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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Mr. Andrew Ho
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Subject: Comments on the Recirculated Draft Environmental Impact Report for the Rancho La Habra Specific Plan Project, La Habra, CA (SCH# 2015111045)

Dear Mr. Ho:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced recirculated draft Environmental Impact Report (EIR) for the Rancho La Habra Specific Plan, dated November 2019. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act, [CEQA] Guidelines §15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and Fish and Game Code (FGC) section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning program, a California regional habitat conservation planning program.

The Rancho La Habra Specific Plan (project) would remove 151 acres from the existing La Habra Hills Specific Plan (SCH# 1992101743) for the purpose of developing three new residential neighborhoods with 402 total homes, linked via trails through open space, in addition to community and commercial use elements. The project site is currently occupied by Westridge Golf Course, at 1400 South La Habra Hills Drive, in the City of La Habra (City). The project site is located southeast of Beach Boulevard, west of South Idaho Street, and north of West Coyote Hills. Westridge Golf Course currently contains an 11.43-acre mitigation site that was conserved in perpetuity, via deed restriction, to compensate for impacts associated with permits for Phase II of the La Habra Hills Specific Plan; this deed restriction would have to be terminated in order for the project to proceed as described in the draft EIR. Approximately 500 linear feet of undeveloped vegetated area in the southwestern portion of the site provide an interface to the undeveloped lands of West Coyote Hills to the south.

The 18-hole golf course includes turf grass fairways, cart paths, access roads, parking, amenity buildings, ornamental landscaped areas, and three human-made ponds (referred to as open water; 1.15 acres). Existing natural habitats observed on the site, according to the Biological Resources section of the EIR, include coastal sage scrub (11.60 acres), riparian woodland (2.83 acres), riparian scrub (2.28 acres), and emergent wetland (0.39 acre) that has established along the outer edges of the human-made ponds. The proposed project would impact 7.55 acres of coastal sage scrub, 2.83 acres of riparian woodland, 1.70 acres of riparian scrub, and 0.39 acre of emergent wetland. The project would also impact 1.15 acres of the open water/human-made ponds. Out of a total of 13.62 acres of on-site vegetation alliances which will be impacted, 9.66 acres of them are within deed-restricted areas.

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The project's Biological Resources section was amended to include the following new assessments: vegetation mapping, special-status plants, tree inventory, jurisdictional delineation, general wildlife, bats, coastal California gnatcatcher (*Poliophtila californica californica*; gnatcatcher; Endangered Species Act [ESA] listed - threatened), least Bell's vireo (*Vireo bellii pusillus*; vireo; CESA - and ESA - listed endangered), and western pond turtle (*Emys marmorata ssp. pallida*; California Species of Special Concern [SSC]). Observations of yellow warbler (*Setophaga petechia*; SSC), Cooper's hawk (*Accipiter cooperii*), gnatcatcher, and one migrant vireo were also included in the reevaluation of the project's environmental baseline. Other species with moderate potential to occur within the project area, that were not observed, are southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*) and coast horned lizard (*Phrynosoma blainvillii*; SSC).

The Department's issuance of a Lake and Streambed Alteration (LSA) Agreement (Agreement) will require CEQA compliance actions by the Department as a Responsible Agency. The Department as a Responsible Agency under CEQA may consider the City's EIR for the project. To minimize additional requirements by the Department pursuant to section 1600 et seq. and/or under CEQA, the 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 the LSA Agreement.

The Department provided comments on the Notice of Preparation for the project in a letter dated December 16, 2015, and on a previous public review draft EIR in a letter dated May 11, 2018. In the latter, the Department's concerns focused on the prior Lake and Streambed Agreement (LSA) obligations, the Department's role in vacating the deed restriction, evaluation of the baseline conditions, proposed use of mitigation outside the deed-restricted area, project configuration, alternatives, and cumulative impacts. In evaluating the recirculated EIR, our concerns include further clarification of the Department's role in vacating the existing deed restriction, insufficiency and lack of specificity surrounding the amount and location of mitigation associated with the deed restriction, and compensatory mitigation for cumulative impacts. We offer the following comments and recommendations to assist the City in avoiding or minimizing potential project impacts on biological resources.

1. The Department's Role in Vacating the Deed Restriction

The Department issued LSA Agreement No. 5-465-94 to Pacific Coast Homes in 1995 for impacts to three tributaries to Coyote Creek associated with Phase II of the La Habra Hills Specific Plan Project. Specifically, the project impacted 4.55 acres of mulefat scrub interspersed with other riparian and exotic species on the project site. To mitigate for the loss of 4.55 acres of riparian habitat, Agreement No. 5-465-94 required compensatory mitigation at a 2:1 ratio, including creation of 9.1 acres of new habitat within and around the drainage courses on the site. Condition 11 of the Agreement required that either a wildlife conservation easement or deed restriction be recorded on the property to protect the fish and wildlife resources of the newly created mitigation sites in perpetuity. To fulfill this requirement, a deed restriction was recorded on November 25, 2009, over an 11.43-acre portion of the property, which included 9.1 acres of riparian habitat (3.52 acres of southern willow scrub, 1.40 acres of mulefat scrub, 2.00 acres of oak woodland, 0.52 acre of freshwater marsh, and 1.72 acres of open water) and 2.27 acres of coastal sage scrub.

On November 21, 2014, the Department received LSA Notification (Notification) No. 1600-2014-0232-R5 from Standard Pacific Homes, Southern California Coastal (Applicant) for the Westridge Residential Development Project. According to the Notification, the project would grade and fill two drainages and five basins in the eastern portion of the project site and fill the pond on the western portion for construction of residential pads. Portions of the impacted areas are within the deed restriction area. Habitat types to be impacted included mulefat scrub, riparian woodland, and open water. The Department subsequently conducted a site visit with the Applicant at the Westridge Golf Course on January 20, 2015, and held a meeting in August 2015, to discuss potential removal of the deed restriction. Additional meetings were held in January and March of 2016. At that time, the Department conditionally agreed to *consider* relocation of the conserved mitigation areas (i.e., riparian areas within the deed restriction) if in-kind mitigation, at a ratio of no less than 5:1, was provided to compensate for the loss of the mitigation lands. Since the deed restriction was a requirement of Agreement No. 5-465-94, the relocated mitigation site(s) would need to be identified, approved by the Department, and acquired (if applicable) *prior* to the Applicant terminating the current deed restriction.

It is the Applicant's responsibility and not the Department's to locate appropriate, functionally equivalent mitigation. The riparian mitigation site(s) should be identified, approved by CDFW, and acquired prior to the Applicant terminating the current deed restriction and prior to the City certifying the project EIR. We also expect the relocated riparian sites to be protected in perpetuity via a conservation easement.

Impact analysis discusses three off-site mitigation options: a mitigation bank, acquisition in West Coyote Hills, and acquisition within the scope of the Puente Hills Habitat Authority (3.5-87). Since the issuance of comments on the draft EIR in May 2018, the Department has met with the City and Applicant several times in order to discuss potential appropriate, functionally equivalent off-site mitigation parcels, managed by the Puente Hills Habitat Preservation Authority (e.g., Buddhist Temple, Ferrero, and Serafi). While we appreciate the good-faith effort made by the City and Applicant to find viable off-site options for mitigation, the use of a mitigation bank was not scoped or approved by the Department during those meetings. The only certified, Department-approved mitigation bank whose service area extends to the project site is Soquel Canyon Mitigation Bank. Currently, this bank does not have the creation credits necessary to accommodate the mitigation required. Furthermore, while we appreciate that smaller, in-kind mitigation parcels may be available off-site at West Coyote Hills (e.g., Neighborhoods 1 and 3), this option has not been vetted with the Department, nor has any documentation of coordination with other relevant agencies been identified in the EIR; therefore, we continue to disagree that the EIR has fully demonstrated that it can replace the habitat values of the deed restricted area according to BIO-1.1a, as it was written in the EIR.

2. Mitigation Outside the Deed Restriction

The recirculated EIR states that,

"[i]t is recognized, however, that a single mitigation program consisting of on-site establishment/restoration/enhancement and/or off-site

purchase/restoration/enhancement could be established to provide compensation of loss of (1) previous mitigation resulting from vacating existing deed restrictions, (2) loss of coastal sage scrub habitat both within and outside of deed-restricted areas, and (3) loss of riparian woodland and riparian scrub alliances that may also be determined to be jurisdictional waters" (3.5-83).

The Department disagrees with this assessment. As stated in our previous letter, we request that mitigation for impacts to areas within the deed restriction should be considered distinct from, and in addition to, compensation for other biological resources impacted within the project site and associated with the project. Without acreages and/or ratios of compensatory mitigation specifically disclosed, it cannot be determined whether mitigation for project impacts within deed restricted areas, outside restricted areas, or for significant cumulative impacts (see Comment 3 below) will be adequate to bring impacts of the project below a significant level.

3. Cumulative Impacts

The Department appreciates that the City has reclassified the cumulative biological resources effects of Rancho La Habra and West Coyote Hills (6-09 through 6-15) as significant. We consider West Coyote Hills, located south of the project site, to be a refugia for many species, including but not limited to: vireo, gnatcatcher, burrowing owl (*Athene cunicularia*; SCC), coastal cactus wren (*Campylorhynchus brunneicapillus*), loggerhead shrike (*Lanius ludovicianus*; SSC), northern harrier (*Circus cyaneus*; SSC), tricolored blackbird (*Agelaius tricolor*; CESA listed-threatened), and coastal western whiptail (*Aspidoscelis tigris stejnegeri*; SSC). A variety of sensitive habitat types, such as coastal sage scrub and cactus scrub, and plants such as San Bernardino aster (*Symphyotrichum defoliatum*), are also present.

The West Coyote Hills Vesting Tentative Tract Map application No. 17609 (VTTM; SCH# 1997051056) describes the development of up to 757 residential units, plus commercial and circulation elements on 208.6 acres of the 510-acre West Coyote Hills property. Significant cumulative impacts of the project are discussed in relationship to West Coyote Hills:

"...offsite purchase of existing CSS and riparian habitats that could include restoration or enhancement such that the [p]roject would result in provision of functionally equivalent or better habitat as determined by [the Department] in consultation with [regulatory agencies] and would ensure that the [p]roject's contribution to cumulative impacts is mitigated. Thus, the Rancho La Habra Specific Plan EIR Project's contribution to a significant cumulative impact on special status species and coastal sage scrub habitats would not be cumulatively considerable." (6-15 through 6-16)

It is unclear how mitigation as described in BIO-1.1a will compensate for significant cumulative impacts, since no distinct acreages and/or ratios for mitigation are disclosed in the EIR, nor are significant cumulative impacts addressed specifically in this mitigation measure. Furthermore, off-site parcel acquisition, when it was presented by the City to the Department, was not considered in relationship to significant cumulative impacts.

Mitigation measures "...must be fully enforceable through permit conditions, agreements, or other legally binding instruments" (CEQA Guidelines §15126.4(2)). Without a firm, specific, written commitment to participation, planning, and/or the execution of a financial instrument to develop and remediate habitat types, the Department concludes that this mitigation measure does not bring cumulative impacts below a significant level.

While the EIR addresses the impacts of decreased open space, it does not address how the large increase in recreation and trail use will impact biological resources in the remaining natural and "open space" habitats. The West Coyote Hills VTTM and the Rancho La Habra Specific Plan combined will create over 1,100 new residences, which will result in a dramatic increase in recreational activities. Impacts to wildlife as a result of recreation include wildlife fleeing in response to recreationists, including those that lawfully, passively use trails. This can result in energetic and physiological costs, temporal and/or spatial displacement from preferred environments or otherwise suitable habitats, reductions in reproduction rates and population levels, and ultimately an alteration in species composition and diversity (Hammitt et al. 2015). The impact of passive trail use and recreation will be further exacerbated in that the amount of open space available to existing wildlife resources will be decreased by approximately 300 acres between the two projects.

Cumulatively, remaining open space within the proposed project area and the West Coyote Hills contains the largest concentration of gnatcatchers in northern Orange and Southern Los Angeles counties. The majority of this area is within designated critical habitat for the gnatcatcher (Unit 9, 72 FR 72010). Unit 9 includes lands containing core gnatcatcher populations and areas important for connectivity in the Montebello, Chino/Puente Hills, and Coyote Hills area. A total of 13.6 acres of native vegetation, including a minimum of 5.9 acres of coastal sage scrub, was restored within the Westridge Golf Course to contribute towards maintaining a core gnatcatcher population in this area (U.S. Fish and Wildlife Service 1995).

Again, the EIR should include an in-depth discussion of this effort in the Biological Resources section. A mitigation measure should also be included, and it should describe in as much detail as possible specific, enforceable actions and commitments to the creation/restoration of coastal sage scrub habitat at a specific on-site location (i.e., figures, coordination with the Department, a Habitat Mitigation and Monitoring Plan, etc.). The upland conservation areas should be designed to limit fragmentation between the proposed project site and West Coyote Hills to the extent possible by eliminating trails and associated lighting that bisect these areas.

To further reduce cumulative impacts, we continue to recommend improving the corridor for mammal movement (e.g., coyotes) between the proposed project site and West Coyote Hills by installing a wildlife crossing under the road (Nicklaus Avenue) that bisects the two properties. Larger predators, in particular, play an important role in maintaining the ecological integrity of remaining open space areas in southern California (Soulé et al. 1988, Crooks and Soulé 1999). The presence of coyotes and bobcats has been shown to be negatively associated with the distribution and abundance of smaller predators (e.g., raccoons and feral cats) that often prey upon songbirds (Crooks and Soulé 1999).

Given the large anticipated increase in recreational trail users, the Department still concludes that cumulative impacts of the project on biological resources are cumulatively considerable (CEQA Guidelines §15065(a)(3)), and recommend that the EIR be amended to include analysis of the increase in open space recreation.

4. Indirect Impacts to Adjacent Open Space

As currently proposed, mitigation measures intended to protect conservation areas are not adequate to ensure sensitive species, including the gnatcatcher, will continue to be supported within the project site. For example, mitigation measure BIO-1.1c provides a 50-foot buffer between coastal sage scrub (breeding habitat for the gnatcatcher) and park features (i.e., viewing areas, benches, and an amphitheater). Noise generated by an amphitheater located 50 feet from coastal sage scrub has the potential to disrupt nesting birds, depending on the location and timing of use of the amphitheater. We recommend that the EIR include a thorough discussion of the following project elements to clarify the quality and extent of habitat for sensitive species that will be supported in the proposed conservation areas:

- a. **Recreational Facilities.** Please clarify the location and intended use of all recreational facilities, with consideration of proposed Mitigation Measures. Given proposed recreational facilities, identify what portions of the conservation areas are anticipated to support sensitive species;
- b. **Fuel Modification Zones.** A Fire Management Plan is not included with the recirculated EIR for public review. With respect to defensible space, the EIR should fully describe and identify the location, acreage, and composition of defensible space within the proposed project footprint. The City, through its planning processes, should ensure that defensible space is provided and accounted for within proposed development areas, and not included in conservation areas. Impacts to native vegetation communities to create defensible space should be treated as permanent impacts and mitigated as such. The regular disturbance associated with thinning vegetation in fuel modification zones increases the extent of non-native weedy species and has the potential to result in the spread of weedy species to conservation areas. Therefore, we recommend that fuel modification zones be planted and maintained with native vegetation that is on Orange County Fire Authority's list of approved species for fuel modification zones¹ and that maintenance be restricted to removing non-native species and species that pose an unacceptable fire risk; and,
- c. **Night Lighting.** Illuminated habitats should not be considered as conserved opened space, but rather included in the calculation of permanent impacts associated with the project. As currently proposed, lighting will be directed away from sensitive habitats, but will be installed in conservation areas where, "it cannot be avoided" (Mitigation Measure BIO-1.1c). Night lighting may increase predation risk to gnatcatchers and other sensitive avian species by increasing visibility for predators. Increased nighttime light levels also may disrupt the daily behavioral patterns and

¹ http://www.ocfa.org/_uploads/pdf/guidec05.pdf (see Attachment 8, species with Code o: native to Orange County)

energy budgets of species located within the setback areas; therefore, night lighting should be excluded from areas intended to provide habitat for wildlife, including the gnatcatcher. Please clarify the change in ambient light conditions that are expected given proposed measures to minimize night lighting. The EIR should include a discussion of how it calculated conserved open space and permanent impacts, specifically with regard to night lighting.

The Department is available to assist the City in addressing our concerns. We request an opportunity to review and comment on any response that the City has to our comments and to receive notification of the forthcoming hearing date for the project (CEQA Guidelines; §15073(e)). If you have any questions regarding these comments, please contact Jennifer Turner of the Department at (858) 467-2717.

Sincerely,



Gail K. Sevens
Environmental Program Manager
South Coast Region

cc: Christine Medak, U.S. Fish and Wildlife Service

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