

US EPA ARCHIVE DOCUMENT



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, CA 94105

September 18, 2006

Mr. Jim Bartel
U.S. Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

Subject: Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) and Receipt of an Application for an Incidental Take Permit for the Orange County Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (NCCP/MSAA/HCP), Southern Orange County, California (CEQ# 20060292)

Dear Mr. Bartel:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (NCCP/MSAA/HCP) sets forth a proposed Conservation Strategy that would be implemented by the County of Orange in cooperation with state and federal agencies and Participating Landowners in southern Orange County. The proposed NCCP/MSAA/HCP has a strong conservation component that should help protect threatened and endangered species in the future. We commend the involved parties for their collaborative efforts, in particular for selecting an alternative that provides for habitat linkage connectivity between the San Juan Creek and San Mateo Creek Watersheds, and offers protection to several important areas including the Chiquita sub-basin and the San Mateo Creek Watershed.

Based on our review, we have rated the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) as Environmental Concerns – Insufficient Information (EC-2) (see enclosed “*Summary of EPA Rating Definitions*”). While we are supportive of the overall NCCP/MSAA/HCP, we have some concerns regarding the scope of the DEIR/EIS, impacts to air quality, and regulatory coverage for water-related issues. In addition, the relationship between the NCCP/MSAA/HCP and San Juan Creek Watershed/Western San Mateo Creek Watershed (SJ/SM) Special Area Management Plan (SAMP) needs to be clarified.

We appreciate the opportunity to review this DEIR/EIS. When the Final Environmental Impact Statement (FEIS) is released for public review, please send one (1) copy to the address above (mailcode: CED-2). If you have any questions, please contact me at (415) 972-3988 or Ann McPherson, the lead reviewer for this project. Ann can be reached at (415) 972-3545 or mcperson.ann@epa.gov.

Sincerely,

/s/

Duane James, Manager
Environmental Review Office
Communities and Ecosystems Division

Main ID # 004395

Enclosures: Summary of EPA Rating Definitions
Detailed Comments
EPA Comment Letter and Detailed Comments on DEIS for the SJ/SM SAMP,
(1/27/06)

US EPA DETAILED COMMENTS on the DRAFT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT (DEIR/EIS) for the SOUTHERN SUBREGION NATURAL COMMUNITY CONSERVATION PLAN/MASTER STREAMBED ALTERATION AGREEMENT/HABITAT CONSERVATION PLAN (NCCP/MSAA/HCP), SEPTEMBER 18, 2006

Project Description

The County of Orange, California, Rancho Mission Viejo (RMV), and the Santa Margarita Water District (SMWD) have requested an incidental take permit for 75 years from the U.S. Fish and Wildlife Service pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The permit is needed to authorize take of listed species associated with the approval and implementation of the Proposed Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (NCCP/MSAA/HCP) Conservation Strategy and Covered Activities, including state and federal regulatory authorizations and provisions for the proposed Covered Activities.

The Conservation Strategy consists of: 1) Creation of a permanent Habitat Reserve; 2) Formulation and implementation of a Habitat Reserve Management Program (HRMP); 3) Receipt of State and Federal regulatory coverage and provisions for the impacts of proposed Covered Activities on proposed Covered Species and California Department of Fish and Game (CDFG) Jurisdictional Areas; and 4) Execution of an Implementation Agreement (IA) and identification of funding necessary to implement the HRMP. The Covered Activities consist of those lawful activities undertaken by the County of Orange, RMV, and the SMWD pursuant to the NCCP/MSAA/HCP.

Scope of the DEIR/EIS

After reviewing the DEIR/EIS, we find that there is some ambiguity regarding the scope of the document. The title of the NCCP/MSAA/HCP implies that it addresses the entire Southern Subregion. However, the Southern Subregion (132,000 acres) is comprised of the Cleveland National Forest (40,000 acres) and the Planning Area (92,000 acres). The NCCP/MSAA/HCP addresses the Planning Area and excludes the Cleveland National Forest. Furthermore, efforts to identify areas of potential development were concentrated on the RMV property (22,815 acres). Consequently, the issuance of an incidental take permit will likely be restricted to the RMV property and other areas specifically mentioned, rather than including the entire Planning Area or the entire Southern Subregion. This difference in scope is not readily visible in the voluminous NCCP/MSAA/HCP or the DEIR/EIS.

In the Planning Area (92,000 acres), about 36 percent (33,000 acres) is developed; another 6 percent (about 5,800 acres) is used for agricultural purposes or is significantly disturbed by other uses; and the remaining 58 percent (about 52,400 acres) is natural habitat (pg. ES-4). The DEIR/EIS states that the RMV lands (22,815 acres) comprise 90 percent of the remaining privately-owned lands in the Planning Area that are not already developed or approved for development (pg. 1-15). For this reason, the range of Habitat Reserve Alternatives differs only with respect to the RMV ownership (pg. 2-3). Open space designations throughout

the remainder of the Subregion (the non-RMV lands) are the same for all of the Habitat Reserve Alternatives presented and analyzed (pgs. ES-8, 2-3).

If there is a total of 52,400 acres of natural habitat in the entire Planning Area and the RMV property comprises 22,815 acres, then that implies that there is an additional 29,585 acres of natural habitat located in the Planning Area. The 29,585 acres of natural habitat outside the RMV property are not readily identified in figures, maps, or tables and does not appear to have been included in the plans to create the Habitat Reserve. Additional opportunities for development and conservation might have been identified if the Alternatives had included areas of natural habitat located outside of the RMV property.

Recommendation:

Clarify whether the incidental take permit will be valid for the entire Southern Subregion, the Planning Area, or selected areas consisting mostly of RMV lands.

Recommendation:

Add a figure in Part IV: Map Book which illustrates all of the areas in the Planning Area that are designated as natural land use. Include a table that designates the acreage and name associated with each of the larger natural land use areas.

Recommendation:

Provide additional clarification regarding the statement that RMV lands comprise 90 percent of the remaining privately-owned lands in the Planning Area that are not already developed or approved for development. This would seem to contradict the statement that there are 52,400 acres of natural habitat in the Planning Area, with the RMV lands containing 22,815 acres.

Relationship to the San Juan Creek Watershed/San Mateo Creek Watershed (SJ/SM) Special Area Management Plan (SAMP)

The NCCP/MSAA/HCP is the result of a collaborative effort involving multiple federal, state, and local agencies. It is one of three large-area efforts in the Southern Subregion, including the San Juan Creek Watershed/Western San Mateo Creek Watershed (SJ/SM) Special Area Management Plan (SAMP) by the U.S. Army Corps of Engineers (USACE), and the General Plan Amendment /Zone Change (GPA/ZC) by the County of Orange, which addresses local land use considerations. Clarification is needed to ensure that issues pertaining to the Clean Air Act and the Clean Water Act are addressed adequately and consistently in the appropriate document(s).

Air Quality

Orange County is located in the South Coast Air Basin (SCAB), an area that is classified as a serious nonattainment area. Air quality issues will need to be addressed in the basin. The sections on Air Quality are nearly identical in both the SJ/SM SAMP and the NCCP/MSAA/HCP. On January 27, 2006, EPA submitted detailed comments regarding Air

Quality in a Comment Letter addressed to the USACE regarding the DEIS for the SJ/SM SAMP. EPA's comments regarding Air Quality are relevant and apply to the NCCP/MSAA/HCP.

Water Quality

The SJ/SM SAMP was designed to address Clean Water Act Section 401 and Section 404(b)(1) water quality requirements. However, the scope of the original Southern Subregional NCCP/HCP was expanded to include consideration of regulatory coverage for wetlands/riparian resources as part of both the NCCP and the MSAA components of the program (pg. 1-7). The name of the overall program was later modified to become the NCCP/MSAA/HCP. Does regulatory coverage for water-related issues need to be addressed in the NCCP/MSAA/HCP and DEIS/EIR? Or is it adequately addressed in the SJ/SM SAMP? Is there consistency between the NCCP/MSAA/HCP and the SJ/SM SAMP?

Recommendation: The Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) should clarify the relationship between the NCCP/MSAA/HCP and the SJ/SM SAMP, particularly with respect to regulatory coverage, and ensure that there is consistency between the two documents.

Recommendation: There is a need to ensure coordination of both water quality and air quality management with the long-term NCCP/MSAA/HCP Habitat Reserve Management Program (HRMP) and the SJ/SM SAMP. EPA's comments on the DEIS for the SJ/SM SAMP are relevant and apply to the NCCP/MSAA/HCP.

Questions regarding Part IV: Map Book

Many of the maps (Part IV: Map Book) referenced in the text do not contain sufficient detail. When the reader is referred to a map, he should be able to locate the items that are mentioned in the text on that particular map. Frequently, this is not possible because there is not enough detail provided on the maps. This problem was noted in map references throughout the DEIR/EIS. We list three examples to illustrate the point:

1. The boundary of the Southern Subregion is described in detail on pg. 2-1 with a reference to Figure 3-M. However, when you examine Figure 3-M, you cannot find several of the items listed on pg. 2-1, specifically the mouth of San Juan Creek, Interstate 5, El Toro Road, or Live Oak Canyon Road, because there is not enough detail shown on the map.

Recommendation:

Review references to figures and maps and determine which maps do not contain the necessary detail; revise maps accordingly. This might involve creating new maps with more extensive detail; referencing the more detailed maps in addition to the previously referenced maps; or referencing multiple existing maps. Inserting tables with additional information would be beneficial to the reader in some cases.

2. Another example is found on pg. 4-252, where the DEIR/EIS itemizes land commitments to the Habitat Reserve and references Figure 182-M. It is especially important that the reader understand exactly what these commitments are because they are part of the preferred alternative. However, when you examine Figure 182-M, you cannot identify the 11,950 acres of County Parkland, the 4,284 acres of RMV pre-existing conservancies, and the 48 acres of RMV land subject to a conservation easement. Clarification is also needed with respect to the 4,284 acres of RMV pre-existing conservancies. Is this acreage located inside or outside the RMV boundary? On pg. 2-39, it specifies that the acreage consists of: *e.g.*, Ladera Land Conservancy, Upper Chiquita conservation easements, Arroyo Trabuco easement, and Donna O'Neill Land Conservancy, all of which are located outside the RMV boundary.

Recommendation:

Please revise Figure 182-M to clearly show the 11,950 acres of County Parklands, 4,284 acres of RMV pre-existing conservancies, and the 48 acres of RMV land subject to a conservation easement. Please add additional references in the text to clarify that the 11,950 acres includes the O'Neill Regional Park, Riley Wilderness Park, and Caspers Wilderness Park; and the 4,284 acres of RMV pre-existing conservancies refers to the Ladera Land Conservancy, Upper Chiquita conservation easements, Arroyo Trabuco easement, and Donna O'Neill Land Conservancy, if this is true. Adding a table which lists these areas and acreages in greater detail would be beneficial to the reader.

3. Section 3.2 in the DEIR/EIS discusses Water Resources, including the existing conditions in the watershed. There is no reference to a map that illustrates the major streams in the Southern Subregion.

Recommendation:

Include a map illustrating the major streams in the Southern Subregion. The San Juan Creek and San Mateo Creek and tributaries should be shown in detail.

Disclosure/Previous Settlements

We understand from personnel in your agency that there have been legal settlements in previous years between environmental groups and the RMV leading to the protection, in particular, of the San Mateo Creek Watershed.

Recommendation:

We recommend that the settlements be summarized to the extent possible in this document to provide context for the NCCP/MsAA/HCP.