

MEMO

DATE: JUNE 17, 2024
TO: JER HARDING, T&B PLANNING
FROM: L&L ENVIRONMENTAL, INC.
SUBJECT: OAK VALLEY NORTH PROJECT - RESPONSE TO OSWIT AND SW WILDLANDS COMMENTS

L&L Environmental, Inc. (L&L) has reviewed the comments by Oswit Land Trust and SC Wildlands (both dated May 6, 2024) regarding the Oak Valley North Project (Project) in Calimesa. L&L offers the following responses to the comments.

Oswit Land Trust

Comment: “THE PROJECT, UNDER ITS CURRENT PROPOSED MITIGATION AND DESIGN, INTERFERES SUBSTANTIALLY WITH THE MOVEMENT OF NATIVE OR MIGRATING WILDLIFE SPECIES. THE DRAFT EIR DOES NOT ADEQUATELY ASSESS THREATS TO SPECIES OR ADEQUATELY EXPLORE ALTERNATIVES AND OPTIONS TO CREATING OR SUSTAINING WILDLIFE LINKAGES, PARTICULARLY AS IT INVOLVES INTERSTATE 10 AS A BARRIER TO WILDLIFE MOVEMENT.”

L&L Response: While there is potential to establish a wildlife corridor that could traverse the Interstate 10 Freeway and Calimesa Boulevard in the region, this does not currently exist. The California Department of Fish and Wildlife (CDFW) has identified El Casco Creek as a priority for wildlife connectivity projects (I-10 El Casco Bridge; CDFW 2022). The location of the El Casco Bridge is over 800 feet southeast of the Project site and separated from it by existing development.

Under existing conditions, the I-10 freeway and Calimesa Boulevard are barriers to terrestrial connectivity to the west of the Project site, and as a result, the Project would not interfere substantially with the movement of wildlife. If the existing flood control structure under the I-10 freeway at El Casco Bridge is modified to create a functional wildlife corridor, along with restoration of habitat in El Casco Creek to the east and west of the bridge, as proposed by CDFW, the Project would be several hundred feet away from the wildlife corridor and separated from it by existing development. Therefore, the Project would not interfere with the movement of wildlife under this potential scenario.

Comment: “Mitigation of wildlife movement is not restricted to the jurisdiction of the WRC MSHCP.”

L&L Response: Relying on the MSHCP for issues relative to biological resources covered by the MSHCP, including wildlife movement, is appropriate and has been appropriate since approval and execution of the MSHCP. Incidental take authorization and associated permits for the MSHCP were issued by United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) in 2006. Authorization granted by these permits is described throughout the following: USFWS Incidental Take Permit; the CDFW Natural Community Conservation Planning (NCCP) Permit, including any special terms and conditions of the permits; MSHCP Volumes, including the Implementing Agreement (Volume III); and any errata thereof.

Pursuant to Volume I, Introduction, the MSHCP:

- Provides a comprehensive means to coordinate, standardize, streamline, and ensure closure regarding mitigation requirements of the Federal Endangered Species Act (FESA), California Endangered Species Act (CESA), National Environmental Policy Act (NEPA), CEQA, California Native Plant Protection Act (CNPPA), and other applicable laws and regulations related to biological and natural resources within the Plan Area.
- Assures property owners, local governments, and other affected parties that conservation measures undertaken for species and wildlife habitat are adequately covered by the MSHCP and will satisfy mitigation requirements of the FESA, CESA, NEPA, CEQA, and CNPPA concerning impacts to those Covered Species and Habitats.

Furthermore, MSHCP, Volume I, Section 6.1.1 explains that development of property outside of the MSHCP Conservation Area (both within and outside of the Criteria Area) shall receive Take Authorization for Covered Species Adequately Conserved provided payment of a mitigation fee is made (or any credit for land conveyed is obtained) and compliance with MSHCP Section 6.0 occurs. Payment of the mitigation fee and compliance with the requirements of Section 6.0 are intended to provide full mitigation under the CEQA, NEPA, FESA, and CESA for impacts to the species and habitats covered by the MSHCP pursuant to agreements with the USFWS, CDFW, and/or any other appropriate participating regulatory agencies and as set forth in the MSHCP Implementing Agreement.

As an approved regional habitat conservation plan, the MSHCP allows for development within areas not targeted for conservation, including within areas that are not identified as “Linkages” designed for facilitation of wildlife movement. The MSHCP has identified Proposed Constrained Linkage 23 to provide connectivity in the local vicinity. However, the Project site is located outside of any lands described for conservation, including the Project’s location south of, and outside of, any lands that would contribute to Proposed Constrained Linkage 23.

While the documentation provided (e.g., “Great I-10 Linkage Implementation Workshop”) and ongoing efforts related to wildlife movement corridors are appreciated, to date no formal changes, amendments, and/or findings of unforeseen circumstances relevant to the MSHCP have been processed and approved specific to wildlife movement corridors (i.e., Linkages) within or around the City of Calimesa. Until the MSHCP is formally amended by CDFW and USFWS (with Permittee concurrence) to include an additional Linkage or a refinement of the Criteria Area, projects demonstrating consistency with current MSHCP requirements are in compliance with CEQA for those species, habitats, and existing and described conservation areas identified and covered by the MSHCP.

The commenter points out perceived limitations in the MSHCP’s identification of connectivity. Notwithstanding, and as described above, it is the Project’s responsibility to comply with the MSHCP, the relevant and acceptable regulatory document created and approved by USFWS and CDFW, and implemented by the City. It is not the Project’s responsibility to address any real or perceived deficiencies in the MSHCP. Moreover, the lack of wildlife connectivity across the I-10 freeway is an existing condition that would not be exacerbated with Project implementation. Even if the commenter is correct regarding the MSHCP deficiencies, the Project still would not actually interfere with the movement of wildlife.

SW Wildlands

Comment: The comment states that impacts of the proposed Project on habitat connectivity and wildlife movement were not sufficiently addressed and discusses mountain lion (puma) specifically. The comment provides a graphic that depicts puma habitat and locations of collared mountain lions detected in the region.

L&L response: The graphic associated with this comment is reproduced below with the location of the Project site added. As shown, the Project site is not within the At-Risk Puma Habitat in Linkage that is identified on the commenter's graphic. The locations of collared mountain lions are shown northeast of the Project site but not on or immediately adjacent to the Project site. Thus, even assuming the graphic and the represented data are correct, the Project would not result in a significant impact on habitat connectivity and wildlife movement of the mountain lion (puma).

Furthermore, pursuant to the MSHCP, mountain lion is a Covered Species Adequately Conserved (MSHCP, Volume I, Table 2-2 and Table 9-2). As discussed in the Implementing Agreement (Volume III), the MSHCP provides "no surprises assurances" in the event that a Covered Species Adequately Conserved becomes a listed species or the existing sensitivity listing is elevated. The following are a few examples of relevant excerpts from the MSHCP Implementing Agreement:

- MSHCP Section 4.3 (C) - To provide assurances to Permittees and others participating in the MSHCP that, "Pursuant to the "No Surprises" provisions of 50 Code of Federal Regulations, sections 17.22(b)(5) and 17.32(b)(5), and State Assurances pursuant to Sections 3.101 and 15.3 of this Agreement, as long as the terms of the MSHCP, this Agreement and the Permits are properly implemented, the Wildlife Agencies will not require additional mitigation from Permittees, with respect to Covered Species Adequately Conserved, except as provided for in this Agreement or as required by law."
- MSHCP Section 14.12.3 – "As set forth in Section 6.8.1 of the MSHCP, pursuant to the No Surprises Rule, as long as the MSHCP is in effect, the USFWS will not require from Permittees, Third Parties Granted Take Authorization, Participating Special Entities or other individuals or entities receiving Take Authorization under the Permits the commitment of additional land, or financial compensation or additional restrictions on the use of land or other natural resources with regard to Covered Activities and their impact

on the Covered Species Adequately Conserved beyond the level and/or amounts specified in the MSHCP, the Permits and this Agreement.”

- MSHCP Section 14.12.4 – “As set forth in Section 6.8.1 of the MSHCP, pursuant to the No Surprises Rule, the USFWS has the burden of making a finding that Unforeseen Circumstances exist with regard to any Covered Species Adequately Conserved using the best scientific and commercial data available. The findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species...”
- MSHCP Section 14.12.5 – “In the event the USFWS makes a finding of Unforeseen Circumstances and such Unforeseen Circumstances warrant the requirement of additional mitigation, enhancement or compensation measures, any such additional measures shall be restricted to modification of the management of the MSHCP Conservation Area, and shall be the least burdensome measures available to address the Unforeseen Circumstances.”

To date, there have been no formal changes, amendments, or findings of Unforeseen Circumstances in the vicinity of the Project site with respect to mountain lion or any new or reconfigured Linkages. The Project as proposed is located outside of the Conservation Area, including outside of any designated Linkages, and has fully demonstrated consistency with all applicable current requirements of the MSHCP.

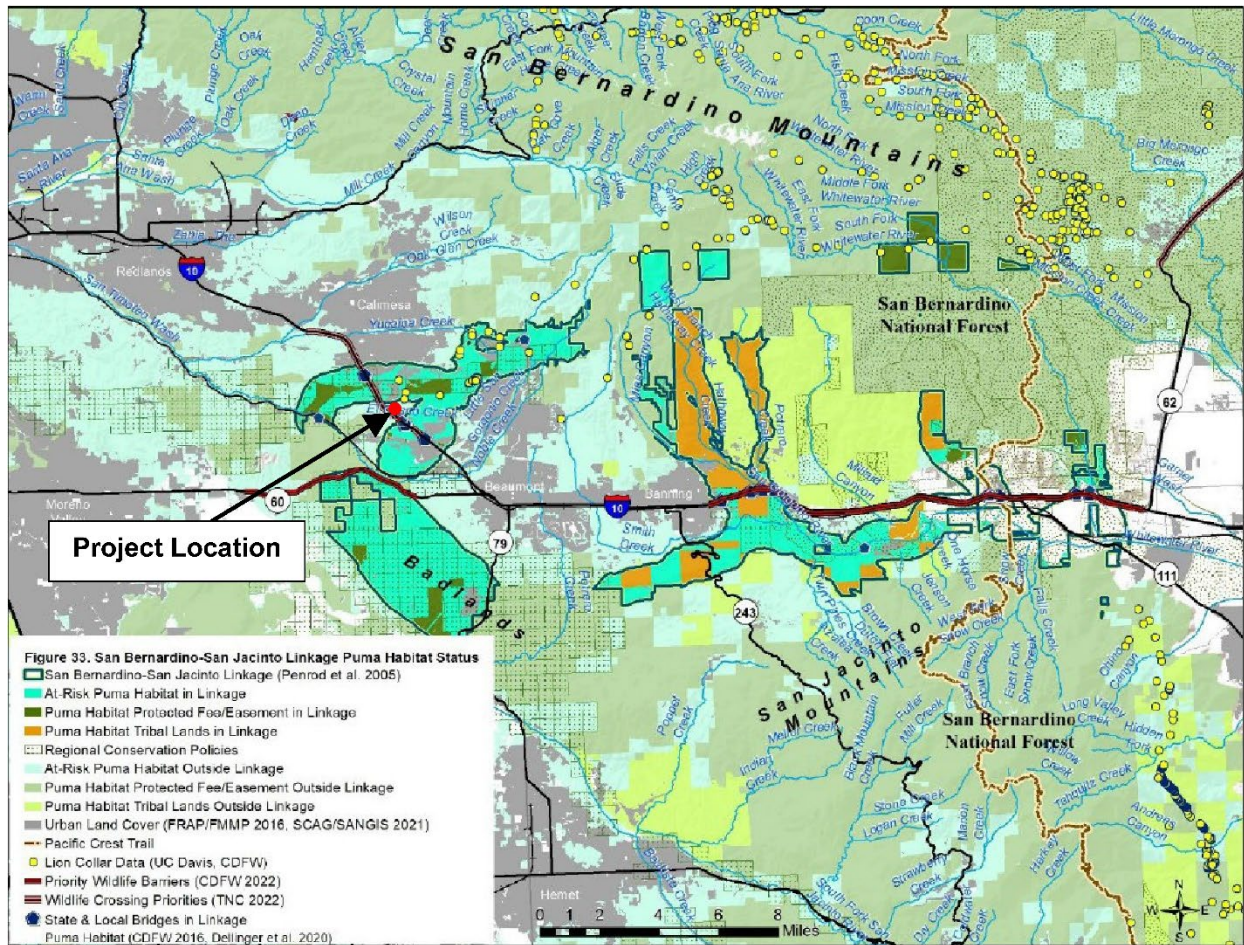
With respect to the commenter’s assertion that the DEIR did not adequately address potential impacts on wildlife movement/linkages, the analysis presented in Subsection 4.4 of the Project’s DEIR included a full analysis of the Project’s consistency with the MSHCP, and the MSHCP addresses and accommodates regional wildlife movement linkages and corridors throughout the MSHCP plan area. Relying on the MSHCP for issues relative to biological resources covered by the MSHCP, including wildlife movement, is appropriate and has been appropriate since approval and execution of the MSHCP. Incidental take authorization and associated permits for the MSHCP were issued by United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) in 2006. Authorization granted by these permits is described throughout the following: USFWS Incidental Take Permit; the CDFW Natural Community Conservation Planning (NCCP) Permit, including any special terms and conditions of the permits; MSHCP Volumes, including the Implementing Agreement (Volume III); and any errata thereof.

Furthermore, MSHCP, Volume I, Section 6.1.1 explains that development of property outside of the MSHCP Conservation Area (both within and outside of the Criteria Area) shall receive Take Authorization for Covered Species Adequately Conserved provided payment of a mitigation fee is made (or any credit for land conveyed is obtained) and compliance with MSHCP Section 6.0 occurs. Payment of the mitigation fee and compliance with the requirements of Section 6.0 are intended to provide full mitigation under the CEQA, NEPA, FESA, and CESA for impacts to the species and habitats covered by the MSHCP pursuant to agreements with the USFWS, CDFW, and/or any other appropriate participating regulatory agencies and as set forth in the MSHCP Implementing Agreement.

As an approved regional habitat conservation plan, the MSHCP allows for development within areas not targeted for conservation, including within areas that are not identified as “Linkages” designed for facilitation of wildlife movement. The MSHCP has identified Proposed Constrained Linkage 23 to provide connectivity in the local vicinity. However, the Project site is located outside of any lands described for conservation, including the Project’s location south of, and outside of, any lands that would contribute to Proposed Constrained Linkage 23.

To date no formal changes, amendments, and/or findings of unforeseen circumstances relevant to the MSHCP have been processed and approved specific to wildlife movement corridors (i.e., Linkages) within or around the City of Calimesa. Until the MSHCP is formally amended by CDFW and USFWS (with Permittee concurrence) to include an additional Linkage or a refinement of the Criteria Area, projects demonstrating consistency with current MSHCP requirements are in compliance with CEQA for those species, habitats, and existing and described conservation areas identified and covered by the MSHCP.

Accordingly, because the mountain lion is a Covered Species Adequately Conserved and because the Project site is not identified by the MSHCP as part of any existing or proposed linkages, corridors, or conservation areas, the Draft EIR correctly concludes that impacts would be less than significant and no changes to the Draft EIR are warranted pursuant to this comment.



Comment: “We suggest that, at a minimum, all land east of Buildings 3 and 4 of the site plans be set aside as mitigation. This area includes residual coastal sage scrub and all of the scrub oaks on the project site and areas identified as Disturbed/Developed/Ornamental in the vegetation community map in the DEIR should be restored to coastal sage scrub.”

L&L response: The commenter is referred to the discussion and analysis presented throughout Draft EIR Subsection 4.4, Biological Resources. As demonstrated therein, all Project impacts to biological resources would be less than significant, or would be reduced to less-than-significant levels with the implementation of mitigation measures presented in Draft EIR subsection 4.4.8, and the analysis in Subsection 4.4 demonstrates that Project impacts to wildlife movement corridors would be less than significant with mandatory compliance with the MSHCP. The Project would not result in any impacts to biological resources that cannot be mitigated to below a level of significance. Pursuant to Section 15126.4(a)(3) of the State CEQA Guidelines, “[m]itigation measures are not required for effects which are not found to be significant.” Thus, while the City acknowledges the commenter’s preference to preserve as open space the portions of the Project site located east of Buildings 3 and 4, no revision to the Draft EIR is warranted pursuant to this comment as the preservation of the coastal sage scrub and the scrub oaks on the Project site would not serve to reduce or avoid any of the Project’s impacts to biological resources. Furthermore, under existing conditions, the I-10 freeway and Calimesa Boulevard are barriers to terrestrial connectivity to the west of the Project site, and as a result, the conservation of the residual coastal sage scrub and scrub oaks on site would not contribute to any functional wildlife corridors. Moreover, there are no components of the proposed Project that would exacerbate restrictions on wildlife movement in the local area beyond what already occurs under existing conditions. Accordingly, because the commenter’s request to preserve as open space the portions of the Project site located east of Buildings 3 and 4 would not serve to reduce or avoid any of the Project’s significant impacts to the environment, no revision to the Draft EIR is warranted pursuant to this comment.

Comment: “The DEIRs assertion that connectivity is limited to the west by a freeway and existing development doesn’t pass muster. Caltrans is currently working on wildlife crossing infrastructure projects across the state to remediate barriers to wildlife movement and in fact the California Department of Fish and Wildlife’s 2022 Wildlife Barriers Report identifies El Casco Creek, immediately adjacent to the proposed project as a Priority Wildlife Barrier for mountain lions. In addition, while there is an entitled

development west of the freeway there is currently no existing development. Furthermore, a large portion of the entitled development west of the freeway has currently filed Chapter 7 opening up the opportunity to conserve a wider wildlife corridor that would need to go right through the proposed Oak Valley North development.”

L&L Response: While there is potential to establish a wildlife corridor that could traverse the Interstate 10 Freeway and Calimesa Boulevard in the region, this does not currently exist. CDFW has identified El Casco Creek as a priority for wildlife connectivity projects (I-10 El Casco Bridge; CDFW 2022). El Casco Creek is not immediately adjacent to the Project site. The location of the El Casco Bridge is over 800 feet southeast of the Project site and separated from it by existing development. Also, review of aerial images (Google Earth 2024) shows that extensive grading has occurred to the west of the I-10 freeway in the vicinity of the Project site.

Under existing conditions, the I-10 freeway and Calimesa Boulevard are barriers to terrestrial connectivity to the west of the Project site and the Project would not interfere substantially with the movement of wildlife. If the existing flood control structure under the I-10 freeway at El Casco Bridge is modified into a functional wildlife corridor as proposed by CDFW, the Project would be several hundred feet away from the wildlife corridor and separated from it by existing development. The proposed wildlife corridor would not go right through the proposed Oak Valley North development. In addition, the development west of the freeway still is entitled and approved for development and subject to a development agreement, regardless of its alleged financial situation. Therefore, it must be assumed this area – which as mentioned above, has already been significantly disturbed – will continue to be developed in the future. Any conservation of this vested, entitled development may constitute an unlawful taking. Accordingly, the DEIR’s conclusion that Project impacts to wildlife movement corridors would be less than significant is based on substantial evidence, and no revision to the DEIR is warranted pursuant to this comment. The Project would not interfere substantially with the movement of wildlife under this scenario.

Comment: “The DEIR must assess impacts to wildlife movement irrespective of whether there is a Western Riverside MSHCP criteria cell within the proposed project site. The DEIR did not use the latest science to evaluate adverse impacts of the proposed project on wildlife movement and habitat connectivity. The Western Riverside County MSHCP was completed in 2003. Several more recent connectivity models, reports, and plans highlight the importance of this area to wildlife movement...”

L&L Response: Relying on the MSHCP for issues relative to biological resources covered by the MSHCP, including wildlife movement, is appropriate and has been appropriate since approval and execution of the MSHCP. Incidental take authorization and associated permits for the MSHCP were issued by United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) in 2006. Authorization granted by these permits is described throughout the following: USFWS Incidental Take Permit; the CDFW Natural Community Conservation Planning (NCCP) Permit, including any special terms and conditions of the permits; MSHCP Volumes, including the Implementing Agreement (Volume III); and any errata thereof.

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- Assures property owners, local governments, and other affected parties that conservation measures undertaken for species and wildlife habitat are adequately covered by the MSHCP and will satisfy mitigation requirements of the FESA, CESA, NEPA, CEQA, and CNPPA concerning impacts to those Covered Species and Habitats.

Furthermore, MSHCP, Volume I, Section 6.1.1 explains that development of property outside of the MSHCP Conservation Area (both within and outside of the Criteria Area) shall receive Take Authorization for Covered Species Adequately Conserved provided payment of a mitigation fee is made (or any credit for land conveyed is obtained) and compliance with MSHCP Section 6.0 occurs. Payment of the mitigation fee and compliance with the requirements of Section 6.0 are intended to provide full mitigation under the CEQA, NEPA, FESA, and CESA for impacts to the species and habitats covered by the MSHCP pursuant to agreements with the USFWS, CDFW, and/or any other appropriate participating regulatory agencies and as set forth in the MSHCP Implementing Agreement.

As an approved regional habitat conservation plan, the MSHCP allows for development within areas not targeted for conservation, including within areas that are not identified as “Linkages” designed for facilitation of wildlife movement. The MSHCP has identified Proposed Constrained Linkage 23 to provide connectivity in the local vicinity. However, the Project site is located outside

of any lands described for conservation, including the Project's location south of, and outside of, any lands that would contribute to Proposed Constrained Linkage 23.

To date no formal changes, amendments, and/or findings of unforeseen circumstances relevant to the MSHCP have been processed and approved specific to wildlife movement corridors (i.e., Linkages) within or around the City of Calimesa. Until the MSHCP is formally amended by CDFW and USFWS (with Permittee concurrence) to include an additional Linkage or a refinement of the Criteria Area, projects demonstrating consistency with current MSHCP requirements are in compliance with CEQA for those species, habitats, and existing and described conservation areas identified and covered by the MSHCP.

Accordingly, no revision to the Draft EIR is warranted pursuant to this comment as the Draft EIR's analysis of potential impacts to wildlife movement corridors and linkages properly demonstrated that such impacts would be less than significant due to the Project's compliance with all applicable MSHCP requirements and because the Project site is not targeted for conservation under the MSHCP.

Comment: "Page 4.4-40 of the DEIR states there are four drainages associated with the proposed project site. Riparian communities are one of the most threatened natural communities on the planet. Virtually all species utilize riparian systems at some point in their life cycle and riparian communities are known movement corridors for numerous species, including mountain lion, and many other species."

L&L response: The small ephemeral drainages on the site are within non-native grassland. There are no riparian habitats or riparian plant species present. One of the drainages is a man-made roadside ditch along Calimesa Boulevard. These drainages do not support riparian habitat or provide vegetated corridors.

Comment: "The El Casco Creek (Cherry Valley) corridor requires urgent protection to ensure the long-term genetic viability of mountain lions, a candidate species, in Southern California because the Transverse Range mountain lion population is considered critical to sustaining statewide mountain lion gene flow."

L&L response: El Casco Creek is not immediately adjacent to the Project site. The location of the El Casco Bridge is over 800 feet southeast of the Project site and separated from it by existing development. If the El Casco Creek wildlife corridor is created as proposed by CDFW, the Project would be several hundred feet away from the wildlife corridor and separated from it by existing development.

References

CDFW (California Department of Fish and Wildlife). 2022. Restoring California's Wildlife Connectivity 2022. Biogeographic Data Branch, Sacramento, California.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=204648&inline>

_____. 2024. BIOS Habitat Connectivity Viewer. <https://wildlife.ca.gov/Data/BIOS>

Google Earth. 2024. Aerial image dated May 2023.

RCA (Regional Conservation Authority) Western Riverside County Multiple Species Habitat Conservation Plan, Permittee Implementation Guidance Manual, August 2007