

**DEPARTMENT OF FISH AND GAME**

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27 January 2004

City of Thousand Oaks
Community Development Department
2100 East Thousand Oaks Boulevard
Thousand Oaks CA 91362
Attention Greg Smith

LD249/HPD2002-80(Dubin)

Dear Mr. Smith:

The California Department of Fish and Game (The Department) was recently notified by the Santa Monica Mountains Conservancy about the above referenced project. It appears the Department never received a copy of this document. As a responsible and trustee agency for Fish and Wildlife resources in the State of California the Department should have received a copy of the document for review. The intent of the project is to construct 4 homes on 25.7 acres. The building footprint of the lots would equal about 6 acres. Approximately 19.7 acres of the site would remain undeveloped. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (CEQA Section 15386) and pursuant to our authority as a Responsible Agency under CEQA Section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (Fish and Game Code Section 2050 et seq) and Fish and Game Code Section 1600 et seq.

Though the project is small (4 houses on 25.7 acres) impacts to public trust resources exist. The Department does not believe the mitigation measures and design constraints included to mitigate the impacts to less than significant are adequate for either wildlife movement or other biological resources. The document also lacks complete information about onsite and adjacent wildlife resources. In general the Department believes the DEIR or and addendum needs to be recirculated for public review. The recirculated document should include at minimum the resource information discussed below not currently included in the DEIR, and an additional alternative discussing elimination of building on lots 1 and 2.

Onsite drainages

Information included in appendices G and H, as well as aerial photos of the site indicate there is an existing drainage on site. The Department believes this drainage may qualify as jurisdictional under section 1600 of the Fish & Game Code. If upon site inspection, by Department staff, jurisdictional areas are confirmed a Streambed alteration agreement will be required for the project. This presence and impacts to this drainage was not discussed in the document.

The Department's issuance of a stream bed alteration agreement is considered a project that is subject to CEQA. To facilitate our issuance of the agreement, the Department as a responsible agency under CEQA may consider the local jurisdiction's (lead agency) document for the project. To minimize additional requirements by the Department under CEQA the document should fully identify the potential impacts to any lake, stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the agreement. Early consultation is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. CEQA documents not fully discussing impacts to section 1600 jurisdictional areas maybe should be amended and recirculated to satisfy CEQA compliance

Impacts to Avifauna

1. General Considerations for Protection of Native Birds - The proposed project may support nesting bird species, including Cactus Wren(*Campylorhynchus brunneicapillus*) a state species of special concern, which may be adversely impacted by the proposed project if any vegetation (native plants and/or nonnative landscape trees/shrubs etc.) will be disturbed or removed. . Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918(50 C.F.R. Section10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other species.

b. Proposed project activities (including disturbances to native and non-native vegetation, structures and substrates) should take place outside of the breeding bird season which generally runs from March 1- August 31 (as early as February 1 for raptors) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). Take means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture of kill (Fish and Game Code Section 86).

c. If project activities cannot feasibly avoid the breeding bird season, the Department recommends that a qualified biologist survey all potential nesting

habitat within the project site for nesting birds. Surveys should begin no later than June 1. Surveys should be conducted every 7 days for 8 consecutive weeks until at least July 1. If no nesting birds are observed site preparation and construction activities may begin. If an active bird nest is located, the nest site should be fenced a minimum of 200 feet (500 feet for raptors) in all directions, and juveniles have fledged and when there is no evidence of a second attempt at nesting.

- d. Limits of construction to avoid a nest should be established in the field with flagging and stakes or construction fencing. Construction personnel should be instructed on the sensitivity of the area. The project proponent should record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to the protection of native birds.

Impacts to sensitive plant species

The Department has developed specific guidelines for conducting rare plants surveys. These guidelines are available electronically on the Department's website at <http://www.dfg.ca.gov/hcpb/species/species.shtml>. A one time site survey to determine the presence of sensitive plants, especially annuals like *Lyon's Pentachaeta*, is usually not sufficient to determine presence or absence. The Moorpark population, used as a reference for the April 18, 2002 survey may not have been an appropriate reference site choice. The Moorpark population routinely germinates, and displays both basal whorls and inflorescences much earlier than other local *Pentachaeta* populations. In addition the wide fluctuation in annual plant populations can cause the incorrect classification of a site as to either presence or population numbers. The Department recommends the site be resurveyed to include repeated site visits. Additional surveys should also occur if project construction or ground disturbance does not occur in potential *Pentachaeta* habitat prior to the next flowering season.

Wildlife Movement

The DEIR acknowledges the Mount Clef Ridge as an area important for wildlife movement, but does not provide adequate mitigation measures to mitigate for the losses. The DEIR cites a 1993 symposium paper on wildlife movements, and other papers on coyote home range usage as justification for the acceptability of unfenced paved areas between lots as viable open space linkages. Though Coyotes, Mule, and even Mt Lions may be forced to use these areas because of development, they should not be considered adequate or even desirable pathways. Inviting these animals to use areas close to homes is also an adverse impact. The Department fields numerous calls from home owners complaining about wildlife in their immediate yards. A wide variety of negative interactions can occur ranging from loss of landscaping to loss of pets. The inevitable result is either the fencing out of wildlife or in some cases the lethal removal of the

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offending animal. The Department suggests at minimum the elimination of development within lots 1 and 2. These areas could potentially be purchased by or dedicated to an open space agency through a variety of methods.

Fuel Modification

The DEIR offers little discussion on the negative impacts from fuel modification requirements. The Department considers all areas required as fuel modification zones to be areas of negative impact, even if they are landscaped with “native” plants. Many of the California natives allowed in these areas are not native to the Coastal Southern California area or must be maintained at particular heights and spacing. It is also difficult to control individual homeowners or even Home Owners Associations. Over time areas intended to be landscaped with native vegetation tends to become a mosaic of non-native, weedy and some native species.

If you have any further questions please contact me at 805-491-3571.

Sincerely,

Morgan Wehtje
Senior Environmental Scientist
Supervisor

cc: Santa Monica Mtn Conservancy
CDFG, Natasha Lohmus, Mary Meyer

Mw/mw

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