

RESPONSES TO COMMENTS

INTRODUCTION

This Responses to Comments document has been prepared in response to comment letters that were submitted on the Lincoln Square Project (proposed project) and its associated Initial Study/Mitigated Negative Declaration (IS/MND). The comments responded to in this document were submitted during the 30-day public review period for the IS/MND, which occurred from January 7, 2022 to February 7, 2022.

LIST OF COMMENTERS

The City of Dixon received four comment letters during the public review period for the IS/MND. The comment letters were authored by the following interested persons. The letters are organized by the order in which they were received.

Letter 1Gavin McCreary, Department of Toxic Substances Control
Letter 2Mark Leong, California Department of Transportation, District 4
Letter 3Erin Chappell, California Department of Fish and Wildlife, Bay Delta Region
Letter 4 Peter G. Minkel, Central Valley Regional Water Quality Control Board

RESPONSES TO COMMENTS

The Responses to Comments below address the comments received during the public review period. Each bracketed comment letter is followed by numbered responses to each bracketed comment. The responses amplify or clarify information provided in the IS/MND and/or refer the reader to the appropriate place in the document where the requested information can be found. Comments that are not directly related to environmental issues (e.g., opinions on the merits of the project that are unrelated to its environmental impacts) are either discussed or noted for the record, as appropriate.

In addition, the Responses to Comments contains all revisions made to the IS/MND. New text is double underlined and deleted text is ~~struck through~~. All such revisions to the IS/MND are relatively minor, and do not affect the adequacy of the conclusions presented therein. CEQA Guidelines Section 15073.5 states the following regarding recirculation requirements for negative declarations:

- (c) Recirculation is not required under the following circumstances:
 - (1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
 - (2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.
 - (3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new



significant environmental effects and are not necessary to mitigate an avoidable significant effect.

- (4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

Based on the above, pursuant to CEQA Guidelines Section 15073.5, recirculation of the IS/MND is not warranted. Each letter has been considered by the City and addressed, in accordance with CEQA Guidelines Section 15074, prior to adoption of the IS/MND.





Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200

Letter 1



Gavin Newsom
Governor

January 11, 2022

Mr. Scott Greeley
Associate Planner
City of Dixon
600 East A Street
Dixon, CA 95620
SGreeley@cityofdixon.us

MITIGATED NEGATIVE DECLARATION FOR LINCOLN SQUARE PROJECT –
DATED JANUARY 2020 (STATE CLEARINGHOUSE NUMBER: 2022010090)

Dear Mr. Greeley:

1-1

The Department of Toxic Substances Control (DTSC) received a Mitigated Negative Declaration (MND) for the Lincoln Square Project (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, work in close proximity to mining or suspected mining or former mining activities, presence of site buildings that may require demolition or modifications, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

DTSC recommends that the following issues be evaluated in the MND Hazards and Hazardous Materials section:

1-2

1. The MND should acknowledge the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The MND should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.

1-3

2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance.



1-3 cont.

This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the MND.

1-4

3. If any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities, proper investigation for mine waste should be discussed in the MND. DTSC recommends that any project sites with current and/or former mining operations onsite or in the project site area should be evaluated for mine waste according to DTSC's 1998 [Abandoned Mine Land Mines Preliminary Assessment Handbook](#)

1-5

4. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 [Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers](#).

1-6

5. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to [DTSC's 2001 Information Advisory Clean Imported Fill Material](#).

1-7

6. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the MND. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 [Interim Guidance for Sampling Agricultural Properties \(Third Revision\)](#).



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1-8

DTSC appreciates the opportunity to comment on the MND. Should you need any assistance with an environmental investigation, please visit DTSC's [Site Mitigation and Restoration Program](#) page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at [DTSC's Brownfield website](#).

If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

Sincerely,



Gavin McCreary
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov



LETTER 1: GAVIN MCCREARY, DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Response to Comment 1-1

The comment serves an introductory statement and does not address the adequacy of the IS/MND.

Response to Comment 1-2

The IS/MND evaluated the potential for the proposed project to create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment under question 'b' of Section IX, Hazards and Hazardous Materials, of the IS/MND, beginning on page 72.

As noted therein, a Phase I and Phase II Environmental Site Assessment (ESA) was prepared for the proposed project by Tetra Tech, Inc. for the purposes of assessing potential on-site hazardous conditions (see Appendices F and G of the IS/MND).^{1,2} The Phase I ESA was prepared for the purposes of identifying, to the extent possible based on available information, whether former activities at or near the project site may have involved or resulted in the use, storage, disposal, and/or release of hazardous or potentially hazardous substances to the environment. The Phase I ESA was prepared in conformance with the general scope and limitations of the American Society for Testing and Materials' (ASTM) Standard Practice E1527-13.

As part of the Phase I ESA, a site reconnaissance was conducted and did not yield observations to support the on-site presence of storage tanks and drum storage, asbestos-containing materials, lead-based paint, and/or evidence of soil staining, stressed vegetation, ponds, pits, sumps, suspicious odors, or any other condition indicative of potential contamination. However, based on interviews and review of previous environmental documents, the Phase I ESA concluded that irrigated agricultural production within the project site was active at a time when persistent pesticides may have been used. Accordingly, the Phase I ESA recommended a Phase II investigation be conducted to assess the potential for persistent pesticides to be present within the near-surface soils.

Accordingly, a Phase II ESA was conducted, which included collection and analysis of 28 surface soil samples throughout the project site. The samples were collected at a depth of zero to six inches below ground surface (BGS). The samples were then tested for the presence of organochlorine pesticides (OCPs) and arsenic. Although the samples exhibited detectable concentrations of such materials, none of the OCP or arsenic concentrations were detected above the applicable Department of Toxic Substances Control (DTSC) screening criteria. Therefore, the Phase II ESA concluded further sampling is not warranted.

Based on the above, the IS/MND concluded that the proposed project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment and a less-than-significant impact would occur.

¹ Tetra Tech, Inc. *Phase I Environmental Site Assessment: Duffel Property*. July 2019.

² Tetra Tech, Inc. *Duffel Property: Phase II Investigation*. July 2019.



Response to Comment 1-3

As indicated by the aerial photographs reviewed and included as part of the Phase I ESA, the area surrounding the project site was not developed with high-traffic roads and medians until after 1993, at the earliest. Both the project site and project vicinity were rural until residential development began subsequent to 1993. As such, sampling and testing for aurally deposited lead (ADL) within the on-site soils adjacent to North Lincoln Street and State Route 113 is not warranted.

Response to Comment 1-4

Neither the project site, nor sites within the vicinity, were used or suspected of having been used for mining activities.

Response to Comment 1-5

The proposed project would not include demolition of any existing on-site structures, as the site is currently undeveloped.

Response to Comment 1-6

The proposed project would not include any import of soil to backfill excavated areas.

Response to Comment 1-7

Please see Response to Comment 1-2.

Response to Comment 1-8

Thank you for participating in the public review process of the IS/MND. Your comments and concerns are noted for the record.



California Department of Transportation

DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660
www.dot.ca.gov



February 3, 2022

SCH #: 2022010090
GTS #: 04-SOL-2022-00227
GTS ID: 25243
Co/Rt/Pm: SOL/113/20.77

Scott Greeley, Associate Planner
Community Development Department
City of Dixon
600 East A Street
Dixon, CA 95620

Re: Lincoln Square Project Mitigated Negative Declaration (MND)

Dear Scott Greeley:

2-1

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Lincoln Square Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the January 2022 IS/MND.

Project Understanding

The project proposes a 10.99-acre subdivided residential community, which would be developed into 102 detached, single-family lots and a pocket park. Additionally, the proposed project includes a 2.27-acre commercial lot, which would be developed with a 4,500-square-foot (sf) convenience store, a 5,789-sf fueling canopy with eight fuel dispensers, and a 2,613-sf car wash. The project is located at the intersection of State Route (SR)-113 (North 1st Street) and North Lincoln Street/Vaughn Road in Dixon.

2-2

Travel Demand Analysis

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide ([link](#)).



2-2 cont.

The project VMT analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's (OPR) Technical Advisory. Per the IS/MND, this project is found to have a less than significant VMT impact, therefore working towards meeting the State's VMT reduction goals.

Regarding the project's driveway/access intersections, please note the following:

- Provide the traffic turning movements if available for Caltrans analyze the proposed access to and from SR-113;
- Provide truck turning templates for each driveway;
- Driveways should conform to Highway Design Manual (HDM) Indexes 205.1, 205.2, 205.3, and 405.1 (2)(c); and
- The driveway accessing SR-113 for the residential development should not exceed a width of 30' per HDM Index 205.

2-3

Construction-Related Impacts

Potential impacts to Caltrans' Right-of-Way (ROW) from project-related temporary access points should be analyzed. Mitigation for significant impacts due to construction and noise should be identified. Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by Caltrans. To apply, visit: <https://dot.ca.gov/programs/traffic-operations/transportation-permits>.

Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the State Transportation Network (STN).

2-4

Utilities

Any utilities that are proposed, moved or modified within Caltrans' ROW shall be discussed. If utilities are impacted by the project, provide site plans that show the location of existing and/or proposed utilities. These modifications require a Caltrans-issued encroachment permit.

2-5

Equitable Access

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.



Encroachment Permit

2-6

Please be advised that any permanent work or temporary traffic control that encroaches onto Caltrans' ROW requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating Caltrans' ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to D4Permits@dot.ca.gov.

2-7

Please note that Caltrans is in the process of implementing an online, automated, and milestone-based Caltrans Encroachment Permit System (CEPS) to replace the current permit application submittal process with a fully electronic system, including online payments. The new system is expected to be available during 2022. To obtain information about the most current encroachment permit process and to download the permit application, please visit <https://dot.ca.gov/programs/traffic-operations/ep/applications>.

Sincerely,



MARK LEONG
District Branch Chief
Local Development Review

c: State Clearinghouse



LETTER 2: MARK LEONG, CALIFORNIA DEPARTMENT OF TRANSPORTATION, DISTRICT 4

Response to Comment 2-1

The comment serves an introductory statement and does not address the adequacy of the IS/MND.

Response to Comment 2-2

The comment letter concurs that the project VMT analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's Technical Advisory. The comment letter continues by requesting additional design-level detail related to the project's driveways. The level of detail requested by the commenter will be included on the improvement plans for the project. As the project will require an encroachment permit from Caltrans for the proposed driveway access, the improvement plans must also be provided to Caltrans for review and approval. Prior to approval of improvement plans, Caltrans and the City will verify that the driveway design complies with state and local standards, such as those identified by the commenter.

Response to Comment 2-3

As discussed on pages 105 and 106 of the IS/MND, during construction of the proposed project, the possibility exists for potential temporary impacts, which could include disruptions to the transportation network near the project site. Such disruptions could include the possibility of temporary lane closures, street closures, sidewalk closures, and bikeway closures. In addition, heavy-truck traffic would temporarily increase due to delivery of construction materials. Because the above-noted factors could disrupt vehicle, bicycle, and transit access and increase safety conflicts, the IS/MND requires preparation of a detailed Construction Traffic Control Plan, as set forth by Mitigation Measure XVII-1. As part of preparing said plan, the project applicant shall submit the plan for review and approval to the City Department of Engineering/Utilities, which shall consult with Caltrans, among others, prior to approving the plan.

Response to Comment 2-4

The project would include connections to utilities in SR 113, and thus, would obtain an encroachment permit from Caltrans.

Response to Comment 2-5

Please see Response to Comment 2-3.

Response to Comment 2-6

Please see Responses to Comments 2-3 and 2-4.

Response to Comment 2-7

Thank you for participating in the public review process of the IS/MND. Your comments and concerns are noted for the record.





State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Letter 3

January 31, 2022

Mr. Scott Greeley
City of Dixon, Community Development Department
600 East A Street
Dixon, CA 95620
sgreeley@cityofdixon.us

Subject: Lincoln Square Project, Mitigated Negative Declaration, SCH No. 2022010090,
City of Dixon, Solano County

Dear Mr. Greeley:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Dixon for the Lincoln Square Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the City of Dixon (City), as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state’s fish and wildlife trust resources.

3-1

PROJECT DESCRIPTION SUMMARY

Proponent: Lewis Land Developers, LLC

Objective: The Project would convert a 13.26-acre undeveloped site on two adjacent parcels into residential housing and a commercial lot. The residential housing would consist of 102 single-family detached lots on 10.99 acres and the commercial lot would consist of a Rotten Robbie convenience store, a gas station, and a car wash on 2.27

¹ CEQA is codified in the California Public Resources Code in Section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

Conserving California’s Wildlife Since 1870



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acres. Primary Project activities include grading, excavation, trenching, building construction, concrete pouring, tree-removal, and landscaping.

Location: The Project is located immediately southwest of the intersection of North Lincoln Street and North First Street/State Route 113, in the City of Dixon, County of Solano. The approximate centroid of the Project is Latitude 38.46545°N, Longitude 121.82326°W and the Assessor's Parcel Numbers are 0108-110-450 and 0108-110-460.

Timeframe: The MND does not specify a timeframe.

ENVIRONMENTAL SETTING

The Project covers 13.26 acres of undeveloped land consisting mainly of non-native annual grassland dominated by wild oat (*Avena fatua*), ripgut brome (*Bromus diandrus*), and Italian rye grass (*Festuca perennis*). In addition, a row of 30 ornamental nonnative trees including London planetree (*Platanus x acerifolia*), coast redwood (*Sequoia sempervirens*), almond (*Prunus dulcis*), and Chinese pistache (*Pistacia chinensis*), and one native coast live oak (*Quercus agrifolia*), occur on the western boundary of the site. The Project is immediately surrounded by residential communities and commercial buildings, with agricultural land predominating the outlying areas. No aquatic features are present on the Project site. Special-status species with the potential to occur in or near the Project site include, but are not limited to, Swainson's hawk (*Buteo swainsoni*), listed as threatened pursuant to CESA; burrowing owl (*Athene cunicularia*), a California Species of Special Concern (SSC); pallid bat (*Antrozous pallidus*), SSC; western red bat (*Lasiurus blossevillii*), SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has the potential to result in take of Swainson's hawk, a CESA listed as threatened species, as further described on Page 4 below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, &

3-1 cont.



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3-1 cont.

15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, such as white-tailed kite, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures including those recommended by CDFW below, CDFW concludes that an MND is appropriate for the Project.

3-2

General Plan Tiering

The MND states that the Project is consistent with the City of Dixon General Plan 2040 certified Environmental Impact Report (EIR) and that the Project may tier its analysis from that EIR (MND page 6). It is unclear to CDFW which analyses included in the previous EIR are relied upon in the MND. CDFW provided public comment during the review period for the General Plan EIR in a letter dated August 6, 2020². In that letter, CDFW recommended providing a clear checklist or procedure for evaluating subsequent projects and clearly citing the portions of the EIR, including page and section references, containing the analysis of the subsequent Project activities' significant effects. While a procedure was not included within the EIR, the MND should still clearly identify the sections and analyses conducted in the EIR which are relevant to

² CDFW's CEQA comment letter includes additional details and citations associated with CEQA tiering: <https://ceganet.opr.ca.gov/2018112035/2/Attachment/qj-pYI>



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3-2 cont.

the current Project. CDFW recommends including an additional appendix or section in the MND with these details.

Environmental Setting and Related Impact Shortcoming

Bat Species of Special Concern and Roosting Bat Habitat

As identified above, the Project is within the range of SSC bat species including pallid bat and western red bat³. The California Wildlife Habitat Relationships model predicts medium suitability for pallid bat and western red bat habitat at the Project site. In addition, the California Bay Area Linkage Network identifies the habitat surrounding the Project area as a core area for pallid bats capable of supporting at least 50 individuals and notes that these bats can use orchards, cropland, and vineyards for invertebrate foraging (Penrod et al. 2013). Mature trees scheduled for removal could provide suitable roosting habitat for SSC bats. These bats are experiencing population declines in California (Brylski et al. 1998). Removal of habitat could result in injury or mortality of these special-status bats, a potentially significant impact. To reduce potential impacts to less-than-significant, CDFW recommends that the MND disclose the potential for these bats to occur in the Project area and incorporate the following mitigation measures.

Mitigation Measure IV-10: Roosting Bat Habitat Assessment and Surveys

3-3

Prior to any tree removal, a qualified biologist shall conduct a habitat assessment for bats. A qualified bat biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark, suitable canopy for foliage roosting species). If suitable habitat trees are found, or bats are observed, mitigation measure IV-11 shall be implemented.

Mitigation Measure IV-11: Roosting Bat Tree Protections

If the qualified biologist identifies potential bat habitat trees, then tree trimming and tree removal shall not proceed unless the following occurs: 1) a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establishes absence of roosting bats, or 2) tree trimming and tree removal occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, and tree removal occurs using the two-step removal process. Two-step tree removal shall be conducted over two consecutive days. The first day (in the afternoon), under the direct supervision and instruction by a qualified

³ CDFW maintains range maps for all terrestrial wildlife species in California, available at <https://wildlife.ca.gov/Data/CWHR/Life-History-and-Range>.



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biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided. The second day the entire tree shall be removed.

In addition, a qualified biologist shall develop a bat roost habitat mitigation plan that identifies roost replacement options, including but not limited to bat boxes and tree planting, and submit the plan to CDFW for review and written approval, unless otherwise approved by CDFW. The bat roost habitat mitigation plan shall be implemented in the same year as the project impacts.

Mitigation Measures and Related Impact Shortcoming

Swainson's Hawk

3-4

The MND identifies that Swainson's hawk, a CESA listed as threatened species, has the potential to occur in and near the Project (MND page 42). There are 145 Swainson's hawk California Natural Diversity Database (CNDDDB) occurrences within a 5-mile radius of the Project site and seven CNDDDB occurrences within a 1-mile radius. The MND identifies appropriate survey requirements, nest avoidance buffer zones, and compensatory mitigation for loss of Swainson's hawk foraging habitat in conformance with the draft Solano Multi-species Habitat Conservation Plan (HCP) in Mitigation Measures IV-1 and IV-2 (MND pages 43-44). The MND identifies compensatory mitigation for impacts to nesting Swainson's hawk in Mitigation Measure IV-3, including impacts such as injury to nesting Swainson's hawk or nest abandonment. Impacts to nesting Swainson's hawk are considered a significant impact and take under CESA, and require an ITP as described above. While Mitigation Measure IV-3 references the adoption of the HCP, which is a federal authorization, it does not identify the requirement for a CESA ITP, which is a State authorization. Take of Swainson's hawk is not authorized based solely on an adopted HCP and requires CDFW authorization as well. Please note that the HCP is still in draft form and may not be finalized this year.

To ensure impacts are reduced to less-than-significant, CDFW recommends that Mitigation Measure IV-3 be revised to require the Project to obtain a CESA ITP from CDFW for take of Swainson's hawk prior to Project activities, if take of Swainson's hawk cannot be avoided.

Burrowing Owl

3-5

The MND identifies that burrowing owl, an SSC, has the potential to occur in and near the Project (MND page 43). There are 11 burrowing owl CNDDDB occurrences within a 5-mile radius of the Project site, including one occurrence approximately 1.1 miles east and another approximately 0.8 miles south. The MND also identifies four mitigation measures for burrowing owl, Mitigation Measures IV-4 through IV-7, which identify survey requirements, nest avoidance buffers, passive relocation, and compensatory



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mitigation requirements. While CDFW generally supports these mitigation measures, it is not clear how they interact with each other. To provide clarity and reduce potential impacts to burrowing owl to less-than-significant, CDFW recommends replacing the existing measures with the following mitigation measures.

Mitigation Measure IV-4: Burrowing Owl Habitat Assessment, Surveys, and Avoidance

Prior to Project activities, a qualified biologist shall conduct a habitat assessment following Appendix C: Habitat Assessment and Reporting Details of the CDFW *Staff Report on Burrowing Owl Mitigation*⁴ (CDFW 2012 Staff Report). The habitat assessment shall extend at least 492 feet (150 meters) from the Project site boundary or more where direct or indirect effects could potentially extend offsite (up to 500 meters or 1,640 feet) and include burrows and burrow surrogates. If the habitat assessment identifies potentially suitable burrowing owl habitat, then a qualified biologist shall conduct surveys following the CDFW 2012 Staff Report survey methodology. Surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted commensurate with the type of disturbance anticipated, as outlined in the CDFW 2012 Staff Report, and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features, in addition to burrows and mounds. Time lapses between surveys or Project activities shall trigger subsequent surveys, as determined by a qualified biologist, including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. Detected nesting burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report and any passive relocation plan for non-nesting owls shall be subject to CDFW review.

Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. Therefore, to mitigate the impacts of potentially evicting burrowing owls to less-than-significant, Mitigation Measure IV-5 outlined below should require habitat compensation with the acreage amount identified in any eviction plan. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction, therefore eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.”

⁴ CDFW, previously Department of Fish and Game, 2012.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

3-5 cont.



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3-5 cont.

Mitigation Measure IV-5: Burrowing Owl Habitat Mitigation

If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described above), the following habitat mitigation shall be implemented prior to Project construction:

Impacts to each nesting site shall be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

3-6

Nesting Birds

The MND identifies Mitigation Measure IV-8 to avoid potentially significant impacts to nesting birds (MND pages 47 and 48). The existing measure identifies a timeline of 14 days prior to ground-disturbing activities within the nesting season for pre-construction nesting bird surveys. CDFW recommends using a timeline of 7 days to increase the likelihood that newly constructed nests are identified prior to beginning ground-disturbing activities. If a period of more than 7 days elapses between the survey date and start of or resuming Project activities, then an additional survey should be conducted.

GENERAL SUGGESTIONS

3-7

Landscape with Native Species

In addition to the above recommendations, CDFW encourages landscaping using native trees and shrubs to benefit native wildlife such as nesting birds and insect pollinators. The removal of habitat for birds from human activities has contributed to the loss of a significant proportion of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Similarly, insect pollinators such as monarch butterflies and native bees have declined drastically relative to 1990 levels (Xerces Society Western Monarch Thanksgiving Count 2021, Xerces Society et al. 2018, Forister et al. 2011). Planting native trees, shrubs, and flowering species, is an opportunity to improve conditions for native birds and insects. The MND generally proposes non-native species for landscaping, including Brisbane box (*Lophostemon confertus*), red oak (*Quercus rubra*), and Russian sage (*Salvia yangii*) (MND pages 24 and 26). As an alternative,



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CDFW recommends native species such as valley oaks (*Q. lobata*), western redbud (*Cercis occidentalis*), and narrowleaf milkweed (*Asclepias fascicularis*) where possible.⁵

ENVIRONMENTAL DATA

3-7 cont.

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

3-8

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or Amanda.Culpepper@wildlife.ca.gov, or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

⁵ For further native species recommendations and planting tips, review the Willis L. Jepson Chapter of the California Native Plant Society document *Native Landscape Planting Guide*: https://jepson.cnps.org/images/horticulture/plans/willis_jepson-planting_guide.pdf and the Xerces Society document *Pollinator Plants: California*: https://xerces.org/sites/default/files/2018-05/17-045_02_XercesSoc_Pollinator-Plants_California_web-3page.pdf



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ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022010090)

REFERENCES

Brylski, Phillip V.; Collins, Paul W.; Peirson, Elizabeth D.; Rainey, William E.; and Kucera, Thomas E. 1998. Draft Terrestrial Mammals Species of Special Concern in California. Report submitted to California Department of Fish and Game, Sacramento, CA.

Forister, Matthew L.; Jahner, Joshua P.; Casner, Kayce L.; Wilson, Joseph S.; and Shapiro, Arthur M. 2011. The race is not to the swift: Long-term data reveal pervasive declines in California's low-elevation butterfly fauna. *Ecology*: 92 (12): 2222-2235.

Penrod, K., Garding, P.E.; Paulman, C.; Beier, P.; Weiss, S.; Schaefer, N.; Branciforte, R.; and Gaffney, K. 2013. Critical Linkages: Bay Area & Beyond. Produced by Science & Collaboration for Connected Wildlands, Fair Oaks, CA in collaboration with the Bay Area Open Space Council's Conservation Lands Network.
http://www.scwildlands.org/reports/CriticalLinkages_BayAreaAndBeyond.pdf

Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avrind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.

Xerces Society, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the State of California Fish and Game Commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as endangered under the California Endangered Species Act. Available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161902&inline>

Xerces Society Western Monarch Thanksgiving County. 2021. Western Monarch Thanksgiving County Data, 1997-2020. Available at www.westernmonarchcount.org.



LETTER 3: ERIN CHAPPELL, CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, BAY DELTA REGION

Response to Comment 3-1

The comment serves an introductory statement, summarizes the project setting and project description, and cites applicable laws under which potential project impacts to biological resources must be analyzed. The comment does not address the adequacy of the IS/MND.

Response to Comment 3-2

According to CEQA Guidelines Section 15152(a) “*Tiering*” refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.”

While permissible given the proposed project’s consistency with the site’s General Plan land use designation, the IS/MND does not tier from the City’s General Plan EIR for the biological resources section of the IS/MND. Rather, the analysis of the project’s potential impacts to biological resources is based on a Biological Assessment Memorandum (BAM) prepared for the project site by WRA Environmental Consultants (attached as Appendix B to the IS/MND),³ as well as the draft Solano Multispecies Habitat Conservation Plan (Solano HCP), in which the City of Dixon has voluntarily chosen to participate. In addition, for the analysis of the proposed project’s consistency with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance, the IS/MND primarily relies upon an Arborist Report prepared by Tree Associates (see Appendix C to the IS/MND).⁴

Response to Comment 3-3

As detailed on page 42 of the IS/MND, as part of evaluating potential project impacts to plant and wildlife species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS, a field survey was conducted by WRA on July 19, 2019. The qualified biologist did not observe trees within the project area that would be considered suitable roosting habitat for special-status bats, due to the trees being small in size (non-native ornamentals) and/or lacking roosting features. Accordingly, WRA’s conclusion is that the site does not provide suitable habitat for special-status bat species, and mitigation measures are not warranted.

Response to Comment 3-4

Mitigation Measures IV-2 and IV-3 of the IS/MND (see pages 44 to 46) provide sufficient protection against take of Swainson’s hawk and reduce potential project impacts to a less-than-significant level. The foregoing mitigation measures require preconstruction, protocol-level Swainson’s hawk surveys and implementation of a 0.25-mile buffer between active nests and project construction. As such, the measures set forth in the IS/MND would result in full avoidance of the species. Nevertheless, should take of Swainson’s hawk be unavoidable, the project applicant would be required to obtain a California Endangered Species Act (CESA) Incidental Take Permit (ITP), prior to the commencement of construction.

³ WRA Environmental Consultants. *Memorandum: Dixon Property – Opportunities and Constraints Memorandum*. July 26, 2019.

⁴ Tree Associates. *Arborist Report, Lincoln Square Project, Dixon, California*. June 20, 2021.



In response to the comment, out of an abundance of caution, Mitigation Measure IV-3 on pages 45 to 46 of the IS/MND is hereby revised, as follows:

IV-3

If the draft Solano HCP is adopted prior to issuance of grading permits for the project, then the following mitigation shall be implemented if indirect Swainson's hawk nest impacts occur as a result of the project. According to the draft Solano HCP, an indirect effect can occur if project construction affects the nest such that active, Swainson's hawks are disturbed to a degree that causes, or is likely to cause: (a) injury to the nesting birds; (b) a decrease in productivity by substantially interfering with normal breeding, feeding, or sheltering behavior; or (c) nest abandonment by substantially interfering with normal breeding, feeding, or sheltering behavior. Covered Activities within 250 feet of an active nest are presumed to have a long-term indirect effect on the nest.

Mitigation for indirect impacts to Swainson's hawk breeding habitat, including known or active nests, shall consist of the following:

- The project applicant shall preserve an active nest site through purchase of occupied nest credits from an HCP-certified mitigation bank or approved project-specific reserve. If preserved active nest sites are unavailable, project proponents will provide funding to the HCP's Interim Nest Protection Program; or*
- Pay current nest-protection impact fee (the fee schedule for the draft Solano HCP has yet to be determined) and monitor the nest tree for a minimum of two nesting seasons following completion and occupancy of the project upon approval from SCWA and Resource Agencies. If the nest remains active or is affected by a subsequent project, the fee, with applicable interest, will be returned to the applicant; or*
- Demonstrate to and receive concurrence from SCWA and the Resource Agencies that the covered activity will not substantially increase disturbance to the nest site.*

If take of Swainson's hawk cannot be avoided, the project applicant shall obtain a California Endangered Species Act (CESA) Incidental Take Permit (ITP) from the CDFW.

The revisions to Mitigation Measure IV-3 do not change the conclusions of the analyses in the IS/MND.

Response to Comment 3-5

The July 19, 2019 field survey conducted as part of the BAM included determining the potential for burrowing owl to occur on-site, which was based on evaluating the site for the presence of burrows and/or potential suitable habitat. At the time of the 2019 assessment, the project area was regularly mowed and disced, which prevents burrowing mammals from using the site to nest or shelter. To date, City-mandated discing and mowing occurs regularly on the project site for the purposes of fire prevention, thereby continuing to deter small mammals from establishing burrows within the project area. Therefore, according to CDFW recommendations in determining burrowing owl potential based on qualitative habitat observations, the project-specific assessment of on-site burrows and/or potential suitable habitat is sufficient.



Mitigation Measure IV-4 of the IS/MND outlines a take avoidance survey, pursuant to the 2012 CDFW *Staff Report on Burrowing Owl Mitigation*, and includes a survey buffer around the project area of at least 200 meters, exceeding the CDFW recommendations. The survey would document the presence or absence of suitable burrows on-site or in the site buffer within a 14- to 30-day window, prior to the start of construction.

In the event that the requirements set forth by Mitigation Measure IV-4 identify positive burrow/habitat findings, Mitigation Measures IV-5 and/or IV-6 of the IS/MND would be implemented. Mitigation Measure IV-5 details avoidance measures, if construction activities begin within burrowing owl breeding season. Mitigation Measure IV-6 details avoidance if construction activities begin outside of burrowing owl breeding season. Mitigation Measure IV-7 details compensatory mitigation for impacts to active nests, including any passive relocation activities. All referenced compensatory mitigation in Mitigation Measure IV-7 follows the CDFW *Staff Report on Burrowing Owl Mitigation*.

Based on the expert opinions of WRA's qualified biologists, the measures outlined in the IS/MND are sufficient to identify, avoid, and compensate for any impacts that may occur to burrowing owl, while ensuring the species does not incur take.

Nevertheless, in response to the comment, Mitigation Measures IV-4 through IV-7 on pages 46 to 47 of the IS/MND are hereby replaced, with the following two new mitigation measures:

Burrowing Owl Habitat Assessment, Surveys, and Avoidance

IV-4

Prior to project construction activities, a qualified biologist shall conduct a habitat assessment following Appendix C: Habitat Assessment and Reporting Details of the 2012 CDFW Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report). The habitat assessment shall extend at least 492 feet (150 meters) from the project site boundary, or more, where direct or indirect effects could potentially extend off-site (up to 500 meters or 1,640 feet) and include burrows and burrow surrogates. If the habitat assessment identifies potentially suitable burrowing owl habitat, then a qualified biologist shall conduct a take avoidance survey following the CDFW 2012 Staff Report survey methodology. The survey shall encompass the project site and a sufficient buffer zone to detect owls nearby that may be impacted, commensurate with the type of disturbance anticipated, as outlined in the CDFW 2012 Staff Report, and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features, in addition to burrows and mounds. Time lapses between the survey or project construction activities shall trigger subsequent surveys, as determined by a qualified biologist, including, but not limited to, a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. Detected nesting burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report and any passive relocation plan for non-nesting owls shall be subject to CDFW review.



~~Between 14 and 30 days prior to the start of construction activities, a take avoidance survey for burrowing owls shall be conducted by a qualified biologist. The take avoidance survey shall be conducted according to methods described in the Staff Report on Burrowing Owl Mitigation (CDFW 2012). The survey area shall include all suitable habitat on and within 200 meters of project impact areas, where accessible. A written summary of the survey results shall be submitted to the City of Dixon Community Development Department before any construction permits are issued.~~

Burrowing Owl Habitat Mitigation

~~IV-5 If project construction activities would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described above), the following habitat mitigation shall be implemented prior to project construction:~~

~~Impacts to each nesting site shall be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites.~~

~~The project applicant may implement alternative methods for preserving habitat, with written acceptance from CDFW.~~

~~If project activities are undertaken during the breeding season (February 1-August 31) and active nest burrows are identified within or near project impact areas, a 200-meter disturbance-free buffer shall be established around the identified burrows prior to the start of construction activities. During the non-breeding season (September 1-January 31), resident owls occupying burrows in or near project impact areas shall be avoided through the establishment of a 50-meter disturbance-free buffer or passively relocated to alternative habitat as described below. Smaller buffer areas during the non-breeding season may be implemented with the presence of a qualified biological monitor during all activities occurring within 50 meters of occupied burrows. Buffers shall remain in place for the duration of project activities occurring within the vicinity of burrowing owl activity.~~

~~IV-6 During the non-breeding season (September 1-January 31), resident owls occupying burrows in project impact areas may be passively relocated to alternative habitat in accordance with a relocation plan prepared by a qualified biologist. In addition to the above mitigation measures, compliance with the draft Solano HCP avoidance and mitigation measures is warranted if burrowing owls move on to the site prior to construction. The draft Solano HCP avoidance and mitigation measures may be addressed concurrently with other habitat preservation and management requirements specified for other natural communities and covered species.~~

~~IV-7 Compensatory Mitigation, if Active Owl Dens are Present: If active burrowing owl dens are present and the project would impact active dens, the project applicant shall implement the following:~~



- ~~• If active owl burrows are present and the project would impact active burrows, the project applicant shall provide compensatory mitigation for the permanent loss of burrowing owl habitat consistent with the March 7, 2012, CDFW's Staff Report on Burrowing Owl Mitigation. Such mitigation may include the permanent protection of land, which is deemed to be suitable burrowing owl habitat through a conservation easement deeded to a non-profit conservation organization or public agency with a conservation mission, or the purchase of burrowing owl conservation bank credits from a CDFW-approved burrowing owl conservation bank.~~

~~If the same mitigation acreage would be utilized for multiple species (i.e., burrowing owl habitat and Swainson's hawk foraging habitat), the appropriate wildlife agency, in this case CDFW, must approve the mitigation lands and long-term management practices for the mitigation lands as suitable and compatible for all species for which the lands are to provide compensatory mitigation. Proof of CDFW's approval habitat "stacking" shall be provided to the City of Dixon Community Development Department.~~

~~Or,~~

- ~~• If the Solano HCP is adopted prior to issuance of grading permits for the project, then the applicant can comply with the burrowing owl mitigation measures in the Solano HCP.~~

All subsequent mitigation measures contained in Section IV, Biological Resources, of the IS/MND are re-numbered, accordingly. The above revisions do not change the conclusions of the analysis in the IS/MND.

Response to Comment 3-6

Based on the expert opinions of WRA's qualified biologists, the 14-day window for nesting birds, prior to the start of ground-disturbing activities, is a standard and sufficient measure to maintain a less-than-significant impact to nesting birds and would be implemented for the proposed project.

Response to Comment 3-7

The comment does not address the adequacy of the IS/MND; however, the comment is noted for the record and will be forwarded to the City of Dixon and project applicant for their consideration. It should be noted that, as detailed on page 49 of the IS/MND, the proposed project would be required to comply with the applicable provisions set forth by Dixon Municipal Code Sections 17.10.320 and 18.33.070, with respect to existing and new trees.

With respect to filing fees, the project applicant would be required to pay all applicable fees necessary as part of project approval, including the applicable CDFW fees concurrent with the filing of the Notice of Determination, should the project be approved.

Response to Comment 3-8

Thank you for participating in the public review process of the IS/MND. Your comments and concerns are noted for the record.



Central Valley Regional Water Quality Control Board

7 February 2022

Letter 4

Scott Greeley
City of Dixon Community Development Department
600 East A Street
Dixon, CA 95620
sgreeley@cityofdixon.us

4-1

COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, LINCOLN SQUARE PROJECT, SCH#2022010090, SOLANO COUNTY

Pursuant to the State Clearinghouse's 7 January 2022 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Lincoln Square Project, located in Solano County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore, our comments will address concerns surrounding those issues.

I. Regulatory Setting

4-2

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of

DENISE KADARA, ACTING CHAIR | PATRICK PULUPA, EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley



Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:

https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

4-2 cont.



↑
Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

4-2 cont.

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ. For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic

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¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.



General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

4-2 cont.

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf



4-2 cont.

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf

Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: <https://www.waterboards.ca.gov/centralvalley/help/permit/>

If you have questions regarding these comments, please contact me at (916) 464-4684 or Peter.Minkel2@waterboards.ca.gov.

4-3



Peter G. Minkel
Engineering Geologist

cc: State Clearinghouse unit, Governor's Office of Planning and Research,
Sacramento



LETTER 4: PETER G. MINKEL, CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Response to Comment 4-1

The comment is an introductory statement and does not address the adequacy of the IS/MND.

Response to Comment 4-2

The comment provides background information regarding Regional Water Quality Control Board (RWQCB) regulations and required permits, some of which are not applicable. For example, the project will not be an industrial site, and thus, an Industrial Storm Water General Permit is not required. Similarly, a USACE 404 Permit is not required, due to the lack of on-site aquatic features, and thus, a Section 401 Water Quality Certification Waiver is not required from the RWQCB. The comment does not address the adequacy of the IS/MND and has been noted for the record.

It should be noted that the National Pollutant Discharge Elimination System (NPDES) permitting requirements to which the proposed project is subject are detailed under Section X, Hydrology and Water Quality, of the IS/MND, which begins on page 76. As discussed therein, the proposed project would be required to comply with the applicable provisions of Dixon Municipal Code Section 16.04.040, which requires new development within the City that disturbs one or more acres of land to comply with the NPDES Construction General Permit. In addition, permanent stormwater management measures for development in the City must be designed in accordance with the State's Phase II Small MS4 General Permit, the development standards of which have been adopted by reference in Section 16.06.120 of the City's Municipal Code. In accordance with Municipal Code Section 16.06.120, during large storm events, stormwater runoff from on-site impervious surfaces would be directed to six Drainage Management Areas (DMAs) within the project site that would treat and detain all on-site runoff prior to discharging to the City's existing stormwater drains located in North Lincoln Street and SR 113. In general, each DMA would consist of biotreatment soil mix to provide initial treatment before runoff is routed to the existing storm drain system adjacent to the site. The DMAs would be of various sizes and would be located as follows: (1) in the northwest corner of the subdivision, between the northern boundary of Lot 46 and North Lincoln Street; (2) to the north of the convenience store, parallel to North Lincoln Street; (3) to the east of the fueling canopy, parallel to SR 113; (4) to the west of the car wash; (5) to the east of residential Lots 86 to 102, parallel to SR 113; and (6) within the pocket park. The storm drain and retention system is designed to accommodate storage for runoff retention as required by the Central Valley RWQCB and would be required to be designed in accordance with Section 4 of the City of Dixon's Engineering Design Standards, which contain the City's requirements for drainage design, including criteria for design runoff, hydraulic grade line, inlets, gutters, streets, manholes, and detention ponds.

Response to Comment 4-3

Thank you for participating in the public review process of the IS/MND. Your comments and concerns are noted for the record.

