



## United States Department of the Interior

### U.S. FISH AND WILDLIFE SERVICE

Ecological Services  
Palm Springs Fish and Wildlife Office  
777 East Tahquitz Canyon Way, Suite 208  
Palm Springs, California 92262



In Reply Refer to:  
FWS-SB-19B0157-19I1044

July 23, 2019  
*Sent by Email*

Ms. Pam Kostka  
U.S. Army Corps of Engineers  
Los Angeles District  
915 Wilshire Boulevard, Suite 930  
Los Angeles, California 90017

Subject: Informal Section 7 Consultation for Rancho Miramonte Riparian Habitat  
Restoration Project, Chino, San Bernardino County, California

Dear Ms. Kostka:

This letter is in response to your correspondence received on September 6, 2018, requesting our concurrence with your determination that construction of the Rancho Miramonte Riparian Habitat Restoration Project (Project) in the City of Chino, San Bernardino County, California may effect, is not likely to adversely affect the federally endangered least Bell's vireo (*Vireo bellii pusillus*, LBV), the federally endangered southwestern willow flycatcher (*Empidonax trailii extimus*, SWFL), or their designated critical habitats in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*).

This informal consultation is based on information from the June 2018 Rancho Miramonte Riparian Habitat Restoration Project Biological Assessment (ESA 2018a), LBV and SWFL focused surveys from 2018 (ESA 2018b, ESA 2018c), project design features outlined in the 2007 Biological Technical Report (Glen Lukos Associates 2007), and email communications.

The Project is associated with the larger 272-acre Rancho Miramonte residential housing development (Figure 1). Original documents from 2007 considered the housing development and habitat restoration areas as one project. The residential development has included measures to minimize effects from the development on the restoration Project.

The current Project action encompasses 62.98 acres which is divided into four lots: O, P Q, and R (Figure 2). The U.S. Army Corps of Engineers' (Corps) has identified their scope as the 0.13 acres of permanent impact to Waters of the U.S. with a 500 ft. noise buffer. As such, the Project action area defined by the Corps for section 7 consultation includes those areas associated with the 404 permit and wherever planned habitat restoration activities related to the Project (e.g. grading, staging, contouring, planting, maintenance) would occur. The development site is a semi-operational dairy farm. With the exception of the riparian corridor along the east side where

the Project is located, the residential development site doesn't support any federally listed species (Glen Lukos Associates 2007).

### **Project Description**

The Project site is located along Mill Creek approximately 4 miles upstream from Prado Dam in the City of Chino, San Bernardino County, California (Figure 1). Directly northeast of the Project site is the Mill Creek Wetlands project (Service 2012a, Service 2012b). To the west lies the remainder of the Rancho Miramonte development property owned by Trumark Homes, and Prado Regional Park. To the east is a landscaping business, and to the south lies agricultural land, a small regional airport, and the Prado Flood Control Basin. The eastern side of the Project area along Mill Creek contains riparian woodland vegetation the west side contains disturbed agricultural and ruderal vegetation. Two of the four lots in the Project area, lots P and Q, will be conserved permanently through easements and collectively cover 31.09 acres.

The Project is the grading and restoration of 12.19 acres of riparian/riverine vegetation and waters of the U.S. for the benefit of LBV and SWFL. Lot P will be graded to lower the ground elevation and material from lot P will be used as fill in the adjacent Trumark Homes housing development. Approximately 2.48 acres of mulefat scrub and southern willow forest/scrub will be removed during excavation activities.

The Project site will be contoured to create four stream channels for the purpose of conveying flows from a splitting device connected to the Mill Creek Wetlands at the north end of the Project to the output structure further downstream along Mill Creek. A portion of the flows traveling from the Mill Creek Wetlands will be diverted through artificially constructed, meandering streambeds on the project site to support restored riparian vegetation and increase groundwater percolation. The diverted flows will exit the project site and return into Mill Creek approximately 0.25 miles downstream. A minimum of 4.96 acres of riparian habitat (willows, mulefat, and cottonwoods) will be created along the new streambeds to mitigate the temporary impacts to 2.48 acres of the existing vegetation during excavation at a 2:1 ratio.

A flow-splitting device will tie-in to an existing structure on lot R to divert a portion of the Mill Creek Wetland flows into the four new stream channels. Maintenance activities will occasionally be needed to clear sediment from the flow-splitting device in lot R. Maintenance activities will be conducted outside of the LBV nesting season and consistent with the conservation measures below.

### **Conservation Measures**

The following measures have been incorporated into the proposed action to avoid effects to LBV, SWFL, and their designated critical habitats.

- CM 1. Construction activity within 500 feet of riparian will be restricted during the LBV nesting season (March 15<sup>th</sup> through August 31<sup>st</sup>).

- a. If construction activity is required within 500 feet of riparian habitat during the LBV nesting season, a temporary barrier for the purpose of visual obstruction and noise attenuation shall be installed between the construction area and the outer extent of riparian habitat prior to March 15th. This barrier shall consist of certified weed-free straw bales stacked at least 4 to six feet high (depending on site topography, or equivalent, with breaks every 100 meters to allow wildlife passage.
- b. During activities within 500 feet of LBV suitable habitat, a qualified biologist, with LBV experience, must be on site to monitor nesting activity by LBV or other avian species and determine whether particular activities could be disturbing or disrupting nesting behavior. The monitor will have the authority to halt construction if LBV nesting behavior is disrupted.

CM 2. Removal of vegetation or other potential nesting bird habitat shall be conducted outside of the avian nesting season (March 15<sup>th</sup>, through August 31<sup>st</sup>).

- a. If removal of vegetation occurs during the avian nesting season, a preconstruction nesting bird survey shall be conducted no more than 3 days prior to this activity.
- b. If birds are found to be nesting within or near the impact area, a 500 foot buffer where no activities will occur will be established by a qualified biologist. This biologist would also determine if the nest is not currently active or when the nest is no longer active, at which time activities can resume.

CM 3. Project implementation will restore 30 acres of grassland habitat for the benefit of burrowing owls in lot O, which will also buffer human activity (i.e. lighting, noise, and presence) for the conserved lots.

CM 4. Vegetation within the restoration areas will not exceed 20% non-native or exotic species.

CM 5. The Project applicant will provide permanent conservation and long-term management for 31.09 acres of riparian land specifically for the support of LBV nesting habitat.

- a. The Project applicant will develop and execute conservation easements over lots P (12.19 acres) and Q (18.9 acres). Drafts will be submitted to the Service for approval within 6 months of issuance of this consultation and the Corps permit and prior to ground disturbance.
- b. The Project applicant will conduct a Property Analysis Record (or comparable analysis) to determine the initial deposit required to establish a long-term management fund such as a non-wasting endowment. The funding mechanism will fund support for long-term management, periodic monitoring, and protection of conservation lands specifically supporting nesting habitat for LBV in lots P and Q. The applicant will submit the cost

estimation results to Service for review within 6 months of the issuance of this consultation and the Corps permit and prior to ground disturbance.

- c. Proof of transferred funds shall be furnished within 1 calendar year from written acceptance of the endowment estimate from the Service and prior to ground disturbance.

## Effects of the Action

### *Least Bell's vireo and its designated critical habitat*

Mill Creek is a tributary to the Santa Ana River and feeds into the Prado Basin, which contains the most concentrated population of LBV in their range. Presence/absence surveys following Service guidelines were conducted in 2018 along the riparian areas associated within the project footprint in lots P and Q and extended at least 300 feet on either end of the property. Surveys located up to 17 singing males. A minimum of 7 and a maximum of 14 individual male LBV were detected during any single survey. A total of 14 territories were delineated within the survey footprint, and the majority found in designated conservation lot Q. Portions of three territories are within the area that will be affected by grading in lot P. However, due to the distribution of available vegetation around these territories and the small area to be affected in each respective territory, we expect the territories to remain occupied with no discernable effects to returning LBV pairs or individuals. Suitable habitat areas were defined as southern willow forest or scrub, non-native riparian (eucalyptus), disturbed wetland, and riverine wash. Dominant species included arroyo willow (*Salix lasiolepis*), black willow (*Salix gooddingii*), mulefat (*Baccharis salicifolia*), tree tobacco (*Nicotiana glauca*), perennial pepperweed (*Lepidium latifolium*), willow smartweed (*Polygonum lapathifolium*), California bulrush (*Schoenoplectus californicus*), sunflower (*Helianthus annuus*) and California mugwort (*Artemisia douglasiana*).

Grading will remove a narrow strip of LBV designated critical habitat totaling 2.48 acres. This area will be restored and an additional 2.48 acres of new riparian vegetation will be planted within lot P for a combined minimum of 4.96 acres. The Project also includes the conservation of 18.9 acres of designated LBV critical habitat in lot Q. These two lots will be deeded to a conservation agency as described in CM 5 above.

### *Southwestern willow flycatcher and its designated critical habitat*

Surveys for SWFL were conducted May-July 2018 using playback in the same 23 acres surveyed for LBV. Two individuals were detected during the earliest survey on May 21st, however none were identified during the four subsequent surveys. Due to the timing of the detections, these birds are likely migrants and therefore cannot be confirmed as SWFL.

Approximately 1.5 acres of designated SWFL critical habitat are located within the riparian area to be graded. However, only 0.43 acres contain suitable vegetation for supporting SWFL and the remaining area is disturbed/ruderal. Project implementation will restore Lot P for the benefit of riparian species, including 0.43 acres of designated SWFL critical habitat.

If the Project is constructed as described and the above conservation measures are implemented, the Service concurs with your determination that the proposed Rancho Miramonte Conservation Project is not likely to adversely affect LBV or SWFL or their designated critical habitats. Therefore, the interagency consultation requirements of section 7 of the Act have been satisfied. Although our concurrence ends informal consultation, obligations under section 7 of the Act will be reconsidered if new information reveals effects of the agency action that may affect listed species or designated critical habitat in a manner or to an extent not previously considered, or this action is subsequently modified in a manner that was not considered in this assessment.

Thank you for your coordination on this Project. If you have any questions regarding this letter, please contact Emily Hockman of this office at (760) 322-2070, extension 420.

Sincerely,

for  
Kennon A. Corey  
Assistant Field Supervisor

## Literature Cited

- [ESA] Environmental Science Associates. 2018a. Rancho Miramonte Riparian Habitat Restoration Project Biological Assessment, Prepared by ESA for Trumark Homes and submitted to the Palm Springs Fish and Wildlife Office, Palm Springs, California. June 2018.
- [ESA] Environmental Science Associates. 2018b. Results of Focused Least Bell's Vireo Surveys on the Rancho Miramonte Riparian Habitat Restoration Project, City of Chino, San Bernardino County, California. Prepared by ESA for Trumark Homes and submitted to the Palm Springs Fish and Wildlife Office, Palm Springs, California. August 13, 2018.
- [ESA] Environmental Science Associates. 2018c. Results of Focused Southwestern Willow Flycatcher Surveys for the Rancho Miramonte Riparian Habitat Restoration Project, City of Chino, San Bernardino County, California. Prepared by ESA for Trumark Homes and submitted to the Palm Springs Fish and Wildlife Office, Palm Springs, California. August 13, 2018.
- Glen Lukos Associates, Inc. 2007. Biological Technical Report for the Approximately 272-Acre Edgewater Communities Property Chino, San Bernardino County, California. Prepared by Glen Lukos Associates, Inc. for Edgewater Associates I, LLC, and submitted to the Palm Springs Fish and Wildlife Office, Palm Springs, California. September 2007.
- [Service] U.S. Fish and Wildlife Service. 2012a. Cucamonga Creek Watershed Regional Water Quality Proposal Alternative 2A, San Bernardino County, California (FWS-SB-12B0014-12I0139). Palm Springs Fish and Wildlife Office, Palm Springs, California.
- [Service] U.S. Fish and Wildlife Service. 2012b. Cucamonga Creek Watershed Regional Water Quality Proposal Alternative 2A, San Bernardino County, California (FWS-SB-12B0014-12I0482). Palm Springs Fish and Wildlife Office, Palm Springs, California.





Figure 1: Location of the Rancho Miramonte Riparian Habitat Restoration Project, Chino, San Bernardino County, California

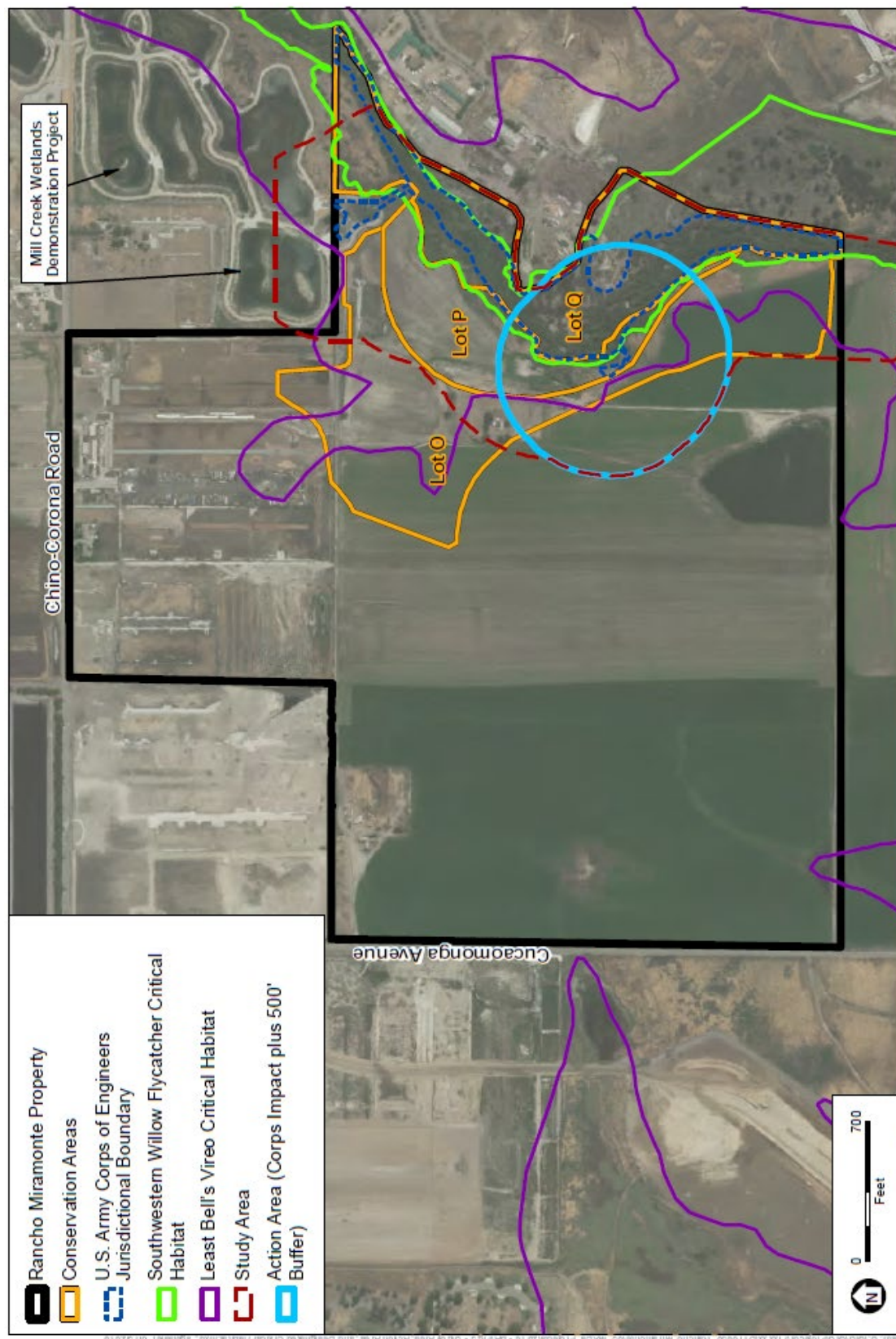


Figure 2: Action area and designated critical habitat (ESA 2018a)