



Deputy Director
Ecosystem Conservation Division
Post Office Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

November 29, 2018

Jimmy Ayala, Division President
Pardee Homes
13400 Sabre Springs Parkway, Suite 200
San Diego, CA 92128

Dear Mr. Ayala:

**Request for Consistency Determination for Meadowood Specific Plan
(2080-2018-013-05)**

On October 30, 2018, the Department of Fish and Wildlife (CDFW) received a notification from RECON, Inc. (RECON) on behalf of Pardee Homes that on July 12, 2018, the United States Fish & Wildlife Service (Service) issued a Biological Opinion (Service file No. FWS-SDG-08B0183-18F1313) (BO) for the proposed Meadowood Specific Plan (Project) referenced above. (See Cal. Reg. Notice Register 2018, No. 45-Z, p. 1985.) The BO describes the Project and sets forth a series of measures to minimize and mitigate the incidental take of least Bell's vireo (*Vireo bellii pusillus*; Vireo), a species designated as endangered pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq). (See Cal. Code Regs., tit. 14, § 670.5, subd. (a)(5)(I).)

RECON's notification included a request pursuant to Fish and Game Code Section 2080.1 that CDFW determine that the BO, including its Incidental Take Statement (ITS), is consistent with CESA as to the Project.

CDFW has determined that for purposes of Vireo and the Project as described in the BO, the BO and ITS are consistent with CESA. A copy of the CDFW determination is enclosed for your records. (See also Fish & G. Code, § 2080.1, subd. (d).)

If you have questions regarding CDFW's consistency determination, please contact Eric Weiss, Senior Environmental Scientist, at (858) 467-4289.

Sincerely,

Chad Dibble, Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

Enclosure

ec: Edmund J. Pert
Regional Manager
South Coast Region
ed.pert@wildlife.ca.gov

Gail Sevens
Environmental Program Manager
South Coast Region
gail.sevens@wildlife.ca.gov

David Woodsmall
CDFW Counsel
Office of the General Counsel
david.woodsmall@wildlife.ca.gov

Ryan Mathis
Senior Environmental Scientist (Supervisor)
Habitat Conservation Planning Branch
ryan.mathis@wildlife.ca.gov

Emily Cate
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
emily_cate@fws.gov

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ECOSYSTEM CONSERVATION DIVISION
POST OFFICE BOX 944209
SACRAMENTO, CA 94244-2090



**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO. 2080-2018-013-05**

Project: Meadowood Specific Plan
Location: San Diego County
Applicant: Jimmy Ayala, Pardee Homes
Notifier: Beth Procsal, RECON, Inc.

Background

Pardee Homes (Applicant) proposes to develop approximately 218 acres of a 399-acre site for residential housing and associated uses. The Applicant's Meadowood Specific Plan (Project) development proposal includes the construction of 800-900 single-family and multi-family residential units, an elementary school site¹, a neighborhood park, pocket parks, 5.9 miles of multi-use recreational trails, and supporting infrastructure (i.e., roadways, detention basins, storm drains, and sewer and water facilities including the placement of two 2.5-million-gallon potable water storage tanks on the Project site).

The Project will also include three on-site open space areas: (1) agricultural open space to retain existing citrus and avocado groves; (2) cultural open space to preserve cultural resources; and (3) 122.3 acres of biological open space to retain sensitive biological habitat. Although approximately 1.81 miles of the proposed 5.9 mile multi-use trail system will pass through the biological open space, the Applicant will construct that portion of the trail along the existing dirt road located in the biological open space. No additional trails will be constructed or otherwise established within the biological open space. In addition, the Applicant will implement a limited building zone extending out 100 feet from the border of the biological open space to ensure that no brush management will occur within the biological open space.

All fuel modification zones will be contained within the Project site boundaries, with the exception of one zone located at the southwestern end of the Project site (north of Street R) where brush management activities will extend off site by 60 feet.

Additional off-site Project features include expanding "Street R," also known as "Pankey Place," by approximately 45 feet on each side of the existing bottom of the roadway prism, paving Street R, constructing an access road to the proposed water storage tanks, installing

¹ If the Bonsall Unified School District ultimately decides not to build on the school site, then the Applicant will construct additional single-family residential units within the existing Project footprint.

a storm drain and access road, performing minor improvements such as cut-fill areas for slope stabilization, and realigning the road at the southern end of the intersection of Horse Ranch Creek Road and State Route 76.

Project construction is anticipated to occur in two phases over the course of approximately 2.5 years. Project site access will only occur over the existing roads off of Horse Creek Road and pre-existing agricultural dirt roads across the property.

The Project activities described above—specifically, Project activities associated with specific off-site Project features including the widening of Street R, the manufactured slope south of Street R, and the realigned road at the intersection of Horse Creek Road and State Route 76—are expected to incidentally take² least Bell's vireo (*Vireo bellii pusillus*; Vireo). In particular, Vireo could be incidentally taken as a result of the permanent removal of approximately 0.39 acre and temporary removal of 0.52 acre of Vireo-occupied habitat. Though all clearing and grubbing of the riparian habitat will be conducted between September 16 and March 14 to avoid the Vireo breeding season, Project activities resulting in the loss of habitat may result in displaced Vireo unable to find forage or shelter and Vireo may be subject to increased predation as a result of Project activities, causing death or injury. Vireo not directly impacted by Project activities may be indirectly impacted by increased intraspecies and interspecies competition for resources including forage and territory establishment, and may lead to a localized reduction in fecundity. Vireo is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and an endangered species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See Cal. Code Regs., tit. 14, § 670.5, subd. (a)(5)(I).)

Vireo have been documented as present within the Project site and there is occupied Vireo habitat both within and adjacent to the Project site. Because of the presence of Vireo and suitable Vireo habitat within the Project site, as well as the dispersal patterns of Vireo, the United States Fish & Wildlife Service (Service) determined that Vireo is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of Vireo.

According to the Service, the Project will result in the permanent loss of 0.39 acre of riparian Vireo habitat. Construction of the Project will also result in the temporary loss of 0.52 acre of riparian Vireo habitat.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, the Army Corps of Engineers (ACOE) consulted with the Service as required by the ESA. The Service issued a draft biological opinion (Service file No. FWS-SDG-08B0183-17F0995) on January 19, 2018. On May 31, 2018, the Service issued a

² Pursuant to Fish and Game Code section 86, "Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 CAL.4th 459,507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "take'...means to catch, capture or kill").

revised draft biological opinion (Service file No. FWS-SDG-08B0183-18F0317) to account for Project changes the Applicant made after the Service issued its January 19, 2018 draft biological opinion. On July 12, 2018, the Service issued a final biological opinion (Service file No. FWS-SDG-08B0183-18F1313) (BO) to the ACOE. The BO describes the Project, requires the Applicant to comply with the terms of the BO and its incidental take statement (ITS), and incorporates additional measures.

On October 30, 2018, the Director of the Department of Fish and Wildlife (CDFW) received a notice from RECON, Inc. on behalf of the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO and its related ITS are consistent with CESA for purposes of the Project and Vireo. (Cal. Reg. Notice Register 2018, No. 45-Z, p. 1985.)

Determination

CDFW has determined that the BO, including the ITS, is consistent with CESA as to the Project and Vireo because the mitigation measures contained in the BO and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. In accordance with the Service's BO, the Project is expected to result in take of Vireo through the loss of habitat, increased intraspecies and interspecies competition, and increased exposure of predation. The Service does not expect direct take or injury of adult Vireo, their eggs, or nestlings. Specifically, CDFW finds that: (1) take of Vireo will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO and ITS will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of Vireo. The mitigation measures in the BO and ITS include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- Conservation Measure 3: Permanent impacts to 0.39 acre of occupied Vireo habitat (i.e., southern riparian forest) will be offset, prior to initiating Project impacts, through the purchase of five credits of reestablishment of southern cottonwood-willow riparian forest at the Brook Forest Mitigation Bank. Confirmation of the credit purchase will be provided to the Service prior to initiating Project impacts.
- Conservation Measure 5: To avoid potential impacts to nesting Vireo, clearing and grubbing of riparian habitat will occur outside of the Vireo breeding season (defined as March 15 through September 15).
- Conservation Measure 6: All brush management activities within the fuel modification zone located at the southwestern portion of the Project site (i.e., the zone extending off site) will occur outside of the Vireo breeding season (defined as March 15 through September 15). The Homeowners' Association (HOA) will be responsible for the long-

term maintenance of brush management in this area. To assure that this work is perpetually completed within the appropriate timeframe (i.e., outside of the Vireo breeding season), the Applicant will include these timing restrictions in the HOA's Covenants, Conditions, and Restrictions document as part of the sale package.

- Conservation Measure 7: Prior to initiating Project activities, a Service-approved biologist will supervise the placement of temporary orange construction fencing or the equivalent along the boundary of the development area as shown on the approved grading plans. Temporary fencing will be installed in all Project locations where proposed grading or clearing is within 100 feet of native habitats or within 100 feet of designated preserved areas. A Service-approved biologist will recommend the location and design for fencing and monitor subsequent installation. All construction activities will take place only within the fenced area, and all staging areas will be located within existing roads if outside the fenced area (i.e., will not remove any existing vegetation).
- Conservation Measure 10: A Service-approved biologist will supervise and monitor grading activities to prevent damage to biological resources that are intended to be protected and preserved. The biologist will be on site during clearing activities that are in or within 100 feet of native biological habitat or within 100 feet of designated preserved areas during clearing and grading activities. If there are disturbances, the biologist must report them immediately to the Service.
- Conservation Measure 12: Pets and other domestic animals will not be present in the work area at any time to avoid impacts to listed species.
- Conservation Measure 13: To avoid attracting predators of listed species, the Project area will be kept as clean of debris as possible. All food-related trash items will be enclosed in sealed containers and regularly removed from the Project area.
- Conservation Measure 14: To minimize indirect effects to listed species and their designated critical habitats, all nighttime lighting during construction and all nighttime lighting of the completed Project will be shielded and directed away from riparian and upland habitat adjacent to the development.
- Conservation Measure 15: To minimize indirect effects from the introduction of non-native species, appropriate native plants will be used to the greatest extent feasible in landscaped areas adjacent to and/or near mitigation/open space areas and/or wetland/riparian areas. The Applicant will not plant, seed, or otherwise introduce invasive exotic plant species to landscaped areas adjacent to and/or near native habitat areas. Species listed on the California Invasive Plant Council's Invasive Plant Inventory (<http://www.cal-ipc.org>) will not be used within the landscaped areas. This list includes such species as: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. In addition, landscaping adjacent to native habitat areas will not use plants that require intensive

irrigation, fertilizers, or pesticides. All water generated from the Project will be treated within the Project footprint.

Monitoring and Reporting Measures

- Conservation Measure 3: Permanent impacts to 0.39 acre of occupied Vireo habitat (i.e., southern riparian forest) will be offset, prior to initiating Project impacts, through the purchase of five credits of reestablishment of southern cottonwood-willow riparian forest at the Brook Forest Mitigation Bank. Confirmation of the credit purchase will be provided to the Service prior to initiating Project impacts.
- Conservation Measure 7: Prior to initiation of project activities, a Service-approved biologist will supervise the placement of temporary orange construction fencing or equivalent along the boundary of the development area as shown on the approved grading plans. Applicant will install temporary fencing in all locations of the project where proposed grading or clearing is within 100 feet of native habitats or within 100 feet of designated preserved areas. A Service-approved biologist will recommend the location and design for fencing and monitor subsequent installation. All construction activities will take place only within the fenced area, and all staging areas will be located within existing roads if outside the fenced area (i.e., will not remove any existing vegetation).
- Conservation Measure 10: A Service-approved biologist will supervise and monitor grading activities to prevent damage to biological resources that are intended to be protected and preserved. The biologist will be on site during clearing activities that are in or within 100 feet of native biological habitat or within 100 feet of designated preserved areas during clearing and grading activities. If there are disturbances, the biologist must report them immediately to the Service.
- Conservation Measure 11: Best Management Practices (BMPs) for erosion control will be implemented and monitored as needed to prevent any significant sediment transport. These practices may include, but may not be limited to, the following: the use of materials such as sandbags; sediment fencing and erosion control matting to stabilize disturbed areas; and installation of erosion control materials, particularly on the down slope side of disturbed areas, to prevent soil loss. A storm drain system and detention basins will be constructed to restrict excess water flow from proposed roads and structures associated with the Project. Filter devices will be installed at the appropriate points to ensure that runoff is cleansed before reaching the basins. All water-catchment features will be located above graded and natural slopes.

Although not a condition of the BO, CDFW requests copies of the following documents:

- As part of Conservation Measure 1, the BO requires the Applicant to record a conservation easement over the Project's biological open space. Applicant is required to provide the Service a draft of the conservation easement for review and approval

and a copy of the final easement and evidence of its recordation. CDFW requests copies of the draft and final conservation easement documents.

- As part of Conservation Measure 2, the BO requires the Applicant to submit a Resource Management Plan (RMP) and a Property Analysis Record (PAR) to the Service. CDFW requests copies of draft and final RMP and PAR documents.
- As part of Conservation Measure 3, the BO requires the Applicant to provide the Service with purchase confirmation for five credits at the Brook Forest Mitigation Bank. CDFW requests a copy of this purchase confirmation.
- CDFW requests to receive electronic copies of monitoring and reporting documents produced as a result of activities conducted under Conservation Measures 2, 5, 7, 10, and 11.

Financial Assurances

- Conservation Measure 3: Permanent impacts to 0.39 acre of occupied Vireo habitat (i.e., southern riparian forest) will be offset, prior to initiating Project impacts, through the purchase of five credits of reestablishment of southern cottonwood-willow riparian forest at the Brook Forest Mitigation Bank. Confirmation of the credit purchase will be provided to the Service prior to initiating Project impacts.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of Vireo, provided the Applicant implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and ITS. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO and ITS, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)).

By: _____



Date: _____

11/29/18

Chad Dibble, Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

Consistency Determination
No. 2080-2018-013-05