

**APPENDIX A:  
NOTICE OF PREPARATION AND SCOPING COMMENTS**

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# Notice of Preparation Environmental Impact Report City of Los Banos

**Date:** January 18, 2022

**To:** State Clearinghouse  
State Responsible Agencies  
State Trustee Agencies  
Other Public Agencies  
Interested Organizations

**From:** Stacy Souza Elms, Community & Economic Development Director  
City of Los Banos  
Community & Economic Development Department  
520 J Street  
Los Banos, CA 93635

**Subject:** Notice of Preparation (NOP) of the Environmental Impact Report (EIR) for the General Plan 2042

**Lead Agency:** City of Los Banos Community & Economic Development Department

**Project Title:** General Plan 2042

**Project Area:** City of Los Banos

Notice is hereby given that the City of Los Banos (City) will prepare an EIR for the Los Banos General Plan 2042 (proposed project) and will hold a public meeting to receive comments on the scope of the EIR, as detailed below. Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15206, the proposed project is considered a project of statewide, regional, or areawide significance. The City, acting as the lead agency, determined that the proposed project could result in potentially significant environmental impacts and that an EIR is required.

The City will prepare an EIR to address the potential environmental impacts associated with the project at a programmatic level consistent with CEQA Guidelines Section 15168. The program-level EIR will evaluate the proposed project for potential impacts on the environment and analyze the proposed policies to determine the potential environmental consequences of future change. An evaluation of project alternatives that could reduce significant impacts will be included in the EIR. The proposed project, its location, and potential environmental effects are described below.

The City is requesting comments and guidance on the scope and content of the EIR from interested public agencies, organizations, and individuals. With respect to the views of Responsible and Trustee Agencies as to significant environmental issues, the City needs to know the reasonable alternatives and mitigation measures that are germane to each agency's statutory responsibilities in connection with the proposed project.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date, but no later than the close of the 30-day NOP review period at **5:00 p.m. on Wednesday, February 16, 2022**. If you submit comments on the scope of the EIR, you will automatically be added to the City's distribution list for future notices and information about the environmental review process for proposed project. If you do not wish to submit comments on the scope of the EIR, but would like to be added to the City's mailing list, you can submit your contact information, including email address with a request to be added to the mailing list.

Please send your written comments to Stacy Souza Elms, at the address shown above or email to [stacy.souza@losbanos.org](mailto:stacy.souza@losbanos.org) with "Los Banos General Plan 2042 EIR" as the subject. Public agencies providing comments are asked to include a contact person for the agency.

A Scoping Meeting to accept oral comments regarding the environmental issues to be addressed in the EIR will be held before the Los Banos Planning Commission on **Wednesday, January 26, 2022 at 6:00 pm**. The City Hall Council Chambers remain closed to the public. In accordance with Assembly Bill 361, all members of the Planning Commission and City staff will join the meeting via phone/video conference and no teleconference locations are required. The public can attend the scoping meeting and provide comment virtually using the instructions included in the agenda and provided on the City's website at <https://losbanos.org/category/planning-commission/>.

## **PROJECT LOCATION, DESCRIPTION, AND OBJECTIVES**

This section describes the location, project description, and overall objective of the proposed project. A copy of this NOP, information about the project, including relevant documents, information on upcoming meetings, and ways you can provide feedback can be viewed: 1) on line at <http://losbanos2040.org/>, or 2) City Hall (520 J Street, Los Banos, CA 93635). The Community and Economic Development counter is open Monday through Friday from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m.

### **Project Location**

Los Banos is an incorporated city situated in western Merced County. The project encompasses the Los Banos all land within the city limits, urban growth boundary, and adjacent land in the City's proposed 2042 Sphere of Influence (SOI) boundary.

### **Lead Agency Contact**

Stacy Souza Elms, Community & Economic Development Director  
City of Los Banos  
Community & Economic Development Department  
520 J Street  
Los Banos, CA 93635  
(209) 827-2433  
[stacy.souza@losbanos.org](mailto:stacy.souza@losbanos.org)

### **Project Sponsor**

City of Los Banos

### **Project Description and Objectives**

Often described as each city's "constitution," general plans are required by State law to guide land use and development, typically within a 20-year horizon. General plans must be periodically updated to respond to new state laws, changing conditions, and emerging issues and opportunities. Los Banos' existing General Plan was adopted in 2009 with a horizon year of 2030. This general plan update is being prepared over 10 years since that document with a new horizon year set to 2042.

The proposed General Plan 2042 is a targeted update to the current General Plan 2030 and will bring the general plan up to date with latest State and federal legislation around urban development, transportation, climate resilience, and safety and address the city's growth, economic development, sustainability, and conservation of open space and land resources. The plan intends to respond to local and regional housing needs, promote economic growth, foster local job creation, enhance quality of life, and protect natural and agricultural resources. In addition to citywide planning issues, General Plan 2042 will provide goals and policies for enhancing downtown Los Banos as the vibrant center of the city and community.

### **Environmental Review**

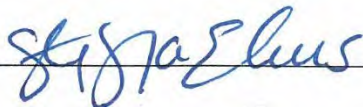
The Los Banos General Plan 2042 EIR will determine whether implementation of the proposed project may result in environmental impacts that require mitigation measures to offset potential impacts. General Plan 2042 itself will incorporate implementation provisions (goals, policies, and actions) that focus on reducing environmental impacts in order to reduce the need for separate EIR mitigation measures, improve the efficiency of implementation, and increase the likelihood that development within the study area will be environmentally sustainable. In accordance with CEQA, the cumulative impacts discussion will be based on review of other plans shaping development outside of the study area. CEQA requires that an EIR evaluate alternatives to a project that could reasonably attain the project objectives while reducing any significant impact of the project, as well as considering the "No Project" Alternative (i.e., what could happen if the project were not approved).

## Environmental Factors Potentially Affected

The EIR will address the proposed project's potential impacts to the following environmental topics:

- Aesthetics
- Agricultural and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources/Tribal Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Parks and Recreation
- Transportation
- Utilities and Service Systems
- Wildfire

Date 1/14/22

Signature 

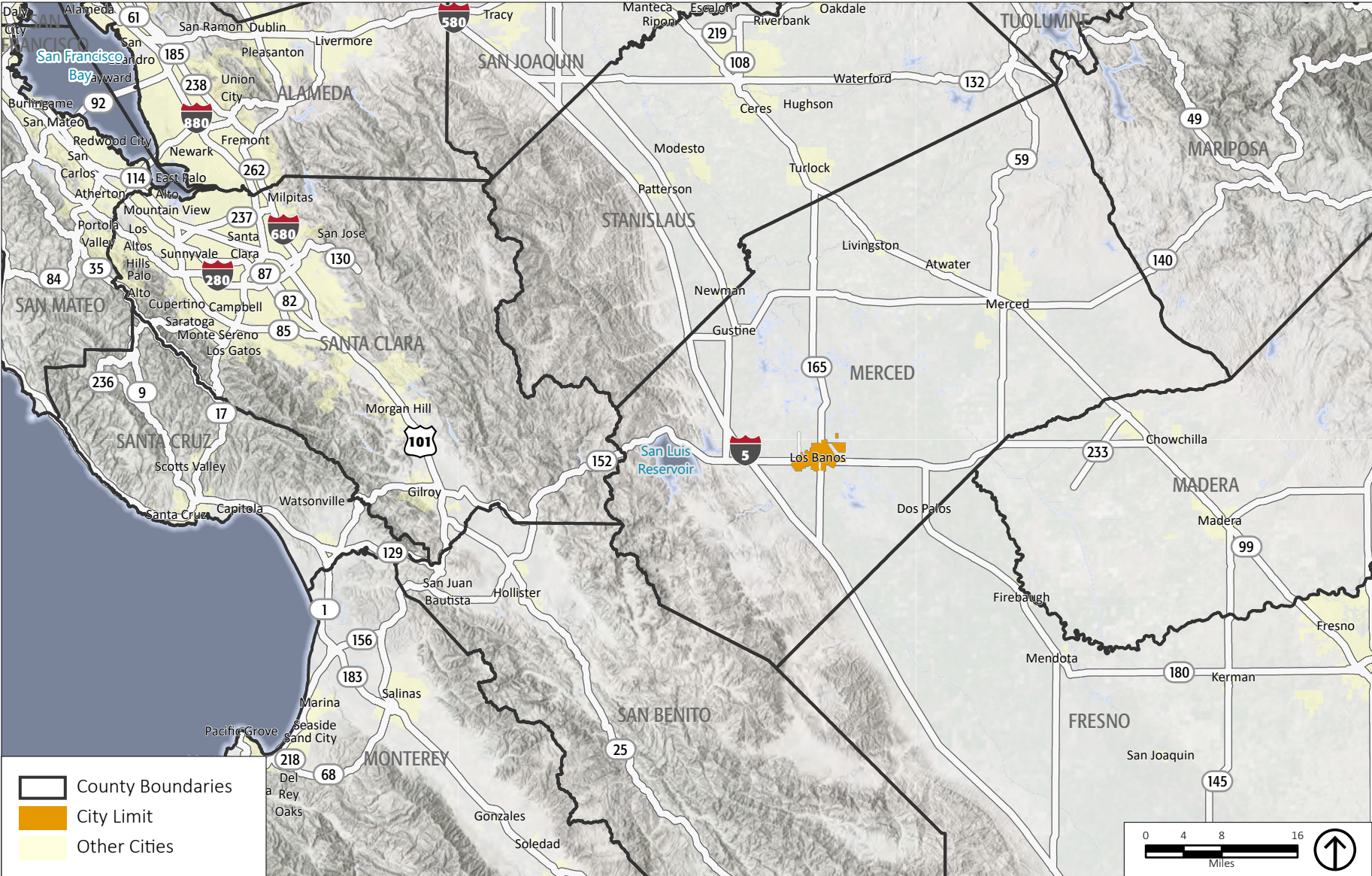
Title Community Development Director

### Attachments:

Figure 1: Regional and Vicinity Map

Figure 2: EIR Study Area

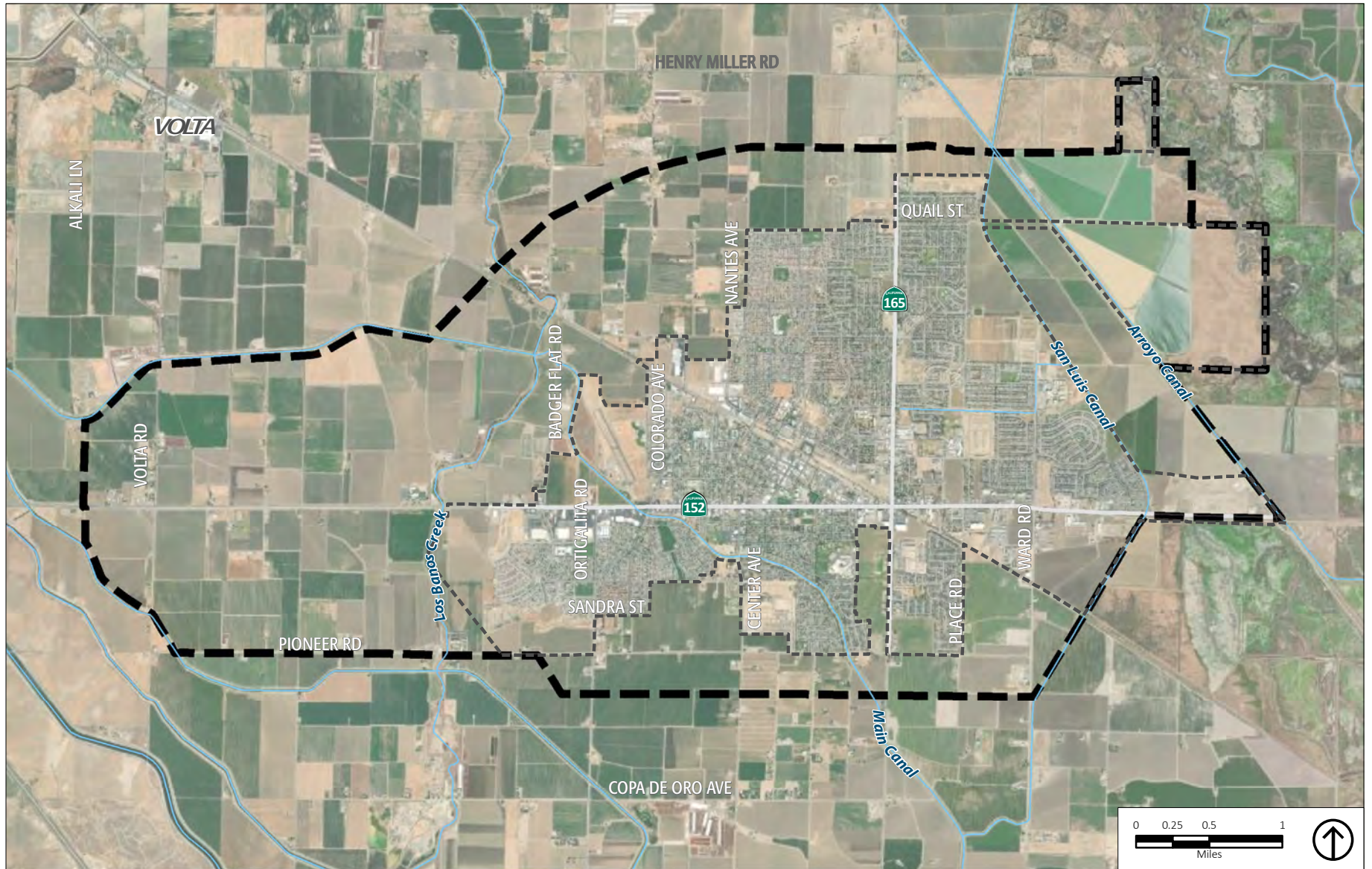
Notice of Preparation



Source: Merced County, 2018; PlaceWorks, 2020.

Figure 1  
Regional and Vicinity Map

Notice of Preparation



Source: California Department of Conservation, 2016; ESRI, 2018; Merced County, 2018; PlaceWorks, 2019.



-  City Limits
-  EIR Study Area

Figure 2  
EIR Study Area

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JANUARY 28, 2022

VIA EMAIL: [STACY.SOUZA@LOSBANOS.ORG](mailto:STACY.SOUZA@LOSBANOS.ORG)

Stacy Souza Elms, Community & Economic Development Director  
City of Los Banos  
Community & Economic Development Department  
520 J Street  
Los Banos, CA 93635

Dear Ms. Souza Elms:

NOTICE OF PREPARATION OF THE ENVIRONMENTAL IMPACT REPORT FOR THE LOS BANOS  
GENERAL PLAN 2042 PROJECT, SCH#2022010254

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Notice of Preparation of the Environmental Impact Report for the Los Banos General Plan 2042 Project (Project). The Division monitors farmland conversion on a statewide basis, provides technical assistance regarding the Williamson Act, and administers various agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's potential impacts on agricultural land and resources.

Project Description

The proposed General Plan 2042 is a targeted update to the current General Plan 2030 and will bring the general plan up to date with latest State and federal legislation around urban development, transportation, climate resilience, and safety and address the city's growth, economic development, sustainability, and conservation of open space and land resources. The plan intends to respond to local and regional housing needs, promote economic growth, foster local job creation, enhance quality of life, and protect natural and agricultural resources. In addition to citywide planning issues, General Plan 2042 will provide goals and policies for enhancing downtown Los Banos as the vibrant center of the city and community.

Department Comments

The conversion of agricultural land represents a permanent reduction and significant impact to California's agricultural land resources. CEQA requires that all feasible and reasonable mitigation be reviewed and applied to projects. Under CEQA, a lead

agency should not approve a project if there are feasible alternatives or feasible mitigation measures available that would lessen the significant effects of the project.

All mitigation measures that are potentially feasible should be included in the project's environmental review. A measure brought to the attention of the lead agency should not be left out unless it is infeasible based on its elements.

Consistent with CEQA Guidelines, the Department recommends the County consider agricultural conservation easements, among other measures, as potential mitigation. (See Cal. Code Regs., tit. 14, § 15370 [mitigation includes "compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."])

Mitigation through agricultural easements can take at least two forms: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project's surrounding area.

A helpful source for regional and statewide agricultural mitigation banks is the California Council of Land Trusts. They provide helpful insight into farmland mitigation policies and implementation strategies, including a guidebook with model policies and a model local ordinance. The guidebook can be found at:

<https://www.calandtrusts.org/resources/conserving-californias-harvest/>

Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered. Indeed, the recent judicial opinion in *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814 ("KG Farms") holds that agricultural conservation easements on a 1 to 1 ratio are not alone sufficient to adequately mitigate a project's conversion of agricultural land. KG Farms does not stand for the proposition that agricultural conservation easements are irrelevant as mitigation. Rather, the holding suggests that to the extent they are considered, they may need to be applied at a greater than 1 to 1 ratio, or combined with other forms of mitigation (such as restoration of some land not currently used as farmland).

### Conclusion

The Department recommends further discussion of the following issues:

- Type, amount, and location of farmland conversion resulting directly and indirectly from implementation of the proposed project.

- Impacts on any current and future agricultural operations in the vicinity; e.g., land-use conflicts, increases in land values and taxes, loss of agricultural support infrastructure such as processing facilities, etc.
- Incremental impacts leading to cumulative impacts on agricultural land. This would include impacts from the proposed project, as well as impacts from past, current, and likely future projects.
- Proposed mitigation measures for all impacted agricultural lands within the proposed project area.
- Projects compatibility with lands within an agricultural preserve and/or enrolled in a Williamson Act contract.
- If applicable, notification of Williamson Act contract non-renewal and/or cancellation.

Thank you for giving us the opportunity to comment on the Notice of Preparation of the Environmental Impact Report for the Los Banos General Plan 2042 Project. Please provide this Department with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Farl Grundy, Associate Environmental Planner via email at [Farl.Grundy@conservation.ca.gov](mailto:Farl.Grundy@conservation.ca.gov).

Sincerely,

*Monique Wilber*

Monique Wilber

Conservation Program Support Supervisor



## NATIVE AMERICAN HERITAGE COMMISSION

January 25, 2022

Stacy Souza Elms  
City of Los Banos  
520 J Street  
Los Banos, CA 93635

**Re: 2022010254, Los Banos General Plan 2042 Project, Merced County**

Dear Ms. Souza Elms:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

CHAIRPERSON  
**Laura Miranda**  
Luiseño

VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash

PARLIAMENTARIAN  
**Russell Attebery**  
Karuk

COMMISSIONER  
**William Mungary**  
Paiute/White Mountain  
Apache

COMMISSIONER  
**Isaac Bojorquez**  
Ohlone-Costanoan

COMMISSIONER  
**Sara Dutschke**  
Miwok

COMMISSIONER  
**Buffy McQuillen**  
Yokayo Pomo, Yuki,  
Nomlaki

COMMISSIONER  
**Wayne Nelson**  
Luiseño

COMMISSIONER  
**Stanley Rodriguez**  
Kumeyaay

EXECUTIVE SECRETARY  
**Christina Snider**  
Pomo

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[NAHC.ca.gov](http://NAHC.ca.gov)

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
  
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
  
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
  
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
  
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
  
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
    - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i.** Protecting the cultural character and integrity of the resource.
    - ii.** Protecting the traditional use of the resource.
    - iii.** Protecting the confidentiality of the resource.
  - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:  
[Andrew.Green@nahc.ca.gov](mailto:Andrew.Green@nahc.ca.gov).

Sincerely,

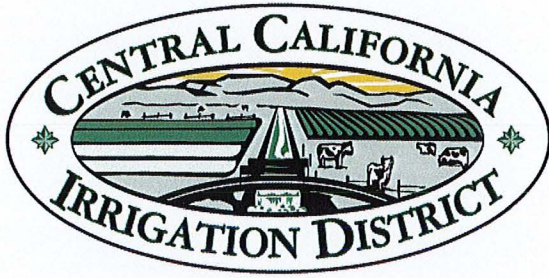


Andrew Green  
Cultural Resources Analyst

cc: State Clearinghouse







February 16, 2022

VIA E-MAIL

Stacy Souza Elms  
Community & Economic Development Director  
City of Los Banos  
520 J Street  
Los Banos, CA 93635  
E-mail: stacy.souza@losbanos.org

**Re: Comments on Notice of Preparation of Environmental Impact Report for the City of Los Banos General Plan 2042**

Dear Ms. Souza Elms,

These comments are submitted by Central California Irrigation District (CCID) and Grassland Water District (GWD) regarding the Notice of Preparation of an Environmental Impact Report (EIR) for the City's 2042 General Plan update. CCID and GWD provide water for irrigation and wetland habitat, respectively, to land historically belonging to the Miller & Lux enterprise. Our history is tied to that of the City of Los Banos, and we share the goal of maintaining compatibility between urban growth and the preservation of valuable and important farmland and open space that surrounds the City. CCID and GWD jointly submit the following comments to help inform the City's preparation of an EIR.

**1. Water Resources**

CCID and GWD have partnered with the City of Los Banos for decades to support the City in the management of water resources. The City relies entirely on pumping groundwater to meet the needs of its citizens. It has partnered with CCID

and the other San Joaquin River Exchange Contractors to develop a Groundwater Sustainability Plan (GSP) in accordance with the Sustainable Groundwater Management Act (SGMA). GWD has also partnered with Merced County on the development of a GSP for lands that surround the City. GWD and CCID coordinate across six planning areas in the Delta-Mendota groundwater subbasin to work towards groundwater sustainability as defined under SGMA. The City also contracts with CCID and GWD to manage and discharge its stormwater drainage into CCID and GWD facilities.

We have significant concerns about the planned growth and conversion of highly productive agricultural land under the City's proposed General Plan without assessing the impact on groundwater resources in the subbasin. The City is currently in a state of groundwater overdraft and proposes to increase its groundwater demand in an already critically overdrafted subbasin. CCID and GWD encourage the City to continue to work with local water suppliers on a plan that is protective of all beneficial users of groundwater in the area. CCID and GWD bring surface water from outside the basin to the areas surrounding the City, providing vital recharge to the aquifer. As the City grows and converts irrigated lands to residential and industrial development, surface water will no longer recharge the aquifer in these areas, and groundwater extraction and overdraft will be exacerbated.

As the City grows, it will also have increased stormwater drainage. Historically, CCID and GWD have facilitated receipt and discharge of these flows through our facilities. We have concerns about impacts to water quality and the costs associated with the required improvements to facilities to accommodate increased stormwater discharges as the City continues to expand.

CCID and GWD look forward to the opportunity to engage with City staff to develop a comprehensive water supply and drainage strategy, as the current General Plan does not address these critical issues.

## **2. Biological Resources**

GWD, in coordination with CCID, provides water to nearby wildlife refuges and approximately 60,000 acres of privately owned wetlands located north, east and south of the City. GWD also helps manage water deliveries for the 230,000-acre Grassland Ecological Area (GEA), an internationally significant wetland complex that exists due to hundreds of millions of dollars in public and private investments for habitat protection and restoration. The GEA is comprised of wetlands, riparian woodlands, native grasslands, vernal pools, and other habitats that support

abundant and diverse wildlife, including numerous threatened and endangered plants and animals. The area also provides critically important wintering and breeding habitat for migratory waterbirds utilizing the Pacific Flyway. The GEA contains a large portion of the remaining 5% of wetlands in the Central Valley, upon which millions of migratory birds depend for their survival.

GWD has a long history of providing feedback to the City on the negative environmental impacts of urban encroachment into the buffer zone between the City and the GEA. Most recently, GWD submitted written comments to the City regarding the General Plan update on July 16, 2021, which are incorporated here by reference. First, the comments discussed how the proposed Areas of Interest in large areas surrounding the City: (1) do not meet LAFCO criteria; (2) may conflict with established land use policies for the Grassland Focus Area under the Merced County General Plan; and (3) would require more protective standards taking into account the sensitive and valuable agricultural land and wetlands that surround the City.

GWD has also repeatedly requested a workshop to discuss the City's Open Space and land protection policies as part of the General Plan update. The City has not lived up to commitments made in its last General Plan, which are more important than ever in light of the City's proposal to expand its Sphere of Influence to the east and north, and to establish zoning for parcels in the "intercanal" area east of the San Luis Canal and north of SR-152.

GWD and CCID remain available to discuss the City's Open Space and land preservation policies, and request that they be specifically reviewed, analyzed, and updated as appropriate in the City's Draft EIR.

### **3. Agricultural Resources**

CCID and GWD strongly support the City's proposed adoption of an agricultural mitigation policy requiring conservation easements to offset the conversion of agricultural land to non-agricultural uses. We support the direction of the City Council to designate areas within the Grassland Focus Area and the intercanal area for priority protection under an agricultural easement policy. However, we do not believe that an easement policy can fully offset the impacts of expanding the City's Urban Growth Boundary and Sphere of Influence beyond what is reasonably necessary to accommodate current growth projections. We also remain concerned about the conversion of farmland within CCID boundaries, which has a very reliable agricultural water supply that is irreplaceable and therefore of high value.

CCID and GWD look forward to continuing their engagement with the City as it analyzes its General Plan update. We believe the City has an opportunity to affirm and strengthen its prior commitments to preserving productive farmland and open space, by establishing growth boundaries and policies that respect the interconnected land and water resources that surround it.

Sincerely,



Jarrett Martin  
General Manager  
Central California Irrigation District



Ricardo Ortega  
General Manager  
Grassland Water District



February 16, 2022

City of Los Banos  
Attn Stacy Souza Elms  
Community & Economic Development Director  
520 J Street  
Los Banos, CA 93620

RE: City of Los Banos Notice of Preparation of the General Plan 2042

Dear Mrs. Souza Elms,

The City of Los Banos (City) is currently in the process of a 30-day review period for the Notice of Preparation (NOP) regarding the update of the General Plan 2042. We appreciate the opportunity to comment as we know this is a large step in the process. Merced County Farm Bureau (MCFB) is a non-profit, non-governmental, grassroots organization that advocates for farmers, ranchers and dairy families who live and/or work in Merced County. We have several members who would be impacted by the listed study area.

We are concerned on the drastic boundary changes that the City wants to expand. Much of the parcels that the City would like to grow to are currently owned or rented by active farms. The large expansion of boundaries that the City is projected to take is far too extensive as development would take years if it even does come to fruition.

We are concerned with the amount of water that the City has available to accommodate such projected growth. Due to the Sustainable Groundwater Management Act, groundwater subbasins must remain in sustainability or face the direct leadership from the State of California. We are concerned with how and where the available water will come from as the City is on a number of groundwater wells. It has also been well noted that the City has had issue with contaminants such as hexavalent chromium.

We are at an increasing rate of losing prime farm soils and would encourage adoption of policies related to agriculture mitigation such as what can be found in the County of Merced's General Plan. Agricultural mitigation is not a silver bullet in saving farmland as acres are still removed from ag uses, but it is a program that can be placed in the toolbox. We would also encourage for such adoption measures to be centralized to local grounds instead of mitigating with parcels outside of the local community.

Lastly, we would encourage adoption of a Right to Farm policy. These types of policies are helpful when residential homes and schools are built in farming areas and inform of the odors, noises and practices

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Email: [info@mercedfarmbureau.org](mailto:info@mercedfarmbureau.org)  
[www.mercedfarmbureau.org](http://www.mercedfarmbureau.org)

that are related to said area. We've witnessed far too many instances when communities are constructed next to a dairy and complain that they are impacted by the odors that the dairy is emitting.

We appreciate the opportunity to comment on this document and the involvement that the City has provided our organization. We look forward to continued discussions on the matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Breanne Vandenberg". The signature is fluid and cursive, with the first name "Breanne" written in a larger, more prominent script than the last name "Vandenberg".

**Breanne Vandenberg**  
Executive Director



Local Agency Formation Commission  
2222 M Street  
Merced, CA 95340  
Phone (209) 385-7671 / Fax (209) 726-1710  
[www.lafcomerced.org](http://www.lafcomerced.org)

February 16, 2022

Stacy Souza Elms, Director  
Community & Economic Development  
City of Los Banos  
520 J Street  
Los Banos, CA 95635

**SENT VIA EMAIL**

RE: Comments on the Notice of Preparation of the Los Banos General Plan 2042 Environmental Impact Report

Dear Ms. Souza Elms:

According to the Notice of Preparation (NOP) released by the City, the current General Plan Update is a "targeted update" of the City's current 2030 General Plan. However, the NOP does not identify what areas of the former General Plan are being "targeted" other than to "respond to new state laws, changing conditions, and emerging issues and opportunities." The identified "General Plan Study Area" is indicated as the boundary for CEQA analysis, but the NOP does not identify the proposed land use designations, or the intensity and density of any development.

As a result, it is difficult for LAFCO to provide specific areas of study or concern beyond the broad environmental impacts that are likely to occur due to the City's growth and delivery of public services which are subject to LAFCO authority for future actions by the Commission. Environmental impacts are usually evaluated with future annexation applications submitted to LAFCO, and these applications have project-level environmental analysis which is based on the programmatic level General Plan Environmental Impact Report (EIR). However, LAFCO will also rely on the General Plan EIR for processing an update to the City Sphere of Influence (SOI) and corresponding Municipal Service Review (MSR) as outlined in this letter.

Typically, following an update to a City's General Plan, the City submits an application to LAFCO for a modification to the Sphere of Influence (SOI) which is defined as "a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission." (Government Code Section 56076). More detailed requirements for what to include in a SOI review or update are contained in Government Code Section 56425(e) which basically includes: identification of existing and planned land uses including agricultural land, the need for public facilities and services in the area and an evaluation of the present capacity and adequacy of these services (such as sewer and water supply), the existence of any social or economic communities of interest (which could include existing service providers or special needs communities), and the presence of any disadvantaged unincorporated communities within the sphere.

Subsection 56425(g) directs LAFCO to, "as necessary," review and update each sphere of influence every five years. Many LAFCOs across the State, including Merced LAFCO, recognize that the term "as necessary" was included in this section of the Code to provide flexibility in the five year timeframe, and with respect to a city SOI, Merced LAFCO would not typically propose any modification or change until the City first prepares a General Plan update.

#### Municipal Service Review

There is a parallel requirement under Government Code Section 56430(e), which requires each LAFCO to conduct a service review (commonly referred to as a Municipal Service Review or "MSR")



before or in conjunction with a sphere of influence update. The current Municipal Service Review for the City of Los Banos was adopted in 2012, which was based on the City's 2030 General Plan adopted by the City in 2009. Government Code Section 56430(a) identifies a list of seven evaluation factors which somewhat overlap with the sphere of influence analysis, but generally include: growth and population projections, identification of disadvantaged unincorporated communities within the sphere, present and planned capacity of public facilities and any deficiencies, financial ability to provide the facilities, opportunities for shared facilities with other service providers, accountability for service delivery and operational efficiencies, and other matters related to effective or efficient service delivery identified by the Commission.

Therefore, following adoption of the General Plan Update, the City should coordinate with LAFCO to initiate the update to the current MSR, which could involve a concurrent update to the SOI.

#### City County Consultation

One last procedural step that will impact processing of a SOI update by LAFCO is compliance with Government Code Section 56425(b). As you recall, the city-county consultation process referenced in this Code section had a direct impact on the processing of a SOI update parallel with the 2012 MSR update adopted by LAFCO. It is also a primary reason the current SOI for the City is based on the earlier 1999 City General Plan.

In summary, the Government Code requires that prior to a city submitting an application to LAFCO to update their SOI, representatives from the city shall meet with the county to discuss the new sphere boundaries, and methods to reach agreement on development standards within the sphere that reflect the concerns of the affected city and that promotes logical and orderly development. If an agreement is reached, LAFCO "...shall give great weight to the agreement to the extent that it is consistent with the commission policies in its final determination of the city sphere."

#### General CEQA Considerations

A map of the existing Los Banos SOI is attached which indicates the current SOI Boundary and a proposed boundary based on the 2009 General Plan. The NOP for the 2042 General Plan which this letter responds to included a Figure 2 identifying the "EIR Study Area" which may or may not be the same as a General Plan growth boundary or proposed SOI. Based on a review of the 2009 General Plan's "Urban Growth Boundary" it would appear the current Study Area is very similar, with a slight shift to the north on the area below Pioneer Road. While a proposed SOI boundary was included in the NOP, the City's 2009 General Plan identified an expansion of the SOI that was 5,300 acres larger than the previous SOI boundary. Most of this area includes productive agricultural land, and therefore, this is will be a significant impact to address in the EIR.

The EIR should identify the need for this approximate 5,000 acre conversion of farmland given realistic population growth projections for housing and employment needs. While new Regional Housing Needs Allocations (RHNA) will be identified by the Merced County Association of Governments later this year, the current RHNA housing allocation for Los Banos (the current cycle between 2014 and 2023) identified a need for 2,472 housing units, approximately half of which should be targeted to low and very low income households. This low income market is typically met through a land use and policy focus on higher density multiple family housing development and ADUs (additional dwelling units). Coupled with State priorities for infill and small lot development, the demand for approximately 5,000 acres of productive farmland and open space land over the General Plan horizon to 2042 should be evaluated to justify the need for conversion of these important resources.

Stacy Souza-Elms  
Director of Community & Economic Development  
City of Los Banos General Plan Update NOP  
February 16, 2022  
Page 3

Related to the justification for the need for this large Urban Growth and corresponding SOI boundary, is identification of appropriate mitigation measures to include the use of agricultural conservation easements to at least partially offset the impact. The City has historically adopted of a statement of overriding considerations instead of reducing the impact or requiring mitigation. A mitigation measure or General Plan policy requiring obtaining conservation easements on similar quality farmland to the land converted has successfully been required for the loss of prime and productive agricultural land by many jurisdictions within California, including the County of Merced (through an adopted General Plan policy), and even by the City of Atwater for 156 acres of productive farmland in the recent Ferrari Ranch Annexation.

Other potential impact areas that are important to LAFCO, and which were identified in the NOP, include the necessary public services and infrastructure necessary to serve the planned growth. These topic areas include: Hydrology and Water Quality, Public Services, Parks and Recreation, and Utilities and Service Systems. Typically master plans are prepared for sewer, water and stormwater utilities, and the EIR would evaluate the need for increased police, fire, parks and recreation staff and services resulting from the growth contemplated in the General Plan.

Please let me know if you have any questions or want to discuss this letter. I can be contacted by phone at: (209) 385-7671 or by email at: [bill.nicholson@countyofmerced.com](mailto:bill.nicholson@countyofmerced.com)

Sincerely,



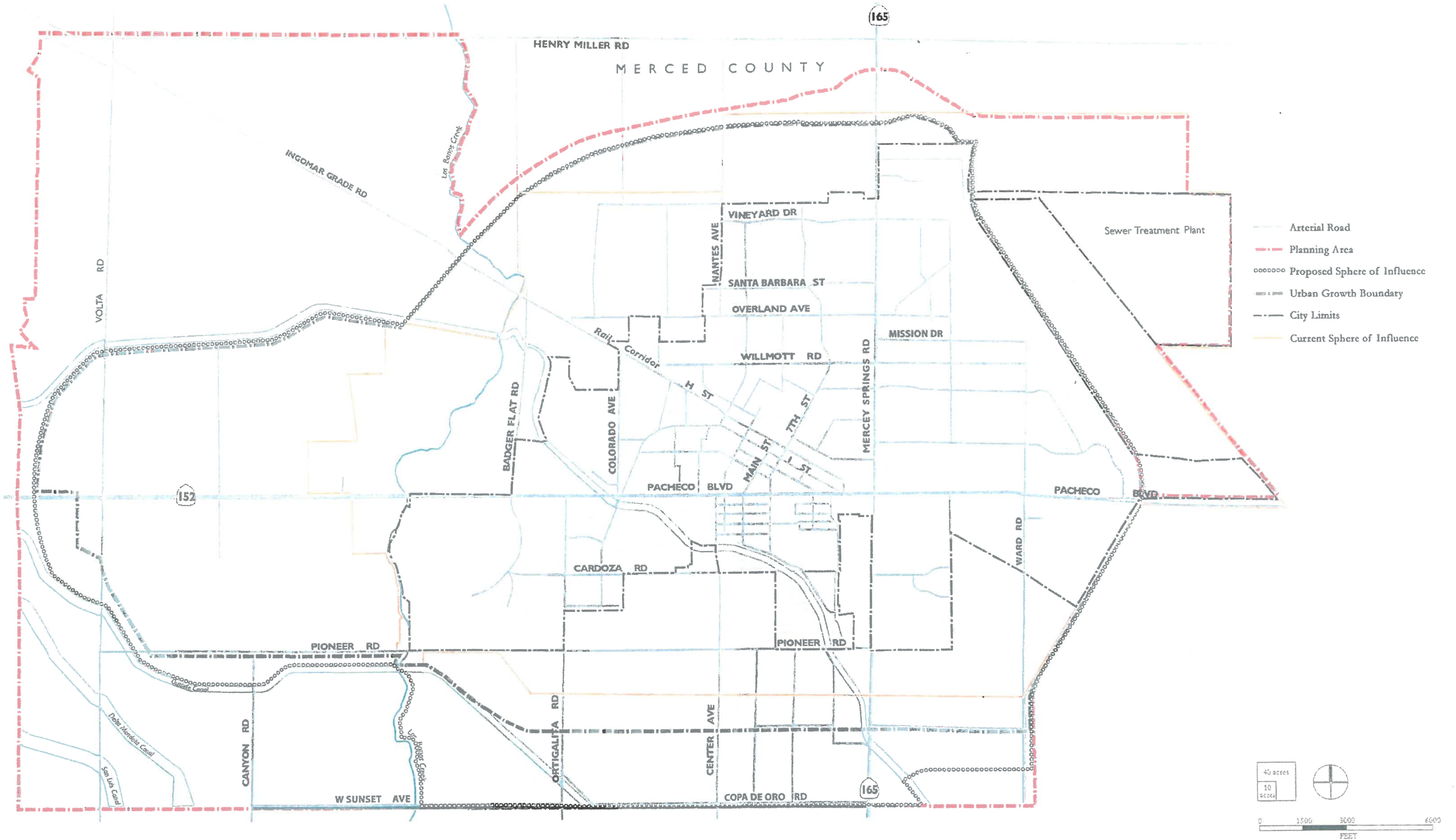
William Nicholson  
Executive Officer

Enclosure:

Existing Sphere of Influence Map for the City of Los Banos and Proposed SOI based on the 2009 City General Plan

cc: LAFCO Commissioners

Figure 2 City of Los Banos: Existing and Proposed Sphere of Influence





State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



February 24, 2022

Stacy Souza Elms, Community & Economic Development Director  
City of Los Banos Community & Economic Development Department  
520 J Street  
Los Banos, California 93635  
[stacy.souza@losbanos.org](mailto:stacy.souza@losbanos.org)

**Subject: Los Banos General Plan 2042 (Project)  
Notice of Preparation (NOP)  
State Clearinghouse No. 2022010254**

Dear Ms. Elms:

The California Department of Fish and Wildlife (CDFW) received an NOP from the City of Los Banos Community & Economic Development Department for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

### **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

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<sup>1</sup> 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.

Stacy Souza Elms, Community & Economic Development Director  
City of Los Banos Community & Economic Development Department  
February 24, 2022  
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of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, 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 is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise 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.), related authorization as provided by the Fish and Game Code will be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Los Banos Community & Economic Development Department

**Objective:** The Project is a targeted update to the current General Plan 2030 and will bring the general plan up to date with the latest State and federal legislation around urban development, transportation, climate resilience, and safety and address the city's growth, economic development, sustainability, and conservation of open space and land resources. The Project intends to respond to local and regional housing needs, promote economic growth, foster local job creation, enhance quality of life, and protect natural and agricultural resources. In addition to citywide planning issues, the Project will provide goals and policies for enhancing downtown Los Banos as the vibrant center of the city and community.

**Location:** The Project encompasses all land within the city limits, urban growth boundary, and adjacent land of Los Banos.

**Timeframe:** Until 2042.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Los Banos Community & Economic Development Department in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on

Stacy Souza Elms, Community & Economic Development Director  
City of Los Banos Community & Economic Development Department  
February 24, 2022  
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fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the subsequent Program EIR.

The Program-level EIR that will be prepared will determine the likely environmental impacts associated with subsequent projects. Given the city-wide implications of the Project, CDFW is concerned that subsequent projects (hereafter, "projects") tiering from the subsequent Program EIR could impact special-status species including, but not limited to, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), and the species of special concern burrowing owl (*Athene cunicularia*).

### **San Joaquin Kit Fox (SJKF)**

Very little habitat considered highly suitable for SJKF remains in Merced County (Cypher et al. 2013). Undeveloped land in western Merced County, spanning the area from around Los Banos Reservoir to north of San Luis Reservoir, has been identified by CDFW and the United States Fish and Wildlife Service (USFWS) as a movement corridor critical to the continued existence and genetic diversity of the northern SJKF population. The Santa Nella area in particular has been identified as a critical SJKF movement "pinch-point". The creation of the San Luis Reservoir and O'Neil Forebay resulted in a large movement barrier to the north-south migration of SJKF, and busy highways in the area such as State Routes 152 and 33 and Interstate 5, as well as existing urban development in the vicinity, further compounded this problem (HT Harvey and Associates 2004). As a result, any upland habitat in this area that could serve as movement or rest areas for SJKF has very high conservation values for this species.

SJKF den in right-of-ways, vacant lots, etc., and populations can fluctuate over time. It is important to note that SJKF populations are known to fluctuate and a negative finding from biological surveys in any one year does not necessarily demonstrate absence of kit fox on a site. In addition, SJKF may be attracted to both construction materials (pipes, etc.) and construction footprints due to the type and level of activity (excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance.

CDFW recommends the Program EIR quantify and describe the potential for subsequent projects to result in direct and indirect impacts to SJKF, including SJKF dispersal and habitat connectivity. The evaluation should include the cumulative impacts to SJKF from other existing, planned, and potential development in the Project vicinity that may contribute to habitat fragmentation. This information, in addition to adequate description of habitat features on individual projects sites, is essential to adequately assess project impacts.

To assess individual Project sites, CDFW recommends that a qualified wildlife biologist assess individual project sites to determine if habitat suitable to support SJKF is present prior to ground- or vegetation-disturbing activities. If suitable habitat is present, CDFW recommends that a qualified biologist assess presence/absence of SJKF by conducting surveys following the USFWS's "Standardized recommendations for protection of the San

Stacy Souza Elms, Community & Economic Development Director  
City of Los Banos Community & Economic Development Department  
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Joaquin kit fox prior to or during ground disturbance” (2011) and implementing no-disturbance buffers around den sites, as described in the USFWS document. SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

### **Swainson’s Hawk (SWHA)**

Projects tiering from the Program EIR have the potential to impact SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from subsequent project activities include nest abandonment, reduced nesting success (loss or reduced health or vigor of eggs or young), and loss of foraging habitat.

To avoid impacts to nesting SWHA, CDFW recommends that subsequent project’s ground-disturbing activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if ground-disturbing activities must take place during that time, CDFW recommends that a qualified wildlife biologist determine if suitable habitat is present on or adjacent to individual project sites. If suitable habitat is present, CDFW recommends a qualified wildlife biologist conduct surveys following the survey methods developed by the Swainson’s Hawk Technical Advisory Committee (SWHA TAC 2000) prior to project implementation. If active nests are detected, CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around them until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If an active SWHA nest is detected during surveys and a 0.5-mile buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

If known SWHA nest trees will be removed as part of Project activities, CDFW recommends that the removal of known SWHA nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity. This mitigation would offset the impacts of nesting habitat loss.

SWHA will forage in mixed agricultural lands that support irrigated hay crops (e.g., alfalfa), as well as dryland pasture, grassy ruderal lots, and some irrigated crops. To reduce impacts to SWHA foraging habitat to less than significant, CDFW recommends compensation of its loss as described in the Staff Report Regarding Mitigation for Impacts to Swainson’s Hawks (CDFG 1994). Specifically, the Staff Report recommends that mitigation for foraging habitat loss occur within a minimum distance of 10 miles from known nest sites using the following criteria:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.

Stacy Souza Elms, Community & Economic Development Director  
City of Los Banos Community & Economic Development Department  
February 24, 2022  
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- For projects within 5 miles of an active nest tree but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

### **Tricolored Blackbird (TRBL)**

TRBL are known to nest in alfalfa, wheat, and other low agricultural crop fields. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

Without appropriate avoidance and minimization measures for TRBL, potential significant impacts of projects tiering from the Program EIR include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young. CDFW recommends that project ground-disturbing activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if ground-disturbing activities must take place during that time, CDFW recommends that a qualified wildlife biologist determine if suitable habitat is present on or adjacent to individual project sites. If suitable habitat is present, CDFW recommends a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time. For this reason, CDFW recommends conducting additional pre-activity surveys within 10 days prior of project initiation to reassess the colony's areal extent. If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.



Stacy Souza Elms, Community & Economic Development Director  
 City of Los Banos Community & Economic Development Department  
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## Burrowing Owl (BUOW)

BUOW use small mammal burrows for nesting and cover. Dispersing juveniles, migrants, transients, or new colonizers may occur in the Project site year-round. Therefore, project activities could impact this species. CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if individual project sites or their immediate vicinity contain suitable habitat for BUOW. If suitable habitat is present, CDFW recommends that a qualified biologist determine if species-specific surveys are necessary to determine if BUOW may be impacted by project activities. CDFW recommends the survey methods described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012) be followed before beginning ground disturbing activities. In the event that BUOW are found, CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

## Editorial Comments and Suggestions

### Nesting birds

CDFW encourages project activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), individual project proponents are responsible for ensuring that implementation of a project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around individual project sites to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of project ground-disturbing activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once ground-disturbing activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from

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the project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

**Lake and Streambed Alteration:** Projects tiering from the Program EIR may involve activities that have the potential to impact streams within the Project site and may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1600 et seq. requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

### **Federally Listed Species**

CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

### **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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed

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form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

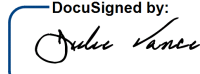
## FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist the City of Los Banos Community & Economic Development Department in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

Attachment 1

ec: R4 LSA  
[R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov)

Patricia Cole, USFWS  
[patricia\\_cole@fws.gov](mailto:patricia_cole@fws.gov)

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**Attachment 1**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM  
(MMRP)**

**PROJECT: Los Banos General Plan 2042**

**SCH No.: 2022010254**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: SJKF	
SJKF Habitat Assessment	
SJKF Surveys	
SJKF Take Authorization	
Mitigation Measure: SWHA	
SWHA Habitat Assessment (Nesting and Foraging)	
SWHA Surveys	
SWHA Foraging Habitat Mitigation	
SWHA Take Authorization	
Mitigation Measure: TRBL	
TRBL Habitat Assessment	
TRBL Surveys	
TRBL Take Authorization	
Mitigation Measure: BUOW	
BUOW Habitat Assessment	
BUOW Surveys	
<i>During Construction</i>	
Mitigation Measure: SJKF	
SJKF Avoidance	
Mitigation Measure: SWHA	
SWHA Avoidance	
Mitigation Measure: TRBL	
TRBL Avoidance	
Mitigation Measure: BUOW	
BUOW Avoidance	