



U.S. FISH AND WILDLIFE SERVICE
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



CALIFORNIA DEPARTMENT OF
FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, California 92123

In Reply Refer to:
FWS/CDFW-23-0078309-HCP_SD

Governor's Office of Planning & Research

May 8, 2023
Sent Electronically

Nicolas Gustafson
County of San Diego
Planning and Development Services
5510 Overland Avenue, Suite 110
San Diego, California 92123
Nicolas.Gustafson@sdcountry.ca.gov

May 08 2023

STATE CLEARING HOUSE

Subject: Joint Response to the Mitigated Negative Declaration for the Greenhills Ranch
Phase II Project, County of San Diego (SCH# 2023030619)

Dear Nicolas Gustafson:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department), jointly the Wildlife Agencies, have reviewed the Mitigated Negative Declaration (MND) for the Greenhills Ranch Phase II Project (Project). The comments provided in this letter are based on information provided in the Initial Study and MND; meetings and discussions with San Diego County (County) staff and representatives of Atlas Investments, LLC and Vance & Associates (Applicant), including a site visit on April 20, 2023; our knowledge of sensitive and declining species and their habitats in the region; and our participation in regional conservation planning efforts, including the County of San Diego's Subregional Multiple Species Conservation Program (MSCP). We have identified potential effects of this Project on wildlife, sensitive habitats, and regional planning efforts.

The primary concern and mandate of the Service is the protection of fish and wildlife resources and their habitats. The Service has the legal responsibility for the welfare of migratory birds, anadromous fish, and threatened and endangered animals and plants occurring in the United States. The Service also is responsible for administering the Federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), including habitat conservation plans developed under section 10(a)(2)(A) of the Act.

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; §§ 15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the State's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (Fish and Game Code § 2050 *et seq.*) and other sections of the Fish and Game Code. The Department also administers the Natural Community Conservation Planning (NCCP) program. The County participates in the NCCP program through implementation of their MSCP Subarea

Nicolas Gustafson (23-0040670-HCP_SD)

2

Plan (SAP), also referred to as the South County MSCP (SC MSCP), and development of its draft North and East County Subarea Plans.

Location and Description

The proposed Project consists of a Specific Plan Amendment to amend the Greenhills Ranch Specific Plan (GRSP) to include development specifications and regulations for phase II of the GRSP, a rezone to add the “D” Special Area Regulation to require a Site Plan, and a tentative map to subdivide the 36.06-acre site into 76 lots. These lots include 63 clustered, single-family residential parcels. The subdivision includes brush management, a private street system, horse/hiking trail, and dedication of 18.64 acres of biological open space. Access to the site would be provided by Audubon Road and from a new road off Lake Jennings Park Road.

The proposed Project occurs within the plan boundary of the SC MSCP. The Project site is located north of the intersection of Adlai Road and Audubon Road in the Lakeside Community Plan area, within the unincorporated County of San Diego. Open space and residential uses developed as a part of Greenhills Ranch Phase I occur northwest of the Project site. Residential development is located directly to the south and east and open space also occurs west of the site. A water filtration plant operated by the Helix Water District is located just northeast of the site.

The Project site is predominantly comprised of Diegan coastal sage scrub (25.76 acres) and Riversidian upland sage scrub (0.98 acre) habitat with an additional 9.88 acres of disturbed or developed land. The site is within the Lake Jennings/Wildcat Canyon Core Area, an existing regional core within the County’s SC MSCP and is within an area designated as Pre-approved Mitigation Area per the SC MSCP. Sensitive species detected within the site and surrounding area include coastal California gnatcatcher [*Polioptila californica californica*; gnatcatcher; federally listed threatened, Department Species of Special Concern (SSC)] and coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*, SSC).

Based on the jurisdictional delineation, approximately 0.04 acre (942 linear feet) of non-wetland waters (ephemeral stream channels) under the Department, U.S. Army Corps of Engineers, and Regional Water Quality Control Board jurisdiction are found within the study area.

We offer the following comments and recommendations to assist the County in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources and to ensure that the Project is consistent with the SC MSCP, federal and state endangered species laws/regulations, and ongoing regional habitat conservation planning efforts:

1. **Analysis of Permanent Impacts.** Figure 4 of the Biological Resources Addendum for the Project depicts several areas on site as “Impact Neutral Open Space” consisting of coastal sage scrub and Riversidian sage scrub habitat. After Project construction, these neutral open space areas—both within and outside of the San Diego Gas and Electric easements—will not retain their original biological value due to edge effects from adjacent development and increased recreation resulting from proposed hiking and riding trails; therefore, the Wildlife Agencies recommend that these areas be treated as permanent impacts and mitigated in accordance with the SC MSCP. Priority for

mitigating impacts in these areas should be given to lands contiguous with the proposed on-site and off-site biological open space.

- 2. Impacts to Biological Resource Core Area (BRCA) and Lakeside Linkage.** The Project is within Biological Resource Core Area 9 (Lake Jennings/Wildcat Canyon) at the boundary of the Biological Linkage H (Lakeside Linkage) as described in the MSCP. As such, the proposed development has the potential to impede a valuable wildlife corridor. The County of San Diego Biological Mitigation Ordinance (BMO) Section 86.508 defines a linkage as an area of land which supports or contributes to the long-term movement of wildlife and genetic material. The focus of the core area and linkage are to support connectivity and breeding for gnatcatcher and coastal cactus wren, both of which were observed in the project site.

Given the importance of the project site for the SC MSCP preserve design, the Wildlife Agencies recommend the project strive for a minimum of 75 percent conservation to adequately retain the function of the linkage as it connects to the core area by providing adequate live-in breeding and foraging habitat for resident species, particularly gnatcatcher. The 75 percent conservation target is consistent with guidance for important linkage areas in the MSCP (gnatcatcher in Table 3-5). Greater conservation will appropriately conserve vegetation that contributes to a key linkage/core area in the greater San Diego region.

- 3. Management of Biological Open Space.** The on-site and off-site biological open space areas are located within the BRCA. As previously stated, this area is vitally important to the continued ecological function of the MSCP Preserve. Additionally, suitable cactus wren habitat exists on site and adjacent to the Project area. The biological open space areas should be managed and monitored for the protection of gnatcatcher and cactus wren and the habitats they occupy. We request that Mitigation Measure Biology 1 (MM BIO-1) be conditioned such that the Wildlife Agencies have the opportunity to review and approve the Resource Management Plan to support the County's efforts in providing high-quality, "live-in" habitat for these species.
- 4. Nesting Bird Avoidance.** MM BIO-2 and MM BIO-7 do not appropriately address avoidance or minimized impact to nesting migratory birds. The Wildlife Agencies recommend combining MM BIO-2 and MM BIO-7 and including specified avoidance buffer distances.

MM BIO-2 and MM BIO-7 indicate avoidance shall be implemented during the nesting/breeding season by not clearing any habitat that supports active nests between February 15 through August 31, but do not specifically indicate appropriate nesting buffers or surveys. Additionally, MM BIO-2 indicates that clearing may occur during nesting season if a monitoring biologist surveys within 72 hours of scheduled clearing, and, if nesting is observed, avoidance will be implemented until the nesting is completed.

If avian avoidance occurs as currently described, impacts to avian species may be in violation of California Fish and Game Code sections 3503, 3503.5, and 3513 by causing the incidental loss of fertile eggs or nestlings, or activities that lead to nest abandonment. The Wildlife Agencies suggest that the MND be amended to include the following language:

“To avoid any direct impacts to migratory birds protected under the Migratory Bird Treaty Act, removal of habitat that supports active nests in the limits of grading or fuel modification zones should occur outside of the breeding season for these species (February 15 through August 31). In lieu of avoidance of the breeding season, a nesting bird survey shall be conducted 72 hours prior to impact completed by the monitoring biologist. If an active nest is discovered, it shall be avoided until nesting is confirmed completed by implementing the following avoidance buffers: 100 feet for passerines; 300 feet for listed bird species; and 500 feet for raptors.

Additionally, if an active nest is discovered, the monitoring biologist shall continue to monitor and conduct survey “sweeps” daily, flagging or staking the appropriate buffer, until the nest is deemed no longer active by the biologist.”

The following comment is specific to the Department:

1. According to Figure 6 of the MND, approximately 942 linear feet of jurisdictional non-wetland ephemeral waters are located within the Project area’s impact neutral open space.

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. Whether an LSAA is required to satisfy the requirements of Fish and Game Code section 1600 *et seq.* can only be determined at the time a formal notification package is submitted to the Department.

If Project activities may affect the hydrological features of such drainages, an LSAA notification may be appropriate. We encourage the County to consult further with the Department regarding the possible submittal of an LSAA Notification package.

Nicolas Gustafson (23-0040670-HCP_SD)

5

Thank you for the opportunity to comment on the MND. We are available to meet with the County and the project proponent if you have any questions regarding this letter or would like to discuss potential approaches to addressing our comments. To coordinate with the Wildlife Agencies on this project, please contact [Eric Porter](#)¹ of the Service, or [Alex Troeller](#)² of the Department over electronic mail.

Sincerely,

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SUSAN WYNN
Date: 2023.05.08
11:13:39 -07'00'

For: Jonathan D. Snyder
Assistant Field Supervisor
U.S. Fish and Wildlife Service

DocuSigned by:

David Mayer
D700B4520375406...

David A. Mayer
Environmental Program Manager
California Department of Fish and Wildlife

¹ Eric_Porter@fws.gov

² Alexandra.Troeller@Wildlife.ca.gov