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United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO:
81440-2011-CPA-0057

January 21, 2011

Mitch Glaser
Department of Regional Planning
Los Angeles County
320 West Temple Street
Los Angeles, California 90012

Subject Notice of Completion, Availability, and Recirculation of the Draft Environmental
Impact Report for the Santa Clarita Valley Area Plan, One Valley On Vision,
Los Angeles County, California

Dear Mr. Glaser:

This letter provides the U.S. Fish and Wildlife Service's (Service) comments on the subject Draft
Environmental Impact Report (DEIR). The notice of availability was received in our office on
November 22, 2010. The proposed project location includes all unincorporated areas within the
Santa Clarita Valley planning area, Los Angeles County, California.

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The proposed project is a comprehensive update of the Santa Clarita Valley Area Plan (Area
Plan), a component of "One Valley One Vision" (OVOV), a joint planning effort with the City of
Santa Clarita and the County of Los Angeles (County). The proposed project would repeal the
Santa Clarita Valley Area Plan, and would adopt the proposed comprehensive update of the Area
Plan.

The Service's responsibilities include administering the Endangered Species Act of 1973, as
amended (Act), including sections 7, 9, and 10. Section 9 of the Act and its implementing
regulations prohibit the taking of any federally listed endangered or threatened species. Section
3(18) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap,
capture, or collect, or to attempt to engage in any such conduct." Harm is further defined by the
Service to include significant habitat modification or degradation that results in death or injury to
listed species by significantly impairing essential behavioral patterns, including breeding,
feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that
create the likelihood of injury to a listed species by annoying it to such an extent as to
significantly disrupt normal behavioral patterns which include, but are not limited to, breeding,
feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking
of listed species. Exemptions to the prohibitions against take may be obtained through
coordination with the Service in two ways. If a project is to be funded, authorized, or carried out
by a Federal agency, and may affect a listed species, the Federal agency must consult with the
Service pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal

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agency but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Act.

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As it is not our primary responsibility to comment on documents prepared pursuant to the California Environmental Quality Act (CEQA), our comments on the DEIR do not constitute a full review of project impacts. We are providing our comments based upon a review of sections addressing biological resources, project activities that have potential to affect federally listed species, and our concerns for listed species within our jurisdiction related to our mandates under the Act. Based upon our review, we have the following concerns regarding the DEIR's characterization of impacts to federally listed species.

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To the best of our knowledge, Table 3.7-1 of the DEIR accurately identifies the federally listed species, which are known to occur in the County's planning area. Before approving projects under the scope of the Area Plan, we recommend that the County coordinate with us to determine if surveys for federally listed species according to Service protocol are necessary. It should be noted that the federally endangered least Bell's vireo (*Vireo bellii pusillus*) had very successful years in 2009 and 2010 throughout its range in regard to breeding and habitat occupation. In addition, we have indications that the coastal California gnatcatcher (*Polioptila californica californica*) may also be expanding its range, as it has recently been observed in locations previously considered unoccupied. In light of this new information, we recommend that the County require future project proponents in the Area Plan area to conduct surveys for the least Bell's vireo and coastal California gnatcatcher when potentially suitable habitat is present on a proposed project site.

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Page ES-25 of the DEIR states that the project may have potentially significant impacts on special status species, sensitive plant communities, federally protected wetlands, wildlife movement, and nursery sites. Mitigation measure 3.7-1 states, "Biological survey reports shall include an analysis of the potential for a proposed project to result in direct mortality of individuals of listed, proposed, or candidate species, losses of habitats occupied by such species, and losses of opportunity for habitat connectivity." While we appreciate the conservation aim of this measure to protect special-status species, we recommend that the measure clarify when biological surveys are required, or require correspondence with the Service to determine when such surveys are needed. The measure should also require an analysis of the potential of the project to result not only in direct mortality, but indirect effects to listed species as well. We feel the addition of this language will better inform project proponents of their responsibilities under the Act, as described in the aforementioned paragraphs.

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Mitigation measure 3.7-2 has language similar to measure 3.7-1. In this case, the measure states that if a special-status species may potentially be subject to direct loss through implementation of construction activities, mitigation measures proposed as part of biological site survey reports shall include a requirement for preconstruction surveys, followed by measures to ensure avoidance, relocation, or safe escape. Please note that take of federally listed species can occur indirectly as a result of construction activities, or during future use of a project site. A land owner may be able to site the development of a residence so that it does not result in direct mortality of a federally listed species, but the indirect effects of the future occupancy of the

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residence may result in take of individuals. For example, night time lighting, domestic pets, contaminated runoff, introduction of invasive species, and excessive noise are potential indirect effects to a federally listed species resulting from a residential development. We recommend that measure 3.7-2 be revised so that indirect effects of a proposed project are evaluated for their impacts to federally listed species. Further, measure 3.7-2 includes language in regard to relocation of individuals. Relocation of one or more individuals of a federally listed species would constitute take, and therefore would require a permit from the Service through section 7(a)(2) or 10(a)(1)(B). We recommend that language be added to the measure to inform applicants of their responsibilities under the Act.

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In some cases, halting construction activities until after offspring have been weaned or fledged as proposed in measure 3.7-2 may not be enough to avoid the take of a federally listed species. For example, if a listed species is using a proposed project site, the implementation of a proposed project may remove habitat that is serving a role in the breeding, feeding, or sheltering of the species. This may force individuals to seek out new habitat and breeding sites. Moving to unfamiliar territory may create the likelihood of injury by exposing individuals to exhaustion and starvation associated with decreased foraging opportunities, increased predation risk, inter- and intraspecific interactions, and decreased probability of reproductive success.

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Please note that despite the incorporation of any mitigation measures developed pursuant to the CEQA, any take of listed wildlife species that would result from implementation of the proposed project would require either (a) an exemption from the prohibitions against take in section 9 of the Act obtained pursuant to section 7 or (b) take authorization pursuant to section 10(a)(1)(B) of the Act, as described above. Significant impacts as defined under CEQA do not necessarily equate to "take" as defined in Section 3(19) of the Act, nor do mitigation measures that reduce CEQA impacts to less-than-significant levels necessarily satisfy the applicant's responsibility to avoid or obtain a permit for such take under the Act.

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The County should provide special notice to future project proponents and property owners that their projects may lie within the range of federally listed species. In the event that the proponents, proponents' agents, property owners, or other concerned parties encounter a federally listed species during development on properties within the Santa Clarita Valley, the project proponents should suspend all ground-disturbing activities and contact the Service immediately. Please note that this letter does not constitute authorization for a project proponent to take a federally listed species in any manner.

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Both the Land Use Element and the Conservation and Open Space Element of the project description outline policies which have a potential to affect federally listed species. While we understand that the goal of the Area Plan is to guide future development within the Santa Clarita Valley, the general wording of the policies makes it difficult to anticipate how federally listed species may be affected. Examples include phrases like "to the extent feasible" and "where appropriate." We suggest the language of the area plan be strengthened to ensure the policies are complied with and impacts on biological resources are anticipated and properly analyzed.

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Figure 3.7-1 of the DEIR illustrates the critical habitat units within the Santa Clarita Valley for the federally endangered least Bell's vireo and arroyo toad (*Anaxyrus californicus*), and the threatened coastal California gnatcatcher and California red-legged frog (*Rana draytonii*). We recommend that the figure be updated to reflect the current status of arroyo toad critical habitat. Currently, there is no final designated critical habitat for the arroyo toad in the Santa Clarita Valley; however, as of October 13, 2009, critical habitat has been repropoed (74 Federal Register 52612) and includes critical habitat in the Santa Clarita Valley and within the scope of the Area Plan, approximately in the locations shown in Figure 3.7-1. Furthermore, critical habitat for the California condor (*Gymnogyps californianus*) exists within the OVOV planning area and should be depicted in Figure 3.7-1.

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After review of Figure 2.0-4, the Proposed Land Use Policy Map, we have concerns regarding the proposed land uses within current and proposed Significant Ecological Areas, as identified in Figure 3.7-2. We recommend that Significant Ecological Areas be given the strictest land use protections possible to support the conservation of the biological resources in the Santa Clarita Valley. Furthermore, it is especially important that sensitive species surveys be conducted in the Significant Ecological Areas before any project is approved that may adversely affect biological resources. For example, Figure 2.0-4 shows that Land Use Policy RL-5 (1 du/ 5 ac) is assigned within the Cruzan Mesa Significant Ecological Area. Because several federally listed species occur within the Cruzan Mesa, and in other Significant Ecological Areas, the County should require future project proponents to conduct surveys for federally listed species before project approval, or through correspondence with the Service obtain concurrence with the determination that surveys are not necessary for the proposed project.

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In summary, we find the DEIR to be lacking in specificity for information regarding the impacts that the Area Plan, as proposed, would have on biological resources. We encourage the County to ensure that the information identified above be gathered for evaluation so that any impacts to federally listed species can avoided wherever possible or minimized to the maximum extent. Any action that would result in the take of listed animal species would be subject to the prohibitions of section 9 of the Act, thus requiring some form of authorization, either through an incidental take permit or interagency consultation if a Federal nexus exists. We encourage the County to work with us to conserve and protect federally listed species and their habitats that occur in the Santa Clarita Valley, and we are willing to work with you to achieve this goal by utilizing a variety of available resources.

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We appreciate the opportunity to provide comments on the Santa Clarita Valley Area Plan DEIR. If you have any questions regarding our comments, please contact Colleen Mehlberg of our staff at (805) 644-1766, extension 221.

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Sincerely,

/s/: Jeff Phillips

Jeff Phillips
Deputy Assistant Field Supervisor

Letter No. A1 **Jeff Phillips, United States Department of the Interior, Fish and Wildlife Service, January 21, 2011**

Response 1

The comment is introductory and provides a description of the proposed Area Plan and the geographic area within the County. No further response is required.

Response 2

The comment describes the Fish and Wildlife Service's statutory and regulatory responsibilities under the Endangered Species Act of 1973 (ESA), including sections 7, 9, and 10.

Adoption of the proposed Area Plan does not authorize any ground disturbance, construction, or other action that would result in the take of any listed animal species under the ESA. Therefore, the County is not required to apply for an incidental take permit from the Service pursuant to section 10(a)(1)(B) of the Act.

The comment provides factual background information regarding the Service's responsibilities under the ESA. However, the comment does not raise any issue regarding the content or adequacy of the Revised Draft Environmental Impact Report (EIR). Therefore, no further response is required. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Area Plan.

Response 3

The comment states that it is not the Service's primary responsibility to comment on California Environmental Quality Act (CEQA) documents, but provides comments on project activities that may affect federally listed species.

The comment provides factual background information regarding the Service's responsibilities, but does not raise any issue regarding the content or adequacy of the Revised Draft EIR. Therefore, no further response is required. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Area Plan.

Response 4

The comment states that the Table 3.7-1 of the Revised Draft EIR accurately identifies the federally listed species known to occur in the unincorporated Santa Clarita Valley planning area. The comment also recommends that the County coordinate with the Service to determine if surveys for federally listed species are needed before the County approves a project within the unincorporated Santa Clarita Valley planning area. In particular, the Service recommends that the County require future project applicants

within the unincorporated Santa Clarita Valley planning area to conduct surveys for the least Bell's vireo and the coastal California gnatcatcher when potentially suitable habitat is present on the site of a proposed project.

The County routinely includes the U.S. Fish and Wildlife Service among the agencies with which it consults in carrying out its responsibilities as lead agency under CEQA. In addition, the County typically requires a project proponent/applicant to provide biological surveys whenever a project site may include suitable habitat for special-status species such as the least Bell's vireo and the coastal California gnatcatcher. Mitigation measures 3.7-1 and 3.7-2 of the Revised Draft EIR require that biological site survey reports: (1) analyze a project's potential to result in direct mortality of individuals of listed, proposed, or candidate species; and (2) propose mitigation measures to avoid or reduce impacts to such species. Therefore, the Revised Draft EIR mitigation is responsive to this comment.

Response 5

The comment states that Mitigation Measure 3.7-1 does not specify when the biological surveys are required and does not require analysis of indirect impacts to listed species.

Biological surveys are requested by the County for projects requiring discretionary approval on a case-by-case basis pursuant to guidance from CEQA and the County Code (such as Section 22.56.215, which pertains to Significant Biological Areas). The County routinely recommends that biological surveys be conducted during the time of year when target species are most likely to be observed, which is typically spring, especially for plant species. When a listed species has a high probability of occurrence based on habitat suitability, the County will request that surveys be conducted. Mitigation Measure 3.7-1 has been modified to include indirect impacts as well as direct impacts. This modification is consistent with Policy CO 10.1.14 of the proposed Area Plan Conservation and Open Space Element. Please see the Revised Final EIR section entitled, "Revised Draft EIR Pages" for the actual text revision.

The recommended modification to Section 3.7, Biological Resources, page 3.7-67 of the Revised Draft EIR has been made. Please see the Revised Final EIR section entitled, "Revised Draft EIR Pages," for the actual text revision.

Response 6

The comment states that while construction of a project may be conducted in a manner that avoids direct impact on a listed species, occupancy of the project may still cause indirect effects on that species, resulting in take. The Service recommends that language be added to Mitigation Measure 3.7-2 to evaluate indirect effects to federally listed species and to inform applicants of their responsibilities under the ESA. In addition, the comment articulates the Service's position that relocation of a federally listed

species constitutes a take and, therefore, requires an incidental take permit under section 7(a)(2) or section 10(a)(1)(B) of the ESA.

Mitigation Measure 3.7-2 has been modified to require analysis of indirect impacts on special status species, including those listed as threatened and endangered under the ESA. It should be noted that the County routinely requires project-level environmental documents prepared under CEQA to analyze indirect impacts whenever sensitive biological resources may be present on a property proposed for development. The recommended modification to Section 3.7, Biological Resources, page 3.7-67, of the Revised Draft EIR has been made. Please see the Revised Final EIR section, entitled, "Revised Draft EIR Pages," for the actual text revision.

Note, however, that a project applicant's responsibilities under the ESA depend on factual and legal matters that are highly project-specific. For this reason, those responsibilities are beyond the scope of this Area Plan-level Revised Draft EIR. Nonetheless, the County also routinely requires project-level environmental documents prepared under CEQA to describe the project site's existing environmental conditions and evaluate the project's impacts (direct, indirect, and cumulative) on sensitive biological resources, including special-status species. The project-level impact analysis is then assessed against the identified significance criteria and significance determinations are made. Based on those significance determinations, feasible mitigation measures are recommended to avoid or reduce the identified impacts. Those mitigation measures must comply with all federal, state, and local laws, including the ESA prohibitions associated with the relocation of listed species.

Response 7

The comment states that employing avoidance measures until offspring have been weaned or fledged may not be sufficient to avoid take of individuals of listed species. In addition, the comment states that loss of habitat would result in impact outside the breeding and rearing seasons.

Mitigation Measure 3.7-1 requires, among other things, that applicants analyze project impacts on habitat and the effect of those impacts on sensitive species, including their breeding, feeding, and sheltering behaviors. If such impacts are deemed significant, the County would require that the project applicant avoid or reduce those habitat-related impacts. If such measures cannot feasibly avoid take of federally listed species, the applicant would be required to seek an incidental take permit from the Service.

The comment does not raise any specific issue regarding the analysis presented in the Revised Draft EIR and, therefore, no more detailed response can be provided or is required

Response 8

The comment states that implementation of CEQA mitigation measures may not prevent the take of federally listed species, and that, in such case, the project applicant would have to secure an exemption from the ESA's take prohibitions or an incidental take permit. The comment also indicates that a significant impact under CEQA is not the equivalent of a "take" under the ESA, and that mitigation measures, which reduce CEQA impacts to "less than significant" do not necessarily eliminate the potential for take of listed species as that term is defined in the ESA.

The comment does not raise any specific issue regarding the analysis presented in the Revised Draft EIR and, therefore, no more detailed response can be provided or is required. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Area Plan.

Response 9

The comment states that future project applicants with the County should be provided with special notice of the range of federally listed species occurring within the unincorporated Santa Clarita Valley planning area. While the County endeavors to provide property owners seeking discretionary development approvals with as much information as possible concerning special-status species occurring within the County, it is not practical for the County to provide special notice to future project proponents that project sites may lie within the range of federally listed species. It is incumbent upon a property owner to know the constraints to development of their property before they undertake a project design. A property owner's due diligence would be to contact a qualified biological firm to provide current and accurate information concerning federally listed species.

The comment does not raise any specific issue regarding the analysis presented in the Revised Draft EIR and, therefore, no more detailed response can be provided or is required. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Area Plan.

Response 10

The comment states that policies in both the Land Use and the Conservation and Open Space Elements of the proposed Area Plan are too general, and the Service suggests adding language requiring compliance with these policies.

The Service's suggestion will be provided to County decision makers for their consideration. No further response is required because the comment does not raise any issue specific to the content or adequacy of the Revised Draft EIR. However, it should be noted that project-specific environmental review of future

development projects includes Mitigated Negative Declarations and Project EIRs that would specify measurable mitigation measures to such projects.

Response 11

The comment states that Figure 3.7-1 of the Revised Draft EIR depicts critical habitat of arroyo toad that is no longer current and recommends that the figure be updated to reflect the current arroyo toad and the California condor critical habitat. This figure has been checked against the Service's recently adopted Final Rule designating critical habitat for the arroyo toad and found to conform substantially to the geographic area described in the designation. In addition, Figure 3.7-1 does include critical habitat for the California condor in the yellow rectangular polygon straddling the boundary between Los Angeles and Ventura Counties in the vicinity of Piru Creek.

The County acknowledges this input and comment. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Area Plan.

Response 12

The comment states concern about proposed land uses within the Significant Ecological Areas (SEAs) and recommends that SEAs be given strict land use protections. It should be noted that County SEAs include strict land use protections through SEA Conditional Use Permit requirements that are specific to development projects proposed in SEAs (see County Zoning Ordinance, Section 22.56.215). Furthermore, the project-specific environmental review process requires consultation with pertinent agencies regarding potential impacts identified in an Initial Study.

The Service's suggestion will be provided to County decision makers for their consideration. However, as the comment does not raise any issue specific to the content or adequacy of the Revised Draft EIR, no further response is required.

Response 13

The comment states that surveys for sensitive species within an SEA should be conducted prior to project approval by the County. The County concurs with this statement. The current SEA program requires project applicants that propose development within an SEA to prepare a biological resource evaluation that is reviewed by an advisory committee of biological experts, the Significant Ecological Areas Technical Advisory Committee, prior to the County completing the environmental review of the proposed development. When sensitive species have the potential to occur on the project site, the biological evaluation will include the survey results for those sensitive species. This has been the County practice since 1982.

The comment does not raise any specific issue regarding the content or analysis presented in the Revised Draft EIR and, therefore, no more detailed response can be provided or is required.

Response 14

The comment states the opinion that the Revised Draft EIR lacks specific information regarding impacts to biological resources resulting from the proposed Area Plan. The County does not concur with this opinion and the comment presents no data or other specific documentation showing how or in what way the biota impact analysis is lacking (see Pub. Resources Code, section 21153, subd. (c)). Since the comment provides no details, the County can only provide a general response. *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 378 (where a general comment is made, a general response is sufficient.)

The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Area Plan.

Response 15

The comment encourages the County to avoid impacts to federally listed species whenever possible and for the County to work with the Service to conserve federally listed species. The County shares the goal to conserve federally listed species and to avoid impacts to these species whenever possible. The County maintains an active consultation process with trustee agencies like the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Area Plan.

Response 16

The comment is noted. No further response is required given that the comment does not address or question the content of the Revised Draft EIR.

Proposed modification of Mitigation Measures 3.7-1 and 3.7-2

3.7-1 Biological site survey reports shall include an analysis of the potential for a proposed project to: (1) result in direct or indirect mortality of special status species; (2) interfere with the breeding, feeding, and/or sheltering behaviors of such species; (3) adversely affect habitat occupied by such species; and (4) reduce wildlife movement and/or habitat connectivity.

Reports must be prepared by qualified biological consultants. Reports must include specific information regarding site location, on-site and surrounding biological resources, observed and detected species, site photographs, vegetation map, literature sources, timing of surveys, project footprint, anticipated project impacts, proposed mitigation measures, and additional recommended surveys. Such reports must be submitted to County staff for review and oversight as part of the project-level CEQA compliance process.

3.7-2

If construction activities have the potential to significantly affect special-status species, the biological site survey report shall propose mitigation measures that: (1) require pre-construction surveys for special-status species surveys; and (2) ensure avoidance, relocation, or safe escape of special-status species from construction activity, whichever action is the most appropriate. If special-status species are found to be brooding, denning, nesting, etc. on site during the preconstruction survey, construction activity shall be halted until offspring are weaned, fledged, etc. and are able to escape the site or be safely relocated to appropriate off-site habitat areas. A qualified biologist shall be on site to conduct surveys, to perform or oversee implementation of protective measures, and to determine when construction activity may resume. Relocation of a federally listed species would require an incidental take permit from the U.S. Fish and Wildlife Service.