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June 22, 2020  
*Sent by email*

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**Governor's Office of Planning & Research**

**Jun 23 2020**

**STATE CLEARINGHOUSE**

**Subject: Draft Environmental Impact Report for the City of Murrieta's Murrieta Hills  
Specific Plan Amendment Project  
State Clearinghouse No. 2014031045**

Dear Mr. Atkins:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (CDFW), hereafter referred to jointly as the Wildlife Agencies, have reviewed the Draft Environmental Impact Report (DEIR) for the City of Murrieta's (City) Murrieta Hills Specific Plan Amendment Project (Project). The Wildlife Agencies provided comments on a previous version of this Project on December 11, 2009 and January 29, 2010. Comments were also submitted by CDFW on the Notice of Preparation (NOP) of a DEIR on April 15, 2014, and joint comment letters were submitted by the Wildlife Agencies on the current Project's Joint Project Review (JPR) for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) on September 12, 2019, and on the Revised Determination of Biologically Equivalent or Superior Preservation (DBESP) on October 28, 2019.

Following review of the DEIR the Wildlife Agencies are concerned that the City has not implemented the MSHCP as described in the permits and its Implementing Agreement. Our review has identified specific concerns related to MSHCP Reserve Assembly, Linkage functionality and viability, urban/wildlands interface, and potential impacts to white-tailed kite. In addition, and from a CEQA perspective, CDFW is concerned with the adequacy of analysis of impacts to the MSHCP, including cumulative impacts, the Project's assessment of impacts to biological resources, and the identification of appropriate and enforceable mitigation measures.

The Wildlife Agencies recommend that Project development proposed in MSHCP Criteria Cells 5357 and 5358 as well as a portion of the southern half of MSHCP Criteria Cell 5255 be relocated to the northwestern part of Criteria Cell 5254 and/or to Criteria Cell 5253. Further, to maintain functionality of the Linkage, proposed wildlife crossings of the McElwain Road extension should be sized to fully span the drainage and leave space under the crossing for

live-in habitat to facilitate wildlife movement of terrestrial and avian species. They should also be designed to have soft-bottom/natural substrate and be vegetated with sage scrub and/or riparian shrubs throughout their lengths so as to encourage use by medium-sized mammals, avian species, and kangaroo rats.

CDFW also recommends that the City expeditiously pursue the completion of focal surveys for the state-listed fully protected white-tailed kite. Note that take of state listed fully protected species is not authorized by the Natural Community Conservation Plan (NCCP) Permit and is prohibited by Fish and Game Code, except in certain limited situations (Fish & G. Code §§ 3511, 4700, 5050, and 5515).

### **PROJECT DESCRIPTION SUMMARY**

The Project proposes residential, commercial, mixed-use, and natural and improved open space on approximately 972 acres located west of Interstate 215 and primarily south of Keller Road, in unincorporated Riverside County, California. Additional off-site impacts are proposed to approximately 4.23 acres. Approximately 366 acres will be developed to accommodate the proposed master-planned community and associated infrastructure and appurtenances, and approximately 608 acres is proposed for conservation.

The Wildlife Agencies' respective 2009 and 2010 comment letters expressed concerns related to the proposed Project's impacts on Reserve Assembly and the long term functioning of MSHCP-designated Linkages required to provide for the movement of species and exchange of gene flow between larger blocks of conserved habitat. The Project described in the DEIR identifies a reduced Project footprint and increase in the preservation of MSHCP-identified conservation lands. The Wildlife Agencies appreciate that changes have been made to the Project footprint, but as identified in our September 12, 2019 comment letter we remain concerned with the Project's impacts on areas identified for conservation within Cell Group C of the MSHCP, and on the Project's impacts on the assembly of Proposed Linkage 8 and Proposed Constrained Linkage 16.

### **WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN AND PERMITTEE OBLIGATIONS**

CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the MSHCP per Section 2800, *et seq.*, of the California Fish and Game Code on June 22, 2004. On this same date the Service issued a section 10(a)(1)(B) permit for the MSHCP. The MSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of Covered Species in association with activities covered under the permit.

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional

plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP from this Project is necessary to address CEQA requirements. To obtain additional information regarding the MSHCP please go to: <https://www.wrc-rca.org/>.

The City is an MSHCP Permittee and is signatory to the associated Implementing Agreement. Section 13.2 of the Implementing Agreement identifies County and Cities Obligations under the MSHCP and states that the County and Cities will “Adopt and maintain ordinances or resolutions as necessary, and amend their general plans as appropriate, to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this [Implementing] Agreement for private and public development projects...” Following review of the DEIR, the Wildlife Agencies are concerned that the City has not implemented the MSHCP as described in the permits and its Implementing Agreement.

#### MSHCP Reserve Assembly

The majority of the Project is located within the Lower Sedco Hills Subunit (SU2) of the Sun City/Menifee Area Plan and covers all MSHCP Criteria Cells (i.e., 5252, 5253, 5254, 5255, 5355, 5356, 5357, 5358), of Cell Group C. The MSHCP conservation description for Cell Group C states:

*Conservation within this Cell Group will contribute to assembly of Proposed Linkage 8 and Proposed Constrained Linkage 16. Conservation within this Cell Group will focus on chaparral, woodlands and forest, a small area of coastal sage scrub, and grassland. Areas conserved within this Cell Group will be connected to coastal sage scrub and chaparral habitat proposed for conservation to the south in Cell Groups H and I and Cell #5460 in the Southwest Area Plan. Conservation within this Cell Group will range from 60%-70%, focusing on the southern, central and eastern portions of the Cell Group.*

As stated in the first sentence of the MSHCP’s conservation description for Cell Group C, the key conservation objective of Cell Group C is to contribute to the assembly of Proposed Linkage 8 and Proposed Constrained Linkage 16. The language that follows in the conservation description, identifies the habitat types, spatial configuration, and size range of the targeted conservation to support the long-term function of the Linkages for their associated Planning Species (defined by the MSHCP as “Subsets of Covered Species that are identified to provide guidance for Reserve Assembly in Cores and Linkages and/or Area Plans”).

The MSHCP defines Linkage as: “A connection between Core Areas with adequate size, configuration and vegetation characteristics to generally provide for “Live-In” Habitat and/or provide for genetic flow for identified Planning Species,” and Constrained Linkage as: “A constricted connection expected to provide for movement of identified Planning Species between Core Areas, where options for assembly of the connection are limited due to existing

patterns of use.” Core Area is defined as “A block of Habitat of appropriate size, configuration, and vegetation characteristics to generally support the life history requirements of one or more Covered Species.”

The DEIR concludes that because the Project proposes to conserve approximately 608 acres, which, when taken in combination with lands that have already been conserved in Cell Group C, the Cell Group is on track to meet its conservation acreage target, and therefore the Project is consistent with the MSHCP. The Wildlife Agencies disagree that the Project is consistent with Reserve Assembly (defined by the MSHCP as the “Acquisition and conservation of Additional Reserve Lands”). Project development is proposed to encroach into the southern, central, and eastern portions of the Cell Group which are areas identified for conservation as described in the conservation description for Cell Group C in the MSHCP. The Service articulated concerns regarding development in portions of Cell Group C described for conservation in their December 11, 2009 letter, and the Wildlife Agencies submitted similar concerns to the City regarding development configuration in our September 12, 2019 comment letter (September 2019 letter) on the Project’s Joint Project Review (JPR) 09-02-17-01.

Following review of the DEIR the Wildlife Agencies’ assessment of the Project remains unchanged. The Project footprint is not consistent with the MSHCP’s identified spatial configuration of conservation lands in Cell Group C, and therefore is not consistent with MSHCP Reserve Assembly. The Wildlife Agencies’ determination (for both the JPR and this DEIR) is based on the proposed location of Project development within Cell Group C and Project-related and long-term impacts to the functionality of Proposed Linkage 8 and Proposed Constrained Linkage 16.

As described above, the key conservation objective of Cell Group C is to contribute to the assembly of Proposed Linkage 8 and Proposed Constrained Linkage 16. The MSHCP identifies that a Linkage needs to be of adequate size, configuration, and support habitat characteristics to provide live-in habitat and/or provide for genetic flow for identified Planning Species. The MSHCP Planning Species for Proposed Linkage 8 are Quino checkerspot butterfly, western pond turtle, southern California rufous-crowned sparrow, Bell’s sage sparrow, southwestern willow flycatcher, loggerhead shrike, coastal California gnatcatcher, least Bell’s vireo, Stephens’ kangaroo rat, and bobcat.

The objective of a Constrained Linkage is to provide for the movement of MSHCP Planning Species between Core Areas. The MSHCP Planning Species for Proposed Constrained Linkage 16 are Quino checkerspot butterfly, coastal California gnatcatcher, and bobcat.

As described above, the Wildlife Agencies’ September 19 letter discussed that the central issue regarding the Project and MSHCP Reserve Assembly is not the acreage numbers, but, rather, the location of the proposed development in the Cell Group, since the purpose of Cell Group C is to conserve a broad wildlife corridor (Linkage 8) that is well connected to the adjoining eastern wildlife corridor (Constrained Linkage 16) to facilitate the regular

movement of medium-sized mammals (e.g., bobcats) and other wildlife species (including coastal California gnatcatcher), between the two wildlife corridors.

The Wildlife Agencies appreciate that the Project proponent has reduced the acreage of the proposed development compared to the 2009 version, but because Project development is still proposed within parts of the Cell Group described for conservation, the Project will not only decrease the size and spatial configuration of conservation lands needed by the Planning Species, but will also increase edge effects from the extension of development into Criteria Cells 5357 and 5358. Further, in combination with the undersized crossing at proposed McElwain Road, the Wildlife Agencies are concerned that the Project will constrain Planning Species movement and use, ultimately limiting Planning Species connectivity across the two Linkages. As articulated to the City in previous comment letters, it is not enough to meet the conservation acreage goals for a given Cell or Cell Group, Reserve Assembly must support the function of the MSHCP Conservation Areas. The December 11, 2009, JPR comment letter from the Service states:

*Although 793 acres of the project site is proposed for conservation, these acres are not configured in a biologically meaningful manner. Moreover, the proposed conservation is not consistent with the cell criteria to conserve within the central and eastern portions of the cell group. The proposed residential development would occur within the central portion of Proposed Linkage 8... The proposed development would constrain and fragment Proposed Linkage 8 and substantially increase edge effects to this linkage. The area of the proposed specific plan is of particular importance to reserve configuration given that a constrained linkage is anticipated to transition into a linkage as defined by the MSHCP (i.e., "generally provide for 'live-in' habitat and/or provide for genetic flow").*

Additionally, CDFW's January 29, 2010, comment letter on the Determination of Biologically Equivalent or Superior Preservation (DBESP) states:

*The uplands proposed for conservation will contribute to Proposed Linkage 8 and Proposed Constrained Linkage 16. The linkage provides live-in habitat for species and also provides for movement of species. Riparian areas provide important foraging habitat and movement and dispersal corridors for mammals, such as bobcat...because the project has the potential to impact wildlife corridors, the Department [CDFW] would like to discuss potential modifications to the project...*

Due to the proposed configuration of the Project's development, the Wildlife Agencies' concerns regarding the Project's impacts on the assembly of Proposed Linkage 8 and wildlife movement between the two wildlife corridors remain the same as in our previous letters to the City regarding this Project. Unless the Project's configuration can be changed such that it would not constrain the connection between the two wildlife corridors and reduce edge effect, the Wildlife Agencies cannot find that the proposed Project is consistent with Sections 3.2.3 and 3.3.3 of the MSHCP. As such, the Wildlife Agencies disagree with the City's conclusion

pertaining to Impact 4.3-6 (“Would the Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan?”) that the Project will have a less than significant impact with mitigation incorporated, and contend that without revisions to the Project development footprint, the Project will have a substantial adverse effect on an adopted Habitat Conservation Plan and Natural Community Conservation Plan.

To adequately address the City’s obligations as a Permittee to the MSHCP and its Implementing Agreement, ensure consistency with the MSHCP, and reduce project impacts to MSHCP Reserve Assembly, the Wildlife Agencies recommend that Project development proposed in MSHCP Criteria Cells 5357 and 5358 as well as a portion of southern half of MSHCP Criteria Cell 5255 be removed and relocated to the northwestern part of Criteria Cell 5254 and/or to Criteria Cell 5253.

#### MSHCP Linkage Functionality and Viability

The DEIR fails to adequately discuss how the Project will ensure the functionality and viability of Proposed Linkage 8 and Proposed Constrained Linkage 16. Further, the DEIR does not include a discussion/analysis of the potential cumulative effects of the Project, the proposed Interstate 215 (I-215) - Keller Road Interchange Project, and the proposed widening of I-215 on the functionality and viability of the Linkages.

The development and maintenance of functioning Linkages is paramount to the success of the MSHCP. As identified in the MSHCP, Proposed Linkage 8 provides live-in habitat for a multitude of species and both Proposed Linkage 8 and Proposed Constrained Linkage 16 provide for the movement of species. The assembly and conservation of a biologically/ecologically suitable (in terms of habitat and spatial characteristics) connection between these two Linkages will facilitate the long-term viability of associated MSHCP Planning Species, and consequently the MSHCP overall. However, based on review of the DEIR, the Wildlife Agencies have significant concerns with the Project’s impact on the characteristics and configuration of each of the Linkages, not only individually, but also at their interconnection.

As previously described, Proposed Linkage 8 provides live-in habitat for multiple bird species (including coastal California gnatcatcher), Quino checkerspot butterfly, and Stephens’ kangaroo rat. The MSHCP identifies that Proposed Linkage 8 provides “Live-In Habitat for over 50 pairs of coastal California gnatcatcher, as well as a connection to other key populations of gnatcatcher...” The MSHCP also identifies that the Linkage may be used by coastal California gnatcatcher to disperse to other Core Areas supporting gnatcatchers. The coastal California gnatcatcher is also identified as a Planning Species for Proposed Constrained Linkage 16.

The MSHCP also identifies that Proposed Linkage 8 and Proposed Constrained Linkage 16 will provide a dispersal and/or movement Linkage for Quino checkerspot butterfly. Further,

Proposed Linkage 8 is identified as providing live-in habitat for small and medium mammals, and both Proposed Linkage 8 and Proposed Constrained Linkage 16 are identified as providing for the movement of mammals, such as bobcat, to other Core Areas/Linkages.

The DEIR provides insufficient information for the Wildlife Agencies to concur with the City's finding, related to Impact 4.3-4 ("Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?") of less than significant with mitigation incorporated, and the City's finding, related to Impact 4.3-6 ("Would the Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan?") of less than significant with mitigation incorporated.

As stated above, Project development is proposed to occur in Proposed Linkage 8 at its connection with Proposed Constrained Linkage 16. Proposed Linkage 8 is intended by the MSHCP to maintain "live-in habitat" for its associated Planning Species, and in combination with Proposed Constrained Linkage 16, a viable corridor for the movement of species. Live-in habitat means that the Linkage is supposed to maintain sufficient width and a large quantity of acres sheltered from the ecological impacts of surrounding developed land uses such that the corridor will maintain resident populations inside the corridor of its Planning Species (as opposed to only maintaining occasional transits of the corridor by non-resident individual animals). Viable functioning of the connection of Proposed Linkage 8 and Proposed Constrained Linkage 16 requires treatment and management of edge conditions along these Linkages, which for Proposed Constrained Linkage 16 will be necessary to ensure that it provides habitat and movement functions for species using the Linkage.

The Wildlife Agencies were unable to locate a discussion or description of the characteristics and configuration of the intersection of Proposed Linkage 8 and Proposed Constrained Linkage 16 within the Project, or how the Project will be designed to promote the functionality of this connection for the associated Planning Species, particularly bobcat and coastal California gnatcatcher.

The MSHCP identifies that because coastal California gnatcatchers have "...lower dispersal capabilities than other small passerine birds, the dispersal of juveniles requires a corridor of native vegetation which provides foraging and cover opportunities to link larger patches of appropriate sage scrub vegetation" (MSHCP page 3-103). Section 7.5.2 of the DEIR specifically identifies that coastal California gnatcatcher "may require assistance to maintain Linkages due to assumed poor flight ability," and "wide road undercrossings or naturalized land bridges over roadways/impediments (overpasses)... may be required to assure movement of the species and resulting genetic flow."

MSHCP Section 7.5.3 provides guidelines for a basic framework for wildlife crossing recommendations "and are to be applied where there is either known wildlife movement, and/or in portions of the MSHCP Conservation Area that are assembled to provide for

wildlife movement.” The “Specific Initial Guidelines for Wildlife Movement Design Considerations within the Criteria Area” identify that “crossing facilities will be vegetated as naturally as possible to mimic the surrounding natural crossing area.” In some instances, vegetation may need to be tailored to match the needs of the focused species. This includes use of “natural objects, such as stumps, rocks, and other natural debris within the crossing facility to create cover for wildlife and to encourage the use of crossings.”

Because of the importance of these Linkages for dispersal of coastal California gnatcatchers, the MSHCP identifies that impacts to Proposed Constrained Linkage 16 (associated with covered activities), need to consider not only a terrestrial crossing for wildlife, but also an avian crossing which considers the dispersal requirements of coastal California gnatcatchers. The MSHCP also identifies the importance of treatment and management of edge conditions along these Linkages, to ensure that the Linkages (particularly Proposed Constrained Linkage 16) provide habitat and movement functions for species using the Linkage.

The DEIR describes that the McElwain Road extension includes “placement of a six-foot by six-foot box culvert in the channel bottom for wildlife movement, and placement of a second four-foot by four-foot box culvert outside of the 100-year floodplain to allow for wildlife movement during high storm events” (DEIR, page 4.3-38). The City’s northward extension of McElwain Road, agreed to by the Wildlife Agencies as a Minor Amendment (2017-01) to the MSHCP, will impact Proposed Linkage 8 and the functionality of the connection of Proposed Linkage 8 and Proposed Constrained Linkage 16. The Wildlife Agencies September 2019 letter raised concerns regarding these impacts and identified that the Project’s McElwain Road crossings are insufficiently sized.

As described in the Wildlife Agencies’ September 2019 letter, the northward extension of McElwain Road will cross the width of the Proposed Linkage 8. The September 2019 letter identified that the design and size of this crossing will likely discourage mammal and reptile movements to and from Constrained Linkage 16 (east of the Project’s extension of McElwain Road). The Wildlife Agencies recommended that the City condition the Project to include wildlife undercrossings or overpasses of sufficient size and supporting appropriate habitat and vegetative cover characteristics (see MSHCP Section 3.1.4) to support and maintain the functionality and viability of the Linkage for its identified Planning Species.

Because the DEIR describes the same undercrossings as identified in the Project’s 2019 JPR (a 6 foot by 6 foot by 137 foot floodplain box culvert supplemented by a nearby upland 4 foot by 4 foot by 137 foot box culvert), the Wildlife Agencies reiterate our concerns that the crossings are of insufficient size and lack appropriate habitat and vegetative cover characteristics to facilitate use for dispersal or movement by the Planning Species. CDFW contends that without the inclusion of such information in the DEIR, a fair argument can be made that the Project may have a significant adverse effect on wildlife movement.

As previously mentioned in this letter, the Wildlife Agencies encourage the City to review Section 7.5.3 of the MSHCP, which provides guidelines for a basic framework for roads to



facilitate wildlife connectivity and Reserve Assembly, for features such as Proposed Linkage 8 and Proposed Constrained Linkage 16. The City should ensure that the crossings are "...vegetated as naturally as possible to mimic the surrounding natural crossing area..." and "...tailored to match the needs of the focused species." As mentioned, the Wildlife Agencies are particularly concerned that the proposed crossings will not be tailored to match the needs of the coastal California gnatcatcher, as well as other Planning Species.

To accomplish the City's role in MSHCP implementation under the MSHCP permits and Implementing Agreement, ensure consistency with the MSHCP, and conclude that the Project will have a less than significant effect on wildlife movement the Wildlife Agencies encourage the City to revise the DEIR and condition the Project to maintain the functionality of the Linkage at McElwain Road by ensuring that the wildlife undercrossings and/or overpasses are sized to fully span the drainage and leave space under the crossing for live-in habitat to facilitate wildlife movement of terrestrial and avian species. Further, they should be designed to include soft-bottom crossings vegetated with sage scrub and/or riparian shrubs throughout the length of the wildlife crossing so as to encourage use by medium-sized mammals, avian species, and kangaroo rats. The wildlife crossings should also be designed such that routine maintenance of the crossings is not needed.

The Wildlife Agencies recommend that the City review the habitat needs and dispersal constraints of the coastal California gnatcatcher to ensure that the crossings facilitate use by this species. Without this accommodation, the Wildlife Agencies contend that the Project will have a substantial adverse effect on special status species identified by CDFW and the Service, a substantial adverse effect on wildlife movement and wildlife corridors, and a substantial adverse effect on an adopted Habitat Conservation Plan and Natural Community Conservation Plan.

#### Urban-Wildlands Interface

Portions of MSHCP Guidelines Pertaining to the Urban/Wildlands Interface (Section 6.1.4) relevant to this Project include drainage, lighting, noise, and trespass. The Wildlife Agencies are concerned by the DEIR's lack of specific information identifying how the Project will address indirect effects to Proposed Linkage 8 and Proposed Constrained Linkage 16, particularly at the connection of Proposed Linkage 8 and Proposed Constrained Linkage 16.

As discussed above, the MSHCP identifies the importance of the treatment and management of edge conditions along these Linkages, to ensure that the linkages provide habitat and movement functions for species using the Linkage. The DEIR should specifically address how the Project will ensure that these Linkages provide habitat and movement for their associated Planning Species not only during construction, but also post-project and into the future.

The MSHCP identifies that management of edge conditions is critical to the viability and long-term functionality of Proposed Constrained Linkage 16. Despite identifying the critical

importance of the management of edge conditions for this Linkage, the DEIR does not include information or discussion that addresses how the Linkage will function for its corresponding Planning Species in the presence of the Project in the long term. As previously discussed, the proposed crossing of the Linkage at McElwain Road is too narrow and is not expected to provide habitat and cover to facilitate movement by coastal California gnatcatcher, bobcat, and other species. The DEIR does not describe how noise, human trespass, introduction of domestic predators, etc., will be managed to ensure that the Linkage continues to provide live in habitat and a viable movement corridor. The Wildlife Agencies recommend that the DEIR be revised to provide specific information and assurances that identify how the Project will have a less than significant effect on the long-term viability and functionality of this Linkage from edge effects. Unless addressed in the DEIR, the Wildlife Agencies contend that a fair argument can be made that edge effects will reduce the long-term viability and functionality of this Linkage, constraining or precluding Planning Species movement through the Linkages.

The MSHCP identifies that Proposed Linkage 8 represents a large block of interconnected habitat with a low perimeter to area ratio. This configuration is important to support the Linkages' associated Planning Species. The Project extends into the areas described for conservation and changes the perimeter to area ratio through an increased project interface with the conservation area. This configuration increases the edge effects to Proposed Linkage 8 from on-going fuel modification, as well as impacts associated with lighting, noise, unmanaged human use, invasive species, and introduction of domestic predators. The Wildlife Agencies are particularly concerned by the high potential for non-passive human use (including destructive use) and introduction of domestic predators into the proposed MSHCP conservation lands.

We were unable to find discussion or identification of specific and enforceable measures that will minimize destructive use of the MSHCP conservation lands by humans and domestic predators. The Wildlife Agencies recommend that the DEIR be revised to include additional information, and specific and enforceable mitigation measures to address access by domestic predators and destructive human use and any associated habitat impacts.

#### *Fuel Modification*

The Project is in a high fire hazard area. The DEIR has identified Fuel Modification Zones along the edges of the Project which resulted in a reduced Conservation Area than originally proposed in the JPR. The Wildlife Agencies are aware that Riverside County Fire Department and other fire agencies are increasingly requesting wider fuel modification zones in and adjacent to natural vegetation than those described in the DEIR. For example, CalFire has recently proposed the clearance of a 300-foot wide by 15-mile long fuel modification zone in natural habitat adjacent to existing development along the eastern slope of the Santa Ana Mountains. Because of this recent proposal by CalFire, the Wildlife Agencies are concerned that the Conservation Area may be required to bear the burden of future fuel modification requests. To reduce fire hazard and potential future requests for fuel reduction in the MSHCP Conservation Area, the Wildlife

Agencies recommend the incorporation of hardened or ignition resistant barriers around the perimeter of the developed Project and construction of structures (e.g., houses and other buildings) at least 100 feet back from the edge of the conservation areas.

The Project's configuration includes cul-de-sacs surrounded by MSHCP conservation areas. Because of the juxtaposition of adjacent natural habitat in the MSHCP Conservation Areas, the Wildlife Agencies are concerned that the development may make future requests, or be mandated, to place new ingress/egress routes through the MSHCP conservation area to address human safety concerns from fire. Because of these concerns and we recommend modifying the Project design to minimize the interface between surrounding natural vegetation and structures, thereby further minimizing human safety risk from fire. This could be achieved by shifting the Project north and moving or reducing Planning Areas 6 and 7 so that they are not isolated areas surrounded by vegetation.

#### *Domestic Pets and Non-passive Human Trespass*

The Project has a high edge area that intrudes into the MSHCP conservation area. Consequently, due to the proximity of homes along the conservation boundary, the risk that domestic cats will trespass into the conservation areas and prey on MSHCP Covered Species is a significant concern that needs to be addressed in the DEIR. Predation of native species by domestic predators, particularly domestic cats, is a significant and universal concern: cats have been documented to severely diminish local populations of bird, reptile, and small mammal species. The DEIR does not address how the Project will limit and/or prevent the incursion of domestic predators into the MSHCP conservation area, nor does it analyze the impact of these predators on native wildlife populations should appropriate barriers not be required by the Project.

The Wildlife Agencies recommend that the Project include cat-proof barriers along the interface between the Project and the proposed adjacent conservation area in proposed Linkage 8. The types of barriers, proposed locations for installation, and their effectiveness, should be identified and discussed in the DEIR.

Non-passive and destructive human use of wildlands also has the potential to have a significant negative effect on natural habitats and associated plant and wildlife populations. The Wildlife Agencies recommend that barriers to prevent non-passive and destructive human use be included as a Project design element. Barriers, such as 8-foot tall fencing made of secure and fire-proof materials (such as brick, stone or metal) would serve a dual function in prevent non-passive and destructive human use and aiding fire protection. The addition of roller bars, angled fence tops, or other effective fence designs would also serve to prevent domestic predators from entering the MSHCP conservation area.

The DEIR discusses the potential use of clear panels of glass or plastic along the perimeter the development and MSHCP conservation area. Please note that clear glass/plastic are a hazard to birds which fly into them and die. The Wildlife Agencies recommend that the City

require fencing that does not pose a wildlife mortality risk, and that performs a dual function, in terms of minimizing non-passive human use, incursions by domestic predators, and fire protection.

### *Trails*

Trails located in MSHCP conservation areas are required to be consistent with MSHCP guidelines for trails (MSHCP Section 7), identified on the approved trails map (Figure 7-4), and being jointly approved by the RCA and the Wildlife Agencies. The DEIR discusses that the development will include a network of internal trails. The Wildlife Agencies are very supportive of this proposal but we are concerned that the internal trails system may result in unmanaged use of the MSHCP Conservation Area where routes terminate or traverse areas adjacent to the conservation lands.

The Wildlife Agencies support management of the existing, unauthorized multi-use trails that traverse the surrounding open space with Project implementation as identified in the DEIR and seek clarification on proposed use of existing dirt road trails within the conservation area. Table 4.10-4 Murrieta General Plan 2035 Consistency, states: “Sidewalks and existing dirt road trails will provide pedestrian connections to the various neighborhoods, recreational amenities, open spaces, and the planned commercial/mixed-use area within the community. (See Exhibit 3-8, *Recreation and Open Space Master Plan*). The Wildlife Agencies request that the DEIR clearly identify that trails will be consistent with MSHCP Section 7.

### Adequacy of Assessment of Impacts to Biological Resources

Surveys for biological resources are dated and should be refreshed. The DEIR identifies that general biological assessments of the Project were completed annually between 2005 and 2008; sensitive/rare plant surveys were completed in 2006, 2008, and 2012; and targeted protocol-level bird surveys were completed as follows: least Bell’s vireo (2006, 2008, and 2012), willow flycatcher (2006), western yellow-billed cuckoo (2006), and burrowing owl (2006, 2008, 2012, and 2018). CDFW is concerned that, for the purposes of CEQA, the surveys may be inadequate to form a complete inventory of the species present in the Project area for the following reasons:

1. Most of the surveys are at least eight years old.
2. For sensitive/rare plants: Given the date of the surveys, it is possible that some species that were not observed during the original surveys may now occur onsite. Also, some sensitive plant species may have only been present in the seedbank when surveys were previously conducted.

Given the lapse in time (at least eight years) between the completion of most surveys, the Wildlife Agencies recommend that new surveys be conducted to provide a current and defensible assessment of Project impacts to biological resources.

*Protection of Riparian/Riverine and Vernal Pool Resources (MSHCP Section 6.1.2)*

Page 4.3-10 of the DEIR states “A DBESP analysis was prepared for this Project to provide information necessary for the City of Murrieta to determine if the Project meets the MSHCP conservation objectives (Appendix 9.3.2). Based on the DBESP assessment, the Project is consistent with 6.1.2 of the MSCHP, which is discussed in Section 4.3.5.” The Wildlife Agencies disagree that the Project is consistent with Section 6.1.2 of the MSHCP. This was conveyed to the City via the Wildlife Agencies’ October 28, 2019 joint comment letter on the Project’s revised DBESP (October 2019 letter), and in our September 2019 letter which conveyed that Project implementation of Section 6.1.2 of the MSHCP is not yet complete. Because of the date of surveys, incomplete assessment of impacts to MSHCP Section 6.1.2 within Project proposed fuel modification zones, and because surveys of off-site areas associated with the McElwain Road Extension have not yet been completed, the Wildlife Agencies’ September 2019 and October 2019 letters requested revisions to the DBESP to address these concerns. Until these concerns are addressed, it is premature for the City to conclude that the Project is consistent with Section 6.1.2 of the MSHCP. Therefore, MSHCP implementation remains incomplete.

The Wildlife Agencies’ October 2019 letter expressed concerns with the City’s differentiation of “swales” and “streambed” in stream mapping figures associated with the DBESP and the lack of identification of impacts to areas mapped as “swales.” The Wildlife Agencies were unable to determine if our recommendation to reclassify swales as streambed was addressed in the DEIR. Given that features mapped as swales are *directly* connected to areas immediately upstream and downstream of features that convey flows, the Wildlife Agencies contend that a fair argument can be made that areas mapped as swales also convey flows. The Wildlife Agencies recommend that the DEIR and associated Appendices be revised to reflect that features mapped as swales also convey flows. An accounting of impacts to swales should be addressed in associated streambed impact calculations, and mitigation should be revised accordingly.

The Wildlife Agencies’ October 2019 letter also expressed concerns with the long-term function and value of habitat within the “avoided” 37-acre linear nature park. Though the DEIR identifies that MSHCP section 6.1.2 and Fish and Game Code section 1600 *et seq.* resources will be left “unmaintained” within this area, the DEIR does identify that if mortality of oaks/willows occurs, within this area, trees will be removed/chipped to reduce fuel load. The DEIR also references management of dead branches within this area (also to minimize fuel load). The Wildlife Agencies appreciate that the Project has attempted to avoid impacts to the centrally located ephemeral stream and its associated riparian habitat, however the identification of future fuel load management within this area constitutes an impact to MSHCP section 6.1.2 as well as Fish and Game Code section 1600 *et seq.* resources.

Fuels management of dead trees/branches will likely require use of heavy equipment, and the removal of these features will likely result in a loss/reduction of important roosting/nesting habitat. The “Operations” section of the DEIR does not address these future impacts to this

area. Because of concerns related to long-term fuels management coupled with edge-effects (lighting, noise, trash, domestic animals) that will permanently impact this habitat, the Wildlife Agencies recommend that the City consider the long-term function and value of this area when finalizing the formulation of mitigation that is biologically equivalent or superior to avoidance. The Wildlife Agencies reiterate our comments and findings related to impacts to this area, as stated in our October 2019 letter: “Given the maturity and high functions and values of the MSHCP riparian/riverine resources onsite, and the DBESP’s proposal to mitigate only a portion of MSHCP riparian/riverine areas subject to fuel modification, the Wildlife Agencies find that the mitigation strategy proposed in the DBESP is not biologically equivalent or superior to preservation.” We recommend that the City revise the DEIR to address these concerns.

The Wildlife Agencies are also concerned with the City’s assessment of potential impacts to vernal pools and associated resources. Page 4.3-9 of the DEIR states “The Project site was surveyed for habitat (such as vernal pools or ephemeral ponds) that could support fairy shrimp. Indicators of potential fairy shrimp habitat that were searched for included basins, ruts, cracked mud, algal mats, and drift lines.” The DEIR concludes that “no potential suitable habitat occurs within the Project study area or off-site areas for these species, and no focused surveys were conducted or are required,” and “no fairy shrimp surveys are required as fairy shrimp habitat does not occur on the Project site, within the Keller Road outfall area, or within the off-site access area for the McElwain Road extension” (DEIR, page 4.3-17).

The Wildlife Agencies are uncertain of the date of vernal pool surveys and question the City’s conclusion that “no potential habitat occurs within the off-site access area for the McElwain Road extension” given that the Project team has not yet secured access to survey this area. The Wildlife Agencies recommend that new surveys be completed during appropriate times of year to provide a current and defensible assessment of potential impacts to vernal pool resources across the entirety of the Project site.

Because of uncertainty related to the date of vernal pool survey efforts across the Project site, and because surveys have yet to be completed at the off-site McElwain Road extension, the Wildlife Agencies recommend that an amendment to the current JPR/DBESP be submitted to the Wildlife Agencies for review following the completion of current surveys, and surveys within the off-site McElwain Road Extension. The Wildlife Agencies recommend that the City revise Mitigation Measure (MM) BIO-7 as follows (additions in **bold**, deletions in ~~strikethrough~~):

MM BIO-7: MSHCP Section 6.1.2 Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools. Upon obtaining access, the Project Applicant shall conduct a full biological assessment for MSHCP Section 6.1.2 resources at the McElwain Road off-site area prior to ground-disturbing activities. **An updated, comprehensive assessment for MSHCP Section 6.1.2 resources shall also be completed over the entirety of the Project area prior to ground disturbing activities.** The habitat assessments (and

surveys if necessary) will be conducted by a botanist/biologist with expertise in the plant and animal species of concern and their habitat in accordance with the survey requirements set forth in Section 6.1.2 of the MSHCP. The survey(s) shall be conducted under conditions conducive to encountering the species (i.e., appropriate time of year [breeding/blooming season], time of day, and weather conditions), as dictated by professional requirements and standards. Prior to any ground-disturbing activities, the results of ~~this~~ **these** assessments will be provided to the RCA and the Wildlife Agencies for review, and to the Lead Agency for final approval. If species associated with Riparian/Riverine Areas and Vernal Pools are observed, the Project Applicant shall immediately inform RCA and the Wildlife Agencies, and coordinate on the potential need for **submission of an amended DBESP, including** appropriate mitigation, prior to initiating ground disturbance.

If surveys detect resources or impacts beyond those analyzed and mitigated in this DEIR, the Wildlife Agencies recommend that the DEIR be revised and recirculated for public review.

*Protection of Narrow Endemic Plant Species (MSHCP Section 6.1.3) and Species Requiring Additional Surveys and Procedures (MSHCP Section 6.3.2)*

As described above, and in the Wildlife Agencies September 2019 letter and October 2019 letter, surveys for narrow endemic plant species and criteria area plant species are outdated. To ensure that the DEIR provides a current and defensible assessment of impacts to biological resources, and demonstrates consistency with the policies and procedures of the MSHCP, the Wildlife Agencies recommend that the City require the Project proponent to conduct updated sensitive plant species surveys within all required survey areas (including off-site areas), during the relevant blooming periods.

The Wildlife Agencies recommend that the City revise MM BIO-4 as follows (additions in **bold**, deletions in ~~strikethrough~~):

MM BIO-4: MSHCP Section 6.1.3 Protection of Narrow Endemic Plant Species. Upon obtaining access, the Project Applicant shall conduct a full biological assessment for MSHCP Section 6.1.3 resources at the McElwain Road off-site area prior to ground-disturbing activities. **An updated, comprehensive assessment for MSHCP Section 6.1.3 resources shall also be completed over the entirety of the Project area prior to ground disturbing activities.** The habitat assessments (and surveys if necessary) will be conducted by a botanist/biologist with expertise in the plant species of concern in accordance with the MSHCP guidance for Area 4 of the NEPSSA. The survey(s) shall be conducted under conditions conducive to encountering the species (i.e., appropriate time of year [blooming season), as dictated by professional requirements and standards. Prior to any ground-disturbing activities, the results of this assessment will be provided to the RCA and the Wildlife

Agencies for review, and to the Lead Agency for final approval. If NEPSSA species are observed, the Project Applicant shall immediately inform RCA and the Wildlife Agencies, and coordinate on the potential need for **submission of an amended DBESP, including** appropriate mitigation, prior to initiating ground disturbance

If surveys detect species occurrences that would increase impacts beyond those analyzed and mitigated in this DEIR, the Wildlife Agencies recommend that the DEIR be revised and recirculated for public review.

As articulated in the Wildlife Agencies September 2019 letter and October 2019 comment letter, the Wildlife Agencies remain concerned with the City's determination that the population of round-leaved filaree (*California macrophylla*, formerly *Erodium macrophyllum*; filaree) has no long-term conservation value. The DEIR discusses (page 4.3-20) that surveys were conducted during below average rainfall years (2006: 66 percent of normal; 2008: 88 percent of normal; and 2012: 63 percent of normal), and concedes that low rainfall "...may have resulted in plants...occurring in smaller numbers." The DEIR goes on to state: "This suggests that it is possible that a slightly larger number of individuals of round-leaved filaree could exist at this location in a normal rainfall year."

Populations of annual plants are present in a seed bank that is always larger than the number of plants that express at any given time, and the City has identified that larger numbers of round-leaved filaree have the potential to occur onsite in wetter years. The Wildlife Agencies contend that the location of filaree on the Project site should be conserved. The plants were detected in a small clay lens adjacent to a larger (approximately 5 acre) clay lens that is in the portion of MSHCP Criteria Cell 5255 described for conservation but is currently proposed for development by the Project. Shifting development out of the southern section of Criteria Cell 5255 as previously recommended by the Wildlife Agencies would preserve this occurrence. If the City determines that complete avoidance of the population of round-leaved filaree is not permissible, mitigation for impacts to this population should be identified in the DEIR (note that the Wildlife Agencies do not consider fuel modification to be avoidance; rather it is an impact). As a Permittee to the MSHCP the City needs to comply with the policies and procedures of the MSHCP. The Wildlife Agencies recommend that the City propose a specific and enforceable mitigation strategy for this population that provides biologically equivalent or superior to avoidance, as described in MSHCP Section 6.3.2.

The DEIR identifies that the McElwain Road extension has not yet been surveyed for sensitive plant resources and affirms that "a general full biological assessment of the McElwain Road off-site access area for MSHCP Section 6.1.3 resources will be conducted once right-of-entry is acquired" (DEIR, page 4.3-18). Because surveys have yet to be completed at the off-site McElwain Road extension, the Wildlife Agencies recommend that the results of these surveys be submitted to the Wildlife Agencies, along with the results of revised, current surveys conducted within all required survey areas within the Project, during the relevant blooming periods.



## **STATE FULLY PROTECTED SPECIES**

The DEIR identifies that white-tailed kites are present in the study area. Based on review of the Biological Resource Reports and associated appendices (DEIR Appendix 9.3), white-tailed kites were documented during all avian surveys conducted: 2006, 2008, and 2012 surveys for least Bell's vireo, and 2006 and 2008 surveys for southwestern willow flycatcher.

White-tailed kite is a state listed fully protected species. Take of state listed fully protected species is not authorized by the Natural Community Conservation Plan (NCCP) Permit and is prohibited by Fish and Game Code, except in certain limited situations (Fish & G. Code §§ 3511, 4700, 5050, and 5515). The MSHCP Implementing Agreement states (section 15.5) "Although fully protected species are included in the list of Covered Species, Take of these species is not authorized in the NCCP Permit and is prohibited by the California Fish and Game Code... CDFG acknowledges and agrees that if the measures set forth in the MSHCP are fully complied with, the Covered Activities are not likely to result in Take of these species."

The "measures set forth in the MSHCP" are the biological objectives for white-tailed kite. These measures were developed to ensure that impacts to the species were mitigated to below a level of significance. The DEIR (page 4.3-26) incorrectly states that white-tailed kite are "fully covered under the MSHCP and require no mitigation other than to show MSHCP compliance through specific habitat assessments, applicable biological surveys, and the provision of an MSHCP compliance analysis."

MSHCP Objective 4 for white-tailed kite requires buffers and protection from disturbance of known winter roost locations and any other identified roost location (in addition to nests). Specifically, Objective 4 of the MSHCP for white-tailed kite states (emphasis added): "Include within the MSHCP Conservation Area, protect, and buffer from disturbance, the known winter roost area along San Timoteo Creek and any winter roost locations identified in the MSHCP Conservation Area in the future. Buffering of the winter roost area will include Conservation of undeveloped Habitat within a 250-meter radius within the MSHCP Conservation Area around the roost site and may include a variety of Habitats."

Because of the frequency with which white-tailed kites were observed on site during past survey efforts, the site may support resident kites. Consequently, CDFW is concerned that the Project has the potential to impact this species. CDFW recommends that focal surveys for white-tailed kite be completed by an appropriately qualified avian biologist as soon as possible to provide current information regarding potential use of the site by the species. CDFW recommends that results of the surveys be provided to the Wildlife Agencies as soon as possible following completion. Note that identification of kite roosts may require modification of the Project development footprint.

Because current information on white-tailed kites is not available or disclosed in the DEIR, CDFW cannot concur with the City's finding of *less than significant with mitigation incorporated* for Impact 4.3-1 ("Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?").

## NESTING AND MIGRATORY BIRDS

Please note that it is the project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

There is conflicting information in the DEIR on the timing of nesting bird surveys: mitigation measure MM NOI-3 (see page 4.11-27) prohibits construction-related noise within 200 feet of the edge of the MSHCP Conservation Area during the typical breeding season of February 15 to August 31, MM BIO-9 identifies that clearing of vegetation shall occur outside of the bird breeding season (February 15 to August 31), and Section 4.3 identifies the active breeding active breeding season, March 1 through June 30, (see p. 4.3-64 of the DEIR). Please note that some bird species (e.g., raptors) may commence nesting as early as January 1, and passerine species may fledge later than September 1. In addition, the Wildlife Agencies have observed that some bird species are nesting earlier or later in the season than historically has occurred. Therefore, CDFW recommend bird surveys to detect active nests be completed regardless of time of year, and further recommend that MM NOI-3 and MM BIO-9 be revised to require surveys within 72 hours prior to vegetation removal and other ground-disturbing activities. To ensure compliance with the rules and regulations pertaining to nesting birds, surveys should be conducted over the entirety of the disturbance footprint area, including native and non-native vegetation as well as unvegetated, or sparsely vegetated areas. Note that some species may nest directly on the ground, and non-native vegetation (e.g., eucalyptus trees) often provide significant nesting resources for native birds, including raptors.

To ensure compliance with all applicable laws related to nesting birds and birds of prey, CDFW recommends that the City revise MM NOI and MM BIO-9 as follows (additions in **bold**, deletions in ~~strikethrough~~):

**MM NOI-3:** Construction-related noise shall be prohibited within 200 feet of the MSHCP

Conservation Area **if a qualified avian biologist detects** ~~during the typical breeding season of February 15 to August 31 (note that this period may be extended to start January 1 if raptor surveys (required in MM BIO-3, see Section 4.3, page 4.3-46) determine that active nests are found~~ **during a nesting bird survey. A nesting bird survey shall be conducted by a qualified avian biologist within no more than 72 hours of scheduled ground disturbance activities, including staging and site preparation, to determine the presence of nesting birds.** Construction activity within and adjacent to any occupied sensitive habitat areas must not exceed 75 dBA Leq, or ambient noise levels if higher than 75 dBA Leq, during the breeding season. Prior to issuance of land development permits, including clearing or grubbing and grading and/or construction permits for areas within or adjacent to the MSHCP Conservation Area, the applicant shall prepare and submit to the satisfaction of the Development Services Director (or their designee), an acoustical analysis to demonstrate that the 75 dBA Leq noise level is not exceeded at the location of any occupied sensitive habitat areas as determined based on the results the required biological pre-construction surveys. The acoustical analysis shall describe the methods by which construction noise shall not exceed 75 dBA Leq. Noise abatement methods may include, but are not limited to, reoperation of specific construction activities, installation of noise abatement at the source, and/or installation of noise abatement at the receiving areas.

**MM BIO-9: Nesting Bird Clearance Survey.** The clearing of vegetation shall occur ~~outside of the bird breeding season (February 15 to August 31), unless~~ **only if** a qualified biologist demonstrates to the satisfaction of the Lead Agency that all nesting is complete through completion of a Nesting Bird Clearance Survey. A Nesting Bird Clearance Survey report shall be submitted to the Lead Agency for review and approval prior to initiating **staging and site preparation** ~~clearing and grubbing during the breeding season. Clearing of upland vegetation outside of the bird breeding season would not require a Nesting Bird Clearance Survey. Additionally, raptors (birds of prey such as Cooper's hawk and white-tailed kite) are known to begin nest building in January or February. If vegetation clearing is to occur between January 1 and February 15, a nesting raptor survey will be conducted. A buffer zone will be established by the Project biologist for any active raptor nest that is found to prevent impact to nesting raptors.~~ **If white-tailed kite are detected, CDFW shall be notified immediately and all project activity shall halt.**

## **FISH AND GAME CODE SECTION 1602**

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass

into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the activities proposed may substantially adversely affect existing fish and wildlife resources.

Multiple locations in the DEIR state that (page 4.3-3, 4.3-7, 4.3-33) CDFW "verified" the "jurisdictional delineation" in 2016. It is true that CDFW staff attended a site visit in 2016 to review the Project area, however CDFW has no written record of staff providing "verification" of the "jurisdictional delineation." Further, it is not the practice of CDFW to verify or determine jurisdiction until after CDFW receives a complete notification of Lake and Streambed Alteration (LSA), has analyzed Project activities, and provided a draft LSA Agreement. Given that elements of the Project have changed since 2016, and CDFW has not received a revised description of proposed Project activities, any reference to CDFW "verifying" stream mapping within the DEIR is misleading and inaccurate.

The DEIR (page 4.3-7) and the Biological Resource Reports (DEIR Appendix 9.3) also incorrectly infer that CDFW, and CDFW's Lake and Streambed Alteration Program, have adopted the definition of a stream defined in California Code of Regulations, Title 14, Section 1.72, for the purposes of implementing section 1602 of the Fish and Game Code. This is not the case. CDFW recommends that the City remove reference to California Code of Regulations, Title 14, Section 1.72, and instead cite Fish and Game Code section 1600 *et seq.*, when describing CDFW's regulatory authority, which is inclusive of any river, stream, and lake.

Please note that the U.S. Army Corps of Engineers (USACE) has no regulatory authority in determining mitigation for impacts to Waters of the State, as identified in the City's MM BIO-8. CDFW recommends that the City revise MM BIO-8 to correct this error. CDFW's recommended edits are as follows (additions in **bold**, deletions in ~~strikethrough~~):

MM BIO-8 Jurisdictional Delineation. Upon obtaining access to the off-site portion of the McElwain Road corridor and prior to the preparation of applicable permit packages (i.e., CWA Section 401/404 permits and/or CDFW Section 1602 consultation), the Project Applicant shall conduct a jurisdictional delineation of the McElwain Road off-site area, in accordance with all professional rules, processes and procedures, to determine the presence/absence of Waters of the U.S. and/or Waters of the State, including wetlands (the "Off-site JD"). A jurisdictional report shall be prepared of the findings of the Off-site JD, and prior to the initiation of work activities within jurisdictional waters, the Project Applicant shall engage the USACE and prepare applicable permit packages to address any proposed impacts to Waters of the U.S. and the State, including wetlands, if applicable. The final mitigation for impacts to Waters of the U.S. ~~and State~~ will be determined by the USACE during the permitting process. **Final mitigation for impacts to Waters of the State will be determined by**

**the Regional Water Quality Control Board and CDFW under their respective regulations, consistent with MSHCP requirements.**

## **CUMULATIVE IMPACTS**

The Wildlife Agencies find that the assessment of Cumulative Impacts identified, described, and analyzed in Section 4.3.6 of the DEIR is insufficient. Despite referencing the I-215-Keller Road Interchange Project (see DEIR, page 4.3-3), the project was not included in the Cumulative Projects List (Table 4-1) and was not assessed to determine cumulative impacts to biological resources in conjunction with the Project. The DEIR also does not assess the cumulative impacts associated with the future widening of I-215. As described earlier in this letter, the Wildlife Agencies have significant concerns with Project impacts at the crossing of McElwain Road and the viability and long-term functionality of Proposed Linkage 8 and Proposed Constrained Linkage 16. The potential cumulative effects of these Projects highlight the importance of a biologically/ecologically appropriate crossing of McElwain Road to facilitate the viability and functionality of these Linkages.

The Wildlife Agencies recommend that the City revise the Cumulative Impacts section of the DEIR (section 4.3.6) to include an assessment of the cumulative effects of the two aforementioned projects and this Project. As stated, the Wildlife Agencies have significant concerns with the cumulative impacts to Linkage viability and long-term functionality as a result of these projects.

## **PROJECT ALTERNATIVES**

Section 15124(b) of the CEQA Guidelines indicates that an EIR should include “a statement of objectives sought by the proposed Project.” The only objective related to the MSHCP is “Permanently preserve over 600 acres of natural open space under the Western Riverside County MSHCP. This equates to approximately 63 percent of the approximately 972-acre MHSPA area, exceeding the MSHCP minimum conservation requirement of 60 percent for Cell Group C in the Sun City/Menifee Valley Area Plan.” However, as explained above, the MSHCP Reserve Assembly requirements are not solely acreage-based; the configuration and location of conservation must also be evaluated for consistency with MSHCP Criteria. The Wildlife Agencies request revision of objectives sought by the Project to accurately reflect the Permittees’ obligation to demonstrate consistency with the MSHCP. Per the MSHCP, the City has the following obligations under the MSHCP and the IA: “Adopt and maintain ordinances or resolutions as necessary, and amend their General Plans as appropriate, to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and the IA for private and public Development projects. Such requirements include: (1) the collection of Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of this document; (2) compliance with the HANS [Habitat Evaluation and Acquisition Negotiation Strategy] process or equivalent process to ensure application of the Criteria and thus, satisfaction of the local acquisition obligation; (3) compliance with the policies for the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools, set forth in Section 6.1.2 of this

document; (4) compliance with the policies for the Protection of Narrow Endemic Plant Species set forth in Section 6.1.3 of this document; (5) compliance with survey requirements as set forth in Section 6.3.2 of this document; (6) require Urban/Wildlands Interface Guidelines compliance as set forth in Section 6.1.4 of this document; and (7) compliance with the Best Management Practices and the siting and design criteria as set forth in Section 7.0 and Appendix C of this document. ....” The Wildlife Agencies recommend revision of the Objective to reflect that the project will demonstrate consistency with all applicable requirements of the MSHCP, the IA and the Permits.

The DEIR should select an alternative project footprint that avoids or minimizes impacts to sensitive biological resources (CEQA Guidelines Section 15126.6) and demonstrates consistency the MSHCP Criteria. As discussed in this letter, the Project will impair the proposed reserve configuration identified in the MSHCP for Proposed Linkage 8, and will likely substantially adversely affect the viability and functionality of Proposed Linkage 8 and Proposed Constrained Linkage 16’s ability to function as a wildlife movement corridor.

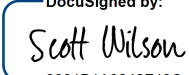
The Wildlife Agencies recommend the development and adoption of a project alternative that shifts the proposed residential development to the northern portion of the site into the northwestern part of Criteria Cells 5254 and 5253 and out of Criteria Cells 5357, 5358, and the southern half of Cell 5255. At a minimum, the Wildlife Agencies recommend a revised footprint that removes portions of Planning Areas 3 and 8 that extend into the Criteria Cells of Cell Group C that are described for conservation.

## **CONCLUSIONS AND FURTHER COORDINATION**

The proposed Project will result in irreversible significant permanent impacts to MSHCP Reserve Assembly and Linkage functionality and viability. The Wildlife Agencies recommend that Project development proposed in MSHCP Criteria Cells 5357 and 5358 as well as a portion of southern half of MSHCP Criteria Cell 5255 be relocated to the northwestern part of Criteria Cell 5254 and/or to Criteria Cell 5253. Further, to maintain functionality of the Linkage, the proposed wildlife crossings of the McElwain Road Extension should be sized to fully span the drainage and leave space under the crossing for live-in habitat to facilitate wildlife movement of terrestrial and avian species. They should also be designed to have soft-bottom/natural substrate and be vegetated with sage scrub and/or riparian shrubs throughout their lengths so as to encourage use by medium-sized mammals, avian species, and kangaroo rats.

We appreciate the opportunity to comment on the City of Murrieta's DEIR for the Murrieta Hills Specific Plan Amendment Project. The Wildlife Agencies request a meeting with the City as soon as possible to discuss the content of this letter. If you have any questions or comments regarding this letter, and to schedule a meeting, please contact James Thiede of the Service at [james\\_thiede@fws.gov](mailto:james_thiede@fws.gov) or Joanna Gibson of CDFW at [joanna.gibson@wildlife.ca.gov](mailto:joanna.gibson@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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for  
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