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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Kevin Canning, Contract Planner
Orange County Development Services/Planning
300 N. Flower Street
Santa Ana, CA, 92702

Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Via Terracaleta Project (SCH# 2019060011)

Dear Mr. Canning:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Preparation of a Draft Environmental Impact Report (DEIR) for the Via Terracaleta Project (Project).

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act [CEQA] Guidelines § 15386, subd. (a)). The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). The Department may need to exercise regulatory authority as provided by the Fish and Game Code. To the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

The Via Terracaleta Project (Project) is located at 2 Via Terracaleta in Coto de Caza in southeast Orange County. The Project site consists of a 16.1-acre parcel that is surrounded by open space to the north and east, a single-family residence and open space to the west, and single-family detached residences to the south. Currently, an existing single-family detached residence with a koi pond, an equestrian riding arena, horse corrals and paddock, tennis court, an outdoor party building with bar-b-que, and a former golf fairway and green is present on the property. The Project proposes to subdivide the parcel into seven lots to allow for the construction of six new residential units, in addition to the demolition and reconstruction of the existing residence. The NOP did not provide information on anticipated habitat impacts; however, the Project is expected to expand on an existing 5.4-acre Orange County Resource Preservation Area (RPA) by adding 0.3 acres additional RPA and 6.1 acres of Scenic Easement Area--an additional 6.4 acres --creating a total of 11.8-acres of open space on site.

The Department offers the following comments and recommendations to assist Orange County (County) in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

1. The NOP indicates that some of the 11.8 acres of open space would be used for wildland fire management and fuel modification, as well as for storm water retention and water quality management. Based on Figure 5, it is unclear whether the proposed fuel modification or water quality management areas would overlap with the proposed 6.4 acres of additional open space (0.3 acres additional RPA and 6.1 acres of Scenic Easement Area). The Department recommends the County update Figure 5 or include an additional figure in the DEIR that delineates all fuel modification and water quality management areas in relation to the proposed RPAs and include a discussion as to whether these areas were accounted for in calculating total Project impacts. Areas of fuel modification and water quality management should not be used to mitigate Project impacts as they require perpetual maintenance and often remain in a disturbed state. These areas should instead be included in the total Project impact acreage and appropriately mitigated. Where feasible, fuel modification zones should be planted with native cacti species such as coast cholla (*Cylindropuntia prolifera*) or prickly pear cactus (*Opuntia littoralis*), as they are compatible in all fuel modification wet and dry zones (OCFA 20171), and can provide foraging habitat for sensitive species such as the coastal cactus wren (*Campylorhynchus brunneicapillus*).
2. Surveys conducted in 2016 reported that the Project site is developed with non-native urbanized landscaping and a mix of coast live oak woodland, California sagebrush scrub, California sagebrush - California buckwheat scrub, coast prickly pear scrub, poison oak scrub, scrub oak chaparral, foothill needlegrass grassland, former citrus orchard, landscape ornamental, mustard, and disturbed/developed habitats. Some of the non-coastal sage scrub habitat types, including coast live oak woodland, purple needlegrass grassland, and scrub oak chaparral have the potential to be impacted by the Project. Purple needlegrass vegetation alliance and a number of the coast live oak woodland and scrub oak chaparral vegetation associations are designated as Sensitive Natural Communities, and the Department recommends the DEIR include mitigation measures that emphasize avoidance and reduction of Project impacts to these habitat types. For unavoidable impacts, on-site habitat preservation or restoration should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition or alternative measures (i.e. payment of an in-lieu fee, if appropriate) should be addressed. As mentioned above, areas of fuel modification or water quality management are not appropriate for use as mitigation of Project related impacts.

For proposed preservation and/or restoration, the DEIR should include measures to perpetually protect the targeted habitat values from direct and indirect negative impacts. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include restrictions on access,

1 Orange County Fire Authority. 2017. Vegetation Management Guideline Technical Design for New Construction Fuel Modification Plans and Maintenance Program.
<https://ocfa.org/uploads/CommunityRiskReduction/OCFA%20Guide-C05-Fuel%20Modification.pdf>

proposed land dedications, monitoring and management programs, and control of illegal dumping, water pollution, and human intrusion.

3. The NOP characterizes the surrounding land use as open space. The document should provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire project site, undertaken at the appropriate time of year. The DEIR should include the following information:
 - a) A thorough, recent floristic-based assessment of special status plants and natural communities, following the Department's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see <https://www.wildlife.ca.gov/Conservation/Plants/Info>). The Department recommends that floristic, alliance-based and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity. The Manual of California Vegetation, second edition, should also be used to inform this mapping and assessment (Sawyer et al. 20082). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts off site. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
 - b) A current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. The Department's California Natural Diversity Data Base in Sacramento should be contacted at www.wildlife.ca.gov/biogeodata/ to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code.
 - c) An inventory of rare, threatened, endangered and other sensitive species on site and within the area of potential effect. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive wildlife, reptile, and amphibian species. Seasonal variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service.
4. A February 2015 Notice of Intent to Prepare a Supplemental DEIR for a similar subdivision on this parcel stated that site development would result in potential impacts to intermediate Mariposa lily (*Calochortus weedii* var. *intermedius*, "IML"). IML is designated by the California Native Plant Society as a List 1B species, which includes plants that are considered to be rare, threatened, or endangered in California and elsewhere. We recommend that any floristic-based assessments for special status plant species include surveys that are conducted during the appropriate time of year for detecting IML, following

2 Sawyer, J. O., T. Keeler-Wolf and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society Press, Sacramento.

adequate precipitation. If IML is detected, then impacts should be avoided to the extent possible. Should impacts to IML be unavoidable, we recommend that the DEIR identify measures that will be implemented to offset impacts to this species. If the species is not detected during surveys, the DEIR should include a discussion as to why the species is no longer present, as bulbs can remain dormant for extended periods of time only to express during years of adequate precipitation and when sufficient canopy openings are available.

5. To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR.
 - a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should be included.
 - b) Discussions regarding indirect Project impacts on biological resources, including resources in nearby open space and adjacent natural habitats. Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR.
6. The Department considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, the Department recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the project CEQA document addresses all project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.
5. In order to avoid impacts to nesting birds, the DEIR should require that clearing of vegetation, and when biologically warranted construction, occur outside of the peak avian breeding season which generally runs from February 1 through September 1 (as early as January 1 for some raptors). If project construction is necessary during the bird breeding season a qualified biologist with experience in conducting bird breeding surveys should conduct weekly bird surveys for nesting birds, within three days prior to the work in the area, and ensure no nesting birds in the Project area would be impacted by the Project. If an active nest is identified, a buffer shall be established between the construction activities and the nest so that nesting activities are not interrupted. The buffer should be a minimum width of 300 feet (500 feet for raptors), be delineated by temporary fencing, and remain in effect as long as construction is occurring or until the nest is no longer active. No Project

construction shall occur within the fenced nest zone until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the Project. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

6. Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.

The Department appreciates the opportunity to comment on the NOP to assist the County in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Kyle Rice at kyle.rice@wildlife.ca.gov or (858) 467-4250.

Sincerely,



Gail K. Sevens
Environmental Program Manager
South Coast Region

ec: Office of Planning and Research, State Clearinghouse, Sacramento
Will Miller, U.S. Fish and Wildlife Service

