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:
81420-2011-TA-0141

December 13, 2010

Mr. John Swiecki
Community Development Department
City of Brisbane
50 Park Place
Brisbane, California 94005

Subject: Notice of Preparation for the Brisbane Baylands Environmental Impact Report

Dear Mr. Swiecki:

This letter is in response to the revised notice of preparation for the Brisbane Baylands Project in the City of Brisbane, San Mateo County, California. Our comments and recommendations are based on *Revised Notice of Preparation of en Environmental Impact Report for the Brisbane Baylands Project City of Brisbane (Previous SCH #2006022136, February 24, 2006)* dated December 2010, that was prepared by the City of Brisbane, and other information available to the U.,S. Fish and Wildlife Service (Service). The notice of preparation was received by the Service on December 13, 2010. This letter is issued under the authority of the Endangered Species Act of 1973, as amended (Act), and the Service's Mitigation Policy of 1956.

It is our understanding that the proposed project involves the development of approximately 7 million square feet of office/retail/industrial/institutional uses, 5 million square feet of residential (4434 residential units) and approximately 205 acres of open space/open area and related grading and infrastructure on 573 acres. Other proposals described in the Notice of Preparation include 8 million square feet of office/industrial/commercial/institutional space, no residential development, and approximately 330 acres of open space and related grading; and a renewable energy alternative that includes what appears to be a wind-generated electrical facility.

At issue are the potential adverse effects of the proposed project on the endangered San Bruno elfin butterfly (*Incisalia mossii bayensis*), endangered callippe silverspot butterfly (*Speyeria callippee callippe*), endangered mission blue butterfly (*Icaricia icarioides missionensis*), endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), burrowing owl (*Spetylo canicularia*), wildlife, and loss and fragmentation of wildlife habitat.

TAKE PRIDE IN AMERICA

Mr. John Swiecki

Section 9 of the Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. As defined in the Act, take is defined as "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, not only are the San Bruno elfin butterfly, callippe silverspot butterfly, mission blue butterfly, and the San Francisco garter snake protected from such activities as collecting and hunting, but also from actions that damage or destroy their habitat. The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

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 the project and a listed species is going to be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be taken by the project.

The Service recommends the City of Brisbane include the following information in the draft environmental impact report:

1. The written results of habitat assessments and, if appropriate, surveys following Service protocols completed by a qualified biologist for the San Bruno elfin butterfly, callippe silverspot butterfly, mission blue butterfly, and San Francisco garter snake. If the proposed project may result in take or adverse effects to federally listed species, we recommend that the City of Brisbane and/or the applicant obtain authorization for incidental take for the appropriate listed species pursuant to sections 7 or 10(a)(1)(B) of the Act prior to any ground breaking at the project site. The mitigations and/or conservation measures should be incorporated by the City of Brisbane as conditions into the final CEQA documents, including the grading permits.

2. The written results of habitat assessments and, if appropriate, surveys following Service and California Department of Fish and Game protocols completed by a qualified botanist for listed and sensitive plants.

3. The written results of habitat assessments and, if appropriate, surveys following California Department of Fish and Game protocols completed by a qualified biologist for the burrowing owl.

4. The effects of fragmentation and loss of wildlife habitat that may result from the project.

5. The potential effects on migratory birds from the wind-generated electrical facility in the renewable energy alternative.

Please contact Chris Nagano, Chief of our Endangered Species Division at the letterhead address, via electronic mail (Chris_Nagano@fws.gov) or at 916/ 414-6600 if you have any questions regarding this letter.

Sincerely,

Cay C. Goude
Assistant Field Supervisor

cc:
Scott Wilson, Suzanne DeLeon, Richard Fitzgerald, California Department of Fish and Game, Yountville, California