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**EDMUND G. BROWN, Jr., Governor**  
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March 28, 2016

Ms. Kim Stater  
 City of Highland  
 27215 Base Line  
 Highland, CA 92346

Subject: Final Environmental Impact Report  
 Harmony Specific Plan Project  
 State Clearinghouse No. 2012071065

Dear Ms. Stater:

The California Department of Fish and Wildlife (Department) has received and reviewed the Final Environmental Impact Report (FEIR) for the Harmony Specific Plan Project (project) [State Clearinghouse No. 2012071065]. The Department reviewed the Draft Environmental Impact Report (DEIR) and provided comments to the City of Highland (City; the CEQA lead agency) in a letter dated June 4, 2014, and reviewed the subsequently recirculated DEIR (RDEIR) and provided comments to the City in a letter dated October 13, 2014. The Department's October 13, 2014 letter expressed concerns related to the adequacy of the assessment of biological resources; impacts (including direct, indirect, and cumulative) to biological resources, waters of the state, adjacent and surrounding lands; and the adequacy and appropriateness of proposed avoidance, minimization, and mitigation measures.

The Department appreciates that some of the concerns raised by the Department in its June 4, 2014 and October 13, 2014 comment letters were addressed in the FEIR, however the Department still finds the FEIR to be inadequate in its assessment of impacts to biological resources; surrounding and adjacent lands; and in the adequacy and enforceability of avoidance, minimization, and mitigation measures proposed by the City. Furthermore, new potentially significant impacts are identified in supplemental survey information that was not included with the DEIR or RDEIR. Based on the Department's assessment of the FEIR, the Department recommends that the City revise and recirculate the RDEIR pursuant to CEQA Guidelines Section 15088.5(a)(1) and 15088.5(a)(4).

## COMMENTS AND RECOMMENDATIONS

The Department's comments and recommendations on the FEIR include:

### *Increased Human Use of Existing Trails*

As stated in the Department's previous letters, we have concerns regarding the edge effects of the project on adjacent natural open space. The FEIR states that the planned Hiking, Trekking, and Equestrian Trails are not expected to result in new indirect impacts to wildlife, because "[s]ince these trails have been in use for a number of years, it is expected that wildlife (including special-status species)... have habituated to the ongoing trail activities". However, the FEIR does not discuss the current level of use that the existing trails receive, nor does it analyze the reasonably foreseeable increase in trail use. The addition of up to 3,632 residential units in the close vicinity of the existing trails is likely to substantially increase the human use of the trails, and without an understanding of the trails' current usage, the Department cannot concur that this change will not cause adverse impacts to the adjacent open space. We repeat our request that the revised and recirculated DEIR contain a thorough and detailed analysis of the project's potential direct and indirect impacts to wildlife and the adjacent open space as a result of the proposed trails, including increased use of existing trails.

### *Domestic Predators*

As stated in the Department's June 4, 2014 letter, the Department is concerned about the effects of an increased presence of subsidized predators (e.g., domestic cats) within the natural open space areas adjacent to the project site. The project site is located directly adjacent to areas known to support endangered species (i.e., least Bell's vireo and San Bernardino kangaroo rat) that are particularly vulnerable to predation by domestic cats (USFWS 1998, p. 51011). While the FEIR acknowledges that cats pose a danger to wildlife, it does not contain a thorough analysis of the reasonably foreseeable impact, and the Department does not concur that the proposed avoidance measures are adequate to significantly reduce the impact. The FEIR states that no domestic animals will be allowed within the proposed wildlife corridor, that educational material explaining the dangers that domestic cats pose to wildlife will be provided to the public, and that "appropriate fencing" will be installed at the boundary of the conserved habitat areas. However, the FEIR does not specify how the Lead Agency intends to enforce a policy excluding cats from the conserved habitat areas, nor does it specify the type of fencing proposed.

The Department does not concur that a combination of educational materials with no direct enforcement methods and installation of ordinary fencing will be effective at keeping cats from entering the conserved habitat areas, and recommends that the City condition the EIR to require, at a minimum, the use of

fencing that is specifically designed to exclude cats, and that has been demonstrated to be effective. We also recommend that the long-term management plan for the conserved areas include provisions and adequate funding sources for the ongoing maintenance and operation of the fencing.

#### *Impacts to Raptors*

A wide variety of raptor species, including the State Fully Protected white-tailed kite and golden eagle, have been observed foraging over the project site. The FEIR states that impacts to raptor foraging habitat will not be significant because "the site is located in a region that has been subjected to rural development and still supports large areas of open space that will continue to provide foraging opportunities." There are a number of flaws in this reasoning:

- a) The FEIR appears to assume that the rural development will remain open space indefinitely. However, due to the well-established pattern of increased development in the Inland Empire, it is reasonably foreseeable that development will continue to reduce foraging habitat for raptors. Therefore, the revised and recirculated DEIR should include a thorough and detailed analysis of the project's cumulatively significant contributions to the regional trend of raptor foraging habitat loss.
- b) The FEIR appears to assume that raptors currently using the project site will be able to move their territories to completely separate areas without any significant consequence. This may be feasible if the surrounding foraging habitat is a) able to support a sufficiently large prey base to sustain the raptors that will be displaced as a result of project construction; b) close enough to the nesting sites of the raptors that currently forage over the project site that they will be able to easily extend their foraging distances without suffering adverse impacts; and c) is not currently in use by other raptor species, which may result in territorial disputes. In order to support these assumptions, the revised and recirculated DEIR should contain a thorough and detailed analysis of the feasibility of forcing the raptors currently supported by the project site to relocate to other foraging areas. The analysis should contain: a) a well-supported description of the prey base and prey numbers required by each raptor species; b) a thorough and detailed analysis of the prey base species and abundance within the surrounding open space areas; and c) a thorough and detailed analysis of the population density of the raptors already using the surrounding areas, including identifying whether the population density is already at or approaching the carrying capacity for those areas. If the use of those areas is already enough that the raptors currently foraging over the project site may not be able to meet their foraging needs in the surrounding areas, then the revised and recirculated DEIR should be conditioned to require acquisition, preservation via an appropriate

conservation method (we recommend using a conservation easement), enhancement and/or restoration, and long-term management in perpetuity by an experienced and qualified independent conservation entity with demonstrated expertise in managing raptor habitat.

- c) The FEIR does not examine the foraging range of the raptor species that forage over the project site and presumably nest near or on the project site. Depending on where the nest is located a raptor nesting off-site or within one of the areas to be conserved may find the majority of its home range within the project's construction footprint. For example, a study of white-tailed kite foraging habits found that out of 233 observed hunting flights, the majority (n=223) were limited to the area within 1 km of the nest, whereas hunting flights between 1 and 3 km from the nest site were rare (n=10) (Warner and Rudd 1975). Therefore, a white-tailed kite nesting in Morton Canyon may lose access to the majority of its hunting range, forcing it to travel longer distances into unfamiliar areas which may already be part of other raptors' territories. This would increase the amount of time and effort required to feed both parents and chicks, and would also increase the risk of confrontation with other territorial raptors, thus increasing the risk of nest failure. The Department recommends that the revised and recirculated DEIR include a thorough and detailed analysis of the foraging needs and home ranges of all raptor species that use the site for foraging. The Department further recommends that the revised and recirculated DEIR identify the location and size (acreage) of appropriate foraging habitat that will be acquired, preserved, enhanced/restored, and managed in perpetuity to offset the project's impacts to raptors. The Department recommends that a map be included in the EIR depicting the location(s) of the proposed raptor foraging habitat land acquisition(s). Locations of suitable nesting habitat should be identified on the map to allow the Department to review proximity of nesting habitat to the proposed mitigation areas.

The FEIR also states that Cooper's hawk, golden eagle, and white-tailed kite "are not expected to nest on the Project site." Please clarify how this conclusion was reached.

#### *Burrowing Owl*

The FEIR states that "no burrowing owl or sign of burrowing owl was observed during the habitat assessment or during the course of the numerous focused surveys," and states that "no direct or indirect impacts would occur to burrowing owl as a result of project implementation." However, the 2013-2014 CAGN Non-Breeding Season Survey lists burrowing owl as one of the special-status species observed. Please clarify why the FEIR was not updated to include the burrowing owl observation, and why the results of the 2013-2014 CAGN surveys were not

included in the RDEIR for public review. The Department requests that the recirculated DEIR include an up-to-date, thorough, and detailed analysis of the project's potential direct, indirect, and cumulative impacts to burrowing owl, as well as adequate, enforceable, and feasible mitigation measures to offset the impacts.

#### *Fairy Shrimp*

The 2013-2014 CAGN Non-Breeding Season Survey states that "fairy shrimp were observed in many of the road ruts and other ponded areas of the project site," and that they were "likely in the genus *Brachinecta*", which "has both rare and common species within the range of the project area." Please clarify the fairy shrimp's species. If the fairy shrimp were not identified to species, or if they were determined to belong to a special-status species, then project impacts to the fairy shrimp should be considered potentially significant, and the EIR should be recirculated for further public review pursuant to CEQA Guidelines Section 15088.5(a)(1). Please include a thorough and detailed analysis of the project's direct, indirect, and cumulative impacts to fairy shrimp within the recirculated DEIR.

#### *Impacts to Riversidean Alluvial Fan Sage Scrub (RAFSS)*

As stated in the Department's October 13, 2014 letter, we do not agree that mature RAFSS has a lower biological or conservation value than pioneer or intermediate stage RAFSS. The Department reiterates this comment. The City states in its response to the Department's October 13, 2014 letter that the mature RAFSS habitat onsite has become "isolated from the fluvial processes of a drainage course" and that it will therefore "evolve to... more dense and woody chaparral habitat". However, the mature RAFSS mapped on the southern border of the project site is not isolated from Mill Creek, and is in fact located within or partially within the 100-year flood plain of the Creek as mapped in the FEIR's figure 5.9-3.

The FEIR asserts that mature RAFSS, isolated from fluvial processes, will evolve into "more dense and woody chaparral habitat." The Department assumes that this conclusion is based on Smith's (1980) characterization of alluvial scrub vegetation of the San Gabriel River. More recent research (e.g., Barbour and Wirka, 1997), however, indicates that the three-stage paradigm of alluvial succession oversimplifies the process of succession in alluvial communities, that succession may take place over a much longer time frame than previously thought, and that succession dynamics may differ by drainage. While Smith's study suggested that alluvial scrub reaches the "mature" phase at approximately 50 years old, some "intermediate" stands have been determined to be on the order of 100 years old or older, and some "mature" stands have been determined to be potentially thousands of years old (Barbour and Wirka, 1997). Therefore,

even if the mature RAFSS habitat's transformation into a more upland chaparral habitat were inevitable, the change could take place over hundreds or thousands of years. Thus, concluding that impacts to mature RAFSS are less significant than impacts to intermediate or pioneer RAFSS requires an inappropriate comparison of the project impacts to a hypothetical future baseline condition, rather than the condition as it exists in the present.

The Department requested in both of its previous comment letters that the City provide the analysis used to conclude that the proposed mitigation ratios for impacts to RAFSS habitat are sufficient to reduce the impacts to a level that is less than significant. The Department reiterates this request, and clarifies that it considers the proposed mitigation acreages for both intermediate stage and mature stage RAFSS to be too low to adequately offset the impacts. Because the FEIR does not propose to create new RAFSS habitat, the impacts to existing RAFSS will cause a net loss in acreage of RAFSS. In order to adequately mitigate the loss with the proposed acreage of mitigation, the enhancement of existing RAFSS habitat would need to more than double its biological function and value as habitat.

In its October 13, 2014 letter, the Department requested clarification as to whether the proposed offsite RAFSS mitigation areas (a) are either owned by the project applicant or required to be purchased by the project applicant, and (b) have flood easements recorded over them. The FEIR clarifies that the proposed offside RAFSS mitigation areas are not owned by the project applicant, but does not mention whether the applicant will be required to purchase them, or whether flood easements have been recorded over them. The Department repeats its request for clarification on this point. Mitigation Measure BIO-2 also requires preservation *and/or* restoration and enhancement of RAFSS habitat rather than preservation *and* restoration/enhancement. Please clarify whether this implies that the offsite RAFSS habitat mitigation areas may not be preserved. The Department emphasizes that enhancement and restoration of off-site habitat without preserving it in perpetuity is not appropriate mitigation for the permanent loss of on-site habitat.

The FEIR states that mitigation opportunities for RAFSS consist of "974 acres of preservation opportunities and 360 acres of enhancement opportunities", consisting of land "owned by the City of Redlands (164 acres with a total of 134 of potential credits), Southern California Edison (458 acres with 426 acres of potential credits), SBCFCD (364 acres with 329 acres of potential credits), and San Bernardino Valley Water Conservation District (424 acres with 445 acres of potential credits)". Please provide a thorough clarification of your use of the word "credits". Is the City implying that the project applicant intends to purchase credits from the aforementioned entities as if they were mitigation banks or in-lieu fee providers? Please note that neither the City of Redlands, Southern California Edison, San Bernardino County Flood Control District, nor the San Bernardino

Valley Water Conservation District have been approved as mitigation banks, nor do they run in-lieu fee programs. Therefore, none of these entities have been approved by the appropriate regulatory agencies to sell mitigation or in-lieu fee credits.

The FEIR revised Mitigation Measure BIO-2 to state that if sufficient RAFSS habitat is not available within the areas specified at the time mitigation is implemented, "then the shortfall in acreage shall be achieved through purchase of RAFSS habitat within the Cajon Creek Conservation Bank or other approved mitigation bank and/or payment into the Riverside-Corona Resource Conservation District in-lieu fee program (or other approved in-lieu fee program) established for RAFSS habitat". As the Department stated in its June 4, 2014 letter, mitigation at the Cajon Creek Conservation Bank or other banks and/or in-lieu fee programs outside of the area containing the Santa Ana River population of San Bernardino kangaroo rat is not appropriate for this project. If it is not feasible to ensure that the project applicant can and shall acquire, enhance, restore, and preserve sufficient occupied habitat, which does not already have an easement placed over it, to adequately mitigate the proposed project impacts to RAFSS and to San Bernardino kangaroo rat, then the Department strongly recommends that the project be redesigned to avoid and preserve the on-site RAFSS habitat.

#### *Impacts to Riversidean Sage Scrub (RSS)*

The Department stated in its October 13, 2014 letter that it considers the loss of 489.4 acres of RSS to be a significant impact. We reiterate this. Several sensitive and special-status species have been observed within the RSS on-site, including loggerhead shrike, western spadefoot toad, San Diego black-tailed jackrabbit, San Diego desert woodrat, and Los Angeles pocket mouse. Additionally, San Diego pocket mice were trapped in the RSS in February 2015 (Lawrey 2015). Given the location and the habitat type in which they were trapped, the Department assumes that the individuals trapped were northwestern San Diego pocket mice, which are a California Species of Special Concern. Additionally, golden eagle, Cooper's hawk, white-tailed kite, and several other raptor species have been observed foraging on-site; and silvery legless lizard, southern California rufous-crowned sparrow, orangethroat whiptail, northern red-diamond rattlesnake, California mountain kingsnake, coast horned lizard, San Diego horned lizard, and Lawrence's goldfinch have all been determined to be either present or potentially present.

Based on the diversity of special-status species present and potentially present, the Department considers the RSS on-site to be highly valuable to wildlife, and considers its loss to be a substantial reduction in sensitive wildlife habitat. We recommend that the revised and recirculated DEIR include an adequate, feasible, and enforceable mitigation measure to offset the loss of RSS habitat

associated with the project's construction, as well as a thorough, detailed, and well-supported analysis demonstrating the mitigation measure's adequacy to reduce the impact of the loss of RSS to a level that is less than significant.

#### *Impacts to Non-Listed Special Status Species*

The Biological Resources section of the FEIR lists 20 special-status wildlife species that are not otherwise listed under the State and/or Federal Endangered Species Acts as being either confirmed present or having a moderate to high likelihood of being present on the project site. The FEIR states, in its response to the Department's October 13, 2014 letter, that "[m]itigation measure MM Bio 2, which is required to reduce potential direct impacts to SBKR from the loss of RAFSS habitat, would also reduce potential direct impacts to special status wildlife species to less than significant levels." The Department does not concur with this statement.

Conservation of habitat cannot be considered appropriate mitigation for direct impacts to a species unless the habitat proposed for conservation is demonstrated to be occupied by the species in question. The FEIR has neither demonstrated that the potential RAFSS mitigation areas are occupied by the same special-status species that currently occupy the project site, nor has the City included a requirement in the FEIR that proposed mitigation areas be surveyed to ensure that they can and do support those species before they are approved as mitigation. Furthermore, it is unclear how the value of 489.4 acres of RSS and 61 acres of RAFSS, totaling 550.4 acres of occupied habitat, can be replaced by preserving and enhancing 86.4 acres of already existing RAFSS habitat. Not only is this proposal woefully inadequate in terms of the sheer discrepancy in acreages (i.e., the proposal represents less than 16% of the area of occupied habitat that is currently proposed to be removed by the project), but the FEIR fails to demonstrate that the 86.4 acres is occupied by the same suite of species that will be impacted. The Department reiterates that the mitigation proposal for direct impacts to special status species and their habitat is not sufficient, and requests that the City ensure that the proposed mitigation for loss of RSS habitat (as requested above) include a requirement that the mitigation area be demonstrated to support viable populations of the special-status species that will be or are likely to be directly impacted by the project's buildout.

#### *Impacts to Wildlife Movement*

The FEIR clarifies that baseline conditions for the proposed wildlife corridor will be measured prior to construction of phase 5 of the project. The Department assumes that phases 1-4 of the project are planned to take place prior to construction of phase 5, and is concerned that delaying the evaluation of the baseline conditions until the project is approximately 80% built out will result in an inaccurate understanding of wildlife movement through Mill Creek. Disturbance of



the area caused by construction of phases one through four can be reasonably expected to impact wildlife movement and behavior in the area. Furthermore, delaying the analysis of wildlife movement reduces the information available to the public for review as part of the CEQA process. Please clarify why it is necessary to delay measurement of baseline conditions. The Department recommends that baseline conditions be measured prior to initiation of construction, and that the resulting analysis be included in the revised and recirculated DEIR.

The Department expressed concern in its October 2014 letter that the proposed five-year monitoring period may be insufficient to assess the successes and/or failures of the proposed corridor, and requested that the FEIR include a justification of the length of the monitoring period. The FEIR's response to the letter states that "the five year monitoring period identified is believed to be an adequate time period for monitoring the wildlife movement in the corridor because the east end of the site is already used by wildlife." This explanation does not adequately address our concern, because it does not explain how the five-year term was determined to be an appropriate period of time, nor does it provide supporting facts or documentation suggesting that five years is adequate to assess changes in wildlife movement resulting from development. Some potential changes that may degrade habitat quality within the corridor may take substantially more than five years to become apparent after the project's construction. For example, exotic vegetation installed by homeowners may gradually begin to colonize the corridor. Depending on how long after construction the homes are sold and on the particular species of exotic vegetation installed by homeowners, this may not become apparent until after the five-year monitoring period is over.

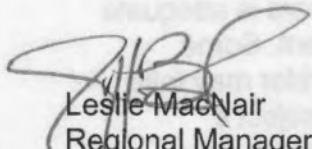
The Department is further concerned that the proposed mitigation does not include a mechanism to address potential degradation to the corridor that may occur after the five-year monitoring period. Reduction of wildlife movement to a relatively narrow corridor substantially increases the risk that wildlife movement will be suddenly precluded by a natural disaster or other unexpected event, such as fire, flood, deposition of debris, transient encampments, etc. While preserving a corridor reduces the long-term impact to wildlife movement as compared to a project that does not preserve a corridor, it does not eliminate it, nor does it render the long-term impacts insignificant. In order to ensure that the project's effect of narrowing the available movement area does not result in preclusion of movement, the Department recommends that the long-term management plan include contingency measures to offset and/or address future habitat degradation and/or barriers to wildlife movement. The Department strongly recommends that the FEIR identify the funding mechanism (e.g., non-wasting endowment) for the implementation of proposed contingency measures, and enforcement criteria to ensure that measures are implemented appropriately and in a timely manner.

The Department reiterates its previously stated concerns regarding the long-term management of the corridor. In order to ensure that the best adaptive management strategies are implemented without placing an undue priority on cost-saving measures, and to avoid potential conflict of interest, we strongly recommend that the corridor be managed by an experienced, independent conservation entity, and that the management be funded through a non-wasting endowment to ensure that management activities are funded in perpetuity.

#### Further Coordination

The Department appreciates the opportunity to comment on the FEIR for the Harmony Specific Plan Project (SCH No. 2012071065) and recommends that the City of Highland address the Department's comments and concerns and recirculate the DEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Gabriele Quillman at (909) 980-3818 or at [gabriele.quillman@wildlife.ca.gov](mailto:gabriele.quillman@wildlife.ca.gov).

Sincerely,

  
Leslie MacNair  
Regional Manager

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cc: State Clearinghouse, Sacramento

#### Literature Cited

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