



# DELTA SHORES

## FINAL ENVIRONMENTAL IMPACT REPORT

SCH No. 2007042070

December 2008

Prepared for:  
**City of Sacramento**



Prepared by:



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## **1. INTRODUCTION**

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# 1. INTRODUCTION

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## **PURPOSE OF THIS DOCUMENT**

This document includes all agency and public comments received on the Draft Environmental Impact Report (Draft EIR) for the Delta Shores Project (proposed project). Written comments were received by the City of Sacramento during the public comment period held from September 9, 2008 to October 23, 2008. This document includes written responses to each comment received on the Draft EIR. The responses correct, clarify, and amplify text in the Draft EIR, as appropriate. These changes do not alter the conclusions of the Draft EIR.

This Final EIR document has been prepared in accordance with the California Environmental Quality Act (CEQA) and together with the Draft EIR (and Appendices) constitutes the EIR for the proposed project.

## **SUMMARY OF PROPOSED PROJECT**

The Delta Shores project includes the development of a 782-acre master planned community. The proposed project is envisioned as a compact residential community of approximately 5,092 residences with two mixed-use retail centers – a Regional Village Center (Village Center) and a neighborhood-serving residential mixed-use retail area (Residential/Mixed-Use area).

The proposed project also includes open space, recreation, and pedestrian and bicycle friendly aspects. The project applicant, M&H (Merlone Geier Partners, LLC) would develop the commercial areas including the Village Center and Residential/Mixed-Use area. The Village Center is anticipated to include up to approximately 1.3 million square feet of retail and commercial uses while the Residential/Mixed-Use area would include a maximum of approximately 161,600 square feet of retail and incorporated office uses

The proposed project proposes to subdivide approximately 315 acres into residential lots and approximately 118 acres into parks, trails, open space, and wetland preserve. A total of approximately 147 acres would be designated for commercial development (including the 19.9 acres of mixed-use) with the remaining area set aside for schools, utilities, a private community center, and roadways, including development of internal residential collector streets.

The City of Sacramento and other responsible agencies are required to follow through with discretionary actions for project approval. Below are summarized the discretionary actions sought by the project applicant for the Delta Shores project that the City of Sacramento and other responsible agencies will consider during its review. A detailed description of required permits and approvals is included in Chapter 2, Project Description, of the Draft EIR.

- Preparation and certification of an EIR pursuant to the California Environmental Quality Act and associated Guidelines (City of Sacramento);

- Approval of the Water Supply Assessment (City of Sacramento);
- Development Agreement (City of Sacramento);
- General Plan Amendment (City of Sacramento);
- Airport/Meadowview Community Plan Amendment (City of Sacramento);
- Rezone (City of Sacramento);
- Delta Shores PUD Guidelines and Schematic Plan Amendments (City of Sacramento);
- Master Tentative Parcel Map(City of Sacramento);
- Tentative Subdivision Maps (City of Sacramento);
- Inclusionary Housing Plan (City of Sacramento);
- Section 404 Wetlands Permit (U.S. Army Corps of Engineers);
- Waste Discharge Requirement Permit and Section 401 Certification or Waiver (Regional Water Quality Control Board); and
- Bikeways Master Plan Amendment (City of Sacramento).

## DOCUMENT ORGANIZATION

The Final EIR is organized as follows:

**Chapter 1 – Introduction:** this chapter summarizes the project under consideration and describes the contents of the Final EIR.

**Chapter 2 – Revisions to the Draft EIR:** This chapter summarizes the text changes to the Draft EIR. These revisions are in response to comments made on the Draft EIR and/or staff-initiated text changes. Changes to the text of the Draft EIR are shown by either a line through the text that has been deleted or double underlined where new text has been inserted. The revisions contain clarification, amplification, and corrections that have been identified since publication of the Draft EIR. The text revisions do not result in a change in the analysis and conclusions presented in the Draft EIR.

**Chapter 3 – List of Agencies and Persons Commenting:** This chapter contains a list of all of the agencies or persons who submitted comments on the Draft EIR during the public review period, ordered by agency, organization, individual and date.

**Chapter 4 – Comments and Responses:** This chapter contains the comment letters received on the Draft EIR followed by responses to individual comments. Each comment letter is presented with brackets indicating how the letter has been divided into individual comments. Each comment is given a binomial with the letter number appearing first, followed by the comment number. For example, comments in Letter 1

are numbered 1-1, 1-2, 1-3, and so on. Immediately following the letter are responses, each with binomials that correspond to the bracketed comments.

If a subject matter of one letter overlaps that of another letter, the reader may be referred to more than one group of comments and responses to review all information on a given subject. Where this occurs, cross-references are provided.

Some comments on the Draft EIR do not pertain to CEQA environmental issues. Responses to such comments, though not required, are included to provide additional information. When a comment does not directly pertain to the environmental issues analyzed in the Draft EIR, does not ask a question about the Draft EIR, or does not challenge an element of or conclusion of the Draft EIR, the response will note the comment and provide additional information where possible. The intent is to recognize the comment. Many of comments express opinions about aspects of the proposed project and these are included in the Final EIR for consideration by the decision-makers.

**Chapter 5 – Mitigation Monitoring Plan:** This chapter contains the Mitigation Monitoring Plan (MMP) to aid the City in its implementation and monitoring of measures adopted in the EIR.

## **PUBLIC PARTICIPATION AND REVIEW**

The City of Sacramento notified all responsible and trustee agencies and interested groups, organizations, and individuals that the Draft EIR on the proposed project was available for review. The following list of actions took place during the preparation, distribution, and review of the Draft EIR:

- A Notice of Preparation (NOP) for an EIR was filed with the State Clearinghouse on April 12, 2007. The 30-day public review comment period for the NOP ended on May 14, 2007.
- A public scoping meeting for the EIR was held on April 30, 2007.
- A Notice of Completion (NOC) and copies of the Draft EIR were filed with the State Clearinghouse on September 9, 2008. An official 45-day public review period for the Draft EIR was established by the State Clearinghouse, ending on October 23, 2008 and a Notice of Availability (NOA) was distributed to interested groups, organizations, and individuals.
- Copies of the Draft EIR were available for review at the following locations:

City of Sacramento Development Services Department  
300 Richards Boulevard, 3rd Floor  
Sacramento, CA 95811  
(Open to the public from 8:00 am to 4:00 pm)

Sacramento Public Library  
828 I Street  
Sacramento, CA 95814

## **2. CHANGES TO THE DRAFT EIR**

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## 2. CHANGES TO THE DRAFT EIR

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### INTRODUCTION

This chapter summarizes the text changes to the Draft EIR. New text is indicated in underline and text to be deleted is reflected by a ~~strike through~~. Text changes are presented in the page order in which they appear in the Draft EIR.

These revisions are in response to comments made on the Draft EIR (see Chapter 4 Responses to Comments) and staff initiated and/or consultant initiated text changes based on their on-going review. The text revisions contain clarification, amplification, and corrections that have been identified since publication of the Draft EIR.

### STAFF OR APPLICANT INITIATED TEXT CHANGES

The discussion of off-site improvements provided on page 2-26 of the Draft EIR is revised to read as follows:

#### Off-Site Improvements

~~Off-site improvements, such as sewer lines, would not be required to develop the project. Existing sewer infrastructure is stubbed to the project site so no off-site connections would be required.~~ Information regarding off-site transportation improvements can be found in Section 5.9, Transportation and Circulation. The project would require the construction of a 60-inch stormwater drainage pipeline from the southernmost detention basin connecting to Sump 89, south of the project site in the SRCSD lands. The project would also require construction of a 18-inch sewer force main that would connect the project site to the SRCSD Central Interceptor located in Franklin Boulevard. This sewer force main pipeline would be constructed within the Cosumnes River Boulevard right-of-way and would not be required until Phase 3 of the project. Construction of the sewer force main under Morrison Creek and the UPRR right-of-way, would be "micro tunneled" under Morrison Creek and the UPRR right-of-way with the ability to maintain a 200-foot buffer from the creek, thereby avoiding any surface disturbance.

The project applicant has requested that the following mitigation measure be added to Impact 5.2-1. The text on page 5.2-14 of the Draft EIR is revised as follows:

#### Mitigation Measure

Although not required, the project applicant has agreed to comply with the following mitigation measure. Compliance with this measure will further ensure the impact is reduced to a **less-than-significant level**.

5.2-1 The Development Agreement shall include a special condition requiring the preservation of farmland at a 1:1 mitigation ratio by preserving approximately five

hundred (500) acres at the Brannan Island Farms site and approximately two hundred eighty-two (282) acres elsewhere in Sacramento County at a site approved by the City comprised of Prime Farmland and Farmland of Statewide Importance, prior to the issuance of any grading permit, in order to reduce any impacts arising from the conversion of the current agricultural uses at the project site to urban development.

*None required.*

Mitigation Measure 5.3-3 on page 5.3-24 of the Draft EIR has been revised to add the following requirement. This new requirement does not change the finding of the EIR analysis.

5.3-3 (b) Prior to the issuance of building permits for the commercial portion of the project, the project applicant shall either enter into an existing Transportation Management Association (TMA), or create a new TMA to serve the project area. Funding shall be provided by the project applicant through a Community Facilities District (CFD) or other financing mechanism approved by the City.

The following pages in the Draft EIR are revised as follows to update the information regarding an update to the City's NPDES Phase 1 MS4 stormwater permit, which was approved by the Regional Water Quality Control Board in September 2008. The revisions do not change any of the findings contained in the Draft EIR.

The second sentence in the first full paragraph on page 5.5-13 of the Draft EIR is revised as follows:

The Central Valley Regional Water Quality Control Board regulates storm water discharges from the municipal separate storm sewer systems (MS4) and non-storm water discharges that come from facilities owned or operated by the County of Sacramento, and the cities of Citrus Heights, Elk Grove, Folsom, Galt, Rancho Cordova, and Sacramento (Permittees/Dischargers) that flow directly or indirectly to receiving waters to include lakes, water-supply reservoirs, ground waters, rivers, tributary streams and waterways and contiguous water bodies within Sacramento County under an NPDES Phase 1 MS4 permit. The Waste Discharge Requirements/Monitoring and Reporting Program for the current NPDES MS4 Permit CAS082597 was issued in September 2008 ~~December 2002~~, and the conditions of that permit are applicable to the proposed project and must be monitored and enforced by the City of Sacramento.

The second sentence in the third full paragraph on page 5.5-13 of the Draft EIR is revised as follows:

This Permit also requires the evaluation of effectiveness of established programs, including compliance monitoring and special studies, for the Permittees' to attain water quality objectives and protect beneficial uses of the aforementioned receiving waters. The current adopted September 2008 ~~December 2002~~ NPDES Permit allows for the continued collection and summation of monitoring data to further develop a list of stormwater discharge pollutants

of concern, in order to assess existing or potential receiving water quality impacts as a result of the identified Sacramento area urban pollutants.

The third full paragraph on page 5.5-14 of the Draft EIR is revised as follows:

The current permit adopted in September 2008 ~~current NPDES permit, which expired in December 2007, is in the process of being revised by the CVRWQCB to incorporate~~ additional federal and state requirements pertaining to enhanced BMP practices such as low impact development/design (LID) and development and implementation of a Hydromodification Management Plan (HMP).

The second sentence of the fourth paragraph on page 5.5-14 of the Draft EIR is revised as follows:

The existing Design Manual promotes (but does not currently require) LID principles such as conservation and use of natural site features; site-specific, lot-scale source and treatment control measures that keep runoff from contacting runoff and leaving the site; and runoff reduction control measures integrated into site design. With the adoption of ~~Under the revised permit in September 2008,~~ the City of Sacramento (along with the other Permittees) must amend, revise, or adopt development standards including policies, codes, ordinances, and/or regulations to require implementation of LID strategies at priority new development and redevelopment projects no later than six months after approval of the HMP by the CVRWQCB.

The first full paragraph on page 5.5-15 of the Draft EIR is revised as follows:

~~The revised permit is expected to be was adopted by the SWRCB in September 2008. Upon adoption, Because~~ the City of Sacramento (along with the other Permittees covered by the permit) will be are required to comply with the terms of the updated permit, ~~This will require that the~~ elements of the SQIP and Design Manual affected by revised permit terms and conditions must be modified by the City of Sacramento and other Permittees according to the timelines established in the revised permit. The SQIP must be revised by May 1, 2009.

The first sentence of the second paragraph on page 5.5-15 of the Draft EIR is revised as follows:

~~When the revised permit is adopted, it will~~ The Permit requires the City of Sacramento along with the other Permittees to update and continue to implement the New Development Element of the SQIP to minimize the short and long-term impacts on receiving water quality from new development and redevelopment.

The first sentence of the third paragraph on page 5.5-15 of the Draft EIR is revised as follows:

In order to reduce pollutants and runoff flows from new development to the MEP, the City will be required to ensure (through its obligation as a Permittee covered by the ~~revised NPDES~~ NPDES MS4 permit) that certain water quality planning and design principles are incorporated into its planning procedures and policies that affect land use decisions, and that

consistent water quality protection measures are implemented for priority development projects.

The fourth paragraph on page 5.5-15 of the Draft EIR is revised as follows:

The City of Sacramento, in issuing development permits for the proposed project, will be responsible for ensuring the project includes features that meet all applicable requirements of the SQIP and Design Manual, including any revisions thereof, that are necessary to implement the ~~revised-current~~ NPDES permit components pertaining to BMPs, LID, and HMP that are applicable to the proposed project.

The third sentence in the first full paragraph on page 5.5-16 of the Draft EIR is revised as follows:

~~When the revised~~ With the adoption of the NPDES Phase 1 MS4 permit in 2008, ~~becomes effective and~~ the SQIP and Design Manual ~~are~~ must be updated accordingly, and additional measures will be required in the design of the proposed project that implement the City's obligations as a Permittee for LID and HMP compliance.

The fourth bulleted item on page 5.5-20 of the Draft EIR is revised as follows:

- Preparation of a Post-Construction Stormwater Quality Plan (PCSWQ) which would contain all information pertinent to the design and construction of the treatment control measures and proposed LID measures to be implemented. The PCSWQ and associated treatment control measures, source control measures, and appropriate LIDs and runoff reduction measures would be reviewed by the City of Sacramento under its NPDES MS4 Permittee requirements to ensure the features comply with the SQIP New Development Element and the *Stormwater Quality Design Manual for the Sacramento and South Placer Regions* (Design Manual) requirements (including any revisions thereof required under the City's ~~revised~~ NPDES MS4 Permit ~~when adopted by the SWRCB~~ and approval of the SQIP) and; therefore, with Regional Board requirements set forth in the City's NPDES Phase I Stormwater Permit.

The third sentence of the third paragraph on page 5.5-21 of the Draft EIR is revised as follows:

As described in the "Regulatory Setting" anticipated revisions to the Phase 1 MS4 permit ~~are expected to become~~ became effective beginning in September 2008, with associated updates to both the SQIP and Design Manual that will require the incorporation of LID and HMP features to address both water quality and the amount of runoff from the proposed project.

The first sentence of the fourth full paragraph on page 5.5-23 of the Draft EIR is revised as follows:

As indicated in the Regulatory Setting, the CVRWQCB ~~is in the process of finalizing and adopting~~ adopted a revised NPDES MS4 permit in September 2008. Programs that

implement the NPDES permit, such as the SQIP and Design Manual, must be revised by the Permittees and submitted to the CVRWQCB for review and approval.

The first sentence of the last paragraph on page 5.5-23 of the Draft EIR is revised as follows:

The ~~updated~~current NPDES Phase 1 MS4 permit ~~will~~requires the use of LID/runoff reduction measures.

The first full paragraph on page 5.5-24 of the Draft EIR is revised as follows:

As discussed above, compliance with the Sacramento-area Phase I NPDES Municipal Separate Storm Sewer System (Permit CAS082597, as adopted by the CVRWQCB in September 2008) and implementation of the Design Manual, compliance with the City's Stormwater Management and Control Code, General Plan policies related to hydrology and water quality, and the State NPDES General Permit for Stormwater Discharges Associated with Construction and the associated SWPPP would all be required during construction and operation of the project. In addition, the project ~~would~~ will be required to implement an ESC Plan, source and treatment control measures, and LID measures to reduce pollutants in storm water and non-stormwater discharges to the MEP. These are all currently accepted practices that ~~would~~ will be required during construction and operation of the project to attain federal and state water quality standards in order to protect beneficial uses of local receiving waters.

The second full paragraph on page 5.5-24 of the Draft EIR is revised as follows:

Therefore, because the project has incorporated all applicable local, state, and federal requirements into project design and the City of Sacramento will be responsible for ensuring compliance with these requirements, including ~~new provisions of the revised~~ the current (2008) MS4 permit pertaining to enhanced BMPs and LID, the proposed project would not violate water quality standards or degrade water quality. Impacts would be ***less than significant***.

The first sentence of the first full paragraph on page 5.5-30 of the Draft EIR is revised as follows:

Further, runoff reduction control measures described in the Design Manual, as revised to meet the ~~revised~~current NPDES Phase 1 MS4 permit requirements ~~after its adoption by the SWRCB~~ (see "Regulatory Setting"), ~~would~~ will also be required as part of the project design to provide the opportunity for groundwater recharge, as well as to control runoff volume and water quality impacts.

The following mitigation measures included in Section 5.9, Transportation and Circulation were removed from the text because it was determined that they were not feasible to implement; therefore City staff requested they be removed from the Draft EIR. Both impacts remain significant and unavoidable.

Mitigation Measure 5.9-7 on page 5.9-106 is deleted:

~~5.9-7 A second exclusive southbound left-turn lane shall be constructed and retiming of the traffic signal shall be completed to provide an overlap phase for the northbound right-turn/eastbound left-turn movements.~~

Mitigation Measure 5.9-13 on page 5.9-109 is deleted:

~~5.9-13 The project applicant shall widen Cosumnes River Boulevard, between I-5 and Delta Shores Circle (west), to eight lanes.~~

In addition, staff has revised Mitigation Measure 5.9-22 on page 5.9-114 as follows:

~~5.9-22 The project applicant shall pay a fair contribution toward the construction of the interchange as defined in the Delta Shores Finance Plan and the cost of widening the southbound off ramp and I-5 overcrossing additional eastbound lane. Design of the interchange is not finalized at this time and may change during the PG&E approval process.~~

Page 5.10-28 of the Draft EIR is revised to add the following information as well as Mitigation Measure 5.10-1:

Notwithstanding the speculative nature of environmental impacts resulting from greenhouse gas emissions at the project level, the impacts of the project on climate change are potentially cumulatively considerable. The following mitigation measures being voluntarily implemented by the project applicant and enforced by the MMP and the Development Agreement for the project, will serve to substantially lessen the environmental effects of greenhouse gas emissions resulting from construction and operation of the project:

Mitigation Measure

The following mitigation measures would help reduce the project's contribution to greenhouse gas emissions; however, the impact would remain **cumulatively considerable**.

5.10-1 In order to further reduce and substantially lessen the impacts on global climate change resulting from construction and operation of the project, the project applicant has voluntarily agreed to implement the following mitigation measures:

- a) Priority parking for hybrid and alternative energy vehicles shall be provided at commercial and retail parking areas, and provide passenger loading, unloading and waiting areas for ridesharing in commercial/retail/office developments.



- b) Pedestrian and bike paths shall be located in a manner to minimize road crossings to promote safety and encourage children to walk or bike to school, consistent with the project's Air Quality Management Plan.
- c) Energy efficiency shall be increased fifteen percent (15%) above Title 24 requirements and comply with the City's Green Building program.
- d) Light-colored roofing materials and paints shall be used on building roofs.
- e) Energy star rated appliances shall be installed in all residential development.
- f) Encourage participation in the California Energy Commission's New Solar Homes Partnership and encourage solar power in the project's PUD Guidelines.
- g) Encourage energy efficient design, such as providing hot water systems with booster heating and locating hot water heaters near hot water taps in the project's PUD Guidelines.
- h) Encourage the use of solar on retail/commercial rooftops and parking lots in the PUD Guidelines. The project applicant shall inform all tenants and building owners of solar power options since the project applicant will not be constructing all buildings at the project site.
- i) The project applicant shall comply with the City's Shade Tree Parking Ordinance as well as the PUD Guidelines to avoid heat island and similar environmental impacts, as well as use high reflectance or lighter colored paving in accordance with the AQMP which requires all unshaded parking lot areas, driveways fire lanes and other paved areas to have a minimum albedo of .3 or greater.
- j) Light emitting diodes (LED) for traffic, street and other outdoor lighting shall be installed at the project site.
- k) Outdoor lighting shall be limited, as specified in Table K in the Draft EIR Appendices.
- l) The project applicant shall participate and fund a transportation management association (TMA) that shall operate ridesharing and shuttle services programs, and also provide educational materials on energy efficiency, as required by the project's Air Quality Management Plan.
- m) The project applicant shall ensure the project site accommodates future Regional Transit bus service.

- n) Class I and Class II bike lanes shall be constructed throughout the project site in excess of those required by the City's 2010 Bikeway Master Plan.
- o) Onsite bicycle and pedestrian facilities shall be provided, including showers and bicycle parking for non-residential projects.
- p) The project applicant shall comply with Sacramento City Code Section 17.72.030 which establishes separate waste and recycling disposal requirements for all new uses, including the use of separate receptacles, including green waste and food recycling.
- q) The project applicant shall comply with Sacramento City Code Section 13.10.400 which requires the separate collection of garden wastes from residential properties.
- r) The project applicant shall comply with Sacramento City Code Section 15.76.030 which requires that all shower fixtures be fitted with low-flow features.
- s) The project applicant shall comply with Sacramento City Code Section 15.92.080 which establishes maximum water usage for landscaping and limits the use of turf, and requires the use of climate-adapted landscaping.
- t) Electrification stations/connections shall be installed in all project loading docks for use by transportation refrigeration units.
- u) The project applicant shall comply with Sacramento City Code Section 17.68.040 which requires the planting of shade trees to ensure that 50% of all surface parking areas are shaded within 15 years of development.
- v) Enlarged sidewalks shall be installed to encourage pedestrian movement throughout the project site.
- w) The project applicant shall comply with Sacramento City Code, Chapter 8.116, which prohibits the idling of diesel powered vehicles for more than five consecutive minutes or five minutes total in one hour.
- x) Recycled building materials shall be used, where feasible, in building designs.
- y) During project construction, alternative fuel (such as aqueous diesel fuel) or catalyst equipped diesel construction equipment shall be used.
- z) Reuse and recycle construction waste where feasible.

- aa) Efficient fluorescent lighting shall be provided for all primary lighting within project buildings. Accent and aesthetic lighting shall not be subject to this condition.
- bb) The project shall be designed consistent with the City's Smart Growth Principles and associated strategies and initiatives, including jobs/housing balance, the mixing of land use, and transit oriented development.
- cc) The project applicant shall Implement additional greenhouse gas reduction strategies through application of future city ordinances to be applied to the project via the MMP and the Development Agreement.

## TEXT CHANGES IN RESPONSE TO COMMENTS RECEIVED

### Appendix A - Initial Study

The following information is included in the Initial Study starting on the top of page 28 at the end of the first sentence:

The Phase I ESA found several RECs that could affect near- and subsurface soils beneath the project site, which could be released during project construction. Unless these materials are properly assessed and mitigated, this could result in a release of hazardous materials into the environment and expose people to hazardous materials. Under Mitigation Measure 9-1, site hazards would be evaluated in advance of any grading permit approvals. If conditions are discovered that could pose a human health or environmental risk, Mitigation Measure 9-2 would ensure that any necessary soil and/or groundwater remediation is performed prior to the issuance of grading permits. This would minimize the potential for construction workers to be exposed to hazards. Upon completion of any remediation, this would further reduce the risk to future occupants of the project. Mitigation Measure 9-3 provides a contingency plan and approach to managing unexpected conditions. Because the state requires investigation of potential school sites for contamination under the Education Code Section 17210 et seq. (the results of requires Department of Toxic Substances Control review), additional mitigation is not required. The results of school site evaluations would be used to determine the suitability of proposed school sites within the project and any necessary soil or groundwater management to reduce risks to children.

The implementation of remedial actions identified in the work plan (if any are determined to be needed) under Mitigation Measure 9-2 could result in environmental effects if controls are not in place to manage them. For example, remediation that involves excavating or moving soil could generate dust to which chemicals could adhere. However, implementation of a site health and safety plan, along with dust controls, in accordance with established laws and regulations, would minimize potential hazards. If it is necessary to dewater for trenching or excavation, the work plan would specify the proper disposal methods.

If the results of the Phase II ESA recommend remedial actions, such efforts would be required to comply with applicable federal, state, and local laws and regulations, which would

sufficiently protect human health and the ecological environment from potential effects due to remediation activities. If risk-based standards are necessary (the need for which would be developed through the Phase II ESA and work plan process in Mitigation Measure 9-2), they would be enforced on any new remediation activities. Moreover, the major hazards-related effects of environmental cleanup associated with any remediation, if necessary, would be beneficial over the long term. Remediation, or effective management, of contamination would eliminate the health threats posed by hazardous wastes and prevent workers and the public from encountering such materials in the event of any future excavation at the site. Management of soil contamination would also eliminate a potential local source of groundwater contamination. Consequently, effective risk management would be beneficial in the long run. Implementation of appropriate risk management measures would also allow for localized cleanup of contamination, while other site preparation activities could proceed. Therefore, there would be no new significant effects on people or the environment due to any additional remedial activities that could take place during construction or occupancy beyond those already identified.

Therefore, this impact would be **less than significant with mitigation incorporated**. This will not be further addressed in the EIR.

### Mitigation Measures

- 9-1 *Prior to ~~the issuance of a building permit~~ issuance of grading permits at the subject property, a Phase II ESA for the subject property shall be prepared by the ~~project~~ permit applicant, as recommended in the Phase I Environmental Site Assessment, Delta Shores, Sacramento, California, prepared by Toxichem Management Systems, Inc., February 21, 2007. The Phase II ESA shall provide additional information regarding the recognized environmental conditions (RECs) present at the ~~project site~~ subject property, determine whether the RECs pose a threat during project construction and/or operation, and recommend additional ~~mitigation, if necessary~~ steps that should be taken to identify and control hazards that could pose a risk to construction workers and future occupants, including residents, school children, visitors, and workers. Such actions shall include, but would not be limited to, soil and groundwater testing and data evaluation, remediation, or physical and/or institutional controls to effectively manage contaminants to levels that would not pose a human health or environmental risk.*
- 9-2 *If the results of the Phase II ESA indicate the need for remediation or risk management, a work plan that describes how hazards will be managed shall be prepared by a qualified professional and submitted to the City in conjunction with any applications for a grading permit. The need for a site-specific risk assessment, use of target screening levels, and development (if required) of risk-based cleanup levels shall be addressed in the work plan. The City shall not issue grading permits ~~Work~~ ~~within the project site shall not proceed~~ until all identified hazards are managed in accordance with the work plan approved by ~~to the satisfaction~~ of the City and the*

Sacramento County Environmental Management Department (SCEMD) ~~in accordance with the work plan.~~ The work plan shall address how hazards to construction workers, future occupants, and visitors will be minimized. The work plan shall identify the specific environmental controls that must be in place to manage air emissions from soil or groundwater remediation, stormwater runoff controls from remediation sites, a health and safety plan, and on- and off-site movement, transport, and/or disposal of soil and groundwater in accordance with state and local laws and regulations. In addition, the City shall ensure grading/construction contracts specifically include any notifications or restrictions that pertain to the potential for encountering contaminants in soil or groundwater. The need for reporting releases to, or further consultation and/or approvals from the Department of Toxic Substances Control and/or Regional Water Quality Control Board, shall be determined by the City in accordance with established regulations.

- 9-23 *In the event that previously unidentified soil or groundwater contamination, USTs, or other features or materials that could present a threat to human health or the environment are discovered during excavation and grading or construction activities, all construction within the project site shall cease immediately, and the applicant shall retain a qualified professional to evaluate the type and extent of the hazardous materials contamination and make appropriate recommendations, including, if necessary, the preparation of a site remediation plan. Pursuant to Section 25401.05 (a)(1) of the California Health and Safety Code, the plan shall include: a proposal in compliance with ~~application~~ applicable law, regulations, and standards for conducting a site investigation and remedial action, a schedule for the completion of the site investigation and remedial action, and a proposal for any other remedial actions proposed to respond to the release or threatened release of hazardous materials at the property. Work within the project site shall not proceed until all identified hazards are managed to the satisfaction of the City and the SCEMD.*

## Chapter 4.0, Land Use Consistency and Compatibility

There are two additional policies that are applicable to the project and are added to the bottom of page 4-24 in Chapter 4.0, Land Use Consistency and Compatibility:

4. New non-agricultural residential development, if needed, shall be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided.

### UTILITIES AND INFRASTRUCTURE

2. New houses built in the Delta agricultural areas shall continue to be served by independent potable water and wastewater treatment facilities. Uses which attract a substantial number of people to one area, including any expansions to the Delta communities, recreational facilities or businesses, shall provide adequate infrastructure improvements or pay to expand existing facilities, and not overburden the existing limited community resources. New or expanded construction of wastewater disposal systems shall ensure highest feasible standards are met, as determined by the local governing body. Independent treatment facilities shall be

monitored to ensure no cumulative adverse impact to groundwater supplies.

In addition, the analysis on page 4-37 is revised to read as follows:

#### Land Use and Resource Management Plan for the Primary Zone

The Land Use and Resource Management Plan for the Primary Zone outlines policies and recommendations specifically for areas within the Primary Zone of the Delta. The project site is located within the Secondary Zone of the Delta and, therefore, is not expressly subject to the policies outlined in the Management Plan. However, even though the project is not within the Primary Zone the activities of the project ~~are not anticipated to adversely~~ could potentially affect resources in the Primary Zone, but there is no substantial evidence that it should be anticipated to affect those Primary Zone resources. Proposed project activities in the Secondary Zone that have the potential to directly affect the Primary Zone are primarily related to changes in land use that could affect drainage patterns, flooding, and water quality. Hydrology, flooding, drainage, and water quality impacts from the proposed Delta Shores project were fully analyzed in Section 5.5, Hydrology and Water Quality of this EIR. It is not anticipated that the project is going to adversely impact any resources located in the Primary Zone, in part because land uses to the north and west include residential and commercial uses in the city and the community of Freeport. Land uses to the east are outside of the Delta Protection Zone and land uses to the south include the SRCSD lands.

Applicable policies from the Land Use and Resource Management Plan include Land Use Policy 3 says which states that new development shall ensure that appropriate buffer areas are provided to prevent conflicts between any proposed use and existing agricultural use. The area surrounding the project site is mostly developed except for a small area to the east of the project site, which is currently active agriculture, but which is anticipated to be developed, and the open space area to the south of the site in the SRCD Bufferlands. The agricultural area to the east would be buffered by the recreational and open space areas proposed in the eastern portion of the project site. Areas to the south of the project site would be buffered by an existing levee. Provision of open space and use of the levee as a buffer to surrounding agricultural uses would adhere to Land Use Recommendation 5. Policy 4 encourages new non-agricultural residential development be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided. The project is located within the City of Sacramento where existing infrastructure and resources exist to support this type of development. Lastly, Policy 2 under Utilities and Infrastructure requires that new development provide the necessary infrastructure so as not to overburden existing development within the Delta. As noted above, the project will be connecting to the City's water, wastewater and storm drain infrastructure and will not place a burden on an existing community. Therefore, the proposed project would be generally compatible with the Land Use and Resource Management Plan for the Primary Zone.



### Section 5.3, Air Quality

The following text will be added to the environmental setting on the bottom of page 5.3-8 of the Draft EIR. The addition of this text does not change any of the findings contained in the Draft EIR.

#### Non-cancer acute and chronic TAC health effects

- In February 2007, a study published in The Lancet showed that children living near a freeway had substantial deficits in lung formation compared with children living farther away.
- A February 2007, study published in the New England Journal of Medicine showed that postmenopausal women living in communities with high levels of fine particulate matter had a 150 percent greater risk of dying from heart disease and stroke than women living in less polluted areas.
- A December 2007, a study published in the New England Journal of Medicine showed that adults with asthma who spent just 2 hours walking on a street with heavy diesel traffic suffered acute effects on their lung function, including lung and airway inflammation.
- An April 2003, a study published in Environmental Health Perspectives showed that exposure to ultrafine particles from incomplete combustion of fuel as well as lubricating oils can bypass the body's defense mechanisms, enter cells and tissues, and disrupt normal cellular function.
- Studies published in February 2003 and September 2005 issues of Environmental Health Perspectives linked traffic-related pollutant exposure to increased risk for low birth weight and premature birth.

### Section 5.4, Biological Resources

The text in Table 5.4-2 on page 5.4-10 of the Draft EIR has been revised to read as follows:

~~**Observed Moderate.**~~ Fallow fields on the site could provide suitable foraging habitat for this species. Suitable nest trees are present adjacent to the site. Species observed foraging over site.

The text in Table 5.4-2 on page 5.4-10 of the Draft EIR has been revised to read as follows:

Burrowing owls have been observed at the site in 2002, ~~and 2004,~~ and 2007.

Table 5.4-2 on page 5.4-10 of the Draft EIR has been revised to read as follows:

~~**Low.**~~ Suitable habitat may be present for this species to occur. ~~**None.**~~ The arborist survey indicated that this species was not located on the project site.

The text in the second full paragraph on page 5.4-17 of the Draft EIR has been revised to read as follows:

ECORP conducted a Giant Garter Snake Habitat Assessment within East Delta Shores and West Delta Shores. The report concludes that the irrigation ditches located within the project site do not appear to provide potential aquatic habitat, nor support an adequate prey base for the giant garter snake. The irrigation ditches were dry during surveys of the site on March 23, May 3, and June 11, 2007, during the giant garter snake's active season. This indicates that the ditches do not support the amphibian and fish prey base that this species requires. Additionally, the ditches did not support aquatic vegetation that would indicate a prolonged inundation period. Although some cattails (*Typha* sp.) were present within portions of the ditches, cattails can often persist in areas where the hydrologic regime has long since been altered through changes in agriculture/irrigation practices. Furthermore, the report concludes that the upland habitat appears to be limited, if present at all, due to historic and on-going agricultural practices. The report mentions that the nearest aquatic habitats appear to be Morrison Creek and an unnamed canal (irrigation ditch) located just north of the site, east of I-5. Since preparation of the report the USFWS has confirmed that the frequently tilled lands adjacent to the unnamed canal along the northern boundary of the site do not constitute GGS upland habitat.

Mitigation Measure 5.4-2(b) on page 5.4-29 of the Draft EIR has been revised to read as follows:

- 5.4-2 b) *If surveys within the project site reveal no occurrences of federally listed branchiopods, no further mitigation would be required. However, if surveys determine that one or more federally listed branchiopod species occur within the project site, or if the project applicant, in consultation with the USFWS, assumes presence of federally-listed branchiopods in any affected pools, the following measures shall be required for those pools with species surveyed or assumed present. The selected measures may be part of the permitting process.*
- *For every acre of habitat impacted, at least one wetland creation credit shall be dedicated within a USFWS-approved mitigation bank, ~~or, based on USFWS evaluation of site-specific conservation values, two acres of wetland habitat shall be created and monitored on the project site as approved by the USFWS.~~*
  - *For every acre of habitat impacted, at least two wetland preservation credits shall be dedicated within a USFWS-approved mitigation bank.*
  - *~~Wetland habitat and associated upland habitat used as on-site mitigation shall be protected from adverse impacts and managed in perpetuity or until the Corps, the applicant, and the USFWS agree on a process to exchange such areas for credits within a USFWS-approved mitigation banking system.~~*

The text on pages 5.4-30 and 5.4-31 under Impact 5.4-3 of the Draft EIR has been revised as follows to provide this additional explanation.

The project site consists of approximately 765-acres of agricultural land that occurs within 10 miles of more than 34 known active Swainson's hawk nest sites (three of which are within one mile of the project site). Based upon the CDFG's *Staff Report regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*, the entire project site would be considered potential foraging habitat for the species. In addition to Swainson's hawk, white-tailed kite and burrowing owls are also likely to use the project site for foraging. As it currently stands, agricultural crops are rotated depending on market pressures. This change of crop would alter the quality of the foraging habitat, year to year. Development of the project would result in the conversion of approximately 765 acres of potential Swainson's hawk, white-tailed kite, burrowing owl, and other raptor foraging habitat. The resulting loss of this habitat could force nesting Swainson's hawks to travel farther and expend more energy gathering prey to feed their offspring. As a result, nest mortality for any such pairs of Swainson's hawk could be likely to increase. Therefore, the loss of potential foraging habitat for Swainson's hawk, white-tailed kite, burrowing owl, or other raptors would be considered a *potentially significant impact*.

Mitigation Measure 5.4-3 on page 5.4-31 of the Draft EIR has been revised to read as follows:

Mitigation Measure

~~Once implemented, this mitigation measure would reduce the above impact to a **less-than-significant level** through the preservation and management in perpetuity of suitable foraging habitat, contiguous with other areas of suitable foraging habitat, for Swainson's hawk, white-tailed kite, burrowing owl and other raptors.~~

Every effort was made to identify contiguous foraging habitat that could be acquired equal to the acreage proposed for impact, but such lands within a five mile radius of the project site are in very short supply and the cost of acquiring rights is high. The area located within five miles of the project site includes large parts of the City of Sacramento, City of West Sacramento and City of Elk Grove already developed with urban uses, the SRCSD bufferlands, the Bartley Cavanaugh Golf Course, open water (the Sacramento River), and Interstate 5, along with a patchwork of farmland that includes vineyards and orchards, which are not generally considered foraging habitat.

Implementation of this mitigation measure would significantly lessen impacts to the Swainson's hawk, white tailed kite, burrowing owls and other raptors from the loss of foraging habitat. The preferred approach to such mitigation would be to identify and acquire rights to a contiguous land area; however, given the size of the project this has been deemed infeasible. The impacts of the project on Swainson's hawks and other raptors would be less than significant.

5.4-3 *Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio or greater, ~~or a ratio acceptable to CDFG.~~<sup>30</sup> Suitable foraging habitat includes alfalfa or other low growing row crops. The applicant shall preserve approximately 100 acres of suitable Swainson's hawk habitat closest to within a five mile radius of the project site. An additional approximately 800 acres at the Brannon Farms location shall be actively farmed and maintained with a crop rotation that is known to support high quality foraging habitat (e.g., alfalfa) in perpetuity. The Brannon Island Farms site is currently located within close proximity to several active Swainson's hawk nests, according to the CNDDDB. Any habitat identified by the applicant shall be evaluated using the following five criteria in consultation with the CDFG:*

*i. Does the mitigation parcel provide suitable foraging habitat?*

*ii. Is the parcel located in close proximity to the impacted foraging habitat?*

*iii. Is the parcel occupied or adjacent to active Swainson's hawk nests?*

*iv. Is the parcel adjacent to other protected habitat thereby contributing to a larger habitat preserve?*

*v. Is the parcel outside of areas identified for urban growth?*

*Preservation ~~could~~ shall occur through the purchase of conservation easements or fee title of lands with suitable foraging habitat. A mitigation plan shall be established and submitted to the City for approval prior to the issuance of grading permits and, at a minimum, shall include confirmation of title and encumbrances, details on mitigation site location, development, maintenance and monitoring. Any easements shall be in compliance with Government Code Section 65965. Land and easements shall be approved by the City in consultation with CDFG.*

~~30. CDFG, Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California, November 8, 1994.~~

Mitigation Measure 5.4-4(a) (b) and (d) on page 5.4-32/33 of the Draft EIR is revised as follows:

#### Mitigation Measure

Implementation of Mitigation Measure 5.4-4(a) would require surveys for protected bird species to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, then implementation of Mitigation Measure 5.4-4(b) through (d) ensures that active nests are protected by instituting appropriate buffer zones and avoiding or minimizing loss or take of this species in consultation with the CDFG and the City. Implementation of Mitigation Measures 5.4-4(a) through (d) would reduce the potential disturbance of nesting avian species to a **less-than-significant level**.

- 5.4-4 a) *Between March 1 and August 1, the project applicant or developer(s) shall have a qualified biologist conduct nest surveys within 30 days prior to any demolition/ construction or ground disturbing activities that are within 500 feet ¼ mile of potential nest trees. A pre-construction survey shall be submitted to CDFG and the City of Sacramento that includes, at a minimum: (1) a description of the methodology including dates of field visits, the names of survey personnel with resumes, and a list of references cited and persons contacted; and (2) a map showing the location(s) of raptor and migratory bird nests observed on the project site. If no active nests of MBTA, CDFG or USFWS covered species are identified then no further mitigation is required.*
- b) *Should active nests of protected bird species be identified in the survey conducted in accordance with Mitigation Measure 5.4-4(a), the applicant, or developer(s), in consultation with the City of Sacramento and CDFG, shall delay construction in the vicinity of active nest sites during the breeding season (March 1 through August 1) while the nest is occupied with adults and/or young. A qualified biologist shall monitor any occupied nest to determine when the nest is no longer used. If the construction cannot be delayed, avoidance shall include the establishment of a non-disturbance buffer zone around the nest site. The size of the buffer zone shall be determined in consultation with the CDFG, but will be a minimum of 100 feet and no more than ¼ mile. The buffer zone shall be delineated with highly visible temporary construction fencing.*
- d) *If demolition/construction activities are unavoidable within the buffer zone, the project applicant shall ~~retain a qualified biologist to monitor the nest site to determine if construction activities are disturbing the adult or young birds. If abandonment occurs the biologist shall~~ consult with CDFG and the City, to develop CDFG approved appropriate impact reduction and take avoidance measures, which may include retaining a qualified biologist to monitor the nest site or USFWS for the appropriate salvage measures. ~~This could include taking any nestlings to a local wildlife rehabilitation center.~~*

Mitigation Measures 5.4-5 (a), (b)(3) and (b)(4) on page 5.4-34 of the Draft EIR are revised to read as follows:

#### Mitigation Measure

Implementation of Mitigation Measure 5.4-5(a) would require surveys for nesting Swainson's hawks to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, then implementation of Mitigation Measure 5.4-5(b) ensures that active nests are protected by instituting appropriate buffer zones to and avoiding or minimizing disturbance to any nesting birds, and that the project applicant will obtain a Fish and Game Code Section 2081 permit, if necessary, thus reducing the impact to a **less-than-significant level**.

- a) *Prior to any demolition/construction activities that occur between March 1 and September 15 the applicant or developer(s) shall have a qualified biologist conduct surveys for nesting migratory birds on the project site and within a ~~quarter-half~~ quarter-half mile<sup>1</sup> of demolition/construction activities unless the City and CDFG approve a reduced survey area. Surveys shall be conducted no more than 30 days prior to the start of any ~~demolition or construction activities-site disturbance for each phase of the project~~. If there is a lapse in construction of more than two weeks, new surveys would be required. If no active nests are identified on or within a quarter mile of construction activities, a letter report summarizing the survey results shall be sent to the City of Sacramento and no further mitigation is required.*
- 5.4-5 b) 3. *No intensive disturbances (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated within ~~1,320 feet (¼~~ half mile) or less, as determined by CDFG, (buffer zone as defined in the CDFG Staff Report) of an active Swainson's hawk nest or 500 feet for other nesting migratory birds, between March 1 and September 15 or until August 15 if a Management Authorization or Biological Opinion is obtained from CDFG for the project. The buffer zone may be reduced in consultation with CDFG.*
4. *~~If demolition/construction activities are unavoidable and are allowed by CDFG within the buffer zone of an active Swainson's hawk nest site, the project applicant or developer(s) shall consult with the CDFG and the City, and if necessary, obtain an incidental take permit issued pursuant to Fish and Game Code section 2081. retain a qualified biologist to monitor the nest to determine if abandonment occurs. If the nest is abandoned and the nestlings are still alive, the project proponent shall retain the services of a qualified biologist to reintroduce the nestling(s) (recovery and hacking). Prior to implementing, any hacking plan shall be reviewed and approved by the Environmental Services Division and Wildlife Management Division of the CDFG. The CDFG may allow reduction of the recommended buffers, if a qualified biologist is retained for on-site nest observations.~~*

Mitigation Measure 5.4-6 (a) on page 5.4-35 of the Draft EIR has been revised to read as follows:

- 5.4-6 a) *Prior to the issuance of grading permits, the project applicant shall retain a qualified biologist to conduct a pre-construction burrowing owl survey, in accordance with most current version of the California Burrowing Owl Consortium Burrowing Owl Survey Protocol and Mitigation Guidelines. Surveys shall be conducted no more than 30 days prior to the start of any*

<sup>1</sup> Swainson's Hawk Technical Advisory Committee. *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, May 31, 2000.

demolition or construction activities. If no suitable burrows are found, no further mitigation is required. If suitable burrows are found, but no owls are found, all burrows shall be hand-excavated and collapsed prior to project construction. If nesting owls are found, no disturbance shall be allowed within 160-feet of the active nest burrow between February 1 and August 31. Outside the nesting season, and/or upon confirmation by the qualified biologist, and in consultation with CDFG, that all young have fledged and left an active nest, burrowing owls present in the burrow shall be excluded from the burrow(s) by a qualified biologist through a passive relocation as outlined in the California Burrowing Owl Consortium's April 1993 Burrowing Owl Survey Protocol and Mitigation Guidelines. Once the burrows have been cleared, they must be hand-excavated and collapsed prior to project construction.

Mitigation Measure 5.4-6(b) on page 5.4-36 of the Draft EIR is revised to read as follows:

- 5.4-6 b) *To offset the loss of foraging and burrow habitat on the project site, and prior to issuance of grading permits, the project proponent shall preserve a minimum of 6.5 acres of foraging habitat (calculated on a 100 m [approx. 300 ft.] foraging radius around the burrow) per pair or unpaired resident bird, in accordance with the most current "California Burrowing Owl Consortium's (April 1993) Burrowing Owl Survey Protocol and Mitigation Guidelines.", shall be acquired and permanently protected.* The protected lands shall be adjacent to occupied burrowing owl habitat and at a location acceptable to the CDFG. Protection of additional habitat acreage per pair or unpaired resident bird may be applicable in some instances. Preservation shall occur through the purchase of conservation easements or fee title of lands and any easements shall be in compliance with Government Code Section 65965. The project proponent shall provide funding for long-term management and monitoring of the protected lands, by way of an endowment account (based on a Property Analysis Record type analysis) that is approved by CDFG. A mitigation and monitoring plan shall be submitted to CDFG and the City for approval and include details on mitigation site location, development, maintenance and monitoring. The monitoring plan shall include success criteria, remedial measures, and an annual report to the Department. This mitigation could overlap with mitigation requirements provided for Swainson's hawk foraging habitat as deemed appropriate by CDFG.

In addition, the text on page 5.4-35, preceding the Mitigation Measure has been revised to account for the change to this Mitigation Measure, as follows:

#### Mitigation Measure

Once implemented, Mitigation Measure 5.4-6(a) through (c) below would reduce the above impact to a **less-than-significant level** through the avoidance of any active burrowing owl

nests, the safe exclusion of burrowing owls from any burrows to be destroyed prior to construction of the proposed project, and the purchase and in perpetuity protection of additional burrowing habitat.

The text on page 5.4-42 under Impact 5.4-10 of the Draft EIR is revised to read as follows:

The giant garter snake is listed as threatened under the state and federal ESA, and the loss of individuals or their habitat is prohibited. ECORP conducted a giant garter snake habitat assessment within the project site and found that no aquatic habitat for the giant garter snake occurs within those areas. Morrison Creek, which lies approximately 500 feet from the southeastern portion of the site, represents potential aquatic habitat for this species. The USFWS considers any upland habitat within 200 feet of suitable aquatic habitat to be potential giant garter snake habitat. Construction of associated offsite project improvements, including a 60-inch storm drain pipe to connect the detention basin to Sump 89 and an 18-inch sewer force main that would be installed along Cosumnes River Boulevard, crossing Morrison Creek, potentially could occur within 200 feet of aquatic habitat.

The USFWS has developed a Programmatic Formal Consultation protocol for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California. In order to qualify for this Programmatic consultation, the following criteria must be met: 1) permanent impacts cannot exceed 3 acres of upland and aquatic habitat combined and no more than 1 acre of permanent impact to aquatic habitat; 2) permanent impacts cannot exceed 218 linear feet of bankside habitat; 3) temporary impacts cannot exceed 20 acres of habitat, and 4) the scope of work is "routinely" authorized under the Corps nationwide permitting program, or by individual permit.

Construction within the 200 feet of potential aquatic habitat could result in the loss of potential upland GGS habitat and the "take" of the giant garter snake. The disturbance or loss of upland habitat and the take of the giant garter snake would be considered a *potentially significant impact*. No project construction would occur within 200 feet of Morrison Creek; therefore, **no impact** would occur and no mitigation is required.

#### Mitigation Measure

*None required.*

Implementation of Mitigation Measure 5.4-10 would require the project applicant or developer(s) to consult with the USFWS and mitigate for the loss of upland habitat and impacts to the giant garter snake. Implementation of the following mitigation measures would reduce this impact to a **less-than-significant level**.

5.4-10 *The project applicant shall consult with the USFWS to address potential impacts on giant garter snake (GGS). Due to the minimal area of potential impact, it is likely that the proposed project could be covered under the Programmatic Formal Consultation*



for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California. For construction activities within the vicinity of Morrison Creek or the ditch north of the project site, the following avoidance measures shall be implemented consistent with the USFWS-Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat:

- Confine movement of heavy equipment to existing roadways to minimize habitat disturbance.
- Construction shall be restricted to the active season for GGS (mid-March through early October), or as determined in consultation with the USFWS.
- Construction personnel shall receive Service-approved worker environmental awareness training. This training instructs workers to recognize giant garter snakes and their habitat(s).
- 24-hours prior to construction activities, the project area shall be surveyed for giant garter snakes. Survey of the project area should be repeated if a lapse in construction activity of two weeks or greater has occurred. If a snake is encountered during construction, activities shall cease until appropriate corrective measures have been completed or it has been determined that the snake will not be harmed. Report any sightings and any incidental take to the Service immediately.
- The project applicant shall provide safe corridors that will allow for GGS to move from Morrison Creek into the project-constructed detention basins in the southern portion of the project site, as determined in consultation with the USFWS.

## Section 5.5, Hydrology and Water Quality

The third sentence in the first paragraph on page 5.5-2 of the Draft EIR is revised as follows:

Morrison Creek is located to the east; the Sacramento River, Freeport Boulevard and the Town of Freeport are located to the west; North Stone Lake ~~(in the SRCSD bufferlands)~~, Beach Lake, and the Bartley Cavanaugh Golf Course are located to the south. Developed areas are located to the north/northeast, and to the south/southeast.

The end of the fourth paragraph on page 5.5-6 of the Draft EIR is revised as follows:

...,by pump, to the Sacramento River. Downstream of the project site, City Sump 90 pumps water from Morrison Creek into the Sacramento River. Near Sump 90, a dike separates Morrison Creek from Lower Beach Lake. Lower Beach Lake is hydraulically connected to North Stone Lake via channels and culverts. During significant winter storm events, surface water elevations can overtop the dike and Morrison Creek becomes contiguous with Lower Beach Lake.



### **3. LIST OF AGENCIES AND PERSONS COMMENTING**



### **3. LIST OF AGENCIES AND PERSONS COMMENTING**

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#### **STATE AGENCIES**

1. State of California Department of Public Health, Health and Human Services Agency, Bridget Binning, CDPH Environmental Review Unit, September 19, 2008
2. State of California Resources Agency, Department of Fish and Game, Kent Smith, Conservation Program Manager, October 23, 2008
3. State of California Department of Transportation, Jeff Pulverman, Deputy District Director, October 30, 2008
4. Delta Protection Commission, Linda Fiack, Executive Director, October 23, 2008
5. Office of Planning and Research, Terry Roberts, Director, October 24, 2008

#### **LOCAL AGENCIES**

6. SRCSD, Sarena Deeble, Policy and Planning, October 16, 2008
7. SRCSD, Bryan Young, Natural Resource Supervisor, October 23, 2008
8. Sacramento Metropolitan Air Quality Management District, Larry Robinson, October 28, 2008
9. County of Sacramento, Robert Sherry, Planning Director, October 23, 2008
10. Sacramento City Unified School District, Tom Barentson, Deputy Superintendent/CFO, October 23, 2008
11. Sacramento County Farm Bureau, Kent Oneto, President, October 23, 2008

#### **INDIVIDUALS AND ORGANIZATIONS**

12. Friends of the Swainson's Hawk, Judith Lamare, President, Friends of the Swainson's Hawk, October 19, 2008
13. South Pocket Homeowners Association, Gregory N. Hatfield, Office of the President, October 20, 2008
14. Adams, Broadwell, Joseph & Cardozzo, Attorneys at Law, Thomas A. Enslow, October 23, 2008 (and attachments listed below)  
  
Berryman Ecological, Ellen Berryman, October 22, 2008  
Tom Brohard and Associates, Tom Brohard, PE, Principal, October 16, 2008  
SWAPE, Matt Hageman and James J. Clark, Ph.D., October 22, 2008

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### 3. LIST OF AGENCIES AND PERSONS COMMENTING

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15. Floyd Britton J/Georgia, undated
16. Mike Gillogley, September 21, 2008 via email
17. Marilyn Shirley, September 11, 2008 via email

## **4. COMMENTS AND RESPONSES**

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MARK B HORTON, MD, MSPH  
Director

State of California—Health and Human Services Agency  
California Department of Public Health

LETTER 1



ARNOLD SCHWARZENEGGER  
Governor

September 19, 2008

Rochelle Amrhein  
City of Sacramento  
300 Richards Blvd., 3 Floor  
Sacramento, CA 95811

Dear Rochelle Amrhein:

DELTA SHORES PROJECT

The California Department of Public Health (CDPH), Environmental Review Unit is in receipt of the Notice of Completion for the above project. As a responsible agency under the California Environmental Quality Act (CEQA), we appreciate the opportunity to comment.

The CDPH, Division of Drinking Water and Environmental Management is responsible for issuing water supply permits administered under the Safe Drinking Water Program. A new or amended Water Supply Permit may need to be issued if the project includes an increase in water supply, storage, or treatment to drinking water. These future developments may be subject to separate environmental review.

1-1

Please contact the CDPH local district office at (916) 449-5600. If you need assistance with the CDPH requirement for permit application, contact Dave Lancaster with any questions.

Sincerely,

Bridget Binning  
CDPH Environmental Review Unit

Cc:

David Lancaster, District Engineer  
Sacramento District Office  
Division of Drinking Water and  
Environmental Management  
California Department of Public Health  
P.O. Box 997377  
Sacramento, CA 95899-7377

**LETTER 1: STATE OF CALIFORNIA DEPARTMENT OF PUBLIC HEALTH**

**Response to Comment 1-1**

Comment noted. Potable water to serve the project will be provided by the City of Sacramento. The project applicant will obtain a Water Supply Permit, if required.



**DEPARTMENT OF FISH AND GAME**<http://www.dfg.ca.gov>

North Central Region

1701 Nimbus Road, Suite A

Rancho Cordova, CA 95670

(916) 358-2900



October 23, 2008

Ms. Rochelle Amrhein  
Environmental Planning Services  
City of Sacramento  
2101 Arena Boulevard, Suite 200  
Sacramento, CA 95834

Dear Ms. Amrhein:

The Department of Fish and Game (DFG) has reviewed the September 2008 Delta Shores Draft Environmental Impact Report (DEIR). The Delta Shores project (proposed project) includes the development of a 782-acre master planned community. The proposed project is envisioned as a compact residential community of approximately 5,092 residences with two mixed-use retail centers – a Regional Village Center and a neighborhood-serving residential mixed-use retail area. This project also includes open space, recreation, and pedestrian and bicycle friendly aspects. The project proposes to subdivide approximately 315 acres into residential lots and approximately 118 acres into parks, trails, open space, and wetland preserve. A total of approximately 147 acres would be designated for commercial development with the remaining area set aside for schools, utilities, a private community center, and roadways, including development of internal residential collector streets.

Wildlife habitat resources consist of cropland, irrigated hayfield, lacustrine, and urban habitats (Mayer and Laudenslayer 1988). Significant natural resources of the project include wetlands, nesting and foraging habitat for raptors including the Swainson's hawk (*Buteo swainsoni*), the burrowing owl (*Athene cunicularia*), and the white-tailed kite (*Elanus leucurus*). An evaluation of impacts to biological resources was contained with the DEIR.

As trustee for the State's fish and wildlife resources, the DFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of such species. In that capacity, the DFG administers the California Endangered Species Act (CESA), the Native Plant Protection Act (NPPA), and other provisions of the California Fish and Game Code that affords protection to the State's fish and wildlife trust resources. The DFG also considers issues as related to the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712) (MBTA).

*Conserving California's Wildlife Since 1870*

We offer the following comments and recommendations as referenced by DEIR content heading:

**5.4-3 Development of the proposed project could result in the loss of foraging habitat for Swainson's hawk and other raptors**

The DEIR states that "development of the project would result in the conversion of approximately 765 acres of potential Swainson's hawk... the resulting loss of this habitat could force nesting Swainson's hawks to travel farther and expend more energy gathering prey to feed their offspring. As a result, nest mortality for any such pairs of Swainson's hawk could be likely to increase. Therefore, the loss of potential foraging habitat for Swainson's hawk, white-tailed kite, burrowing owl, or other raptors would be considered a *potentially significant impact*."

The DEIR further provides the following mitigation measure to reduce the above impact to a "*less-than-significant level* through the preservation and management in perpetuity of suitable foraging habitat, contiguous with other areas of suitable foraging habitat, for Swainson's hawk, white-tailed kite, burrowing owl and other raptors":

*"5.4-3 Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio, or a ratio acceptable to CDFG. Suitable foraging habitat includes alfalfa or other low growing row crops. Preservation could occur through the purchase of conservation easements or fee title of lands with suitable foraging habitat. Land and easements shall be approved by the City in consultation with CDFG."*

In February of 2008, upon request from the City of Sacramento (City), the DFG reviewed a November 20, 2007 proposed Delta Shores Project's draft Mitigation Plan and provided guidance to the City for establishment of adequate Swainson's hawk mitigation lands. At that time, the DFG recommended that the above mitigation plan did not provide sufficient mitigation measures because the proposed mitigation site at the Brannon Realty Farm site (> 20 miles distant) was not positioned within close proximity to the foraging habitat or to the nesting hawks which may be impacted by the proposed project. At that time, the DFG also recommended that mitigation lands be identified within closer proximity to the proposed project site, that habitats utilized for mitigation be in-place before the impacts occur to greatly increase the mitigation's effectiveness, and that mitigation lands be protected in perpetuity with a DFG approved conservation easement.

The DEIR states on page 5.4-18 that "Swainson's hawks can forage as far as 10 miles from the nest, but nests are generally more successful if suitable foraging habitat is present within an approximate 5-mile radius", and also states on page 5.4-31 that "the

resulting loss of this (foraging) habitat could force nesting Swainson's hawks to travel farther and expend more energy gathering prey to feed their offspring. As a result, nest mortality for any such pairs of Swainson's hawk could be likely to increase." The DFG agrees with this assertion, and supports it by adding that some local telemetry studies have been conducted to determine foraging requirements of Swainson's hawks, and have shown that the majority of birds observed typically use relatively small home ranges in close proximity to their nests (mean size = 2760 ha) in search of prey (Estep 1989, Babcock 1993). Other studies suggest that if adults must hunt long distances from the nest site, the energetics of the foraging effort may result in reduced nestling vigor with an increased likelihood of disease and/or starvation, and in more extreme cases, the breeding pair, in an effort to assure their own existence, may even abandon the nest and young (Woodbridge 1985). Suitable foraging habitat mitigation lands should be located within an energetically efficient distance from the active Swainson's hawk nests affected by the proposed project, so that adult hawks potentially affected by the proposed project can achieve an energy balance between the needs of themselves and the demands of nestlings and fledglings.

↑  
2-1  
(cont.)

The DEIR's mitigation measure MM 5.4-3 does not provide an adequate requirement to ensure that the mitigation lands are properly established, maintained, or monitored, and therefore does not demonstrate how the project will minimize the above identified potentially significant impact to less than significant. Subdivision (b) of Section 21081.6 of the CEQA Guidelines requires that mitigation measures be "fully enforceable through permit conditions, agreements, or other measures." Incorporating adequate mitigation measures into the conditions of approval applied to the project could meet this requirement.

2-2

The DFG recommends as a means to reduce impacts to below a significant level, 1) that the City include in a mitigation and monitoring program, that an endowment account (based on a Property Analysis Record [PAR] type analysis) shall be established and approved by the DFG to maintain and monitor Swainson's hawk foraging habitat mitigation lands, and 2) that the DEIR mitigation measure MM 5.4-3 be revised to state:

2-3

*5.4-3 Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio, within close proximity of the proposed project site. Preservation shall occur through the purchase of conservation easements or fee title of lands. A mitigation plan shall be established and submitted to the DFG and the City for approval, and at a minimum shall include details on mitigation site location, development, maintenance, and monitoring. Any easements shall be in compliance with Government Code Section 65965.*

**5.4-4 Implementation of the proposed project could result in the disturbance of nesting habitat for birds protected by the MBTA, including raptors**

The DEIR states that “trees in the project site could provide nesting habitat for a number of protected avian species including white-tailed kite, tree swallow, western blue bird, great egret, great blue heron, and other birds... some examples of project related activities that could cause nest abandonment or forced fledging are: demolition, large mobile construction equipment such as large bulldozers, and earth movers working directly under the nest trees for a significant amount of time and people trying to climb the nest tree”, and “implementation of the proposed project could result in the disturbance to protected nesting avian species potentially leading to nest abandonment and mortality. This would be considered a *potentially significant impact*.”

The DEIR further asserts that “implementation of Mitigation Measure 5.4-4(a) would require surveys for protected bird species to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, then implementation of Mitigation Measure 5.4-4(b) through (d) ensures that active nests are protected by instituting appropriate buffer zones and avoiding or minimizing loss or take of this species. Implementation of Mitigation Measures 5.4-4(a) through (d) would reduce the potential disturbance of nesting avian species to a *less-than-significant level*.”

Mitigation Measure 5.4-4(a) mentions that nest surveys will be conducted in potential nest trees within 500 feet of demolition/construction or ground disturbing activities, and Mitigation Measures 5.4-4(b) states that if “active nests...be identified... the applicant, or developer(s)...shall delay construction in the vicinity of active nest sites during the breeding season while the nest is occupied with adults and/or young...the size of the buffer zone shall be determined in consultation with the CDFG, but will be a minimum of 100 feet.”

The DFG is not aware of information supporting the City’s assertion that performing surveys for nesting birds (including the white-tailed kite) within 500 feet of demolition/construction or ground disturbing, or that providing a minimum standard of a 100 foot protection buffer is adequate to properly assess impacts and provide protections for nesting raptors. The DFG has had good success with, and recommends that a more conservative approach to protecting raptors and avoiding take of these species include performing surveys and providing a general protective no-work buffer out to a distance of ¼ mile from demolition/construction or ground disturbing activities. The DFG also recommends that Mitigation Measure 5.4-4(a) be revised to replace the 500 foot survey with a ¼ mile survey, and that Mitigation Measure 5.4-4(b) be revised to replace the 100 foot minimum protective buffer with a general ¼ mile protective no-work buffer.



Mitigation Measure 5.4-4(d) states that “if demolition/construction activities are unavoidable within the (above) buffer zone, the project applicant shall retain a qualified biologist to monitor the nest site to determine if construction activities are disturbing the adult or young birds. If abandonment occurs the biologist shall consult with CDFG or USFWS for the appropriate salvage measures. This could include taking any nestlings to a local wildlife rehabilitation center.” Abandonment of an active raptor nest, and capturing raptor nestlings could be considered “take” under Fish and Game Code, and is not advised. Therefore, the DFG recommends that Mitigation Measure 5.4-4(d) be revised to state:

2-5

*“If demolition/construction activities are unavoidable within the buffer zone, the project applicant shall consult with the DFG and the City, and develop DFG approved appropriate impact reduction and take avoidance measures.”*

#### **5.4-5 Implementation of the proposed project could result in the disturbance of nesting habitat for Swainson’s hawks**

The DEIR states that “trees existing in the riparian area of the Sacramento River could support nesting habitat for Swainson’s hawks... (and) construction activities associated with the proposed project within a ¼ mile (1,320 feet) of a Swainson’s hawk nest could disturb nesting pairs of Swainson’s hawk possibly resulting in nest abandonment, forced fledging and/or mortality... and thus would be considered a *potentially significant impact*”.

The DEIR further states that “implementation of Mitigation Measure 5.4-5(a) would require surveys for nesting Swainson’s hawks to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, then implementation of Mitigation Measure 5.4-5(b) ensures that active nests are protected by instituting appropriate buffer zones and avoiding or minimizing disturbance to any nesting birds reducing the impact to a *less-than-significant level*.”

2-6

Mitigation Measure 5.4-5(a) asserts that surveys for Swainson’s hawks will be conducted no more than 30 days prior to the start of any demolition or construction activities. The DFG believes that surveys should be conducted according to the Swainson’s Hawk Technical Advisory Committee’s May 30, 2000 “Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley,” which requires that surveys should be completed for at least the two survey periods (defined within the May 30, 2000 protocol) immediately prior to a project’s initiation. Therefore, the DFG recommends that Mitigation Measure 5.4-5(a) be revised to describe that the above methodology will be used for performing Swainson’s hawk surveys.

Mitigation Measure 5.4-5(b)(4) states that "if demolition/construction activities are unavoidable and are allowed by CDFG within the buffer zone, the project applicant or developer(s) shall retain a qualified biologist to monitor the nest to determine if abandonment occurs. If the nest is abandoned and the nestlings are still alive, the project proponent shall retain the services of a qualified biologist to reintroduce the nestling(s) (recovery and hacking). Prior to implementing, any hacking plan shall be reviewed and approved by the Environmental Services Division and Wildlife Management Division of the CDFG. The CDFG may allow reduction of the recommended buffers, if a qualified biologist is retained for on-site nest observations." The act of capturing nestlings for recovery and reintroduction could be considered "take" under Fish and Game Code, and is not advised for Swainson's hawks, except possibly as a condition of an incidental take permit pursuant to Fish and Game Code section 2081 et seq. Therefore, the DFG recommends that Mitigation Measure 5.4-5(b)(4) be revised to state:

2-7

*"If demolition/construction activities are unavoidable within the buffer zone, the project applicant shall consult with the DFG and the City, and if necessary, obtain an incidental take permit issued pursuant to Fish and Game Code section 2081.*

#### **5.4-6 Development of the proposed project could result in the loss of active burrowing owl nest burrows**

The DEIR indicates that burrowing owls are known to occur within the project site, and states that "the loss of an occupied ([a] site should be assumed occupied if at least one burrowing owl has been observed occupying a burrow there within the last three years") burrowing owl nest or its occupants would be considered a *significant impact*.

The DEIR further states that "once implemented, Mitigation Measure 5.4-6(a) through (c) below would reduce the above impact to a *less-than-significant level* through the avoidance of any active burrowing owl nests, the safe exclusion of burrowing owls from any burrows to be destroyed prior to construction of the proposed project, and the purchase of additional burrowing habitat."

2-8

Mitigation Measure 5.4-6(b) states that "to offset the loss of foraging and burrow habitat on the project site, a minimum of 6.5 acres of foraging habitat (calculated on a 100 m [approx. 300 ft.] foraging radius around the burrow) per pair or unpaired resident bird, shall be acquired and permanently protected. The protected lands shall be adjacent to occupied burrowing owl habitat and at a location acceptable to the CDFG. Protection of additional habitat acreage per pair or unpaired resident bird may be applicable in some instances. The project proponent shall provide funding for long-term management and monitoring of the protected lands. The monitoring plan shall include

success criteria, remedial measures, and an annual report to the Department. This mitigation could overlap with mitigation requirements for Swainson's hawk foraging habitat as deemed appropriate by CDFG."

If occupied burrows are discovered through survey efforts required by Mitigation Measure 5.4-6, then this mitigation measure would not prove adequate to ensure that the mitigation lands are properly established, maintained, or monitored, and therefore does not demonstrate how the project will minimize the above identified potentially significant impact to less than significant. Subdivision (b) of Section 21081.6 of the CEQA Guidelines requires that mitigation measures be "fully enforceable through permit conditions, agreements, or other measures." Incorporating adequate mitigation measures into the conditions of approval applied to the project could meet this requirement.

The DFG recommends as a means to reduce impacts to below a significant level, 1) that the City include in a mitigation and monitoring program, that an endowment account (based on a Property Analysis Record [PAR] type analysis) shall be established and approved by the DFG to maintain and monitor burrowing owl nesting and foraging habitat mitigation lands, and 2) that Mitigation Measure 5.4-6(b) be revised to include that prior to issuance of grading permits, the project applicant shall preserve an appropriate amount and type (as outlined in the California Burrowing Owl Consortium's April 1993 Burrowing Owl Survey Protocol and Mitigation Guidelines) of burrowing owl mitigation. Preservation shall occur through the purchase of conservation easements or fee title of lands. A mitigation plan shall be established and submitted to the DFG and the City for approval, and at a minimum shall include details on mitigation site location, development, maintenance, and monitoring. Any easements shall be in compliance with Government Code Section 65965.

This project may have an impact to fish and/or wildlife habitat. Assessment of fees under Public Resources Code Section 21089 and as defined by Fish and Game Code Section 711.4 may be necessary. Fees are payable by the project applicant upon filing of the Notice of Determination by the lead agency.

Pursuant to Public Resources Code Sections 21092 and 21092.2, the DFG requests written notification of proposed actions and pending decisions regarding this project. Written notifications should be directed to this office.



2-8  
(cont.)

2-9

2-10

Ms. Amrhein  
October 23, 2008  
Page Eight

Thank you for the opportunity to review this project. If the DFG can be of further assistance, please contact Mr. Todd Gardner, Staff Environmental Scientist, at (209) 745-1968, or myself at (916) 358-2382.

Sincerely,

Kent Smith  
Conservation Program Manager

Cc: Ms. Jana Milliken  
U.S. Fish and Wildlife Service  
2800 Cottage Way, Room W2605  
Sacramento, CA 95825-1888

Mr. Jeff Drongesen  
Mr. Todd Gardner  
Department of Fish and Game  
1701 Nimbus Road, Suite A  
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## LETTER 2: STATE OF CALIFORNIA RESOURCES AGENCY, DEPARTMENT OF FISH AND GAME

### Response to Comment 2-1

This comment describes the evaluation in the Draft EIR regarding the loss of foraging habitat for Swainson's hawk as a result of the proposed project. It goes on to describe a mitigation proposal (draft Mitigation Plan for Swainson's hawk) provided by the project applicant that the California Department of Fish and Game (CDFG) did not prefer. Finally it provides data that states the need for suitable foraging habitat within an "energetically efficient distance" of the nest site. This is consistent with the text in the Draft EIR, and no response is necessary. The comment is noted.

### Response to Comment 2-2

The comment states that Mitigation Measure 5.4-3 on page 5.4-31 of the Draft EIR does not include a requirement that ensures that mitigation lands for Swainson's hawk are properly established, maintained or monitored. Accordingly, Mitigation Measure 5.4-3 on page 5.4-31 has been revised to read as follows:

#### Mitigation Measure

~~Once implemented, this mitigation measure would reduce the above impact to a **less-than-significant level** through the preservation and management in perpetuity of suitable foraging habitat, contiguous with other areas of suitable foraging habitat, for Swainson's hawk, white-tailed kite, burrowing owl and other raptors.~~

Every effort was made to identify contiguous foraging habitat that could be acquired equal to the acreage proposed for impact, but such lands within a five mile radius of the project site are in very short supply and the cost of acquiring rights is high. The area located within five miles of the project site includes large parts of the City of Sacramento, City of West Sacramento and City of Elk Grove already developed with urban uses, the SRCSD bufferlands, the Bartley Cavanaugh Golf Course, open water (the Sacramento River), and Interstate 5, along with a patchwork of farmland that includes vineyards and orchards, which are not generally considered foraging habitat.

Implementation of this mitigation measure would significantly lessen impacts to the Swainson's hawk, white tailed kite, burrowing owls and other raptors from the loss of foraging habitat. The preferred approach to such mitigation would be to identify and acquire rights to a contiguous land area; however, given the size of the project this has been deemed infeasible. The impacts of the project on Swainson's hawks and other raptors would be less than significant.

5.4-3 *Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio or greater, or a ratio acceptable to CDFG.<sup>30</sup> Suitable foraging habitat includes alfalfa or other low growing*

crops. The applicant shall preserve approximately 100 acres of suitable Swainson's hawk habitat closest to within a five mile radius of the project site. An additional approximately 800 acres at the Brannon Farms location shall be actively farmed and maintained with a crop rotation that is known to support high quality foraging habitat (e.g., alfalfa) in perpetuity. The Brannon Island Farms site is currently located within close proximity to several active Swainson's hawk nests, according to the CNDDDB. Any habitat identified by the applicant shall be evaluated using the following five criteria in consultation with the CDFG:

i. Does the mitigation parcel provide suitable foraging habitat?

ii. Is the parcel located in close proximity to the impacted foraging habitat?

iii. Is the parcel occupied or adjacent to active Swainson's hawk nests?

iv. Is the parcel adjacent to other protected habitat thereby contributing to a larger habitat preserve?

v. Is the parcel outside of areas identified for urban growth?

Preservation ~~could~~ shall occur through the purchase of conservation easements or fee title of lands with suitable foraging habitat. A mitigation plan shall be established and submitted to the City for approval prior to the issuance of grading permits and, at a minimum, shall include confirmation of title and encumbrances, details on mitigation site location, development, maintenance and monitoring. Any easements shall be in compliance with Government Code Section 65965. Land and easements shall be approved by the City in consultation with CDFG.

30. ~~CDFG, Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California, November 8, 1994.~~

### Response to Comment 2-3

Please see Response to Comment 2-2, above.

### Response to Comment 2-4

The comment restates text from the Draft EIR, under Impact 5.4-4 (see page 5.4-31) on potential disturbance of nesting habitat for birds protected by the Migratory Bird Treaty Act (MBTA). The comment also notes that they are not aware of any requirement to conduct nesting surveys within 500 feet of ground disturbance or providing a 100-foot minimum buffer around active nest sites during construction activities. The comment further requests that both the 500-foot and 100-foot buffer requirements be replaced with a ¼-mile buffer.

Accordingly, Mitigation Measure 5.4-4(a) and (b) on page 5.4-32 is revised as follows:

- 5.4-4 a) *Between March 1 and August 1, the project applicant or developer(s) shall have a qualified biologist conduct nest surveys within 30 days prior to any*



*demolition/construction or ground disturbing activities that are within 500-foot ¼ mile of potential nest trees. A pre-construction survey shall be submitted to CDFG and the City of Sacramento that includes, at a minimum: (1) a description of the methodology including dates of field visits, the names of survey personnel with resumes, and a list of references cited and persons contacted; and (2) a map showing the location(s) of raptor and migratory bird nests observed on the project site. If no active nests of MBTA, CDFG or USFWS covered species are identified then no further mitigation is required.*

- b) *Should active nests of protected bird species be identified in the survey conducted in accordance with Mitigation Measure 5.4-4(a), the applicant, or developer(s), in consultation with the City of Sacramento and CDFG, shall delay construction in the vicinity of active nest sites during the breeding season (March 1 through August 1) while the nest is occupied with adults and/or young. A qualified biologist shall monitor any occupied nest to determine when the nest is no longer used. If the construction cannot be delayed, avoidance shall include the establishment of a non-disturbance buffer zone around the nest site. The size of the buffer zone shall be determined in consultation with the CDFG, but will be a minimum of 100 feet and no more than ¼ mile. The buffer zone shall be delineated with highly visible temporary construction fencing.*

The comment then expresses concern regarding the minimum 100-foot buffer provided in Mitigation Measure 5.4-4 (b). As stated in the Mitigation Measure, this buffer is a minimum buffer, to be expanded, as necessary, in consultation with CDFG depending on a variety of circumstances, including the bird species in question, the type and timing of construction activities, and any barriers between the nest and construction activities. Because a larger buffer may not be required for non-raptor bird species protected under the Migratory Bird Treaty Act, this language will not be changed.

### **Response to Comment 2-5**

The comment describes Mitigation Measure 5.4-4(d), which discusses measures to be undertaken if a buffer cannot be established around an active nest site. In response to the concerns raised by the comment, Mitigation Measures 5.4-4(d) on page 5.4-33 is revised to read as follows:

#### Mitigation Measure

Implementation of Mitigation Measure 5.4-4(a) would require surveys for protected bird species to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, then implementation of Mitigation Measure 5.4-4(b) through (d) ensures that active nests are protected by instituting appropriate buffer zones and avoiding or minimizing loss or take of this species in consultation with the CDFG and the City. Implementation of Mitigation Measures 5.4-4 (a) through (d) would reduce the potential disturbance of nesting avian species to a ***less-than-significant level***.

- 5.4-4 d) *If demolition/construction activities are unavoidable within the buffer zone, the project applicant shall ~~retain a qualified biologist to monitor the nest site to determine if construction activities are disturbing the adult or young birds. If abandonment occurs the biologist shall~~ consult with CDFG and the City, to develop CDFG approved appropriate impact reduction and take avoidance measures, which may include retaining a qualified biologist to monitor the nest site or USFWS for the appropriate salvage measures. ~~This could include taking any nestlings to a local wildlife rehabilitation center.~~*

### Response to Comment 2-6

The comment describes the discussion in the Draft EIR under Impact 5.4-5, relative to the potential for disturbance to nesting Swainson's hawks during construction of the proposed project. It goes on to recommend using the guidelines provided in the Swainson's Hawk Technical Advisory Committee's May 30, 2000, "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley." The mitigation measure, as it is currently written, is appropriate for determining presence of this species in the project area. Additionally, the language recommended in the comment does not address projects that are phased as this one would be. Under the recommended measure, surveys would be conducted prior to project initiation and then not be required again. Because construction of the proposed project would be phased, there is potential for Swainson's hawk to move into the project area following the first year of surveys.

Accordingly, Mitigation Measure 5.4-5 (a) on page 5.4-34 has been revised to read as follows:

- 5.4-5 a) *Prior to any demolition/construction activities that occur between March 1 and September 15 the applicant or developer(s) shall have a qualified biologist conduct surveys for nesting migratory birds on the project site and within a ~~quarter-half~~ mile<sup>1</sup> of demolition/construction activities unless the City and CDFG approve a reduced survey area. Surveys shall be conducted no more than 30 days prior to the start of any ~~demolition or construction activities-site disturbance for each phase of the project~~. If there is a lapse in construction of more than two weeks, new surveys would be required. If no active nests are identified on or within a quarter mile of construction activities, a letter report summarizing the survey results shall be sent to the City of Sacramento and no further mitigation is required.*

### Response to Comment 2-7

The comment describes Mitigation Measure 5.4-5(b)(4) on page 5.4-34, which discusses measures to be undertaken if a buffer cannot be established around an active Swainson's hawk nest site that could be affected by proposed project construction activities. In response to the concerns raised, Mitigation Measures 5.4-5(b)(4) on page 5.4-34 is revised to read as follows:

---

1 Swainson's Hawk Technical Advisory Committee. *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, May 31, 2000.

Mitigation Measure

Implementation of Mitigation Measure 5.4-5(a) would require surveys for nesting Swainson's hawks to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, then implementation of Mitigation Measure 5.4-5(b) ensures that active nests are protected by instituting appropriate buffer zones to and avoiding or minimizing disturbance to any nesting birds, and that the project applicant will obtain a Fish and Game Code Section 2081 permit, if necessary, thus reducing the impact to a *less-than-significant level*.

- 5.4-5 b) 4. ~~If demolition/construction activities are unavoidable and are allowed by CDFG within the buffer zone of an active Swainson's hawk nest site, the project applicant or developer(s) shall consult with the CDFG and the City, and if necessary, obtain an incidental take permit issued pursuant to Fish and Game Code section 2081. retain a qualified biologist to monitor the nest to determine if abandonment occurs. If the nest is abandoned and the nestlings are still alive, the project proponent shall retain the services of a qualified biologist to reintroduce the nestling(s) (recovery and hacking). Prior to implementing, any hacking plan shall be reviewed and approved by the Environmental Services Division and Wildlife Management Division of the CDFG. The CDFG may allow reduction of the recommended buffers, if a qualified biologist is retained for on-site nest observations.~~

**Response to Comment 2-8**

The comment describes the discussion under Impact 5.4-6 on page 5.4-35 of the Draft EIR, relative to burrowing owl nests. It goes on to state that Mitigation Measure 5.4-6 does not include a requirement that ensures that mitigation lands are properly established, maintained or monitored. It recommends that a mitigation and monitoring program be required, and that the measure be revised to include that prior to issuance of grading permits, an appropriate amount and type of mitigation land be preserved in accordance with the "California Burrowing Owl Consortium's April 1993 Burrowing Owl Survey Protocol and Mitigation Guidelines." This mitigation measure was written in accordance with those guidelines, but to clarify, Mitigation Measure 5.4-6(b) on page 5.4-36 is revised to read as follows:

- 5.4-6 b) To offset the loss of foraging and burrow habitat on the project site, and prior to issuance of grading permits, the project proponent shall preserve a minimum of 6.5 acres of foraging habitat (calculated on a 100 m [approx. 300 ft.] foraging radius around the burrow) per pair or unpaired resident bird, in accordance with the most current "California Burrowing Owl Consortium's (April 1993) Burrowing Owl Survey Protocol and Mitigation Guidelines.", shall be acquired and permanently protected. The protected lands shall be adjacent to occupied burrowing owl habitat and at a location acceptable to the CDFG. Protection of additional habitat acreage per pair or unpaired

*resident bird may be applicable in some instances. Preservation shall occur through the purchase of conservation easements or fee title of lands and any easements shall be in compliance with Government Code Section 65965. The project proponent shall provide funding for long-term management and monitoring of the protected lands, by way of an endowment account (based on a Property Analysis Record type analysis) that is approved by CDFG. A mitigation and monitoring plan shall be submitted to CDFG and the City for approval and include details on mitigation site location, development, maintenance and monitoring. The monitoring plan shall include success criteria, remedial measures, and an annual report to the Department. This mitigation could overlap with mitigation ~~requirements provided~~ for Swainson's hawk foraging habitat as deemed appropriate by CDFG.*

In addition, the text on page 5.4-35, preceding the Mitigation Measure has been revised to account for the change to this Mitigation Measure, as follows:

Mitigation Measure

Once implemented, Mitigation Measure 5.4-6(a) through (c) below would reduce the above impact to a ***less-than-significant level*** through the avoidance of any active burrowing owl nests, the safe exclusion of burrowing owls from any burrows to be destroyed prior to construction of the proposed project, and the purchase and in perpetuity protection of additional burrowing habitat.

**Response to Comment 2-9**

Comment noted. The Draft EIR identifies impacts on wildlife habitat in Section 5.4, Biological Resources. The City will pay applicable fees upon filing of the Notice of Determination, in accordance with Public Resources Code and Fish and Game Code requirements.

**Response to Comment 2-10**

Comment noted.

**DEPARTMENT OF TRANSPORTATION**

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LETTER 3



*Flex your power!  
 Be energy efficient!*

October 30, 2008

0308-SAC0168  
 03-SAC-05 PM 14.899  
 Delta Shores  
 Draft Environmental Impact Report (DEIR)  
 SCH#2007042070

Ms. Rochelle Amrhein  
 City of Sacramento  
 300 Richards Boulevard, 3<sup>rd</sup> Floor  
 Sacramento, CA 95811

Dear Ms. Amrhein:

Thank you for the opportunity to review and comment on the Delta Shores DEIR. This 782-acre project includes 5,222 residences, a regional commercial center with approximately 1.39 million square feet of retail and commercial use, a residential mixed-use area with approximately 161,600 square feet of retail and incorporated office use, open space and parks, and public facilities including two schools and a fire station. Primary project accessibility will be via the planned Interstate 5 (I-5)/Cosumnes River Boulevard interchange. Our comments are as follows:

- Impact 5.9-9 – Under Baseline Plus Project conditions, the DEIR finds that the project would have a significant impact on Interstate 5 freeway operations. Accordingly, the City is requiring Mitigation Measure 5.9-9:

*“The project applicant shall be required to pay a fair share development impact fee towards the I-5/Cosumnes River Boulevard interchange project, as well as the I-5 corridor impact fee that is in effect at the time of issuance of building permits.”*

Caltrans applauds the City’s leadership as a principal participant and facilitator regarding the development of the proposed “Freeway Mitigation Fee Program.” The fee program, which will fund a range of local road, transit, and highway improvement projects to improve mobility, has not yet been adopted by the City or any other participating jurisdiction. Also, the name of the fee program has changed from what is referenced in the DEIR. Therefore, we recommend that the following language be substituted:

*“Caltrans improves mobility across California”*

3-1

*“The project applicant shall be required to pay a fair share development impact fee towards the I-5/Cosumnes River Boulevard interchange project and the fee mandated by the Freeway Mitigation Fee Program that is in effect at the time of issuance of building permits. If the Freeway Mitigation Fee program has not been adopted by the City of Sacramento at the time building permits are issued, the project shall pay a fair share development impact fee towards the Interstate 5 Bus/Carpool Lane project.”*

The I-5 Bus/Carpool Lane project is a feasible mitigation strategy with a clear nexus to the Delta Shores development, and is the most efficient and effective mitigation strategy available to reduce the significant impacts to I-5 being created by the development. In fact, the project is included in the program of projects within the proposed Freeway Mitigation Fee Program. The I-5 Bus/Carpool Lane project already has a portion of project funding identified from the New Measure A Sacramento County sales tax. The project is already in project development, and is included in the Sacramento Area Council of Government’s Metropolitan Transportation Plan and Metropolitan Transportation Improvement Program. Caltrans, as the project sponsor and owner/operator of the freeway, is committed to constructing the project and able to accept direct fee contributions.

3-1  
(cont.)

- Coordination between the City and Caltrans is needed to ensure that the project’s scope and timing are not significantly altered from what is assumed in the ongoing environmental and design work for the planned I-5/Cosumnes River Boulevard interchange. The traffic analysis needs to confirm that both the near term (10 year design) and the ultimate (20 year design) interchange/local road configuration are still valid as the current interchange plans define. Additionally, the City needs to identify a specific phasing proposal for the interchange construction.

3-2

- Impact 5.9-20 – Under Cumulative Plus Project conditions, the Cosumnes River Boulevard/Delta Shores Circle (west) intersection could be impacted. It is noted the City is requiring Mitigation Measure 5.9-20:

*“The project applicant shall construct two southbound through lanes and two northbound through lanes on Delta Shores Circle South between Cosumnes River Boulevard and Street D (North). The project applicant shall pay a fair share towards modifying the planned westbound approach of the Cosumnes River Boulevard/I-5 northbound ramps intersection to provide two through lanes and two exclusive right-turn (mixed flow) lanes. This configuration would allow mixed flow vehicles to use both westbound right-turn lanes to enter the northbound on-ramp. This differs from the planned configuration, which only allows high occupancy vehicles (HOV) to turn right from a shared through/right-turn lane. The HOV bypass lane would begin just downstream on the northbound on-ramp.”*

3-3

Caltrans is aware of this proposal and will work with the City to implement these mitigation measures into the interchange design.

3-3  
(cont.)

- The existing volumes used in the DEIR for the ramp locations are lower than Caltrans counts, as follows:
  - I-5 NB on-ramp from WB Pocket Rd AM peak hour reported as 677 in the DEIR (Caltrans counts: 2005 peak hour volume = 815)
  - I-5 NB on-ramp from WB Pocket Rd PM peak hour reported as 392 in the DEIR (Caltrans counts: 2005 peak hour volume = 600)
  - SR 99 SB off-ramp to WB Mack Rd AM peak hour reported as 342 in the DEIR (Caltrans counts: 2005 peak hour volume = 450)
  - SR 99 SB off-ramp to EB Mack Rd/Bruceville Rd PM peak hour reported as 648 in the DEIR (Caltrans counts: 2005 peak hour volume = 885)

3-4

These volumes need to be verified and/or revised. This may result in revising the forecasted volumes and Level of Service reported in the DEIR. It may also affect the impacts and the mitigations proposed in the DEIR.

- In order to adequately evaluate potential hydrological impacts to I-5, please provide results of water surface modeling studies that show water surface elevations resulting from the proposed development to Mr. Gurdeep Bhattal, Caltrans District 3, Hydraulics Branch. Mr. Bhattal can be reached at (530) 740-4830.

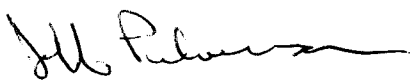
3-5

- Sign plans for any proposed freeway monument signage should be provided to Caltrans for review and, depending on proposed sign location, approval. The plans should depict the layout, roadway setback, orientation, glare intensity, and sign size. Caltrans is required by law to enforce the Outdoor Advertising Act and Regulations regarding the placement of advertising along the highways. That document is available on the internet at: [http://www.dot.ca.gov/hq/oda/download/ODA\\_Act\\_&\\_Regulations.pdf](http://www.dot.ca.gov/hq/oda/download/ODA_Act_&_Regulations.pdf). For more information, please contact Mr. Robert Carbajal at (916) 654-6225.

3-6

If you have any questions about these comments please contact Alyssa Begley, Chief, Office of Transportation Planning-South at (916) 274-0635.

Sincerely,



JEFF PULVERMAN  
Deputy District Director  
Planning & Local Assistance

Ms. Rochelle Amrhein  
October 30, 2008  
Page 4 of 5

cc: Jerry Way, City of Sacramento  
Fran Halbakken, City of Sacramento



Ms. Rochelle Amrhein  
October 30, 2008  
Page 5 of 5

bc: Gurdeep Bhattal  
Robert Carbajal  
Jim Calkins  
Nadarajah "Sutha" Suthahar



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**LETTER 3: CALIFORNIA STATE DEPARTMENT OF TRANSPORTATION****Response to Comment 3-1**

The City requires a nexus study be completed prior to establishing a fee requirement. Once this fee is established, it will be required at the time building permits are obtained. Based on current market conditions and the need for substantial infrastructure development within the project area, is it anticipated that this fee structure will be legally established before building permits are requested for this area. However, there is currently no legally permissible mechanism available prior to the completion of the nexus study and legal establishment for charging a mitigation fee to a building permit applicant in advance of compliance with the legal requirements of the California Mitigation Fee Act. Therefore, no changes can be made to Mitigation Measure 5.9-9 on page 5.9-107 of the Draft EIR.

**Response to Comment 3-2**

The City is currently working with Caltrans and the permitting agencies and will complete all necessary approvals including concluding right-of-way to start construction in summer of 2009.

Please see Response to Comment 14-134.

**Response to Comment 3-3**

Comment noted.

**Response to Comment 3-4**

Information on freeway volumes for I-5 was obtained from the April 4, 2008, "*I-5 Bus/Carpool Lanes Traffic Report*" prepared for Caltrans by Fehr & Peers. Information on freeway volumes for State Route 99 was obtained through a combination of historic count data collected by Caltrans and count data from the Freeway Performance Measurement System (PeMS). PeMS is a repository for all Caltrans loop detector count data that was developed by U.C. Berkeley. Please note that several projects were implemented in the study area after the 2004 reference provided in the comment letter. For example, ramp metering on all these ramps was implemented after 2004 and the SR 99 mainline north of Mack Road was widened this year by adding an additional north bound lane. Therefore, it is anticipated that using more recent data than 2004 numbers is considered appropriate.

**Response to Comment 3-5**

Caltrans has retained the firm of Mark Thomas Company to prepare a hydrological analysis that evaluates hydrological effects to I-5 and the city is working with staff from Caltrans to address their concerns. The drainage plan for the I-5/Cosumnes River Boulevard Interchange project was provided to Caltrans by Mark Thomas subsequent to the date of this comment letter. The hydrological analysis and drainage plan for the Delta Shores project will interface and be consistent

with the I-5/Cosumnes River Boulevard Interchange project drainage plan and has been provided to Caltrans for their review as well.

**Response to Comment 3-6**

Comment noted.

**DELTA PROTECTION COMMISSION**

14215 RIVER ROAD  
P.O. BOX 530  
WALNUT GROVE, CA 95690  
Phone (916) 776-2290  
FAX (916) 776-2293  
E-Mail: dpc@citlink.net Home Page: www.delta.ca.gov



October 23, 2008

Shelly Amrhein, Associate Planner  
City of Sacramento, Development Services Department  
Environmental Planning Services  
300 Richards Boulevard, Third Floor  
Sacramento, California 95811

Dear Ms. Amrhein:

**SUBJECT: Draft Environmental Impact Report for the Delta Shores Project  
(SCH #2007042070).**

Staff of the Delta Protection Commission (Commission) has reviewed the subject document dated September 9, 2008. As noted in the comments from the Commission to the City of Sacramento, on May 14, 2007 (letter attached), staff had determined that the proposed project is located within the Secondary Zone of the Legal Delta, therefore actions for approval or denial of projects in the Secondary Zone are not subject to appeal to the Commission. However, the analysis of the proposed project should address any potential impacts to the resources of the Primary Zone resulting from activities in the Secondary Zone. Pursuant to the Delta Protection Act (Act), approvals for projects in the Secondary Zone shall take into consideration consistency with the provisions of the Land Use and Resource Management Plan for the Primary and Secondary Zones of the Delta. The Act and Management Plan are available for your reference at the Commission's website at [www.delta.ca.gov](http://www.delta.ca.gov).

4-1

Thank you for the opportunity to provide input on the subject proposal is appreciated. Please do not hesitate to contact me at (916) 776-2290 if you would like further clarification with respect to the Commission's Management Plan or comments.

Sincerely,

A handwritten signature in cursive script that reads "Linda Fiack".

Linda Fiack  
Executive Director



**LETTER 4: STATE OF CALIFORNIA RESOURCES AGENCY, DELTA PROTECTION COMMISSION****Response to Comment 4-1**

Chapter 4.0, Land Use Consistency and Compatibility, addresses the project's consistency and compatibility with the Delta Protection Commission Land Use and Resource Management Plan. The Delta Protection Commission Land Use and Resource Management Plan contains eight elements: Environment; Utilities and Infrastructure; Land Use and Development; Water; Levees; Agriculture; Recreation and Access; Marine Patrol, Boater Education, and Safety Programs. As shown in Figure 4-5 on page 4.5-25 of the Draft EIR, the project site is located in the northern portion of the Secondary Zone at the edge of the boundary. Because the project site is in the Secondary Zone of the Legal Delta proposed project activities in the Secondary Zone that have the potential to directly affect the Primary Zone are primarily related to land use changes that could affect drainage patterns, flooding, and water quality.

Hydrology, flooding, drainage, and water quality impacts from the proposed Delta Shores project were fully analyzed in Section 5.5, Hydrology and Water Quality of the Draft EIR. Pages 5.5-11 through 5.5-15 and Impact 5.5-1 on pages 5.5-19 through 5.5-24 in the Draft EIR describes how the City implements its obligations as a co-permittee under the Clean Water Act National Pollutant Discharge Elimination System (NPDES) stormwater program. The reduction of pollutants carried in construction and post-development stormwater runoff. Thus, the analyses in this section of the Draft EIR took into consideration state water quality objectives set by the Central Valley Water Quality Control Board and the City, both of which are consistent with the Delta Protection Commission's Land Use and Resource Management Plan for the Primary and Secondary Zones of the Delta.

There are two additional policies from the Management Plan that are applicable to the project and are added to the bottom of page 4-24 in Chapter 4.0, Land Use Consistency and Compatibility:

4. New non-agricultural residential development, if needed, shall be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided.

**UTILITIES AND INFRASTRUCTURE**

2. New houses built in the Delta agricultural areas shall continue to be served by independent potable water and wastewater treatment facilities. Uses which attract a substantial number of people to one area, including any expansions to the Delta communities, recreational facilities or businesses, shall provide adequate infrastructure improvements or pay to expand existing facilities, and not overburden the existing limited community resources. New or expanded construction of wastewater disposal systems shall ensure highest feasible standards are met, as determined by the local governing body. Independent treatment facilities shall be monitored to ensure no cumulative adverse impact to groundwater supplies.

In addition, the analysis on page 4-37 is revised to read as follows:

#### Land Use and Resource Management Plan for the Primary Zone

The Land Use and Resource Management Plan for the Primary Zone outlines policies and recommendations specifically for areas within the Primary Zone of the Delta. The project site is located within the Secondary Zone of the Delta and, therefore, is not expressly subject to the policies outlined in the Management Plan. However, even though the project is not within the Primary Zone the activities of the project ~~are not anticipated to adversely~~ could potentially affect resources in the Primary Zone, but there is no substantial evidence that it should be anticipated to affect those Primary Zone resources. Proposed project activities in the Secondary Zone that have the potential to directly affect the Primary Zone are primarily related to changes in land use that could affect drainage patterns, flooding, and water quality. Hydrology, flooding, drainage, and water quality impacts from the proposed Delta Shores project were fully analyzed in Section 5.5, Hydrology and Water Quality of this EIR. It is not anticipated that the project is going to adversely impact any resources located in the Primary Zone, in part because land uses to the north and west include residential and commercial uses in the city and the community of Freeport. Land uses to the east are outside of the Delta Protection Zone and land uses to the south include the SRCSD lands.

Applicable policies from the Land Use and Resource Management Plan include Land Use Policy 3 says which states that new development shall ensure that appropriate buffer areas are provided to prevent conflicts between any proposed use and existing agricultural use. The area surrounding the project site is mostly developed except for a small area to the east of the project site, which is currently active agriculture, but which is anticipated to be developed, and the open space area to the south of the site in the SRCD Bufferlands. The agricultural area to the east would be buffered by the recreational and open space areas proposed in the eastern portion of the project site. Areas to the south of the project site would be buffered by an existing levee. Provision of open space and use of the levee as a buffer to surrounding agricultural uses would adhere to Land Use Recommendation 5. Policy 4 encourages new non-agricultural residential development be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided. The project is located within the City of Sacramento where existing infrastructure and resources exist to support this type of development. Lastly, Policy 2 under Utilities and Infrastructure requires that new development provide the necessary infrastructure so as not to overburden existing development within the Delta. As noted above, the project will be connecting to the City's water, wastewater and storm drain infrastructure and will not place a burden on an existing community. Therefore, the proposed project would be generally compatible with the Land Use and Resource Management Plan for the Primary Zone.





ARNOLD SCHWARZENEGGER  
GOVERNOR

STATE OF CALIFORNIA  
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH  
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT  
DIRECTOR

October 24, 2008

Rochelle Amrhein  
City of Sacramento  
300 Richards Blvd., 3rd Floor  
Sacramento, CA 95811

Subject: Delta Shores Project  
SCH#: 2007042070

Dear Rochelle Amrhein:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on October 23, 2008, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

A handwritten signature in black ink that reads "Terry Roberts".

Terry Roberts  
Director, State Clearinghouse

5-1

**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2007042070  
**Project Title** Delta Shores Project  
**Lead Agency** Sacramento, City of

---

**Type** EIR Draft EIR  
**Description** The proposed project includes the development of 782-acre master planned community with 5,092 residences, one regional commercial center, one mixed use retail and commercial center, open space and parks, and public facilities including two schools and a fire station.

---

**Lead Agency Contact**

**Name** Rochelle Amrhein  
**Agency** City of Sacramento  
**Phone** (916) 808-7601 **Fax**  
**email**  
**Address** 300 Richards Blvd., 3rd Floor  
**City** Sacramento **State** CA **Zip** 95811

---

**Project Location**

**County** Sacramento  
**City** Sacramento  
**Region**  
**Lat / Long**  
**Cross Streets**  
**Parcel No.**  
**Township**

**Range** **Section** **Base**

---

**Proximity to:**

**Highways** I-5, SR 160  
**Airports** No  
**Railways** Union Pacific  
**Waterways** Sacramento River, Morrison Creek  
**Schools** Susan B. Anthony, Freeport, John D. Sloat Basic, Mark Hopkins....  
**Land Use** The project site is used primarily for agricultural purposes.  
Zoning District: Agricultural (A), Shopping Center - PUD (SC-PUD), Single Family Alternative Residential - PUD (R-1A-PUD), and Manufacturing, Research & Development - PUD (MRD-PUD).  
GPD: Industrial-Employee Intensive, Community/Neighborhood Commercial and Office, Parks-Recreation-Open Space, and Public/Quasi-Public Miscellaneous.

---

**Project Issues** Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Growth Inducing; Landuse; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife

---

**Reviewing Agencies** Resources Agency; Department of Conservation; Department of Fish and Game, Region 2; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 3; Department of Housing and Community Development; Department of Health Services; Regional Water Quality Control Bd., Region 5 (Sacramento); Department of Toxic Substances Control; Native American Heritage Commission; Public Utilities Commission; State Lands Commission

---

**Date Received** 09/09/2008 **Start of Review** 09/09/2008 **End of Review** 10/23/2008

**LETTER 5: GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, STATE CLEARINGHOUSE AND PLANNING UNIT**

**Response to Comment 5-1**

Comment noted. The State Clearinghouse has indicated the City has complied with the review requirements for draft environmental documents, and that no state agencies that received the document from the State Clearinghouse submitted any comments to the state clearinghouse.





Technology in balance with nature

10545 Armstrong Avenue

Mather, CA 95655

Tele: [916] 876-6000

Fax: [916] 876-6160

Website: www.srcsd.com

October 16, 2008

Shelly Amrhein  
Associate Planner  
Environmental Planning Services  
300 Richards Blvd. Third Floor  
Sacramento, CA 95811

**Board of Directors**

**Representing:**

County of Sacramento

County of Yolo

City of Citrus Heights

City of Elk Grove

City of Folsom

City of Rancho Cordova

City of Sacramento

City of West Sacramento

**Subject: Notice of Availability – Draft Environmental Impact Report for the Delta Shores Project (P06-197)**

Dear Ms. Amrhein:

The Sacramento Regional County Sanitation District (SRCS D) has reviewed the Notice of Availability for a Draft Environmental Impact Report for the Delta Shores Project and has the following comments:

The closest SRCS D interceptor connection point for the Freeport area, and the Phase 1 and 2 portion of the Delta Shores development is located on the City Interceptor south of the Consumnes River Interchange (CRI). Preliminary modeling predicts surcharging of the City Interceptor. The peak design flow of 1.25 MGD from the Freeport, and Phase 1 and 2 of the Delta Shores development is predicted to increase surcharge of the interceptor. On an interim basis, SRCS D can serve the Freeport Area and Phases 1 and 2 of the Delta Shores Development by allowing a connection to the City Interceptor south of the CRI.

6-1

It is expected that once the remaining portion of the Delta Shores project develops, a permanent sewer connection will be required which would abandon the connection to the City Interceptor. Ultimate service for the Freeport area, Phase 1 and 2 of the Delta Shores development would be the connection to the Central Interceptor.

6-2

In November 1980, the Board of Directors approved the Operating Agreement between SRCS D and the City of Sacramento regarding the Combined Wastewater Collection System (CWCS).

6-3

*Section 3.F. Responsibilities of District in Operation of CWCS states:*

1. ...The District agrees to accept flows via the City Interceptor from the following City service areas up to the maximum instantaneous flow rates indicated:

Mary K. Snyder  
District Engineer

Stan R. Dean  
Plant Manager

Wendell H. Kido  
District Manager

Marcia Maurer  
Chief Financial Officer

<u>Service Area</u>	<u>Maximum Flow Rate</u>
Sump 2	60 MGD

*The parties to this Agreement acknowledge and agree that the 60 MGD maximum flow rate supersedes the 70 MGD figure specified in Section 29 of the Master Interagency Agreement.*

Sump 21, 55 and 119	38 MGD
Gravity intercepts to City Interceptor at or downstream of the North Meadowview Intercept Structure	10.5 MGD
Total to City Interceptor	108.5 MGD

1. *Up to the design flow capacity limit of the City Interceptor upstream of the North Meadowview Intercept Structure, estimated at 98 MGD, the Wastewater Treatment Superintendent (or designated representative) may authorize flows from Sump 2 for stipulated time periods in excess of the 60 MGD limit above noted. It is the intent here to accommodate higher levels of treatment for combined wastewater flows during periods when SRWTP secondary treatment capacity is available due to lag in receipt of inflow from other District service areas or when the City Interceptor influent flows from Sumps 21, 55 and 119 are less than 38 MGD.*

As stated in the table above, the maximum amount of flow that the City can discharge to the City Interceptor via gravity connections downstream of the North Meadowview Intercept Structure is 10.5 MGD. The Delta Shores development is located downstream of the North Meadowview Intercept Structure, and it is City's responsibility to ensure that the additional flow from this project does not exceed the 10.5 MGD limit. These flow limitations identified in the Operation and Maintenance Agreement should be followed to the maximum extent feasible.

If you have any questions regarding these comments, please contact me at (916) 876-9994.

Sincerely,



Sarena Deeble  
SRCSD/SASD  
Policy and Planning

cc: Ruben Robles  
Michael Meyer  
SRCSD Development Services  
SASD Development Services

**LETTER 6: SRCSD, SARENNA DEEBLE**

**Response to Comment 6-1**

The comment provides information on the existing and planned SRCSD interceptor that will serve the project and confirms information provided in the Draft EIR. The comment does not relate to the analysis in the EIR. No further response is required.

**Response to Comment 6-2**

Comment noted. As discussed in the Draft EIR (Impact 5.8-1 on page 5.8-8), at project buildout wastewater from the entire site would be pumped from the lift station at the community park site to the Central Interceptor located at the intersection of Cosumnes River Boulevard and Franklin Boulevard.

**Response to Comment 6-3**

Comment noted.





**Sacramento Regional Wastewater****Treatment Plant**

**8521 Laguna Station Road**  
**Elk Grove, CA 95758-9550**  
**Tele: [916] 875-9000**  
**Fax: [916] 875-9068**  
**Website: www.srcsd.com**

October 23, 2008

Shelly Amrhein  
 Associate Planner  
 City of Sacramento  
 Environmental Planning Services  
 300 Richards Blvd., Third Floor  
 Sacramento, CA 95811

Dear Ms. Amrhein:

**Board of Directors****Representing:**

County of Sacramento  
 County of Yolo  
 City of Citrus Heights  
 City of Elk Grove  
 City of Folsom  
 City of Rancho Cordova  
 City of Sacramento  
 City of West Sacramento

**Subject: Delta Shores Draft Environmental Impact Report**

The Sacramento Regional County Sanitation District (SRCSD) owns and operates the Sacramento Regional Wastewater Treatment Plant (SRWTP) located southeast of the Delta Shores project area. Surrounding the SRWTP is the 2,650 acre Bufferlands which is also owned and managed by SRCSD. As noted in the Delta Shores DEIR, the Delta Shores project boundary abuts the SRWTP Bufferlands. The major change in land use inherit to this project will impact certain Bufferland functions, land uses, and sensitive natural resources. The project will also require construction activity and permanent easement across the SRWTP Bufferlands to facilitate stormwater drainage. SRCSD requests that the project proponent allows for SRCSD review of all design submittals to ensure that applicable procedures are followed and mitigating measures are appropriately implemented to address these impacts. Additionally, SRCSD submits the following comments:

7-1

Mary K. Snyder  
 District Engineer

Stan R. Dean  
 Plant Manager

Wendell H. Kido  
 District Manager

Marcia Maurer  
 Chief Financial Officer

**2.0 Project Description**

- SRCSD currently utilizes Beach Lake Road for northern access to the SRWTP Bufferlands. It is unclear from the Land Use Plan (Fig. 2-3) how this road will be incorporated into the development. SRCSD requires access to this portion of its property.
- For reasons of Plant security and public safety as well as the protection of sensitive biological resources, unescorted public access on the majority of the Bufferlands is restricted. A TBD Public Access Barrier is included at the southern most boundary between the project area and the Bufferlands. SRCSD desires input on the design of this barrier and also requests that the eventual site plan give consideration to project layouts that support this barrier (i.e. locating non-public uses and preferably non-public open space uses immediately adjacent to this barrier).

7-2

7-3

- The project will require the construction of a new stormwater pipeline across the SRWTP Bufferlands to City Sump 89. In addition to acquiring a construction and permanent easement from SRCSD for this facility, the project must also adhere to the SRCSD Access Request procedures for work that may impact SRCSD property and/or operations.

7-4

#### 5.1 Aesthetics

- To minimize impacts to the sensitive natural resources of the Bufferlands, in areas where planned commercial and retail about the SRWTP Bufferlands, lighting should be sited to prevent spill over light onto the Bufferlands. Site plans in these areas should also consider layouts and designs that would minimize litter generated on these areas from impacting the Bufferlands.

7-5

#### 5.2 Agricultural Resources

- The southeast boundary of the project is adjacent to approximately 100 acres of the SRWTP Bufferlands that is currently farmed as described in the Environmental Setting for the entire project site. The farming operation in this area is conducted under a lease by SRCSD. The farming operation in this area has historically and is currently managed in concert with the agricultural ground of the project site. Through the removal of water conveyance ditches and fragmentation of this area through direct and cumulative impacts, the project implementation will impact the farming operation on this adjacent property. This impact is not considered in this section of the DEIR.

7-6

#### 5.4 Biological Resources

- The Biological Resources section of the DEIR does not address potential impacts to greater sandhill cranes. Wintering greater sandhill cranes have been documented in increasing numbers on habitat similar to the project site on the SRWTP Bufferlands and the northern portions of the Stone Lakes National Wildlife Refuge.
- Table 5.4-2 rates the likelihood of Swainson's hawk (SWHA) occurrence as moderate. The California Natural Diversity Database (CNDDDB) documents nesting within one mile of the project area. SRCSD biologists have recorded regular occurrences of SWHA foraging within the project area as well as displays of courtship behavior. The likelihood of occurrence of this species is greater than moderate.
- Table 5.4-2 references observation of western burrowing owls (BUOW) at the site in 2002 and 2004. Occurrence of BUOW at this site is also documented in the 2007 Statewide Burrowing Owl survey sponsored by the Institute for Bird Populations.
- Mitigation measures for 5.4-4 and 5.4-5 address impacts to nesting species, but do not address impacts or removal of suitable nesting habitat. Mitigation measures for 5.4-8 address only impacts to "heritage" trees and will not mitigate the impact or loss of non-heritage trees that provide nesting habitat for SWHA and other protected species.

7-7

7-8

7-9

7-10

- Mitigation measures for 5.4-5 should require that SWHA surveys adhere to all guidelines contained in the Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley, May 31, 2000. 7-11
- Mitigation measure 5.4-6 a) should require that BUOW surveys adhere to California Burrowing Owl Consortium, Burrowing Owl Survey Protocol and Mitigation Guidelines, April 1993. Due to the potential lag time between the issuance of the grading permit and the actual project ground disturbance, this measure should also ensure that at least one protocol survey is conducted within 30 days of ground disturbance. 7-12

5.5 Hydrology and Water Quality

- The Environmental Setting describes ...*Stone Lake (in the SRCSD Bufferlands) Beach Lake, and Bartly Cavanaugh Golf Course are located to the south.* It is assumed that the document is referring to North Stone Lake. While North Stone Lake is located south of the project area, it does not occur on the SRWTP Bufferlands. 7-13
- The Site Specific Hydrology, Water Quality, Stormwater Drainage and Flooding section describes Morrison Creek as ...*predominantly channelized and deepened to accommodate peak stormflow, and flows west/southwest through urbanized high density residential, industrial and commercial areas before flowing south to Stone Lake. Stone Lake, a 112-acre body of water that is part of the Stone Lake National Wildlife Refuge, is adjacent to and hydraulically connected, by pump, the Sacramento River.* As it flows across the SRWTP Bufferlands, Morrison Creek is within the project boundary of the Stone Lakes National Wildlife Refuge (SLNWR). The terminus of Morrison Creek is on the west side of I-5 at a City of Sacramento Pump Station known as City Sump 90. This pump station pumps Morrison Creek water to the Sacramento River. Near Sump 90, a dike separates Morrison Creek from Lower Beach Lake. The surface water of Lower Beach Lake is hydraulically connected to North Stone Lake via channels and culverts. During significant winter storm events, when surface water elevation levels exceed 3 feet above mean sea level, this dike is overtopped and Morrison Creek becomes contiguous with Lower Beach Lake as well as the remainder of the Stone Lakes Basin. 7-14

Sincerely,



Bryan Young  
Natural Resource Supervisor  
Sacramento Regional County Sanitation District

BJY:bjy

Cc: Stan Dean, Dan Bonebrake, Ruben Robles, Michael Meyers, Sarena Deeble

Young, Bryan (MSA)" <youngb@sacsewer.com> 10/31/2008 1:44 PM >>>

Ms. Amrhein,

On October 23, 2008, I submitted comments to you regarding the Delta Shores Draft Environmental Impact Report (EIR). These comments were submitted on behalf of the Sacramento Regional County Sanitation District (SRCSD). Today, I submit the following two additional comments from the SRCSD for your consideration. As the formal comment period closed on October 23, 2008, I understand that these comments may not be addressed in the Final EIR document but will nonetheless be considered by the City of Sacramento.

2.0 Project Description

- The change in land use inherent to this project will result in increased opportunity for and incidents of trespass onto adjacent SRCSD property where, for reasons of Plant security and public safety, public access is currently restricted. The project should implement measures (i.e. fencing and signage approved by SRCSD) to address this impact for all areas where the project boundary is adjacent to SRCSD Property.

7-15

5.8 Public Utilities

- Full implementation of the Delta Shores Project will require the construction of a sewer force main outside of the project area and across SRCSD property (depicted in 5.8-1). Environmental impacts associated with this sewer force main are not described nor addressed within this document.

7-16

Please feel free to contact me if these comments needs any clarification.

**Bryan Young**

**Natural Resource Supervisor**

**Sacramento Regional County Sanitation District**

**ph: 916-875-9273**

**fx: 916-875-9163**

---

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**LETTER 7: SRCSD, BRYAN YOUNG**

**Response to Comment 7-1**

The project applicant shall consult with the SRCSD regarding any activities that involve the use of SRCSD lands to ensure applicable procedures are followed and implemented.

**Response to Comment 7-2**

The project will provide appropriate easements and access to the property. At this time it is proposed that the Beach Lake Road will be abandoned/quitclaimed to the project applicant and be a private road, with an access easement provided concurrently to SRCSD.

**Response to Comment 7-3**

The project applicant will coordinate with SRCSD during the design stage of the project to ensure appropriate layout and design of the Public Access Barrier.

**Response to Comment 7-4**

Comment noted. As noted above in Response to Comment 7-1, the project applicant shall coordinate with the SRCSD for any activities that require the use of SRCSD lands.

**Response to Comment 7-5**

The Delta Shores PUD Guidelines (see Appendix C of the Draft EIR) include specific provisions to reduce spillover light as discussed on page 5.1-33, “[t]he Guidelines also contain specific lighting designs for the residential, commercial, and park land uses to minimize spill light on adjacent uses (i.e., downlighting and shielding).”

**Response to Comment 7-6**

The comment notes that the project will remove water conveyance ditches that will impact agricultural operations on the SRWTP Bufferlands to the south of the project site. The comment does not provide enough information with regards to the location of existing water conveyance facilities in the project vicinity. Further, upon examination of topographic maps and aerial photographs of the project site, although a portion of the project site is adjacent to the SRWTP Bufferlands, there are no conveyance ditches located within the project site that would be impacted, as suggested by the comment. As shown on page 5.5-25 of the Draft EIR, Figure 5.5-1 on existing drainage features on the project site include the City’s Pump Station 89, which would continue to discharge stormwater into Morrison Creek at or below existing discharge rates.

**Response to Comment 7-7**

The comment suggests the need for the Draft EIR to address potential impacts to the greater sandhill crane (*Grus canadensis tabida*). This subspecies is listed and protected under the California Endangered Species Act and fully protected according to Section 3511 of the California

Fish and Game Code. This subspecies was not addressed in the analysis because it did not appear on any of the special-status species lists queried for the project, including the CNDDDB and the USFWS list of species that could be affected by projects occurring in Sacramento County. Sandhill cranes are migratory birds, but the MBTA only covers take of the species not loss of their habitat. Sandhill cranes winter in areas of southern Sacramento County, specifically in and around the Cosumnes River preserve and Staten Island. The species lists are included in Appendix G in the Draft EIR, and information from those lists is presented in Table 5.4-2 in Section 5.4, Biological Resources. According to the SCRSD's "Bufferlands" website, there have been greater sandhill cranes sightings in the fall and winter, with limited sightings in the spring. This website provides no specific data concerning the frequency, abundance, or spatial distribution of species observed within the site. Per Keith Kwan, a Senior Avian Ecologist with Ecorp Consulting, Inc., this subspecies does not nest in the vicinity of the project nor does it nest in the region. Further, sandhill cranes generally prefer to winter in and around large expanses of wetland or irrigated farmlands away from human encroachment. Therefore, the project site does not support wintering habitat for greater sandhill cranes. Incidentally, land preserved for Swainson's hawks under Mitigation Measure 5.4-3 would likely provide suitable wintering habitat for this species. Please see also Responses to Comments 14-27, 14-28 and 14-123 and 14,124.

#### **Response to Comment 7-8**

The comment states that the likelihood of occurrence for Swainson's hawk at the project site should be changed because sightings of Swainson's hawk have occurred and a recorded nest site is located within a mile of the project site.

The text in Table 5.4-2 on page 5.4-10 has been revised to read as follows:

Observed Moderate. Fallow fields on the site could provide suitable foraging habitat for this species. Suitable nest trees are present adjacent to the site. Species observed foraging over site.

#### **Response to Comment 7-9**

The comment provides additional information on documented occurrences of burrowing owl on the project site.

Therefore, the text in Table 5.4-2 on page 5.4-10 has been revised to read as follows:

Burrowing owls have been observed at the site in 2002, and 2004, and 2007.

#### **Response to Comment 7-10**

The comment states that the Draft EIR did not address the loss of suitable nesting habitat. There are no federal, state, or City standards that require that potential nesting habitat be protected or mitigated for if lost as a result of a proposed project. However, Mitigation Measure 5.4-8 on page



5.4-38 provides mitigation for impacts on heritage trees. Trees used by raptors are likely to be large trees that would also meet the heritage tree standard.

### **Response to Comment 7-11**

Please see Responses to Comments 2-6 and 2-7 that provide revisions to Mitigation Measure 5.4-5.

### **Response to Comment 7-12**

The comment suggests changes to Mitigation Measure 5.4-6 (a). To address the concerns raised, Mitigation Measure 5.4-6 (a) on page 5.4-35 has been revised to read as follows:

- 5.4-6 a) *Prior to the issuance of grading permits, the project applicant shall retain a qualified biologist to conduct a pre-construction burrowing owl survey in accordance with most current version of the California Burrowing Owl Consortium Burrowing Owl Survey Protocol and Mitigation Guidelines. Surveys shall be conducted no more than 30 days prior to the start of any demolition or construction activities. If no suitable burrows are found, no further mitigation is required. If suitable burrows are found, but no owls are found, all burrows shall be hand-excavated and collapsed prior to project construction. If nesting owls are found, no disturbance shall be allowed within 160-feet of the active nest burrow between February 1 and August 31. Outside the nesting season, and/or upon confirmation by the qualified biologist, and in consultation with CDFG, that all young have fledged and left an active nest, burrowing owls present in the burrow shall be excluded from the burrow(s) by a qualified biologist through a passive relocation as outlined in the California Burrowing Owl Consortium's April 1993 Burrowing Owl Survey Protocol and Mitigation Guidelines. Once the burrows have been cleared, they must be hand-excavated and collapsed prior to project construction.*

Please see also Response to Comment 2-8 that provides revisions to the language included in Mitigation Measure 5.4-6 (b).

### **Response to Comment 7-13**

The comment is noted and the text in the Draft EIR revised to address this clarification. The information does not change the impact analyses within the Draft EIR.

The third sentence in the first paragraph on page 5.5-2 of the draft EIR is revised as follows:

Morrison Creek is located to the east; the Sacramento River, Freeport Boulevard and the Town of Freeport are located to the west; North Stone Lake (~~in the SRCSD bufferlands~~), Beach Lake, and the Bartley Cavanaugh Golf Course are located to the south. Developed areas are located to the north/northeast, and to the south/southeast.

### **Response to Comment 7-14**

The comment adds additional setting information with regards to hydraulic connectivity between Morrison Creek and Lower Beach Lake within the Stone Lakes Basin. The information does not change the impact analyses within the Draft EIR.

The end of the fourth paragraph on page 5.5-6 of the Draft EIR is revised as follows:

...by pump, to the Sacramento River. Downstream of the project site, City Sump 90 pumps water from Morrison Creek into the Sacramento River. Near Sump 90, a dike separates Morrison Creek from Lower Beach Lake. Lower Beach Lake is hydraulically connected to North Stone Lake via channels and culverts. During significant winter storm events, surface water elevations can overtop the dike and Morrison Creek becomes contiguous with Lower Beach Lake.

### **Response to Comment 7-15**

Comment noted. The project applicant is required to coordinate with SRCSD during the design stage of the project to ensure appropriate layout and design of the Public Access Barrier. In addition, the applicant will coordinate with the SRCSD regarding appropriate signage.

### **Response to Comment 7-16**

The text of the Draft EIR has been revised to address construction of a proposed storm drain pipe through SRCSD land to connect to Sump 89. Please see Chapter 2, Text Changes, for more detail on how the Draft EIR text has been revised.



October 28, 2008

Shelly Amrhein  
City of Sacramento  
Development Services Department  
300 Richards Boulevard, 3<sup>rd</sup> Floor  
Sacramento, CA 95811

**RE: Delta Shores Draft Environmental Impact Report (DEIR); P06-197  
SMAQMD#: 200600974**

Thank you for the opportunity for the Sacramento Metropolitan Air Quality Management District (SMAQMD) to review and comment on the Delta Shores DEIR. Staff comments are as follows:

**Greenhouse Gas (GHG) Emissions**

1. A significance determination is an important step in the evaluation of GHG emissions. Other projects in the Sacramento County area, both larger and smaller than Delta Shores, have made GHG significance findings and have also chosen to apply mitigation measures to help reduce GHG emissions. However, notwithstanding a significance finding, the SMAQMD would like to see a format for both the *Greenhouse Gas Emissions Reduction Measures/Design Strategies* found in Table 5.10-7 and the list of *Attorney General Recommendations for Addressing Global Warming* found in Appendix K that better ensures a commitment to implementation and enforceability. The recommendation of the SMAQMD is to include these GHG reduction measures in the form of mitigation and included in a Mitigation, Monitoring and Reporting Program. 8-1
2. The SMAQMD recommends providing a more complete explanation for any measure in Appendix K the *Attorney General Recommendations for Addressing Global Warming* that is not being implemented on the Delta Shores project. 8-2

**Construction PM Mitigation**

1. Section 5.3-2, Mitigation incorrectly refers to "... the District's requirement to grade no more than 15 acres per day...". The 15 acres is not a required limitation, but is a screening criterion to determine what level of mitigation from Table B.1 in the *Guide to Air Quality Assessment (Guide)* to apply to a project. The Guide also states that "*if a project is larger than the screening values, or if the project cannot undertake the mitigation measures that would be required, the project proponent should model the project using a PM modeling program.*" The SMAQMD does not recommend limiting a project of this size to 15 acres 8-3

actively graded because monitoring and enforcement of such a measure is problematic. At this time the SMAQMD recommends following the protocol in the Guide for PM mitigation.

↑  
8-3  
(con't.)

### Off Site Construction Mitigation Fee

1. Off site construction fee calculations sheets are not shown in Appendix E as indicated in the notes on Table 5.3-6.
2. Table 5.3-5 correctly lists the NOx construction emissions calculated through the use of URBEMIS 9.2.4; however, the figures for the 2010 construction year were not carried forward correctly to Table 5.3-6 for calculation of the off site mitigation fee. The \$89,667 indicated for 2010 in Table 5.3-6 does not account for the overlap in the mass grading (159 lbs/day) and building (160 lbs/day) phases clearly shown in the URBEMIS results in Time Slice 6/1/2010 – 12/31/2010 (154 days). The revised calculation for the 2010 is \$224,688 and when added to the remaining construction years will result in a mitigation fee of \$1,009,233. With the addition of the 5% administrative fee along with all corrections as noted above, the total off site construction mitigation fee owed the SMAQMD is \$1,059,695 or \$1454 per acre, given the current value of \$16,000 per ton of NOx.

8-4  
8-5


### Toxic Air Contaminants Mitigation

1. The project proponents are proposing to build a number of residential units within 500 feet of the freeway which have been shown to be at relatively low risk levels by both the evaluation following the SMAQMD *Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways* (Protocol) and the subsequent Health Risk Assessment. However, given the proximity to the freeway, the SMAQMD would like to recommend strong consideration be given to the planting of trees between the freeway and the receptors as an added barrier. As cited in the Protocol, recent studies indicate that all forms of vegetation are effective with redwood and deodar cedar trees being most effective.

8-6

Any questions regarding these comments can be directed to Charlene McGhee of my staff at [cmcghee@airquality.org](mailto:cmcghee@airquality.org) or 916.874.4883.

Sincerely,



Larry Robinson

Sacramento Metropolitan AQMD

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**LETTER 8: SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT****Response to Comment 8-1**

The City acknowledges the comments submitted by the SMAQMD that encourage the City to identify thresholds of significance for greenhouse gas (GHG), adopt an impact analysis with appropriate mitigation, and provide a clear conclusion regarding the significance of the City's contribution to climate change. However, the City determined that such an approach to addressing global climate change at this time would be premature.

Ultimately, the criteria for determining the significance of the impact of the GHG emissions of land development and transportation at the regional level on climate change on the global level will likely utilize AB 32 target GHG reductions and/or a quantitative emission threshold over pre-project levels. However, to apply such criteria, at the very least, the regional emission inventory must be completed. Until this information is available, determination of impacts and undertaking measurement of the effectiveness of mitigation measures is premature.

As discussed in section 5.10, Global Climate Change, and on pages 2-25 and 2-26 in Chapter 2, Project Description, the project has included numerous elements to reduce its contribution of GHG and to reflect the principles of smart growth. However, it is difficult, if not impossible, to quantify the benefits of these various design elements. The project has also prepared an Air Quality Management Plan (AQMP) that lists various steps the applicant has taken to help reduce the contribution of GHG emissions (see Appendix F of the Draft EIR). All of these components will help reduce the project's contribution to global climate change.

The City is continuing to work with its regional partners in identifying an inventory on a broader basis. With an agreed-upon inventory, and with the magnitude of needed changes then apparent, local agencies, including the City of Sacramento, can provide decision-makers, the public and affected industries with meaningful information about new rules, new programs and new initiatives that will produce the changes needed. Furthermore, the importance of a regional approach needs to be reiterated. The City's cooperation with the Sacramento Area Green Partnership is consistent with the City's view that adoption of new strategies to respond to global warming should be done on a regional, statewide and national level. We cannot rely on the actions of individual agencies, using differing inventory and reduction methodologies, to achieve the reductions needed. Focus on regional, statewide and national approaches will ensure not only effectiveness, but fairness. This is consistent with the recommendation of the CARB's *Draft Scoping Plan* to identify regional reduction targets for the local government land use and transportation-related sector. Please see also Responses to Comment 14-64 through 14-67.

**Response to Comment 8-2**

Please see Response to Comment 14-67 which addresses measures listed in Appendix K of the Draft EIR.

**Response to Comment 8-3**

The comment states that it is not an SMAQMD recommendation to limit grading sites to 15 acres or less and that prescribed PM control protocols be implemented during construction of the proposed project. SMAQMD has previously approved an Air Quality Management Plan for the Delta Shores Project which is found in Appendix F to the DEIR.

The SMAQMD CEQA Guide Appendix B states: "If a project is larger than the screening values [as given in Table B1], or if the project cannot undertake the mitigation measures that would be required, the project proponent should model the project using a PM modeling program." Table B1 defines 15 acres as the maximum parcel size below which dispersion modeling is not required. This acreage limit was included in Mitigation Measure 5.3-2 not because it is a SMAQMD policy, but to assure that all the measures SMAQMD recommends, which have been included in Mitigation Measure 5.3-2, would protect nearby receptors from PM<sub>10</sub> impacts (i.e., dust) due to project construction activities.

**Response to Comment 8-4**

The commentor is correct. The calculation sheets were inadvertently omitted from the Draft EIR. Please see the calculation sheets included at the end of this chapter.

**Response to Comment 8-5**

The comment states that because certain construction phases would overlap, the NO<sub>x</sub> mitigation fee estimates in the Draft EIR underestimate the mitigation fee that the project applicant would have to pay.

The Draft EIR fee estimates were made with the best construction phasing and equipment data available at the time. But Mitigation Measure 5-3-1 makes a provision for its adjustment when more accurate data becomes available during construction, specifically: "*In consultation with SMAQMD staff, and prior to the issuance of each grading permit, a construction mitigation fee and appropriate SMAQMD administrative fee shall be calculated and paid to the district based on the number of acres to be graded and the equipment to be used during grading activities. Fees shall be calculated using the Carl Moyer cost effectiveness figure of \$16,000 per ton of NO<sub>x</sub> plus the 5% administrative fee, or applicable fee in effect at the time the grading permit is issued.*"

**Response to Comment 8-6**

As shown on Figure 2-3, Land Use Plan on page 2-9 of the Draft EIR, a landscaped buffer is proposed between the residences and I-5 in the western portion of the site. The applicant has indicated that the trees to be planted in this area would be subject to approval by Caltrans. If deemed appropriate by Caltrans, fine needled trees would be planted in this area. Please see also Responses to Comments 14-62 and 14-63 regarding the use of vegetative buffers.



Municipal Services Agency

Terry Schutten, County Executive

Paul Hahn, Agency Administrator

Planning and Community Development

Robert Sherry, Director

County of Sacramento

October 23, 2008

Shelly Amrhein, Associate Planner  
City of Sacramento, Development Services Department  
Environmental Planning Services  
300 Richards Boulevard, Third Floor  
Sacramento, CA 95811

**RE: DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE DELTA SHORES PROJECT**

Dear Ms. Amrhein:

Thank you for the opportunity to review and provide comments regarding the Draft Environmental Impact Report (DEIR) for the Delta Shores Project. Sacramento County Planning Department staff has reviewed these documents and have some comments on issues that may affect the unincorporated County.

First, Sacramento County is sensitive to the proposed project's potential affect on the unincorporated community of Freeport, which is located adjacent to the project area. Freeport is a small community with a rural character and historical significance. Historically, Freeport was a major transportation hub for both river traffic as well as rail traffic during the late 1800s. While much of that significance has decreased over time, it continues to retain much of its history and character in its buildings and continued agricultural and recreational opportunities. The residents have expressed concern to the County that the Delta Shores Project would increase traffic along Freeport Boulevard and exert pressures to urbanize their small town, potentially altering the nature of the community. The County recognizes that the DEIR and the developer have made note of this concern and attempted to alleviate it by providing a mix of low-density residential land uses that would provide a smooth transition between the more intense land uses of the Delta Shores Project and the town of Freeport. Also, the traffic study within the DEIR indicates traffic mitigation for Freeport Boulevard could be mitigated to a less than significant level. To ensure the best solution is reached, the County advocates that the City of Sacramento work with the residents of Freeport to coordinate land uses and appropriate traffic controls adjacent to Freeport that meets both the project's needs and respects the history and character of their community.

9-1

Second, there have been numerous meetings between Sacramento County and Freeport residents (some of which were attended by City of Sacramento staff) concerning the provision of limited urban services to the town of Freeport. Freeport residents have expressed an interest in acquiring water and sewer services for their community. The County recently approved a General Plan Amendment that allows the provision of such services to this community, and County staff is currently working on securing grants from the United States Department of Agriculture to pay for the extension of these services to Freeport. The County would like to ensure that the citizens of Freeport are eventually provided with water and sewer services, whether they are provided through grant funds or through the development of the Delta Shores Project.

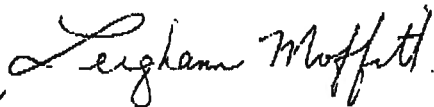
9-2

Overall, the project would successfully implement a number of goals supported by the County, including the protection of the Sacramento Regional Wastewater Treatment Plant Bufferlands (the Bufferlands) and development of a contiguous trail/bike system. The Bufferlands is an important preservation area to the County and we would like to limit impacts from the Delta Shores development as much as possible. To this end, the County supports the 200' buffer along the south portion of the project area between the proposed commercial development and the Bufferlands to the south. Also, the County supports the effort made to build a trail and bikeway network through the area; however, it is unclear whether this system would connect to the trails along the Sacramento River. It is very important to Sacramento County that connections are made between important bike/trail paths to create a complete regional trail system. A pedestrian/bike overpass crossing Interstate 5 could address this issue and provide additional connectivity to the regional trail and bike system that exists along the Sacramento River.

9-3

Again, Sacramento County would like to thank the City of Sacramento for the opportunity to comment on the Draft Environmental Impact Report for the Delta Shores Project. If you have any additional questions or would like more information related to any of our comments or recommendations, please feel free to contact Tim Tadlock or Dave Defanti at 916-874-6141.

Sincerely,

*for*   
 Robert Sherry, Planning Director

- c: Supervisor Don Nottoli
- Bob Davison, Manger of Special Districts



**LETTER 9: COUNTY OF SACRAMENTO, ROBERT SHERRY**

**Response to Comment 9-1**

The comment notes that the development plan and EIR analysis recognize the potential effects of the proposed Delta Shores project on the unincorporated community of Freeport. Specifically, the County states the project attempts to alleviate concerns by providing a mix of low-density residential land uses that would provide a smooth transition between the more intense land uses in the project, and the traffic study indicates traffic mitigation for Freeport Boulevard could be mitigated to a less-than-significant level. The County encourages the City to work with the residents of Freeport to coordinate land uses and appropriate traffic controls that meets both the project's needs, and respects the history and character of the Freeport community. The County's suggestions have been forwarded to the decision-makers for consideration during the development process.

**Response 9: Comment 9-2**

Comment noted. The City supports the County in their efforts to provide water and sewer service to the Freeport community.

**Response to Comment 9-3**

Comment noted. As shown in Figure 2-5 on page 2-19 of the Draft EIR, the project is proposing to construct class I off-street multi-use trails throughout the project site connecting to existing neighborhoods to the north. The project is not proposing to connect to any off-site trails along the Sacramento River because there is no off-street bike trail along the portion of the Sacramento River to the west of the project site. The bike trail along the Sacramento River currently ends just north of the Pocket neighborhood, far north of the project site.

There is a plan for a bike trail along the southern boundary of the Delta Shores project site. The planned trail would mostly fall outside of the city limits, including the overcrossing of I-5. The project applicant has dedicated a 20-foot-wide easement to the City along the southern border of the west side of the project site which would be where the trail would go. Since the remaining portion of the trail is outside of the project site and the city limits, the city has chosen to not request any more than the 20-foot-dedication of easement at this time.





**Sacramento City Unified School District**  
 5735 47<sup>th</sup> Ave ,Sacramento, CA 95824  
 P.O. Box 246870, Sacramento, CA 95824-6870  
 (916) 643-7400

October 23, 2008

Shelley Amrhein  
 Associate Planner  
 City of Sacramento, Development Services Department  
 Environmental Planning Services  
 300 Richards Boulevard, Third Floor  
 Sacramento, CA 95811  
 FAX#: (916) 808-1077

Re: Comments by Sacramento City Unified School District on the Draft Environmental Impact Report for the Delta Shores Project (P06-197)

Dear Ms. Amrhein:

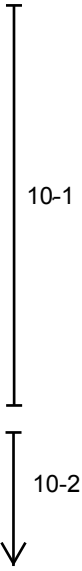
This letter provides comments by the Sacramento City Unified School District ("District") on the Draft Environmental Impact Report for the Delta Shores Project ("DEIR"). We hope to have open, constructive dialogue about the impact that the Project will have on school facilities and the ability of the District to continue to provide quality educational facilities to Sacramento residents. We look forward to working with the City, the project applicant, and involved parties to address school facilities concerns in a way that maximizes the project's potential.

Impacts of the Project

As you know, quality school facilities are vital to the viability and health of any development project. According to the DEIR, currently the Project plans call for 5,092 residential units, and will generate 2,734 K-12 students, all of whom will reside within the Sacramento City Unified School District. The DEIR's estimate of the potential student population generated, by grade level, is as follows:

- 1,640 Elementary school students (grades K-6)
- 492 Middle school students (grades 7-8)
- 601 High school students (grades 9-12)

These figures will vary significantly as housing densities are calculated. The DEIR acknowledges a need for two new elementary school sites and expansion of existing middle schools and an existing high school. On page 5.7-23 of the DEIR, the District is quoted as



Shelley Amrhein  
October 23, 2008  
Page 2

option to not develop one of the schools and instead develop that area with low density residential." Although this option is a remote possibility, it is important to note that the option would certainly require the expansion of other neighboring elementary schools to accommodate the over 1,000 additional elementary students generated by the project. In addition, by the DEIR's own estimates, existing middle school and high school facilities would have to be expanded to accommodate an additional 625 middle school students and 760 high school students generated by the project, as well. Neither one nor two new elementary schools are adequate solutions, alone.

↑  
10-2  
(con't.)

The standard developer fees that would be assessed for such a project will not begin to address the costs for new and expanded school facilities acknowledged by the DEIR. (Gov. Code, §§ 65995, 65995.5.) Although the Legislature has declared developer fees to be full and adequate mitigation under CEQA, the DEIR acknowledges that developer fees are "often insufficient to fund 100 percent of new school facility construction." Both the District and the Developer agree that developer fees will be, in conjunction with allowable state funding attributable to the project, insufficient to fully fund the new school construction and/or expansion costs necessary to accommodate the students generate by the project. The District and Developer also agree that additional fees or other obligations in-lieu of fees will be necessary in order to fully and adequately mitigate the impacts of the project.

10-3

The Legislature has long intended that there be coordinated planning for school sites between a school district and a local city or county. The Legislature has set out the need for schools and cities or counties to meet and coordinate "[o]ptions for the siting of new schools and whether or not the local city or counties existing land use element appropriately reflects the demand for public school facilities, and ensures that new planned development reserves location for public schools in the most appropriate locations." (Gov. Code, §§ 65352.2.)

10-4

There are ways that the City and the District can coordinate and plan for the provision of adequate school facilities.

Dedication Under Subdivision Map Act

First, Section 66478 of the Subdivision Map Act states that "a city or county may adopt an ordinance requiring any [developer who develops in a school district] to dedicate to the school district . . . such land as the local legislative body shall deem to be necessary for the purpose of constructing thereon such elementary schools as are necessary to assure the residents of the subdivision adequate public school service."

10-5  
↓

Section 66478 is a dedication measure separate and apart from the developer fee structure. The Subdivision Map Act contains several provisions requiring a "dedication" by a developer to address needs created by the new development. (See Gov. Code § 66475 (streets and utilities).) These dedications also differ from mitigation measures usually imposed under the authority of the California Environment Quality Act ("CEQA"). Similarly, the requirement for the dedication of land to a school district in section 66478 of the Subdivision Map Act is not a

Shelley Amrhein  
October 23, 2008  
Page 3

CEQA mitigation measure because its purpose is not to address overcrowding in the surrounding schools. Instead, section 66478 states that the dedication of land is intended to "assure the residents of the subdivision adequate public school service." The section addresses the needs of the residents of the new development, not the needs of the school district.

↑  
10-5  
(con't.)

The City and the District should discuss whether and how the City of Sacramento can adopt or amend an ordinance to set aside land for elementary schools that can serve the Project.

Additional Fees Due to Overcrowding Under Government Code Section 65970

Resulting overcrowding may be addressed through additional developer fees. There exists under Government Code section 65970, et seq., a process whereby a school district can find that conditions of overcrowding exist in "one or more attendance areas" that will impair educational programs. (Gov. Code § 65971, subd. (a)(1).) This process also requires a finding that no reasonable, sufficient methods of mitigation are available. (Gov. Code § 65971, subd. (a)(2).) At that point, the City can assist with determining that fees or other obligations in addition to the statutory fees are appropriate in certain circumstances. (Gov. Code, §§ 65972 & 65974.)

10-6

California Environmental Quality Act (CEQA)

We should also note that the CEQA analysis for this project can and should address the adequacy of school facilities. While state law clarifies that a project may not be denied solely on the basis of inadequate school facilities, it does not prevent a city from analyzing schools and concluding that there are significant impacts that remain unmitigated. Specifically, a CEQA analysis for new development should properly analyze whether the developer fees in fact mitigate the impacts of the project. If they are found not to do so, the City would then have to adopt a statement of overriding considerations, finding that the merits of the project outweigh the unmitigated impacts. (Pub. Res. Code §§ 21002, 21002.1 & 21081; CEQA Guidelines §§ 15021 (a)(2) & 15091 (a) & 15096 (g).)

10-7

Conclusion

These are only a few of the options available. The City of Sacramento has ample opportunity to work with the Sacramento City Unified School District, the project applicant, and interested parties to address the adequacy of school facilities and overcrowding. As you know, the best solutions for these complex problems come from collaborative efforts and creative discussions. We look forward to an open dialogue and continued close communication about this Project.

10-8

Sincerely,



Tom Barentson  
Deputy Superintendent/CFO



**LETTER 10: SACRAMENTO CITY UNIFIED SCHOOL DISTRICT**

**Response to Comment 10-1**

Comment noted. The information provided is consistent with the determination of students presented on page 5.7-22 of the Draft EIR.

**Response to Comment 10-2**

Comment noted. Impact 5.7-5 on page 5.7-22 of the Draft EIR addresses the issue of adequate school facilities to serve the project.

**Response to Comment 10-3**

Comment noted. Government Code Sections 65995 through 65998 provide the exclusive methods for mitigation of impacts of new development on schools for purposes of CEQA. Nonetheless, the project applicant will continue to work with the school district on determining ways in which the schools can best be provided.

**Response to Comment 10-4**

Comment noted. Please see Response to Comment 10-3, above.

**Response to Comment 10-5**

Comment noted. The project includes two 10-acre sites designated for future elementary schools which will be reserved for acquisition by the school district pursuant to state law. Government Code Sections 65995 through 65998 provide the exclusive methods for mitigation of impacts of new development on schools for purposes of CEQA. Nonetheless, the project applicant will continue to work with the school district on determining ways in which the schools can best be provided.

**Response to Comment 10-6**

Comment noted. Please see Response to Comment 10-3.

**Response to Comment 10-7**

The Draft EIR includes an analysis of impacts to local schools, see the discussion on pages 5.7-22 through 5.7-23 under Impact 5.7-5. The discussion notes the funding challenges associated with the provision of school facilities.

The project applicant and/or developer(s) would be required to contribute fees towards school facilities funding. Funding for new school construction is provided through state and local revenue sources. Due to the passage of Proposition 1A in November 1998, SB 50 (Chapter 407, Statutes of 1998) was enacted to change the way school districts can levy developer fees. SB 50 has resulted in full state preemption of school mitigation. SB 50 enables the district to collect a fee that is equal to the current statutory Level I fees. Where justified, SB 50 allows the

district to collect additional fees in an amount that would approximate 50 percent of the cost of additional facilities. The collection of the 50 percent mitigation fees is with the assumption that the State School Facility funding program remains intact and that state funds are still available for partial funding of new school facilities. If the funds are not available, districts may collect up to 100 percent mitigation fees under certain circumstances. Although school impact fees are often insufficient to fund 100 percent of new school facility construction and operation, the California State Legislature has declared the school impact fee to be full and adequate mitigation under CEQA.

**Response to Comment 10-8**

Comment noted. The City is available to work with the district to address the adequacy of school facilities as the project moves forward and residential housing is developed. Please see Response to Comment 10-3.





**SACRAMENTO COUNTY FARM BUREAU**

8970 Elk Grove Boulevard • Elk Grove, California 95624-1946  
(916) 685-6958 • Fax (916) 685-7125

October 23, 2008

Shelly Amrhein, Associate Planner  
City of Sacramento, Development Services Department  
Environmental Planning Services  
300 Richards Blvd. Third Floor  
Sacramento, CA 95811

**RE: Proposed Delta Shores Project**

Dear Ms. Amrhein:

The Sacramento County Farm Bureau has significant concerns regarding the proposed Delta Shores project and offers these comments.

The proposed Delta Shores project will pave over some of the County's remaining prime farmland with no discernible mitigation to help preserve farmland in our region. The 782-acre project site includes approximately 765 acres of agricultural land located south of the Meadowview neighborhood in the area of the City of Sacramento. The majority of the project site is currently being farmed and is in active agricultural production. Approximately 200 acres of the project site is prime agricultural land.

The DEIR is failing to mitigate for loss of agricultural land. Failure to mitigate for loss of agricultural land violates CEQA. Jurisdictions in the region require at least 1:1 mitigation for the intent purposes of agriculture only. Anything less than 1:1 mitigation for agriculture is unacceptable and this project should be no exception.

It should be recognized that agriculture's economic impact to Sacramento County is over \$364 million in farm gate sales and over \$1.2 billion in supportive industries, such as transportation, processing and sales. Farm Bureau respects the position of the City and County's need to grow to accommodate future population growth. However, agriculture should be of highest priority and protected against urban sprawl because of its economic contribution. Agriculture is an important economic engine that drives the vitality of our economic health, habitat for wildlife and food and fiber for people around the world. **We urge that infill projects and revitalization of existing developed areas be the priority before the development of existing farmland.**

11-1

11-2

*To Represent and Promote Agriculture in Sacramento County*

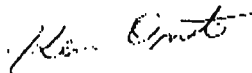
page 2 of 2  
comments to the proposed Delta Shores project  
Sacramento County Farm Bureau

In closing, the proposed Delta Shores project does not adequately address the impacts to agriculture. Farm Bureau urges infill projects be a priority before further expansion. If expansion must occur, we ask this project remain consistent with other local jurisdictions that require at least 1:1 mitigation for the intent purposes of agriculture only and in accordance with CEQA requirements.

11-3

Thank you for the opportunity to comment and we would like to be included in notice of new documents and any hearings on this project.

Sincerely,



Ken Oneto, President  
[sacfarmbur@msn.com](mailto:sacfarmbur@msn.com)  
916-685-6958

## LETTER 11: SACRAMENTO COUNTY FARM BUREAU

### Response to Comment 11-1

It is not the policy of the City of Sacramento to require mitigation for the loss of farmland, since it is an urban jurisdiction and seeks to promote urban development within its city limits rather than forcing new development into areas remote from the urban core. Any agricultural activities being conducted within the city limits are considered temporary in nature until a more intense land use can take place. Nonetheless, the project applicant has voluntarily agreed to preserve farmland at a one to one (1:1) mitigation ratio by preserving approximately five hundred (500) acres at the Brannan Island Farms site, with another approximately two hundred eighty-two (282) acres to be preserved elsewhere in Sacramento County; the project will be specially conditioned to do so in its Development Agreement.

Consequently, the text on page 5.2-14 of the Draft EIR is revised as follows:

#### Mitigation Measure

Although not required, the project applicant has agreed to comply with the following mitigation measure. Compliance with this measure will further ensure the impact is reduced to a **less-than-significant level**.

5.2-1 The Development Agreement shall include a special condition requiring the preservation of farmland at a 1:1 mitigation ratio by preserving approximately five hundred (500) acres at the Brannan Island Farms site and approximately two hundred eighty-two (282) acres elsewhere in Sacramento County at a site approved by the City comprised of Prime Farmland and Farmland of Statewide Importance, prior to the issuance of any grading permit, in order to reduce any impacts arising from the conversion of the current agricultural uses at the project site to urban development.

*None required.*

### Response to Comment 11-2

According to the most recent information available from the 2004 FMMP updated through a review of 2006 aerial maps and ground truthing, there are approximately 3,985 acres of Important Farmland within the city boundaries. This total includes 1,470 acres of Prime Farmland, 545 acres of Farmland of Statewide Importance, 115 acres of Unique Farmland, and 1,860 acres of Farmland of Local Importance. Important farmlands, by category, at the project site are listed in Table 5.2-2 on page 5.2-5 in the Draft EIR.

The project site is located within the city boundaries and has been designated for urban development for over 25 years. In 1983, the City approved the Delta Shores Planned Unit Development (PUD) project which was intended to be comprised of predominately employment-generating uses (i.e., high technology industrial, office, commercial, and retail) with limited

residential development. However, that project was never developed. In 1988, the City's General Plan designated the site for Industrial-Employee Intensive uses with smaller areas designated for Community/Neighborhood and Regional Commercial and Office, Low and Medium Density Residential, Parks-Recreation-Open Space, and Public/Quasi-Public-Miscellaneous uses.

As an urban jurisdiction, the City of Sacramento intends to develop all land within its boundaries to accommodate future growth of the city. Although the city still contains agricultural land or land designated Important Farmland, much of this land has been designated and zoned for development (like the project site) and in many instances has been entitled for future urban development, in part to limit the conversion of agricultural lands outside of the city limits.

The City acknowledges the importance of agricultural land and by keeping development within established growth areas the City is helping to limit urban sprawl into other agricultural regions, thereby helping to minimize or reduce impacts on agricultural resources and operations in more agriculturally productive areas. Available water and sewer infrastructure already exists adjacent to the project site and with the planned extension of Cosumnes River Boulevard through the project site and the I-5 interchange, access to I-5 and local roadways would be provided making the project site accessible for future development. In addition, a full storm water drainage system exists at the project site which was installed many years ago for the previously planned development that never came to fruition.

Impact 5.2-1 in the Draft EIR evaluates the potential for the proposed project to affect farmlands. The current CEQA Guidelines Appendix G does not require an agency to find that the loss of prime agricultural land will be a significant impact on the environment, as was the case under the former Appendix G prior to May 1997,<sup>2</sup> thus triggering the need for mitigation. The City of Sacramento has identified its thresholds for determining significance on page 5.2-14 in the Draft EIR. Based on these, the Draft EIR does not identify any significant impacts related to loss of important farmlands. Therefore, the City has not failed to mitigate an impact, as asserted by the comment. The impact evaluation on page 5.2-14 explains how the City concluded the conversion of agricultural land would not be a significant environmental effect. While other jurisdictions may choose to adopt 1:1 mitigation programs, there is no requirement that all jurisdictions adopt such a program.

### **Response to Comment 11-3**

Comment noted. Please see Response to Comment 11-1, above.

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2 Michael H. Remy and others, Guide to CEQA, 11th edition, 2007, p.220.



915 L Street, C-425  
 Sacramento, Ca. 95814  
 916-447-4956  
 www.swainsonshawk.org  
 swainsonshawk@sbcglobal.net

October 19, 2008

Shelly Amrhein, Associate Planner  
 City of Sacramento, Development Services Department  
 Environmental Planning Services  
 300 Richards Boulevard, Third Floor  
 Sacramento, CA 95811  
 FAX#: (916) 808-1077

Dear Ms Amrhein:

Friends of the Swainson's Hawk has reviewed the DEIR for the Delta Shores project (P06-197), and offers these comments.

The 782-acre project site includes approximately 765 acres of agricultural land located south of the Meadowview neighborhood in the south area of the city of Sacramento. The majority of the project site is currently undeveloped and used for agricultural production (wheat, alfalfa, oats). Approximately 200 of these acres are prime agricultural land. Most of the latter is west of I-5, where the project will have its greatest impact on survival of the Swainson's Hawk. The area west of I-5 should not be developed but preserved in agriculture. This area could continue to grow food for Sacramentans for centuries and provide riparian open space which would benefit Sacramento residents and species which use the Sacramento River riparian corridor.

**Reduce Project Footprint to Reduce Impacts and Be Consistent with General Plan.** The project would be much more consistent with the City's policies and requirements for protecting natural resources were the project to be confined to the portion east of I-5, reducing the footprint of the project, it's infrastructure needs and its impacts significantly. This approach would be more consistent with the approach in North Natomas where the Natomas Basin Habitat Conservation Plan requires the conservation of agriculture and habitat within one mile of the inside toe of the Sacramento River levee. The City has the opportunity for a similar conservation area in this location which would be part of a network of preserves along the Sacramento River south of the City (Regional Sanitation Bufferlands, Stone Lakes Wildlife Refuge).

**Failure to mitigate for loss of agricultural land violates CEQA.** The DEIR states that cumulative impacts on agricultural land loss are less than significant because "if Delta Shores is not developed, the development would go to county land that is now agricultural." Such a finding is not supported by any evidence that the project would somehow prevent development of an equal or greater area of farmland in the County's jurisdiction. CEQA requires that impacts

12-1

12-2

of loss of farmland be mitigated to the extent feasible. Failure to do so, as proposed by the DEIR, would be inconsistent with CEQA and would thus invite litigation. The County's current development expansion seems targeted to rangelands in the east county, not to prime farmland. There is no evidence that the County has any intention of approving urban development of farmland south of the City. Nearby land use jurisdictions require mitigation for farmland loss at 1:1 ratio and because of this are guaranteeing the preservation of farmland in perpetuity with each loss from urbanization. The City has an obligation to participate in farmland loss mitigation at a 1:1 ratio. City of Elk Grove, City of Davis and SAFCA have all required mitigation for loss of farmland at this ratio in recent EIRs. As you know, the City of Elk Grove lost the Lent Ranch lawsuit a few years ago because it failed to mitigate for loss of farmland. The Sacramento County Superior Court's ruling on that issue was upheld by the Court of Appeal in an unpublished opinion. A finding that mitigation for loss of farmland is "infeasible" would be inconsistent with CEQA and may expose the project EIR to CEQA litigation.

↑ 12-2 (cont.)  
12-3  
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**Biological Impacts.** FOSH has the following comments on the biological analysis and mitigation measures selected. These problems are sufficiently severe that the EIR should be recirculated after this section is revised to be consistent with CEQA.

**Nesting Habitat Mitigation.** No mitigation has been provided for the removal of nesting habitat, and no reason is stated which would support a finding that mitigation for loss of potential nesting habitat is somehow infeasible.

12-4  
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**Foraging Habitat Mitigation.** 5.4-3 *Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio, or a ratio acceptable to CDFG.<sup>30</sup> Suitable foraging habitat includes alfalfa or other low growing row crops. Preservation could occur through the purchase of conservation easements or fee title of lands with suitable foraging habitat. Land and easements shall be approved by the City in consultation with CDFG.*

There are a number of problems with Mitigation Measure 5.4-3. Substantial evidence does not support a finding that the mitigation measure reduces impacts of loss of SWH foraging habitat to less than significant or a finding that impacts have been reduced to less than significant.

12-5  
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1. The location of the proposed mitigation land is not identified nor are there any standards or criteria stated for what would be a suitable location. It is axiomatic that mitigation land for loss of SWH foraging habitat be as close as possible to the site of the impact, so that the species population which is affected by the project benefits from the mitigation. Under MM 5.4-3, mitigation land located 20 miles distant from the project site would be deemed compliance, which is ridiculous given the availability of high quality foraging habitat in close proximity.

2. The DEIR proposes that City make the determination as to whether the mitigation land is suitable SWH foraging habitat. There is no evidence that City staff have the expertise to make such determinations or to judge the validity of any mitigation proposal by Applicant. The mitigation measure mentions consultation with CDFG. This is a poor substitute for requiring CDFG approval for the mitigation land chosen. It is essential that any mitigation lands, and indeed the terms and conditions of conservation easements acquired, first be approved by California Department of Fish and Game as appropriate mitigation. CDFG is the trustee agency

12-6  
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capable of judging the suitability of mitigation lands in conjunction with other mitigation programs in the same area, and has been working with other nearby jurisdictions on making such determinations. There is no excuse for the City to fail to do so for this project.

12-6  
(con't.)

3. Mitigation measure 5.4.3 lacks requirements for payment of a fee for monitoring and enforcement of compliance by landowner with the terms of the SWH conservation easement. CEQA requires that mitigation measures be enforceable – Courts have overturned a number of project approvals where mitigation measures were not enforceable. Please consult with CDFG to determine standard language to ensure the administrative costs, maintenance and operation costs of mitigation land, including monitoring and enforcement, are fully covered before grading permits are issued. Since other jurisdictions routinely include this language in EIRs, it should be fairly easy for the City to find the most up to date version to include in this EIR. Without these fees and designation of an entity to enforce compliance with the easement in perpetuity, the permanent maintenance of the dedicated land to Swainson’s Hawk foraging cannot be assured, and the project would be noncompliant with CEQA’s requirement that mitigation measures be enforceable

12-7

4. The easements or title should be held by CDFG and a non profit conservation organization and not the City alone. Again, please refer to CDFG for specific guidance. There should be no opportunity for a future City Council to dispose of the land for a different purpose than stated in this EIR. There is no evidence that City has the expertise to monitor and enforce compliance with a conservation easement in perpetuity.

12-8

**White Tailed Kite.** The DEIR fails to provide the level of protection for reproductive activity and avoidance of take for white tailed kite. White tailed kite is fully protected by Fish and Game Code Section 3511(b)(12), which means that individuals of the species or eggs cannot be taken even if incidental to otherwise lawful activity. Therefore, white tailed kite nesting activity is entitled to at least equivalent protection for nesting activity as the Swainson’s Hawk. Limiting the protection offered to white tailed kite to DEIR Mitigation Measure 5.4-4 instead of using MM 5.4-5 is not adequate protection as required by CEQA. Substantial evidence does not support the finding that MM 5.4-4 reduces impacts to less than significant or mitigates impacts to the extent feasible.

*5.4-4 a) Between March 1 and August 1, the project applicant or developer(s) shall have a qualified biologist conduct nest surveys within 30 days prior to any demolition/ construction or ground disturbing activities that are **within 500 feet of potential nest trees**. A pre-construction survey shall be submitted to CDFG and the City of Sacramento that includes, at a minimum: (1) a description of the methodology including dates of field visits, the names of survey personnel with resumes, and a list of references cited and persons contacted; and (2) a map showing the location(s) of raptor and migratory bird nests observed on the project site. If no active nests of MBTA, CDFG or USFWS covered species are identified then no further mitigation is required.*

12-9

*b) Should active nests of protected bird species be identified in the survey conducted in accordance with Mitigation Measure 5.4-4(a), the applicant, or developer(s), in consultation with the City of Sacramento and CDFG, shall delay construction in the vicinity of active nest sites during the breeding season (March 1 through August 1) while the nest is occupied with adults and/or young. A qualified biologist shall*

monitor any occupied nest to determine when the nest is no longer used. If the construction cannot be delayed, avoidance shall include the establishment of a nondisturbance buffer zone around the nest site. **The size of the buffer zone shall be determined in consultation with the CDFG, but will be a minimum of 100 feet.** The buffer zone shall be delineated with highly visible temporary construction fencing.

c) No intensive disturbance (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated within the established buffer zone of an active nest between March 1 and August 1.

d) If demolition/construction activities are unavoidable within the buffer zone, the project applicant shall retain a qualified biologist to monitor the nest site to determine if construction activities are disturbing the adult or young birds. If abandonment occurs the biologist shall consult with CDFG or USFWS for the appropriate salvage measures. This could include taking any nestlings to a local wildlife rehabilitation center.

[Emphasis added]

The notion that nesting SWH or white-tailed kites will not suffer harm from construction activities as near as 100 feet from the nest is contrary to all credible biological authority and is not supported by substantial evidence, as is the notion that it may infeasible to impose a 500-foot buffer between construction activity and a nest site. Where nest sites exist within a half mile of construction sites, qualified biologist monitoring should be required at all times to stop construction if white tailed kite nest site disturbance is noted. Limiting monitoring to within the buffer zone is not adequate protection.

#### Swainson's Hawk Avoidance of Take Measures.

PP 5.4.34 and 35 describe Swainson's Hawk avoidance of take measures as follows. Substantial evidence does not support the assertion that this measure reduces impacts to less than significant.

Implementation of Mitigation Measure 5.4-5(a) would require surveys for nesting Swainson's hawks to confirm the presence of active nests during the appropriate nesting season. If construction activities cannot be avoided during the nesting season, then implementation of Mitigation Measure 5.4-5(b) ensures that active nests are protected by instituting appropriate buffer zones and avoiding or minimizing disturbance to any nesting birds reducing the impact to a ***less-than-significant level***.

5.4-5 a) Prior to any demolition/construction activities that occur between March 1 and September 15 the applicant or developer(s) shall have a qualified biologist conduct surveys for nesting migratory birds on the project site and within a quarter mile<sup>32</sup> of demolition/construction activities. **Surveys shall be conducted no more than 30 days prior to the start of any demolition or construction activities.** If no active nests are identified on or within a quarter mile of construction activities, a letter report summarizing the survey results shall be sent to the City of Sacramento and no further mitigation is required.

b) If active nests are found, measures that will avoid impacts to nesting migratory birds, including measures consistent with the CDFG Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California<sup>33</sup> shall be implemented as follows:

12-9  
(cont)

12-10

12-11



1. Nest trees shall not be removed unless there is no feasible way of avoiding their removal.
2. If there is no feasible alternative to removing a nest tree, a Management Authorization (including conditions to offset the loss of the nest tree) shall be obtained from CDFG with the tree removal period (generally between October 1 and February 1) to be specified in the Management Authorization.
3. No intensive disturbances (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated **within 1,320 feet (1/4 mile) or less, as determined by CDFG** (buffer zone as defined in the CDFG Staff Report) of an active Swainson's hawk nest or 500 feet for other nesting migratory birds, between March 1 and September 15 or until August 15 if a Management Authorization or Biological Opinion is obtained from CDFG for the project. The buffer zone may be reduced in consultation with CDFG.
4. If demolition/construction activities are unavoidable and are allowed by CDFG within the buffer zone, the project applicant or developer(s) shall retain a qualified biologist to monitor the nest to determine if abandonment occurs. If the nest is abandoned and the nestlings are still alive, the project proponent shall retain the services of a qualified biologist to reintroduce the nestling(s) (recovery and hacking). Prior to implementing, any hacking plan shall be reviewed and approved by the Environmental Services Division and Wildlife Management Division of the CDFG. The CDFG may allow reduction of the recommended buffers, if a qualified biologist is retained for on-site nest observations.

12-11  
(cont)

At minimum, the following changes are required to be consistent with CEQA:

- 1) qualified biological monitoring should occur throughout the construction period to determine if nesting activities are disturbed on site or within ½ mile of the construction site;
- 2) construction activities should be halted at direction of the monitoring biologist if nesting disturbance occurs;
- 3) no suitable nesting or potential nesting trees should be removed from the project site without full mitigation for nesting habitat removal;
- 4) no intensive disturbances that could cause nest abandonment or forced fledging should be initiated within ½ mile of an active Swainson's Hawk or white tailed kite nest, as provided in the CDFG Staff Report on Mitigation Measure for SWH.

12-12

Thank you for this opportunity to comment.

Please provide written response to our comments and notice of availability of new documents and of any hearings on this EIR and project.

Sincerely,

Judith Lamare  
 President, Friends of the Swainson's Hawk  
 judelam@sbcglobal.net  
 916-447-4956



**LETTER 12: FRIENDS OF THE SWAINSON'S HAWK, JUDITH LAMARE****Response to Comment 12-1**

As discussed in Chapter 4, Land Use Consistency and Compatibility, a portion of the area east of I-5 is currently designated and zoned for Regional, Commercial and Office uses as well as Community Neighborhood Commercial and Office under the City's 1988 General Plan and the 1983 PUD. The approach taken in the Natomas Basin (the Basin) would not be applicable here. The one-mile Swainson's hawk buffer was established because the majority of Swainson's hawk nests and suitable nesting trees in the Basin are located within one mile of the river. In areas of the City and County outside of the Basin, nest trees are more widely distributed. Therefore, it is more appropriate to consider nesting habitat in areas outside of the Basin on a project by project basis rather than to establish an arbitrary zone of protection in one area around the river. The concerns expressed by the commentor are noted and forwarded to the decision-makers.

**Response to Comment 12-2**

Please see Responses to Comments 11-1, 11-2, 14-87 through 14-93.

**Response to Comment 12-3**

Please see Responses to Comments 11-1, 11-2, 14-87 through 14-93.

**Response to Comment 12-4**

The comment suggests that no mitigation was provided for the loss of nesting habitat. Impacts 5.4-3, 5.4-4, and 5.5-5 evaluate effects on Swainson's hawk, and mitigation measures are identified to address significant impacts. Please see Responses to Comments 2-1 through 2-7 and 7-10.

**Response to Comment 12-5**

The comment raises concerns regarding the effectiveness of Mitigation Measure 5.4-3 relative to the loss of Swainson's hawk foraging habitat. Please see Response to Comment 2-2 that provides revisions to this mitigation measure.

The project site currently supports a variety of crops, likely dependent upon agricultural market forces. Different crops have a different foraging habitat quality, with alfalfa providing the highest quality and other crops, such as grains, orchards and vineyards providing low quality habitat. With implementation of Mitigation Measure 5.4-3, high quality foraging habitat will be provided and preserved in perpetuity.

The text on pages 5.4-30 and 5.4-31 under Impact 5.4-3 has been revised as follows to provide this additional explanation.

The project site consists of approximately 765-acres of agricultural land that occurs within 10 miles of more than 34 known active Swainson's hawk nest sites (three of which are within

one mile of the project site). Based upon the CDFG's *Staff Report regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*, the entire project site would be considered potential foraging habitat for the species. In addition to Swainson's hawk, white-tailed kite and burrowing owls are also likely to use the project site for foraging. As it currently stands, agricultural crops are rotated depending on market pressures. This change of crop would alter the quality of the foraging habitat, year to year. Development of the project would result in the conversion of approximately 765 acres of potential Swainson's hawk, white-tailed kite, burrowing owl, and other raptor foraging habitat. The resulting loss of this habitat could force nesting Swainson's hawks to travel farther and expend more energy gathering prey to feed their offspring. As a result, nest mortality for any such pairs of Swainson's hawk could be likely to increase. Therefore, the loss of potential foraging habitat for Swainson's hawk, white-tailed kite, burrowing owl, or other raptors would be considered a *potentially significant impact*.

#### **Response to Comment 12-6**

Please see Response to Comment 2-2 that provides revisions to Mitigation Measure 5.4-3. Because foraging habitat is not covered by the California Endangered Species Act, and impacts to foraging habitat are evaluated and mitigated through CEQA only, approval authority for mitigation of these impacts is only enforceable as granted to the lead agency. CDFG, therefore, would have no legally enforceable approval authority for this type of mitigation. The city does currently, and will continue to, consult with CDFG as the conservator of the species, on all issues of this nature.

#### **Response to Comment 12-7**

Please see Response to Comment 2-2 that provides revisions to Mitigation Measure 5.4-3.

#### **Response to Comment 12-8**

Please see Response to Comment 2-2 that provides revisions to Mitigation Measure 5.4-3. The city does not hold title to conservation easements. Typically, the city requires such easements to be granted to a non-profit conservation organization with CDFG (and sometimes the city) as a third party beneficiary.

#### **Response to Comment 12-9**

The comment states that the Draft EIR does not provide adequate protection for white-tailed kite. Impact 5.4-4 evaluates impacts on birds protected by the MBTA, such as white-tailed kite. Please see Responses to Comments 2-4 and 2-5 that address these concerns and includes revisions to Mitigation Measure 5.4-4.

#### **Response to Comment 12-10**

The comment questions the ability of Mitigation Measure 5.4-4 to adequately protect nesting Swainson's hawk and white-tailed kites. Impacts on nesting Swainson's hawks are addressed in Mitigation Measure 5.4-5 on page 5.4-34. Please see Responses to Comments 2-4 and 2-5 that

discuss and make revisions to Mitigation Measure 5.4-4, that address impacts to nesting birds and raptors protected by the MBTA. Lastly, the Draft EIR makes no claim that a 500-foot buffer would be infeasible or that monitoring would be limited to within the buffer. Issues associated with adequate buffers are addressed in concerns raised by the CDFG, see responses to Letter 2.

### **Response to Comment 12-11**

Please see Responses to Comments 2-6 and 2-7 that address changes to Mitigation Measure 5.4-5.

### **Response to Comment 12-12**

The comment suggests specific revisions to Mitigation Measure 5.4-5. Please see Responses to Comments 2-6 and 2-7 that includes changes to this mitigation measure. The first recommendation is for monitoring of nesting activities within ½ mile of construction. Accordingly, Mitigation Measure 5.4-5(b)(3) on page 5.4-34 has been revised as follows:

3. *No intensive disturbances (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated within ~~1,320 feet~~ (¼ half mile) or less, as determined by CDFG, (buffer zone as defined in the CDFG Staff Report) of an active Swainson's hawk nest or 500 feet for other nesting migratory birds, between March 1 and September 15 or until August 15 if a Management Authorization or Biological Opinion is obtained from CDFG for the project. The buffer zone may be reduced in consultation with CDFG.*

In response to the second recommendation, the revision to Mitigation Measure 5.4-5 (b)(4), described in Response to Comment 2-7, provides additional protection to nesting Swainson's hawk should construction within the approved buffer be required. This additional protection goes beyond the suggestion that a monitoring biologist have the authority to stop construction if nesting disturbance occurs and addresses the potential issue of nest abandonment or forced fledging. Please see also Response to Comment 7-10 that addresses the loss of potential nesting habitat.





South Pocket Homeowners Association

OCTOBER 20, 2008

MRS. SHELLY AMRHEIN  
CITY OF SACRAMENTO, DEVELOPMENT SERVICES DEPARTMENT  
300 RICHARDS BOULEVARD, 3 rd FLOOR  
SACRAMENTO, CA 95811

RE: RESPONSE TO DRAFT EIR FOR DELTA SHORES.

THE SOUTH POCKET HOMEOWNERS ASSOCIATION HAS FOLLOWED WITH INTREST THE OVERALL DEVELOPMENT PLANS THAT HAVE BEEN PROPOSED OVER A NUMBER OF YEARS FOR THIS PROPERTY, SOME PROPOSALS NOT CONTAINING THE SAME NUMBER OF ACRES, AND DIFFERENT PROPOSED USAGES.

THE BOARD OF DIRECTORS AND THE OVERALL MEMBERSHIP HAS PARTICIPATED IN MEETINGS, PRESENTATIONS BY THE APPLICANTS AGENTS, ARCHITECTS AND PROJECT MANAGERS. THE OVERALL SOUTH POCKET HOMEOWNERS ASSOCIATION AND BOARD OF DIRECTORS HAVE APPRECIATED THE BRIEFINGS, AND THE CHANCE TO COMMENT ON THE OVERALL PROJECT AS IT WILL AFFECT OUR DAILY LIVES IN MANY WAYS.

THE BOARD OF DIRECTORS HAS DECIDED TO CONCENTRATE ON APPROXIMATELY 15.34% OF THE OVERALL PROJECT OF 782 ACRES.

THE 15% OR 120 ACRES, INCLUDES ALL PROPERTY WEST OF I-5, SOUTH OF POCKET/MEADOWVIEW ROADS, AND EAST OF FREEPORT BLVD. AND NORTH OF BARTLEY CAVANAUGH GOLF COURSE, PER THE REVIEWED DOCUMENTS. THIS AREA IS KNOWN AS "DELTA SHORES WEST", WITH A TOTAL OF 490 SINGLE FAMILY UNITS, BROKEN OUT AS 350 SINGLE FAMILY HOMES WITH A PROPOSED ZONING OF "LDR" AND 140 MULTI-FAMILY RESIDENTIAL UNITS WITH A PROPOSED ZONING OF "MDR & HDR".

13-1

IN ADDITION TO 15% OF THE PROJECT, THE NEIGHBORHOOD HAS GRAVE CONCERNS OVER THE TRAFFIC IMPACT OF THE OVERALL 782 ACRE DEVELOPMENT.

THE OVERALL NET CUMULATIVE TRAFFIC IMPACT FROM THIS DEVELOPMENT ADDED TO THE EXISTING PROJECTED ISLANDS AT RIVERLAKE, WITH THE EXISTING POCKET AND MEADOWVIEW TRAFFIC IS JUST NOT ACCEPTABLE TO THE NEIGHBORHOOD, UNTIL THE COMPLETION OF I-5 FREEWAY COORIDOR AND I-5 INTERCHANGE WORK IS COMPLETED.

13-2

THE SOUTH POCKET NEIGHBORHOOD HAS ALREADY EXPERIENCED THE AFFECTS OF THE LAGUNA & ELK GROVE FREEWAY INTERCHANGES THAT

13-3

HAVE SEVERELY IMPACTED TRAFFIC, AIR QUALITY, NOISE, ETC. ALONG THE EXISTING I-5 FREEWAY, WITHOUT TRAFFIC IMPROVEMENTS TO THE FREEWAY LEADING TO AND FROM THOSE INTERCHANGES AND HAVING A SIGNIFICANT IMPACT ON THE EXISTING I-5 POCKET/MEADOWVIEW INTERCHANGE.

13-3  
(con't.)

THIS PROBLEM SHOULD ONLY BE MITIGATED BY HAVING THE DEVELOPER/CITY/STATE AND OTHER STAKE HOLDERS, INSTALL THE TRAFFIC IMPROVEMENTS AT THE BEGINNING OF THE OVERALL PROJECT.

TRAFFIC CONCERNS:

1.

Traffic during the commute periods in the Meadowview/Freeport Blvd area is pretty heavy currently. With the addition of the new Strip Mall on the SE corner and then Delta Shores this intersection will be very impacted as the DEIR points out. They have some mitigating plans that we agree with in general, however it is the timing of them that we feel could be improved to make life for the current residents more pleasant.

13-4

Delta Shores proposes to add two additional turn lanes at the Meadowview/Freeport Blvd intersection. However they do not plan to do it until the development is 70-80% completely built out. That means years of construction traffic and thousands of additional cars daily using that intersection before the additional turn lanes are added. We feel those turn lanes should be added at the beginning of the project, especially to handle the large construction equipment.

2.

Hiway 160. This "highway" is pretty narrow with no bike lanes and very narrow shoulders, if any in places. We did not see any plans to widen this road, only add a signal at the new intersection of Consumnes River Blvd and Freeport Blvd. With the City's goal of providing bike lanes we think this would be the time to do it on this stretch that would then tie in to the lanes already on Freeport Blvd North of Meadowview.

13-5

3.

I-5/Consumnes River Blvd Interchange

It seems like Delta Shores is trying to delay construction of this interchange and main entrance/exit to the project until the last moment.

It seems like this should be done in the 1<sup>st</sup> phase with the commercial so that residents in the 2<sup>nd</sup> phase on the W. side of I-5 could access the commercial for their shopping and freeway traffic could also pull off easily to shop there.

13-6

Having the interchange done as early as possible would also help mitigate some of the construction traffic that will be using neighborhood surface streets.

4.

Fair Share

There are references to Delta Shores paying their "Fair Share" to the cost of the Interchange and the Consumnes River Blvd/Hiway 160 signal. It seems to us the only reason for those two projects is for Delta Shores to function and should be their total responsibility.

13-7



“DELTA SHORES WEST”:

IT WAS THE ASSOCIATIONS UNDERSTANDING THAT THE DEVELOPER WAS PROPOSING ALL SINGLE FAMILY DETACHED HOMES FOR THIS AREA. THE EXISTING PLAN NOW SHOWS ALL RESIDENTIAL DEVELOPMENT BUT CONTAINS NOT ONLY FREE STANDING SINGLE FAMILY HOMES, (350 HOMES), BUT A COMPONENT OF 140 MULTI-FAMILY RESIDENTIAL UNITS.

MULTI-FAMILY RESIDENTIAL IS WELL WITHIN THE DEFINITION OF RESIDENTIAL UNITS.

TO HELP REDUCE TRAFFIC, AIR POLLUTION, AND ADDITIONAL IMPACTS TO FREEPORT BLVD. THE ASSOCIATION IS ASKING THAT THE NORTH PORTION OF “DELTA SHORES WEST”, (NORTH OF COSUMNES RIVER BLVD & FREEPORT BLVD.), BE ALL ZONED MDR. THE REMOVAL OF THE HDR ZONING ON 3.92 ACRES, WOULD ALSO MAKE THE DEVELOPMENT MORE CONSISTENT AND COMPATABLE WITH THE COMMUNITY OF FREEPORT.

13-8

MIXED INCOME HOUSING ORDINANCE:

IT IS UNDERSTOOD AND AGREED UPON THAT 15% OF ALL RESIDENTIAL UNITS NEED TO BE DESIGNATED AS AFFORDABLE PER THE CITY’S ORDANCE.

IN RESPECT TO THE PLANNED 490 SINGLE FAMILY UNITS WITHIN “DELTA SHORES WEST”, THIS ORDANCE WOULD PRODUCE 74 AFFORDABLE UNITS. BASED ON THIS PORTION OF THE OVERALL DEVELOPMENT, THIS AREA SHOULD HAVE NO LESS THAN 74 AFFORDABLE UNITS AND NO MORE THAN 74 AFFORDABLE UNITS.

13-9

THE OVERALL DELTA SHORES DEVELOPMENT AND THE CITY OF SACRAMENTO SHOULD NOT ALLOW OTHER DEVELOPERS/BUILDERS TO ACQUIRE PROPERTY TO “RE-LOCATE” THEIR REQUIRED 15% AFFORDABLE HOUSING REQUIREMENT TO THE 120 ACRE “DELTA SHORES WEST”, OR WITHIN THE FULL DELTA SHORES DEVELOPMENT.

AFFORDABLE HOUSING SHOULD BE DEVELOPED WITHIN EACH NEW DEVELOPMENT CITY WIDE AND NOT “TRANSFERRED” TO A LARGER PROJECT SUCH AS DELTA SHORES.

RESPECTFULLY SUBMITTED



GREGORY N. HATFIELD  
OFFICE OF THE PRESIDENT  
SOUTH POCKET HOMEOWNERS ASSOCIATION



## **LETTER 13: SOUTH POCKET HOMEOWNERS ASSOCIATION**

### **Response to Comment 13-1**

Comment noted.

### **Response to Comment 13-2**

Please see Responses to Comments 13-4 through 13-7.

### **Response to Comment 13-3**

Please see Responses to Comments 13-4 through 13-7.

### **Response to Comment 13-4**

The comment expresses concern over the timing of improvements at the Meadowview Road/Freeport Boulevard intersection. Mitigation Measure 5.9-6 (see page 5.9-105) requires the project applicant to construct an exclusive southbound right turn lane at the intersection of Meadowview Road/Freeport Boulevard before completion of development that would generate 80 percent of the PM peak hour project traffic. The timing of implementation of this mitigation measure was determined by the traffic study and is based on development of the project and its impact on this intersection. As stated in the traffic study, development of the project would create an impact at this intersection when it is developed at 80 percent development based on trip generation estimation. Therefore, the increase in the PM peak hour trips associated with the project would create an impact when approximately 80 percent of the project has been developed which will require improvements to the intersection at that time.

As stated in the City's *Traffic Impact Guidelines*, a significant traffic impact occurs under the following conditions: the addition of project-generated traffic causes a facility to change from LOS A, B, or C to LOS D, E, or F. The project generated traffic causes the level of service to change from C to D in the PM peak hour when 80 percent of the project has been developed. Therefore, at this stage of the development the project applicant is required to construct an exclusive southbound right turn lane to mitigate the impact.

### **Response to Comment 13-5**

The section of Highway 160 mentioned in the comment is a state facility and as shown in the traffic analysis in the Draft EIR the project does not cause any impact on this facility. In addition, the project applicant has no control over the design and implementation of any improvements to this stretch of roadway. However, the Cosumnes River Boulevard Interchange project would implement improvements in this area such as improving and signalizing the Cosumnes River Boulevard/Freeport Boulevard intersection.

### **Response to Comment 13-6**

The comment is questioning the proposed phasing to construct the I-5/Cosumnes River Boulevard interchange project. Phase 1 of the proposed project, which includes development of the commercial portion of the site, assumes the construction of the I-5/Cosumnes River Boulevard Interchange and the Cosumnes River Boulevard extension to Franklin Boulevard before development of this phase of the project. Construction of this interchange (which is a separate project) is an important component to ensure access to the project site from I-5 and the interchange's construction would commence and be completed before the generation of any traffic by the project's retail/commercial development.

### **Response to Comment 13-7**

The signalization of Cosumnes River Boulevard/Highway 160 and the construction of the interchange are part of a Capital Improvement Project *Interstate 5/Cosumnes River Boulevard Interchange*. This interchange along with all other transportation improvements along this corridor is defined in the Sacramento General Plan and is considered a regional corridor that will connect SR 99 to I-5 and will serve most of the southern area of the city.

The interchange is not proposed by the project and is an independent and separate City project for which an EIR/EIS was previously prepared and certified. However, the project applicant will be required to pay its fair share toward the interchange construction project costs through the Delta Shores Finance Plan and a fair share funding agreement (see Mitigation Measure 5.9-1 on page 5.9-102) which is required to be developed and approved by the city before project review.

### **Response to Comment 13-8**

The suggestion by the commentor to remove the proposed high density residential uses in the northern portion of the project site located on the west side of I-5 is noted.

### **Response to Comment 13-9**

The project will provide affordable housing consistent with the project's affordable housing plan. The affordable housing ordinance does not establish any upper limit or cap on the number of affordable housing units which a developer may provide. The concerns expressed by the commentor are not environmental issues that relate to the adequacy of the EIR and, as such are noted and forwarded to the decision-makers.

## ADAMS BROADWELL JOSEPH &amp; CARDOZO

A PROFESSIONAL CORPORATION

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ANN BROADWELL

October 23, 2008

\*Licensed in New York only

**VIA EMAIL AND PERSONAL DELIVERY**Shelly Amrhein  
City of Sacramento, Development Services Department  
300 Richards Boulevard, 3rd Floor  
Sacramento, CA 95811Re: Comments on the Draft Environmental Impact Report for the Delta  
Shores Project

Dear Ms. Amrhein:

We are writing on behalf of: (1) Tracy Oto, Rachael Anderson, Tony Moribito, Britton McFetridge and the Freeport Preservation Coalition; (2) Liz Zainasheff and the Stone Lakes National Wildlife Refuge Association; and (3) Frank Albert, Gary Krula, Brian Lujan and the Coalition for Responsible Development to provide comments on the September 2008 Draft Environmental Impact Report ("DEIR") for the Delta Shores project ("Project"). These individuals and organization are collectively referred to in the letter as the "Delta Shores Coalition." The Project is a massive undertaking proposing to convert to urban development 800 acres of productive farmland and other open space located in the southwest section of the City of Sacramento ("City"). The Project includes 5,092 units of residential development, a village center with approximately 1.3 million square feet of retail and commercial uses and approximately 161,000 square feet of commercial and office space in a residential/mixed-use area.

As explained more fully below, the DEIR does not comply with the requirements of the California Environmental Quality Act ("CEQA"). The City may not approve the Project until the errors in the DEIR are corrected and a revised document is recirculated for public review and comment.

2240-001d

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## I. INTRODUCTION

The Freeport Preservation Coalition is an unincorporated association of residents of the town of Freeport and the surrounding area interested in maintaining the cultural, environmental and historical character of this historic community. Currently, Freeport is bordered by the Sacramento River on the West and is surrounded by open space and farmland on the North, East and South. The proposed Project will almost entirely envelop the unincorporated town of Freeport with high density, residential development, destroying the unique historical characteristics of this community. Individuals Tracy Oto, Rachael Anderson, Tony Moribito and Britton McFetridge are members of the Freeport Preservation Coalition and live in or near Freeport.

The Stone Lakes National Wildlife Refuge Association's mission is to conserve, protect, and support the Stone Lakes National Wildlife Refuge and to promote its use for educational, recreational and research opportunities. The Refuge Association is a non-profit volunteer public benefit corporation whose members include residents of Sacramento County who appreciate the region's environmental qualities, and whose personal, aesthetic, and property interests will be severely injured if the Delta Shores Project is developed without disclosure, analysis and mitigation of its environmental impacts. Liz Zainasheff is a member of the Association and a resident of Elk Grove, south of the Project

In 1972, the U.S. Army Corps of Engineers recommended establishing a national wildlife refuge in the Stone Lakes Basin after completing a flood control study of Morrison Creek, Sacramento County's largest creek system. In 1994, following six years of study and public meetings, the U.S. Fish & Wildlife Service ("USFWS") established Stone Lakes National Wildlife Refuge in Sacramento County, which borders the City and now is within the Elk Grove Planning Area. Stone Lakes National Wildlife Refuge is the 505th refuge in the National Wildlife Refuge System.

The Stone Lakes National Wildlife Refuge is the ultimate destination of storm water and other drainage from development within the Morrison Creek watershed. Under assault from contaminated drainwater and encroaching urban development, Stone Lakes National Wildlife Refuge has been declared one of the six most threatened refuges in the nation. Nevertheless, Stone Lakes National Wildlife Refuge is the single largest remaining complex of natural wetlands, lakes and

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riparian areas remaining in the Sacramento-San Joaquin Delta, and provides critical habitat for waterfowl and other migratory birds of international concern, as well as a number of endangered plant and animal species.

The Project will create substantial storm water runoff that may carry urban pollutants into the Refuge water system via Morrison Creek. The Project also proposes filling important wetlands that are hydrologically connected to the Stone Lakes Wildlife Refuge and will destroy important habitat for special status species that nest and live in the Wildlife Refuge.

The Coalition for Responsible Development is comprised of residents of the City and County of Sacramento, including Frank Albert, Gary Krula and Brian Lujan who live with their families in South Sacramento nearby the proposed Project, and Plumbers and Pipefitters Union, Local 447, International Brotherhood of Electrical Workers Union, Local 340 and Sheet Metal Workers Union, Local 162 and their members and their families and other individuals who live and work in the City and County of Sacramento. The Coalition for Responsible Development was formed to advocate for responsible and sustainable development that will help to ensure the long-term health of the regional construction industry and the economy in general, while at the same time protecting the environment where the coalition members and their families work and live.

The members of the Coalition for Responsible Development have a strong interest in enforcing environmental laws such as CEQA. Its members reside and work in the City and County of Sacramento and are likely to be working on the Project itself. Accordingly, these members will be directly affected by the environmental impacts of the Project. The members who work on the Project are the first in line to be exposed to contaminated soils that have not been adequately tested, identified and remediated. The members who live, work and raise their families in Sacramento will breathe the contaminated dust from the Project and will be directly affected by increased traffic impacts in an area already dangerously congested.

Moreover, poorly planned and environmentally detrimental projects may jeopardize future construction jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live here. Continued degradation can, and has, caused construction moratoria and other restrictions on growth in California.

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This, in turn, reduces future employment opportunities in the construction industry.

These three organizations, their members and the individuals named herein have joined together to submit these comments based on mutual concerns that the proposed Project may result in adverse environmental impacts affecting the communities and the environment where their members and the other individuals participating in these comments live, work and recreate.

As these comments will demonstrate, the DEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment” and “to list ways in which the significant effects of such a project might be minimized.”<sup>1</sup>

Substantial evidence indicates that the Project is likely to cause significant adverse impacts. The DEIR is legally defective due to its failure to adequately identify, evaluate and mitigate these potentially significant impacts. Among the errors contained in the DEIR are:

- Failure to adequately disclose, evaluate and mitigate potential impacts to special status species; 14-1
- Failure to adequately disclose, evaluate and mitigate potential water quality impacts, including impacts on the Stone Lakes National Wildlife Refuge; 14-2
- Failure to adequately disclose, evaluate and mitigate potential hazardous contamination of soil on the Project site; 14-3
- Failure to adequately evaluate and mitigate health risk impacts of diesel and other contaminants from adjacent highways; 14-4
- Failure to adequately evaluate and meaningfully mitigate the Project’s greenhouse gas emissions; 14-5

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<sup>1</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.  
 2240-001d



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- Failure to adequately evaluate and mitigate flooding impacts; [ 14-6
- Failure to adequately evaluate and mitigate traffic impacts; [ 14-7
- Failure to adequately evaluate and mitigate loss of farmland; and [ 14-8
- Failure to adequately evaluate and mitigate impacts on the Town of Freeport and Scenic Highway 160. [ 14-9

The DEIR must be withdrawn and revised to address these errors. Because of the substantial deficiencies in the information disclosed in the DEIR, revisions necessary to comply with CEQA will be, by definition, significant. In addition substantial revision will be required to address impacts that were not disclosed in the DEIR. Because these revisions are significant, the revised DEIR will need to be recirculated for additional public comment.<sup>2</sup>

We reviewed the DEIR for the Project with the assistance of technical experts. These experts include the environmental consulting firm SWAPE and their soil contamination, hydrology and water quality expert Matt Hagemann and air quality expert and toxicologist Dr. James Clark (“SWAPE Comments”), Biologist Ellen Berryman (“Berryman Comments”), and traffic expert Tom Brohard (“Brohard Comments”). Their attached technical comments are submitted in addition to the comments in this letter. Accordingly, they must be addressed and responded to separately. Their curriculum vitas are also attached as exhibits to this letter. Also attached is a cd-rom containing copies of pertinent documents and evidence cited in these comments.

**II. CEQA REQUIRES THE DISCLOSURE OF ALL POTENTIALLY SIGNIFICANT PROJECT IMPACTS AND THE INCORPORATION OF ALL FEASIBLE MITIGATION MEASURES NECESSARY TO REDUCE SUCH IMPACTS TO A LEVEL OF INSIGNIFICANCE**

CEQA has two basic purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects

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<sup>2</sup> Pub. Resources Code § 21091.1; 14 Cal. Code Regs. (“CEQA Guidelines”) § 15088.5; *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*, *supra*, 6 Cal.4<sup>th</sup> at 1129.

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of a project.<sup>3</sup> Except in certain limited circumstances, CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”).<sup>4</sup> An EIR’s purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, an EIR “protects not only the environment but also informed self-government.”<sup>5</sup>

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”<sup>6</sup> An adequate EIR must contain facts and analysis, not just an agency’s conclusions.<sup>7</sup> CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.<sup>8</sup>

The second purpose of CEQA is to require public agencies to avoid or reduce environmental damage when possible by requiring appropriate mitigation measures and through the consideration of environmentally superior alternatives.<sup>9</sup> If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.<sup>10</sup> CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.<sup>11</sup> Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

As discussed in detail below, the DEIR fails to meet either of these two key goals of CEQA. The DEIR fails to disclose and evaluate all potentially significant environmental impacts of the Project. It further fails to evaluate numerous feasible mitigation measures available to minimize significant impacts. In addition, many

<sup>3</sup> CEQA Guidelines § 15002, subd. (a)(1).

<sup>4</sup> See, e.g., Pub. Resources Code § 21100.

<sup>5</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

<sup>6</sup> CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>7</sup> See *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at 568.

<sup>8</sup> Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).

<sup>9</sup> CEQA Guidelines § 15002, subds. (a)(2)-(3); see also, *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at 564; *Laurel Heights Improvement Assn. v. Regents of the University of California*, *supra*, 47 Cal.3d at 400.

<sup>10</sup> Pub. Resources Code §§ 21002.1, subd. (a), 21100, subd. (b)(3).

<sup>11</sup> Pub. Resources Code §§ 21002-21002.1.

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of the mitigation measures that are proposed are unenforceable, vague, unnecessarily deferred or so undefined that it is impossible to evaluate their effectiveness.

### III. THE DEIR'S EVALUATION OF BIOLOGICAL IMPACTS IS DEFICIENT

The DEIR fails to adequately disclose, evaluate and mitigate the Project's potential impacts on special status species and their habitat. The Project proposes to develop 800 acres of undeveloped farmland and open space located adjacent to the approved refuge boundary for the Stone Lakes National Wildlife Refuge. Biologist Ellen Berryman has reviewed the DEIR and the biological surveys and reports prepared for the Project. She concludes that the DEIR lacks foundation for its analysis of potential impacts to the giant garter snake, Swainson's hawk, greater sandhill crane and the California black walnut tree.

#### A. The DEIR Lacks Foundation for Its Finding that the Project Site Does Not Provide Potential Habitat for the Giant Garter Snake

The Project site is within the Sacramento Basin subpopulation and Mid-Valley Recovery Unit for the federally listed giant garter snake.<sup>12</sup> The DEIR cites a giant garter snake habitat assessment prepared by ECORP Consulting, concluding that the irrigation ditches within the Project site do not appear to provide potential aquatic habitat for the giant garter snake.<sup>13</sup> The assessment, however, does not substantiate the finding that giant garter snake habitat is absent from the Project site.

14-10

The document indicates that the ditches onsite potentially convey water during the growing season and likely convey water during the rainy season, but that these periods of inundation do not appear sufficient to support the aquatic prey base required by giant garter snake.<sup>14</sup> The DEIR does not provide information to support this conclusion, including the expected duration of flows through these

14-11

<sup>12</sup> Berryman Comments at p. 1.

<sup>13</sup> DEIR at p. 5.4-17.

<sup>14</sup> *Id.*

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ditches and why these flows are insufficient to support the aquatic prey base, for at least a portion of the giant garter snake’s active season.

↑ 14-11  
 (con’t.)

It is likely that irrigation water is available onsite during at least a portion of the snake’s active season (mid-March through early October), as this overlaps with the agricultural growing season. The potential for water to persist onsite for a sufficient duration to provide giant garter snake foraging opportunities is evidenced by the presence of emergent wetland vegetation as described in the DEIR.<sup>15</sup> Prey potentially occurring in areas that inundate for a sufficient period to support this type of emergent vegetation include frogs and tadpoles (most likely Pacific tree frog, but also potentially bullfrog) and mosquito fish.

14-12

Although ECORP did not observe potential prey species during their site visits on March 23 and June 11, 2007, the ditches were dry during these visits and thus do not definitively indicate that prey species are absent during the garter snake’s entire active season. ECORP’s observations merely indicate that there is insufficient water onsite to support the snake during its entire active season. However, because the seasonal wetlands and drainage ditches onsite are tributary to Morrison Creek,<sup>16</sup> there remains a potential for the giant garter snake to occasionally enter the site from the off-site creek.

14-13

Moreover, historical records strongly support the likelihood of occasional use of these ditches by the giant garter snake. There is a 1992 record for giant garter snake from the eastern face of a levee between Morrison Creek and Beach Lake, west of Interstate 5, within a mile south of the Project site.<sup>17</sup> There is also a record for giant garter snake east of Interstate 5 within a mile south of the Project site, in an area that at the time consisted of farmland (wheat, corn) adjacent to Morrison Creek floodplain.<sup>18</sup> There is a 1983 confirmed observation of giant garter snake from the Sacramento Regional County Sanitation District Bufferlands (“Bufferlands”) directly south of the Project site and a 1988 unconfirmed record from along Morrison Creek.<sup>19</sup> On the south side of Morrison Creek, adjacent to the Project site, is an extensive wetland area consisting of the Bufferlands<sup>20</sup> and Beach

14-14

<sup>15</sup> DEIR at p. 5.4-7.

<sup>16</sup> Berryman Comments at p. 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> DEIR at p. 5.4-2.

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Lake.<sup>21</sup> This provides ample high quality giant garter snake habitat in the Project vicinity.

↑14-14  
 (con't.)

The DEIR states that “[d]ue to the distance from Morrison Creek, giant garter snake habitat is unlikely to occur within the project site.”<sup>22</sup> The DEIR further states that no construction would occur within 200 feet of Morrison Creek, therefore no impact to giant garter snake would occur and no mitigation is required.<sup>23</sup> However, the DEIR indicates that suitable aquatic habitat for giant garter is also present at an unnamed canal located just north of the site, east of Interstate 5.<sup>24</sup> The DEIR does not disclose the distance between the proposed development and the suitable aquatic habitat immediately north of the site. This distance should be provided to determine whether the Project would impact giant garter snakes potentially occurring in this northern canal and using adjacent upland habitat.

14-15

In light of: (a) the presence of a large block of giant garter snake habitat adjacent to and hydrologically connected to the project site, from which there are documented occurrences of giant garter snake; (b) the existence of irrigation ditches on the project site supporting emergent wetland vegetation species characteristic of habitat for giant garter snake and typical prey species; and (c) the likelihood that these irrigation ditches flow during at least a portion of the snake’s active season, the DEIR lacks foundation for its finding that giant garter snake habitat is absent from the Project site.

14-16

The DEIR’s analysis of potential impacts to the giant garter snake is also deficient because it fails to address the potential for giant garter snakes to utilize a historic drainage swale that will be restored as part of the Project. The DEIR states that an historic drainage swale on the Project site would be restored to a “functional wetland feature that runs through the eastern portion of the project site and drains into Morrison Creek.”<sup>25</sup> These restored wetlands would provide giant garter snake habitat. The DEIR should be revised to evaluate the potential use of these restored wetlands by the giant garter snake and to address potential indirect impacts from

14-17

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<sup>21</sup> Berryman Comments at p. 2.  
<sup>22</sup> DEIR at p. 5.4-17.  
<sup>23</sup> DEIR at p. 5.4-42.  
<sup>24</sup> DEIR at p. 5.4-17.  
<sup>25</sup> DEIR at p. 5.5-24.

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the adjacent development. Such impacts could include vehicular strikes, predation by domestic cats, and human disturbance.

↑14-17  
 (cont.)

**B. The DEIR Fails to Accurately Disclose the Presence of Swainson’s Hawk on the Project Site and Fails to Provide Adequate Mitigation to Protect this Species**

The DEIR’s conclusion that Swainson’s hawk has a *moderate* likelihood of occurrence onsite is misleading and contrary to the evidence in the record.<sup>26</sup> The DEIR states that four Swainson’s hawk nests are located along the Sacramento River west of the site, and that Swainson’s hawks were observed flying over the site during the May 2007 site visit.<sup>27</sup> The DEIR must be revised to state that Swainson’s hawks have been *observed* onsite.

14-18

The DEIR is further deficient because it fails to provide sufficient mitigation to reduce the Project’s impacts to Swainson’s hawks to a level of insignificance. The proposed mitigation consists of offsite preservation at a 1:1 ratio.<sup>28</sup> Although this is consistent with CDFG draft mitigation guidelines, mere compliance with this measure does not necessarily mitigate Swainson’s hawk impacts to a level below significance.

14-19

The CDFG guidelines have been reviewed by the Swainson’s Hawk Technical Committee (“SHTC”), an independent group of Swainson’s hawk experts. The SHTC has judged the guidelines to be inadequate to conserve or recover the species in the Central Valley, because they allow for loss of foraging habitat without considering habitat needs for Swainson’s hawk territories.<sup>29</sup>

14-20

Since offsite preservation at a 1:1 ratio essentially means that there will be a 50% loss of Swainson’s hawk foraging habitat, the DEIR needs to explain how this preservation is expected to reduce impacts to a level less than significant.

14-21

The DEIR also needs to ensure that the preserved habitat has at least as high a conservation value than the impacted habitat? The DEIR specifies that the habitat to be preserved off-site must be suitable (alfalfa or other low growing row

14-22  
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<sup>26</sup> DEIR at p. 5.4-10.

<sup>27</sup> DEIR at p. 5.4-18.

<sup>28</sup> DEIR at p. 5.4-31.

<sup>29</sup> Berryman Comments at p. 3.

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crops),<sup>30</sup> but the DEIR does not specify the location of the mitigation land. Foraging habitat in close proximity to nesting habitat has higher value than land far from nesting habitat, as the energetic cost of travelling between foraging and nest site is lower.<sup>31</sup>

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 14-22  
 (cont.)

Foraging habitat on the Project site is adjacent to nesting habitat along the Sacramento River, which supports the highest density of nesting hawks in the region.<sup>32</sup> Loss of foraging habitat in the immediate vicinity of Sacramento could result in higher energetic costs for Swainson’s hawks as they need to travel further to forage, and this may translate into lower reproductive success.

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 14-23

The DEIR fails to describe specifically how the offsite preservation is expected to mitigate this impact. As a result, the DEIR lacks foundation for its conclusion that impacts to Swainson’s hawks will be reduced to a level of insignificance.

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 14-24

**C. The DEIR Fails to Adequately Mitigate Impacts to Vernal Pool Crustaceans**

The DEIR states that mitigation for loss of vernal pool crustacean habitat shall consist of dedication of one wetland creation credit for each acre impacted, or two acres of onsite creation for each acre impacted.<sup>33</sup> The California Native Plant Society (“CNPS”) Policy and Guidelines on Vernal Pool Mitigation state:

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This practice of creating vernal pools to mitigate for loss of natural pools relies on incomplete scientific methodology, in that criteria for success are seldom based on detailed biological data and monitoring for success is therefore usually incomplete; created pools frequently are built in existing vernal pool fields and thus alter, and may mar or damage, the existing functional natural ecosystems; and created pools built in areas away from natural pools generally have greatly lowered success rates.<sup>34</sup>

<sup>30</sup> DEIR at p. 5.4-31.

<sup>31</sup> Berryman Comments at p. 4.

<sup>32</sup> DEIR at p. 5.4-18.

<sup>33</sup> DEIR at p. 5.4-28.

<sup>34</sup> Berryman Comments at p. 4.

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The recovery plan for vernal pool species, including the listed vernal pool fairy shrimp and vernal pool tadpole shrimp, maintains that vernal pool creation is still considered experimental, that long terms trends and sustainability of created pools have not been verified, and that preservation should therefore be the fundamental conservation strategy for vernal pools.<sup>35</sup> CNPS and USFWS therefore recommend a preservation component in addition to a creation component for vernal pool mitigation. Typically, the preservation component consists of at least two acres preserved for each acre lost.<sup>36</sup>

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 14-25  
 (con't.)

The DEIR includes no preservation component in its mitigation strategy for vernal pool crustaceans and lacks foundation for its conclusion that impacts will be mitigated to a level below significance through creation alone.

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 14-26

**D. The DEIR Fails to Evaluate Impacts to the Greater Sandhill Crane**

The DEIR's biological analysis is further inadequate because it fails to disclose and evaluate potential project-related impacts to the greater sandhill crane.<sup>37</sup> This species is listed as Threatened and is designated as a Fully Protected Species by CDFG.<sup>38</sup> The greater sandhill crane is known to be present on the adjacent Bufferlands<sup>39</sup> and Stone Lakes National Wildlife Refuge<sup>40</sup> during the winter. Sandhill cranes are threatened by encroaching development and loss of cereal cropland in their wintering habitat.<sup>41</sup> These cranes require fresh water for drinking and bathing, and in the Central Valley they forage in newly harvested cereal crops;<sup>42</sup> thus it is reasonable to assume that cranes using the wetlands within the adjacent Bufferlands will occasionally forage in the agricultural land onsite.

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The Comprehensive Conservation Plan for the Beach-Stone Lakes National Wildlife Refuge discusses ongoing threats to sandhill cranes in the region, as follows:

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Berryman Comments at p. 7.

<sup>38</sup> *Id.* at p. 8.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*



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*Many migratory birds which frequent the Refuge are also dependent on habitats outside of the Refuge. For example, the greater sandhill crane has a wintering range of approximately three square miles . . . . Therefore, cranes utilizing the Refuge also rely on nearby agricultural fields, grasslands and wetlands for feeding, loafing, etc. As open land is lost, these birds are either forced to fly longer distances to suitable habitat or pushed into smaller and smaller parcels. Over the last ten years, the ability of the eastern Sacramento-San Joaquin Delta region to support wintering cranes ...has declined and continues to be threatened by urban development and conversion of pasture and row crops to vineyards.<sup>43</sup>*

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 14-28  
 (cont.)

Given that the Project site supports suitable winter foraging habitat for the greater sandhill crane, and this species is known to occur on the adjacent Bufferlands, it is likely that sandhill cranes will use the Project site for foraging. The CEQA analysis should address the potential for wintering sandhill cranes to use the site, and the effects that the proposed Project would have on these species, including both onsite effects and indirect, offsite effects.

**E. The DEIR Lacks Foundation for Its Determination that the California Black Walnut Tree Does Not Occur on the Project Site**

The DEIR lacks foundation for its finding that the likelihood of occurrence of the California black walnut tree is low.<sup>44</sup> The Northern California black walnut is designated as a List 1B species by the California Native Plant Society, indicating that it is rare or endangered in California and elsewhere.<sup>45</sup> The DEIR indicates that suitable habitat for northern California black walnut may be present on the Project site. The DEIR further indicates that walnut trees are present onsite, but the document does not state which species of walnut was found there.<sup>46</sup> Without evidence that none of the walnut trees observed on site were California black walnut, the DEIR's conclusion that the likelihood of occurrence of the California

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<sup>43</sup> *Id.*  
<sup>44</sup> DEIR at p. 5.4-10.  
<sup>45</sup> Berryman Comments at p. 7.  
<sup>46</sup> DEIR at pp. 5.4-2, 5.4-4.  
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black walnut tree is low lacks foundation. The DEIR must be revised to determine the species of walnut trees observed on the Project site.

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 14-29  
 (con't.)

**IV. THE DEIR FAILS TO ADEQUATELY DISCLOSE, EVALUATE AND MITIGATE POTENTIAL WATER QUALITY IMPACTS FROM CONSTRUCTION RUN OFF AND STORM WATER RUNOFF, INCLUDING IMPACTS ON SENSITIVE BIOLOGICAL RESOURCES WITHIN THE STONE LAKES NATIONAL WILDLIFE REFUGE**

**A. The DEIR Fails to Identify Specific Best Management Practices to Protect Water Quality during Construction**

The DEIR provides a general discussion about the need to obtain required NPDES permits and to prepare a Storm Water Pollution Prevention Plan (“SWPPP”) to mitigate construction impacts. However, the DEIR does not provide any discussion about the potential presence of pesticides in the soil and how pesticides may be mobilized during grading and excavation and routed by storm water runoff to Morrison Creek.

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 14-30

Morrison Creek is identified in the DEIR as a waterway that will receive runoff from the Project via Pump Station 89 (p. 2-23). Morrison Creek is listed on the Clean Water Act 303 (d) list as impaired due to Diazinon and Chlorpyrifos, two formerly used pesticides which may be present in the proposed Project area soils and in upstream runoff. The DEIR describes monitoring that has been conducted in Morrison Creek by the RWQCB which show “high levels of diazinon resulting from pesticide use within the watershed” (p. 5.5-8).

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 14-31

The DEIR vaguely identifies “various urban pollutants,” petroleum products, and heavy metals potentially spilled in association with construction equipment usage as potentially impacting Morrison Creek during Project construction.<sup>47</sup> However, the DEIR fails to identify existing contamination as a concern. The Project’s Phase I Environmental Site Assessment report specifically identifies “pesticide and metal residuals from longtime agricultural use on most of the Site” as well as petroleum and lead residues as potential contaminants of the Project soils.<sup>48</sup>

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<sup>47</sup> DEIR at p. 5.5-20.

<sup>48</sup> Phase I Environmental Site Assessment, Delta Shores, February 21, 2007, Executive Summary, p. vi.

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Extensive grading activities will be conducted over the entire 1.2 square mile Project site, potentially mobilizing soil with concentrations of residual pesticides and other contaminants. The Project proposes excavating 500,000 cubic yards of soil for planned storm water detention basins alone, a volume that would require movement by 50,000 10-yard dump trucks. This creates an enormous potential for mobilization of pesticides in storm water and sheet flow that is not described in the DEIR.

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 14-31  
 (con't.)

As a result, no provision is made to mitigate impacts to receiving waters. The DEIR should be revised to identify specific Best Management Practices (“BMPs”) that will mitigate potential transport of contaminants, particularly pesticides, to Morrison Creek during Project construction.

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 14-32

**B. The DEIR Fails to Evaluate and Mitigate Potential Downstream Biological Impacts Due to Levee Improvements and Storm Water Runoff**

The DEIR is further deficient because it fails to address potential indirect impacts to sensitive biological resources within the Morrison Creek watershed downstream from the Project site. Adverse effects might result from increased storm water run-off due to placement of impervious surfaces over the Project site and placement of levees to reduce the floodplain, resulting in increased rate and volume of flows, which can cause downstream habitat modification, erosion and sedimentation. Potential downstream adverse effects also include increased downstream contamination resulting from urban run-off.

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 14-33

The DEIR states that the Project site is mostly protected by existing levees, but that SAFCA is planning to construct a levee wall near Franklin Boulevard, which would protect the remainder of the property.<sup>49</sup> Construction of the new levee can be attributed to the Project, since it is necessary to put the development within 100-year flood protection. Any impacts from the new levee should therefore be considered in the CEQA analysis.

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 14-34

The encroachment of urban development into floodplains translates into more rapid movement of flood peaks downstream. When the natural floodplain is intact, flood stages on the main watercourse tend to attenuate between significant

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<sup>49</sup> DEIR at p. 5.5-28.  
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tributaries, but with levee construction the stages instead accumulate into higher downstream flood stages. This diminishment of floodplain, in addition to increases in volume and rate of flows due to the placement of impervious surfaces, can adversely affect aquatic habitat downstream.<sup>50</sup>

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 14-35  
 (con't.)

Biologically sensitive lands downstream from the Project site include the Beach-Stone Lakes Basin and the Stone Lakes National Wildlife Refuge. The Project site is immediately adjacent to the approved refuge boundary for Stone Lakes National Wildlife Refuge. This boundary envelops lands that are currently owned and/or managed by the USFWS, and areas within which the USFWS is authorized to work with willing landowners to acquire and/or manage land.<sup>51</sup>

The Bufferlands, adjacent to the Project site to the south, are not currently part of the refuge but lie within the approved refuge boundary.<sup>52</sup> The Bufferlands include the City of Sacramento Laguna Creek Vernal Pool/Seasonal Wetlands Mitigation Site, and an additional 115-acre wetland preserve.<sup>53</sup> Immediately south, and hydrologically connected to the Bufferlands via Morrison and Laguna Creeks, is land that is currently owned and managed by the USFWS within the Stone Lakes National Wildlife Refuge.

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 14-36

The Beach-Stone Lakes Basin, including the existing National Wildlife Refuge, the Bufferlands, and other lands within the approved refuge boundary, supports an abundance of wetlands and a diversity of native wildlife and plant species. The basin is a vital stop for migratory birds that breed, rest and feed along the Pacific Flyway.<sup>54</sup> A number of State and federally listed and other special status species are known to occur on these lands, including but not limited to the giant garter snake, Swainson's hawk, vernal pool fairy shrimp, vernal pool tadpole shrimp, greater sandhill crane, burrowing owl and western pond turtle.<sup>55</sup>

The primary source of water to the Beach-Stone Lakes Basin is from the accumulated flows of the Morrison Creek Stream Group watershed, and the Basin receives storm water runoff from upstream urban developments.<sup>56</sup> The Stone Lakes

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<sup>50</sup> Berryman at p. 5.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

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Wildlife Refuge Comprehensive Conservation Plan (“CCP”) describes the challenges that upstream urban development poses for the ecological integrity of the Refuge:

*Projections are that continued urbanization will lead to a loss of upstream storage area and a doubling of storm water runoff entering Stone Lakes basin . . . Increases in elevation and duration of flooding resulting from upstream development may affect the grassland, riparian and wetland habitats and associated wildlife now using the Refuge. Noxious weeds, such as perennial pepperweed, yellow star thistle and other species, may become more invasive on grassland habitats as seed sources are washed into the Refuge . . . Riparian habitats may be affected due to prolonged high flood water levels, particularly during the spring. Conversion of stands of willows and cottonwood trees in low lying areas to more aquatic habitats may result and the composition of seasonal and permanent wetlands may change.<sup>57</sup>*

14-36  
 (con't.)

The DEIR fails to address potential impacts to biological resources downstream from the Project site that could result from an increase in urban storm water runoff as described in the CCP. In particular, the document should address how increases in urban storm water runoff could modify downstream habitats and introduce noxious weeds.

The Hydrology and Water Quality section of the DEIR addresses the Project’s potential for increasing the rate and amount of storm water. Although the DEIR states that these impacts would be less than significant,<sup>58</sup> the significance standard used in the DEIR is that the Project would not “create or contribute storm water runoff which would exceed the capacity of existing or planned storm water drainage systems or increase erosion at the project site.”<sup>59</sup>

14-37

This standard addresses public safety issues related to flood risk downstream from the Project site, but does not address the cumulative effect that increased storm water might have on downstream biological resources. These potential effects should have been addressed in the Biological Resources section of the document.

<sup>57</sup> *Id.*

<sup>58</sup> DEIR at pp. 5.5-24 – 5.5-28.

<sup>59</sup> DEIR at p. 5.5-19.

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The DEIR should also have addressed Project-related effects on downstream resources related to water quality impairment. The USFWS raises the issue of urban development and indirect water quality impacts on resources in the Beach-Stone Lakes Basin:

*Morrison Creek runs through southern Sacramento prior to entering the north end of the Refuge and has been characterized by the Environmental Protection Agency (EPA) as an impaired waterway because of high Diazinon concentrations. The EPA found that Diazinon poses unacceptable risks to agricultural workers and to birds and other wildlife species . . . Most likely these pesticides were flushed through the storm water runoff drainage system after accumulating on lawns and other areas during the dry season . . . Sacramento County's National Pollutant Discharge System (NPDES) Municipal Permit requires reduction of pollutants found in urban storm water runoff to the maximum extent possible. Stormwater detention basins are constructed as urban expanses east and upstream of the Refuge are developed. These basins are effective in reducing pollutants by 30 to 90 percent. The pollutants that are not detained will likely enter the Refuge in run-off, potentially affecting fish and wildlife.<sup>60</sup>*

14-38

In addition to Diazinon, Chlorpyrifos has been identified as a hazardous chemical that threatens wildlife and is found from urban storm water runoff in Morrison Creek.<sup>61</sup> The DEIR states that the additional impervious surface area that would be created by the Project could increase the transport of urban pollutants in runoff to nearby waterways within the Morrison Creek watershed.<sup>62</sup>

The DEIR, however, fails to take the next step of describing potential adverse water-quality effects to sensitive biological resources within the Beach-Stone Lakes Basin and identifying appropriate mitigation to address these impacts. Rather than providing such an analysis, the DEIR merely provides a list of permits and plans that would apply to the Project's storm water runoff. The DEIR then concludes

14-39

<sup>60</sup> Berryman Comments at pp. 6-7.

<sup>61</sup> *Id.* at p. 7.

<sup>62</sup> DEIR at p. 5.5-21.

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that, there would not be any significant impact on water quality from this runoff because the Project must comply with these permits and plans.<sup>63</sup> This analysis is inadequate because it fails to disclose and evaluate how compliance with these permits and plans will result in mitigation of the Project's storm water runoff impacts to a level below significance, both individually and cumulatively.

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14-39  
(con't.)

The DEIR also fails to evaluate potential Project-related effects from urban run-off and levee construction on the volume, rate, and quality of water flows into the Sacramento River and potential consequences related to special status fish populations. Morrison Creek is a tributary to the Sacramento River. The Sacramento River supports the state and federally threatened Delta smelt, the state and federally endangered Sacramento winter-run Chinook salmon, the state and federally threatened Central Valley spring-run Chinook salmon, the federally threatened Central Valley steelhead, and the Sacramento splittail, a state and federal species of concern.<sup>64</sup>

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14-40

Given the size and scope of the proposed Project and because of impaired status of Morrison Creek, the DEIR should be revised to include provisions for a baseline water quality study. Use of baseline water quality studies has recently been mandated for development projects including the proposed Foothill Toll Road.<sup>65</sup>

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14-41

A baseline water quality study of Morrison Creek should be implemented as early as possible to document current water quality which could then be used for comparison during Project construction and after Project build out to ensure the effectiveness of BMPs. The study should be of sufficient length to capture variation in dry and wet weather quality. Constituents to be monitored, given the Project description in the DEIR, should include pesticides and metals.

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<sup>63</sup> DEIR at p. 5.5-24.

<sup>64</sup> Berryman Comments at p. 7.

<sup>65</sup> SWAPE Comments at p. 7.

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**V. THE DEIR FAILS TO DISCLOSE, EVALUATE AND MITIGATE HAZARDOUS CONTAMINATION ON THE PROJECT SITE**

As described in more detail in the accompanying SWAPE Comments, the DEIR completely fails to disclose, evaluate and mitigate hazardous contamination on the Project property. The failure to disclose, evaluate and mitigate all hazardous conditions on the Project site is a major flaw of the DEIR that may result in exposing construction workers and future occupants of the Project to hazardous and cancer causing substances including lead, petroleum hydrocarbons and pesticides.

A Phase I environmental site assessment report,<sup>66</sup> prepared for the proposed Project area in 2007, identified a number of “recognized environmental conditions” or potential sources of contamination, including:

- Pesticide and metal residuals from longtime agricultural use on most of the site;
- Lead-based paint and pesticide residues in the former dairy areas;
- Petroleum and metal residues in equipment storage and maintenance areas;
- Aerially deposited lead residues adjacent to Interstate 5; and
- Possible subsurface impacts from the drug lab operation on Parcel 26.

14-42

The construction of residential homes, schools, and public parks on land potentially contaminated with petroleum, lead, pesticides and related metals may pose a significant health and safety risk to workers, residents, school children and park users. For example, organochlorine pesticides are concentrated in fatty tissues and are passed on to infants via breast milk and to fetuses via the placenta and are associated with cancer, neurological and liver problems, and birth defects.<sup>67</sup>

14-43

The Phase I report stated that the above conditions “warrant follow-up or Phase II investigative study prior to commencing new development.”<sup>68</sup> Specifically, the Phase I report recommended conditions to “be addressed by a soil sampling and testing program” to target “proposed areas of sensitive land use such as schools,

<sup>66</sup> Phase I Environmental Site Assessment, Delta Shores, February 21, 2007.

<sup>67</sup> SWAPE Comments at p. 8.

<sup>68</sup> Phase I Environmental Site Assessment, Delta Shores, February 21, 2007 at p. vi.



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parcs and single-family residences, the former dairy areas and the Interstate 5 alignment.”<sup>69</sup>

↑ 14-43  
(con't.)

Despite the substantial evidence of potential significant pesticide and other contamination, no site assessment activities or soil sampling to address the recommendations in the Phase I report were documented in the DEIR. Indeed, the Phase I report was not described in the DEIR at all and a section on hazardous materials, which would typically discuss potentially hazardous soil conditions, was not included in the DEIR.

14-44

As a result, no enforceable mitigation measures have been imposed to address these hazards. Without mitigation, these contaminants may pose risks to construction workers and to future residents.

Potential mitigation for the environmental conditions identified in the Phase I report was described in the Initial Study and includes the following:

Prior to the issuance of a building permit, a Phase II ESA shall be prepared by the project applicant, as recommended in the Phase I Environmental Site Assessment, Delta Shores, Sacramento, California, prepared by Toxicchem Management Systems, Inc., February 21, 2007. The Phase II ESA shall provide additional information regarding the recognized environmental conditions (RECs) present at the project site, determine whether the RECs pose a threat during project construction and/or operation, and recommend additional mitigation, if necessary. Work within the project site shall not proceed until all identified hazards are managed to the satisfaction of the City and the Sacramento County Environmental Management Department (SCEMD).<sup>70</sup>

14-45

This recommended mitigation, however, was not evaluated in the DEIR or identified as an enforceable mitigation measure. Furthermore, the recommended mitigation measure is inadequate because it permits deferral of the Phase II investigation until just “prior to the issuance of a building permit.” This is unacceptable mitigation.

<sup>69</sup> *Id.*

<sup>70</sup> Delta Shores Initial Study at p. 29.

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The mitigation proposed in the Initial Study would permit grading of the property and complete construction of the commercial and residential buildings prior to the investigation of the soil contamination. This delay would put construction workers at risk and could limit feasible remediation measures. A Phase II sampling investigation should be prepared *prior to preparation of a revised DEIR* so that results can be evaluated and appropriate mitigation can be imposed prior to finalization of Project plans and prior to potential worker exposure. By conducting the Phase II investigation now, the DEIR can be prepared to ensure that proposed land uses, which include two elementary schools and residential housing, are compatible with any contaminants that remain at the site.

14-46

CEQA places the burden of environmental investigation on the government rather than the public. As a result, the DEIR may not rely upon its failure to gather relevant data.<sup>71</sup> By failing to gather the relevant data and correct the deficiencies in the record, the DEIR must conclude that the potential presence of contaminated Project soil is a significant impact. In preparing a revised DEIR the lead agency should require soil sampling and testing evaluation of potential health impacts to construction workers and future residents. Soil samples should be collected in conjunction with Department of Toxic Substance Control under the voluntary oversight program to ensure appropriate samples are collected for analysis of chemical compounds likely to be associated with past agricultural usage. If contamination is confirmed, appropriate remediation actions must be identified and required.

14-47

**VI. THE DEIR FAILS TO ADEQUATELY EVALUATE HAZARDOUS EMISSIONS FROM ADJACENT FREEWAYS AND ROADWAYS**

The DEIR is deficient because it fails to adequately evaluate and mitigate the health risks of traffic-related emissions from the proposed construction of residential units adjacent to Interstate 5 and the Consumnes Boulevard Interchange.

14-48

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<sup>71</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

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**A. The DEIR Applies an Arbitrary and Improper Threshold of Significance in Evaluating Traffic-Related Toxic Air Contaminants**

The Project proposes developing residential units adjacent to Interstate 5 on both sides of the freeway. The nearest residential land uses would be located only 119 feet from Interstate 5. Thus, future residents of the development area would be exposed to emissions of air pollutants including diesel particulate matter from truck traffic and other toxic air contaminants from vehicle exhaust. A Health Risk Assessment (“HRA”) has been prepared for the Project to assess the exposure of sensitive receptors to diesel particulate matter emissions from highway truck traffic.

The Delta Shores HRA determined that individuals residing in the residential units closest to Interstate 5 will increase their incremental 70-year individual lifetime cancer risk by 168 in one million.<sup>72</sup> This conservatively estimated maximum incremental cancer risk, which is based on modeled ambient concentrations of diesel particulate matter, greatly exceeds the significance standard for toxic air contaminants (“TACs”) set by the Sacramento Metropolitan Air Quality Management District (“SMAQMD”).<sup>73</sup> SMAQMD CEQA guidelines sets the threshold of significance for TACs as emissions that cause “a lifetime cancer risk greater than 10 in one million (one in one million if ‘Best Available Control Technology’, or BACT, is not applied).<sup>74</sup>

14-49

Rather than disclosing that this is a significant impact and requiring appropriate mitigation measures, the DEIR instead sets an artificially high threshold of significance for cancer risk of 446 in 1 million which is arbitrarily based upon a SMAQMD evaluation criterion for determining when to prepare an HRA. As a result, the DEIR concludes that the incremental cancer risks due to diesel

14-50

<sup>72</sup> DEIR at p. 5.3-27. A May 10, 2007 *Project Screening for Sensitive Land Uses Adjacent to Major Roadways Delta Shores Planned Development* found that the estimated incremental cancer risk for receptors east (downwind) of Interstate 5 would be 354 per million and the estimated incremental cancer risk for residential receptors west (upwind) of Interstate 5 would be 189 per million.” DEIR 5.3-26. A full HRA was then prepared which determined that the increased cancer risk for the nearest proposed residents would be 168 in 1 million. DEIR at p. 5.3-27.

<sup>73</sup> SMAQMD, *Guide to Air Quality Assessment in Sacramento County* (July 2004) at pp. v & 2-12.

<sup>74</sup> *Id.*

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particulate matter emissions associated with locating residents within 119 feet of Interstate 5 are less than significant.

↑ 14-50  
(cont.)

The DEIR’s failure to apply SMAQMD’s threshold of significance for TACs is arbitrary and capricious. Moreover, the SMAQMD’s reliance on a threshold of 446 in 1 million lacks foundation and is contrary to the DEIR’s own HRA, which expressly warns that this threshold does not represent a “safe” risk level or regulatory threshold of significance.<sup>75</sup>

14-51

Cancer risk is defined as the lifetime probability of developing cancer from exposure to carcinogenic substances. Cancer risks are expressed as increased chances in one million of contracting cancer, and it often incorporates more than one exposure pathway (e.g., inhalation, dermal contact, ingestion of contaminated soil, and infant ingestion of breast milk due to the mother’s cumulative exposure). Overall cancer risks are determined by summing the individual risk for each pathway and for each toxic air contaminants (“TAC”).

14-52

Health risks from toxic air contaminants are generally considered significant if the lifetime probability of contracting cancer due to exposure to the contaminant is greater than one in one million.<sup>76</sup> However, ten in one million is sometimes considered an acceptable health risk level for purposes of setting regulation, if further reduction of the risk level would be infeasible due to economic or technological limitations.<sup>77</sup> Proposition 65, for example, requires public notification if the incremental risk equals or exceeds ten in one million.<sup>78</sup> The greater risk levels allowed by some regulations do not mean that the risk is below a level of significance, but rather are a determination that the risk level is “acceptable” despite the significant cancer rate due to economic or technological considerations.

14-53

As stated above, SMAQMD sets the threshold of significance for TACs at one in a million unless BACT is applied, in which case the threshold is ten in a million.<sup>79</sup> This threshold is consistent with the guidance provided by the California Environmental Protection Agency (Cal EPA) Office of Environmental Health Hazard Assessment (“OEHHA”). For purposes of evaluating TACs under CEQA,

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<sup>75</sup> Delta Shores Health Risk Assessment (July 2007) at pp. i & 1.  
<sup>76</sup> OEHHA, *A Guide to Health Risk Assessment* (2001) at pp. 11-12.  
<sup>77</sup> *Id.*; See also, e.g., El Dorado County APCD CEQA Guide (2002), Chapter 7, p. 4.  
<sup>78</sup> SWAPE Comments at p. 15.  
<sup>79</sup> SMAQMD, *Guide to Air Quality Assessment in Sacramento County* (July 2004) at pp. v & 2-12.

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OEHHA has determined that the zone of significant cancer toxic air contaminant impacts is where receptors have a potential cancer risk greater than one in a million.<sup>80</sup>

↑ 14-53  
 (cont.)

The 446 in 1 million threshold of significance adopted by the DEIR lacks foundation and its application is arbitrary and capricious. The DEIR bases its 446 in 1 million threshold on the evaluation criterion for preparing HRAs adopted by SMAQMD in the *Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways* (the "Protocol"). The Protocol was adopted by SMAQMD to guide in the analysis of hazardous air emissions from roadways and freeways on adjacent sensitive receptors. The 2007 version of the Protocol recommends using a cancer risk of 446 in 1 million as the evaluation criterion for determining when a full HRA should be prepared for emissions from major roadways.<sup>81</sup>

On its face, however, the Protocol's evaluation criterion is not intended to be used as a CEQA threshold of significance. SMAQMD expressly states that the evaluation criteria "does not provide an acceptable cancer risk level or a regulatory threshold; therefore it does not establish which projects are acceptable and which are not."<sup>82</sup> Rather it is intended solely to define the point at which SMAQMD recommends preparation of a full, site specific HRA.<sup>83</sup>

14-54

Moreover, the Delta Shores HRA itself warns against using the Protocol evaluation criterion for determining a threshold of significance. The HRA advises that the "the evaluation criterion does not represent a 'safe' risk level or regulatory threshold; it is simply the level at which the potential cancer risk would be reduced by 70 percent relative to the highest estimated cancer risk near major roadways in Sacramento County."<sup>84</sup> The HRA further warns that "[t]he protocol does not

<sup>80</sup> OEHHA, *Air Toxics Hot Spots Program Risk Assessment Guidelines: The Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments* (August 2003) at p. 4-14; see also OEHHA, *A Guide to Health Risk Assessment* (2001) at pp. 11-12.

<sup>81</sup> SMAQMD has recently updated the Protocol and has adjusted the evaluation criterion triggering the SMAQMD recommendation for preparing a HRA to 319 in a million. SMAQMD, *Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways* (June 2008) at p. 11.

<sup>82</sup> SMAQMD, *Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways* (June 2008) at p. 2.

<sup>83</sup> *Id.*; see also DEIR at p. 5.3-8.

<sup>84</sup> Delta Shores Health Risk Assessment (July 2007) at p. i.

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distinguish between ... significant and less than significant environmental impacts using a threshold.”<sup>85</sup>

↑ 14-54  
(cont.)

Despite the repeated warnings that the SMAQMD evaluation criterion does not represent a threshold of significance or a “safe” risk level, the DEIR concludes that: “Because the proposed Project would not expose sensitive receptors to TAC emissions from construction activities above ... the SMAQMD evaluation criterion, this impact is considered less than significant.”<sup>86</sup>

Nowhere in the DEIR or its supporting appendices is any justification or analysis provided to support using the *Protocol* evaluation criterion as a threshold of significance.

14-55

The 446 in 1 million threshold of significance adopted by the DEIR lacks foundation, violates SMAQMD and OEHHA guidance on determining significance for TACs, and is contrary to the general consensus of the scientific and regulatory community in determining significant cancer risks. The DEIR must be revised to evaluate the impact of traffic related TACs using the generally accepted threshold of significance of one in one million.

**B. The DEIR’s Analysis of Hazardous Traffic Emissions Violates the Health Risk Guidelines Established by CARB**

Over the last ten years, a great number of public health studies have shown that air pollution exposure levels are greater close to roadways than are typically reported through regional air pollution measurements and that individuals living in proximity to freeways or busy roadways have poorer health outcomes. The distances from the road where levels are high enough to increase health risks are about 500 to 1,500 feet for particulate matter (soot from gasoline or diesel engine exhaust); about 600 to 1,500 feet for nitrogen dioxide (“NO<sub>2</sub>”), and about 300 to 1,000 feet for ultrafine particles (soot smaller than 0.1 micrometers).

14-56

Recognizing the health risks of traffic-related emissions , the California Air Resources Board (“CARB”), the state agency entrusted with the protection of California’s air quality, recently developed guidelines to protect vulnerable populations. The CARB guidance document *Air Quality and Land Use Handbook*:

<sup>85</sup> Id. at p. 1.  
<sup>86</sup> DEIR at p. 5.3-28.  
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*A Community Health Perspective* recommends that sensitive receptors (including residential units) be sited “no closer” than 500 feet from a freeway or other high traffic roadways.<sup>87</sup> This guidance is based upon CARB’s finding that cancer risk from traffic-emissions drops by 70 percent at 500 feet away from the roadway.

14-56  
 (cont.)

In other words, CARB sets a minimum distance guideline that it believes will offer adequate protection in most circumstances. Greater buffer zones than 500 feet, however, may be appropriate depending upon actual traffic conditions and health risk.

To the extent the DEIR relies upon SMAQMD’s *Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways* to support siting residential units closer than 500 feet to a freeway, this approach improperly interprets the CARB recommendation as a maximum distance guideline to be only applied to the nearest receptor from the highest peak traffic volume reported by Caltrans for Sacramento County. The SMAQMD *Protocol* sets its “evaluation criterion” for preparing a full-blown HRA at 446 in a million. This “corresponds to the level of risk 70 percent less than the risk 10 feet from the edge of the nearest travel lane of the highest volume roadway in Sacramento County (24,000 vehicle per hour).”<sup>88</sup> Relying on the SMAQMD *Protocol* to support siting residential units within 119 feet from Interstate 5, the DEIR assumes that it is acceptable to locate sensitive receptors closer than 500 feet to the freeway as long as at least one other section of freeway in the County would pose a greater risk to adjacent receptors at the same distance. Such an assumption grossly distorts CARB guidance on this matter and fails to take into account whether the resultant cancer risk would be statistically significant.

14-57

CARB’s recommendations are based on the consistent health research findings demonstrating that proximity to high-traffic roadways results in both cancer and non-cancer health risks, including reduced lung function and increased asthma hospitalizations, asthma symptoms, bronchitis symptoms, and medical visits.<sup>89</sup> CARB’s recommended buffer zone may certainly be disregarded if substantial evidence supports a finding that such a buffer zone is unnecessary.

14-58

<sup>87</sup> CARB, *Air Quality and Land Use Handbook: A community Health Perspective* (April 2005) at p. 10.

<sup>88</sup> DEIR at p. 5.3-8.

<sup>89</sup> CARB, *Air Quality and Land Use Handbook: A community Health Perspective* (April 2005) at pp. 8-10.

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However, it is arbitrary and capricious to disregard this recommendation where undisputed evidence in the record demonstrates that failure to apply the buffer zone will result in a statistically significant increase in cancer or other health risks.

↑  
 14-58  
 (cont.)

**C. The DEIR Fails to Address Non-Carcinogenic Health Risks Resulting from Locating Sensitive Receptors in Proximity to Interstate 5**

The DEIR’s analysis of potential traffic-related air quality impacts is further inadequate because it restricts its discussion of potential adverse health effects to carcinogenic health risks resulting from exposure to diesel particulate matter emissions from truck traffic. The DEIR does not address non-carcinogenic health risks resulting from locating residential land uses or hospitals or clinics close to Interstate 5. Studies have shown that living near major roadways is associated not only with increased cancer risk, but also with short term adverse health impacts.

Exposure to traffic-related emissions has been implicated with a variety of cancer as well as non-cancer health risks including acute and chronic respiratory disease including reduced lung function and increased asthma hospitalizations and heart attacks as well as premature death in elderly individuals with heart disease.<sup>90</sup> Most recently, a study found that particulate matter pollution also raises the risk of deep vein thrombosis, a particular concern for elderly people.<sup>91</sup>

14-59

In addition, there is growing concern about the health effects of ultrafine particle pollution (smaller than 0.1 micrometers) near busy roadways. This type of particle pollution originates from gasoline- as well as diesel-powered vehicles. In fact, the majority of particles from vehicle exhaust are in the size range of 20 to 130 nanometers (“nm”) (0.02–0.13 μm) for diesel engines and 20 to 60 nm (0.02–0.06 μm) for gasoline engines.

Recent toxicological studies have indicated that at the same mass concentration, ultrafine particles are more toxic than larger particles with the same chemical composition. These particles are observed mostly close to the roadway, and, when the wind blows directly from the road, the concentration of fine and ultrafine particles drops off by about 50 percent at 300 to 500 feet away. Most of the smallest fraction of these particles is found within 100 to 200 feet of the

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<sup>90</sup> *Id.*

<sup>91</sup> SWAPE Comments at p. 18.



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roadway. Laboratory studies have found that while new engine technology and fuel reformulation decreased particle mass concentrations emitted from vehicles, ultrafine particle number concentrations remained unchanged or even increased.<sup>92</sup> Accordingly, projected increases in traffic along Interstate 5 must be taken into account when evaluating the health risks to adjacent residents.

14-59  
 (con't.)

The non-cancer health risk from adjacent freeway emissions should be quantified using a hazard index ("HI"). Under SMAQMD and OEHHA guidelines, an HI greater than 1.0 is considered significant.<sup>93</sup> The DEIR must be revised to properly evaluate and disclose non-carcinogenic health risks resulting from locating residential land uses adjacent to Interstate 5.

#### **D. The Health Risk Assessment Fails to Account for Emissions of Toxic Air Contaminants other than Diesel Particulate Matter**

The DEIR's HRA estimates incremental cancer risks from exposure of sensitive receptors to diesel particulate matter emissions from truck traffic on Interstate 5. However, on a typical urban highway, diesel particulate matter accounts for only about 70 percent of the potential cancer risk from motor vehicle traffic.<sup>94</sup> The other 30 percent are mainly attributable to emissions of benzene and 1,3-butadiene, mostly from gasoline-powered passenger vehicles.<sup>95</sup> Therefore, the DEIR underestimates incremental cancer risks associated with exposure to highway emissions.

14-60

When accounting for toxic air contaminants other than diesel particulate matter, the total incremental 70-year risk is 240 in 1 million.<sup>96</sup> Thus, the total actual cancer risks associated with locating residents within 119 feet of Interstate 5 are significantly understated in the DEIR. The DEIR should be revised to account for toxic air contaminant emissions other than diesel particulate matter and to disclose the actual increase in cancer risks to Project residents.

<sup>92</sup> *Id.* at p. 19.

<sup>93</sup> OEHHA, *Air Toxics Hot Spots Program Risk Assessment Guidelines: The Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments* (August 2003) at p. 4-14; SMAQMD, *Guide to Air Quality Assessment in Sacramento County* (July 2004) at pp. v & 2-12.

<sup>94</sup> CARB, *Air Quality and Land Use Handbook: A Community Health Perspective* (April 2005) at p. 9.

<sup>95</sup> *Id.*

<sup>96</sup>  $0.7 \times 240 = 168$ .

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**E. The Health Risk Assessment Fails to Account for Increased Traffic Emissions from Construction of the Project and the Consumnes River Boulevard Interchange**

The HRA is further flawed because it relies upon current traffic data and not upon traffic estimates for when the Project and the Consumnes River Boulevard Interchange are built.<sup>97</sup> The Consumnes River Interchange will connect Interstate 5 to U.S. 99 and will run directly through the Project, connecting with Interstate 5 within the Project boundaries. Traffic from the Project and the Interchange could result in significant increased diesel emissions not evaluated in the HRA.

14-61

**F. The DEIR Fails to Require Appropriate Mitigation for Roadway-Generated Pollutants as Required under the Sacramento General Plan**

The DEIR is further inadequate because it fails to require appropriate mitigation for residential and commercial units located within 500 feet of the Interstate 5 and other major roadways as required by City of Sacramento 2030 General Plan Policy ER 6.1.8 for "Development near Major Roadways." This policy requires that "new development with sensitive uses within 500 feet of a major roadway be designed with consideration of site and building orientation and incorporate appropriate technology for improved air quality, flow, ventilation, and filtration to lessen any potential health risks due to the Project's proximity to the roadway."<sup>98</sup>

14-62

SMAQMD recommends numerous measures to mitigate roadway-generated pollutants, none of which are required or evaluated in the DEIR. The preferred mitigation measure is to increase project distance from the freeway or major roadway.<sup>99</sup> SMAQMD also recommends buffering receptors from the freeway with tiered vegetable plantings. Such plantings are shown to be effective in removing fine and ultrafine particles.<sup>100</sup> In the developments themselves, SMAQMD recommends requiring passive (drop-in) electrostatic filtering systems with low air

14-63

<sup>97</sup> Delta Shores Health Risk Assessment (July 2007 ) at p. 2.

<sup>98</sup> DEIR at p. 5.3-14.

<sup>99</sup> SMAQMD, *Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways* (June 2008) at p. 19.

<sup>100</sup> *Id.*

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velocities, changing the location of air intakes and ensuring that windows nearest to the freeway or major roadway do not open.<sup>101</sup> These mitigation measures must be evaluated in a revised DEIR.

↑  
 14-63  
 (cont.)

## VII. THE DEIR FAILS TO ADEQUATELY EVALUATE AND MITIGATE THE PROJECT'S GREENHOUSE GAS EMISSIONS

The DEIR is further inadequate because it fails to make a finding of significance regarding the Project's greenhouse gas emissions and fails to require all feasible mitigation to reduce these emissions.

In 2006, Governor Schwarzenegger signed AB 32, a landmark law to control and reduce the emission of global warming gases in California. AB 32 requires both reporting of greenhouse gas emissions and their reduction on an ambitious time line, including a reduction of greenhouse gas emissions to 1990 levels by 2020 and to 80 percent below 1990 levels by 2050. Local governments, like all agencies, must comply with the legislation's provisions, and identify both CO<sub>2</sub> and other greenhouse gas sources, and offer actions for mitigation of the increases in emissions in greenhouse gases that result from new development projects.

14-64

Climate change results from the accumulation in the atmosphere of "greenhouse gases" produced by the burning of fossil fuels for energy. Because greenhouse gases, primarily carbon dioxide ("CO<sub>2</sub>"), methane and nitrous oxide, persist and mix in the atmosphere, emissions anywhere in the world impact the climate everywhere. The impacts on climate change from greenhouse gas emissions have been extensively studied and documented.

The California Climate Change Center, for example, reports that by the end of this century, if greenhouse gas emissions proceed at a medium to high rate, temperatures could rise by up to 10.5 F and sea levels may rise by 30 inches or more.<sup>102</sup> This could have serious consequences in California, including changing weather patterns, substantial loss of snow-pack in the Sierra and consequent water shortages, coastal erosion, saltwater intrusion into the Delta, an increase of as

<sup>101</sup> *Id.* at p. 20.

<sup>102</sup> California Climate Change Center, *Our Changing Climate: Assessing the Risks to California*, July 2006; <http://www.climatechoices.org/ca/site/our-changing-climate.html> [accessed September 9, 2008].

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much as 55 percent in the risk of large wildfires, reductions in the quality and quantity of agricultural products, among other things.<sup>103</sup>

Because global warming is perhaps the most serious environmental threat currently facing California, the City has a duty to do its part to comply with AB 32 by providing full environmental disclosure of the Project's effects on greenhouse gas emissions, and by adopting serious and real mitigation measures to minimize those effects and emissions.

CEQA requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so."<sup>104</sup> This requirement is the "core of an EIR."<sup>105</sup> Agencies must ensure that mitigation measures "are fully enforceable through permit conditions, agreements, and other measures."<sup>106</sup> Global warming is an "effect on the environment" under CEQA, and an individual project's incremental contribution to global warming can be cumulatively considerable.<sup>107</sup> In evaluating projects under CEQA, the City should also address whether the projected greenhouse gas emissions of the Project are consistent with the need to greatly reduce the State's greenhouse gas emissions by 2020 and again by 2050.

There is no question that any effort to reduce greenhouse gas emissions must address residential and commercial development. The most recent edition of the California Air Resources Board's *Climate Change Proposed Scoping Plan* finds that:

Collectively, energy use and related activities by buildings are the second largest contributor to California's greenhouse gas emissions. Almost one-quarter of California's greenhouse gas emissions can be attributed to buildings. As the Governor recognized in his Green Building Initiative (Executive Order S-20-04), significant reductions in

<sup>103</sup> California Climate Action Team Report to Governor Schwarzenegger and the California Legislature, March 2006, pp. xii-xiii; [http://www.climatechange.ca.gov/climate\\_action\\_team/reports/2006report/2006-04-03\\_FINAL\\_CAT\\_REPORT\\_EXECSUMMARY.PDF](http://www.climatechange.ca.gov/climate_action_team/reports/2006report/2006-04-03_FINAL_CAT_REPORT_EXECSUMMARY.PDF) [accessed September 8, 2008].

<sup>104</sup> Pub. Resources Code § 21002.1, subd. (b).

<sup>105</sup> *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.

<sup>106</sup> Pub. Resources Code § 21081.6, subd. (b).

<sup>107</sup> See Pub. Resources Code § 21083.05, subd. (a); see also Sen. Rules Comm., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.

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greenhouse gas emissions can be achieved through the design and construction of new green buildings as well as the sustainable operation, retrofitting, and renovation of existing buildings.<sup>108</sup>

This Project is one of the largest proposed developments in Sacramento and is large even by California standards.<sup>109</sup> The Project proposes construction of 5,092 units of residential development, and over 1.4 million square feet of retail and commercial uses. The DEIR estimates that at buildout, the Project will emit 268,832 tons/year of greenhouse gasses. The bulk of the emissions will come from electricity that is needed for the planned 5,000 residential units and over 1.3 million square feet of “big box” development. Another significant source of greenhouse gas emissions will come from motor vehicles. These estimates document that the Project will be a significant addition to greenhouse gasses in California.

14-64  
(con't.)

The DEIR is inadequate because it fails to evaluate the significance of the Project’s greenhouse gas emissions under CEQA. The DEIR uses the absence of a regulatory threshold of significance to avoid evaluation of the significance of the Project’s greenhouse gas emissions. The DEIR states:

the City has determined that until such time as a sufficient scientific basis exists to ascertain the incremental impact of an individual project on global climate change, and to accurately project future climate trends associated with that increment of change, and guidance is provided by regulatory agencies on the control of GHG emissions and thresholds of significance, the significance of an individual project’s contribution to global GHG emissions is too speculative to be determined.<sup>110</sup>

14-65

This argument lacks validity and unlawfully abdicates the City’s responsibilities under CEQA. Nothing in CEQA or its regulations requires establishment of a regulatory threshold in order to assess the significance of an environmental effect. The lack of an official threshold does not absolve the City from the obligation under CEQA to determine the significance of the anticipated greenhouse gas emissions of this Project.<sup>111</sup>

<sup>108</sup> CARB, *Climate Change Proposed Scoping Plan* (Oct. 2008) at p. 57.

<sup>109</sup> SWAPE Comments at p. 10.

<sup>110</sup> DEIR at p. 5.10-18.

<sup>111</sup> See CAPCOA, *CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions*

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A very similar argument involving assessing the significance of mobile source emissions of toxic air contaminants (“TACs”) was rejected by the courts in the 2001 case, *Berkeley Keep Jets Over the Bay Committee v. Board of Commissioners*.<sup>112</sup> In *Berkeley Keep Jets*, the EIR argued that:

There is no approved, standardized protocol for assessing the risk associated with mobile source emissions of TACs, as there is for stationary-source emissions . . . . Furthermore, there is no standard for evaluating the significance of the risk associated with mobile-source emissions of TACs. Therefore, while the potential risk associated with mobile-source TAC emissions can be qualitatively discussed and can be considered by decision makers, a formal determination of the significance of the impact would be speculative and would not be based on accepted scientific principles or methodologies. The significance of this impact is thus considered unknown.<sup>113</sup>

Not surprisingly, the Appellate Court rejected this argument as follows:

The fact that a single methodology does not currently exist that would provide the Port with a precise, or “universally accepted,” quantification of the human health risk from TAC exposure does not excuse the preparation of any health risk assessment—it requires the Port to do the necessary work to educate itself about the different methodologies that are available. The Guidelines recognize that “[d]rafting an EIR . . . involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” (Guidelines, § 15144, italics added.)<sup>114</sup>

As has been clearly stated by the Attorney General in comments and filings, “lack of a threshold does *not* mean lack of significance. An agency may argue lack of significance for any project, but that argument would have to be carried forth on a

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from *Projects Subject to the California Environmental Quality Act* (January 2008) at pp. 5, 23.

<sup>112</sup> *Berkeley Keep Jets Over the Bay Committee v. Board of Commissioners* (2001) 91 Cal.App.4th 1344.

<sup>113</sup> *Id.* at 1367-1368.

<sup>114</sup> *Id.* at 1370.

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case-by-case, project specific basis.”<sup>115</sup> In its technical advisory on *CEQA and Climate Change*, the Governor’s Office of Planning and Research has stated:

As with any environmental impact, lead agencies must determine what constitutes a significant impact. In the absence of regulatory standards for GHG emissions ... individual lead agencies may undertake a project-by-project analysis, consistent with available guidance and current CEQA practice.<sup>116</sup>

14-65  
 (con't.)

If there are no established thresholds of significance, the significance of each project will have to be determined during the course of review. The review may be qualitative or quantitative in nature.<sup>117</sup> A lead agency may formulate standards of significance for use in an EIR as long as a reasonable basis exists for using those standards. This requires that the agency make a policy judgment about where the line should be drawn for distinguishing adverse impacts deemed substantial from those that are not deemed substantial.<sup>118</sup>

The California Air Pollution Control Officers Association (“CAPCOA”) provides an analysis of seven feasible threshold measures for determining the significance of a project’s greenhouse gas emissions.<sup>119</sup> In its analysis, CAPCOA provides a rational basis for using each of these thresholds. These thresholds range from a zero emission threshold, a 50 residential unit or 900 greenhouse gas tons/year threshold, a 1,400 residential unit or 25,000 greenhouse gas tons/year threshold and, as the largest threshold, a 2,600 residential unit or 50,000 greenhouse gas tons/year threshold. The 50,000 greenhouse gas tons/year threshold would capture far less than half of new residential or commercial development and appears on its face to be insufficient to meet the requirements of AB 32.

14-66

<sup>115</sup> CAPCOA, *CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act* (January 2008) at p.24.

<sup>116</sup> Governor’s Office of Planning and Research, Technical Advisory, *CEQA and Climate Change* (June 19, 2008) at p. 6.

<sup>117</sup> CAPCOA, *CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act* (January 2008) at p.24.

<sup>118</sup> CEQA Guidelines § 15064, subd. (b).; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4<sup>th</sup> 477.

<sup>119</sup> CAPCOA, *CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act* (January 2008) at p. 49.

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The Delta Shores Project easily meets even the most generous of thresholds evaluated by CAPCOA. The Project proposes construction of 5,092 units of residential development, and over 1.4 million square feet of retail and commercial uses. This will result in approximately 82,401 tons of greenhouse gas emissions during construction and more than 268,832 tons per year of operational greenhouse gas emissions at buildout.<sup>120</sup> This cannot be considered anything but significant under any of the CAPCOA thresholds and in light of California's statutory mandate to reduce greenhouse gas emissions to 1990 levels by the year 2020 and to 80 percent below 1990 levels by 2050. Accordingly, the DEIR must be revised to disclose that the Project's greenhouse gas emission impacts will, in fact, be cumulatively significant.

14-66  
 (con't.)

Because the Project's greenhouse gas emissions are significant, they should be mitigated aggressively. Greenhouse gas emissions from both electricity and motor vehicles can be cut significantly through effective mitigation measures. The DEIR identifies mitigation for emissions from electricity and motor vehicles as summarized below. The mitigation as identified for the Project, however, is insufficient to reduce the Project's greenhouse gas emissions to a level of insignificance. Projects of this size and scope will need to aggressively mitigate greenhouse gas emissions if California is to achieve AB 32-mandated targets of achieving 1990 levels by 2020, and 80% below 1990 levels by 2050.<sup>121</sup>

The DEIR should therefore be revised to consider the following additional measures to reduce the Project's greenhouse gas emissions:

14-67

### **Motor Vehicle Greenhouse Gas Emissions**

Mitigation for greenhouse gas emissions from motor vehicles is identified in Table 5.10-7 as follows:

- Restrictions on diesel vehicle idling;
- Use of alternative-fueled vehicles;
- Participation in a transportation management association (ride sharing, shuttles);
- Parking spaces reserved for HOV and loading/unloading;

<sup>120</sup> DEIR at p. 5.10-20.

<sup>121</sup> SWAPE Comments at p. 11.



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- Design for future bus service and proximity to rail;
- Bike lane construction as well as bike stalls and showers;
- Transit education; and
- Consistency with Sacramento Smart Growth principles.

Additional mitigation that should be considered includes:<sup>122</sup>

- Providing funding to the school district to expand the area where bus service to and from the Project’s schools is provided;
- Providing priority parking spaces for hybrid and electric vehicles at commercial and retail centers and free parking for electric vehicles at transit stations; provide recharging stations for plug-in vehicles at commercial and retail centers and transit stations.
- Locating pedestrian routes and bike paths in a manner that will minimize road crossings to promote safety and therefore encourage walking and bicycling to school; and
- Ensuring that shuttle service is provided by alternative-fueled vehicles.

14-67  
 (cont.)

**Electricity-Related Greenhouse Gas Emissions**

Mitigation for greenhouse gas emissions from the generation of electricity is identified in Table 5.10-7 as follows:

- Use of efficient florescent lighting;
- “Conditioned” use of electrical facilities at loading docks;
- Use of urban forestry; and
- “Conditioned” use of light colored roofing.

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<sup>122</sup> SWAPE Comments at p. 12.  
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Additional mitigation that should be considered includes:<sup>123</sup>

- Increased energy efficiency by at least 15 percent above California Title 24 Requirements;
- Mandated use of roofing material with the highest commercially available solar reflectance, e.g. Energy Star;
- Mandated use of energy efficient appliances, e.g. Energy Star;
- Compliance with LEED Silver or Gold Certification for all retail and commercial buildings;
- Compliance with Green Point Build It Green system (minimum 90 points) for all residential buildings;
- Participation in California Energy Commission New Solar Homes Partnership use of solar photovoltaic systems in at least 50 percent of the residential units;
- Use of solar hot water systems with booster heating and location of water heater near hot water taps;
- Use of solar power for generation of electricity on retail and commercial building rooftops and parking lots;
- Use of high reflectance and lighter colored paving;
- Use of R-19 wall and roof insulation, at a minimum;
- Installing solar heating, automatic covers, and efficient pumps and motors for all pools and spas;
- Installing light emitting diodes for traffic, street and other outdoor lighting;
- Placing limits on hourly usage of outdoor lighting; and
- Providing educational materials on energy efficiency.

The DEIR should be revised to consider these and other feasible mitigation measures.

14-67  
 (cont.)

<sup>123</sup> SWAPE Comments at pp. 12-13.

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**IX. THE DEIR FAILS TO ADEQUATELY EVALUATE AND MITIGATE FLOODING IMPACTS**

**A. The Proposed Development Is Only Partially Protected from 100-Year Flooding and Puts Inhabitants at Risk**

The DEIR lacks foundation for its conclusion that the Project would result in a less than significant flooding impact because it improperly relies upon undefined future improvements to guarantee protection from flooding and associated flood hazards for a significant portion of the proposed development area. The DEIR states:

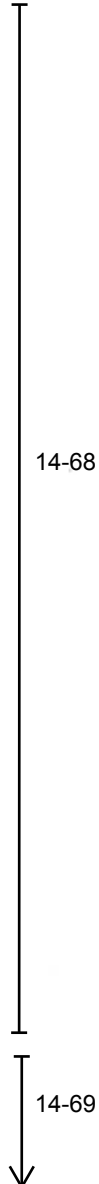
existing levee protection, compliance with SAFCA’s planning and maintenance of flood control levees, and *future improvement of the levee within Basin 89* would reduce the proposed project’s contribution to exposure of people or property to flooding from failure of a levee to less-than-significant levels.<sup>124</sup>

Basin 89, a 1,345-acre drainage basin, does not currently offer protection from a 100-year flood. According to the DEIR, Basin 89:

is protected by levees on the eastern, southern, and western boundaries. The southern and western boundaries currently provide a 100-year protection level. The eastern side levee has 100-year flood protection up to Brookfield Road, but north of Brookfield Road the levee does not have adequate freeboard and the 100-year water surface could spill into the low area of Basin 89.<sup>125</sup>

SWAPE has mapped the area that would be inundated by a 100-year flood and has shown that the Project’s planned medium- and high-density residential development is included in the 100-year floodplain. Accordingly, the current level of levee protection will not protect future residents in this portion of the Project from a 100-year flood.

In order to mitigate this significant flooding risk, the DEIR relies on vague and undefined “future improvements.” The DEIR fails to identify what future



<sup>124</sup> DEIR at p. 5.5-33.

<sup>125</sup> DEIR at p. 5.5-7.

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improvements are required, fails to evaluate if such improvements are adequate, fails to evaluate if such improvements are feasible and fails to require that construction of such improvements be completed prior to construction of the Project. As a result, the DEIR lacks any foundation for its conclusion that these “future improvements” will reduce the risk of flooding to a level of insignificance.

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 14-69  
 (cont.)

The DEIR must be revised to describe the measures that will be taken to remove all developed areas of the Project from the 100-year floodplain, including how future levee improvements will be designed, funded and implemented. Moreover, to rely upon such improvements to reduce the flooding risk to a level of insignificance, the DEIR must require that such improvements are completed prior to development of the areas within the 100-year floodplain.

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 14-70

In addition, the DEIR must evaluate the environmental impacts of improving the levees to remove this area out of the 100-year floodplain. As discussed in the comments of biologist Ellen Berryman, removing land from the floodplain and installing new levees may result in significant impacts on important biological resources in the area. Where mitigation measures may result in their own significant environmental impacts, CEQA requires evaluation of such impacts in the EIR.<sup>126</sup>

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 14-71

**B. The DEIR Fails to Evaluate the Risk of Flooding due to Damaged Levees**

The DEIR acknowledges that more than 80 levees have sustained critical erosion damage over the years in the Sacramento Valley, but then fails to evaluate how this damage may put new construction in the Project area at risk.<sup>127</sup> The DEIR also fails to determine when or if these damaged levees will be repaired.

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 14-72

The most recent draft of the Delta Vision Strategic Plan finds that the Delta levees, in their current form, cannot protect against existing earthquake and flood risks, much less against conditions exacerbated by future climate change. As a result, there is as high as a two-in-three chance of multiple levee failures in the next 30 years.<sup>128</sup>

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<sup>126</sup> *Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 130.

<sup>127</sup> DEIR at p. 5.5-8.

<sup>128</sup> Delta Vision Strategic Plan, 5<sup>th</sup> Draft, (Oct. 9, 2008), p. 1-23.

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Accordingly, even the areas of the Project that have achieved 100-year flood protection are at risk of flooding due to the potential failure of existing levees. Until these levees are repaired, they cannot be relied upon to provide 100-year flood protection. The Delta Vision draft concludes that, where levees are inadequate, intensive land uses, such as housing, should not occur.<sup>129</sup>

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 14-73  
 (cont.)

The DEIR should be revised to describe the potential for levee failure based on current levee conditions and local geology. This should also be supplemented by a model analysis of potential levee breaching from earthquakes. Discoveries from this evaluation, including necessary structural improvements, should be incorporated into levee upgrade plans.

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 14-74

A revised DEIR should include a comprehensive levee upgrade plan which demonstrates both qualitatively and quantitatively that all flood protection requirements will be achieved prior to construction of the Project. Increased levee stability monitoring and increased vegetation management should be considered in the plan.

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**C. The DEIR Should Be Revised to Expand the Level of Protection to 200 Years**

The DEIR is further deficient because it seeks only to achieve a level of 100-year flood protection, not the 200-year protection that has been mandated by the State of California.

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 14-75

All national floodplain management agencies along with the U.S .Army Corps of Engineers (“USACOE”) and the Federal Emergency Management Agency (“FEMA”) now state that the National Flood Insurance Program (“NFIP”) 100-year level of protection is inadequate to reduce the risk of flooding in urban areas to a level of insignificance.<sup>130</sup> The recent report *ReEnvisioning the Delta: Alternative Futures for the Heart of California* also concludes that the 100-year flood level is inadequate to protect urban development in the Delta.<sup>131</sup>

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<sup>129</sup> *Id.* at p. 1-24.

<sup>130</sup> SWAPE Comments at p. 4.

<sup>131</sup> Eisenstein, et al., Dept. of Landscape Architecture and Environmental Planning, University of California, Berkeley, *ReEnvisioning the Delta: Alternative Futures for the Heart of California* (2006).

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There are several serious problems with the 100-year standard. First, the 100-year flood is a statistical construct, and it usually becomes larger as our historical flood data set expands. Second, as areas urbanize, less rain infiltrates, so the flood runoff increases for the same rainfall, meaning the 100-year flood is actually greater than before. Third, the mapping of the 100-year flood assumes a static channel, but in fact river channels are subject to change, especially during big floods. Fourth, many people misunderstand the probability concept and think that the “100-year flood” won’t happen for a hundred years. Even more importantly, the 100-year flood is by no means the largest flood we can expect. There is the 200-year flood, with a one-half percent probability of occurring each year, and the 400-year flood, with a 0.25-percent annual probability, and so on. The residual risk of flooding from these larger, less frequent floods is significant. Over the life of a 30-year mortgage, the residual risk of flooding to a house protected by a 100-year levee is about 25 percent – strikingly poor odds.

There is no better illustration of the flaws in this system than the Delta Developers and local authorities are constructing levees to meet the standards of 100-year protection, thereby officially removing the “protected” area from the 100-year floodplain and releasing the below-sea-level land from restrictions on development. This is done in full knowledge that even if the levee performs as designed, they will not protect against any larger-than-100-year flood, which are about 25 percent likely over a 30-year period. And when the houses are below sea level, the floodwaters will rush in quickly, leaving little time for evacuation. This will inevitably result in loss of human life and massive property damage, for which California taxpayers likely will be held liable.<sup>132</sup>

As a result of the general consensus that 100-year flood protection is insufficient, the State Board of Reclamation set a policy of minimum 200-year flood protection for new urban projects. In 2007, Senate Bill 5 was passed making this policy State law. SB 5 requires 200-year flood protection from all new urban developments.<sup>133</sup>

<sup>132</sup> *Id.* at p. 15.

<sup>133</sup> SWAPE Comments at p. 5.

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Through the enactment of SB 5, the Legislature has determined that 200-year protection is required to reduce flood impacts to a level of insignificance. SB 5 sets forth strict timelines for implementation that are tied to the Central Valley Floodplain Protection Plan starting in 2012. Buildout of the Project is not projected until 2015 following planned groundbreaking in early 2009.<sup>134</sup>

14-77

Two hundred-year flood protection provisions are especially critical given continued land subsidence and potential sea level rise as a result of global warming.<sup>135</sup> Although there is no legal requirement to meet 200-year flood protection until after Central Valley Floodplain Protection Plan adoption in 2012, 200-year flood protection is necessary to *actually* reduce flooding risks in the Project area to a level of insignificance. The DEIR must be revised to disclose that Project development in areas with only 100 year flood protection (or less) will be exposed to a significant risk of flooding. If feasible, 200 year flooding protection must be required prior to occupancy of the Project.

**X. THE DEIR’S EVALUATION OF TRAFFIC IMPACTS CONTAINS NUMEROUS ERRORS AND DEFICIENCIES**

The DEIR is also deficient because it fails to adequately assess the Project’s traffic impacts. As discussed in greater detail in the attached Brohard Comments, the errors and deficiencies contained in the DEIR’s evaluation of traffic impacts include the following:

- The Notice of Preparation (“NOP”) comment letter from the California Department of Transportation (“Caltrans”) has not been adequately addressed;
- Trip generation for the Village Center commercial/retail portion of the Project have been underestimated; and
- The DEIR fails to ensure that the Cosumnes River Boulevard Project will be completed before Phase 1 of the Project is occupied.

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These errors and deficiencies must be addressed in a revised DEIR.

<sup>134</sup> DEIR at p. 2-27.

<sup>135</sup> SWAPE Comments at p. 6.

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**A. The DEIR Fails to Evaluate All Potential Traffic Impacts Identified by Caltrans**

In response to the Delta Shores NOP, Caltrans submitted comments requesting that:

A Traffic Impact Study (TIS) should be completed. The TIS should consider all possible traffic impacts to all ramps, ramp intersections, and the mainline. The TIS should analyze the I-5 interchanges at Pocket-Mountainview Road and the planned Cosumnes River Boulevard, as well as State Route (SR) 99/Mack Road Interchange. The TIS should analyze mainline I-5 between Elk Grove Boulevard and the I-5/US 50 interchange. The TIS should also analyze mainline SR 99 between the Sheldon Road and Florin Road interchanges.<sup>136</sup>

While the DEIR analyzes the various interchanges on Interstate 5 and on SR 99 requested by Caltrans, the mainline analysis on both Interstate 5 and on SR 99 falls short of the limits requested by Caltrans. The DEIR fails to analyze all of the Interstate 5 and SR 99 mainline segments requested by Caltrans. For the Interstate 5 mainline, Caltrans requested analysis between the US 50 and the Elk Grove Boulevard interchanges but the DEIR only analyzed the Interstate 5 mainline between the Florin Road and Laguna Boulevard interchanges. For the SR 99 mainline, Caltrans requested analysis between Florin Road and Sheldon Road, but the DEIR only analyzed the SR 99 mainline between the Mack Road and Sheldon Road interchanges.

14-81

Because the DEIR identifies significant Project traffic impacts to the mainline of both freeways in segments immediately adjacent to the omitted segments, it is reasonable to assume that the Project will also create additional significant traffic impacts in the mainline segments omitted from the traffic analysis.<sup>137</sup> Project traffic impacts on the additional mainline segments on Interstate 5 and on SR 99 must thus be evaluated in a revised DEIR.

<sup>136</sup> DEIR, Appendix B, Caltrans NOP Comment Letter (May 7, 2007).

<sup>137</sup> DEIR at P. 5.9-107.



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**B. The DEIR Significantly Underestimates the Project’s Trip Generation Due to the Failure to Use Proper Trip Generation Rates for the Village Center Area**

The DEIR’s traffic analysis lacks foundation because the trip generation rates used in the Traffic Study do not correspond to the proposed land uses in the Project description of the DEIR. By using lower trip rates, the Traffic Study underestimates the number of trips that will occur with the phases of the proposed Project.

The Project includes a large, regional Village Center that would provide up to a maximum of 1.3 million square feet of commercial and retail uses. The Village Center would be located adjacent to Interstate 5 in the eastern portion of the site. The DEIR states that the Village Center could include “big box” development as well as restaurants, movie theaters, book stores, home supply stores, electronics stores, and other types of similar retail and professional office uses.”<sup>138</sup>

To forecast trips for the Village Center portion of the Delta Shores Project, the DEIR applies trip generation data for a “shopping center.” In the critical afternoon peak hours, the trip rate for a shopping center is 2.67 trips per thousand square feet.<sup>139</sup>

The Project Description of the DEIR, however, expressly states that the Village Center could include “big box” development. With the exception of home improvement superstores, trip generation rates for other “big box” development in the critical PM peak hour are considerably higher than the trip rate of 2.67 trips per thousand square feet for a shopping center. Discount clubs such as Costco have a trip generation rate of 4.24 trips per thousand square feet; discount stores such as Wal-Mart or Target have a trip generation rate of 5.06 trips per thousand square feet; and discount supermarkets such as Winco have a trip generation rate of 8.90 trips per thousand square feet.

By using lower trip rates, the traffic analysis underestimates the number of PM peak hour trips that will be generated by the “big box” development. As a result, the DEIR does not properly disclose, evaluate, analyze, and mitigate all of the potentially significant traffic impacts of the proposed Project. To provide an

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<sup>138</sup> DEIR at p. 2-12.  
<sup>139</sup> DEIR at p. 5.9-23.  
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appropriate and properly conservative analysis of traffic impacts, the traffic analysis must be revised to use trip generation rates associated with “big box” development that is likely to be included within the Village Center portion of the Project.

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14-83  
(con't.)

**C. The DEIR Fails to Condition Occupancy of Phase I of the Project on Completion of the Cosumnes River Boulevard Project**

The DEIR is also inadequate because it fails to ensure that assumed traffic improvements will actually be built at the time the DEIR relies upon their completion. Mitigation of near term and cumulative Project traffic impacts can only be achieved through actual construction of recommended mitigation measures and assumed improvements. If the improvements are not constructed prior to construction of the Project, significant and avoidable traffic impacts will occur until such time as the improvements are actually constructed.

14-84

The DEIR’s traffic analysis of Baseline Conditions assumes that various roadway improvements will be in place including the new Interstate 5/Cosumnes River Boulevard Interchange together with the extension of Cosumnes River Boulevard from Franklin Boulevard to Freeport Boulevard.<sup>140</sup> A review of available information on these projects, however, demonstrates that it is unlikely that the necessary right-of-ways, project funding, and required Caltrans approvals will be obtained in time for these projects to be completed prior to the completion of Phase I of the Delta Shores Project.<sup>141</sup>

Mitigation of baseline project traffic impacts can only be achieved through actual construction of these improvements. Payment of fees to various agencies or payment of the Project’s fair share of the new Interstate 5/Cosumnes River Boulevard interchange and the extension of Cosumnes River Boulevard from Franklin Boulevard to Freeport Boulevard does not guarantee that these improvements will be built in a timely manner.

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Because the DEIR fails to evaluate traffic impacts if Phase I is occupied before these improvements are actually in place, the DEIR must tie completion of the Cosumnes River Boulevard Project to Phase I of the Delta Shores Project and

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<sup>140</sup> DEIR at p. 5.9-47.

<sup>141</sup> Brohard Comments at pp. 4-6.

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not allow building occupancy permits to be issued until the interchange and roadway improvements are fully completed.

↑ 14-86  
 (cont.)

## XI. THE DEIR FAILS TO ADEQUATELY EVALUATE AND MITIGATE LOSS OF FARMLAND

The DEIR is further deficient because it fails to properly evaluate and mitigate the Project's conversion of important farmlands. The Legislature has repeatedly held that conversion of agricultural land is a significant concern and that the preservation of agricultural land is a significant goal of the State.<sup>142</sup> The Legislature has further stated that CEQA shall play an important role in the preservation of agricultural lands.<sup>143</sup>

The threat that farmland conversion poses to the viability of continued agriculture in the Central Valley as a whole cannot be overstated. In only a century and a half since the Gold Rush, almost seven hundred thousand acres on the floor of the Valley have been developed for urban use. Almost one hundred thousand acres of this were paved over in the 1990's alone. Within just the next generation, close to a million more acres of farmland could vanish, putting additional pressure on the ability of the region's farmers to continue producing food for the State, the nation and the world.<sup>144</sup> All communities have a responsibility to help preserve the agricultural base of the Central Valley, even as those same communities grow and provide housing for Valley residents.

The Project will result in a massive, permanent conversion of important farmlands to non-agricultural use. Approximately 764 acres of farmland will be converted to urban uses under the Project.<sup>145</sup> The DEIR states that 201 acres of this farmland is prime agricultural land, 341 acres is farmland of statewide

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<sup>142</sup> Gov. Code § 51220 (Williamson Act findings that agricultural preservation is valuable and necessary); Civ. Code § 815 (legislative declaration that preservation of agricultural lands "is among the most important environmental assets of California"); Pub. Resources Code § 10200, et seq. (California Farmland Conservancy Program Act, promoting the establishment of agricultural easements as a means to preserve agricultural land).

<sup>143</sup> Stats.1993, ch. 812, §1, subd. (d); see also Pub. Resources Code §§ 21061.1, 21061.2, 21095.

<sup>144</sup> American Farmland Trust, "The Future is Now: Central Valley Farmland at the Tipping Point?" (2006), <http://www.farmland.org/programs/states/futureisnow/default.asp> [accessed October 22, 2008].

<sup>145</sup> DEIR at p. 5.2-5.

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importance and 222 acres is farmland of local importance. Currently the land is primarily planted with oat hay, but previous plantings have included tomatoes, sugar beets, wheat, corn, safflower and alfalfa.<sup>146</sup>

The DEIR sets a standard of significance which states that “impacts on agricultural resources are considered significant if the proposed Project would: affect agricultural resources or operations (e.g., impacts to soils or farmlands, or impacts from incompatible land uses, or premature conversion of Williamson Act contracts).”<sup>147</sup> There is no question that the Project will meet this standard. The Project will affect existing agricultural resources and operations by permanently converting 201 acres of prime agricultural land, 341 acres of farmland of statewide importance and 221 acres of farmland of local importance that are currently in active agricultural production.<sup>148</sup>

The DEIR, however, ignores its own standard of significance and instead finds:

because the project site is within the city limits and has been designated both in the 1988 and 2030 General Plan for future development[,] the City does not consider the conversion of this agricultural land to be a significant impact. Therefore, the permanent conversion of agricultural land to nonagricultural use associated with the project is considered a **less-than-significant impact**.<sup>149</sup>

General Plan consistency is not a valid basis for finding that the agricultural land conversion caused by the Project is not a significant impact. A conversion of agricultural land to non-agricultural uses, that would otherwise be a significant adverse impact, does not become a less than significant impact merely because of a general plan designation.

CEQA requires that the impacts of the Project be measured against the “real conditions on the ground.”<sup>150</sup> Numerous cases have rejected environmental impact

<sup>146</sup> DEIR at p. 5.2-2.

<sup>147</sup> DEIR at pp. 5.2-13, 5.2-14.

<sup>148</sup> DEIR at p. 5.2-2.

<sup>149</sup> DEIR at p. 5.2-14.

<sup>150</sup> *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121; See also CEQA Guidelines § 15064(d), which requires a Lead Agency to evaluate “the direct physical changes in the environment” (emphasis added).



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(cont.)

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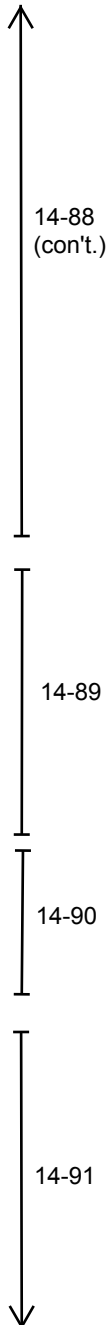
reports that compare a project under review to what is allowed under current zoning rather than to the existing physical environment.<sup>151</sup> This same line of analysis applies to general plan consistency.

CEQA does not identify general plan consistency as a basis for exempting projects from CEQA’s requirement that significant adverse impacts be identified, and to the extent feasible, mitigated. The fact that an impact will occur as a result of a project that is consistent with planned uses does not mean that the impact is less than significant. If that were true, arguably none of the impacts associated with any planned development could ever be considered significant or would ever be mitigated. Because this Project will cause the permanent conversion of agricultural land, the Project developer should be responsible for providing feasible mitigation for the impact.

The evidence in the record shows that the conversion of 201 acres of prime agricultural land, 341 acres of farmland of statewide importance and 221 acres of farmland of local importance constitutes a significant adverse impact that requires mitigation. For example, the Department of Conservation, the agency responsible for promoting proper management of the State’s agricultural land, has determined that the Project’s conversion of agricultural land is “an impact of at least regional significance.” An agency’s expert opinion constitutes substantial evidence.

In lieu of relying upon the initial opinion letter of the Department of Conservation, the City may make its own determination of significance. However, such a determination must be based upon substantial evidence and relevant factors.

The Department of Conservation has developed a California Agricultural Land Evaluation and Site Assessment (“LESA”) Model to provide lead agencies with a methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process.<sup>152</sup> The LESA Model’s evaluation factors include two land evaluation measures regarding soil resource quality and four site assessment factors, including a project’s size, water resource availability, surrounding agricultural lands, and surrounding protected resource lands. The project score



<sup>151</sup> See, e.g., *Environmental Planning and Information Council v. County of El Dorado* (1983) 131 Cal.App.3d 350; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229.

<sup>152</sup> Pub. Resources Code § 21095.

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then becomes the basis for making a determination of a project's potential significance. The DEIR must be revised to evaluate the Project's agricultural conversion impacts using the LESA Model or some other equivalent approach.

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(con't.)

As a significant effect under CEQA, the City is required to consider feasible mitigation and alternatives that would lessen or eliminate this significant impact.<sup>153</sup> To mitigate the impacts of the Project due to the conversion of agricultural land, the Department of Conservation, Division of Land Resource Conservation:

...recommends the purchase of agricultural conservation easements on land of at least equal quality and size as partial compensator, for the direct loss of agricultural land, as well as for the mitigation of growth inducing and cumulative impacts on agricultural land.

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Mitigation using conservation easements can be implemented by at least two alternative approaches: the outright purchase of conservation easements tied to the project, or via the donation of mitigation fees to a local, regional or statewide organization or agency, including land trusts and conservancies, whose purpose includes the purchase, holding and maintenance of agricultural conservation easements. For example, the California Farmland Conservancy Program is authorized to accept donations of funds if the Department of Conservation is the designated beneficiary and it agrees to use the funds for purposes of the program in a county specified by the donor.<sup>154</sup>

Imposition of this recommended mitigation would be consistent with the City of Sacramento 2030 General Plan Policies ER 4.2.2 and ER 4.2.3:

**ER 4.2.2 Permanent Preservation.** The City shall work with the County, Natomas Basin Conservancy, and other entities to protect and permanently preserve a one-mile buffer outside of the city to preserve viable agricultural activities and as a community separator between Sutter and Sacramento Counties and along the Sacramento River.

14-93

<sup>153</sup> Pub. Resources Code § 21002; CEQA Guidelines §§ 15126.4, subd. (a), 15126.6, subd. (b).

<sup>154</sup> DEIR, Appendix B, Department of Conservation NOP comment letter (May 9, 2007) at p. 2.

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**ER 4.2.3 Coordinate to Protect Farmland.** The City shall continue to work with County and other adjacent jurisdictions to implement existing conservation plans to preserve prime farmland and critical habitat outside the city.

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14-93  
(cont.)

The DEIR must be revised to adequately evaluate and disclose the Project’s farmland conversion impacts and to provide for appropriate mitigation of such impacts.

**XII. THE DEIR FAILS TO ADEQUATELY EVALUATE AND MITIGATE IMPACTS ON THE HISTORIC TOWN OF FREEPORT AND SCENIC HIGHWAY 160**

The DEIR is further deficient because it: (1) fails to disclose and evaluate the Project’s impact on the unique historical characteristics of the Town of Freeport; (2) fails to fully disclose and evaluate the Project’s negative aesthetic and visual impacts on residents of, and visitors to, the Town of Freeport and on Scenic Highway 160; and (3) fails to disclose and evaluate the Project’s potential impacts on the historic Victory Trees Memorial along Freeport Boulevard.

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The DEIR acknowledges that the Town of Freeport is located west of the Project site along the east bank of the Sacramento River and “is characterized by a mix of architectural styles and rural characteristics.” But the DEIR fails to disclose the historic importance of this town and the longstanding efforts of the County of Sacramento to preserve its unique historical characteristics from inconsistent development pressures immediately to the east of the town.

Freeport, the northernmost river town on the Sacramento Delta, was established as a river port in 1862 by the Sacramento Valley Railroad in order to avoid taxes levied by the City of Sacramento.<sup>155</sup> Development within the town of Freeport over the past 145 years has reflected its association and proximity with the Sacramento River.<sup>156</sup> The Town of Freeport is located at the southwestern corner of the City of Sacramento, adjacent to the Sacramento River and along State Highway 160.

<sup>155</sup> City of Sacramento, Town of Freeport Annexation, Initial Study/Mitigated Negative Declaration (August 2003) at p. 4-55.

<sup>156</sup> *Id.*

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Since its formation, Freeport has remained relatively isolated from the urban pressures that have occurred throughout the surrounding area and has retained a rural Delta Town atmosphere. The town consists of primarily residential homes, and neighborhood scale retail businesses, including restaurants, a grocery store, offices and marinas.

During the past decade, Freeport has begun to feel development pressures in areas immediately east of the town. Recent studies have concluded that, as these pressures continue, there is a high risk that the character of the town could be negatively impacted.<sup>157</sup>

The County of Sacramento has long recognized that careful land use planning was critical to assure a continuing distinct identity in Freeport.<sup>158</sup> The County of Sacramento has designated the town of Freeport as a "Neighborhood Preservation Area. The intent of this designation is "to preserve and protect the existing river town atmosphere of the property" and "to preserve the unique historical characteristics of the town of Freeport."<sup>159</sup>

In making this designation, the City of Sacramento has determined that "The Freeport Community is historically unique in Sacramento County, having been conceived as a riverport community."<sup>160</sup> The City further found that "Urban Development in the City of Sacramento is approaching Freeport, threatening the character of the town."<sup>161</sup>

The Freeport identity is more closely linked to its historic origins as a water-oriented rural town than to an architectural style.<sup>162</sup> Accordingly, protection of its unique historical characteristics is not simply a matter of ensuring that adjacent development uses similar architectural style. More critical is to maintain the town's rural Delta Town atmosphere.<sup>163</sup> This requires maintaining sufficient

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<sup>157</sup> See, e.g., Town of Freeport Amendments to the Airport-Meadowview Community Plan.

<sup>158</sup> See City of Sacramento, Town of Freeport Annexation, Initial Study/Mitigated Negative Declaration (August 2003) at p. 4-55.

<sup>159</sup> Sacramento County Zoning Code § 533-10, subd. (a).

<sup>160</sup> *Id.* § 533-14, subd. (a).

<sup>161</sup> *Id.* § 533-14, subd. (b).

<sup>162</sup> City of Sacramento, Town of Freeport Annexation, Initial Study/Mitigated Negative Declaration (August 2003) at p. 4-55.

<sup>163</sup> *Id.*; Sacramento County Zoning Code § 533-14.



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agricultural and open space buffer zones between Freeport and any nearby urban development.

Unfortunately, the Project as proposed will completely swallow up and obliterate Freeport as a distinct and historically unique Delta riverfront town by immediately surrounding it with dense urban development.

The DEIR fails to analyze or evaluate the impact of the Project on Freeport's rural historical landscape, or consider mitigation measures or alternative land uses that would significantly reduce these aesthetic, visual, historical and culturally significant impacts. Rather than actually evaluating this impact, the DEIR attempts to minimize the negative aesthetic and visual impacts of the Project by maintaining that Project visual impacts are subjective at best, and in any case, will be reduced by compatible design, appropriate landscape and open space buffers in compliance with the yet to be adopted Delta Shores PUD Guidelines.

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In actuality, the Project plan does not provide any buffers or open space around Freeport, but rather places medium and low density tract housing of up to 15 units per acre cheek to jowl immediately next to Freeport residences and businesses. As a result, Freeport, as a distinct and unique community, will cease to exist with the construction of Delta Shores.

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Moreover, reliance on future Delta Shores PUD Guidelines improperly defers mitigation. Moreover, such guidelines generally address architectural compatibility and would not require the creation of sufficient agricultural and open space buffer zones between Freeport and any nearby urban development to maintain the community's historic rural Delta Town atmosphere.

14-97

The Freeport Preservation Coalition recommends that these significant Project impacts to Freeport be mitigated by an agricultural and park open space buffer zone covering the west of the Interstate 5 portion of the Project. Such mitigation would achieve the dual objectives of keeping valuable and rapidly disappearing farm land in production and providing a needed open space buffer to maintain the historical and small town integrity of Freeport.

14-98

The Project's construction of medium and low density housing along the State Highway 160 would also cause significant visual impairments. Highway 160 is designated a scenic highway through the Town of Freeport and along the western

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edge of the Project site. The designation ends where the city limits cross over Highway 160 at Post Mile 35.045.

The DEIR sets as its thresholds of significance for impacts on aesthetics and visual resources, the following:

- The Project will have a demonstrable negative aesthetic effect that would substantially degrade the existing visual character or quality of the Project site and its surroundings, and
- The Project will affect a scenic vista or adopted view corridor.

Here, the Project clearly meets both of these standards. Currently this section of Highway 160 offers views of the historic Town of Freeport and the adjacent open space and agricultural lands. The Project would eliminate these largely undeveloped, agricultural views and replace them with residential and commercial buildings as high as 55 feet in residential mixed-use buildings within the Project site. The Project would also substantially degrade the historic rural Delta Town atmosphere of Freeport.

Instead of actually applying its own thresholds of significance, the DEIR states that it will not make a determination of significance of the specific design elements of the Project because “positive or negative value attached to changes in visual character is largely subjective.”<sup>164</sup> Rather than making a judgment as to the Project’s aesthetic and visual impacts, the DEIR instead abdicates its duties under CEQA and states that it will assume less than significant aesthetic and visual impacts as long as the Project complies with the City’s adopted design goals and policies and on the Delta Shores PUD Guidelines.<sup>165</sup>

Consistency with adopted goals, polices and guidelines, however, is not a valid basis for finding that the aesthetic and visual impacts caused by the Project are not significant impacts. Conversion of a scenic highway’s historic open space views to views of dense suburban development and destruction of an historic community’s essential character does not become a less than significant impact merely because it is consistent with adopted goals, polices and guidelines.



<sup>164</sup> DEIR at p. 5.1-26.

<sup>165</sup> *Id.*

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CEQA requires that the impacts of the Project be measured against the “real conditions on the ground.”<sup>166</sup> Numerous cases have rejected environmental impact reports that compare a project under review to what is allowed under current regulations and policies rather than to the existing physical environment.<sup>167</sup>

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 14-101  
 (cont.)

The DEIR must be revised to make a finding of significance based upon the Project’s actual aesthetic, visual, historical and culturally significant impacts.

The DEIR is also deficient due to its failure to evaluate possible impacts on the Victory Trees Memorial along Freeport Boulevard. The Victory Trees are elm trees that were planted along both sides of Freeport Boulevard to below Freeport in 1920 to honor and memorialize Sacramento citizens who fought and died in World War I. These trees historically provided a magnificent green canopy over Freeport Boulevard for two miles from Meadowview Road to Freeport.

↑  
 14-102  
 ↓

In its *Historical Resources Compliance Report for the Relinquishment of State Route 160 to the City of Sacramento*, Caltrans determined that the Victory Trees Memorial was eligible for the National Register of Historic Places as a contributing element of the River Road/Delta Highway, a potentially eligible historic district.<sup>168</sup> The report also concluded that the Victory Trees appear to meet the criteria for individual inclusion on the National Register under Criterion C as a significant designed landscape feature. The transfer of a portion of State Route 160 to the City of Sacramento included a Preservation Covenant for the trees.

Unfortunately over the past five years the City of Sacramento has cut down over two thirds of the trees, including every single one of the trees facing the Delta Shores property on Freeport Boulevard above Stone Crest Avenue. While the removal of these trees has been justified due to purported infection by Dutch elm disease, there have been no efforts to replant the trees and maintain the Victory Trees Memorial.

<sup>166</sup> *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121; See also CEQA Guidelines § 15064(d), which requires a Lead Agency to evaluate “the direct physical changes in the environment” (emphasis added).

<sup>167</sup> See, e.g., *Environmental Planning and Information Council v. County of El Dorado* (1983) 131 Cal.App.3d 350; *Christward Ministry v. Superior Court* ( 1986) 184 Cal.App.3d 180; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229.

<sup>168</sup> City of Sacramento, Town of Freeport Annexation, Initial Study/Mitigated Negative Declaration (August 2003) at p. 4-56.

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The DEIR discusses heritage trees and the impacts and mitigations associated with, but makes no specific mention of the Victory Trees or of its historic importance as a World War I memorial.

↑  
14-102  
(con't.)

The DEIR must be revised to evaluate the Project's impact on the Victory Trees Memorial, including potential Project inconsistency with restoration of the memorial with replacement trees. The City's obligation to protect the Victory Tree Memorial continues regardless of whether the trees are the same ones as originally planted. Moreover, the City has a legal obligation per its agreement with Caltrans to preserve and maintain this important historical landmark, as well as a moral obligation to preserve and protect this memorial to the brave Sacramento citizens who fought and died in World War I.

↑  
14-103

The DEIR must be revised to disclose the existence of the Victory Tree Memorial and to evaluate the Project's potential impacts on continued maintenance and restoration of the memorial.

**XIII. THE CITY MUST PREPARE AND RECIRCULATE A REVISED DEIR AS A RESULT OF ITS INADEQUACIES**

CEQA requires a lead agency to recirculate an EIR when significant, new information is added to the EIR following public review but before certification.<sup>169</sup> The CEQA Guidelines clarify that new information is significant if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project" including, for example, "a disclosure showing that ... [a] new significant environmental impact would result from the project."<sup>170</sup>

As discussed above, the proposed Project will have numerous impacts that are different and more severe than those described in the EIR, including impacts related to special status species, water quality, soil contamination, air quality, global warming, flooding, traffic, farmland, and cultural and historical aesthetics. The EIR also lacks adequate mitigation for the significant impacts it identifies. A revised and recirculated EIR is required.

↑  
14-104  
↓

<sup>169</sup> Pub. Resources Code § 21092.1.

<sup>170</sup> CEQA Guidelines § 15088.5.

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**XIV. CONCLUSION**

The proposed DEIR fails to fulfill its responsibilities under CEQA. The comments presented above identify numerous impacts that are undisclosed, erroneously evaluated or insufficiently mitigated. The Project as currently described may result in significant impacts that may create as many burdens to the community as it creates opportunities. A revised DEIR must be prepared to correct these deficiencies. Because such revisions would be significant, the revised DEIR must be recirculated for public review and comment.

↑  
14-104  
(con't.)

We urge the City to ensure that the Project's impacts are fully disclosed, evaluated and mitigated before the Project is allowed to proceed.

The Delta Shores Coalition and its member organizations and its individual members thank the City of Sacramento for providing us the opportunity to comment on this matter.

Sincerely,



Thomas A. Enslow

TAE:cnh  
Attachments

- cc: Freeport Preservation Coalition
- Stone Lakes National Wildlife Refuge Association
- Coalition for Responsible Development
- Individual Representatives



October 22, 2008

Mr. Thomas A. Enslow  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Sacramento, CA 95814

**Re: Biological-Related Comments on the Draft Environmental Impact Report for the Delta Shores Project in Sacramento, California**

Dear Mr. Enslow:

This letter contains my comments on the September 2008 Draft Environmental Impact Report ("DEIR") for the proposed Delta Shores project. I am a professional environmental biologist and have been working in this field for over 22 years, including 10 years as an environmental consultant in the private sector and 12 years in the public sector (California Department of Transportation and US Fish and Wildlife Service: "USFWS"). During my ten years with the USFWS, I reviewed and commented on numerous Environmental Impact Reports and Environmental Impact Statements. I am currently the principal of Berryman Ecological. I have a B.S. in zoology from the University of California, Santa Barbara, and an M.A. in biology from San Diego State University.

I have reviewed the biological and wetland impacts analysis presented in the DEIR. Based upon my expertise and experience in this area, I have the following comments.

*Giant Garter Snake*

The project site is within the Sacramento Basin subpopulation and Mid-Valley Recovery Unit for the federally listed giant garter snake<sup>1</sup>. The DEIR cites a giant garter snake habitat assessment prepared by ECORP Consulting, concluding that the irrigation ditches within the project site do not appear to provide potential aquatic habitat for the giant garter snake.<sup>2</sup> The DEIR does not substantiate the finding that giant garter snake habitat is absent from the project site.

14-105

The document indicates that the ditches onsite potentially convey water during the growing season and likely convey water during the rainy season, but that these periods of inundation do not appear sufficient to support the aquatic prey base required by giant garter snake.<sup>3</sup> The DEIR does not provide information to support this conclusion, including the expected duration of flows through these ditches and why these flows are insufficient to support the aquatic prey base, for at least a portion of the giant garter

14-106

<sup>1</sup> USFWS 1999, at P. 45.  
<sup>2</sup> DEIR at p. 5.4-17  
<sup>3</sup> DEIR at p. 5.4-17

snake's active season.

↑ 14-106  
(con't.)

It is likely that irrigation water is available on-site during at least a portion of the snake's active season (mid-March through early October), as this overlaps with the agricultural growing season. The potential for water to persist on-site for a sufficient duration to provide giant garter snake foraging opportunities is evidenced by the presence of emergent wetland vegetation including rush (*Juncus* sp.) and cattail (*Typha* sp.), as described in the DEIR.<sup>4</sup> Prey potentially occurring in areas that inundate for a sufficient period to support this type of emergent vegetation includes frogs and tadpoles (most likely Pacific tree frog, but also potentially bullfrog). Although ECORP did not observe potential prey species during their site visits on March 23 and June 11, 2007<sup>5</sup>, when the ditches were dry, this does not definitively indicate that prey species are absent during the garter snake's entire active season.

14-107

While it does not appear that there is sufficient water on-site to support the snake during its entire active season, the seasonal wetlands and drainage ditches on-site are tributary to Morrison Creek<sup>6</sup>, and there is potential for the giant garter snake to occasionally enter the site from the off-site creek. There is a 1992 record for giant garter snake from the eastern face of a levee between Morrison Creek and Beach Lake, west of Interstate 5, within a mile south of the project site<sup>7</sup>. There is also a 1965 record for giant garter snake east of Interstate 5 within a mile south of the project site, in an area that at the time consisted of farmland (wheat, corn) adjacent to Morrison Creek floodplain.<sup>8</sup> There is a confirmed observation of giant garter snake from the Bufferlands, directly south of the project site, from 1983, and an unconfirmed record from along Morrison Creek in 1988<sup>9</sup>. On the south side of Morrison Creek adjacent to the project site is an extensive wetland area consisting of the Sacramento Regional County Sanitation District bufferlands<sup>10</sup> and Beach Lake.<sup>11</sup> This provides ample high quality giant garter snake habitat in the project vicinity.

14-108

The DEIR states "Due to the distance from Morrison Creek, giant garter snake habitat is unlikely to occur within the project site."<sup>12</sup> The DEIR further states that no construction would occur within 200 feet of Morrison Creek, therefore no impact to giant garter snake would occur and no mitigation is required<sup>13</sup>. However, the DEIR indicates that suitable aquatic habitat for giant garter is also present at an unnamed canal located just north of the site, east of I-5.<sup>14</sup> The DEIR does not provide the distance between the proposed development and the suitable aquatic habitat immediately north of the site. This distance should be provided to determine whether the project would impact giant garter snakes

14-109

<sup>4</sup> DEIR at p. 5.4-7

<sup>5</sup> ECORP 2007a

<sup>6</sup> ECORP 2006

<sup>7</sup> Stone Lake Refuge plan, p. 48; CNDDB 2008, GGS Occurrence #15

<sup>8</sup> CNDDB 2008, GGS Occurrence #147

<sup>9</sup> Carollo Engineers 2000, at p. 2-23

<sup>10</sup> DEIR at p. 5.4-2

<sup>11</sup> Stone Lake Refuge plan, p. \*\*

<sup>12</sup> DEIR at p. 5.4-17

<sup>13</sup> DEIR at p. 5.4-42

<sup>14</sup> DEIR at p. 5.4-17

potentially occurring in this northern canal and using adjacent upland habitat.

↑ 14-109  
(cont.)

Given (a) the presence of a large block of giant garter snake habitat adjacent to and hydrologically connected to the project site, from which there are documented occurrences of giant garter snake, (b) the existence of irrigation ditches on the project site supporting emergent wetland vegetation species characteristic of habitat for giant garter snake and typical prey species, and (c) the likelihood that these irrigation ditches flow during at least a portion of the snake's active season, the potential for giant garter snake occurrence on the project site appears to be higher than is characterized in the DEIR.

14-110

The Hydrology and Water Quality section of the DEIR states that an historic drainage swale on the project site would be restored to a "functional wetland feature that runs through the eastern portion of the project site and drains into Morrison Creek."<sup>15</sup> The DEIR should discuss whether the restored wetlands would provide giant garter snake habitat, and if so, the DEIR should address potential indirect impacts from the adjacent development such as vehicular strikes, predation by domestic cats, and human disturbance.

14-111

Swainson's Hawk

Table 5.4-2 indicates that Swainson's hawk has a *moderate* likelihood of occurrence on-site.<sup>16</sup> Page 5.4-18 of the DEIR, however, states that four Swainson's hawk nests are located along the Sacramento River west of the site, and that Swainson's hawks were observed flying over the site during the May 2007 site visit. Table 5.4-2 should state that Swainson's hawks have been *observed* on-site.

14-112

The proposed mitigation consists of offsite preservation at a 1:1 ratio.<sup>17</sup> Although this is consistent with CDFG draft mitigation guidelines,<sup>18</sup> the proposed measure does not necessarily mitigate Swainson's hawk impacts to a level below significance. The CDFG guidelines have been reviewed by the Swainson's Hawk Technical Committee (SHTC), an independent group of Swainson's hawk experts. The SHTC has judged the guidelines to be inadequate to conserve or recover the species in the Central Valley, because they allow for loss of foraging habitat without considering habitat needs for Swainson's hawk territories.<sup>19</sup>

14-113

Since offsite preservation at a 1:1 ratio essentially means that there will be a 50% loss of Swainson's hawk foraging habitat, the DEIR needs to explain how this preservation is expected to reduce impacts to a level less than significant. Will the preserved habitat have higher conservation value than the impacted habitat? The DEIR specifies that the habitat to be preserved off-site must be suitable (alfalfa or other low growing row crops),<sup>20</sup> but the DEIR does not specify the location of the mitigation land. Foraging habitat in close proximity to nesting habitat has higher value than land far from nesting

14-114

<sup>15</sup> DEIR at p. 5.5-24

<sup>16</sup> DEIR at p. 5.4-10

<sup>17</sup> DEIR at p. 5.4-31

<sup>18</sup> Woodbridge 1998

<sup>19</sup> Woodbridge 1998

<sup>20</sup> DEIR at p. 5.4-31



habitat, as the energetic cost of travelling between foraging and nest site is lower<sup>21</sup>. Foraging habitat on the project site is adjacent to nesting habitat along the Sacramento River, which supports the highest density of nesting hawks in the region.<sup>22</sup> Loss of foraging habitat in the immediate vicinity of the Sacramento could result in higher energetic costs for Swainson's hawks as they need to travel further to forage, and this may translate into lower reproductive success. The DEIR fails to describe specifically how the offsite preservation is expected to mitigate this impact. As a result, the DEIR lacks justification for its conclusion that impacts to Swainson's hawks will be reduced to a level of insignificance.

14-114  
(con't.)

#### Vernal Pool Crustaceans

The DEIR states that mitigation for loss of vernal pool crustacean habitat shall consist of dedication of one wetland creation credit for each acre impacted, or two acres of on-site creation for each acre impacted<sup>23</sup>. The California Native Plant Society (CNPS) Policy and Guidelines on Vernal Pool Mitigation state, "This practice of creating vernal pools to mitigate for loss of natural pools relies on incomplete scientific methodology, in that criteria for success are seldom based on detailed biological data and monitoring for success is therefore usually incomplete; created pools frequently are built in existing vernal pool fields and thus alter, and may mar or damage, the existing functional natural ecosystems; and created pools built in areas away from natural pools generally have greatly lowered success rates."<sup>24</sup> The recovery plan for vernal pool species, including the listed vernal pool fairy shrimp and vernal pool tadpole shrimp, maintains that vernal pool creation is still considered experimental, that long terms trends and sustainability of created pools have not been verified, and that preservation should therefore be the fundamental conservation strategy for vernal pools.<sup>25</sup> CNPS and USFWS therefore recommend a preservation component in addition to a creation component for vernal pool mitigation. Typically, the preservation component consists of at least two acres preserved for each acre lost.<sup>26</sup> The DEIR includes no preservation component in its mitigation strategy for vernal pool crustaceans, and does not justify the conclusion that impacts will be mitigated to a level below significance through creation alone.

14-115

#### Downstream Effects

The DEIR does not address potential indirect impacts to sensitive biological resources within the Morrison Creek watershed downstream from the project site. Adverse effects might result from increased stormwater run-off due to placement of impervious surfaces over the project site and placement of levees to reduce the floodplain, resulting in increased rate and volume of flows, which can cause downstream habitat modification, erosion, and sedimentation. Potential downstream adverse effects also include increased downstream contamination resulting from urban run-off.

14-116

<sup>21</sup> England et. al 1995 at p. 1

<sup>22</sup> DEIR at p. 5.4-18

<sup>23</sup> DEIR at p. 5.4-28

<sup>24</sup> CNPS 1994 at p. 1

<sup>25</sup> USFWS 2005 at p. II-8

<sup>26</sup> CNPS 1994 at p. 2; USFWS 2007a at p. 35, 36, 53; USFWS 1996 at p.3

The DEIR states that the project site is mostly protected by existing levees, but that SAFCA is planning to construct a levee wall near Franklin Boulevard which would protect the remainder of the property<sup>27</sup>. Construction of the new levee can be attributed to the project, since it is necessary to put the development within 100 year flood protection. Any impacts from the new levee should therefore be considered in the CEQA analysis. The encroachment of urban development into floodplains translates into more rapid movement of flood peaks downstream. When the natural floodplain is intact, flood stages on the main watercourse tend to attenuate between significant tributaries, but with levee construction the stages instead accumulate into higher downstream flood stages. This diminishment of floodplain, in addition to increases in volume and rate of flows due to the placement of impervious surfaces, can adversely affect aquatic habitat downstream.<sup>28</sup>

14-117

Biologically sensitive lands downstream from the project site include the Beach/Stone Lakes Basin and the Stone Lake National Wildlife Refuge. The project site is immediately adjacent to the approved refuge boundary for Stone Lake National Wildlife Refuge. This boundary envelops lands that are currently owned and/or managed by the USFWS, and areas within which the USFWS is authorized to work with willing landowners to acquire and/or manage land.<sup>29</sup> The Sacramento Regional County Sanitation District Bufferlands (Bufferlands), adjacent to the project site to the south, is not currently part of the refuge but lies within the approved refuge boundary.<sup>30</sup> The Bufferlands include the City of Sacramento Laguna Creek Vernal Pool/Seasonal Wetlands Mitigation Site, and an additional 115-acre wetland preserve.<sup>31</sup> Immediately south, and hydrologically connected to the Bufferlands via Morrison and Laguna Creeks, is land that is currently owned and managed by the USFWS within the Stone Lake National Wildlife Refuge.

14-118

The Beach-Stone Lakes Basin, including the existing National Wildlife Refuge, the Bufferlands, and other lands within the approved refuge boundary, supports an abundance of wetlands and a diversity of native wildlife and plant species. The basin is a vital stop for migratory birds that breed, rest and feed along the Pacific Flyway.<sup>32</sup> A number of State and federally listed and other special status species are known to occur in on these lands, including but not limited to the giant garter snake, Swainson's hawk, vernal pool fairy shrimp, vernal pool tadpole shrimp, greater sandhill crane, burrowing owl, and western pond turtle.<sup>33</sup>

The primary source of water to the Beach-Stone Lakes Basin is from the accumulated flows of the Morrison Creek Stream Group watershed, and the Basin receives storm water runoff from upstream urban developments.<sup>34</sup> The Stone Lakes Wildlife Refuge Comprehensive Conservation Plan (CCP) describes the challenges that upstream urban development poses for the ecological integrity of the Refuge:

<sup>27</sup> DEIR at p. 5.5-28

<sup>28</sup> NOAA 2008 at p.

<sup>29</sup> USFWS 2007b at p. 9

<sup>30</sup> USFWS 2007b at p. 9, Fig 2

<sup>31</sup> Carollo Engineers 2000, at p. 2-29

<sup>32</sup> [www.stonelakes.org/refuge/migration.htm](http://www.stonelakes.org/refuge/migration.htm)

<sup>33</sup> USFWS 2007b, Appendix C

<sup>34</sup> USFWS 2007b at p. 64, 65

*Projections are that continued urbanization will lead to a loss of upstream storage area and a doubling of storm water runoff entering Stone Lakes basin . . . Increases in elevation and duration of flooding resulting from upstream development may affect the grassland, riparian and wetland habitats and associated wildlife now using the Refuge. Noxious weeds, such as perennial pepperweed, yellow star thistle and other species, may become more invasive on grassland habitats as seed sources are washed into the Refuge . . . Riparian habitats may be affected due to prolonged high flood water levels, particularly during the spring. Conversion of stands of willows and cottonwood trees in low lying areas to more aquatic habitats may result and the composition of seasonal and permanent wetlands may change.<sup>35</sup>*

14-118  
(cont.)

The DEIR did not address potential impacts to biological resources downstream from the project site that could result from an increase in urban stormwater runoff as described in the CCP. In particular, the document should address how increases in urban stormwater runoff could modify downstream habitats and introduce noxious weeds. The Hydrology and Water Quality section of the DEIR addresses the project's potential for increasing the rate and amount of stormwater, and although the DEIR states that these impacts would be less than significant,<sup>36</sup> the significance standard used in the DEIR is that the project would not "create or contribute stormwater runoff which would exceed the capacity of existing or planned stormwater drainage systems or increase erosion at the project site."<sup>37</sup> This standard addresses public safety issues related to flood risk downstream from the project site, but does not address the cumulative effect that increased stormwater might have on downstream biological resources. These potential effects should have been addressed in the Biological Resources section of the document.

14-119

The DEIR should also have addressed project related effects on downstream resources related to water quality impairment. The USFWS raises the issue of urban development and indirect water quality impacts on resources in the Beach-Stone Lakes Basin:

*Morrison Creek runs through southern Sacramento prior to entering the north end of the Refuge and has been characterized by the Environmental Protection Agency (EPA) as an impaired waterway because of high Diazinon concentrations. The EPA found that Diazinon poses unacceptable risks to agricultural workers and to birds and other wildlife species . . . Most likely these pesticides were flushed through the stormwater runoff drainage system after accumulating on lawns and other areas during the dry season . . . Sacramento County's National Pollutant Discharge System (NPDES) Municipal Permit requires reduction of pollutants found in urban stormwater runoff to the maximum extent possible. Stormwater detention basins are constructed as urban expanses east and upstream of the Refuge are developed.*

14-120

<sup>35</sup> USFWS 2007b at p. 65

<sup>36</sup> DEIR at pp. 5.5-24 – 5.5-28

<sup>37</sup> DEIR at p. 5.5-19

*These basins are effective in reducing pollutants by 30 to 90 percent. The pollutants that are not detained will likely enter the Refuge in run-off, potentially affecting fish and wildlife.*<sup>38</sup>

In addition to Diazinon, Chlorpyrifos has been identified as a hazardous chemical that threatens wildlife and is found from urban stormwater runoff in Morrison Creek.<sup>39</sup> The DEIR states that the additional impervious surface area that would be created by the project could increase the transport of urban pollutants in runoff to nearby waterways within the Morrison Creek watershed.<sup>40</sup> The document then maintains that compliance with local, state, and federal water quality requirements will cause the project to have less than significant water quality impacts.<sup>41</sup> The DEIR does not, however, describe potential adverse water-quality effects to sensitive biological resources within the Beach-Stone Lakes Basin and how the required measures are expected to reduce impacts to these resources to a level below significance, both individually and cumulatively.

14-120  
(con't.)

Morrison Creek is tributary to the Sacramento River, which supports the state and federally threatened Delta smelt, the state and federally endangered Sacramento winter-run Chinook salmon, the state and federally threatened Central Valley spring-run Chinook salmon, the federally threatened Central Valley steelhead, and the Sacramento splittail, a state and federal species of concern.<sup>42</sup> The CEQA analysis should address potential project-related effects from urban run-off and levee construction on the volume, rate, and quality of water flows into the Sacramento River, and potential consequences related to special status fish populations.

14-121

#### California Black Walnut

DEIR indicates that walnut trees are present on-site, but the document does not state which species of walnut was found there.<sup>43</sup> Table 5.4-2 indicates that suitable habitat for northern California black walnut (*Juglans hindsii*) may be present for this species to occur, but states that the likelihood of occurrence is low.<sup>44</sup> Information provided in the document does not justify the conclusion that this species has a low likelihood of occurrence on-site. Northern California black walnut is designated as a List 1B species by the California Native Plant Society, indicating that it is rare or endangered in California and elsewhere<sup>45</sup>. The document should provide sufficient evidence to determinate that none of the walnut trees observed on-site are California black walnut.

14-122

#### Greater Sandhill Crane

The DEIR and Special Status Species Assessments<sup>46</sup> do not mention potential project related impacts to the greater sandhill crane (*Grus canadensis tabida*). This species is

14-123

<sup>38</sup> USFWS 2007b at p. 66.

<sup>39</sup> California Water Plan Update Pre-Admin Draft. [www.waterplan.water.ca.gov/docs/cwpu2009/0908pre-admin/vol3/3-RR\\_Delta\\_Pre-Admin-RB\\_\(8-20-08\)formatted.doc](http://www.waterplan.water.ca.gov/docs/cwpu2009/0908pre-admin/vol3/3-RR_Delta_Pre-Admin-RB_(8-20-08)formatted.doc)

<sup>40</sup> DEIR at p. 5.5-21

<sup>41</sup> DEIR at p. 5.5-24

<sup>42</sup> CNDDDB 2008

<sup>43</sup> DEIR at p. 5.4-2, 5.4-4

<sup>44</sup> DEIR at p. 5.4-10

<sup>45</sup> CNDDDB 2008

<sup>46</sup> ECORP 2007b and 2007c

listed as Threatened and is designated as a Fully Protected Species by CDFG.<sup>47</sup> The greater sandhill crane is known to be present on the adjacent Bufferlands<sup>48</sup> and Stone Lakes National Wildlife Refuge<sup>49</sup> during the winter. Sandhill cranes are threatened by encroaching development and loss of cereal cropland in their wintering habitat.<sup>50</sup> These cranes require fresh water for drinking and bathing, and in the Central Valley they forage in newly harvested cereal crops,<sup>51</sup> thus it is not unreasonable to assume that cranes using the wetlands within the adjacent Bufferlands will occasionally forage in the agricultural land on-site

14-123  
(cont.)

The Comprehensive Conservation Plan for the Beach-Stone Lakes National Wildlife Refuge discusses ongoing threats to sandhill cranes in the region, as follows:

*Many migratory birds which frequent the Refuge are also dependent on habitats outside of the Refuge. For example, the greater sandhill crane has a wintering range of approximately three square miles . . . Therefore, cranes utilizing the Refuge also rely on nearby agricultural fields, grasslands and wetlands for feeding, loafing, etc. As open land is lost, these birds are either forced to fly longer distances to suitable habitat or pushed into smaller and smaller parcels. Over the last ten years, the ability of the eastern Sacramento-San Joaquin Delta region to support wintering cranes ...has declined and continues to be threatened by urban development and conversion of pasture and row crops to vineyards.*<sup>52</sup>

14-124

Given that the project site supports suitable winter foraging habitat for the greater sandhill crane, and this species is known to occur on the adjacent Bufferlands, it appears likely that sandhill cranes use the project site for foraging. The CEQA analysis should address the potential for wintering sandhill cranes to use the site, and the effects that the proposed project would have on these species, including both onsite and indirect, offsite effects.

This concludes my comments on the Delta Shores DEIR. Thank you for the opportunity to review and comment on this document.

Sincerely,



Ellen Berryman  
Berryman Ecological

<sup>47</sup> CNDDDB 2008

<sup>48</sup> Carollo Engineers at p. 2-22, Table 2-2

<sup>49</sup> USFWS 2007b at p. 67

<sup>50</sup> Littlefield and Ivey 2000, in species account at [www.sonoma.edu/users/s/stokes/Greater sandhill crane revised.pdf](http://www.sonoma.edu/users/s/stokes/Greater_sandhill_crane_revised.pdf)

<sup>51</sup> <http://www.dfg.ca.gov/biogeodata/cwhr/cawildlife.aspx>

<sup>52</sup> USFWS 2007b at p 67.

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M.S., Biology, San Diego State University, 1993

Concentrations: Systematics and Evolutionary Biology

*Thesis involved designing and conducting a radiotelemetry study which tracked movement patterns of brown-headed cowbirds between breeding and foraging ranges.*

B.A., Zoology, University of California, Santa Barbara, 1982

Currently enrolled in UC Davis program to receive a certificate in Project Management

**Experience:**

Principal, 2005 - present

Berryman Ecological

- *Company Manager:* *Own and manage a small environmental consulting firm consisting of myself, a Geographic Information Systems specialist, and an administrative assistant. Work with a network of independent environmental consultants, and often manage large projects involving employees and subcontractors.*
- *Environmental Consulting:* *Biological surveys, inventories, and investigations; technical report preparation; and assisting clients in compliance with environmental regulations, including developing conservation strategies, preparing permit applications and habitat conservation plans, coordinating with regulatory agencies, and construction and compliance monitoring and tracking. Assistance in preparation of Environmental Impact Reports, including responses to comments. Presentations at planning commission and County Board of Supervisor hearings. Focused surveys for listed species including California red-legged frog, San Joaquin kit fox, blunt-nosed leopard lizard, and valley elderberry longhorn beetle.*

Regulatory Department Manager, 2002 - 2005

Foothill Associates

- *Department Manager:* *Responsible for managing staff in the regulatory department of an environmental consulting company, including mentoring staff and managing workload, budget, and timelines.*
- *Biological Assessments and Regulatory Compliance.* *Conducted biological investigations and impact analyses, developed conservation strategies, coordinated with landowners and wildlife agencies to resolve land use conflicts, and wrote biological technical reports.*

Conservation Biologist, 2001-2002

EIP Associates

- *Biological Assessments.* *Prepared biological assessments for development projects, including the highly controversial UC Merced project. Analyzed the effects of the UC Merced project on federally listed and other special status species, and prepared a complex biological assessment providing the project details, descriptions of pertinent ecological factors for each species, analysis of potential impacts, and effects of the proposed conservation strategy.*

Ecologist, 1998 – 2001

US Fish and Wildlife Service, Sacramento, California

- *Regional Planning/Section 7 Consultations:* *Developed a regional conservation strategy for listed vernal pool plant species on the Santa Rosa Plain. Prepared a Biological Opinion for a Programmatic Section 7 Consultation incorporating this regional strategy. Also prepared numerous biological opinions for individual projects throughout the Sacramento Valley.*
- *Habitat Conservation Planning:* *USFWS lead for regional conservation plans for Placer, Solano, and Yolo Counties. Involved coordination with county planners and supervisors,*



and with stakeholder groups. Assisted in the development of conservation strategies, and reviewed and commented on draft plans.

- Analysis and Writing: Analyzed effects of multiple small and large scale projects on federally listed and other special status plant and wildlife species, including county-wide multiple species conservation plans for Yolo and San Joaquin counties. Prepared biological opinions describing the methods and results of these analyses.

Ecologist, 1992 – 1998

US Fish and Wildlife Service, Carlsbad, California

- Listing: Researched population status and threats for declining species, prepared proposed and final rules for listing species as threatened or endangered, participated in public outreach and responded in writing to public comments regarding controversial federal listings. Was the USFWS lead for the listing of four upland and three vernal pool plant species, and the Riverside fairy shrimp, as well as a 90-day finding for the scaled dune buprestid beetle. Assisted in preparation of the proposed rule for the cactus wren, the least Bell's vireo critical habitat proposed rule and economic analysis, the cuckoo bee 90-day finding, and the California gnatcatcher final rule.
- Field Studies: Participated in willow flycatcher, least Bell's vireo, and California gnatcatcher surveys on Camp Pendleton; data collection (nest surveys and monitoring, vegetation sampling) for a study on gnatcatcher habitat requirements and cowbird parasitism in Riverside County, California, funded by Metropolitan Water District (study published by Braden et al. 1997); herpetological pitfall trap sampling on Camp Pendleton; and clapper rail surveys in Orange County, California..
- Habitat Conservation Planning: Coordinated between county and city planners, public utility districts, wildlife agency personnel, landowners, developers, and environmental groups in the development of large-scale multiple species conservation plans under the Natural Communities Conservation Planning (NCCP) program. Was the USFWS lead for regional conservation plans for the County and City of San Diego, and the Cities of La Mesa, Chula Vista, El Cajon, Santee, Encinitas, and Carlsbad. This involved development of conservation strategies at both the project-specific and regional level.
- Conservation Banks: FWS lead in planning and establishment of the first upland conservation bank in San Diego County: Carlsbad Highlands. FWS lead for the Crestridge and Manchester Avenue conservation banks. These banks included coastal sage scrub, southern maritime chaparral, oak woodland, riparian, and native grassland habitats.
- Project Review and Approvals: Reviewed numerous private and public development projects in accordance with the CAGN 4(d) rule that allowed a limited number of projects to move forward without incidental take permits during interim period while the regional NCCP plans were being developed. Involved coordinating with county and city planners, special use districts, and landowners, reviewing project proposals, evaluating impacts and mitigation strategies, and resolving land use conflicts.
- Analysis and Writing: Analyzed the potential effects of projects on multiple special status species, and prepared technical reports based on these analyses. FWS lead in preparation of a complex Biological Opinion for the San Diego Multiple Species Conservation Plan, which involved analyzing the effects of a conservation plan covering approximately 900 square miles on over 80 special status species. Coordinated a team of biologists in completing this analysis.

Ecologist, 1990 - 1992

RECON Environmental Consultants

- Environmental Consulting: Biological surveys, inventories, and investigations. Technical report preparation. Participated in surveys for California gnatcatcher throughout Baja California. Designed and conducted a study on effects of traffic noise on breeding California gnatcatchers.

Biologist, 1988 - 1990

California Department of Transportation

- *Biological surveys, inventories, and investigations; and technical report preparation.*
- *Designed and conducted research on California gnatcatcher habitat requirements.*

Research Biologist, 1986 - 1988

San Diego State University

- *Participated in least Bell's vireo territory mapping, nest monitoring, and cowbird trapping, San Diego County*

Teaching Assistant, 1984 - 1986

- *Taught lab on Evolution and Diversity*

**Professional Affiliations:**

- Wildlife Society
- Ecological Society of America
- California Native Plant Society

**Publications:**

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Plants from Southwestern California and Baja California, Mexico. Federal Register. 1995. Volume 60, #153

Final Rule: Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Vernal Pool Plants and the Riverside Fairy Shrimp. Federal Register. 1993. Volume 62, #22

**Unpublished Reports** (selected from the last 7 years only)

*Webb Property, Biological Resources Report, Nevada County, CA.* Prepared for Lincoln and Long Engineering. April 2008.

*Wetland Delineation, Dial 12-acre Site, Nevada County, CA.* Prepared for Lincoln and Long Engineering, March 2008.

*Pla-Vada Water Tank and Well Project, Biological Resources Report, Nevada County, CA.* Prepared for Pla-Vada Community Association. March 2008

*Dial Property, Biological Resources Report, Nevada County, CA.* Prepared for Lincoln and Long Engineering. Berryman Ecological. March 2008

*Town and County Mini-storage, Biological Resources Report.* Prepared for Roy Arashi. Berryman Ecological. January 2008

*Spot Lighting and Scent Station Surveys for San Joaquin Kit Fox on the Coalinga Chemical Waste Management Site.* Prepared for Chemical Waste Management. Berryman Ecological. October 2007.

*Santa Nella Community Specific Plan, Wastewater Treatment Facilities: Section 7 Biological Assessment.* Prepared for Santa Nella County Water District. August 2007.

*Analysis of Mitigation Suitability: Coalinga Chemical Waste Management Site.* Prepared for Chemical Waste Management. Berryman Ecological. April 2007.

*Crescenzi Property Biological Resources Report.* Prepared for Lincoln and Long Engineering. Berryman Ecological. May 2007

*The Villages of Laguna San Luis, Section 7 Biological Assessment.* Berryman Ecological. May 2007

*Dusthammer Biological Resources: Opportunities and Constraints Report, Madera County, CA.* Berryman Ecological. February 2007.

- Environmental Assessment for the Greenbriar Habitat Conservation Plan.* Prepared for North Natomas 575 LLC. Berryman Ecological. November 2006
- Tracy Hills Habitat Conservation Plan.* Prepared for Tracy Hills LLC. Berryman Ecological. November 2006.
- Resource Inventory for the Roth Property, Nevada County, California.* Prepared for Scott Roth. Berryman Ecological. November 2006.
- Pre-disturbance Kit Fox Surveys for Geotechnical Drilling along Delta Mendota Canal, Merced County, CA.* Letter report prepared for the Twinings Laboratory. October 2006
- Greenbriar Farms Biological Assessment.* Prepared for North Natomas 575 LLC. Berryman Ecological. August 2006
- Douglas 98 Determinate Level Biological Survey Report.* Prepared for Woodside Homes. Berryman Ecological. August 2006.
- Tracy Hills San Joaquin Kit Fox Analysis.* Prepared for Tracy Hills LLC. Berryman Ecological. May 2006
- Patterns of Winter Avian Abundance in Rice Fields and Urban Lakes in the Natomas Basin.* Prepared for RWI Investments. Berryman Ecological. April 2006.
- Santa Nella Wastewater Master Plan: Section 7 Biological Assessment.* Prepared for Santa Nella County Water District. November 2005
- Sunridge Park Section 7 Biological Assessment.* Prepared for River West Investments. Foothill Associates. July 2004.
- Anatolia IV Section 7 Biological Assessment.* Prepared for USFWS on behalf of Sunridge LLC. Foothill Associates. September, 2004
- Sunridge Village J Section 7 Biological Assessment.* Prepared for USFWS on behalf of Crestleigh Homes. Foothills Associates. January, 2004.
- Biological Assessment for the Monte Dorado (Parkway) Project, Santa Nella, California.* Prepared for River West Investments. Foothill Associates. October 2003
- San Joaquin Kit Fox Management Plan: Monte Dorado (Parkway) Project, Santa Nella, California.* Prepared for River West Investments. Foothill Associates. October 2003
- Biological Assessment: UC Merced Campus Project and County of Merced Infrastructure in Support of the UC Merced Project.* EIP Associates. February, 2002
- Federally-listed Vernal Pool Crustaceans Survey Report for the UC Merced/University Community Planning Area in Eastern Merced County, California.* EIP Associates. July, 2001.
- Natural Environmental Study for the Widening of State Route 65 in the City of Lincoln.* Prepared for Caltrans. EIP Associates. May 2001

**Awards and Honors:**

- Graduated with High Honors, UCSB
- On the Spot Awards and Performance Awards, USFWS
- Certificate of Appreciation from Secretary of Interior Bruce Babbitt for role in development of a regional multiple species conservation plan for southern California (MSCP)

**References:** References available upon request.

October 16, 2008

Mr. Thomas A. Enslow, Attorney at Law  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Sacramento, California 95814

**SUBJECT: Review of the Draft EIR for the Delta Shores Project in the City of Sacramento – Traffic Comments**

Dear Mr. Enslow:

Tom Brohard, PE, has reviewed various portions of the September 2008 Draft Environmental Impact Report (Draft EIR) prepared for the City of Sacramento for the proposed Delta Shores Project. In addition to the review of Section 5.9, Transportation and Circulation, portions of the Draft EIR Appendices were also reviewed. Various other sources were also researched “on line” to determine the schedule and committed funding levels for the I-5/Cosumnes River Boulevard Interchange Project. These included the State Transportation Improvement Program, the City of Sacramento website, and the Sacramento Area Council of Governments Metropolitan Transportation Plan.

Review of the Draft EIR indicates several transportation and circulation issues associated with the Delta Shores Project have not been properly or adequately disclosed or addressed. In summary and as detailed throughout this report, the following significant deficiencies and inadequacies were found:

- 1) NOP Response Letter from Caltrans Has Not Been Adequately Addressed
- 2) Trips for Village Center Commercial/Retail Have Been Underestimated
- 3) Cosumnes River Boulevard Project Must Be Complete Before Phase 1

14-125

These flaws, deficiencies and inadequacies must be carefully studied and addressed in a revised Traffic Study conducted as part of a thorough project reevaluation in a subsequent Revised Draft EIR.

**Education and Experience**

Since receiving a Bachelor of Science in Engineering from Duke University in Durham, North Carolina in 1969, I have gained over 39 years of professional engineering experience. I am licensed as a Professional Civil Engineer both in California and Hawaii and as a Professional Traffic Engineer in California. I formed Tom Brohard and Associates in 2000 and now serve as the City Traffic Engineer for the City of Indio and as Consulting Transportation Engineer for the

Cities of Big Bear Lake and San Fernando. I have extensive experience in traffic engineering and transportation planning. During my career in both the public and private sectors, I have reviewed numerous environmental documents and traffic studies for various projects. Several recent assignments are highlighted in the enclosed resume.

**Traffic-Related Issues**

Section 5.9 of the Draft EIR provides a summary of the traffic impact analysis for the project prepared by Fehr & Peers. Based on information in the Draft EIR, its Appendices, and various other sources researched, my review indicates the following flaws, omissions and deficiencies regarding the traffic analysis of the Delta Shores Project:

- 1) NOP Response Letter from Caltrans Has Not Been Adequately Addressed – In response to the City’s April 12, 2007 Notice of Preparation (NOP) of an environmental impact report for the Delta Shores Project, the California Department of Transportation (Caltrans) May 7, 2007 letter included in Appendix B requested that “A Traffic Impact Study (TIS) should be completed. The TIS should consider all possible traffic impacts to all ramps, ramp intersections, and the mainline. The TIS should analyze the I-5 interchanges at Pocket-Mountainview Road and the planned Cosumnes River Boulevard, as well as State Route (SR) 99/Mack Road Interchange. The TIS should analyze mainline I-5 between Elk Grove Boulevard and the I-5/US 50 interchange. The TIS should also analyze mainline SR 99 between the Sheldon Road and Florin Road interchanges.”

14-126

Page 5.9-1 of the Draft EIR states “The California Department of Transportation (Caltrans) submitted comments on the Notice of Preparation (see Appendix B) that included requests for analysis and consideration of specific mitigation measures of State Route (SR) 99 freeway segments, the SR 99/Mack Road Interchange, and the SR 99/Cosumnes River Boulevard interchange. Analysis of these facilities is included in this document.” The Draft EIR should also acknowledge that Caltrans requested analysis of I-5 interchanges and the I-5 mainline in the vicinity of the Delta Shores Project.

While the Draft EIR analyzes the various interchanges on I-5 and on SR 99 requested by Caltrans, the mainline analysis on both I-5 and on SR 99 falls short of the limits requested by Caltrans. For the I-5 mainline, Caltrans requested analysis between the US 50 and the Elk Grove Boulevard interchanges but the Draft EIR only analyzed the I-5 mainline between the Florin Road and Laguna Boulevard interchanges. For the SR 99 mainline, Caltrans requested analysis between Florin Road and Sheldon Road but the

14-127

Draft EIR only analyzed the SR 99 mainline between the Mack Road and Sheldon Road interchanges.

↑ 14-127  
(con't.)

The Draft EIR fails to analyze the I-5 and SR 99 mainline segments requested by Caltrans in their letter in response to the NOP. With the significant project traffic impacts to the mainline of both freeways in immediately adjacent segments as identified in the Draft EIR on Page 5.9-107 for Baseline Plus Project conditions and on Pages 5.9-107 and 5.9-108, it is reasonable to assume the project will also create additional significant traffic impacts in the mainline segments omitted from the Draft EIR traffic analysis. Analysis of the additional mainline segments on I-5 and on SR 99 must be conducted as part of a revised Traffic Study conducted as part of a thorough project reevaluation in a subsequent Revised Draft EIR.

14-128

- 2) Trips for Village Center Commercial/Retail Have Been Underestimated – Page 2-12 of the Draft EIR, the Project Description, states “The project also includes a larger, regional Village Center that would provide up to a maximum of 1.3 million square feet of commercial and retail uses. The Village Center would be located adjacent to I-5 in the eastern portion of the site. It is anticipated that the Village Center could include “big box” development as well as restaurants, movie theaters, book stores, home supply stores, electronics stores, and other types of similar retail and professional office uses.”

14-129

To forecast trips for the Village Center portion of the Delta Shores Project, Table 5.9-6 on Page 5.9-23 of the Draft EIR applies data contained in Trip Generation, 7<sup>th</sup> Edition published by the Institute of Transportation Engineers, ITE, for a Shopping Center, Land Use 820. In the critical PM peak hour, the trip rate used in the Draft EIR is 2.67 trips per thousand square feet.

The Project Description of the Draft EIR states “...the Village Center could include “big box” development...” With the exception of home improvement superstores, trip generation rates for other “big box” development in the critical PM peak hour are considerably higher than the trip rate of 2.67 trips per thousand square feet in the Draft EIR for a Shopping Center as follows:

14-130

<u>Land Use</u>	<u>Example</u>	<u>ITE Code</u>	<u>Average PM Trip Rate Per 1,000 Sq. Ft.</u>
Home Improvement	Home Depot/Lowe’s	862	2.45
Shopping Center	(Draft EIR)	820	2.67

Discount Superstore <sup>1</sup>	Super Wal-Mart/Target	813	3.87
Discount Club	Costco	861	4.24
Discount Store <sup>2</sup>	Wal-Mart/Target	815	5.06
Discount Supermarket	Winco	854	8.90

The shopping center trip generation rates used in the traffic analysis of the Village Center portion of the Delta Shores Project do not correspond to the proposed “big box” land uses in the Project Description of the Draft EIR. By using lower trip rates, the traffic analysis underestimates the number of PM peak hour trips that will be generated by the “big box” development. As a result, the Draft EIR does not properly disclose, evaluate, analyze, and mitigate all of the potentially significant traffic impacts of the proposed project. To provide an appropriate and properly conservative analysis of traffic impacts, the traffic analysis must be revised to use trip generation rates associated with “big box” development that is likely to be included within the Village Center portion of the project.

14-130  
(cont.)

- 3) Cosumnes River Boulevard Project Must Be Complete Before Phase 1 – For the traffic analysis of Baseline Conditions beginning on Page 5.9-47 of the Draft EIR, various roadway improvements are assumed to be in place including the new I-5/Cosumnes River Boulevard Interchange together with the extension of Cosumnes River Boulevard from Franklin Boulevard to Freeport Boulevard. Mitigation of baseline project traffic impacts can only be achieved through actual construction of these improvements. Payment of fees to various agencies or payment of the project’s fair share of the new I-5/Cosumnes River Boulevard interchange and the extension of Cosumnes River Boulevard from Franklin Boulevard to Freeport Boulevard does not guarantee that these improvements will be built in a timely manner.

14-131

Figure 2-7 in the Project Description of the Draft EIR identifies four phases for the Delta Shores Project. Phase 1 which includes the Village Center retail development is identified in the legend as occurring from “Early to Mid 2009 to 2010 to late 2009 or early 2010”. While this is rather confusing, it appears the Village Center portion of the project may be completed in early 2010. While Page 5.9-20 indicates the I-5/Cosumnes River Boulevard Interchange Final EIR was “...certified by the City Council on May 15, 2007”, the Draft EIR does not provide a schedule for construction and completion of the new interchange that is required to serve Phase 1 of the Delta Shores Project.

14-132

<sup>1</sup> Includes grocery sales

<sup>2</sup> Does not include grocery sales

Various sources were researched “on line” to determine the schedule and committed funding levels for the I-5/Cosumnes River Boulevard Interchange Project with the following results:

- 2006 State Transportation Improvement Program (STIP) – Page 91 of the 2006 STIP (the most recent available) identifies \$5,108,000 as programmed to acquire right of way during the 2007/2008 Fiscal Year. No other funding is identified for design, construction, or construction engineering in the STIP through 2011/2012.
- City of Sacramento – Cosumnes River Boulevard Extension Community Update – The April 2008 flyer for the project indicates the Measure “A” sales tax will partially pay for this project. Additional sources of funding are identified as the proposed development in the Delta Shores area together with federal and state funding. The tentative project schedule indicates project design will be completed in spring 2009 and construction will begin in late summer 2009 (based on funding availability).
- City of Sacramento - Department of Transportation - Current Projects in Design/Construction – The August 4, 2008 listing identifies \$1,110,000 for the project and indicates the design is 60% complete.
- Sacramento Area Council of Governments Metropolitan Transportation Plan – Page 13 of the July 25, 2006 Project List indicates the total cost to “Extend Cosumnes River Boulevard from Franklin to Freeport with an interchange at I-5” as \$80,000,000, and identifies the project completion year as 2009.

The information summarized above identifies several funding sources but does not specifically identify the amount that has been committed and programmed for the \$80 million Cosumnes River Boulevard Project. Mitigation Measure 5.9-1 on Page 5.9-102 of the Draft EIR states “The project applicant shall be required to develop the Delta Shores Finance Plan for review and approval by the City before project approval.” The Draft EIR must include this plan to demonstrate that adequate funding is available to extend Cosumnes River Boulevard from Franklin Boulevard to Freeport Boulevard and the new interchange at I-5 to support the Draft EIR assumptions.

While funding to acquire right of way was included in the 2006 STIP, it is not known if all of the necessary right of way for the Cosumnes Boulevard Project has been acquired. This process can take several years to complete and could delay construction of the improvements.

14-133

14-134



From the City's website, it appears plans for the Cosumnes Boulevard Project were only 60% complete as of August 4, 2008. Once the plans have been completed to the City's satisfaction, they must be reviewed and approved by Caltrans. From my personal experience in working with Caltrans to improve four interchanges on I-10 in the City of Indio, it is extremely difficult and time consuming to obtain State approval. The process requires multiple submittals that negatively impact the planned project schedule, even if the local agency uses the best available engineering consulting firms. From my experience, it is likely that Caltrans approval of the plans for the I-5/Cosumnes Boulevard Interchange will take much longer than the three to four months indicated in tentative project schedule in the City's April 2008 flyer.

↑  
14-134  
(con't.)

Page 5.9-42 of the Draft EIR briefly analyzes one development area within the Delta Shores Project "...to determine the number of units that could be developed before completion of the I-5/Cosumnes River Boulevard interchange." It concludes that 490 single family residential units taking access to Freeport Boulevard could be built and occupied in the western portion of the project. However, the Draft EIR does not evaluate or otherwise constrain development of Phase 1 of the Delta Shores Project which includes the Village Center Retail/Commercial regional development that may be completed in early 2010. The Draft EIR must tie completion of the Cosumnes River Boulevard Project to Phase 1 of the Delta Shores Project and not allow building occupancy permits to be issued until the interchange and roadway improvements are fully completed.

14-135

In sum, there are several transportation and circulation issues associated with the September 2008 Draft EIR prepared for the City of Sacramento for the proposed Delta Shores Project. These flaws, deficiencies and inadequacies must be carefully studied and addressed in a revised traffic study conducted as part of a thorough project reevaluation in a subsequent Revised Draft EIR. If you have questions regarding these comments, please call me at your convenience.

Respectfully submitted,

**Tom Brohard and Associates**



Tom Brohard, PE  
Principal



Enclosure

## Tom Brohard, PE

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- Licenses:** 1975 / Professional Engineer / California – Civil, No. 24577  
 1977 / Professional Engineer / California – Traffic, No. 724  
 2006 / Professional Engineer / Hawaii – Civil, No. 12321
- Education:** BSE / Civil Engineering / Duke University / 1969
- Experience:** 36 Years
- Memberships:** Institute of Transportation Engineers – Fellow, Life  
 Orange County Traffic Engineers Council - Chair 1979-1980  
 American Public Works Association - Member

Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

Tom has extensive experience in providing transportation planning and traffic engineering services to public agencies. Since May 2005, he has served Indio as City Traffic Engineer three days per week. He also provides “on call” Consulting Traffic and Transportation Engineer services to the Cities of Big Bear Lake and San Fernando as well as to Riverside County. In addition to conducting traffic engineering investigations for Los Angeles County from 1972 to 1978, he has previously served as City Traffic Engineer in these communities:

- Bellflower.....1997 - 1998
- Bell Gardens .....1982 - 1995
- Huntington Beach.....1998 - 2004
- Lawndale.....1973 - 1978
- Los Alamitos.....1981 - 1982
- Oceanside .....1981 - 1982
- Paramount.....1982 - 1988
- Rancho Palos Verdes.....1973 - 1978
- Rolling Hills .....1973 - 1978, 1985 - 1993
- Rolling Hills Estates.....1973 - 1978, 1984 - 1991
- San Marcos .....1981
- Santa Ana .....1978 - 1981
- Westlake Village.....1983 - 1994

During these assignments, Tom has supervised City staff and directed other consultants including traffic engineers and transportation planners, traffic signal and street lighting personnel, and signing, striping, and marking crews. He has secured over \$5 million in grant funding for various improvements. He has managed and directed many traffic and transportation studies and projects. While serving these communities, he has personally conducted investigations of hundreds of citizen requests for various traffic control devices. Tom has also successfully presented numerous engineering reports at City Council, Planning Commission, and Traffic Commission meetings in these and other municipalities.

Since forming Tom Brohard and Associates in 2000, Tom has also reviewed many traffic impact reports and environmental documents for various development projects. He has provided expert witness services and also prepared traffic studies for public agencies and private sector clients. Some of these significant accomplishments during the last five years include the following:

- ❖ Prepared critique of the traffic impacts identified in the Addendum to the Program EIR and Transportation Analysis for the Davidon Homes Project in the City of Antioch for Adams Broadwell Joseph & Cardozo (1/2007)
- ❖ Prepared critique of the traffic and circulation impacts identified in the Monterey County 2006 General Plan Final EIR for Mark R. Wolfe & Associates (12/2006)
- ❖ Provided expert witness evaluation of traffic and circulation impacts identified in the EIS, Traffic Impact Report, and Updates for the Turtle Bay Resort Expansion Project on the North Shore of Oahu for Alston Hunt Floyd & Ing (9/2006 to 11/2006)
- ❖ Prepared trip generation study for a bank and separate drive through bank facility in Century City in the City of Los Angeles for Tract No. 7260 Association (11/2006)
- ❖ Prepared preliminary critique of the traffic impacts identified in the Draft EIR and Traffic Impact Study for the Rio Vista Riverwalk Project in the City of Rio Vista for Adams Broadwell Joseph & Cardozo (11/2006)
- ❖ Prepared critique of traffic and parking impacts identified in the Traffic Impact Analysis for the Providence Medical Center Expansion Project in the City of Los Angeles for Weinberg, Roger & Rosenfeld (11/2006)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and Traffic Impact Analysis for the Chula Vista Bayfront Master Plan (Gaylord Resort Project) in the City of Chula Vista for Adams Broadwell Joseph & Cardozo (10/2006 to 11/2006)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and Traffic Impact Study for the Antioch Wal-Mart Expansion Project in the City of Antioch for Mark R. Wolfe & Associates (6/2006 to 8/2006); prepared rebuttal to responses to comments in the Final EIR (9/2006 to 10/2006)
- ❖ Prepared critique of traffic and parking impacts identified in the Draft EIR and various supporting technical studies for the Solana Beach Train Station Mixed Use Project in the City of Solana Beach for area residents (6/2006 to 9/2006)
- ❖ Prepared critique of the traffic and circulation impacts identified in the Revised Partial Draft EIR and the Traffic Study for the Gregory Canyon Landfill Project in San Diego County (7/2006 to 8/2006)

- ❖ Prepared critique of the traffic and circulation impacts identified in the Conditional Use Permit Application for Altamont Motorsports Park in Alameda County for Mark R. Wolfe & Associates (6/2006)
- ❖ Prepared preliminary critique of the traffic impacts identified in the Draft EIR for the Delano Marketplace Project in the City of Delano for Mark R. Wolfe & Associates (5/2006)
- ❖ Prepared response to Initial Study/Notice of Preparation of a Draft EIR for 483 condominiums proposed in three high rise towers in Century City in the City of Los Angeles for Tract No. 7260 Association (6/2005); prepared critique of the Draft EIR for the 10131 Constellation Boulevard Project proposed by JMB (12/2005 to 1/2006); reviewed responses to comments in the Final EIR (5/2006)
- ❖ Conducted study which developed traffic engineering measures as well as potential enforcement and legislative actions to deter excessive speeding on Stunt Road adjacent to Calabasas in Los Angeles County for area residents (9/2005 to 4/2006)
- ❖ Prepared critique of the Draft EIR and Traffic Impact Analysis for the Rancho Santa Fe Elementary School Project in San Diego County for Coast Law Group (9/2005); prepared rebuttal to responses to comments in the Final EIR (2/2006 to 3/2006)
- ❖ Prepared critique of the traffic, circulation, and parking impacts identified in the Traffic Impact Analysis for Los Angeles Unified School District Valley Elementary School #8 in the City of San Fernando (1/2006)
- ❖ Prepared critique of the traffic impacts identified in the Focused EIR and Traffic Impact Analysis for the Temecula Regional Hospital Project in the City of Temecula for Adams Broadwell Joseph & Cardozo (10/2005); prepared rebuttal to responses to comments in the Final EIR (1/2006)
- ❖ Prepared critiques of the traffic impacts identified in the Draft EIR and in the Revised Draft EIR for the Central Larkspur Specific Plan in the City of Larkspur and prepared responses to comments in the Final EIR for Shute, Mihaly, & Weinberger (7/2002 to 8/2002, 12/2003 to 2/2004, 1/2005 to 3/2005, and 12/2005 to 1/2006)
- ❖ Conducted Traffic Impact Analyses for the Sacred Heart Church and School Master Plan in the City of Palm Desert including presentations to community residents and testimony at Public Hearings before the City Council (3/2005 to 12/2005)
- ❖ Prepared critique of traffic impacts identified in the Final EIR and Traffic Study for the Preserve at San Marcos Project in Santa Barbara County for the San Marcos Foothill Coalition (10/2005 to 11/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and the Traffic Impact Analysis for the Borden Ranch Surface Mining Project in Sacramento County for Weinberg, Roger & Rosenfeld (11/2005)

- ❖ Prepared critiques of the Mitigated Negative Declaration and Traffic Impact Analysis and of these documents as revised for the Providence Center Specific Plan in the City of Fullerton for Shute, Mihaly, & Weinberger (6/2005 to 7/2005; 11/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Blue Rock Quarry Expansion near the Town of Forestville in Sonoma County for Weinberg, Roger & Rosenfeld (10/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and Traffic Study for the Oak to Ninth Project in the City of Oakland for Mark R. Wolfe & Associates (9/2005 to 10/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the East Cypress Corridor Specific Plan Project adjacent to the City of Oakley in Contra Costa County for Adams Broadwell Joseph & Cardozo (9/2005 to 10/2005)
- ❖ Prepared critique of the Mitigated Negative Declaration for the Providence Medical Center Expansion Project in the City of Los Angeles for Shute, Mihaly, & Weinberger (9/2005)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the University District Specific Plan Project adjacent to the City of Rohnert Park in Sonoma County for Mark R. Wolfe & Associates (9/2005)
- ❖ Prepared preliminary critique of the traffic impacts identified in the Draft Subsequent EIR for the Mare Island Specific Plan Project in the City of Vallejo for Adams Broadwell Joseph & Cardozo (9/2005)
- ❖ Prepared critique of the traffic portions of the Revised EIR and the traffic study of the Deer Creek Park 2 Project in the County of Nevada for Shute, Mihaly, & Weinberger and the City of Nevada City (8/2005 to 9/2005)
- ❖ Prepared preliminary critique of the traffic impacts identified in the Draft EIR and traffic study for the Prewett Ranch Project in the City of Brentwood for Adams Broadwell Joseph & Cardozo (7/2005)
- ❖ Prepared critique of the traffic and circulation sections of the Draft Subsequent EIR of the County of Ventura Focused General Plan Update and prepared rebuttal to responses for Shute, Mihaly, & Weinberger and the Community of Somis (12/2004 to 1/2005; 6/2005)
- ❖ Prepared critique of the traffic and parking impacts identified in the Draft EIR and Traffic Impact Analysis for the Long Beach Memorial Medical Center Expansion in the City of Long Beach for Weinberg, Roger & Rosenfeld (2/2005 to 5/2005)
- ❖ Prepared critique of the Draft EIR and traffic study for the Villages at Fairfield Project in the City of Fairfield for Adams Broadwell Joseph & Cardozo (4/2005 to 5/2005)

- ❖ Prepared critique of the traffic, circulation, and parking impacts identified in the Traffic Impact Analysis for Los Angeles Unified School District Valley High School #5 in the City of San Fernando (4/2005)
- ❖ Prepared critique of the transportation, circulation, and parking impacts identified in the Draft EIR and the Final EIR for the Wood Street Project in the City of Oakland for the East Bay Community Law Center (3/2005)
- ❖ Conducted City wide engineering and traffic surveys confirming enforceable speed limits on 31 street segments for the City of San Fernando (1/2005 to 3/2005)
- ❖ Checked plans for traffic signal installations and modifications as well as signing and striping revisions for various projects for Engineering Resources of Southern California and the Cities of Hemet and Palm Springs (12/2003 to 3/2005)
- ❖ Prepared critique of the Initial Study and traffic study prepared for the Hidden Canyon (Greenfield) Quarry Use Permit and Reclamation Plan in Monterey County for Weinberg, Roger & Rosenfeld (2/2005)
- ❖ Prepared critiques of the traffic impacts identified in the Los Angeles International Airport Master Plan Draft EIS/EIR for Alternatives A, B, and C and in the Supplement Draft EIS/EIR for Alternative D, prepared responses to comments in the Final EIS/EIR, and reviewed Addendum #3 for Shute, Mihaly, & Weinberger and the City of El Segundo (2/2001 to 7/2001, 7/2003 to 10/2003, 11/2004, and 12/2004)
- ❖ Prepared critique of the Traffic Study for the 450-460 North Palm Drive Senior Housing Residential Project in the City of Beverly Hills for Luna & Glushon (11/2004)
- ❖ Prepared critique of the Draft EIR and traffic study and provided testimony at a public hearing regarding the West Los Angeles College Facilities Master Plan in Los Angeles County for Culver Crest Neighborhood Association (10/2004 to 12/2004)
- ❖ Prepared critique of the Draft EIR and the associated traffic impact analysis as well as subsequent rebuttal to responses to these comments in the Final EIR for The Ranch Plan in the County of Orange for the Endangered Habitats League (6/2004 to 7/2004 and 10/2004)
- ❖ Prepared preliminary critique of the Draft EIR and traffic study for the Chandler Ranch Specific Plan Project in the City of Paso Robles for Adams Broadwell Joseph & Cardozo (9/2004)
- ❖ Prepared critique of the Draft EIR and traffic report associated with the Magnolia Park Project in the City of Oakley for Adams Broadwell Joseph & Cardozo (9/2004)
- ❖ Prepared critique of the traffic impacts identified in the Recirculated Draft EIR and traffic study for the McKean Road Sports Complex in Santa Clara County for Shute, Mihaly, & Weinberger (9/2004)

- ❖ Prepared critique of the Environmental Assessment for Robie Ranch Reclamation Project in Calaveras County for Weinberg, Roger & Rosenfeld (9/2004)
- ❖ Provided expert assistance to residents in the City of La Mirada during settlement negotiations regarding litigation involving the Big T Residential Development Project in the City of Buena Park (6/2004 to 9/2004)
- ❖ Prepared critique of the traffic impacts identified in the Recirculated Draft EIR and the associated traffic study for the Lake Jennings Ralph's Shopping Center in San Diego County for SOFAR and Shute, Mihaly, & Weinberger (8/2004)
- ❖ Reviewed Traffic Impact Study prepared for the San Fernando Corridors Specific Plan for the City of San Fernando (7/2004 to 8/2004)
- ❖ Prepared critique of the Negative Declaration for the Brisbane Recycling Project in the City of Brisbane for Weinberg, Roger & Rosenfeld (6/2004)
- ❖ Reviewed various alternative alignments for the extension of Lexington Drive from Cerritos Avenue to Katella Avenue, a proposed secondary highway, for the City of Los Alamitos; provided expert assistance to the City of Los Alamitos during settlement negotiations regarding litigation of the proposed Cottonwood Christian Center Project in the City of Cypress (4/2004 to 6/2004)
- ❖ Prepared critique of the Draft EIR and the associated traffic impact study for the Jaxon Enterprises Mine and Reclamation Expansion Project in the County of Merced for Weinberg, Roger & Rosenfeld (5/2004)
- ❖ Prepared critique of the Environmental Secondary Study for the Santa Fe Parcel 6 Mixed Use Project in the City of San Diego for Adams Broadwell Joseph & Cardozo (4/2004 to 5/2004)
- ❖ Prepared critique of the Draft EIR and the associated traffic impact analysis for the for the San Mateo Rail Corridor Plan & Bay Meadows Specific Plan Amendment in the City of San Mateo for Adams Broadwell Joseph & Cardozo (3/2004 to 5/2004)
- ❖ Reviewed the Edinger Corridor Specific Plan Traffic Analysis for the proposed redevelopment and intensification of adjacent land uses for the City of Huntington Beach (12/2003, 4/2004, and 5/2004)
- ❖ Conducted the Traffic Impact Study of the San Fernando Regional Pool Facility Project and the associated street improvements for the City of San Fernando (3/2004 to 4/2004)
- ❖ Prepared critique of the Initial Study/Mitigated Negative Declaration and the associated traffic study for the Pixar Headquarters Expansion in the City of Emeryville for Shute, Mihaly, & Weinberger (3/2004 to 4/2004)

- ❖ Prepared critique of the Draft EIR and the associated traffic impact analysis for the Lower Lagoon Valley Specific Plan in the City of Vacaville for Adams Broadwell Joseph & Cardozo (3/2004 to 4/2004)
- ❖ Conducted the Traffic Study of Two Parking Alternatives for the City of San Dimas to provide on street parking to complement potential retail/residential development on the east side of San Dimas Avenue north of Arrow Highway (12/2003 to 4/2004)
- ❖ Prepared trip generation calculations for various retail and “Big Box” stores in conjunction with a March 2004 ballot measure in Contra Costa County for Mark R. Wolfe & Associates (1/2004 to 2/2004)
- ❖ Prepared critique of the Initial Study/Mitigated Negative Declaration and the associated transportation impact analysis for the S&S Farms and Hancock Property Residential Development Plan in the City of Brentwood for Adams Broadwell Joseph & Cardozo (2/2004)
- ❖ Prepared critiques of the traffic impacts identified in the Mitigated Negative Declarations as well as subsequent rebuttal to responses to these comments for the Bayfront Live Work Project in the City of Hercules for Adams Broadwell Joseph & Cardozo (4/2003, 10/2003, and 2/2004)
- ❖ Conducted the City Wide Traffic Calming Study of Residential Streets in the City of San Fernando including development of traffic calming guidelines and specific recommendations addressing over 70 “Hot Spots” throughout the City including monthly presentations at Transportation & Safety Commission meetings and a presentation of the Final Report to the City Council (5/2003 to 1/2004)
- ❖ Prepared critique of the Initial Study/Mitigated Negative Declaration and the associated transportation analysis for the Cottonwood Christian Center in the City of Cypress for the City of Los Alamitos (1/2004)
- ❖ Prepared critique of the Recirculated Draft EIR and the associated transportation analysis for the Sand Creek Specific Plan in the City of Antioch for Adams Broadwell Joseph & Cardozo (1/2004)
- ❖ Prepared critique of the Initial Study and the associated traffic impact studies for the West Dublin Transit Village in the City of Dublin for Adams Broadwell Joseph & Cardozo (11/2003 to 1/2004)
- ❖ Prepared critiques of the Initial Study and the Recirculated Initial Study/General Plan Amendment and Rezoning for the Jack Parker Trucking Site in the City of San Pablo for Adams Broadwell Joseph & Cardozo (9/2003 and 11/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and rebuttal to responses to comments in the Final EIR for the proposed Wal-Mart in the City of Fremont for Mark R. Wolfe & Associates (7/2002 to 10/2003)



- ❖ Prepared critique of the traffic impacts identified in the Draft EIR, rebuttal to responses in the Final EIR, and testimony at a public hearing regarding the Alpine Village Shopping Center in San Diego County for Shute, Mihaly, & Weinberger (6/2002 to 10/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR, rebuttal to responses in the Final EIR, testimony at public hearings, and assistance during settlement negotiations regarding the 2000 Avenue of the Stars Project in Century City in the City of Los Angeles for Tract No. 7260 Association (9/2002 to 10/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Glen Loma Ranch Project in the City of Gilroy for Adams Broadwell Joseph & Cardozo (9/2003)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study and the Traffic Impact Analysis for the Ryder Homes Project in the City of Oakley for Adams Broadwell Joseph & Cardozo (9/2003)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study and the Traffic Impact Analysis for the Ravenswood Residential Project in Contra Costa County for Adams Broadwell Joseph & Cardozo (8/2003 to 9/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft Subsequent EIR for the proposed Boronda Crossing Commercial Project in the City of Salinas for Mark R. Wolfe & Associates (8/2002 to 9/2003)
- ❖ Prepared four grant applications to Caltrans for \$1,115,000 of Hazard Elimination Safety funding to modify traffic signals and to upgrade regulatory, warning, and street name signs in the City of Santa Ana (3/2003 to 8/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and the Traffic Impact Analysis for the Bluerock Business Center Project in the City of Antioch for Adams Broadwell Joseph & Cardozo (8/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Clark Road Residential Project in the City of Richmond for Adams Broadwell Joseph & Cardozo (8/2003)
- ❖ Prepared critique of the traffic impacts identified in the Initial Study and the Traffic Impact Analysis for the Sky Ranch Residential Project in the City of Antioch for Adams Broadwell Joseph & Cardozo (7/2003 to 8/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Cal Poly Student Housing North Project in the City of San Luis Obispo for Adams Broadwell Joseph & Cardozo (7/2003)

- ❖ Prepared critique of the traffic impacts identified in the Final EIR for the Lake Jennings Ralph's Shopping Center in San Diego County for SOFAR and Shute, Mihaly, & Weinberger (3/2003 to 7/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Cypress Grove Residential Project in the City of Oakley for Adams Broadwell Joseph & Cardozo (6/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the McKean Road Sports Complex in Santa Clara County for Shute, Mihaly, & Weinberger (5/2003)
- ❖ Prepared grant application to Caltrans for \$448,000 of Safe Route to School funding to upgrade all school signs at 68 public and private schools in the City of Santa Ana (3/2003 to 5/2003)
- ❖ Prepared critique of the traffic impacts identified in the Traffic Impact Analysis for the Blossom Valley Middle School for the Dunbar Lane Task Force in San Diego County (4/2003 to 5/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR and the Traffic Impact Analysis for the Bettencourt Ranch Aggregate Mining Project in Merced County for Weinberg, Roger & Rosenfeld (4/2003)
- ❖ Conducted a complete review of the General Plan Circulation Element for the City of Huntington Beach including comparisons to the Orange County Transportation Authority's Master Plan of Arterial Streets and drafted a Request for Proposal to update the City's Circulation Element (8/2002 to 4/2003)
- ❖ Prepared critique of the traffic impacts identified in the Traffic Impact Analysis for the proposed Wal-Mart in the City of Gilroy for Mark R. Wolfe & Associates (2/2003 to 3/2003)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for the Waterfront/Downtown Mixed Use Project in the City of Vallejo for Adams Broadwell Joseph & Cardozo (2/2003)
- ❖ Provided expert witness evaluation of the traffic impacts caused by simultaneous construction of various Alameda Corridor Transportation Authority projects for Sullivan, Workman, & Dee (12/2002 to 2/2003)
- ❖ Conducted 12 training sessions in Urban Street Design Fundamentals for the Engineering Department staff in the City of Torrance (4/2001 to 4/2002 and 10/2002 to 12/2002)

- ❖ Prepared critique of the traffic impacts identified in the Transportation Impact Study for the Western Research Campus in the City of Richmond in Contra Costa County for Adams Broadwell Joseph & Cardozo (11/2002)
- ❖ Evaluated Conditions of Approval for the proposed intersection of Mulholland Highway and Hazel Nut Court in Los Angeles County and provided testimony to the Board of Supervisors for Seminole Springs Mobile Home Park (11/2002)
- ❖ Reviewed the Traffic Impact Analysis prepared for the Pacific City Project for the City of Huntington Beach (9/2002)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR for North Yorba Linda Estates in the City of Yorba Linda for Shute, Mihaly, and Weinberger (9/2002)
- ❖ Conducted the Hacienda Road Traffic Calming Study and presented the final report at locally televised meetings of the Traffic Committee and the City Council in the City of La Habra Heights (10/2001 to 9/2002)
- ❖ Prepared critique of the traffic impacts identified in Initial Studies with Traffic Impact Analyses for three residential subdivisions in the City of Pittsburg for Adams Broadwell Joseph & Cardozo (8/2002)
- ❖ Conducted the City Wide Traffic Safety Study and presented the final report at meetings of the Traffic Committee and the City Council in the City of Rolling Hills Estates (4/2001 to 5/2002)
- ❖ Prepared critique of the traffic impacts identified in the Draft EIR, rebuttal to responses, and testimony at a public hearing regarding extensions of Corona and Valley View Avenues in the City of Norco for C. Robert Ferguson (1/2002 to 4/2002)
- ❖ Prepared critique of the traffic impacts identified in the Draft Initial Study and Environmental Assessment, rebuttal to responses, and testimony at public hearings before the Ventura County Board of Supervisors regarding intersection improvements proposed by Caltrans at State Route 118/State Route 34 in Ventura County for the Community of Somis (12/2000 to 10/2001)



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October 22, 2008

Mr. Thomas A. Enslow  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Sacramento, CA 95814

**Subject: Comments on the Draft Environmental Impact Report for the Delta  
Shores Project in Sacramento, California**

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Dear Mr. Enslow:

We have reviewed the 2008 Draft Environmental Impact Report, for the Delta Shores project in Sacramento, California (DEIR).<sup>1</sup> The proposed project is located adjacent to the southern boundary of the City limits. Located on approximately 782 acres, the proposed project includes a mix of residential uses with two mixed-use commercial centers, schools, parks, and limited office uses.

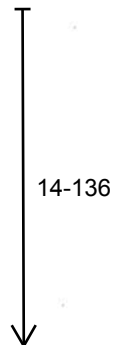
**HYDROLOGY**

**1. The Proposed Development is Only Partially Protected from 100-year Flooding and Puts Inhabitants at Risk**

The DEIR states:

existing levee protection, compliance with SAFCA’s planning and maintenance of flood control levees, and future improvement of the levee within Basin 89 would reduce the proposed project’s contribution to exposure of people or property to flooding from failure of a levee to less-than-significant levels (p. 5.5-33).

The DEIR lacks foundation for its conclusion that the Project would result in a less than significant flooding impact because it does not guarantee protection from flooding and



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<sup>1</sup> Delta Shores Draft Environmental Impact Report. Prepared for the City of Sacramento, California, by PBS&J. September 2008. Available at <http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs>

associated flood hazards for a significant portion of the proposed development area. In the event of a 100-year flood, this entire area would become inundated with water.

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(con't.)

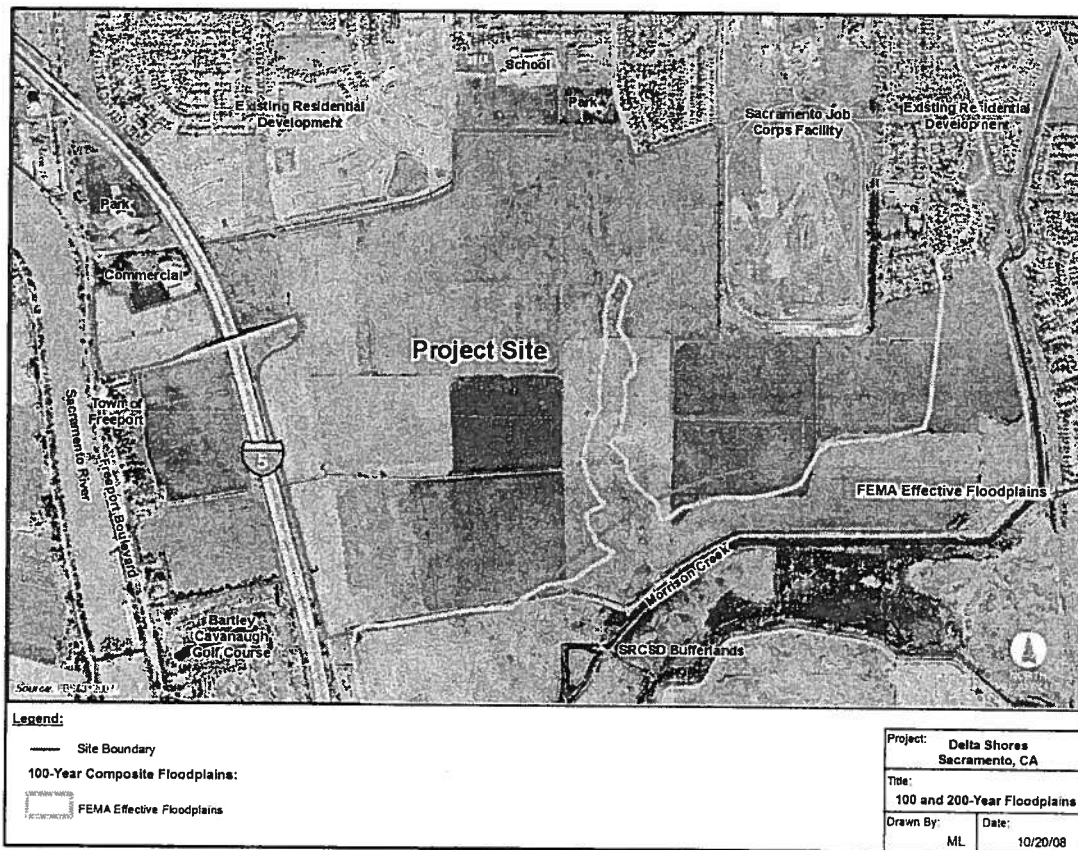
Basin 89, a 1,345-acre drainage basin, does not currently offer protection from a 100-year flood. According to the DEIR, Basin 89

is protected by levees on the eastern, southern, and western boundaries. The southern and western boundaries currently provide a 100-year protection level. The eastern side levee has 100-year flood protection up to Brookfield Road, but north of Brookfield Road the levee does not have adequate freeboard and the 100-year water surface could spill into the low area of Basin 89 (p. 5.5-7).

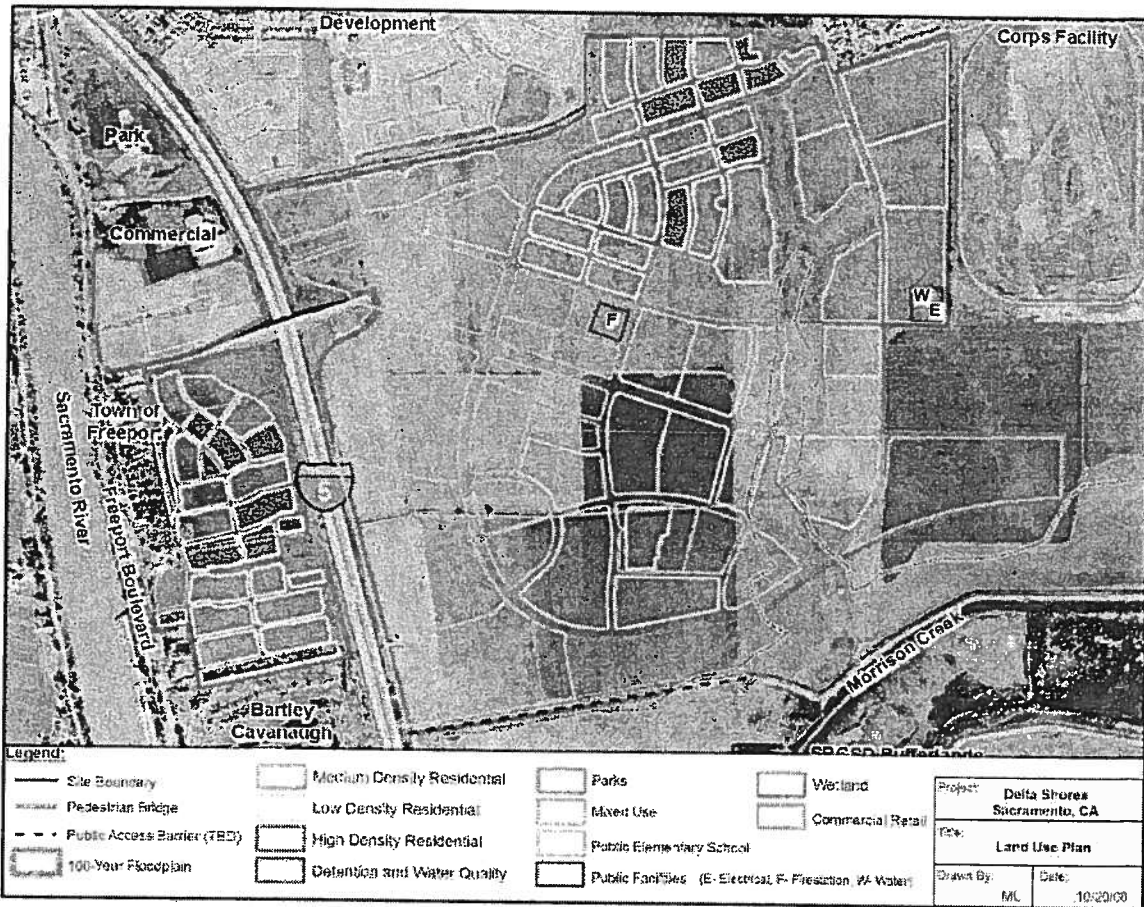
14-137

The project, with the current level of levee protection, will not protect future residents from a 100-year flood. We have mapped the area that would be inundated by a 100-year flood in the figures below.<sup>2</sup> The second figure shows that planned medium- and high-density residential development is included in the 100-year floodplain.

14-138



<sup>2</sup> [http://www.water.ca.gov/floodmgmt/lrafm/fmb/fes/best\\_available\\_maps/sacramento/sac\\_c2.pdf](http://www.water.ca.gov/floodmgmt/lrafm/fmb/fes/best_available_maps/sacramento/sac_c2.pdf)



14-138  
(cont.)

In order to address this significant flooding risk, the DEIR relies on vague and undefined “future improvements” to achieve a less than significant level of flooding. The DEIR, however, fails to identify what future improvements are required, fails to evaluate if such improvements are adequate, fails to evaluate if such improvements are feasible and fails to require that construction of such improvements be completed prior to construction of the Project. As a result, the DEIR lacks any foundation for its conclusion that these “future improvements” will reduce the risk of flooding to a level of insignificance.

14-139

The DEIR must be revised to describe all the measures that will be taken to remove all developed areas of the project from the 100-year floodplain, including how future levee improvements will be designed, funded and implemented. Moreover, to rely upon such improvements to reduce the flooding risk to a level of insignificance, the DEIR must require that such improvements are completed prior to development of the areas within the 100-year floodplain. In addition, the DEIR must evaluate the environmental impacts of improving the levees to remove this area out of the 100-year floodplain.

14-140

**2. The DEIR Fails to Evaluate Flooding Risks due to Delayed Maintenance and Repairs of Existing Levees**

The DEIR acknowledges that more than 80 levees have sustained critical erosion damage over the years in the Sacramento Valley, but then fails to evaluate how this damage may

14-141

put new construction in the Project area at risk (p. 5.5-8). Nor does it provide any evaluation of when or if this damage will be repaired.

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(cont.)

The most recent draft of the Delta Vision Strategic Plan finds that the Delta levees, in their current form, cannot protect against existing earthquake and flood risks, much less against conditions exacerbated by future climate change. As a result, there is as high as a two in-three chance of multiple levee failures in the next 30 years.<sup>3</sup>

14-142

Accordingly, even the areas of the Project that have achieved 100-year flood protection are at risk of flooding due to the potential failure of existing levees. Until these levees are repaired, they cannot be relied upon to provide 100-year flood protection. The Delta Vision draft concludes that, where levees are inadequate, intensive land uses such as housing should not occur (p. 1-24).

The DEIR should be revised to include a comprehensive levee upgrade plan which demonstrates both qualitatively and quantitatively that all flood protection requirements will be achieved prior to construction of the Project. Increased levee stability monitoring and increased vegetation management should be considered in the plan in a revised DEIR.

14-143

**3. The DEIR Should Be Revised to Expand the Level of Protection to 200 Years**

The DEIR is further deficient because it seeks only to achieve a level of 100-year flood protection, not the 200-year protection that has been mandated by the State of California.

All national floodplain management agencies along with the US Army Corps of Engineers (USACOE) and FEMA now state that the National Flood Insurance Program (NFIP) 100-year level of protection is inadequate to reduce the risk of flooding in urban areas to a level of insignificance.<sup>4</sup> The recent report *ReEnvisioning the Delta: Alternative Futures for the Heart of California* also concludes that the 100-year flood level is inadequate to protect urban development in the Delta.<sup>5</sup>

14-144

There are several serious problems with the 100-year standard. First, the 100-year flood is a statistical construct, and it usually becomes larger as our historical flood data set expands. Second, as areas urbanize, less rain infiltrates, so the flood runoff increases for the same rainfall, meaning the 100-year flood is actually greater than before. Third, the mapping of the 100-year flood assumes a static channel, but in fact river channels are subject to change, especially during big floods. Fourth, many people misunderstand the probability concept and think that the “100-year flood”

<sup>3</sup> Delta Vision strategic Plan, 5<sup>th</sup> Draft, Oct. 9, 2008), p. 1-23, [http://www.deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/DV\\_SP\\_Fifth\\_Staff\\_Draft\\_Vol\\_1.pdf](http://www.deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/DV_SP_Fifth_Staff_Draft_Vol_1.pdf).)

<sup>4</sup> Personal communication with Dr. Jeffery Mount, UC Davis .

<sup>5</sup> *ReEnvisioning the Delta: Alternative Futures for the Heart of California*, <http://landscape.ced.berkeley.edu/~delta/symp%20report/ReEnvisioning%20FINAL.pdf>

won't happen for a hundred years. Even more importantly, the 100-year flood is by no means the largest flood we can expect. There is the 200-year flood, with a one-half percent probability of occurring each year, and the 400-year flood, with a 0.25-percent annual probability, and so on. The residual risk of flooding from these larger, less frequent floods is significant. Over the life of a 30-year mortgage, the residual risk of flooding to a house protected by a 100-year levee is about 25 percent – strikingly poor odds.

There is no better illustration of the flaws in this system than the Delta. Developers and local authorities are constructing levees to meet the standards of 100-year protection, thereby officially removing the “protected” area from the 100-year floodplain and releasing the below-sea-level land from restrictions on development. This is done in full knowledge that even if the levee performs as designed, they will not protect against any larger-than-100- year flood, which are about 25 percent likely over a 30-year period. And when the houses are below sea level, the floodwaters will rush in quickly, leaving little time for evacuation. This will inevitably result in loss of human life and massive property damage, for which California taxpayers likely will be held liable (p. 15).

As a result of this general consensus that 100-year flood protection is insufficient, the State Board of Reclamation set a policy of minimum 200-year flood protection for new urban projects. In 2007, Senate Bill 5 was passed making this policy State law. SB 5 requires 200-year flood protection from all new urban developments.<sup>6</sup>

Timelines associated with SB 5 are tied to the Central Valley Floodplain Protection Plan which is to be adopted by July 1, 2012. Within two years of the adoption date, each affected city and county must incorporate provisions of the plan into their general plans. Within three years of the adoption date, each city and county must amend its zoning ordinance to be consistent with their amended general plans. Once the amendments are effective, cities within the Sacramento-San Joaquin Valley cannot enter into development agreements for areas within a flood hazard zone unless:<sup>7</sup>

- existing facilities are protected by a 200-year flood, or
- local flood management agencies make adequate progress on the construction of the flood protection system to provide the required level of protection; or
- conditions are imposed on the development that will provide the required level of protection.

Buildout of the project is not projected until 2015 following planned groundbreaking in early 2009 (DEIR, p. 2-27). SB 15 determined that 200-year protection is required to reduce flood impacts to a level of insignificance and sets forth strict timelines for

<sup>6</sup> [http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0001-0050/sb\\_5\\_bill\\_20071010\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0001-0050/sb_5_bill_20071010_chaptered.pdf)

<sup>7</sup> [http://www.water.ca.gov/floodmgmt/lrafmofmb/fes/urban\\_floodplain.cfm](http://www.water.ca.gov/floodmgmt/lrafmofmb/fes/urban_floodplain.cfm)

14-144  
(cont.)

14-145

14-146



implementation that are tied to the Central Valley Floodplain Protection Plan starting in 2012.

↑  
14-146  
(cont.)

Although there is no legal requirement to meet 200-year flood protection until Central Valley Floodplain Protection Plan adoption in 2012, 200-year flood protection is required to actually reduce flooding risks in the Project area to a level of insignificance. Revision of the DEIR to include 200-year flood protection provisions is especially critical given continued land subsidence and potential sea level rise as a result of global warming.<sup>8</sup>

**4. The DEIR Fails to Adequately Evaluate the Risk of Levee Failure Due to a Major Earthquake**

The DEIR should also be revised to describe the potential for levee failure based on current levee conditions and local geology. This should also be supplemented by a model analysis of potential levee breaching from earthquakes. Discoveries from this evaluation, including necessary structural improvements, should be incorporated into any levee upgrade plans.

14-147

**5. Identification of Specific Best Management Practices to Protect Water Quality During Construction is Needed**

The DEIR vaguely identifies only “various urban pollutants,” petroleum products, and heavy metals potentially spilled in association with construction equipment usage as potentially impacting Morrison Creek during project construction (p. 5.5-20). However, the DEIR fails to identify pesticides as pollutants of concern even though it states:

14-148

The project area currently consists primarily of agricultural land. Agricultural land use is known to contribute residual pesticides, fertilizers, and sediment as well as high nutrient content and dissolved solids to surface water bodies (p. 5.5-8).

A Phase I Environmental Site Assessment report, prepared in February 2007, identified “pesticide and metal residuals from longtime agricultural use on most of the Site” as a “recognized environmental concern.”<sup>9</sup> The Phase I report also identified the following as concerns:

14-149

- Lead-based paint and pesticide residues in three former dairies located at the site;
- Petroleum and metal residues in the equipment storage and maintenance areas;
- Lead residues adjacent to I-5; and
- Possible subsurface impacts from the drug lab operation on Parcel 26.

The current land use at the project site includes cultivation of tomatoes, sugar beets, wheat, corn, safflower, and alfalfa (p. 5.5-19) which also likely involve the ongoing use

14-150  
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<sup>8</sup> [http://www.deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/DV\\_SP\\_Fifth\\_Staff\\_Draft\\_Vol\\_1.pdf](http://www.deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/DV_SP_Fifth_Staff_Draft_Vol_1.pdf)

<sup>9</sup> Phase I Environmental Site Assessment, Delta Shores, February 21, 2007, Executive Summary, p. vi

of pesticides. None of these potential contaminants and their potential impact to water quality was described in the DEIR.

↑ 14-150  
(con't.)

Extensive grading activities will be conducted over the entire 1.2 square mile project site, potentially mobilizing soil with concentrations of residual pesticides and other contaminants. We note that 500,000 cubic yards of soil is to be excavated just for planned stormwater detention basins, a volume that would require movement by 50,000 10-yard dump trucks. Estimates of the volume for soil excavation across the entire proposed project site were not provided in the DEIR or supporting documents. This potential for mobilization of pesticides in stormwater and sheetflow is not described in the DEIR, and no provisions are made to mitigate impacts to receiving waters.

14-151

Morrison Creek is identified in the DEIR as a waterway that will receive runoff from the project via Pump Station 89 (p. 2-23). Morrison Creek is listed on the Clean Water Act 303 (d) list as impaired due to diazinon and chlorpyrifos, two formerly used pesticides which may be present in the proposed project area soils. The DEIR describes monitoring that has been conducted in Morrison Creek by the RWQCB which show "high levels of diazinon resulting from pesticide use within the watershed" (p. 5.5-8).

14-152

The DEIR provides a general discussion about the need to obtain required NPDES permits and to prepare a Storm Water Pollution Prevention Plan (SWPPP) to mitigate construction impacts. However, the DEIR does not provide any discussion about the potential presence of pesticides in soil and how pesticides may be mobilized during grading and excavation and routed by stormwater runoff to Morrison Creek. Therefore, the DEIR should be revised to identify specific Best Management Practices (BMPs) that will mitigate potential transport of contaminants, particularly pesticides, to Morrison Creek during project construction.

14-153

**6. Baseline Water Quality Study is Needed**

Stone Lake, a National Wildlife Refuge located approximately four miles downstream from the project area, is fed by Morrison Creek.<sup>10</sup> According to the Stone Lake National Wildlife Refuge website<sup>11</sup>

The increase of storm water run-off and drainage from the combined development and impervious surface construction over the Stone Lakes watershed has not been quantified, nor has any collective study of water quality been conducted.

14-154

Given the size and scope of the proposed project and because of impaired status of Morrison Creek, we recommend revision of the DEIR to include provisions for a baseline water quality study. Use of baseline water quality studies has recently been mandated for development projects including the proposed Foothill Toll Road.<sup>12</sup>

<sup>10</sup> <http://www.fws.gov/stonelakes/images/SLalakesPDF.pdf>

<sup>11</sup> <http://www.stonelakes.org/refuge/challenges.htm>

<sup>12</sup> [http://www.latimes.com/news/local/crime/la-me-briefs15-2008oct15\\_0\\_5056692.story](http://www.latimes.com/news/local/crime/la-me-briefs15-2008oct15_0_5056692.story)

A baseline water quality study of Morrison Creek should be implemented as early as possible to document current water quality which could then be used for comparison during project construction and after project buildout to ensure the effectiveness of BMPs. We recommend a two-year study, to capture variation in dry- and wet-weather water quality. Constituents to be monitored, given the project description in the DEIR, should include pesticides and metals.

14-155

Rather than providing such an analysis, the DEIR merely provides a list of permits and plans that would apply to the Project’s storm water runoff. The DEIR then concludes that, there would not be any significant impact on water quality from this runoff because the Project must comply with these permits and plans. This analysis is inadequate because it fails to disclose and evaluate how compliance with these permits and plans will result in mitigation of the Project’s storm water runoff impacts.

14-156

**HAZARDOUS MATERIALS**

**7. Phase II Environmental Site Assessment is Needed**

A Phase I environmental site assessment report<sup>13</sup>, prepared for the proposed project area in 2007, identified a number of “recognized environmental conditions” or potential sources of contamination, including:

14-157

- Pesticide and metal residuals from longtime agricultural use on most of the Site;
- Lead-based paint and pesticide residues in the former dairy areas;
- Petroleum and metal residues in equipment storage and maintenance areas;
- Aerially deposited lead residues adjacent to 1-5; and
- Possible subsurface impacts from the drug lab operation on Parcel 26.

The construction of residential homes, schools, and public parks on land potentially contaminated with petroleum, lead, pesticides and related metals may pose a significant health and safety risk to workers, residents, school children and park users. For example, organochlorine pesticides are concentrated in fatty tissues and are passed on to infants via breast milk and to fetuses via the placenta and are associated with cancer, neurological and liver problems, and birth defects.<sup>14</sup>

14-158

The Phase I stated that the above conditions “warrant follow-up or Phase II investigative study prior to commencing new development” (p. vi). Specifically, the Phase I recommended conditions to “be addressed by a soil sampling and testing program” to target “proposed areas of sensitive land use such as schools, parks and single-family residences, the former dairy areas, and the 1-5 alignment” (p. vi).

Despite the preceding substantial evidence of potential significant pesticide and other contamination, no site assessment activities or soil sampling to address the

14-159

<sup>13</sup> Phase I Environmental Site Assessment, Delta Shores, February 21, 2007

<sup>14</sup> Center for Disease Control, 2005. Third National Report on Human Exposure to Environmental Chemicals <http://www.cdc.gov/exposurereport/pdf/thirdreport.pdf>

recommendations in the Phase I were documented in the DEIR. Indeed, the Phase I report was not described in the DEIR at all and a section on hazardous materials, which would typically discuss potentially hazardous soil conditions, was not included in the DEIR.

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14-159  
(cont.)

As a result, no enforceable mitigation measures have been imposed to address these hazards. Without mitigation, these contaminants may pose risks to construction workers and to future residents.

The Phase I report was discussed in the Initial Study (Appendix A, to the DEIR), as below.

Recognized environmental conditions (RECs) indicate the presence or likely presence of hazardous materials that could pose a threat if a release were to occur into the ground, groundwater, or surface water on a property. The Phase I ESA found several RECs at the project site, including: pesticide, metal, and petroleum residues from agricultural uses and equipment storage areas, in near-surface soils throughout most of the site, lead-based paint residues in near-surface soils in the former dairy areas, aerially deposited lead residues in near surface soils adjacent to I-5, and possible subsurface impacts from a former drug lab operation at one of the dairy sites. Due to the presence of these RECs at the project site, the Phase I ESA recommended a follow-up investigative study and possibly a Phase II ESA (p. 27).

Mitigation for the environmental conditions identified in the Phase I was described in the Initial Study and includes the following:

14-160

Prior to the issuance of a building permit, a Phase II ESA shall be prepared by the project applicant, as recommended in the Phase I Environmental Site Assessment, Delta Shores, Sacramento, California, prepared by Toxicchem Management Systems, Inc., February 21, 2007. The Phase II ESA shall provide additional information regarding the recognized environmental conditions (RECs) present at the project site, determine whether the RECs pose a threat during project construction and/or operation, and recommend additional mitigation, if necessary. Work within the project site shall not proceed until all identified hazards are managed to the satisfaction of the City and the Sacramento County Environmental Management Department (SCEMD) (p. 29).

This mitigation, however, was not evaluated or identified as an enforceable mitigation measure in the DEIR. Moreover, this mitigation measure is inadequate; to defer conduct of the Phase II until “prior to the issuance of a building permit” is unacceptable mitigation. The project site, as assessed in the Phase I, was identified to have significant recognized environmental conditions, including potential pesticide residue from decades of cultivation and the presence of three dairies. A Phase II sampling investigation is needed prior to preparation of a revised DEIR so that results can be included in a revised DEIR. By conducting the Phase II now, the DEIR can be prepared to ensure that

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proposed land uses, which include two elementary schools and residential housing, are compatible with any contaminants that remain at the site.

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(con't.)

Moreover, the mitigation proposed in the Initial Study would permit grading of the property and construction of the commercial and residential buildings prior to the investigation of the soil contamination. This delay would put construction workers at risk and could limit feasible remediation measures.

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Preparation of the DEIR should be halted until soil sampling has been conducted and evaluated for potential health impacts to construction workers and future residents. Soil samples should be collected in conjunction with DTSC under the voluntary oversight program to ensure appropriate samples are collected for analysis of chemical compounds likely to be associated with past agricultural usage. If contamination is confirmed, appropriate remediation actions must be identified and required.

14-162

**GREENHOUSE GASSES**

**8. Mitigation for Greenhouse Gasses Emissions is Insufficient and Should be More Comprehensive**

Section 5.0 of the DEIR estimates that at buildout, the project will emit 268,832 tons/year of greenhouse gasses as shown in the table below (p. 5.1-20). The bulk of the emissions will come from electricity that is needed for the planned 5,000 residential units and over 1.3 million square feet of big box development (p. 2-12). Another significant source of greenhouse gas emissions will come from motor vehicles.

14-163

<b>TOTAL OPERATIONAL EMISSIONS AT BUILDOUT</b>	
<b>Emissions Source</b>	<b>CO<sub>2</sub>e (Tons/Year)</b>
Motor Vehicles	116,266
Electricity	127,063
Natural Gas	17,708
Solid Waste	7,795
<b>TOTAL</b>	<b>268,832</b>
<small>Source: Source: PBS&amp;J, 2008. Refer to Appendix E for detailed emissions calculations and assumptions.</small>	

These estimates document that the project will be a significant addition to greenhouse gasses in California. This project is one of the largest proposed developments in Sacramento<sup>15</sup> and is large even by California standards. The DEIR fails to articulate the significance of the project greenhouse gas emissions stating only:

the City has determined that until such time as a sufficient scientific basis exists to ascertain the incremental impact of an individual project on global climate change, and to accurately project future climate trends associated with that

<sup>15</sup> [http://www.bizjournals.com/sacramento/stories/2006/12/04/story4.html?jst=s\\_cn\\_hl](http://www.bizjournals.com/sacramento/stories/2006/12/04/story4.html?jst=s_cn_hl)

increment of change, and guidance is provided by regulatory agencies on the control of GHG emissions and thresholds of significance, the significance of an individual project's contribution to global GHG emissions is too speculative to be determined (p. 5.10-18).

14-163  
(cont.)

The California Air Pollution Control Officers Association (CAPCOA) provides an analysis of seven feasible threshold measures for determining the significance of a project's GHG emissions. These thresholds range from a zero emission threshold, a 50 residential unit or 900 GHG tons/year threshold, a 1,400 residential unit or 25,000 GHG tons/year threshold and, to the largest threshold, a 2,600 residential unit or 50,000 GHG tons/year threshold. The 50,000 GHG tons/year threshold would capture far less than half of new residential or commercial development and appears on its face to be insufficient to meet the requirements of AB 32.<sup>16</sup>

14-164

The Delta Shores Project easily meets even the most generous of thresholds evaluated by CAPCOA. The Project proposes construction of 5,092 units of residential development, and over 1.4 million square feet of retail and commercial uses. As shown in the table above, this will result in more than 268,832 tons per year of greenhouse gas emissions at buildout. This cannot be considered anything but significant under any of the CAPCOA thresholds and in light of California's statutory mandate to reduce greenhouse gas emissions to 1990 levels by the year 2020 and to 80 percent below 1990 levels by 2050.

Because the project's greenhouse gas emissions are significant, they should be mitigated aggressively. Greenhouse gas emissions from both electricity and motor vehicles can be cut significantly through effective mitigation measures. The DEIR identifies mitigation for emissions from electricity and motor vehicles as summarized below. We believe, however, that the mitigation as identified for the project is insufficient. Projects of this size and scope will need to aggressively mitigate greenhouse gas emissions if California is to achieve AB 32-mandated targets of achieving 1990 levels by 2020, and 80% below 1990 levels by 2050.<sup>17</sup>

Therefore, we recommend consideration of the following additional measures in a revised DEIR.

14-165

**Motor Vehicle Greenhouse Gas Emissions**

Mitigation for greenhouse gas emissions from motor vehicles is identified in Table 5.10-7 as follows:

- Restrictions on diesel vehicle idling;
- Use of alternative-fueled vehicles;
- Participation in a transportation management association (ride sharing, shuttles);
- Parking spaces reserved for HOV and loading/unloading;

<sup>16</sup> CAPCOA, CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (January 2008) at p.49

<sup>17</sup> <http://gov.ca.gov/index.php?/press-release/4111>

- Design for future bus service and proximity to rail;
- Bike lane construction as well as bike stalls and showers;
- Transit education; and
- Consistency with Sacramento Smart Growth principles.

Additional mitigation that should be considered includes:

- Providing funding to the school district to expand the area where bus service to and from the project's schools is provided;
- Providing priority parking spaces for hybrid and electric vehicles at commercial and retail centers and free parking for electric vehicles at transit stations; provide recharging stations for plug-in vehicles at commercial and retail centers and transit stations.
- Locating pedestrian routes and bike paths in a manner that will minimize road crossings to promote safety and therefore encourage walking and bicycling to school; and
- Ensuring that shuttle service is provided by alternative-fueled vehicles.

### **Electricity-Related Greenhouse Gas Emissions**

14-165

Mitigation for greenhouse gas emissions from the generation of electricity is identified in Table 5.10-7 as follows:

- Use of efficient florescent lighting;
- "Conditioned" use of electrical facilities at loading docks;
- Use of urban forestry; and
- "Conditioned" use of light colored roofing.

Additional mitigation that should be considered includes:

- Increased energy efficiency by at least 15% above California Title 24 Requirements;<sup>18</sup>
- Mandated use of roofing material with the highest commercially available solar reflectance, e.g. Energy Star;<sup>19</sup>
- Mandated use of energy efficient appliances, e.g. Energy Star;<sup>20</sup>
- Compliance with LEED Silver or Gold Certification for all retail and commercial buildings;<sup>21</sup>
- Compliance with Green Point Build It Green system (minimum 90 points) for all residential buildings;<sup>22</sup>

<sup>18</sup> <http://www.energy.ca.gov/title24/> (as of July 9, 2007)

<sup>19</sup> [http://www.energystar.gov/index.cfm?c=roof\\_prods.pr\\_roof\\_products](http://www.energystar.gov/index.cfm?c=roof_prods.pr_roof_products)

<sup>20</sup> [http://www.energystar.gov/index.cfm?c=appliances.pr\\_appliances](http://www.energystar.gov/index.cfm?c=appliances.pr_appliances)

<sup>21</sup> <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=64>

<sup>22</sup> [www.builditgreen.org/greenpointrated](http://www.builditgreen.org/greenpointrated)

- Participation in California Energy Commission New Solar Homes Partnership<sup>23</sup> use of solar photovoltaic systems in at least 50% of the residential units;
- Use of solar hot water systems with booster heating and location of water heater near hot water taps;<sup>24</sup>
- Use of solar power for generation of electricity on retail and commercial building rooftops and parking lots;
- Use of high reflectance and lighter colored paving;
- Use of R-19 wall and roof insulation, at a minimum;
- Installing solar heating, automatic covers, and efficient pumps and motors for all pools and spas;
- Installing light emitting diodes for traffic, street and other outdoor lighting;
- Placing limits on hourly usage of outdoor lighting; and
- Providing educational materials on energy efficiency.

14-165  
(con't.)

The DEIR should be revised to consider these and other feasible mitigation measures.

**HUMAN HEALTH RISK**

**9. The DEIR Fails to Adequately Evaluate Hazardous Emissions from Adjacent Freeways and Roadways**

The DEIR is deficient because it fails to adequately evaluate and mitigate the health risks of traffic-related emissions from the proposed construction of residential units adjacent to Interstate 5 and the Consumnes Boulevard Interchange. The evaluation provided in the DEIR focuses only on the potential cancer risk from diesel particulate matter (DPM) ignoring the other toxic air contaminants (TACs) found in freeway and roadway emissions. In addition to DPM, freeway and roadway emissions contain other particulate matter (including toxic metals and ultrafine particulate matter (UFP)) and volatile organic compounds (including benzene and 1,3-butadiene), which known and suspected human carcinogens.

14-166

**10. The DEIR Applies an Arbitrary and Improper Threshold of Significance in Evaluating Traffic-Related Toxic Air Contaminants**

The Project proposes developing residential units adjacent to Interstate 5 on both sides of the freeway. The nearest residential land uses would be located only 119 feet from Interstate 5. Thus, future residents of the development area would be exposed to emissions of air pollutants including diesel particulate matter from truck traffic and other toxic air contaminants from vehicle exhaust. A Health Risk Assessment (“HRA”) has been prepared for the Project to assess the exposure of sensitive receptors to diesel particulate matter emissions from highway truck traffic.<sup>25</sup>

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<sup>23</sup> <http://www.gosolarcalifornia.org/nshp/index.html>

<sup>24</sup> <http://www.gohotwater.com/D'MAND/structured.asp>

<sup>25</sup> Ibid.



The Delta Shores HRA determined that individuals residing in the residential units closest to Interstate 5 will increase their incremental 70-year individual lifetime cancer risk by 168 in one million.<sup>26</sup> This conservatively estimated maximum incremental cancer risk, which is based on modeled ambient concentrations of diesel particulate matter, greatly exceeds the 1 in a million CEQA significance standard for toxic air contaminants (“TACs”) set by the Sacramento Metropolitan Air Quality Management District (“SMAQMD”).<sup>27</sup>

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(cont.)

Rather than disclosing that this is a significant impact and requiring appropriate mitigation measures, the DEIR instead sets an artificially high threshold of significance for cancer risk of 446 in 1 million arbitrarily based upon a SMAQMD evaluation criterion for preparing health risk assessments (“HRAs”). As a result, the DEIR concludes that the incremental cancer risks due to diesel particulate matter emissions associated with locating residents within 119 feet of Interstate 5 are less than significant.

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The DEIR’s analysis of the potential impact of traffic related toxic air contaminants (“TACs”) is legally inadequate because it improperly and arbitrarily disregards the threshold of significance set by SMAQMD and arbitrarily adopts a much higher threshold of significance. The DEIR states that the threshold of significance for TACs is where receptors are exposed to an increased cancer risk of greater than 446 in 1 million. SMAQMD CEQA guidelines, however, set the threshold of significance for TACs at as emissions that cause “a lifetime cancer risk greater than 10 in one million (one in one million if ‘Best Available Control Technology’, or BACT, is not applied).<sup>28</sup>

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The DEIR’s failure to apply SMAQMD’s threshold of significance for TACs is arbitrary and capricious. Moreover, the SMAQMD’s reliance on a threshold of 446 in 1 million lacks foundation and is contrary to the DEIR’s own Health Risk Assessment which expressly warns that this a threshold does not represent a “safe” risk level or regulatory threshold of significance.<sup>29</sup>

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14-170

Cancer risk is defined as the lifetime probability of developing cancer from exposure to carcinogenic substances. Cancer risks are expressed as increased chances in one million of contracting cancer, and it often incorporates more than one exposure pathway (e.g., inhalation, dermal contact, ingestion of contaminated soil, and infant ingestion of breast milk due to the mother’s cumulative exposure). Overall cancer risks are determined by summing the individual risk for each pathway and for each TAC.

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<sup>26</sup> DEIR at p. 5.3-27. A May 10, 2007 Project Screening for Sensitive Land Uses Adjacent to Major Roadways Delta Shores Planned Development found that the estimated incremental cancer risk for receptors east (downwind) of I-5 would be 354 per million and the estimated incremental cancer risk for residential receptors west (upwind) of I-5 would be 189 per million.” DEIR 5.3-26. A full HRA was then prepared which determined that the increased cancer risk for the nearest proposed residents would be 168 in 1 million. DEIR at p. 5.3-27.

<sup>27</sup> SMAQMD, Guide to Air Quality Assessment in Sacramento County (July 2004) at pp. v & 2-12.

<sup>28</sup> SMAQMD, Guide to Air Quality Assessment in Sacramento County (July 2004) at pp. v & 2-12.

<sup>29</sup> Delta Shores Health Risk Assessment (July 2007) at pp. i & 1.

Health risks from toxic air contaminants are generally considered significant if the lifetime probability of contracting cancer due to exposure to the contaminant is greater than one in one million.<sup>30</sup> However, ten in one million and even 100 million are sometimes considered an acceptable health risk level for purposes of setting regulation if further reduction of the risk level would be infeasible due to economic or technological limitations.<sup>31</sup> Proposition 65, for example, requires public notification if the incremental risk equals or exceeds 10 in one million.<sup>32</sup> The greater risk levels allowed by some regulations do not mean that the risk is below a level of significance, but rather are a determination that the risk level is “acceptable” despite the significant cancer rate due to economic or technological considerations.

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As stated above, SMAQMD sets the threshold of significance for TACs at one in a million unless BACT is applied, in which case the threshold is ten in a million.<sup>33</sup> This threshold is consistent with the guidance provided by the California Environmental Protection Agency (Cal EPA) Office of Environmental Health Hazard Assessment (“OEHHA”). For purposes of evaluating TACs under CEQA, OEHHA has determined that the zone of significant cancer toxic air contaminant impacts is where receptors have a potential cancer risk greater than one in a million.<sup>34</sup>

14-172

The 446 in 1 million threshold of significance adopted by the DEIR lacks foundation and its application is arbitrary and capricious. The DEIR bases its 446 in 1 million threshold on the evaluation criterion for preparing health risk assessments (“HRAs”) adopted by SMAQMD in the Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways (the Protocol”). The Protocol was adopted by SMAQMD to guide in the analysis of hazardous air emissions from roadways and freeways on adjacent sensitive receptors. The 2007 version of the Protocol upon which the DEIR relies recommends using a cancer risk of 446 in 1 million as the evaluation criterion for emissions from major roadways for determining when a full health risk assessment should be prepared.<sup>35</sup> This evaluation criteria corresponds to “the level of risk 70 percent less than the risk 10 feet from the edge of the nearest travel lane of the highest volume roadway in Sacramento County (24,000 vehicle per hour).”

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On its face, however, the Protocol’s evaluation criterion is not intended to be used as a CEQA threshold of significance. SMAQMD expressly states that the evaluation criteria “does not provide an acceptable cancer risk level or a regulatory threshold; therefore it

<sup>30</sup> OEHHA, A Guide to Health Risk Assessment (2001) at pp. 11-12.

<sup>31</sup> OEHHA, A Guide to Health Risk Assessment (2001) at pp. 11-12; See also, e.g., El Dorado County APCD CEQA Guide (2002), Chapter 7, p. 4.

<sup>32</sup> <http://www.oehha.org/prop65/pdf/2008MayStatusReport.pdf>

<sup>33</sup> SMAQMD, Guide to Air Quality Assessment in Sacramento County (July 2004) at pp. v & 2-12.

<sup>34</sup> OEHHA, Air Toxics Hot Spots Program Risk Assessment Guidelines: The Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments (August 2003) at p. 4-14; see also OEHHA, A Guide to Health Risk Assessment (2001) at pp. 11-12.

<sup>35</sup> SMAQMD has recently updated the Protocol and has adjusted the evaluation criterion triggering the SMAQMD recommendation for preparing a HRA to 319 in a million. SMAQMD, Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways (June 2008) at p. 11.

does not establish which projects are acceptable and which are not.”<sup>36</sup> Rather it is intended solely to define the point at which SMAQMD recommends preparation of a full, site specific HRA.<sup>37</sup>

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(cont.)

Moreover, the Delta Shores HRA itself warns against using the Protocol evaluation criterion for determining a threshold of significance. The HRA advises that the “the evaluation criterion does not represent a ‘safe’ risk level or regulatory threshold; it is simply the level at which the potential cancer risk would be reduced by 70 percent relative to the highest estimated cancer risk near major roadways in Sacramento County.”<sup>38</sup> The HRA further warns that “[t]he protocol does not distinguish between ... significant and less than significant environmental impacts using a threshold.”<sup>39</sup>

14-174

Despite the repeated warnings that the SMAQMD evaluation criterion does not represent a threshold of significance or a “safe” risk level, the DEIR concludes that: “Because the proposed project would not expose sensitive receptors to TAC emissions from construction activities above ... the SMAQMD evaluation criterion, this impact is considered less than significant.”<sup>40</sup>

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Nowhere in the DEIR or its supporting appendices is any justification or analysis provided to support using the Protocol evaluation criterion as a threshold of significance.

The 446 in 1 million threshold of significance adopted by the DEIR lacks foundation, violates SMAQMD and OEHHA guidance on determining significance for TACs, and is contrary to the general consensus of the scientific and regulatory community in determining significant cancer risks. The DEIR must be revised to evaluate the impact of traffic related TACs using the generally accepted threshold of significance of one in one million.

14-176

**11. The DEIR’s Analysis of Hazardous Traffic Emissions Violates the Health Risk Guidelines Established by CARB**

Over the last ten years, a great number of public health studies have shown that air pollution exposure levels are greater close to roadways than are typically reported through regional air pollution measurements and that individuals living in proximity to freeways or busy roadways have poorer health outcomes. The distances from the road where levels are high enough to increase health risks are about 500 to 1,500 feet for particulate matter (soot from gasoline or diesel engine exhaust); about 600 to 1,500 feet for nitrogen dioxide (“NO<sub>2</sub>”), and about 300 to 1,000 feet for ultrafine particles (soot smaller than 0.1 micrometers).

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<sup>36</sup> SMAQMD, Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways (June 2008) at p. 2.

<sup>37</sup> Id.; see also DEIR at p. 5.3-8.

<sup>38</sup> Delta Shores Health Risk Assessment (July 2007) at p. i.

<sup>39</sup> Id. at p. 1.

<sup>40</sup> DEIR at p. 5.3-28.

Recognizing the health risks of traffic-related emission, the California Air Resources Board (“CARB”), the state agency entrusted with the protection of California’s air quality, recently developed guidelines to protect vulnerable populations. The California Air Resources Board (“CARB”) guidance document Air Quality and Land Use Handbook: A community Health Perspective recommends that sensitive receptors (including residential units) be sited “no closer” than 500 feet from a freeway or other high traffic roadways.<sup>41</sup> This guidance is based upon CARB’s finding that cancer risk from traffic-emissions drops by 70 percent at 500 feet away from the roadway.

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(cont.)

In other words, CARB sets a minimum distance guideline that it believes will offer adequate protection in most circumstances. Greater buffer zones than 500 feet, however, may be appropriate under these guidelines depending upon actual traffic conditions and health risk.

To the extent the DEIR relies upon SMAQMD’s Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways to support siting residential units closer than 500 feet to a freeway, this approach improperly interprets the CARB recommendation as a maximum distance guideline to be only applied to the nearest receptor from the highest peak traffic volume reported by Caltrans for Sacramento County. The SMAQMD Protocol sets its “evaluation criterion” for preparing a full-blown HRA at 446 in a million. This “corresponds to the level of risk 70 percent less than the risk 10 feet from the edge of the nearest travel lane of the highest volume roadway in Sacramento County (24,000 vehicle per hour).”<sup>42</sup> In relying on the SMAQMD Protocol to support siting residential units within 119 feet from Interstate 5, the DEIR assumes that it is acceptable to locate sensitive receptors closer than 500 feet to the freeway as long as at least one other section of freeway in the County would pose a greater risk to adjacent receptors at the same distance. Such an assumption grossly distorts CARB guidance on this matter and fails to take into account whether the resultant cancer risk would be statistically significant.

14-178

CARB’s recommendations are based on the consistent health research findings demonstrating that proximity to high-traffic roadways results in both cancer and non-cancer health risks, including reduced lung function and increased asthma hospitalizations, asthma symptoms, bronchitis symptoms, and medical visits.<sup>43</sup>

14-179

CARB’s recommended buffer zone may certainly be disregarded if substantial evidence supports a finding that such a buffer zone is unnecessary. However, it is arbitrary and capricious to disregard this recommendation where undisputed evidence in the record demonstrates that failure to apply the buffer zone will result in a statistically significant increase in cancer risk.

<sup>41</sup> CARB, Air Quality and Land Use Handbook: A community Health Perspective (April 2005) at p. 10.

<sup>42</sup> DEIR at p. 5.3-8.

<sup>43</sup> CARB, Air Quality and Land Use Handbook: A community Health Perspective (April 2005) at pp. 8-10.

**12. The DEIR Fails to Address Non-Carcinogenic Health Risks Resulting from Locating Sensitive Receptors in Proximity to Interstate 5**

The DEIR's analysis of potential traffic-related air quality impacts is further inadequate because it restricts its discussion of potential adverse health effects to carcinogenic health risks resulting from exposure to diesel particulate matter emissions from truck traffic. The DEIR does not address non-carcinogenic health risks resulting from locating residential land uses or hospitals or clinics close to Interstate 5. Studies have shown that living near major roadways is associated not only with increased cancer risk, but also with short term adverse health impacts.

According to CARB, key health findings from studies of the effects of traffic emissions include:

- Reduced lung function in children was associated with traffic density, especially trucks, within 1,000 feet and the association was strongest within 300 feet. (Brunekreef, 1997);
- Increased asthma hospitalizations were associated with living within 650 feet of heavy traffic and heavy truck volume. (Lin, 2000);
- Asthma symptoms increased with proximity to roadways and the risk was greatest within 300 feet. (Venn, 2001);
- Asthma and bronchitis symptoms in children were associated with proximity to high traffic in a San Francisco Bay Area community with good overall regional air quality. (Kim, 2004); and
- A San Diego study found increased medical visits in children living within 550 feet of heavy traffic. (English, 1999)

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Exposure to traffic-related emissions has been implicated with a variety of cancer as well as non-cancer health risks including acute and chronic respiratory disease including reduced lung function and increased asthma hospitalizations and heart attacks as well as premature death in elderly individuals with heart disease.<sup>44</sup> Most recently, a study found that particulate matter pollution also raises the risk of deep vein thrombosis, a particular concern for elderly people.<sup>45</sup>

14-181

In addition, there is growing concern about the health effects of ultrafine particle pollution (smaller than 0.1 micrometers) near busy roadways. This type of particle pollution originates from gasoline- as well as diesel-powered vehicles. In fact, the majority of particles from vehicle exhaust are in the size range of 20 to 130 nanometers ("nm") (0.02–0.13  $\mu\text{m}$ ) for diesel engines and 20 to 60 nm (0.02–0.06  $\mu\text{m}$ ) for gasoline engines.

<sup>44</sup> Id.

<sup>45</sup> A. Baccarelli, I. Martinelli, A. Zanobetti, P. Grillo, L.F. Hou, P.A. Bertazzi, P.M. Mannucci, J. Schwartz, Exposure to Particulate Air Pollution and Risk of Deep Vein Thrombosis; abstract available at: [http://snipurl.com/28nor\\_\[www\\_ctv\\_ca\]](http://snipurl.com/28nor_[www_ctv_ca]), accessed August 14, 2008.

Recent toxicological studies have indicated that at the same mass concentration, ultrafine particles are more toxic than larger particles with the same chemical composition. These particles are observed mostly close to the roadway, and, when the wind blows directly from the road, the concentration of fine and ultrafine particles drops off by about 50 percent at 300 to 500 feet away. Most of the smallest fraction of these particles is found within 100 to 200 feet of the roadway. Laboratory studies have found that while new engine technology and fuel reformulation decreased particle mass concentrations emitted from vehicles, ultrafine particle number concentrations remained unchanged or even increased.<sup>46</sup> Accordingly, projected increases in traffic along I-5 must be taken into account when evaluating the health risks to adjacent residents.

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(con't.)

While at this time, insufficient information exists on how to quantify the adverse short term health impacts of living near freeways, CEQA nonetheless requires that known environmental impacts must be disclosed. Therefore, the DEIR must be revised to properly discuss and disclose non-carcinogenic health risks resulting from locating residential land uses adjacent to Interstate 5.

14-182

**13. The DEIR is Inadequate Because it Fails to Require Appropriate Mitigation for Roadway-Generated Pollutants as Required Under the Sacramento General Plan**

The DEIR is further inadequate because it fails to require appropriate mitigation for residential and commercial units located within 500 feet of the Interchange 5 and other major roadways as required by City of Sacramento 2030 General Plan Policy ER 6.1.8 for “Development near Major Roadways.” This policy requires that “new development with sensitive uses within 500 feet of a major roadway be designed with consideration of site and building orientation and incorporate appropriate technology for improved air quality, flow, ventilation, and filtration to lessen any potential health risks due to the project’s proximity to the roadway.”<sup>47</sup>

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SMAQMD recommends numerous measures to mitigate roadway-generated pollutants, none of which are required or evaluated in the DEIR. The preferred mitigation measure is to increase project distance from the freeway or major roadway.<sup>48</sup> SMAQMD also recommend buffering receptors from the freeway with tiered vegetable plantings. Such plantings are shown to be effective in removing fine and ultrafine particles.<sup>49</sup> In the developments themselves, SMAQMD recommends requiring passive (drop-in) electrostatic filtering systems with low air velocities, changing the location of air intakes and ensuring that windows nearest to the freeway or major roadway do not open.<sup>50</sup>

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<sup>46</sup> Y. Zhu, W.C. Hinds, S. Kim, and C. Sioutas, Concentration and Size Distribution of Ultrafine Particles Near a Major Highway, *Journal of the Air and Waste Management Association*, Vol. 52, pp. 1032-1042.

<sup>47</sup> DEIR at p. 5.3-14.

<sup>48</sup> SMAQMD, Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways (June 2008) at p. 19.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at p. 20.

**14. The Health Risk Assessment Fails to Account for Emissions of Toxic Air Contaminants Other than Diesel Particulate Matter**

The DEIR's health risk assessment estimates incremental cancer risks for exposure or sensitive receptors to diesel particulate matter emissions from truck traffic on Interstate 5. However, on a typical urban highway (truck traffic of 10,000-20,000/day), diesel particulate matter accounts for only about 70 percent of the potential cancer risk from motor vehicle traffic.<sup>51</sup> The other 30 percent are mainly attributable to emissions of benzene and 1,3-butadiene, mostly from gasoline-powered passenger vehicles.<sup>52</sup> Therefore, the DEIR's underestimates incremental cancer risks associated with exposure to highway emissions. When accounting for toxic air contaminants other than diesel particulate, the total incremental 70-year risk is 240 in one million.<sup>53</sup> Thus, the total actual cancer risks associated with locating residents within 119 feet of Interstate 5 are significantly understated in the DEIR. The DEIR should be revised to account for toxic air contaminant emissions other than diesel particulate matter and to disclose the actual increase in cancer risks to Project residents.

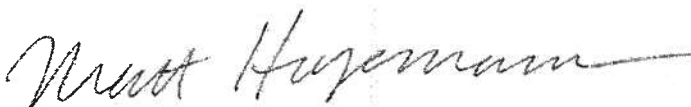
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**15. The Health Risk Assessment Fails to Account For Increased Traffic Emissions from Construction of the Project and the Consumnes River Boulevard Interchange**

The Health Risk Assessment is further flawed because it relies upon current traffic data and not upon traffic estimates for when the Project and the Consumnes River Boulevard Interchange are built. (Delta Shores Health Risk Assessment (July 2007) at p. 2.) The Consumnes River Interchange will connect I-5 to U.S. 99 and will run directly through the Project, connecting with I-5 within the Project boundaries. Traffic from the Project and the Interchange could result in significant increased diesel emissions not evaluated in the Health Risk Assessment.

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Sincerely,



Matt Hagemann



JAMES J. CLARK, PH.D.

<sup>51</sup> California Environmental Protection Agency, California Air Resources Board, Air Quality and Land Use Handbook: A Community Health Perspective, April 2005, p. 9; <http://www.arb.ca.gov/ch/handbook.pdf>, accessed August 14, 2008.

<sup>52</sup> Ibid.

<sup>53</sup> 0.7 x 240 = 168



Technical Consultation, Data Analysis and  
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## ***James J. J. Clark, Ph.D.***

*Principal Toxicologist*

**Toxicology/Exposure Assessment Modeling**

**Risk Assessment/Analysis/Dispersion Modeling**

### **Education:**

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

### **Professional Experience:**

Dr. Clark is the principal toxicologist, principal air modeler, lead scientist for SWAPE's emerging contaminant research program (perchlorate, pharmaceuticals, personal care products, fuel oxygenates, and industrial solvents); and managing partner at SWAPE. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

### **EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS**

#### **Client: Ameren Services, St. Louis, Missouri**

Managed the preparation of a comprehensive human health risk assessment of workers and residents at or near an NPL site in Missouri. The former operations at the Property included the servicing and repair of electrical transformers, which resulted in soils and groundwater beneath the Property and adjacent land becoming impacted with PCB and chlorinated solvent compounds. The results were submitted to U.S. EPA for evaluation and will be used in the final ROD.



**Client: City of Santa Clarita, Santa Clarita, California**

Dr. Clark is managing the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Immanent and Substantial Endangerment Order. Dr. Clark is assisting the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive evaluation of perchlorate in environment. As part SWAPE's perchlorate research program, Dr. Clark evaluated the production, use, chemical characteristics, fate and transport, toxicology, and remediation of perchlorate. Perchlorates form the basis of solid rocket fuels and have recently been detected in water supplies in the United States. The results of this research were presented to the USEPA, National GroundWater, and ultimately published in a recent book entitled *Perchlorate in the Environment*.

**Client – Confidential, Los Angeles, California**

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

**PUBLIC HEALTH/TOXICOLOGY****Client: Brayton Purcell, Novato, California**

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature. The results of the study were

**Client: Confidential, San Francisco, California**

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

**Client: Confidential, San Francisco, California**

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

**Client: Confidential, San Francisco, California**

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

**Client: Covanta Energy, Westwood, California**

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

**Client – United Kingdom Environmental Agency**

Oversaw a comprehensive toxicological evaluation of methyl-*tertiary* butyl ether (*MtBE*) for the United Kingdom's Environment Agency. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of *MtBE*. The results of the evaluation have been used as a briefing tool for public health professionals.

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of *tertiary* butyl alcohol (*TBA*) in municipal drinking water system. *TBA* is the primary breakdown product of *MtBE*, and is suspected to be the primary cause of *MtBE* toxicity. This evaluation will include available information on the production, use, chemical characteristics, fate and transport in the environment, absorption, distribution, routes of detoxification, metabolites, carcinogenic potential, and remediation of *TBA*. The results of the evaluation were used as a briefing tool for non-public health professionals.

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been used as a briefing tool for non-public health professionals.

**Client – Ministry of Environment, Lands & Parks, British Columbia**

Dr. Clark was part of a team at SWAPE selected to develop water quality guidelines for methyl tertiary-butyl ether (MTBE) to protect water uses in British Columbia (BC). The water uses to be considered includes freshwater and marine life, wildlife, industrial, and agricultural (e.g., irrigation and livestock watering) water uses. Guidelines from other jurisdictions for the protection of drinking water, recreation and aesthetics were to be identified.

**Client: Confidential, Los Angeles, California**

Prepared physiologically based pharmacokinetic (PBPK) assessment of lead risk of receptors at middle school built over former industrial facility. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

**Client: Kaiser Venture Incorporated, Fontana, California**

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

**RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS****Client: Confidential, Atlanta, Georgia**

Researched potential exposure and health risks to community members potentially exposed to creosote, polycyclic aromatic hydrocarbons, pentachlorophenol, and dioxin compounds used at a former wood treatment facility. Prepared a comprehensive toxicological summary of the chemicals of concern, including the chemical characteristics, absorption, distribution, and carcinogenic potential. Prepared risk characterization of the carcinogenic and non-carcinogenic chemicals based on the exposure assessment to quantify the potential risk to members of the surrounding community. This evaluation was used to help settle class-action tort.

**Client: Confidential, Escondido, California**

Prepared comprehensive Preliminary Endangerment Assessment (PEA) of dense non-aqueous liquid phase hydrocarbon (chlorinated solvents) contamination at a former printed circuit board manufacturing facility. This evaluation was used for litigation support and may be used as the basis for reaching closure of the site with the lead regulatory agency.

**Client: Confidential, San Francisco, California**

Summarized epidemiological evidence for connective tissue and autoimmune diseases for product liability litigation. Identified epidemiological research efforts on the health effects of medical prostheses. This research was used in a meta-analysis of the health effects and as a briefing tool for non-public health professionals.

**Client: Confidential, Bogotá, Columbia**

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of a 13.7 hectares plastic manufacturing facility in Bogotá, Colombia. The risk assessment was used as the basis for the remedial goals and closure of the site.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally cadmium) and VOCs from soil and soil vapor at 12-acre former crude oilfield and municipal landfill. The site is currently used as a middle school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and was used as the basis for regulatory closure of site.

**Client: Confidential, Los Angeles, California**

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally lead), VOCs, SVOCs, and PCBs from soil, soil vapor, and groundwater at 15-acre former manufacturing facility. The site is currently used as a year round school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and will be basis for regulatory closure of site.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive evaluation of VOC vapor intrusion into classrooms of middle school that was former 15-acre industrial facility. Using the Johnson-Ettinger Vapor Intrusion model, the evaluation determined acceptable soil gas concentrations at the site that did not pose health threat to students, staff, and residents. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

**Client –Dominguez Energy, Carson, California**

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of 6-acre portion of a 500-acre oil and natural gas production facility in Carson, California. The risk assessment was used as the basis for closure of the site.

**Kaiser Ventures Incorporated, Fontana, California**

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

**ANR Freight - Los Angeles, California**

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

**Kaiser Ventures Incorporated, Fontana, California**

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

**Unocal Corporation - Los Angeles, California**

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

**Client: Confidential, Los Angeles, California**

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a

former hard chrome plating operation that operated for approximately 40-years. In its oversight role, SWAPE is working with the overseeing regulatory agency to investigate the source, magnitude, extent and fate of contamination, and develop a remedy for the site.

**Client: Confidential, San Francisco, California**

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

**Client: Confidential, San Francisco, California**

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

**IT Corporation, North Carolina**

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

**LITIGATION SUPPORT**

**Case: Tanya Drummond V. E.I. Dupont De Nemours and Company, Meadowbrook Corporation, Mattheissen & Hegler Zinc Company Inc, Nuzum Trucking Company, T.L. Diamond & Company, Inc., and Joseph Pauschel, Circuit Court of Harrison County, West Virginia. Civil Action Number 04-C-296-2.**

**Client: Cochran, Cherry, Givens, Smith, Lane & Taylor, P.C., Dothan, Alabama**

Dr. Clark performed a comprehensive exposure assessment of a plaintiff exposed to toxic metals from a former zinc smelting facility. The site has undergone a CERCLA mandated removal action/remediation for the presence of the toxic metals. Intensive modeling results (from physical and numerical models) were used to determine a daily dose of metals in the plaintiff over a life time of exposure along with a causal analysis to determine the contribution of the toxic metals to the renal carcinomas the plaintiff died from.

**Case Result: Settlement in favor of plaintiff.**

**Case: City of Stockton v. BNSF Railway Co., et al. Eastern District of California, Case No. 2:05-CV-02087**

Dr. Clark offered opinions regarding the potential health risks from exposure to chemicals present in and emanating from the soil and into the air at a site formerly operated by the defendant using the regulatory guidance framework from USEPA and DTSC. The evaluation was designed to establish cleanup goals based upon the current and future land uses of the Site. A second objective was to evaluate whether current conditions at the Site put patrons and staff of the Children's Museum at an elevated potential health risk from exposure to chemicals present in and emanating from the soil and into the air at the Site.

**Case Result: Initial summary judgement motions in favor of plaintiff with trial re-scheduled for upcoming year.**

**Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court Of The State Of California, County Of Santa Cruz. Case No. CV 146344**

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

**Case Result: Settlement in favor of defendant.**

**Case: Lori Lynn Moss and Rand Moss, et al. V. Venoco, Inc. et al. Superior Court of the State of California, County of Los Angeles, Central Civil West. Case Number BC 297083**

**Client: Baron & Budd, PC. Dallas, TX.**

Dr. Clark performed a comprehensive exposure assessment of plaintiffs (former students at a school adjacent to the plant) to dioxin-like compounds from a large urban electrical utility generator and from multiple oil and gas production facilities adjacent to an active school. Modeling of emissions has confirmed that emissions from the facilities have impacted the school, resulting in significant exposure to carcinogens and neurotoxins. Intensive modeling results (from physical and numerical models) were used to determine a daily dose of contaminants from multiple sites over decades of exposure.

**Case Result: Under Appeal.**

**Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247**

**Client: Richard G. Berger Attorney At Law, Buffalo, New York**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: RFI et al., V. City of Santa Clarita, Superior Court of the State of California, County of Los Angeles**

**Client: City of Santa Clarita, Santa Clarita, California**

Dr. Clark provided testimony regarding the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Immanent and Substantial Endangerment Order. Dr. Clark provided depositional testimony and trial testimony on the extent of contamination in the subsurface and groundwater, the migration of contaminants offsite, and cost estimates for remediating the contamination.

**Case Result: Under Appeal.**

**Case: Costco Wholesale Corporation, etc, V. San Francisco Bay Area Rapid Transit District, etc., et. al., Superior Court of the State of California For the County of San Mateo**

Dr. Clark evaluated analytical laboratory results to determine whether remediation efforts by the plaintiff were necessary based on the proposed site land use. Deposition testimony was offered on the composition of petroleum hydrocarbons in the subsurface at the site, clean-up standards, and the necessity of remediation. harm to the plaintiffs in question.

**Case Result: Settlement in favor of defendant.**



**SELECTED AIR MODELING RESEARCH/PROJECTS****Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California**

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client – City of Santa Monica, Santa Monica, California**

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client: Omnitrans, San Bernardino, California**

Dr. Clark managed a public health survey of three communities near transit fueling facilities in San Bernardino and Montclair California in compliance with California Senate Bill 1927. The survey included an epidemiological survey of the effected communities, emission surveys of local businesses, dispersion modeling to determine potential emission concentrations within the communities, and a comprehensive risk assessment of each community. The results of the study were presented to the Governor as mandated by Senate Bill 1927.

**Client: Confidential, San Francisco, California**

Summarized cancer types associated with exposure to metals and smoking. Researched the specific types of cancers associated with exposure to metals and smoking. Provided causation analysis of the association between cancer types and exposure for use by non-public health professionals.

**Client: Confidential, Minneapolis, Minnesota**

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

**Client – United Kingdom Environmental Agency**

Dr. Clark is part of team that performed comprehensive evaluation of soil vapor intrusion of VOCs from former landfill adjacent residences for the United Kingdom's Environment Agency. The evaluation included collection of liquid and soil vapor samples at site, modeling of vapor migration using the Johnson Ettinger Vapor Intrusion model, and calculation of site-specific health based vapor thresholds for chlorinated solvents, aromatic hydrocarbons, and semi-volatile organic compounds. The evaluation also included a detailed evaluation of the use,

chemical characteristics, fate and transport, and toxicology of chemicals of concern (COC). The results of the evaluation have been used as a briefing tool for public health professionals.

### **Professional Associations**

American Public Health Association (APHA)  
 Association for Environmental Health and Sciences (AEHS)  
 California Redevelopment Association (CRA)  
 International Society of Environmental Forensics (ISEF)  
 Society of Environmental Toxicology and Chemistry (SETAC)

### **Publications and Presentations:**

#### **Books and Book Chapters**

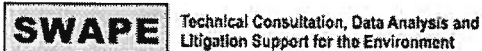
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- Rosenfeld, P.E., **Clark, J. J.**, Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" *Water Science & Technology*. 55(5): 345-357.

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- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13<sup>th</sup> Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
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## **Matt Hagemann**

**Site Assessment**  
**CEQA Review**  
**Investigation and Remediation Strategies**  
**Regulatory Compliance**  
**Expert Witness**  
**Research**

### **Education:**

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.  
 B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.  
 Teaching Certificate, Science, University of Oregon, Eugene, OR, 1987.

### **Professional Experience:**

Matt has 20 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Senior Environmental Analyst, Komex H2O Science, Inc (2000 -- 2003);
- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);

- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

**Senior Regulatory and Litigation Support Analyst:**

With SWAPE, Matt's responsibilities have included:

- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Lead analyst in the review of numerous environmental impact reports under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions and geologic hazards.
- Technical assistance and litigation support for TCE vapor intrusion concerns.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.
- Expert witness on MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.

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

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.
- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

**Executive Director:**

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

including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

**Hydrogeology:**

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

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

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

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

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted public hearings, and responded to public comments from residents who were very concerned about the impact of designation.
- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

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

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

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

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

**Policy:**

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

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

**Geology:**

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

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



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

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

**Teaching:**

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

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

**Invited Testimony, Reports, Papers and Presentations:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESOLUTION NO. \_\_\_\_\_

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

**RESOLUTION AMENDING THE AIRPORT-MEADOWVIEW COMMUNITY PLAN TO DELETE LAND USE SECTION II.D.9 AND III.D.11, AND TRANSPORTATION SECTION II.A.5, AND TO ADD THE TOWN OF FREEPORT SECTION TO THE AIRPORT-MEADOWVIEW COMMUNITY PLAN, SECTION IV.C.9.**

(M00-047) (APN: 119-0010-027 thru 029, 119-0010-062 thru 065, 119-0030-001, 119-0030-002, 119-0030-004 thru 119-0030-007, 119-0030-010 thru 119-0030-017, 119-0030-019 thru 119-0030-025, 119-0040-001 thru 119-0040-011, 119-0040-014 thru 119-0040-18, 119-0050-001, 119-0050-005 thru 119-0050-010, 119-0050-013 thru 119-0050-018, 119-0050-21, 119-0050-022, 119-0190-007, 119-0190-009, 119-0190-010, 119-0190-021, 119-0190-033, 119-0190-035, 119-0190-037, 119-0190-040 thru 119-0190-42, 119-0190-047 thru 119-0190-0503)

WHEREAS, the City Council conducted a public hearing on \_\_\_\_\_ concerning the above plan amendment and based on documentary and oral evidence submitted at the public hearing, the Council hereby finds:

1. The proposed plan amendment is compatible with the surrounding uses;
2. The subject area is suitable for inclusion in the Airport-Meadowview Community Plan;
3. The proposal is consistent with the policies of the City's General Plan;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Sacramento that the City Council of the City of Sacramento that the attached amendments, included as Exhibit 1, be made to the Airport-Meadowview Community Plan.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

## EXHIBIT 1

### TOWN OF FREEPORT AMENDMENTS TO THE AIRPORT-MEADOWVIEW COMMUNITY PLAN

The 1984 Airport-Meadowview shall be amended as follows:

(Strikethrough text will be removed)

#### Land Use Section II.D.9 – pp.35

~~Finally, there is an issue regarding the Town of Freeport. The Delta Shores proposal abuts Freeport, a small, unincorporated town in Sacramento County. Some residents and CalTrans are concerned that intense development in the City next to Freeport will ultimately destroy the town's character. While there is some debate over the issue, this Community Plan acknowledges the need to minimize negative impacts on Freeport from the Delta Shores development. Annexation of Freeport to the City of Sacramento seem to offer the best opportunity for rational, efficient and cohesive development of the area, but in absence of annexation, the Delta Shores conditions for a fifteen year open space buffer and indirect road access are supported in this Plan. Before development of the buffer area, City and County of Sacramento should jointly plan the longer-term future of the Town of Freeport. It may be that expansion of some of the attractive and positive elements found in Freeport could offer the most potential for a cohesive, viable community with its own unique character. New development within the buffer area should build on the existing character of Freeport, with a transitional use, density and design adjacent to Delta Shore office development.~~

#### Land Use Section III.11 – pp.36

~~The Town of Freeport should be protected from adverse impacts of adjacent development, and the City and County should jointly determine the long range development of the surrounding lands. Annexation to the City of Sacramento would be the best way to monitor development and provide services (especially fire protection) to the Town of Freeport.~~

#### Transportation Section II.A.5 – pp.48

~~Scenic Highways. There are no existing Scenic Highways within the Airport Meadowview community. The County of Sacramento, however, has designated the County portion of Highway 160 a Scenic Highway. The City will consider continuation of this designation along a part of the City portion of Highway 160 near Freeport.~~

#### Freeport Section IV.C.9. – pp. 40

##### Preface

The Airport-Meadowview Community Plan Area is located immediately to the north and east of the Town of Freeport annexation area. Upon annexation to the City of Sacramento, the Town of Freeport annexation area will become part of the Airport Meadowview-South Sacramento Community Plan Area, and will be subject to the City's land-use designations, policies and objectives. The existing Community Plan was adopted by the City Council on April 17, 1984, and the Planning & Building Department is in the process of updating the Community Plan. Due to these circumstances, and the timing of the preparation of the Town of Freeport SPD, the Airport Meadowview Community Plan Amendments are designed as a stand-alone section of the 1984 version of the Plan. This section is designed to facilitate incorporation of the Town of Freeport into the updated Airport-Meadowview Community Plan.

To facilitate the addition of objectives and goals for the Town of Freeport to the Airport-Meadowview Community Plan, the following sections from the 1984 Airport Meadowview Community Plan will be deleted and replaced by the Town of Freeport Section of the Airport Meadowview Community Plan that follows.

## 9. Town of Freeport

**Area Boundary:** The Town of Freeport is located in the southwestern corner of the City of Sacramento, adjacent to the Sacramento River. The area entails 178 gross acres (to the center line of the river), which includes 73 separate parcels totaling 136 acres. The area is bounded on the west by the centerline of the Sacramento River, on the north by the City limits and the Airport-Meadowview Community Plan Area boundary, and on the east by Interstate 5. The south property line of the City owned Bartley Cavanaugh Golf Course constitutes the southern boundary. Freeport has a population of 73 (2000 U.S. Census).

**Background:** The Town of Freeport was founded in 1862 as a potential rival railroad hub to Sacramento. The town was platted, the population quickly grew to 400, and a number of commercial enterprises were established. Although the railroad venture failed, and Freeport's population declined by the late 1860's, the town remained an active shipping point on the Sacramento River.

Since that time the town has remained relatively isolated from the urban pressures that have occurred throughout the surrounding area and has retained a rural Delta Town atmosphere. The town consists of primarily residential homes, and neighborhood scale retail businesses, including restaurants, a grocery, offices, and marinas.

During the past several years, the Town of Freeport has begun to feel development pressures in areas immediately east of the town. As these pressures continue, there is a high risk that character of the town could be negatively impacted. To best protect and expand on the attractive and positive elements found in Freeport, the town initiated annexation talks with the City of Sacramento. After careful consideration it was determined that annexation offered the best opportunity for rational, efficient and cohesive development of the area, and the best method to improve the quality of municipal services.

The following Goals, objectives, and policies, will be amended to the Airport-Meadowview Community Plan as an independent section or chapter.

### Town of Freeport Section of the Airport-Meadowview Community Plan

#### Purpose:

The purpose of the Freeport Section of the Airport-Meadowview Community Plan is to provide guidance for future development and redevelopment in the former Town of Freeport area. Freeport is comprised of characteristics that are unique to the region and need protection from development pressures. The following Goals are intended to create a vision for the future of the town of Freeport while protecting the historic delta river town atmosphere that currently exists.

#### Goal 1:

Retain the "delta river town" identity and unique historical characteristics of the Town of Freeport by applying special development standards and design guidelines.

- 1.1 Establish a Town of Freeport Special Planning District that defines development standards and design guidelines for maintaining the character of the area and preventing the intrusion of inappropriate land uses. The SPD boundaries should be expanded in the future to include all land west of Interstate 5 to insure continuity between the Freeport area and developing lands to the east. New construction in the Special Planning District may require a Planning Director's Plan Review, and applicable environmental review under CEQA.

- 1.2 The portion of State Highway 160 (Freeport Boulevard) that runs through the Town of Freeport should be designated as a Scenic Highway to ensure the continuation of highway maintenance standards, sign regulations, and other standards along this route.
- 1.3 The City of Sacramento should add the Victory trees on Freeport Boulevard to the inventory of Heritage trees, thereby protecting them per regulations set forth in Sacramento City Code 12.64. In addition, the City should designate the Victory Tree Cultural Landscape Historic District in the Sacramento Register, per Chapter 15.124 of Title 15 of the Sacramento City Code, which would protect the Victory Tree district in addition to protecting each individual tree.

**Goal 2:**

Improve the level of service to the Town of Freeport and provide service to the City owned Cavanaugh Municipal Golf Course.

- 2.1 Coordinate municipal water and sewer infrastructure improvements to the Town and the Golf Course in conjunction with development of the Delta Shores project and other future infrastructure improvements, such as the Consumes River Boulevard interchange project.
- 2.2 Consider a Town of Freeport assessment district plan to assist property owners and businesses in addressing fiscal impacts of infrastructure improvements. The assessment district should include all parcels located between I-5 and the Sacramento River.
- 2.3 Where feasible, the City of Sacramento should attempt to collaborate with the Freeport Regional Water Authority regional water intake project to install water infrastructure to the Town of Freeport.
- 2.4 A community main street master plan should be developed to plan for public improvements along Freeport Boulevard, and throughout the area, which have a unified theme and are designed to accommodate increased vehicle and pedestrian traffic that will occur with development to the east. Possible themes would reflect the historic character of the town and its location on the river and near the railroad tracks. Examples of a unified theme include alternatives to plain concrete sidewalks such as wood planks (similar to Old Sacramento) or cobblestone.

Upon extension of services to the Town of Freeport, the City of Sacramento Public Works Department, Department of Utilities, or other relevant departments, should be involved in the development of, and utilize the concepts developed in, the community main street master plan (to be developed) to guide the construction of normally required infrastructure improvements, such as curbs, gutters, sidewalks, and lighting.

- 2.5 Following annexation to the City of Sacramento, initiate a traffic study to examine the potential effectiveness of traffic calming measures on Freeport Boulevard.

**Goal 3:**

Guide future development to ensure that it will integrate with and reinforce the existing rural, small-town development patterns and river lifestyle.

- 3.1 New development should be smaller in scale to ensure a fit with the size and style of existing buildings in the Town. New commercial development should be less than two stories in height and should be oriented towards the primary street frontage. New development to the east of Freeport should serve as a transition zone between the rural characteristics of the town and more intensive uses proposed east of Interstate 5.

- 3.2 Architectural styles should reflect the historic architecture of the area with a variety of styles strongly encouraged. The use of different styles and materials is intended to add variety to the streetscape while retaining a common historic character throughout the town.
- 3.3 Guide future development decisions based on the review of individual projects and their consistency with the Town of Freeport character as a river-oriented and rural town.
- 3.4 Encourage small-scale tourism and visitor serving retail uses that emphasize Delta history, the environment, and arts, while maintaining the unique small town character.
- 3.5 Work with the State Railroad Museum to reactivate the steam train from Old Sacramento to Freeport. Also, examine the feasibility of rebuilding a replica of the historic train depot.
- 3.6 New landscaping should build upon the existing landscape form and should consist of trees, shrubs, and other plants that are native to the Freeport Area. Native vegetation information is available from the City of Sacramento Parks Department and the City Arborist.

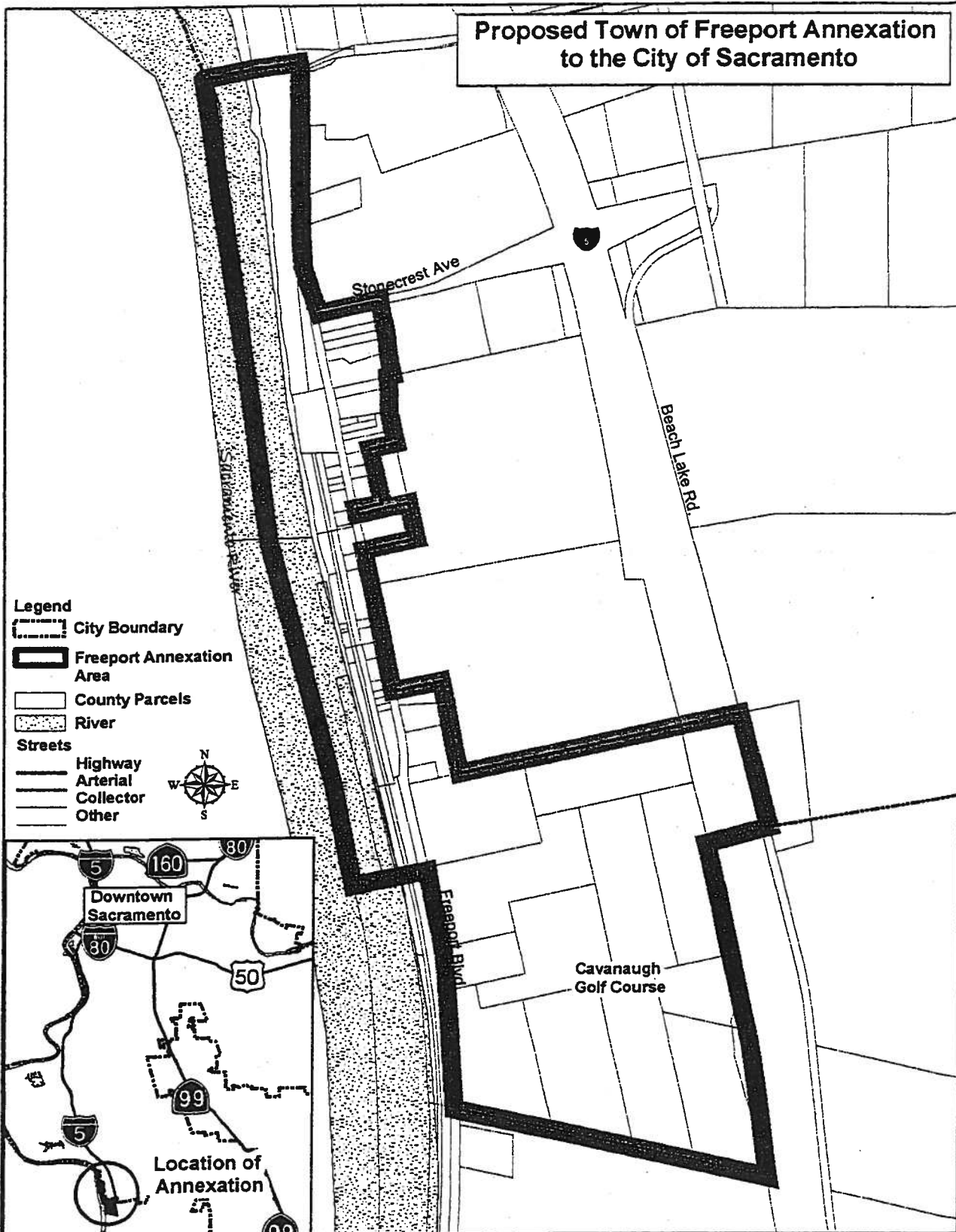
**Goal 4:**

Provide open space and greenway buffers to connect the Town with the Sacramento River and provide an appropriate transition between development to the north and east of the town of Freeport and along the Sacramento River Levee.

- 4.1 Maintain the open space and low density residential land uses designations west of Interstate 5 and adjacent to the Town of Freeport. These land uses will provide a buffer and land use transition between the rural Town of Freeport and any new development to the east.
- 4.2 Explore the creation of an open space/trail parkway along the Sacramento River through the town of Freeport. This Parkway would provide public access points to the river.



EXHIBIT 2



**THE TOWN OF FREEPORT NEIGHBORHOOD PRESERVATION AREA**

533-10. INTENT. It is the intent of the Board of Supervisors in adopting this Neighborhood Preservation Ordinance to preserve and protect the existing river town atmosphere of the property described in Section 533-15, to preserve the unique historical characteristics of the town of Freeport, and to minimize incompatible design in the area.

533-11. DEVELOPMENT PLAN REVIEW. Construction or modification of one- and two-family residences on existing parcels is not subject to development plan review. Any other proposal to construct a new building, change the use, alter the external appearance of a principle building, erect a sign, or provide cooperative public parking lots on property regulated herein shall be subject to a development plan review subject to the provision of Article 7, Chapter 10, Title I of the Zoning Code, as follows:

- (a) **APPROPRIATE AUTHORITY.** The Director of the Planning and Community Development Department shall be the appropriate authority to review all plans submitted pursuant to the requirements of this Section, as prescribed by Section 110-84 of the Zoning Code. The Director may waive the requirement for development plan review for minor projects deemed to be insignificant to the intent of this Ordinance. The Director may refer development plan review to the Project Planning Commission if he deems such action to be appropriate; reasonable fees to recover the cost of the review may be collected from the applicant.
- (b) **COMMUNITY COUNCIL REVIEW.** All applications requiring development plan review pursuant to this section shall be referred to the Delta Citizens Municipal Advisory Council for review, prior to final approval of the development plans.
- (c) **DESIGN.** This Ordinance does not prescribe a specific style or scheme for development of the Freeport area. Rather, it attempts to encourage development which is sensitive to the character of the area and will relate to the existing construction and development in the town. Particular attention will be given to the height, location, shape and proportion of structures, parking, and the scale of the projects as they relate to the overall community identity.
- (d) **LOCATION OF BUILDINGS.** Setbacks for new structures shall be determined on a case-by-case basis at the time specific development plans are submitted for approval, pursuant to this Section. These setbacks shall be based upon existing development adjacent to and in the vicinity of the facility and any other factors which contribute to preserving the atmosphere of the town. Setbacks shall be sufficient to incorporate shade trees and planters into the project design, especially within front and side yards adjacent to Freeport Boulevard.
- (e) **LANDSCAPING.** Landscaping is required in areas where on-site parking is provided and where buildings are set back from the sidewalk. This landscaping shall include street trees, sidewalk planters, planter strips, shrubs, groundcover, or a combination of the above. Areas

which may be required to be landscaped include slopes along the levee, front yards, or other open areas.

- (f) **GRADING.** Grading shall be restricted in areas where significant trees may be endangered. Tree removal is also prohibited prior to approval by the Director. Applicants are encouraged to design their projects so that the existing healthy trees may be preserved and utilized in the landscaping of the development.
- (g) **PARKING.** Parking facility plans will be reviewed as part of the development plan review process. Minimum parking requirements shall be determined by the provisions of the Zoning Code, except that the Director may permit the required parking to be provided off-site. Additional landscaping may be required to screen parking areas from public view. Community parking lots and shared parking arrangements may be approved by the Director in order to create parking areas of sufficient size to feasibly incorporate landscaping.

533-12. **VIOLATIONS.** Violation of the provisions of this Ordinance, or exhibits made part of this Ordinance, shall be deemed a violation of Sacramento County Zoning Code, Ordinance No. 83-10, as amended.

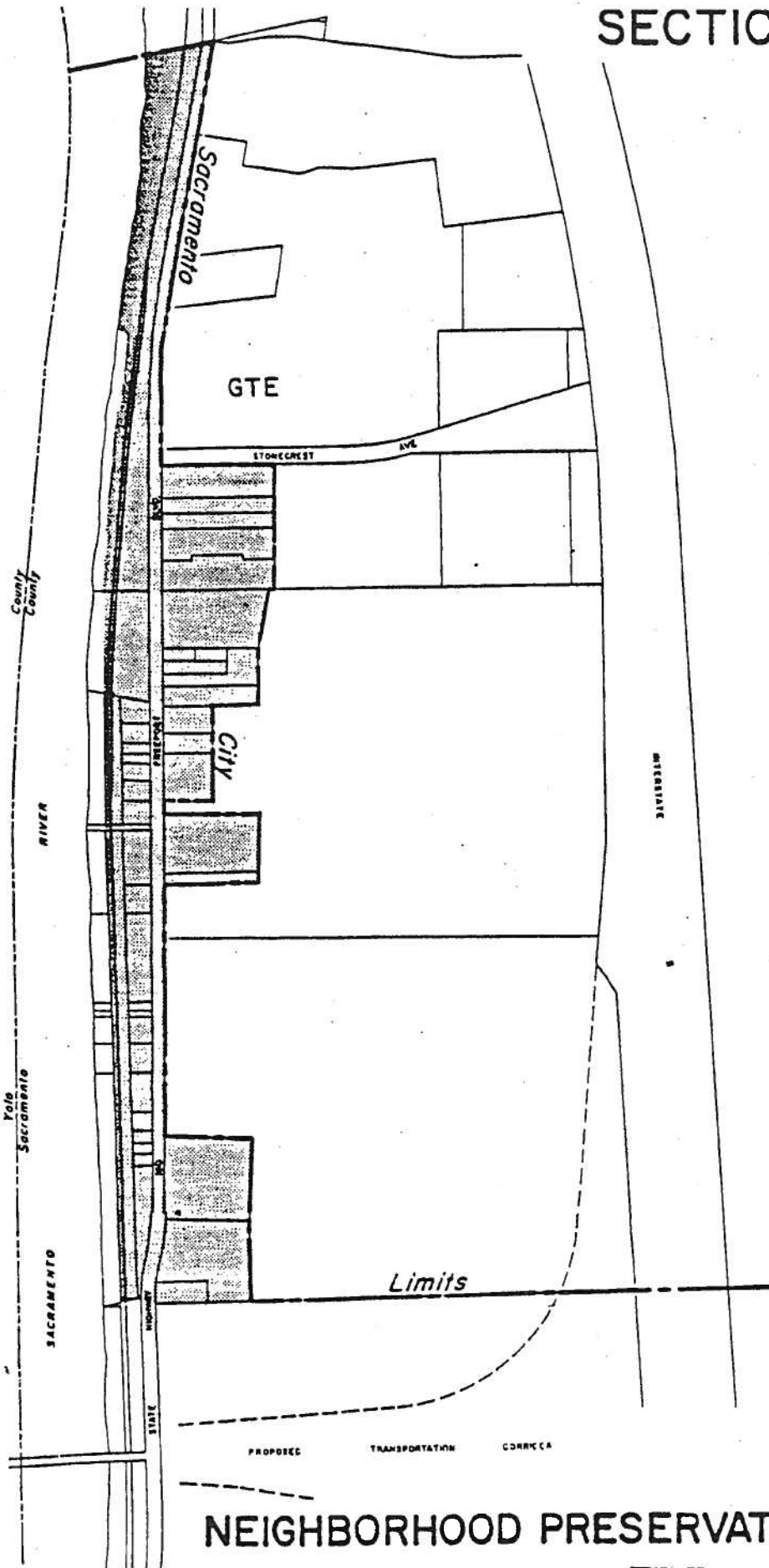
533-13. **VARIANCES.** The variance provision of Article 2, Chapter 10, Title I of the Zoning Code shall apply to this Ordinance.

533-14. **FINDINGS.** During the public hearings on this Ordinance, the Planning Commission and the Board of Supervisors determined that:

- (a) The Freeport community is historically unique in Sacramento County, having been conceived as a riverport community.
- (b) Urban development in the City of Sacramento is approaching Freeport, threatening the character of the town.
- (c) The area in Section 533-15 is of sufficient size to constitute an identifiable neighborhood.
- (d) Adoption of this Ordinance will not unduly restrict reasonable uses of the land, nor cause undue hardship on property owners.

# SECTION 533-15

LETTER 14



## NEIGHBORHOOD PRESERVATION AREA

TOWN OF  
**FREEPORT**



# TOWN OF FREEPORT ANNEXATION

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## INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

August 2003

Prepared for:

City of Sacramento  
1231 I Street, Room 300  
Sacramento, CA 95814

Prepared by:



**AES**  
*ANALYTICAL ENVIRONMENTAL SERVICES*  
2021 "N" Street, Suite 200  
Sacramento, CA 95814

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potential impact area?

## ENVIRONMENTAL SETTING

Freeport, the northernmost river town on the Sacramento Delta, was established as a river port in 1862 by the Sacramento Valley Railroad in order to avoid taxes levied by the City of Sacramento. Development within the Town of Freeport over the past 140± years has reflected its association and proximity with the Sacramento River. The Town of Freeport was developed in a linear pattern along State Highway 160. The town has evolved through a period of years with little consistency to a theme, and the Freeport identity appears to be more closely linked to its historic origins as a water-oriented rural town than to an architectural style (Sacramento County, 1983).

The County recognized, with the adoption of the Delta Community Area Plan in 1983, that long-term coordinated land use planning between the City of Sacramento and the County was necessary in order to assure a continuing distinct identity in Freeport. To begin this process, the County adopted a Neighborhood Preservation Area (NPA) to be applied by zoning ordinance to all of Freeport. The intent of the NPA is to protect the existing river town atmosphere, preserve the unique historical characteristics of the town and minimize incompatible design. The City followed suit in 1984 with the adoption of the Airport Meadowview Community Plan that confirmed cooperation between the County and City to protect the Town of Freeport.

Several structures within the Town of Freeport may be eligible for listing on City historic lists. The City of Sacramento is currently working with Caltrans to analyze the impacts associated with the proposed Cosumnes River Boulevard Interchange on Interstate 5. The Area of Potential Effects identified for this project includes the Town of Freeport, which is south of the proposed interchange. A draft Historic Resources Evaluation Report for this project identified approximately 24 sites that were developed prior to 1950. Of these, four sites were identified as being potentially eligible for the National Register of Historic Places. (Jones and Stokes, 2002) However, all of these sites could become eligible for listing under the City's Historic list when they move forward with their own survey. A survey conducted by the City in the early 1990's identified 23 structures being potentially historic or architecturally significant. These structures included the following:

**TABLE 4-6**  
DRAFT FREEPORT HISTORIC STRUCTURE SURVEY

Category	Number of Structures	Example
Essential Structure	3	Souza House, A.J. Bumps and Freeport Bridge <sup>1</sup>
Priority Structures	9	Clayton House, Freeport Market, Old Schoolhouse
Supportive Structures	9	Bungalow style homes
Retrievable structures	2	

NOTE: 1/ Freeport Bridge is not within the project site.  
SOURCE: City of Sacramento, 1990

Caltrans and the City of Sacramento teamed up to relinquish a portion of State Route 160 to the City immediately north of the project site. In doing so, a *Historical Resources Compliance Report for the Relinquishment of State Route 160 to the City of Sacramento by Caltrans* was prepared to determine the eligibility status of the Victory Trees, located on Freeport Boulevard/State Route 160 (SR 160) between Meadowview/Pocket Road and Stonecrest Drive in Sacramento County. The report revealed that the Victory Trees appear to be eligible for the National Register of Historic Places as a contributing element of the River Road/Delta Highway, a potentially eligible historic district. The report also concluded that the Victory Trees appear to meet the criteria for individual inclusion on the National Register under Criterion C as a significant designed landscape feature. The transfer of this segment of SR 160 included a Preservation Covenant for trees. As mentioned in the Biological Resources section above, the Victory Trees extend into the project site and would also be considered potentially eligible.

The annexation area is located in close proximity to a Primary Impact Area as defined by Exhibit V-5 of the Sacramento GPU EIR. Areas along the Sacramento River are considered to be potentially sensitive areas since prehistoric occupation sites were typically located near watercourses (City of Sacramento, 1987). There are no known religious sites within the project site.

## STANDARDS OF SIGNIFICANCE

Cultural resource impacts are considered significant if the proposed project would result in one or more of the following:

1. Cause a substantial change in the significance of a historical or archaeological resource as defined in CEQA Guidelines Section 15064.5 or
2. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

## ANSWERS TO CHECKLIST QUESTIONS

### QUESTIONS A-E

Development is not expected to occur after project approval. As discussed above, future development is not expected unless and until water and wastewater services are extended to the site. However, the extension of water and wastewater infrastructure to the Town of Freeport is dependent on the development of adjacent lands outside of the project site. To date, no adjoining development proposal includes the extension of wastewater services to the Town of Freeport.

The City is proposing various policies that will designate Freeport Boulevard as a Scenic Highway, and explore the creation of an open space/trail parkway along the Sacramento River through the town of Freeport. These policies would be considered beneficial effects of the Proposed Project. However, a significant impact could result to the Victory Trees, or potentially eligible structures if the listing and designations were not undertaken until after trails are



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October 10, 2008

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**VIA FACSIMILE AND U.S. MAIL**

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Historic City Hall  
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**Re: Request for Documents Referenced in the Delta Shores Draft Environmental Impact Report (September 2008)**

Dear Ms. Amrhein & Ms. Concolino:

We are writing on behalf of Plumbers and Pipefitters Union, Local 447, International Brotherhood of Electrical Workers Union, Local 340 and Sheet Metal Workers Union, Local 162 and their members who live or work in the City of Sacramento. We write to request that the City of Sacramento provide us with copies of, and make available for our immediate review, the following documents referenced in the "Delta Shores Draft Environmental Impact Report" dated September 2008 ("the DEIR"):

1. Civil Engineering Solutions, Delta Shores Development, Sacramento, California, Preliminary Drainage Study, March 18, 2007.

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2. ECORP Consulting, 2006 Dry Season Survey 90-Day Report of Findings Regarding Federally Listed Branchiopods for Delta Shores East, March 7, 2007.
3. ECORP Consulting, 2006-2007 Wet Season Survey 90-Day Report of Findings Regarding Federally Listed Branchiopods for Delta Shores East,
4. ECORP Consulting, Arborist Survey Report for East Delta Shores, June 15, 2006.
5. ECORP Consulting, Arborist Survey Report for West Delta Shores, June 12, 2007.
6. ECORP Consulting, Delta Shores – Giant Garter Snake Habitat Assessment, June 13, 2007.
7. ECORP Consulting, Special-Status Species Assessment for East Delta Shores, June 6, 2007.
8. ECORP Consulting, Special-Status Species Assessment for West Delta
9. ECORP Consulting, Delta Shores – Valley Elderberry Longhorn Beetle Survey Report, September 12, 2007.
10. ECORP Consulting, Wetland Delineation for East Delta Shores, September 5, 2006.
11. ECORP Consulting, Wetland Delineation for West Delta Shores, June 13, 2006.
12. ECORP Consulting, Valley Elderberry Longhorn Beetle Survey Letter for the Delta Shores Project, April 30, 2007.
13. Initial Alternatives Report. Final Version, March 2005. Sacramento River Reliability Study. Updated by personal communication with Jim Peifer, City of Sacramento and Sammie Cervantes, USBR, August 9, 2007.
14. J House Environmental, Inc., Project Screening for Sensitive Land Uses Adjacent to Major Roadways for the Delta Shores Planned Development, Sacramento, California, May 10, 2007.
15. M&H, August 2008.
16. PBS&J, Delta Shores Draft Water Supply Assessment, November 2007.

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17. United States Army Corps of Engineers, Delta Shores (West & East) Wetland Delineation Verification Letter (200600311) to Joseph Karnes, November 7, 2006.
18. Allen, Tracey, Sacramento Job Corps Center, personal communication, September 18, 2007.
19. Arshad, Humera, SRCSD, personal communication, November 26, 2007.
20. Brown, Shannon, ECORP, e-mail communication to Christine Kronenberg, May 1, 2007.
21. Cadd, Dennis, State Scenic Highway Coordinator, Landscape Architecture Program, Caltrans, written communication, April 2, 2007.
22. Caronite, Barron, PE, M&H, e-mail communication, July 28, 2008 and July 31, 2008.
23. Dobson, Jim, Director of Planning and Construction, Sacramento City Unified School District, personal communication, October 9, 2007.
24. Doucette, Jim, Captain, Public Information Officer, Sacramento Fire Department, written notes, June 20, 2006.
25. EIP Associates and Foothill Associates, Letter to Teichert Aggregates, March 2006.
26. Peifer, Jim, Senior Engineer, City of Sacramento Department of Utilities Memorandum to PMC Consultants, December 21, 2005.
27. Poerio, Eric, Lieutenant, Sacramento Police Department, Crime Prevention through Environmental Design, written communication, June 8, 2007.
28. Ness, Will, Chief, Sacramento Office, U.S. Department of the Army, U.S. Army Engineer District, Sacramento, Corps of Engineers, wetland verification letter to Joseph Karnes, SunCal Companies, November 7, 2006.
29. Ogan, Lloyd, Deputy Chief, Operations, Sacramento Fire Department, written communication, May 8, 2007.
30. O'Neil, Andy, Assistant Principal, John Still Elementary School, Sacramento City Unified School District, personal communication, November 14, 2007.

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31. Sherry, Dan, City of Sacramento, Utilities Department. Status of groundwater wells, personal communication, June 23, 2005.
32. Shimizu, Gary, P.E., SMUD Distribution Services, personal communication, July 25, 2007.
33. Shook, Angie, Prevention and Plan Review, Sacramento Fire Department, written notes, June 22, 2006, and written communication, May 8, 2007.
34. Shook, Angie, Prevention and Plan Review, Sacramento Fire Department, letter to Dana Allen, Senior Planner, City of Sacramento, May 14, 2007.
35. Williams, Demetrius, Project Manager, PG&E, personal communication, August 28, 2007.

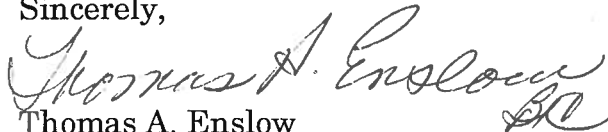
This request is made pursuant to Section 21092, subdivision (b)(1) of the California Environmental Quality Act ("CEQA") and CEQA Guidelines section 15087, subdivision (c)(5), which require that "all documents referenced in the EIR will be available for public review" and "readily accessible" during the entire comment period. This request is also made pursuant to the California Public Records Act. (Government Code §§ 6250, et seq.)

Please send the above requested items to our Sacramento Office as follows:

Thomas Enslow  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Sacramento, CA 95814-4715

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Sincerely,



Thomas A. Enslow

TAE:bh

cc: William Thomas, Development Director (916/808-7185)  
John Dangberg, Assistant City Manager (916/808-7618)

**LETTER 14: ADAMS, BROADWELL, JOSEPH & CARDOZZO, ATTORNEYS AT LAW**

**Response to Comment 14-1**

Concerns associated with impacts on biological resources are addressed in Responses to Comments 14-10 through 14-29 and Responses to Comments 14-105 through 14-124.

**Response to Comment 14-2**

Responses to Comments 14-30 through 14-41 and 14-116 through 14-121 and 14-154 through 15-156 address concerns associated with impacts to water quality and the Stone Lakes National Wildlife Refuge.

**Response to Comment 14-3**

Responses to Comments 14-42 through 14-47 and 14-157 through 14-162 address comments about hazardous materials contamination.

**Response to Comment 14-4**

The City's responses to comments regarding the potential health risk impacts of diesel and other toxic air containments are provided in Responses to Comments 14-48 through 14-63 and 14-166 through 14-185.

**Response to Comment 14-5**

Greenhouse gas emissions associated with the project are addressed in Responses to Comments 14-64 through 14-67 and 14-163 through 14-165.

**Response to Comment 14-6**

Flooding impacts are evaluated and further addressed in Responses to Comments 14-68 through 14-77 and 14-136 through 14-147.

**Response to Comment 14-7**

Traffic impacts are evaluated and further addressed in Responses to Comments 14-78 through 14-86 and 14-125 through 14-135.

**Response to Comment 14-8**

Concerns associated with the loss of farmland are addressed in Responses to Comments 14-87 through 14-93.

**Response to Comment 14-9**

Concerns associated with potential impacts on the Town of Freeport and Highway 160 are addressed in Responses to Comments 14-94 through 14-103.

## Response to Comment 14-10

The comment states that the Draft EIR does not substantiate the finding that giant garter snake (GGS) habitat is absent from the project site. Pages 5.4-10 and 5.4-17 of the Draft EIR state that based on the *Giant Garter Snake Habitat Assessment*, prepared by ECORP, the project site does not support suitable habitat for this species. The report does indicate that the nearest aquatic habitat appears to be offsite along Morrison Creek and an unnamed canal located just north of the project site (eastern side). However, since preparation of the report ECORP staff met with a representative from the USFWS who confirmed that the unnamed drainage canal does not provide suitable habitat for the snake.<sup>3</sup> Therefore, the text in the Draft EIR is revised to address this change.

The text in the second full paragraph on page 5.4-17 is revised to read:

ECORP conducted a Giant Garter Snake Habitat Assessment within East Delta Shores and West Delta Shores. The report concludes that the irrigation ditches located within the project site do not appear to provide potential aquatic habitat, nor support an adequate prey base for the giant garter snake. The irrigation ditches were dry during surveys of the site on March 23, May 3, and June 11, 2007, during the giant garter snake's active season. This indicates that the ditches do not support the amphibian and fish prey base that this species requires. Additionally, the ditches did not support aquatic vegetation that would indicate a prolonged inundation period. Although some cattails (*Typha* sp.) were present within portions of the ditches, cattails can often persist in areas where the hydrologic regime has long since been altered through changes in agriculture/irrigation practices. Furthermore, the report concludes that the upland habitat appears to be limited, if present at all, due to historic and on-going agricultural practices. The report mentions that the nearest aquatic habitats appear to be Morrison Creek and an unnamed canal (irrigation ditch) located just north of the site, east of I-5. Since preparation of the report the USFWS has confirmed that the frequently tilled lands adjacent to the unnamed canal along the northern boundary of the site do not constitute GGS upland habitat.

The offsite improvements that would be located within 200-feet of the offsite potential GGS habitat include a 60-inch storm drain pipe to connect the on-site detention basin to Sump 89 located south of the project site, and an 18-inch sewer force main that would be installed within the Cosumnes River Boulevard right-of-way connecting the project site to the SRCED Central Interceptor located in Franklin Boulevard. Construction of this pipeline would involve micro-tunneling under Morrison Creek which, it is anticipated, would not be within 200 feet of the creek. Nonetheless, because some of the proposed offsite construction activities may potentially take place within 200 feet of potential GGS habitat, the text on page 5.4-42 under Impact 5.4-10 is revised to read as follows:

The giant garter snake is listed as threatened under the state and federal ESA, and the loss of individuals or their habitat is prohibited. ECORP conducted a giant garter snake habitat assessment within the project site and found that no aquatic habitat for the giant garter

<sup>3</sup> Email from Peter Balfour, ECORP Consulting to Emily Bacchini, PBS&J on November 25, 2008.

snake occurs within those areas. Morrison Creek, which lies approximately 500 feet from the southeastern portion of the site represents potential aquatic habitat for this species. The USFWS considers any upland habitat within 200 feet of suitable aquatic habitat to be potential giant garter snake habitat. Construction of associated offsite project improvements, including a 60-inch storm drain pipe to connect the detention basin to Sump 89 and an 18-inch sewer force main that would be installed along Cosumnes River Boulevard, crossing Morrison Creek, potentially could occur within 200 feet of aquatic habitat.

The USFWS has developed a Programmatic Formal Consultation protocol for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California. In order to qualify for this Programmatic consultation, the following criteria must be met: 1) permanent impacts cannot exceed 3 acres of upland and aquatic habitat combined and no more than 1 acre of permanent impact to aquatic habitat; 2) permanent impacts cannot exceed 218 linear feet of bankside habitat; 3) temporary impacts cannot exceed 20 acres of habitat, and 4) the scope of work is "routinely" authorized under the Corps nationwide permitting program, or by individual permit.

Construction within the 200 feet of potential aquatic habitat could result in the loss of potential upland GGS habitat and the "take" of the giant garter snake. The disturbance or loss of upland habitat and the take of the giant garter snake would be considered a *potentially significant impact*. No project construction would occur within 200 feet of Morrison Creek; therefore, **no impact** would occur and no mitigation is required.

#### Mitigation Measure

*None required.*

Implementation of Mitigation Measure 5.4-10 would require the project applicant or developer(s) to consult with the USFWS and mitigate for the loss of upland habitat and impacts to the giant garter snake. Implementation of the following mitigation measures would reduce this impact to a **less-than-significant level**.

5.4-10 *The project applicant shall consult with the USFWS to address potential impacts on giant garter snake (GGS). Due to the minimal area of potential impact, it is likely that the proposed project could be covered under the Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California. For construction activities within the vicinity of Morrison Creek or the ditch north of the project site, the following avoidance measures shall be implemented consistent with the USFWS-Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat:*

- Confine movement of heavy equipment to existing roadways to minimize habitat disturbance.
- Construction shall be restricted to the active season for GGS (mid-March through early October), or as determined in consultation with the USFWS.
- Construction personnel shall receive Service-approved worker environmental awareness training. This training instructs workers to recognize giant garter snakes and their habitat(s).
- 24-hours prior to construction activities, the project area shall be surveyed for giant garter snakes. Survey of the project area should be repeated if a lapse in construction activity of two weeks or greater has occurred. If a snake is encountered during construction, activities shall cease until appropriate corrective measures have been completed or it has been determined that the snake will not be harmed. Report any sightings and any incidental take to the Service immediately.
- The project applicant shall provide safe corridors that will allow for GGS to move from Morrison Creek into the project-constructed detention basins in the southern portion of the project site, as determined in consultation with the USFWS.

#### Response to Comment 14-11

The comment states that the Draft EIR does not support the conclusion that the irrigation ditches on the project site would not support the aquatic prey base for GGS. The expected flows of the irrigation ditches is unknown, however as described on page 5.4-17 of the Draft EIR, the prey base for GGS includes fish (which require a permanent water supply) and amphibians (which require at least 4 months of water for their development). The ditches were dry when surveys were conducted March 23, May 3, and June 11, 2007, which indicates that the water supply is not sufficient to support either fish or amphibians. Additionally, the vegetation in the ditches on the project site did not support wetland vegetation that would indicate that the ditches remained inundated for a prolonged period of time. Accordingly, the text in the second full paragraph on page 5.4-17 has been revised to read as follows:

ECORP conducted a Giant Garter Snake Habitat Assessment within East Delta Shores and West Delta Shores. The report concludes that the irrigation ditches located within the project site do not appear to provide potential aquatic habitat, nor support an adequate prey base for the giant garter snake. The irrigation ditches were dry during surveys of the site on March 23, May 3, and June 11, 2007, during the giant garter snake's active season. This indicates that the ditches do not support the amphibian and fish prey base that this species requires. Additionally, the ditches did not support aquatic vegetation that would indicate a prolonged inundation period. Although some cattails (*Typha* sp.) were present within portions of the ditches, cattails can often persist in areas where the hydrologic regime has long since been altered through changes in agriculture/irrigation practices. Lastly, the report



concludes that the upland habitat suitable for the giant garter snake appears to be limited, if present at all, due to historic and on-going agricultural practices.

Please see also Response to Comment 14-10 that provides revisions to Impact 5.4-10 relative to GGS.

#### **Response to Comment 14-12**

The comment states that irrigation water is available on-site during a portion of the snake's active season. However, the prey species for giant garter snake require a minimum of 4 months of ponded water. Water was not ponded on the site during the March 23, May 3 or June 11, 2007, surveys during the time period when suitable prey need to be present. Thus, the water supply is inconsistent and of too limited a duration to support a reliable food base.

Please see Responses to Comments 14-10 that provides revisions to Impact 5.4-10 relative to GGS and Response to Comment 14-11.

#### **Response to Comment 14-13**

The comment states that it is possible for GGS to move from Morrison Creek, where it has been recorded, onto the project site. GGS are highly aquatic and it is unlikely that they would leave the high quality habitat present in Morrison Creek and traverse the project site due to the lack of aquatic habitat. Moreover, it would not be prudent to encourage or facilitate any such movements by the GGS because it would expose them to predation by domestic pets, humans, and injury from motor vehicles.

Please see also Response to Comment 14-10 that provides revisions to Impact 5.4-10 relative to GGS and Response to Comment 14-12, above.

#### **Response to Comment 14-14**

Please see Response to Comment 14-13, above. It should also be noted that the original listing decision by the USFWS to elevate the GGS as a listed threatened species under the Federal Endangered Species Act was premised, in part, upon the complete extirpation (loss) of the GGS from Morrison Creek.

#### **Response to Comment 14-15**

This comment states that while no construction would occur within 200-feet of Morrison Creek, it could occur within 200-feet of the ditch located north of the eastern portion of the project site. Please see Response to Comment 14-10 that provides revisions to Impact 5.4-10 and addresses potential construction within 200 feet of the ditch located north of the project site.

### **Response to Comment 14-16**

Please see Response to Comment 14-10 that states that the project site does not support suitable habitat for GGS. Additionally, please look at the revisions to Impact 5.4-10 provided in that response.

### **Response to Comment 14-17**

The comment discusses the potential for the proposed project to create habitat for GGS that, if they use it, could lead to take through vehicular strikes, predation by cats, and human disturbance. Please see Response to Comment 14-10 that provides revisions to Mitigation Measure 5.4-10. These revisions would address this potential concern.

### **Response to Comment 14-18**

Please see Response to Comment 7-8 that addresses this comment.

### **Response to Comment 14-19**

Revised Mitigation Measure 5.4-3 addresses impacts related to the loss of foraging habitat for Swainson's hawk. Please see also Response to Comment 2-2.

### **Response to Comment 14-20**

The comment states that the CDFG draft mitigation guidelines have been reviewed by the Swainson's Hawk Technical Committee, which has determined that the guidelines are inadequate to conserve or recover the species in the Central Valley. This is a correct statement; however, CDFG has not issued additional or revised guidelines, and no other generally accepted and CDFG endorsed mitigation standard is in place. However, Mitigation Measure 5.4-3 has been revised, see Response to Comment 2-2.

### **Response to Comment 14-21**

The comment is noting that a 1:1 preservation of land for Swainson's hawk foraging habitat essentially translates into a 50% loss of foraging habitat. However, it must be recognized that the project site provides questionable Swainson's hawk habitat due to its location in an urban area and its crop rotation history. Please see Mitigation Measure 5.4-3 as revised under Response to Comment 2-2. While the total acreage of available foraging habitat may be reduced, the quality of the remaining habitat would be increased and preserved in perpetuity under this mitigation measure.

### **Response to Comment 14-22**

Please see revised Mitigation Measure 5.4-3 and please see Responses to Comments 14-19 through 14-21, above.

### Response to Comment 14-23

The comment states that the project site is adjacent to the Sacramento River and loss of foraging habitat in the immediate vicinity could result in higher energetic costs (energy related to flying further for food) for Swainson's hawks. This is consistent to what is described on page 5.4-30 of the Draft EIR.

### Response to Comment 14-24

Please see Responses to Comments 2-2, and 14-19 through 14-21, above.

### Response to Comment 14-25

The comment expresses concern that the vernal pool crustacean mitigation, which inadvertently left out the preservation component, is not adequate. To address this omission, Mitigation Measure 5.4-2 (b) on page 5.4-29 has been revised to read as follows:

- 5.4-2 b) *If surveys within the project site reveal no occurrences of federally listed branchiopods, no further mitigation would be required. However, if surveys determine that one or more federally listed branchiopod species occur within the project site, or if the project applicant, in consultation with the USFWS, assumes presence of federally-listed branchiopods in any affected pools, the following measures shall be required for those pools with species surveyed or assumed present. The selected measures may be part of the permitting process.*
- *For every acre of habitat impacted, at least one wetland creation credit shall be dedicated within a USFWS-approved mitigation bank, ~~or, based on USFWS evaluation of site-specific conservation values, two acres of wetland habitat shall be created and monitored on the project site as approved by the USFWS.~~*
  - *For every acre of habitat impacted, at least two wetland preservation credits shall be dedicated within a USFWS-approved mitigation bank.*
  - *~~Wetland habitat and associated upland habitat used as on-site mitigation shall be protected from adverse impacts and managed in perpetuity or until the Corps, the applicant, and the USFWS agree on a process to exchange such areas for credits within a USFWS-approved mitigation banking system.~~*

Determinate surveys have already been conducted in the majority of wetlands identified onsite. All surveys were conducted following USFWS criteria and concluded that no listed brachiopods were found.

### Response to Comment 14-26

Please see Response to Comment 14-25, above.

### Response to Comment 14-27

Please see Response to Comment 7-7 that discusses greater sandhill cranes.

### Response to Comment 14-28

Please see Response to Comment 7-7 that discusses greater sandhill cranes.

### Response to Comment 14-29

The comment questions whether the walnut trees on the project site were northern California black walnut (*Juglans hindsii*), a CNPS List 1B plant. The Draft EIR relied upon the Arborist Reports prepared by ECORP Consulting, as discussed on page 5.4-1 of the Draft EIR. These reports listed the walnut trees down to genus level, *Juglans* sp. It was confirmed on November 12, 2008, by ECORP Consulting that the trees are naturalized from agricultural rootstock used for grafting English walnut. They are not northern California black walnut, which is considered a CNPS List 1B plant.

To address this correction the text in Table 5.4-2 on page 5.4-10 has been revised to read as follows:

~~Low. Suitable habitat may be present for this species to occur.~~ **None.** The arborist survey indicated that this species was not located on the project site.

### Response to Comment 14-30

As stated on pages 5.5-4 to 5.5-5 and 5.5-8 of the Draft EIR, Morrison Creek is monitored by both the City and Central Valley Water Quality Control Board (CVRWQCB) for pesticides as part of Section 303(9d) Total Maximum Daily Load program. Furthermore, as explained on pages 5.5-19 to 5.5-20 of the Draft EIR, construction activities would require a State NPDES General Permit for Discharges of Storm Water Runoff Associated with Construction Activity from the CVRWQCB. The permit conditions require that Best Management Practices (BMPs) using the Best Available Technology (BAT) are used to prevent stormwater pollution. These BMPs would be included in the Storm Water Pollution Prevention Plan (SWPPP), required as part of the permit process. Additionally, the SWPPP must contain a visual monitoring program, a chemical monitoring program for pollutants to be implemented if there is a failure of BMPs, and a sediment monitoring plan if the site discharges directly to a water body listed on the 303(d) list for sediment. Fortunately, the project site is separated from directly discharging to Morrison Creek by Pump Station 89. Pump Station 89 thus serves as a mechanical separation of stormwater runoff from the project site and is controlled by the City. The City also maintains its stormwater infrastructure and water quality through an existing NPDES permit for municipal stormwater runoff. These various controls would monitor stormwater runoff conditions during construction and be required to implement better controls should

sediment or other pollutants be found in runoff. Further, the CVRWQCB could require additional monitoring above that specified in the State NPDES General Construction Permit.

In addition, the comment suggests that potential residual pesticide in on-site soils could reach Morrison Creek. The Draft EIR fully addressed issues related to potential contaminants on the project site on pages 27 through 29 in the Initial Study (see Appendix A). As stated in the Initial Study, potential contaminants on the project site could exist and, therefore, require Mitigation Measures 9-1 and 9-2 (see also Response to Comment 14-45 that includes revisions to these mitigation measures). Specifically, Mitigation Measure 9-1 states that a Phase II Environmental Site Assessment (ESA) shall be conducted to further characterize Recognized Environmental Concerns (RECs) reported in the Phase I ESA. If any are found to pose a threat to the environment during construction, then mitigation shall be recommended and work within the site shall not proceed until all identified hazards are managed to the satisfaction of the City and the Sacramento County Environmental Management Department (SCEMD). This would include implementation of an agency-approved work plan to ensure that excavated soils that may contain contaminants are properly moved, stored, and transported within the project site, along with dust control and stormwater control measures. This would minimize the potential for contaminated soils, if any, to be transported into Morrison Creek.

Finally, operation of the proposed project stormwater drainage facilities would be consistent with the City's NPDES Phase 1 Municipal Separate Storm System Permit Low Impact Development to prevent water quality degradation through BMP implementation, inspections, and maintenance. The proposed water quality BMPs, including detention basins, would meet the water quality control criteria for urban pollutants as mandated by both the State and City.

#### **Response to Comment 14-31**

The comment states that the Draft EIR does not identify existing contamination as a concern with regards to stormwater runoff into Morrison Creek. Please see Response to Comment 14-30, above.

#### **Response to Comment 14-32**

The comment states the Draft EIR does not provide mitigation of impacts to receiving waters (i.e., Morrison Creek) and should provide specific BMPs for control of pesticides during construction. Mitigation Measures 9-1 and 9-2 in the Initial Study (see Response to Comment 14-45) describe the approach for identifying the extent of, and controlling contaminants, if any, in runoff. It would be premature to identify specific BMPs for managing contaminants at this level of project development. This is because the full extent of the hazard would first need to be determined, from which the necessary BMPs can be identified. The stormwater BMPs that address the contamination (if any) would be developed prior to issuance of a grading permit when the precise locations of earth movement are known, as would construction BMPs in the SWPPP under the General Permit. A site-wide, comprehensive approach to BMP planning would ensure effective integration of the BMPs to serve the intended purposes. Please see also Response to Comment 14-30, above.

### **Response to Comment 14-33**

The discussion on pages 2-23 through 2-24 and 5.5-22 through 5.5-28 of the Draft EIR provide a thorough description and analyses of stormwater runoff flows, volumes, and water quality from the proposed drainage system.

Section 5.4, Biological Resources, in the Draft EIR on pages 5.4-2 through 5.4-7 describes the habitat and species that could be affected by project development. Impact 5.5-1 on pages 5.5-21 through 5.5-24 thoroughly describes how project-generated stormwater runoff would be managed to protect Morrison Creek water quality. As stated in Response to Comment 14-30, operation of the proposed project stormwater drainage facilities would be consistent with the City's NPDES Phase 1 Municipal Separate Storm System Permit Low Impact Development to prevent water quality degradation through BMP implementation, inspections, and maintenance. The proposed water quality BMPs, including detention basins, would meet the water quality control criteria for urban pollutants as mandated by both the State and City. This would reduce the potential for adverse effects on aquatic resources in the Morrison Creek watershed downstream from the site.

### **Response to Comment 14-34**

The comment suggests that the proposed project includes analysis of a levee currently planned for improvement under the authority of the regional Sacramento Area Flood Control Agency (SAFCA) and the United States Army Corps of Engineers (USACOE) from flood control projects approved by the U.S. Congress in 1999, as stated on pages 5.5-7 and 5.5-8 of the Draft EIR. This levee provides flood protection for residences in the vicinity of the project site as well as the project site and is a separate project under a different agency. According to SAFCA's website, the improvements along Morrison Creek are nearly complete; currently planned for completion in 2012.<sup>4</sup> The proposed project does not include plans to build, operate, or control levees that are under the jurisdiction of SAFCA. Further, SAFCA levee projects are subject to CEQA documentation separate from the Delta Shores project. As such, impacts from levee construction, if any, would be disclosed under SAFCA's lead agency decision authority.

### **Response to Comment 14-35**

Impact 5.5-2 on pages 5.5-24 through 5.5-28 and Impact 5.5-3 on pages 5.5-29 and 5.5-30 in the Draft EIR evaluate how project-generated stormwater flows could affect, or be affected by flood hazard in the watershed. These impacts also describe the measures that are in place or would be implemented to control the flood hazard. In combination with the stormwater runoff water quality measures that must be incorporated into project design, the potential for adverse downstream effects is minimized. Please see Responses to Comments 14-33 and 14-34.

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4 SAFCA, [http://www.safca.org/Programs\\_SoSacStreams.html](http://www.safca.org/Programs_SoSacStreams.html), accessed on November 11, 2008.

### **Response to Comment 14-36**

The comment describes the Stone Lakes National Wildlife Refuge and the Bufferlands lands located in proximity to the proposed project site, and the habitat that these lands provide to support special-status wildlife species. The comment then goes on to describe the water source of the Beach-Stone Lakes Basin. The comment suggests that the proposed project runoff could modify downstream habitats and introduce noxious weeds into the adjacent Bufferlands. The proposed project would not plant or otherwise introduce noxious weeds to the project site. Also, see Responses to Comments 14-33 and 14-119.

### **Response to Comment 14-37**

Please see Response to Comment 14-33.

### **Response to Comment 14-38**

Please see Response to Comment 14-30.

### **Response to Comment 14-39**

The comment states the Draft EIR does not explain how project compliance with federal, state, and local stormwater quality permits and programs results in less-than-significant impacts. As described on pages 5.5-9 through 5.5-18 of the Draft EIR, the existing federal, state, and local stormwater quality framework includes multiple layers of government oversight of both construction and operation of the project. This legal framework incorporates mandatory notification, permitting, installation, monitoring, and maintenance of BMPs, and monitoring of stormwater runoff. The impact analyses provided in the Draft EIR explains how this framework applies to construction and operation of the proposed project and, therefore would reduce the project's impacts to less-than-significant levels. Also see Response to Comment 14-30.

### **Response to Comment 14-40**

The comment states that the Draft EIR did not analyze impacts of the proposed project on increases in urban runoff volumes, flows, and related water quality. Please see Responses to Comments 14-30 and 14-33, above. The comment also states that the project did not analyze impacts of the levee improvements being done by SAFCA in the project vicinity. See Response to Comment 14-34. The comment also states that the Draft EIR did not analyze impacts to fish species. The reader is directed to Response to Comment 14-121 for issues related to special-status fish.

### **Response to Comment 14-41**

The comment states that the Draft EIR should be revised to include a baseline water quality study to compare existing water quality with post-project water quality. As stated above in Response to Comment 14-30, Morrison Creek is already monitored by state and federal agencies for water quality because it is on the CWA Section 303(d) list of impaired water bodies. In addition, the existing urban areas to the north of the project site all currently drain into Morrison Creek without any water quality

treatment by means of an underground storm water drainage pipeline which traverses the project site. The project applicant would improve the quality of that existing drainage by modifying that pipeline and treating that existing storm water at the project's new water quality detention basin, before it is then conveyed to Morrison Creek, thereby providing a significant water quality benefit to Morrison Creek.

The CVRWQCB will review the NPDES General Construction Permit application materials from the project contractors and could require more stringent monitoring during project construction. The comment further states that pre and post-construction monitoring would ensure BMP effectiveness. As part of the City's NPDES Phase 1 MS4 Permit, a program for monitoring water quality in Morrison Creek is already established to ensure the effectiveness of BMPs within the watershed and to improve the water quality in the creek (see <http://www.sacramentostormwater.org> for further technical details on the monitoring programs). Further, the City will enforce the Low Impact Development (LID) standards described on pages 5.5-21 through 5.5-24 of the Draft EIR to reduce pollutants in stormwater runoff to the maximum extent practicable and, thus, meet forthcoming changes to the City's NPDES Phase 1 MS4 permit.

#### **Response to Comment 14-42**

The Initial Study, included in Appendix A in the Draft EIR, evaluates the potential hazards associated with development of the proposed project on property for which the Phase 1 Environmental Site Assessment (ESA) referenced by the commentor was prepared. The analysis is presented on pages 26 through 28 in the Initial Study. The Phase 1 ESA was also included in the Initial Study as Appendix B.

#### **Response to Comment 14-43**

The text on pages 26 and 27 of the Initial Study (see Appendix A) states that recognized environmental conditions (RECs) were identified in the Phase 1 ESA that warranted follow up investigative study and a Phase 2 ESA.

#### **Response to Comment 14-44**

As noted in Response to Comment 14-42, the Draft EIR does, in fact, include an analysis of the potentially hazardous conditions due to possible contamination at the site. The analysis is presented in Item 9 on pages 26 through 28 of the Initial Study included in Appendix A in the Draft EIR. The Phase 1 ESA is included in Appendix B to the Initial Study. The Initial Study, and the impact evaluations therein, comprise substantial evidence and are part of the administrative record for the EIR for the proposed project and, as such, the analysis has been included in the Draft EIR.

The Initial Study/NOP was provided to both the State Department of Toxic Substances Control and the Regional Water Quality Control Board. These state agencies are responsible for oversight of the investigation and cleanup of sites with contamination. No comments were received during the NOP comment period in April 2007 from these two agencies or any other agency or individual that



suggested the analysis should be evaluated in greater detail in the EIR, or that either agency would seek an active role in the investigation and/or cleanup recommended in the Phase 2 ESA.

No comments were received from the Sacramento County Environmental Management Department, which also oversees investigations and cleanups of contaminated sites at the local level, that additional analysis should be provided in the Draft EIR.

### **Response to Comment 14-45**

The analysis on page 27 of the Initial Study concludes mitigation is required to perform a Phase 2 ESA, per the recommendations of the Phase 1 ESA.

Page 28 in the Initial Study (Appendix A in the Draft EIR) has been revised as follows in response to the comment. The mitigation measures have also been revised. These revisions clarify and elaborate on the analysis presented in the Initial Study. No new significant impacts would occur that would trigger the need to recirculate the Draft EIR regarding this topic.

The following information is included on the top of page 28 at the end of the first sentence:

The Phase I ESA found several RECs that could affect near- and subsurface soils beneath the project site, which could be released during project construction. Unless these materials are properly assessed and mitigated, this could result in a release of hazardous materials into the environment and expose people to hazardous materials. Under Mitigation Measure 9-1, site hazards would be evaluated in advance of any grading permit approvals. If conditions are discovered that could pose a human health or environmental risk, Mitigation Measure 9-2 would ensure that any necessary soil and/or groundwater remediation is performed prior to the issuance of grading permits. This would minimize the potential for construction workers to be exposed to hazards. Upon completion of any remediation, this would further reduce the risk to future occupants of the project. Mitigation Measure 9-3 provides a contingency plan and approach to managing unexpected conditions. Because the state requires investigation of potential school sites for contamination under the Education Code Section 17210 et seq. (the results of requires Department of Toxic Substances Control review), additional mitigation is not required. The results of school site evaluations would be used to determine the suitability of proposed school sites within the project and any necessary soil or groundwater management to reduce risks to children.

The implementation of remedial actions identified in the work plan (if any are determined to be needed) under Mitigation Measure 9-2 could result in environmental effects if controls are not in place to manage them. For example, remediation that involves excavating or moving soil could generate dust to which chemicals could adhere. However, implementation of a site health and safety plan, along with dust controls, in accordance with established laws and regulations, would minimize potential hazards. If it is necessary to dewater for trenching or excavation, the work plan would specify the proper disposal methods.

If the results of the Phase II ESA recommend remedial actions, such efforts would be required to comply with applicable federal, state, and local laws and regulations, which would sufficiently protect human health and the ecological environment from potential effects due to remediation activities. If risk-based standards are necessary (the need for which would be developed through the Phase II ESA and work plan process in Mitigation Measure 9-2), they would be enforced on any new remediation activities. Moreover, the major hazards-related effects of environmental cleanup associated with any remediation, if necessary, would be beneficial over the long term. Remediation, or effective management, of contamination would eliminate the health threats posed by hazardous wastes and prevent workers and the public from encountering such materials in the event of any future excavation at the site. Management of soil contamination would also eliminate a potential local source of groundwater contamination. Consequently, effective risk management would be beneficial in the long run. Implementation of appropriate risk management measures would also allow for localized cleanup of contamination, while other site preparation activities could proceed. Therefore, there would be no new significant effects on people or the environment due to any additional remedial activities that could take place during construction or occupancy beyond those already identified.

Therefore, this impact would be ***less than significant with mitigation incorporated***. This will not be further addressed in the EIR.

### **Mitigation Measures**

9-1 ~~Prior to the issuance of a building permit~~ issuance of grading permits at the subject property, a Phase II ESA for the subject property shall be prepared by the project permit applicant, as recommended in the Phase I Environmental Site Assessment, Delta Shores, Sacramento, California, prepared by Toxichem Management Systems, Inc., February 21, 2007. The Phase II ESA shall provide additional information regarding the recognized environmental conditions (RECs) present at the project site subject property, determine whether the RECs pose a threat during project construction and/or operation, and recommend additional mitigation, if necessary. steps that should be taken to identify and control hazards that could pose a risk to construction workers and future occupants, including residents, school children, visitors, and workers. Such actions shall include, but would not be limited to, soil and groundwater testing and data evaluation, remediation, or physical and/or institutional controls to effectively manage contaminants to levels that would not pose a human health or environmental risk.

9-2 If the results of the Phase II ESA indicate the need for remediation or risk management, a work plan that describes how hazards will be managed shall be prepared by a qualified professional and submitted to the City in conjunction with any applications for a grading permit. The need for a site-specific risk assessment, use of target screening levels, and development (if required) of risk-based cleanup levels shall be addressed in the work plan. The City shall not issue grading permits ~~Work~~

~~within the project site shall not proceed until all identified hazards are managed in accordance with the work plan approved by to the satisfaction of the City and the Sacramento County Environmental Management Department (SCEMD) in accordance with the work plan. The work plan shall address how hazards to construction workers, future occupants, and visitors will be minimized. The work plan shall identify the specific environmental controls that must be in place to manage air emissions from soil or groundwater remediation, stormwater runoff controls from remediation sites, a health and safety plan, and on- and off-site movement, transport, and/or disposal of soil and groundwater in accordance with state and local laws and regulations. In addition, the City shall ensure grading/construction contracts specifically include any notifications or restrictions that pertain to the potential for encountering contaminants in soil or groundwater. The need for reporting releases to, or further consultation and/or approvals from the Department of Toxic Substances Control and/or Regional Water Quality Control Board, shall be determined by the City in accordance with established regulations.~~

- 9-23 *In the event that previously unidentified soil or groundwater contamination, USTs, or other features or materials that could present a threat to human health or the environment are discovered during excavation and grading or construction activities, all construction within the project site shall cease immediately, and the applicant shall retain a qualified professional to evaluate the type and extent of the hazardous materials contamination and make appropriate recommendations, including, if necessary, the preparation of a site remediation plan. Pursuant to Section 25401.05 (a)(1) of the California Health and Safety Code, the plan shall include: a proposal in compliance with ~~application~~ applicable law, regulations, and standards for conducting a site investigation and remedial action, a schedule for the completion of the site investigation and remedial action, and a proposal for any other remedial actions proposed to respond to the release or threatened release of hazardous materials at the property. Work within the project site shall not proceed until all identified hazards are managed to the satisfaction of the City and the SCEMD.*

CEQA requires reporting on and monitoring of mitigation measures adopted as part of the environmental review process (Public Resources Code section 21081.6). A Mitigation Monitoring Program (MMP) included in this Final EIR (see Chapter 5) is designed to aid the City of Sacramento in its implementation and monitoring of measures adopted from the Delta Shores Draft EIR. The mitigation measures identified in the Delta Shores Draft EIR (including those identified in the Initial Study) will become conditions of approval for the proposed project. The City will be responsible for ensuring the implementation of mitigation measures for which it has authority to impose and monitor throughout the development process. Mitigation Measures 9-1 through 9-3, as revised, are mitigation measures within the City's jurisdiction to enforce.

### **Response to Comment 14-46**

Please see Response to Comment 14-45, above, regarding the request to revise the Draft EIR to incorporate additional impact analysis and mitigation.

Revisions to the mitigation measures were made in response to this comment letter (see Response to Comment 14-45). The revisions clarified the timing of the action and added additional performance standards.

The Draft EIR included identification of all known hazards, identified the potential for human health effects, identified the recommendations of the Phase 1 ESA and incorporated those recommendations, and included mitigation measures (as revised) to reduce impacts to less-than-significant levels. The revisions do not identify any new hazardous materials contamination-related impacts or substantial increase in the severity of an environmental impact that would not be reduced to a less-than-significant level through mitigation, nor would the revised mitigation measures result in a new significant environmental impact. In fact, the revised mitigation measure would further enhance the effectiveness of the mitigation measure to be protective of human health. With the revisions, the revised mitigation does not include a new feasible way to mitigate or avoid an impact (including a feasible project alternative) that the project proponents have declined to implement. Because no new resources or new unmitigable impacts have been identified or added to the revised mitigation, the EIR is not changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project. Therefore, the revisions herein represent improvements to the analysis and mitigations and do not warrant recirculation of the Draft EIR. Please see also Response to Comment 14-104.

### **Response to Comment 14-47**

Revised Initial Study Mitigation Measures 9-1 through 9-3 (see Response to Comment 14-45, above) describes the process that will be used in advance of any soil-disturbing activities at the project site to ensure all necessary testing is performed and the results evaluated to determine potential health risks to construction workers, visitors, and future site occupants. The necessary revisions have been made to the EIR analysis to address the comment. Please see also Responses to Comments 14-44, 14-45, and 14-46.

### **Response to Comment 14-48**

The Draft EIR evaluated the health risks from traffic-related emissions according to the methodology and evaluation criterion specified by the Sacramento Metropolitan Air Quality Management District (SMAQMD) in *Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways* (*Protocol*; originally released January 2007 and amended October 2008).

The *Protocol* states: "... the cancer risk posed by vehicle MSAT [Mobile Source Air Toxic] emissions is dominated by diesel PM exposure" and it reports Cancer Potency Factors of 1.1 for DPM compared to 0.6 for 1,3-butadiene (about 50% of the DPM risk) and 0.1 for benzene (about 10% of

the DPM risk). It goes on to state: “The cancer risk due to diesel PM exposure is more significant than the other carcinogenic MSATs.”

Further, the California Air Resources Board (CARB) in *Air Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles* (October 2000) found that “... diesel PM emissions are estimated to be responsible for about 70 percent of the total ambient air toxics risk.”

The Draft EIR HRA found a maximum cancer risk to the proposed residential use closest to I-5 to be 168 in a million for a 70-year lifetime exposure compared to the SMAQMD recommended evaluation criterion of 446 in a million. With such a large margin of safety, the inclusion of 1,3-butadiene, benzene and the other TACs present in motor vehicle exhaust, which have lesser potency factors and also lesser concentrations, would not likely have altered the study finding that mobile source TAC health risk was less than significant. In addition, the purpose of the AQMP is to improve regional air quality in a manner that exceeds the minimum emission reduction standards set by the SMAQMD.

#### **Response to Comment 14-49**

The commentor states that the Draft EIR’s finding of a maximum TAC risk of 168 in a million exceeds the SMAQMD recommended CEQA significance standard of 1 in a million.

There are two thresholds of significance for TACs set by SMAQMD. The first is 10 in one million, or 1 in one million if Best Available Control Technology, or BACT) is not applied. These thresholds referenced by the commentor apply to stationary sources of TAC emissions only. TACs from stationary sources are regulated by the SMAQMD under Rule 904 (see page 5.3-26 in the Draft EIR). The proposed project does not presently include any large stationary sources that would be a source of TACs subject to Rule 904 and stationary source emissions thresholds. However, the proposed project would be a source of traffic-generated TAC emissions, with diesel particulate emissions generating the largest risk. The SMAQMD’s *Guide to Air Quality Assessment in Sacramento County (Guidelines; July 2004)* makes the following statement:

*“Currently no adequate acceptable methodology is available to assess TACs from mobile sources ... , therefore the environmental document may conservatively consider impacts from TACs significant and unavoidable. The recommended significance thresholds for TACs include:*

- *Lifetime probability of contracting cancer is greater than 10 in one million”*

However, the SMAQMD has subsequently developed a specific protocol and evaluation criterion for dealing with mobile-source TACs. This *Protocol* (January 2007; amended October 2008) developed an alternate risk evaluation criterion for mobile source TACs and recommends:

*“Local land use jurisdictions retain all authority and decide after considering all relevant factors whether the land use project is appropriate.”*

Both the risk screening procedure and full HRA conducted for the Draft EIR found that the cancer risk to the closest project residential uses to I-5 were far below the SMAQMD recommended evaluation criterion. Therefore, the Lead Agency determined that, for the purposes of this Draft EIR, the mobile source TAC impact was less than significant. In addition, the purpose of the AQMP is to improve regional air quality in a manner that exceeds the minimum emission reduction standards set by the SMAQMD.

#### **Response to Comment 14-50**

The commentor states that the Draft EIR sets an artificially high threshold of significance for TAC risk based on the SMAQMD evaluation criterion.

The Draft EIR HRA uses exactly the same mobile source evaluation criterion set by the SMAQMD in its *Protocol*. It is also clear from the *Protocol* that the SMAQMD leaves the final decision on the appropriateness of the estimated TAC exposure for the proposed land use up to the Lead Agency. See Figure 2, page 8 of the *Protocol*, which shows that after evaluation of risk with respect to the SMAQMD evaluation criterion, the results are to be reported to the Lead Agency for a “Jurisdiction Decision” on the significance of the impact.

#### **Response to Comment 14-51**

The commentor states that the SMAQMD’s TAC significance criterion is 10 in a million and that the Draft EIR’s failure to apply it is arbitrary and capricious, and further, that the Draft EIR is wrong to adopt the SMAQMD evaluation criterion of 446 in a million as its significance criterion while at the same time the HRA done for the Draft EIR identifies the evaluation criterion as not representing a “safe” risk level or regulatory threshold of significance.

It is clear from the substance of its *Protocol* that the SMAQMD had not adopted 10 in a million as its own regulatory threshold of significance for mobile TAC sources. If it had adopted this threshold, the SMAQMD would not have issued a document recommending a much higher “evaluation criterion” for the consideration of a Lead Agency if it believed that 10 in a million was clearly necessary to avoid mobile source TAC health impacts to occupants of proposed land uses. The HRA is quoting the *Protocol* when it notes that its evaluation criterion is neither a “safe” risk level nor regulatory threshold of significance” as far as the SMAQMD is concerned. But it believes that a level of risk between 10 in a million and 446 in a million is a range within which a Lead Agency may exercise its discretion when deciding if the benefits to the larger community from a proposed development would outweigh the risks to its future occupants from the mobile source TACs they would be exposed to.

#### **Response to Comment 14-52**

The commentor states that TAC risks are generally considered significant if the cancer risk is greater than 1 in a million, citing a document by the Office of Environmental Health Hazard Assessment (OEHHA) in support. Also, the assertion is made that the CEQA significance criterion for mobile source TACs needs to be based on a “significant” health risk level as determined by appropriate

regulatory agencies and not just an “acceptable” health risk level that accommodates economic or technological feasibility considerations.

There are no regulatory standards for TAC risk comparable, scientifically or legally, to the federal/state ambient air quality standards for criteria air pollutants (e.g., ozone, carbon monoxide, etc.). For the latter, substantial scientific evidence has established that ambient concentrations below the set standards will avoid all known adverse health consequences to people so exposed. These ambient standards have been included in federal/state regulations and their attainment is legally mandated (note: they are the “standards” cited in the CEQA Appendix G Checklist, i.e. “*Will the project: Violate any air quality standard or contribute substantially to an existing or projected air quality violation?*”). In contrast, a wide range of risk values is used to assess the acceptability of TAC exposure depending on the specific TACs being assessed, the TAC sources, the regulatory agency responsible for the assessment, etc. The range 1 in a million to 10 in a million is commonly used for risk assessments performed under OEHHA’s *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments (Guidance; August 2003)*. But the setting of that range by OEHHA is hardly a key part of their methodology. Specifically, their *Guidance* states (on page 4-14):

*“Population exposure can [bold/underline added] be assessed by determining the number of people at a particular cancer risk level such as [bold/underline added] 1 x 10<sup>-5</sup> or 1 x 10<sup>-6</sup>.”*

There are no SMAQMD or OEHHA guidelines that set particular values or ranges for TAC exposures that are regarded as “significant” for their potential health impacts, or others that are regarded as merely “acceptable” when economic or technological considerations are included.

### Response to Comment 14-53

The commentator states that both SMAQMD and OEHHA set the threshold of significance for TAC risks from all sources at between 1 in a million and 10 in a million.

It is clear that SMAQMD does not use the above mentioned criterion for mobile source TAC risk; otherwise, it would not have issued a separate *Protocol* with a different evaluation criterion. As shown above, the OEHHA *Guidance* suggests, but does not require, the same risk range for assessments done under its methodology. Further, OEHHA methodology and assessment criteria were specifically developed to evaluate the health risk from stationary sources of TACs. Specifically, the *Guidance* (Introduction, page 1-1) makes the following statement:

*“The Hot Spots Act is designed to provide information to state and local agencies and to the general public on the extent of airborne emissions from stationary sources [bold/underline added] and the potential public health impacts of those emissions. The Hot Spots Act requires that OEHHA develop risk assessment guidelines for the Hot Spots program.”*

**Response to Comment 14-54**

The commentor, after correctly summarizing the essential content and findings of the Draft EIR's HRA, states that the SMAQMD intended the evaluation criterion in its *Protocol* to serve only as a trigger for the preparation of a site-specific risk assessment and not as the CEQA threshold of significance.

The decision to prepare a site-specific HRA for the Draft EIR was based on the evaluation criterion in the *Protocol*. Traffic volumes on this section of I-5, the closest distances of on-site proposed residential uses to the freeway and the risk screening tables in the *Protocol* determined a maximum risk of 354 in a million compared with the 446 in a million evaluation criterion. Because of the magnitude of the screening-level risk, a more detailed site-specific risk assessment was performed using the full methodology specified in the *Protocol Technical Appendix*, which lowered the maximum on-site risk estimate to 168 in a million.

The commentor quotes the Protocol statement: "the evaluation criterion does not provide an acceptable cancer risk level or a regulatory threshold." This statement means that, while the SMAQMD has not formally defined it as their measure of acceptability for TAC mobile-source exposure, nor formally adopted it as a threshold in any of their rules and regulations, lead agencies are free to adopt it as a CEQA threshold of significance (see *Protocol* flow chart, page 7; "jurisdiction decision" as endpoint of HRA process).

**Response to Comment 14-55**

The commentor quotes the Draft EIR HRA which contains certain statements about the "evaluation criterion," "significant" risks and "safe" risks, as taken from the SMAQMD *Protocol*.

The HRA was prepared for the Lead Agency's consideration in its determination of the significance of the mobile source TAC exposure for the Draft EIR. It included the SMAQMD statements concerning the intended use of the *Protocol's* evaluation criterion and the SMAQMD's position on acceptable risk and regulatory thresholds, also for the Lead Agency's consideration.

The commentor restates the same concerns expressed previously about improper use of the evaluation criterion and requirements to use the "generally accepted" 1 in a million significance threshold in the Draft EIR. Please see Responses to Comments 14-48 through 14-54.

**Response to Comment 14-56**

The commentor states that the Draft EIR should have proposed larger buffer zones (i.e., 500 feet or greater) along the section of I-5 that crosses the project site in accordance with the recommendations of the California Air Resources Board (CARB) *Air Quality and Land Use Handbook: A Community Health Perspective (Handbook; April 2005)*.

The CARB *Handbook* proposes an all-purpose 500-foot buffer zone to assure adequate protection from mobile source TACs for new residential uses proposed near California freeways. The width of



this buffer zone was determined by TAC monitoring and modeling conducted for some of the largest freeways in the State, which also accommodate the highest percentage of high-TAC-emitting heavy trucks. This was based on the finding that TAC concentrations decreased to local background levels within 300 to 500 feet from such freeways. The motivation for the SMAQMD's *Protocol* was to be able to adjust the width of this protective buffer zone based on lower traffic volumes and different local meteorological conditions in the Sacramento area. Because traffic is lower and dispersion conditions are better here, the buffer zones can be narrower. The *Protocol* determines the acceptable width of the zone based on local traffic and road geometry.

#### **Response to Comment 14-57**

The commentator states that the Draft EIR is improperly applying the SMAQMD *Protocol* to allow project residential uses closer than the minimum safe 500-foot distance established in the CARB *Handbook*.

On the contrary, the commentator misunderstands the rationale for and utility of the *Protocol*. The SMAQMD determined the maximum TAC risk at the edge of the busiest freeway in Sacramento County; it then set its evaluation criterion at 70% below that level. The *Protocol* screening table (or the CAL3QHCR model in a detailed HRA) is used to determine the distance from the freeway of interest for a particular project to the point at which the TAC risk on the project site is 70% less than the maximum freeway-induced TAC risk in the county. In every case, application of the *Protocol* to estimate the project-specific buffer zone would yield a width less than the 500-foot wide zone recommended in the CARB *Handbook*.

#### **Response to Comment 14-58**

Please see Response to Comment 14-57, above.

#### **Response to Comment 14-59**

The commentator faults the Draft EIR for not including information about non-carcinogenic health risk, and asserts that a health hazard ("HI") of 1.0 or greater is the appropriate standard that should be used to determine freeway emission risks for non-carcinogens. However, as stated on page 1-1 in the reference document cited by the commentator in footnote 93 (OEHHA, Air Toxic Hot Spots Program Risk Assessment Guidelines, August 2003), "the Air Toxic Hot Spots Act is designed to provide information to state and local agencies and to the general public on the extent of airborne emissions from *stationary sources* [emphasis added] and the potential public health impacts of those emissions." Freeway emissions are not stationary source emissions and are not subject to Air Toxic Hot Spots Act reporting. However, that does not mean the risks should not be evaluated.

The original CARB Protocol issued in January 2007 did not recommend that an EIR include information on non-carcinogenic health risk ("hazard index" ["HI"]). Its recent revision in October 2008 now recommends that potential non-cancer health risks of living near freeways and major roadways should be discussed qualitatively. The EIR analysis was drafted in 2006/2007, prior to the October 2008 revision.

Therefore, the following text will be added to the environmental setting on the bottom of page 5.3-8 of the Draft EIR. The addition of this text does not change any of the findings contained in the Draft EIR.

Non-cancer acute and chronic TAC health effects

- In February 2007, a study published in The Lancet showed that children living near a freeway had substantial deficits in lung formation compared with children living father away.
- A February 2007, study published in the New England Journal of Medicine showed that postmenopausal women living in communities with high levels of fine particulate matter had a 150 percent greater risk of dying from heart disease and stroke than women living in less polluted areas.
- A December 2007, a study published in the New England Journal of Medicine showed that adults with asthma who spent just 2 hours walking on a street with heavy diesel traffic suffered acute effects on their lung function, including lung and airway inflammation.
- An April 2003, a study published in Environmental Health Perspectives showed that exposure to ultrafine particles from incomplete combustion of fuel as well as lubricating oils can bypass the body's defense mechanisms, enter cells and tissues, and disrupt normal cellular function.
- Studies published in February 2003 and September 2005 issues of Environmental Health Perspectives linked traffic-related pollutant exposure to increased risk for low birth weight and premature birth.

The commentor also asks that projected increases in traffic along I-5 be taken into account when evaluating health risks to adjacent residents.

The CARB estimates that emission benefits associated with the full implementation of its *Diesel Risk Reduction Plan* would reduce DPM emissions and its associated cancer risk by 85 percent by 2020. Thus, it is very likely, even with the growth of traffic volumes expected on I-5 in future years, that the maximum risk estimated for on-site residential uses with the present traffic volume and vehicle mix would represent the worst-case risk.

**Response to Comment 14-60**

Please see Responses to Comments 14-56 and 14-57.

**Response to Comment 14-61**

Future traffic volumes and truck percentages on Cosumnes River Boulevard would fall far short of those on I-5 because Cosumnes River Boulevard is not designated as a freeway and will not carry the same volume of vehicles as I-5. According to the Draft EIR/EIS prepared for the Cosumnes

River Boulevard project, the maximum number of vehicle trips per day on any segment would be 54,000. As such, Cosumnes River Boulevard would not by itself warrant an HRA under SMAQMD guidelines. Also, since the risk at the closest receptor on the project site was found by the HRA to be so much less than the SMAQMD evaluation for I-5, it is very probable that including Cosumnes River Boulevard in the model with I-5 would not tip the scale from less than the SMAQMD evaluation criterion to greater.

#### **Response to Comment 14-62**

The commentator faults the Draft EIR for not including appropriate mitigation for proposed residential uses within 500 feet of the freeway.

No such mitigation was included because the estimated TAC exposures were found to not be high enough to warrant mitigation. However, the project design does include plans for trees along the freeway frontage, which should provide some additional reductions in TAC levels at the residential uses.

The policy noted in the comment is a new policy proposed in the City's 2030 General Plan that has not yet been adopted. The City anticipates adopting the 2030 General Plan in January 2009. If this policy is adopted it would help ensure new development adjacent to freeways would need to be designed to account for the increase in air pollutants.

#### **Response to Comment 14-63**

The commentator faults the Draft EIR for not specifically including vegetative plantings in the buffer zone adjacent to the freeway and air filtration devices in the proposed homes.

No such mitigation was included because the estimated TAC exposures were found to not be high enough to warrant mitigation. However, the project design does include plans for tree plantings in the buffer strip along the freeway. This would provide some additional value in reducing TAC levels at the residential uses.

#### **Response to Comment 14-64**

CEQA does not require that the City make a finding of significance and impose mitigation measures for speculative environmental impacts. AB 32 is concerned with greenhouse gas emissions from stationary sources and imposes no such requirement. As noted in the Draft EIR (see page 5.10-11), subsequent legislation, Senate Bill 97, provides for future guidelines, to be implemented in July, 2009 and January, 2010, and, until then, a finding of significance must be based upon substantial evidence. The Draft EIR properly concludes that such substantial evidence is currently lacking.

In the absence of a uniform, accepted methodology to evaluate the significance of potential project level contributions to global climate change, it is sufficient for the City to have analyzed the issue and determined that any impact is too speculative for evaluation. See *Berkeley Keep Jets Over the Bay Committee v. Board of Ports Commissioners* (2001) 91 Cal.App.4th 1344, 1370. In this regard, the

California Supreme Court has specifically confirmed that CEQA does not require evaluation of speculative impacts that are impossible to quantify. *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1137. Recent Court of Appeal decisions confirm this approach. *Alliance of Small Emitters/Metals Industry v. South Coast Air Quality Management District* (1997) 60 Cal.App. 4<sup>th</sup> 55; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal. App 4<sup>th</sup> 1173. While these court decisions generally concern the issue of air emissions, toxic or otherwise, they have credible application to the issue of speculation and with respect to project level impacts on global warming.

The Draft EIR concludes that any finding of significance regarding greenhouse gas emissions at the project level is too speculative. Although no reported court decisions have considered this issue with respect to greenhouse gas emissions and global warming, several superior court decisions have upheld findings made by local government entities that concluded that any finding of significance regarding greenhouse gas emissions is too speculative given the current state of scientific knowledge. *Santa Clarita Oak Conservancy v. City of Santa Clarita*, Los Angeles Superior Court (2007) [review of literature regarding effect of climate change on water supply sufficient to support finding that impact of climate change on water supply is too speculative for CEQA review]; *Center for Biological Diversity v. County of San Bernardino*, San Bernardino Superior Court (2008) [analyzing climate change without guidance from state agencies held to be too speculative and is not required by CEQA]; *El Charro Vista and Syufy Enterprises v. City of Livermore*, Alameda County Superior Court (2008) [substantial evidence supported City finding that climate change impacts are too speculative for further evaluation in EIR]. Thus, substantial evidence supports the City's determination that any finding of significance regarding greenhouse gas emissions is too speculative. Accordingly, it would be inappropriate for the City to impose mitigation measures to minimize such emissions when no appropriate legal nexus can be established. CEQA Guidelines section 15126.4(a)(4); *Nollan v. California Coastal Commission* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374. Nevertheless, the applicant and City have agreed that identified strategies to reduce greenhouse gas emissions will be included in both the mitigation monitoring plan and the special conditions for the project Development Agreement, both of which insure that the project will realize meaningful reduction in greenhouse gas emissions. See Response to Comment 14-65, below.

The Draft EIR contains a detailed description concerning greenhouse gas emissions and global climate change in the Environmental Setting of section 5.10 of the Draft EIR (see page 5.10-2-18). This includes information regarding the impacts of global climate change on such matters as air quality, hydrology, ecosystems and wildlife.

AB 32 does not address CEQA in any way. Moreover, the commentor ignores the fact that section 5.10 of the Draft EIR includes full quantification of the project's projected greenhouse gas emissions and explains the substantial project features that serve to reduce those emissions. As the Draft EIR concludes:

The City believes that the Delta Shores project is a good example of project design that would minimize GHG emissions and thereby reduce the project's contribution to global warming.

From a geographic standpoint, the project is situated within five miles of the urban core in Downtown Sacramento and within close proximity to a future light rail station. It will provide residents of the City with the opportunity to live and shop close to their jobs and close to public transportation lines.

The project reflects the City's interest in project design that includes a mix of uses, including retail, residential and open space. The project provides a more integrated mix of uses than those envisioned when the project site was originally zoned for development over 20 years ago.

The Delta Shores Project differs from the typical suburban development project found elsewhere in the greater Sacramento metropolitan region. It is an example of the type of new urban development the City of Sacramento has taken the lead in planning and promoting with its proximity to the future light rail line and increased urban densities. The Delta Shores Project will help to reduce GHG emissions and their impact on global climate change. (Draft EIR, page 5.10-24)

The comment notes that CEQA requires the lead agency to mitigate or avoid significant effects on the environment. Since the City has made no finding of significance with respect to greenhouse gas emissions for the project, imposition of mitigation measures pursuant to CEQA is neither necessary, nor permissible. Nevertheless, the applicant and City have agreed that identified strategies to reduce greenhouse gas emissions will be included in both the mitigation monitoring plan and the special conditions for the project Development Agreement, both of which insure that the project will realize meaningful reduction in greenhouse gas emissions. See Responses to Comment 14-65, 14-66, and 14-67, below.

The Draft EIR acknowledges that greenhouse gas emissions are a cumulative, not project specific, issue. As explained in section 5.10 of the Draft EIR (5.10-1), "...it is generally agreed that climate change is caused by the cumulative impact of many projects over time and that the emissions of any one project cannot [be] demonstrated to be substantial enough to have any material impact on global climate change. See, *Alternative Approaches to Analyzing Greenhouse Gas Emissions and Global Climate Change in CEQA Documents* by the Association of Environmental Professionals." Determining whether the project's contribution is cumulatively considerable, however, requires scientific explanation of the incremental impact of a project on global climate change, which current studies have concluded is negligible. Contrary to the commentor's claims, CEQA does not mandate evaluation of a project's emissions in terms of AB 32's 2020 and 2050 emission targets. The California Air Resources Board's strategy for reducing emissions from stationary sources adopted in October, 2007, does not include land use as an early action measure (see Draft EIR, pages 5.10-10 through 5.10-11).

In addition, federal, state, regional and local governmental entities are continuing to analyze the issue of greenhouse gas emissions on a broader scale and any ultimate measures required could be applied to the project's subsequent approvals. It is currently anticipated that no residential construction within the project will occur until after completion of the I-5/Cosumnes Boulevard interchange, which is scheduled to be completed in the fall of 2011, at the earliest. By that time, it is anticipated that broader mechanisms may be in place to address global climate change. In this

regard, the City is currently updating its General Plan and working with the California Attorney General's office to further address the issue of greenhouse gas emissions and climate change through the General Plan process. This will include the development of a Climate Action Plan that will contain a timeline for completion (e.g., 2008-2010), an inventory of emissions, emission reduction targets consistent with AB 32 and City plans, specific reduction strategies that will help to achieve reduction targets, and monitoring and reporting requirements and adaptive management strategies to ensure that reduction targets are updated over time. The City will also prepare and implement other studies concerning climate change (e.g., green technology, research and development; Green Building Rating Program; update of the City Residential Energy Conservation Ordinance) that, ultimately, will result in the adoption of City-wide ordinances that would serve to further reduce greenhouse gas emissions at the local level. Importantly, notwithstanding the uncertain and evolving nature of appropriate greenhouse gas reduction strategies, the project applicant has agreed to abide by the provisions of future city ordinances that implement greenhouse gas reduction strategies at the project level and this commitment is included in, and enforceable by, the MMP and the Development Agreement.

Contrary to the commentator's inference, the project's location and design is consistent with the Green Building strategy outlined by CARB in its Proposed Scoping Plan and, as noted in the DEIR, is implementing numerous measures already identified by the City as appropriate to provide for meaningful reductions in greenhouse gas emissions that might otherwise occur if the issue of greenhouse gas emissions was being completely ignored by the City and the project applicant through development of a business-as-usual project. As CARB explains, "A Green Building strategy will produce greenhouse gas saving through buildings that exceed minimum energy efficiency standards, decrease consumption of potable water, reduce solid waste during construction and operation, and incorporate sustainable materials. Combined these measures can also contribute to healthy indoor air quality, protect human health and minimize impacts to the environment. A Green Building strategy also includes siting considerations. Buildings that are sited close to public transportation or near mixed-use areas can work in tandem with transportation related strategies to decrease greenhouse gas emissions that result from that sector" (see CARB, Proposed Scoping Plan, page 58). The project includes substantial greenhouse gas emissions measures in compliance with the City's Smart Growth Principles (see Draft EIR, pages 5.10-13 through 15). Moreover, it is located near the city core and includes mixed use features and transportation strategies that serve to reduce greenhouse gas emissions.

While the Draft EIR does calculate the emissions from the project, there is no scientific basis to conclude that these emissions "will be a significant addition to greenhouse gasses in California." The commentator cites no authority for this statement and it is belied by the studies noted in the DEIR. Moreover, the total estimated project greenhouse gas emissions constitute negligible amounts of state, national and global emissions.

#### **Response to Comment 14-65**

The comment states that the Draft EIR is inadequate because it fails to evaluate the project's contribution of GHG emissions. The Draft EIR contains a detailed description concerning

greenhouse gas emissions and global climate change in the Environmental Setting of Section 5.10, Global climate Change of the Draft EIR (see pages 5.10-2 through 5.10-18). This includes information regarding: the impacts of global climate change at the local level; primary sources of greenhouse gas emissions; quantification of federal and state greenhouse gas inventories; and international, federal, state and local greenhouse gas emission reduction legislation and strategies.

The comment states that the courts have rejected the argument that the lack of a threshold does not allow the lead agency to not determine the significance of an impact. However, the cited authority, *Berkeley Keep Jets Over the Bay Committee v. Board of Commissioners* (2001) 91 Cal.App.4th 1344, 1370, acknowledges that it is sufficient for the City to have analyzed the issue of greenhouse gas emissions and determined that any impact is too speculative for evaluation. The commentor's selected quotation from this case omits the final sentence from the quoted paragraph of the decision, which states: "If, *after thorough investigation*, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." Here, fully consistent with the court decision in *Berkeley Keep Jets*, the Draft EIR has included a comprehensive quantification of project greenhouse gas emissions and, although unable to determine that these quantified emissions are cumulatively considerable, has further evaluated the project's features that result in substantial reductions in emissions when compared to business-as-usual projects occurring elsewhere in the Sacramento region.

The comment goes on to state that a lead agency may adopt standards of significance as long as there is a reasonable basis for using those standards. While lack of a threshold does not mean lack of significance, where the state of available information is such that significance cannot be measured because thresholds do not exist, the City can properly determine that it is too speculative to determine whether a project's minimal, incremental cumulative impacts are significant for CEQA purposes. Consistent with the comment, the Draft EIR does include a quantitative analysis of the project's greenhouse gas emissions and an explanation of project features that minimize those impacts. The Draft EIR properly notes that "pursuant to section 15145 of the CEQA Guidelines, the City has determined that until such time as a sufficient scientific basis exists to ascertain the incremental impact of an individual project on global climate change, and to accurately project future climate trends associated with that increment of change, and guidance is provided by regulatory agencies on the control of greenhouse gas emissions and thresholds of significance, the significance of an individual project's contribution to global GHG emissions is too speculative to be determined. There is no basis to predict future climate trends associated with the incremental GHG emissions arising from the project, and the regulatory agencies have provided no guidance on the thresholds of significance to be used whenever evaluating GHG emissions. Therefore, further analysis of current GHG emissions scenarios, climate models, and climate change projections to the proposed project is also determined to be too speculative." Please see Response to Comment 14-64, above.

#### **Response to Comment 14-66**

The comment notes that the CAPCOA report provides an analysis of seven thresholds for determining GHG significance. While CAPCOA did provide analyses regarding possible alternative approaches to establishing thresholds of significance, the City appropriately has determined,

consistent with the CAPCOA report, that it cannot establish thresholds of significance at this juncture and that it is fully appropriate to wait for the state framework to be put into place to establish any threshold (see Draft EIR, page 5.10-16.) In this regard, the City is currently updating its General Plan and working actively with the State Attorney General's office in an effort to address greenhouse gas emissions on a City-wide scale, with ultimate adoption of greenhouse gas reduction strategies that will be applicable to the project through its Development Agreement. The commentator appears to assert that the theoretical CAPCOA threshold analyses are the only appropriate options under CEQA. The CAPCOA report specifically disclaims any such use or purpose by noting in a "Disclaimer" at the outset of the report that "[t]his paper is intended as a resource, not a guidance document. It is not intended, and should not be interpreted, to dictate the manner in which an air district or lead agency chooses to address greenhouse gas emissions in the context of its review of projects under CEQA."

The comment asserts that the project results in a considerable contribution of GHG emissions. The commentator bases this argument on a false predicate – that the greenhouse gas emissions from the project are significant under CEQA. As noted, no such finding of significance has been, or scientifically can be, made. Nevertheless, to address this issue with more clarity, the City has revised the DEIR with respect to greenhouse gas emissions to note that, while speculative, the impacts of the project on climate change are potentially cumulatively considerable. These potential cumulatively considerable impacts are, however, substantially lessened by the project's features and the additional measures being implemented with the project through the Development Agreement and, even if they remain cumulatively considerable after implementation of such measures, these project-related impacts are overridden by the considerable economic, social and political factors that support development of this project in an area of the City that has been designated for urban uses for decades.

AB 32 requirements apply only to stationary sources of greenhouse gas emissions, not to motor vehicles, which are not covered by AB 32. While the commentator lists some of the project features that serve to reduce the project's carbon footprint and greenhouse gas emissions, it ignores many of the measures listed in Table 5.10-7. As noted in Table 5.10-7, the following measures/design strategies serve to reduce greenhouse gas emissions: Diesel anti-idling; alternative fuel standards; light emitting diode traffic lights; participation in a Transportation Management Association; proximate location to a future light rail station; development of a mixed use town center; incorporation of bike lanes and pedestrian trails into the project; public education regarding public transportation; separate collection of waste and recycling; recycling of construction waste; low-flow shower fixtures; use of climate-adapted landscaping and regulation of landscape water usage; use of fluorescent lighting; installation of electrification stations/connections at loading docks; compliance with City standard for 50% shade tree coverage of surface parking areas; planting of approximately 1,000 new trees in an area basically devoid of any trees; compliance with City Smart Growth principles to include a jobs/housing balance, a mix of land uses and transit oriented development; use of light-colored roofing materials; project location directly adjacent to current urbanized area, discouraging urban sprawl and leap-frog development.



Appendix F of the Draft EIR contains the Air Quality Management Plan (AQMP) that has been approved for the project by the Sacramento Air Quality Management District. As the Draft EIR explains on page 5.3-21:

The SMAQMD recommends that lead agencies require projects to reduce their ozone precursor emissions by 15 percent. The SMAQMD has prepared a list of measures and corresponding reduction credits that can be applied to meet the required 15 percent reduction in emissions. Each emission reduction measure is assigned a point value, which is “appropriately equivalent to the percentage reduction of emissions from the level that would be produced by a base-case project assuming full trip generation per the current ITE Trip Generation Handbook.” The project applicant is required to have a minimum of 15 points to sufficiently reduce air quality impacts.

The AQMP for the project has been completed and approved and provides for more than the minimum amount of emission reduction points. The plan provides for 18.347 total mitigation points through the implementation of the following mitigation measures, as detailed in the plan (DEIR, Appendix F, page 5-7): bike parking for non-residential projects (0.175 points); end of trip facilities (0.175 points); bike parking at multi-unit residential (0.45 points); location of projects proximate to bike path/bike lanes (0.625 points); pedestrian network (1.0 point); minimization of pedestrian barriers (1.0 point); bus shelters for existing transit service (0.25 points); traffic calming features (0.75 points); pedestrian pathways through parking lots (0.5 points); off street parking (0.5 points); project orientation toward planned transit, bikeway, or pedestrian corridors (0.25 points); residential density (2.52 points); affordable housing component (.432 points); suburban mixed-use (3.0 points); no fireplaces (0.72 points); non-roof surfaces (1.0 points); and Transportation Management Association membership (5.0 points). Implementation of the AQMP serves to reduce the greenhouse gas emissions associated with the project well beyond the business-as-usual approach.

Moreover, in addition to the numerous project features analyzed in Table 5.10-7, the project applicant has agreed to implement the following additional features into the project, thereby further reducing the projects carbon footprint and greenhouse gas emissions: Providing priority parking spaces for hybrid and electric vehicles at commercial and retail centers; locating pedestrian routes and bike paths in a manner that will minimize road crossings to promote safety and therefore encourage walking and bicycling to school; encouraging the use of solar power for generation of electricity on retail and commercial building rooftops and parking lots; limited lighting in parks; and distributing educational materials on energy efficiency. These additional measures, coupled with the extensive project features identified in Table 5.10-7, will reduce the greenhouse gas emissions from the project at buildout to less than those projected in the Draft EIR. Please see also Response to Comment 14-67.

While all of the above strategies and design features are not mandatory CEQA mitigation measures, they are enforceable. The applicant and City have agreed that all of these matters will be made part of the Mitigation Monitoring Plan (MMP) for the project, which will be annually reviewed and enforced by the City. In addition, the entitlements for the project include a Development Agreement between the City and the Applicant, in which each of these measures is included as a requirement for compliance with the Development Agreement and is, accordingly, incorporated into the Development

Agreement as a Special Condition that will be actively monitored by the City. Thus, meaningful monitoring of these strategies and design features is provided by the MMP and the Development Agreement, thereby insuring that the greenhouse gas emission reductions referenced above and the mitigation measures in the Draft EIR will be realized.

#### Response to Comment 14-67

The project's contribution to global climate change is addressed in section 5.10, Global Climate Change. The City of Sacramento has not adopted any specific thresholds for the analysis of greenhouses gases; therefore, the DEIR analysis does not include a significance finding for the project's cumulative contribution towards global climate change. Nevertheless, to address this issue with more clarity, the DEIR has been revised with respect to greenhouse gas emissions to note that, while speculative, the impacts of the project on climate change are potentially cumulatively considerable. In this regard, the Conclusion to section 5.10 on page 5.10-28 of the Draft EIR is revised to add the following to the end thereof:

Notwithstanding the speculative nature of environmental impacts resulting from greenhouse gas emissions at the project level, the impacts of the project on climate change are potentially cumulatively considerable. The following mitigation measures being voluntarily implemented by the project applicant and enforced by the MMP and the Development Agreement for the project, will serve to substantially lessen the environmental effects of greenhouse gas emissions resulting from construction and operation of the project:

#### Mitigation Measure

The following mitigation measures would help reduce the project's contribution to greenhouse gas emissions; however, the impact would remain **cumulatively considerable**.

5.10-1 In order to further reduce and substantially lessen the impacts on global climate change resulting from construction and operation of the project, the project applicant has voluntarily agreed to implement the following mitigation measures:

- a) Priority parking for hybrid and alternative energy vehicles shall be provided at commercial and retail parking areas, and provide passenger loading, unloading and waiting areas for ridesharing in commercial/retail/office developments.
- b) Pedestrian and bike paths shall be located in a manner to minimize road crossings to promote safety and encourage children to walk or bike to school, consistent with the project's Air Quality Management Plan.
- c) Energy efficiency shall be increased fifteen percent (15%) above Title 24 requirements and comply with the City's Green Building program.
- d) Light-colored roofing materials and paints shall be used on building roofs.

- e) Energy star rated appliances shall be installed in all residential development.
- f) Encourage participation in the California Energy Commission's New Solar Homes Partnership and encourage solar power in the project's PUD Guidelines.
- g) Encourage energy efficient design, such as providing hot water systems with booster heating and locating hot water heaters near hot water taps in the project's PUD Guidelines.
- h) Encourage the use of solar on retail/commercial rooftops and parking lots in the PUD Guidelines. The project applicant shall inform all tenants and building owners of solar power options since the project applicant will not be constructing all buildings at the project site.
- i) The project applicant shall comply with the City's Shade Tree Parking Ordinance as well as the PUD Guidelines to avoid heat island and similar environmental impacts, as well as use high reflectance or lighter colored paving in accordance with the AQMP which requires all unshaded parking lot areas, driveways fire lanes and other paved areas to have a minimum albedo of .3 or greater.
- j) Light emitting diodes (LED) for traffic, street and other outdoor lighting shall be installed at the project site.
- k) Outdoor lighting shall be limited, as specified in Table K in the Draft EIR Appendices.
- l) The project applicant shall participate and fund a transportation management association (TMA) that shall operate ridesharing and shuttle services programs, and also provide educational materials on energy efficiency, as required by the project's Air Quality Management Plan.
- m) The project applicant shall ensure the project site accommodates future Regional Transit bus service.
- n) Class I and Class II bike lanes shall be constructed throughout the project site in excess of those required by the City's 2010 Bikeway Master Plan.
- o) Onsite bicycle and pedestrian facilities shall be provided, including showers and bicycle parking for non-residential projects.
- p) The project applicant shall comply with Sacramento City Code Section 17.72.030 which establishes separate waste and recycling disposal

requirements for all new uses, including the use of separate receptacles, including green waste and food recycling.

- q) The project applicant shall comply with Sacramento City Code Section 13.10.400 which requires the separate collection of garden wastes from residential properties.
- r) The project applicant shall comply with Sacramento City Code Section 15.76.030 which requires that all shower fixtures be fitted with low-flow features.
- s) The project applicant shall comply with Sacramento City Code Section 15.92.080 which establishes maximum water usage for landscaping and limits the use of turf, and requires the use of climate-adapted landscaping.
- t) Electrification stations/connections shall be installed in all project loading docks for use by transportation refrigeration units.
- u) The project applicant shall comply with Sacramento City Code Section 17.68.040 which requires the planting of shade trees to ensure that 50% of all surface parking areas are shaded within 15 years of development.
- v) Enlarged sidewalks shall be installed to encourage pedestrian movement throughout the project site.
- w) The project applicant shall comply with Sacramento City Code, Chapter 8.116, which prohibits the idling of diesel powered vehicles for more than five consecutive minutes or five minutes total in one hour.
- x) Recycled building materials shall be used, where feasible, in building designs.
- y) During project construction, alternative fuel (such as aqueous diesel fuel) or catalyst equipped diesel construction equipment shall be used.
- z) Reuse and recycle construction waste where feasible.
- aa) Efficient fluorescent lighting shall be provided for all primary lighting within project buildings. Accent and aesthetic lighting shall not be subject to this condition.
- bb) The project shall be designed consistent with the City's Smart Growth Principles and associated strategies and initiatives, including jobs/housing balance, the mixing of land use, and transit oriented development.

cc) *The project applicant shall Implement additional greenhouse gas reduction strategies through application of future city ordinances to be applied to the project via the MMP and the Development Agreement.*

These potentially cumulatively considerable impacts are substantially lessened by the project's features and the additional measures being implemented with the project through the MMP and the Development Agreement. As noted in Table 5.10-7 on page 5.10-25 of the Draft EIR provides a list of all the various design strategies the project would be using to help reduce the contribution of greenhouse gases.

In response to the specific measures listed in the comment, the project applicant has indicated those measures they consider to be currently feasible and these measures are itemized, below. Moreover, additional, and as yet unknown greenhouse gas reduction strategies that will be implemented through the City's future ordinances that will be applied to the project through the Development Agreement. This could include some measures, the feasibility of which is currently uncertain.

1. Provide funding to the school district to expand bus service for proposed schools – impacts to school districts are fully mitigated by the payment of school facilities fees and the applicant will be providing the school district with its required school impact fees. Government Code Section 65995 precludes the City from requiring further mitigation of project impacts on schools.
2. Provide priority parking and recharge stations for hybrid and electric vehicles at commercial and retail areas and transit stations, if applicable - The applicant will agree to provide priority parking for hybrid and alternative energy vehicles in the commercial areas, but the project does not include any transit stations. Because there is no common industry standard for plug-in hybrid, electric and alternative energy vehicles that might use project area commercial parking, the feasibility of such recharging stations is currently uncertain.
3. Locate pedestrian and bike paths to promote safety and encourage children to walk or bike to school – The proposed project includes pedestrian routes and bike paths throughout the project site as well as a multiuse bridge that crosses Cosumnes River Boulevard. This issue has been addressed in the AQMP and the trails plan.
4. Ensure shuttle service is provided by alternative fueled vehicles – Mitigation Measure 5.9-10 requires the project applicant to coordinate with Regional Transit to provide transit facilities to serve the area. In addition, the project applicant has prepared an Air Quality Management Plan (AQMP) described on pages 5.3-21 through 5.3-23 that requires the applicant to provide funding for the local Transportation Management Association (TMA) that requires cost-effective transportation services be provided to help reduce emissions, such as shuttle services.
5. Increase energy efficiency 15% above Title 24 requirements - The project will exceed Title 24 requirements by fifteen percent (15%).

6. Mandate use of roofing material with the highest solar reflectance - Per table 5.10-7 in the Draft EIR, the project will be conditioned to require light colored roofing. The feasibility of additional specifications regarding roofing material is currently uncertain.
7. Mandate use of energy efficient appliances - The use of energy efficient appliances is recommended in the PUD guidelines and the use of energy star rated appliances will be applicable to all residential development.
8. Compliance with LEED silver or gold certification for retail/commercial buildings – The project has agreed to exceed Title 24 requirements by fifteen percent (15%), instead of individual LEED building certifications for each building in the project. In addition, the project applicant will work with the City's Green Building Program. Also, it must be noted that the PUD Guidelines and AQMP already contain many of the contemplated sustainable measures of the LEED program.
9. Compliance with Green Point Build It Green system for all residential buildings – The City of Sacramento is currently evaluating sustainable building strategies for incorporation into its building code. Many of the Green Point Build It Green proposals are already contained in the Project's PUD Guidelines and AQMP.
10. Participate in the California Energy Commission New Solar Homes Partnership - Participation in this program will be encouraged and solar power is encouraged in the Project's PUD Guidelines.
11. Provide hot water systems with booster heating and located hot water heaters near hot water taps – This energy efficient design, along with other sustainability measures, are encouraged in the Project's PUD Guidelines.
12. Use solar on retail/commercial rooftops and parking lots - The use of solar power on retail and commercial building rooftops and parking lots is encouraged in the PUD Guidelines. The retail and commercial centers will be designed to take advantage of these features, but ultimate reliance on solar power would be up to individual commercial and retail tenants and building owners. The project's buildings have yet to be designed and its tenants and building owners identified, but the project applicant will include some level of solar power. The project applicant will work with all tenants and building owners at the project to make them aware of solar power options since it will not be constructing all buildings at the project. The feasibility of all solar power options is currently uncertain.
13. Use high reflectance and light colored paving – Compliance with the City's shade tree parking ordinance as well as the PUD Guidelines, achieves the same goal of avoiding heat island and similar environmental impacts, as the use of high reflectance or lighter colored paving. Nevertheless, light colored enhanced paving will be used in specific locations throughout the Project in accordance with the AQMP which requires all unshaded parking lot areas, driveways fire lanes and other paved areas to have a minimum albedo of .3 or greater.

14. Use R-19 wall and roof insulation - The project is committed to exceeding Title 24 standards by 15%, which will be achieved using the most economical and environmentally friendly insulation materials available at the time of construction. Specific insulation types cannot be specified at this time due to the uncertainty in construction timing and available materials. Additionally, energy efficient design features will likely reduce insulation requirements. Moreover, the Project will exceed Title 24 requirements which will effectively result in efficient energy use. R-19 insulation will be used in residential building roofs.
15. Install solar heating, automatic covers, and efficient pumps and motors for all pools and spas - It is unknown at this time whether any pools or spas will be constructed as a part of this project. The applicant has not proposed construction of any pools or spas. The feasibility of requiring all of these features on residential homeowners is currently unknown.
16. Install light emitting diodes for traffic, street and other outdoor lighting - Per table 5.10-7, the project applicant shall be conditioned to use LED for all traffic lights and signals installed with the project site.
17. Limit usage of outdoor lighting - Limits on hourly usage of outdoor lighting are specified in Table K in the Draft EIR Appendices.
18. Provide educational materials on energy efficiency - Educational materials will be provided as part of the TMA, which is required by the AQMP as specified in Table 5.10-7.

#### **Response to Comment 14-68**

The comment asserts that the proposed project would be inundated by the 100-year flood. As stated on pages 5.5-7 to 5.5-8 of the Draft EIR, the levees along Morrison, Elder, Florin, and Strawberry Creeks watershed have been or are currently under improvement to meet current Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) and USACOE standards for protection of residences in south Sacramento from the 100-year flood event. Further, the small portion of the project site that is within the FEMA-designated Zone A99 will be revised to Zone X in the near future when all SAFCA and USACOE levee improvements in the South Sacramento Streams group are complete. In addition, residential development in this portion of the site is slated for Phase 4, which is not anticipated to begin construction until after 2011 at the earliest. Due to the current economic situation and the slow down in residential homebuilding it is anticipated residential construction may be further delayed. Please see also Response to Comment 14-34.

#### **Response to Comment 14-69**

The comment asserts that the Draft EIR relies on “vague and undefined” improvements for future flood protection. The comment goes on to state that the Draft EIR lacks foundation for its conclusion that the risk of flooding would be reduced to a “level of insignificance.” The Draft EIR analysis of potential impacts of flood risk concluded on page 5.5-33 that the risk of flooding from failure of a levee was a “less-than-significant impact” based on supporting information from FEMA Flood

Insurance Risk Maps and current levee projects either completed or currently planned in the watershed by SAFCA and USACOE to protect existing residential areas within south Sacramento, including the project site. Please see also Responses to Comments 14-34 and 14-68.

**Response to Comment 14-70**

Please see Responses to Comments 14-34, 14-68 and 14-69.

**Response to Comment 14-71**

Please see Responses to Comments 14-34, 14-68 and 14-69.

**Response to Comment 14-72**

The comment states that the Draft EIR fails to evaluate levees that have sustained critical erosion damage over the years and how this may affect the project. Damaged levees that were identified and are either under repair or already repaired by the California Department of Water Resources (DWR) and USACOE are listed on the Official California DWR Levee repair website at <http://www.water.ca.gov/levees/>. The analyses provided on pages 5.5-28 through 5.5-29 and 5.5-32 through 5.5-33 of the Draft EIR state that SAFCA and USACOE have been and are improving the levees that provide flood protection to the project site, adjacent residential areas, and the City as a whole through various levee improvement programs. See Responses to Comments 14-34, 14-68, and 14-69.

**Response to Comment 14-73**

The comment tries to connect the conclusions regarding the stability of levees reported in the Delta Vision Strategic Plan to the levees that protect the City of Sacramento and the project site. The comment neglects to mention that the Final Delta Vision Strategic Plan recommends limited urban development within the primary zone and only selective development within specific areas of the secondary zone (see page 38 of the Strategic Plan). In these recommendations, the Final Delta Vision Strategic Plan does not identify the City of Sacramento as an area of focus. Moreover, the conditions of levees located in the Delta that are a focus of the Delta Vision Strategic Plan are completely different than those that protect the City of Sacramento. Levees in the Delta are under more year-round hydraulic pressure due to subsidence and underlying soil conditions. The levees in the City of Sacramento have been or are currently under various federal, state, and regional flood improvement projects and are not under constant hydraulic pressure because there is no subsidence in the city and the rivers are not constantly at flood stage.

**Response to Comment 14-74**

The comment asserts that the Draft EIR should conduct a full scale analysis of the levee systems protecting the City of Sacramento and provide a levee upgrade plan. These are well beyond the scope of the project and the Draft EIR. The analysis provided in the Draft EIR is based on information provided by FEMA, the state Department of Water Resources and the City and is



sufficient for impacts related to the risk of flooding in the project site due to levee failure. See also Responses to Comments 14-68 and 14-69.

#### **Response to Comment 14-75**

The comment states that California Senate Bill (SB) 5 (2007) currently requires 200-year flood protection for “all” new urban development. The comment is not accurate because it fails to recognize the technical details of SB 5, which state that the California Building Standards Code shall be revised by a process which begins with the state Department of Water Resources (DWR) first submitting suggested changes to the code to the California Building Standard Commission for review and approval. The changes to the code would likely be limited to construction techniques and building design techniques (e.g., flood proofing or elevating structures). The timeline for adoption of changes to this code are currently proceeding with a potential final adoption not expected until 2010. Until such time, the proposed project is required by law to follow the current California Building Code Standards. If the proposed project is built after adoption of the new code standards, then those standards would supersede existing standards. Please see Responses to Comments 14-34, 14-68 and 14-69.

#### **Response to Comment 14-76**

Please see Response to Comment 14-75.

#### **Response to Comment 14-77**

Please see Response to Comment 14-75.

#### **Response to Comment 14-78**

Please see Response to Comment 14-81, below.

#### **Response to Comment 14-79**

Please see Responses to Comments 14-82 and 14-83, below.

#### **Response to Comment 14-80**

Please see Responses to Comments 14-84 through 14-86.

#### **Response to Comment 14-81**

The City of Sacramento and Caltrans staff had several meetings and correspondence regarding this project and the design of the interchange project, which took place at the same time as the traffic study for the Draft EIR was being prepared. Therefore, the project study area was defined in coordination with the City and Caltrans of which Caltrans has the exclusive jurisdiction over freeway facilities. Caltrans did not request that the Draft EIR analyze mainline segments or ramps other than those locations studied in the Draft EIR. The scope of work for the transportation and circulation section of the Draft EIR was submitted to Caltrans for their review and comment and evaluating the

mainline segments on SR 99 north and south of the Cosumnes River Interchange was acknowledged to be sufficient by Caltrans.

Additionally, the locations mentioned in the comment are a significant distance from the project site and the impact of project trips on these locations will dissipate as traffic is distributed throughout area roadways and freeway facilities in the region.

### **Response to Comment 14-82**

The proposed project includes a request to rezone a portion of the site to Village Center Commercial/ Retail which could include uses such as “big box” development as well as restaurants, movie theatres, book stores, home supply stores, electronics stores, and other types of similar retail and professional office uses. Therefore, due to the wide variety of retail uses that could be expected the trip generation rates will also vary. All of these uses have different trip generation rates; however, because the specific uses are not known at this time it is standard practice and appropriate to assume the trip generation rates of a Shopping Center category, as specified in the ITE manual.

The ITE *Trip Generation*, 7<sup>th</sup> Edition, recommends a procedure for estimating trip generation to determine the best estimate using data contained in the Trip Generation Handbook (see Chapter 3, page 9). The first step is to determine if the proposed development is consistent with the description of the specific land use code, as defined in the handbook and for which data points are provided. As noted above, the project is proposing 1.3 million square feet (sf) of commercial and retail uses. All of these uses are included in the Shopping Center Land Use 820 land use category which states, “[s]hopping centers, including neighborhood centers, community centers, regional centers and super regional centers, were surveyed for this land use.” In addition, because it was premised upon a wide spectrum of possible shopping center configurations and tenants. It simply would not be reasonable or appropriate to only use the trip generation rates for big box retailers as the trip generation rates for shopping centers which contain a variety of other retail uses because it would severely overstate the traffic impacts. The ITE data shows that the PM trip rate per 1,000 sf of shopping center gross leasable area ranges between 0.68 and 29.27 trips. All of the different land use categories mentioned in the comment are within the range of the ITE trip rate for the Shopping Center Land Use category.

Please note that the proposed development is expected to include restaurants, movie theaters, book stores, electronic stores, and other types of similar uses. All of these land uses fit within the ITE Land Use 820 (Shopping Center) category. To assume that the only proposed commercial uses are all big box, per the comment, it is not realistic and would overestimate the traffic generated by the Village Center.

A shopping center can be considered a multi-use development, but because the ITE Land Use category 820 is used to forecast trips for the shopping center the internal capture rate between several uses within one shopping center is not applicable to this category. Whereas, if each individual building is used in the trip generation estimation, an internal capture rate would be applicable which would have a net effect in reducing the vehicle trip generation rate for the overall

center and the external street system compared to the total number of trips generated by a stand alone site. For example, a trip to a discount store (i.e., WalMart) may include a stop by a gas station, a bank and a fast food restaurant within the same shopping center. All of these four stops would be counted as four separate trips if the uses are not within the same shopping center. A trip rate of 5.06 for a WalMart store, as mentioned in the comment would be adjusted to account for the internal capture attributed to other uses within the shopping center. The same type of trip adjustment would be considered in the trip generation rate for the bank, the gas station and the fast food restaurant.

Therefore, given the fact that no specific land use is defined for the Village Center nor building sizes, it is speculative to assume only one specific land use (big box) would occupy the entire 1.3 million sf of retail and commercial uses. It is the professional judgment of the transportation consultant and the City's Department of Transportation staff that the ITE Land Use 820 Shopping Center category is appropriate for the trip rate since it is based upon a large number of survey sites (407 sites) with similar retail uses, as described by the Delta Shores project.

**Response to Comment 14-83**

Please see Responses to Comments 14-82 and 14-130.

**Response to Comment 14-84**

Please see Response to Comment 14-131, 14-132, and 14-133.

**Response to Comment 14-85**

Please see Responses to Comments 14-133 and 14-134.

**Response to Comment 14-86**

Please see Response to Comment 14-135.

**Response to Comment 14-87**

Please see Responses to Comments 11-1, 11-2 and 11-3.

**Response to Comment 14-88**

Please see Responses to Comments 11-1, 11-2 and 11-3.

**Response to Comment 14-89**

Please see Responses to Comments 11-1, 11-2 and 11-3.

**Response to Comment 14-90**

Please see Responses to Comments 11-1, 11-2 and 11-3.

### **Response to Comment 14-91**

Please see Responses to Comments 11-1, 11-2 and 11-3.

### **Response to Comment 14-92**

Please see Responses to Comments 11-1, 11-2 and 11-3.

### **Response to Comment 14-93**

Please see Responses to Comments 11-1, 11-2 and 11-3.

### **Response to Comment 14-94**

The comment contends that the Draft EIR is deficient because the it fails to disclose and evaluate the project's impact on the "unique historical characteristics of the Town of Freeport"; the Draft EIR fails to evaluate the visual effects of the project on the Town of Freeport and Scenic Highway 160; and fails to disclose potential effects on the historic Victory Trees Memorial along Freeport Boulevard. Please see Responses to Comments 14-95 through 14-99 that address these concerns in more detail.

### **Response to Comment 14-95**

The comment states that the Draft EIR "fails to analyze or evaluate the impact of the project on Freeport's rural historical landscape, or consider mitigation measures or alternative land uses" to address project impacts. In the Cultural Resource Survey and Evaluation Delta Shores, prepared by ECORP, no areas within the Town of Freeport have been designated as a rural historic landscape or listed on the National Register. According to the U.S. Department of the Interior, National Park Service a rural historic landscape is defined as follows:

The rural historic landscape is one of the categories of property qualifying for listing in the National Register as a historic site or district. For the purposes of the National Register, a rural historic landscape is defined as a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features.

Cultural resources studies were conducted within the project boundaries, which excludes the majority of the Town of Freeport. No resources outside of the project boundaries were inventoried or evaluated for eligibility; however, the records search radius did extend 1/4-mile outside of the project boundaries to encompass the Town of Freeport. The records searches conducted by the North Central Information Center of the California Historical Resources Information System failed to yield cultural or historical resources listed on the National or State registers. The records search did indicate that four properties within the Town of Freeport have been previously evaluated for NRHP eligibility, and all four were determined not eligible for the NRHP by the Federal Highways Administration via the California Department of Transportation.

Moreover, section 15064.5 of the CEQA Guidelines (Determining the Significance of Impacts to Archaeological and Historical Resources) defines a significant effect on an historical resource as follows (emphasis added):

"(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource *means physical demolition, destruction, relocation, or alteration* of the resource or its immediate surroundings such that the significance of an historical resource would be *materially* impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) *Demolishes or materially alters* in an adverse manner those *physical characteristics* of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) *Demolishes or materially alters* in an adverse manner those *physical characteristics* that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) *Demolishes or materially alters* in an adverse manner those *physical characteristics* of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA."

As cited above, the CEQA Guidelines define a significant effect as one that is physical or material. The CEQA Guidelines do not convey importance in addressing indirect effects to character, atmosphere, or visual characteristics of historical resources. The buildings and landscape in the Town of Freeport were not considered because impacts from the proposed project would not demolish or materially alter them.

The comment states that "the DEIR fails to disclose the historic importance of [the Town of Freeport]" (page 51). The historic context of the Town of Freeport was documented by Peak and Associates (2007) in their report titled "*Determination of Eligibility and Effect for Historic Period Resources within the Delta Shores Project Area, Freeport, County of Sacramento, California.*" The historical importance of the Town of Freeport was not considered because impacts from the proposed project would not demolish or materially alter it.

As discussed on page 5.1-31 of the Draft EIR, the proposed project includes a number of landscaped and open space setback buffers between existing uses and the project to create compatibility and reduce potential conflicts between uses. Further, any development within the project site would be subject to review by city staff, the Planning Commission, and the City Council prior to approval, which would ensure that the project would not negatively affect the character of the Town of Freeport. The City is committed to working with the County to protect the Town of Freeport.

Regarding the comment that the Draft EIR fails to evaluate the visual effects of the project on the Town of Freeport and Scenic Highway 160, other than implying that any development would be negative, the comment provides no evidence that development of the project would result in negative visual effects. The Draft EIR describes the existing character of the area and a description of the changes that would take place with implementation of the proposed project. The Draft EIR determined that compliance with the Design Guidelines developed for the project would ensure that the proposed project would not negatively affect the Town of Freeport or Scenic Highway 160 (see Draft EIR page 5.1-31, and Appendix C, Draft PUD Guidelines).

#### **Response to Comment 14-96**

The comment states that the project does not provide any buffers or open space around the Town of Freeport and places low density residential units adjacent to residential and commercial areas within the Town. As shown in Figure 2-3, Land Use Plan, on page 2-10 of the Draft EIR, high density residential is proposed in the northern portion of the project site adjacent to Highway 160 and across the street from the Sacramento River. There are no existing residences adjacent to this portion of the site. Further to the south, south of Stonecrest Avenue, low and medium density residential uses are proposed adjacent to existing commercial uses with a few residential uses in the Town of Freeport. As shown in the Land Use Plan a small green space and trees are proposed along the western boundary of the project site adjacent to these uses. In addition, most of the existing structures are located closer to Highway 160 with deep rear yard setbacks that provide a buffer to any uses to the east. Further to the south the project is proposing a six-acre park adjacent to Highway 160 with Low Density Residential uses located to the south. Lastly, the project is proposing residential uses that are considered compatible with existing residential and commercial uses. As discussed on page 4-28 of the Draft EIR, the PUD Guidelines include a detailed discussion of the architectural compatibility in Section 2.6 of the Guidelines, Freeport Area Design Guidelines, to tie into the existing architectural elements found in existing residences. The project is located on the eastside of the existing community of Freeport and includes architectural, design and landscape elements that would provide a connection to the existing community but would not change the “distinct and unique community” that characterizes the Town of Freeport.

#### **Response to Comment 14-97**

The comment contends that the project does not include sufficient agricultural and open space buffers between the Town of Freeport and the proposed project uses. The project includes landscaping and a six-acre park between the proposed project boundary and existing uses within the Town of Freeport. Neither the County nor the City has indicated that open space or agricultural buffers of a certain size or location were required as a part of the project. As indicated above, the City is committed to working with the County to protect the Town of Freeport; however, the County has not indicated that buffers between existing uses and the project were required; therefore, the applicant has included landscaped areas and a buffer of trees between the proposed uses and the existing uses within the Town of Freeport to be sensitive to the existing community.

### Response to Comment 14-98

The Draft EIR did not identify any significant project impacts associated with visual, historic, or cultural effects of the project on the Town of Freeport.; The recommendation suggested by the comment that the project not develop the western portion of the site to provide open space buffers to maintain the historical and small town integrity of the Town of Freeport will be considered by the City Council during the decision-making process.

### Response to Comment 14-99

The comment contends that the project would cause significant visual impairments to Highway 160 by constructing low- and medium-density housing. As shown in Figure 2-3, Land Use Plan, on page 2-10 of the Draft EIR, there are only two areas where housing would be constructed fronting Highway 160, in the northernmost portion and one lot on the south side of the proposed park. The high-density residential in the northern portion of the site could have a maximum building height of 45 feet with an allowance for an additional 8 feet of architectural features. The low-density residential could have a maximum building height of 34 feet with an allowance for an additional 8-feet in architectural features.

The analysis of the project's impact on Highway 160, a designated scenic highway, is addressed in detail in Impact 5.1-3 on pages 5.1-34 through 5.1-36 of the Draft EIR. As noted in the Draft EIR, a majority of new uses (with the exception of the low and medium density residential uses described above) would be constructed behind the existing residences and commercial uses along Highway 160 and would not be directly visible from the road. The analysis concluded the project would result in moderate intrusions along Highway 160, which are defined as follows:

The *Scenic Highway Guidelines* from Caltrans contains examples of visual intrusions along scenic corridors. Visual intrusions are considered minor, moderate, or major as shown below. When more than one example is listed, only one example need be applicable for an intrusion to occur. For residential and commercial development:<sup>5</sup>

- Minor intrusion: Widely dispersed buildings. Natural landscape dominates. Wide setbacks and buildings screened from roadway. Exterior colors and materials are compatible with environment. Buildings have cultural or historical significance.
- Moderate intrusion: Increased number of buildings, but these are complimentary to the landscape. Smaller setbacks and lack of roadway screening. Buildings *do not* degrade or obstruct scenic view.
- Major intrusion: Dense and continuous development. Highly reflective surfaces. Buildings poorly maintained. Visible blight. Development along ridge lines. Buildings *degrade* or *obstruct* scenic view.

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5 California Department of Transportation, Scenic Highway Guidelines, <[www.dot.ca.gov/hq/LandArch/scenic/guidelines/scenic\\_hwy\\_guidelines.pdf](http://www.dot.ca.gov/hq/LandArch/scenic/guidelines/scenic_hwy_guidelines.pdf)>, accessed February 12, 2008, Appendix E, Examples of Visual Intrusions Along Scenic Corridors.

The project would not be considered a major intrusion along Highway 160 and would not affect a scenic vista or view corridor resulting in a significant impact. Currently views along Highway 160 through the Town of Freeport are of a mix of residential and commercial buildings, trees, and other landscaping. These views would not be significantly affected by the project and the project would not degrade the rural community atmosphere of Freeport.

#### **Response to Comment 14-100**

The comment notes that the Draft EIR does not make a determination of significance of the specific design elements of the project. That is correct. The impact analysis does not include a discussion of the positive or negative aspects of the specific design elements of the project because what one person considers attractive another person may find unattractive. Therefore, the impact analysis evaluates if the project could have a demonstrable negative aesthetic effect that could substantially degrade the existing visual character or quality of the project site and its surroundings. The analysis under Impact 5.1-1 on pages 5.1-27 through 5.1-31 evaluates how implementation of the project would change the existing visual character or quality of the project site. As noted in the conclusion on page 5.1-31, the project would result in a significant change in the existing visual character of the site; however, compliance with the proposed PUD Design Guidelines would reduce changes in the visual character by ensuring that the project is sensitive to existing development and includes landscaping and other design elements to reduce impacts.

#### **Response to Comment 14-101**

Please see Responses to Comments 14-99, 14-100 and Response to Comment 14-102 below.

#### **Response to Comment 14-102**

The comment states that the Draft EIR is deficient because it does not evaluate possible impacts on the Victory Trees Memorial along Freeport Boulevard. The proposed project would not adversely affect the remaining Victory Trees memorial in a physical or material manner because the Victory Trees are not within the boundaries of the project site, and the project does not propose to widen the roadway or remove any of the existing trees in order to accommodate the project.

The comment letter indicates that Caltrans determined the Victory Trees Memorial eligible for the NRHP; however, the Historic Property Data File at the North Central Information Center does not list the Victory Trees Memorial as having been evaluated or eligible for listing. In addition, the comment letter states that "over the past five years the City of Sacramento has cut down over two thirds of the trees, including every single one of the trees facing the Delta Shores property on Freeport Boulevard above Stone Crest Avenue" (Amrhein 2008:55). In doing so, the City has affected the integrity of this resource. Loss of integrity that exceeds more than ten percent of the resource is customarily considered to be significant. As a result, this resource would no longer be eligible for the National or State registers, and, accordingly, assessing impacts to non-eligible resources is not required under CEQA. Moreover, "efforts to replant the trees" with modern replacements suggested by the comment letter would not restore integrity or eligibility status. It must be noted that there is no



relationship between the Delta Shores project and the loss of these trees, which took place in prior years.

Based on the traffic model, the majority of project trips would use the new Cosumnes River Boulevard to access I-5 at the new I-5/Cosumnes River Boulevard interchange. Highway 160/Freeport Boulevard would be used by project traffic, primarily from new residents located in the western portion of the project, west of I-5. 24<sup>th</sup> Street would also serve residential project traffic traveling to/from the north; it would also be a key route for residents of the Meadowview neighborhood destined for the project's retail and school uses. Residents and retail patrons would also travel to/from the east via Cosumnes River Boulevard. The only access into the project site from Highway 160 would be via Stone Crest Avenue. As shown on Figure 5.9-7 on page 5.9-31 of the Draft EIR, it is anticipated that at project buildout only 2 percent of the trips would access Highway 160 southbound and 6 percent northbound. There are currently no plans by either the City or the County to widen Highway 160 in the vicinity of the project site.

Because the Victory Trees would not be physically or materially impacted by project development and are not located within the project site (see Response to Comment 14-95), no additional analysis or changes to the Draft EIR are necessary as a result of this comment.

#### **Response to Comment 14-103**

The comment is requesting that the Draft EIR must evaluate the project's impact on the "Victory Trees Memorial, including potential project inconsistency with restoration of the memorial with replacement trees." As discussed above in Response to Comment 14-102, the project would not physically or materially impact the Victory Tree memorial; therefore, the project did not evaluate potential impacts to this memorial.

In 2003, staff from the City's Tree Services Division in partnership with Veteran's Memorial Victory Tree Committee planted 11 hybrid Dutch Elm disease resistant trees along the 7800 block of Freeport Boulevard to replace some of the trees removed that had succumbed to Dutch Elm disease. The trees were planted to maintain the honor, respect and memory of veterans.

#### **Response to Comment 14-104**

The comment notes that the Draft EIR fails to fulfill its responsibilities under CEQA and is requesting that the Draft be revised and recirculated. The Draft EIR complies with the requirements of CEQA and discloses project impacts and provides feasible mitigation, if available. However, in response to comments some mitigation measures have been revised or updated to reflect a specific concern from either a commenting agency or the public. Please see Responses to Comment Letters 2, 3, 7, 8, 11, 12 and 14.

The following addresses each of the four criteria under CEQA Guidelines section 15088.5(a) and why preparation of a revised Draft EIR to address the impacts identified by the commentor (special-status species, water quality, soil contamination, air quality, global warming, flooding, traffic, farmland, and cultural and historical aesthetics) is not warranted.

First, the revisions do not identify any impacts or substantial increase in the severity of an environmental impact that would not be reduced to a less-than-significant level through mitigation, nor would the revised mitigation measures result in a new significant environmental impact. (CEQA Guidelines sections 15088.5(a)(1) and 15088.5(a)(2)). In fact, the revised mitigation measures clarify and strengthen the effectiveness of the mitigation measures to help further reduce or avoid an impact. Further, with the revisions, the revised mitigation measures do not include a new feasible way to mitigate or avoid an impact (including a feasible project alternative) that the Lead Agency has declined to implement (CEQA Guidelines section 15088.5(a)(3)). Because no new resources or new unmitigable impacts have been identified or added to the revised mitigation, the EIR is not changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project (CEQA Guidelines section 15088.5(a)(4)). Therefore, the revisions herein represent improvements to the analysis and mitigations and do not warrant recirculation of the Draft EIR.

**Attachment: Berryman Ecological Letter**

**Response to Comment 14-105**

Please see Response to Comment 14-10.

**Response to Comment 14-106**

Please see Response to Comment 14-11.

**Response to Comment 14-107**

Please see Responses to Comments 14-12 and 14-13.

**Response to Comment 14-108**

Please see Response to Comment 14-14.

**Response to Comment 14-109**

Please see Response to Comment 14-15.

**Response to Comment 14-110**

Please see Response to Comment 14-16.

**Response to Comment 14-111**

Please see Response to Comment 14-17.

**Response to Comment 14-112**

Please see Response to Comment 14-17.

**Response to Comment 14-113**

Please see Responses to Comment 14-20 and 14-21.

**Response to Comment 14-114**

Please see Responses to Comment 2-2, 14-20, 14-22, and 14-23.

**Response to Comment 14-115**

Please see Responses to Comments 14-25 and 14-26.

**Response to Comment 14-116**

Please see Response to Comment 14-33 that addresses stormwater runoff and concerns associated with potential contaminants.

**Response to Comment 14-117**

Please see Responses to Comments 14-34 and 14-35 that address the levee construction near Franklin Boulevard, changes in flooding patterns, and impacts on downstream aquatic habitat.

**Response to Comment 14-118**

The comment describes the Stone Lakes National Wildlife Refuge and the Bufferlands lands located in proximity to the proposed project site, and the habitat that these lands provide to support special-status wildlife species. The comment then goes on to describe the water source of the Beach-Stone Lakes Basin. This is descriptive information, and no response is necessary.

**Response to Comment 14-119**

The comment states that the Draft EIR did not address potential impacts that may be associated with urban stormwater runoff. Please see Response to Comment 14-33 that discusses project runoff. The comment also suggests that the proposed project could introduce noxious weeds into the adjacent Bufferlands. The proposed project would not plant or otherwise introduce noxious weeds to the project site. Please see also Response to Comment 14-36.

**Response to Comment 14-120**

Please see Response to Comment 14-30 that addresses water quality impacts.

**Response to Comment 14-121**

The comment claims that the Draft EIR did not analyze the impacts of the proposed project on increases in urban runoff volumes, flows, and related water quality. This comment is addressed in Responses to Comments 14-30 and 14-33. The comment also claims that the project did not analyze impacts of the levee improvements being done by SAFCA in the vicinity of the project site.

Please see Response to Comment 14-34. The comment also suggests that the Draft EIR needs to discuss impacts on special-status fish species that are located in or travel through the Sacramento River. Operation of the proposed project stormwater drainage facilities would be consistent with the City's NPDES Phase 1 Municipal Separate Storm System Permit Low Impact Development to prevent water quality degradation through BMP implementation, inspections, and maintenance. The City is required to comply with these requirements, in part, to prevent any potential effect on special-status fish populations.

**Response to Comment 14-122**

Please see Response to Comment 14-29.

**Response to Comment 14-123**

Please see Response to Comment 14-27.

**Response to Comment 14-124**

Please see Response to Comment 14-28.

**Attachment: Tom Brohard and Associates Letter**

**Response to Comment 14-125**

Please see Responses to Comments 14-126 through 14-135, below.

**Response to Comment 14-126**

Please see Response to Comment 14-81.

**Response to Comment 14-127**

Please see Response to Comment 14-81.

**Response to Comment 14-128**

Please see Response to Comment 14-81.

**Response to Comment 14-129**

Please see Responses to Comment 14-82 and 14-83.

**Response to Comment 14-130**

The comment notes specific land uses and identifies the ITE designation and associated trip rate from the ITE Manual. The ITE Land uses 862, 813, 861, 815 and 854 identified in the comment are from the ITE Manual and are all considered free standing stores, per the definition. This definition

does not fit the mix of commercial uses proposed by the project. Please see Response to Comment 129, above. Please see also Responses to Comments 14-82 and 14-83.

#### **Response to Comment 14-131**

The I-5/Cosumnes River Boulevard Interchange project is a City of Sacramento Capital Improvement (CIP) Project that also includes the extension of Cosumnes River Boulevard from Freeport Boulevard to Franklin Boulevard. It is considered one project and is required to be built in its entirety before the commercial portion of the proposed project adjacent to I-5 is operational. Otherwise, there will be no other access into the commercial portion of the Delta Shores project site.

The project applicant will participate in this project by paying its fair share, as defined in the Delta Shores Finance Plan, by entering into a funding agreement with the city. Please see also Responses to Comments 14-84 and 14-85.

#### **Response to Comment 14-132**

Currently, the total funding committed by the City to the I-5/ Cosumnes River Boulevard Interchange project is approximately \$19.5 million. Additionally, the Interchange project will receive a total of \$22.8 million from Measure A Sales Tax approved by the Sacramento Region starting from the year 2013 through the year 2022. In 2008, the Sacramento Area Council of Governments (SACOG) approved \$10.5 million in State Transportation Improvement Program (STIP) funds for the Interchange project. The City is also working with SACOG to advance the Measure A and STIP funding to meet the construction year. The remainder of the project costs will be funded through the Delta Shores Finance plan and a fair share funding agreement with the Delta Shores project applicant. Please see also Responses to Comments 14-84 and 14-85.

#### **Response to Comment 14-133**

Please see Response to Comment 14-132, above.

#### **Response to Comment 14-134**

The City is currently working with Caltrans and the permitting agencies and will complete all necessary approvals including concluding right-of-way to start construction in summer of 2009.

#### **Response to Comment 14-135**

The completion of Phase 1 of the Delta Shares project ties to the completion of the I-5/ Cosumnes River Boulevard Interchange project. No building occupancy permits will be issued for the commercial development before the completion of the I-5 Interchange, and the Final Parcel Map conditions tie the construction of appropriate roadway improvements to different development phases.

**Attachment: SWAPE Letter**

**Response to Comment 14-136**

The comment notes that the proposed project would construct homes within the 100-year floodplain. Please see Responses to Comments 14-34, and 14-68 through 14-70.

**Response to Comment 14-137**

The comment mistakes Basin 89 with providing flood protection; Basin 89 is a drainage shed (Draft EIR page 5.5-6) that is protected by levees on the eastern, southern, and western boundaries. It is not a flood protection system.

**Response to Comment 14-138**

The comment states that the proposed project would construct homes within the 100-year floodplain. The FEMA FIRM maps for the project site shows the area of concern located in an existing, low-lying area within the project site. As described in the Draft EIR, this area of the project site would be graded and new stormwater infrastructure would be constructed to direct flows into detention basins that would then discharge to Pump Station 89. These facilities would encompass most of the area shown as within the FEMA Zone A99, as described on page 5.5-7 of the Draft EIR. Please see also Responses to Comments 14-34, 1 and 4-68 through 14-70.

**Response to Comment 14-139**

Improvements to levees and/or flood protection systems by SAFCA and USACOE are currently under construction or have been completed to raise the level of flood protection in the project site and vicinity. These are not vague or undefined projects as the comment suggests, but publicly visible and well-funded projects. Please see Responses to Comments 14-34, and 14-68 through 14-70.

**Response to Comment 14-140**

A small portion of the project site is located within Zone A99 with the balance of the site located in Zone X. As stated on page 5.5-7 of the Draft EIR, Zone A99 denotes an area to be protected from a 100-year flood by a federal flood protection system under construction. Zone X denotes an area determined to be outside the 500-year floodplain. Impact 5.5-3 on page 5.5-28 of the Draft EIR addresses the exposure to flood hazards and due to existing levees and future improvement of the levee within Basin 89 the project is not considered in a hazardous flood zone. Therefore, flooding was not identified in the Draft EIR as a significant issue because adequate flood protection is available. Please see also Responses to Comments 14-34, and 14-68 through 14-70.

**Response to Comment 14-142**

Please see Responses to Comments 14-72 and 14-73.

**Response to Comment 14-142**

Please see Response to Comment 14-73.

**Response to Comment 14-143**

Please see Response to Comment 14-74.

**Response to Comment 14-144**

The comment suggests that the Draft EIR include mitigation measures for protection of the project site from a 200-year flood event because of recent legislation passed in SB 5 (2007). The comment provides evidence that SB 5 will ultimately result in future changes to general plans and ordinances requiring a 200-year level of flood protection by 2012. This is due to the recommendations and guidelines of the Central Valley Flood Protection Board (CVFPB) and the California Building Standard Commission. The comment states that there is no legal requirement to meet 200-year flood protection until the CVFPB adopts its plan in 2012. However, the comment maintains that the Draft EIR be revised to include 200-year flood protection provisions. There is no requirement that the Draft EIR be revised to include 200-year flood protection provisions prior to the State adoption of specific building codes and other requirements. Further, the Draft EIR states on page 5.5-7 that SAFCA is currently working on plans to provide the City with a 200-year level of flood protection. Please see Response to Comment 14-76.

**Response to Comment 14-145**

Please see Response to Comment 14-144.

**Response to Comment 14-146**

Please see Response to Comment 14-144.

**Response to Comment 14-147**

Please see Response to Comment 14-74.

**Response to Comment 14-148**

The Draft EIR lists general types of products used during construction that could, if spilled, enter stormwater. The list is general and broad to cover all products because it is unknown which particular products could be used on the project site. Further, it would be speculative to provide such a detailed list at this time. The comment also suggests that the Draft EIR did not identify pesticides as pollutants of concern. The reader is referred to pages 27 through 29 in the Initial Study (see Appendix A of the Draft EIR), which analyzed the potential for agricultural pesticide residues in soil on and adjacent to the project site, in addition to providing Mitigation Measures 9-1, 9-2 (as revised), and 9-3 to ensure potential contaminants, if any, on the project site are not released during project construction. See also Responses to Comments 14-45 through 14-47.

**Response to Comment 14-149**

Please see Response to Comment 14-42.

**Response to Comment 14-150**

Existing water quality was described on pages 5.5-3 through 5.5-5 of the Draft EIR, including a description of agricultural practices that can affect water quality. Also see Response to Comment 14-148.

**Response to Comment 14-151**

Please see Responses to Comments 14-30, 14-39, 14-41, and 14-148.

**Response to Comment 14-152**

The comment is repeating information presented in the Draft EIR. The comment is noted.

**Response to Comment 14-153**

Please see Responses to Comments 14-30, 14-39, 14-41, and 14-148.

**Response to Comment 14-154**

Please see Response to Comment 14-41.

**Response to Comment 14-155**

Please see Response to Comment 14-41.

**Response to Comment 14-156**

Please see Responses to Comments 14-30, 14-39, 14-41, and 14-148.

**Response to Comment 14-157**

See Response to Comment 14-42.

**Response to Comment 14-158**

See Response to Comment 14-43.

**Response to Comment 14-159**

See Response to Comment 14-44.

**Response to Comment 14-160**

See Responses to Comments 14-44 through 14-46.



**Response to Comment 14-161**

See Responses to Comments 14-45 and 14-46.

**Response to Comment 14-162**

Mitigation Measures 9-1 and 9-2 in the Initial Study have been revised (see also Response to Comment 14-45) to clarify the timing and process that will be used to identify site-specific hazards from soil and/or groundwater contamination. There is no need to delay completion of the Draft EIR to identify and evaluate site-specific hazards because the process and performance standards have been identified and will be a condition of project approval before any soil-disturbing activities occur.

The Department of Toxic Substances Control (DTSC) does not have a “voluntary oversight program.” The commentor may be referring to the agency’s Voluntary Cleanup Program (VCP). This program allows interested parties to enter into an agreement with DTSC for oversight services. There is no requirement for any property or landowner to enter into such an agreement. It would be at the discretion of the property owner whether participation in the VCP is of value. As noted in Response to Comment 14-44, the Initial Study/NOP was provided to DTSC. No comments were received during the NOP comment period in April 2007 from DTSC that suggested the analysis should be evaluated in greater detail in the EIR, or that the agency would seek an active role in the investigation and/or cleanup recommended in the Phase 2 ESA. See Response to Comment 14-47.

**Response to Comment 14-163**

Please see Responses to Comments 14-64 through 14-67 that address GHG issues.

**Response to Comment 14-164**

Please see Responses to Comments 14-64 through 14-67.

**Response to Comment 14-165**

Please see Response to Comment 14-67.

**Response to Comment 14-166**

Please see Response to Comment 14-48.

**Response to Comment 14-167**

Please see Response to Comment 14-49.

**Response to Comment 14-168**

Please see Response to Comment 14-50.

**Response to Comment 14-169**

The commentor states that the Draft EIR improperly and arbitrarily disregards the threshold of significance set by the SMAQMD and arbitrarily adopts a much higher threshold of significance.

The SMAQMD *Guidelines*, released in July 2004, state: “*Currently no adequate acceptable methodology is available to assess TACs from mobile sources*” and recommended that, until such a methodology was available, CEQA documents could declare any mobile source TAC risk greater than 10 in a million as significant and unavoidable. But the SMAQMD reconsidered this important issue in subsequent years and eventually issued its *Protocol* in January 2007 (amended October 2008), which set a mobile source TAC evaluation criterion and allowed the Lead Agency to make the call on project significance after application of the risk screening procedure or full risk assessment determined how the project stands with respect to the SMAQMD criterion. Please see also Responses to Comments 14-48 through 14-59.

**Response to Comment 14-170**

Please see Response to Comment 14-51.

**Response to Comment 14-171**

Please see Response to Comment 14-52.

**Response to Comment 14-172**

Please see Response to Comment 14-53.

**Response to Comment 14-173**

Please see Response to Comment 14-54.

**Response to Comment 14-174**

Please see Response to Comment 14-55.

**Response to Comment 14-175**

Please see Response to Comment 14-55.

**Response to Comment 14-176**

Please see Responses to Comments 14-48 through 14-55.

**Response to Comment 14-177**

Please see Response to Comment 14-56.

**Response to Comment 14-178**

Please see Response to Comment 14-57.

**Response to Comment 14-179**

Please see Response to Comment 14-58.

**Response to Comment 14-180**

Please see Response to Comment 14-59.

**Response to Comment 14-181**

Please see Response to Comment 14-59.

**Response to Comment 14-182**

Please see Response to Comment 14-59.

**Response to Comment 14-183**

Please see Response to Comment 14-62.

**Response to Comment 14-184**

Please see Response to Comment 14-63.

**Response to Comment 14-185**

Please see Response to Comment 14-48.

**Response to Comment 14-186**

Please see Response to Comment 14-59.



CITY OF SACRAMENTO  
CALIFORNIADEVELOPMENT  
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Sacramento, CA 95811FLOYD BRITTON J/GEORGIA  
PO BOX 1054  
SACRAMENTO CA 95812

Public Notice/Shelly Amrhein/Delta Shores NOA

Comments - Is This  
Really needed. Isn't Sacramento  
over developed as it is. Traffic  
is bad, air is bad, Houses are  
in a slump. Which friends  
Contractor is going to get  
Rich. We dont need more people  
moving into our ruined  
Smoggy valley. Get real  
and quit using greed as a  
motivation. work on

Alternative ways to get folks out of  
Their cars and to Stop consuming

Get things  
better /

**LETTER 15: FLOYD BRITTON**

**Response to Comment 15-1**

Comment noted. The comment is expressing an opinion about the merits of the proposed project and is not raising any concerns associated with the adequacy of the EIR.





>>> "Mike Gilllogley" <mgillogley@comcast.net> 09/21/2008 9:37 AM >>>

I don't understand why any developer wants to develop new retail/homes next to meadowview area which is already in decay, with retail abandoning their leases right and left. We need to build up and recover communities at risk, not just continue developing precious fertile valley soil.

16-1



**LETTER 16: MIKE GILLOGLEY**

**Response to Comment 16-1**

Comment noted. The comment is expressing an opinion about the merits of the proposed project and is not raising any concerns associated with the adequacy of the EIR.



>>> "Marilyn Shirey" <mshirey@comcast.net> 09/11/2008 12:14 AM >>>  
Hi Shelly,

Thank you for your prompt response to my inquiry regarding the Delta Shores Project EIR.

I appreciate your point about a modified scaling of some of the residential components of the project, but I would still question the need for any new housing construction given the existing unsold inventory of newly constructed housing available in the city and county as well as older housing that is currently on the market. In the Pocket area alone, the new housing development planned near the Riverlake area and adjacent to Pocket Road (on both sides of Pocket Road) has been stalled as a result of the decline in the housing market. Some new units have been built and sold, but many more remain unbuilt or unsold. Some units have languished under construction for months. Literally half of the project on one side of the road contains some infrastructure and weeds. In addition, there are newly constructed (within the past few years) multiple housing units that remain empty just off of Greenhaven and adjacent to I5. Finally, there are numerous existing single family homes in our neighborhood that have been on the market for months! South of us in the Laguna area there are many more unsold homes. How does this developer propose to sell his new housing when there is considerable unsold housing stock already available? The housing proposed does not appear to be filling a gap to provide an affordable housing mix in the area either.

17-1

I would also question the viability of new commercial development at a time when businesses in Sacramento, both large and small are going out of business due to the state of the economy, depressed housing market, etc.

17-2

Finally, it is a mystery to me how the city could support a new fire station when existing fire station hours have been cut back due to budget deficits.

17-3

Why is this project being considered at all at this time?

17-4

Perhaps my questions reflect an ignorance of the planning process or the timing related to it, but there are certain realities I see all around me that make me question the wisdom of more development at this time or in the near future.

17-5

Your help in understanding the desirability and viability of this project would be welcome.

Thank you in advance for your help.

Marilyn Shirey



**LETTER 17: MARILYN SHIRLEY**

**Response to Comment 17-1**

Comment noted. The comment is expressing an opinion about the merits of the proposed project and is not raising any concerns associated with the adequacy of the EIR.

**Response to Comment 17-2**

Comment noted. The comment is expressing an opinion about the merits of the proposed project and is not raising any concerns associated with the adequacy of the EIR.

**Response to Comment 17-3**

The fire department has indicated that another fire station is required if the project is developed in order to adequately provide service to the southern portion of the city.

**Response to Comment 17-4**

The project is being considered at this time because the landowner filed an application with the city in November 2006 seeking a General Plan Amendment and rezone to change the existing land use designations and zoning in order to develop the project site. Since that time, the project has been reviewed by City staff and project-specific information compiled in order to prepare the EIR.

**Response to Comment 17-5**

Since the project application was filed in 2006 there have been significant changes in the national and economic market that were not present in 2006.





## **5. MITIGATION MONITORING PLAN**

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## 5. MITIGATION MONITORING PLAN

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### INTRODUCTION

CEQA requires review of any project that could have significant adverse effects on the environment. CEQA also requires reporting on and monitoring of mitigation measures adopted as part of the environmental review process (Public Resources Code section 21081.6). This MMP is designed to aid the City of Sacramento in its implementation and monitoring of measures adopted from the Delta Shores Draft EIR.

The mitigation measures are taken from the Delta Shores Draft EIR (including the Initial Study, see Appendix A of the Draft EIR). Mitigation measures in this MMP are assigned the same number they had in the Draft EIR and Initial Study. The MMP is presented in table format and it describes the actions that must take place to implement each mitigation measure, the timing of those actions, the entities responsible for implementing and monitoring the actions, and verification of compliance.

### MMP COMPONENTS

The components of the MMP table are summarized below.

Mitigation Measure: All mitigation measures identified in the Delta Shores Draft EIR (including the Initial Study) are presented, and numbered as they appear in the Draft EIR. Any change to the text of a mitigation measure presented in Chapter 2, Changes to the Draft EIR, of this Final EIR is included in this MMP.

Action: Identifies the action that must be completed in order for the mitigation measure to be considered implemented. For every mitigation measure, one or more action is described.

Implementing Party: Identifies the entity that will be responsible for implementing the action.

Timing: Each action must take place prior to the time at which a threshold could be exceeded. Implementation of the action must occur prior to or during some part of approval, project design or construction or on an ongoing basis. The timing for each measure is identified.

Monitoring Party: Identifies the entity that will be responsible for monitoring implementation of the required action. The City of Sacramento is responsible for ensuring that most mitigation measures are successfully implemented. Within the City, a number of departments and divisions will have responsibility for monitoring some aspect of the overall project. Occasionally, monitoring parties outside the City are identified; these parties are referred to as "Responsible Agencies" by CEQA.

Verification of Compliance: Identifies verification of compliance for each identified mitigation measure.

<b>DELTA SHORES PROJECT</b>						
<b>MITIGATION MONITORING PLAN</b>						
<b>Mitigation Measure</b>	<b>Action</b>	<b>Implementing Party</b>	<b>Timing</b>	<b>Monitoring Party</b>	<b>Verification of Compliance</b>	
<b>5.2 Agricultural Resources</b>						
5.2-1	The Development Agreement shall include a special condition requiring the preservation of farmland at a 1:1 mitigation ratio by preserving approximately five hundred (500) acres at the Brannan Island Farms site and approximately two hundred eighty-two (282) acres elsewhere in Sacramento County at a site approved by the City comprised of Prime Farmland and Farmland of Statewide Importance, prior to the issuance of any grading permit, in order to reduce any impacts arising from the conversion of the current agricultural uses at the project site to urban development.	Verify that this condition is included in the DA.	Project Applicant	Prior to project approval.	Development Services	
5.2-2	The project applicant or developer shall provide all future homeowners with a copy of the Right-to-Farm in California included in the California Code of Regulations (CCR), Title 3, Sections 3482.5 and 3482.6 that outline allowable farming and agricultural operations.	Verify that homeowners received a copy of the Right-to-Farm Act included in the CCR.	Project Applicant <sup>1</sup>	Prior to issuance of occupancy permits.	Development Services	
5.2-4	Implement Mitigation Measure 5.2-2.	See MM 5.2-2	See MM 5.2-2	See MM 5.2-2	See MM 5.2-2	
<b>5.3 Air Quality</b>						
5.3-1 a)	The project shall provide a plan, for approval by the lead agency in consultation with the SMAQMD, demonstrating that the heavy-duty (>50 horsepower) off-road vehicles to be used in the construction project, including owned, leased and subcontractor vehicles, would achieve a project wide fleet-average 20% NO <sub>x</sub> reduction and 45% particulate reduction compared to the most recent CARB fleet average at time of construction. The SMAQMD shall make the final decision on the emission control technologies to be used by the project construction equipment; however, acceptable options for reducing emissions may include use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and/or other options as they become available.	Verify that construction bid documents include required measures to minimize ozone precursor emissions.	Project Applicant and/or contractor	Prior to issuance of grading permits or building permits.	Development Services	

<sup>1</sup> In the event the Project Applicant sells, assigns or transfers its interests in the Property or in any portion of the Property pursuant to the terms and conditions of the Development Agreement between the Project Applicant and City, the purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Project Applicant, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred.

<b>DELTA SHORES PROJECT</b>					
<b>MITIGATION MONITORING PLAN</b>					
<b>Mitigation Measure</b>	<b>Action</b>	<b>Implementing Party</b>	<b>Timing</b>	<b>Monitoring Party</b>	<b>Verification of Compliance</b>
b) The project applicant and/or contractor shall submit to SMAQMD a comprehensive inventory of all off-road construction equipment, equal to or greater than 50 horsepower, that shall be used an aggregate of 40 or more hours during any phase of the construction project. The inventory shall include the horsepower rating, engine production year, and projected hours of use or fuel throughput for each piece of equipment. The inventory shall be updated and submitted monthly throughout the duration of the project, except that an inventory shall not be required for any 30-day period in which no construction activity occurs. At least 48 hours prior to the use of subject heavy-duty off-road equipment, the project applicant and/or contractor shall provide SMAQMD with the anticipated construction timeline, including start date and name and phone number of the project manager and on-site foreman.	Verify that an off-road construction equipment inventory is submitted to the SMAQMD.	Project Applicant and/or contractor	Prior to construction activities Monthly reports ongoing during construction.	Development Services	
c) The project applicant and/or contractor shall ensure that emissions from all off-road diesel powered equipment used on the project site do not exceed 40% opacity for more than three minutes in any one hour. Any equipment found to exceed 40% opacity (or Ringelmann 2.0) shall be repaired immediately and SMAQMD shall be notified within 48 hours of identification of non-compliant equipment. A visual survey of all in-operation equipment shall be made at least weekly by contractor personnel certified to perform opacity readings, and a monthly summary of the visual survey results shall be submitted to the SMAQMD throughout the duration of the project, except that the monthly summary shall not be required for any 30-day period in which no construction activity occurs. The monthly summary shall include the quantity and type of vehicles surveyed as well as the dates of each survey.	Verify that visual surveys of all in-operation equipment are completed weekly by certified personnel and that a monthly summary report is submitted to the SMAQMD.	Project Applicant and/or contractor	Weekly surveys and monthly reports ongoing during construction.	Development Services	
d) Limit vehicle idling time to five minutes or less.	Verify that all construction equipment does not idle for longer than 5 minutes.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	

<b>DELTA SHORES PROJECT</b>					
<b>MITIGATION MONITORING PLAN</b>					
<b>Mitigation Measure</b>	<b>Action</b>	<b>Implementing Party</b>	<b>Timing</b>	<b>Monitoring Party</b>	<b>Verification of Compliance</b>
e) In consultation with SMAQMD staff, and prior to the issuance of each grading permit, a construction mitigation fee and appropriate SMAQMD administrative fee shall be calculated and paid to the district based on the number of acres to be graded and the equipment to be used during grading activities. Fees shall be calculated using the Carl Moyer cost effectiveness figure of \$16,000 per ton of NO <sub>x</sub> plus the 5% administrative fee, or applicable fee in effect at the time the grading permit is issued.	Verify that the construction mitigation fee and appropriate SMAQMD administrative fee has been calculated and paid.	Project Applicant and/or contractor	Prior to issuance of grading permits.	Development Services	
5.3-2					
a) The project applicant shall limit the project's maximum acreage graded per day to no more than 15 acres or the project applicant shall model the project using a PM modeling program, such as the BEEST or AERMOD models, to determine the full PM impact of the project under the proposed grading acreages. Upon completion of the PM modeling, the results and recommended mitigation measures to reduce PM emissions below SMAQMD thresholds shall be submitted to the City for their approval. If more than 15 acres will be graded per day, dispersion modeling following SMAQMD procedures shall be completed, and mitigation measures shall be approved by the City prior to the issuance of grading permits. In either case, the project applicant shall implement Mitigation Measures 5.3-2 (b) through (m) below and other mitigation measures, deemed appropriate, as a result of the PM modeling to reduce local particulate matter concentrations below 50 µg/m <sup>3</sup> per day.	Verify that the measures to reduce PM emissions are implemented as set forth in MM 5.3-2(a).	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
b) All disturbed areas, including storage piles that are not being actively used for construction purposes, shall be covered or watered with sufficient frequency as to maintain soil moistness;	Verify that all disturbed area, including storage piles are covered or watered.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
c) All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or a chemical stabilizer or suppressant;	Verify that unpaved access roads are stabilized.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
d) When materials are transported off-site, they shall be covered, effectively wetted to limit visible dust emissions, or maintained with at least 2 feet of freeboard space from the top of the container;	Verify that materials transported off-site are covered.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	

<b>DELTA SHORES PROJECT</b>					
<b>MITIGATION MONITORING PLAN</b>					
<b>Mitigation Measure</b>	<b>Action</b>	<b>Implementing Party</b>	<b>Timing</b>	<b>Monitoring Party</b>	<b>Verification of Compliance</b>
e) All operations shall limit or expeditiously remove the accumulation of project-generated mud or dirt from adjacent public streets at least once every 24 hours when operations are occurring;	Verify that project-generated mud or dirt is removed from adjacent public streets in a timely fashion.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
f) Following the addition of materials to, or the removal of materials from, the surfaces of outdoor storage piles, the storage piles shall be effectively stabilized of fugitive dust emissions using sufficient water or a chemical stabilizer or suppressant;	Verify that storage piles are effectively stabilized.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
g) On-site vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph);	Verify that on-site vehicle speeds on unpaved roads are limited to 15 mph.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
h) Wheel washers shall be installed for all trucks and equipment exiting from unpaved areas or wheels shall be washed manually to remove accumulated dirt prior to leaving the site;	Verify that well washers have been installed.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
i) Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from adjacent project areas with a slope greater than 1 percent;	Verify that sandbags or other erosion control measures have been installed.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
j) Excavation and grading activities shall be suspended when winds exceed 20 mph;	Verify that excavation and grading activities are suspended during windy days.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
k) The extent of areas simultaneously subject to excavation and grading shall be limited, wherever possible, to the minimum area feasible.	Verify that excavation and grading are limited to the minimum area feasible.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	



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l) The text of this measure shall be included in all construction plans and specifications.	Verify that the text of this measure has been included in all construction plans and specifications.	Project Applicant and/or contractor	Prior to issuance of grading permits.	Development Services	
m) For all future discretionary projects associated with this project, either this measure shall apply, or additional PM analysis shall be required, which may include BEEST modeling if maximum acreage graded per day exceeds the acreage ranges in Table B.1 of the SMAQMD Guide.	Verify that the measures to reduce PM emissions are implemented as set forth in MM 5.3-2(m).	Project Applicant and/or contractor	Ongoing during operation.	Development Services	
5.3-3					
(a) The project applicant shall implement the emission reduction strategies contained in the Delta Shores Air Quality Management Plan (AQMP). The AQMP shall be endorsed by the SMAQMD prior to the release of the Draft EIR. Documentation confirming implementation of the AQMP shall be provided to the SMAQMD and the City of Sacramento prior to issuance of occupancy permits, as required.	Verify that emission reduction strategies contained in the Delta Shores AQMP are implemented.	Project Applicant and/or contractor	Prior to issuing occupancy permits.	Development Services	
(b) Prior to the issuance of building permits for the commercial portion of the project, the project applicant shall either enter into an existing Transportation Management Association (TMA), or create a new TMA to serve the project area. Funding shall be provided by the project applicant through a Community Facilities District (CFD) or other financing mechanism approved by the City.	Verify that the applicant has either entered into a TMA or created one to serve the project site.	Project Applicant	Prior to issuance of building permits	Development Services	
5.3-7 Implement Mitigation Measures 5.3-1 (a) through (e).	See MM 5.3-1 (a) through (e).	See MM 5.3-1 (a) through (e).	See MM 5.3-1 (a) through (e).	See MM 5.3-1 (a) through (e).	
5.3-8 Implement Mitigation Measures 5.3-2(a) through (m).	See MM 5.3-2(a) through (m).	See MM 5.3-2(a) through (m).	See MM 5.3-2(a) through (m).	See MM 5.3-2(a) through (m).	
5.3-9 Implement Mitigation Measure 5.3-3.	See MM 5.3-3.	See MM 5.3-3.	See MM 5.3-3.	See MM 5.3-3.	

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<b>5.4 Biological Resources</b>					
5.4-1					
a) The project applicant shall, where feasible, preserve the maximum amount of existing wetlands and establish minimum 250-foot buffers around wetlands with listed species or 50-foot buffers around wetlands without listed species (species presence shall be verified as described in Impact 5.4-3 or assumed). Where wetlands are preserved, a Wetland Avoidance Plan (WAP) shall be prepared by a qualified biologist and submitted to the City for review and approval prior to the issuance of grading permits or any groundbreaking activity. The WAP shall include project designs that shall not cause significant changes to the pre-project hydrology, water quality or water quantity in any wetland that is to be retained on site, and shall include maps and provisions for buffers that will prevent construction equipment, debris and sediment from entering wetland features.	Verify that the maximum amount of existing wetlands has been preserved and that a WAP has been prepared; ensure that minimum buffers around wetlands have been established.	Project Applicant	Prior to issuance of grading permits.	Development Services	
b) Where avoidance of existing wetlands and drainages is not feasible, mitigation measures shall be implemented prior to the approval of grading permits or any groundbreaking activity within 250 feet of wetlands for the project-related loss of any existing wetlands, such that there is no net loss of wetland acreage or habitat value. The required distance can be reduced to 50 feet where determinate surveys have shown no special status species within wetland features.	Verify that no net loss of wetland acreage or habitat value occurs.	Project Applicant	Prior to issuance of grading permits.	Development Services	
c) Prior to the issuance of grading permits by the City for any work within 250 feet of wetlands, the project applicant shall acquire all applicable wetland permits. The required distance can be reduced to 50 feet where determinate surveys have shown no special status species within wetland features. These permits may include, but would not be limited to, a Section 404 Wetlands Fill Permit from the U.S. Army Corp of Engineers, a Section 401 Water Quality Certification from the Regional Water Quality Control Board, and/or a Section 1601 Streambed Alteration Agreement from the California Department of Fish and Game.	Verify that all applicable wetland permits have been acquired.	Project Applicant	Prior to issuance of grading permits.	Development Services/USACE/CVRWQCB/CDFG	

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<p>d) Wetland mitigation shall be developed as a part of the permitting process(es) as described above. Mitigation shall be provided prior to construction related impacts on the existing wetlands. The exact mitigation ratio is variable, based on the type and value of the wetlands affected by the project, but agency standards typically require a minimum of 1:1 for preservation and 1:1 for restoration. In addition, unless other mitigation is required by permitting processes that would provide similar or greater mitigation, a wetland mitigation and monitoring plan shall be developed that includes the following:</p> <ul style="list-style-type: none"> <li>• Descriptions of the wetland types, and their expected functions and values;</li> <li>• Performance standards and monitoring protocol to ensure the success of the mitigation wetlands over a period of five to ten years;</li> <li>• Engineering plans showing the location, size and configuration of wetlands to be created or restored;</li> <li>• An implementation schedule showing that construction of mitigation areas shall commence prior to or concurrently with the initiation of construction; and</li> <li>• A description of legal protection measures for the preserved wetlands (i.e., dedication of fee title, conservation easement, and/or an endowment held by an approved conservation organization, government agency or mitigation bank).</li> </ul>	<p>Verify that mitigation is provided prior to construction related impacts on the existing wetlands. Develop a wetland mitigation and monitoring plan.</p>	Project Applicant	Prior to issuance of grading permits.	Development Services/USACE/CVRWQCB/CDFG	
<p>5.4-2</p> <p>a) The project applicant, in consultation with the USFWS, shall either (1) complete surveys for federally listed branchiopods, or (2) assume presence of federally-listed branchiopods in all affected pools where surveys have not been completed. Surveys shall be conducted by qualified biologists in accordance with the most recent USFWS guidelines or protocols to determine the time of year and survey methodology.</p> <p>The survey(s) and subsequent report(s) shall include at a minimum:</p> <ul style="list-style-type: none"> <li>• A complete list of species observed in the vernal pools and seasonal wetlands.</li> </ul>	<p>Verify that a qualified biologist conducts surveys for federally listed branchiopods or that the applicant assumes the presence of federally listed branchiopods were surveys have not been completed. If surveys are</p>	Project Applicant	Prior to issuance of grading permits.	Development Services/Public Works/USFWS	

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<ul style="list-style-type: none"> <li>• A detailed description of methodology including dates of field visits, the names of survey personnel with resumes and a list of references cited and persons contacted.</li> <li>• Survey results <i>that</i> include at a minimum:                             <ul style="list-style-type: none"> <li>– A map showing the location(s) of any federally listed branchiopods species identified within the project site.</li> <li>– A detailed description of any identified federally listed branchiopods or populations including information on the density, distribution and habitat quality relative to typical occurrences of the species in question.</li> <li>– A discussion of the importance of the population(s) with consideration of both nearby populations and total species distribution.</li> <li>– An assessment of significance related to project impacts on any federally listed branchiopods populations identified on the project site.</li> </ul> </li> </ul>	<p>conducted, verify that the survey results are submitted to USFWS and the City of Sacramento.</p>				
<p>b) If surveys within the project site reveal no occurrences of federally listed branchiopods, no further mitigation would be required. However, if surveys determine that one or more federally listed branchiopod species occur within the project site, or if the project applicant, in consultation with the USFWS, assumes presence of federally-listed branchiopods in any affected pools, the following measures shall be required for those pools with species surveyed or assumed present. The selected measures may be part of the permitting process.</p> <ul style="list-style-type: none"> <li>• For every acre of habitat impacted, at least one wetland creation credit shall be dedicated within a USFWS-approved mitigation bank.</li> <li>• For every acre of habitat impacted, at least two wetland preservation credits shall be dedicated within a USFWS-approved mitigation bank.</li> </ul>	<p>If federally listed branchiopods are present, verify that the measures to protect the species are implemented as set forth in MM 5.4-2(b).</p>	Project Applicant	Prior to issuance of grading permits.	Development Services/Public Works/USFWS	

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<ul style="list-style-type: none"> <li>• If habitat is avoided (preserved) on site, a USFWS-approved biologist (monitor) shall inspect any construction-related activities at the proposed project site to ensure that no unnecessary take of listed species or destruction of their habitat occurs. The biologist shall have the authority to stop all activities that the biologist deems may result in such a take or destruction until appropriate corrective measures have been completed. The biologist shall also immediately report any unauthorized impacts to the City, the USFWS and the CDFG.</li> <li>• Adequate fencing shall be placed and maintained around any avoided (preserved) wetland habitat to prevent impacts from vehicles.</li> <li>• The project proponent shall conduct Worker Environmental Awareness Program (WEAP) training for construction crews (primarily crew and construction foreman) and City inspectors before construction activities begin. The WEAP shall include a brief review of the special status species and other sensitive resources that could occur in the proposed project site (including their life history and habitat requirements and what portions of the proposed project area they may be found in) and their legal status and protection. The program shall also cover all mitigation measures, environmental permits and proposed project plans, such as the SWPPP, BMPs, erosion control and sediment plan, and any other required plans. During WEAP training, construction personnel shall be informed of the importance of avoiding ground-disturbing activities outside of the designated work area. The designated biological monitor shall be responsible for ensuring that construction personnel adhere to the guidelines and restrictions. WEAP training sessions shall be conducted as needed for new personnel brought onto the job during the construction period.</li> <li>• The project proponent shall ensure that activities that are inconsistent with the maintenance of the suitability of remaining wetland habitat and associated watershed on-site are prohibited.</li> </ul>					

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<p>5.4-3 Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio or greater. Suitable foraging habitat includes alfalfa or other low growing crops. The applicant shall preserve approximately 100 acres of suitable Swainson's hawk habitat closest to within a five mile radius of the project site. An additional approximately 800 acres at the Brannon Farms location shall be actively farmed and maintained with a crop rotation that is known to support high quality foraging habitat (e.g., alfalfa) in perpetuity. The Brannon Island Farms site is currently located within close proximity to several active Swainson's hawk nests, according to the CNDDDB. Any habitat identified by the applicant shall be evaluated using the following five criteria in consultation with the CDFG:</p> <ul style="list-style-type: none"> <li>i. Does the mitigation parcel provide suitable foraging habitat?</li> <li>ii. Is the parcel located in close proximity to the impacted foraging habitat?</li> <li>iii. Is the parcel occupied or adjacent to active Swainson's hawk nests?</li> <li>iv. Is the parcel adjacent to other protected habitat thereby contributing to a larger habitat preserve?</li> <li>v. Is the parcel outside of areas identified for urban growth?</li> </ul> <p>Preservation shall occur through the purchase of conservation easements or fee title of lands with suitable foraging habitat. A mitigation plan shall be established and submitted to the City for approval prior to the issuance of grading permits and, at a minimum, shall include confirmation of title and encumbrances, details on mitigation site location, development, maintenance and monitoring. Any easements shall be in compliance with Government Code Section 65965. Land and easements shall be approved by the City in consultation with CDFG.</p>	Verify that suitable raptor foraging habitat has been preserved.	Project Applicant	Prior to issuance of grading permits.	Development Services/Public Works/CDFG	

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5.4-4					
a) Between March 1 and August 1, the project applicant or developer(s) shall have a qualified biologist conduct nest surveys within 30 days prior to any demolition/ construction or ground disturbing activities that are within ¼ mile of potential nest trees. A pre-construction survey shall be submitted to CDFG and the City of Sacramento that includes, at a minimum: (1) a description of the methodology including dates of field visits, the names of survey personnel with resumes, and a list of references cited and persons contacted; and (2) a map showing the location(s) of raptor and migratory bird nests observed on the project site. If no active nests of MBTA, CDFG or USFWS covered species are identified then no further mitigation is required.	Verify that a qualified biologist conducts pre-construction nest surveys and that the survey results are submitted to CDFG and the City of Sacramento.	Project Applicant and/or contractor	Prior to issuance of grading, or building permits and every calendar year that construction activities occur.	Development Services/Public Works/CDFG/USFWS	
b) Should active nests of protected bird species be identified in the survey conducted in accordance with Mitigation Measure 5.4-4(a), the applicant, or developer(s), in consultation with the City of Sacramento and CDFG, shall delay construction in the vicinity of active nest sites during the breeding season (March 1 through August 1) while the nest is occupied with adults and/or young. A qualified biologist shall monitor any occupied nest to determine when the nest is no longer used. If the construction cannot be delayed, avoidance shall include the establishment of a non-disturbance buffer zone around the nest site. The size of the buffer zone shall be determined in consultation with the CDFG, but will be a minimum of 100 feet and no more than ¼ mile. The buffer zone shall be delineated with highly visible temporary construction fencing.	Verify that if active nests of protected bird species are identified that construction activities are delayed or non-disturbance buffer zone enforced.	Project Applicant and/or contractor	Ongoing during construction.	Development Services/Public Works/CDFG/USFWS	
c) No intensive disturbance (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated within the established buffer zone of an active nest between March 1 and August 1.	Verify that no use of heavy equipment occurs within established buffer zones.	Project Applicant and/or contractor	Ongoing during construction.	Development Services	

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d) If demolition/construction activities are unavoidable within the buffer zone, the project applicant shall consult with CDFG and the City, to develop CDFG approved appropriate impact reduction and take avoidance measures, which may include retaining a qualified biologist to monitor the nest site or taking any nestlings to a local wildlife rehabilitation center.	Verify that a qualified biologist is on-site during the site disturbing activities to monitor any active nest sites in the buffer zone.	Project Applicant and/or contractor	Ongoing during construction.	Development Services/CDFG/US FWS	
5.4-5					
a) Prior to any demolition/construction activities that occur between March 1 and September 15 the applicant or developer(s) shall have a qualified biologist conduct surveys for nesting migratory birds on the project site and within a half mile <sup>2</sup> of demolition/construction activities unless the City and CDFG approve a reduced survey area. Surveys shall be conducted no more than 30 days prior to the start of any site disturbance for each phase of the project. If there is a lapse in construction of more than two weeks, new surveys would be required. If no active nests are identified on or within a quarter mile of construction activities, a letter report summarizing the survey results shall be sent to the City of Sacramento and no further mitigation is required.	Verify that a qualified biologist conducts pre-construction nest surveys and that the survey results are submitted to CDFG and the City of Sacramento.	Project Applicant and/or contractor	Ongoing during construction.	Development Services/CDFG	
b) If active nests are found, measures that will avoid impacts to nesting migratory birds, including measures consistent with the CDFG Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California shall be implemented as follows:  1. Nest trees shall not be removed unless there is no feasible way of avoiding their removal.  2. If there is no feasible alternative to removing a nest tree, a Management Authorization (including conditions to offset the loss of the nest tree) shall be obtained from CDFG with the tree removal period (generally between October 1 and February 1) to be specified in the Management Authorization.	Verify that if active nests of protected bird species are identified that the measures set forth in MM 5.4-2(b) are implemented.	Project Applicant and/or contractor	Ongoing during construction.	Development Services/Public Works/CDFG	

2 Swainson's Hawk Technical Advisory Committee. *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, May 31, 2000.



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<p>3. No intensive disturbances (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated within half mile or less, as determined by CDFG, (buffer zone as defined in the CDFG Staff Report) of an active Swainson’s hawk nest or 500 feet for other nesting migratory birds, between March 1 and September 15 or until August 15 if a Management Authorization or Biological Opinion is obtained from CDFG for the project. The buffer zone may be reduced in consultation with CDFG.</p> <p>4. If demolition/construction activities are unavoidable within the buffer zone of an active Swainson’s hawk nest site, the project applicant or developer(s) shall consult with the CDFG and the City, and if necessary, obtain an incidental take permit issued pursuant to Fish and Game Code section 2081.</p>					
<p>5.4-6 a) Prior to the issuance of grading permits, the project applicant shall retain a qualified biologist to conduct a pre-construction burrowing owl survey in accordance with most current version of the California Burrowing Owl Consortium Burrowing Owl Survey Protocol and Mitigation Guidelines. Surveys shall be conducted no more than 30 days prior to the start of any demolition or construction activities. If no suitable burrows are found, no further mitigation is required. If suitable burrows are found, but no owls are found, all burrows shall be hand-excavated and collapsed prior to project construction. If nesting owls are found, no disturbance shall be allowed within 160-feet of the active nest burrow between February 1 and August 31. Outside the nesting season, and/or upon confirmation by the qualified biologist, and in consultation with CDFG, that all young have fledged and left an active nest, burrowing owls present in the burrow shall be excluded from the burrow(s) by a qualified biologist through a passive relocation as outlined in the California Burrowing Owl Consortium’s April 1993 Burrowing Owl Survey Protocol and Mitigation Guidelines. Once the burrows have been cleared, they must be hand-excavated and collapsed prior to project construction.</p>	<p>Verify that a qualified biologist has conducted a pre-construction survey for burrowing owls. If present, verify appropriate measures have been incorporated in construction contracts to protect owls.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuing demolition, grading, or building permits every calendar year that such activities occur.</p>	<p>Development Services/ CDFG</p>	

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b) To offset the loss of foraging and burrow habitat on the project site, and prior to issuance of grading permits, the project proponent shall preserve a minimum of 6.5 acres of foraging habitat (calculated on a 100 m [approx. 300 ft.] foraging radius around the burrow) per pair or unpaired resident bird, in accordance with the most current "California Burrowing Owl Consortium's (April 1993) Burrowing Owl Survey Protocol and Mitigation Guidelines." The protected lands shall be adjacent to burrowing owl habitat and at a location acceptable to the CDFG. Protection of additional habitat acreage per pair or unpaired resident bird may be applicable in some instances. Preservation shall occur through the purchase of conservation easements or fee title of lands and any easements shall be in compliance with Government Code Section 65965. The project proponent shall provide funding for long-term management and monitoring of the protected lands, by way of an endowment account (based on a Property Analysis Record type analysis) that is approved by CDFG. A mitigation and monitoring plan shall be submitted to CDFG and the City for approval and include details on mitigation site location, development, maintenance and monitoring. The monitoring plan shall include success criteria, remedial measures, and an annual report to the Department. This mitigation could overlap with mitigation provided for Swainson's hawk foraging habitat as deemed appropriate by CDFG.	Verify that replacement habitat has been acquired and permanently protected in accordance with procedures outlined in MM 5.4-6(b).	Project Applicant	Prior to issuance of grading permits.	Development Services/Public Works/CDFG	
c) If destruction of occupied burrows is unavoidable, the project applicant shall coordinate with CDFG to identify existing suitable burrows located on the protected lands site to be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1.	Verify that suitable burrows are provided in accordance with procedures outlined in MM 5.4-6(c).	Project Applicant and/or contractor	Prior to issuance of grading permits.	Development Services/Public Works/CDFG	
5.4-7 a) The proposed project shall be designed to avoid ground disturbance within 100 feet of the dripline of elderberry shrubs identified in the ECORP VELB Surveys as having stems greater than or equal to one inch in diameter. The 100 foot buffer could be adjusted in consultation with the USFWS. If avoidance is achieved, a letter report confirming avoidance shall be sent to the City of Sacramento and no further mitigation is required.	Verify that project design avoids disturbance within 100 feet of elderberry shrub dripline and that avoidance is documented in a	Project Applicant and/or contractor	Prior to issuing demolition or grading permits.	Development Services/Public Works/USFWS	

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b) If disturbance within 100 feet of the dripline of the elderberry shrub with stems greater than or equal to one inch in diameter is unavoidable, then the project applicant shall retain the services of a qualified biologist to develop a formal VELB mitigation plan in accordance with the most current USFWS mitigation guidelines for unavoidable take of VELB habitat pursuant to either Section 7 or Section 10(a) of the Federal Endangered Species Act. Prior to implementation by the applicant the mitigation plan shall be reviewed and approved by the USFWS.	report submitted to the City of Sacramento.  Verify that a qualified biologist develops a formal VELB mitigation plan and that appropriate mitigation guidelines are implemented.	Project Applicant and/or contractor	Prior to issuing demolition or grading permits.	Development Services/Public Works/USFWS	
c) If the VELB is delisted by the USFWS prior to the initiation of any ground disturbing, demolition, or construction activities, the project applicant shall proceed consistent with any requirements that accompany the VELB delisting notice.	Verify the implementation of any requirements consistent with the VELB delisting notice.	Project Applicant and/or contractor	Prior to issuance of grading permits.	Development Services/Public Works/USFWS	
5.4-8 a) Prior to issuance of any grading permits or any groundbreaking activity, whichever comes first, the applicant shall submit all grading and trenching plans to the Urban Forest Services' (UFS) City Arborist for review to ensure protection of Heritage trees located on site. Along with this plan, a supplemental survey of trees that may be impacted by construction shall be conducted and a report shall be submitted. This survey report shall include the dbh of all potentially impacted trees, which shall be verified by the City Arborist. The City Arborist will provide written verification and additional protection measures not available at this time to the City's Development Services Department prior to issuance of the grading permit.	Verify that all grading and trenching plans have been submitted to the City Arborist. Submit a supplemental survey of trees that may be impacted by construction.	Project Applicant and/or contractor	Prior to issuance of grading permits.	Development Services/Urban Forests Division	

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<p>b) Heritage trees identified by the City Arborist, both on- and off-site, are recommended for preservation to the extent feasible without substantially altering the project site plan. If trees should require removal, the applicant/developer shall obtain authorization through a tree removal permit from the City Urban Forest Services. The project applicant/developer shall coordinate with the City of Sacramento Urban Forest Services Division to identify any trees able to be preserved. If trees are identified for preservation, the applicant/developer shall coordinate with the Urban Forest Services Division in preparation of a preservation plan for any and all trees identified for preservation. The preservation plan shall include, but not be limited to the following measures 5.4-8(b)(i) thru 5.4-8(b)(xi) to prevent impacts to the trees during construction of the proposed project:</p> <p>i. A 6' high cyclone fence shall be installed around each tree at a distance determined adequate by the City Arborist to protect trees from damage. This fencing will define the construction exclusion zone (CEZ) and no vehicles, construction equipment, mobile home/office, supplies, materials or facilities shall be driven, parked, stockpiled or located within the CEZ of protected trees. A laminated sign indicating such shall be attached to fencing surrounding trees on-site. Fencing shall be shown on all construction and preservation plans and shall be installed prior to any construction activities. The appropriate CEZ distances for trees 173, 186, 109, 110 and 112 were previously determined by the City Arborist. Tree 173 shall require a 20.5' CEZ, tree 186 shall require a 17.5' CEZ, tree 109 shall require a 16.0' CEZ, tree 110 shall require a 19.0' CEZ and tree 112 shall require a 23.5' CEZ, if they are able to be preserved.</p> <p>ii. Prior to any pruning of heritage trees, the applicant or contractor shall obtain a heritage tree pruning permit from UFS (808-6345). Any required pruning shall be performed by an International Society of Arboriculture (ISA) certified arborist. The contractor shall contact the City Arborist for a root inspection(s) for trenching activities within the dripline(s) of trees to be saved.</p>	<p>Verify that a tree removal permit from the City Urban Forest Services is obtained if heritage trees are to be removed. Verify the tree preservation plan for trees to be preserved, that includes the measures identified in 5.4-8(b)(i) through 5.4-8(b)(xi) or equally effective measures.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Urban Forests Division</p>	

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<p>iii. If during excavation for the project, tree roots greater than two inches in diameter are encountered, work shall stop immediately until the City Arborist can perform an on site inspection. All roots shall be cut clean and the tree affected may require supplemental irrigation/fertilization and pruning as a result of the root cutting. The contractor will be responsible for any costs incurred. Depending upon the amount of roots encountered and the time of year, wet burlap may be required along the sides of the trench.</p> <p>iv. The contractor shall be held liable for any damage to existing trees, i.e. trunk wounds, broken limbs, pouring of any deleterious materials, or concrete washout under the dripline of the trees. Damages will be assessed using the "Guide to Plant Appraisal" eighth edition, published by the International Society of Arboriculture. An appraisal report shall be submitted for review by the City Arborist.</p> <p>v. Drainage patterns on the site shall not be modified so that water collects or stands within 8 feet of the trunk of any Heritage tree that is to be preserved.</p> <p>vi. No lawn irrigation system shall be installed within 8 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services.</p> <p>vii. No planting of landscaping within 6 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services.</p> <p>viii. No trenching activity within 8 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services.</p> <p>ix. No grading activity within 8 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services. In the absence of an approved grading plan, the applicant/developer shall agree to mitigate for the loss of any Heritage tree that the City Arborist determines has been irreparably damaged by grading or other construction activity.</p> <p>x. No impervious surfaces shall be allowed within 8 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services.</p>					

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<p>xi. City Ordinances 12.56.060 (Protection of trees), 12.64.040 (Protection of Heritage trees during construction activities), and 12.64.050 (Maintenance responsibility – Permits for activities affecting Heritage trees) must be followed at all phases of construction.</p> <p>Tree protection methods noted above shall be identified on all construction plans for the project.</p> <p>c) If Heritage Trees 173, 186, 109, 110 and 112, or any other heritage trees are unable to be preserved, prior to removal of these trees, the project applicant/developer shall coordinate with City of Sacramento Urban Forest Services Division to obtain the necessary permits for removal of the trees in accordance with the Heritage Tree Ordinance (City Code 12.64). All trees that fall under this category shall have a supplemental survey report prepared, as specified in Mitigation Measure 5.4-8 (a). All heritage trees removed shall be mitigated. Mitigation for removed trees can be carried out on site through the planting and care of young trees as specified by the City Arborist, or through the payment of in lieu fees to the City of Sacramento Urban Forest Services Division at the currently accepted rate. If in lieu fees are paid, verification of payment shall be provided to the Development Services Department. These fees would be used to provide planting and care of replacement trees. If the applicant can provide on-site mitigation, planting will be subject to the following City of Sacramento Urban Forest Services conditions:</p> <ul style="list-style-type: none"> <li>• Preparation of a tree mitigation planting plan prepared for review and approval by Urban Forest Services which shall include the following minimum elements:               <ol style="list-style-type: none"> <li>1. Species, size, and locations of all replacement plantings (the plan shall provide adequate planter and canopy space for trees to grow to maturity).</li> <li>2. Method of irrigation.</li> <li>3. A tree planting detail.</li> <li>4. Planting, irrigation, and maintenance schedules.</li> <li>5. Identification of the maintenance entity and a written agreement with that entity to provide care and irrigation of the trees.</li> </ol> </li> <li>• Inspection of nursery stock (prior to planting) by Urban Forest Services.</li> </ul>	<p>Verify that a tree removal permit is obtained if heritage trees are to be removed. Prepare a tree mitigation plan as outlined in MM 5.4-8(c).</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Urban Forests Division</p>	

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<ul style="list-style-type: none"> <li>Post-planting inspection by Urban Forest Services.</li> </ul>					
5.4-9					
a) Prior to demolition and tree removal activities, the project applicant or developer(s) shall retain a qualified biologist to conduct a focused survey for bats and potential roosting sites within the project site. If no roosting sites or bats are found within the project site, a letter report confirming absence shall be sent to the City of Sacramento and no further mitigation is required.	Verify that a qualified biologist conducts a bat survey and that a letter report confirming absence is submitted to the City of Sacramento.	Project Applicant and/or contractor	Prior to issuing demolition or grading permits.	Development Services/Public Works	
b) If bats are found roosting at the site outside of nursery season (May 1st through October 1st), then they shall be evicted as described under (c) below. If bats are found roosting during the nursery or maternity season, then they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or monitoring the roost after the adults leave for the night to listen for bat pups. If the roost is determined to not be a maternal roost, then the bats shall be evicted as described under (c). Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. A 250-foot (or as determined in consultation with CDFG) buffer zone shall be established around the roosting site within which no construction shall occur.	Verify that proper procedures are followed as outlined in MM 5.4-9(b).	Project Applicant and/or contractor	Prior to issuing demolition or grading permits.	Development Services/Public Works/CDFG	
c) Eviction of bats shall, as specified above, be conducted using bat exclusion techniques, developed by Bat Conservation International (BCI) and in consultation with CDFG, that allow the bats to exit the roosting site but prevent re-entry to the site. This would include but not be limited to the installation of one way exclusion devices. The devices shall remain in place for seven days and then the exclusion points and any other potential entrances shall be sealed. This work shall be completed by a Bat Conservation International recommended exclusion professional.	Verify that proper procedures are followed as outlined in MM 5.4-9(c).	Project Applicant and/or contractor	Prior to issuing demolition or grading permits.	Development Services/Public Works/CDFG	

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<p>5.4-10 The project applicant shall consult with the USFWS to address potential impacts on giant garter snake (GGS). Due to the minimal area of potential impact, it is likely that the proposed project could be covered under the Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California. For construction activities within the vicinity of Morrison Creek or the ditch north of the project site, the following avoidance measures shall be implemented consistent with the USFWS-Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat:</p> <ul style="list-style-type: none"> <li>• Confine movement of heavy equipment to existing roadways to minimize habitat disturbance.</li> <li>• Construction shall be restricted to the active season for GGS (mid-March through early October), or as determined in consultation with the USFWS.</li> <li>• Construction personnel shall receive Service-approved worker environmental awareness training. This training instructs workers to recognize giant garter snakes and their habitat(s).</li> <li>• 24-hours prior to construction activities, the project area shall be surveyed for giant garter snakes. Survey of the project area should be repeated if a lapse in construction activity of two weeks or greater has occurred. If a snake is encountered during construction, activities shall cease until appropriate corrective measures have been completed or it has been determined that the snake will not be harmed. Report any sightings and any incidental take to the Service immediately.</li> <li>• The project applicant shall provide safe corridors that will allow for GGS to move from Morrison Creek into the project-constructed detention basins in the southern portion of the project site, as determined in consultation with the USFWS.</li> </ul>	Verify the project applicant has consulted with the USFWS and follows the requirements set forth in this MM, if required.	Project Applicant	Prior to issuance of grading permits for the offsite infrastructure.	Development Services/Public Works/CDFG	
5.4-11 Implement Mitigation Measure 5.4-1.	See MM 5.4-1	See MM 5.4-1	See MM 5.4-1	See MM 5.4-1	
5.4-12 Implement Mitigation Measure 5.4-3.	See MM 5.4-3	See MM 5.4-3	See MM 5.4-3	See MM 5.4-3	



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5.4-14 Implement Mitigation Measure 5.4-5.	See MM 5.4-5	See MM 5.4-5	See MM 5.4-5	See MM 5.4-5	
5.4-15 Implement Mitigation Measure 5.4-6(a) through (d).	See MM 5.4-6(a) through (d)	See MM 5.4-6(a) through (d)	See MM 5.4-6(a) through (d)	See MM 5.4-6(a) through (d)	
5.4-16 Implement Mitigation Measure 5.4-8.	See MM 5.4-8	See MM 5.4-8	See MM 5.4-8	See MM 5.4-8	
<b>5.6 Noise</b>					
5.6-1 The project contractor(s) shall ensure that the following measures are implemented during all phases of project construction:					
a) Whenever construction occurs on parcels adjacent to existing off-site residential neighborhoods or schools or, when it occurs during later project stages on parcels near residential and other noise-sensitive uses built on-site during earlier project stages, temporary barriers shall be constructed around the construction sites to shield the ground floor and lower stories of the noise-sensitive uses. These barriers shall be of ¾-inch Medium Density Overlay (MDO) plywood sheeting, or other material of equivalent utility and appearance, and shall achieve a Sound Transmission Class of STC-30, or greater, based on certified sound transmission loss data taken according to ASTM Test Method E90. The barrier shall not contain any gaps at its base or face, except for site access and surveying openings. The barrier height shall be designed to break the line-of-sight and provide at least a 5 dBA insertion loss between the noise producing equipment and the upper-most story of the adjacent noise-sensitive uses. If, for practical reasons, which are subject to the review and approval of the City, a barrier cannot be built to provide noise relief to the upper stories of nearby noise-sensitive uses, then it must be built to the tallest feasible height.	Verify noise reduction and attenuation measures are implemented as set forth in MM 5.6-1(a).	Project Applicant and/or contractor	Prior to issuance of grading or building permits; implement measures during ground disturbing and construction activities.	Development Services/Building Division	
b) Construction activities shall comply with the City of Sacramento Noise Ordinance, which limits such activity to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday, the hours of 9:00 a.m. to 6:00 p.m. on Sunday, prohibits nighttime construction, and requires the use of exhaust and intake silencers for construction equipment engines.	Verify noise reduction and attenuation measures are implemented as set forth in MM 5.6-1(b).	Project Applicant and/or contractor	Prior to issuance of grading or building permits; implement measures during ground disturbing and construction activities.	Development Services/Building Division	

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c) Construction equipment staging areas shall be located as far as possible from residential areas while still serving the needs of construction contractor(s). Prior to the approval of all construction related permits, including grading permits, improvement plans, and building permits, a plan shall be submitted for approval to the City showing the proposed location of all staging areas. This plan may be included with grading permit, improvement plan, and building permit submittals (i.e., it may be included in improvement plans) and can be reviewed and approved concurrently with permits.	Verify noise reduction and attenuation measures are implemented as set forth in MM 5.6-1(c).	Project Applicant and/or contractor	Prior to issuance of grading or building permits; implement measures during ground disturbing and construction activities.	Development Services/Building Division	
d) High noise activities, such as jackhammers, drills, impact wrenches and other generators of sporadic high noise peaks, shall be restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, unless it can be proved to the satisfaction of the City that the allowance of Saturday work on certain onsite parcels (i.e., those as far from noise-sensitive uses as possible) would not adversely affect nearby noise-sensitive receptors. Prior to any such work outside of the specified hours, the applicant shall obtain written approval from the City.	Verify noise reduction and attenuation measures are implemented as set forth in MM 5.6-1(d).	Project Applicant and/or contractor.	Prior to issuance of grading or building permits; implement measures during ground disturbing and construction activities.	Development Services/Building Division	
5.6-3 At the time of building permits, the project applicant or developer shall be required to comply with the City's adopted General Plan policies that pertain to acceptable noise levels. This may require construction of a soundwall, if appropriate and feasible given the exposure circumstances of the residence(s) along 24th Street, to minimize traffic noise.	Verify compliance with the City's General Plan policies.	Project Applicant and/or contractor	Prior to issuance of building permits.	Development Services/Building Division	
5.6-4 The project applicant shall have a certified acoustical professional prepare a site-specific analysis for all residential uses fronting both sides of I-5 that details how exterior noise levels would achieve exterior noise levels less than 65 dB Ldn and interior noise levels less than 45 dB Ldn. The results of the analysis shall be submitted to the City of Sacramento for review and approval and appropriate recommended noise reduction measures/design features shall be incorporated into project design. Noise reduction measures/design features shall include, but are not limited to the following:					

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a) Prior to final design review, all low-density and medium-density residences west of I-5 and medium-density residential residences east of I-5 (in the 8.62-acre parcel adjacent to I-5) shall be designed and constructed to Title 24 standards which specify that interior noise levels attributable to exterior sources shall not exceed 45 dBA Ldn in any habitable room of new dwellings.	Verify preparation of a site-specific acoustical analysis has been prepared that addresses MM 5.6-4(a) and has been submitted to the city for review and approval.	Project Applicant and/or contractor	Prior to issuance of building permits.	Development Services/Building Division	
b) Prior to issuance of occupancy permits, the project applicant shall construct a sound wall west of the southbound lane of traffic along I-5 with a minimum height of 15 feet, that is capable of reducing exterior noise levels below 65 dB Ldn outside the closest residential units. The project applicant shall also construct a sound wall for residences proposed north of the interchange (in the 8.62-acre parcel adjacent to I-5) along the east side of the northbound lane of I-5 with a minimum height of 15 feet that is capable of reducing exterior noise levels below 65 dB Ldn outside the closest residential units.	Verify construction of sound wall that addresses MM 5.6-4(b).	Project Applicant and/or contractor	Prior to issuance of occupancy permits.	Development Services/Building Division	
5.6-5					
a) Prior to the issuance of building permits, the applicant shall submit engineering and acoustical specification for project mechanical HVAC equipment to the Planning Director (or their designee) demonstrating that the equipment design (types, location, enclosure, specifications) would control noise from the equipment to at least 10 dBA below existing ambient noise levels at nearby residential and other noise-sensitive land uses.	Verify that engineering and acoustical specification for project Mechanical HVAC equipment is submitted to the Planning Director.	Project Applicant and/or contractor	Prior to issuance of building permits.	Development Services/Building Division	
b) Garbage storage containers and retail/commercial building loading docks shall be placed to allow adequate separation to shield adjacent residential or other noise-sensitive uses. If the placement of garbage storage containers or loading docks away from adjacent noise-sensitive uses is not feasible, these noise-generating areas shall be enclosed or acoustically shielded to reduce noise-related impacts to these noise-sensitive uses. The location of garbage storage containers and loading docks shall be shown on building plans reviewed by the City. If these	Verify that the project design does not place garbage containers or loading docks in areas that would disturb residential or other noise-sensitive uses.	Project Applicant and/or contractor	Prior to issuance of building permits.	Development Services/Building Division	

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<p>noise-generating structures will be located near sensitive uses, a plan shall be submitted to the City for review and approval, demonstrating adequate acoustical shielding to reduce noise-related impacts to an appropriate level.</p> <p>c) Noise generating stationary equipment associated with proposed commercial and/or office uses, including portable generators, compressors, and compactors shall be enclosed or acoustically shielded to reduce noise-related impacts to noise-sensitive residential uses. Such shielding shall be detailed in all plans submitted to the City for approval which include these equipment types.</p> <p>d) Prior to tentative map approval, the project applicant shall have a certified acoustical professional prepare a site-specific analysis for residential uses adjacent to the Sacramento Job Corps facility that details how exterior noise levels would achieve exterior noise levels less than 65 dB L<sub>dn</sub> and an interior noise level of less than 45 dB L<sub>dn</sub>. The results of the analysis shall be submitted to the City of Sacramento for review and approval and appropriate recommended noise reduction measures/design features shall be incorporated into project design and be printed on all construction documents. Noise reduction measures/design features shall include, but are not limited to the following:</p> <ul style="list-style-type: none"> <li>• All residences immediately west of the Sacramento Job Corps facility shall be designed and constructed to Title 24 standards which specify that interior noise levels attributable to exterior sources shall not exceed 45 dBA CNEL in any habitable room of new dwellings.</li> <li>• The project applicant shall construct a rear-yard sound wall of adequate height and building specifications, as determined by the acoustical professional, between residential uses located adjacent to the Sacramento Job Corps facility that would reduce exterior noise levels to less than 65 dB L<sub>dn</sub> and interior noise levels to less than 45 dB L<sub>dn</sub>.</li> </ul>	<p>Verify all stationary equipment is adequately shielded.</p> <p>Verify preparation of a site-specific acoustical analysis has been prepared that addresses MM 5.6-5(d) and has been submitted to the city for review and approval.</p>	<p>Project Applicant</p> <p>Project Applicant and/or contractor</p>	<p>Prior to issuance of building permits.</p> <p>Prior to issuance of building permits.</p>	<p>Development Services/Building Division</p> <p>Development Services/Building Division</p>	

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<ul style="list-style-type: none"> <li>All prospective buyers shall be informed of the operational activities that occur at the Sacramento Job Corps facility site and the noise levels associated with those activities. All residential contracts shall include a disclosure statement that a purchaser, lessee, or transferee signs at the time of sale, purchase, contract of sale, transfer, or lease of real property.</li> </ul>					
5.6-7 Implement Mitigation Measure 5.6-4.	See MM 5.6-4	See MM 5.6-4	See MM 5.6-4	See MM 5.6-4	
<b>5.7 Public Services</b>					
5.7-1 Prior to the issuance of building permits, the project developer shall enter into a funding agreement with the City of Sacramento Department of Development Services to pay its fair share contribution toward the development of the Sacramento Police Department's new Meadowview Area facility. The fair share contribution for the proposed project has been determined to be \$1,182,000.00, per the City. Implementation of this funding agreement shall be monitored by the City's Planning Department.	Verify that funding amount outlined in MM 5.7-1 has been paid.	Project Applicant.	Prior to issuance of building permits.	Development Services	
5.7-2 Implement Mitigation Measure 5.7-1.	See MM 5.7-1	See MM 5.7-1	See MM 5.7-1	See MM 5.7-1	
<b>5.9 Transportation and Circulation</b>					
5.9-1 The project applicant shall be required to develop the Delta Shores Finance Plan for review and approval by the City before project approval. The plan shall identify the financing mechanisms for all feasible transportation improvements defined as mitigation measures including, but not limited to, new roadways, roadway widening, traffic signals and public transit. The project applicant shall coordinate preparation of the finance plan with the City of Sacramento. All mitigation measures with "fair share" contributions would be implemented through the proposed financing mechanisms(s) indicated in the finance plan or by some other mechanism as determined by the City of Sacramento. The City shall adopt the Delta Shores Finance Plan at the time the project is considered for approval.	Verify that a Finance Plan has been developed and that the plan was reviewed and approved by the City of Sacramento.	Project Applicant	Concurrent with project approval.	Development Services and Department of Transportation	
5.9-2 The project applicant shall construct an exclusive eastbound right turn lane at the intersection of Meadowview Road/Freeport Boulevard. This improvement has to be in place at the time when building permits for 200 dwelling units have been issued.	Verify that this improvement has been completed.	Project Applicant	Prior to issuance of building permits for 200 dwelling units.	Development Services and Department of Transportation	

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5.9-3 The project applicant shall coordinate with Regional Transit to provide transit facilities to serve the project area. The project applicant, in coordination with Regional Transit, shall also identify the specific locations of sheltered transit stops with bus turnouts. The City of Sacramento Development Engineering Division, working in conjunction with Regional Transit, shall approve the location, design, and implementation timing of the sheltered transit stops and bus turnouts prior to the issuance of building permits. Construction of these on-site bus stop facilities shall be phased consistent with the phased development of the project. Once demand for public transit services reaches 50 service requests, the project applicant shall work with Regional Transit to begin to provide transit services and shall increase those services in proportion to the development levels and increased rider ship levels occurring on the project site. Final design and operation of the transit service will be subject to the approval of the City and other proposed operating agencies (e.g., RT).	Verify that coordination has occurred with Regional Transit.	Project Applicant	Prior to issuance of building permits.	Development Services and Department of Transportation	
5.9-5 Before issuance of grading permits for the project site, the project applicant shall prepare a detailed Traffic Management Plan that would be subject to review and approval by the City Department of Transportation, Caltrans, and local emergency service providers including the City of Sacramento fire and police departments. The plan shall ensure that acceptable operating conditions on local roadways and freeway facilities are maintained. At a minimum, the plan shall include: <ul style="list-style-type: none"> <li>• The number of truck trips, time, and day of street closures</li> <li>• Time of day of arrival and departure of trucks</li> <li>• Limitations on the size and type of trucks, provision of a staging area with a limitation on the number of trucks that can be waiting</li> <li>• Provision of a truck circulation pattern</li> <li>• Provision of driveway access plan so that safe vehicular, pedestrian, and bicycle movements are maintained (e.g., steel plates, minimum distances of open trenches, and private vehicle pick up and drop off areas)</li> <li>• Maintain safe and efficient access routes for emergency vehicles</li> <li>• Manual traffic control when necessary</li> </ul>	Verify that a Traffic Management Plan has been prepared and reviewed and approved by the city.	Project Applicant	Prior to issuance of grading permits.	Development Services and Department of Transportation	

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<ul style="list-style-type: none"> <li>• Proper advance warning and posted signage concerning street closures</li> <li>• Provisions for pedestrian safety</li> <li>• A copy of the construction traffic management plan shall be submitted to local emergency response agencies and these agencies shall be notified at least 14 days before the commencement of construction that would partially or fully obstruct roadways.</li> </ul>					
5.9-6 The project applicant shall construct an exclusive southbound right turn lane at the intersection of Meadowview Road/Freeport Boulevard before completion of development that would generate 80 percent of the PM peak hour project traffic, assuming construction of the I-5/Cosumnes River Boulevard interchange and the Cosumnes River Boulevard Extension west to Freeport Boulevard.	Verify that this improvement has been completed.	Project Applicant	Prior to the completion of development that would generate 80 percent of the PM peak hour project traffic.	Development Services and Department of Transportation	
5.9-8 The project applicant shall install a traffic signal at the Meadowview Road/Manorside Drive intersection before completion of development that would generate 70 percent of the PM peak hour project traffic, assuming construction of the I-5/Cosumnes River Boulevard interchange and the Cosumnes River Boulevard Extension west to Freeport Boulevard.	Verify that this improvement has been completed.	Project Applicant	Prior to the completion of development that would generate 70 percent of the PM peak hour project traffic.	Development Services and Department of Transportation	
5.9-9 The project applicant shall be required to pay a fair share development impact fee towards the I-5/Cosumnes River Boulevard interchange project, as well as the I-5 corridor impact fee that is in effect at the time of issuance of building permits.	Verify that the applicant has paid their fair share fees.	Project Applicant	Prior to issuance of building permits.	Development Services and Department of Transportation	
5.9-10 The project applicant shall coordinate with Regional Transit to provide transit facilities to serve the project area. This may include but not limited to, creating new bus routes or/ add rerouting existing bus services through the project area to connect the project site with the future light rail station at Morrison Creek or to Meadowview station or to downtown Sacramento. The project applicant, in coordination with Regional Transit, shall also identify the specific locations of sheltered	Verify that coordination has occurred with Regional Transit.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	

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transit stops with bus turnouts. The City of Sacramento Development Engineering Division, working in conjunction with Regional Transit, shall approve the location, design, and implementation timing of the sheltered transit stops and bus turnouts prior to the issuance of building permits. Construction of these on-site bus stop facilities shall be phased consistent with the phased development of the project. Once demand for public transit services reaches 50 service requests, the project applicant shall coordinate to begin to provide transit services and shall increase those services in proportion to the development levels and increased rider ship levels occurring on the project site. Final design and operation of the transit service would be subject to the approval of the City and other proposed operating agencies (e.g., RT).					
5.9-12 Implement Mitigation Measure 5.9-5.	See MM 5.9-5	See MM 5.9-5	See MM 5.9-5	See MM 5.9-5	
5.9-15 The project applicant shall pay a fair share towards the addition of a second exclusive southbound left turn lane, an exclusive southbound right turn lane, and shall pay a fair share to recover costs for the City's Traffic Operations Center monitoring and retiming of modifications to the traffic signal to provide an overlap phase for the southbound right turn/eastbound left turn movements at the intersection of Meadowview Road/Freeport Boulevard.	Verify that the applicant has paid their fair share towards this improvement and towards the City's recovery costs.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-17 The project applicant shall pay a fair share to recover costs for the City's Traffic Operations Center monitoring and retiming of the traffic signal to provide an overlap phase for the eastbound right-turn/northbound left-turn movements at the intersection of Mack Road/Franklin Boulevard.	Verify that the applicant has paid their fair share towards the City's recovery costs.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-18 The project applicant shall pay a fair share towards the addition of a second exclusive northbound left-turn lane at the intersection of Cosumnes River Boulevard/Franklin Boulevard.	Verify that the applicant has paid their fair share towards this improvement.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	



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<b>Mitigation Measure</b>	<b>Action</b>	<b>Implementing Party</b>	<b>Timing</b>	<b>Monitoring Party</b>	<b>Verification of Compliance</b>
5.9-19 The project applicant shall pay a fair contribution toward the construction of the Cosumnes River Boulevard/Freeport Boulevard intersection as defined in the Delta Shores Finance Plan.	Verify that the applicant has paid their fair share towards this improvement.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-20 The project applicant shall construct two southbound through lanes and two northbound through lanes on Delta Shores Circle South between Cosumnes River Boulevard and Street D (north). The project applicant shall pay a fair share towards modifying the planned westbound approach of the Cosumnes River Boulevard/I-5 northbound ramps intersection to provide two through lanes and two exclusive right-turn (mixed flow) lanes. This configuration would allow mixed flow vehicles to use both westbound right-turn lanes to enter the northbound on-ramp. This differs from the planned configuration which only allows high occupancy vehicles (HOV) to turn right from a shared through/right-turn lane. The HOV bypass lane would begin just downstream on the northbound on-ramp.	Verify that the applicant has constructed the two SB lanes and has paid their fair share towards this improvement.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-21 Implement the Mitigation Measure 5.9-8.	See MM 5.9-8.	See MM 5.9-8.	See MM 5.9-8.	See MM 5.9-8.	
5.9-22 <b>Consumnes River Boulevard Interchange.</b> The project applicant shall pay a fair contribution toward the construction of the interchange as defined in the Delta Shores Finance Plan and the cost of widening the southbound off ramp and I-5 overcrossing additional eastbound lane.	Verify that the applicant has paid their fair share towards this improvement.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-23 Implement Mitigation Measure 5.9-9.	See MM 5.9-9	See MM 5.9-9	See MM 5.9-9	See MM 5.9-9	
5.9-24 Implement Mitigation Measure 5.9-10.	See MM 5.9-10	See MM 5.9-10	See MM 5.9-10	See MM 5.9-10	
<b>5.10 Global Climate Change</b>					
5.10-1 In order to further reduce and substantially lessen the impacts on global climate change resulting from construction and operation of the project, the project applicant has voluntarily agreed to implement the following mitigation measures:	Verify all feasible measures are implemented as part of the project.	Project Applicant	Prior to project occupancy and prior to issuance of building permits (in some instances)	Development Services	

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a) Priority parking for hybrid and alternative energy vehicles shall be provided at commercial and retail parking areas, and provide passenger loading, unloading and waiting areas for ridesharing in commercial/retail/office developments.					
b) Pedestrian and bike paths shall be located in a manner to minimize road crossings to promote safety and encourage children to walk or bike to school, consistent with the project's Air Quality Management Plan.					
c) Energy efficiency shall be increased fifteen percent (15%) above Title 24 requirements and comply with the City's Green Building program.					
d) Light-colored roofing materials and paints shall be used on building roofs.					
e) Energy star rated appliances shall be installed in all residential development.					
f) Encourage participation in the California Energy Commission's New Solar Homes Partnership and encourage solar power in the project's PUD Guidelines.					
g) Encourage energy efficient design, such as providing hot water systems with booster heating and locating hot water heaters near hot water taps in the project's PUD Guidelines.					
h) Encourage the use of solar on retail/commercial rooftops and parking lots in the PUD Guidelines. The project applicant shall inform all tenants and building owners of solar power options since the project applicant will not be constructing all buildings at the project site.					
i) The project applicant shall comply with the City's Shade Tree Parking Ordinance as well as the PUD Guidelines to avoid heat island and similar environmental impacts, as well as use high reflectance or lighter colored paving in accordance with the AQMP which requires all unshaded parking lot areas, driveways fire lanes and other paved areas to have a minimum albedo of .3 or greater.					
j) Light emitting diodes (LED) for traffic, street and other outdoor lighting shall be installed at the project site.					

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k) Outdoor lighting shall be limited, as specified in Table K in the Draft EIR Appendices.					
l) The project applicant shall participate and fund a transportation management association (TMA) that shall operate ridesharing and shuttle services programs, and also provide educational materials on energy efficiency, as required by the project's Air Quality Management Plan.					
m) The project applicant shall ensure the project site accommodates future Regional Transit bus service.					
n) Class I and Class II bike lanes shall be constructed throughout the project site in excess of those required by the City's 2010 Bikeway Master Plan.					
o) Onsite bicycle and pedestrian facilities shall be provided, including showers and bicycle parking for non-residential projects.					
p) The project applicant shall comply with Sacramento City Code Section 17.72.030 which establishes separate waste and recycling disposal requirements for all new uses, including the use of separate receptacles, including green waste and food recycling.					
q) The project applicant shall comply with Sacramento City Code Section 13.10.400 which requires the separate collection of garden wastes from residential properties.					
r) The project applicant shall comply with Sacramento City Code Section 15.76.030 which requires that all shower fixtures be fitted with low-flow features.					
s) The project applicant shall comply with Sacramento City Code Section 15.92.080 which establishes maximum water usage for landscaping and limits the use of turf, and requires the use of climate-adapted landscaping.					
t) Electrification stations/connections shall be installed in all project loading docks for use by transportation refrigeration units.					

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u) The project applicant shall comply with Sacramento City Code Section 17.68.040 which requires the planting of shade trees to ensure that 50% of all surface parking areas are shaded within 15 years of development.					
v) Enlarged sidewalks shall be installed to encourage pedestrian movement throughout the project site.					
w) The project applicant shall comply with Sacramento City Code, Chapter 8.116, which prohibits the idling of diesel powered vehicles for more than five consecutive minutes or five minutes total in one hour.					
x) Recycled building materials shall be used, where feasible, in building designs.					
y) During project construction, alternative fuel (such as aqueous diesel fuel) or catalyst equipped diesel construction equipment shall be used.					
z) Reuse and recycle construction waste where feasible.					
aa) Efficient fluorescent lighting shall be provided for all primary lighting within project buildings. Accent and aesthetic lighting shall not be subject to this condition.					
bb) The project shall be designed consistent with the City's Smart Growth Principles and associated strategies and initiatives, including jobs/housing balance, the mixing of land use, and transit oriented development.					
cc) The project applicant shall Implement additional greenhouse gas reduction strategies through application of future city ordinances to be applied to the project via the MMP and the Development Agreement.					
<b>Initial Study - 9. Hazards</b>					
9-1 Prior to issuance of grading permits at the subject property, a Phase II ESA for the subject property shall be prepared by the permit applicant, as recommended in the Phase I Environmental Site Assessment, Delta Shores, Sacramento, California, prepared by Toxichem Management Systems, Inc., February 21, 2007. The Phase II ESA shall provide additional information regarding the recognized environmental conditions (RECs) present at the subject property, determine whether the RECs pose a threat during project construction and/or operation, and	Verify that a Phase II ESA was prepared for the project site.	Project Applicant	Prior to approval of the Final Tentative Map.	Development Services	

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recommend additional steps that should be taken to identify and control hazards that could pose a risk to construction workers and future occupants, including residents, school children, visitors, and workers. Such actions shall include, but would not be limited to, soil and groundwater testing and data evaluation, remediation, or physical and/or institutional controls to effectively manage contaminants to levels that would not pose a human health or environmental risk.					
9-2 If the results of the Phase II ESA indicate the need for remediation or risk management, a work plan that describes how hazards will be managed shall be prepared by a qualified professional and submitted to the City in conjunction with any applications for a grading permit. The need for a site-specific risk assessment, use of target screening levels, and development (if required) of risk-based cleanup levels shall be addressed in the work plan. The City shall not issue grading permits until all identified hazards are managed in accordance with the work plan approved by the City and the Sacramento County Environmental Management Department (SCEMD). The work plan shall address how hazards to construction workers, future occupants, and visitors will be minimized. The work plan shall identify the specific environmental controls that must be in place to manage air emissions from soil or groundwater remediation, stormwater runoff controls from remediation sites, a health and safety plan, and on- and off-site movement, transport, and/or disposal of soil and groundwater in accordance with state and local laws and regulations. In addition, the City shall ensure grading/construction contracts specifically include any notifications or restrictions that pertain to the potential for encountering contaminants in soil or groundwater. The need for reporting releases to, or further consultation and/or approvals from the Department of Toxic Substances Control and/or Regional Water Quality Control Board, shall be determined by the City in accordance with established regulations.	Verify that a qualified professional prepared a work plan, if necessary, and that all identified hazards are managed properly.	Project Applicant and/or contractor	Prior to issuance of grading or building permits.	Development Services and SCEMD	
9-3 In the event that previously unidentified soil or groundwater contamination, USTs, or other <i>features</i> or materials that could present a threat to human health or the environment are discovered during excavation and grading or construction activities, all construction within the project site shall cease immediately, and the applicant shall retain a qualified professional to evaluate the type and extent of the hazardous materials contamination and make appropriate recommendations,	Verify that measures addressing unidentified hazards are implemented as set forth in MM 9-3.	Project Applicant and/or contractor	During all earth disturbing activities.	Development Services and SCEMD	

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<p>including, if necessary, the preparation of a site remediation plan. Pursuant to Section 25401.05 (a)(1) of the California Health and Safety Code, the plan shall include: a proposal in compliance with applicable law, regulations, and standards for conducting a site investigation and remedial action, a schedule for the completion of the site investigation and remedial action, and a proposal for any other remedial actions proposed to respond to the release or threatened release of hazardous materials at the property. Work within the project site shall not proceed until all identified hazards are managed to the satisfaction of the City and the SCEMD.</p>					
<b>Initial Study - 14. Cultural Resources</b>					
14-1	The project applicant shall hire a qualified archaeologist to perform test trenching in the area of the former Russian Embarcadero to determine if there are subsurface features or deposits associated with this era that remain. If cultural resources are uncovered during test trenching data recovery or other methods determined adequate by a qualified archaeologist and that are consistent with the Secretary of the Interior's Standards for Archaeological Documentation shall be implemented in order to ensure that resources are not significantly impacted.	Hire a Project Archaeologist to perform test trenching in the area of the former Russian Embarcadero.	Project Applicant and/or contractor	Prior to issuance of grading permit and during ground disturbance activities.	Development Services
14-2	The project proponent shall hire a qualified archaeologist to monitor all ground disturbing activities in the vicinity of the former Russian Embarcadero and the dairy complex. If cultural resources are uncovered during construction Mitigation Measure 14-3 shall be implemented.	Hire a Project Archaeologist to monitor all ground disturbing activities in the vicinity of the former Russian Embarcadero and the dairy complex.	Project Applicant and/or contractor	Prior to issuance of grading permit and during ground disturbance activities.	Development Services

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14-3 In the event that any prehistoric or historic subsurface archaeological features or deposits, including locally darkened soil ("midden") that could conceal cultural deposits, animal bone, obsidian, and/or mortar are discovered during construction-related earth-moving activities, all ground-disturbing activity within 100 feet of the resources shall be halted and the City of Sacramento Development Services Department shall be notified. The Development Services Department shall consult with a qualified archeologist to assess the significance of the find. Impacts to any significant resources shall be mitigated to a less-than-significant level through data recovery or other methods determined adequate by a qualified archaeologist and that are consistent with the Secretary of the Interior's Standards for Archaeological Documentation.	If prehistoric or historic subsurface archaeological features or deposits are discovered, halt construction within 100 feet of discovery, and notify the Development Services Department immediately.	Project Applicant and/or contractor	Prior to issuance of grading permit and during ground disturbance activities.	Development Services	
14-4 If human remains are discovered at any project construction sites during any phase of construction, all ground-disturbing activity within 50 feet of the remains shall be halted immediately, and the City of Sacramento Development Services Department and the County coroner shall be notified immediately. If the remains are determined by the County coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours, and the guidelines of the NAHC shall be adhered to in the treatment and disposition of the remains. The project proponent shall also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The County Coroner shall be responsible for approval of recommended mitigation as it deems appropriate, taking account of the provisions of State law, as set forth in CEQA Guidelines section 15064.5(e) and Public Resources Code section 5097.98. The project applicant shall implement approved mitigation, to be verified by the City of Sacramento Development Services Department, before the resumption of ground-disturbing activities within 50 feet of where the remains were discovered.	If human remains are discovered, halt construction within 100 feet of discovery, and notify Sacramento County coroner and Development Services Department immediately.	Project Applicant and/or contractor	Ongoing during construction.	Development Services	