



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-SDG-1668.10

Dec 7 2005

Colonel Alex Dornstauder
District Engineer
U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch B San Diego Field Office
16885 West Bernardo Drive, Suite 300A
San Diego, California 92127

Attn: Robert Smith

Subject: Amendment to the Biological Opinion on the San Marcos Highlands Project, City of San Marcos, San Diego County, California (Corps File No. 200100479-SKB, FWS Log No. 1-6-05-F-1668-R1)

Dear Colonel Dornstauder:

This document is an amendment to our biological opinion (1-6-05-F-1668) for the San Marcos Highlands project. The project site is located partially within the City of San Marcos (City) and partially within the County of San Diego (County), California. In our biological opinion for the San Marcos Highlands project, we concluded that the project was not likely to adversely affect either the least Bell's vireo (*Vireo bellii pusillus*; vireo) or southwestern willow flycatcher (*Empidonax traillii extimus*; flycatcher), nor jeopardize the continued existence of the federally listed threatened coastal California gnatcatcher (*Poliottila californica californica*). The biological opinion was issued on April 8, 2005, in accordance with section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*).

This amendment is necessary to modify the description of the proposed project. The project applicant has requested that the following changes be made to the project description:

- The total area of the San Marcos Highlands project site (Site) was originally described as "approximately 203 acres." The Site area has been revised with additional property line and topographic surveys and is now identified as being 204.5 acres in size. The acreage of the adjacent off-site mitigation parcel to the northwest was also refined from 21.9 acres to 22.8 acres.

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- The biological opinion stated that “approximately 123.1 acres” of the Site will be preserved as open space, “of which approximately 109.3 acres can be considered natural open space.” Due to minor project revisions and refined survey data, on-site open space will total 124.5 acres, of which 111.3 acres will be considered natural open space.
- The refined proposed project involves replacing the earthen dam in the Creek with a single arched culvert that is 10 feet high, 12 feet wide, and 159 feet long to allow for the flow of water and wildlife movement.
- Temporary, construction-related impacts, which include a buffer around the limits of grading, have been increased from 10 feet to 20 feet in order to accommodate maneuvering the large, earth-moving equipment where needed.
- U.S. Army Corps of Engineers (Corps), California Department of Fish and Game (Department), and Regional Water Quality Control Board (RWQCB) jurisdictional impacts have been revised. Minor revisions have been incorporated into the project design to address concerns raised during the review process (e.g., modified limit of grading, realignment of the fuel modification zone, 10-foot culvert design, etc.), and data collected during an additional site survey. The revised impact values reflect more accurate site conditions as well as the most current project design. The revised impacts do not alter the existing permit application status of the project. These impact revisions include the following:
 - Total Corps and RWQCB impacts increased from 0.75 acre (0.71 acre permanent and 0.04 acre temporary) to 0.80 acre (0.74 acre permanent and 0.06 acre temporary).
 - Total Department impacts are 1.38 acres. However, permanent impacts have decreased from 1.26 acres to 1.22 acres and temporary impacts have increased from 0.10 acre to 0.16 acre.
- Approximately 0.05 acre of wetland creation will be established within the upland eucalyptus removal zone immediately adjacent to the stream corridor of Agua Hedionda Creek (Creek). The area of wetland creation has been designed and incorporated within the project to address agency concerns and to ensure a “no-net-loss” of wetlands on the Site. The placement of the wetland has been chosen such that it satisfies the Corps, RWQCB, and Department “wetland creation” definitions (as discussed during the September 30, 2005, meeting).
- The dredged pond material will not be re-used within the project site. As such, sediment dredged from the pond will be properly disposed of and clean topsoil collected from upland areas within the development footprint will be used in construction and mitigation activities requiring fill or topsoil amendments.
- All mitigation areas will be preserved in perpetuity and managed under a conservation easement. Separately, 2.3 acres of enhanced riparian habitat in the upper reaches of Agua

Hedionda Creek lie within an area occupied by several infrastructure easements. While it is likely that the easements may never be executed, their presence precludes the 2.3 acres from being preserved "in perpetuity" and thus must be excluded from the conservation easement. Nevertheless, KB Home Coastal, Inc. will provide funds to maintain the ecological integrity of riparian zone where the Vista Irrigation District pipeline easement crosses the Creek.

The points listed above are the major points of the updated project description. A complete version of the updated project description may be found in the Memorandum from PCR to the Agencies, dated October 20, 2005. We believe that these changes to the project description will not change the analysis or conclusions of our April 8, 2005, biological opinion; therefore, no change is necessary to the Incidental Take Statement.

All measures proposed by the applicant, except as discussed above, and all terms and conditions in the April 8, 2005, biological opinion must be implemented as written. If you have any questions regarding this amendment, please contact Janet Stuckrath at (760) 431-9440.

Sincerely,

//s//Kathleen Brubaker, for
Therese O'Rourke
Assistant Field Supervisor

cc: Chris Means, Regional Water Quality Control Board