



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846



In reply refer to:  
1-1-05-TA-0221

Ms. Julia Baigent  
Attorney at Law  
60 Buck Court  
Woodside, California 94062

Subject: Habitat Determination for the Wavecrest Site, Half Moon Bay, San Mateo County, California.

Dear Ms. Baigent:

The U.S. Fish and Wildlife Service (Service) is writing to reiterate our previous determination regarding the presence of suitable habitat for federally listed species on the Wavecrest site owned by Concar Enterprises. The Service is providing this in response to your opinion article that was published in the Half Moon Bay Review on December 1, 2004.

The Service would like to reiterate our formal determination, as reflected in both our August 24, 2004 and November 16, 2004 letters, that the entire Wavecrest site, including the portion owned by Concar Enterprises, is suitable habitat for both the threatened California red-legged frog (*Rana aurora draytonii*) (red-legged frog) and the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and should be considered sensitive habitat for both species.

The Service would also like to clarify that the dead snake found on the Wavecrest site after the disking activity, and referenced in your piece, has not yet been positively identified as to the exact species. The snake is being sent for analysis to determine if it is the endangered San Francisco garter snake, a coast garter snake, or a hybrid of the two species. The Service would also like to stress that the presence of a biological monitor during disking activities (or other surface-disturbing activities) will not insure that *take* of red-legged frogs or San Francisco garter snakes will not occur. At this time of the year, San Francisco garter snakes that may be present on the Wavecrest site are likely to be underground in burrows, therefore a biological monitor would not detect their presence without locating and hand excavating each burrow. Therefore, disking is likely to result in death or injury to San Francisco garter snakes that may be present in burrows on the site. Disking may also result in death or injury to red-legged frogs that may be utilizing the upland habitat on the site.

Section 9 of the Endangered Species Act (Act) and its implementing regulations prohibit the *take* of a federally listed wildlife species. *Take* is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any such animal. *Take* may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or shelter (50 CFR 17.3).



*Take* incidental to an otherwise lawful activity may be authorized by one of two procedures:

If a Federal agency is involved with the permitting, funding, or carrying out of a project that may result in take, then that agency must engage in a *formal consultation* with the Service. During formal consultation, the Federal agency, the applicant, and the Service work together to avoid or minimize the impact on listed species and their habitat. Such consultation would result in a *biological opinion* by the Service addressing the anticipated effect of the project on listed and proposed species. The opinion may authorize a limited level of incidental *take*.

If no Federal agency is involved with the project, and federally listed species may be taken as part of the project, then the applicant should apply for an *incidental take permit*. The Service may issue such a permit if a satisfactory habitat conservation plan (HCP) for the species that would be affected by the project is submitted to us. Should surveys determine that federally listed or proposed species occur in the area and are likely to be affected by the project, we recommend that the applicant work with this office and the California Department of Fish and Game to develop an HCP that minimizes the project's direct and indirect impacts to listed species and mitigates for project-related loss of habitat. The applicant should include the plan in any environmental documents filed.

If you have any questions regarding the Service's comments, please contact Mary Hammer or the Coast Bay Delta Branch Chief at (916) 414-6625 for further discussion.

Sincerely

Cay C. Goude  
Assistant Field Supervisor

cc:

David M. Ivester, Stoel Rives, LLP  
Pat Fitzgerald, Wavecrest Partners, LLC  
Susan Craig, California Coastal Commission  
Dave Johnston, California Department of Fish and Game  
Jack Liebster, City of Half Moon Bay  
Mike Josselyn, Wetlands Research Associates  
John Bayless, Cabrillo Unified School District