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South Coast Region
3883 Ruffin Road
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In Reply Refer To:
FWS/CDFW-SDG-2022-0036257

Dai Hoang
Development Services Department
City of Chula Vista
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dhoang@chulavistaca.gov



May 5, 2022
Sent Electronically

Subject: Otay Trails & Mitigation Bank Expansion Draft Mitigated Negative Declaration

Dear Mr. Hoang:

The U.S. Fish and Wildlife Service (Service) and California Department of Fish and Wildlife (Department), collectively referred to as the Wildlife Agencies, have reviewed the draft Mitigated Negative Declaration (MND) for the proposed Otay Trails & Mitigation Bank Expansion (Project) received on April 6, 2022. The project details referenced here are based on information provided in those documents and through prior meetings and correspondence between the Wildlife Agencies, City of Chula Vista (City), and representatives of Home Fed Otay Land II, Limited Liability Corporation (project proponent).

The primary concern and mandate of the Service is the protection of fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and threatened and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Federal Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), including habitat conservation plans (HCP) developed under section 10(a)(1)(B) of the Act. The Department is a Trustee Agency with jurisdiction over natural resources affected by the project [California Environmental Quality Act (CEQA) Guidelines §15386] and is 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 Section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning (NCCP) Program, a California regional habitat conservation planning program. The City participates in the NCCP and HCP programs by implementing the approved Chula Vista Multiple Species Conservation Program (MSCP) Subarea Plan (SAP).

The project area is located within the floodplain of the Otay River main channel, approximately 1.2 miles downstream of Savage Dam and the Lower Otay Reservoir. The 233-acre Project site encompasses two parcels owned by the City (eastern portion of the site) and three parcels owned by the project proponent (western portion of the site). All parcels are located within the Otay Ranch Preserve (Preserve) and designated as 100 percent Conservation Area per the City's SAP.

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The City and the County of San Diego are the Preserve Owner/Manager of the Otay Ranch Preserve and responsible for long-term management in accordance with the Otay Ranch Resource Management Plan.

The proposed Project includes an expansion of the 2016 Otay River Restoration Project mitigation bank (Original Mitigation Bank) to 220 acres (proposed Bank) and modification of the existing trail network within the project area consistent with the City of Chula Vista Greenbelt and Otay Valley Regional Park trail plans. Construction activities involve the removal of invasive plants and grading of the channel and floodplain areas to remove remnants of past mining activities (e.g., spoil piles, berms, and pits) and to re-establish the Otay River mainstem and create secondary flow channels and a floodplain terrace. Trail modification involves recontouring of existing trails/roads, construction of new trails, gravel placement, armoring stream crossings, strategic fencing and boulder placement, and installing signs and educational kiosks. In addition, almost 2 miles of trails would be closed and reclaimed, including redundant trails and shoulders of wider trails. Implementation of the Project would extend over approximately 24 weeks and occur between September and February, followed by a minimum 5-year maintenance, monitoring, and reporting phase.

As you are aware, the proposed Bank is currently under review by an Inter-agency Review Team (IRT). The IRT for the proposed Bank includes the United States Army Corps of Engineers, the Service, the Department, the Environmental Protection Agency, and the Regional Water Quality Control Board. As part of the process, a draft Bank Enabling Instrument (BEI) containing a Development and Interim Management Plan was provided by the project proponent to the IRT for review in August 2021. The IRT is currently meeting with the Bank Sponsor regularly on development of the draft BEI to discuss the proposed restoration activities, service area, crediting, tracking, and other aspects of bank operations. These discussions are ongoing and may result in changes to the proposed Project and associated mitigation measures identified in the draft MND. We recommend that the City not finalize the MND until agreements have been reached on the BEI and associated banking documents, and the MND can be updated to be consistent with the banking documents.

The Wildlife Agencies offer the following comments and recommendations to assist the City in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources and to ensure the project is consistent with ongoing regional habitat conservation planning efforts. This list is not inclusive of all the issues we are working on with the IRT, but instead highlights some of the specific biological concerns that will need to be addressed:

1. No federally or state listed plant species are known to occur within the limits of grading; however, the federally threatened spreading navarretia (*Navarretia fossalis*) has been recorded in areas of the Project site proposed for low-impact enhancement. In addition, the Project site is considered to have a high potential to include Otay tarplant (*Deinandra conjugens*; ESA listed Threatened, CESA listed Endangered), and approximately 140.6 acres of designated critical habitat for Otay tarplant would be impacted (5.7 acres of which would be considered permanent impacts). Listed wildlife species documented within the project site and subject to potential permanent and temporary impacts include: San Diego fairy shrimp (*Branchinecta sandiegonensis*; ESA listed Endangered), Quino checkerspot butterfly (*Euphydryas editha quino*; ESA listed Endangered), western yellow-billed

cuckoo¹ (*Coccyzus americanus occidentalis*; ESA listed Threatened, CESA listed Endangered), least Bell's vireo (*Vireo bellii pusillus*; ESA listed Endangered, CESA listed Endangered), and coastal California gnatcatcher (*Polioptila californica californica*; ESA listed Threatened, state Species of Special Concern).

- a. MM BIO-9 of the draft MND requires special status plants, Quino checkerspot butterfly host plants, and succulents to be avoided where feasible and otherwise salvaged and relocated to the extent feasible in accordance with a Plant Salvage Plan. We recommend MM BIO-9 be revised to include a requirement for a qualified biological monitor to install and maintain fencing or stakes visible to operators of heavy equipment around populations of all state or federally listed plants and narrow endemic species to be avoided within the grading footprint. Biological monitoring would ensure that the avoidance fencing remains intact for the duration of grading activities, as well as any other restoration activities that could result in impacts to listed or narrow endemic plant species observed during pre-construction special-status plant surveys.
- b. We appreciate the inclusion of dot-seed plantain (*Plantago erecta*) in the proposed vernal pool upland seed mix (MND Attachment 3, Development and Interim Management Plan). We also recommend adding Otay tarplant to the seeding plan where appropriate habitat is present.
- c. The Biological Resources Report notes the presence of southern interior cypress forest within the south-central portion of the Project site, adjacent to trails proposed for grading. Tecate cypress (*Hesperocyparis [Cupressus] forbesii*; California Rare Plant Rank 1B.1) has a very limited distribution and is found only in isolated groves in Orange County, San Diego County, and Baja California, Mexico. Several stands have burned in recent years, further limiting the distribution of this sensitive plant species. Tecate cypress is also the singular host plant for the rare Thorne's hairstreak butterfly (*Callophrys gryneus thornei*), which has been observed on site within the grove. Per the report, 332 Tecate cypress (30 percent of the trees within the Project site) will be subject to impacts from grading activities. We recommend the project is redesigned to avoid Tecate cypress to the maximum extent possible. In addition, please clarify if proposed changes in hydrology will impact the health of avoided Tecate cypress over the long-term.
- d. We recommend BIO MM-6 be revised, consistent with the SAP, to clarify that no vegetation removal shall occur within the gnatcatcher and vireo breeding bird season (February 15 – September 15).
- e. According to the provided least Bell's vireo survey results (Appendix G), brown-headed cowbird parasitism is widespread across the project site and is having a significant negative impact on vireo nest productivity. The MSCP SAP states that Management of Wetlands within the Preserve will include brown-headed cowbird control measures and specific measures to protect against detrimental edge effects

¹ Western yellow-billed cuckoo are considered to be the listed entity when nesting; the bird observed on site was determined to be a transient.

(page 4-18). As such, the Wildlife Agencies request that a cowbird trapping and management plan be included as a condition of establishing least Bell's vireo bank credits.

- f. It has come to our attention that light-footed Ridgway's rails (*Rallus obsoletus levipes*; ESA listed Endangered, CESA listed Endangered, state Fully Protected) have been moving further upstream into freshwater habitats (e.g., cattail marsh) than previously expected. We recommend conducting surveys of the project area for suitable habitat for this species. If suitable habitat is present, we recommend conducting surveys for this species prior to finalizing the restoration plans.
- g. According to project documents, western spadefoot (*Spea hammondi*; ESA candidate species; state Species of Special Concern) tadpoles were observed on site in 49 vernal pools and road ruts during fairy shrimp surveys. Western spadefoots are burrowing anurans that breed in ephemeral pools but spend the majority of their lives underground in adjacent upland habitats. Despite known occurrences within the Project site, no mitigation measures were included to offset potentially significant impacts to this species from project activities. We recommend the following mitigation measures to avoid and minimize impacts to western spadefoot:
 - i. Prior to the start of any ground disturbance, construction, or site preparation activities, a qualified biologist will conduct pre-construction surveys for western spadefoot within all portions of the Project site containing suitable breeding habitat. Surveys shall be conducted beginning the first week of January or following the first one-inch or greater rain event and will be repeated as necessary to monitor their development. An estimate of the total larval population for each pond and total density for all impacted ponds will be recorded.
 - ii. A relocation plan will be developed and approved by the Wildlife Agencies prior to ground disturbance. The relocation plan will include:
 - iii. Suitable relocation sites a minimum 50-foot from the impact area (a 100-foot buffer is recommended when feasible), of similar or greater size to breeding habitat impacted, and as far away as possible from recreation activities.
 - iv. Methods for relocation.
 - v. Monitoring of relocation sites bimonthly for tadpoles between January 1 and June 1 for five years. Monitoring will include estimated tadpole density at each site and observations of adults as well as for egg masses. Survey data will be provided to the Wildlife Agencies in an annual report summarizing the monitoring results.
 - vi. Success criteria, including documented natural reproduction of spadefoot toad in each of the relocation sites, as indicated by the presence of tadpoles in the relocation sites.

2. The Project site is already part of the Otay Ranch Preserve and, therefore, managed for conservation. The draft BEI does not contain sufficient detail to determine the anticipated ecological “lift” (relative to the existing preserve condition) and justify that the proposed crediting is appropriate. In order to determine how much crediting is warranted, we request clarification of the vegetation communities that are anticipated to be created and which management tasks are new and are intended to provide lift above and beyond the anticipated baseline condition of management tasks to be implemented by the Preserve Owner/Manager per the Otay Ranch Resource Management Plan.
3. Extensive stands of tamarisk scrub are present within the main channel and proposed restoration area. The presence of tamarisk can indicate salty soils and low hydrologic flows, conditions that may be incompatible with willow scrub establishment. It is not clear that removal of tamarisk alone, without regular flushing flows from the river, will provide appropriate conditions for successful willow scrub restoration. We recommend soils are tested for their salt content. If soils are determined to be too salty to support willow scrub establishment as currently proposed, we recommend the project design is modified in coordination with the Wildlife Agencies to ensure proposed vegetation communities will be successful over the long term.
4. MM BIO-8 states that the final trail alignments, access routes, and work areas described in the draft MND will be further refined prior to the onset of construction to avoid all permanent impacts to federally listed fairy shrimp. We recommend MM BIO-8 also specify that final trail alignments and access routes will avoid impacts to the quantity and quality of water flow to the vernal pools supporting listed fairy shrimp. While we appreciate the avoidance of impacts to fairy shrimp, shifting the areas of impact will likely result in new impacts to other sensitive resources not previously analyzed. We recommend that any refinement of the project design be done prior to circulation of the final documents and that the MND should document, analyze, and propose mitigation for the expected impacts based on the final project design.
5. Due to proposed tree removal, Project activities have the potential to result in the spread of tree insect pests and disease into areas not currently exposed to these stressors. Therefore, the final MND should describe an infectious tree disease management plan and how it will be implemented. All trees identified for removal from the Project site should be inspected for contagious tree diseases including, but not limited to: thousand canker fungus (*Geosmithia morbida*), see <http://www.thousandcankers.com/>; Polyphagous Shot Hole Borer (*Euwallacea spp.*), see <http://eskalenlab.ucr.edu/avocado.html>; and goldspotted oak borer (*Agrilus auroguttatus*), see <http://ipm.ucanr.edu/PMG/PESTNOTES/pn74163.html>. To avoid the spread of infectious tree diseases, diseased trees should not be transported from the Project site without first being treated using best available management practices relevant for each tree disease observed.
6. The project documents make several references to vehicles and current use by recreational ATV riders within the project area. The proposed trails discussion also mentions the inclusion of features (to be designed in conjunction with mountain bike groups) such as banked berm turns, boulders to wind through, and semi-buried logs to travel over with the purpose of providing additional interest and technical challenges for mountain bikers.

Public off-highway recreational vehicle activity within Preserve Areas is incompatible with the goals of the MSCP Subregional Plan and is prohibited (SAP, Section 6.4.1). The Wildlife Agencies further recommend that the City evaluate compatibility of proposed trail uses and design with the need to permanently protect Covered Species and their habitats within Preserve (SAP, Sections 6.0, 6.2.1, and 7.5.3). In addition, any anticipated impacts to sensitive biological resources associated with trail use should be quantified and incorporated into the final determination of appropriate bank credits.

The following comments (7, 8, and 9) are specific to the Department:

7. The Department has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or “entity”) must provide written notification to the Department pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, the Department determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. The Department’s issuance of a LSAA for a project that is subject to CEQA 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 MND for the project. To minimize additional requirements by the Department pursuant to section 1600 *et seq.* and/or under CEQA, the City’s document should fully identify the potential impacts to any stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSAA. Whether an LSAA is required to satisfy requirements of section 1600 *et seq.* can only be determined at the time a formal Notification package is submitted to the Department. Given the design elements of the proposed Project, we strongly encourage the City to consider submittal of a streambed notification package to the Lake and Streambed Alteration Program.
8. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.
9. The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the Department. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

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We appreciate the opportunity to comment on the draft MND and look forward to our continued collaboration in implementing the City's SAP. If you have questions or comments regarding this letter, please contact Heather Schmalbach of the Department at (858) 637-5511 or Heather.Schmalbach@wildlife.ca.gov or Christine Medak of the Service at (760) 431-9440 or Christine_Medak@fws.gov.

Sincerely,

**JONATHAN
SNYDER** Digitally signed by
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