would be restricted to the Frey Creek floodway and adjoining natural areas. All of the potential dispersal and aestivation areas will be conserved and managed and an open space easement will be placed over the Frey Creek area, preventing any direct or indirect "take" of this species. For this reason, consultation with the Service is not warranted. Please also see Section 2.4.2.3 (Criterion 4) of the DEIR and response no. 14 above.
22. The County acknowledges the comment. As related to the yellow-billed cuckoo, please see response no. 15 above.

12. The biological technical report notes (page 28) that the entire Shadow Run Ranch property provides foraging habitat for raptors, including Cooper's hawk (*Accipiter cooperii*), red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), and white-tailed kite (*Elanus leucurus*), a state fully-protected species. The report concludes that any of the tall trees on-site could support raptor nesting activities. The Department recommends that measures be incorporated into the final EIR to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the Fish and Game Code prohibit take of all native bird species and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Proposed Project activities (including, but not limited to, staging and disturbances to native and nonnative vegetation, structures, and substrates) should occur outside of the avian breeding season which generally runs from February 1 through September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the avian breeding season is not feasible, we recommend surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300-feet of the disturbance area (within 500 feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

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23. Seasonal restrictions on noise generating activities are required and have been included as mitigation in DEIR Section 2.4.5.1, Mitigation Measure M-BI-1, page 2-62, and Section 2.4.5.3, Mitigation Measure M-BI-3, page 2-64. These measures will be required to ensure project conformance with the MBTA and various relevant sections of the California Fish and Game Code and will be included as part of the Final EIR. Mitigation Measure M-BI-1 in Section 2.4.5.1 of the DEIR, page 2-62, has been revised to read as follows:

(Impacts BI-1, BI-3, BI-8) Because the project site is considered potentially occupied by Least Bell's Vireo (LBV), Southwestern Willow Flycatcher (SWWF), and other nesting migratory birds or nesting raptors could occur on the site, breeding season avoidance shall be implemented through Project plans. Brushing, grading or construction generating noise levels in excess of 60 decibels shall not be permitted within 300 feet of LBV, SWWF, or other nesting migratory birds during the breeding season of these species (March 15th to September 15th), in order to avoid impacts to potentially nesting vireos, flycatchers, and/or other riparian obligate songbirds. There shall be no brushing, clearing, and/or grading within 500 feet of any active raptor nests during the breeding season of these species (February 1 through September 1st). The restrictions may be waived by the director of Planning and Development Services, with written concurrence from the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife, if surveys indicate nesting or breeding bird activity is not occurring in the vicinity of the brushing, clearing, and/or grading as specified above. Surveys will be carried out by a County-approved biologist within one week prior to the start of disturbance. It will include all areas within 300 feet of the proposed activity for the LBV, SWWF, or other nesting riparian obligate songbirds, or within 500 feet of the proposed activity of nesting raptors. The results of these surveys should be provided in a report to the Director of Planning & Development Services for concurrence with the conclusions and recommendations. The biologist shall coordinate with the on-site acoustician in determining noise levels on the site, unless it is determined by directed surveys that the nesting birds are not present. These restrictions will pertain for the duration of brushing, clearing, grading, or construction.

Additional text was added in Section 2.4.2.3 of the DEIR to discern between potential lighting and noise impacts by stating "Impacts with respect to lighting are not significant and no mitigation is required."

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Memorandum

To: Mr. Mark Thompson, TRS Consultants

From: Vince Scheidt, Consulting Biologist 
Brandon Myers, Biological Field Associate 

Date: December 19, 2014

RE: Shadow Run Ranch: Status of San Diego Cactus Wren and Southwestern Pond Turtle Habitat

In response to your recent request, we have surveyed the Shadow Run Ranch project site in Pauma Valley for two California Species of Concern that were mentioned in a CDFW letter of comment on the project's EIR. The purpose of this survey was to inspect all accessible stands of *Opuntia* cactus and all areas of open water. These site features could constitute potential habitat for the San Diego Cactus Wren (*Campylorhynchus brunneicapillus sandiegensis*) and Southwestern Pond Turtle (*Clemmys marmorata pallida*), which are known to occur in similar habitat in the general vicinity of the project site. We visited the site on the afternoon of November 18, 2014. Specific features examined included all stands of *Opuntia* that could be accessed (some were on very steep slopes and could not be safely approached), all areas of Frey Creek, and the existing irrigation pond.

The San Diego Cactus Wren is not anticipated on this site due to a lack of suitable habitat with the exception of a few remote thickets of *Opuntia littoralis* in the far northern portion of the property in excess of 2,750 feet from any proposed development. Within the development area, most of the *Opuntia* consists of *O. ficus-indica* and hybrids with unsuitable structure for cactus wrens. *O. littoralis*, the native species, occurs onsite but only in the aforementioned remote thickets at the extreme north, well within proposed biological open space. No San Diego Cactus Wren's were detected during the field survey, and none are expected due to the limitations of the habitat. Should any Cactus Wrens occur on this site, they would be restricted to the remote thickets. Based on the results of this survey, the development area of the site and adjoining lands are considered "unoccupied" by San Diego Cactus Wren.

Southwestern Pond Turtle was not anticipated on this site due to a general lack of suitable habitat. A focused search for pond turtles and pond turtle habitat was completed by searching all potential habitat areas, including the water reservoir and all areas of Frey Creek with a focus on wet areas in the headwaters. No pond turtles were found during this survey. The reservoir definitely supports no chelonians, native or introduced, and very little vegetation. Frey Creek is mostly dewatered and very rocky, and the upper reaches are beneath a closed canopy. Suitable habitat is therefore not present within Fry Creek or in the onsite reservoir. Shadow Run Ranch is considered "unoccupied by Southwestern Pond Turtle.

Attached are site photos showing features that were searched during the November 2014 field survey. Please contact us with any questions.

ADDENDUM TO COMMENTS LETTER A



Photo 1. Scattered stands of *Opuntia ficus-indica* hybrids along the fringes of Frey Creek.



Photo 2. A stand of *Opuntia littoralis* near the northern property edge on very steep slopes. This stand is found at a excess of 2,750 feet from the proposed development area.



Photo 3. Water reservoir located in the northern-central portion of the property. No turtles were observed and banks showed no signs of turtle activity. Note the lack of riparian vegetation.

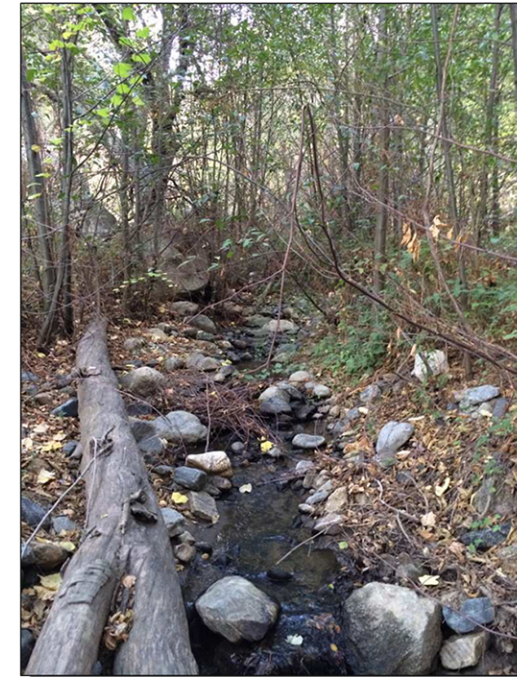


Photo 4. Fry Creek running through the northern portion of the property. No Pond Turtles were found or are anticipated to occur in this area.