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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