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May 28, 2019

Mr. Gregory Mattson
County of San Diego, Planning and Development Services
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Subject: Comments on the Recirculation of Portions of the Draft Environmental Impact Report, Replacement Tentative Map, Specific Plan and Technical Reports for the Otay Ranch Resort Village 13 Project (SCH# 2004101058)

Dear Mr. Matson:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced recirculated portions of the draft Environmental Impact Report (DEIR) for the Otay Ranch Resort Village 13 (Project). The following statements and comments have been prepared pursuant to the Department's authority as a Trustee Agency with jurisdiction over natural resources affected by the Project (California Environmental Quality Act [CEQA] Guidelines § 15386), and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed Project that come under the purview of the California Endangered Species Act (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. The County of San Diego (County) participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan.

The Department issued NCCP Approval and Take Authorization per Section 2800 *et seq.*, of the California Fish and Game Code for the County MSCP Subarea Plan on March 17, 1998. The MSCP is a comprehensive, long-term habitat conservation planning program that addresses the needs of multiple species and the preservation of natural vegetation communities within the southwestern subregion of San Diego County. The MSCP also addresses the loss of covered species and their habitats due to the direct, indirect, and cumulative impacts associated with land development. The County Subarea Plan and associated Implementing Agreement and permits are the means by which the County is obligated to assemble its portion of the MSCP Preserve and to mitigate for impacts to covered species and their habitats.

The 1,869-acre Project site is located within the southern portion of Proctor Valley, just east of the City of Chula Vista, on Otay Lakes Road. The proposed Project is part of the broader 23,000-acre Otay Ranch General Development Plan/Subregional Plan (GDP/SRP) and includes the construction of 1,881 single-family residential units, a mixed-use area with 57 multi-family residences and up to 20,000 square feet of commercial uses, a 17.4-acre resort hotel and ancillary uses, an elementary school site, nine parks, and a public safety site.

The recirculated portions of the DEIR include Chapter 4.0 Project Alternatives, which introduces Alternative H, a new project-level Alternative, Appendix D-3 Biological Resources Technical Report Supplemental Analysis for Alternative H (Dudek 2019), and Section 2.10 Draft Revised

Global Climate Change. Alternative H includes construction of the same number of dwelling units and ancillary uses as the proposed Project but also includes off-site improvements to Otay Lakes Road.

According to the Biological Resources Technical Reports (Dudek 2018, 2019), the Project site supports sensitive native vegetation communities including chaparral, coastal sage scrub, native grassland, and riparian. The site also supports two vernal pool complexes known as K6 and K8. In addition, numerous special status flora and fauna species occur on the Project site including the federally endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Quino checkerspot butterfly (*Euphydryas editha quino*; Quino), federally threatened California gnatcatcher (*Polioptila californica californica*), federally threatened/state endangered San Diego thornmint (*Acanthomintha ilicifolia*), state fully protected golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), and federal candidate western spadefoot toad (*Spea hammondii*). The federally and state-endangered least Bell's vireo (*Vireo bellii pusillus*) occurs along a portion of Otay Lakes Road that is proposed for widening as part of Alternative H.

The Department offers the following recommendations and comments to assist the County in minimizing and mitigating Project impacts to biological resources, and to assure that the Project is consistent with the MSCP and County Subarea Plan.

MSCP and Otay Ranch Specific Plan Implementation

The Department commented previously on the project during the public review for the DEIR in a joint letter with the U.S. Fish and Wildlife Service (Service) dated May 21, 2015, and in a letter dated March 30, 2017, in response to a request for a Boundary Line Adjustment. The Department has also provided extensive comments on the update to the Otay Ranch Resource Management Plan (RMP), both in a joint letter with the Service dated July 24, 2018, and in numerous meetings. The County has not provided any formal response to the 2015 Village 13 DEIR comment letter, and many of the concerns the Department raised are still outstanding and were not addressed in this recirculated document. For example, the Department has asked the County to provide a summary of the status of progress that Otay Ranch is (or is not) making towards meeting the conservation objectives and policies outlined in the Otay Ranch General GDP/SRP. Without this information, there is no context for evaluating the proposed project and alternatives with regards to meeting the biological goals and objectives of the Otay Ranch RMP and the County Subarea Plan. Instead, the DEIR relies on the acreage conveyance guidelines of the Otay Ranch RMP to ensure that the direct impacts to sensitive biological resources are mitigated to less than significant; however, adherence to the Otay Ranch RMP species-specific and habitat-specific policies is also required.

In addition to the seven alternatives (A-G) that were identified in the DEIR, an eighth alternative (H) is now being considered. Based on the Recirculation Findings, Alternative H was created "in response to comments and a letter received from the Wildlife Agencies." As stated above, the Department's letter dated March 30, 2017, which was specifically mentioned in the Recirculation Findings, was in response to the County's request for a Boundary Line Adjustment for the project, not our 2015 DEIR comment letter. Therefore, it is not clear how Alternative H addresses the full set of concerns raised in our previous DEIR comment letter. Although the Department's later letter regarding the Boundary Line Adjustment states: "we would like to meet with you and the project proponents to discuss a potential alternative to the proposed project that would address our concerns for the Quino, as well as the other issues identified in our May

21, 2015, letter," the Department has not participated in any meetings to specifically discuss our previous comments or Alternative H.

Quino Checkerspot Butterfly

The Department has been working collaboratively with the County and the Service on a Subarea Plan Amendment to add Quino as a Covered Species. Based on our knowledge of Quino and recent modeling efforts depicting Quino suitable habitat within Otay Ranch, Alternative H does not address the concerns the Department has raised with regards to maintaining a resilient population of Quino in the conserved portion of the project site. Conservation of Quino resources/suitable habitat associated with the project must be sufficient to meet NCCP standards, which are considerably more stringent than that required under a Section 7 consultation. Therefore, the Department recommends developing an alternative that would shift the development to the west and minimize impacts to high quality Quino habitat that is located on the lower slopes of the project site. Given the central location of the project site within the Otay Core Occurrence Complex[1], the project needs to ensure that connectivity to occupied habitat to the northwest and southeast of the project site is maintained. With two modifications, Alternative D is closer to meeting this objective than the new proposed Alternative H, and therefore would be biologically superior to the proposed project and to Alternative H. The two modifications include shifting the L-19 87 DU development bubble west, adjacent to the LMV-3.1 89 DU development bubble, and avoidance of the 13.4-acre San Diego thornmint population.

The Department's 2015 project DEIR comment letter recommended that impacts to Quino habitat be calculated based on the observed resources, including host plants, hilltops, and nectar resources. The Biological Technical Report (Dudek 2019) assumes that all occupied habitat is equal and calculates a mitigation ratio of 2.85:1 (1,107 designated as preserve: 389 direct impacts from project construction). This assumption does not account for the actual habitat components (e.g., host plant and nectar resources) that are necessary to maintain a resilient population of Quino, does not address indirect effects, and does not reflect that only 787 acres are proposed to be conveyed (i.e., actively managed and monitored). While the proposed project will protect the upper ridgelines where Quino has been observed, there is little room for expansion as the topography limits the suitable habitat to narrow strips. Therefore, the Department believes that the project will result in a net loss of suitable habitat. Conversely, on the lower slopes and mesa tops there are extensive patches of host plant as well as sufficient room for enhancement and restoration of Quino habitat to remedy the influx of nonnative weeds and the lack of active management that has occurred over the last decade. The Department reminds the County that one aspect of the Otay Ranch RMP approved 25 years ago was that habitat was to be maintained until such time that it would be conveyed into the Preserve.

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[1] Occurrence complex as defined by USFWS (2019a): Spatially clustered Quino observation records. The largest ones are termed "core occurrence complexes" and [are believed to] represent current [or former] population density centers. Occurrence complexes represent current short-term documented local occupancy, probably within the greater distribution of extant metapopulations. Occurrence complexes are mapped using 1 km (0.6 mi) movement radii. Occurrences within approximately 2 km (1.2 mi) of each other are considered part of the same complex. [Core designation is based on total polygon area equal to or greater than the minimum occurrence complex size in the set of the largest occurrence complexes in each recovery unit.]

Conserving and managing a broader area of Quino habitat on the lower slopes would substantially contribute to maintaining a viable core population of Quino.

The Department and the County have held numerous meetings regarding Subarea Plan coverage for the Quino. For these meetings, the Department has reviewed a Quino habitat model prepared by Tom Oberbauer for the County and another prepared by Dr. Travis Longcore. Based on our review, most of the higher quality modeled Quino habitat is located within the proposed project footprint, and for Alternative H specifically, over half of the medium/high quality modeled habitat and at least half of the observed adult locations between 2008 and the present (Service 2019b) would be directly impacted. This impact assessment includes the conserved open space around the San Diego thornmint population (*Acanthomintha ilicifolia*) and K-8 vernal pools in the area of impact as these areas are too small and close to development to support Quino over time. Therefore, the Department believes that the total impact to Quino habitat is not adequately offset through the conservation of extant habitat along the ridgelines.

The Department has also conducted a preliminary review of the proposed Quino Checkerspot Butterfly Management/Enhancement Plan dated March 2019. The plan includes a small amount of restoration (4.2 acres) and enhancement (7.5 acres), in addition to annual adaptive management (15 acres) and monitoring. Due to the existing level of habitat degradation and the associated invasion of nonnative grasses and forbs that has already occurred on site, this minimal level of restoration, enhancement, and weed control will not be sufficient to restore on-site areas to suitable Quino habitat. The Plan includes an estimate of $30,000 a year for 15 acres ($2,000/acre) for Quino habitat enhancement (see Table 8). This is significantly lower than what recent restoration and enhancement projects for Quino habitat have spent on similar tasks. For example, the Service has been spending approximately $5,000/acre for enhancement of habitat associated with its Quino Augmentation Project on the San Diego National Wildlife Refuge (Spring Strahm, personal communication). In addition, the Otay Ranch POM was recently awarded a State Local Assistance Grant in the amount of $42,414 to treat nonnative invasive plant species on 6 acres of Quino suitable habitat, which equates to approximately $7,000 per acre. Therefore, both the acreage and the funding levels need to be adjusted upward to ensure that suitable habitat is maintained for the remaining Quino within the project site.

With regards to monitoring, the plan references the 2010 draft Quino Checkerspot Butterfly Amendment prepared by the County. Please be aware that the draft conservation strategy, including the monitoring component, was never finalized, nor was it envisioned that it could be stepped down and applied to a single property. The monitoring strategy was developed for the entire County subarea planning area and was meant to provide a regional perspective. The subset of the strategy that is included in the 2019 Management/Enhancement Plan will not provide the site-specific data that is needed to guide adaptive management of the on-site Preserve, which is a critical component to maintaining Quino in the MSCP and County Plan Areas. The Department is available to work collaboratively with you to develop a site-specific monitoring plan for the Village 13 site.

Native Grassland

Please clarify how Alternative H complies with the Phase 1 RMP Policy 2.3 Preserve Native Grasslands. This policy states that a minimum of 80% of the total acreage of native grassland

on site (i.e., within Otay Ranch GDP) shall be preserved or restored. The 80% must be comprised of at least 25% preservation of existing habitat. In general, to achieve the RMP policies in the absence of a comprehensive monitoring system, and considering projects are being processed for different ownerships, we recommend policies such as the one for native grassland conservation be implemented on a project-by-project basis. Appendix D-3 Table 9 states there are 110.46 acres of native grassland on site, of which 102.94 acres (93%) would be impacted as a result of implementation of Alternative H, which does not conform to Policy 2.3. To satisfy Policy 2.3, at least 88 acres of native grassland habitat should be preserved/restored, comprising at least 27.62 acres preserved on site and 60.38 acres preserved or restored off site. As currently proposed, only 7.52 acres will be preserved on site and 73 acres restored, for a total of 80.52 acres. If Policy 2.3 is not being implemented on a project-by-project basis, then as stated previously, the County should be disclosing (in the EIR) progress made in satisfying this policy. If the 80% requirement is not being met, then the higher mitigation ratio for native grassland identified in the 2018 RMP 2 Update (up to 3:1) is warranted.

City of San Diego Cornerstone Lands

As stated under mitigation measure M-BI-2, prior to widening Otay Lakes Road, the Applicant must complete a Multi-Habitat Planning Area Boundary Line Adjustment to the satisfaction of the City of San Diego Development Services Director. Although we acknowledge that the Applicant has proposed a 4:1 conservation-to-impact ratio as mitigation for the 21.45-acre impact to City Cornerstone Lands, the City of San Diego is not signatory to the Otay Ranch RMP. In addition, MHPA Boundary Line Adjustments must result in an "area of equivalent or higher biological value," and in the case of City Cornerstone Lands, there are both land value (as a conservation bank) and biological value considerations in evaluating and mitigating impacts to these lands. The City Water Department must be compensated for any title restriction placed on the Cornerstone Lands and for any financial burdens that do not directly benefit the City's water utility rate payers (City of San Diego MSCP Subarea Plan p. 28). In addition, according to the Biological Technical Report (Dudek 2019) for Alternative H, the widening of Otay Ranch Road will result in impacts to three pairs of California gnatcatcher and one pair of least Bell's vireo, which would need to be addressed when evaluating the biological value of the proposed mitigation land.

Wildlife Undercrossings

Included in Alternative H is mitigation measure M-BI-12, which states that "one wildlife culvert shall be constructed to provide and improve habitat linkages and movement corridors." This culvert will be installed under Otay Lakes Road to facilitate wildlife movement between the L8 Major Local Corridor and the R2 Regional Corridor as identified on Figure 2.3-13 of the DEIR. However, Alternative H includes development that blocks the R2 corridor approximately 1,200 feet north of Otay Lakes Road. Therefore, installing a wildlife culvert in this location would not facilitate wildlife movement between conserved lands surrounding the project site. Instead, we recommend that the wildlife culvert(s) be installed in locations that would facilitate wildlife movement between conserved lands such as the area identified in the DEIR as Wildlife Crossing #2, which is located just east of the proposed Resort development bubble. The Phase 1 RMP also identified the connection of "key biological resources" in this area (see Figure 10 connection "11"). City Cornerstone Lands and the Department's Otay Mountain Ecological Reserve support these key biological resources to the south of Otay Lakes Road, while POM/Otay Ranch Preserve lands support them to the north.

Widening of Otay Lakes Road to four lanes where it bisects City Cornerstone Lands located to the west of the project site will increase fragmentation of these sensitive lands and potentially hinder wildlife movement. Therefore, the DEIR should evaluate the long-term impacts to Cornerstone Land connectivity and should include measures to allow wildlife to safely cross under the road alignment including installation of appropriately sized bridges/culverts, possibly in concert with directional fencing. These structures should be designed to encourage wildlife use and to minimize roadkill. These structures should be separate from those installed to allow water flow, as wildlife may not use culverts that often flood or have continual flows. The Department strongly recommends the County and Applicant work with local representatives of the U.S. Geological Survey that have been developing ways to make undercrossings more functional for wildlife.

Vernal Pools

The K6 area vernal pool complex was the only known location of little mousetail (*Myosurus minimus*) on Otay Ranch (Michael Brandman Associates 1991), and formerly supported a large population of Quino (Dudek 1991). Based on the presence of little mousetail and the "undisturbed area of mounded topography," the K6 complex was considered a "high priority for preservation" (Michael Brandman Associates 1991). Therefore, this area was identified in the Otay Ranch GDP/SRP as a Special Study Area to "avoid development until it is determined if the resources are of such significance to require preservation" (p. 21 Phase 1 RMP). Michael Brandman and Associates (1991) state that the K6 complex was degraded due to grazing but had a high restoration potential. Since 1991, this area has further degraded and was characterized in the Biological Technical Report (Dudek 2019) as having "low to moderate value" and mitigation for unoccupied pools was identified as 2:1. Due to the historical value that was identified for this complex, and again recognizing that previously documented biological resource values were to be maintained as Otay Ranch developments proceeded, the Department recommends the mitigation ratio be at least 3:1. In addition, the RMP 2 Update (County 2018) includes Policy 2.9, which states "Assure the continued survival of little mousetail (*Mysourus minimus* var. *apus*) and San Diego navarettia (*Navarettia fossalis*) on Otay Ranch through... a combination of enhancement, restoration, and management efforts". Therefore, we recommend that the final Vernal Pool Restoration Plan for the project incorporate these species into the plant palette, where appropriate.

Alternative H includes development (e.g., residential and arterial road) on all sides of the K8 vernal pool complex, essentially severing any connectivity with other open space areas supporting vernal pool resources such as pollinator species. The Department recommends removing development from the southern boundary of the K8 complex in order to retain some connectivity to open space lands located south of Otay Lakes Road. If development is removed from this area, this would also improve the biological function and value of the wildlife undercrossing included in Alternative H.

Narrow Endemics

Variegated dudleya (*Dudleya variegata*) is a List 1B species (California Native Plant Society 2019). RMP Policy 2.7 states that a minimum of 75% of Otay Ranch populations of plant species recognized as List 1B will be included in the Preserve. This is also shown on Table 5 in the Phase 1 RMP and Attachment 5 of the RMP 2 Update. Although the Alternative H analysis

indicates that only 50% of the variegated dudleya must be preserved and the remaining individuals can be translocated, the 50% preservation standard only applies to List 3 and 4 species. Variegated dudleya was erroneously included in the Phase 1 RMP list of List 3 or List 4 species found on Otay Ranch. This error was carried forward to the 2018 RMP 2 Update.

Similar to the K8 vernal pool preserve, Alternative H includes a San Diego thornmint preserve that is surrounded on all sides by some form of development. We recommend that mitigation for this species include restoration, enhancement and long-term management actions to ensure this will be a self-sustaining population that retains genetic fitness through adequate pollination.

We appreciate the opportunity to comment on the referenced DEIR. Questions regarding this letter and further coordination on these issues should be directed to David Mayer at (858) 467-4234 or david.mayer@wildlife.ca.gov.

Sincerely,

Gail Sevrens
Environmental Program Manager

ec: Karen Goebel, U.S. Fish and Wildlife Service, Carlsbad
Scott Morgan (State Clearinghouse)

References:

City of Chula Vista and County of San Diego. 1993. Otay Ranch Resource Management Plan. 259 pp.

Dudek and Associates, Inc. (Dudek)

1991. Responses to "Data Gaps" Identified by the Otay Ranch Biological Subcommittee. Prepared for the Interjurisdictional Task Force Joint Planning Team Otay Ranch Biological Subcommittee. November 1991. 32 pp. + appendices.

2015. Otay Ranch Resort Village Biological Resources Technical Report San Diego County, California. Prepared for Baldwin & Sons LLC. Revised March 2015. 201 pp. + appendices.

2019. Biological Resources Technical Report Supplemental Analysis Otay Ranch Resort Village 13-Alternative H. Prepared for County of San Diego Planning & Development Services. April 2019. 74 pp. + appendices.

Michael Brandman Associates. 1991. Report on the Hydrology and Flora of the Otay Ranch Vernal Pools, 1990 San Diego County, California. Prepared for the Baldwin Company. March 5, 1991. 33pp + appendices.

Recon Environmental. 2018. Otay Ranch Phase 2 Resource Management Plan Update. Prepared for County of San Diego and City of Chula Vista. Finalized September 2018. 174 pp.

U.S. Fish and Wildlife Service (Service).

2019a. Recovery Plan for Quino Checkerspot Butterfly (*Euphydryas editha quino*) Draft Amendment. Prepared by Region 8 Carlsbad, California. March 2019. 22pp.

2019b. Occurrence Information for Multiple Species within the Jurisdiction of the Carlsbad Fish and Wildlife Office. https://www.fws.gov/carlsbad/GIS/CFWOGIS.html