



July 19, 2012

Mr. Ron Santos  
City of Lake Forest  
25550 Commercentre Drive, Suite 100  
Lake Forest, CA 92630

**Subject: Comments on the Portola Center Project Modified Initial Study/Environmental Checklist and Notice of Preparation of a Draft Environmental Impact Report (SCH # 2012061063)**

Dear Mr. Santos:

The California Department of Fish and Game (Department) has received (on June 19, 2012) and reviewed the Modified Initial Study/Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Portola Center Project (Project) in the City of Lake Forest, County of Orange. On Friday, July 13, 2012, the Department requested a one-week extension of the public comment period, until July 23, 2012. On July 13, 2012, the City of Lake Forest (City) approved our request by e-mail. We appreciate the extension, and assume that the City will fully consider our comments in the preparation of the DEIR.

The Project is part of the City of Lake Forest Opportunities Study Final Program Environmental Impact Report (OSA PEIR), dated May 23, 2008 that was certified in June 2008. The NOP analyzes the changes between the Portola Center project that is identified as Site 2 in the OSA PEIR and the Project as currently proposed in the NOP. The Project site is about 195 acres and supports a mixture of annual grassland and coastal sage scrub (CSS), which is occupied by the federally threatened coastal California gnatcatcher (*Polioptila californica californica*, "gnatcatcher"). The approximate 48-acre difference between Site 2, as analyzed in the OSA PEIR, and the currently proposed Project is due to several open space dedications that were made by the property owners, which reduced the size of the property from approximately 243 acres to 195 acres.

The City is signatory to the County of Orange Central and Coastal Subregion Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) Implementation Agreement (IA). As a signatory jurisdiction, the City must ensure and verify that any project that is under their discretionary approval meets the requirements and conditions of the NCCP/HCP.

The NOP correctly describes the history of the project site in context of the NCCP/HCP and the related boundary adjustment to the NCCP/HCP Reserve System (Reserve) that was approved by the Nature Reserve of Orange County (NROC) in June 2009, to reconcile a mapping error along the southeastern boundary of the project site. Specifically, the boundary adjustment removed 28.3 acres from the Reserve and retained 12.07 acres of the project site as "Existing Use Area" as defined by the NCCP/HCP.

On April 30, 2010, the Department and United States Fish and Wildlife Service, hereafter collectively referred to as the Wildlife Agencies, approved Minor Amendment 10-01 (MA 10-01) to the NCCP/HCP that allowed for the development of a portion of the project site that was mapped as an Existing Use Area. The NCCP/HCP does not authorize "take" of gnatcatchers as defined in the Endangered Species Act of 1973, as amended, within Existing Use Areas, so the approved minor amendment addressed take of gnatcatchers at this location. The NCCP/HCP authorizes payment of an in-lieu fee by non-participating landowners to NROC to mitigate impacts to CSS, gnatcatcher, and other covered species within identified areas in participating jurisdictions. Although payment of the in-lieu fee does not require a minor amendment, several issues were proposed and clarified through MA 10-01 that addressed calculation of the in-lieu fee, use of the in-lieu fee in an Existing Use Area, and credits for conservation and restoration of CSS and southern cactus scrub (SCS) habitat, which is a form of CSS according to the NCCP/HCP.

The NOP indicates that significant permanent direct impacts to CSS communities will be mitigated in accordance with the NCCP/HCP, and that MA 10-01 outlines the required mitigation that needs to be implemented for the City to comply with the conditions of the NCCP/HCP. The NOP cites the following required mitigation and provisions of use of the in-lieu fee according to MA 10-01:

1. Dedication of approximately 32 acres of open space to the Reserve;
2. Payment of the in-lieu fee will be calculated using the 1997 CSS vegetation mapping for occurrence of CSS and various subtypes;
3. Payment of the in-lieu fee will be based on the applicable in-lieu fee rate;
4. Mitigation credits will be given for 1) lands supporting CSS that are dedicated to the Reserve, 2) lands supporting SCS revegetation within and outside the Reserve, and 3) lands supporting SCS revegetation within fuel modification zones (FMZ) both within the Reserve and within the project area at 66 percent credit;
5. Biological resources within the limits of the grading impact area and any additional FMZ are considered 100 percent permanent loss; and
6. NCCP/HCP Construction Minimization and Avoidance Measures will be followed during all phases of construction.

In addition to the above, the NOP specifies that the applicant has prepared a management plan for non-Reserve habitat, which will be reviewed and approved by the Wildlife Agencies prior to issuance of a grading permit for the Project. Furthermore, prior to issuing any grading permit for the Project, the applicant shall provide to the City proof of payment to and acceptance by NROC of the in-lieu fee. The tabulation of remaining in-lieu mitigation fee requirements is provided in Table 4.4-13, Central/Coastal NCCP/HCP In-Lieu Fee Calculation, based on the current development plan and the Conceptual Southern Cactus Scrub Revegetation & Management Plan for the Portola Center Project (RMP) dated May 2012 (included in Appendix A2 of the NOP).

In summary, the DEIR shall adequately describe how the Project will impact biological resources and mitigate for those impacts. Because the City is signatory to the NCCP/HCP, certain mitigation measures are expected to be implemented (e.g., Construction Minimization and Avoidance Measures). Furthermore, the Reserve boundary line adjustment and the minor amendment to the NCCP/HCP that was approved specifically

for the Project identified additional impacts to covered species and habitats and specific measures to mitigate for these impacts. There are a few key components of MA 10-01 that were not mentioned in the NOP that should be disclosed in the DEIR. There were also mitigation measures disclosed in the NOP that the City stated the applicant has already complied with that we recommend be verified through supporting documentation in the DEIR. We offer the following comments to the City when complying with the conditions and requirements of the NCCP/HCP MA 10-01.

#### Dedication of Approximately 32 Acres to the Reserve System

1. The Department would like supporting documentation on the approximate 32 acres of open space that was dedicated to the NCCP/HCP Reserve according to MA 10-01. MA 10-01 states that "Approximately 32.4 acres of land will be added to the Reserve system through a dedication of land from Portola to the City and then an exchange of land between the City and County Parks." Throughout various sections of the NOP it mentions that the Applicant has conveyed all of the required open space (approximately 32 acres) through Irrevocable Offer of Dedications to the City; however, the NOP does not provide any supporting documentation of the transfer of land from the Applicant to the City nor any reference that the 32 acres has been conveyed to the County of Orange and then included in the Reserve. We recommend that the City include as an attachment to the DEIR legal documentation of dedication of lands to the Reserve. This documentation should also be sent to NROC for their files, if it has not been done so already.

#### Table 4.4-13 Central/Coastal NCCP/HCP IN-Lieu Fee Calculation

2. The Department is concerned with the 133.21 acres of impacted CSS that is identified in Table 4.4-13 in the NOP. We are interested in knowing why the area of impact is less than the 138.29 acres that was identified in Table 1: Estimated Fee Calculation in MA 10-01. The difference of 5.08 acres is substantial when calculating the in-lieu fee, which is a decrease of \$330,200.00 that would not be available to mitigate the impacts of the Project by implementing restoration or enhancement activities within the Reserve or by purchasing conservation land that would be added to the NCCP/HCP Reserve System. We would appreciate knowing where changes were made to the grading plans that reduce direct permanent impacts and cause this difference in the impacted CSS area. To enable reviewers to understand how the area of direct impacts was calculated, we recommend that the DEIR include an exhibit of the 1997 Vegetation Map of Portola Property, Figure 2 in MA 10-01, with a blue print of the City-approved grading plan overlaid and with the number of acres labeled for each graded area of CSS, which shall include mature and disturbed CSS and SCS as required by MA 10-01.
3. There are minor deviations in the acreages of the Source of Credits in Table 4.4-13 from the minor amendment's Credit for conservation/restoration in Table 1. At this point we are not concerned with the slight differences of acreage between what is being conserved or restored; however, we would appreciate a description and illustration in the DEIR as to how the acres of Source of Credits are configured

across the project site and within the adjacent lands that are being dedicated as open space for the Project. To help us and other reviewers know where each type of credit and its associated acreage is located, we recommend that the DEIR insert the number of acres to each credit category that is shown in Exhibit 4.4-4, Mitigation. If a credit category is not contiguous, for example, as in the case of the Additional Acreage Conserved in Perpetuity area that is bisected by Glenn Ranch Road, then each portion of the credit category should have its own acreage labeled.

4. MA 10-01 also requires that in order to receive mitigation credit for habitat conservation in the Project's FMZ, the Orange County Fire Authority (OCFA) must confirm, in writing, that the activities contemplated in the minor amendment in the FMZ are acceptable. The DEIR should include a copy of this written confirmation from OCFA.

By incorporating the three above recommendations into the DEIR for the Project, the City would ensure that the in-lieu fee component of MA 10-01 is being adequately addressed. Again, as stated in MA 10-01, prior to issuance of any grading permit, the final impacts and restoration credits will be determined by the City, subject to approval by NROC. By depicting the location and area (in acres) of final impacts and the conservation and restoration credits on an exhibit, and providing the OCFA confirmation letter that accepts the activities proposed in the minor amendment in the FMZ, NROC should have all the necessary information to determine Project consistency with use of the in-lieu fee program according to MA 10-01.

5. The NOP references a different in-lieu fee of either \$50,000 or \$65,000 per acre of CSS lost throughout the document. We recommend that DEIR reflect the current applicable rate which is \$65,000 per acre. The DEIR should also note that the project proponent will be responsible for paying the in-lieu fee that is applicable at the time the grading permit is issued.

Conceptual Southern Cactus Scrub Revegetation & Management Plan (Revegetation Program)

6. The Department would like to remind the City that prior to issuance of any grading permits for the Project that the Revegetation Program shall be approved by the Wildlife Agencies and NROC for non-FMZ areas located within the Reserve. The NOP includes the Revegetation Program in Appendix A2 but is missing details of the following key components as required in MA 10-01:
  - a. An identified long-term land manager;
  - b. Fully executed Property Analysis Record (PAR) or equivalent analysis to determine an endowment for maintenance and management of the non-Reserve revegetation areas in perpetuity;
  - c. Endowment, assessment mechanism or other funding source established; and
  - d. Draft Conservation Easement or other long-term protection mechanism that will be recorded prior to issuance of grading permits.

The four components above are identified in the Revegetation Program; however, the Department needs assurance that the project proponent has engaged in developing the specifics of these components before we can consider approving the Revegetation Program. These components are important to the Department because they ensure that the conserved habitat will be protected and managed in perpetuity to supplement and buffer the remaining primary linkage between the Central Subarea and the Southern NCCP Subregion, in addition to providing habitat for cactus wren (*Campylorhynchus brunneicapillus*) and foraging habitat for gnatcatcher. We encourage the City to engage early on with the project proponent on these items because preparation and processing of these documents is time-consuming. We recommend that the DEIR incorporate the above mentioned components into the Revegetation Program, as an appendix to the DEIR, or at the least mention that the City will ensure that the Revegetation Program will be approved by the Wildlife Agencies and NROC and the above mentioned key components will be established and recorded prior to issuing grading permits for the Project.

7. We are concerned with the statement at the bottom of page 4.4-39 of the NOP regarding the southern cactus revegetation, which states "Reference to implementation of the southern cactus scrub revegetation on grading, improvement, and /or landscape plans, as appropriate, shall constitute implementation for purposes of satisfying pre-grading requirement." To ensure consistency with MA 10-01, we request that the project proponent be required to submit supporting documentation with their grading permit applications that includes a joint letter, or separate letters, from the Wildlife Agencies and NROC that each entity has approved a dated version of the Revegetation Program and that all applicable components of the Restoration Plan and Management Plan as identified in MA 10-01 have been established.

The Department appreciates the opportunity to comment on this NOP. Please contact Cara Allen at (858) 637-7188 if you have any questions or comments concerning this letter.

Sincerely,



Stephen M. Juarez  
Environmental Program Manager  
South Coast Region

cc: State Clearinghouse, Sacramento  
Lyn McAfee, Nature Reserve of Orange County  
Jonathan Snyder, United States Fish and Wildlife Service, Carlsbad