



Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670-4599
916-358-2900
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

November 6, 2020

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Todd Smith
Sacramento County Planning
827 7th Street, Suite 225
Sacramento, CA 95814
ceqa@saccounty.net

STATE CLEARINGHOUSE

Subject: Upper Westside Specific Plan - Notice of Preparation
SCH# 2020100069

Dear Mr. Smith:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) from Sacramento County for the Upper Westside Specific Plan (Project) in Sacramento County (the County) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹ CDFW previously submitted comments in response to the County's request for comments on the Project's application to the County dated March 6, 2020.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. Code).

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise

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.

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regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project is a Specific Plan that encompass approximately 2,066 acres in the unincorporated Natomas community of Sacramento County, approximately 3.5 miles from downtown Sacramento. The Project area is bounded by Interstate 80 to the south, the West Drainage Canal to the east, Fisherman's Lake Slough to the north, and Garden Highway to the west. The Project is located outside of the County's Urban Policy Area (UPA) and Urban Services Boundary (USB), but is bounded on three sides by the City of Sacramento, bordering the communities of North and South Natomas.

The Project's Preliminary Land Use Plan envisions a community with a 1,532± acre Development Area and a 534± acre Ag Buffer Area that is located west of the Development Area. Within the Development Area, the applicant has proposed an urban, commercial mixed-use town center district near the intersection of El Centro Road and West El Camino Avenue surrounded by neighborhoods. The Development Area includes 9,356± dwelling units and 3,096,245± square feet of commercial uses, with three K-8 school sites, one high school site, and several parks.

The Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment stage area, spoils areas, adjacent infrastructure development, staging areas and access and haul roads if applicable.

As required by § 15126.6 of the CEQA Guidelines, the EIR should include appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts to resources under CDFW's jurisdiction.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the forthcoming EIR address the following:

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Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the EIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends that the EIR specifically include:

1. An assessment of all habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey (USGS) 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* on the Department webpage www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data). Please review the website for information on how to access the database to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship (CWHR) System, California Native Plant Society (CNPS) Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations.

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3. A complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. The EIR should include the results of focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Species-specific surveys should be conducted in order to ascertain the presence of species with the potential to be impacted directly, indirectly, on or within a reasonable distance of the Project activities. CDFW recommends the lead agency rely on survey and monitoring protocols and guidelines available at: www.wildlife.ca.gov/Conservation/Survey-Protocols. Alternative survey protocols may be warranted; justification should be provided to substantiate why an alternative protocol is necessary. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Some aspects of the Project may warrant periodically updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought or deluge.
4. A thorough, recent (within the last two years), floristic-based assessment of special-status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see www.wildlife.ca.gov/Conservation/Plants).
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The EIR should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources. To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the EIR:

1. The EIR should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The EIR must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed, and it must permit the significant effects of the Project to be considered in the full environmental context.

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2. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by Project activities especially those adjacent to natural areas, exotic and/or invasive species occurrences, and drainages. The EIR should address Project-related changes to drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project outcome of runoff from the Project site. The EIR should address sources of wildlife mortality such as human introduction of domestic cats (as it relates to bird mortality), bird strikes with Project buildings, increased wildlife control, and vehicle strikes.
3. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Conservation or Recovery Plan, or other conserved lands).
4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR should include a list of present, past, and probable future projects producing related impacts to biological resources or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis shall include impact analysis of vegetation and habitat reductions within the area and their potential cumulative effects. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.

Mitigation Measures for Project Impacts to Biological Resources

The EIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW also recommends that the environmental documentation provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

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1. *Fully Protected Species*: Several Fully Protected Species (Fish & G. Code § 3511) have the potential to occur within or adjacent to the Project area, including, but not limited to: white-tailed kite (*Elanus leucurus*). Fully protected species may not be taken or possessed at any time. Project activities described in the EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the EIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.
2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The EIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.
3. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the EIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration, enhancement, or permanent protection should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Any mitigation proposed outside the Natomas Basin and within the jurisdiction of a different local government, should be supported by robust scientific reasoning and such a strategy should contemplate local degradation of Natomas Basin fish, wildlife, or plant resources and potential land use authority.

The EIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

4. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in the regional ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a

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minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate. Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project. Examples may include retention of woody material, logs, snags, rocks, and brush piles. Fish and Game Code sections 1002, 1002.5 and 1003 authorize CDFW to issue permits for the take or possession of plants and wildlife for scientific, educational, and propagation purposes. Please see our website for more information on Scientific Collecting Permits at www.wildlife.ca.gov/Licensing/Scientific-Collecting#53949678-regulations-.

5. *Nesting Birds*: It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory nongame native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Potential habitat for nesting birds and birds of prey is present within the Project area. The Project should disclose all potential activities that may incur a direct or

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indirect take to nongame nesting birds within the Project footprint and its vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the EIR.

CDFW recommends that the EIR include specific avoidance and minimization measures to ensure that impacts to nesting birds or their nests do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. In addition to larger, protocol level survey efforts (e.g. Swainson's hawk surveys) and scientific assessments, CDFW recommends a final preconstruction survey be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier.

6. *Moving out of Harm's Way*: The Project is anticipated to result in the clearing of habitats that support native species. To avoid direct mortality, the Lead Agency may condition the EIR to require that a qualified biologist with the proper permits be retained to be onsite prior to and during all ground- and habitat-disturbing activities. The qualified biologist with the proper permits may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.
7. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species as these efforts are generally experimental in nature and largely unsuccessful.

The EIR should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the EIR should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral. CEQA Guidelines section 15126.4, subdivision (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. To avoid deferring mitigation in this way, the EIR should describe avoidance, minimization and mitigation measures that would be implemented should the impact occur.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal

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species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in “take” (Fish & G. Code § 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of state-listed CESA species, either through construction or over the life of the Project. CESA ITPs are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

The Project area has the following State-listed species that are known to be present:

- Swainson’s hawk (*Buteo swainsoni*)
- Giant garter snake (*Thamnophis gigas*)

The Project area as shown in the NOP also may include habitat for these State and/or federally listed species: bank swallow (*Riparia riparia*), California tiger salamander (*Ambystoma californiense*), tricolored blackbird (*Agelaius tricolor*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphous*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), Bogg’s Lake hedge-hyssop (*Gratiola heterosepala*), Sacramento Orcutt grass (*Orcuttia viscida*), and slender orcutt grass (*Orcuttia tenuis*).

The EIR should disclose the potential of the Project to take State-listed species and how the impacts will be avoided, minimized, and mitigated. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the EIR include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

Native Plant Protection Act

The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of State-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of State-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

Lake and Streambed Alteration (LSA) Program

The EIR should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other hydrologically connected aquatic features (such as ditches), and any associated biological resources/habitats present within the entire Project footprint (including utilities, access and staging areas). The EIR should analyze all potential temporary, permanent,

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direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined that the Project will result in significant impacts to these resources, the EIR shall propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level.

Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water or some agricultural drainages.

If CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, an LSA Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, the EIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources. To obtain an LSA notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Section 1602 of the Fish and Game Code. Therefore, CDFW does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction (such as United States Army Corps of Engineers) when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

CDFW relies on the lead agency environmental document analysis when acting as a responsible agency issuing an LSA Agreement. Addressing CDFW's comments to appropriately address Project impacts facilitates the issuance of an LSA Agreement and CDFW's associated CEQA compliance as a responsible agency.

The following information will be required for the processing of an LSA Notification and CDFW recommends incorporating this information into any forthcoming CEQA document(s) to avoid subsequent documentation and Project delays:

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1. Mapping and quantification of lakes, streams, and associated fish and wildlife habitat (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the Project, including impacts from access and staging areas. Please include an estimate of impact to each habitat type.
2. Discussion of specific avoidance, minimization, and mitigation measures to reduce Project impacts to fish and wildlife resources to a less-than-significant level. Please refer to section 15370 of the CEQA Guidelines.

Based on review of Project materials, aerial photography and observation of the site from public roadways, the Project site contains tributaries to lakes and streams within the Natomas Basin. CDFW recommends that the EIR fully identify the Project's potential impacts to lakes, streams, and/or its associated vegetation and wetlands.

Regional Habitat Conservation Plans

CEQA Guidelines section 15125(d) states that EIRs must discuss any inconsistencies between projects and applicable plans (including habitat conservation plans/natural community conservation plans). If the Project is contemplating the viability of offsite mitigation, the EIR should include a discussion of each Project alternative's consistency with any approved habitat conservation plan that overlaps with the Project's mitigation area or the Project itself. Such plans would include the Natomas Basin Habitat Conservation Plan (NBHCP), Metro Air Park Habitat Conservation Plan (MAP HCP), Yolo Habitat Conservation Plan/Natural Community Conservation Plan, South Sacramento Habitat Conservation Plan (SSHCP), and the Placer County Conservation Program.

Local Habitat Conservation Plans

The Project area is within the NBHCP and is in close proximity to the MAP HCP. Both the NBHCP and MAP HCP are approaching their twentieth year of implementation, conserving to date more than 4000 acres of land in the Natomas Basin. These conserved lands provide tremendous benefit to wildlife in Sacramento and Sutter Counties, and the larger surrounding region. Additional development is authorized under both plans, conditioned on in-perpetuity conservation obligations, such as land acquisition and commitments to agriculture, not yet completed within the Natomas Basin. Therefore a robust analysis of whether, in what way, and to what extent the Project may affect future implementation and the continued viability of the NBHCP and MAP HCP in the Natomas Basin is essential to the County's informed review of the Project.

CDFW appreciates the Project proponent and the County's previous commitment to prepare a related effects analysis as part of the County's review of the Project. The analysis will provide critical information essential to a meaningful understanding of the Project's regional setting. That, in turn, will also help ensure the EIR's environmental analysis is robust and includes all the potentially significant effects on fish and wildlife that may be caused by the Project.

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Section 15125 of the CEQA guidelines states that special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project, while also discussing any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. To identify any identify any potential inconsistencies with the Natomas Basin plans and provide special emphasis on rare or unique resources in compliance with CEQA, CDFW recommends that the EIR address, specific to the effects analysis, the following:

- Persistence of NBHCP and MAP HCP Covered Species in the Natomas Basin
- Impacts to established reserve land managed by the Natomas Basin Conservancy (TNBC)
- Reduction of available reserve land in the Natomas Basin under the NBHCP and MAP HCP (with appropriate buffers and setbacks as detailed in the NBHCP)
- Reduction of ability for TNBC to establish or enhance Covered Species range and habitats in the southern Natomas Basin.
- Continued viability of the land uses in the Natomas Basin as detailed in the NBHCP and MAP HCP
- Financial impacts to TNBC and fee payers under the NBHCP and MAP HCP, including the recent action by TNBC Board of Directors and the Sacramento City Council to address related ongoing financial challenges of continuing to implement the required conservation strategy in the Natomas Basin, and
- Cumulative impact of the Project, in combination with other development in the Natomas Basin approved since 2003 that is outside of the City of Sacramento and Sutter County's permitted area under the NBHCP (e.g., levee improvements by the Sacramento Area Flood Control Agency and the Greenbriar project). A visual representation of the mounting pressure on the continued viability of the NBHCP is shown in Figure 1.

CDFW highlights that the County also has vested interest in the success of the MAP HCP. The MAP HCP and the related authorization under CESA serves as a regulatory platform for the Metro Air Park I-5 Interchange, the Amazon fulfillment center, and other large warehouse facilities all of which provide significant economic benefit to the County. The Project's potential effect on the continued success of the MAP HCP is an important consideration for the County as it considers the proposed Project, particularly with County interest in the build-out of Metro Air Park and the MAP HCP's implementation reliance on structure provided by the NBHCP.

Joint Vision

The 2002 Joint Vision Memorandum of Understanding (MOU) outlines a vision shared by the County and City for land use and revenue by the two agencies in the Natomas Basin. The MOU, importantly, recognizes the City as the agent of development in the Sacramento portion of the basin and the County as the agent of permanent open space, habitat, and farmland/ranchland preservation. The MOU, in this respect, defines a set of guiding principles for the County and City to jointly implement a number of goals, including proactively guiding future urban growth for more efficient land use, while

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securing permanent preservation of open space at a mitigation ratio of at least one-to-one. The Joint Vision MOU, importantly, also acknowledges and has served to bolster the coordinated effort by the NBHCP and MAP HCP permittees, and TNBC to minimize the effects of other projects on fish and wildlife resources in the basin. The County and City's Joint Vision MOU has been a cornerstone for land use planning in the Natomas Basin for nearly two decades.

The Joint Vision MOU executed by the County and City in 2002 also informed CDFW's approval of the NBHCP and issuance of the related CESA ITPs to the City, Sutter County, and TNBC in July 2003. The County and City's Joint Vision has also been a key benchmark for CDFW as it monitors the nearly two-decade implementation of the NBHCP by the permittees. The Projects marks an apparent departure by the County from the principles detailed in its shared vision with the City. The County's web page reads currently, for example, that the Joint Vision project has been withdrawn and individual landowners are moving forward with their own projects, including this Project and the Grand Park Specific Plan. It should also be noted that the County's web page does not appear to describe the status of the Joint Vision MOU (signed 2002, after a unanimous vote by the County Board of Supervisors). CDFW flags this issue and recommends that the County analyzes this deviation from the 2002 Joint Vision MOU. This is of particular importance because the County and City's Joint Vision has been critical to the integrity of the NBHCP and the successful management and conservation of the unique biological resources in the Natomas Basin.

Swainson's Hawk

The Natomas Basin is known for its importance to Swainson's hawk within the Sacramento Valley (NBHCP 2003). Over 100 documented nesting occurrences occur within 10 miles² of the Project area (The Natomas Basin Conservancy 2019 Implementation Annual Report). Therefore, high value foraging habitat present in a majority of the Project area could contribute to foraging ability for hundreds of Swainson's hawks in the Natomas Basin, as well as those using surrounding nests in Yolo and east and south Sacramento County, and Swainson's hawk migrating through the Project area (CDFW 2020). This highlights the Natomas Basin's unique contribution in providing valuable nesting and foraging habitat, both of which are essential for the species' life history. As such, a thorough evaluation in the EIR of the Project's impacts to both nesting and foraging habitat as independent factors will be crucial, considering the value of the Natomas Basin for the species. The EIR should cite survey methodology, specifically a full set of protocol surveys using the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Tech. Advis. Comm., 5/2000), empirical data, and discuss how proposed avoidance, minimization, and mitigation measures for the Project are informed

² 10 miles is typically understood as the maximum distance to which a Swainson's hawk will forage during the breeding season (SSHCP 2018)

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by that information. Having this information in the EIR facilitates more efficient and detailed review and feedback from CDFW.

Much of the Project area is mapped within the Swainson's Hawk Zone (SHZ), which the NBHCP describes as the area within one mile of the Sacramento River in the Natomas Basin. The SHZ was derived from the high density of Swainson's hawk nests within this area and scientific evidence for the value of the habitat (NBHCP 2003). The NBHCP recognizes the importance of the SHZ to this species and the viability of their plan which resulted in substantial effort from the City of Sacramento and Sutter County to replan development outside of this area. Replanning efforts in the SHZ have been vital to preserve the area's ecological value and the overall goals of the NBHCP, despite the associated economic and political opportunity costs. Although the County is not party to the NBHCP, CDFW recommends the County considers the Project's 1) biological impact in an ecologically valuable area and 2) the effect that Project development in the SHZ will have on the continued implementation and viability of the NBHCP, as well as the MAP HCP.

As such, robust analysis of the Project's potentially significant effects on Swainson's hawk will be a critical part of the development of the EIR. With the Project in the SHZ, there could be several potentially significant effects to the species, both in the project-specific and cumulative context. Creating a feasible mitigation approach should be an early and focal part of the EIR development given the high utilization of the area by the species.

While typical projects often focus on initial surveys, this Project is in a particularly unique area where extensive surveys and biological resource mapping has already been completed. The most recent surveys indicated that 14 Swainson's hawk nests are present within the Project area or within a 0.5-mile radius that Project activities may impact (TNBC 2019, CDFW 2020). Due to the density of known nest sites, CDFW recommends the EIR analyze the individual nesting and foraging behavior patterns associated with each known nest pair and propose avoidance, minimization and mitigation that specifically addresses those patterns, rather than simply acknowledging presence. CDFW also recommends the EIR analyze the Project's regional impacts to the species, both to the overall persistence of Swainson's hawk within the Natomas Basin and indirect impacts to individual Swainson's hawk that may depend on the Project area's foraging habitat. Data from such studies can more effectively inform a mitigation strategy that complies with CESA.

Other Covered Species

The Natomas Basin has significant biological resources, including habitat and documented occurrences for 22 Covered Species under the NBHCP and other sensitive species. While CDFW recognizes the need for focus on Swainson's hawk and giant garter snake, further detail on the other Covered Species is needed so that all impacts to fish, wildlife, and plant resources can be adequately assessed. Specific focus on the resources likely to be most impacted, including the 22 Covered Species, and robust analysis of these species can strengthen the Project's mitigation strategy.

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ENVIRONMENTAL DATA

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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an effect on fish and 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 in order 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

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Dylan Wood, Environmental Scientist, at 916-358-2384 or dylan.a.wood@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kelley Barker
Environmental Program Manager

ec: Tanya Sheya, Senior Environmental Scientist (Supervisory)
Dylan Wood, Environmental Scientist
CEQACommentLetters@wildlife.ca.gov
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

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Figure 1. Comparison of proposed land uses in the Natomas Basin (2020 & NBHCP signing in 2003)

