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June 15, 2018

Via Email: emorris@cityofnapa.org

Ms. Erin Morris
City of Napa, Planning Manager
1600 First Street
Napa, CA 94559

Subject: Trinitas Mixed-Use Project Conformance with Lodging Policy Recommendations
per City Resolution R2008-76

Dear Ms. Morris:

This following information has been prepared for the Trinitas Mixed Use Project (the "Project") to demonstrate the Project's conformance with City of Napa Resolution R2008-76 Approving New Lodging Policies. Resolution R2008-76 set forth policies to guide future lodging development within the City of Napa.

Trinitas Project Overview

The Project is an opportunity to provide City residents and visitors with a mixed-use project that compliments the City's agrarian lifestyle and improve upon the visual character of the Napa Valley Commons corporate park. This Project, thoughtfully conceived by Pacific Hospitality Group ("PHG"), represents a balance of top-rate hospitality, maximization of location, and economic driving factors. The Project will offer a positive economic benefit to the City of Napa and its residents through a significant contribution of revenue from property tax, occupancy tax, and promotion of the City's downtown businesses.

For example, from 2006 through 2017, The Meritage Resort & Spa ("TMR") has contributed \$16,742,820 in property tax while further generating \$26,965,352 in occupancy tax, totaling \$43,708,172.

Since 1987, PHG has developed, owned, and operated a variety of hotel properties including upscale full-service properties to boutique select service hotels. PHG recognizes that not all projects are the same and takes extraordinary steps to ensure that its' projects benefit the local community.

The Trinitas Mixed Use Project proposes a hotel, winery, and an office building located on three vacant parcels within the Napa Valley Commons corporate park in south Napa. The hotel portion

consists of a 253-guest-room, dual-branded, select service AC Hotel and Residence Inn. The winery is a single-story building with production and storage facilities, conference room, small tasting area, sales/office area, and an outdoor courtyard. The office is a 2-story building with highly modular office space.

The visual concept for the Project incorporates updated and contemporary features by using materials that are commonly found in homes and wineries in the area. While the Project is designed to communicate aesthetically as a whole, each component exemplifies slightly unique characteristics. The building colors and materials provide a cohesive appearance, compatible with the existing development within the corporate park. Materials include reclaimed wood, stucco, colored concrete block, and more contemporary materials such as steel and glass.

The select service hotels will be constructed as a single building with several shared features while providing distinct experiences. The building architecture interior design will differ for each brand including separate arrival and lobby areas. The AC Hotel (153 rooms) includes a breakfast area, lounge, library, and two small media areas that serve as meeting rooms. The Residence Inn (100 rooms) includes a breakfast-serving area along with a hearth and a study area, and a small meeting room shared with the AC Hotel. The hotels will also share a pool and fitness room. As select service properties, the hotels will not include a full restaurant or room service but will provide limited breakfast service while the AC Hotel will also offer small bites in the lobby bar.

Hotel Policy Analysis

In 2008, the City of Napa adopted Resolution R2008-76 which adopted guiding recommendations for new hotel developments. An analysis of the recommendations made by the approved policies is provided below:

Recommendation 1

A priority should be placed on the development of full-service and resort hotels downtown because of the ancillary and complementary benefits to other downtown uses and activities. This does not preclude the full range of additional lodging products in appropriate locations throughout the city.

The Trinitas Mixed Use project is not located in the downtown area. The AC Hotel and Residence Inn hotels proposed as a part of the Project are select service hotels that provide a balance to the full-service and resort hotels desired in the downtown area. The AC Hotel and Residence Inn are intended to provide a high-quality lodging experience at a lower price-point compared to the majority of hotel offerings within the City of Napa.

As confirmed in the recent hotel study commissioned by the City of Napa, there is a need for lower priced hotel accommodations. Many business travelers and day-trippers do not stay in Napa due to the exorbitant hotel prices. PHG's own research confirmed the same findings which point to the need for more reasonably priced accommodations.

Moreover, Napa is a jewel that should not be accessibly to only those with the means to afford such high lodging prices. Providing more reasonably priced lodging allows a wider variety of visitor to enjoy the splendor of Napa.

Recommendation 2

Limited service hotels with meeting room space and close proximity to surrounding support services would be considered desirable. Bed and breakfasts and small inns as in-fill projects would be encouraged as indicated in the General Plan.

The Trinitas Mixed Use project consists of a dual branded select service, or limited service hotel. The AC Hotel and Residence Inn provide distinct experiences and function in conjunction with the winery and office building. The AC Hotel and Residence Inn do offer a limited amount of meeting room space and the location of the dual branded hotel has been mindfully selected near support services. While Bed and Breakfast Inns are not permitted in the Corporate Park designation, this project represents in-fill as it is one of the last vacant parcels in Napa Valley Commons. The shuttle service currently operating out of The Meritage Resort transporting guests from the hotel to the downtown area will be expanded to serve the AC Hotel and Residence Inn. The mixed-use nature of the proposed Project is consistent with the City's General Plan policy, as it proposes a range of goods and services convenient to Napa residents.

Recommendation 3

New hotel projects should provide a minimum of 15-100 square feet of contiguous meeting room space per guest room depending on the type of hotel and location to facilitate and expand the group meeting demand.

The AC Hotel and Residence Inn includes approximately 1,200 square feet of meeting space and is anticipated to function with the proposed winery which provides a small amount of additional meeting space. As a select service hotel, it is anticipated that conference guests will be participants of conferences or events at area hotels or the downtown area.

Additionally, The Meritage Resort & Spa ("TMR"), located around the corner from the Project, is often unable to utilize its expansive over 35,000 square feet of conference and meeting space due to a lack of room availability. The Project's addition of more affordable rooms will allow south Napa to attract larger conferences.

Recommendation 4

Hotel applicants/developers should demonstrate how they will pursue mass transport activities that reduce traffic congestion such as shuttle services, linkages with other hotels, use of the trolley or like public transit options, for guest and employees, particularly for group-oriented hotels.

As select service hotels, the vehicles traveling to the AC Hotel and Residence Inn are anticipated to be guest vehicles since there are no other amenities such as retail or restaurant associated with the hotels. It is anticipated that entertainment will be sought off-site, most likely in the downtown area.

A shuttle service will provide transportation from the hotel to the downtown area and TMR, which offers a broader array of guest serving amenities.

TMR currently operates shuttles which picks up guests every 30-45 minutes between 3:15 PM and 8:30 PM or later as dictated by demand. The shuttles currently transport approximately 80-100 guests per night to downtown Napa between Sunday-Thursday with the number increasing to 125-150 guests per night Friday and Saturday. The shuttle service provides a benefit to hotel guests as well as the businesses of downtown Napa while helping to reduce traffic congestion along SR 221 and in the downtown area.

The Napa Valley Transportation Authority (NVRTA) operates multiple bus routes near the Project site (Routes 3, 4, 10, 11, 21, 25 and 29). NVRTA Route 11 is a local bus service that operates between the Redwood Park & Ride and the Vallejo Ferry. Route 11 runs south on SR 221 before heading west on Kaiser Road and then south on Napa Valley Corporate Drive. On weekdays, NVRTA Route 11 operates from 4:00 a.m. to 9:00 p.m. at headways ranging from 30 minutes to 70 minutes. On Saturdays, Route 11 operates from 6:30 a.m. to 7:00 p.m. at headways ranging from 50 minutes to 70 minutes. There is a bus stop near the Project site at the intersection of Napa Valley Corporate Drive and Kaiser Road and at the intersection of Napa Valley Corporate Drive and Napa Valley Corporate Way, approximately 800 feet from the project site.

In addition to the shuttle provided to hotel guests and the Project's proximity to NVRTA Route 11, there are two Class I bike facilities within the vicinity of the Project that will provide bicycle linkage to the Project.

- Napa Valley Vine Trail is a portion of the Bay Trail that runs alongside the Napa River. It begins near Kaiser Drive in the south and terminates north of the study area at 3rd Street. In the study area, the Vine Trail is existing from Kennedy Park to 3rd Street. The portion between Kennedy Park and Hartle Court overlaps with the Bay Trail. The section from Kaiser Road to Kennedy Park is proposed but not currently constructed.
- The River-to-Ridge Trail is a portion of the Bay Trail that runs east-west. It begins at the Napa Valley Vine Trail near Streblow Drive and runs alongside Streblow Drive to SR 221 and then continues east into Skyline Wilderness Park.

Recommendation 5

Hotel applicants/developers should demonstrate how they will link with the Napa Valley College Hospitality Institute and Hospitality and Tourism Management Program, and/or provide in-house hospitality and employment training programs that will provide a career ladder and stable employment sector.

As a hospitality-focused organization, PHG believes that guests experiences rely on top notch facilities and exemplary service where employees are the heartbeat success. Cultivating and retaining a reliable team involves reaching into the community for local youth and adults interested

in delivering a high standard of hospitality services. Additionally, PHG has a long and proud history of promoting within the company.

The talent recruiting process implemented by PHG for TMR builds its strength from local high school students and Napa Valley College. Last year TMR partnered with the Napa Valley Union School District (“NVUSD”) to create an 8-week training / internship program dubbed “Resorting to Opportunity.” TMR brought in 8 students who trained in a variety of hospitality roles.

In addition to working with local high school students, PHG and TMR host NVUSD teachers as part of a paid summer externship program so teachers can see what hotels do on a day-to-day basis and how they can incorporate those skills into their curriculum.

PHG has also partnered with the Napa Salvation Army Culinary Academy, a second chance program in Napa, to provide informational classroom information regarding interview preparation and employment expectations. Furthermore, PHG hires at least one graduate from each class to work at TMR.

Additional local partnerships include work with the United Cerebral Palsy North Bay non-profit organization and WineBev Services to provide employment for disabled individuals (10-15 people per day, 5 days per week).

PHG also has a close relationship with Napa Valley College (“NVC”), located approximately 2 miles from the Project site. For many years PHG has partnered with NVC to provide tuition reimbursement for TMR employees. PHG offers regular tours for classes and consistently hire students in the hospitality program. TMR Director of Human Resources Tami Pacho is on the Advisory Council for the Hospitality Program.

Furthermore, PHG employees undergo regular job training courses and as previously mentioned are eligible for tuition reimbursement. TMR employees are also eligible to transfer to other PHG properties or participate in exchange programs should they so desire.

PHG’s commitment to providing internships and employment to Napa Valley College students, in conjunction with providing in-house training programs that yield high success and retention rates, remain a priority. The success of such programs will no doubt transfer over to the new hotels proposed as a part of the Trinitas Mixed Use Project.

Recommendation 6

Hotel projects should demonstrate how they will meet sustainability (green practices as determined by LEED standards) or future green ordinances or initiatives that may be adopted by the City.

The AC Hotel and Residence Inn, as with the entire Project, has been designed to incorporate Leadership in Energy Environmental Design (“LEED”), CALGreen provisions and the City’s High-Performance Building Regulations. The proposed mixed-use development will offer connection to

pedestrian and bicycle links from one use to another within the Project, resulting in reduced automobile trips.

The low impact development plan will include the use of drought-resistant plant materials, reclaimed water for all landscape irrigation purposes, water-saving systems, and the use of storm water filtering systems throughout the Project site. Water-saving features such as utilizing low-flow showerheads, faucets, and water closets are proposed. Landscaping water usage will be reduced by using drought-tolerant California friendly plant material and irrigation systems that measure the local weather condition and respond to current conditions. The use of large areas of turf is minimal and is not utilized in landscape areas. Roof collection systems will divert rain water to irrigate drought tolerant landscape area. The Project will be in compliance with the City of Napa Water Efficient Landscape Ordinance ("WELO") as well as state criteria for water usage.

Reduction of energy usage by the proposed Project will be accomplished through the use of passive solar techniques and low energy lighting such as incorporating roof overhangs, awnings, trellises, and shade trees to selectively control heat gain, installation of windows to catch breezes and provide cross ventilation. Appliances used by the hotel shall be Energy Star qualified appliances and the Project will comply with the California Energy Code and Green Building Code.

An Environmental Impact Report (EIR) was prepared for the Project. The EIR stipulates through Mitigation Measures GHG-1 and GHG-2 that the Project will:

- Designate at least 53 clean air vehicle (i.e., electric vehicle) parking spaces
- Ensure that all winery-related wastewater is treated on-site and institute a program to reduce indoor and outdoor water use by at least 20%
- Institute a program to ensure that 2013 Title 24 energy standards (used by the CalEEMod model) for energy use and lighting are exceeded by at least 20% and adherence to CalGreen 2016 Title 24 energy standards, as well as other measures including, but not limited to:
 - a. Installation of sensors in all rooms to ensure HVAC systems are not operating when a guest is not present.
 - b. A separate system which requires the guest room key to be inserted in order for the lights to work in the hotel rooms
 - c. LED lights installed throughout the Project
 - d. Energy efficient rated hotel appliances
- Planting of at least 430 new trees on-site;
- Institute a shuttle program which would reduce Project trip generation by at least 180 trips per day;
- Institute a recycling and compost program that would divert at least 20% of waste created on-site.

In addition to the measures the Project will implement to meet green practices by reducing the use of water and electricity, the winery will use a subterranean tank system to hold industrial wastewater that will be transferred through an underground piping system to an on-site wastewater treatment

area. Solids and liquids will be separated, and the solids will be dewatered and disposed of with normal trash. The remaining water will be filtered to a pure state and stored in tanks to be dispersed through the Project's landscape irrigation system. This method of treating winery wastewater on-site reduces waste and promotes water conservation.

Recommendation 7

Hotel applications should demonstrate as part of the application process a commitment to advancing cultural arts by providing a public art component visible and accessible to the public, particularly for hotels located downtown. Hotel projects in the pipeline may be subject to a future "art in public places" ordinance, pending adoption by City Council in 2008.

The visual quality of the Project as an extension of the area's agrarian culture architectural theme is a priority to PHG. The Project will comply with the City's Public Art Ordinance through the installation of public art at the Project site. Exact locations have yet to be determined; however, once Project plans are refined, an artist will be retained and public art locations will be incorporated into construction drawings for City review and approval.

Recommendation 8

Hotel applicants should provide a report or study that provides a comprehensive overview regarding hotel employment. The report or study should be prepared by an independent consultant and include, at a minimum, the following information: the number of employees the hotel would employ, full-time vs. part-time, positions titles, wage rates by position, and types of benefits; the anticipated breakdown of employees residing inside or outside the County of Napa, and the rationale for breakdown; and any programs or policies the applicant or operator will implement in the area of employee housing and congestion management. The City Council has requested this employment information to measure any economic, housing and transportation impacts the hotel would create.

A review of employment characteristics from the Trinitas Project in Napa, dated September 12, 2017, was prepared in conformance with the City's recommendation. The review of employment characteristics provided an overview of general impacts hotels having on housing.

- Employment categories
- Occupational categories
- Wage distribution
- Employment densities
- Distribution of workers by land use type
- Household formation

Employment Category	Description and Examples
Development Assumptions Office Wine wholesalers Lodging	28,878 square feet 26,214 square feet 155,557 square feet
Demographic Assumptions Workers per household with workers Persons per household with workers Persons per family	1.43 persons 3.63 persons 3.24 persons
Employment Density Assumptions Office Wine wholesalers Lodging	300-400 square feet per employee 750-1,311 square feet per employee 450-617 square feet per employee

Based on the information provided by the employment study, a hotel the size of the proposed AC Hotel and Residence Inn is projected to generate 347 to 480 workers with income levels ranging from very low to above moderate. However, the employment levels projected by the employment study are greater than those anticipated by PHG based on its ownership and operation of several limited service properties. PHG projects that the hotels will employ approximately 70-80 people while also providing existing part-time TMR employees an opportunity to gain additional hours.

TMR presently employees 560 team members of which 331, or 59%, live in Napa County while 269, or 48%, live in the City of Napa. PHG projects similar statistics for the AC Hotel and Residence Inn. Additionally, while TMR is considered a full-service resort and the AC Hotel and Residence Inn are limited service, salaries will remain competitive and comparable.

TMR employee salaries consistently rank in the top levels of the annual Wine Country Hospitality survey. Moreover, PHG proudly offers one of the best benefit packages in all of Napa, covering 80% of the costs. For example, TMR employees may obtain medical, dental, and vision insurance for \$65 per pay period. Employees are also eligible for 401k benefits after 90 days while every full-time employee receives a \$10,000 life insurance policy paid for by the company.

In addition to providing competitive employment opportunities in the hospitality sector, the Project is required to pay into the City's Affordable Housing Fee prior to the issuance of a building permit. The fee will be calculated based on the methodology identified by the City Council for non-residential development. PHG is also working with local non-profit organizations to explore alternative uses of Project funds for affordable housing.

Conclusion

PHG appreciates the opportunity to submit this information regarding the City's hotel policy recommendations. The information provided in this letter reinforces PHG's commitment to its employees and the economic health of the City of Napa. The Project is a mixed-use project providing stable hospitality employment that surpasses the recommendations of R2008-76. The Project provides a product that does not exist within the City of Napa and is complementary to the existing TMR and ideal for providing hotel market diversity within Napa Valley Commons and the City of Napa. The AC Hotel and Residence Inn are not considered a visitor destination and have been mindfully designed so that guests explore Napa, taking advantage of the City's recreation, retail and restaurant amenities.

Please do not hesitate to contact me with any questions.

Very truly yours,



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May 31, 2018

Via Email and Hand DeliveryChair Michael Murray
Honorable Members of the Planning Commission for the City of Napa
c/o Patty Baring
City Hall, Council Chambers
955 School Street
Napa, CA 94559
Email: pbaring@cityofnapa.org**By Email Only**Erin Morris, Planning Manager: emorris@cityofnapa.org**Re: Special Meeting Agenda Item No. 7.A: Trinitas Mixed-Use
Project – 2610 & 2620 Napa Valley Corporate Drive
(File No. P16-0054)**

Dear Chair Murray, Honorable Members of the Planning Commission for the City of Napa, Ms. Morris:

On behalf of Napa Residents for Responsible Development (“Napa Residents”), we submit these comments regarding Special Meeting Agenda Item No. 7.A: Trinitas Mixed-Use Project – 2610 & 2620 Napa Valley Corporate Drive, File No. P16-0054, SCH #2017072005 (“Project”). The Project is proposed by Pacific Hospitality Group (“Applicant”). We previously submitted comments on the Draft Environmental Impact Report (“DEIR”) for the Project on February 26, 2018 (“DEIR Comments”), and preliminary comments on the Final Environmental Impact Report (“FEIR”) to the Planning Commission on May 17, 2018. We incorporate our prior comments by reference.¹

¹ Napa Residents reserves the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v.*

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Napa Residents respectfully requests that the Commission continue this hearing to a later date due to the City's failure to provide timely access to numerous documents and studies that the City is relying upon to support its proposed CEQA findings, as well as documents referenced in, but not attached to, the Staff Report.

As discussed below, the City failed to timely provide Napa Residents with several documents that are referenced in the Staff Report and relied upon in the FEIR, including several new biological studies. Napa Residents submitted a Public Records Act ("PRA") request on May 23, 2018 for all new technical studies prepared for the Project. The City failed to provide the requested documents, and failed to include them in the current Staff Report. The public therefore remains uninformed regarding the basis for several of the City's proposed CEQA findings regarding biological resources, in violation of CEQA. The City also failed to provide its responses to our May 17, 2018 comment letter until after close of business on May 29, 2018, leaving inadequate time for Napa Residents and its consultants to fully consider the responses prior to this hearing. This hearing must be continued in order to provide Napa Residents and the public the opportunity to consider the evidence that the City asserts it is relying upon for its CEQA conclusions.

The Staff Report also fails to resolve issues raised in Napa Residents' DEIR comments and May 17, 2018 comments to the Planning Commission regarding the FEIR's failure to adequately analyze the Project's significant cumulative impacts to biological resources, and inadequate mitigation for impacts to wetlands. The City must revise and recirculate the FEIR to adequately address these and other issues identified in Napa Residents' previous comments before the Planning Commission may consider approving the Project.

Finally, Napa Residents supports the Staff Report's proposed recommendations to remove floor area ratio ("FAR") averaging ("Alternative 2A"), and to remove hotel uses from the portion of the Project site located in Airport Land Use Commission ("ALUC") Zone C ("Alternative 2B"). However, these alternatives are among three alternative recommendations proposed in the Staff Report. Without a binding requirement to comply with FAR zoning and ALUC Zone C

Bakersfield (2004) 124 Cal. App. 4th 1184, 1199-1203; *see Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

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regulations, the Project will remain in violation of City and County land use policies. Both requirements must be included as binding Conditions of Approval.

We prepared these comments with the assistance of conservation biologist and wildlife ecologist Scott Cashen.² Napa Residents reserves the right to submit supplemental comments to the City following our receipt and review of the outstanding studies, reports, and other documents relied upon in the FEIR and Staff Report.

I. THE CITY FAILED TO DISCLOSE CRITICAL STUDIES THAT IT RELIES ON TO SUPPORT THE FEIR'S CONCLUSIONS AND PROPOSED CEQA FINDINGS

The City failed to timely provide Napa Residents with several documents that are referenced in the Staff Report and relied upon in the FEIR, including documents we recently requested via a Public Records Act request to the City. The City's actions violate both the Public Records Act and CEQA's basic requirement that an agency must disclose all evidence relied upon in its CEQA analysis and CEQA findings to the public.

On May 23, 2018, Napa Residents submitted a Public Records Act request to the City seeking *immediate access*, pursuant to Gov. Code § 6253(a), to all public records referring or related to Trinitas Project since January 23, 2018, including but not limited to:

- All public comments received by the City regarding the Project that are not included in the Project's FEIR, including but not limited to all public comments received by the City at or in conjunction with the May 17, 2018 Planning Commission hearing on the Project.
- All surveys and technical reports prepared by or on behalf of the City's EIR consultant related to the Project that are not included in the Project's DEIR or FEIR, including but not limited to the 2018 fairy shrimp study referenced by Ms. Shana Shaffner during the May 17 Planning Commission hearing on the Project.

² Mr. Cashen's technical comments and curriculum vitae are attached hereto as Exhibit A.

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- All documents related to the construction status of the Meritage Commons Project, to be located at 850 and 875 Bordeaux Way, also known as the Meritage Resort Expansion Project (PL15-0071).
- All other documents related to the Project that were not previously provided in response to our January 23, 2018 Public Records Act request.³

As of the time of this writing, Napa Residents has not received any documents from the City in response to its May 23, 2018 Public Records Act request, including the five biological resources studies that were conducted after the release of the DEIR that are referenced in Attachment 7 of the Staff Report as part of the City's responses to Napa Residents' May 17, 2018 comments. These studies include:

- Reconnaissance level survey by Bargas Environmental Consulting (referred to as the "Bargas Report" in the FEIR).
- Dry season and wet season surveys for vernal pool fairy shrimp (Response to FEIR comments, p. 105).
- Wetland delineation (Response to FEIR comments, p. 106).
- Rare plants survey (Response to FEIR comments, p. 69).
- Swainson's hawk surveys (Response to FEIR comments, pp. 22 and 83).

Section 6253(a) of the Public Records Act requires public records to be "open to inspection at all times during the office hours of the state or local agency" and provides that "every person has a right to inspect any public record."⁴ The City's responses to our May 17, 2018 comments are dated May 23, 2018, and reference these documents. Therefore, the documents were clearly in existence at the time our Public Records Act request was submitted to the City. The City's failure to provide immediate access to these records violates the Public Records Act.

The City also failed to timely provide Attachment 7 to the Staff Report to the public. Attachment 7 includes the City's 167-page response to our May 17, 2018 comment letter. The City did not provide Attachment 7 to Napa Residents until after close of business on Tuesday, May 29, 2018, in response to an email from the undersigned which advised the City of its omission from the Staff Report.

³ A copy of our May 23, 2018 Public Records Act request is attached hereto as Exhibit B.

⁴ Gov. Code § 6253(a).

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Attachment 7 still remains incomplete, as the version provided to Napa Residents failed to attach any of the recent biological studies that the City is relying on to conclude that the Project's impacts to sensitive biological resources, including impacts to the federally threatened vernal pool fairy shrimp and the State-listed threatened and federally designated Bird of Conservation Concern, Swainson's hawk, are less than significant. As a result, Napa Residents and its technical consultants have been unable to fully evaluate the Staff Report, the City's responses to its comments, or the adequacy of the FEIR.

The City's failure to disclose these studies to Napa Residents and the public violates CEQA. An agency may not rely on hidden studies or documents that it fails to disclose to the public to support its CEQA analysis and CEQA findings.⁵ CEQA requires an EIR to provide the reader with the analytic bridge between its ultimate findings and the facts in the record.⁶ The City has failed to comply with this requirement by failing to disclose the FEIR's supporting evidence and analysis to the public. Moreover, if the biological studies and other technical documents relied upon in the FEIR and Staff Report are not in the City's possession, and the Commission has not independently reviewed them, the Commission is similarly unable to exercise its independent judgment in making a recommendation to the City Council, as required by CEQA.⁷

In order to comply with CEQA and afford the public the necessary opportunity to consider the City's CEQA analysis, this hearing must be continued. The FEIR must also be recirculated to include all evidence and underlying analysis that the City is relying upon to support the FEIR's conclusions regarding the severity of the Project's environmental impacts.

⁵ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

⁶ *Topanga Ass'n for a Scenic Comty. v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 733.

⁷ Pub. Res. Code ("PRC") § 21082.1(c); 14 Cal. Code Regs. ("CCR") §15090(a).

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II. THE PROJECT MUST BE REVISED AS RECOMMENDED IN THE STAFF REPORT TO COMPLY WITH MANDATORY LAND USE POLICIES

The Staff Report includes two alternative recommendations for Commission consideration – Alternative 2A, which would add a Condition of Approval that the Project be revised to reduce the floor area of the Project by approximately 10,000 square feet to eliminate the need for floor area ration (“FAR”) averaging, and Alternative 2B, which would require the Project be revised to shift the portion of the hotel currently depicted in ALUC Zone C (approximately 12,400 square feet) out of Zone C.⁸ As discussed below, the Commission should require both conditions to be adopted in order to remedy the Project’s inconsistencies with City land use policies.

A. Floor Area Ratio.

The maximum permitted FAR in the IP-A and B Zoning Districts, where the Project is to be located is 0.40.⁹ The May 17, 2018 Staff Report previously explained that this FAR is consistent with these zones’ permitted industrial, research, and development uses, where a typical structure is generally a single story industrial building with surface parking.¹⁰ The FAR for the Trinitas Project is 0.42, which exceeds the 0.40 maximum by over 8,000 sq. ft. of building area.¹¹

The FEIR and May 17 Staff Report initially proposed to allow the Applicant to “average” the FAR for the Project site with the FAR allowed for its other two adjoining projects – Meritage Commons and the Meritage Resort – in order to render the Project’s excess FAR consistent with City zoning requirements. The FEIR and Staff Report initially relied on Municipal Code Section 17.52.120, which allows averaging of the FAR where a project site encompasses several buildings on several lots. However, Section 17.52.120 only allows averaging of FAR for lots that

⁸ Staff Report, p. 8.

⁹ See May 17, 2018 Staff Report, p. 11; see City of Napa Muni. Code sec. 17.52.120, Density and floor area ratio calculations.

¹⁰ *Id.*

¹¹ *Id.*

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are *part of a single development project*.¹² Meritage Commons and the Meritage Resort were separately permitted by the City prior to preparation of the EIR for the Trinitas Project. Although Napa Residents has previously commented that the Trinitas Project, Meritage Commons, and the Meritage Resort are all part of a single development project by the Applicant that should have been analyzed in a single CEQA document, the City continues to deny this fact.

In response to Napa Residents' prior comments, and to concerns raised by Commissioners at the May 17, 2018 Commission hearing, the City now proposes the adoption of Alternative 2A, which would add a Condition of Approval that the Project be revised to reduce the floor area of the Project by approximately 10,000 square feet to eliminate the need for FAR averaging.

Napa Residents supports the reduction in FAR to comply with the applicable zoning requirement of 0.40 FAR. The City cannot, on the one hand, refuse to analyze the impacts of the three components of the Meritage Project as a whole, while at the same time seek to rely on an FAR averaging provision that is restricted to use by a single project. Alternative 2A must be adopted. The City must also continue to remedy the defects in its piecemealed CEQA analysis that were identified in Napa Residents' prior comments.

B. ALUC Policies.

Napa Residents previously commented that the Project's hotel uses are likely to result in violations of ALUC Zone C regulations, which the FEIR failed to disclose as a significant impact. The FEIR and May 17, 2018 Staff Report explained that approximately 12,400 square feet of the proposed Residence Inn portion of the hotel building is located within ALUC Zone C.¹³ ALUC Zone C establishes a threshold of 50 persons per acre maximum for structures within ALUC Zone C.¹⁴ Based on calculations in the FEIR, the projected density for the portion of the Residence Inn located within Zone "C" is 46.5 persons per acre, just below the 50 persons per acre

¹² See City of Napa Muni. Code sec. 17.52.120.C ("In cases where a project site encompasses several buildings on several lots, the floor area ratio may be combined and averaged over the entire project site.")

¹³ *Id.*

¹⁴ Staff Report, p. 10.

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maximum.¹⁵ However, this assumption was based on an unsupported assumption of 80% room occupancy, with the threshold of 50 persons per acre being exceeded at 86% occupancy.¹⁶

Neither the FEIR nor the Staff Report's proposed Conditions of Approval include any restriction to limit occupancy of the Residence Inn to less than 86%. Thus, Napa Residents concluded reasonably foreseeable that operation of the Residence Inn will result in levels of occupancy that violate the ALUC Zone C regulations, resulting in a land use inconsistency and significant CEQA impact.¹⁷

In response to these comments, the Staff Report proposes the adoption of Alternative 2B, which would require the Project be revised to shift the portion of the hotel currently depicted in ALUC Zone C (approximately 12,400 square feet) out of Zone C.¹⁸ Alternative 2B is consistent with the economically foreseeable goal of the Applicant to reach up to a 100% occupancy level at the hotel in order to maximize profits. By relocating hotel uses outside of ALUC Zone C, Alternative 2B would also ensure that hotel occupancy that meets or exceeds 86% does not violate ALUC Zone C regulations. Accordingly, Napa Residents supports the adoption of Alternative 2B. Only in this way can the City ensure that the Project does not violate critical airport safety regulations.

III. THE FEIR'S BIOLOGICAL RESOURCES ANALYSIS AND MITIGATION PLAN REMAIN INADEQUATE

A. Failure to Disclose Biological Resources Studies.

As discussed above, the City failed to provide Napa Residents with the six new biological resources surveys that the FEIR and Staff Report rely on to conclude that the Project's biological resources impacts will be reduced to less than significant levels, including the following studies:

1. Reconnaissance level survey by Bargas Environmental Consulting (referred to as the "Bargas report" in the FEIR).

¹⁵ Staff Report, p. 10; pg. 5.7-22 of the FEIR.

¹⁶ *Id.*

¹⁷ See Napa Residents May 17, 2018 comments, p. 8.

¹⁸ Staff Report, p. 8.

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2. Dry-season surveys for vernal pool fairy shrimp.
3. Formal wetland delineation.¹⁹
4. Rare plants surveys.²⁰
5. Wet-season surveys for vernal pool fairy shrimp.²¹
6. Swainson's hawk surveys.²²

The City is therefore in violation of CEQA's public disclosure requirements, and Napa Residents remains unable to fully evaluate the adequacy of the FEIR and its responses to comments regarding several biological resources issues. We reserve the right to supplement our comments following receipt of these reports.

B. Unsupported Wetland Mitigation Ratio.

Napa Residents reviewed the FEIR and the City's most recent May 23, 2018 responses to comments in conjunction with Mr. Cashen. Based on this review, we continue to conclude that the FEIR fails to support its proposed mitigation measures for impacts to wetlands, and wetland-dependent species the vernal pool fairy shrimp, with substantial evidence. Specifically, the FEIR's reliance on a 2:1 mitigation ratio to mitigate significant impacts from lost wetland habitat violates CEQA because the City lacks substantial evidence to support its conclusion that a 2:1 ratio is adequate to mitigate admittedly significant impacts.²³

As Mr. Cashen explains, numerous factors determine the mitigation ratio needed to mitigate a project's impacts to wetlands (or other jurisdictional waters) to less than significant levels, including:

- (1) whether there will be a time lag between wetland functions lost at the Project site and wetland functions gained at the compensatory mitigation site;

¹⁹ City's May 23, 2018 Response to FEIR comments, p. 106.

²⁰ *Id.*, p. 69.

²¹ *Id.*, p. 25.

²² *Id.*, pp. 22 and 83.

²³ PRC §§ 21002.1(a), 21100(b)(3).

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- (2) whether in-kind mitigation is required (i.e., compensatory mitigation will consist of vernal pools);
- (3) whether compensation wetlands will be in close proximity and within the same watershed as the Project site;
- (4) whether the mitigation site will include buffers around the compensatory wetlands; and
- (5) the mitigation method (i.e., wetland creation, restoration, enhancement, or preservation) that will be implemented.²⁴

The FEIR fails to include any evidence or analysis related to any of these factors. Therefore, Mr. Cashen concludes that it is impossible for either the City or the public to evaluate the efficacy of the FEIR's proposed 2:1 mitigation ratio because the City has not provided any information that would establish facts to dictate selection of the appropriate ratio.²⁵ As Mr. Cashen explains, "without this information, there is inadequate evidence on which to derive an appropriate mitigation ratio, and no substantial evidence to support the City's reliance on the MMRP's proposed 2:1 mitigation ratios included in Mitigation Measures BIO-7 and BIO-8."²⁶

CEQA requires that mitigation measures effectively reduce the impacts they are designed to address.²⁷ The Court of Appeal recently affirmed that mitigation ratios that are incorporated in mitigation measures for project impacts resulting from lost habitat must be supported by substantial evidence. In *Save Panoche Valley v. San Benito County* ("*Panoche*"),²⁸ the court upheld a 3:1 mitigation ratio for lost kangaroo rat habitat based on biological surveys of proposed mitigation lands prepared by the lead agency. Similarly, in *Banning Ranch Conserv'y v. Newport Beach*,²⁹ the court upheld an EIR's reliance on a 2:1 mitigation ratio for replacing gnatcatcher habitat where it was based on scientific studies and direct observations by the lead agency's biologist. Here, the FEIR failed to include any biological analysis of the efficacy MM BIO-7 and MM BIO-8, and failed to identify the basis for its selection of 2:1 habitat replacement in the first place. The FEIR

²⁴ See Exhibit A, p. 3.

²⁵ *Id.*

²⁶ *Id.*

²⁷ PRC §§ 21002.1(a), 21100(b)(3); 14 CCR § 15064(a)(2).

²⁸ (2013) 217 Cal. App. 4th 503, 528.

²⁹ (2012) 211 Cal. App. 4th 1209, 1232.

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therefore lacks the basic information required by CEQA that the EIR's in the *Panoche* and *Banning Ranch* cases contained which allowed the court to uphold the 2:1 and 3:1 mitigation ratios adopted by those agencies.

Moreover, bare conclusions, such as those contained in the FEIR's discussion of its 2:1 mitigation ratio, violate CEQA's basic requirements that conclusions in an EIR must be supported by substantial evidence.³⁰ The courts have held that conclusory statements "unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind" are insufficient to support a finding of insignificance.³¹ An EIR must provide the reader with the analytic bridge between its ultimate findings and the facts in the record.³² The FEIR fails to bridge this gap. Because it fails to include a biological analysis of the viability of the 2:1 ration proposed in MM BIO-7 and MM BIO-8, the FEIR fails to comply with CEQA, and the City's proposed CEQA findings that these measures would adequately mitigate the loss of wetlands caused by the Project are unsupported.

C. The FEIR Fails to Disclose and Mitigate Significant Cumulative Impacts to Swainson's Hawk.

The City does not dispute that the Project site provides foraging habitat for the Swainson's hawk. However, the FEIR fails to require any mitigation measures for the incremental loss of Swainson's hawk habitat that will be caused by the Project. Instead, the FEIR incorrectly concludes that the Project's cumulative impacts are insubstantial, and that no mitigation is required, based on an unsupported rationale that the foraging habitat that will be eliminated by the Project represents only 0.1% of the mean home range of a Swainson's hawk.³³ As a result, the FEIR dismisses the Project's cumulative impacts on Swainson's hawk as insignificant by claiming that they are a "drop in a bucket" of overall hawk habitat. This approach has been rejected by the courts, and fails to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."³⁴

³⁰ PRC § 21081.5; 14 CCR § 15091(b).

³¹ *People v. County of Kern* (1974) 39 Cal. App. 3d 830, 841-842.

³² *Topanga Ass'n for a Scenic Comty. v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 733.

³³ DEIR, p. 5.3-47.

³⁴ PRC § 21083(b)(2); 14 CCR § 15130; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.

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As Mr. Cashen explains, the FEIR's contention that the Project would impact only a small portion of a bird's home range wholly ignores the cumulative impact from the incremental loss of habitat caused by the Project in conjunction with existing development and in conjunction with each newly approved development project within the City and County.³⁵ As he further explains, the FEIR's approach also contradicts well-established evidence demonstrating that persistence of the Swainson's hawk in California is threatened by the incremental, unmitigated loss of habitat from numerous "small" projects.³⁶

CDFW mitigation guidelines call for the provision of compensatory habitat mitigation for all projects that would impact ***five or more acres of foraging habitat***.³⁷ The CDFW mitigation guidelines are based on scientific evidence, and recognize that incremental reductions in Swainson's hawk foraging habitat can have significant impacts on the viability of the species. Thus, the CDFW mitigation guidelines set a significance threshold of five acres as the basis for requiring mitigation for cumulative loss of foraging habitat.

The Project would impact 11.5 acres of foraging habitat, more than double the five-acre threshold designated by CDFW as triggering the need for compensatory mitigation. The Project will therefore have a significant cumulative impact as described in the CDFW guidelines. The FEIR fails to disclose this significant cumulative impact, and fails to require *any* mitigation for lost foraging habitat. This cumulative impact must be disclosed in a recirculated EIR, and mitigation measures incorporated to require compensation for the 11.5 acres of foraging habitat lost to the Project.

IV. CONCLUSION

We urge the Planning Commission to continue this hearing and remand the Project to City Staff to prepare and circulate a revised EIR which includes all studies and evidence relied upon for its significance conclusions, which identifies all of the Project's potentially significant impacts, and which requires all feasible

³⁵ Exhibit A, p. 4.

³⁶ *Id.*

³⁷ *Id.*; see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992>

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mitigation measures and analyzes all feasible alternatives to reduce impacts to a less than significant level.

If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers. The Planning Commission cannot recommend approval of the Project until the City prepares a revised EIR that resolves these issues and complies with CEQA's requirements.

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro

CMC:

Attachments

4140-006j

EXHIBIT A

May 31, 2018

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

**Subject: Comments on CAA Planning's responses to Comments on the Final
Environmental Impact Report Prepared for the Trinitas Mixed-Use Project**

Dear Ms. Caro:

CAA Planning prepared responses to my May 16, 2018 comments on the Final Environmental Impact Report ("FEIR") issued by the City of Napa ("City") for the Trinitas Mixed-Use Project. The City provided those responses after close of business two days ago, on May 29, 2018, in support of the Planning Commission meeting that will be held today, May 31, 2018. The following comments address a few of the issues associated with the responses provided by CAA Planning. However, given the limited timeframe and outstanding missing studies and reports, I was unable to address all of the issues raised in the City's responses. I will be submitting supplemental comments at a later date on outstanding issues.

Supplemental Surveys

The City's response to my DEIR comments stated that two additional surveys had been completed at the Project site:

1. Reconnaissance level survey by Bargas Environmental Consulting (referred to as the "Bargas report" in the FEIR).
2. Dry-season surveys for vernal pool fairy shrimp.

The FEIR claimed the "Bargas report" was included as Appendix A to the FEIR.¹ It was not. My FEIR comment letter (dated 16 May 2018) explained that the Bargas report was not included with the FEIR. CAA Planning's responses to my FEIR comment letter fail to address this issue, and more importantly, the City has yet to provide a copy of the Bargas report.

Based on the summary of the Bargas report in the FEIR, it appears the author of the Bargas report correctly concluded that the Project site provides potential nesting habitat for the Swainson's hawk.² This conflicts with the DEIR's (and Biological Technical Report's) conclusion that there is no potential for Swainson's hawks to nest at the Project site due to a lack of suitable, large nesting trees.³ Based on the summary of the Bargas report contained in the FEIR, it is possible that the Bargas report contains additional conclusions that may conflict with those initially provided in the DEIR. For this reason, it is critical that the public be given access to the Bargas report prior to Project approval.

¹ FEIR, RTC B-2.

² FEIR, RTC C-B10.

³ DEIR, pp. 5.3-18 and -19.

CAA Planning's responses to my FEIR comments further states that four additional surveys have been conducted at the Project site:

1. Formal wetland delineation.⁴
2. Rare plants surveys.⁵
3. Wet-season surveys for vernal pool fairy shrimp.⁶
4. Swainson's hawk surveys.⁷

None of these studies were attached to the responses to comments or the Staff Report. CAA Planning asserts that the results from these surveys eliminate many of the issues discussed in my previous comment letters. I am unable to verify these assertions because the City has not provided any of the six surveys listed above.⁸

For example, according to CAA Planning, the formal wetland delineation confirmed the presence of 0.06 acre of wetlands on the Project site.⁹ My review of Google Earth imagery suggests the Project site contains more than 0.06 acre of wetlands. Therefore, I cannot evaluate the validity of the City's conclusion without reviewing the City's sampling data and information on the sampling methods used in its delineation process (e.g., number and location of sampling points).

Unsupported Wetland Mitigation Ratio

Numerous factors determine the mitigation ratio needed to mitigate a project's impacts to wetlands (or other jurisdictional waters) to less than significant levels. For example, higher mitigation ratios are warranted when there will be a time lag between the loss of aquatic resource functions at the impact site and the replacement of aquatic resource functions at the compensatory mitigation site.¹⁰ Although both of my previous comment letters discussed the factors that should be considered in establishing the mitigation ratio, the City still has not provided any evidence that it contemplated those factors before concluding that a 2:1 ratio would mitigate the Project's impacts to less than significant levels.

Moreover, it is impossible to evaluate whether the FEIR's proposed 2:1 mitigation ratio is appropriate for this project because the City has not provided any information pertaining to, or established requirements for, the necessary factors that dictate the appropriate ratio. Specifically, the City has failed to disclose:

⁴ Response to FEIR comments, p. 106.

⁵ *Ibid*, p. 69.

⁶ *Ibid*, p. 25.

⁷ *Ibid*, pp. 22 and 83.

⁸ The City provided a copy of the botanical survey report as I was finishing this letter. Given the timeframe, I was unable to review that report.

⁹ *Ibid*, p. 106.

¹⁰ See pages 78-83 in: California State Water Resources Control Board. 2017. Draft Staff Report Including the Substitute Environmental Documentation: State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State. Available at: <https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/official_Doc_timeline/staff_report_clean.pdf>.

- (1) whether there will be a time lag between wetland functions lost at the Project site and wetland functions gained at the compensatory mitigation site;
- (2) whether in-kind mitigation is required (i.e., compensatory mitigation will consist of vernal pools);
- (3) whether compensation wetlands will be in close proximity and within the same watershed as the Project site;
- (4) whether the mitigation site will include buffers around the compensatory wetlands; and
- (5) the mitigation method (i.e., wetland creation, restoration, enhancement, or preservation) that will be implemented.

Without this information, there is inadequate evidence on which to derive an appropriate mitigation ratio, and no substantial evidence to support the City's reliance on the MMRP's proposed 2:1 mitigation ratios included in Mitigation Measures BIO-7 and BIO-8.

The City's failure to justify the 2:1 ratio is further exacerbated by its failure to establish any performance standards or monitoring requirements for the compensatory wetlands should the Applicant elect to satisfy the mitigation requirement through "permittee responsible mitigation" (i.e., means other than the purchase of credits at a wetland mitigation bank). For these reasons, the City has no basis for its conclusion that Mitigation Measures BIO-7 and BIO-8 would reduce the Project's significant impacts on wetlands to less than significant levels.

Cumulative Impacts to Swainson's Hawk Foraging Habitat

The City does not dispute that the Project site provides foraging habitat for the Swainson's hawk. However, the FEIR fails to require any mitigation measures for the incremental loss of Swainson's hawk habitat that will be caused by the Project. The FEIR incorrectly concludes that the Project's cumulative impacts are insubstantial, and that no mitigation is required, based on the following unsupported rationale:

Given the large amount of available foraging area in the vicinity of the Study Site relative to the limited impacts to potential foraging habitat (10.24 acres of wild oats grassland) and given that the 10.24 acres of suitable habitat represents about 0.1% of a mean home range, impacts to foraging Swainson's hawk would be less than significant. The Project site represents a small amount of relatively low-quality Swainson's hawk foraging habitat.¹¹

As described below, the City's purported analysis is scientifically indefensible, contradicts evidence in the record, and is contrary to State guidelines for mitigation of impacts to Swainson's hawk from loss of foraging habitat.

First, the FEIR fails to provide any evidence to support its assertion that there is a "large amount of available foraging area" in the vicinity of the Project site. CAA Planning's response to my FEIR comments acknowledges that vineyards constitute a significant land cover type in Napa, and that vineyards do not provide foraging habitat for Swainson's hawks.¹² Time lapse imagery

¹¹ DEIR, p. 5.3-47.

¹² Response to FEIR comments, p. 95.

available through Google Earth further reveals that most of the foraging habitat in the vicinity of the Project site (and nearby Swainson's hawk territories) has been incrementally converted to vineyards over the past 15 to 20 years. Indeed, based on a review of Google Earth imagery, the Project site contains one of the few patches of foraging habitat remaining in the vicinity of the Project.

Second, the argument that the Project would impact only a small portion of a bird's home range completely ignores the cumulative impact from the incremental loss of habitat caused by this Project, and each newly approved Project within the City and County. Indeed, if this "drop in the bucket" approach were permissible, it is unlikely that any project would ever be considered to have a cumulative impact. The FEIR's approach contradicts well-established evidence demonstrating that persistence of the Swainson's hawk in California is threatened by the incremental, unmitigated loss of habitat from numerous "small" projects. As a result, CDFW mitigation guidelines call for the provision of compensatory habitat mitigation for *all* projects that would impact five or more acres of foraging habitat.¹³ CDFW mitigation guidelines are based on scientific evidence.

The Project would impact 11.5 acres of foraging habitat, more than double the five-acre compensatory mitigation recommended by CDFW. Nevertheless, the FEIR fails to require any mitigation for lost foraging habitat, and provides no evidence to support its conclusion that no mitigation is required. Rather, the City continues to argue that the Project would not significantly impact the Swainson's hawk, even though the EIR never analyzed the cumulative impact to Swainson's hawk foraging habitat in the first place. Based on my review of Google Earth imagery and the City's failure to incorporate compensatory mitigation for projects that affect Swainson's hawk foraging habitat, the cumulative impact to Swainson's hawk foraging habitat is significant.

Third, the argument that the Project site only provides relatively "low-quality" foraging habitat is unsupported. By contrast, there is ample scientific evidence demonstrating the importance of disced fields (grasslands) as foraging habitat for Swainson's hawks.¹⁴ Given the cumulative impact scenario that would be caused by implementation of the Project, the loss of habitat from the Project site could very well be the "tipping point" that causes any remaining nearby Swainson's hawk territory to become unviable.

¹³ See <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992>.

¹⁴ Estep JA. 1989. Biology, movements, and habitat relationships of the Swainson's Hawk in the Central Valley of California, 1986-87. Calif. Dept. Fish and Game, Nongame Bird and Mammal Section Report. Table 8.

Cumulative Impacts to Vernal Pool Habitat

The City's analysis of cumulative impacts to vernal pools is limited to the statements:

Any impacts to wetlands will be contained on the Project site and not contribute to off-site wetland area impacts. The potential wetlands are considered isolated; therefore, no downstream or adjacent cumulative impacts will occur.¹⁵

The City's analysis misses the point. Any impact of the Project on wetlands offsite (i.e., downstream) would be considered an indirect impact—not a cumulative impact. In this case, the cumulative impact of concern is the cumulative loss wetlands that multiple projects have had, and will have, on wetlands in Napa County and the Lake-Napa vernal pool region. As the DEIR acknowledges:

Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. The cumulative impact from several projects is the change in the environment resulting from the incremental impact of the Project when added to other closely related past, present and reasonably foreseeable probably future projects.¹⁶

Napa County had approximately 1,207 acres of vernal pools in 1987.¹⁷ Over 86% (1,042 acres) of those vernal pools were eliminated by 2005. This represents an extremely significant cumulative impact to vernal pool habitat in Napa County. Although Project impacts to vernal pool habitat are relatively minor from the project perspective, they would further the decline of the few vernal pools that remain in the county (i.e., approximately 165 acres in 2005).¹⁸

The FEIR proposes to require the Applicant to mitigate Project impacts to wetlands at a 2:1 ratio. However, as discussed above, it fails to incorporate the provisions necessary to ensure the mitigation would mitigate the Project's contribution to the cumulative loss of vernal pools in Napa County and the Lake-Napa vernal pool region. Specifically, MM BIO-8 indicates: “[t]he mitigation may be satisfied through purchase of credits in an approved mitigation bank with a service area that covers the Project site, or in an acceptable manner to the City, so long as the 2:1 ratio is met.” Thus, the mitigation measure provides no assurances that the compensatory mitigation would occur in the county, or that it would replace the vernal pool habitat eliminated from the Project site (i.e., in-kind mitigation).

I previously commented that the clause “or in an acceptable manner to the City, so long as the 2:1 ratio is met” was too vague to assure Project impacts to wetlands are effectively mitigated. CAA Planning's response to this issue was that: “[i]f permittee responsible mitigation is selected as an option, the project would be responsible for selecting and obtaining a suitable site and developing a Habitat Mitigation and Monitoring Plan that would be approved by the City prior to issuance of a final grading permit.”¹⁹ CAA Planning's response is unsupported because the EIR's Mitigation Monitoring and Reporting Program (revised May 2018) fails to require a

¹⁵ DEIR, Table 7-1.

¹⁶ DEIR, p. 5.3-40.

¹⁷ Holland RF. 2009. California's Great Valley Vernal Pool Habitat Status and Loss: Rephotorevised 2005. Report prepared for Placer Land Trust. 19 pp.

¹⁸ *Ibid.*

¹⁹ Response to FEIR Comment ABJC-B20.

Habitat Mitigation and Monitoring Plan for “permittee responsible mitigation.” This issue is compounded by the EIR’s lack of any performance standards for the permittee responsible mitigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Cashen", written in a cursive style.

Scott Cashen, M.S.
Senior Biologist

Memorandum

To : Div. Chiefs - IFD, BDD, NHD, WMD
Reg. Mgrs. - Regions 1, 2, 3, 4

Date : November 8, 1994

From : Department of Fish and Game

Subject: Staff Report Regarding Mitigation for Impacts to Swainson's Hawks
(*Buteo swainsoni*) in the Central Valley of California

I am hereby transmitting the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California for your use in reviewing projects (California Environmental Quality Act [CEQA] and others) and in developing 2081 Management Authorizations and 2090 Biological Opinions which may affect Swainson's hawk habitat in the Central Valley. The staff report has been developed during the last 18 months by the Environmental Services Division (ESD) in cooperation with the Wildlife Management Division (WMD) and Regions 1, 2, and 4. It has been sent out for public review on several occasions and redrafted as appropriate.

Either the mitigation measures in the staff report may be used or project specific measures may be developed. Alternative project specific mitigation measures proposed by the Department Divisions/Regions or by project sponsors will also be considered. However, such mitigation measures must be submitted to ESD for review. The review process will focus on the consistency of the proposed measure with Department, Fish and Game Commission, and legislative policy and with laws regarding raptors and listed species. ESD will coordinate project specific mitigation measure review with WMD.

If you have any questions regarding the report, please contact Mr. Ron Rempel, Program Supervisor, Habitat Conservation Planning and Endangered Species Permitting, Environmental Services Division at (916) 654-9980.

COPY Original signed by
A. Petrovich, Jr.

For
Boyd Gibbons
Direction

Enclosure

cc: Mr. Ron Rempel
Department of Fish and Game
Sacramento

file; d, exfile, esd, chron
Vouchilas/seh/pdl SRPBUTEO.DS1

**Staff Report regarding Mitigation
for Impacts to Swainson's Hawks (*Buteo swainsoni*)
in the Central Valley of California**

INTRODUCTION

The Legislature and the Fish and Game Commission have developed the policies, standards and regulatory mandates which, if implemented, are intended to help stabilize and reverse dramatic population declines of threatened and endangered species. In order to determine how the Department of Fish and Game (Department) could judge the adequacy of mitigation measures designed to offset impacts to Swainson's hawks in the Central Valley, Staff (WMD, ESD and Regions) has prepared this report. To ensure compliance with legislative and Commission policy, mitigation requirements which are consistent with this report should be incorporated into: (1) Department comments to Lead Agencies and project sponsors pursuant to the California Environmental Quality Act (CEQA); (2) Fish and Game Code Section 2081 Management Authorizations (Management Authorizations); and (3) Fish and Game Code Section 2090 Consultations with State CEQA Lead Agencies.

The report is designed to provide the Department (including regional offices and divisions), CEQA Lead Agencies and project proponents the context in which the Environmental Services Division (ESD) will review proposed project specific mitigation measures. This report also includes "model" mitigation measures which have been judged to be consistent with policies, standards and legal mandates of the Legislature and Fish and Game Commission. Alternative mitigation measures, tailored to specific projects, may be developed if consistent with this report. Implementation of mitigation measures consistent with this report are intended to help achieve the conservation goals for the Swainson's hawk and should complement multi-species habitat conservation planning efforts currently underway.

The Department is preparing a recovery plan for the species and it is anticipated that this report will be revised to incorporate recovery plan goals. It is anticipated that the recovery plan will be completed by the end of 1995. The Swainson's hawk recovery plan will establish criteria for species recovery through preservation of existing habitat, population expansion into former habitat, recruitment of young into the population, and other specific recovery efforts.

During project review the Department should consider whether a proposed project will adversely affect suitable foraging habitat within a ten (10) mile radius of an active (used during one or more of the last 5 years) Swainson's hawk nest(s). Suitable Swainson's hawk foraging habitat will be those habitats and crops identified in Bechard (1983), Bloom (1980), and Estep (1989). The following vegetation types/agricultural crops are considered small mammal and insect foraging habitat for Swainson's hawks:

- alfalfa
- fallow fields
- beet, tomato, and other low-growing row or field crops
- dry-land and irrigated pasture

- rice land (when not flooded)
- cereal grain crops (including corn after harvest)

The ten mile radius standard is the flight distance between active (and successful) nest sites and suitable foraging habitats, as documented in telemetry studies (Estep 1989, Babcock 1993). Based on the ten mile radius, new development projects which adversely modify nesting and/or foraging habitat should mitigate the project's impacts to the species. The ten mile foraging radius recognizes a need to strike a balance between the biological needs of reproducing pairs (including eggs and nestlings) and the economic benefit of developments) consistent with Fish and Game Code Section 2053.

Since over 95% of Swainson's hawk nests occur on private land, the Department's mitigation program should include incentives that preserve agricultural lands used for the production of crops, which are compatible with Swainson's hawk foraging needs, while providing an opportunity for urban development and other changes in land use adjacent to existing urban areas.

LEGAL STATUS

Federal

The Swainson's hawk is a migratory bird species protected under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-711). The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in Section 50 of the Code of Federal Regulations (C.F.R.) Part 10, including feathers or other parts, nests, eggs or products, except as allowed by implementing regulations (50 C.F.R. 21).

State

The Swainson's hawk has been listed as a threatened species by the California Fish and Game Commission pursuant to the California Endangered Species Act (CESA), see Title 14, California Code of Regulations, Section 670.5(b)(5)(A).

LEGISLATIVE AND COMMISSION POLICIES, LEGAL MANDATES AND STANDARDS

The FGC policy for threatened species is, in part, to: "Protect and preserve all native species ... and their habitats...." This policy also directs the Department to work with all interested persons to protect and preserve sensitive resources and their habitats. Consistent with this policy and direction, the Department is enjoined to implement measures that assure protection for the Swainson's hawk.

The California State Legislature, when enacting the provisions of CESA, made the following findings and declarations in Fish and Game Code Section 2051:

- a) "Certain species of fish, wildlife, and plants have been rendered extinct as a consequence of man's activities, untempered by adequate concern and conservation";
- b) "Other species of fish, wildlife, and plants are in danger of, or threatened with, extinction because their habitats are threatened with destruction, adverse modification, or severe curtailment because of overexploitation, disease, predation, or other factors (emphasis added)";and
- c) "These species of fish, wildlife, and plants are of ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of this state, and the conservation, protection, and enhancement of these species and their habitat is of statewide concern" (emphasis added).

The Legislature also proclaimed that it "is the policy of the state to conserve, protect, restore, and enhance any endangered or threatened species and its habitat and that it is the intent of the Legislature, consistent with conserving the species, to acquire lands for habitat for these species" (emphasis added).

Section 2053 of the Fish and Game Code states, in part, "it is the policy of the state that state agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species and or its habitat which would prevent jeopardy" (emphasis added).

Section 2054 states "The Legislature further finds and declares that, in the event specific economic, social, and or other conditions make infeasible such alternatives, individual projects may be approved if appropriate mitigation and enhancement measures are provided" (emphasis added).

Loss or alteration of foraging habitat or nest site disturbance which results in:

(1) nest abandonment; (2) loss of young; (3) reduced health and vigor of eggs and/or nestlings (resulting in reduced survival rates), may ultimately result in the take (killing) of nestling or fledgling Swainson's hawks incidental to otherwise lawful activities. The taking of Swainson's hawks in this manner can be, a violation of Section 2080 of the Fish and Game Code. This interpretation of take has been judicially affirmed by the landmark appellate court decision pertaining to CESA (DFG v. ACID, 8 CA App.4, 41554). The essence of the decision emphasized that the intent and purpose of CESA applies to all activities that take or kill endangered or threatened species, even when the taking is incidental to otherwise legal activities. To avoid potential violations of Fish and Game Code Section 2080, the Department recommends and encourages project sponsors to obtain 2081 Management Authorizations for their projects.

Although this report has been prepared to assist the Department in working with the development community, the prohibition against take (Fish and Game Code Section 2080) applies to all persons, including those engaged in agricultural activities and routine maintenance of facilities. In addition, sections 3503, 3503.5, and 3800 of the Fish and Game Code prohibit the take, possession, or destruction of birds, their nests or eggs.

To avoid potential violation of Fish and Game Code Section 2080 (i.e. killing of a listed species), project-related disturbance at active Swainson's hawk nesting sites should be reduced or eliminated during critical phases of the nesting cycle (March 1 - September 15 annually). Delineation of specific activities which could cause nest abandonment (take) of Swainson's hawk during the nesting period should be done on a case-by-case basis.

CEQA requires a mandatory findings of significance if a project's impacts to threatened or endangered species are likely to occur (Sections 21001 (c), 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports findings of Overriding Consideration. The CEQA Lead Agency's Findings of Overriding Consideration does not eliminate the project sponsor's obligation to comply with Fish and Game Code Section 2080.

NATURAL HISTORY

The Swainson's hawk (*Buteo swainsoni*) is a large, broad winged buteo which frequents open country. They are about the same size as a red-tailed hawk (*Buteo jamaicensis*), but trimmer, weighing approximately 800-1100 grams (1.75 - 2 lbs). They have about a 125 cm. (4+foot) wingspan. The basic body plumage may be highly variable and is characterized by several color morphs - light, dark, and rufous. In dark phase birds, the entire body of the bird may be sooty black. Adult birds generally have dark backs. The ventral or underneath sections may be light with a characteristic dark, wide "bib" from the lower throat down to the upper breast, light colored wing linings and pointed wing tips. The tail is gray ventrally with a subterminal dusky band, and narrow, less conspicuous barring proximally. The sexes are similar in appearance; females however, are slightly larger and heavier than males, as is the case in most sexually dimorphic raptors. There are no recognized subspecies (Palmer 1988).

The Swainson's hawk is a long distance migrator. The nesting grounds occur in northwestern Canada, the western U.S., and Mexico and most populations migrate to wintering grounds in the open pampas and agricultural areas of South America (Argentina, Uruguay, southern Brazil). The species is included among the group of birds known as "neotropical migrants". Some individuals or small groups (20-30 birds) may winter in the U.S., including California (Delta Islands). This round trip journey may exceed 14,000 miles. The birds return to the nesting grounds and establish nesting territories in early March.

Swainson's hawks are monogamous and remain so until the loss of a mate (Palmer 1988). Nest construction and courtship continues through April. The clutch (commonly 3-4 eggs) is generally laid in early April to early May, but may occur later. Incubation lasts 34-35 days, with both parents participating in the brooding of eggs and young. The young fledge (leave the nest) approximately 42-44 days after hatching and remain with their parents until they depart in the fall. Large groups (up to 100+ birds) may congregate in holding areas in the fall and may exhibit a delayed migration depending upon forage availability. The specific purpose of these congregation areas is as yet unknown, but is likely related to: increasing energy reserves for migration; the timing of migration; aggregation into larger migratory groups (including assisting the young in learning migration routes); and providing a pairing and courtship opportunity for unattached adults.

Foraging Requirements

Swainson's hawk nests in the Central Valley of California are generally found in scattered trees or along riparian systems adjacent to agricultural fields or pastures. These open fields and pastures are the primary foraging areas. Major prey items for Central Valley birds include: California voles (*Microtus californicus*), valley pocket gophers (*Thomomys bottae*), deer mice (*Peromyscus maniculatus*), California ground squirrels (*Spermophilus beecheyi*), mourning doves (*Zenaida macroura*), ring-necked pheasants (*Phasianus colchicus*), meadowlarks (*Sturnella neglecta*), other passerines, grasshoppers (*Conocephalinae sp.*), crickets (*Gryllidae sp.*), and beetles (Estep 1989). Swainson's hawks generally search for prey by soaring in open country and agricultural fields similar to northern harriers (*Circus cyaneus*) and ferruginous hawks (*Buteo regalis*). Often several hawks may be seen foraging together following tractors or other farm equipment capturing prey escaping from farming operations. During the breeding season, Swainson's hawks eat mainly vertebrates (small rodents and reptiles), whereas during migration vast numbers of insects are consumed (Palmer 1988).

Department funded research has documented the importance of suitable foraging habitats (e.g., annual grasslands, pasture lands, alfalfa and other hay crops, and combinations of hay, grain and row crops) within an energetically efficient flight distance from active Swainson's hawk nests (Estep pers. comm.). Recent telemetry studies to determine foraging requirements have shown that birds may use in excess of 15,000 acres of habitat or range up to 18.0 miles from the nest in search of prey (Estep 1989, Babcock 1993). The prey base (availability and abundance) for the species is highly variable from year to year, with major prey population (small mammals and insects) fluctuations occurring based on rainfall patterns, natural cycles and agricultural cropping and harvesting patterns. Based on these variables, significant acreages of potential foraging habitat (primarily agricultural lands) should be preserved per nesting pair (or aggregation of

nesting pairs) to avoid jeopardizing existing populations. Preserved foraging areas should be adequate to allow additional Swainson's hawk nesting pairs to successfully breed and use the foraging habitat during good prey production years.

Suitable foraging habitat is necessary to provide an adequate energy source for breeding adults, including support of nestlings and fledglings. Adults must achieve an energy balance between the needs of themselves and the demands of nestlings and fledglings, or the health and survival of both may be jeopardized. If prey resources are not sufficient, or if adults must hunt long distances from the nest site, the energetics of the foraging effort may result in reduced nestling vigor with an increased likelihood of disease and/or starvation. In more extreme cases, the breeding pair, in an effort to assure their own existence, may even abandon the nest and young (Woodbridge 1985).

Prey abundance and availability is determined by land and farming patterns including crop types, agricultural practices and harvesting regimes. Estep (1989) found that 73.4% of observed prey captures were in fields being harvested, disced, mowed, or irrigated. Preferred foraging habitats for Swainson's hawks include:

- alfalfa;
- fallow fields;
- beet, tomato, and other low-growing row or field crops;
- dry-land and irrigated pasture;
- rice land (during the non-flooded period); and
- cereal grain crops (including corn after harvest).

Unsuitable foraging habitat types include crops where prey species (even if present) are not available due to vegetation characteristics (e.g. vineyards, mature orchards, and cotton fields, dense vegetation).

Nesting Requirements

Although the Swainson's hawk's current nesting habitat is fragmented and unevenly distributed, Swainson's hawks nest throughout most of the Central Valley floor. More than 85% of the known nests in the Central Valley are within riparian systems in Sacramento, Sutter, Yolo, and San Joaquin counties. Much of the potential nesting habitat remaining in this area is in riparian forests, although isolated and roadside trees are also used. Nest sites are generally adjacent to or within easy flying distance to alfalfa or hay fields or other habitats or agricultural crops which provide an abundant and available prey source. Department research has shown that valley oaks (*Quercus lobata*), Fremont's cottonwood (*Populus fremontii*), willows (*Salix* spp.), sycamores (*Platanus* spp.), and walnuts (*Juglans* spp.) are the preferred nest trees for Swainson's hawks (Bloom 1980, Schlorff and Bloom 1983, Estep 1989).

Fall and Winter Migration Habitats

During their annual fall and winter migration periods, Swainson's hawks may congregate in large groups (up to 100+ birds). Some of these sites may be used during delayed migration periods lasting up to three months. Such sites have been identified in Yolo, Tulare, Kern and San Joaquin counties and protection is needed for these critical foraging areas which support birds during their long migration.

Historical and Current Population Status

The Swainson's hawk was historically regarded as one of the most common and numerous raptor species in the state, so much so that they were often not given special mention in field notes. The breeding population has declined by an estimated 91% in California since the turn of the century (Bloom 1980). The historical Swainson's hawk population estimates are based on current densities and extrapolated based on the historical amount of available habitat. The historical population estimate is 4,284-17,136 pairs (Bloom 1980). In 1979, approximately 375 (± 50) breeding pairs of Swainson's hawks were estimated in California, and 280 (75%) of those pairs were estimated to be in the Central Valley (Bloom 1980). In 1988, 241 active breeding pairs were found in the Central Valley, with an additional 78 active pairs known in northeastern California. The 1989 population estimate was 430 pairs for the Central Valley and 550 pairs statewide (Estep, 1989). This difference in population estimates is probably a result of increased survey effort rather than an actual population increase.

Reasons for decline

The dramatic Swainson's hawk population decline has been attributed to loss of native nesting and foraging habitat, and more recently to the loss of suitable nesting trees and the conversion of agricultural lands. Agricultural lands have been converted to urban land uses and incompatible crops. In addition, pesticides, shooting, disturbance at the nest site, and impacts on wintering areas may have contributed to their decline. Although losses on the wintering areas in South America may occur, they are not considered significant since breeding populations outside of California are stable. The loss of nesting habitat within riparian areas has been accelerated by flood control practices and bank stabilization programs. Smith (1977) estimated that in 1850

over 770,000 acres of riparian habitat were present in the Sacramento Valley. By the mid-1980s, Warner and Hendrix (1984) estimated that there was only 120,000 acres of riparian habitat remaining in the Central Valley (Sacramento and San Joaquin Valleys combined). Based on Warner and Hendrix's estimates approximately 93% of the San Joaquin Valley and 73% of the Sacramento Valley riparian habitat has been eliminated since 1850.

MANAGEMENT STRATEGIES

Management and mitigation strategies for the Central Valley population of the Swainson's hawk should ensure that:

- suitable nesting habitat continues to be available (this can be accomplished by protecting existing nesting habitat from destruction or disturbance and by increasing the number of suitable nest trees); and
- foraging habitat is available during the period of the year when Swainson's hawks are present in the Central Valley (this should be accomplished by maintaining or creating adequate and suitable foraging habitat in areas of existing and potential nest sites and along migratory routes within the state).

A key to the ultimate success in meeting the Legislature's goal of maintaining habitat sufficient to preserve this species is the implementation of these management strategies in cooperation with project sponsors and local, state and federal agencies.

DEPARTMENT'S ROLES AND RESPONSIBILITIES IN PROJECT CONSULTATION AND ADMINISTRATION OF CEQA AND THE FISH AND GAME CODE

The Department, through its administration of the Fish and Game Code and its trust responsibilities, should continue its efforts to minimize further habitat destruction and should seek mitigation to offset unavoidable losses by (1) including the mitigation measures in this document in CEQA comment letters and/or as management conditions in Department issued Management Authorizations or (2) by developing project specific mitigation measures (consistent with the Commission's and the Legislature's mandates) and including them in CEQA comment letters and/or as management conditions in Fish and Game Code Section 2081 Management Authorizations issued by the Department and/or in Fish and Game Code Section 2090 Biological Opinions.

The Department should submit comments to CEQA Lead Agencies on all projects which adversely affect Swainson's hawks. CEQA requires a mandatory findings of significance if a project's impacts to threatened or endangered species are likely to occur (Sections 21001 fc), 21083. Guidelines 15380, 15064, 15065). Impacts must be: (1) avoided; or (2) appropriate mitigation must be provided to reduce impacts to less than significant levels; or (3) the lead agency must make and support findings of overriding consideration. If the CEQA Lead Agency makes a Finding of Overriding Consideration, it does not eliminate the project sponsor's obligation to comply with the take prohibitions of Fish and Game Code Section 2080. Activities

which result in (1) nest abandonment; (2) starvation of young; and/or (3) reduced health and vigor of eggs and nestlings may result in the take (killing) of Swainson's hawks incidental to otherwise lawful activities (urban development, recreational activities, agricultural practices, levee maintenance and similar activities). The taking of Swainson's hawk in this manner may be a violation of Section 2080 of the Fish and Game Code. To avoid potential violations of Fish and Game Code Section 2080, the Department should recommend and encourage project sponsors to obtain 2081 Management Authorizations.

In aggregate, the mitigation measures incorporated into CEQA comment letters and/or 2081 Management Authorizations for a project should be consistent with Section 2053 and 2054 of the Fish and Game Code. Section 2053 states, in part, "it is the policy of the state that state agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species and or its habitat which would prevent jeopardy" - Section 2054 states: "The Legislature further finds and declares that, in the event specific economic, social, and or other conditions make infeasible such alternatives, individual projects may be approved if appropriate mitigation and enhancement measures are provided."

State lead agencies are required to consult with the Department pursuant to Fish and Game Code Section 2090 to ensure that any action authorized, funded, or carried out by that state agency will not jeopardize the continued existence of any threatened or endangered species. Comment letters to State Lead Agencies should also include a reminder that the State Lead Agency has the responsibility to consult with the Department pursuant to Fish and Game Code Section 2090 and obtain a written findings (Biological Opinion). Mitigation measures included in Biological Opinions issued to State Lead Agencies must be consistent with Fish and Game Code Sections 2051-2054 and 2091-2092.

NEST SITE AND HABITAT LOCATION INFORMATION SOURCES

The Department's Natural Diversity Data Base (NDDB) is a continually updated, computerized inventory of location information on the State's rarest plants, animals, and natural communities. Department personnel should encourage project proponents and CEQA Lead Agencies, either directly or through CEQA comment letters, to purchase NDDB products for information on the locations of Swainson's hawk nesting areas as well as other sensitive species. The Department's Nongame Bird and Mammal Program also maintains information on Swainson's hawk nesting areas and may be contacted for additional information on the species.

Project applicants and CEQA Lead Agencies may also need to conduct site specific surveys (conducted by qualified biologists at the appropriate time of the year using approved protocols) to determine the status (location of nest sites, foraging areas, etc.) of listed species as part of the CEQA and 2081 Management Authorization process. Since these studies may require multiple years to complete, the Department shall identify any needed studies at the earliest possible time in the project review process. To facilitate project review and reduce the potential for costly

project delays, the Department should make it a standard practice to advise developers or others planning projects that may impact one or more Swainson's hawk nesting or foraging areas to initiate communication with the Department as early as possible .

MANAGEMENT CONDITIONS

Staff believes the following mitigation measures (nos. 1-4) are adequate to meet the Commission's and Legislature's policy regarding listed species and are considered as preapproved for incorporation into any Management Authorizations for the Swainson's hawk issued by the Department. The incorporation of measures 1-4 into a CEQA document should reduce a project's impact to a Swainson's hawk(s) to less than significant levels. Since these measures are Staff recommendations, a project sponsor or CEQA Lead agency may choose to negotiate project specific mitigation measures which differ. In such cases, the negotiated Management Conditions must be consistent with Commission and Legislative policy and be submitted to the ESD for review and approval prior to reaching agreement with the project sponsor or CEQA Lead Agency.

Staff recommended Management Conditions are:

1. No intensive new disturbances (e.g. heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project related activities which may cause nest abandonment or forced fledging, should be initiated within 1/4 mile (buffer zone) of an active nest between March 1 - September 15 or until August 15 if a Management Authorization or Biological Opinion is obtained for the project. The buffer zone should be increased to 1/2 mile in nesting areas away from urban development (i.e. in areas where disturbance [e.g. heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities] is not a normal occurrence during the nesting season). Nest trees should not be removed unless there is no feasible way of avoiding it. If a nest tree must be removed, a Management Authorization (including conditions to off-set the loss of the nest tree) must be obtained with the tree removal period specified in the Management Authorization, generally between October 1- February 1. If construction or other project related activities which may cause nest abandonment or forced fledging are necessary within the buffer zone, monitoring of the nest site (funded by the project sponsor) by a qualified biologist (to determine if the nest is abandoned) should be required . If it is abandoned and if the nestlings are still alive, the project sponsor shall fund the recovery and hacking (controlled release of captive reared young) of the nestling(s). Routine disturbances such as agricultural activities, commuter traffic, and routine facility maintenance activities within 1/4 mile of an active nest should not be prohibited.
2. Hacking as a substitute for avoidance of impacts during the nesting period may be used in unusual circumstances after review and approval of a hacking plan by ESD and WMD. Proponents who propose using hacking will be required to fund the full costs of the effort, including any telemetry work specified by the

Department.

3. To mitigate for the loss of foraging habitat (as specified in this document), the Management Authorization holder/project sponsor shall provide Habitat Management (HM) lands to the Department based on the following ratios:

(a) Projects within 1 mile of an active nest tree shall provide:

- one acre of HM land (at least 10% of the HM land requirements shall be met by fee title acquisition or a conservation easement allowing for the active management of the habitat, with the remaining 90% of the HM lands protected by a conservation easement [acceptable to the Department] on agricultural lands or other suitable habitats which provide foraging habitat for Swainson's hawk) for each acre of development authorized (1:1 ratio); or
- One-half acre of HM land (all of the HM land requirements shall be met by fee title acquisition or a conservation easement [acceptable to the Department] which allows for the active management of the habitat for prey production on-the HM lands) for each acre of development authorized (0.5:1 ratio).

(b) Projects within 5 miles of an active nest tree but greater than 1 mile from the nest tree shall provide 0.75 acres of HM land for each acre of urban development authorized (0.75:1 ratio). All HM lands protected under this requirement may be protected through fee title acquisition or conservation easement (acceptable to the Department) on agricultural lands or other suitable habitats which provide foraging habitat for Swainson's hawk.

(c) Projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree shall provide 0.5 acres of HM land for each acre of urban development authorized (0.5:1 ratio). All HM lands- protected under this requirement may be protected through fee title acquisition or a conservation easement (acceptable to the Department) on agricultural lands or other suitable habitats which provide foraging habitat for Swainson's hawk.

4. Management Authorization holders/project sponsors shall provide for the long-term management of the HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands) at the rate of \$400 per HM land acre (adjusted annually for inflation and varying interest rates).

Some project sponsors may desire to provide funds to the Department for HM land protection. This option is acceptable to the extent the proposal is consistent with Department policy regarding acceptance of funds for land acquisition. All HM lands should be located in areas which are consistent with a multi-species habitat conservation focus. Management

Authorization holders/project sponsors who are willing to establish a significant mitigation bank (> 900 acres) should be given special consideration such as 1.1 acres of mitigation credit for each acre preserved.

PROJECT SPECIFIC MITIGATION MEASURES

Although this report includes recommended Management Measures, the Department should encourage project proponents to propose alternative mitigation strategies that provide equal or greater protection of the species and which also expedite project environmental review or issuance of a CESA Management Authorization. The Department and sponsor may choose to conduct cooperative, multi-year field studies to assess the site's habitat value and determine its use by nesting and foraging Swainson's hawk. Study plans should include clearly defined criteria for judging the project's impacts on Swainson's hawks and the methodologies (days of monitoring, foraging effort/efficiency, etc.) that will be used.

The study plans should be submitted to the Wildlife Management Division and ESD for review. Mitigation measures developed as a result of the study must be reviewed by ESD (for consistency with the policies of the Legislature and Fish and Game Commission) and approved by the Director.

EXCEPTIONS

Cities, counties and project sponsors should be encouraged to focus development on open lands within already urbanized areas. Since small disjunct parcels of habitat seldom provide foraging habitat needed to sustain the reproductive effort of a Swainson's hawk pair, Staff does not recommend requiring mitigation pursuant to CEQA nor a Management Authorization by the Department for infill (within an already urbanized area) projects in areas which have less than 5 acres of foraging habitat and are surrounded by existing urban development, unless the project area is within 1/4 mile of an active nest tree.

REVIEW

Staff should revise this report at least annually to determine if the proposed mitigation strategies should be retained, modified or if additional mitigation strategies should be included as a result of new scientific information.

LITERATURE CITED

- Babcock, K.W. 1993. Home range and habitat analysis of Swainson's hawks in West Sacramento. Michael Brandman Associates report prepared for the Southport Property Owner's Group, City of West Sacramento, CA. 21pp.
- Bechard, M.J. 1983. Food supply and the occurrence of brood reduction in Swainson's Hawk. *Wilson Bull.* 95(2):233-242.
- Bloom, P.H. 1980. The status of the Swainson's Hawk in California, 1979. Federal Aid in Wildlife Restoration, Project W-54-R-12, Nongame Wildl. Invest. job Final Report 11-8-0. 24p + appendix.
- Estep, J.A. 1989. Biology, movements, and habitat relationships of the Swainson's Hawk in the Central Valley of California, 1986-87. Calif. Dept. Fish and Game, Nongame Bird and Mammal Section Report, 53pp.
- Palmer, R.S. 1988a. Handbook of North American birds. Vol. 4: diurnal raptors (part 1). Yale Univ. Press, New Haven, CT.
- Palmer, R.S. 1988b. Handbook of North American birds. Vol. 5: diurnal raptors (part 2). Yale Univ. Press, New Haven, CT.
- Schlorff, R.W. and P.H. Bloom. 1983. Importance of riparian systems to nesting Swainson's Hawks in the Central Valley of California. pp 612-618. In: R.E Warner and K.M. Hendrix, (Eds.). 1984. California Riparian Systems. University of California Press, Berkeley.
- Smith, F. 1977. Short review of the status of riparian forests in California. In: Stet, A. (Ed.). Riparian forests in California: Their ecology and conservation. Inst. of Ecology Pubi. 15. Univ. of Calif., Davis.
- Warner, R.E. and K. M. Hendrix, Eds. 1984. California riparian systems; ecology, conservation, and productive management. University of California Press, Berkeley.
- Woodbridge, B. 1985. Biology and management of Swainson's Hawk in Butte Valley, California. U.S. Forest Service Report, 19pp.

Draft Staff Report

Including the Substitute Environmental Documentation

State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State

[Proposed for Inclusion in the Water Quality Control Plans for
Inland Surface Waters and Enclosed Bays and Estuaries and
Ocean Waters of California]



July 21, 2017

- c. **Amount:** *The amount of compensatory mitigation will be determined on a project-by-project basis in accordance with the State Supplemental Dredge or Fill Guidelines, section 230.93(f). The permitting authority may take into account recent anthropogenic degradation to the aquatic resource and the potential and existing functions and conditions of the aquatic resource. A minimum of one-to-one acreage or length of stream reach replacement is necessary to compensate for wetland or stream losses unless an appropriate function or condition assessment method clearly demonstrates, on an exceptional basis, that a lesser amount is sufficient. A reduction in the mitigation ratio for compensatory mitigation will be considered by the permitting authority if buffer areas adjacent to the compensatory mitigation are also required to be maintained as part of the compensatory mitigation management plan. The amount of compensatory mitigation required by the permitting authority will vary depending on which of the following strategies the applicant uses to locate the mitigation site within a watershed.*

General Considerations: The amount of compensatory mitigation required by the Water Boards would be the amount necessary to compensate for aquatic resource losses that is sufficient in replacing the full range of aquatic resources and/or functions of the aquatic resource. Functions are the physical, chemical, and biological processes that occur in ecosystems. In general, compensatory mitigation projects that are fully established prior to the adverse impacts to aquatic resource(s) will require a lower amount of compensatory mitigation because there will be no temporal losses in aquatic functions and absolute certainty in the success of the compensatory mitigation project. Similarly, compensatory mitigation projects that are implemented prior to or concurrent with the adverse impacts to aquatic resource(s) will generally require a lower amount of compensatory mitigation because temporal losses in aquatic functions will be lower and certainty in the success in the compensatory mitigation project will be greater. In addition, compensatory mitigation projects that take a relatively long time to develop a full range of functions will require a greater amount of compensatory mitigation to account for temporal losses in aquatic functions.

The ability to adjust the required mitigation ratio to account for recent anthropogenic degradation of an aquatic resource creates a disincentive for an applicant to intentionally degrade an aquatic resource in advance of a project so that less compensatory mitigation would be required. When recent anthropogenic degradation occurs that is wholly independent of the project applicant's activity, a higher mitigation ratio would likely not be appropriate.

In-kind mitigation is preferred and will generally require a lower amount of compensatory mitigation because it provides greater assurance that the full range of lost aquatic resource(s) and/or functions will be replaced. Locational factors, such as proximity to the impact site, hydrological conditions, soil characteristics, adjacent land uses, and biological conditions, will affect the level of certainty that a compensatory mitigation project will replace lost acres, functions, and services (i.e., likelihood of success).

Compensatory mitigation projects with a high likelihood for success will generally require a lower amount of compensatory mitigation because a high likelihood of success will ensure no overall net loss and achieve a long-term net gain in the aquatic resource acres, functions and services. For instance, mitigation projects located in close proximity and within the same watershed as the impacted aquatic resources will generally require a lower amount of mitigation. Lastly, impacts to aquatic resources with potentially medium to high level of aquatic functions will require a greater amount of compensatory mitigation.

Buffers: Compensatory mitigation projects that include buffers will generally require a lower amount of compensatory mitigation because risk and failure will be lower when buffers are provided. The Procedures allow for buffer areas to be included as a component of compensatory mitigation, to ensure the ecological sustainability of a compensatory mitigation site, when necessary. Buffers are important to ensuring the long-term viability of aquatic resources and may provide habitat and wildlife corridors that improve the ecological functioning of an aquatic resource. In order for buffer areas to be considered as a component of compensatory mitigation, those buffer areas would need to be maintained and protected in long-term management plans.

Watershed Approach: In addition to condition assessments and buffer area components, the Water Boards will take into consideration the application of the watershed approach. As a component of a draft compensatory mitigation plan, an applicant must submit a watershed profile which contains data on the abundance, diversity and condition of aquatic resources in a project evaluation area sufficient to provide information to evaluate direct, secondary (indirect), and cumulative impacts of a project and compensatory mitigation alternatives on sustaining and enhancing the aquatic resources in the watershed. The Water Boards will take into consideration the following two strategies when determining compensatory mitigation amounts based on the applicant submittal of a watershed profile.

***Strategy 1:** Applicant locates compensatory mitigation using a watershed approach based on a watershed profile developed from a watershed plan that has been approved by the permitting authority and analyzed in an environmental document, includes monitoring provisions, and includes guidance on compensatory mitigation opportunities;*

***Strategy 2:** Applicant locates compensatory mitigation using a watershed approach based on a watershed profile developed for a project evaluation area, and demonstrates that the mitigation project will contribute to the sustainability of watershed functions and the overall health of the watershed area's aquatic resources.*

Generally, the amount of compensatory mitigation required under Strategy 1 will be less than the amount of compensatory mitigation required under Strategy 2 since the level of certainty that a compensatory mitigation project will meet its performance standards increases if the compensatory mitigation project complies with a watershed plan as described above. Certainty

increases when there is a corresponding increase in understanding of watershed conditions, which is increased when using a watershed plan as described above to determine compensatory mitigation requirements.

The Water Boards aim to sustain and enhance the quality and quantity of aquatic resources within watersheds by applying the watershed approach to strategically select compensatory mitigation sites. As stated above, by relying on a Water Board approved watershed plan, compensatory mitigation quantities for the applicant could be reduced due to a higher level of certainty that the compensatory mitigation project would improve the overall health of the watershed.

Minimum Mitigation Ratio: The minimum mitigation ratio establishes the baseline ratio which is then increased based on such factors as mentioned above (e.g., risk, type and location of compensatory mitigation). Normally, a minimum quantity of one-to-one ratio of impacted waters to areas restored through compensatory mitigation is required. The Water Boards could consider a mitigation ratio of less than one-to-one, but upon adoption of the Procedures, a lesser ratio will be considered “on an exceptional basis.” Given the uncertainties associated with mitigation (as described in section 5.2 *Impacts of Compensatory Mitigation*), there is a relatively heavy burden on applicants to clearly demonstrate that mitigation less than a one-to-one would compensate for the proposed impacts. Examples of factors that individually, or in combination with other factors, may lead to consideration of a less than one-to-one minimum mitigation ratio by the Water Boards, include:

- Where condition assessments of the mitigation site and the impact site a significant lift in functional capacity within the watershed based on an analysis of attainable condition at both sites. A significant increase in functional capacity is indicated when there is a categorical difference in assessed condition scores at the mitigation site and the impact site (e.g., “good condition” offsetting “poor condition”). If this is the case, the mitigation project must also demonstrate a high likelihood of achieving its performance standards. Operationally, a site’s attainable condition may be evaluated by considering the ecological stressors impacting the site and whether those stressors may be expected to naturally continue or dissipate in the near future, or be ameliorated without much difficulty or cost.
- Where mitigation projects include maintenance of substantial buffers to protect the mitigation as part of the mitigation plan, because those buffers are not included in the calculation of the ratio.
- Where mitigation projects include multiple benefits, such as addressing climate change, sea level rise, or similar issues, as long as those issues are not related to impacts of the project, and
- Where mitigation projects are part of a watershed plan, if the mitigation project when evaluated in conjunction with other nearby mitigation projects in the watershed plan, has additional cumulative watershed benefits.

Mitigation Ratio Factoring. The Water Boards intend to implement standardized procedures to determine compensatory mitigation requirements which are open and transparent to the applicant. It

will be consistent with the procedures developed by the South Pacific Division of the Corps for determining and documenting mitigation ratios (Regulatory Program Standard Operating Procedures for Determination of Mitigation Ratios⁵⁷), but will also include consideration of the additional factors discussed above. In the Corps procedures, the following factors are evaluated using a “checklist” approach to adjust the mitigation ratio:

- Quantitative or qualitative impact-mitigation comparison: The mitigation ratio is adjusted based on the degree of gain in aquatic resource function and condition. A comparison of the sites is made quantitatively based on field scores from an approved function/condition assessment method, or qualitatively by assessing the functional loss at the impact site verses expected functional gain at the mitigation site.
- Mitigation site location – Generally, a lower ratio is prescribed when mitigation is located within the same watershed as the impacted aquatic resource since to would replace the permanent loss of aquatic resource functions and beneficial uses. An increase in the mitigation ratio would be justified if the mitigation was located outside of the watershed to account for permanently removing the aquatic resource unless it is determined that the proposed mitigation is ecologically preferable.
- Net loss of aquatic resource surface area – The mitigation ratio is adjusted based on the compensatory mitigation method since compensatory mitigation in the form of establishment (creation) or re-establishment results in a gain of area and a gain in function; compensatory mitigation in the form of rehabilitation or enhancement results in a gain of function only; mitigation in the form of preservation results in neither a gain of area or a gain in function. Thus, the latter method of compensatory mitigation would require the highest increase in the mitigation ratio, while the first method would result in the least increase.
- Type conversion – Out-of-kind mitigation is compensatory mitigation that replaces a resource that is structurally and functionally different from the impacted aquatic resource. For out-of-kind mitigation generally a higher mitigation ratio is prescribed unless the mitigation is ecologically preferable based on aquatic resource needs in the greater ecoregion.
- Risk and uncertainty – The ratio is adjusted to reflect the uncertainty mitigation success. Factors considered include, but are not limited to, whether the mitigation is permittee responsible, difficulty of replacement (e.g., vernal pools, streams) modified hydrology or artificial hydrology, supporting structures requiring long-term maintenance (e.g., bank stabilization, outfalls), planned vegetation maintenance, and absence of a long-term preservation mechanism.

⁵⁷ Special Public Notice: “Standard Operating Procedure for Determination of Mitigation Ratios” U.S. Army Corps of Engineers, South Pacific Division, February 20, 2012

- **Temporal loss** – Temporal loss describes the time lag between the loss of aquatic resource functions caused by permanent or temporary impacts and the timing of the replacement of aquatic resource functions at the compensatory mitigation site. If temporal loss is expected, a higher mitigation ratio is prescribed. If compensatory mitigation is established before a proposed impact, such as at a mitigation bank, temporal loss would not be considered.

Other factors that could be taken into consideration when determining mitigation ratios might include: (1) mitigation projects that include maintenance of substantial buffers to protect the mitigation as part of the mitigation plan, because those buffers are not included in the calculation of the ratio, (2) mitigation projects that have multiple benefits, such as addressing climate change, sea level rise, or similar issues, as long as those issues are not related to impacts of the project, and (3) mitigation projects that are part of a watershed plan, if the mitigation project, when evaluated in conjunction with other nearby mitigation projects in the watershed plan, has additional cumulative watershed benefits.

- d. **Type and Location:** *The permitting authority will evaluate the applicant's proposed mitigation type and location based on the applicant's use of a watershed approach based on a watershed profile. The permitting authority will determine the appropriate type and location of compensatory mitigation based on watershed conditions, impact size, location and spacing, aquatic resource values, relevant watershed plans and other considerations. In general, the required compensatory mitigation should be located within the same watershed as the impact site, but the permitting authority may approve compensatory mitigation in a different watershed. For example, if a proposed project may affect more than one watershed, then the permitting authority may determine that locating all required project mitigation in one area is ecologically preferable to requiring mitigation within each watershed.*

The Procedures would require that the Water Boards determine that the compensatory mitigation type and location is the most environmentally-preferable by applying the watershed approach to the extent appropriate and practicable. The Procedures provide that the Water Boards may approve all required compensatory mitigation in one area within the larger region if the proposed project impacts more than one watershed while taking into consideration watershed conditions, impact size, location and spacing, aquatic resource values, watershed plans and other considerations. Compensatory mitigation should be located where it is most likely to successfully replace the lost functions and services of the impact site, taking into account the watershed profile.

As described in the state Guidelines, the following compensatory mitigation types would be considered: 1) mitigation banks, 2) In-Lieu fee programs, and 3) permittee responsible mitigation. The state Guidelines further provide for a preference hierarchy, with the highest preference given to mitigation banks, and then in-lieu fee programs; permittee-responsible under a watershed approach; permittee-responsible through on-site and in-kind mitigation; and lastly, permittee-responsible off-site and/or out-of-kind. This is considered a "soft preference" because any mitigation type may override the preferred

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type if that mitigation type will result in greater benefits to the condition of aquatic resources in the watershed.

- e. *Final Compensatory Mitigation Plan: The permitting authority will review and approve the final compensatory mitigation plan submitted by the applicant to ensure mitigation comports with the State Supplemental Dredge or Fill Guidelines, Water Code requirements, applicable water quality standards, and other appropriate requirements of state law. The level of detail in the final plan shall be sufficient to accurately evaluate whether compensatory mitigation offsets the adverse impacts attributed to a project considering the overall size and scope of impact. The compensatory mitigation plan shall be sufficient to provide the permitting authority with a reasonable assurance that replacement of the full range of lost aquatic resource(s) and/or functions will be provided in perpetuity.*

As part of a complete application, the applicant would have already submitted a draft compensatory mitigation plan. Water Board staff will review the draft mitigation plan to ensure all components have been addressed and finalized, including the amount, type, and location of compensatory mitigation. A final compensatory mitigation plan will be adopted as part of the final Order issued by the Water Boards.

If circumstances require that an Order be issued before a compensatory mitigation plan can be finalized, the applicant would need to obtain final approval from the Water Board before impacting waters of the state. In these cases, a final mitigation plan will be approved by amending the Order.

- f. *Financial Security: Where deemed necessary by the permitting authority, provision of a financial security (e.g., letter of credit or performance bond) shall be a condition of the Order. In this case, the permitting authority will approve the financial security to ensure compliance with compensatory mitigation plan requirements.*

In some cases, the Water Boards may require the applicant provide financial security to ensure a high level of confidence that the compensatory mitigation project will be completed, successfully. Financial assurances could be provided in the form of a letter of credit, a performance bond, escrow accounts, or casualty insurance.

- g. *Term of Mitigation Obligation: The permitting authority may specify in the Order the conditions that must be met in order for the permitting authority to release the permittee from the mitigation obligation, including compensatory mitigation performance standards and long term management funding obligations.*

The Water Boards may include conditions in an Order that would release the permittee from any further compensatory mitigation obligations. A release may be considered by the Water Boards after a real-estate instrument is in place to protect the site in perpetuity, all performance standards agreed to in the compensatory mitigation plan have been met, and an endowment fund has been provided to ensure the long term management and protection of the aquatic resource site in perpetuity. If site-specific environmental factors are present that may jeopardize the condition of the mitigation site, then these

California's Great Valley Vernal Pool Habitat Status and Loss: Rephotorevised 2005

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ABSTRACT

Aerial photograph interpretation was used to map the extent of vernal pool habitat in the Great Valley for 2005, and was compared to maps prepared previously for the 1976–1995 period and for 1997. The primary causes of vernal pool habitat loss were also obtained from aerial photograph interpretation. Approximately 1,030,000 acres of vernal pool habitat were documented in the Great Valley for the 1976–1995 period. In 2005, about 895,000 acres remained; a reduction of roughly 135,000 acres. The amount of loss was not distributed evenly across the Great Valley. For example, Mariposa County has not lost any vernal pool habitat since 1976, but at the opposite extreme, Merced County has lost 24,000 acres (or 8 percent) and Placer County 17,000 acres (or 35 percent) of the vernal pool habitat found during initial mapping (in 1987 and 1994, respectively). Counties in the central and western portions of the Great Valley (Colusa, Glenn, Sutter, and Yolo) have also seen high losses, ranging from 40 to 75 percent. Eighty one percent of the total habitat loss between the initial mapping period and 2005 (110,000 acres) was lost due to agricultural land conversions. Establishment of orchards and vineyards represents the largest category of land conversion, or almost 30 percent, which corresponds to an approximately 40,000 acres loss of vernal pool habitat. Most of this loss was concentrated in the southern Sacramento Valley and northern San Joaquin Valley. Urban development accounted for 26,000 acres (19 percent) of total habitat loss. Most urban development caused habitat loss (two-thirds of the total) was concentrated in Placer and Sacramento Counties with relatively small amounts of loss scattered in other parts of the Great Valley.

INTRODUCTION

Vernal pools are ephemeral wetland ecosystems with a specialized biota that includes numerous localized plant and animal species. Typically, they form within shallow depressions in grasslands that are underlain by an impervious soil layer. Beginning in the winter, the pools fill with rain water and then slowly dry out through evaporation in the spring. At the time of initial Spanish exploration in the late 1700s, about half of the area of the Great Valley was likely characterized by vernal pool landscapes (Holland and Hollander 2007). The approximately 7 million acres of vernal pool landscapes present at that time have been much reduced, first by agricultural development and mineral extraction, and more recently by urban expansion. The most recent estimate of remaining vernal pool habitat (i.e., vernal pool wetlands and the surrounding grassland matrix within which vernal pools typically occur) was about 967,600 acres in 1997 (Holland 1998b), an 87 percent reduction in the original habitat acreage. Habitat loss, combined with the intrinsically localized distributions of many vernal pool taxa, has led to several species of plants and animals being listed by the State of California or federal government as Threatened or Endangered (Table 1). Many more species are considered to be Rare by the California Native Plant Society (2009).

Great Valley vernal pool habitat was initially mapped from aerial photographs over the period from 1976 to 1995 (Holland 1998a). Subsequently, this map was updated in 1997 based on aerial photography for the entire Great Valley, and the loss of habitat over that period was assessed (Holland 1998b). The objectives of the current study were to update the 1997 vernal pool habitat map to 2005 conditions, to evaluate changes to vernal pool habitat distribution, and, for the first time, to identify those land uses to which vernal pool habitat was converted.

MATERIALS AND METHODS

PREVIOUS MAPPING METHODS

1976 to 1995 Map (Baseline)

The first digital map of Great Valley vernal pool habitat (Holland 1998a) documented 1,033,000 acres of remaining habitat. This baseline map was based on air photos taken over the period from 1976 to 1995, with the majority taken between 1982 and 1992 (Holland 1998a). The photos were vertically oriented, 35 mm, true-color slides that covered about 1 x 1.4 miles, with 20 percent front- and side-lap, taken from a specially equipped aircraft that flew at constant height above the ground. The slides were taken as part of a program in the California Department of Water Resources that maps the origin, distribution, and use of agricultural water throughout cultivated California, by mapping crop types in California counties on an approximately 7-year rotation. Every slide in every flight line was visually examined for the characteristic signatures¹ of vernal pools. When habitat was encountered, it was mapped onto paper 7.5' USGS topographic map sheets. Each sheet was digitized on an ArcINFO workstation upon completion. The density of vernal pools within each polygon was subjectively scored as either low, medium, or high and areas of disturbed habitat (e.g., areas of cultivation where extant habitat was still evident) were differentiated from areas of undisturbed habitat. Examples of low, medium, and high density vernal pool habitats are shown in Figures 1 and 2. Over an 18 month period, more than 40,000 slides (covering all or part of 345 7.5' USGS topographic map sheets) were examined in an approximately 18,000,000 acre study area that stretched from Shasta Dam south to the Tehachapi Mountains and west to include several North Bay counties.

1997 Map

In 1997, the California Department of Conservation Farmland Mapping and Monitoring Program sponsored a U2 flight covering the entire Great Valley. The resultant images were 9x9 inch false-color infrared transparencies at 1:130,000 scale. About 1,500 images were required to cover the valley. These images, in combination with readily available black-and-white SPOT satellite imagery, were used to update the baseline map to 1997 conditions. Individual vernal pools were not visible at the mapped scale of the U2 and SPOT images, but changes in land use were readily apparent. Hundreds of vernal pool habitat polygons were converted to other uses. Hundreds more were reduced in size or split into two or more fragments. Polygon boundaries were modified to 1997 conditions. This revised map (Holland 1998b) allowed the first calculation of the rate at which vernal pool habitats in California's Great Valley were vanishing.

The calculation of habitat loss was complicated because the baseline photos were taken county-by-county over several decades. Two counties were mapped from photos just two years old (i.e., 1995 photos). Two other counties were mapped from 1976 photos. Thus, it was possible to calculate annual habitat loss rates for each county, but not for the entire Great Valley. This map (Holland 1998b) has been publicly available for nearly a decade and was the starting point for the present study.

MAPPING METHODS FOR 2005

In 2005, the National Agricultural Imaging Program (NAIP) — administered by the USDA's Farm Service Agency—produced imagery for each of California's counties. The NAIP images are 1-meter pixel true color orthophoto mosaics that can be displayed using Geographic Information Systems over a large range of scales without loss of image quality. Working systematically from north to south, all polygons from the 1997 map (Holland 1998b) were examined in relation to the NAIP imagery. Vernal pool habitat was scored using the same

¹ The photos were taken during peak irrigation demand during the mid summer. During this season, the grassland has completely dried and formerly living annual plants now stand as dead straw. Vernal pools appear as irregularly dendritic features within the tawny matrix of dried annual grassland. See Figures 1 and 2.

methods as employed in the related previous studies. Polygon boundaries were adjusted to 2005 conditions. Due to the enhanced resolution provided by the NAIP imagery, it was possible to add a code indicating the current land use for every polygon, something that was not possible in previous studies. Figure 3 shows several polygons in relation to landscape in Shasta County, California.

Once the 1997 polygons were updated to 2005 conditions and attributed, the map and accompanying attribution underwent an extensive third-party quality assurance and quality control review. The review included attribute checking of random samples of polygons, checking attributes of known areas, assessment and correction of map topology, and comparing of check sums of acreages between years. Each mapped polygon was inspected against the NAIP imagery (and sometimes against other public-domain geospatial datasets if interpretation of a feature or attribute class was unclear). This review did not look outside the mapped polygons to see if additional habitat had been missed in the original mapping efforts. The purpose of the review was to confirm that each polygon was correctly attributed as extant or extirpated and the correct land conversion code was assigned. Overall polygon boundaries were not changed or adjusted, except in the cases of overlapping polygons. Overlapping polygons were adjusted so that the overlap acreage would not be calculated twice. As necessary, polygons were clipped to accurately portray existing land use. This was especially necessary in some of the largest polygons where portions had been converted to agricultural residential land use (e.g., “ranchettes” or “hobby farms”). A total of 222 additional polygons were created. Once all polygons had been reviewed and reattributed as necessary, new areas and acreages were calculated for each polygon.

As a final step, the shapefile was thoroughly checked for topological errors (i.e., minute mapping errors such as edges of adjacent polygons not completely overlapping). Any topological errors were discovered and corrected. The resulting attribute table was exported out of ArcGIS into Microsoft Excel. Excel was used to summarize the data, compute various data cross-tabulations, and display results graphically.

RESULTS

The final 2005 vernal pool habitat map is presented in Figure 4. Figure 5 summarizes the acreage of extant vernal pool habitat, by density class, for each of the three mapping periods. The acreage of habitat loss is also shown for the 1997 map and 2005 update. Tables 2 and 3 list the amount of habitat lost for each mapping period, by county, as well as the rate of habitat loss. Figure 6 summarizes the various land use changes that have resulted in vernal pool habitat loss and lists those counties where the majority of vernal pool habitat has been lost for each land use conversion. Table 4 displays these same data in detail.

Some of the most significant results are described below.

There were 1,033,000 acres of extant vernal pool habitat in the (1976–1995) baseline map. By 1997, the acreage of extant habitat had been reduced to 995,000 acres, and many previously contiguous areas of habitat had been fragmented. By 2005 there were 896,000 acres of extant habitat with additional fragmentation of the habitat that remained. Therefore, a total of 137,000 acres, or roughly 13 percent, of vernal pool habitat has been lost since the baseline map was prepared (Table 2).

About 4 percent of the habitat extant in the original mapping had been eliminated by 1997, an additional 9 percent was lost between 1997 and 2005. This is over 1 percent per year of the extant habitat in the baseline habitat map (Table 2).

While a large amount of habitat has been lost, the amount of loss is not distributed evenly across the study area. For example, Mariposa County has not lost any vernal pool habitat since the baseline mapping year (1976). Merced and Placer Counties occupy the opposite extreme. Merced County lost 6,100 acres between 1986 and 1997, or 552 acres/year. Placer County lost 10,440 acres between 1994 and 1997, or 3,480 acres/year. These two

counties account for almost one-half (46 percent) of the habitat loss documented in 1997. Large acreages of habitat loss continued in these two counties between 1997 and 2005. Merced County lost an additional 18,000 acres of habitat during this period, and Placer County lost 6,600 acres of habitat. In all, these two counties have lost 8 percent and 35 percent, respectively, of their baseline vernal pool habitat acreage. While the percentage of loss in Merced County is only 8 percent of the baseline habitat, this represents a loss of almost 24,000 acres, greatly exceeding the total acreage of loss in any other county during the assessment periods. Areas in the central and western portions of the valley (Colusa, Glenn, Sutter, and Yolo) have experienced dramatic declines in the total proportional of vernal pool habitat, as have Sonoma, Napa, and Marin counties outside the Great Valley in the North Bay Area (Table 2).

Similar to the amount of habitat loss, the rate of habitat loss varies greatly across the study area. Habitat loss rates, in terms of acreage per year, have accelerated markedly in Madera, Stanislaus, Butte, Fresno, Merced, Kings, Kern, Sacramento, San Joaquin, and Sutter counties between 1997 and 2005 relative to the baseline year and 1997. Marked decelerations in habitat loss are evident in Glenn, Placer, and Solano counties. When habitat losses are viewed in terms of the percentage of baseline habitat lost per year slightly different, but equally compelling trends are observed. Six counties (Colusa, Glenn, Napa, Placer, Sutter, and Yolo) have lost more than 3 percent of their baseline habitat *per year*, since the baseline mapping year. For these counties this represents a time span of anywhere from 10 years (Yolo County) to 18 years (Napa County). In some cases the rate of habitat loss is roughly even throughout this period (Colusa and Yolo Counties, both averaging nearly 5 percent of baseline habitat lost per year) while in other cases the rate of loss is declining (Glenn and Placer counties) or increasing (Sutter and Napa counties) (Table 3).

Various forms of agricultural land use conversion plainly exceed urbanization as a source of vernal pool habitat loss. Eighty one percent of the total habitat loss between the baseline year and 2005 was lost due to agricultural land conversions (Table 4 and Figure 6).

Orchards, vineyards, and, less frequently, eucalyptus plantations (for pulp) represent the single largest cause of vernal pool habitat conversion. Almost 30 percent of the total observed vernal pool habitat loss (approximately 40,000 acres) could be attributed to this land conversion. Much of the loss (nearly two-thirds of the total) was concentrated in the northern San Joaquin Valley counties of Merced, Stanislaus, and San Joaquin. Much of the remaining loss occurred in Madera, Glenn, and Colusa counties (Table 4 and Figure 6).

The amount of vernal pool habitat loss attributable to other types of agricultural land conversion (agricultural residential, bare agricultural land, irrigated pasture, and other agricultural activities) was roughly equivalent, ranging from 10 percent to 15 percent of the total habitat loss. With the exception of agricultural residential development, which is most common in the northeastern Sacramento Valley, these activities have been concentrated in the San Joaquin Valley (Table 4 and Figure 6).

Land conversions tied to population growth and urban development accounted for almost 26,000 acres or 19 percent of habitat loss. Most urban habitat loss (two-thirds of the total) was concentrated in Placer and Sacramento Counties (Table 4 and Figure 6).

DISCUSSION

Over 13 percent of the extant vernal pool habitat found in the baseline mapping effort (Holland 1998a) has been eliminated as of 2005. Agricultural conversions (e.g., rangeland being converted to orchards or vineyards) are far and away the primary drivers of vernal pool habitat loss across the Great Valley. The vast majority of these habitat conversions occur outside the normal regulatory processes that apply to urban, commercial, infrastructure, and industrial development (AECOM 2009) and are, therefore, largely unmitigated. In other words, little to no vernal pool habitat is being created or preserved to compensate for this loss, resulting in an overall net loss of vernal pool habitat functions and services. Urbanization exceeds agricultural development as the primary cause of vernal pool habitat loss only in Placer County.

The rate of habitat loss increased sharply between 1997 and 2005, relative to rates of loss prior to 1997. And, while much vernal pool habitat still remains in many counties (despite significant losses), widespread loss of habitat was observed on the western side of the Northern Sacramento Valley, an area that did not have extensive areas of vernal pool habitat initially. If the current rate of annual habitat loss were to continue, vernal pool habitats (with the exception of vernal pool habitat preserves) would be completely eliminated from the Great Valley by 2087.

Given changes in GIS technology since the baseline maps were prepared, a brief discussion of the limitations of the mapping methodology used to prepare the current and historic maps is appropriate. The original maps were sketched by hand from a display screen at about 1: 10,400 scale onto 1: 24,000 scale topographic sheets, and later digitized by a technician using ArcINFO at a dedicated workstation and a digitizing tablet. The 1997 update was drawn by hand on 130,000-scale base maps. These base maps were edited by a technician on-screen using ArcView 3.2. The 2005 update was done entirely on-screen using ArcGIS version 9.2. With this technology, one may zoom in or out, overlay maps of topography, geology, or soils, or compare the photomosaic with other imagery from other dates. The 1997 methods were more accurate than the baseline mapping methods, and the 2005 methods were again more accurate than the 1997 methods.

Because the 2005 NAIP imagery afforded vastly superior image quality to the color aerial photography slides and satellite imagery used to prepare the baseline map and 1997 update, a variety of initial mapping errors were evident. For example, it was not uncommon to find polygons originally mapped from baseline imagery whose boundaries only approximated the detail visible in the 2005 images. There were also instances where habitat that was obviously extant in 2005 was not mapped in the initial baseline map, and, conversely, there were obvious areas of non-habitat that had been lumped with adjacent areas of extant habitat to create a single polygon.

Unfortunately, it would be very time consuming, and likely impossible, to quantify the acres of vernal pool habitat affected by these mapping errors, which are equally likely in both directions. Even if the accuracy of specific acreage estimates for extant and extirpated habitat are somewhat uncertain, the relative amount of loss between the baseline mapping year and 2005 is a valid estimate of the net loss of vernal pool habitat during this period. The clear conclusion is that significant vernal pool habitat loss is occurring throughout the Great Valley and that, despite the attention devoted to urban development, various forms of agricultural development have resulted in over four times more vernal pool habitat loss than urbanization.

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REFERENCES

- California Native Plant Society. 2009. Inventory of Rare and Endangered Plants. Available on-line at:
<http://cnps.site.aplus.net/cgi-bin/inv/inventory.cgi>.
- AECOM. 2009. U. S. Army Corps of Engineers Permitting and Mitigation of Central Valley Vernal Pool Impacts, 2000–2006. Prepared for Placer Land Trust. Sacramento, CA.
- Holland, Robert F. 1998a. Great Valley Vernal Pool Distribution, Photorevised 1996. Pp. 71–75 in Witham, C. W., E. T. Bauder, D. Belk, W. R. Ferren Jr., and R. Ornduff (Editors) *Ecology, Conservation, and Management of Vernal Pool Ecosystems – Proceedings from a 1996 Conference*. California Native Plant Society, Sacramento, CA.
- . 1998b. Changes in Great Valley Vernal Pool Distribution from 1989 to 1997. California. Department of Fish and Game. Natural Heritage Division. Consultant report. 18 pp. Available on-line at:
www.dfg.ca.gov/biogeodata/wetlands/pdfs/Holland_ChangesInGreatValleyVernalPoolDistribution.pdf.
- Holland, R. F. and A. D. Hollander. 2007. Hogwallow biogeography before gracios. In Schlising, R. A. and D. G. Alexander (eds.) *Vernal pool landscapes*. Studies from the herbarium, Number 14. California State University, Chico. Pp. 29–50.

Table 1
Great Valley Vernal Pool Species That Are Listed As Threatened or Endangered by
the U.S. Fish and Wildlife Service or the California Department of Fish and Game

Scientific Name	Common Name
<i>Ambystoma californiense</i>	California tiger salamander
<i>Elaphrus viridis</i>	Delta green ground beetle
<i>Branchinecta longiantenna</i>	longhorn fairy shrimp
<i>Branchinecta conservatio</i>	Conservancy fairy shrimp
<i>Branchinecta lynchi</i>	vernal pool fairy shrimp
<i>Lepidurus packardii</i>	vernal pool tadpole shrimp
<i>Neostapfia colusana</i>	Colusa grass
<i>Orcuttia inaequalis</i>	San Joaquin Valley Orcutt grass
<i>Orcuttia pilosa</i>	hairy Orcutt grass
<i>Orcuttia viscida</i>	Sacramento Orcutt grass
<i>Orcuttia tenuis</i>	slender Orcutt grass
<i>Tuctoria mucronata</i>	Solano grass
<i>Tuctoria greenei</i>	Greene's tuctoria
<i>Castilleja campestris</i> ssp. <i>succulenta</i>	succulent owl's clover
<i>Chamaesyce hooveri</i>	Hoover's spurge
<i>Limnanthes floccosa</i> ssp. <i>californica</i>	Butte County meadowfoam
<i>Lasthenia conjugens</i>	Contra Costa goldfields
Source: Data provided by EDAW in 2009	

Table 2
Acreage of Vernal Pool Habitat Loss, by County

County	Baseline Year	Mapped Extant			Total Acres Lost			Total Percent Lost		
		Baseline	1997	2005	Base-97	97-05	Base-05	Base-97	97-05	Base-05
Alameda	1986	2,751	2,402	2,006	348	396	745	12.7%	14.4%	27.1%
Amador	1983	4,242	4,242	3,846	0	396	396	0.0%	9.3%	9.3%
Butte	1994	59,166	58,714	53,540	452	5,174	5,626	0.8%	8.7%	9.5%
Calaveras	1983	6,419	6,419	5,917	0	502	502	0.0%	7.8%	7.8%
Colusa	1993	5,703	4,410	2,110	1,293	2,300	3,593	22.7%	40.3%	63.0%
Contra Costa	1985	3,150	3,150	3,131	0	19	19	0.0%	0.6%	0.6%
El Dorado	1983	1,274	1,274	1,018	0	256	256	0.0%	20.1%	20.1%
Fresno	1994	27,690	27,539	25,490	151	2,048	2,199	0.5%	7.4%	7.9%
Glenn	1993	10,803	8,113	6,553	2,690	1,560	4,250	24.9%	14.4%	39.3%
Kern	1990	9,543	9,455	8,681	88	774	862	0.9%	8.1%	9.0%
Kings	1991	11,951	11,662	9,676	289	1,986	2,275	2.4%	16.6%	19.0%
Lake	1995	2,541	2,541	2,410	0	131	131	0.0%	5.2%	5.2%
Madera	1987	94,054	90,357	79,706	3,697	10,651	14,348	3.9%	11.3%	15.3%
Marin	1986	260	260	162	0	98	98	0.0%	37.7%	37.7%
Mariposa	1976	6,553	6,553	6,553	0	0	0	0.0%	0.0%	0.0%
Merced	1987	285,215	279,142	261,180	6,073	17,962	24,035	2.1%	6.2%	8.4%
Napa	1987	1,207	994	165	213	829	1,042	17.6%	68.7%	86.3%
Placer	1994	48,298	37,858	31,185	10,440	6,673	17,113	21.6%	13.8%	35.4%
Sacramento	1993	53,757	53,583	47,159	174	6,424	6,598	0.3%	12.0%	12.3%
San Joaquin	1988	37,976	36,527	29,615	1,449	6,912	8,361	3.8%	18.2%	22.0%
Shasta	1995	24,034	23,937	23,019	97	918	1,015	0.4%	3.8%	4.2%
Solano	1994	38,897	37,334	35,400	1,563	1,934	3,497	4.0%	5.0%	9.0%
Sonoma	1986	4,466	3,925	2,464	541	1,461	2,002	12.1%	32.7%	44.8%
Stanislaus	1988	92,346	91,025	78,254	1,321	12,771	14,092	1.4%	13.8%	15.3%
Sutter	1990	1,444	1,374	700	70	674	744	4.8%	46.7%	51.5%
Tehama	1994	137,902	134,641	126,860	3,261	7,781	11,042	2.4%	5.6%	8.0%
Tulare	1993	38,223	36,442	30,969	1,781	5,473	7,254	4.7%	14.3%	19.0%
Tuolumne	1976	4,164	4,164	4,080	0	84	84	0.0%	2.0%	2.0%
Yolo	1989	3,617	2,640	901	977	1,739	2,716	27.0%	48.1%	75.1%
Yuba	1995	14,337	14,061	13,034	276	1,027	1,303	1.9%	7.2%	9.1%
Totals		1,031,983	994,738	895,787	37,245	98,951	136,196	3.6%	9.6%	13.2%
Map Error		928				928	928			
Net Loss						99,879	137,124		9.7%	13.3%

Table 3
Rate of Vernal Pool Habitat Loss, by County

County	Baseline Year	Acres Lost Per Year			Percent Lost Per Year		
		Base-97	97-05	Base-05	Base-97	97-05	Base-05
Alameda	1986	32	50	39	1.2%	1.8%	1.4%
Amador	1983	0	50	18	0.0%	1.2%	0.4%
Butte	1994	151	647	511	0.3%	1.1%	0.9%
Calaveras	1983	0	63	23	0.0%	1.0%	0.4%
Colusa	1993	323	288	299	5.7%	5.0%	5.3%
Contra Costa	1985	0	2	1	0.0%	0.1%	0.0%
El Dorado	1983	0	32	12	0.0%	2.5%	0.9%
Fresno	1994	50	256	200	0.2%	0.9%	0.7%
Glenn	1993	673	195	354	6.2%	1.8%	3.3%
Kern	1990	13	97	57	0.1%	1.0%	0.6%
Kings	1991	48	248	162	0.4%	2.1%	1.4%
Lake	1995	0	16	13	0.0%	0.6%	0.5%
Madera	1987	370	1,331	797	0.4%	1.4%	0.8%
Marin	1986	0	12	5	0.0%	4.7%	2.0%
Mariposa	1976	0	0	0	0.0%	0.0%	0.0%
Merced	1987	607	2,245	1,335	0.2%	0.8%	0.5%
Napa	1987	21	104	58	1.8%	8.6%	4.8%
Placer	1994	3,480	834	1,556	7.2%	1.7%	3.2%
Sacramento	1993	43	803	550	0.1%	1.5%	1.0%
San Joaquin	1988	161	864	492	0.4%	2.3%	1.3%
Shasta	1995	49	115	102	0.2%	0.5%	0.4%
Solano	1994	521	242	318	1.3%	0.6%	0.8%
Sonoma	1986	49	183	105	1.1%	4.1%	2.4%
Stanislaus	1988	147	1,596	829	0.2%	1.7%	0.9%
Sutter	1990	10	84	50	0.7%	5.8%	3.4%
Tehama	1994	1,087	972	1,004	0.8%	0.7%	0.7%
Tulare	1993	445	684	605	1.2%	1.8%	1.6%
Tuolumne	1976	0	11	3	0.0%	0.3%	0.1%
Yolo	1989	122	217	170	3.4%	6.0%	4.7%
Yuba	1995	138	128	130	1.0%	0.9%	0.9%

County	Urban, Commercial, Industrial		Agricultural Residential		Orchards, Vineyards, & Eucalyptus		Bare, Plowed Agricultural Land		Alfalfa & Pasture		Other Agricultural	
	Acres	Percent of Conversion	Acres	Percent of Conversion	Acres	Percent of Conversion	Acres	Percent of Conversion	Acres	Percent of Conversion	Acres	Percent of Conversion
Alameda	389	1.5%	0	0.0%	151	0.4%	0	0.0%	135	0.9%	69	0.3%
Amador	21	0.1%	69	0.4%	29	0.1%	0	0.0%	121	0.8%	0	0.0%
Butte	1,127	4.3%	2,946	16.8%	936	2.4%	464	2.6%	26	0.2%	368	1.7%
Calaveras	51	0.2%	335	1.9%	2	0.0%	98	0.6%	0	0.0%	16	0.1%
Colusa	22	0.1%	10	0.1%	1,150	2.9%	615	3.5%	432	2.8%	1,364	6.4%
Contra Costa	0	0.0%	0	0.0%	0	0.0%	26	0.1%	0	0.0%	0	0.0%
El Dorado	101	0.4%	155	0.9%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Fresno	61	0.2%	1,010	5.8%	207	0.5%	366	2.1%	0	0.0%	554	2.6%
Glenn	0	0.0%	54	0.3%	2,643	6.7%	851	4.8%	87	0.6%	615	2.9%
Kern	124	0.5%	293	1.7%	0	0.0%	92	0.5%	0	0.0%	198	0.9%
Kings	372	1.4%	11	0.1%	0	0.0%	798	4.5%	901	5.9%	193	0.9%
Lake	0	0.0%	27	0.2%	22	0.1%	0	0.0%	82	0.5%	0	0.0%
Madera	103	0.4%	2,913	16.6%	3,386	8.6%	473	2.7%	3,453	22.7%	4,018	19.0%
Marin	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	97	0.5%
Merced	1,404	5.4%	63	0.4%	11,105	28.1%	3,684	20.8%	3,636	23.9%	3,961	18.7%
Napa	895	3.4%	31	0.2%	0	0.0%	0	0.0%	0	0.0%	213	1.0%
Placer	15,368	59.2%	172	1.0%	103	0.3%	426	2.4%	188	1.2%	1,363	6.4%
Sacramento	3,267	12.6%	416	2.4%	2,193	5.6%	420	2.4%	69	0.5%	387	1.8%
San Joaquin	60	0.2%	1,137	6.5%	4,503	11.4%	1,654	9.3%	506	3.3%	860	4.1%
Shasta	175	0.7%	722	4.1%	7	0.0%	0	0.0%	36	0.2%	76	0.4%
Solano	743	2.9%	132	0.8%	0	0.0%	1,068	6.0%	217	1.4%	1,335	6.3%
Sonoma	500	1.9%	44	0.2%	822	2.1%	62	0.3%	202	1.3%	373	1.8%
Stanislaus	19	0.1%	1,116	6.4%	9,202	23.3%	2,379	13.4%	489	3.2%	944	4.5%
Sutter	22	0.1%	181	1.0%	14	0.0%	132	0.8%	0	0.0%	341	1.6%
Tehama	325	1.3%	5,286	30.1%	2,570	6.5%	448	2.5%	1,443	9.5%	861	4.1%
Tulare	15	0.1%	326	1.9%	314	0.8%	2,589	14.6%	3,123	20.5%	1,032	4.9%
Tuolumne	39	0.2%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	44	0.2%
Yolo	626	2.4%	0	0.0%	132	0.3%	924	5.2%	0	0.0%	1,034	4.9%
Yuba	136	0.5%	94	0.5%	0	0.0%	125	0.7%	74	0.5%	873	4.1%
Totals	25,965	100.0%	17,542	100.0%	39,491	100.0%	17,696	100.0%	15,228	100.0%	21,190	100.0%

Note: 1. Vernal pool habitat loss represents the difference between the acreage for 2005 and the 1976-1995 period.

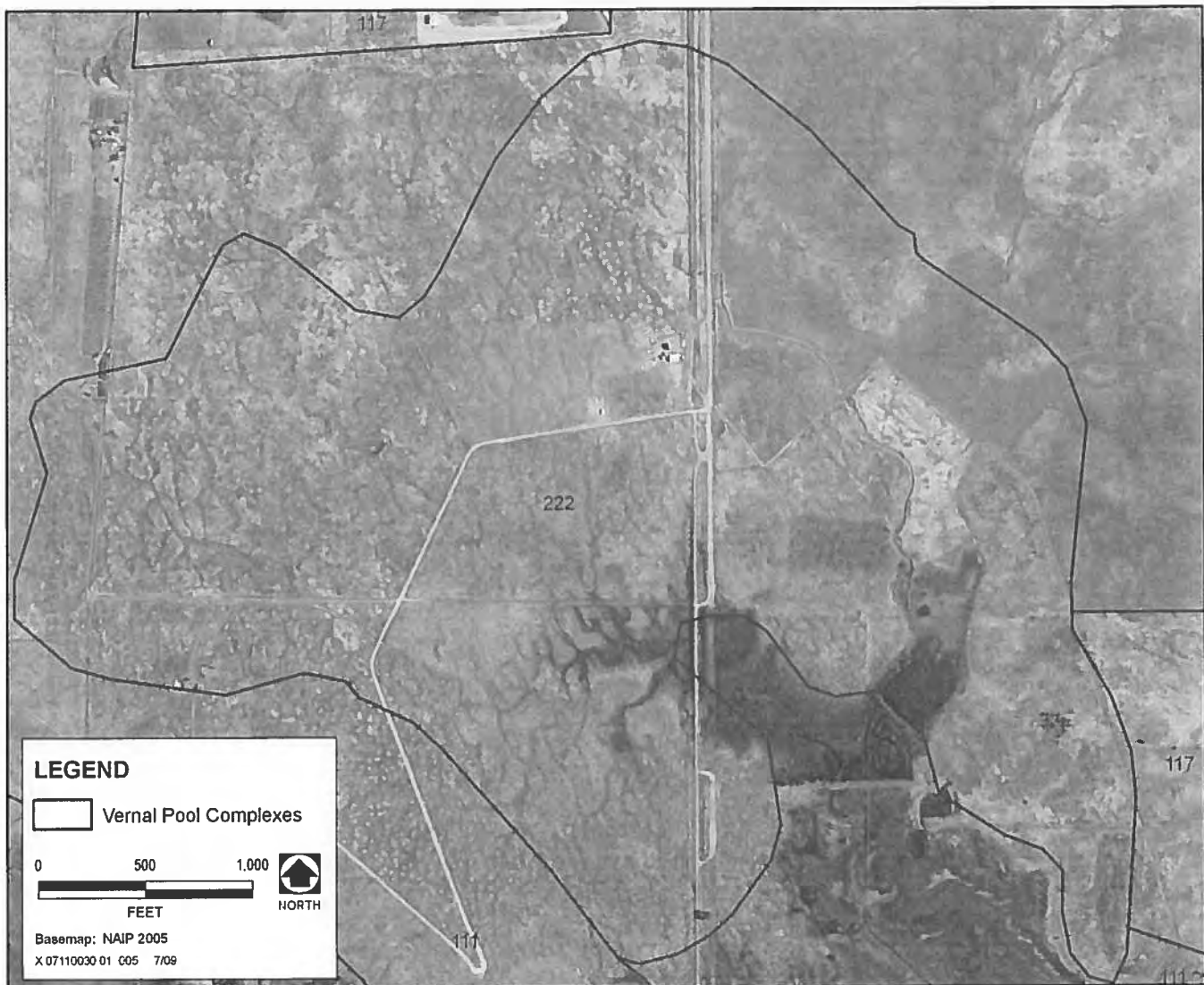


Figure 1. Example Image from Thermalito Afterbay, Butte County

Note: Red numbers indicate habitat scores in the original mapping, 1997, and 2005. Low density habitat (ones) nearly surrounds an area of moderate density habitat (twos). Two areas of low density habitat were converted to agricultural residential (sevens) between 1997 and 2005.

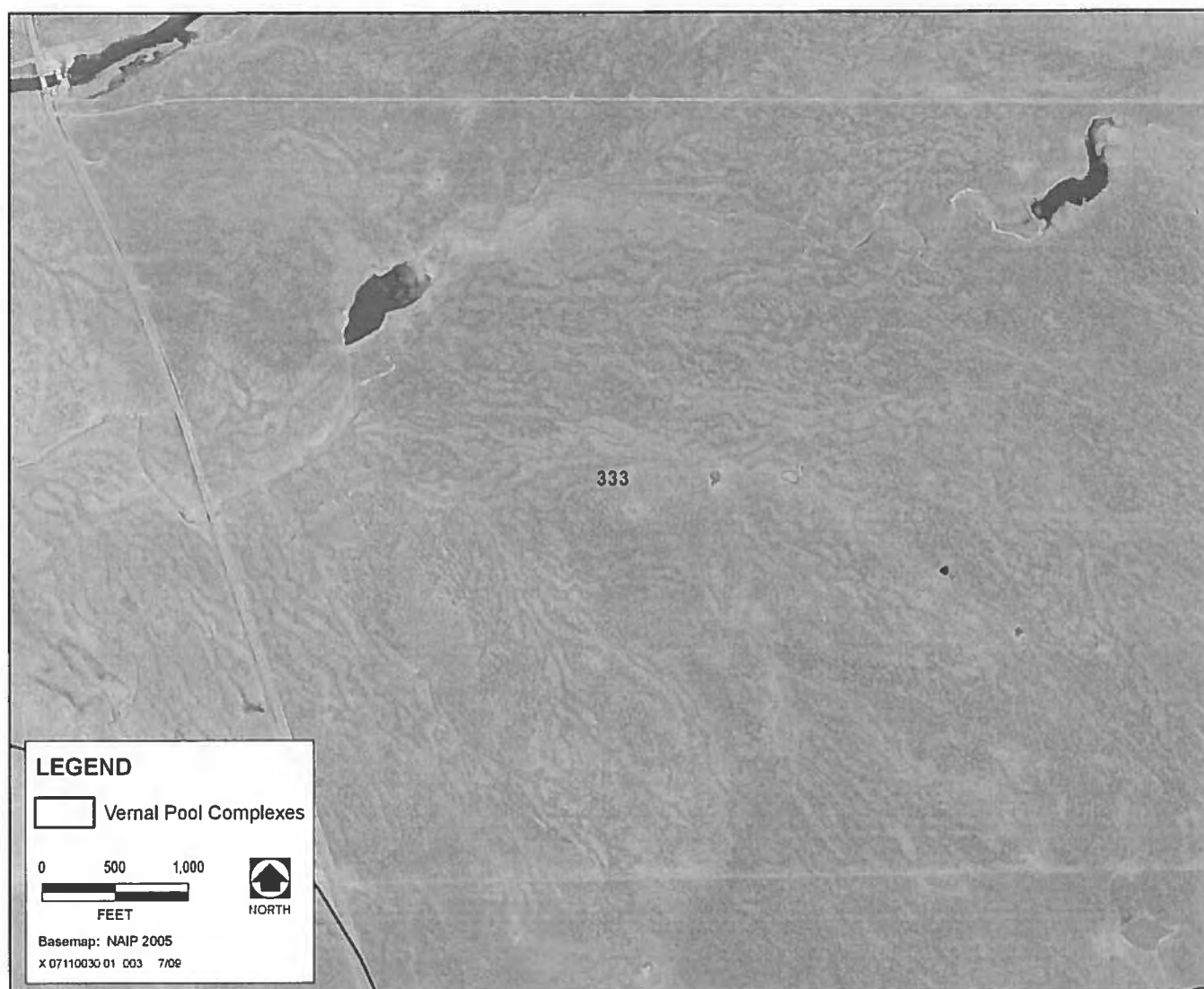


Figure 2. Example Image of High Density Habitat near Snelling, Merced County

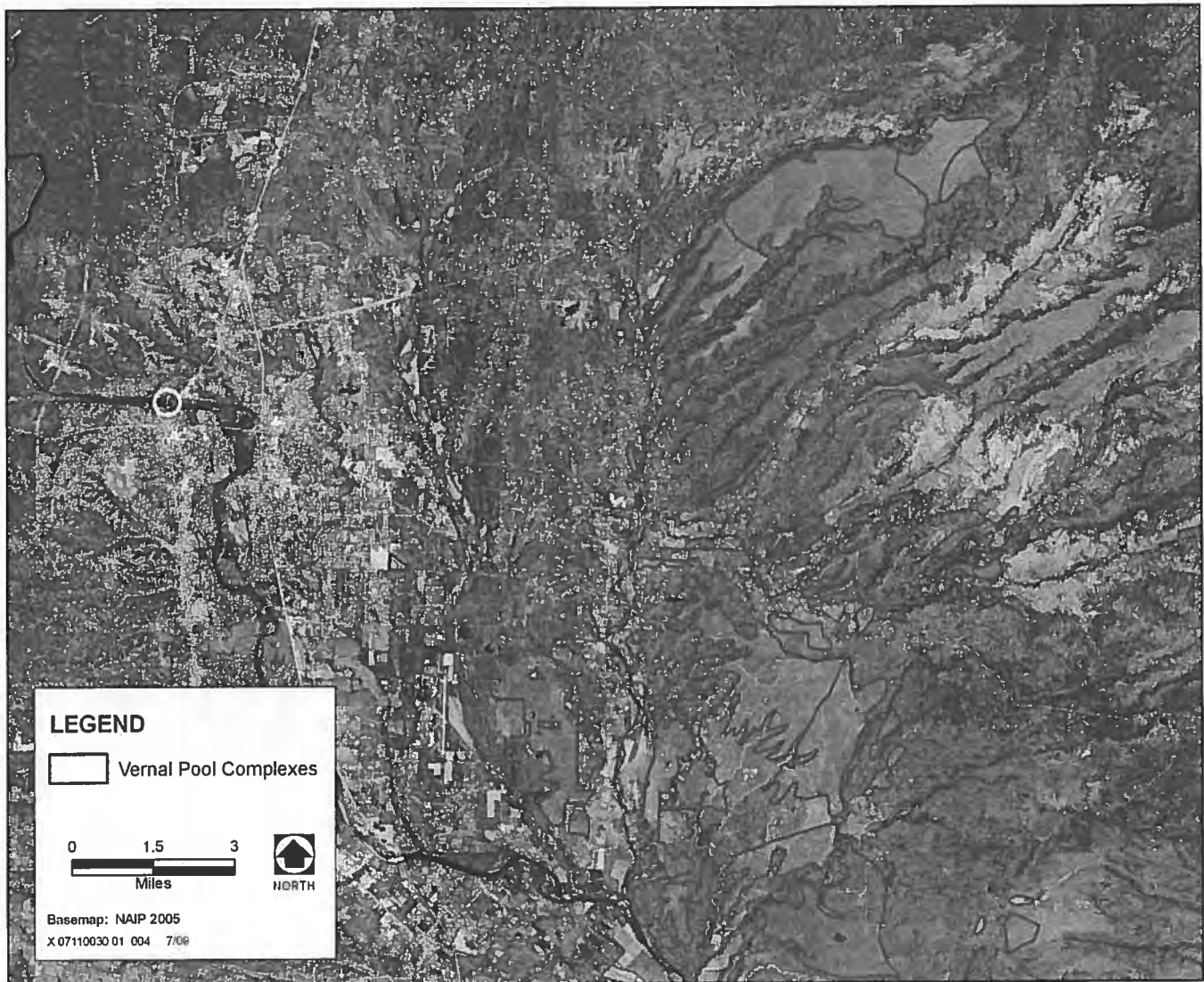


Figure 3. Example Image from Shasta County Showing Several Habitat Polygons in Relation to Landforms

Note: The city of Redding is in the lower left; the 20 foot wide Sundial Bridge over Sacramento River is visible inside the yellow circle. The major north-south road is Interstate 5. The polygon west of the interstate was urbanized after 1997.

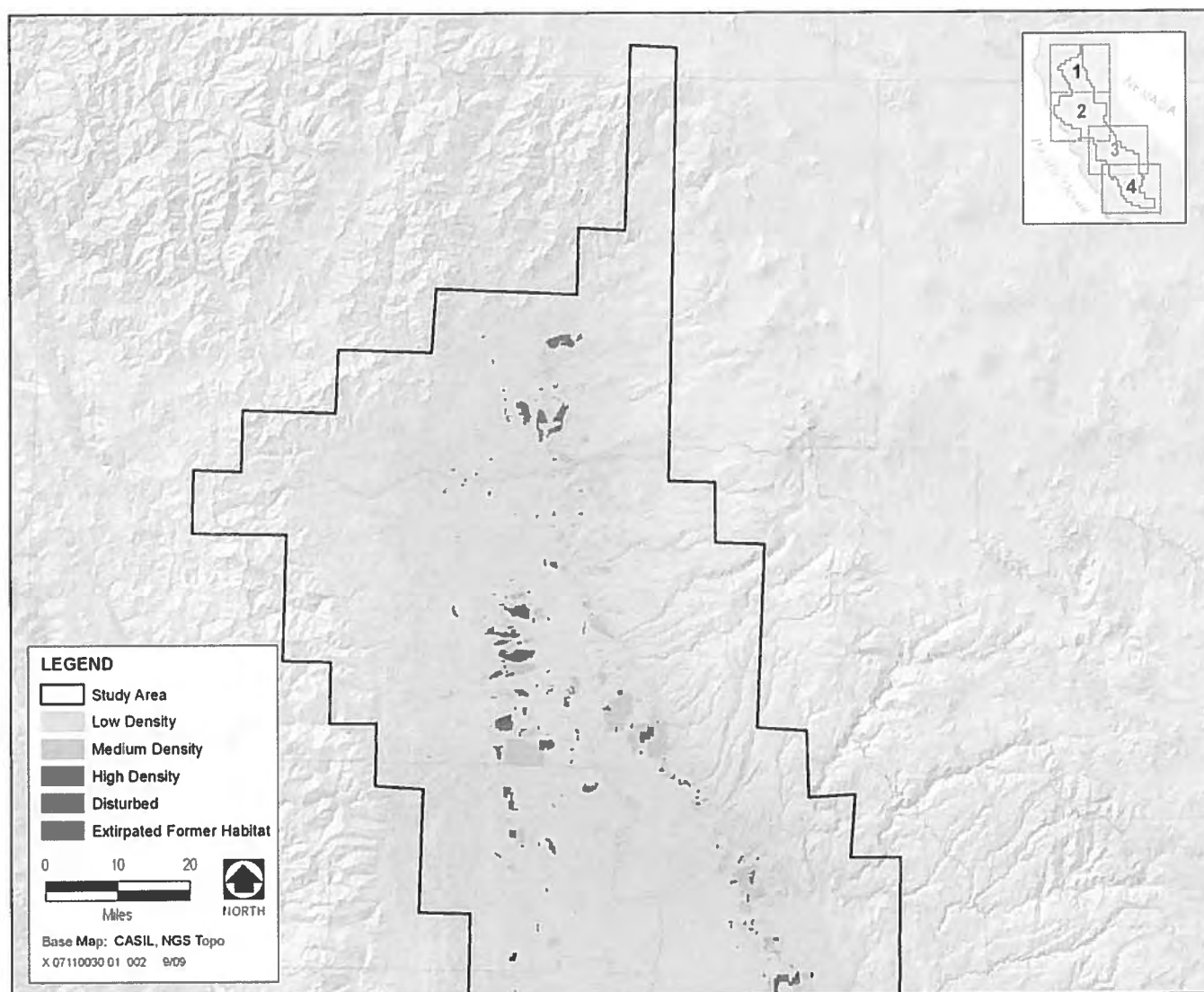


Figure 4a. Distribution of Vernal Pools in the Northern Sacramento Valley as of Summer 2005

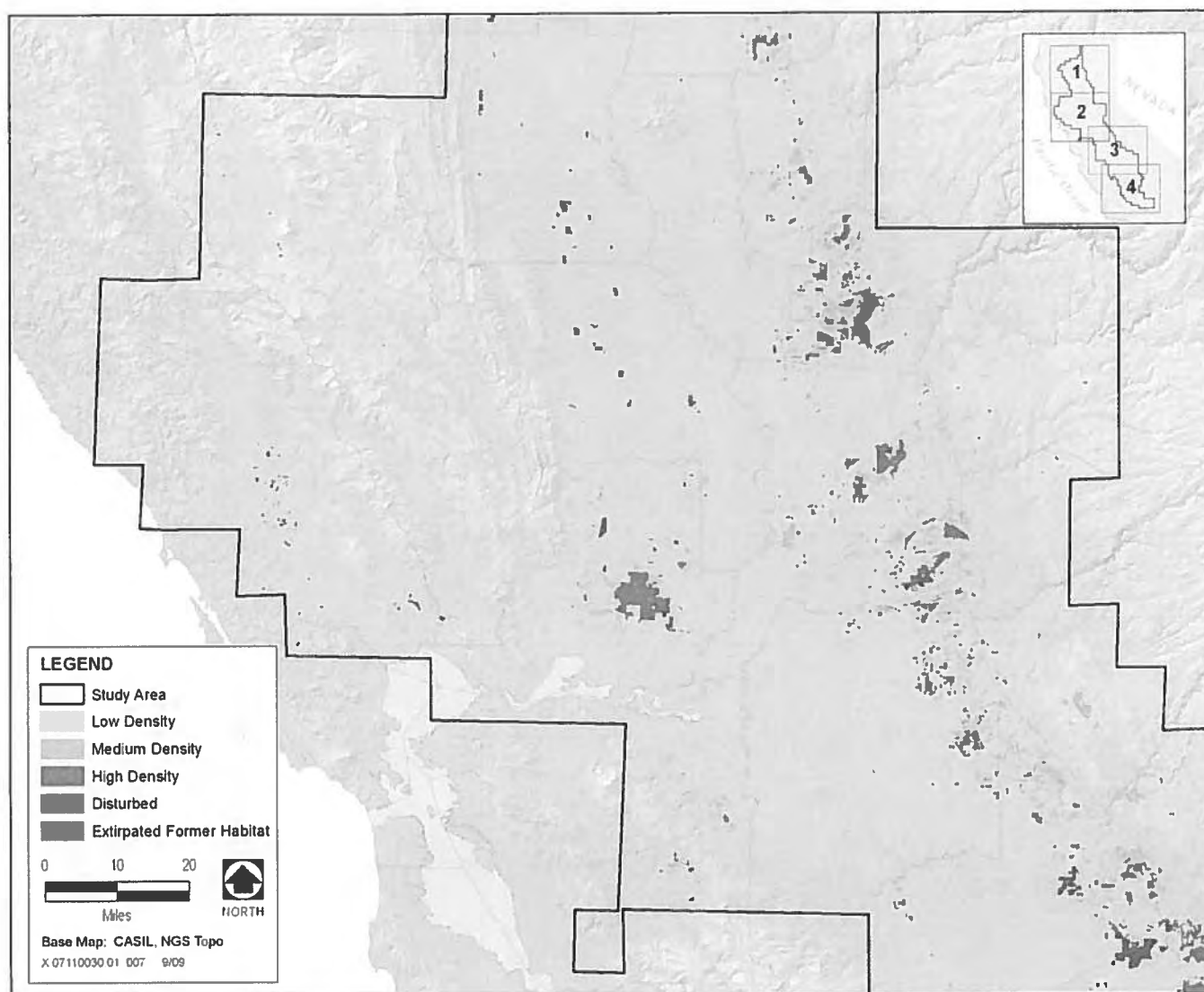


Figure 4b. Distribution of Vernal Pools in the Southern Sacramento and Northern San Joaquin Valleys as of Summer 2005.

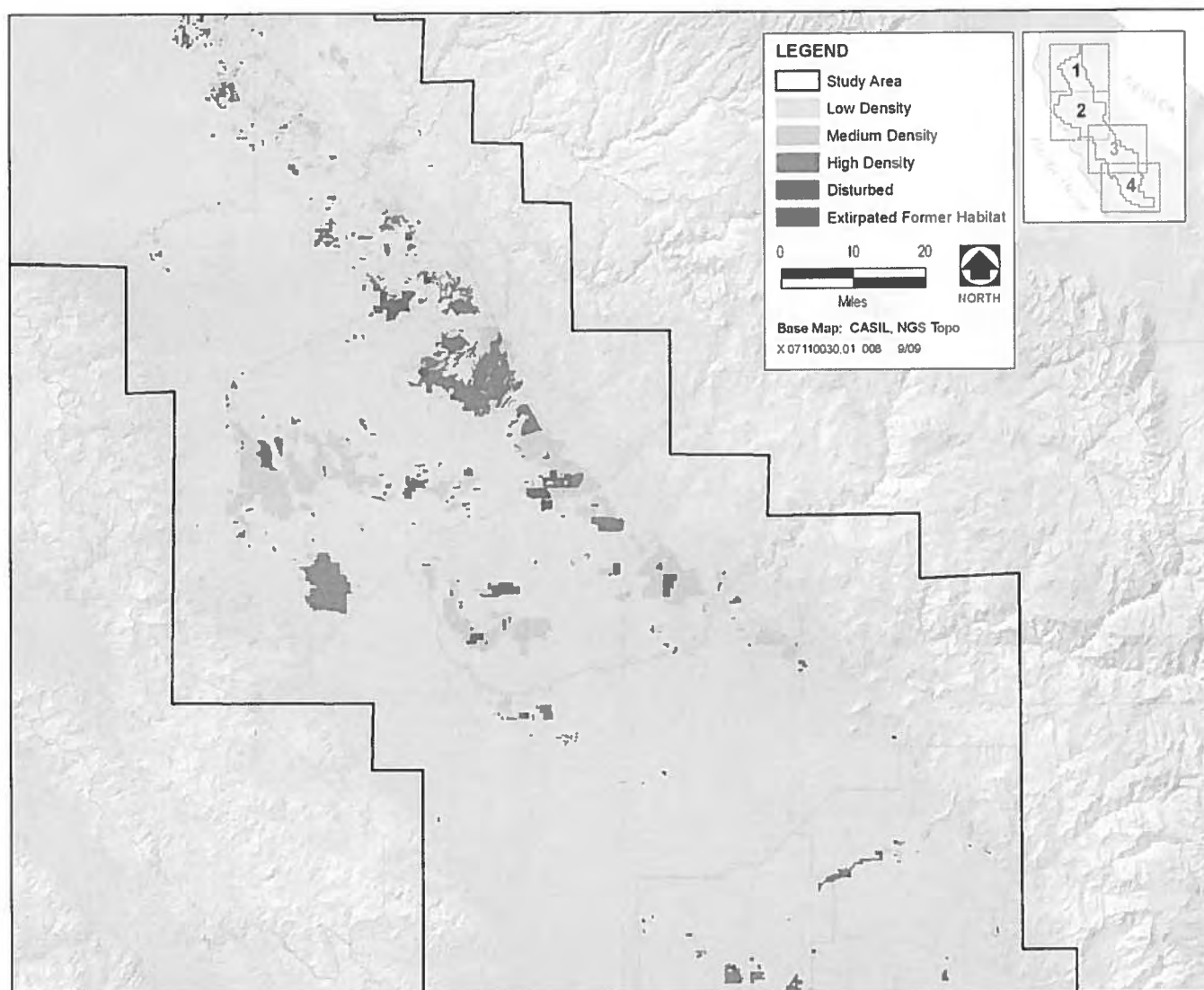


Figure 4c. Distribution of Vernal Pools in the San Joaquin Valley as of Summer 2005.

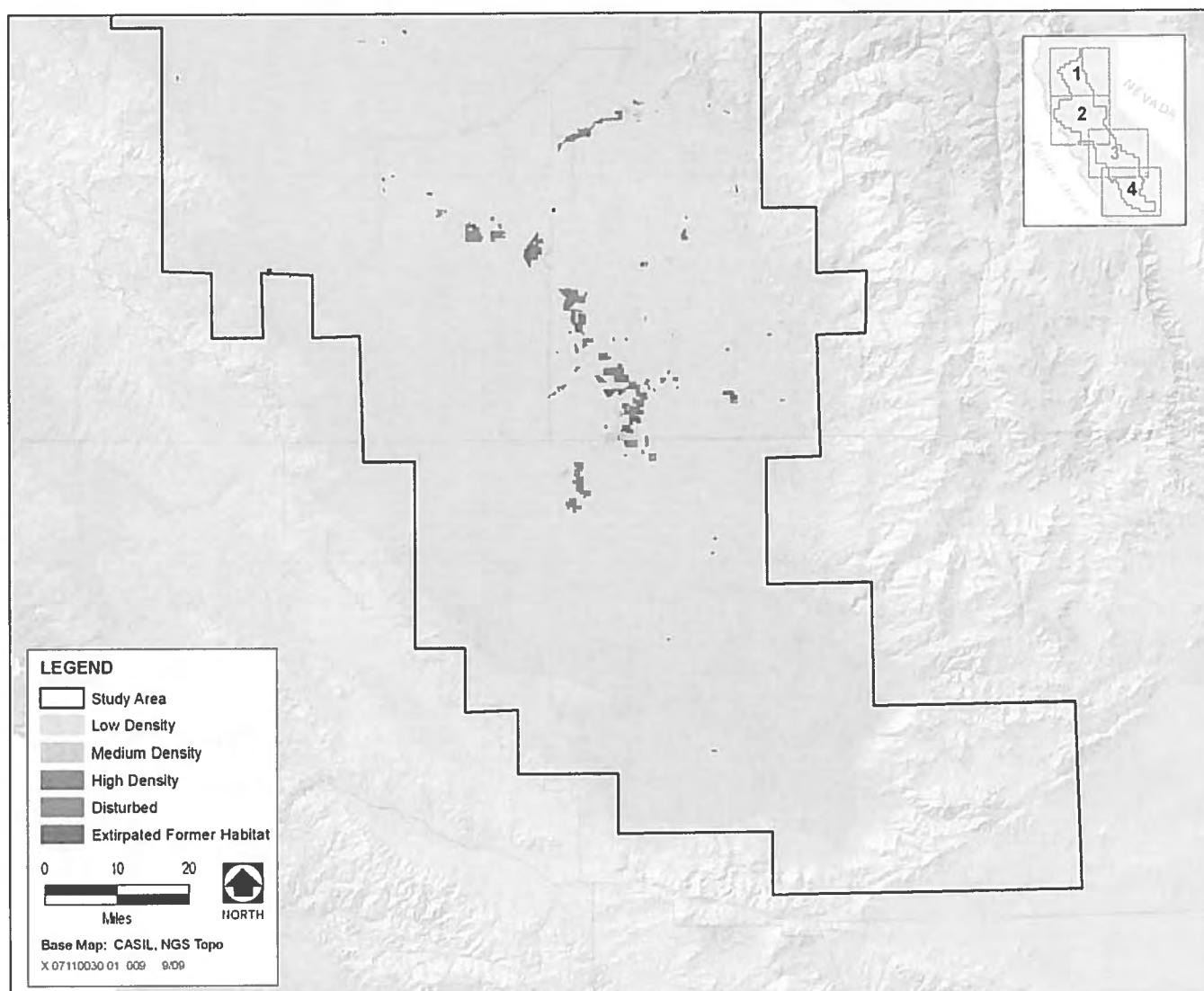
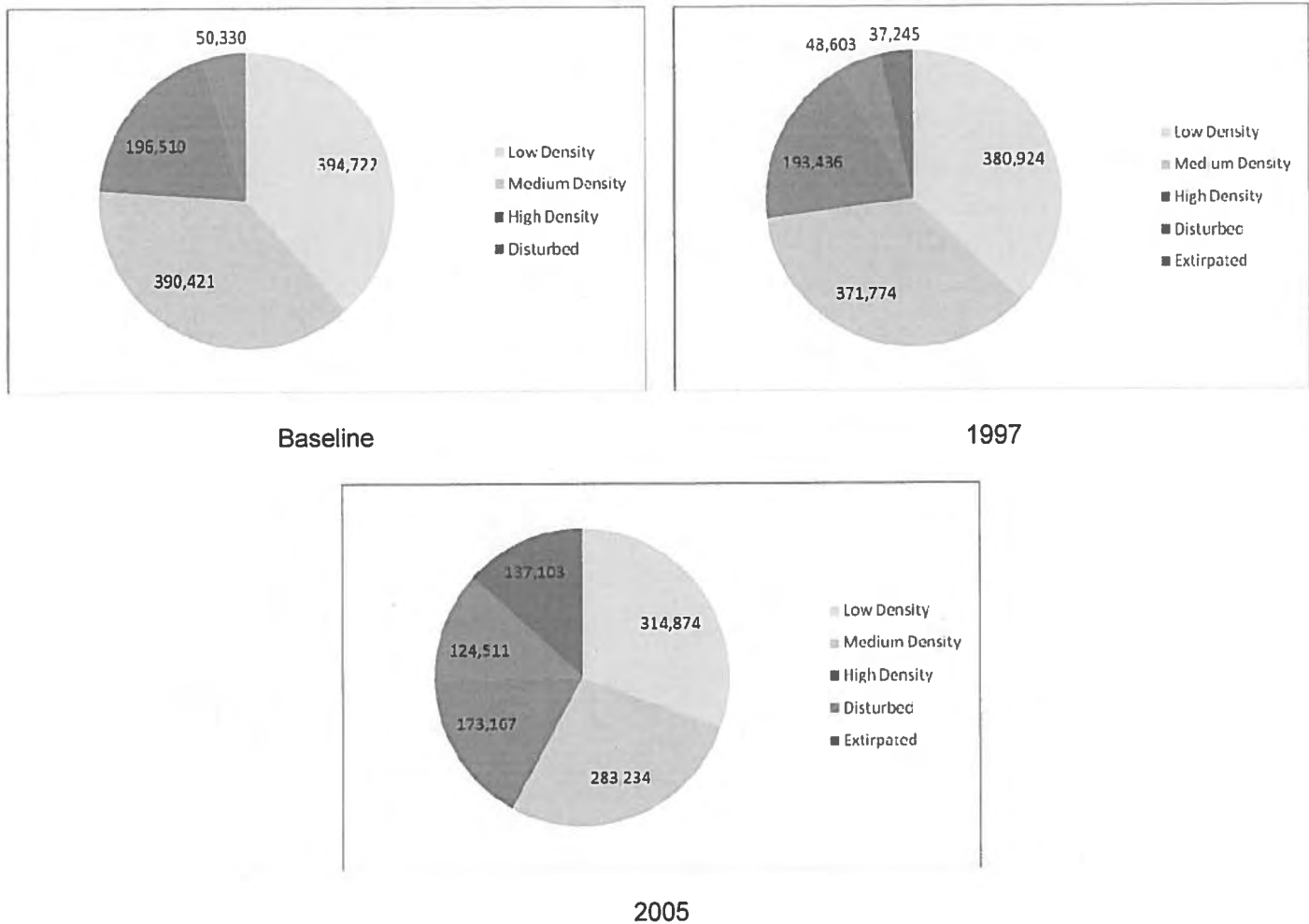


Figure 4d. Distribution of Vernal Pools in the Tulare Basin as of Summer 2005.



Habitat Category	Baseline ¹	1997	2005
Low Density	394,722	380,924	314,874
Medium Density	390,421	371,774	283,234
High Density	196,510	193,436	173,167
Disturbed	50,330	48,603	124,511
Extirpated	-	37,245	137,103
TOTAL ACREAGE	1,031,982	1,031,982	1,032,889
% Baseline Habitat Lost		3.61%	13.27%

Note: 1. Baseline represents the period of 1976 to 1995.

Figure 5. Total Existing and Lost Great Valley Vernal Pool Habitat (in acres)

Vernal Pool Habitat Loss 137,103 Acres

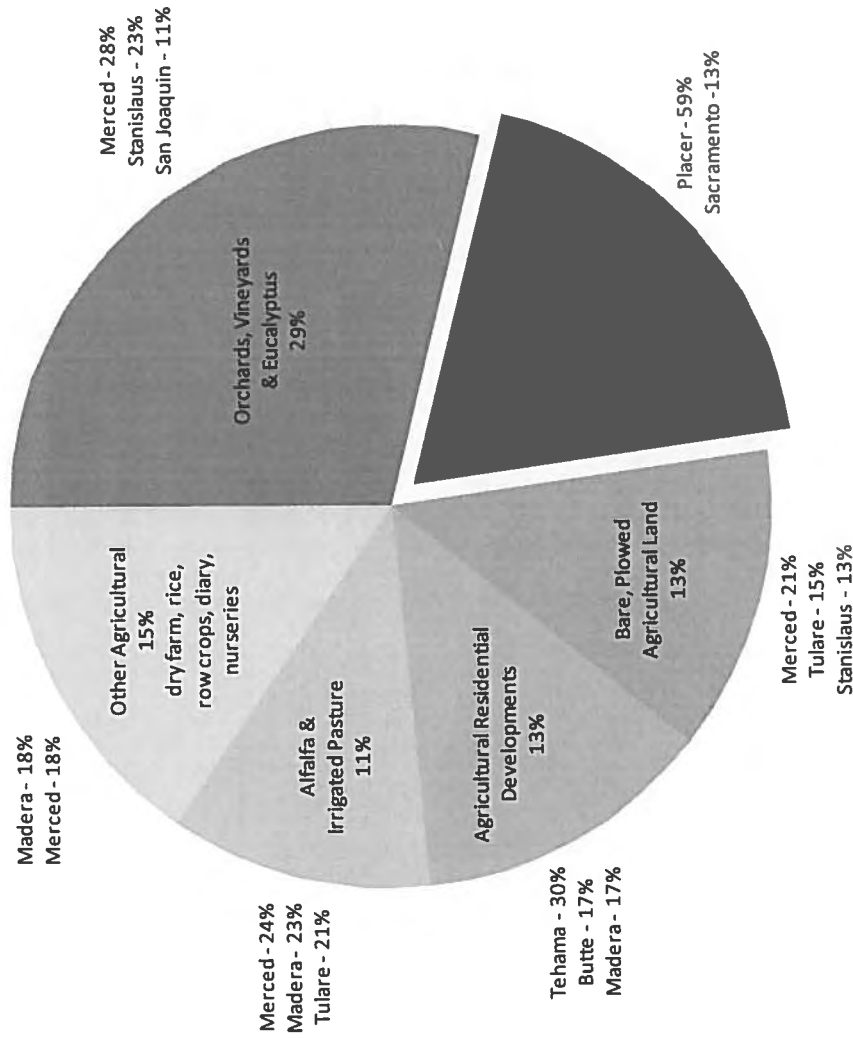


Figure 6. Great Valley Vernal Pool Habitat Loss by Land Use Conversion (percent of baseline) – Counties with Significant Acreages of Loss Highlighted

Note: Percentages for counties indicate the contribution of the county to the Central Valley-wide loss for the category, for example, 59% of all vernal pool loss due to Urban, Commercial and Industrial development occurred in Placer County.

EXHIBIT B

ADAMS BROADWELL JOSEPH & CARDOZO

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May 23, 2018

Via Email and U.S. MailDorothy Roberts
City Clerk
Office of the City Clerk
City of Napa
955 School Street
Napa, CA 94559
clerk@cityofnapa.org;
droberts@cityofnapa.orgErin Morris
Planning Division Manager
Community Services Building
City of Napa
1600 First Street
Napa, CA 94559
emorris@cityofnapa.org**Via Email Only**Victor Carniglia, Contract Planner, vcarniglia@cityofnapa.org**Re: Request for Immediate Access to Public Records for the
Trinitas Mixed-Use Project, SCH #2017072005**

Dear Ms. Roberts, Mr. Morris and Mr. Carniglia:

We are writing on behalf of Napa Residents for Responsible Development ("Napa Residents") to request *immediate access* to any and all public records referring or related to Trinitas Mixed-Use Project, SCH #2017072005, ("Project") **since the date of our last request on January 23, 2018**. The Project is located at 2650 Napa Valley Corporate Drive (APNs: 046-610-009, -019, -020), at the southern boundary of the City of Napa, near the junction of State Route 29 (SR 29) and State Route 221 (SR 221).

This request includes, but is not limited to, any and all materials, correspondence, electronic mail messages, resolutions, memos, notes, analysis, files, maps, charts, and/or any other documents related to the Project, including but not limited to the following documents:

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- All public comments received by the City regarding the Project that are not included in the Project's Final Environmental Impact Report ("FEIR"), including but not limited to all public comments received by the City at or in conjunction with the May 17, 2018 Planning Commission hearing on the Project.
- All surveys and technical reports prepared by or on behalf of the City's EIR consultant related to the Project that are not included in the Project's Draft Environmental Impact Report ("DEIR") or FEIR, including but not limited to the 2018 fairy shrimp study referenced by Ms. Shana Shaffner during the May 17 Planning Commission hearing on the Project.
- All documents related to the construction status of the Meritage Commons Project, to be located at 850 and 875 Bordeaux Way, also known as the Meritage Resort Expansion Project (PL15-0071).
- All other documents related to the Project that were not previously provided in response to our January 23, 2018 Public Records Act request.

Napa Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. Napa Residents includes the International Brotherhood of Electrical Workers Local 180, Plumbers & Steamfitters Local 343, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Napa and Contra Costa County. Napa Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members.

Pursuant to the California Public Records Act, Government Code Section 6250 et seq., we request that the City of Napa, and all of its departments (collectively, "City") make immediately available for inspection and copying the requested documents related to the Project. Citizens requests immediate access to review the above documents pursuant to section 6253(a) of the Public Records Act, which requires public records to be "open to inspection at all times during the office hours of the state or local agency" and provides that "every person has a right to inspect any public record."¹

¹ Gov. Code § 6253(a).

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This request seeks access to the above documents for inspection under Section 6253(a) only, and does not request that the City provide copies of these documents. Therefore, the ten day response period applicable to a “request for a copy of records” under Section 6253(c) does not apply to this request. The City is also directed not to take any action to organize or modify the requested documents. We request access to the documents in the existing form maintained by the City.²

If any of the above requested documents are available online, please provide us with the URL web address at which the documents may be downloaded. If any of the requested documents are retained by the City in electronic computer-readable format such as PDF (portable document format), please provide us with PDF copies of the documents via email, or inform us of the location at which we can copy these documents electronically. We reserve the right to have a copy service make copies of any and all of the requested documents depending on the volume.

In responding to this request, please bear in mind that any exemptions from disclosure the City may believe to be applicable are to be narrowly construed.³ If the City declines to produce any of the requested documents on the grounds of an exemption, please note that the Public Records Act imposes a duty on the City to distinguish between the exempt and the non-exempt portion of any such records, and to attempt in good faith to redact the exempt portion and to disclose the balance of such documents.⁴ Furthermore, should the City choose to withhold any document from disclosure, the City has a duty under Government Code section 6255, subd. (a) to “justify withholding any record by demonstrating that the record in question is exempt under express provisions” of the Public Records Act or that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”⁵ The City may not seek recovery of costs for any staff time related to responding to this Public Records Act request.⁶

² See *Sierra Club v. Super. Ct.* (2013) 57 Cal. 4th 157, 161.

³ *Marken v. Santa Monica-Malibu Unif. Sch. Dist.* (2012) 202 Cal. App. 4th 1250, 1262; *Citizens for Ceres v. Super. Ct.* (2013) 217 Cal.App.4th 889, 913 (the common interest doctrine cannot apply to communications between a developer and a reviewing public agency made before project approval.)

⁴ Gov. Code § 6253(a).

⁵ *Id.*

⁶ *North County Parents v. Dept. of Education* (1994) 23 Cal.App.4th 144; *County of Los Angeles v. Super. Ct.* (2000) 82 Cal.App.4th 819, 826.

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If any of the requested items are available on the Internet, we request that the City direct us to the appropriate URL web address or other site for accessing the documents. Pursuant to Government Code section 6253.9, if the requested documents are in electronic format and are 10 MB or less (or can be easily broken into chunks of 10 MB or less), please email them as attachments. We request access to the above documents, including any electronic documents, in their original form, as maintained by the City.⁷

Please use the following contact information for all correspondence regarding these requests:

Christina Caro
Janet Laurain
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Ste. 1000
South San Francisco, CA 94080
jlaurain@adamsbroadwell.com

Thank you for your assistance with this matter.

Sincerely,



Christina M. Caro

CMC:acp

⁷ Gov. Code § 6253.9(a)(1); *See Sierra Club v. Super. Ct.* (2013) 57 Cal. 4th 157, 161.

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May 17, 2018

Via Email and Hand DeliveryChair Michael Murray
Honorable Members of the Planning Commission for the City of Napa
c/o Patty Baring
City Hall, Council Chambers
955 School Street
Napa, CA 94559
Email: pbaring@cityofnapa.org**By Email Only**Erin Morris, Planning Manager: emorris@cityofnapa.org**Re: Agenda Item No. 7.C: Trinitas Mixed-Use Project –
2610 & 2620 Napa Valley Corporate Drive (File No. P16-0054)**

Dear Chair Murray, Honorable Members of the Planning Commission for the City of Napa, Ms. Morris:

On behalf of Napa Residents for Responsible Development (“Napa Residents”), we submit these comments regarding Agenda Item No. 7.C: Trinitas Mixed-Use Project – 2610 & 2620 Napa Valley Corporate Drive, File No. P16-0054, SCH #2017072005 (“Project”), and the Final Environmental Impact Report (“FEIR”) for the Project. The Project is proposed by Pacific Hospitality Group (“Applicant”). We previously submitted comments on the Draft Environmental Impact Report (“DEIR”) for the Project on February 26, 2018 (“DEIR Comments”).¹ We incorporate these prior comments by reference.

¹ The City failed to make all documents referenced or relied upon in the DEIR (“DEIR Reference Documents”) available to Napa Residents and other members of the public during the DEIR public comment period, then denied Napa Residents’ February 26, 2018, and April 25, 2018 requests to re-open the DEIR public comment period following receipt of the documents. On January 23, 2018, we submitted a letter to the City pursuant to CEQA Section 21092(b)(1) requesting “immediate access to any and all documents referenced or relied upon” in the DEIR. Napa Residents did not receive the 4140-004acp

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Napa Residents and its technical consultants have reviewed the Planning Commission Staff Report for the Project (“Staff Report”), as well as the FEIR. Based upon our review of the Staff Report and FEIR, we conclude that, while the FEIR corrects a few selected errors from the DEIR, it still fails to disclose or meaningfully evaluate significant Project impacts related to biological resources, and fails to acknowledge or evaluate the impacts of the entirety of the Meridian Resort Project, of which the Trinitas Project is the third component. The FEIR also relies on inadequate and unenforceable mitigation measures to reduce potentially significant impacts to less than significant levels, fails to evaluate feasible mitigation for potentially significant impacts, and fails to support many of its findings with substantial evidence. Moreover, the Staff Report fails to disclose and mitigate land use inconsistencies with City and Airport Land Use Commission (“ALUC”) requirements.

The City must revise and recirculate the FEIR to adequately address these issues before the Planning Commission may consider approving the Project.

We prepared these comments with the assistance of air quality consultant Hadley Nolan of Soil Water Air Protection Enterprise (“SWAPE”)², as well as conservation biologist and wildlife ecologist Scott Cashen.³

I. STATEMENT OF INTEREST

Napa Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential environmental and public health impacts associated with Project development. Napa Residents includes the International Brotherhood of Electrical Workers Local 180, Plumbers & Steamfitters Local 343, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals

full set of DEIR Reference Documents until April 25, 2018. CEQA mandates that the City make the DEIR and all documents relied on in the DEIR available and “readily accessible” during the entire comment period. See PRC § 21092(b)(1); 14 CCR § 15087(c)(5). Napa Residents have therefore had less than the full 45 days required by CEQA to review and comment on the DEIR Reference Documents, in violation of CEQA. These comments address some of those documents. However, Napa Residents is continuing its review of the DEIR Reference Documents, and reserves the right to supplement these comments at a later time.

² SWAPE’s technical comments and curriculum vitae are attached hereto as Exhibit A.

³ Mr. Cashen’s technical comments and curriculum vitae are attached hereto as Exhibit B.

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that live and/or work in the City of Napa and Napa County. Napa Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members.

Individual members of Napa Residents and its member organizations include residents of the City of Napa and surrounding communities, including City of Napa resident Brett Risley and Napa County resident Steve McCall. The individual members of Napa Residents live, work, recreate, and raise their families in the City of Napa and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, Napa Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. THE FEIR AND STAFF REPORT FAIL TO ACCURATELY DESCRIBE AND ANALYZE THE WHOLE OF THE PROJECT

Napa Residents previously commented that the DEIR improperly piecemealed its description of the Project from the other two Meritage facilities which the DEIR explained are part of a single commercial development project by the Applicant ("Meritage Project"). As a result, the DEIR failed to analyze the full extent of the Project's environmental impacts, and artificially minimized its analysis of potentially significant cumulative impacts.

The FEIR failed to correct this error. Instead, the FEIR contends that the three hotels are different projects because they each "offer a different type of guest experience," have different check-in locations for guests, and were analyzed in

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separate CEQA documents.⁴ However, the FEIR at the same time acknowledges that all three hotels in the Meritage Project are “under one ownership,” and include “shared facilities management, laundry, and engineering [] proposed to enhance efficiencies of and reduce overlap or duplication in back of house services.”⁵ In addition, the FEIR acknowledges that the shuttle service between all three hotels and downtown Napa will be offered as a single amenity for hotel guests.⁶ As explained in our DEIR Comments, these factors contribute substantially to the determination that the three-hotel Meritage resort is a single project for purposes of CEQA, and should have been analyzed in a single CEQA document.

CEQA prohibits a project proponent from seeking approval a large project in a piecemeal fashion in order to take advantage of environmental exemptions or lesser CEQA for smaller projects.⁷ CEQA mandates “that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment - which cumulatively may have disastrous consequences.”⁸ Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. As the Court of Appeal stated: “...[t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish.”⁹

The FEIR fails to analyze the impacts of the Meritage Project as a single Project, in violation of CEQA. As discussed below, when considered together, the Meritage Project will have significant, unmitigated impacts on air quality and biological resources that must be disclosed and mitigated in a revised EIR.

⁴ FEIR RTC, p. 34.

⁵ FEIR, RTC, p. 34.

⁶ *Id.*

⁷ *Arviv Enterprises, Inc.*, 101 Cal. App. 4th at 1340.

⁸ *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165 (1985).

⁹ *Natural Resources Defense Council v. City of Los Angeles*, 103 Cal.App.4th 268 (2002).

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A. The Meritage Project Has Significant Air Quality Impacts from Construction Emissions.

The Meritage Commons Project was approved by the City in 2015, and is the second component of the Meritage Project. Meritage Commons is currently under construction.¹⁰ The Trinitas Project is the third component of the Meritage Project, and proposes to expand existing Meritage hotel uses by adding an additional 4-story, 253-guestroom dual-branded hotel, winery and office complex to the Meridian site. If the City were to approve the Trinitas Project now, Project construction is likely to overlap with construction of the Meritage Commons Project, resulting in overlapping construction impacts.

SWAPE conducted a conservative air quality analysis of the construction emissions from the Meritage Commons construction combined with the construction emissions from the Trinitas Project. SWAPE's analysis added the criteria air pollutant emissions general during construction of the Trinitas Project to the construction emissions generated by Meritage Commons Project, then compared the sum of these emissions to the Bay Area Air Quality Management District's ("BAAQMD") significance thresholds.¹¹ The results of SWAPE's analysis are set forth below:¹²

Average Daily Construction Emissions (lbs/day)				
Development	ROG	NOx	PM10	PM2.5
Trinitas	8.9	32.8	1.6	1.5
Trinitas and Meritage Commons	21.6	68.6	3.6	3.4
Percent Difference	143%	109%	125%	127%
BAAQMD Regional Threshold (lbs/day)	54	54	82	54
Threshold Exceeded?	No	Yes	No	No

When the construction emissions from the Trinitas and Meritage Commons Project are combined, SWAPE finds that construction-related NOx emissions would total 68.6 pounds per day. This exceeds the BAAQMD's established significance

¹⁰ DEIR, p. 3-1.

¹¹ Exhibit A, pp. 2-3.

¹² Exhibit A, p. 2.

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threshold of 54 pounds per day (lbs/day), resulting in a significant air quality impact that the FEIR fails to disclose and mitigate.

Because Meritage Commons and Trinitas are components of the single Meritage Project, the FEIR must be revised to analyze the combined air quality impacts of the ongoing development of the Meritage Commons Project with the Trinitas Project.

B. The Meritage Project Has Significant Biological Resources Impacts from Habitat Loss.

The first two Meritage Project components – Meritage Resort and Meritage Commons - contain just over 30 acres of land devoted to hotel uses. The proposed Trinitas Project would add approximately 6.5 acres of land dedicated to hotel uses along with 253 additional hotel rooms (the winery, office building, and related parking account for the remaining five acres of the site). The Trinitas Project would bring the amount of acreage in the business park dedicated to hotel uses to 36.5 acres, consisting of a total of 720 hotel rooms (with Trinitas accounting for about 20% of this total acreage and 36% of the 720 total hotel rooms).¹³

Mr. Cashen explains that this additional conversion of lands from undeveloped to developed uses by the Trinitas Project component would result in the elimination of approximately 59 percent of existing Swainsons hawk home range.¹⁴ Because 30 acres of land on the Meritage Project site have already been converted to commercial uses, Mr. Cashen concludes that the additional loss of foraging habitat caused by the Project “would undoubtedly have a significant impact on Swainson’s hawks.”¹⁵

The FEIR must be revised and recirculated to disclose and mitigate these and other significant impacts of the overall Meritage Project.

¹³ Staff Report, p. 6-7.

¹⁴ Exhibit B, p. 12.

¹⁵ *Id.*

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III. THE FEIR AND STAFF REPORT FAIL TO RESOLVE THE PROJECT'S LAND USE INCONSISTENCIES

A. The Project is Irreconcilably Inconsistent with the General Plan's Land Use Policy, Goal LU-7, and Policy ED 4.4 (Tourism/Hospitality) Due to Its Location.

The Project site is located in an area designated by the General Plan as Planning Area 11 – River East.¹⁶ The General Plan Designation for the Project site is CP-720, Corporate Park, which allows industrial uses, including “manufacturing, warehousing, and office, public and quasi-public uses and similar compatible uses in a campus like setting.”¹⁷ The zoning for the Project site is similarly industrial – Industrial Park – Area A (IP-A); Industrial Park – Area B (IP-B).¹⁸ None of these uses designate hotels. Hotels fall under Policy ED 4.4 (Tourism/Hospitality), which “emphasizes the importance of locating hotel uses in the Downtown.”¹⁹ The Project’s proposal to place major hotel uses in this industrial area of the City is inconsistent with these uses, and is likely to displace or prevent other industrial uses from occupying limited industrial land within the City.

The General Plan explains that only 4% of the City’s lands are available for industrial use.²⁰ LU Element Goal LU-7’s focus is to “achieve diverse industrial opportunities in suitable locations to provide employment for Napa residents and promote economic growth in the city.”²¹ The Staff Report explains that the Project will have a significant impact on land use within the City by displacing industrial uses:

Land for large-scale business offices and light industrial use is growing increasingly difficult to find in Napa and in the corporate park forcing business interests outward to the Airport industrial area and further south

¹⁶ See FEIR, p. 5.9-5; General Plan, Land Use (“LU”) Element, p. 1-7, available at <https://www.cityofnapa.org/DocumentCenter/View/445/Chapter-1---Land-Use-PDF>.

¹⁷ Staff Report, p. 8.

¹⁸ Staff Report, p. 1.

¹⁹ Staff Report, p. 9.

²⁰ General Plan, LU Element, p. 1-1, 1-4.

²¹ *Id.* at p. 1-20.

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which introduces fundamental community-wide land use issues... Staff is concerned [about] the loss of industrially zoned parcels to hospitality uses.²²

Neither the FEIR nor the Staff Report's proposed General Plan consistency findings rectify this inconsistency, or disclose the loss of industrial lands as a significant impact. The loss of industrial lands that will be caused by the Project therefore remains a significant, unmitigated impact, and renders the Project inconsistent with the General Plan's Land Use Policy, Goal LU-7, and Policy ED 4.4.

B. The Project Violates Airport Land Use Commission Policy for ALUC Zone C.

The Project's hotel uses are likely to result in violations of ALUC Zone C regulations. The FEIR fails to disclose this significant impact. Approximately 12,400 square feet of the proposed Residence Inn portion of the hotel building is located within ALUC Zone C.²³ ALUC Zone C establishes a threshold of 50 persons per acre maximum for structures within ALUC Zone C.²⁴ Based on calculations in the FEIR, the projected density for the portion of the Residence Inn located within Zone "C" is 46.5 persons per acre, just below the 50 persons per acre maximum.²⁵ However, this assumption is based on 80% room occupancy, with the threshold of 50 persons per acre being exceeded at 86% occupancy.²⁶

Neither the FEIR nor the Staff Report's proposed Conditions of Approval include any restriction to limit occupancy of the Residence Inn to 86%. The FEIR similarly fails to include any substantial evidence that the hotel's occupancy will not exceed 86%. The Staff Report asserts that average hotel occupancy is about 75%. This does not support the Staff Report's conclusion that Project hotel occupancy will not exceed the 86% threshold to create a violation of ALUC Zone C regulations. It is therefore reasonably foreseeable that operation of the Residence Inn will result in levels of occupancy that violate the ALUC Zone C regulations. Indeed, it is economically foreseeable that the goal of the Applicant is to reach a

²² Staff Report, pp. 9-10.

²³ *Id.*

²⁴ Staff Report, p. 10.

²⁵ Staff Report, p. 10; pg. 5.7-22 of the FEIR.

²⁶ *Id.*

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100% occupancy level in order to maximize profits from the hotel, which would certainly result in violations of the ALUC Zone C regulations.

In order to ensure that the Project does not violate the ALUC Zone C regulations, the City should require a Condition that the Residence Inn be limited to a maximum 85% occupancy once operational.

IV. THE FEIR AND STAFF REPORT FAIL TO ADEQUATELY ANALYZE AND MITIGATE SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES

The FEIR fails to adequately respond to Napa Resident's DEIR Comments regarding the Project's impacts to biological resources. As a result, the FEIR fails to adequately disclose and mitigate the Project's impacts on a number of sensitive plants, animals, and due to habitat loss.

CEQA requires that a lead agency meaningfully evaluate all comments on the DEIR and provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful."²⁷ As discussed below, and in the comments of biologist Scott Cashen, attached hereto, the FEIR fails to comply with these requirements. The FEIR must be revised and recirculated to fully disclose and mitigate all outstanding significant impacts to biological resources.

A. Swainson's Hawk.

The FEIR acknowledges that "[n]o attempt was made to assess usage by Swainson's hawks as it is clear that they occur in and around Napa," and that "the potential frequency of use is not known."²⁸ Nevertheless, the FEIR continues to argue that the loss of foraging habitat from the Project site would not have a substantial adverse effect on Swainson's hawks.²⁹ The basis for this argument is that the Project would eliminate only one-tenth of one percent of a Swainson's hawk

²⁷ *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

²⁸ FEIR, RTC C-B15.

²⁹ *Id.*

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home range, and that the City's consultants do not believe that this would constitute a substantial adverse effect. As explained by Mr. Cashen, the FEIR's conclusions are entirely unsupported.

Mr. Cashen explains that neither the DEIR nor the FEIR analyzed the cumulative effects that multiple projects would have on the home ranges of Swainson's hawks that occur within the Project region.³⁰ For this reason, Mr. Cashen explains that "it is inappropriate and scientifically indefensible for [the FEIR] to use the mean home range of Swainson's hawks near Sacramento to assess impacts to the home range of birds in Napa County." The FEIR then concludes that the Project would impact just 1/10th of relevant Swainson's hawk habitat.³¹ However, because the FEIR failed to identify the home ranges of the birds that occur in the Project region, it lacks substantial evidence to support the conclusion that the Project would impact only one-tenth of one percent of the home range.

By contrast, Mr. Cashen explains that the Project site contains a relative abundance of foraging habitat in close proximity to nesting territory, which is an important factor in the survival of Swainson's hawks in the area.³² Mr. Cashen concludes that the loss of habitat caused by Project development is likely to result in a significant impact to Swainson's hawk that the FEIR fails to disclose and mitigate.

B. Fairy Shrimp.

The FEIR fails to include adequate mitigation to reduce the Project's potentially significant impacts on fairy shrimp to less than significant levels, and fails to ensure that the Project will comply with all other applicable laws, as required by CEQA.

MM BIO-7 requires the Applicant to mitigate impacts to occupied habitat at a 2:1 ratio if listed fairy shrimp are detected within any of the vernal pools at the Project site. However, MM BIO-7 fails to ensure that the Project will comply with all other applicable laws. Like the DEIR, the FEIR fails to require the Applicant to undertake any Endangered Species Act consultation with the USFWS. The FEIR

³⁰ Exhibit B, p. 11.

³¹ *Id.*

³² *Id.* at p. 12.

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also fails to require the Applicant to obtain an incidental take permit prior to the “take” of any listed fairy shrimp species at the site. As a result, the FEIR fails to ensure the Project would comply with Section 9 of the Endangered Species Act.

Mr. Cashen initially raised this issue in his DEIR Comments. The FEIR’s response merely states that “listed species are not expected to occur and there will be no need to obtain an incidental take permit from USFWS for the Project.”³³ As Mr. Cashen explains, this response is entirely dismissive of the potential for fairy shrimp to occur at the Project site, and is unsupported, due to the FEIR’s failure to conduct wet season surveys to assess the presence of fairy shrimp at the Project site during the appropriate time of year. Thus, the FEIR lacks substantial evidence for its conclusion that the Project will not result in any significant impacts to fairy shrimp, and that there will be no need for the Applicant to obtain an incidental take permit from the USFWS.

V. THE FEIR CONTINUES TO IMPROPERLY RELY ON “PROJECT DESIGN FEATURES” AS UNENFORCEABLE MITIGATION MEASURES

Napa Residents previously commented that the DEIR improperly relied on non-binding Project Design Features (“PDFs”) to mitigate many of the Project’s significant impacts.³⁴ The PDFs include various measures to be implemented by the Applicant to prevent the occurrence of, or to minimize, the significance of potential environmental effects. CEQA defines “mitigation” as “[a]voiding the impact altogether by not taking a certain action or parts of an action; [m]inimizing impacts by limiting the degree or magnitude of the action and its implementation; [r]ectifying the impact by repairing, rehabilitating, or restoring the impacted environment; [r]educing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or [c]ompensating for the impact by replacing or providing substitute resources or environments.”³⁵ The PDFs are therefore “mitigation” within the meaning of CEQA.

The FEIR continues to rely on PDFs to mitigate Project impacts without incorporating them into the Project’s mitigation program. In particular, the FEIR

³³ FEIR, RTC, pp. 7-8.

³⁴ See Napa Residents DEIR Comments, pp. 25-28.

³⁵ 14 CCR § 15370.

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continues to apply PDFs to the Project's unmitigated impacts on aesthetics, air quality, and GHG emissions. The FEIR then concludes that implementation of PDFs will reduce the Project's significant impacts in these areas to less than significant levels. However, the FEIR fails to incorporate these PDFs as binding mitigation measures in either the FEIR's Mitigation Monitoring and Reporting Program ("MMRP") or the Staff Report's proposed Conditions of Approval ("Conditions").

CEQA requires that mitigation measures be enforceable through conditions of approval, contracts or other means that are legally binding.³⁶ This requirement is intended to ensure that mitigation measures will actually be implemented, not merely adopted and then ignored.³⁷ A review of the MMRP and proposed Conditions demonstrates that only four PDFs related to noise have been incorporated as binding mitigation.³⁸ The remaining PDFs are not included as either mitigation measures or Conditions, and are therefore unenforceable.

The below table identifies the PDFs which the FEIR relies upon to conclude that impacts will be reduced as a result of their application, but which are not included as binding mitigation measures anywhere in the FEIR or Staff Report:

<u>Resource</u>	<u>Project Design Feature(s)</u>	<u>Relied on to Reduce Impacts?</u>	<u>Included in MMRP or Conditions of Approval?</u>
Aesthetics	"The aesthetics components of the proposed Project include vehicle and pedestrian access, truck delivery access, common space areas, and building materials and features... [including]... "design elements such as wood trellis, pergolas for entryways, water features, low walls with	Yes	No

³⁶ PRC § 21081.6(b); 14 CCR § 15126.4(a)(2); *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

³⁷ *Fed'n of Hillside & Canyon Ass'n v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1261; *Anderson First Coal. v. City of Anderson* (2005) 130 Cal.4th 1173, 1186.

³⁸ See FEIR MMRP, p. 13.

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	decomposed granite, pavers, and outdoor fire pits” ³⁹ ...”Special Mitigation Measures: None required. The analysis indicates that, with implementation of project design features and the City’s Standard Mitigation Measures, the proposed Project would not have a significant effect on aesthetics.” ⁴⁰		
Air Quality	<p>“Design features will be incorporated into the Project to reduce or eliminate air quality impacts during construction and operational phases.”⁴¹</p> <p>“1. Designate at least 53 clean air vehicle (i.e., electric vehicle) parking spaces;...</p> <p>4. Planting of at least 430 new trees on-site;</p> <p>5. Instate a shuttle program which would reduce project trip generation by at least 180 trips per day.”⁴²</p>	Yes	No
GHG Emissions	<p>“• Implement NEV Network (electronic vehicle charging stations)</p> <ul style="list-style-type: none"> • Exceed Title 24 by 20% • Install High Efficiency Lighting (20% reduction) • Apply Water Conservation Strategy (20% indoor and 20% outdoor) • Institute Recycling and Composting Services (20% reduction) • Sequestration (planting of at least 	Yes	No

³⁹ FEIR, p. 5.1-12.

⁴⁰ FEIR, p. 5.1-37.

⁴¹ FEIR, p. 5.2-15.

⁴² FEIR, Appendix D, p. 17 (described in Appendix as “Mitigation Measure AQ-2,” but MMRP and Conditions do not contain this mitigation measure.

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	430 trees).” ⁴³		
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The FEIR and Conditions of Approval must be revised and recirculated to incorporate all PDFs as binding mitigation measures. Without incorporating these PDFs as binding mitigation in the MMRP or as Conditions of Approval, the City and the public lack a mechanism to enforce the PDFs, and to require that the Applicant implement them in the first place. Because the PDFs are currently unenforceable, the FEIR also lacks substantial evidence to support its conclusions that application of the PDFs will result in impacts being mitigated to less than significant levels or to the greatest extent feasible.

VI. THE CITY HAS NOT TAKEN ALL STEPS NECESSARY TO ADOPT OF A STATEMENT OF OVERRIDING CONSIDERATIONS

Before it can approve the Project, the City must certify the Project’s Final EIR and make mandatory CEQA findings. Those findings must include (1) that the Final EIR complies with CEQA, (2) that the City has mitigated all significant environmental impacts to the greatest extent feasible, and (3) that any remaining significant environmental impacts are acceptable due to overriding considerations.⁴⁴ Where, as here, the Project will have a significant effect on the environment, the City may not approve the Project unless it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”⁴⁵

The FEIR concludes that the Project’s GHG impacts will be significant and unavoidable.⁴⁶ Accordingly, in order to approve the Project, the City must make a finding that the Project’s excessive GHG emissions are acceptable due to overriding considerations. The Staff Report includes a proposed Statement of Overriding Considerations for recommendation by the Planning Commission to the City Council.⁴⁷ However, the FEIR fails to include substantial evidence to support the

⁴³ FEIR, p. 5.6-12.

⁴⁴ 14 CCR sections 15090, 15091.

⁴⁵ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

⁴⁶ FEIR, p. 5.6-13; FEIR RTC, p. 63.

⁴⁷ See Staff Report, Attachment 3, p. 1.

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requisite findings. As discussed below, the Planning Commission lacks substantial evidence to support a recommendation to the City Council regarding the proposed Statement of Overriding Considerations because the FEIR fails to incorporate all feasible mitigation measures to reduce GHG emissions to the greatest extent feasible, and fails to address all factors required by CEQA to support a determination of overriding benefits.⁴⁸

A. The FEIR Fails to Adopt All Feasible Mitigation Measures to Reduce GHG Emissions to the Greatest Extent Feasible Before Declaring Them Significant and Unavoidable.

The FEIR explains that the Project will result in significant, long-term operational GHG emissions caused by day-to-day Project operation and maintenance, use of consumer products, energy and water usage, solid waste disposal, and vehicle trips associated with employees, visitors, and hotel guests.⁴⁹

The FEIR estimates that the Project's unmitigated operational GHG emissions would be approximately 2,277 metric tons of carbon dioxide equivalents per year ("MT CO₂e/yr").⁵⁰ The FEIR then applies GHG reductions from the assumed implementation of six (6) Project Design Features to conclude that the Project's mitigated GHG emissions would be 2,058 MT CO₂e/yr.⁵¹ The FEIR concludes that, even with application of the Project Design Features, the Project's mitigated GHG emissions will still exceed the BAAQMD's threshold of 1,100 MT CO₂e/yr, and will therefore remain significant and unavoidable.⁵² The FEIR explains that the remaining, unmitigated GHG emissions will be primarily the result of mobile emissions and energy consumption for hotel workers and guests.⁵³

Before it can adopt a Statement of Overriding Considerations due to the Project's significant and unavoidable GHG emissions, the City must first ensure that it has mitigated all significant environmental impacts to the greatest extent

⁴⁸ Pub. Resources Code, § 21081, subds. (a)(3) and (b).

⁴⁹ FEIR, p. 5.6-8.

⁵⁰ FEIR, p. 5.6-11; Appendix D, pp. 15-16.

⁵¹ FEIR, p. 5.6-14.

⁵² FEIR, p. 5.6-11.

⁵³ FEIR, p. 5.6-14.

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feasible.⁵⁴ The FEIR fails to meet this threshold requirement for two reasons. First, as discussed above, the FEIR fails to incorporate its proposed GHG Project Design Features as binding mitigation measures. Implementation of the PDFs is assumed in the FEIR, but the PDFs are not included in the MMRP. The PDFs are therefore non-binding and unenforceable, and cannot be relied upon to reduce the Project's GHG emissions at all, let alone "to the greatest extent feasible."⁵⁵

Second, the FEIR fails to require all feasible mitigation measures that can contribute to additional GHG reductions. The FEIR contains a single GHG mitigation measure, Mitigation Measure GHG-1, which would require on-site processing of winery wastewater, implementation of the 2013 Title 24 Green Building standards related to energy efficiency in the Project's hotel buildings, and implementation of a recycling program to divert 20% of waste created on the Project site.⁵⁶ While the measures required under Mitigation Measure GHG-1 are likely to lead to some reduction in GHG emissions, none of them include the 6 PDF GHG measures that the FEIR relies on to conclude that GHG emissions would be reduced to 2,058 MT CO₂e/yr. Therefore, Mitigation Measure GHG-1 does not support the FEIR's conclusion that the Project's GHG emissions will be reduced to the greatest extent feasible, because there are at least 6 additional mitigation measures that would further reduce GHG impacts which the FEIR considers feasible, but which it fails to require.

Additionally, the FEIR rejects all fourteen (14) GHG mitigation measures proposed by Napa Residents' air quality experts as either infeasible or already incorporated under Mitigation Measure GHG-1's Title 24 requirements,⁵⁷ but fails to identify any additional measures that may be available to reduce these impacts. Instead, the FEIR simply concludes that GHG emissions have been mitigated to the greatest extent feasible.⁵⁸ Contrary to the FEIR's conclusions, there are several additional, feasible mitigation measures available to further reduce the Project's

⁵⁴ 14 CCR sections 15090, 15091.

⁵⁵ The FEIR's Air Quality Analysis (Appendix D) assumed that the PDFs would be incorporated as binding mitigation measures. See Appendix D, pp. 15-17. Appendix D refers to "Mitigation Measure AQ-2," which includes the GHG PDFs. However, neither the DEIR's mitigation matrix, the FEIR's MMRP, nor the Staff Report's proposed Conditions of Approval, contain a "Mitigation Measure AQ-2" or any of the GHG PDFs.

⁵⁶ See FEIR MMRP, pp. 5-6.

⁵⁷ See FEIR RTC, pp. 107-113.

⁵⁸ FEIR, p. 5.6-14.

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GHG emissions from mobile sources and customer energy usage that the FEIR failed to consider. Some of these measures include:

- Require electric vehicle charging stations on the Project site as binding mitigation. There is substantial market evidence demonstrating that installation of electric vehicle charging stations at hotels is likely to result in increased patronage by guests with lower or no-GHG emitting electric vehicles, and can also result in financial incentives to the property owner for installing EV charging devices.⁵⁹ (The FEIR currently proposes a PDF which vaguely says “implement NEV network,” but fails to include this PDF as a binding mitigation measure, and specify the number of electric vehicle charging spaces that will be provided.⁶⁰)
- Implement a bike sharing program at the Project site. Bike sharing programs are widespread and feasible, and are currently offered by other hotel chains, such as Wyndham and Affinia Hotels and Suites.⁶¹ If the City or Applicant raise cost concerns over the feasibility of a hotel-sponsored bike sharing program, the Applicant could offer parking lot space for an installation of a pay-by-ride bike station by an independent third-party bike-sharing program, such as Ford’s “Go Bike” program.⁶² (The Project currently proposes to install on-site bike racks and bike storage, but does not provide bicycles for guest use.⁶³)
- Require fair share contributions to local public transit. The Staff Report contains Conditions of Approval requiring over \$1 million in fair share contributions from the Applicant for highway and intersection improvements,⁶⁴ but none for municipal public transit.
 - The FEIR’s Traffic Study shows the Project is estimated to generate 184 trips in the AM peak hour, 182 trips in the PM peak hour and

⁵⁹ See e.g. https://www.hotel-online.com/press_releases/release/why-hotels-are-charging-up-for-electric-vehicles; <https://www.usatoday.com/story/money/cars/2017/08/11/electric-cars-take-off-theyll-need-place-charge/559126001/>.

⁶⁰ FEIR, 5.6-12.

⁶¹ See <https://www.wyndhamhotels.com/hawthorn-extended-stay/hotel-deals/bike-sharing>; <https://www.affinia.com/special-offers/offer/bike-program-1.18133>; http://www.republicbike.com/bikes_for_hotels.asp; <https://www.americaninno.com/boston/bike-sharing-the-modern-hotel-amenity/>.

⁶² See <https://www.fordgobike.com/>.

⁶³ FEIR, p. 4-40.

⁶⁴ See FEIR, p. 5.13-36; Staff Report, p. 24.

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1,946 daily trips.⁶⁵ City of Napa General Plan Policy T-1.2 requires the City to assess fees on new development to cover the fair share portion of that development's "impacts on the local and regional transportation system."⁶⁶ The "transportation system" includes the public transit system,⁶⁷ not just physical impacts on roadways from vehicles. Under Policy T-1.2, the City has the authority, and indeed the duty, to impose fees on an applicant to contribute to the City's public transit system. The FEIR proposes to implement a private resort shuttle to carry 27 passengers to Downtown Napa, and assumes a trip reduction of 180 vehicles/day for this amenity.⁶⁸ However, the Project's GHG impacts from vehicle trips remains significant even with the proposed shuttle, assuming it is implemented.⁶⁹ Therefore, the City has a duty to require additional, feasible GHG mitigation to further reduce vehicle trips. A fair share contribution to the City's public transit system is feasible, and is likely to increase the availability of public transit services to hotel guests and workers. More robust and frequent public transit services are likely reduce the need for local car trips by hotel guests, workers, and winery visitors.

- Implement mitigation measures to effect Zero Net Emissions ("ZNE") for GHGs by the Project. A ZNE mitigation plan was recently approved, and is currently being implemented for the Newhall Ranch development in Los Angeles County.⁷⁰

The FEIR must be revised to consider these and any other feasible GHG mitigation measures as binding mitigation for the Project before the City can conclude that the Project's GHG impacts are significant and unavoidable, and before the Planning Commission can recommend adoption of a Statement of Overriding Considerations.

⁶⁵ FEIR, 5.13-1.

⁶⁶ FEIR, p. 5.13-6.

⁶⁷ See e.g. FEIR, p. 5.13-6 ("Existing Transit System depicts the bus routes in the general vicinity of the Project.").

⁶⁸ FEIR, p. 5.13-19 to 20.

⁶⁹ The FEIR fails to include the shuttle as binding mitigation in the MMRP.

⁷⁰ See Exhibit C, Newhall Ranch 2017 Revised Mitigation Plan.

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B. The Statement of Overriding Consideration Must Consider Whether the Project Provides Employment Opportunities for Highly Trained Workers

As previously stated, the City concluded in the FEIR that the Project will have significant and unavoidable environmental impacts related to GHG emissions.⁷¹ Therefore, in order to approve the Project, CEQA requires the City to adopt a statement of overriding considerations, providing that the Project's overriding benefits outweigh its environmental harm.⁷² An agency's determination that a project's benefits outweigh its significant, unavoidable impacts "lies at the core of the lead agency's discretionary responsibility under CEQA."⁷³

In adopting a statement of overriding considerations, the City must set forth the reasons for its action, pointing to supporting substantial evidence in the administrative record.⁷⁴ This requirement reflects the policy that public agencies must weigh a project's benefits against its unavoidable environmental impacts, and may find the adverse impacts acceptable only if the benefits outweigh the impacts.⁷⁵ Importantly, a statement of overriding considerations is legally inadequate if it fails to accurately characterize the relative harms and benefits of a project.⁷⁶

In this case, in order to recommend Project approval to the City Council, the Planning Commission must find that the Project's significant, unavoidable impacts are outweighed by the Project's benefits to the community. CEQA specifically references employment opportunities for highly trained workers as a factor to be considered in making the determination of overriding benefits.⁷⁷ Currently, there is not substantial evidence in the record showing that the Project's significant, unavoidable impacts are outweighed by benefits to the community. For example, the Applicant has not made any commitments to employ graduates of state approved apprenticeship programs or taken other steps to ensure employment of

⁷¹ FEIR, p. 63, Responses to Comments.

⁷² CEQA Guidelines, § 15043.

⁷³ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

⁷⁴ Pub. Resources Code, § 21081, subd. (b); CEQA Guidelines, § 15093, subds. (a) and (b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 357.

⁷⁵ Pub. Resources Code, § 21081(b); CEQA Guidelines, § 15093, subds. (a) and (b)

⁷⁶ *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.

⁷⁷ Pub. Resources Code, § 21081, subds. (a)(3) and (b).

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highly trained and skilled craft workers on Project construction. Therefore, the City would not fulfill its obligations under CEQA if it adopted a statement of overriding considerations and approved the Project.

VII. CONCLUSION

We urge the Planning Commission to remand the Project to City Staff to prepare and circulate a revised EIR which identifies the Project's potentially significant impacts, requires all feasible mitigation measures and analyzes all feasible alternatives to reduce impacts to a less than significant level. If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers. The Planning Commission cannot recommend approval of the Project until the City prepares a revised EIR that resolves these issues and complies with CEQA's requirements.

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro

CMC:acp

Attachments

4140-004acp

EXHIBIT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405
Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

May 16, 2018

Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on the Trinitas Mixed-Use Project

Dear Ms. Caro,

We reviewed the January 2018 Draft Environmental Impact Report (DEIR) and associated appendices for the Trinitas Mixed-Use Project ("Trinitas Project") and submitted a February 14, 2018 letter addressing deficiencies in the DEIR's impact analyses. Specifically, we found that the DEIR failed to adequately evaluate the Trinitas Project's potential health risk impacts posed to nearby sensitive receptors as a result of emissions generated during construction and operational activities.

Further review of the Trinitas Project demonstrates that it is one component of a three-part commercial hotel development project by the Project Applicant, which will operate as a single project ("Meritage Project") at full buildout. However, the DEIR failed to properly evaluate the combined potential environmental impacts resulting from construction and operation of the Trinitas Project and operation of the two other commercial hotels, referred to as the Meritage Resort Project and the Meritage Commons Project. Because the three developments will operate as one project, the DEIR should have evaluated the impacts of all three developments together. By failing to analyze all components of the Meritage Project, the significance determinations made within the Trinitas DEIR cannot, and should not, be relied upon to determine the potential impacts that construction and operation will have on the surrounding environment. Our analysis, discussed herein, demonstrates that when the emissions from the Meritage Commons Project, which is currently under construction, and the Trinitas Project are evaluated together, new and more severe significant impacts than what was previously identified within the DEIR would occur.

A revised DEIR should be prepared and recirculated to discuss and adequately evaluate the environmental impacts of all three components and to implement appropriate mitigation measures, where necessary. Until such an analysis is prepared, the Trinitas DEIR should not be approved.

Air Quality and Greenhouse Gas

Failure to Assess Air Quality and Greenhouse Gas Impacts from All Project Components

As mentioned above, the Trinitas Project is being proposed as part of the Meritage Project that comprises of two other commercial hotel developments. The first component is the Meritage Resort, which was approved in 2004 (DEIR, p. 3-1). The Meritage Commons Project is the second component and is a hotel expansion project that is currently under construction (DEIR, p. 3-1). Finally, the Trinitas Project is the third component, proposing to expand the existing Meritage hotel and adding a 253-guest room hotel, winery, and office complex (DEIR, p. 2-1). Since the Meritage Resort, Meritage Commons, and Trinitas Project have the same Project Applicant and will share the same operations, the DEIR should have evaluated all three components together in order to provide an accurate and comprehensive analysis of the potential air quality and GHG impacts that would result from these developments (DEIR, p. 3-1, p. 4-12). The Trinitas DEIR, however, failed to include any such analysis. By failing to prepare such an analysis, the additional air quality impacts that would occur if the DEIR for the Trinitas Project was approved are unknown and potentially significantly underestimated.

Because the Meritage Commons Project is already under construction, in an effort to evaluate the air quality impacts that would occur during construction of this development in conjunction with the proposed Trinitas Project, we conducted a simple, conservative analysis. We added all of the criteria air pollutant emissions generated during construction of the Trinitas Project and the Meritage Commons Project and then compared the sum of these emissions to the Bay Area Air Quality Management District's ("BAAQMD") significance thresholds.¹ This method of determining significance provides an accurate representation of the Project's potential air quality impacts that would occur as a result of construction of the Trinitas Project and the Meritage Commons Project (see table below).

Average Daily Construction Emissions (lbs/day)				
Development	ROG	NOx	PM10	PM2.5
Trinitas	8.9	32.8	1.6	1.5
Trinitas and Meritage Commons	21.6	68.6	3.6	3.4
Percent Difference	143%	109%	125%	127%
BAAQMD Regional Threshold (lbs/day)	54	54	82	54
Threshold Exceeded?	No	Yes	No	No

When the construction emissions from the Trinitas and Meritage Commons Project are combined, we find that construction-related NOx emissions would exceed the BAAQMD's established threshold of 54 pounds per day (lbs/day). Additionally, we see that ROG, PM10, and PM2.5 emissions increase significantly when the combined emissions from construction of both developments are evaluated. This demonstrates that if the DEIR for the Trinitas Project is approved, the combined emissions resulting

¹ See BAAQMD's May 2017 CEQA Air Quality Guidelines, available at http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, at p. 2-6.

from construction of the Trinitas Project and the Meritage Commons Project would result in a significant air quality impact which was not previously evaluated.

It should be noted that construction will also generate substantial toxic air contaminant (“TAC”) emissions, such as diesel particulate matter (“DPM”), during the construction of both commercial hotel developments. It is possible that the combined construction emissions could increase TAC emissions above applicable thresholds of significance, causing a significant health risk to the public. For this reason, a health risk assessment must be prepared to analyze TAC emissions generated by construction of both hotel developments.

Furthermore, in an effort to evaluate the GHG impacts that would occur during operation of the Trinitas and Meritage Commons Projects we conducted an additional analysis. We added the greenhouse gas (GHG) emissions generated during construction and operation of both developments and then compared the sum of these emissions to the BAAQMD’s bright-line significance threshold of 1,100 metric tons of carbon dioxide equivalents per year (MT CO₂e/yr).² This method of determining significance provides an accurate representation of the Project’s potential GHG impact that would occur as a result of operation of the Trinitas Project and the Meritage Commons Project (see table below).

Combined Annual Greenhouse Gas Emissions	
Project	GHG Emissions (MT CO₂e/Yr)
Trinitas	2,058
Meritage Commons	1,063
Combined Total	3,121
BAAQMD Threshold	1,100
<i>Exceed?</i>	<u>Yes</u>

As shown above, the combined GHG emissions generated by construction and operation of both projects would be approximately 3,121 MT CO₂e/yr. The Trinitas DEIR previously determined that the project’s mitigated emissions would be approximately 2,058 MT CO₂e/yr, resulting in a significant impact (Appendix D, p. 16). The Air Quality and Greenhouse Gas Assessment prepared for the Meritage Commons Project, included in the project’s Mitigated Negative Declaration (MND), however, determined that the project’s GHG emissions would be approximately 1,063 MT CO₂e/yr, resulting in a less than significant impact (Appendix A, pp. 12). Our analysis demonstrates that the GHG impact resulting from the combined emissions generated by the Trinitas Project and Meritage Common Project would result in a more significant impact than what was previously identified in the Trinitas Project DEIR and the Meritage Common MND.

By failing to conduct a proper analysis of the air quality and GHG impacts that would occur as a result of the development of two commercial hotels on the Project site, the impact on local and regional air

² See BAAQMD’s May 2017 CEQA Air Quality Guidelines, available at http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, at p. 2-6.

quality is greatly underestimated. As such, a revised DEIR should be prepared to include an updated air quality and GHG analysis that accurately describes and evaluates the environmental impacts that would occur as a result of construction and operation of the Trinitas and Meritage Commons projects.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Hadley Nolan

Tel: (949) 887-9013

Email: mhagemann@swape.com**Matthew F. Hagemann, P.G., C.Hg., QSD, QSP**

**Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt’s responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt’s duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, *Oxygenates in Water: Critical Information and Research Needs*.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.

- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.

HADLEY KATHRYN NOLAN

Technical Consultation, Data Analysis and
Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE

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EDUCATION

UNIVERSITY OF CALIFORNIA, LOS ANGELES B.S. ENVIRONMENTAL SCIENCES & ENVIRONMENTAL SYSTEMS AND SOCIETY JUNE 2016

PROJECT EXPERIENCE**SOIL WATER AIR PROTECTION ENTERPRISE****SANTA MONICA, CA****AIR QUALITY SPECIALIST****SENIOR PROJECT ANALYST: CEQA ANALYSIS & MODELING**

- Modeled construction and operational activities for proposed land use projects using CalEEMod to quantify criteria air pollutant and greenhouse gas (GHG) emissions.
- Organized presentations containing figures and tables that compare results of criteria air pollutant analyses to thresholds.
- Quantified ambient air concentrations at sensitive receptor locations using AERSCREEN, a U.S. EPA recommended screening level dispersion model.
- Conducted construction and operational health risk assessments for residential, worker, and school children sensitive receptors.
- Prepared reports that discuss adequacy of air quality and health risk analyses conducted for proposed land use developments subject to CEQA review by verifying compliance with local, state, and regional regulations.

SENIOR PROJECT ANALYST: GREENHOUSE GAS MODELING AND DETERMINATION OF SIGNIFICANCE

- Evaluated environmental impact reports for proposed projects to identify discrepancies with the methods used to quantify and assess GHG impacts.
- Quantified GHG emissions for proposed projects using CalEEMod to produce reports, tables, and figures that compare emissions to applicable CEQA thresholds and reduction targets.
- Determined compliance of proposed land use developments with AB 32 GHG reduction targets, with GHG significance thresholds recommended by Air Quality Management Districts in California, and with guidelines set forth by CEQA.

PROJECT ANALYST: ASSESSMENT OF AIR QUALITY IMPACTS FROM PROPOSED DIRECT TRANSFER FACILITY

- Assessed air quality impacts resulting from implementation of a proposed Collection Service Agreement for Exclusive Residential and Commercial Garbage, Recyclable Materials, and Organic Waste Collection Services for a community.
- Organized tables and maps to demonstrate potential air quality impacts resulting from proposed hauling trip routes.
- Conducted air quality analyses that compared quantified criteria air pollutant emissions released during construction of direct transfer facility to the Bay Area Air Quality Management District's (BAAQMD) significance thresholds.
- Prepared final analytical report to demonstrate local and regional air quality impacts, as well as GHG impacts.

PROJECT ANALYST: EXPOSURE ASSESSMENT OF LEAD PRODUCTS FOR PROPOSITION 65 COMPLIANCE DETERMINATION

- Calculated human exposure and lifetime health risk for over 300 lead products undergoing Proposition 65 compliance review.
- Compiled and analyzed laboratory testing data and produced tables, charts, and graphs to exhibit emission levels.
- Compared finalized testing data to Proposition 65 Maximum Allowable Dose Levels (MADLs) to determine level of compliance.
- Prepared final analytical lead exposure Certificate of Merit (COM) reports and organized supporting data for use in environmental enforcement statute Proposition 65 cases.

ACCOMPLISHMENTS

- **Academic Honoree**, Dean's List, University of California, Los Angeles

MAR 2013, MAR 2014, JAN 2015, JAN 2016

EXHIBIT B

May 16, 2018

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on the Final Environmental Impact Report Prepared for the Trinitas Mixed-Use Project

Dear Ms. Caro:

I submitted an extensive comment letter in response to the Draft Environmental Impact Report (“DEIR”) prepared by the City of Napa (“City”) for the Trinitas Mixed-Use Project (“Project”). That comment letter established my professional qualifications and described the actions I took to evaluate the DEIR and underlying analyses. The subsequent comments address the Final Environmental Impact Report (“FEIR”) that has been prepared for the Project. The numbering associated with the headers below correspond to the comment numbers assigned in the FEIR.

EXISTING CONDITIONS ISSUES

Special-status Plants (C-B2)

The Applicant’s consultant, Glenn Lukos Associates (“GLA”), failed to conduct appropriately-timed (protocol-level) surveys for special-status plant species at the Project site. The FEIR asserts:

As noted in Response to Comment C-B1, previous grading and ongoing disturbance associated with weed control on the site (page 2-1 Project Description and page 5.1-1 Existing Conditions of the DEIR, respectively) have adversely impacted the site such that the site supports a significant component of non-native grasses and forbs consistent with such disturbance (page 5.3-1 Biological Resources Existing Conditions).

During the botanical surveys on the site, the areas identified as potential wetlands were carefully surveyed for the remains of the saline clover (*Trifolium hydrophilum*), dwarf downingia (*Downingia pusilla*), and Alkali milk-vetch (*Astragalus tener* var. *tener*), which were noted in the Biological Technical Report and in the DEIR on Table 5.3-2 Special-Status Plants Evaluated for the Study Site (page 5.3-10). The only wetland species detected in Features A and C were spikerush (*Eleocharis macrostachya*), and non-native rabbitsfoot grass (*Polypogon monspeliensis*), and curly dock (*Rumex crispus*). Feature B did not support these wetland species. Based on this combination of factors it was appropriately determined that the site does not support the above-reference special-status species. Furthermore, given that there were no remains of other species, it is appropriate to conclude that legenere (*Legenere limosa*) and Lobb’s aquatic buttercup (*Ranunculus lobbii*) do not occur on the site.¹

There are three reasons why these are spurious arguments:

¹ RTC, C-B2.

First, almost all grasslands in California are characterized by “a significant component of non-native grasses and forbs.”² Furthermore, the vernal pools at the Project site are dominated by a native species (pale spikerush).³ As a result, the “significant component of non-native grasses and forbs” at the Project site does not preclude the potential presence of special-status plants, especially in the vernal pools. Indeed, despite past disturbances and the abundance of non-native grasses and forbs (in the grassland), special-status plants have the potential to occur at the site as long as the soil seed bank has not been removed. The presence of pale spikerush (a rhizomatous perennial) at the site demonstrates that the seed bank has not been removed.

Second, previous grading and ongoing disturbance associated with weed control do not eliminate the potential for special-status plant species to occur at the site. In my previous comment letter I identified five special-status plant species that have the potential to occur at the Project site.⁴ The California Natural Diversity Database (“CNDDDB”) has occurrence records for four of these species (i.e., saline clover, alkali milk-vetch, dwarf downingia, and legenere). All four species have been detected at locations that have been subject to grading, mowing, or other forms of disturbance similar to those that have occurred at the Project site (Table 1; Figures 1 and 2).⁵ Indeed, at least some of these species may benefit from disturbance. For example, anecdotal evidence suggests that: (a) alkali milk-vetch may benefit from some types of temporary surface disturbance,⁶ and (b) disking appears to increase cover of dwarf downingia.⁷

Third, GLA’s failure to locate remains of saline clover, dwarf downingia, and alkali milk-vetch during its “general field reconnaissance survey” on 2 August 2017 is not evidence that those three species are absent from the Project site. Similarly, it is not evidence that legenere and Lobb’s aquatic buttercup are absent from the Project site. As discussed in my previous comment letter, because all five species are annual herbs, their remains would not have been evident during GLA’s survey in August. Indeed, according to the Consortium of California Herbaria, these five species have never been collected during the month of August (i.e., because they are not present for botanists to collect specimens).^{8,9}

² U.S. Fish and Wildlife Service. 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. U.S. Fish and Wildlife Service, Portland, Oregon. p. I-14.

³ DEIR, p. 5.3-8.

⁴ Comment C-B4.

⁵ California Natural Diversity Database. 2018 May 1. RareFind 5. California Department of Fish and Wildlife.

⁶ U.S. Fish and Wildlife Service. 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. U.S. Fish and Wildlife Service, Portland, Oregon. p. II-121.

⁷ California Natural Diversity Database. 2018 May 1. RareFind 5. California Department of Fish and Wildlife. EOn dx #44061.

⁸ Data provided by the participants of the Consortium of California Herbaria. Available at: <ucjeps.berkeley.edu/consortium>. (Accessed 2018 May 14).

⁹ The Consortium of California Herbaria database includes over 2.2 million specimen records from 37 institutions. See <<http://ucjeps.berkeley.edu/consortium/about.html>>.

Table 1. Examples of CNDDDB occurrence records associated with disturbed sites containing special-status plant species with potential to occur at the Project site.

Species	CNDDDB Occurrence No.	CNDDDB Comments
Saline clover	43	<i>Immediate area has undergone a number of disturbances within past 10 years including disking and development.</i>
Dwarf downingia	65	<i>Site is grazed by cattle and has been leveled and disked in the past.</i>
Dwarf downingia	103	<i>Area is grazed and portions disked. Disking appears to increase cover or Downingia. Herbicide occasionally applied.</i>
Dwarf downingia	118	<i>Cattle grazing, Extensive grading occurred in this portion of property for rice farming, but this area never seeded.</i>
Dwarf downingia	121	<i>In a recently plowed, about 10 acre vernal pool dominated by Eleocharis macrostachya.¹⁰</i>
Alkali milk-vetch	37	<i>Disking for fire prevention (mowed in 2002), exotic species, car tracks.</i>
Alkali milk-vetch	44	<i>Competition from Salsola, Lepidium latifolium, etc. Historic disking, herbicide use, and fire suppression.</i>
Alkali milk-vetch	72	<i>Area formerly cultivated as ag land but is now converting to alkali grassland/alkali sink scrub.</i>
Legenere	33	<i>Wetland disked/mowed annually for fire break; “dirt-biking use and refuse dumping also impact.</i>
Legenere	48	<i>Year-round cattle grazing and historic disking of land.</i>

¹⁰ Features A and C at the Project site are dominated by *Eleocharis macrostachya*.



Figure 1. Google Earth image from 2009. Red circle depicts disturbance and the location of saline clover plants detected during 2011 botanical survey.



Figure 2. Google Earth image from 2010. Red circle depicts disturbance and the location of saline clover plants detected during 2011 botanical survey.

Botanical Surveys (C-B3 and C-B4)

The California Department of Fish and Wildlife (“CDFW”) submitted a comment letter in response to the Notice of Preparation that was issued for the Project. The letter identified three special-status plant species that are known to occur, or that have the potential to occur, in or near the Project site. It then stated:

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and require the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

I commented that contrary to CDFW’s guidance, the Applicant did not conduct botanical surveys according to CDFW protocols.¹¹ The FEIR claims: “[t]his comment mischaracterizes the NOP comment letter received from CDFW.”¹² It argues:

The CDFW NOP comment letter did not request or require botanical surveys for special-status plant species as claimed in the comment. Rather, the CDFW letter recommends surveys for special-status species with potential to occur... As detailed in Response to Comment C-B2 above, the surveys conducted provide sufficient evidence that the above referenced special-status species do not occur on the site and focused surveys for special-status plant species are not warranted.¹³

The FEIR’s argument is invalid because it is based on circular reasoning. Furthermore, the NOP comment letter clearly identifies saline clover, dwarf downingia, and alkali milk-vetch as “species that are known to occur, or that have the potential to occur, in or near the Project site,” and thus, botanical surveys for these three species “must be conducted during the blooming period...and require the identification of reference populations.”¹⁴

Even if the City was genuinely confused by the comments in CDFW’s NOP letter, CDFW’s botanical survey protocol (which was cited in the NOP letter) is clear in stating that appropriately-timed floristic surveys should be conducted whenever natural or naturalized vegetation occurs on a project site and the project has the potential for direct or indirect effects on vegetation.¹⁵ Natural and naturalized vegetation occur on and adjacent to the Project site, and the Project will have direct and indirect impacts on that vegetation.¹⁶ The “general field reconnaissance survey” conducted by GLA in August was incapable of detecting special-status plants that could be significantly impacted by the Project. Therefore, to establish existing conditions and comply with CDFW guidelines, the Applicant needs to conduct appropriately-timed botanical surveys throughout all portions of the Project area and buffer zone containing

¹¹ Comments C-B2 and C-B3.

¹² RTC C-B3.

¹³ *Ibid.*

¹⁴ DEIR, Appendix B (NOP Comment Letters): CDFW letter, p. 2.

¹⁵ California Department of Fish and Game. 2009. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. p. 3.

¹⁶ DEIR, Figure 4.4-1.

natural or naturalized vegetation. Data from those surveys are required to fully assess existing conditions, analyze Project impacts, and formulate appropriate mitigation for impacts to sensitive botanical resources.

Response to Comment (“RTC”) C-B3 further argues:

The habitat descriptions and species profiles contained within the Biological Technical Report provided detailed information related to the potential for special status-plant species to occur. Table 5.3-2 in the DEIR details 49 distinct special-status plant species including habitat requirements and occurrence.¹⁷

The FEIR’s claim contradicts evidence in the record. The DEIR does not provide any information on occurrences of special-status species in the vicinity of the Project site (e.g., from the CNDDDB and other databases). In addition, the habitat descriptions and species profiles contained within the DEIR and Biological Technical Report (“BTR”) are limited to a list of the general habitats and elevational ranges associated with each plant.¹⁸ Contrary to the FEIR’s claim, the BTR does not provide *detailed information*, and for most species, it does not provide *any scientific information* justifying GLA’s conclusions regarding the species’ potential to occur at the Project site.¹⁹ This issue is exacerbated because many of the BTR’s conclusions regarding potential for occurrence are inconsistent with scientific evidence and the rationale provided in the BTR.

For example, the BTR concluded that dwarf downingia, alkali milk-vetch, legenere, and Lobb's aquatic buttercup do not occur at the Project site because “the site does not contain habitat for the species and/or the site does not occur within the geographic range of the species.”²⁰ However, the BTR acknowledges all four species are associated with vernal pool habitats, which are present at the Project site.²¹ Although the BTR fails to describe the geographic range of these four species, their presence in the immediate vicinity of the Project site demonstrates that the site is within their respective ranges.²²

The issues described above are compounded by the FEIR’s false representation of the information provided in the BTR. Contrary to what the FEIR suggests, the BTR *did not* conclude that no special-status plant species occur on the Project site. Whereas it concluded that most of the species do not occur, it also concluded that six of the species are “not expected to occur on site.”²³ According to the BTR, the presence of those six species *cannot be ruled out*.²⁴

Because the FEIR fails to resolve the issues discussed in my previous comment letter, I maintain the conclusion that the City does not have the data needed to assess existing conditions, analyze Project impacts, and formulate appropriate mitigation for impacts to sensitive botanical resources.

¹⁷ Comments C-B2 and C-B3.

¹⁸ BTR, Table 4-2.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Comment C-B4, Table 1.

²³ *Ibid.*

²⁴ BTR, Table 4-2, p. 21.

Swainson's Hawk Nests (C-B10)

The DEIR and BTR conclude that there is no potential for Swainson's hawks to nest at the Project site due to a lack of suitable, large nesting trees.²⁵ I provided substantial evidence that DEIR and BTR's conclusion is incorrect.²⁶ The FEIR fails to address this issue. However, it now claims:

GLA conducted surveys for Swainson's hawk and carefully evaluated the few trees on the site for nests as well as all adjacent off-site trees. Neither Swainson's hawks nor any raptor nests were detected on the site in the few on-site trees or offsite where a substantial number of trees are growing along State Route 221 and/or Napa Valley Corporate Way.²⁷

In addition, it claims:

An additional survey was conducted on September 17, 2017 by Bargas Environmental Consulting who concluded: The trees along the borders of the project area are large enough to provide suitable nesting habitat for Swainson's hawk and white-tailed kite. Neither species nor existing nests were observed on site. The nearest CNDDDB occurrence for Swainson's hawk is approximately 0.75 miles southeast of the project.²⁸

The FEIR's response is not supported by evidence. The BTR provides no evidence that GLA conducted focused surveys for Swainson's hawks or their nest sites.²⁹ Moreover, there would have been no reason for GLA to "carefully evaluate" the trees for Swainson's hawk nests if those trees were not suitable or large enough to support Swainson's hawk nests (as reported in the BTR).

The FEIR indicates the "Bargas report" is included with the FEIR as Appendix A.³⁰ However, the Bargas report was not included with the FEIR, nor could I find it anywhere on the City's website. As a result, I could not evaluate the merits of the Bargas report or the information that the FEIR attributes to that report. Nevertheless, according to the FEIR, the Bargas report concluded that: (a) the trees along the borders of the project area are large enough to provide suitable nesting habitat for Swainson's hawk, and (b) the nearest CNDDDB occurrence for Swainson's hawk is approximately 0.75 miles southeast of the project. I concur with those conclusions.³¹ The City also appears to concur with those conclusions. As a result, it is unclear why the DEIR—which was published nearly four months after the Bargas survey—reported that: (a) the trees in the Project area are *not suitable* for Swainson's hawk nests, and (b) the nearest known Swainson's hawk nest recently recorded by CDFW (i.e., in the CNDDDB) is *more than 5 miles* from the site.³² At a minimum, this erroneous information misled the public during the CEQA comment period and casts doubt on the validity of the other information presented in the DEIR and BTR.

²⁵ DEIR, pp. 5.3-18 and -19. *See also* BTR, p. 35.

²⁶ Comment C-B10.

²⁷ RTC C-B10.

²⁸ RTC C-B10.

²⁹ BTR, pp. 3 and 4.

³⁰ RTC B-2.

³¹ *See* Comments C-B10 and C-B12.

³² Comments C-B10 and C-B11.

The FEIR incorrectly suggests that the failure to locate Swainson's hawks or their nest sites during GLA's survey in August, or Bargas' survey in September, is evidence that the Project site does not contain nest sites or breeding territories. Young Swainson's hawks typically fledge the nest between late July and early August.³³ After the young have fledged, Swainson's hawks start forming flocks and using communal roost sites instead of spending the night at the nesting territory. Adults in central California began gathering in flocks and roosting communally as early as August.³⁴ Migration from the Central Valley is usually completed by early September.³⁵ As a result, nesting activity would not have necessarily been evident during GLA's survey in August, and neither Swainson's hawks or nest sites would have been evident during Bargas' survey on September 17th.

The FEIR attempts to validate the BTR even though it clearly provided erroneous scientific information and conclusions. The FEIR argues:

It is also important to note, that while there have been sightings recorded in eBird, within 0.30 to 0.40 miles from this site, there are no records of Swainson's hawks nesting on the site or in the trees growing along State Route 221 and/or Napa Valley Corporate Way. Thus, GLA's conclusion in the Biological Technical Report that Swainson's are not expected to use the site is based on direct observation by different biologists as well as the appropriate data bases.³⁶

As explained below, these are spurious arguments.

First, there is no evidence that the Project site has even been surveyed for Swainson's hawk nests. Because the CNDDDB and eBird are "positive occurrence" databases, the absence of nest records is not evidence that Swainson's hawk nests are absent.³⁷ Furthermore, the "direct observations by different biologists" (i.e., surveys conducted by GLA and Bargas) were incapable of providing reliable information on the presence of Swainson's hawk nests on or near the Project site due to the timing of those observations.

Second, the BTR did not conclude that Swainson's hawks "are not expected to use the site." The BTR reported: "the potential frequency of use is not known."³⁸ Indeed, RTC C-B15 acknowledges that: "[n]o attempt was made to assess usage by Swainson's hawks as it is clear that they occur in and around Napa."

Third, the FEIR's assertion that GLA concluded Swainson's hawks are not expected to use the site is inconsistent with the FEIR's response to Comment C-B12. RTC C-B12 states:

³³ Woodbridge B. 1991. Habitat selection by nesting Swainson's hawks: a hierarchical approach. M.S. Thesis, Oregon State Univ., Corvallis, Oregon. p. 29. *See also* Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. p. 4.

³⁴ Woodbridge, B. 1998. Swainson's Hawk (*Buteo swainsoni*). In *The Riparian Bird Conservation Plan: a strategy for reversing the decline of riparian-associated birds in California*. California Partners in Flight. Available at: <https://www.prbo.org/calpif/htmldocs/species/riparian/swainsons_hawk.htm>.

³⁵ Woodbridge B. 1991. Habitat selection by nesting Swainson's hawks: a hierarchical approach. M.S. Thesis, Oregon State Univ., Corvallis, Oregon. p. 29.

³⁶ RTC, C-B10.

³⁷ In addition, eBird users rarely report nest sites, either due to limitations of the surveys, or to protect Sensitive Species. *See* <<http://help.ebird.org/customer/portal/articles/2885265>>.

³⁸ BTR, p. 42.

GLA included Swainson's hawk in the faunal compendium as it is expected to potentially occur on the site or in vicinity of the site as reflected in the explanatory note in the compendium: "The faunal compendium lists species that were either observed within or adjacent to the Study Area." GLA concurs and thus reported that the Swainson's hawk has been reported in proximity to the site.

Until the City obtains and analyzes data from focused surveys that adhere to the established survey protocol, it does not have the basis to conclude that the Project would not affect Swainson's hawk nests or breeding territories.³⁹

Swainson's Hawk Occurrence Records (C-B11)

The DEIR provides incorrect information on the occurrence of Swainson's hawks in the Project area. The FEIR's response to this issue states:

The Biological Technical Report reported previously documented occurrences within 0.30 to 0.40 miles from the site and is the appropriate data for use in addressing potential impacts to Swainson's hawk. The reference that the "... nearest known Swainson's hawk nest recently recorded by CDFW is more than 5 miles from the site" has been deleted from the EIR.⁴⁰

The BTR cited an eBird record, which it claimed was associated with a single sighting depicted in what is now a developed area approximately 0.30 to 0.40 miles south of the Project site.^{41,42} The BTR neglected to mention that the record is of two adults that were "soaring in the same general area they have been seen every year."⁴³ It also neglected to mention the numerous other records of Swainson's hawks occurring near the Project site.⁴⁴

I provided evidence that the CDFW has records of six Swainson's hawk nest sites within approximately 1.4 miles of the Project site.⁴⁵ Whereas the FEIR deleted the BTR's erroneous statement that the nearest known nest record is more than five miles from the Project site, it failed to incorporate into the FEIR any information on nearby nest sites. This is important because a single eBird record of two hawks soaring (foraging) in an area that is now developed is not the "appropriate data" for addressing potential impacts to Swainson's hawks.

The Project has the potential to significantly impact Swainson's hawks in two ways, which are not necessarily related: (1) through the loss of foraging habitat, and (2) by directly or indirectly affecting nest sites. Therefore, evaluating the Project's impact on foraging habitat requires site-specific data on Swainson's hawk use of the site for foraging (e.g., through point count surveys

³⁹ Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley.

⁴⁰ RTC, C-B11.

⁴¹ BTR, p. 42.

⁴² The distance from the location mapped in eBird and the edge of the Project site is only 0.17 mile.

⁴³ Niznik K. 2016. eBird Checklist: <https://ebird.org/view/checklist/S30230310>. eBird: An online database of bird distribution and abundance [web application]. eBird, Ithaca, New York. Available at: <<http://www.ebird.org>>. (Accessed: 2018 May 14).

⁴⁴ Comment C-B12.

⁴⁵ *Ibid.*

and a utilization distribution assessment).⁴⁶ Evaluating impacts to nest sites requires focused surveys to identify the locations of nest sites and a corresponding assessment of how Project activities may affect those nest sites.

Swainson's Hawk Presence (C-B12)

According to the faunal compendium provided in the BTR, the Swainson's hawk was one of the species that GLA "either observed within or adjacent to the Study Area."⁴⁷ RTC C-B12 argues that this comment mischaracterizes the faunal compendium provided in the BTR. According to the FEIR:

GLA included Swainson's hawk in the faunal compendium as it is expected to potentially occur on the site or in vicinity of the site as reflected in the explanatory note in the compendium: "The faunal compendium lists species that were either observed within or adjacent to the Study Area." GLA concurs and thus reported that the Swainson's hawk has been reported in proximity to the site.⁴⁸

The FEIR's response contradicts the evidence. As the response acknowledges, the explanatory note accompanying the faunal compendium clearly states that the compendium provides a list of species that were either observed within or adjacent to the Study Area—not that it is a list of species that *potentially occur* on the site or in the vicinity of the site.

Although the FEIR acknowledges GLA's conclusion that Swainson's hawks occur (or potentially occur) on or adjacent to the Project site, it jumps to the conclusion that the Project would not impact nesting Swainson's hawks because: (a) Swainson's hawks have not been reported on the site or in the trees bordering the site, and (b) the surveys in August and September 2017 further confirm the absence of Swainson's hawks.⁴⁹ The fallacy of this argument is obvious. Specifically, if Swainson's hawks occur on or adjacent to the Project site (as stated in the BTR); or if Swainson's hawks potentially occur on or adjacent to the Project site (as stated in RTC C-B12); they cannot be "confirmed" absent, and thus, they could be impacted by the Project. Moreover, the surveys conducted in August and September 2017 were incapable of "confirming" anything pertaining to Swainson's hawk nesting activity because: (a) they did not adhere to the survey protocol, (b) they were conducted too late in the season,⁵⁰ and (c) remnants of nest sites may would not necessarily have been visible because trees are heavily foliated in August and September.⁵¹ The fact remains that the Applicant has not conducted the surveys needed to ascertain the presence of Swainson's hawk nest sites on or adjacent to the Project site.

⁴⁶ Point count surveys are used to record avian abundance and activity duration within a three-dimensional plot. A utilization distribution assessment is used to analyze an animal's spatial distribution or intensity of use of various parts of a given area, such as its home range.

⁴⁷ BTR, Appendix B (Faunal Compendium).

⁴⁸ RTC C-B12.

⁴⁹ *Ibid.*

⁵⁰ Although some birds may still be at nest sites on August 2 (i.e., the date of the GLA survey), they would not necessarily still be at nest sites on that date. Swainson's hawks would not have been present at nest sites on September 17 (i.e., the date of the Bargas survey).

⁵¹ Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. p. 4.

PROJECT IMPACT ISSUES

Special-status Plants (C-B14)

RTC C-B14 repeats the same flawed arguments as those presented in RTC C-B2. As a result, I maintain the conclusion that the City does not have the data needed to conclude the Project would not impact special-status plants.

Swainson's Hawk (C-B15)

RTC C-B15 acknowledges that: “[n]o attempt was made to assess usage by Swainson’s hawks as it is clear that they occur in and around Napa,” and that “the potential frequency of use is not known.” Nevertheless, the City continues to argue that the loss of foraging habitat from the Project site would not have a substantial adverse effect on Swainson’s hawks.⁵² The basis for this argument is that the Project would eliminate only one-tenth of one percent of a Swainson’s hawk home range, and GLA does not believe that this would constitute a substantial adverse effect. As discussed below, there are numerous flaws with the City’s argument.

First, the same argument was made for the Meritage Commons Project, Syar Napa Quarry Project, and potentially other projects.^{53,54} Whereas the impact to a Swainson’s hawk’s home range from any one of these projects might be considered insignificant, the incremental (cumulative) effects may be extremely significant. However, neither the DEIR nor FEIR analyzed the cumulative effects that multiple “small” projects would have on the home ranges of Swainson’s hawks that occur in the Project region.⁵⁵

Second, the BTR cited the mean home ranges of birds monitored by Estep (1989) and Babcock (1995) near Sacramento as evidence that the Project would affect only a fraction of a Swainson’s hawk home range.⁵⁶ As discussed in my previous comment letter, it is inappropriate and scientifically indefensible for GLA and the City to use the *mean* home range of Swainson’s hawks near Sacramento to assess impacts to the home range of birds in Napa County. For example, Babcock (1995) reported that Swainson’s hawk home ranges tend to be relatively large in the Sacramento Valley because changing agricultural markets and the juxtaposition of agriculture areas with urban development has resulted in a wide variety of agricultural cover types dispersed over very large areas.⁵⁷ Swainson’s hawks that nest in areas surrounded by cover types that are high in prey density and accessibility, and low vegetative cover, appear to require

⁵² RTC C-B15.

⁵³ City of Napa. 2015. Initial Study of Environmental Significance and Mitigated Negative Declaration for the Meritage Commons Project. p. 66. *See also* Napa County Department of Planning. 2013. Draft Environmental Impact Report for the Syar Napa Quarry Expansion Project, Vol II (Appendices), Appendix F (Biological Evaluation), p. 44. Available at: <<https://www.countyofnapa.org/867/Syar-Napa-Quarry-Project>>.

⁵⁴ The City’s failure to identify the projects that could contribute to cumulative impacts precluded me from assessing whether environmental documents associated with other projects made a comparable argument.

⁵⁵ Comments C-B23 and C-B24.

⁵⁶ BTR, p. 42.

⁵⁷ Babcock KW. 1995. Home Range and Habitat Use of Breeding Swainson’s Hawks in the Sacramento Valley of California. *Journal of Raptor Research* 29:193–197.

substantially smaller home ranges.⁵⁸ For example, Woodbridge (1991) reported that Swainson's hawks in northeastern California had very small home ranges (mean 1,001 acres; range 69 to 7,126 acres).⁵⁹ This is consistent with Estep (1989), who reported small home ranges (830 acres) for a pair that occupied a territory with stable foraging opportunities throughout the breeding season.⁶⁰ Because the City does not know the home ranges of the birds that occur in the Project region, it has no basis for the conclusion that the Project would impact only one-tenth of one percent of the home range. Indeed, if the smallest home range reported by Woodbridge (1991) is considered, the Project would eliminate approximately 17 percent of a home range, and the three hospitality entitlements combined (i.e., Trinitas, Meritage Commons, and Meritage Resort) would eliminate approximately 59 percent of a home range. These levels of loss would undoubtedly have a significant impact on Swainson's hawks.

Third, the City has no basis for concluding that impacts would be less than significant without assessing the Project's effect on core-habitat-use areas (those land use areas that are used most extensively by nesting hawks as foraging habitat) within the home range. The size of the core-habitat-use areas of the hawks monitored by Babcock (1995) ranged from 64 to 203 acres.⁶¹ Without data on the locations of core-habitat-use areas, one must conclude that the Project site provides a core-habitat-use area. The loss of core foraging habitat is likely to lead to "take," which is a significant impact. The FEIR fails to analyze or provide mitigation for this potentially significant impact.

Fourth, the FEIR continues to ignore the fact that the relative abundance of foraging habitat in close proximity to the nesting territory is an important factor in the survival of Swainson's hawks (young and adults).⁶²

Finally, the California Endangered Species Act ("CESA") requires lead agencies to "fully mitigate" the impacts of a project on State-listed species. Through its independent analysis, the CDFW has concluded that compensatory mitigation is required to fully mitigate the impacts associated with new development projects that adversely modify nesting or foraging habitat within 10 miles of an active nest.⁶³ In this case, the CDFW has concluded that compensatory mitigation is required to mitigate the Project's impact on foraging habitat.⁶⁴ CDFW is the agency responsible for recovery of State-listed species and implementation of CESA. Therefore, it does not matter what GLA "believes," especially given the absence of scientifically defensible data and analysis supporting GLA's belief.

⁵⁸ *Ibid.*

⁵⁹ Woodbridge B. 1991. Habitat selection by nesting Swainson's hawks: a hierarchical approach. M.S. Thesis, Oregon State Univ., Corvallis, Oregon. Available at: https://ir.library.oregonstate.edu/concern/graduate_thesis_or_dissertations/9k41zk079.

⁶⁰ Estep JA. 1989. Biology, movements, and habitat relationships of the Swainson's Hawk in the Central Valley of California, 1986-87. Calif. Dept. Fish and Game, Nongame Bird and Mammal Section Report. p. 30.

⁶¹ Babcock KW. 1995. Home Range and Habitat Use of Breeding Swainson's Hawks in the Sacramento Valley of California. *Journal of Raptor Research* 29:193-197.

⁶² Comment C-B19.

⁶³ California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo swainsoni*) in the Central Valley of California.

⁶⁴ Comment B-2.

Abundance of Foraging Habitat (C-B17)

The DEIR argues that the large amount of available foraging habitat in the vicinity of the Project site relative to the limited impacts of the Project renders the impact less than significant.⁶⁵ This argument is not supported by scientific evidence because the DEIR provides no data on the amount of available foraging habitat in the vicinity of the Project site.⁶⁶ The FEIR fails to rectify this issue; it simply states: “[v]ineyards and other [unspecified] land-uses constitute the existing conditions within Napa and surrounding areas.”⁶⁷ As discussed in my previous comment letter, vineyards in general do not provide foraging habitat for Swainson’s hawks.⁶⁸ As a result, the City’s response contradicts the DEIR’s assertion that there is a large amount of available foraging area in the vicinity of the Project site.

The City’s response to Comment C-B17 further states: “[a]s acknowledged, Swainson’s hawks are relatively common in the area based on both CNDDDB and eBird data and it must also be assumed are at carrying capacity relative to foraging areas over the surrounding areas.”⁶⁹ If Swainson’s hawks are at carrying capacity relative to foraging habitat in the surrounding areas, then any loss of foraging habitat would reduce the carrying capacity (i.e., number of Swainson’s hawks).⁷⁰ This constitutes an unmitigated, significant impact.

CDFW Mitigation Guidelines (C-B19)

The DEIR concluded that Project impacts to Swainson’s hawk foraging habitat would be less than significant. I commented that the DEIR’s conclusion is inconsistent with CDFW mitigation guidelines.⁷¹ The FEIR’s response is that: “[t]he commenter asserts that the DEIR is inconsistent with CDFW mitigation guidelines, but does not list which of the guidelines the Project could be inconsistent with.”⁷²

To clarify, the CDFW has concluded that the loss of foraging habitat may lead to the “take” of Swainson’s hawks. As a result, CDFW’s mitigation guidelines identify four mitigation measures (including the provision of compensatory habitat) to avoid “take” and reduce a project’s impact to Swainson’s hawks to less than significant levels.⁷³ The EIR does not incorporate the four mitigation measures listed in CDFW’s mitigation guidelines, nor does it propose comparable mitigation. As a result, Project impacts to Swainson’s hawk foraging remain potentially significant and unmitigated.

⁶⁵ DEIR, p. 5.3-47.

⁶⁶ Comment C-B17.

⁶⁷ RTC, C-B17.

⁶⁸ California Department of Fish and Wildlife. 2015. Status Review: Swainson’s Hawk (*Buteo swainsoni*) in California. pp. 7 and 8.

⁶⁹ RTC, C-B17.

⁷⁰ In biology, the carrying capacity pertains to the number of a species that an environment can sustain, considering the limiting factors at play (e.g., food, water, competition, etc.).

⁷¹ Comment C-B19.

⁷² RTC, C-B19.

⁷³ California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson’s hawks (*Buteo swainsoni*) in the Central Valley of California. p. 10.

Foraging Habitat Quality (C-B20)

The DEIR failed to provide any scientific evidence to support the claim that the Project site contains relatively low-quality Swainson's hawk foraging habitat.⁷⁴ The FEIR's response is that:

While the commenter suggests that the site must be considered as exhibiting high values for foraging, the lack of any nesting recorded on the site or within trees immediately adjacent to the site during the last 5 years suggests the opposite. Swainson's hawks have not nested at this location for a variety of possible reasons which have already been addressed including its location within an urbanized setting.

There are two flaws with the response:

First, the City has not provided any evidence that protocol-level surveys for Swainson's hawk nest sites have ever been conducted at the Project site. As described above, GLA's "general field reconnaissance survey" in August, and Bargas' survey in September, were insufficient to draw any conclusions pertaining to Swainson's hawk nesting activity at the site. Furthermore, because the site is private property, it is reasonable to assume that opportunities for other biologists and members of the public to search for Swainson's hawk nests at the site have been extremely limited. Therefore, the absence of nesting records is not evidence that nests are absent.

Second, the absence of nests in an area has no relevance on the quality of foraging habitat in that area. In other words, nests are not always located next to high-quality foraging habitat, and trees adjacent to high-quality foraging habitat do not always have nests. Indeed, Woodbridge (1998) reported:

Nest site selection by Swainson's Hawks does not appear to be strongly influenced by the characteristics of the vegetation immediately surrounding the nest tree. They will use trees in dense riparian forest, scattered trees, or solitary trees along roadsides or field edges, with understories of native shrubs, cultivated crops, or mowed lawns...During the breeding season, Swainson's Hawks travel long distances (up to 29km) in search of habitats with abundant prey.⁷⁵

Indirect Impacts (C-B22)

The DEIR lists several "potential indirect effects associated with development," including "invasive plant species from landscaping."⁷⁶ The DEIR then acknowledges that the Project has the potential for both temporary and permanent indirect effects.⁷⁷ However, according to the DEIR: "Section 5.3.6 below identifies mitigation measures to reduce indirect effects to below a level of significance."⁷⁸ I commented that the DEIR's statement is not supported by evidence because the DEIR does not include any mitigation measures for invasive plants.

⁷⁴ Comment C-B20.

⁷⁵ Woodbridge, B. 1998. Swainson's Hawk (*Buteo swainsoni*). In *The Riparian Bird Conservation Plan: a strategy for reversing the decline of riparian-associated birds in California*. California Partners in Flight. Available at: <https://www.prbo.org/calpit/htmldocs/species/riparian/swainsons_hawk.htm>.

⁷⁶ DEIR, p. 5.3-48.

⁷⁷ DEIR, p. 5.3-49.

⁷⁸ *Ibid.*

The FEIR's response to this issue is that:

1. "The reference to direct and indirect effects on page 5.3-48 of the DEIR was provided in the context of general effects."
2. "This was an introduction and explanation of what would be considered an indirect impact and not a list of what was analyzed in the DEIR as a Project-specific impact."

In other words, the FEIR appears to be claiming that: (a) the potential indirect effects discussed in the DEIR do not necessarily apply to the Project, and (b) the City did not analyze all of the potential indirect effects listed in the DEIR. If this is correct, the DEIR had no basis for asserting that Section 5.3.6 of the DEIR identifies mitigation measures to reduce indirect effects to below a level of significance. Indeed, the DEIR fails to incorporate mitigation for *any* of the indirect effects mentioned in the DEIR. Therefore, if: (a) "[t]he Project has the potential for both temporary and permanent indirect effects;" *and* (b) "Section 5.3.6 of the DEIR identifies mitigation measures to reduce indirect effects to below a level of significance;" *but* (c) the indirect effects listed in the DEIR "was provided in the context of general effects" and is "not a list of what was analyzed in the DEIR;" it is utterly unclear what indirect effects may occur due to the Project, what indirect effects were analyzed, and what indirect effects are being mitigated by measures incorporated into the DEIR.

The Applicant intends to plant three invasive tree species (*Olea europaea*, *Phoenix canariensis*, and *Pyrus calleryana*) throughout the Project site.⁷⁹ These invasive tree species may have significant indirect impacts on surrounding ecosystems.⁸⁰ Because the DEIR fails to incorporate mitigation, indirect impacts associated with invasive plants remain potentially significant.

The FEIR acknowledges that the invasive tree species the Applicant will be planting are included in the database maintained by the California Invasive Plant Council ("Cal-IPC"). Two of the trees are listed as "Limited" and one is listed as "Watch" in the Cal-IPC database. The FEIR claims: "[g]iven the low rating status of these trees and the controlled planting environment proposed by the landscaping plan, the proposed trees are appropriate."⁸¹ The FEIR's response is misleading and does not eliminate potentially significant impacts associated with planting invasive species at the Project site. According to the Cal-IPC:

The Inventory categorizes plants as High, Moderate, or Limited, reflecting the level of each species' negative ecological impact in California. Other factors, such as economic impact or difficulty of management, are not included in this assessment. It is important to note that even Limited species are invasive and should be of concern to land managers. Although the impact of each plant varies regionally, its rating represents cumulative impacts statewide. Therefore, a plant whose statewide impacts are categorized as Limited may have more severe impacts in a particular region.... Species on the "watch" list have been assessed as posing a high risk of becoming invasive in the future in California.⁸²

⁷⁹ DEIR, Exhibits 4-48 and -49. *See also* California Invasive Plant Council. California Invasive Plant Inventory. Available at: <<http://www.cal-ipc.org/plants/inventory/>>. (Accessed 2018 Feb 16).

⁸⁰ California Invasive Plant Council. California Invasive Plant Inventory. Available at: <<http://www.cal-ipc.org/plants/inventory/>>. (Accessed 2018 Feb 16). *See also* Culley TM, NA Hardiman. 2007. The Beginning of a New Invasive Plant: A History of the Ornamental Callery Pear in the United States. *Bioscience* 57(11):956-964.

⁸¹ RTC, C-B22.

⁸² *See* <<http://www.cal-ipc.org/plants/inventory/about-the-inventory/>>.

Cumulative Impacts (C-B23, C-B24, and C-B25)

Comments C-B23 through C-B25 pertained to deficiencies in the City's cumulative impacts analyses. The FEIR fails to respond to, or resolve, the specific issues raised in my comments.

MITIGATION ISSUES

Swainson's Hawk Survey Distance (C-B27)

RTC C-B27 claims that the Swainson's Hawk Technical Advisory Committee's ("TAC") survey protocol states that surveys should be conducted within a ¼ mile radius of the project area. The TAC survey protocol actually states:

To meet the California Department of Fish and Game's (CDFG) recommendations for mitigation and protection of Swainson's hawks, surveys should be conducted for a ½ mile radius around all project activities, and if active nesting is identified within the ½ mile radius, consultation is required. In general, the TAC recommends this approach as well.⁸³

Swainson's Hawk Habitat Compensation (C-B28 and C-B29)

Comments C-B28 and C-B29 relayed CDFW's policy that new development projects that adversely modify nesting or foraging habitat within 10 miles of an active Swainson's hawk nest should mitigate the project's impacts by providing compensatory mitigation. CDFW's comment letter points out that the DEIR does not propose any mitigation for the permanent loss of 11.55 acres of Swainson's hawk foraging habitat, and that any permanent loss of Swainson's hawk foraging habitat should be mitigated adequately.⁸⁴ It then provides the mitigation ratios that CDFW recommends for impacts to foraging habitat.

The EIR fails to require *any* mitigation for the loss of Swainson's hawk foraging habitat at the Project site. This is inconsistent with CDFW's comments, CDFW's mitigation policy, and CESA's provision for "full mitigation." It also appears to be inconsistent with Policy NR-2.4 in the City's General Plan, which states:

When acting as a project proponent or when reviewing proposals for private projects requiring discretionary review by the City, the City shall ensure that its environmental review documents identify any feasible means of avoiding *any net loss of habitat* or of habitat value for endangered, threatened, and rare species. Where necessary or desirable, such avoidance can be achieved through off-site mitigation measures. As part of the environmental review, the City shall determine whether the Department of Fish and Game, in implementing the California Endangered Species Act...will likely require mitigation sufficient to avoid any net loss of habitat or of habitat value for such species. Where these agencies are likely to require such a level of mitigation, the City may

⁸³ Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. p. 1.

⁸⁴ Comment B-2.

formulate its own mitigation measures so as to minimize the extent to which those measures duplicate the efforts of these agencies.⁸⁵

Consistency with the City of Napa General Plan

The Land Use and Planning chapter of the DEIR discusses the Project's consistency with the Natural Resources Element of the City of Napa General Plan. It first identifies the natural resources objectives of the General Plan. It then states: "Section 5.3, Biological Resources, of this DEIR provides further discussion and analysis of project consistency with applicable City natural resources policies."⁸⁶ Despite this statement, Section 5.3 of the DEIR provides no discussion or analysis of the Project's consistency with the City's natural resources policies other than the City's tree preservation standards.⁸⁷ There is no discussion of the General Plan policies whatsoever in the Biological Resources chapter of the DEIR.

The Land Use and Planning chapter of the DEIR further states: "[c]onsistency with the City's General Plan policies is detailed in the following table."⁸⁸ The table does indeed list several of the General Plan policies pertaining to Natural Resources.⁸⁹ However, it omits many of the policies, including Policy NR-2.4 (discussed above).

Pallid Bat (C-B30)

The FEIR incorporates the following mitigation measure for potentially significant impacts to the pallid bat:

Preconstruction focused surveys for pallid bat will be conducted by a biologist qualified to conduct focused bat surveys for trees onsite and immediately adjacent to the site. Surveys will be conducted in spring prior to birth which typically occurs in May or June. If a maternity roost is detected, appropriate buffers will be established during the maternity season to ensure that maternity roosts are not disturbed by construction.⁹⁰

The City's proposed mitigation is insufficient to ensure potentially significant impacts to the pallid bat are mitigated to less than significant levels.

First, the FEIR fails to identify the survey techniques that should be implemented for the preconstruction surveys. This is important because bat detection often requires specialized techniques and the locations of natural roosts (e.g., trees) are difficult to detect.⁹¹ Because the FEIR does not establish minimum standards for the "qualified" biologist, the City has no basis for assuming the preconstruction surveys would be effective.

Second, the FEIR fails to identify what would constitute "appropriate buffers." As a result, the FEIR provides no assurances that whatever buffers the Applicant elects to implement would be

⁸⁵ City of Napa. 1998 [Reprinted with Amendments to September 3, 2015]. City of Napa General Plan, p. 7-6.

⁸⁶ DEIR, p. 5.9-8.

⁸⁷ See DEIR, p. 5.3-23.

⁸⁸ DEIR, p. 5.9-8.

⁸⁹ See DEIR, Table 5.9-3.

⁹⁰ RTC, C-B30.

⁹¹ Western Bat Working Group. 2017. Survey Matrix. Available at: <<http://wbwg.org/matrices/survey-matrix/>>.

sufficient to avoid disturbance to maternity roosts.

Third, the surveys and proposed buffers are limited to the breeding season, thus ignoring impacts to wintering (hibernation) roosts. Impacts to wintering roosts are potentially significant because the metabolic cost of waking bats from hibernation can be very high and enough to reduce their energy supply to the point where survival of the individual is not possible.⁹²

Nest Buffers (C-B31)

Comment C-B31 pertained to the DEIR's failure to identify the *minimum* buffer distances that shall be required around bird nests. The FEIR fails to provide a response to this issue.

Fairy Shrimp (C-B34)

MM BIO-7 requires the Applicant to mitigate impacts to occupied habitat at a 2:1 ratio if listed fairy shrimp are detected within any of the vernal pools at the Project site. The DEIR, however, does not require the Applicant to undertake Endangered Species Act consultation with the USFWS, nor does it require the Applicant to obtain an incidental take permit prior to the "take" of any listed fairy shrimp species at the site. As a result, the DEIR fails to ensure the Project would comply with Section 9 of the Endangered Species Act. The FEIR's response states: "listed species are not expected to occur and there will be no need to obtain an incidental take permit from USFWS for the Project." The City has no basis for the conclusion that there will be no need to obtain an incidental take permit from the USFWS until wet season surveys have been completed and verified by the USFWS. As a result, the FEIR fails to resolve the issues raised in Comment C-B34.

Wetland Mitigation (C-B35)

GLA detected three features on the Project site that are potentially wetlands.⁹³ GLA, however, was unable to make a definitive determination that the three areas are indeed wetlands.⁹⁴ MM BIO-8 requires the Applicant to complete a formal wetland determination demonstrating whether or not the three features meet the minimum threshold for wetlands. It further requires the Applicant to mitigate impacts at a 2:1 ratio if the features meet the minimum threshold for wetlands. However, it only requires mitigation to the two wetlands that are dominated by pale spikerush (i.e., "Features A and C"). The DEIR fails to justify omission of mitigation for impacts to "Feature B," should that feature meet the minimum threshold for wetlands. The FEIR fails to address or resolve this issue.

⁹² Johnston D, G Tatarian, E Pierson. 2004. California Bat Mitigation Techniques, Solutions, and Effectiveness. p. 30.

⁹³ BTR, p. 7.

⁹⁴ BTR, pp. 8 and 17.

Wetland Mitigation (C-B36)

MM BIO-8 indicates wetland mitigation may be satisfied through purchase of credits at an approved mitigation bank “or in an acceptable manner to the City, so long as the 2:1 ratio is met.” This stipulation is too vague to assure Project impacts to wetlands are effectively mitigated. Specifically, the EIR must identify what other manners of mitigation would be “acceptable” to the City such that they can be vetted during the CEQA review process. The FEIR fails to address or resolve this issue.

Wetland Mitigation Ratio (C-B37 and C-B38)

Comments C-B37 and C-B38 pertained to the City’s failure to justify the 2:1 mitigation ratio proposed in the DEIR. Several factors affect the mitigation ratio that should be implemented for a project’s impacts to wetlands. I discussed several of these factors. The FEIR’s response is that: “[n]one of these factors are feasible when applied to the proposed Project given the location, surroundings and minimal acreage involved (0.6 acre).”⁹⁵ The FEIR’s response is illogical. It is feasible for the City to assess and establish criteria for all of the factors discussed in my comment. For example, it is feasible for the City to incorporate criteria for: (a) the acceptable lag time between wetland losses at the Project site and wetland “gains” at the mitigation sites; (b) upland habitat buffers surrounding the mitigation wetlands; (c) acceptable mitigation locations; (d) the acceptable mitigation methods if the Applicant elect to satisfy MM BIO-8 through a manner other than purchase of credits at an approved mitigation bank; and (e) whether compensation wetlands must be vernal pools (i.e., “in-kind” mitigation). Once these criteria have been established, it is feasible for the City to assess whether the 2:1 mitigation ratio is sufficient, or whether a different mitigation ratio is warranted.

The FEIR goes on to argue that: “[c]onsidering the approximately 0.6 acre of seasonal wetlands on site, the 2:1 mitigation ratio is adequate as concluded in the DEIR.”⁹⁶ The FEIR fails to provide the scientific basis for this argument, although it appears to be based on the false premise that mitigation ratio is dependent on impact acreage. As outlined in my previous comments, there are numerous factors that affect the mitigation ratio—*size is not one of them*.⁹⁷

Comment C-B38 discussed the DEIR’s failure to fulfill CEQA requirements for mitigation. These include establishing: (a) performance standards for the compensation wetlands; (b) monitoring and reporting requirements; and (c) the financial and legal mechanisms for ensuring success of the compensation wetlands and for protecting them in perpetuity. The FEIR fails to address or resolve this issue.

⁹⁵ RTC, C-B37.

⁹⁶ *Ibid.*

⁹⁷ See California State Water Resources Control Board. 2017. Draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State. 43 pp. Available at: <https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/official_Doc_timeline/procedures_clean.pdf>. See also National Research Council. 2001. Compensating for wetland losses under the Clean Water Act. National Research Committee on Mitigating Wetland Losses. National Academy Press, Washington DC, USA. pp. 108 through 110. Available at: <<https://www.nap.edu/catalog/10134/compensating-for-wetland-losses-under-the-clean-water-act>>.

This concludes my comments on the FEIR.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Cashen", written in a cursive style.

Scott Cashen, M.S.
Senior Biologist

Scott Cashen, M.S.**Senior Biologist / Forest Ecologist**

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Scott Cashen has 20 years of professional experience in natural resources management. During that time he has worked as a field biologist, forester, environmental consultant, and instructor of Wildlife Management. Mr. Cashen currently operates an independent consulting business that focuses on CEQA/NEPA compliance issues, endangered species, scientific field studies, and other topics that require a high level of scientific expertise.

Mr. Cashen has knowledge and experience with many taxa, biological resource issues, and environmental regulations. This knowledge and experience has made him a highly sought after biological resources expert. To date, he has been retained as a biological resources expert for over 40 projects. Mr. Cashen's role in this capacity has encompassed all stages of the environmental review process, from initial document review through litigation support and expert witness testimony.

Mr. Cashen is a recognized expert on the environmental impacts of renewable energy development. He has been involved in the environmental review process for 28 renewable energy projects, and he has been a biological resources expert for more of California's solar energy projects than any other private consultant. In 2010, Mr. Cashen testified on 5 of the Department of the Interior's "Top 6 Fast-tracked Solar Projects" and his testimony influenced the outcome of each of these projects.

Mr. Cashen is a versatile scientist capable of addressing numerous aspects of natural resource management simultaneously. Because of Mr. Cashen's expertise in both forestry and biology, Calfire had him prepare the biological resource assessments for all of its fuels treatment projects in Riverside and San Diego Counties following the 2003 Cedar Fire. Mr. Cashen has led field studies on several special-status species, including plants, fish, reptiles, amphibians, birds, and mammals. Mr. Cashen has been the technical editor of several resource management documents, and his strong scientific writing skills have enabled him to secure grant funding for several clients.

AREAS OF EXPERTISE

- CEQA, NEPA, and Endangered Species Act compliance issues
- Comprehensive biological resource assessments
- Endangered species management
- Renewable energy
- Forest fuels reduction and timber harvesting
- Scientific field studies, grant writing and technical editing

EDUCATION

M.S. Wildlife and Fisheries Science - The Pennsylvania State University (1998)

B.S. Resource Management - The University of California, Berkeley (1992)

PROFESSIONAL EXPERIENCE

Litigation Support / Expert Witness

As a biological resources expert, Mr. Cashen reviews CEQA/NEPA documents and provides his client(s) with an assessment of biological resource issues. He then prepares written comments on the scientific and legal adequacy of the project's environmental documents (e.g., EIR). For projects requiring California Energy Commission (CEC) approval, Mr. Cashen has submitted written testimony (opening and rebuttal) in conjunction with oral testimony before the CEC.

Mr. Cashen can lead field studies to generate evidence for legal testimony, and he can incorporate testimony from his deep network of species-specific experts. Mr. Cashen's clients have included law firms, non-profit organizations, and citizen groups.

REPRESENTATIVE EXPERIENCE

Solar Energy Facilities

- Abengoa Mojave Solar Project
- Avenal Energy Power Plant
- Beacon Solar Energy Project
- Blythe Solar Power Project
- Calico Solar Project
- Calipatria Solar Farm II
- Carrizo Energy Solar Farm
- Catalina Renewable Energy Project
- Fink Road Solar Farm
- Genesis Solar Energy Project
- Heber Solar Energy Facility
- Imperial Valley Solar Project
- Ivanpah Solar Electric Generating
- Maricopa Sun Solar Complex
- Mt. Signal and Calxico Solar
- San Joaquin Solar I & II
- Solar Gen II Projects
- SR Solis Oro Loma
- Vestal Solar Facilities
- Victorville 2 Power Project

Geothermal Energy Facilities

- East Brawley Geothermal
- Mammoth Pacific 1 Replacement
- Western GeoPower Plant and

Wind Energy Facilities

- Catalina Renewable Energy Project
- Ocotillo Express Wind Energy
- San Diego County Wind Ordinance
- Tres Vaqueros Repowering Project
- Vasco Winds Relicensing Project

Biomass Facilities

- Tracy Green Energy Project

Development Projects

- Alves Ranch
- Aviano
- Chula Vista Bayfront Master Plan
- Columbus Salame
- Concord Naval Weapons Station
- Faria Annexation
- Live Oak Master Plan
- Napa Pipe
- Roddy Ranch
- Rollingwood
- Sprint-Nextel Tower

Project Management

Mr. Cashen has managed several large-scale wildlife, forestry, and natural resource management projects. Many of these projects have required hiring and training field crews, coordinating with other professionals, and communicating with project stakeholders. Mr. Cashen's experience in study design, data collection, and scientific writing make him an effective project manager, and his background in several different natural resource disciplines enable him to address the many facets of contemporary land management in a cost-effective manner.

REPRESENTATIVE EXPERIENCE

Wildlife Studies

- Peninsular Bighorn Sheep Resource Use and Behavior Study: (*CA State Parks*)
- "KV" Spotted Owl and Northern Goshawk Inventory: (*USFS, Plumas NF*)
- Amphibian Inventory Project: (*USFS, Plumas NF*)
- San Mateo Creek Steelhead Restoration Project: (*Trout Unlimited and CA Coastal Conservancy, Orange County*)
- Delta Meadows State Park Special-status Species Inventory: (*CA State Parks, Locke*)

Natural Resources Management

- Mather Lake Resource Management Study and Plan – (*Sacramento County*)
- Placer County Vernal Pool Study – (*Placer County*)
- Weidemann Ranch Mitigation Project – (*Toll Brothers, Inc., San Ramon*)
- Ion Communities Biological Resource Assessments – (*Ion Communities, Riverside and San Bernardino Counties*)
- Del Rio Hills Biological Resource Assessment – (*The Wyro Company, Rio Vista*)

Forestry

- Forest Health Improvement Projects – (*CalFire, SD and Riverside Counties*)
- San Diego Bark Beetle Tree Removal Project – (*SDG&E, San Diego Co.*)
- San Diego Bark Beetle Tree Removal Project – (*San Diego County/NRCS*)
- Hillslope Monitoring Project – (*CalFire, throughout California*)

Biological Resources

Mr. Cashen has a diverse background with biological resources. He has conducted comprehensive biological resource assessments, habitat evaluations, species inventories, and scientific peer review. Mr. Cashen has led investigations on several special-status species, including ones focusing on the foothill yellow-legged frog, mountain yellow-legged frog, desert tortoise, steelhead, burrowing owl, California spotted owl, northern goshawk, willow flycatcher, Peninsular bighorn sheep, red panda, and forest carnivores.

REPRESENTATIVE EXPERIENCE

Avian

- Study design and Lead Investigator - Delta Meadows State Park Special-Status Species Inventory (*CA State Parks: Locke*)
- Study design and lead bird surveyor - Placer County Vernal Pool Study (*Placer County: throughout Placer County*)
- Surveyor - Willow flycatcher habitat mapping (*USFS: Plumas NF*)
- Independent surveyor - Tolay Creek, Cullinan Ranch, and Guadacanal Village restoration projects (*Ducks Unlimited/USGS: San Pablo Bay*)
- Study design and Lead Investigator - Bird use of restored wetlands research (*Pennsylvania Game Commission: throughout Pennsylvania*)
- Study design and surveyor - Baseline inventory of bird species at a 400-acre site in Napa County (*HCV Associates: Napa*)
- Surveyor - Baseline inventory of bird abundance following diesel spill (*LFR Levine-Fricke: Suisun Bay*)
- Study design and lead bird surveyor - Green Valley Creek Riparian Restoration Site (*City of Fairfield: Fairfield, CA*)
- Surveyor - Burrowing owl relocation and monitoring (*US Navy: Dixon, CA*)
- Surveyor - Pre-construction raptor and burrowing owl surveys (*various clients and locations*)
- Surveyor - Backcountry bird inventory (*National Park Service: Eagle, Alaska*)
- Lead surveyor - Tidal salt marsh bird surveys (*Point Reyes Bird Observatory: throughout Bay Area*)
- Surveyor - Pre-construction surveys for nesting birds (*various clients and locations*)

Amphibian

- Crew Leader - Red-legged frog, foothill yellow-legged frog, and mountain yellow-legged frog surveys (*USFS: Plumas NF*)

- Surveyor - Foothill yellow-legged frog surveys (*PG&E: North Fork Feather River*)
- Surveyor - Mountain yellow-legged frog surveys (*El Dorado Irrigation District: Desolation Wilderness*)
- Crew Leader - Bullfrog eradication (*Trout Unlimited: Cleveland NF*)

Fish and Aquatic Resources

- Surveyor - Hardhead minnow and other fish surveys (*USFS: Plumas NF*)
- Surveyor - Weber Creek aquatic habitat mapping (*El Dorado Irrigation District: Placerville, CA*)
- Surveyor - Green Valley Creek aquatic habitat mapping (*City of Fairfield: Fairfield, CA*)
- GPS Specialist - Salmonid spawning habitat mapping (*CDFG: Sacramento River*)
- Surveyor - Fish composition and abundance study (*PG&E: Upper North Fork Feather River and Lake Almanor*)
- Crew Leader - Surveys of steelhead abundance and habitat use (*CA Coastal Conservancy: Gualala River estuary*)
- Crew Leader - Exotic species identification and eradication (*Trout Unlimited: Cleveland NF*)

Mammals

- Principal Investigator – Peninsular bighorn sheep resource use and behavior study (*California State Parks: Freeman Properties*)
- Scientific Advisor – Study on red panda occupancy and abundance in eastern Nepal (*The Red Panda Network: CA and Nepal*)
- Surveyor - Forest carnivore surveys (*University of CA: Tahoe NF*)
- Surveyor - Relocation and monitoring of salt marsh harvest mice and other small mammals (*US Navy: Skagg's Island, CA*)
- Surveyor – Surveys for Monterey dusky-footed woodrat. Relocation of woodrat houses (*Touré Associates: Prunedale*)

Natural Resource Investigations / Multiple Species Studies

- Scientific Review Team Member – Member of the science review team assessing the effectiveness of the US Forest Service's implementation of the Herger-Feinstein Quincy Library Group Act.
- Lead Consultant - Baseline biological resource assessments and habitat mapping for CDF management units (*CDF: San Diego, San Bernardino, and Riverside Counties*)

- Biological Resources Expert – Peer review of CEQA/NEPA documents (*Adams Broadwell Joseph & Cardoza: California*)
- Lead Consultant - Pre- and post-harvest biological resource assessments of tree removal sites (*SDG&E: San Diego County*)
- Crew Leader - T&E species habitat evaluations for Biological Assessment in support of a steelhead restoration plan (*Trout Unlimited: Cleveland NF*)
- Lead Investigator - Resource Management Study and Plan for Mather Lake Regional Park (*County of Sacramento: Sacramento, CA*)
- Lead Investigator - Biological Resources Assessment for 1,070-acre Alfaro Ranch property (*Yuba County, CA*)
- Lead Investigator - Wildlife Strike Hazard Management Plan (*HCV Associates: Napa*)
- Lead Investigator - Del Rio Hills Biological Resource Assessment (*The Wyro Company: Rio Vista, CA*)
- Lead Investigator – Ion Communities project sites (*Ion Communities: Riverside and San Bernardino Counties*)
- Surveyor – Tahoe Pilot Project: Validation of California’s Wildlife Habitat Relationships (CWHR) Model (*University of California: Tahoe NF*)

Forestry

Mr. Cashen has five years of experience working as a consulting forester on projects throughout California. Mr. Cashen has consulted with landowners and timber operators on forest management practices; and he has worked on a variety of forestry tasks including selective tree marking, forest inventory, harvest layout, erosion control, and supervision of logging operations. Mr. Cashen’s experience with many different natural resources enable him to provide a holistic approach to forest management, rather than just management of timber resources.

REPRESENTATIVE EXPERIENCE

- Lead Consultant - CalFire fuels treatment projects (*SD and Riverside Counties*)
- Lead Consultant and supervisor of harvest activities – San Diego Gas and Electric Bark Beetle Tree Removal Project (*San Diego*)
- Crew Leader - Hillslope Monitoring Program (*CalFire: throughout California*)
- Consulting Forester – Forest inventories and timber harvest projects (*various clients throughout California*)

Grant Writing and Technical Editing

Mr. Cashen has prepared and submitted over 50 proposals and grant applications. Many of the projects listed herein were acquired through proposals he wrote. Mr. Cashen's clients and colleagues have recognized his strong scientific writing skills and ability to generate technically superior proposal packages. Consequently, he routinely prepares funding applications and conducts technical editing for various clients.

PERMITS

U.S. Fish and Wildlife Service Section 10(a)(1)(A) Recovery Permit for the Peninsular bighorn sheep

CA Department of Fish and Game Scientific Collecting Permit

PROFESSIONAL ORGANIZATIONS / ASSOCIATIONS

The Wildlife Society (Conservation Affairs Committee member)

Cal Alumni Foresters

Mt. Diablo Audubon Society

OTHER AFFILIATIONS

Scientific Advisor and Grant Writer – *The Red Panda Network*

Scientific Advisor – *Mt. Diablo Audubon Society*

Grant Writer – *American Conservation Experience*

Scientific Advisor and Land Committee Member – *Save Mt. Diablo*

TEACHING EXPERIENCE

Instructor: Wildlife Management - The Pennsylvania State University, 1998

Teaching Assistant: Ornithology - The Pennsylvania State University, 1996-1997



March 1, 2018

Victor Carniglia, Contract Planner
Community Development Department
City of Napa
PO Box 660
Napa, CA 94559

Re: Trinitas Mixed Use Project

Dear Mr. Carniglia:

We are writing in response to the proposed expansion of the Meritage Resort with a new hotel, small winery and 2-story office building with parking and associated outdoor space ("Trinitas Mixed Use Project"). The project would require a conditional use permit and rezoning of the property to a Planned Development Overlay to allow an increase in height and shared parking. The site is currently zoned Industrial Park – Zone A (IP-A) and has a General Plan designation of Corporate Park (CP-720).¹

We support the efforts of the City of Napa to allow development that will provide new jobs and improve the economic well-being of the community. We also encourage the City to consider the current and future goals of nearby businesses, and to take steps to facilitate a symbiotic relationship between neighbors.

The Trinitas Mixed Use Project is located on Napa Valley Corporate Drive, directly adjacent to our 16.5-acre property at 2600 Napa Valley Corporate Drive, approximately 8 acres of which are vacant and abut the proposed Trinitas Mixed Use Project. We purchased this property in 2006 and currently operate an approximately 224,000 square foot data center there. The building was originally built in 1990 and was used as a data center prior to Kaiser's purchase. Our zoning is IP-B, with a General Plan designation of CP-720.

When we purchased the property, as part of our due diligence, we confirmed with the staff from the City of Napa Community Development Department on March 9, 2006 that the industrial zoning and corporate park General Plan designation that applied to our property and the surrounding area allows for primary uses compatible with our data center, since we plan on remaining at the site for the indefinite future. We also discussed our plans for future expansion on our 8 acres of vacant land at that time. In 2013, we worked with Michael Allen of the City of Napa Planning Division, on approvals for a transformer yard project at the Data Center to accommodate the Phase 4 expansion and future site expansion projects.

¹ Per the Napa General Plan, the Corporate Park land use designation provides for manufacturing, warehousing, and office, public, and quasi-public uses, and similar compatible uses in a campus-like setting.

Our data center serves a vital purpose, securely transmitting and storing vital patient information, such as medical records, test results and patient assessments, and facilitating our delivery of quality, effective care to our more than 4 million members and patients in Northern California. We also plan on expanding our data center to take advantage of our remaining vacant property, thereby creating additional employment opportunity for Napa residents and expanding the health care services we provide to millions of Napa and Northern California employees and residents.

As a result, we respectfully request that as part of the City review of the proposed Trinitas Mixed Use Project, the analysis of the project and any conditions of approval (if the project is approved) take into consideration the potential impacts of the proposed project on the existing, surrounding industrial and office uses to ensure that those uses are protected and do not incur additional costs as a result of the proposed project.

Specifically, as required by Section 17.60.070 of the City's zoning code, the City must find that the proposed project is not "materially injurious to properties or improvements in the vicinity" when determining if the required conditional use permit findings can be met. If the proposed use results in an incompatible use that increases the cost or feasibility to build a primary use allowed under the existing zoning on our remaining property, that would be materially injurious to Kaiser.

To ensure that the project would not be "materially injurious", we respectfully request the City to consider the following:

- **Site Design:** We appreciate the current design proposal that locates sensitive uses, such as the hotel, away from our existing and future light industrial uses so that they are not impacted by noise and other impacts generated by typical primarily allowed IP-B uses. We like that the office, winery and parking has been located as a buffer between our data center site and the proposed hotel. We request that any changes to the site plan of the project do not locate sensitive uses closer to our property.
- **Adequate Screening:** We recognize that due to their utilitarian operations, buildings primarily allowed in the IP zones often are not as attractive as those in areas that typically house hotels and other tourist attractions. For this reason, we also request that the proposed project be required to incorporate adequate screening, such as taller trees and walls, between the project site and ours, to proactively avoid future conflict related to siting a tourist destination next to light industrial uses.
- **Transfer Disclosure Statement:** We would also like the project to be required to place disclosures on title to ensure that owners and users of the property are aware that it is located in an existing industrial area, which comes with associated noise, 24/7 hours of operation, visual impacts, etc. This will help document that the current and future owners of the proposed project have accepted that the location comes with certain conditions that may not be ideal for the proposed uses.

We appreciate your consideration. If you have any questions, please do not hesitate to call Skyler Denniston at (626) 405-6333 or via email skyler.x.denniston@kp.org. Also, please add Carol Harris at 415.686.4255 or carol.a.harris@kp.org to your mailing list for any future notifications about this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven Press', with a long horizontal flourish extending to the right.

Steven Press
Vice President, Data Center Operations

Cc: Rachel Zenner, Director of Community & Government Relations, Northern California Region
Carol Harris, Community & Government Relations Manager
Shiyama Clunie, Public Affairs Director

EXHIBIT C

2.3 ERRATA TO MITIGATION MONITORING AND REPORTING PLAN

1. INTRODUCTION

This Errata to the Mitigation Monitoring and Reporting Plan (MMRP) for the Landmark Village Project (Project), previously adopted by the Los Angeles County (County) Board of Supervisors (Board) in February 2012, identifies those changes to the previously adopted MMRP that are necessary to respond to the court directives in *Friends of the Santa Clara River v. County of Los Angeles* (Case No. B256125; Los Angeles County No. BS136549), which relates to the California Supreme Court's decision in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204.

The MMRP (as revised by this Errata) is required by the County as lead agency under CEQA (Pub. Resources Code, §§ 21000, et seq.) for the Project as analyzed in the previously certified Landmark Village EIR (State Clearinghouse No. 2004021002) and this ~~additional analysis~~ Recirculated Analysis. Specifically, this Errata has been adopted to ensure that the avoidance or mitigation of significant effects as described in the Project's Recirculated Portions of the EIR are enforceable. As to global climate change, mitigation measures LV-4.23-1/2-1 through LV 4.23-13/2-13 contained herein replace and supersede (in full) mitigation measures LV 4.23-1 through LV 4.23-7 in the previously adopted MMRP (February 2012). These new GHG mitigation measures account for the ongoing evolution in the technological feasibility of GHG emissions-reducing strategies for large-scale planned communities and serve to achieve the first-ever, large-scale planned community resulting in net zero emissions. Additionally, the Project Applicant's commitment to the installation of additional electric vehicle charging stations is reflected in the Errata. This Errata also reflects the elimination of mitigation measures LV 4.4-10 and LV 4.4-54 (and two other related mitigation measures), and the addition of new Project Design Features and mitigation measures, in light of the Supreme Court's *CBD* decision and **Section 2.2** of this document.¹ The new mitigation measures to ensure no "take" of unarmored threespine stickleback are designated as LV 4.4-67/BIO-3-1a through LV 4.4-86/BIO-3-3f.

¹ Because Landmark Village EIR mitigation measures LV 4.4-8, 4.4-11, and 4.4-12 ~~4.4-13~~ also contemplated Santa Clara River stream diversion and/or other river-related activities that could relocate and thereby affect unarmored threespine stickleback, those measures have been eliminated from the Landmark Village EIR, as well, consistent with the Department's RMDP/SCP take avoidance assessment (see **Appendix 2.2-D**).

2.3 Errata to Mitigation Monitoring and Reporting Plan

As to the GHG emissions-reducing measures, because the Project will facilitate the phased development of a planned community, and because the regulatory and technological frameworks for GHG emissions are rapidly evolving and are expected to continue to do so for decades to come, minor modifications to the mitigation measures presented in this Errata are permitted, but can be made by the applicant or its designee only with the approval of the County of Los Angeles Department of Regional Planning (DRP) staff. Following consultation with any other appropriate agencies or departments, County DRP staff may determine the adequacy of any minor modifications by evaluating whether the proposal of the applicant or its designee results in equivalent or more beneficial environmental effects, as compared to the original mitigation measures. The minor modifications cannot result in the creation of new or substantially more severe environmental effects; instead, at a minimum, the modifications must achieve equivalent environmental benefits. County DRP must render its determination based on the evidentiary record before it, including supporting materials and analyses prepared at the request of the applicant or its designee. The minor modifications procedure, described above, is generally applicable to the Project Design Features and mitigation measures set forth in this Errata and the MMRP adopted by the County in 2012.

As required by Public Resource Code section 21081.6(a)(2), the custodian and location of the documents constituting the record of proceedings for the Project are the County of Los Angeles, Department of Regional Planning, ~~Sam-Dea~~ Diane Aranda, 320 W. Temple Street, Room ~~1346~~ 1382, Los Angeles, California 90012, and are incorporated by reference. All inquiries relating to the record should be directed to the Department of Regional Planning at (213) 974-~~6433~~ 4808.

(Mitigation measures LV 4.4-8 and 4.4-13 previously were proposed for elimination in the Draft Recirculated Portions of the EIR (November 2016). However, upon further evaluation, the County determined that those mitigation measures still are applicable to the Landmark Village Project. As such, their previous illustration in ~~striketrough~~ in the table below was in error, and the table rows containing those measures have been removed from the table below in order to minimize confusion. Mitigation Measures LV 4.4-8 and 4.4-13 remain part of the MMRP adopted by the County in 2012.)

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
Since the County's February 2012 approval of the original MMRP, the following measures have been added or deleted to address potential impacts to unarmored threespine stickleback, in response to the Supreme Court's CBD decision.				
LV PDF-2.2-1: To avoid impacts on the unarmored threespine stickleback, as well as other sensitive fish in the Santa Clara River, no construction activities shall take place in the wetted channel of the Santa Clara River.	Applicant (Qualified biologist)	Field Verification: Qualified biologists shall be present during any construction activity that takes place in the dry riverbed of the River to ensure that such construction activity does not make contact with or disturb the Low-Flow <u>wetted</u> channel of the River. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County identifying where construction activities in the Santa Clara River have occurred and demonstrating that such activities have not taken place in the Low-Flow <u>wetted</u> channel of the River.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During bridge construction activities	
LV PDF-2.2-2: The construction methods for the permanent bridge at Commerce Center Drive <u>Long Canyon Road</u> shall be modified to: (i) reduce the number of bridge piers and include a span between piers <u>columns supported by piles</u> that accommodates the maximum dry season flow within the Santa Clara River; and (ii) relocate bridge piers to span the bridge deck across the entirety of the wetted portion of the Santa Clara River channel to allow for a "no water contact construction zone" within the wetted channel and avoid the need for stream diversion or dewatering during	Applicant (Qualified engineer)	Bridge Plan Check	1. Los Angeles County Department of Public Works 2. Los Angeles County Department of Public Works, CDFW 3. Prior to issuance of bridge permit	

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	
			2. Monitoring Agency	
			3. Monitoring Phase	
construction.				
LV PDF-2.2-3: To avoid contact with the wetted channels of the Santa Clara River during construction, the span between permanent bridge piers shall increase from the 100-foot span analyzed in the Landmark Village 2011 FEIR to a minimum of a 165-foot span over the wetted channel.	Applicant (Qualified engineer)	Bridge Plan Check	1. Los Angeles County Department of Public Works 2. Los Angeles County Department of Public Works, CDFW 3. Prior to issuance of bridge permit	
LV PDF-2.2-4: The 165-foot span over the wetted channel shall conform to Caltrans Bridge Design Standards, the County of Los Angeles Department of Public Works geotechnical review requirements, and applicable seismic stability and operational safety standards.	Applicant (Qualified engineer)	Bridge Plan Check	1. Los Angeles County Department of Public Works 2. Los Angeles County Department of Public Works 3. Prior to issuance of bridge permit	
LV PDF-2.2-5: The Project shall use the full-depth temporary casing method for constructing Cast-In-Drilled-Hole (CIDH) shafts for the permanent bridge at Long Canyon Road.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activities to ensure that such construction activities adhere to this Project Design Feature. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that such bridge construction activities	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW	

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	
			2. Monitoring Agency	
			3. Monitoring Phase	
			3. During bridge construction activities	
LV PDF-2.2-6: All <u>permanent</u> bridge pier and <u>structure</u> construction from <u>within the riverbed work</u> shall be completed during the dry season (defined as June 1 through September 30), and may require multiple construction seasons.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activities to ensure that such construction activities adhere to this Project Design Feature. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that such bridge construction activities adhere to this Project Design Feature.	1. Los Angeles County Department of Regional Planning, CDFW	
			2. Los Angeles County Department of Regional Planning, CDFW	
LV PDF-2.2-7: All construction of the permanent bridge decks and subsequent deck work shall occur from the top of the superstructure and no access to the wetted channel of the Santa Clara River shall be allowed for this work to be completed.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activities to ensure that such construction activities adhere to this Project Design Feature. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that such bridge construction activities adhere to this Project Design Feature.	1. Los Angeles County Department of Regional Planning, CDFW	
			2. Los Angeles County Department of Regional Planning, CDFW	
			3. During bridge construction activities	

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
LV PDF-2.2-8: With respect to the temporary haul route bridges, all steel pile supports shall be installed and removed when the column and pile locations are outside of the wetted portion of the Santa Clara River and when there is a clear weather window as predicted by NOAA weather data. A clear weather forecast is defined for this project as a 40 percent or less change chance of a 0.10- inches or greater precipitation event within the next 48 hours. Modular bridge decks, and all travel surface materials above the deck, shall be removed from the river prior to November 30 and shall not be installed until after May 1 of each year they are in use, consistent with NOAA weather data.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during installation and removal of temporary bridge components to ensure such components are installed and removed pursuant to the conditions set forth in this Project Design Feature. Reporting: Applicant shall prepare and submit monitoring reports to the County Department of Regional Planning confirming that such bridge construction activities adhere to this Project Design Feature.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During temporary haul route bridges construction activities	
LV PDF-2.2-9: Bank stabilization installation at in locations susceptible to winter flood flows shall be conducted from May 1 through November 30, when winter flood flows typically do not occur on the Santa Clara River. Other bank stabilization areas not at risk of winter flood flows may be constructed year-round.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activities to ensure that such construction activities adhere to this Project Design Feature. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that such bridge construction activities adhere to this Project Design Feature.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During bank stabilization construction activities	
LV PDF-2.2-10: During the concrete pour of the permanent bridge piles,	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activities to ensure that such construction activities adhere to	1. Los Angeles County Department of Regional Planning, CDFW	

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
displaced groundwater shall be contained within portable tanks located in the work zone for disposal at a legal disposal site in an upland area. No continuous dewatering or drawdown within the shaft shall occur. Casing water, if any, shall be extracted and disposed at a legal disposal site in an upland location. No other construction dewatering associated with installation of the Long Canyon Road bridge or temporary haul route bridges shall occur within the project site.	designee)	this Project Design Feature. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that such bridge construction activities adhere to this Project Design Feature.	CDFW	2. Los Angeles County Department of Regional Planning, CDFW
LV PDF-2.2-11: All construction dewatering of seepage water associated with bank stabilization shall be conducted in a manner that does not create a risk of fish stranding, either through draw down (zone of influence) or by flow discharge creating temporary habitat suitable for unarmored threespine stickleback.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activities to ensure that such construction activities adhere to this Project Design Feature. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that such bridge construction activities adhere to this Project Design Feature.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During bank stabilization construction activities	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During bank stabilization construction activities
LV PDF-2.2-12: All long-term maintenance of project facilities on the Santa Clara River shall adhere to timing and work zone restrictions, specifically: (1) maintenance activities shall not take place in the wetted channel of the Santa Clara River; (2) maintenance, repair or replacement of bridge structures requiring access to the riverbed shall be restricted to the	Applicant (Qualified designee)/LA County DPW	Field Verification: Qualified biologist(s) shall be present during bridge maintenance activities to ensure that such maintenance activities adhere to this Project Design Feature. Reporting: Applicant/LA County DPW shall prepare and submit maintenance activity reports to CDFW confirming that such bridge maintenance	1. Los Angeles County Department of Public Works, CDFW 2. Los Angeles County Department of Public Works, CDFW	1. Los Angeles County Department of Public Works, CDFW 2. Los Angeles County Department of Public Works, CDFW

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	
			2. Monitoring Agency	
			3. Monitoring Phase	
			3. During bridge repair and maintenance activities	
period from June 1 to September 30; (3) any dewatering necessary during any maintenance activities shall not create a risk of fish stranding, either through draw down (zone of influence) or through by flow discharge creating temporary habitat suitable for unarmored threespine stickleback, nor shall it involve direct removal of surface water from, or discharge to, the wetted channel of the Santa Clara River.		activities adhere to this Project Design Feature.		
LV 4.4-67/BIO-3-1a: The project applicant, or its designated general contractor, shall implement the PDFs and regulatory measures as incorporated into the project's bridge and bank stabilization designs.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge and bank stabilization construction activities to ensure that the PDFs and regulatory measures have been implemented as incorporated into the project's bridge and bank stabilization designs. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that the bridge and bank stabilization PDFs have been implemented per the proposed designs.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During bridge and bank stabilization construction activities	
LV 4.4-68/BIO-3-1b: The mandated Worker Environmental Awareness Program (Mitigation Measure LV 4.4-18 from the 2011 Landmark Village Final EIR) shall include a discussion regarding restriction of access to the wetted channel of the Santa Clara River and repercussions if encroachment occurs.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction and bank stabilization construction activities installation to ensure that all workers receive instruction regarding restricted access to the wetted channel of the Santa Clara River and the repercussions if encroachment occurs.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW	

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
		Reporting: Applicant shall prepare and submit reports to the County demonstrating that all workers involved in bridge construction and/or bank stabilization installation have received instruction and warnings as required by this mitigation measure.	CDFW 3. Prior to <u>During</u> bridge and bank stabilization construction activities	
LV 4.4-69/BIO-3-1c: Prior to the commencement of construction activities, a qualified biologist shall survey the proposed work locations to confirm that the construction zone is outside the wetted channel of the river and that no work takes place where fish may be affected.	Qualified biologist	Field Verification: Qualified biologist(s) shall be present at bridge and bank stabilization construction zones to ensure that such zones are outside the wetted channel of the river and that no work takes place where fish may be affected. Reporting: Applicant shall prepare and submit reports to the County demonstrating that all conditions of this mitigation measure have been met satisfactorily.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During <u>Prior to commencement of bridge and bank stabilization</u> construction activities	
LV 4.4-70/BIO-3-1d: During permanent bridge construction, a qualified biologist shall monitor all activities that are a threat to adjacent natural habitats or nearby species and prevent equipment, personnel and or debris from entering or making contact with the wetted channel of the river.	Qualified biologist	Field Verification: Qualified biologist(s) shall be present at bridge construction zones to ensure no equipment, personnel or debris enter or makes contact with the wetted channel of the river. Reporting: Applicant shall prepare and submit reports to the County demonstrating that all conditions of this mitigation measure have been	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning,	

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	
			2. Monitoring Agency	
			3. Monitoring Phase	
			CDFW	
		met satisfactorily.	3. During bridge construction activities	
LV 4.4-71/BIO-3-1e: A clear weather window, defined for this project as less than a 40 %-percent chance or less chance of 0.10 inches or greater of precipitation in the next 48 hours, as forecasted by NOAA, shall be required for the scheduling of any bridge or bank stabilization-related concrete pours. If a bridge or bank stabilization-related concrete pour is in progress, and an un-forecasted rain event occurs, bridge or bank stabilization-related concrete pours shall be suspended.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall obtain and consult daily weather forecasts and verify a 72-hour clear weather window for all construction activities. During a defined storm event, the qualified biologist shall confirm that no bridge or bank stabilization-related concrete pours are being installed. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County demonstrating that no bridge pier installation took place during defined storm events.	1. Los Angeles County Department of Regional Planning, CDFW	
			2. Los Angeles County Department of Regional Planning, CDFW	
			3. During bridge and bank stabilization construction activities	
LV 4.4-72/BIO-3-1-f: During all storm events (including summer rains), a monitor shall inspect work sites to make sure that site is secure and that flooding does not cause tarps to break or diversion drains to become plugged, potentially allowing construction materials and debris to flow into the river.	Applicant (Qualified designee)	Field Verification: During all storm events, a monitor shall inspect work sites to ensure flooding does not cause tarps to break or diversion drains to become plugged, potentially allowing construction materials and debris to flow into the River. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that such site inspections took place	1. Los Angeles County Department of Regional Planning, CDFW	
			2. Los Angeles County Department of Regional Planning, CDFW	

Landmark Village Project
June 2017

2.4-10

County of Los Angeles
Final Recirculated Portions of the EIR

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	2. Monitoring Agency
			3. Monitoring Phase	
			3. During bridge and bank stabilization construction activities	
			3. During bridge and bank stabilization construction activities	
LV 4.4-73/BIO-3-1g: Precautionary spill containment devices shall be deployed and maintained during any pouring of concrete related to the bridge structure where released materials or storm water runoff that may have come in contact with uncured concrete could be released to the wetted channel of the Santa Clara River. Containment may be integrated into the K-rail barrier along the perimeter of the Work Zone or may be underslung or integrated into the bridge structure itself (such as storm drain system for the roadway that is directed to a water quality treatment facility within the development areas north or south of the bridge crossing).	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during any construction activity that takes place in the dry riverbed of the River to ensure that spill containment devices have been deployed and that no uncured concrete or other materials are discharged or released into the wetted channel of the River. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County Department of Regional Planning demonstrating that spill containment devices have been deployed and that no uncured concrete or other materials have been discharged or released to the wetted channel of the River.	1. Los Angeles County Department of Regional Planning, CDFW	2. Los Angeles County Department of Regional Planning, CDFW
			2. Los Angeles County Department of Regional Planning, CDFW	3. During bridge construction activities
			3. During bridge construction activities	
LV 4.4-74/BIO-3-1h: A K-rail construction barrier shall be deployed between the bridge construction work zone and the wetted channel of the Santa Clara River. A discussion of access limitations restrictions shall be included in the required Worker Environmental Awareness Program training. (Mitigation Measure LV 4.4-18 from the 2011 Landmark Village Final EIR).	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activity to ensure that K-rail construction barrier is deployed as required by this mitigation measure. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County demonstrating that K-rail barriers have been deployed as required by this mitigation measure.	1. Los Angeles County Department of Regional Planning, CDFW	2. Los Angeles County Department of Regional Planning, CDFW
			2. Los Angeles County Department of Regional Planning, CDFW	3. During bridge construction activities
			3. During bridge construction activities	

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase
LV 4.4-75/BIO-3-11: Spill containment shall be deployed and maintained during Cast-in-Drilled Hole (CIDH) pile construction, bridge column construction, cast-in-place girder construction, bridge deck pours, and any other pouring of concrete related to the bridge structure where released materials or storm water runoff that may have come in contact with uncured concrete could be released to the wetted channel of the Santa Clara River. Containment may <u>shall</u> be integrated into the K-rail barrier along the perimeter of the work zone or underslung <u>tarp</u> or integrated into the bridge structure itself (such as storm drain system for the roadway that is directed to a water quality treatment facility within the development areas north or south of the bridge crossing).	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activities to ensure spill containment as required in this mitigation measure. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that during bridge construction activities the spill containment requirements set forth in this mitigation measure have been fulfilled.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During bridge construction activities
LV 4.4-76/BIO-3-11: To prevent construction debris from falling into the Santa Clara River during installation of bridge decks, the deck areas shall be fitted with an under-slung debris tarp, debris platform, or equivalent protection, extending at least 50 feet beyond the width of the wetted channel. The <u>project</u> applicant or its designee shall perform periodic maintenance and inspection to ensure <u>confirm</u> that the debris catchment system is performing correctly.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bridge construction activities to ensure construction debris prevention has been implemented as required by this mitigation measure. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that during bridge construction activities the construction debris prevention requirements of this mitigation measure have been fulfilled.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During bridge construction activities

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
<p>LV 4.4-77/BIO-3-1k:</p> <p>To ascertain that water quality is not being affected by bridge or bank stabilization-related concrete pouring activities, the project applicant or its designee shall monitor the water quality at points upstream, downstream, and immediately adjacent to the bridge construction work zone daily during bridge-related concrete pouring operations and report the results monthly, or as directed, to CDFW and the County. Key parameters to be monitored include pH and turbidity.</p>	Applicant (Qualified designee)	<p>Field Verification: Qualified water quality technician(s) shall be present during bridge construction activities to ensure water quality monitoring as required by this mitigation measure. In addition, if the monitoring data show that pH levels have changed more than 0.5 units from the naturally occurring variation or have fallen outside the range of 6.5 to 8.5,² the applicant shall immediately cease concrete-related construction work on the proposed bridge and within 24 hours inform CDFW and the County. Concrete-related construction work on the proposed work shall not resume until conditions return to the ranges indicated above or until CDFW determines such work may recommence without adversely affecting fish or other biological resources.</p> <p>Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that during bridge construction activities the water quality monitoring requirements of this mitigation measure have been fulfilled.</p>	<p>1. Los Angeles County Department of Regional Planning, CDFW</p> <p>2. Los Angeles County Department of Regional Planning, CDFW</p> <p>3. During bridge construction activities</p>	

² These thresholds are derived from the Los Angeles Regional Water Quality Control Board's Basin Plan.

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Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency
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LV 4.4-78/BIO-3-1i: All bridge maintenance and repair activities, as described in the RMDP Maintenance Manual, that have the potential to affect the wetted channel of the Santa Clara River shall adhere to the dry season window, as defined for this project, as June 1 through September 30, and to shall completely avoid the Santa Clara River wetted channel when performing maintenance activities. All measures implemented during original bridge construction shall also be implemented to avoid accidental contact, spills, or falling debris into the wetted channel. In the future, if the wetted portion of the Santa Clara River shifts in location (for example, in response to a flood event that alters the geomorphology of the channel wetted channel alignment), all maintenance and repair activities shall also be required to occur outside of the wetted channel.	Applicant (Qualified designee)/ LA County DPW	Field Verification: Qualified biologist(s) shall be present during bridge maintenance and repair activities to ensure that (i) such activities take place only during the dry season window as defined in this mitigation measure, and (ii) all required measures to prevent accidental contact, spills or falling debris into the wetted channel have been implemented. Reporting: Applicant/LA County DPW shall prepare and submit mitigation monitoring <u>maintenance activity reports to the County CDFW</u> confirming bridge maintenance and repair activities comply with the conditions of the mitigation measure.	1. Los Angeles County Department of Public Works, CDFW 2. Los Angeles County Department of Public Works, CDFW 3. During bridge maintenance activities
LV 4.4-79/BIO-3-2b: Prior to the commencement of construction activities, a qualified biologist shall survey the proposed work locations to confirm that the construction zone is outside the wetted channel of the river, that the proposed vibratory pile installation locations are at least ten 10 feet away from the wetted channel, and that no work takes place where unarmored threespine stickleback may be affected.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during temporary bridge construction to ensure that proposed work locations are outside the wetted channel of the river, that the proposed vibratory pile installation locations are at least 10 feet from the wetted channel, and that no work takes place where unarmored threespine stickleback may be affected. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that temporary bridge construction activities comply with the conditions of the mitigation measure.	1. Los Angeles County Department of Regional Planning, CDFW 2. Los Angeles County Department of Regional Planning, CDFW 3. During temporary bridge construction activities

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	<div>1. Enforcement Agency</div> <div>2. Monitoring Agency</div> <div>3. Monitoring Phase</div>	
LV 4.4-80/BIO-3-2c: Vibratory piles for the temporary haul route bridges shall be installed no closer than 10 feet to the wetted channel of the Santa Clara River, as determined by survey at the time piles are to be installed, and shall only be removed by vibratory methods if the wetted channel is at least 10 feet away.	Applicant (Qualified designee)	<p>Field Verification: Qualified biologist(s) shall be present during temporary bridge construction to ensure that the proposed vibratory piles are installed and removed only during times when the wetted channel is at least 10 feet away.</p> <p>Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that temporary bridge construction activities comply with the conditions of the mitigation measure.</p>	<div>1. Los Angeles County Department of Regional Planning, CDFW</div> <div>2. Los Angeles County Department of Regional Planning, CDFW</div> <div>3. During temporary bridge construction activities</div>	
LV 4.4-81/BIO-3-2d: No construction activities or personnel shall occur near the edge of the wetted channel that would have the potential to destabilize the low flow channel bank. A set-back from the edge of the top of bank for a horizontal distance that is twice the bank height (2 horizontal: 1 vertical) shall be maintained to prevent collapsing the bank on of the low flow channel.	Applicant (Qualified designee)	<p>Field Verification: Qualified biologist(s) shall be present during temporary bridge construction activities to ensure that such activities do not destabilize the low flow channel bank and that the setback required by this mitigation measure is maintained.</p> <p>Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that temporary bridge construction activities comply with the conditions of the mitigation measure.</p>	<div>1. Los Angeles County Department of Regional Planning, CDFW</div> <div>2. Los Angeles County Department of Regional Planning, CDFW</div> <div>3. During temporary bridge construction activities</div>	
LV 4.4-82/BIO-3-2e: During temporary <u>haul route</u> bridge construction and	Applicant (Qualified designee)	<p>Field Verification: Qualified biologist(s) shall be present during temporary bridge construction activities to ensure that no equipment, personnel</p>	<div>1. Los Angeles County Department of Regional Planning,</div>	

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Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	
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			3. Monitoring Phase	
			CDFW	
demobilization, a qualified biologist shall monitor all activities that are a threat to adjacent natural habitats or nearby species and ensure no prevent equipment, personnel or debris from entering or makes making contact with the wetted channel of the River.	designee)	or debris enter or makes contact with the wetted channel of the River. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that temporary bridge construction activities comply with the conditions of the mitigation measure.	2. Los Angeles County Department of Regional Planning, CDFW	
			3. During temporary bridge construction activities	
LV 4.4-83/BIO-3-3b: Prior to the commencement of bank stabilization construction activities, a qualified biologist shall survey the proposed work locations to confirm that the construction zone is outside the wetted channel of the river and that construction BMPs are installed prior to construction. Such surveys shall ensure and that no work takes place where fish may be affected.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bank stabilization construction activities to ensure that (i) the construction zones are outside the wetted channel of the river, (ii) construction BMPs have been installed prior to construction, and (iii) no work takes place where fish may be affected. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that bank stabilization construction activities comply with the conditions of this mitigation measure.	1. Los Angeles County Department of Regional Planning, CDFW	
			2. Los Angeles County Department of Regional Planning, CDFW	
			3. During bank stabilization construction activities	
LV 4.4-84/BIO-3-3d: Bank stabilization construction locations susceptible to winter flood flows shall be conducted from May 1 through November 30, when winter flood flows do not occur on the	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bank stabilization construction activities to ensure that such activities take place only during the period set forth in this mitigation	1. Los Angeles County Department of Regional Planning, CDFW	

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			3. Monitoring Phase	
Santa Clara River. Other bank stabilization areas not at risk of flood flows shall be constructed year-round.		measure. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that bank stabilization construction activities comply with the conditions of this mitigation measure.	2. Los Angeles County Department of Regional Planning, CDFW	
			3. During bank stabilization construction activities	
LV 4.4-85/BIO-3-3e: Although a late-spring or early fall flood event is not expected to occur, the project applicant or its designee <u>designated contractor</u> shall implement Perimeter Best Management Practices, as required under the Environmental Protection Agency's Construction National Pollutant Discharge Elimination System permit, which would deflect minor flows (less than 12 inches deep, and less than 15 8 fps velocities) from entering bank protection construction work zones.	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall be present during bank stabilization construction activities to ensure that the applicant or its designee implements the Perimeter Best Management Practices as described in this mitigation measure. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that the applicant or its designee implements the Perimeter Best Management Practices as described in this mitigation measure.	1. Los Angeles County Department of Regional Planning, CDFW	
			2. Los Angeles County Department of Regional Planning, CDFW	
			3. During bank stabilization construction activities	
LV 4.4-86/BIO-3-3f: The <u>project A</u> applicant or its designee shall develop a Construction Groundwater Dewatering Plan for those areas (i.e., bank stabilization areas) in close proximity to stream flow and submit to CDFW and the County for approval. The plan shall include the following measures and be conducted	Applicant (Qualified designee)	Field Verification: Qualified biologist(s) shall monitor the construction dewatering requirements of this mitigation measure. Reporting: Applicant shall prepare and submit mitigation monitoring reports to the County confirming that the construction dewatering requirements of this mitigation measure have	1. Los Angeles County Department of Regional Planning, CDFW	
			2. Los Angeles County Department of	

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<p>during construction groundwater dewatering activities:</p> <ul style="list-style-type: none"> Operational restriction on dewatering addressed in the 2010 Final EIR (2011 Landmark Village Final EIR) require that any dewatering be conducted in a manner that does not affect river flow, and these same restrictions shall be observed going forward. Bank stabilization dewatering shall be implemented in a manner that (1) does not create temporary wetted channel habitat suitable for stickleback; (2) does not diminish existing river flow, and therefore does not result in stranding of unarmored threespine stickleback or other fish; and (3) does not introduce pollutants to surface waters. Dewatering activities shall not involve direct removal of surface water from, or discharge to the Santa Clara River. Nor shall such activities result in any draw-down of the river's flow such that fish may become stranded. Any groundwater discharges shall be directed to an appropriate and legal disposal site in an upland area that will not affect the surface elevation of the wetted channel of the Santa Clara River. The project A applicant or its designee shall assess local stream and groundwater conditions, including flow depths, groundwater elevations, and anticipated dewatering cone of influence (radius of draw down). The project A applicant or its designee shall monitor daily surface water elevations upstream, adjacent to, and downstream of the extraction points, to assess any critical flow regimes susceptible to excessive draw down before, during and after groundwater dewatering 		been fulfilled.	Regional Planning, CDFW 3. During bank stabilization construction activities

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<p>activities. The designated monitor shall have the authority to halt dewatering activities if water levels decrease in the wetted portion of the Santa Clara River where unarmored threespine stickleback are present. In the event the designated monitor observes an effect on the wetted channel that necessitates halting of dewatering operations, the applicant will be required to consult with CDFW, revise the Construction Groundwater Dewatering Plan as appropriate, and implement whatever additional restrictions may be necessary to preclude impact to the wetted channel (such as limiting the extent of excavation dewatering, implementing other construction methods acceptable to the Los Angeles County Department of Public Works such as launch stone, or suspending construction until such time as regional groundwater conditions are more favorable for the construction to proceed).</p> <ul style="list-style-type: none"> The project A applicant or its designee shall monitor surface water elevations downstream of the project location to assess any flow regimes and overbank areas that may be susceptible to flooding. The project A applicant or its designee shall monitor upland discharge locations for potential channel erosion from dewatering discharge, and appropriate BMPs must be implemented to prevent excessive erosion or turbidity in the discharge. Monitoring reports shall be summarized and provided to CDFW and the County upon completion of construction activities that required dewatering. 			

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<p>LV 4.4-10</p> <p>Temporary bridges, culvert crossings, or other feasible methods of providing access across the river shall be constructed outside of the winter season and not during periods when spawning is occurring. Prior to the construction of any temporary or permanent crossing of the Santa Clara River, the applicant shall develop a Stream Crossing and Diversion Plan. The plan shall include the following elements: the timing and methods for pre-construction aquatic species surveys; a detailed description of the diversion methods (e.g., berms shall be constructed of on-site alluvium materials of low silt content, inflatable dams, sand bags, or other approved materials); special status species relocation; fish exclusion techniques; including the use of block netting and fish relocation; methods to maintain fish passage during construction; channel habitat enhancement, including the placement of vegetation, rocks, and boulders to produce riffle habitat; fish stranding surveys; and the techniques for the removal of crossings prior to winter storm flows. The plan shall be submitted to the USFWS and CDFG for approval at least 30 days prior to implementation.</p> <p>If adult special status fishes are present and spawning has not occurred, they shall be relocated prior to the diversion or crossing. Block nets of 0.125-inch woven mesh will be set upstream and downstream. On days with possible high temperature or low humidity (temperatures in excess of 80°F), work will be done in the early morning hours, as soon as sufficient light is available, to avoid exposing fishes to high</p>	Applicant (Project biologist)	<p>Review and Approval of a Stream Crossing and Diversion Plan</p> <p>At least 30 days prior to Implementation of Plan and prior to the construction of any temporary or permanent crossing of the Santa Clara River</p>	<p>1. LACDRP / CDFG / ACOE / USFWS</p> <p>2. LACDRP / CDFG / ACOE / USFWS</p> <p>3. Prior to the construction of any temporary or permanent crossing of the Santa Clara River,</p>

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temperatures and/or low humidity. If high temperatures are present, the fishes will be herded to downstream areas past the block net. Once the fishes have been excluded by herding, a USFWS staff member or his or her agents shall inspect the site for remaining or stranded fish. A USFWS staff member or his or her agents shall relocate the fish to suitable habitat outside the Project area (including those areas potentially subject to high turbidity). During the diversion/relocation of fishes, the USFWS or his or her agents shall be present at all times.				
LV 4.4-12: Slow moving water habitats shall be constructed upstream and downstream of any river crossing or bridge construction area to provide refuge for special status fishes during construction. Where feasible and in consultation with CDFG and USFWS, the applicant shall enhance slow-moving water habitats for each linear foot disturbed by hand excavating shallow side channels and placing multiple sets of obstructions (e.g., boulders, large logs, or other CDFG and USFWS approved materials) in the channel.	Applicant	Enhancement of Slow-Moving Water Habitats Field Verification	1- LACDRP / CDFG USFWS	
			2- LACDRP / CDFG USFWS	
			3- Prior to Any River Crossings or Bridge Construction	
LV 4.4-13: Installation of bridges, culverts, or other structures shall not impair movement of fish and aquatic life. Bottoms of temporary culverts shall be placed at or below channel grade. Bottoms of permanent culverts shall be placed below channel grade. Culvert crossings shall include provisions for	Applicant	Review of construction plan and field verification	1- LACDRP	
			2- LACDRP	
			3- Prior to any river crossings or bridge construction	

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a low flow channel where velocities are less than two feet per second to allow fish passage.				
LV 4.4-54 During any stream diversion or culvert installation activity, a qualified biologist(s) shall be present and shall patrol the areas within, upstream, and downstream of the work area. The biologist(s) shall inspect the diversion and inspect for stranded fish or other aquatic organisms. Under no circumstances shall the unarmored threespine stickleback be collected or relocated, unless USFWS personnel or their agents implement this measure. Any event involving stranded fish shall be recorded and reported to CDFG and USFWS within 24 hours.	Applicant (Project biologist)	Field Verification	1. CDFG/USFWS 2. CDFG/USFWS 3. During to Stream Diversion of Culvert Installation Activity	
The following mitigation measures replace and supersede (in full) mitigation measures LV 4.23-1 through LV 4.23-7 located on pages 210 through 211 of the MMRP adopted by the County in February 2012, and are consistent with the South Coast Air Quality Management District's locational preferences for GHG mitigation by securing emissions reductions on the Project site, within the Santa Clarita Valley and County of Los Angeles, and within and outside of the State of California. Additionally, these mitigation measures are identical to those identified by the California Department of Fish and Wildlife's Draft Additional Environmental Analysis (SCH No. 2000011025; 2016) for the RMDP/SCP Project. Accordingly, the mitigation measures that follow are preceded by a Landmark Village-specific numerical prefix (i.e., LV 4.23-x), as well as a RMDP/SCP Project-specific numerical prefix (i.e., 2-x). The italicized text in the parentheticals following each mitigation measure provides relevant Landmark Village Project-specific details and clarifications.				
LV 4.23-1/2-1: Prior to the issuance of residential building permits for the project or a portion of the project, the project applicant or its designee shall submit a one or more Zero Net Energy (ZNE) Confirmation Reports (ZNE Report) prepared by a qualified building energy efficiency and design consultant to	Applicant	Submit ZNE Report for County review and approval confirmation prior to issuance of residential building permits. An energy efficiency and design consultant is qualified to prepare a ZNE Report if the consultant is a Certified Energy Analyst, as established by the	1. Los Angeles County Dept. of Public Works and Dept. of Regional Planning 2. Los Angeles County	

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<p>Los Angeles County for review and approval confirmation that the residential development covered by the ZNE Report achieves the ZNE standard specified in this mitigation measure. The Specifically, a ZNE Report shall demonstrate that the residential development within the RMDP/SCP project site subject to application of Title 24, Part 6, of the California Code of Regulations has been designed and shall be constructed to achieve ZNE, as defined by CEC in its 2015 Integrated Energy Policy Report, or otherwise achieve an equivalent level of energy efficiency, renewable energy generation or greenhouse gas emissions savings which requires the value of the net energy produced by project renewable energy resources to equal the value of the energy consumed annually by the project using the CEC's Time Dependent Valuation metric.</p> <p>A ZNE Report may, but is not required to shall provide, at a minimum, the following information:</p> <ul style="list-style-type: none"> • <u>Confirmation that the residential development shall comply with Title 24, Part 6 building standards that are operative at the time of building permit application.</u> • <u>Identification of additional measures or building performance standards that shall be relied upon to achieve the ZNE standard (as defined above), assuming ZNE is not already achieved by meeting the operative Title 24, Part 6 building standards.</u> <p>In demonstrating that the residential development achieves the ZNE standard, the ZNE Report may:</p>		<p>California Association of Building Energy Consultants, or, alternatively, has similar qualifications as confirmed by staff for the County of Los Angeles.</p>	<p>Dept. of Public Works</p> <p>3. Prior to Issuance of Building Permits</p>

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<ul style="list-style-type: none"> Evaluate multiple buildings and/or land use types. For example, a ZNE Report may cover all of the residential and commercial <u>non-residential buildings</u> within a neighborhood/community, or a subset thereof, <u>including an individual building</u>. Rely upon aggregated or community-based strategies to support its determination that the subject buildings are designed to achieve ZNE. For example, shortfalls in renewable energy generation for one or more buildings may be offset with excess renewable generation from one or more other buildings, <u>or off-site renewable energy generation</u>. As such, a ZNE Report could determine a building is designed to achieve ZNE based on aggregated or community-based strategies even if the building on its own may not be designed to achieve ZNE. Make reasonable assumptions about the estimated electricity and natural gas loads and energy efficiencies of the subject buildings. If interconnection of the project's renewable generation is not sufficient to allow compliance with the ZNE standard for the project, or a portion of the project, then Los Angeles County shall allow the project applicant or its designee to achieve an equivalent level of GHG emissions reductions to mitigate such shortfall by providing 5.1 MT CO₂e of GHG reductions for every megawatt-hour of renewable energy generation that would have been needed to achieve the ZNE standard 			

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			3. Monitoring Phase	
<p>for the project, or a portion of the project, as demonstrated in the ZNE Report.</p> <p><i>(This mitigation measure applies to Landmark Village without change, with the qualification that the village-specific equivalency metric is 6.2 (not 5.1) MT CO₂e of GHG reductions for every megawatt-hour of renewable energy generation that would have been needed to achieve the ZNE standard. This village-specific equivalency metric accounts for the Renewable Portfolio Standard requirements established for the 2024 calendar year.)</i></p>				
<p>LV 4.23-2/2-2:</p> <p>Prior to the issuance of building permits for commercial development and private recreation centers, and prior to the commencement of construction for the public facilities, respectively, <u>for the project or a portion of the project the project applicant or its designee shall submit a one or more Zero Net Energy Confirmation Reports (ZNE Report) prepared by a qualified building energy efficiency and design consultant to Los Angeles County for review and approval confirmation that the commercial developments, private recreation centers, and/or public facilities covered by the ZNE Report achieve the ZNE standard specified in this mitigation measure.</u> The Specifically, a ZNE Report shall demonstrate that the commercial development, private recreation centers, and public facilities within the RMDP/SCP project site subject to application of Title 24, Part 6, of the California Code of Regulations have been designed and shall be constructed to achieve ZNE, as</p>	Applicant	<p>Submit ZNE Report for County review and approval <u>confirmation</u> prior to issuance of building permits for commercial development and private recreation centers, and prior to the commencement of construction for the public facilities.</p> <p><u>An energy efficiency and design consultant is qualified to prepare a ZNE Report if the consultant is a Certified Energy Analyst, as established by the California Association of Building Energy Consultants, or, alternatively, has similar qualifications as confirmed by staff for the County of Los Angeles.</u></p>	<p>1. Los Angeles County Dept. of Public Works and Dept. of Regional Planning</p> <p>2. Los Angeles County Dept. of Public Works</p> <p>3. Prior to Issuance of Building Permits</p>	

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<p>defined by CEC in its 2015 Integrated Energy Policy Report, or otherwise achieve an equivalent level of energy efficiency, renewable energy generation or greenhouse gas emissions savings which requires the value of the net energy produced by project renewable energy resources to equal the value of the energy consumed annually by the project using the CEC's Time Dependent Valuation metric.</p> <p>("Commercial development" includes retail, light industrial, office, hotel, and mixed-use buildings. "Public facilities" are fire stations, libraries, and elementary, middle/junior high and high schools.)</p> <p>A ZNE Report may, but is not required to shall provide, at a minimum, the following information:</p> <ul style="list-style-type: none"> • Confirmation that the commercial development, private recreation centers, and/or public facilities shall comply with Title 24, Part 6 building standards that are operative at the time of building permit application. • Identification of additional measures or building performance standards that shall be relied upon to achieve the ZNE standard (as defined above), assuming ZNE is not already achieved by meeting the operative Title 24, Part 6 building standards. <p>In demonstrating that the commercial development, private recreation centers, and/or public facilities achieves the ZNE</p>			

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<p><u>standard, the ZNE Report may:</u></p> <ul style="list-style-type: none"> Evaluate multiple buildings and/or land use types. For example, a ZNE Report may cover all of the residential and non-residential buildings within a neighborhood/community, or a subset thereof, <u>including an individual building.</u> Rely upon aggregated or community-based strategies to support its determination that the subject buildings are designed to achieve ZNE. For example, short falls in renewable energy generation for one or more buildings may be offset with excess renewable generation from one or more other buildings, <u>or off-site renewable energy generation.</u> As such, a ZNE Report could determine a building is designed to achieve ZNE based on aggregated or community-based strategies even if the building on its own may not be designed to achieve ZNE. Make reasonable assumptions about the estimated electricity and natural gas loads and energy efficiencies of the subject buildings. If interconnection of the project's renewable generation is not sufficient to allow compliance with the ZNE standard for the project, or a portion of the project, then Los Angeles County shall allow the project applicant or its designee to achieve an equivalent level of GHG emissions reductions to mitigate such shortfall by providing 5.1 MT CO₂e of GHG reductions for every megawatt-hour of renewable energy generation that would have been needed to achieve the ZNE standard 			

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<p>for the project, or a portion of the project, as demonstrated in the ZNE Report.</p> <p><i>(This mitigation measure applies to Landmark Village without change, with the qualification that the village-specific equivalency metric is 6.2 (not 5.1) MT CO₂e of GHG reductions for every megawatt-hour of renewable energy generation that would have been needed to achieve the ZNE standard. This village-specific equivalency metric accounts for the Renewable Portfolio Standard requirements established for the 2024 calendar year.)</i></p>				
<p>LV 4.23-3/2-3:</p> <p>Prior to the issuance of private recreation center building permits, the project applicant or its designee shall submit swimming pool heating design plans to Los Angeles County for review and approval. The design plans shall demonstrate that all swimming pools located at private recreation centers on the RMDP/SCP project site have been designed and shall be constructed to use solar water heating or other technology with an equivalent level of energy efficiency.</p> <p><i>(This mitigation measure applies to Landmark Village without change.)</i></p>	Applicant	Submit swimming pool heating design plans for County review and approval prior to issuance of building permit for private recreation center.	1. Los Angeles County Dept. of Public Works	
			2. Los Angeles County Dept. of Public Works	
			3. Prior to Issuance of Building Permits	
<p>LV 4.23-4/2-4:</p> <p>Prior to the issuance of residential building permits, the project applicant or its designee shall submit building design plans, to Los Angeles County for review and</p>	Applicant	As to the charging stations, submit building design plan for County review and approval prior to issuance of residential building permits. As to the purchase subsidies, the Project applicant	1. Los Angeles County Dept. of Public Works and Dept. of Regional Planning	

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<p>approval, which demonstrate that each residence within the RMDP/SCP project site subject to application of Title 24, Part 6, of the California Code of Regulations shall be equipped with a minimum of one single-port electric vehicle (EV) charging station. Each charging station shall achieve a similar or better functionality as a Level 2 charging station. Additionally, prior to the issuance of the first building permit for the RMDP/SCP project site, the project applicant or its designee shall establish and fund a dedicated account for the provision of subsidies for the purchase of ZEVs, as defined by ARB. The project applicant or its designee shall provide proof of the account's establishment and funding to Los Angeles County.</p> <p>The dedicated account shall be incrementally funded, for each village-level project, in an amount that equals the provision of a \$1,000 subsidy per residence – on a first-come, first-served basis – for <u>50</u> <u>65</u> percent of the village's total residences subject to application of Title 24, Part 6, of the California Code of Regulations.</p> <p><i>(This mitigation measure applies to Landmark Village without change.)</i></p>		<p>or its designee shall submit proof of the establishment and funding of a dedicated account for the administration of the subsidies to the County prior to the issuance of the first building permit for the RMDP/SCP Project site. The dedicated account shall be <u>funded incrementally</u>, prior to the issuance of residential building permits for each village-level project in an amount that equals the provision of subsidies for <u>65</u> percent of the village's total residences.</p> <p>For purposes of the Landmark Village Project, there are a total of 1,444 residential dwelling units. Therefore, the Project applicant or its designee has a <u>\$722,000</u> <u>\$938,600</u> funding obligation [(1,444 units x 0.65) x (\$1,000)] in the event that full build-out is achieved, which equates to a <u>\$500</u> <u>\$650</u> per dwelling unit funding obligation.</p> <p>The dedicated account shall be funded incrementally, prior to the issuance of residential building permits within the Landmark Village Project. Specifically, prior to the issuance of residential building permits, the Project applicant or its designee shall provide proof of payment in an amount that directly relates to the number of residential units being permitted at that time.</p> <p>The dedicated account shall be administered by the Project's Transportation Management</p>	<p>2. Los Angeles County Dept. of Public Works and Dept. of Regional Planning</p> <p>3. Prior to Issuance of Building Permits</p>

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
		<p>Organization or equivalent management entity (see mitigation measure LV 4.23-6/2-6), which shall be responsible for marketing and promoting the availability of the purchase subsidies to each village's residences, and tracking the update uptake (i.e., utilization) of the subsidies.</p> <p>In the event that the account is not depleted after occupancy of the final residential dwelling unit, the Project applicant or its designee, which may include the Transportation Management Organization or its equivalent management entity, shall coordinate with the Los Angeles County Planning Director and secure the Planning Director's approval of one or more strategies that secure an equivalent level of greenhouse gas emissions reductions. For purposes of calculating the greenhouse gas emissions reductions required to demonstrate equivalency, each un-used subsidy shall equal 4.48 <u>5.93</u> MT CO₂e reductions per year. The Project applicant or its designee shall be permitted to utilize any unused subsidy funding for purposes of achieving this equivalency requirement.</p>		
LV 4.23-5/2-5: Prior to the issuance of commercial building permits, the project applicant or its designee shall submit building design plans, to Los Angeles County, which demonstrate	Applicant	<p>Submit building design plan for County review and approval prior to issuance of commercial building permits.</p>	1. Los Angeles County Dept. of Public Works and Dept. of Regional Planning	

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	2. Monitoring Agency
<p>that the parking areas for commercial buildings on the RMDP/SCP project site shall be equipped with EV charging stations that provide charging opportunities to 7.5 percent of the total number of required parking spaces. ("Commercial buildings" include retail, light industrial, office, hotel, and mixed-use buildings.)</p> <p>The EV charging stations shall achieve a similar or better functionality as a Level 2 charging station. In the event that the installed charging stations use more superior functionality/technology <u>other</u> than Level 2 charging stations, the parameters of the mitigation obligation (i.e., number of parking spaces served by EV charging stations) shall reflect the comparative equivalency of Level 2 charging stations to the installed charging stations on the basis of average charge rate per hour. For purposes of this equivalency demonstration, Level 2 charging stations shall be assumed to provide charging capabilities of 25 range miles per hour.</p> <p><i>(This mitigation measure applies to Landmark Village without change.)</i></p>			2. Los Angeles County Dept. of Public Works	3. Prior to Issuance of Building Permits
<p>LV 4.23-6/2-6:</p> <p>The project applicant-submitted Newhall Ranch Transportation Demand Management Plan (TDM Plan), located in Technical Report <u>Final AEA Appendix E Z</u> contained in AEA Appendix 1, shall be implemented to reduce VMT resulting from project build out with oversight from Los Angeles County. The TDM Plan is designed to influence the transportation choices of residents, students,</p>	Applicant	<p>A copy of the Newhall Ranch TDM is contained within Appendix E 2.7.2 of Appendix 2.1-A the <u>Final Recirculated Analysis</u>. Implementation of the Newhall Ranch TDM Plan is <u>shall proceed in</u> accordance with the provisions outlined in the plan, and shall be required by the County's condition of approval that itself requires implementation of this MMRP. Monitoring</p>	1. Los Angeles County Dept. of Public Works and Dept. of Regional Planning	2. Los Angeles County Dept. of Public Works and Dept. of Regional Planning

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	<div>1. Enforcement Agency</div> <div>2. Monitoring Agency</div> <div>3. Monitoring Phase</div>
<p>employees, and visitors, and serves to enhance the use of alternative transportation modes both on and off the project site through the provision of incentives and subsidies, expanded transit opportunities, bikeshare and carshare programs, technology-based programs, and other innovative means. Village-level implementation implementation of relevant elements of the TDM Plan will be included as a condition of approval shall proceed in accordance with village-level applicability supplements prepared by a qualified transportation engineer that are reviewed and considered by Los Angeles County when approving tentative subdivision maps for land developments that are part of the project.</p> <p>Accordingly, the TDM Plan identifies key implementation actions that are critical to the effectiveness of the VMT-reducing strategies, as well as timeline and phasing requirements, monitoring standards, and performance metrics and targets tailored to each of the strategies.</p> <p>In accordance with the TDM Plan, a non-profit Transportation Management Organization (TMO) or equivalent management entity shall be established to provide the services required, as applicable.</p> <p><i>(This mitigation measure applies to Landmark Village without change. Note that the subject TDM Plan is located in Appendix 3.4 of the Final Recirculated Analysis.)</i></p>		<p>Additionally, monitoring and implementation of the Newhall Ranch TDM Plan shall proceed in accordance with the Landmark Village Applicability Supplement, located in Appendix E 3.4 within Appendix 2.1-A of the Final Recirculated Analysis, in conjunction with the additional village-specific information provided here.</p> <p>The Newhall Ranch TDM Plan includes the provision of subsidies for the purchase of neighborhood electric vehicles (NEVs) and electric bikes (E-Bikes). The Newhall Ranch Transportation Management Organization or equivalent management entity shall be responsible for marketing and promoting the availability of the NEV and E-Bike purchase subsidies to each village's residences, and tracking the uptake (i.e., utilization) of the subsidies.</p> <p>In the event that the NEV and E-Bike subsidies are not fully utilized after occupancy of the final residential dwelling unit, the Project applicant or its designee, which may include the Transportation Management Organization or its equivalent entity, shall coordinate with the Los Angeles County Planning Director and secure the Planning Director's approval of one or more strategies that secure an equivalent level of greenhouse gas <u>emission</u> reductions. For purposes of calculating the greenhouse gas emissions</p>	<div>Planning</div> <div>3. Prior to Issuance of Building Permits</div>

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	2. Monitoring Agency
		reductions required to demonstrate equivalency, each un-used NEV purchase subsidy shall equal <u>5.0</u> 4.13 MT CO ₂ e reductions per year and each un-used E-Bike purchase subsidy shall equal <u>1.6</u> 0.8 MT CO ₂ e reductions per year. The Project applicant or its designee shall be permitted to utilize any unused subsidy funding for purposes of achieving this equivalency requirement.		3. Monitoring Phase
LV 4.23-7/2-7: Prior to the issuance of traffic signal permits, the project applicant or its designee shall work with Los Angeles County and the California Department of Transportation (Caltrans), as applicable, to facilitate traffic signal coordination along: <ul style="list-style-type: none"> State Route 126 from the Los Angeles County line to the Interstate 5 north-bound ramps; Chiquito Canyon Road, Long Canyon Road, and Valencia Boulevard within the RMDP/SCP project site; Magic Mountain Parkway from Long Canyon Road to the Interstate 5 north-bound ramps; and Commerce Center Drive from Franklin Parkway to Magic Mountain Parkway. To effectuate the signal synchronization and specifically the operational and timing adjustments needed at affected traffic signals, the project applicant or its designee shall submit traffic signal plans for review and approval, and/or pay needed fees as determined by Los Angeles County or	Applicant	The Project applicant or its designee shall submit traffic signal plan(s) for County or Caltrans review and approval, as applicable, and/or pay applicable fees as needed for signal operations and timing adjustments to affected traffic signals prior to traffic signal permit issuance.	1. Los Angeles County Dept. of Public Works	2. Los Angeles County Dept. of Public Works/Cal. Dept. of Trans.
				3. Prior to Traffic Signal Permit Issuance

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	2. Monitoring Agency
Caltrans, as applicable. A majority of the signals that will be synchronized will be new signals constructed/installed by the project. Thus, for these signals, the project will provide the necessary equipment at the signal controller cabinet, as well as within the new roadways themselves, to enable and facilitate synchronization. The project is responsible for paying 100 percent of the applicable fee amount for the signal synchronization work, with assurance that the necessary funding will be available to fully implement this measure. <i>(For purposes of the Landmark Village Project, the following roadway segments shall be subject to traffic signal synchronization improvements: (a) SR-126 from west of Chiquita Canyon Road to east of Wolcott Way (adjacent to the Landmark Village boundary); and, (b) Long Canyon Road (within the Landmark Village boundary).)</i>				
LV 4.23-8/2-8: Consistent with the parameters of the Newhall Ranch TDM Plan, the project applicant or its designee shall provide Los Angeles County with proof that funding has been provided for the purchase, operation and maintenance of electric zero emission school buses in furtherance of the school bus program identified in the project's TDM Plan. The proof of funding shall be demonstrated incrementally as the school bus program is paced to village-level occupancy and student enrollment levels. <i>(This mitigation measure applies to</i>	Applicant	See mitigation measure LV 4.23-6/2-6, above. Provide the County with proof of payment per the standards established in the TDM Plan for the administration of the school bus program; the funding shall be made available incrementally as the school bus program is paced to village-level occupancy and student enrollment levels.	1. Los Angeles County Dept. of Regional Planning	2. Los Angeles County Dept. of Regional Planning
				3. Per TDM Plan Phasing

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	<div>1. Enforcement Agency</div> <div>2. Monitoring Agency</div> <div>3. Monitoring Phase</div>
Landmark Village without change.)			
<p>LV 4.23-9/2-9:</p> <p>Prior to the issuance of the first 2,000th residential building permit within the RMDP/SCP project site and every 2,000th residential building permit thereafter, the project applicant or its designee shall provide Los Angeles County with proof that it has provided a subsidy of \$100,000 per bus for the replacement of up to 10 diesel or compressed natural gas transit buses with <u>electric zero emission</u> buses to the identified transit provider(s).</p> <p><i>(The Landmark Village Project shall be responsible for its proportional share of the referenced subsidies.)</i></p>	Applicant	<p>Prior to the issuance of the first 2,000th residential building permit within the RMDP/SCP Project site and every 2,000th residential building permit thereafter, provide the County with proof of establishment of an escrow account in the amount of \$100,000 representing a subsidy for the one <u>electric zero emission</u> transit bus for the benefit of the identified transit provider(s). The escrow instructions shall document that the subsidies only can be used by the transit provider(s) exclusively for the purpose specified herein (i.e., the purchase of <u>electric zero emission</u> transit buses).</p> <p>The project applicant or its designee, which may include the Transportation Management Organization or its equivalent management entity, shall monitor the transit provider(s)'s utilization of the subsidies.</p> <p>In the event that one or more subsidies are not utilized for the purchase of any <u>electric zero emission</u> transit bus after occupancy of the final residential dwelling unit within the RMDP/SCP project area, the Project applicant or its designee, which may include the Transportation Management Organization or its equivalent management entity, shall coordinate with the Los Angeles County Planning Director and secure the</p>	<div>1. Los Angeles County Dept. of Regional Planning</div> <div>2. Los Angeles County Dept. of Regional Planning</div> <div>3. Prior to Issuance of Building Permits</div>

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency
			2. Monitoring Agency
			3. Monitoring Phase
		Planning Director's approval of one or more strategies that secure an equivalent level of greenhouse gas emissions reductions. For purposes of calculating the greenhouse gas emissions reductions required to demonstrate equivalency, each un-used electric <u>zero emission</u> transit bus subsidy shall equal 65.72 MT CO ₂ e reductions per year. The Project applicant or its designee shall be permitted to utilize any unused subsidy funding for purposes of achieving this equivalency requirement.	
LV 4.23-10/2-10: Prior to issuing grading permits for village-level development within the RMDP/SCP project site, Los Angeles County shall confirm that the project applicant or its designee shall fully mitigate the <u>related</u> construction and vegetation change GHG emissions associated with each such grading permit (the "Incremental Construction GHG Emissions") by relying upon one of the following compliance options, or a combination thereof, in accordance with the project applicant-submitted Newhall Ranch GHG Reduction Plan (GHG Reduction Plan; see Technical Report # <u>Final AEA Appendix 6 - F contained in AEA Appendix 1</u>):	Applicant	<p>A copy of the Newhall Ranch GHG Reduction Plan is located within Appendix F of Appendix 2.1-A <u>2.7.1 of the Final Recirculated Analysis</u>.</p> <p>Prior to obtaining grading permits for development within the Project site, the incremental GHG emissions associated with such construction and vegetation change-related activities <u>must</u> shall be offset.</p> <p>Compliance with this measure can be demonstrated by either of the following options, or some combination thereof, as provided for in Section VIII of the GHG Reduction Plan.</p> <ul style="list-style-type: none"> • Directly providing the County with proof of retired carbon credits (e.g., the carbon credits retirement documentation) in a quantity equal to the Incremental Construction GHG Emissions; or 	<p>1. Los Angeles County Dept. of Regional Planning</p> <p>2. Los Angeles County Dept. of Regional Planning</p> <p>3. Prior to Issuance of Grading Permits</p>

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ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase
<p>shall mean an instrument issued by an Approved Registry that satisfies the performance standards set forth in the GHG Reduction Plan and shall represent the estimated reduction or sequestration of one metric tonne of carbon dioxide equivalent that will be achieved by a Direct Reduction Activity that is not otherwise required (CEQA Guidelines Section 15126.4(c)(3)). An "Approved Registry" is an accredited carbon registry as defined by the GHG Reduction Plan; or</p> <ul style="list-style-type: none"> Obtain and retire "Carbon Offsets" carbon credits that have been issued by a recognized and reputable carbon registry, as described in the GHG Reduction Plan, in a quantity equal to the Incremental Construction GHG Emissions. "Carbon Offset" shall mean an instrument issued by an Approved Registry that satisfies the performance standards set forth in the GHG Reduction Plan and shall represent the past reduction or sequestration of one metric tonne of carbon dioxide equivalent achieved by a Direct Reduction Activity or any other GHG emission reduction project or activity that is not otherwise required (CEQA Guidelines Section 15126.4(c)(3)). <p>(This mitigation measure applies to Landmark Village without change. Note that the subject GHG Reduction Plan is located in Appendix 2.7.1 of the Final Recirculated Analysis.)</p>		<ul style="list-style-type: none"> Providing the County with confirmation of GHG reduction credits issued by a Coordinating Registry that verifies the retirement of credited GHG reductions in a quantity equal to the Incremental Construction GHG Emissions, as described in the GHG Reduction Plan (Appendix F within Appendix 2.1-A). <p>In the event that multiple village-level projects have shared improvements, as defined to include any type of utility, roadway and/or infrastructure improvement identified for the implementation of each project, the construction-related emissions for the shared improvements only shall be offset once and shall be the responsibility of the village-level project that occurs first in time from a grading permit issuance perspective.</p>	

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase
<p>LV 4.23-11/2-11:</p> <p>Prior to the issuance of building permits for every 100 residential units or 100,000 square feet of commercial development for each village-level project development within the RMDP/SCP Project site, the project applicant or its designee shall provide proof of funding of undertake or fund Direct Reduction Activities pursuant to the Building Retrofit Program ("Retrofit Program"), as included in Final AEA Appendix 13, to improve the energy efficiency of existing buildings located primarily in disadvantaged communities (as defined in the Retrofit Program). The project applicant or its designee shall retire GHG Mitigation Credits or Carbon Offsets issued by an Approved Registry based on such Direct Reduction Activities in a quantity equal to the proportional percentage sum of the Building Retrofit Program (Retrofit Program), following (together, the "Retrofit Reduction Requirement") as included in the Technical Report, Final AEA Appendix 13 - G contained in AEA Appendix 1, to Los Angeles County.:</p> <ul style="list-style-type: none"> For the residential portion of a building permit application, the product of the planned number of residential units for the village-level project multiplied by 0.0377 MTCO₂e; For the commercial portion of a building permit application, the product of the planned commercial development per thousand commercial square feet multiplied by 0.0215 MTCO₂e. ("Commercial development" includes retail, light industrial, office, hotel and mixed-use buildings.) 	Applicant	<p>A copy of the Newhall Ranch Building Retrofit Program is located within Appendix G of Appendix 2.4-A 2.7.3 of the Final Recirculated Analysis.</p> <p>Prior to the issuance of building permits for development within the Project site, the Project Applicant or its designee shall every 100 residential units or 100,000 square feet of commercial development, provide the County with an attestation from an Approved Registry that the Project Applicant has retired a sufficient quantity of GHG Mitigation Credits or Carbon Offsets associated with Direct Reduction Activities to undertake or fund Building Retrofits in a quantity equal to the Retrofit Reduction Requirement, proof of payment as described in the Retrofit Program to implement the NGO Retrofit Strategy that has been approved by the Planning Director. The Project applicant or its designee also shall provide confirmation to the County that any such payment was used to install energy retrofits consistent with an approved NGO Retrofit Strategy.</p>	1. Los Angeles County Dept. of Regional Planning 2. Los Angeles County Dept. of Regional Planning 3. Prior to Issuance of Building Permits

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
<p>Building retrofits covered by the Retrofit Program can include, but are not limited to: cool roofs, solar panels, solar water heaters, smart meters, energy efficient lighting (including, but not limited to, light bulb replacement), energy efficient appliances, energy efficient windows, <u>pool</u> covers, insulation, and water conservation measures.</p> <p>The Retrofit Program shall be implemented within the geographic area defined to include Los Angeles County and primarily within disadvantaged communities, as defined by the Retrofit Program, or in other areas accepted by the Los Angeles County Planning Director.</p> <p><u>Funding shall be applied to implement retrofits strategies identified in the Retrofit Program or other comparable strategies accepted by the Los Angeles County Planning Director.</u></p> <p><i>(This mitigation measure applies to Landmark Village without change. Note that the subject Building Retrofit Program is located in Appendix 2.7.3 of the Final Recirculated Analysis.)</i></p>				
<p>LV 4.23-12/2-12:</p> <p>Prior to the issuance of the first building permit for the RMDP/SCP project site, the project applicant or its designee shall provide Los Angeles County with proof of installation of EV charging stations capable of serving 20 off-site parking spaces. Thereafter, the project applicant or its designee shall provide Los Angeles County proof of installation of EV charging stations prior to the issuance of residential and commercial building permits per the following ratios: one</p>	Applicant	<p>Provide the County with proof (e.g., illustrative photos) of installation of electric vehicle charging stations capable of servicing 20 off-site parking spaces prior to the issuance of the first building permit for the RMDP/SCP Project site.</p> <p>Prior to issuance of the 30th residential building permit and each 30th residential building permit thereafter, provide evidence (e.g., illustrative photos) of installation of one off-site parking</p>	<p>1. Los Angeles County Dept. of Regional Planning</p> <p>2. Los Angeles County Dept. of Regional Planning</p> <p>3. Prior to Issuance of</p>	

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase
<p>(1) off-site parking space shall be served by an electric vehicle charging station for every 30 dwelling units, and one (1) off-site parking space shall be served by an electric vehicle charging station for every 7,000 square feet of commercial development. ("Commercial development" includes retail, light industrial, office, hotel and mixed-use buildings.) Off-site EV charging stations capable of servicing 2,036 parking spaces would be required if the maximum allowable development facilitated by the RMDP/SCP project occurs; fewer EV charging stations would be required if maximum build-out under the RMDP/SCP project does not occur.</p> <p>The EV charging stations shall achieve a similar or better functionality as a Level 2 charging station and may service one or more parking spaces. In the event that the installed charging stations use more superior functionality/technology other than Level 2 charging stations, the parameters of the mitigation obligation (i.e., number of parking spaces served by EV charging stations) shall reflect the comparative equivalency of Level 2 charging stations to the installed charging stations on the basis of average charge rate per hour. For purposes of this equivalency demonstration, Level 2 charging stations shall be assumed to provide charging capabilities of 25 range miles per hour.</p> <p>The EV charging stations shall be located within the geographic area defined to include Los Angeles County,⁷ and <u>The EV charging stations shall be in areas that are generally accessible to the public, For example, the charging stations may be located in such as areas that</u></p>		<p>space being equipped with an electric vehicle charging station up to 144 parking spaces.</p> <p>Prior to the issuance of a commercial building permit for 7,000 square feet and each additional 7,000 square feet thereafter, provide evidence (e.g., illustrative photos) of installation of one off-site parking space being equipped with an electric vehicle charging station up to 231 parking spaces.</p>	Building Permits

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Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
include, but are not limited to, retail centers, employment centers and office complexes, recreational facilities, schools, and other categories of public facilities. <i>(This mitigation measure applies to Landmark Village without change.)</i>				
LV 4.23-13/2-13: In addition to Mitigation Measures 2-1 through 2-12, the project applicant or its designee shall offset GHG emissions to zero by funding or undertaking <u>Direct Reduction Activities</u> that directly reduce or sequester GHG emissions or, if necessary, obtaining <u>Carbon Offsets</u> earned through the Newhall Ranch GHG Reduction Plan. The project applicant-submitted Newhall Ranch GHG Reduction Plan focuses on achieving GHG reductions or sequestration through the <u>Direct Reduction Activities</u> direct investment in specific programs or projects in coordination with an <u>Approved Registry</u> accredited carbon registry, such as the <u>Climate Action Reserve</u> . If these <u>Direct Reduction Activities</u> direct investment efforts do not achieve the necessary an adequate amount of GHG reductions, the project applicant or its designee can obtain <u>Carbon Offsets</u> issued by an <u>Approved Registry</u> carbon credits from accredited carbon registries. SCAQMD recommends that mitigation be considered in the following prioritized manner: (1) project design feature/on-site reduction measures; (2) off-site within neighborhood; (3) off-site within district; (4) off-site within state; and (5)	Applicant	A copy of the Newhall Ranch GHG Reduction Plan is located within Appendix F of Appendix 2.1-A 2.7.1 of the Final Recirculated Analysis. Prior to obtaining building permits for an incremental level of development within the Landmark Village Project site, the incremental operational GHG emissions over the 30-year Project life associated with such building permits that must be offset (the "Incremental Operational GHG Emissions") will be equal to the sum of: (1) the number of proposed residential units covered by the applicable building permit multiplied by 107.45 MT CO ₂ e; and (2) every thousand square feet (TSF) of proposed commercial development covered by the applicable building permit multiplied by 542.40 MT CO ₂ e. For example, to obtain a building permit for 75 residential units and 40,000 square feet of commercial development, the Incremental Operational GHG Emissions would be: 75 units x 107.45 MT CO ₂ e/unit + 40 TSF x 542.40 MT CO ₂ e/sq. ft. = 29,755 MT CO ₂ e.	1. Los Angeles County Dept. of Regional Planning 2. Los Angeles County Dept. of Regional Planning 3. Prior to Issuance of Building Permits	

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase
<p>off-site-out-of-state (SCAQMD-2008).</p> <p>Prior to issuing building permits for development within the RMDP/SCP project site, Los Angeles County shall confirm that the project applicant or its designee shall fully offset the project's remaining (i.e., post implementation of Mitigation Measures 2-1 through 2-12) operational GHG emissions over the 30-year project life associated with each such building permit permits (the "Incremental Operational GHG Emissions") by relying upon one of the following compliance options, or a combination thereof, in accordance with the Newhall Ranch GHG Reduction Plan:</p> <ul style="list-style-type: none"> Undertake or fund <u>Direct Reduction Activities</u> Demonstrate that the project applicant has directly undertaken or funded activities that reduce or sequester GHG emissions ("Direct Reduction Activities") that are estimated to result in GHG <u>Mitigation Credits</u> reduction credits, as described in the GHG Reduction Plan, and retire such GHG <u>Mitigation Credits</u> reduction credits in a quantity equal to the Incremental Operational GHG <u>Emissions</u> emissions; Provide a guarantee that it shall retire carbon credits issued in connection with Direct Reduction Activities in a quantity equal to the Incremental Operational GHG emissions; Undertake or fund Direct Reduction Activities and retire the associated Carbon Offsets carbon credits in a quantity equal to the Incremental Operational GHG Emissions; or 		<p>Compliance with this measure can shall be demonstrated as provided for in Section VIII of the <u>GHG Reduction Plan</u> by either of the following options, or some combination thereof:</p> <ul style="list-style-type: none"> Directly providing the County with proof of retired carbon credits (e.g., the carbon credits retirement documentation) in a quantity equal to the Incremental Operational GHG Emissions; or Providing the County with GHG reduction credits issued by a Coordinating Registry that confirms the retirement of GHG reduction credits in a quantity equal to the Incremental Operational GHG Emissions, as described in the GHG Reduction Plan (Appendix F within Appendix 2-1-A). <p>Implementation of this measure shall, within the context of the GHG mitigation measures for the Project overall (i.e., this measure and mitigation measures LV 4.23 1/2-1 through LV 4.23 12/2-12), follow the preferred geographic hierarchy recommended by SCAQMD. Given that mitigation measures LV 4.23 1/2-1 through LV 4.23 9/2-9, LV 4.23 11/2-11 and LV 4.23 12/2-12 are measures located on the Project site and within the County of Los Angeles, this measure can be implemented by securing GHG emissions reductions within or</p>	

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase
<ul style="list-style-type: none"> If necessary, as determined by the Los Angeles County Planning Director in accordance with the GHG Reduction Plan, it is impracticable to fully offset Incremental Operational GHG Emissions through the Direct Reduction Activities, the project applicant or its designee may purchase and retire Carbon Offsets carbon-credits that have been issued by an Approved Registry a recognized and reputable, accredited carbon registry in a quantity equal to the Incremental Operational GHG Emissions. <p>Compliance with MM 2-13 shall be demonstrated incrementally prior to obtaining building permits, and shall in the context of the project overall follow the preferred geographic hierarchy recommended by SCAQMD, discussed above.</p> <p>The Incremental Operational GHG Emissions emissions shall be equal to the sum of (1) the number of proposed residential units covered by the applicable building permit multiplied by a "GHG Residential Ratio" 88-13 MT-CO₂e and (2) every thousand square feet of proposed commercial development covered by the applicable building permit multiplied by a "GHG Commercial Ratio." ("Commercial development" includes retail, light industrial, office, hotel, and mixed-use buildings.) GHG Residential Ratio and GHG Commercial Ratio shall mean the emissions ratios in MTCO₂e set forth in the applicable CEQA analysis completed by the County of Los Angeles for a specific village-level project to ensure that the related GHG emissions are reduced to zero 542.40 MT-CO₂e.</p>		outside of the State of California.	

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Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase
<p><i>(This mitigation measure applies to Landmark Village without change, with the exception that the emissions reduction rates specified in the mitigation measure for residential and commercial building permits have been modified to reflect the Project specific emissions analysis presented in Appendix 2.1-A and equate to those rates of emissions reductions needed to ensure that Project emissions are reduced to zero. Note that the subject GHG Reduction Plan is located in Appendix 2.7.1 of the Final Recirculated Analysis.)</i></p>			
<p>Project Applicant-Proposed Supplemental Commitment</p> <p>In addition to the installation of EV charging stations required by Mitigation Measures 2-5 and 2-12, and although not required for the project to achieve net zero GHG emissions, the project applicant or its designee shall provide Los Angeles County with proof of installation of EV charging stations prior to the issuance of residential and commercial building permits per the following ratios: one (1) parking space shall be served by an electric vehicle charging station for every 50 dwelling units, and one (1) parking space shall be served by an electric vehicle charging station for every 15,900 square feet of commercial development. ("Commercial development" includes retail, light industrial, office, hotel and mixed-use buildings.) EV charging stations capable of servicing 1,010 parking spaces would be required if the maximum</p>	Applicant	<p>Prior to issuance of the 50th residential building permit and each 50th residential building permit thereafter, provide evidence (e.g., illustrative photos) of installation of one on- or off-site parking space being equipped with an electric vehicle charging station.</p> <p>Prior to the issuance of a commercial building permit for 15,900 square feet and each additional 15,900 square feet thereafter, provide evidence (e.g., illustrative photos) of installation of one on- or off-site parking space being equipped with an electric vehicle charging station.</p> <p>If installed on the RMDP/SCP Project site, the parking spaces equipped with an electric vehicle charging station must be in addition to the parking</p>	1. Los Angeles County Dept. of Regional Planning 2. Los Angeles County Dept. of Regional Planning 3. Prior to Issuance of Building Permits

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN			
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase
<p>allowable development facilitated by the RMDP/SCP project occurs; fewer EV charging stations would be required if maximum build-out under the RMDP/SCP project does not occur.</p> <p>The EV charging stations shall achieve a similar or better functionality as a Level 2 charging station and may service one or more parking spaces. In the event that the installed charging stations use functionality/technology other than Level 2 charging stations, the parameters of the mitigation obligation (i.e., number of parking spaces served by EV charging stations) shall reflect the comparative equivalency of Level 2 charging stations to the installed charging stations on the basis of average charge rate per hour. For purposes of this equivalency demonstration, Level 2 charging stations shall be assumed to provide charging capabilities of 25 range miles per hour.</p> <p>The EV charging stations shall be located either on the project site or within the jurisdictional area of the Southern California Association of Governments. The EV charging stations shall be in areas that are generally accessible to the public, such as areas that include, but are not limited to, retail centers, employment centers and office complexes, recreational facilities, schools, and other categories of public facilities.</p> <p><i>(This supplemental commitment applies to Landmark Village without change.)</i></p>		<p>spaces otherwise required to have such infrastructure by Mitigation Measure MV 4.23-5/2-5.</p> <p>If installed off of the RMDP/SCP Project site, the parking spaces equipped with an electric vehicle charging station must be in addition to the parking spaces otherwise required to have such infrastructure by Mitigation Measure MV 4.23-12/2-12.</p> <p>Because the parking spaces serviced by the electric vehicle charging stations provided by this measure are in addition to those required by Mitigation Measures MV 4.23-5/2-5 and MV 4.23-12/2-12, a tracking matrix shall be maintained to ensure that this measure's benefits are additive and that the requirements of each measure are independently satisfied.</p>	

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency 2. Monitoring Agency 3. Monitoring Phase	
LV 4.23 1. All residential buildings on the project site that are enabled by approval of the proposed project shall be designed to provide improved insulation and ducting, low-E glass, high efficiency air conditioning units, and radiant barriers in attic space, as needed, or equivalent to ensure that all residential buildings operate at levels 15 percent better than the standards required by the 2008 version of Title 24.	Applicant	Plan Check	1. LACDPW 2. LACDPW 3. Prior to Issuance of Building Permits	
LV 4.23 2. All commercial and public buildings on the project site that are enabled by approval of the proposed project shall be designed to provide improved insulation and ducting, low-E glass, high efficiency HVAC equipment, and energy efficient lighting design with occupancy sensors, as needed, or equivalent to ensure that all commercial and public buildings operate at levels 15 percent better than the standards required by the 2008 version of Title 24. Notwithstanding this measure, all nonresidential buildings shall be designed to comply with the then-operative Title 24 standards applicable at the time building permit applications are filed. For example, if new standards are adopted that supersede the 2008 Title 24 standards, the nonresidential buildings shall be designed to comply with those newer standards and, if necessary, exceed those standards by an increment that is equivalent to a 15 percent exceedance of the 2008 Title 24 standards.	Applicant	Plan Check	1. LACDPW 2. LACDPW 3. Prior to Issuance of Building Permits	

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	
			2. Monitoring Agency	
			3. Monitoring Phase	
			1. LACDPW	
LV 4.23-3. The project applicant or designee shall produce or cause to be produced renewable electricity, or secure greenhouse gas offsets or credits from a public agency (e.g., CARB, SCAQMD)-endorsed market, equivalent to the installation of one 2.0 kilowatt photovoltaic (i.e., solar) power system no smaller than 2.0 kilowatts, when undertaking the design and construction of each single-family detached residential unit on the project site.	Applicant	Production of payment to renewable electricity	2. LACDPW	
			3. Prior to Issuance of Building Permits	
LV 4.23-4. The project applicant or designee shall produce or cause to be produced renewable electricity, or secure greenhouse gas offsets or credits from a public agency (e.g., CARB, SCAQMD)-endorsed market, equivalent to the installation of one 2.0 kilowatt photovoltaic (i.e., solar) power system no smaller than 2.0 kilowatts, on each 1,600 square feet of nonresidential roof area provided on the project site.	Applicant	Production of payment to renewable electricity	1. LACDPW	
			2. LACDPW	
			3. Prior to Issuance of Building Permits	
LV 4.23-5. Consistent with the Governor's Million Solar Roofs Plan, the project applicant or designee, acting as the seller of any single-family residence constructed as part of the development of at least 50 homes that are intended or offered for sale, shall offer a solar energy system option to all customers that enter negotiations to purchase a new production home constructed on land for which a tentative subdivision map has been deemed complete. The seller shall disclose the total installed cost of the solar energy	Applicant	Prior to Escrow Negotiations	1. LACDPW	
			2. LACDPW	
			3. Prior to entering into Escrow with Potential Single-Family Home-Buyers	

2.3 Errata to Mitigation Monitoring and Reporting Plan

ERRATA TO MITIGATION MONITORING AND REPORTING PLAN				
Mitigation Measures/Conditions of Approval	Party Responsible for Implementing Mitigation	Monitoring Action	1. Enforcement Agency	
			2. Monitoring Agency	
			3. Monitoring Phase	
system-option, and the estimated cost savings.				
LV 4.23-6. The project applicant shall use solar water heating for all pools located at the Landmark Village recreation centers.	Applicant	Plan Check and Field Verification	1. LACDPW	
			2. LACDPW	
			3. Prior to Issuance of Building Permits for the Recreation Centers	
LV 4.23-7. The project applicant, in accordance with Los Angeles County requirements, will design and construct the approximately 11,000 square foot fire station so as to achieve LEED silver certification.[1]	Applicant	Plan Check	1. LACDPW	
			2. LACDPW	
			3. Prior to Issuance of the Building Permit for the Fire Station	