



## Paoli/Watson Lane Annexation

### Final Environmental Impact Report State Clearinghouse No. 2022090097

*prepared by*

**City of American Canyon**

4381 Broadway Street, Suite 201

American Canyon, California 94503

Contact: Brent Cooper, AICP, Community Development Director

*prepared with the assistance of*

**Rincon Consultants, Inc.**

449 15th Street, Suite 303

Oakland, California 94612

**October 2023**



**RINCON CONSULTANTS, INC.**

Environmental Scientists | Planners | Engineers

[rinconconsultants.com](http://rinconconsultants.com)

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# Acronyms and Abbreviations

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ACT	Advanced Clean Trucks
ALUCP	Airport Land Use Compatibility Plan
AF	Acre Feet
BAAQMD	Bay Area Air Quality Management District
BRA	Biological Resources Assessment
CARB	California Air Resources Board
CDFW	California Department of Fish and Wildlife
CESA	California Endangered Species Act
CEQA	California Environmental Quality Act
CFGC	California Fish and Game Code
DEIR	Draft Environmental Impact Report
EIR	Environmental Impact Report
EV	Electric Vehicle
FEIR	Final Environmental Impact Report
GHG	Greenhouse Gas Emissions
ITP	Incidental Take Permit
LAFCo	Napa County Local Agency Formation Commission
LSA	Lake and Streambed Alteration
MBTA	Migratory Bird Treaty Act
MMRP	Mitigation Monitoring and Reporting Program
NOA	Notice of Availability
NOC	Notice of Completion
NOP	Notice of Preparation
PRC	Public Resources Code
TRU	Transport Refrigeration Unit
USFWS	U.S. Fish and Wildlife Services
TRU	Transport Refrigeration Unit
VMT	Vehicle Miles Traveled

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# 1 Introduction

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## 1.1 Final EIR Contents

This Final Environmental Impact Report (EIR) has been prepared by the City of American Canyon (City) to evaluate the potential environmental impacts of the proposed Paoli/Watson Lane Annexation Project (hereafter also referred to as “project”).

Pursuant to *California Environmental Quality Act (CEQA) Guidelines* Sections 15088 and 15132, the City of American Canyon, as the lead agency, is required to evaluate comments on environmental issues received from persons who have reviewed the Draft EIR and to prepare written responses to those comments. This document together with the Draft EIR (incorporated by reference) comprise the Final EIR for the project. This Final EIR includes individual responses to each letter received during the public review period for the Draft EIR. In accordance with *CEQA Guidelines* Section 15088(c), the written responses describe the disposition of significant environmental issues raised.

The City has provided a good faith effort to respond to all significant environmental issues raised by the comments. The Final EIR also includes minor clarifications, corrections, or revisions to the Draft EIR suggested by certain comments. The Final EIR includes the following contents:

- Section 1: Introduction
- Section 2: Responses to Comments on the Draft EIR
- Section 3: Minor Revisions to the Draft EIR
- Section 4: Recirculation Not Warranted

## 1.2 Draft EIR Public Review Process

Pursuant to CEQA, lead agencies are required to consult with public agencies with jurisdiction over a proposed project and to provide the general public with an opportunity to comment on the Draft EIR.

The City of American Canyon filed a notice of completion (NOC) with the Governor’s Office of Planning and Research to begin the 45-day public review period (Public Resources Code [PRC] Section 21161), which began on March 14, 2023, and ended on April 28, 2023. The Draft EIR was made available on the City’s website.<sup>1</sup> In addition, the Draft EIR was made available for review at the City’s offices at 4381 Broadway Street, Suite 201 and the City Library at 300 Crawford Way. A Notice of Availability (NOA) of the Draft EIR was published on March 14, 2023. As a result of these notification efforts, the City received eight written comments on the content of the Draft EIR. Section 2, “Responses to Comments on the Draft EIR,” identifies these commenting parties, their respective comments, and responses to these comments. None of the comments received, or the responses provided, constitute “significant new information” by CEQA standards (*CEQA Guidelines* Section 15088.5).

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<sup>1</sup> Draft EIR for the project is available here: <https://cityofamcan.org/ProjectReview>

## 1.3 EIR Certification Process and Project Approval

Before adopting the project, the lead agency is required to certify that the EIR has been completed in compliance with CEQA, that the decision-making body reviewed and considered the information in the EIR, and that the EIR reflects the independent judgment of the lead agency.

Upon certification of an EIR, the lead agency makes a decision on the project analyzed in the EIR. A lead agency may: (a) disapprove a project because of its significant environmental effects; (b) require changes to a project to reduce or avoid significant environmental effects; or (c) approve a project despite its significant environmental effects, if the proper findings and statement of overriding considerations are adopted (*CEQA Guidelines* Sections 15042 and 15043).

In approving a project, for each significant impact of the project identified in the EIR, the lead or responsible agency must find, based on substantial evidence, that either: (a) the project has been changed to avoid or substantially reduce the magnitude of the impact; (b) changes to the project are within another agency's jurisdiction and such changes have or should be adopted; or (c) specific economic, social, or other considerations make the mitigation measures or project alternatives infeasible (*CEQA Guidelines* Section 15091). Pursuant to PRC Section 21061.1, feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account, economic, environmental, legal, social, and technological factors.

While the information in the EIR does not constrain the City's ultimate decision under its land use authority, the City must respond to each significant effect and mitigation measure identified in the EIR as required by CEQA by making findings supporting its decision. If an agency approves a project with unavoidable significant environmental effects, it must prepare a written Statement of Overriding Considerations that sets forth the specific social, economic, or other reasons supporting the agency's decision and explains why the project's benefits outweigh the significant environmental effects (*CEQA Guidelines* Section 15093).

When an agency makes findings on significant effects identified in the EIR, it must adopt a reporting or monitoring program for mitigation measures that were adopted or made conditions of project approval to mitigate significant effects (*CEQA Guidelines* Section 15091[d]).

## 2 Responses to Comments on the Draft EIR

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This section includes comments received during public circulation of the Draft Environmental Impact Report (EIR) prepared for the City of American Canyon Paoli/Watson Lane Annexation project. The comment letters included herein were submitted to the City of American Canyon by public agencies, an organization, and individuals. The City prepared these responses to written comments received to address the environmental concerns raised by the commenters and to indicate where and how the Draft EIR addresses pertinent environmental issues. The Draft EIR was circulated for a 45-day public review period that began on March 14, 2023, and ended on April 28, 2023. The City of American Canyon received eight comment letters on the Draft EIR. The commenters and the page number on which each commenter's letter appear are listed below.

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### 2.1 Comment Letters and Responses

Written responses to each comment letter received on the Draft EIR are provided in this section. All letters received on the Draft EIR are provided in their entirety. The comment letters have been numbered sequentially and each separate issue raised by the commenter, if more than one, has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (Response A.1-1, for example, indicates that the response is for the first issue raised in comment Letter A.1). Comments that start with "A" indicate that the commenter represents a public agency; comments that start with "P" indicate that the commenter is an individual or represents a non-governmental organization.

Revisions made to the text of the Draft EIR are provided in Section 3, *Minor Revisions to the Draft EIR*, including corrected information, data, or intent. Where a comment results in a revision to the Draft EIR text, a notation is made in the response indicating that the text is revised. Within the *Minor Revisions to the Draft EIR*, revisions in text are signified by strikeouts (~~strikeouts~~) where text is removed and by underlined font (underlined font) where text is added.

Following public review of an EIR, lead agencies are directed to "evaluate comments on environmental issues received from persons who reviewed the draft EIR and prepare a written response" (*CEQA Guidelines* Section 15088(a)). Some of the comments that were received on the Draft EIR did not address specific environmental issues or effects associated with the project or the adequacy of the analysis contained in the Draft EIR. No additional analysis or response is required for these types of comments. All comments, however, will be noted and made available to applicable decision-makers as they consider the project.



A Tradition of Stewardship  
A Commitment to Service

## Letter A.1

Department of Public Works  
Napa County Airport

2000 Airport Road  
Napa, CA 94558  
www.napacountyairport.org

Main: (707) 253-4300  
Fax: (707) 299-4482

Steven Lederer  
Director

April 25, 2023

Sent Electronically

M. Nicolle Hall  
Administrative Technician  
City of American Canyon  
4381 Broadway Street, Suite 201  
American Canyon, CA 94503

Subject: Paoli Lane / Watson Lane Annexation

Dear Ms. Hall,

The City of American Canyon is considering an annexation of privately held property in Napa County and will be reviewing the environmental impact report (EIR) at a public meeting of the Planning Commission on April 27, 2023. As a joint letter from both the Napa County Airport and the Napa County Department of Planning, Building & Environmental Services (PBES), we are writing to formally oppose the inclusion of Residential Estates (RE) zoning within the general plan amendment for parcels in Zone D of the Airport Land Use Compatibility Plan (ALUCP).

A.1-1

More specifically:

1. In reviewing the Notice of Availability (NOA), it depicts existing and proposed General Plan designations including properties designated as Residential Estate (RE). The proposed RE boundary would extend the northerly property lines of Lots I & M. This same area would also be pre-zoned RE. This area is within Zone D of the ALUCP which does not allow new residential development. The majority of this area is designated Industrial in the Napa County General Plan.
2. Section 2.5.7 of the Draft Environmental Report (DEIR) indicates that the parcels pre-zoned RE have existing residential uses and the pre-zoning acknowledges the existing uses. This section also states that the RE pre-zoning would not induce residential development beyond existing conditions. This is reiterated on page 4.9-19 of the DEIR. The RE designated area includes approximately 37 acres with lots ranging in size from one to 10 acres. According to the city's municipal code, the RE district would allow a main dwelling and an ADU as permitted uses, not to mention lots splits per SB 9. Annexation will create a RE zone that allows for residential uses beyond what is currently zoned as Ag, thereby inducing further growth currently not permitted under the ALUCP.
3. Pages 4.9-11 and 4.11-4 of the Draft Environmental Report (DEIR) acknowledge that new residential uses are not allowed in Zone D of the ALUCP without review by the Airport Land Use Commission (ALUC). Additionally, the DEIR references a Settlement Agreement between the City and the ALUC dated May 3, 2002, that states the City will not recommend for approval any application for a residential use in Zone D until an amendment to the ALUCP has been approved or December 31, 2023, whichever occurs first. The DEIR should include that the County has initiated an update to the ALUCP, which is expected to be complete before Summer 2024.

A.1-2

A.1-3

A.1-4

Thus, the annexation should be consistent with the current ALUCP which does not permit new residential housing development in Zone D. Additionally, the DEIR should consider and adequately analyze that Zone D may take on more complex characteristics in the future (i.e., D1, D2, D3), which could result in the restrictions in D Zone changing depending on the subzone restrictions.

A.1-5

Thank you for your consideration.



Mark Witsoe, A.A.E./CAE  
Napa County Airport Manager  
Public Works Department

---

Michael Parker  
Planning Manager  
Department of Planning, Building &  
Environmental Services

C: TBD



## Letter A.1

**COMMENTER:** Mark Witsoe, A.A.E./CAE, Napa County Airport Manager, Public Works Department

**DATE:** April 25, 2023

### Response A.1-1

*The commenter introduces their understanding of the project and states their opposition to the inclusion of Residential Estates (RE) zoning within Zone D of the Airport Land Use Compatibility Plan (ALUCP).*

The City thanks Napa County Airport for their input on the project and acknowledges their opposition to the proposed zoning. The proposed zoning is a component of the proposed project, which is evaluated for potentially significant effects in the DEIR. Therefore, no additional revisions to the DEIR are required in response to this comment.

### Response A.1-2

*The commenter cites the project's Notice of Availability, proposed pre-zoning, and existing Napa County land use designation for a portion of the project site.*

This comment does not pertain to the DEIR or CEQA, other than describing the circulation of the Notice of Availability of the DEIR. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### Response A.1-3

*The commenter discusses the DEIR's treatment of growth on land that would be pre-zoned for RE uses because the RE zoning allows for an ADU on parcels, plus Senate Bill 9 could allow lot splits. The commenter speculates that pre-zoning as RE would induce further growth that is not permitted under the ALUCP.*

As described on page 2-15 of the DEIR, the parcels that would be pre-zoned as Residential Estate (RE) under the proposed project already have existing residential uses. Therefore, the proposed RE pre-zoning component of the project would not induce additional residential development beyond existing conditions. Senate Bill 9 is a State law that deems lot splits as ministerial. Therefore, CEQA does not apply. For these reasons, no additional revisions to the Draft EIR are required in response to this comment.

### Response A.1-4

*The commenter cites the DEIR's discussion of development in Zone D of the ALUCP and the Settlement Agreement regarding residential development in Zone D. The commenter notes and suggests for inclusion in the DEIR that Napa County has initiated an update to the ALUCP, which is anticipated to be completed by Summer 2024.*

The City concurs that the General Plan Amendment and Pre-zoning require review by the Airport Land Use Commission (ALUC).

As described in the DEIR, the Settlement Agreement does not prohibit the City from processing an application for a residential proposal within Zone D. Given that the annexation area remains outside

City limits and, by considering a General Plan Amendment and Pre-zoning only at this time, the City has no capacity to consider or approve any residential use prior to the Airport Land Use Compatibility Plan amendment approval or December 31, 2023, whichever occurs first.

To reflect the most recent status of the ALUCP, the City has made revisions under Section 2.8, *Required Approvals*, which are included in Section 3 of the FEIR, *Minor Revisions to the Draft EIR*.

### **Response A.1-5**

*The commenter concludes their letter by requesting that the annexation should be consistent with the ALUCP and not permit new residential development in Zone D. The commenter further requests that the DEIR analyzes potential future subzone restrictions under Zone D.*

Please refer to responses A.1-3 and A.1-4 for a discussion of residential development in Zone D. Regarding future subzones, the City cannot use the DEIR to speculate on zoning districts, subzones, or zoning overlays that are not proposed in the project. Environmental analysis considers existing conditions at the time of publication of the Notice of Preparation, which was September 7<sup>th</sup> 2022 for the project, pursuant to CEQA Guidelines Section 15125(a)(1). No revisions to the DEIR are required.



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Bay Delta Region  
 2825 Cordelia Road, Suite 100  
 Fairfield, CA 94534  
 (707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



Letter A.2

April 26, 2023

Sean Kennings  
 City of American Canyon  
 Post Office Box 7043  
 Corte Madera, CA 94976  
[Sean@lakassociates.com](mailto:Sean@lakassociates.com)

Subject: Paoli/Watson Lane Annexation Project, Draft Environmental Impact Report, SCH No. 2022090097, City of American Canyon, Napa County

Dear Mr. Kennings:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (EIR) from the City of American Canyon (City) for the Paoli/Watson Lane Annexation Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW provided comments in response to the EIR's Notice of Preparation (NOP) in a letter dated October 4, 2022.

A.2-1

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

## CDFW ROLE

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

A.2-2

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of American Canyon

**Objective:** Annex 83 acres of an unincorporated area in Napa County into American Canyon city limits. Several parcels would be rezoned to urban land use, including 47 acres currently designated as Agricultural land to be changed to Industrial and Residential Estate land. The Project would promote development and extend Newell

A.2-3

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Drive approximately one mile from State Route 29, southeast along the northern boundary of the annexation area, to its planned terminus at the northern limits of Watson Ranch.

**Location:** The annexation site is within unincorporated Napa County within the Sphere of Influence of the City of American Canyon and is surrounded by City limits to the east, west, and south centered at approximate Latitude 38.191004°N, Longitude 122.252360°W. Immediately west of the annexation area is Paoli Loop Road and State Route 29. The northern boundary of the annexation area parallels the terminus of Paoli Loop Road. The Union Pacific Railroad (UPRR) runs through the east side of the annexation area and the annexation area is bounded to the south by the UPRR and vacant land and mixed residential/commercial uses further south.

A.2-3  
 cont.

## REGULATORY REQUIREMENTS

### California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project may impact Swainson’s hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), which are CESA listed as threatened species.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

A.2-4

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

A.2-5

### Lake and Streambed Alteration

Notification, pursuant to Fish and Game Code sections 1600 et. seq. is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **Thank you for including Mitigation Measure BIO-5 which requires the Project to obtain an LSA Agreement prior to impacting**

A.2-6

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**any streams or lakes.** CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

A.2-6  
cont.

## COMMENTS AND RECOMMENDATIONS

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

A.2-7

### I. Subsequent Project CEQA Evaluation

**COMMENT 1:** For future development within the Project site, Mitigation Measure (MM) BIO-1 requires a "preliminary biological resource screening" to determine if a biological resources assessment is necessary; however, it is unclear how adequate mitigation measures would be identified to reduce impacts to biological resources to less-than-significant. CEQA Guidelines section 15168, subdivision (c)(4) states, "Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR" and CEQA Guidelines section 15126.4, subdivision (a)(2) requires that "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design" (also see Pub. Resources Code, § 21081.6, subd. (b)). MM BIO-1 does not require a written checklist to outline fully enforceable mitigation measures of future development projects.

A.2-8

**Recommended Mitigation Measure:** Pursuant to our response letter to the EIR's NOP, based on CEQA Guidelines section 15183.3 and associated Appendix N Checklist, and consistent with other program EIRs, CDFW recommends creating a procedure or checklist for evaluating subsequent Project impacts on biological resources to determine if they are within the scope of the Program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the EIR. Future analysis shall include all special-status species and sensitive habitats including, but not limited to, species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.

A.2-9

When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a "within the scope" of the EIR

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conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis shall be prepared by a Qualified Biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the EIR, including page and section references, containing the analysis of the subsequent Project activities' significant effects and indicate whether it incorporates all applicable mitigation measures from the EIR.

A.2-9 cont.

**II. MANDATORY FINDINGS OF SIGNIFICANCE: Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict range of a rare or endangered plant or animal?**

**COMMENT 2: Swainson's Hawk – Environmental Setting and Mitigation Measure Shortcoming**

**Issue:** The Project may impact nesting Swainson's hawk, which occurs in Napa County. MM BIO-2 is insufficient to reduce potential impacts to Swainson's hawk to less-than-significant. BIO-2 only requires surveys for Swainson's hawk be conducted between January 1 and March 20 and recommends, but does not require, that the Project follow the Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley.

A.2-10

**Specific impacts and why they may occur and be significant:** There are potentially suitable Swainson's hawk nest trees on and adjacent to the Project site, and open areas potentially suitable for foraging. If active Swainson's hawk nests are not detected by surveys or appropriate buffer zones are not established, Swainson's hawk could be directly impacted by the removal of nest trees or experience indirect impacts from noise and visual disturbance from Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby, substantially reducing the number of the species.

Swainson's hawk is CESA listed as a threatened species and therefore, is considered to be a threatened species pursuant to CEQA Guidelines section 15380. The estimated historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20<sup>th</sup> century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016).

A.2-11

Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is

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considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

A.2-11 cont.

**Recommended Mitigation Measure:** For an accurate environmental setting, to reduce impacts to Swainson's hawk to less-than-significant, and to comply with CESA, CDFW recommends adding the following mitigation measure:

Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk* (2000)<sup>2</sup> survey protocol, within 0.5-mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a project's initiation. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

A.2-12

### **COMMENT 3: Tricolored Blackbird – Environmental Setting and Mitigation Measure Shortcoming**

**Issue:** There are several documented occurrences of tricolored blackbird occurring in the vicinity of the Project, including approximately 1 mile north of the annexation area. The Project site is within the range of and appears to contain suitable habitat for tricolored blackbird. MM BIO-2 requires a 150-foot buffer for passerines may not be sufficient to avoid impacts to tricolored blackbird.

**Specific impacts and why they may occur and be significant:** If active tricolored blackbird nests are not detected by the proposed surveys or appropriate buffer zones are not established, tricolored blackbird could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. Tricolored blackbird is CESA listed as a threatened species and therefore, is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active tricolored blackbird nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

A.2-13

<sup>2</sup> Swainson's Hawk Technical Advisory Committee, 2000.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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**Recommended Mitigation Measure:** For an accurate environmental setting, to comply with CESA, and to reduce impacts to tricolored blackbird to less-than-significant, CDFW recommends including the following mitigation measure.

Tricolored Blackbird Avoidance. If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately, and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. Presence of nesting tricolored blackbird may require a CESA ITP before Project activities may commence.

A.2-14

#### **COMMENT 4: Special-Status Plants – Environmental Setting and Mitigation Measure Shortcoming**

**Issue:** The Project site has potentially suitable habitat for several special-status plants, including, but not limited to, two-fork clover (*Trifolium amoenum*), which is federally listed as endangered, has a California Rare Plant Rank (CRPR)<sup>3</sup> 1B.1, and has historically been observed at the Project site. Protocol level surveys for plants were not conducted to determine whether or not special-status plants occur within the annexation area.

A.2-15

**Specific impacts, why they may occur and be potentially significant:** If special-status plants are present and not detected by the appropriate surveys, the Project may result in potential significant impacts through crushing and killing plants and impacting viable seeds in the soil.

**Recommended Mitigation Measure:** For an accurate environmental setting and to reduce impacts to plants to less-than-significant, CDFW recommends including the following mitigation measure.

Pre-Project Special-Status Plant Surveys. A Qualified Biologist shall conduct a habitat assessment for special-status plants, and if habitat is present, shall conduct a botanical survey during the appropriate blooming period and conditions for all special-status plants that have the potential to occur, prior to the start of construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>). Survey reports shall be submitted to CDFW for written approval prior to the start of construction.

A.2-16

<sup>3</sup> CRPR rank definitions are available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).



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If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts cannot be avoided, the Project shall provide compensatory habitat at a minimum 3:1 ratio including preparing, implementing, and funding in perpetuity a long-term management plan, unless otherwise approved in writing by CDFW.

A.2-16  
 cont.

**III. Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service?**

**COMMENT 5: Burrowing Owl – Mitigation Measure Shortcoming**

**Issue:** If the Project cannot avoid wintering western burrowing owl (*Athene cunicularia*), MM BIO-3 states that the Project will utilize “additional measures such as passive relocation during the nonbreeding season and construction buffers of 200 feet during the breeding season.” CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure, and a 200-foot buffer may be insufficient to reduce impacts to this species to less-than-significant.

Additionally, MM BIO-3 indicates that surveys for burrowing owl would be conducted 30 days prior to Project activities; however, this is inconsistent with the survey requirements in the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) referenced in MM BIO-3.

**Specific impacts and why they may occur and be significant:** The Project could result in injury or mortality of adult burrowing owl, and a permanent reduction of burrowing owl habitat in Napa County.

A.2-17

Burrowing owl is a Species of Special Concern (SSC) because the species' population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrels (*Spermophilus beecheyi*) resulting in a loss of suitable burrows required by burrowing owls for nesting, protection from predators, and shelter (Shuford and Gardali 2008; CDFW 2012 Staff Report; personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owls have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (CDFW 2012 Staff Report; personal communication, Esther Burkett, May 13, 2022).

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Historically, burrowing owl populations were locally abundant within portions of Solano County. Burrowing owls are no longer abundant and habitat loss caused by development is the most immediate threat to burrowing owls in high growth areas of the San Francisco Bay Area, and loss of burrowing owl habitat will likely continue well into the future (Townsend and Lenihan 2007). As urbanization increases and local burrowing owl populations decline, they become vulnerable to stochastic events (demographic, genetic, and environmental) associated with small population size, creating the potential for an extinction “vortex” (Gilpin and Soulé 1986 as cited in Townsend and Lenihan 2007).

A.2-17  
cont.

The *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) states, “current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal...”

Based on the above, if the Project would result in impacts to burrowing owl, Project impacts to burrowing owls would be potentially significant.

**Recommended Mitigation Measure:** To reduce impacts to burrowing owl to less-than-significant, CDFW recommends including the below mitigation measure.

**Burrowing Owl Surveys.** To protect wintering burrowing owl, a Qualified Biologist shall conduct a habitat assessment, and surveys if warranted based on the habitat assessment, pursuant to the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) survey methodology prior to Project activities beginning during the non-breeding wintering season (September 1 to January 31), unless otherwise approved in writing by CDFW. Any deviations from the survey methodology must be approved in writing by CDFW. If burrowing owl is detected, CDFW shall be immediately notified and a Qualified Biologist shall establish suitable buffers pursuant to the above survey methodology which shall be a minimum of 500 meters (1,640 feet) to ensure the owl is not disturbed by Project activities, unless otherwise approved in writing by CDFW. To prevent encroachment, the established buffers shall be clearly marked by high visibility material. Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012), unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site-specific conditions and completed before Project construction unless otherwise approved in writing by CDFW. It shall also include placement of a conservation easement and

A.2-18

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preparation, implementation, and funding of a long-term management plan prior to Project construction.

A.2-18  
cont.

#### **COMMENT 6: American Badger – Environmental Setting and Mitigation Measure Shortcoming**

**Issue:** The Project is within the range<sup>4</sup> of the American badger (*Taxidea taxus*). The Project is located within grassland habitat that may be suitable for American badger. Badgers range throughout most of California and can dig burrows in a single day; therefore, the species may occupy the Project site and adjacent habitat prior to Project construction (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Additionally, the California Wildlife Habitat Relationships Predicted Habitat Suitability for most of the site is mapped as Medium Suitability.

A.2-19

**Specific impacts and why they may occur and be significant:** American badger is an SSC. The Project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, if American badgers are present on or adjacent to the Project area, Project impacts to American badger would be potentially significant.

**Recommended Mitigation Measure:** For an adequate environmental setting and to reduce impacts to American badger to less-than-significant, CDFW recommends that the EIR include the following mitigation measure.

American Badger Avoidance. A Qualified Biologist shall survey the Project site and adjacent habitat for signs of American badger and suitable burrows. If occupied burrows are detected, the Project shall avoid occupied burrows and establish a sufficient buffer as determined by a qualified biologist and approved by CDFW. If badgers are found on or adjacent to the Project site and cannot be avoided the Project shall prepare and implement a CDFW-approved relocation plan.

A.2-20

#### **COMMENT 7: Pallid Bat – Environmental Setting and Mitigation Measure Shortcoming**

**Issue:** The annexation area includes buildings and trees which may provide suitable habitat for roosting bats, including pallid bat (*Antrozous pallidus*), an SSC which is known to roost in tree bark, hollows, or foliage, as well as, man-made structures (Johnston 2004). The EIR does not include any measures to avoid or minimize impacts to special-status bats.

A.2-21

**Specific impacts and why they may occur and be significant:** Mature trees and buildings scheduled for removal could provide suitable roosting habitat for pallid bat.

<sup>4</sup> The American badger range map is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2598&inline=1>

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These bats are experiencing population declines in California (Brylski et al. 1998). Bats are long-lived and have a low reproductive rate (Johnston 2004); therefore, each mortality can have a protracted effect on the reproductive rate of the population. Removal of habitat could result in injury or mortality of these special-status bats, which would be a potentially significant impact.

A.2-21  
cont.

**Recommended Mitigation Measure:** For an adequate environmental setting and to reduce impacts to pallid bat to less-than-significant, CDFW recommends that the EIR include the following mitigation measure.

**Bat Habitat Assessment and Surveys.** Prior to Project activities that would remove trees or modify buildings or bridges, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.

For tree removal, the habitat assessment shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, and anthropogenic structures such as buildings, bridges, and culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

If roosting bats are detected in anthropogenic structures that will be impacted by Project activities, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.

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## ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The types of information reported to CNDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

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

A.2-22

## CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
B77E9A6211EF486  
Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment A: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022090097)

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## ATTACHMENT A

### Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
<b>MM BIO-1</b>	<p>Subsequent Project CEQA Evaluation. A procedure or checklist for evaluating subsequent Project impacts on biological resources shall be prepared to determine if the impacts are within the scope of the Program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the EIR. Future analysis shall include all special-status species and sensitive habitats including, but not limited to, species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.</p> <p>When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a “within the scope” of the EIR conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis should be prepared by a Qualified Biologist to provide the necessary supporting information. In addition, the checklist shall cite the specific portions of the EIR, including page and section references, containing the analysis of the subsequent Project activities’ significant effects and indicate whether it incorporates all applicable mitigation measures from the EIR.</p>	Prior to Ground Disturbance	Project Applicant
<b>MM BIO-2</b>	<p>Swainson’s Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson’s hawks (March 1 to August 31), prior to beginning work on this Project, Swainson’s hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the <i>Recommended timing and methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley Swainson’s Hawk</i> (2000)<sup>5</sup> survey protocol, within 0.5-mile of the Project site each year that Project activities occur.</p>		

<sup>5</sup> Swainson’s Hawk Technical Advisory Committee, 2000.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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	Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.		
<b>MM BIO-3</b>	Tricolored Blackbird Avoidance. If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately, and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. Presence of nesting tricolored blackbird may require a CESA ITP before Project activities may commence.	Prior to Ground Disturbance or Impacts to Vegetation and continuing over the course of the Project	Project Applicant
<b>MM BIO-4</b>	Pre-Project Special-Status Plant Surveys. A Qualified Biologist shall conduct a habitat assessment for special-status plants, and if habitat is present, shall conduct a botanical survey during the appropriate blooming period and conditions for all special-status plants that have the potential to occur, prior to the start of construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities ( <a href="https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants">https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants</a> ). Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts cannot be avoided, the Project shall provide compensatory habitat at a minimum 3:1 ratio including preparing, implementing, and funding in perpetuity a long-term management plan, unless otherwise approved in writing by CDFW.	Prior to Ground Disturbance or Impacts to Vegetation	Project Applicant
<b>MM BIO-5</b>	Burrowing Owl Surveys. To protect wintering burrowing owl, a Qualified Biologist shall conduct a habitat assessment, and surveys if warranted based on the habitat assessment, pursuant to the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation</i> (2012) survey methodology	Prior to Ground Disturbance or Impacts to	Project Applicant



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	<p>prior to Project activities beginning during the non-breeding wintering season (September 1 to January 31), unless otherwise approved in writing by CDFW. Any deviations from the survey methodology must be approved in writing by CDFW. If burrowing owl is detected, CDFW shall be immediately notified and a Qualified Biologist shall establish suitable buffers pursuant to the above survey methodology which shall be a minimum of 500 meters (1,640 feet) to ensure the owl is not disturbed by Project activities, unless otherwise approved in writing by CDFW. To prevent encroachment, the established buffers shall be clearly marked by high visibility material. Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation</i> (2012), unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site specific conditions, and completed before Project construction unless otherwise approved in writing by CDFW. It shall also include placement of a conservation easement and preparation, implementation, and funding of a long-term management plan prior to Project construction.</p>	Vegetation	
<b>MM BIO-6</b>	<p>American Badger Avoidance. A Qualified Biologist shall survey the Project site and adjacent habitat for signs of American badger and suitable burrows. If occupied burrows are detected, the Project shall avoid occupied burrows and establish a sufficient buffer as determined by a qualified biologist and approved by CDFW. If badgers are found on or adjacent to the Project site and cannot be avoided the Project shall prepare and implement a CDFW-approved relocation plan.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	Project Applicant
<b>MM BIO-7</b>	<p>Bat Habitat Assessment and Surveys. Prior to Project activities that would remove trees or modify buildings or bridges, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.</p> <p>For tree removal, the habitat assessment shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, and anthropogenic structures such as buildings, bridges, and</p>	<p>Prior to Ground Disturbance or Impacts to Vegetation or Anthropogenic Structures</p>	Project Applicant

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	<p>culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</p> <p>If roosting bats are detected in anthropogenic structures that will be impacted by Project activities, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.</p>		
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## Letter A.2

**COMMENTER:** Erin Chappell, Regional Manager, Bay Delta Region, California Department of Fish and Wildlife

**DATE:** April 26, 2023

### Response A.2-1

*The commenter introduces the project as a project governed by CEQA and their input on potentially significant impacts to biological resources.*

The commenter described CEQA as applicable to the proposed project. The City has and continues to undertake the CEQA process for the proposed project, such as preparing the Notice of Preparation, DEIR, and this FEIR.

### Response A.2-2

*The commenter reiterates its roles as a Trustee and Responsible Agency under CEQA.*

Under Section 1.6, *Lead Responsible, and Trustee Agencies*, the DEIR notes that CDFW is a Trustee Agency due to the potential for impacts to rare or endangered species on the project site. No revisions to the DEIR are required.

### Response A.2-3

*The commenter summarizes the project objective and location.*

This comment does not pertain to the DEIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### Response A.2-4

*The commenter advises that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) must be obtained if the project may result in taking of Swainson's hawk or tricolored blackbird. The commenter notes that issuance of an ITP must be covered by a CEQA document.*

As discussed on page 4.4-4 of the DEIR, there are several records of Swainson's hawks nesting within five miles of the project site. No tricolored blackbirds were noted on the project site during queries of various databases to obtain comprehensive information on special-status species, as discussed in page 4.4-3 of the DEIR. The CEQA document presents a programmatic analysis since no site-specific development plans are yet to be submitted or considered by the City. As noted under Impact BIO-1, mitigation measures BIO-1 and BIO-2 would be required to avoid and minimize potential impacts to nesting birds, such as Swainson's hawk and tricolored blackbird. Mitigation Measure BIO-1 would require a site-specific biological resources assessment to determine if, in fact, Swainson's hawk or tricolored blackbird are subject to be impacted by the project. Mitigation Measure BIO-2 would require a pre-construction survey to determine if there are nesting birds, such as Swainson's hawk or tricolored blackbird on the project site at the time site-specific development plans are submitting for review and approval by the City. Implementation of Mitigation Measure BIO-2 would include consultation with CDFW, if necessary. Overall, no ITPs are required at this programmatic stage and adequate mitigation measures are in place to identify and, if warranted, to mitigate impacts to any species protected under CESA prior to any project approval. No revisions to the DEIR are necessary.

## Response A.2-5

*The commenter summarizes CEQA requirements regarding Mandatory Finding of Significance for threatened or endangered species and Findings of Overriding Consideration.*

The DEIR identifies the potentially significant impacts of the project, including potentially significant impacts to biological resources. All impacts of the project would be reduced to a less than significant level with implementation of mitigation measures found throughout the DEIR. Specifically, mitigation measures BIO-1 through BIO-4 would mitigate impacts to threatened or endangered species to less than significant levels. Therefore, a Statement of Overriding Considerations is not required, as this is a requirement only when a significant impact is unavoidable (CEQA Guidelines Section 15093). Therefore, as the DEIR already provides determinations of potentially significant impacts of the project, no additional revisions to the DEIR are necessary in response to this comment.

## Response A.2-6

*The commenter summarizes Fish and Game Code sections 1600 et. seq. regarding lake and streambed alteration (LSA). The commenter thanks the City for including Mitigation Measure BIO-5, which requires obtaining an LSA agreement, and reiterates their role as a Responsible Agency under CEQA.*

Page 4.4-10 of the DEIR contains a summary of LSA regulatory requirements pursuant to Fish and Game Code Section 1600 et. seq. As the commenter acknowledges, Mitigation Measure BIO-5 on page 4.4-18 of the Draft EIR requires project applicants to obtain an LSA as applicable. Therefore, no additional revisions to the DEIR are necessary in response to this comment.

## Response A.2-7

*The commenter introduces their comments and recommendations to assist the City in identifying and/or mitigating impacts to biological resources and concurs that an EIR was the appropriate level of environmental review for the project.*

The commenter provides no specific comments on the adequacy of the DEIR, but rather introduces comments that follow later in the letter. Therefore, no revisions to the DEIR are necessary in response to this comment. Please see the remaining responses below for responses to the later comments provided in this comment letter.

In addition, CDFW references Attachment A to their letter, which includes a summary of the language that they believe should be incorporated into the MMRP for the Project. In the subsequent responses, the City provides a response to each specific suggested revision made in Attachment A. In addition, please refer to Section 3 of the FEIR, *Minor Revisions to the Draft EIR*, which shows the revisions that the City has made to the mitigation measures, in response to CDFW's comment. These revisions will be included in the MMRP for the project.

## Response A.2-8

*The commenter quotes CEQA Guidelines regarding activities within the scope of a program EIR and enforceability of mitigation. The commenter opines that Mitigation Measure BIO-1 as written does not include a mechanism to ensure that mitigation set forth in the DEIR will be fully enforceable for future development projects facilitated by the annexation.*

Mitigation Measure BIO-1 does not explicitly require preparation of a checklist that outlines fully enforceable mitigation measures of future development projects to accompany the Biological Resources Assessment required under Mitigation Measure BIO-1 because Mitigation Measure BIO-1 requires a preliminary biological screening. As discussed below in Response A.2-9, the City is revising Mitigation Measure BIO-1 to ensure that a reconnaissance survey is conducted prior to evaluation of whether a complete biological resources assessment is required. This revision would improve enforceability of Mitigation Measure BIO-1. Additionally, the City's community development department would review all future development proposals on the project site to determine whether they are within the scope of the EIR or require additional CEQA review. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-9**

*The commenter suggests creating a procedure or checklist to evaluate subsequent project impacts on biological resources that may result from this programmatic DEIR. The checklist should include site-specific analysis prepared by a qualified biologist and support that the project is within the scope of the DEIR conclusion and cite specific portions of the DEIR.*

Mitigation Measure BIO-1 ensures site-specific analysis for projects facilitated by this DEIR. However, in response to this comment, the City is revising Section 4.4, *Biological Resources*, as shown in Section 3 of the FEIR, *Minor Revisions to the Draft EIR* (see page 3-1 and 3-2, which identifies the revisions to Mitigation Measure BIO-1). Additionally, as discussed under Response A.2-8, development proposals on the project site would potentially require additional CEQA review if such proposals are outside of the scope of the EIR. No additional revisions to the DEIR are required in response to this comment beyond those identified in Section 3.

### **Response A.2-10**

*The commenter is concerned that Mitigation Measure BIO-2 would not sufficiently reduce impacts to Swainson's hawk to be less than significant since the timing for surveys is only from January 1 to March 20 and since the Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley is recommended but not required.*

Page 4.4-4 of Section 4.4, *Biological Resources*, discusses Swainson's hawk generally and on the project site. Mitigation Measure BIO-2 requires a pre-construction surveys and subsequent avoidance for Swainson's hawk for future development facilitated by the project, which reduces impacts to less than significant levels. However, in response to this comment, Mitigation Measure BIO-2 has been revised to require the use of Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. The City has revised Mitigation Measure BIO-2 to ensure clarity on the timing and requirements around Swainson's hawk surveys. These revisions are included in Section 3 of the FEIR, *Minor Revisions to the Draft EIR* (see pages 3-2 and 3-3, which identifies the revisions to Mitigation Measure BIO-2). Please refer to Response A.2-12 for further revisions regarding Swainson's hawk. No additional revisions to the DEIR are necessary in response to this comment beyond those identified in Section 3.

### **Response A.2-11**

*The commenter notes the potentially suitable Swainson's hawk habitat near the project site and notes the potential to impact Swainson's hawk through indirect noise and visual impacts if surveys*

*and buffers are not adequate. The commenter summarizes Swainson's hawk status as a CESA threatened species and notes that the project could result in a substantial reduction in Swainson's hawk if nests are disturbed.*

Mitigation Measures BIO-1, BIO-2, and BIO-4 would reduce impacts to Swainson's hawk to less than significant. As discussed in Response A.2-10 and Response A.2-12, Mitigation Measure BIO-2 is revised consistent with the commenter's recommendations. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-12**

*In order to reduce impacts to Swainson's hawk, the commenter recommends mitigation to perform comprehensive surveys and avoidance tactics.*

The City notes that most recommendations regarding Swainson's hawk are already integrated into Mitigation Measure BIO-2. The City has made revisions in Section 4.4, *Biological Resources*, which are included in Section 3 of the FEIR, *Minor Revisions to the Draft EIR*, including those referenced in Response A.2-10 to address the commenter's concern. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-13**

*The commenter notes documented occurrences of tricolored blackbird in the vicinity of the project site and is concerned that Mitigation Measure BIO-2 does not adequately avoid impacts to tricolored blackbird. The commenter suggests that tricolored blackbird nests may be disturbed by the project if they are not detected during pre-construction surveys or appropriate buffer zones are not established.*

Mitigation Measure BIO-2 would reduce impacts to migratory nesting birds, including tricolored blackbirds, to levels that are less than significant. The City, as discussed in Response A.2-14 and Response A.2-12, has revised Mitigation Measure BIO-2 to increase the protective buffer for tricolored blackbirds. No additional revisions to the DEIR are necessary in response to this comment.

### **Response A.2-14**

*The commenter recommends including mitigation specifically for tricolored blackbirds, including an increased buffer, notification of CDFW, and potentially acquiring an ITP.*

Mitigation Measure BIO-2 provides protection for tricolored blackbirds and reduces impacts to less than significant. However, the commenters recommendations may further reduce impacts. Accordingly, the City revised Section 4.4, *Biological Resources*, as shown in Response A.2-12 and Section 3 of the FEIR, *Minor Revisions to the Draft EIR*. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-15**

*The commenter notes that there is suitable habitat on the project site for special-status plants, including those that may be federally listed as endangered. The commenter is concerned that special-status plants may be impacted from implementing the project.*

As discussed on pages 4.4-3 and 4.4-4 of Section 4.4, *Biological Resources*, of the DEIR, queries of various databases were made for analysis in the DEIR to determine special-status species that are likely to occur on the project site. Special-status species include federally listed species. The queries

found 73 special-status plant species, but none of the plant species were found to have moderate or greater potential to occur within the project site. Further, as discussed in Response A.2-16, Mitigation Measure BIO-1 has been revised to further protect botanical resources and would identify special-status plant species on the project site prior to commencement of development projects facilitated by the project. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-16**

*The commenter recommends inclusion of mitigation to perform pre-project surveys for special-status plant species and recommends a specific protocol to follow.*

Mitigation Measure BIO-1 addresses all biological resources, and thus would effectively protect special-status plant species, including with the minor revisions show in Section 3, *Minor Revisions to the Draft EIR*. Implementation of Mitigation Measure BIO-1 would initiate a survey of each proposed project site and subsequent assessment, when necessary. To provide additional clarification or guidance, the City has revised Mitigation Measure BIO-1 as shown in Section 3, *Minor Revisions to the Draft EIR*, to include timing for botanical surveys, protocol for such surveys, and actions to be taken in the event of discovery of special-status plant species. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-17**

*The commenter takes issue with the provision in Mitigation Measure BIO-3 regarding passive relocation of burrowing owls, if necessary, as well as how early the survey can be conducted. The commenter summarizes the importance of protecting burrowing owls and their habitat.*

The City revised Mitigation Measure BIO-3 as shown in Section 3, *Minor Revisions to the Draft EIR*. Passive relocation is offered as an example of measures that could be taken when habitat avoidance is not feasible. The City further acknowledges the importance of mitigating potentially significant impacts to burrowing owls and their habitat and the possibility of occurrence on the project site, as discussed on page 4.4-4 of Section 4, *Biological Resources*, in the DEIR. No additional revisions to the DEIR are required in response to this comment beyond those identified in Section 3. Revisions are included in Section 3 of the FEIR, *Minor Revisions to the Draft EIR* (see page 3-3, which identifies the revisions to Mitigation Measure BIO-3).

### **Response A.2-18**

*The commenter provides suggested revisions to burrowing owl mitigation to better protect them and their habitat.*

As discussed above under Response A.2-17, the DEIR includes Mitigation Measure BIO-3 to reduce impacts to burrowing owls to less-than-significant levels. However, in response to this comment and comment A.2-17, above, Mitigation Measure BIO-3 has been revised to include additional clarification on mitigating impacts to burrowing owls, such as specifying survey timing, specifying an avoidance buffer, and removing passive relocation in favor of off-site compensation. Specific revisions to Mitigation Measure BIO-3 are included in Section 3 of the FEIR, *Minor Revisions to the Draft EIR*. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-19**

*The commenter notes that the project site is in the range and potentially suitable for American badger habitat. American badgers are special-status species.*

As noted on page 4.4-4 of Section 4, *Biological Resources*, of the DEIR, American badgers have a low potential to occur within the project site according to databases queried during preparation of the DEIR. Mitigation Measure BIO-1 on pages 4.4-14 and 4.4-15, as revised in Section 3, *Minor Revisions to the Draft EIR*, would reduce potentially significant impacts to special-status species to less than significant. American badgers are a special-status species. Therefore, Mitigation Measures BIO-1 would reduce potential impacts to American badgers to less than significant. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-20**

*The commenter suggests a new mitigation measure to survey for and avoid American badgers and their burrows.*

As discussed above under Response A.2-19, impacts to special-status species, such as American badgers and their habitat, would be reduced to less than significant with implementation of Mitigation Measure BIO-1, as revised in this FEIR. Revisions to Mitigation Measure BIO-1 are included in Section 3 of the FEIR, *Minor Revisions to the Draft EIR*. No additional revisions to the DEIR are required in response to this comment.

### **Response A.2-21**

*The commenter notes that the project site may provide habitat for roosting bats that may be special-status species. The commenter provides context for bat population decline and the importance of protecting their habitat. The commenter provides a recommended mitigation measure to protect bat habitat and bats themselves.*

As described in the Biological Resources Assessment for the project site, which is provided as Appendix B to the DEIR, special-status bats such as pallid bat, Townsend's big-eared bat, and big free-tailed bat were not expected to occur within the project site nor was suitable roosting habitat present. However, Mitigation Measure BIO-1 is revised to specifically require contacting CDFW for guidance on roosting bats if they are discovered during a site-specific survey and assessment, as habitat conditions could change over time. The revisions to Mitigation Measure BIO-1 are included in Section 3 of the FEIR, *Minor Revisions to the Draft EIR*. No additional revisions to the Draft EIR are required in response to this comment.

### **Response A.2-22**

*The commenter reminds the City to record instances of special-status species or natural communities recorded on the project site to CDFW and reminds the City of CEQA filing fees. The commenter concludes their letter thanking the City for opportunity to comment and provides contact information to follow up.*

The City thanks the commenter for their reminder of recording obligations and filing fees. This comment does not pertain to the DEIR or CEQA, other than describing the circulation of the Notice of Availability of the DEIR. Therefore, no additional revisions to the Draft EIR are required in response to this comment.





April 28, 2023

**VIA PROJECT PORTAL AND ELECTRONIC MAIL** to the following website and email addresses: <https://portal.laserfiche.com/f0791/forms/hkadg>; [jholley@cityofamericancanyon.org](mailto:jholley@cityofamericancanyon.org); [cityclerk@cityofamericancanyon.org](mailto:cityclerk@cityofamericancanyon.org); [wross@lawwross.com](mailto:wross@lawwross.com); [bcooper@cityofamericancanyon.org](mailto:bcooper@cityofamericancanyon.org)

Attn: Jason Holley, City Manager and Brent Cooper, AICP, Community Development Director  
City of American Canyon  
4381 Broadway Street, Suite 201  
American Canyon, California 94503

**Re.: City of Vallejo Comments on the Draft Environmental Impact Report for Paoli/Watson Lane Annexation**

Dear Mr. Cooper,

Thank you for providing the City of Vallejo (Vallejo) the opportunity to comment on the Paoli/Watson Lane Annexation Draft Environmental Impact Report (DEIR), which proposes to annex 83 acres of privately owned property into the City of American Canyon as a part of a larger development project, including the Promontory Subdivision and Residences at Napa Junction. The purpose of this letter is to provide the City of American Canyon (American Canyon) comments Vallejo deems vital to Vallejo citizens and regional water customers, including American Canyon.

A.3-1

**1. The DEIR failed to identify areas of known controversy by failing to consider the ongoing litigation between American Canyon and Vallejo relative to the 1996 Water Service Agreement (“1996 Agreement”)**

On July 11, 2022, American Canyon filed its complaint against Vallejo for declaratory relief and breach of contract under the 1996 Agreement in *City of American Canyon v. City of Vallejo* (Case No. 22CV000772) (the “Litigation”). The Notice of Preparation of this DEIR occurred on September 7, 2022. Despite ample time between American Canyon’s initiation of the Litigation and its preparation of the DEIR, the Litigation was not considered as part of the DEIR.

A.3-2

The DEIR’s failure to consider the impacts of the Litigation makes its findings of less than significant without mitigation under Impact UTL-2 unreliable and incomplete. The Litigation is centered around Vallejo and American Canyon’s competing interpretations of the 1996 Agreement – the key water supply document between the cities. At a minimum, the Litigation underscores uncertainties regarding American Canyon’s water supply and its water supply planning. Therefore, Vallejo recommends American Canyon refrain from relying on Vallejo water to serve the Project and other developments while the Litigation is ongoing.

A.3-3

## 2. The DEIR mischaracterizes the nature of the water Vallejo supplies to American Canyon.

The DEIR mischaracterizes Vallejo's water rights that supply American Canyon. Section 4.17.1 of the DEIR fails to recognize the place of use restrictions associated with Vallejo's water rights in stating, at page 4-17-2:

Under the Vallejo Agreement, a specific source is identified for Permit Water supply but not for Treated or Emergency Water," and further states, "A specific source for Treated Water is not identified in the Vallejo Agreement; thus, the ultimate source of this water is a blend of Vallejo's water sources."

A.3-4

Unequivocally, a "blend of all of Vallejo's water sources" is *not* used to provide American Canyon with potable water. Vallejo's only water right with an authorized place of use that includes any portion of American Canyon is License 7848, sometimes referred to as "Vallejo Permit Water." The authorized place of use for License 7848 does not extend to the whole of American Canyon.

Although a Water Supply Assessment is not required as part of this DEIR, there are several planned projects associated with this annexation that will have a cumulative impact on the water supply. Vallejo recommends that American Canyon perform a Cumulative Water Supply Assessment for all planned projects near the Paoli/Watson Lane annexation area, and not simply piecemeal smaller projects without performing water supply assessments. As part of that cumulative assessment, American Canyon should consult with Vallejo to determine whether the Project site falls within the authorized place of use of License 7848. Vallejo also recommends that even if the Project is located within the authorized place of use for License 7848, American Canyon should consider developing an alternative water supply for the Project.

A.3-5

Engaging in a cumulative water supply assessment supports the purpose of the DEIR as a Programmatic EIR by considering broad programmatic issues early in the planning process. For example, the pre-zoning for the project expands the Residential Estate zoning area, allowing additional residences with a lot size of at least 1-acre. (ES 2-7, 2-9, 2-10.) However, the land use impact analysis finds that the pre-zoning for the project is consistent with American Canyon's General Plan objective of ensuring that land use development is coordinated with the ability to provide adequate public infrastructure, despite the uncertainty of American Canyon's water supply. (4.11-6.) The DEIR should evaluate the impact of increasing the acreage of the Residential Estate zoning area to ensure that the programmatic issues are properly addressed and mitigated before American Canyon relies on this DEIR's conclusion to allow projects to move forward. The additional impacts on water supply resources from expanding the Residential Estate zoning designation area are just one example of the DEIR failing to evaluate reasonably foreseeable impacts from the project.

A.3-6

An additional item on page 4.17-2 is footnote Number 3 which states, “*For example, Vallejo Permit Water delivery was curtailed in 2014 and 2015.*” It should be clarified in the text, and not the footnotes, that the State imposed curtailments on Vallejo’s License 7848 and not an action by Vallejo. The DEIR should also disclose and consider that License 7848 was curtailed again in 2021, and 2022 and that the Barker Slough Pumping Plant (a State Water Project facility), which is the starting point of the North Bay Aqueduct (NBA), was curtailed in 2021 and 2022 due to the presence of Delta Smelt larvae in accordance with the Incidental Take Permit (ITP) in place for SWP facilities. This ITP has the potential to curtail the NBA for up to six months out of the year during dry years, significantly impacting the availability of water supplies to the region, including American Canyon.

A.3-7

**3. The DEIR utilized incorrect water volumes available from the City of Vallejo and may affect thresholds relying on sufficient water supplies including, but not limited to, the findings of PSR-1, UTL-1, UTL-2, WF-1, WF-2, WF-3, and WF-4.**

The 1996 Water Service Agreement Vallejo has with American Canyon outlines a Basic Agreement capacity of 1 million gallons per day (MGD), with an annual volume of 629 acre-feet (AF) and provides options for American Canyon to purchase more capacity in Vallejo’s system during specific timeframes. American Canyon exercised two of the available options and the volume of Vallejo Treated Water available for American Canyon’s use under the 1996 Water Service Agreement is 2,074 AF, instead of the 3,206 AF referenced in Table 4.17-1.

The City of American Canyon’s 2020 Urban Water Management Plan only identifies 628.6 acre-feet per year of Vallejo Treated Water available for purchase in Section 6.1.2.2. on page 6-2 stating the following:

A.3-8

The agreement with Vallejo allows the City to purchase up to 628.6 AFY of Vallejo Treated Water (potable water). Vallejo Treated Water is delivered via an intertie connection following treatment of water at Vallejo’s Fleming Hill WTP.

This volume is further characterized as “reasonably available” in Table 6-9 on page 6-13 of the UWMP from 2025 to 2045. Given that the published value considered available in the UWMP is less than 20% of what is identified as available in the DEIR, the water supply should be re-evaluated to ensure it is adequate to serve the preferred alternative and any future project associated with the Annexation.

Beyond the incorrect assumptions of the water available through the 1996 Water Service Agreement, the DEIR relies on American Canyon’s Zero Water Footprint (“ZFW”) policy to assert that there would be “no net increase in water demands.” (DEIR at 4.1-23.) While the ZFW policy requires that “developers must ensure that new development will offset the increased potable water demand that would be consumed by their project on a one-to-one basis,” there is no analysis of how the project will comply with that policy. (*Id.*) Therefore the finding that no

A.3-9

mitigation measures are required for the increased water demand that is a result of the project is not supported.

A.3-9  
cont.

**4. The street improvements set forth in the DEIR are growth inducing impacts.**

A portion of the project involves the extension of Newell Drive to augment north-south travel parallel to SR 29 and to install circulation improvements along Paoli Loop and Watson Lane. All of these improvements are growth-inducing improvements which should be discussed in the DEIR with appropriate mitigation. As growth increases environmental impacts increase. These improvements will have effects on VMT, noise, population, greenhouse gas emissions, energy, air quality, aesthetics and other potential areas. The City has failed to recognize these growth-inducing attributes and to adequately address the issues caused thereby.

A.3-10

**5. The DEIR fails to adequately address affordable housing.**

The DEIR says that the project “would not affect the availability of affordable housing” and that “because the project would require the payment of an impact fee to fund affordable housing, the impacts on affordable housing are not discussed any further.” However, the City is adding 83 acres and pre-zoning a significant portion of that land as “Residential Estates.” In such a large annexation, the City should be discussing how it intends to supply additional affordable housing in line with LAFCO’s stated policy which the DEIR identifies as follows: “LAFCo has identified the availability of affordable housing as an issue of local interest that should be addressed in the CEQA documentation.” Despite this requirement by LAFCo, the City has failed to address affordable housing at all and instead says it isn’t necessary. Given LAFCo’s policy as well as the state’s policy of increasing the availability of housing, the DEIR should address this important issue rather than simply saying it’s not necessary. Also, the DEIR should address how any fee charged for affordable housing will ensure that an adequate amount of affordable housing will be constructed to meet requirements.

A.3-11

Thank you for taking the time to review our concerns,

Sincerely,

Melissa  
Cansdale

 Digitally signed by Melissa Cansdale  
DN: cn=Melissa Cansdale, o=City of Vallejo,  
ou=Water Department,  
email=melissa.cansdale@cityofvallejo.net, c=US  
Date: 2023.04.28 08:52:25 -07'00'

Melissa Cansdale,  
Water Resources Manager

cc: Veronica Nebb, City Attorney  
Randy Risner, Chief Assistant City Attorney  
Beth Schoenberger, Water Director  
Christina Ratcliffe, Planning and Economic Development Director  
Barbara Brenner, Partner, White Brenner LLP

## Letter A.3

**COMMENTER:** City of Vallejo

**DATE:** April 28, 2023

### Response A.3-1

*The commenter introduces the project and states their intention to provide comments that the City of Vallejo deems vital to Vallejo residents and regional water customers.*

The City thanks the City of Vallejo for their interest in the project. This comment does not pertain to the DEIR or CEQA, other than describing the intent of the commenter to provide comments on the DEIR. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### Response A.3-2

*The commenter states that the DEIR failed to identify areas of known controversy because it failed to consider ongoing litigation between American Canyon and Vallejo relative to the 1996 Water Service Agreement. The commenter states that litigation began in July 2022, which is prior to issuance of the NOP for this DEIR in September 2022; therefore, there was ample time to consider the litigation in the EIR.*

As of publication of this FEIR, litigation over the 1996 Water Service Agreement (WSA) is in its discovery stages in the trial court and it would be speculative to assume that it will result in any particular outcome especially since any outcome may result in an appeal by the party who was adversely affected. It is a dispute that is assigned to another branch of government for resolution. In contrast, an understanding of project water availability, particularly in light of Vallejo's adopted 2020 UWMP, which states the contract water cannot be reduced, responds to the commenter's statement.

The Vallejo 2020 UWMP<sup>1</sup> stated the following regarding its sale of water to American Canyon: "The [City's] contract does not allow for restrictions or reductions (page 4-3 of the Vallejo 2020 UWMP). For demand projection purposes, the full 3,074 acre feet per year (AFY) is assumed." In this case, the cited 3,074 AFY refers to the sum of raw (500 AFY), treated (2,074 AFY), and emergency water (500 AFY).

As shown in Table 4.17-3 of the Draft EIR, the projected water supply was based on the City of American Canyon 2020 UWMP. Importantly, the American Canyon 2020 UWMP assumed a total supply from Vallejo of only up to 1,129 AFY (500 AFY of raw water plus 629 AFY of treated water) in normal years through the full planning period, and still concludes that sufficient water is available through purchase of supplemental water to meet demand (see page 6-2 of the American Canyon 2020 UWMP). In addition, page 7-4 of American Canyon's 2020 UWMP identifies that water supplies from Vallejo would be reduced during single-dry and consecutive-dry years, including the following:

- **Vallejo Treated Water:** Assumed to be full contracted volume (628.6 AFY) for average year water type and to be reduced by 20 percent for single-dry and consecutive-dry year water types based on City of Vallejo's Water shortage Contingency Plan Stage 2.

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<sup>1</sup> City of Vallejo. 2021. 2020 Urban Water Management Plan Final Adopted: October 12, 2021. Prepared by: Zanjero Tully & Young, Comprehensive Water Planning

- **Vallejo Emergency Water:** Assumed to be full contracted volume (500 AFY) for single-dry and consecutive-dry years 1 to 2, 400 AFY consecutive-dry years 3 to 5, and to be 0 AFY for average year water type (based on historical past practice).

Overall, American Canyon's 2020 UWMP identifies less water supply from Vallejo than what is identified in the Vallejo 2020 UWMP. Because the Draft EIR relies on the water supply identified in American Canyon's 2020 UWMP, the Draft EIR analysis considers a conservative analysis where water supply from Vallejo is less than what is identified in the Vallejo 2020 UWMP.

American Canyon has available supply to meet the project's estimated 914 AFY demand, without Vallejo water. Only 23 percent of the City's water supply is from the City of Vallejo in a "normal" year. As noted by Vallejo, the project site is outside the place of use for Vallejo Permit Water, and thus the litigation could have no direct impact on that source of water for project water supply.

The City has alternative water supplies, including the option to purchase water if needed. Because the Draft EIR analysis relied on the water supply identified in the American Canyon 2020 UWMP, the analysis in the Draft EIR assumed a reduction in supply from Vallejo during single-dry and multi-dry-year scenarios. Furthermore, the American Canyon 2020 UWMP assumed only 629 AFY of treated water supplied from Vallejo (as opposed to the 2,074 assumed in the Vallejo 2020 UWMP). Should the litigation over the 1996 Agreement result in a further reduction in the City's portfolio of supply, it is reasonable to assume the City would acquire a substitute supply. The City of American Canyon's 2015 and 2020 UWMPs both concluded that predicted water supply constraints can be resolved through the purchase of "supplemental imported water through existing agreements through the planning horizon (2045) for all water year scenarios" (2020 UWMP<sup>2</sup>, pp. 1-2.) The fact is that water purchases, both temporary and permanent, are commonly used in California to redirect water resources to areas of greatest need, consistent with the legislative policy of the state to facilitate water transfers. (See Wat. Code, Sections 475, 480 *et seq.*)

In addition, the DEIR identified several other features that would ensure that the impacts would remain less than significant (see Impact UTL-2). The Draft EIR identified that the City of American Canyon has a Water Shortage Contingency Plan that identifies the stages of actions to be taken during a reduction in available water supply. Furthermore, the Draft EIR identifies the application of the City's Zero Water Footprint (ZWF) Policy, which would require developers to minimize demand for new potable water by using water efficient fixtures; using recycled water for non-potable uses when available; using recycled water for toilet flushing via dual plumbing at commercial and industrial buildings; installing water wise landscaping and irrigation; and other appropriate measures. Furthermore, new industrial uses would require dual plumbing and would set limits for daily water use, pursuant to American Canyon Municipal Code Chapter 13.10 (New Water and Sewer Connections and Services).

Therefore, no revisions to the DEIR are necessary.

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<sup>2</sup> City of American Canyon. 2023. 2020 Urban Water Management Plan Final: January 2023. Prepared by: Carollo Engineers, Inc.

### **Response A.3-3**

*The commenter expresses concern over the finding of less than significant impacts under Impact UTL-2 because the DEIR failed to consider the impacts of the ongoing litigation. The commenter recommends that American Canyon refrain from relying on Vallejo Water to serve the project and other developments while litigation is ongoing.*

Please refer to Response A.3-2, which explains why impacts would remain less than significant. No revisions to the DEIR are necessary.

### **Response A.3-4**

*The commenter states that the DEIR mischaracterizes the nature of water Vallejo supplies to American Canyon. Specifically, the commenter states that Section 4.17.1 of the DEIR fails to recognize the place of use restrictions associated with Vallejo's water rights. The commenter explains that Vallejo's only water right with an authorized place of use that includes American Canyon is License 7848, which does not extend to the whole of American Canyon.*

Please refer to Response A.3-2, which provides further explanation of the assumptions about water supply used in the Draft EIR analysis. No revisions to the DEIR are necessary.

### **Response A.3-5**

*The commenter recommends that American Canyon perform a Cumulative Water Supply Assessment for all planned projects near the Paoli/Watson Lane annexation area. The commenter recommends American Canyon consult with Vallejo as part of this process and should consider developing an alternative water supply for the project.*

The DEIR provides a programmatic and conservative overview of potential environmental impacts that may result from annexation of the project site. Specific development plans for the project site are not yet available and thus a Cumulative Water Supply Assessment is not feasible at this stage. A Cumulative Water Supply Assessment may be reasonable when specific development proposals are available, at the discretion of the City, so that the assessment includes the most recent planned and existing projects. In the interim, Section 4.17.4, *Cumulative Impacts*, addresses cumulative water supply impacts and finds such impacts to be less than significant. Therefore, no revisions to the DEIR are necessary.

### **Response A.3-6**

*The commenter states that completing a cumulative water supply assessment supports the purpose of the DEIR as a programmatic EIR. The commenter states that the DEIR should evaluate the impact of increasing the average of the residential estate zoning area to ensure that the programmatic issues are properly addressed and mitigated in the DEIR.*

While some of the project site would be pre-zoned, as discussed in Section 2.5.7, *Project Buildout*, the Residential Estate pre-zoning is intended to acknowledge the existing residential uses on the project site and residential growth is not considered in the DEIR (also refer to Responses A.1-3 and A.3-11). As such, there would be no additional water demand from this change in pre-zoning. Please also refer to Response A.3-5. No revisions to the DEIR are necessary.

### Response A.3-7

*The commenter recommends that footnote number 3 be amended on page 4.17-2 of the DEIR to clarify that the State imposed curtailments on Vallejo's License 7848 and these curtailments were not an action of Vallejo. The commenter also recommends that the DEIR be amended to disclose and consider that License 7848 was curtailed again in 2021 and 2022 and the Barker Slough Pumping Plant was curtailed in 2021 and 2022 for the presence of Delta Smelt larvae in accordance with the ITP in place for SWP facilities. The commenter states the ITP has the potential to significantly impact the availability of water supplies to the region including American Canyon.*

Please refer to Response A.3-2, which explains how the numbers used in the water supply analysis are reasonable and why impacts would be less than significant. The commenter has not presented any new information that would change the impact analysis and for that reason no revisions to the DEIR are necessary.

### Response A.3-8

*The commenter states that the DEIR used incorrect water volumes. Specifically, the commenter states under the 1996 Water Services Agreement the volume of Vallejo treated water available to American Canyon is 2,074 acre feet (AF) instead of 3,206 AF which is referenced in Table 4.17-1 of the DEIR. The commenter cites American Canyon's 2020 Urban Water Management Plan which identifies 628.6 AF of Vallejo Treated Water available for purchase and recommends that the water supply for the project be reevaluated.*

Please refer to Response A.3-2, which explains that the analysis of water supply relies on the water supply presented in American Canyon's 2020 UWMP. The Draft EIR analysis assumes the approximately 629 AFY of Vallejo Treated Water. Please refer to the numbers in Table 6-9 of the American Canyon 2020 UWMP, which presents the water supply numbers during normal-dry years, including the approximately 629 AFY from Vallejo Treated Water. These numbers are consistent with the numbers presented in Table 4.17-3 of the Draft EIR. No revisions to the DEIR are necessary.

### Response A.3-9

*The commenter states that the DEIR relies on American Canyon's Zero Water Footprint policy to find that there would be no net increase in water demands. The commenter expresses concern that there is no analysis of how the project will comply with that policy.*

Please refer to Response A.3-2. The ZWF policy is enforceable during the project approval stage for development facilitated by the project. The City of American Canyon disagrees that there is no analysis of how the project would comply with this policy. In fact, the Draft EIR includes a list of measures to achieve this policy. Below is an excerpt from Section 4.17 the Draft EIR that outlines these actions:

Developers are required to minimize demand for new potable water by using water efficient fixtures; using recycled water for non-potable uses when available; using recycled water for toilet flushing via dual plumbing at commercial and industrial buildings; installing water wise landscaping and irrigation; and other appropriate measures (City of American Canyon 2022).

As such, no revisions to the DEIR are necessary.



### **Response A.3-10**

*The commenter states that the street improvements such as extending Newell Drive and the circulation improvements along Paoli Loop and Watson Lane as discussed in the DEIR are growth inducing impacts. The commenter states that these improvements will have effects on VMT, noise, population, greenhouse gas emissions, energy, air quality, and aesthetics.*

The City of American Canyon disagrees with the assertion that the extension of Newell Drive and associated circulation improvements are growth inducing impacts. These roadway improvements are aimed at increasing local and regional circulation and would not induce population or economic growth as they will serve existing users. Even if roadway improvements are determined to be growth inducing impacts, Section 5.1, *Growth Inducement*, in Section 5, *Other CEQA Required Discussions*, discusses the project's overall potential to foster economic or population growth. The DEIR concludes that, while the project, including roadway improvements, could induce economic growth, the City anticipates that the local and regional labor force would adequately support this growth especially given the new housing anticipated from approved projects, such as the Watson Ranch Specific Plan and Broadway District Specific Plan. Therefore, no revisions to the DEIR are necessary.

### **Response A.3-11**

*The commenter states that the DEIR does not adequately address affordable housing. The commenter states that the City has disregarded LAFCO's policies and failed to address affordable housing. The commenter recommends that the DEIR address how any fee charged for affordable housing will ensure that an adequate amount of affordable housing would be constructed to meet requirements.*

The City of American Canyon is aware of the need to add affordable housing in the region and is pursuing its Regional Housing Needs Allocation through other projects that aim to add residential units. None of the project objectives, as listed in Section 2.7, *Project Objectives*, are related to housing, and therefore, affordable housing is outside of the scope of the project. Furthermore, and as discussed in Section 4.13, *Population and Housing* on page 4.13-4:

Because this project would be limited to commercial, industrial, and town center uses, the project would not affect the availability of affordable housing. The City of American Canyon has an affordable housing nexus fee, which would require payment by the applicants of any future development on the project site and would fund affordable housing. As such, because the project would not affect the availability of affordable housing and because the project would require the payment of an impact fee to fund affordable housing, the impacts on affordable housing are not discussed any further.

While some of the project site would be pre-zoned, as discussed in Section 2.5.7, *Project Buildout*, the Residential Estate pre-zoning is intended to acknowledge the existing residential uses on the project site and residential growth is not considered in the DEIR. Lastly, Napa County LAFCo is responsible for reviewing and approval of the City's annexation application, which includes this DEIR. No revisions to the DEIR are necessary.

April 21, 2023

Letter P.1

City of American Canyon  
4381 Broadway Street, Suite 201  
American Canyon, CA 94503

City of American Canyon Planning Commission  
City of American Canyon City Counsel

**Subject:** City of American Canyon Paoli/Watson Lane Annexation Project, Environmental Impact Report

***Request:***

We request that the City of American Canyon Planning Commission revise its current proposed zoning for our properties as currently presented in the Environmental Impact Report to reflect the zoning as presented in the 2019 Annexation Project [see *Attachment A (2019) and Attachment B (2023)*].

P.1-1

***Background:***

On September 21, 2022, the Paoli/Watson Lane Annexation Project Public Scoping Meeting was held via Zoom. Proposed zoning in the materials presented at that meeting identified differences on the proposed zoning when compared to 2019 proposed zoning; these differences impact allowed uses on our property (parcel numbers: 057-120-050 and 057-120-051), and also appears to impact our neighbor's property (parcel number 057-120-045). The proposed zoning in the current proposal for these parcels is Residential Estate (RE). In the 2019 proposal, the proposed zoning for the front of our properties was RE, with the back of our properties zoned as Paoli Light Industrial (PLI).

P.1-2

On October 4, 2022, we submitted an inquiry to Sean Kennings, Lake Associates, regarding the change. We asked about the purpose of the change, and we requested that the proposed zoning be changed to reflect the 2019 proposal. Because we did not receive a response to our questions/comments, we submitted a subsequent inquiry to City staff on November 29, 2022. We were informed by City staff that the previous project was a Property Owner-initiated annexation project, and that project failed. The current project is a City-initiated project and maintains a status-quo zoning for Watson Lane properties to minimize environmental impacts and mitigation, and that land use changes may be considered any time following annexation.

P.1-3

***Comments:***

We believe it is more appropriate to discuss proposed zoning before our property is annexed into the City rather than request a change after annexation. Therefore, for the reasons noted below, we respectfully ask that the City Planning Commission/City Council consider our request:

P.1-4

- The uses allowed on our properties under the 2019 project are more consistent with the uses allowed under the Airport Zoning.

Based on our review of the Napa Airport Land Use Compatibility Plan, our properties are located in Zone D, which, in part, prohibits “Residential uses, except for residential uses allowable under agricultural land use and zoning designations.” (*Attachment C: 17.34.040 ALUCP Zone D regulations*). Light industrial appears to be allowed in Zone D.

P.1-5

- Our request is consistent with the proposed zoning as illustrated in an attachment to American Canyon City Council Resolution No. 2019-22 (passed, approved, and adopted by City Council on March 19, 2019) and Resolution No. 2019-44 (passed, approved and adopted by the City Council on June 18, 2019). Although an owner-initiated project (Paoli), the proposed zoning was adopted by the City Council.

P.1-6

[Please note that we reviewed the meeting agendas and notes for the Planning Commission meetings and City Council Meetings that are available on the City’s website (2021 to date), and we are unable to locate a proposed revision to the 2019 proposal other than what was presented at the September 22, 2022 NOP Workshop. We would appreciate assistance in locating documents from the Planning Commission/City Council meetings that discussed and subsequently revised/replaced Resolutions No. 2019-22 and No. 2019-44, if such documents exist.]

- The uses allowed on our properties under the 2019 project are more consistent with how we believe our property should be zoned. Light industrial will be directly behind our parcels; therefore, the option of light industrial on the back of our parcels provides more options on our properties. Also, it should not impact the Environmental Impact Report due to the proximity of our parcels to the Paoli property that will also be zoned light industrial.

P.1-7

In summary, we believe the proposed zoning should reflect the 2019 proposal. We believe the current proposal prohibits/restricts future development of our properties. Also, based on our review of the materials on the City’s website, our proposed zoning request is consistent with previously adopted resolutions of the City Council.

P.1-8

Thank you considering our request.

Sincerely,

  
Leslie E. Lawson

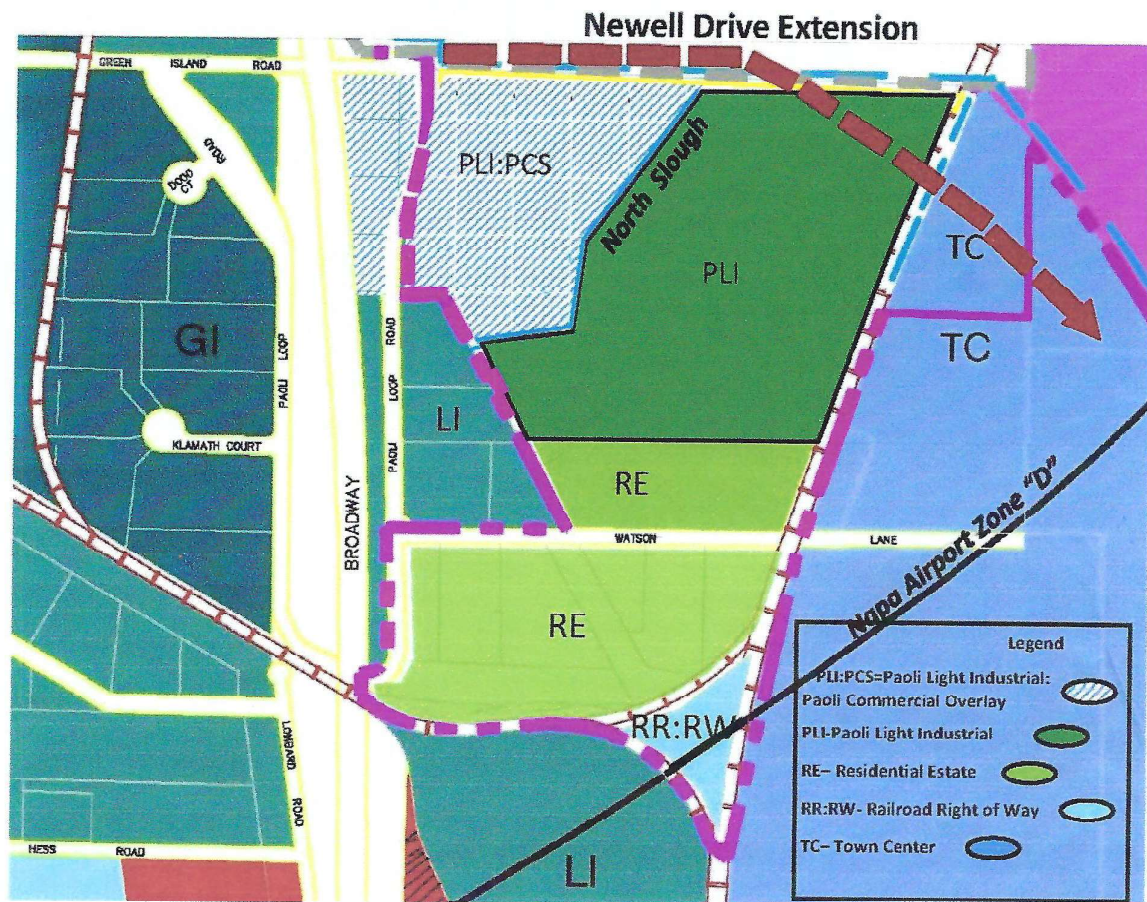
  
Margaret E. Lawson



2019

Attachment A

Figure 2 - Proposed Prezoning



- **Environmental Review** - The land use changes and annexation application are subject to the California Environmental Quality Act (CEQA). The Agreement designates the City as the Lead Agency who would prepare the environmental review.
- **Dedication of Public Right-of-Way** - A portion of the future Newell Drive Right-of-Way traverses the Paoli Property. The Paoli Owner will dedicate the future Newell Drive Right-of-Way within their Property and dedicate Right-of-Way to realign Paoli Loop prior to LAFCO certification of the certified annexation. The general alignment for Newell Drive and Paoli Loop is shown in Figure 1.
- **Land Use Processing and Environmental Review Cost Reimbursement** - The Annexation process will incur costs for a variety of purposes ("Annexation Costs"). The Owner shall reimburse the City their "Fair Share" of Annexation Costs after the effective date of the Annexation which includes the following:
  - Preparing Land Use Documents (e.g., General Plan Amendment, Prezoning).
  - Environmental review.
  - Community outreach.
  - City Staff, Legal, and Consultants costs with associated Overhead charges.
  - County and LAFCO fees.

#### *Watson Lane Properties*

All of the Watson Lane property is located in Zone D of the Napa Airport Land Use Plan. In accordance with this plan, residential uses are not permitted in Zone D. Napa County, the current land use authority for this property, recognizes that the Watson Lane neighborhood predates Zone D. In recognition of this



2023

Attachment B

Notice of Preparation  
City of American Canyon Paoli/Watson Lane Annexation

Figure 5 Proposed Pre-Zoning



Imagery provided by Microsoft Bing and its licensors © 2022.  
Additional data provided by County of Napa, 2022.



project proposing heights over the applicable height limit shall require a use permit and be referred to the ALUC prior to final approval.

3. Lot Coverage. Lot coverage is governed by density and/or FAR limits assigned by the General Plan. If such limits are not identified for a particular site due to "Study Area" designations, the building lot coverage limit shall be 20%. Any project proposing a change in the General Plan FAR, density, or, for an unassigned site, building lot coverage over 20%, shall be referred to the ALUC prior to final approval.

(O2003-12)

#### **17.34.040 ALUCP Zone D regulations.**

Within ALUCP Zone D, most nonresidential uses are normally acceptable. However, the following standards shall apply in addition to the standards of the principal zoning district:

- A. Overflight easements acceptable to the city in consultation with the airport proprietor shall be required as a condition of subdivision approval and/or discretionary permits for new construction, including expansions greater than 5,000 square feet in size. Such easements shall be prepared prior to issuance of a building permit and granted to the airport proprietor.
- B. Prohibited Uses. The following uses are prohibited:
  - 1. Landfills;
  - 2. Residential uses, except for residential uses allowable under agricultural land use and zoning designations.
- C. Uses Not Normally Acceptable. The following uses raise concerns related to size, density of use, mobility, noise sensitivity or propensity to attract birds to be addressed for a project to be approved. Such uses shall require use permits and shall be referred to the ALUC for a compatibility determination prior to final approval.
  - 1. Public or private schools for children under 18;
  - 2. Libraries;
  - 3. Hospitals, major medical facilities (skilled nursing and similar);
  - 4. Day care centers;
  - 5. Retail buildings and shopping centers greater than 40,000 square feet; or smaller retail buildings and centers that, when combined with an adjacent retail building and center, would in combination total more than 40,000 square feet;
  - 6. Amphitheaters;
  - 7. New ponds;
  - 8. Residential uses allowable under agricultural land use and zoning designations.
- D. Use Review Criteria. In determining whether proposed uses in subsection C have been appropriately designed, decision-making body shall consider the following criteria:
  - 1. Density. Density of use averaged over the entire site (excluding streets) should not exceed 100 persons per acre in structures, or 150 persons in and out of structures.
  - 2. Clustering. Clustering of development within the density parameters is encouraged to protect and provide open land/safety areas for emergency landing (such as requiring building envelopes, contiguous parking and landscape areas, and larger setbacks from certain geographic features such as creeks, roads, etc.).
  - 3. Noise. Appropriate noise reduction measures have been incorporated for noise sensitive uses (such as schools or libraries) consistent with ALUCP and city General Plan standards, whichever is more restrictive.
- E. General Design Requirements.
  - 1. Lights, glare, electronic interference. All uses and structures shall be designed so as to prevent hazard to flight that could occur as a result of smoke, glare, distracting lights, or electronic interference. All exterior lighting shall be directed downward or shielded to prevent glare to aircraft and meet any approved ALUC lighting guidelines. The Community Development Director may require the applicant to consult with Airport Land Use Commission (ALUC) staff, the airport manager or a qualified airport land use planning consultant

## Letter P.1

**COMMENTER:** Leslie E. Lawson and Margaret E. Lawson

**DATE:** April 21, 2023

### Response P.1-1

*The commenters request that the American Canyon Planning Commission revise the proposed zoning for their properties as included in the DEIR to reflect the zoning as presented in the 2019 annexation project proposal.*

The City revised the proposed pre-zoning between 2019 and commencement of preparation of the DEIR in 2022 by extending the Residential Estates pre-zoning border north to ensure that entire parcels were pre-zoned for one use. Under the 2019 proposal, pre-zoning of certain parcels in the middle of the project site (parcels I and M as indicated on Table 2-1 on page 2-4 and Figure 2-3 on page 2-5 of the DEIR) would have been split into two uses. Regardless, the proposed pre-zoning is a component of the proposed project which is outside of the scope of analysis within the DEIR. The DEIR analyzes and discloses the potential environmental impacts and mitigation measures to reduce potentially significant impacts of the proposed project. The DEIR does not propose zoning, but instead evaluates impacts of proposed zoning. Therefore, no additional revisions to the DEIR are necessary in response to this comment.

### Response P.1-2

*The commenters state that there are differences in the 2019 proposed zoning and the current proposed zoning for their property (APN 057-120-050 and 057-120-051) and their neighbor's property (APN 057-120-045). The commenters state that the current proposed zoning for these parcels is RE and that in the 2019 proposal the zoning for these parcels was RE with the back of the properties zoned as Paoli light industrial (PLI).*

Please refer to Response P.1-1. This comment does not pertain the DEIR or CEQA. Therefore, no additional revisions to the DEIR are necessary in response to this comment.

### Response P.1-3

*The commenters state that they submitted inquiries to both Sean Kennings, Lake Associates, and City staff asking about the purpose of this change and to request that the proposed zoning be changed to reflect the 2019 proposal. The commenters state that City staff informed them that the previous project was a property owner-initiated project while the current proposal is a City-initiated project. The City staff further indicated that the current proposal maintains a status-quo zoning for Watson Lane properties to minimize environmental impacts and mitigation and that land use changes may be considered any time following annexation.*

The City concurs its previous response as referenced by the commenter from November 29, 2022. In addition, please refer to Response P.1-1 regarding consistency of pre-zoning across individual parcels. Additionally, as discussed in Response P.1-1, pre-zoning is a component of the proposed project and is not proposed by the DEIR. The DEIR evaluates potential environmental impacts of the proposed project. Therefore, no additional revisions to the DEIR are necessary in response to this comment.

## Response P.1-4

*The commenters express an opinion that it is more appropriate to discuss proposed zoning before annexation rather than request a change after annexation.*

Please refer to Response P.1-1. As described therein, no additional revisions to the DEIR are necessary, as zoning is a component of the proposed project and is only evaluated for potential environmental impacts in the DEIR.

## Response P.1-5

*The commenters state that the uses allowed on their properties under the 2019 proposal are more consistent with the uses allowed under the airport zoning. The commenters state that their properties are located in Zone D in the Napa Airport Land Use Compatibility Plan which, in part, prohibits residential uses except for those allowable under agricultural land use zoning designations. The commenters state that light industrial land use appears to be allowed in Zone D.*

The DEIR states on page 2-16 under Section 2.8, *Required Approvals*, that the City will not approve a residential use application in Zone D until an amendment to the Airport Land Use Compatibility Plan has been approved or December 31, 2023, whichever occurs first. The City notes that revisions to the Airport Land Use Compatibility Plan are underway and future residential development with additional environmental review under CEQA may be possible. Further, as noted under Response P.1-1, proposed pre-zoning is a component of the proposed project. The DEIR evaluates the environmental impacts of the proposed project. No additional revisions to the DEIR are required in response to this comment.

## Response P.1-6

*The commenters state that the zoning proposed in 2019 was adopted by the City Council through Resolution No. 2019-11 and Resolution No. 2019-44. The commenters also request assistance in locating documents from the Planning Commission/ City Council meetings that revised or replaced these resolutions.*

Resolution 2019-11 relates to the City participating in Phase 2 of the Sites Reservoir project. Resolution 2019-44 is a First Amended Pre-Annexation Agreement for the Cecil Augusto Paoli Revocable Family Trust property as a portion of the Paoli Loop/Watson Lane Area Annexation affected area. Thus, neither resolution relate to rezoning. Furthermore, rezoning must occur by Ordinance and not Resolution. This comment does not pertain to the DEIR or CEQA. Therefore, no additional revisions to the DEIR are necessary in response to this comment.

The commenter requests assistance in obtaining documents from meetings where Resolution No. 2019-11 was addressed. Copies of these documents can be obtained by submitting a public records act request at City Hall located at 4381 Broadway, American Canyon, California 94503 or on the following website address: <https://rb.gy/laozg>.



### **Response P.1-7**

*The commenters express an opinion that their property should be zoned according to the 2019 proposal because light industrial will be directly behind their properties, so allowing light industrial on the back of their properties would give them more options on their properties. The commenters express an opinion that this change should not affect the environmental impact report because their parcels are in close proximity to the Paoli property that will also be zoned light industrial.*

This comment pertains to a zoning request for a specific property. This comment does not pertain to the DEIR or CEQA. The commenter acknowledges this comment does not pertain to the DEIR. Therefore, no additional revisions to the DEIR are necessary in response to this comment.

### **Response P.1-8**

*The commenters express an opinion that the proposed zoning should reflect the 2019 proposal because the current proposal prohibits and restricts future development on their properties and because their request is consistent with previously adopted City Council resolutions.*

This comment pertains to a zoning request for a specific property or properties. This comment does not pertain to the DEIR or CEQA. No additional revisions to the DEIR are necessary in response to this comment.

April 26, 2023

City of American Canyon  
4381 Broadway Street, Suite 201  
American Canyon, CA 94503

Letter P.2

City of American Canyon Planning Commission  
City of American Canyon City Counsel

**Subject:** Alternative 4: City of American Canyon Paoli/Watson Lane Annexation Project,  
Environmental Impact Report

We reviewed the Staff Report, Business Item Number 5, and would like to provide some comments in reference to Alternative 4 for your consideration.

The following are excerpts from the Staff Report regarding Alternative 4:

- Assumes that the Newell Drive extension would not extend north of Watson Lane, and that travelers would instead utilize Watson Lane and Paoli Loop Road for travel between Newell Drive and SR 29, and between Newell Drive and the planned extension of South Kelly Road.
- Utilizes an existing-at-grade crossing of the Union Pacific Railroad (UPRR) tracks on Watson Lane.
- Requires an 80-foot right-of-way width.

P.2-1

**Request:**

For the reasons noted in our below comments, we request that the City of American Canyon Planning Commission/American Canyon City Council do not choose/adopt Alternative 4 in the Paoli Watson Lane Annexation Draft Environmental Impact Report (DEIR) (April 27, 2023 Staff Report Business Item Number 5).

P.2-2

**Comments:**

In general, Alternative 4 is the only alternative that negatively impacts current private residences. Therefore, we ask that you please consider the following comments when determining the best long-term plan for the City of American Canyon.

**Comment 1: Alternative 4 would require an 80-foot right-of-way width.**

Currently, Watson Lane is approximately 20 feet wide. Alternative 4 would make Watson Lane a “major collector street” that would require 4 times the current width. Based on the difference, it appears this alternative would require 30-foot-wide encroachments on each private residence along Watson Lane.

P.2-3

- *Issue: Cost incurred by the City to acquire the 30-foot encroachments on each private residence along Watson Lane.*

<ul style="list-style-type: none"> <li>• <i>Issue: Proximity of homes to widened road.</i> Some of our neighbor’s homes are already close to the road. How will the proposed encroachment impact these residents and other Watson Lane residents? For example: <ul style="list-style-type: none"> <li>➤ Will the widened road meet city setback requirements?</li> <li>➤ How will this “major collector street” impact Watson Lane residents with the traffic and noise level increase with the road so close to their homes.</li> <li>➤ How will the increased pollution resulting from additional vehicles impact the residents?</li> <li>➤ How will the Watson Lane property values be impacted, and what is the risk to the City for implementing a proposal that results in reduced property values?</li> <li>➤ With increased traffic, there is potential for an increase in crime. Does the City plan to increase its emergency services?</li> <li>➤ How will the city control the speed and traffic associated with the number of potential cars utilizing this road to avoid Highway 29 during peak commuting times?</li> </ul> </li> </ul>	P.2-4
<ul style="list-style-type: none"> <li>• <i>Issue: Encroachment on Leach Lines/Septic Systems.</i> We do not know the exact location of all the septic systems on Watson Lane, but we do know of one septic system that is within the 30-foot encroachment. <ul style="list-style-type: none"> <li>➤ How would the city address the issue of the inability to use septic systems located within the encroachment. The home(s) would be inhabitable until a different option(s) is available and in use.</li> <li>➤ Will the City incur the cost for the new septic system(s)? If not, what is the risk to the City for implementing a proposal that results with unnecessary costs to the Watson Lane homeowner(s)?</li> </ul> </li> </ul>	P.2-5
<ul style="list-style-type: none"> <li>• <i>Issue: Potential Impacts to Watson Lane residents during construction.</i> We anticipate potential impacts to Watson Lane residents during construction. For example: <ul style="list-style-type: none"> <li>➤ Travel delays to and from Watson Lane residences.</li> <li>➤ Potential intermittent loss of utilities (electricity, gas, water) during construction.</li> <li>➤ Potential delays in emergency services (ambulance, fire, police) during construction.</li> <li>➤ Storage of large equipment during construction.</li> <li>➤ Where does the City plan to stage potential large equipment during the process and how will this impact Watson Lane residents?</li> </ul> </li> </ul>	P.2-6
<p><b><i>Comment 2: Alternative 4 would result in potential major traffic delays during times of railway use.</i></b></p> <ul style="list-style-type: none"> <li>➤ <i>Issue: Delays in traffic during times on Watson Lane during railroad use.</i> This issue is addressed in the EIR, but we are including it in our comments to note the delays in traffic during railroad use time will block entrances to Watson Lane residences.</li> </ul>	P.2-7

- *Issue: Extended Delays in traffic due to Watson Lane's proximity to the Railroad yard, and the lead switch, which is currently located approximately 40 feet from Watson Lane. (If Watson Lane is widened, the lead switch will be approximately 10 feet from Watson Lane.)*

Currently, trains block Watson Lane traffic while operating manual switches and moving railroad cars back and forth. At this time, trains cross Watson Lane approximately 4 to 6 times a day. It is not uncommon for the trains to block the road from 5 minutes to as long as 15 minutes. Depending on the number of cars using Watson Lane as the "major collector street," cars could be sitting idle on Watson Lane, Paoli Loop, and potentially the freeway waiting to continue travel down Watson Lane.

To illustrate the potential number of cars that may use Watson Lane under Alternative 4, the following are excerpts from an article in The American Canyon Eagle (*Proposed American Canyon annexation has Highway 29 connection*, September 22, 2022, updated September 30, 2022) that provided information on the proposed annexation of 83 acres that will include the Newell Drive connection to Highway 29.

"[A] Newell Drive extension across an annexed Paoli/Watson Lane area would provide another entrance to adjacent 300-acre Watson Ranch, which is to have more than 1,000 homes."


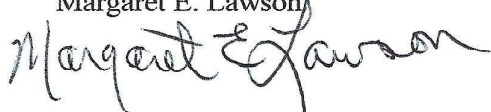
The article also includes a comment from city councilmember David Oro "[T]aking even **100 cars** an hour off Highway 29 putting them on an extended Newell Drive would help with the highway traffic." *Emphasis added.*

To summarize this issue, halting traffic on Watson Lane during times of railroad use is bigger issue when compared to halting traffic in Alternative 2 due to the proximity of the lead switch to Watson Lane.

Thank you in advance for reviewing and considering our comments. As discussed above, we do not believe Alternative 4 is the best option for the current residences of Watson Lane, future residences of Watson Ranch, or for the City of American Canyon. If you have any questions, feel free to contact us.

Thank you,

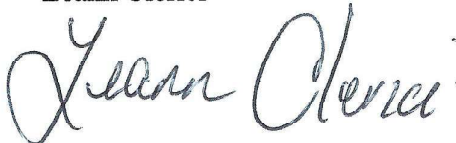
Leslie E. Lawson  
260 Watson Lane  
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Margaret E. Lawson  


Sam Clerici  
220 Watson Lane



Leann Clerici





## Letter P.2

**COMMENTER:** Leslie E. Lawson, Margaret E. Lawson, Sam Clerici, and Leann Clerici

**DATE:** April 26, 2023

### Response P.2-1

*The commenters state that they reviewed the staff report and are providing comments in reference to Alternative 4. The commenters state that according to the staff report, Alternative 4 assumes the Newell Drive extension would not extend north of Watson Lane and that travelers would instead utilize Watson Lane and Paoli Loop Road to travel between Newell Drive and SR 29, and between Newell Drive and the planned extension of South Kelly Road. The commenters also state that the staff report indicates that Alternative 4 would utilize an existing-at-grade crossing of the Union Pacific Railroad tracks on Watson Lane and require an 80-foot right-of-way width.*

The commenter stated their understanding of Alternative 4. No additional revisions are required in response to this comment.

### Response P.2-2

*The commenters request that the City not choose Alternative 4 in the DEIR because it is the only alternative that negatively impacts current private residences.*

As required by CEQA, an EIR must describe a reasonable range of alternatives to a proposed project that could feasibly attain most of the basic project objectives, and would avoid or substantially lessen any of the proposed project's significant effects. The Draft EIR does not recommend approval of the proposed project or alternatives to the proposed project, such as Alternative 4. The City Council will make a decision on whether to approve the Proposed Project and is required to make Findings regarding Alternatives considered, pursuant to CEQA Guidelines Section 15091. Letter P.2 will become part of the FEIR and thus, will be provided to the advisory bodies and City Council. No additional revisions to the DEIR are required in response to this comment.

### Response P.2-3

*The commenters state an opinion that the 80-foot right-of-way required as part of Alternative 4 would make Watson Lane a "major collector street" that would require four times its current width of 20 feet. The commenters state this would require 30-foot-wide encroachments on each private residence along Watson Lane. The commenters express concern over the cost incurred by the city to acquire these encroachments.*

Please refer to Response P.2-2. As described therein and on page 6-17 of the DEIR, implementation of Alternative 4 would encroach on private property. Please also see Figure 6-1 in the DEIR, which shows the potential areas that may need to be encroached on for this alternative, including driveways for residences. The cost associated with acquiring land is not a CEQA environmental topic or issue, which are identified in Appendix G of the CEQA Guidelines. Accordingly, no additional revisions to the DEIR are required in response to this comment.

## Response P.2-4

*The commenters express concerns over the proximity of homes to the widened road required as part of Alternative 4. The commenters raise questions regarding city setback requirements, traffic and noise levels, increased pollution, property values, increase in emergency services due to an increase in crime, and the control of traffic along Watson Lane if Alternative 4 is chosen.*

New roadway development would comply with City setback requirements as a regulatory requirement of the Municipal Code. As noted on page 6-19 in Section 6, *Alternatives*, there is no substantial evidence that Alternative 4 would increase VMT, and the commenter does not provide supporting evidence or documentation. Congestion, traffic, and speed are not impacts discussed under CEQA (see both Section 15064.3 and Appendix G of the CEQA Guidelines). Since there would be no increase in VMT, associated air quality and noise impacts from vehicles is not assumed to increase either. Impacts to property values are not analyzed under CEQA, as property value impacts are not environmental impacts subject to environmental review under CEQA. As discussed on page 6-18 in Section 6, *Alternatives*, Alternative 4 is not anticipated to result in an increase in emergency calls rates, such as calls to respond to crimes. Please refer to Response P.2-2 regarding the environmental impacts of Alternative 4. No additional revisions to the DEIR are required in response to this comment.

## Response P.2-5

*The commenters express concerns over encroachment on leach lines or septic systems required as part of Alternative 4. The commenters raise questions regarding the use of septic systems within the encroachment area and if the City would incur the cost for new septic systems.*

As discussed on page 6-17 in Section 6, *Alternatives*, the DEIR notes that roadway widening under Alternative 4 would encroach on existing private properties and would require the take of portions of encroached properties. Potential replacement or movement of septic systems is outside of the scope of this DEIR because septic relocation is not proposed. Additionally, please refer to Response P.2-2 regarding the environmental viability of Alternative 4. No additional revisions to the DEIR are required in response to this comment.

## Response P.2-6

*The commenters express concerns about the impact to residents during the construction on Watson Lane included as part of Alternative 4, such as impacts to utilities and delays in emergency service responses. The commenters raise questions regarding where large equipment would be staged during construction.*

Impacts related to travel delays are not relevant to CEQA analysis for land use projects, such as the proposed project (see Section 15064.3 of the CEQA Guidelines). Construction staging is not determined because no specific construction projects have been designed or proposed as part of the proposed project or alternatives, including Alternative 4. As discussed on page 6-19 in Section 6, *Alternatives*, impacts to utilities resulting from Alternative 4 were determined to be less than significant, similar to the proposed project. As discussed on page 6-18 in Section 6, *Alternatives*, the DEIR acknowledges that impacts to response times for police and fire services would be impacted more severely than analyzed under the project. Additionally, please refer to Response P.2-2 regarding the environmental viability of Alternative 4. No additional revisions to the DEIR are required in response to this comment.

### **Response P.2-7**

*The commenters express an opinion that Alternative 4 would result in major traffic delays during railroad use time which would block entrances to Watson Lane residences. The commenters note this is addressed in the DEIR.*

Traffic and vehicle delay are not issues required for analysis under CEQA for land use projects, such as the proposed project and alternatives to the project (CEQA Guidelines Section 15064.3). Additionally, please refer to Response P.2-2 regarding the environmental impacts of Alternative 4. No additional revisions to the DEIR are required in response to this comment.

### **Response P.2-8**

*The commenters state that they believe Alternative 4 is not the best option for the current residents of Watson Lane, future residents of Watson Ranch, or the City as a whole.*

As discussed under Response P.2-2, the DEIR notes that Alternative 4 is the least environmentally superior alternative of the alternatives analyzed in the DEIR. Also described in Response P.2-2, the Draft EIR does not recommend approval of Alternative 4, other alternatives, or the proposed project, but instead discloses the potential environmental effects of the project and alternatives, compared to the project. City Council will make a decision on whether to approve the Proposed Project and is required to make Findings regarding Alternatives considered, pursuant to CEQA Guidelines Section 15091. Therefore, no additional revisions to the DEIR are required in response to this comment.

To: Sean Kennings

4/28/2023

From: Charles Lemmon, 193 Watson Lane, American Canyon

Subject: Watson Lane annexation Draft EIR comments

The EIR is a well written comprehensive discussion of potential impacts. I do have 3 comments / concerns. If the comments are incorporated into the report, they have the potential to increase the reports acceptance and credibility.

P.3-1

1) Alternatives section

The Alternatives section should include the LAFCO recommended alternative. The LAFCO recommended / preferred alternative is to extend Newell Drive to connect with South Kelly road with No green island cross connection. Most residents of Watson Lane and the City of American canyon strongly favor the LAFCO routing. I understand the City Manager's concerns about potential project schedule impacts due to Napa County being in control of the process. The uncertainty of Newell extension to South Kelly could be listed as the negative impact that lowers the score of this alternative below the City recommended project. Leaving out the Citizens and the LAFCO agency's most favored Newell Drive Extension alternative significantly lowers the credibility of the EIR alternatives analysis section.

P.3-2

2) Utilities impacts, wastewater.

Refer to the snip below.

than significant.

Impact UTL-3: The project would increase demand for wastewater treatment but there is adequate wastewater treatment capacity to serve the project's projected demand in addition to existing commitments. Impacts would be less than significant.

No mitigation measures would be required.

Impact UTL-4: The project would not generate solid waste in excess of state or local standards.

No mitigation measures would be required.

P.3-3

Please add the words "and the existing residential properties on Watson Lane" after the words "capacity to serve the project's". Referencing the residential properties capacity needs, will make the EIR more inclusive to the residents needs. The discussion of available capacity does not commit the City to mitigate the lack of sewer service to the residences.

3) Environmental impacts TAC PM 2.5

Refer to snip below

P.3-4



In addition, the proposed extension of Newell Drive would add a new source of TAC emissions to the project area that could adversely affect sensitive receptors residing in close proximity. For roadways, BAAQMD has developed a Roadway Screening Analysis Calculator to assess whether new roadways with traffic volumes over 10,000 vehicles per day may have a potentially significant impact. Project-specific data was input to the screening calculator such as the county, roadway direction, and future vehicle volume. Based on traffic data, under cumulative plus project conditions, the Newell Drive extension is estimated to have up to 28,072 vehicles per day (GHD 2022). The nearest off-site sensitive receptor to the proposed extension is a residence located approximately 850 feet to the south on Watson Lane. At this distance, the increased cancer risk at the nearest off-site residence would be up to 1.6 in one million, which would not exceed the BAAQMD significance threshold of 10 in one million increased cancer risk. The annual PM<sub>2.5</sub> concentration would be up to 0.04 ug/m<sup>3</sup>, which would not exceed the BAAQMD significance threshold of 0.3 ug/m<sup>3</sup>. Therefore, community health risk impacts from the proposed Newell Drive Extension would be less than significant.

P.3-4 cont.

### **Mitigation Measures**

AQ-2     *Conduct Construction Health Risk Assessment*

The EIR should provide the details of the traffic load calculation as an appendix just like the noise calculations shown in appendix C. TAC / PM<sub>2.5</sub> is an important health impact topic of concern for the residents living on Watson Lane as well as existing Newell drive residents. As written the estimated number of vehicles is listed, but the basis of the number is only discussed in general terms. This lowers the report's credibility in this important area.

General comment on Report Focus areas.

The report primarily focuses on impacts from "potential future developments". The report does not highlight the more certain impacts of the City recommended Newell Drive extension. The Newell Drive extension is not required to construct future developments on the former Paoli Property. The Newell Drive extension is a separate project that has benefits to the City of American canyon. The Newell Drive extension is what created the need to annex the Watson Lane neighborhood, not the potential development of the former Paoli property. As such the Newell Drive extension impacts should have been more highlighted as it is much more certain in the near term versus "future possible developments".

P.3-5

I don't have any recommendations on how to fix that now, Its just an observation.

## Letter P.3

**COMMENTER:** Charles Lemmon

**DATE:** April 28, 2023

### Response P.3-1

*The commenter states that the DEIR is well written and they have three comments which, if incorporated into the report, would have the potential to increase the DEIR's acceptance and credibility.*

The City thanks the commenter for their interest in the project. Responses to the referenced comments are provided in Response P.3-2 through P.3-5, below. No additional revisions to the DEIR are required in response to this comment.

### Response P.3-2

*The commenter states an opinion that the alternative section should include the LAFCO recommended alternative to extend Newell Drive to connect with South Kelly Road. The commenter states an opinion that this alternative is strongly favored by most residents of Watson Lane and American Canyon and that to leave it out of the DEIR lowers the credibility of the alternatives analysis section.*

Section 6, Alternatives, of the DEIR evaluates feasible alternatives to the project to reduce one or more potentially significant impacts of the proposed project, pursuant to CEQA Guidelines Section 15126.6. Extending Newell Drive northward to South Kelly Road and forgoing the connection to Paoli Loop Road/Green Island Road is not feasible for analysis under the DEIR since the lead agency for such a project would include Napa County. Extension of Newell Drive into South Kelly Road would require approval from Napa County under CEQA. The DEIR analyzes discretionary actions proposed by and potentially undertaken by the City of American Canyon. According to CEQA Guidelines Section 15126.6(f), jurisdictional boundaries, such as the boundary serving as the city/county limits, are factors to consider when determining the feasibility of an alternative in CEQA. Additionally, CEQA Guidelines Section 15126.6(b) states that the purpose of including alternatives in an EIR is to attempt to reduce one or more of the significant impacts identified for the proposed project. The commenter does not provide explanation or details on how their suggested alternative would reduce potentially significant impacts of the project. Therefore, no additional revisions to the DEIR are required in response to this comment.

### Response P.3-3

*The commenter requests that "and the existing residential properties on Watson Lane" should be added to the discussion of impact UTIL-3 to make the DEIR more inclusive to resident's needs.*

As discussed on page 4.17-24 of Section 4.17, *Utilities and Service Systems*, as of 2020 there was remaining capacity of 1.05 million gallons per day at the City's water reclamation facility. The City would have substantial capacity to service the residents on the project site in addition to new development that may be facilitated by the project. The project site would be added to the City's water service area and therefore, the existing residences would have the opportunity to be provided service. It is unnecessary to describe this in the DEIR. Therefore, no additional revisions to the DEIR are required in response to this comment.

### **Response P.3-4**

*The commenter requests that details of traffic load as it relates to air quality impacts be added as an appendix to the EIR.*

Traffic load volume is included in Appendix C, whereby volumes on the Newell Drive extension is estimated at 28,072 vehicles per day. The methodology to estimate traffic load is not in the purview of air quality analysis. Traffic volume, as discussed in Section 4.15, *Transportation*, was estimated using the American Canyon travel demand model. Accordingly, no additional revisions to the DEIR are required in response to this comment.

### **Response P.3-5**

*The commenter states an opinion that there should be more focus on the Newell drive Extension project throughout the DEIR as it is a separate project that created the need to annex the Watson Lane neighborhood.*

The Newell Drive extension is discussed continuously throughout the DEIR where applicable. As a project feature as described under Section 2.5.2, *Newell Drive Extension*, it is thoroughly analyzed in Sections 4.1 through 5 for potentially significant environmental impacts. Accordingly, no additional revisions to the DEIR are required in response to this comment.

Comments on the Pauli/Waton Lane Annexation Project

From: Yvonne Baginski, 707-694-5486

[yvonnebaginski@gmail.com](mailto:yvonnebaginski@gmail.com)

I am very concerned about the environmental impact of this project, which promises paving over another substantial portion of grasslands that will further work to annihilate local wildlife, increase GHG emissions, and destroy open space views. The current Environmental Impact Report is inadequate.

P.4-1

Specifically, AES-1 claims that the project would not have an adverse impact on scenic vistas. That statement bears no evidence. This project has no protections in place to ensure that scenic vistas will remain in view of the public eye. There are no restrictions for residences or industrial areas to remain single-story, no determination of space requirements between buildings, no buffer zones, or building specifications in effect. Right now, as it is written, as long as people stay within the city's building codes, they can build how they'd like. If you look at the warehouses, office buildings and apartments being built, you'll note that they are 2-3 stories high and readily obstruct all views. What is currently stated in this EIR will not protect the scenic views.

P.4-2

This project refers to "biologically sensitive areas," yet provides no information on location or protection. A 50-foot setback from the banks of the North Slough is required under current regulations. There is no extra protection for this property spelled out in this EIR. And, there is no land set aside specifically for wildlife or plant life to be allowed to thrive in a natural state. What this project does is takes away more foraging/nesting land from the local wildlife and further restrict their habitats. Some will perish, and others will no longer be found in Napa County. Almost all the land in American Canyon and south Napa County is being built up, so there is really no place left for wildlife to live. In fact, the Giovannoni Site Project eats up 7 percent of birds foraging habitat just on its own. Start adding up all the other acres eaten up by projects and the cumulative effect is devastating to the natural world. What this project fails to recognize is that it is part of a larger growth effort that will basically kill all the animals currently living or using this land.

P.4-3

One request I have is for the project to require that any residence or build on this land use only native plants and landscaping. That wildlife is allowed to flourish and must be left alone. No animal traps or poisoning are permitted. Because the animals will be surrounded by two major roads, wildlife crossing bridges or tunnels be built so they can traverse to the wetlands or up into the hills. Right now, if they cross any street they are headed to be run over by a car or truck. Because there is a slough cutting through the property, all poison traps must be strictly prohibited. Bait stations are not allowed.

P.4-4

AES-4. Lighting, especially at night, will be unavoidable. Of course, it will impact the environment. Especially the birds. To make a statement otherwise doesn't make sense. American Canyon is not a

P.4-5

“dark” city Unlike places like Tucson, Az, it currently doesn’t have ordinances in place to limit light pollution.

P.4-5 cont.

AG-1 I don’t understand the statement that no farmland will be affected. I see right in the introduction that agricultural land will be converted. “The land currently designated for Agricultural will be changed to industrial.”

P.4-6

I am also very dubious on the “promises” made to mitigate the construction process. Having watched numerous construction sites in Napa Valley, I am curious on who is going to monitor and enforce these mitigations. I know from my own experience, that until a formal complaint is made to the right person, nothing is done. I stress the right person because it could be a state official, a county official or a city official who has jurisdiction. It is often days between phone calls, and follow-up is impossible because no reports are made back to the complainer.

P.4-7

So, knowing this, how realistic is it to “require the use of newer equipment,” when the “newer” isn’t defined? The lack of concreteness in many of the mitigations makes enforcement impossible. Who will be standing at the gate to monitor and enforce that 10% of building materials are purchased locally, or 65% of construction and demolition will be recycled or reused? Who will be measuring the mitigation?

Idling a nonworking vehicle is limited to 5 minutes in this EIR. I am requesting it be further reduced to three minutes, and that nonworking vehicles be clearly defined. Sometimes the vehicle is running while someone is just sitting in it, or has left it for a few minutes.

P.4-8

What is especially appalling will be the loss of foraging land and habitat to the Swainson hawk and golden eagle. I would be very interested in knowing how purchasing mitigation credits is going to save these birds in American Canyon. Especially so since the Napa Valley Vine roundabout purchased the last mitigatable Swainson hawk nesting tree available in California at a cost of \$170,000.

Here’s one more fact to consider, the California Dept. of Fish and Wildlife has written numerous letters over the years, on various projects in American Canyon, asking specifically for grasslands to be preserved for foraging birds, especially the Swainson Hawk. Their pleas have been ignored by the local planners and city council members.

P.4-9

American Canyon is blessed with the best bird habitat in Napa County. Wildlife diversity is a bellwether of ecological health and the loss of wildlife is the harbinger for the future of humans, as well.

One more thing to consider, as American Canyon continues to grow industrial areas, it is solidly aiming for a future public health crisis for the families of the region. Already, there are numerous complaints about diesel truck emissions, idling, congestion and air pollution. American Canyon residents suffer more exposure to pollutants than 73% of the state, with exposures from traffic in the 83<sup>rd</sup> percentile, according to data from the California Office of Environmental Health. The city’s residents also face the highest pollution burden in Napa County.

P.4-10

This development, along with the many others already on the books for American Canyon, will contribute greatly to the decline of the natural beauty of the region. It will also translate to a staggering decline in the quality of life for people who enjoy open space, vista views, clean air, and the abundance nature provides.

P.4-11

We need a new dialogue on how we are shaping the future of American Canyon. Backroom agreements made thirty years ago are no longer relevant. The truth is, no one looking for a quick and easy profit is going to be interested in preservation. The cost of the cumulative damage caused by a selfish lack of concern is much greater than the economic benefits to be obtained.

P.4-11  
cont.

I am imploring you to do the least harm to the environment. If a buildout is inevitable, then make it the best for all. Not just the investors and the developers. Demonstrate sustainable possibilities.

P.4-12

This environmental review is simply inadequate and more work needs to be done.

Thank you for this consideration,

Yvonne Baginski

## Letter P.4

**COMMENTER:** Yvonne Baginski

**DATE:** No date, received April 28, 2023

### Response P.4-1

*The commenter expresses an opinion that the environmental impact of this project has the potential to impact wildlife, increase GHG emissions, and destroy open space views. The commenter expresses an opinion that the DEIR is inadequate.*

Impacts to wildlife, GHG emissions, and open space views are discussed in Sections 4.4, *Biological Resources*, 4.8, *Greenhouse Gas Emissions*, and 4.1, *Aesthetics*, respectively. As described in those sections of the DEIR, the proposed project would result in impacts to these environmental resources or topics. Impacts would be either less than significant without mitigation or reduced to less than significant with implementation of provided mitigation measures. Therefore, no additional revisions to the DEIR are required in response to this comment.

### Response P.4-2

*The commenter states an opinion that there is no evidence to support the claim that the project would not have an adverse impact on scenic vistas. The commenter states they believe there are no protections in the DEIR to ensure that scenic vistas will remain in public view and scenic views will not be protected.*

As discussed under Impact AES-1 in Section 4.1, *Aesthetics*, there are no designated scenic vistas or viewpoints within American Canyon. Hills in the background of the project site may be visible on an intermittent and fleeting basis to motorists passing the project site on SR 29, but undeveloped hillside areas would remain visible in the background. Viewers in open space areas like Newell Open Space Preserve would be too distant from the project site for scenic views to be impacted. Additionally, no specific development proposals on the project site were analyzed as part of the project because none are proposed at this time. Furthermore, Impact AES-1 determines that the project would have adverse impacts on scenic vistas but impacts would be less than significant (DEIR page 4.1-12). Therefore, no additional revisions to the DEIR are required in response to this comment.

### Response P.4-3

*The commenter states that there is no information about the location or protection of biologically sensitive areas in the DEIR. The commenter states a 50-foot setback from the banks of the North Slough is required, but there is no extra protection for this property included in the DEIR. The commenter expresses concerns about the cumulative impacts to wildlife given the other development projects being proposed in the area.*

Section 4.4, *Biological Resources*, of the DEIR describes various biologically sensitive areas that occur or may occur in the project area. For example, page 4.4-1 of the DEIR describes the presence of the North Slough in the project site. Pages 4.4-3 and 4.4-4 of the DEIR describe the potential for special-status species to occur in the project site based on suitable habitat in the area. Another example is found on page 4.4-6 of the DEIR, which describes the presence of a known wildlife movement corridor along the eastern border of the project site. The DEIR also provides mitigation measures,

such as Mitigation Measure BIO-1 to reduce impacts to these biological resources. With implementation of mitigation measures identified in Section 4.4, *Biological Resources*, impacts to biological resources would be reduced to less than significant.

As discussed under Impact BIO-3 in Section 4.4, *Biological Resources*, the DEIR acknowledges that North Slough may potentially be jurisdictional. Mitigation Measure BIO-5 would require preparation of an aquatic resources delineation survey to determine the jurisdictional area around the North Slough. Follow up permitting would potentially be required from United States Army Corps of Engineers, California Regional Water Quality Control Board, and CDFW. Oversight from these State and federal agencies would ensure protection of the North Slough. Furthermore, Mitigation Measure BIO-6 would require a setback of at least 50 feet from the top of the bank of the North Slough. The setback may be greater pending the results of the aquatic resources delineation completed under Mitigation Measure BIO-5. Finally, Mitigation Measure BIO-7 would be required in the case that impacts to North Slough could not be avoided. Implementation of these three mitigation measures would reduce impacts to North Slough to less than significant. Additionally, as discussed under Impact BIO-1, Mitigation Measure BIO-1 would require site-specific biological resources assessments; if potential critical habitat is uncovered, then further technical studies and consultation with State and federal agencies may be required.

Cumulative impacts to biological resources, such as wildlife and habitat, is discussed on page 4.4-21 in Section 4.4, *Biological Resources*, of the DEIR. As discussed therein, the project's contribution to a cumulative impact would be less than considerable with implementation of mitigation measures. Furthermore, nearby habitat would remain in the area unaffected by the project, including habitat at Newell Open Space Preserve, and other ongoing City projects include conservation easements to preserve habitat.

No additional revisions to the DEIR are required in response to this comment.

#### **Response P.4-4**

*The commenter requests that a residence built as part of the proposed project be required to use only native plants and landscaping. The commenter also requests that no animal traps or poisoning be permitted and that bridges or tunnels be built so that animals can safely cross the two major roads surrounding development proposed by the project.*

The DEIR is a programmatic document and does not analyze details and designs specific to individual development projects, such as landscaping, animal traps/poisons, or the use of wildlife bridges/tunnels. As noted in Impact BIO-4 in Section 4.4, *Biological Resources*, the project site is not a significant regional or local wildlife movement corridor. Impacts to wildlife movement in North Slough would be reduced to less than significant with implementation of Mitigation Measure BIO-6. No additional revisions to the DEIR are required in response to this comment.

#### **Response P.4-5**

*The commenter states an opinion that there will be unavoidable light at night as a result of the project and that this will negatively impact birds. The commenter states that American Canyon does not currently have ordinances in place to limit light pollution.*

As discussed on pages 4.1-14 and 4.1-15, impacts to light pollution would be less than significant with mitigation. While the project would increase nighttime light, implementation of Mitigation Measure AES-2 would reduce operational light spillage to the extent feasible. The City has adopted California Green Building Code into its municipal code, which includes requirements to reduce light



pollution. Overall, implementation of Mitigation Measure AES-2 would ensure that lighting and glare is minimized during operation of future development facilitated by the project, and impacts would be less than significant. No additional revisions to the DEIR are required in response to this comment.

### **Response P.4-6**

*The commenter states that they don't understand the statement that no farmland would be affected when the introduction states that agricultural land will be converted.*

As discussed in Section 4.2, *Agricultural and Forestry Resources*, the project site does not contain farmland pursuant to the Farmland Mapping and Monitoring Program, as there are no Important Farmlands located on the project site. CEQA is concerned with Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. Prime Farmland is defined by the California Department of Conservation as "Farmland with the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date". Unique Farmland is defined as "Farmland of lesser quality soils used for the production of the state's leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date." Farmland of Statewide Importance is defined as "Farmland similar to Prime Farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date". While some of the land proposed to be converted by the project is zoned as agricultural land, none of this land is classified as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. Therefore, there would be no impact to farmland as it pertains to CEQA. No additional revisions to the DEIR are required in response to this comment.

### **Response P.4-7**

*The commenter expresses concern over construction mitigation measures included in the DEIR. Specifically, the commenter asks who will be monitoring and enforcing these measures. The commenter expresses concern over how "newer" equipment is defined.*

The DEIR is a programmatic document and does not analyze project-specific details including construction details because no specific construction project has been proposed or designed. The programmatic Mitigation and Monitoring and Reporting Program (MMRP) of this project that would be required to be adopted pursuant to State Assembly Bill AB 3180 (1988) would provide mitigation for individual development projects. The use of the word "newer" in Mitigation Measure AQ-3 is used comparatively between equipment and/or vehicles analyzed in an operational health risk assessment and potentially newer equipment and vehicles that may be available on the ground for actual use. No additional revisions to the DEIR are required in response to this comment.

### **Response P.4-8**

*The commenter requests that nonworking vehicles be defined in the DEIR and that idling time requirements are further reduced to three minutes.*

As stated in Section 4.8, *Greenhouse Gas Emissions*, the 5-minute idling time of nonworking vehicles would be consistent with the California Airborne Toxics Control Measure Title 13, Section 2485 of the California Code of Regulations requirements. Adherence to these requirements for nonworking vehicles would reduce GHG emissions associated with idling. No additional revisions to the DEIR are required in response to this comment.

### **Response P.4-9**

*The commenter states that the project would result in loss of foraging land and habitat for the Swainson's Hawk and Golden Eagle. The commenter expresses concern over the purchase of mitigation credits to save the Swainson Hawk and Golden Eagle in American Canyon because the Napa Valley Roundabout purchased the last mitigable Swainson Hawk nesting tree available in California. The commenter states that CDFW has written numerous letters on various American Canyon projects asking for grasslands to be preserved for foraging birds and that these please have been ignored by local planners and city council members.*

As discussed in Section 4.4, *Biological Resources*, there are several records of Swainson's hawks nesting within five miles of the project site, with the last record from 2013. No Swainson's hawks were observed during the reconnaissance survey. There is suitable nesting and foraging habitat within the project site. The nesting habitat in the project site is limited to eucalyptus trees and ornamental trees within the low-density housing area. Swainson's hawk has a moderate potential to forage and nest within the project site. As stated in Response A.2-10, the City is revising Mitigation Measure BIO-2 to clarify the timing and requirements around Swainson's hawk surveys. Please refer to Section 3, *Minor Revisions to the Draft EIR*, to see the revisions to the DEIR, including revisions to Mitigation Measure BIO-2.

The commenter's submittals on other projects in American Canyon do not pertain to the DEIR for the proposed project. Therefore, no additional revisions to the DEIR are required in response to this comment.

### **Response P.4-10**

*The commenter expresses concern over air pollution and public health effects of the growth of industrial areas in American Canyon.*

Air quality impacts were discussed in Section 4.3, *Air Quality*, of the DEIR, and operational impacts related to air quality were found to be less than significant with implementation of Mitigation Measure AQ-3, which would require an operational health risk assessment prior to project approval. Development facilitated by the project would be subject to mitigation measures in the DEIR. No additional revisions to the Draft EIR are required in response to this comment.

### **Response P.4-11**

*The commenter states an opinion that the project will contribute to a decline of natural beauty and quality of life in the area.*

Environmental resources related to natural beauty, like scenic vistas and visual quality are discussed in Section 4.1, *Aesthetics*, of the DEIR. As described therein, the proposed project would have adverse impacts on aesthetics. However, impacts were determined to be less than significant either with or without mitigation, depending on the specific impact. Impacts to air quality, which can affect the visibility of scenic resources, were also determined to be less than significant, as concluded in Section 4.3, *Air Quality*. Therefore, no additional revisions to the DEIR are required in response to this comment.

### **Response P.4-12**

*The commenter requests that the project be conducted with the least harm to the environment. The commenter expresses the opinion that the environmental review is inadequate and more work needs to be done.*

Pursuant to CEQA, the City has prepared the EIR to determine the potentially significant environmental impacts of the proposed project and to provide mitigations measures to reduce or avoid those impacts to the extent feasible. The DEIR contains mitigation measures, that when combined with the minor revisions contained in Section 3, *Minor Revisions to the Draft EIR*, would reduce potentially significant impacts to less than significant when implemented in accordance with the MMRP for the project.

The commenter's opinion that the environmental review conducted for the project is inadequate lacks substantial evidence. Responses to the other comments in the letter are provided above in Response P.4-1 through P.4-11. No additional revisions to the DEIR are required in response to this comment.



Letter P.5

April 28, 2023

*Sent via email*

Brent Cooper  
Community Development Director  
City of American Canyon  
4381 Broadway Street, Suite 201  
American Canyon, California 94503  
(707) 647-4335  
bcooper@cityofamericancanyon.org

**Re:** Paoli/Watson Lane Annexation (State Clearinghouse No 2022090097)

Dear Mr. Cooper:

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”) regarding the Paoli/Watson Lane Annexation (State Clearinghouse No 2022090097). The Center has reviewed the Draft Environmental Impact Report closely and is concerned about the fundamental and egregious failure to disclose the extent or significance of greenhouse gas emissions, serious impacts to special status species that have not been mitigated, and the incorrect water supply analysis, among other issues. The Center urges the City to correct these deficiencies and recirculate a revised EIR that conforms to the California Environmental Quality Act.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the City of American Canyon and Napa County.

**I. The DEIR’s Analysis of and Mitigation for Greenhouse Gas Impacts Is Inadequate.**

P.5-1

P.5-2

Lead agencies performing environmental review under CEQA must thoroughly evaluate a project's impacts on climate change. (*See Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 89-91.) The CEQA Guidelines require lead agencies to determine the significance of a proposed project's greenhouse gas ("GHG") emissions. (CEQA Guidelines § 15064.4.) If an agency's analysis indicates that a proposed project will have a significant project-specific or cumulative impact on climate change, the agency must identify and adopt feasible mitigation measures to address this impact. (CEQA Guidelines § 15126.4(c).) Unfortunately, the DEIR's analysis of the Project's GHG emissions is flawed.

P.5-2  
cont.

#### **A. Climate Change is a Catastrophic and Pressing Threat to California.**

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and that climate change threats are becoming increasingly dangerous. The Intergovernmental Panel on Climate Change (IPCC), the leading international scientific body for the assessment of climate change, concluded in its 2014 Fifth Assessment Report that: "[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen," and further that "[r]ecent climate changes have had widespread impacts on human and natural systems." (IPCC 2014.) These findings were echoed in the United States' own 2014 Third National Climate Assessment and 2017 Climate Science Special Report, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies. The Third National Climate Assessment concluded that "[m]ultiple lines of independent evidence confirm that human activities are the primary cause of the global warming of the past 50 years" and "[i]mpacts related to climate change are already evident in many regions and are expected to become increasingly disruptive across the nation throughout this century and beyond." (Melillo 2014.) The 2017 Climate Science Special Report similarly concluded:

P.5-3

[B]ased on extensive evidence, it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.

The U.S. National Research Council concluded that "[c]limate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems." (NRC 2010.) Based on observed and expected harms from climate change, in 2009 the U.S. Environmental Protection Agency found that greenhouse gas pollution endangers the health and welfare of current and future generations.

(74 Fed. Reg. 66496 (Dec. 15, 2009) [U.S. EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule].)

These authoritative climate assessments decisively recognize the dominant role of greenhouse gases in driving climate change. As stated by the Third National Climate Assessment: “observations unequivocally show that climate is changing and that the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases.” (Mellilo 2014.) The Assessment makes clear that “reduc[ing] the risks of some of the worst impacts of climate change” will require “aggressive and sustained greenhouse gas emission reductions” over the course of this century. (Melillo 2014 at 13, 14, and 649.)

The impacts of climate change will be felt by humans and wildlife. Climate change is increasing stress on species and ecosystems—causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes—in addition to increasing species extinction risk. (Warren 2008.) Climate-change-related local extinctions are already widespread and have occurred in hundreds of species. (Wiens 2016.) Catastrophic levels of species extinctions are projected during this century if climate change continues unabated. (Thomas 2004; Maclean 2011; Urban 2015.) In California, climate change will transform our climate, resulting in such impacts as increased temperatures and wildfires, and a reduction in snowpack and precipitation levels and water availability.

Therefore, immediate and aggressive greenhouse gas emissions reductions are necessary to keep warming well below 2°C above pre-industrial levels. The IPCC Fifth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO<sub>2</sub> must remain below about 1,000 GtCO<sub>2</sub> from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 GtCO<sub>2</sub> from 2011 onward for a 66 percent probability of limiting warming to 1.5°C. (IPCC 2013 at 25; IPCC 2014 at 63-64 & Table 2.) These carbon budgets have been reduced to 850 GtCO<sub>2</sub> and 240 GtCO<sub>2</sub>, respectively, from 2015 onward. (Rogelj 2016 at Table 2.) As of 2022, climate policies by the world’s countries would lead to an estimated 2.7°C of warming, and possibly up to 3.6°C of warming, well above the level needed to avoid the worst dangers of climate change. (Climate Action Tracker 2021.)

The United States has contributed more to climate change than any other country. The U.S. is the world’s biggest cumulative emitter of greenhouse gas pollution, responsible for 27 percent of cumulative global CO<sub>2</sub> emissions since 1850, and the U.S. is currently the world’s second highest emitter on an annual and per capita basis. (World Resources Institute 2020.) Nonetheless, U.S. climate policy is wholly inadequate to meet the international climate target to

P.5-3  
cont.

hold global average temperature rise to well below 2°C above pre-industrial levels to avoid the worst dangers of climate change. Current U.S. climate policy has been ranked as “insufficient” by an international team of climate policy experts and climate scientists which concluded that “the US’ climate policies and action in 2030 need substantial improvements.” (Climate Action Tracker 2022.)

In its 2018 Special Report on Global Warming of 1.5°C, the IPCC—the leading international scientific body for the assessment of climate change—described the devastating harms that would occur at 2°C warming. The report highlights the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth. (IPCC 2018.) The report also provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoid the most devastating climate change harms.

In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement and compliance with these steps are essential to help stabilize the climate and avoid catastrophic impacts to our environment. California has a mandate under AB 32 to reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. (Health & Saf. Code, § 38550.) Based on the warning of the Intergovernmental panel on Climate Change and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emission reduction 40 percent below 1990 levels by 2030. (Executive Order B-30-15 (2015).) The Executive Order is line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts. (Executive Order S-3-05 (2005).) In enacting SB 375, the state has also recognized the critical role that land use planning plays in achieving greenhouse gas emission reductions in California. Most recently, the California Air Resources Board issued its 2022 Scoping Plan, which lays out a path to achieve carbon neutrality by 2045. (CARB 2022.)<sup>1</sup>

The state Legislature has found that failure to achieve greenhouse gas reduction would be “detrimental” to the state’s economy. (Health & Saf. Code § 38501(b).) In his 2015 Inaugural Address, Governor Brown reiterated his commitment to reduce greenhouse gas emissions with three new goals for the next fifteen years:

- Increase electricity derived from renewable sources to 50 percent;
- Reduce today’s petroleum use in cars and trucks by 50 percent;
- Double the efficiency of existing buildings and make heating fuels cleaner.

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<sup>1</sup> <https://ww2.arb.ca.gov/sites/default/files/2022-12/2022-sp.pdf>

(Brown 2015 Address.)

Although some sources of GHG emissions may seem insignificant, climate change is a problem with cumulative impacts and effects. (*Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.3d 1172, 1217 (“the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis” that agencies must conduct).) One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California’s climate as a whole. Therefore, project-specific GHG emission disclosure, analysis and mitigation is vital to California meeting its climate goals and maintaining our climate.

The impacts of climate change are already being felt by humans and wildlife. Human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people. (IPCC 2022.) This rise in weather and climate extremes has led to some irreversible impacts, as natural and human systems are pushed beyond their ability to adapt. (IPCC 2022.)

Thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor. (USGCRP 2017.) In California, climate change will result in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack, precipitation levels, and water availability.

In the IPCC’s most recent report, entitled *Climate Change 2022: Impacts, Adaptation and Vulnerability*, it found that warming is proceeding even faster than anticipated, and the best-case scenario for climate change is slipping out of reach. (IPCC 2022.) The report now estimates that, over the next 20 years, the world will cross the global warming threshold of 1.5°C. And unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions, limiting warming to close to 1.5°C—or even 2°C—will be beyond reach. The United Nations Secretary General described the forecasts in this report as an “atlas of human suffering.” (Borenstein 2022.)

Given the increasingly urgent need for drastic action to reduce GHG emissions, the FEIR’s failure to fully disclose, analyze, mitigate, or consider alternatives to reduce the Project’s significant climate change effects is all the more alarming.

## **B. The DEIR’s GHG Analysis Fails Because It Does Not Include an Inventory of GHG Emissions**

P.5-3  
cont.

P.5-4



As a preliminary matter, the DEIR fails to provide readers with information essential to understanding the Project’s GHG emissions and therefore fails as an informational document. A DEIR must be an informational document from which the public can properly weigh any adverse effects presented by a project. Pub. Res. Code §§ 21061; 21005(a) (“noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented...may constitute a prejudicial abuse of discretion...”). “CEQA requires full environmental disclosure...” (*Communities for a Better Environment v. City of Richmond* (2010)184 Cal.App.4th 70, 88.) Guideline § 15144 states, “an agency must use its best efforts to find out and disclose all that it reasonably can.” Failure to do so deprives the public of the ability to fulfill its proper role in the CEQA process. (*Id.*)

The City has not made a good faith effort at fully disclosing the GHG impacts of this Project because it claims to analyze GHG impacts without disclosing or quantifying the GHG emissions associated with the Project. This is a fundamental failure that renders the EIR inadequate as an informational document. A GHG inventory is a central part of the GHG analysis in an EIR, and that inventory makes the rest of the analysis possible. Readers of this EIR are given no sense of the scale of GHGs this Project will emit, so they are left unable to evaluate the impact of the emissions or what would be required to mitigate them. Far from being too difficult, a complete GHG inventory can be done with CalEEMod, and is standard in EIRs for mixed use developments. For just one example, the Otay Ranch Resort Village Project used CalEEMod to estimate GHG emissions from a project that included over 1,500 residences, a school, a park, and 40,000 square feet of retail uses.<sup>2</sup> (Otay Ranch Resort Village Project DEIR, Appendix C-2.) A good faith effort at disclosure would necessarily include using the standard, easily available tools to estimate GHG emissions. The City’s failure to disclose the inventory of emission associated with the Project is inexcusable.

P.5-4  
cont.

### **C. The DEIR’s Threshold of Significance is Inappropriate and Not Supported by Substantial Evidence.**

A lead agency’s selection of a threshold of significance must be supported with substantial evidence. Moreover, a determination that an environmental impact complies with a particular threshold of significance does not relieve a lead agency of its obligation to consider evidence that indicates the impact may be significant despite compliance with the threshold. (CEQA Guidelines § 15064(b)(2).) If evidence shows that an environmental impact might be significant despite the significance standard used in the EIR, the agency must address that evidence. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.)

P.5-5

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<sup>2</sup> The Center does not here comment on the adequacy of the environmental review process for Otay Ranch Resort Village Project, beyond noting that it does include a GHG inventory.

BAAQMD’s thresholds for climate land use impacts require that projects meet a VMT target, depending on whether the project consists of office, retail, or residential uses. (BAAQMD 2022.) The thresholds were developed based on typical residential and office projects, and the BAAQMD warns that lead agencies “should not use these thresholds” when faced with a project that is not a typical retail, residential or office project, because the analyses supporting the thresholds will not apply. (BAAQMD 2022.)

This Project consists of almost 500,000 square feet of commercial uses, almost 700,000 square feet of industrial uses, and almost 200,000 square feet of visitor-serving/hotel uses. (DEIR 2-15.) The EIR chooses a significance threshold that treats these three categories—and all the specific land uses contained within each—as if they were all, exclusively, office space. The EIR claims that GHG impacts will not be significant if the Project achieves a 15% reduction in project-generated VMT *per employee*. (4.8-17.) That threshold is only appropriate for office spaces, and BAAQMD guidance specifically cautions against applying it indiscriminately to projects that are anything other than typical office projects. Far from being a typical office project, this project is instead 83 acres of diverse land uses, zoned for six different purposes. (DEIR 2-6; 2-9) No substantial evidence supports using the threshold that BAAQMD developed exclusively for office projects to capture the significance of the GHG impacts for this Project, and the threshold is thus unlawful under CEQA.

P.5-5  
cont.

One specific impact that the EIR completely fails to disclose is GHG emissions from heavy trucks. Industrial uses account for the highest square footage of any land use type in the Project, and the EIR mentions “serving local and regional demand for manufacturing, logistics warehouse, and other industrial uses” as one of the project objectives. (DEIR 2-15, 6-20.) Industrial land uses involve heavy, diesel-powered trucks, which are serious emitters of GHGs. For warehouse projects in particular, heavy-duty trucks are typically the largest source of GHG emissions. As just one example, at the recently approved Giovannoni warehouse, heavy trucks would emit 13,175 MT Co2/year—more than six times higher than the next highest source of GHGs. (Giovannoni DEIR 3.6-53.) By omitting consideration of heavy trucks from the significance threshold and, further, failing to even estimate their emissions in an inventory, the EIR has completely neglected what might be the largest source of emissions from the largest land-use designation in the Project. Because substantial evidence shows that heavy truck emissions are likely to be a significant source of GHG impacts, the EIR is required to disclose and analyze them. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.)

P.5-6

## **II. The DEIR's Analysis of Impacts to Biological Resources is Inadequate Because It Does Not Adequately Analyze Harms to Special-Status Species.**

The DEIR acknowledges that the site is foraging habitat for the western burrowing owl (a state species of special concern), Swainson's hawk (a state-threatened species), and white-tailed hawk (a fully-protected species.) (DEIR 4.4-5.) However, it concludes that the loss of foraging habitat for these species is less than significant without any mitigation measures. That claim is not supported by substantial evidence.

The CEQA Guidelines indicate that a Project can be expected to have significant impacts to biological resources if the Project has a substantial adverse effect, **either directly or through habitat modifications**, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. (CEQA Guidelines, Appendix G, subd. IV(a).) Accordingly, the DEIR itself indicates that the Project's impacts will be significant if it will "have a substantial adverse effect, **either directly or through habitat modifications**, on any species identified as a candidate . . . species . . . by the California Department of Fish and Game." (DEIR at 4.4-13; see also CEQA Guidelines § 15065(a)(1) [when performing an initial study, agencies shall make a mandatory finding of significance where a proposed project has the potential to substantially reduce the number or restrict the range of a listed species].) Consequently, the Project's impacts to western burrowing owl, Swainson's hawk, and white-tailed hawk must be considered significant and fully evaluated. The City has failed to do, disregarding the evidence, studies, and recommendations of the California Department of Fish and Wildlife (CDFW).

P.5-7

## **III. The DEIR's Water Supply Analysis Is Inadequate Because It Continues Mistaken Assumptions about American Canyon's Rights to Water from the City of Vallejo.**

This EIR contains the same errors that the City of American Canyon has made repeatedly in other EIRs regarding its rights to water from the City of Vallejo. The EIR says that the Project will be supplied primarily from State Water Project Water and water from the City of Vallejo. (DEIR 4.17-1) The EIR assumes that 500-acre feet of water per year will be available for the Project from Vallejo Permit Water, without admitting that American Canyon does not have rights to that water, or even disclosing any uncertainty. This inadequate analysis ignores the Place of Use Restrictions associated with the water that Vallejo provides to American Canyon; relies on a contested interpretation of a water rights agreement between Vallejo and American Canyon that is the subject of current litigation; and does not consider Vallejo's concerns about American Canyon's 2020 Urban Water Management Plan.

P.5-8

This Project cannot be approved based on an EIR that relies on Vallejo water that American Canyon does not have the right to use. The EIR must be revised with a full and accurate analysis of what water will actually be available for the Project, and recirculated so the public, and particularly residents of American Canyon and Vallejo, can understand where the water will come from and evaluate the impacts of supplying that increasingly-scarce water to this development. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434 [“The ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project.”].)

P.5-8  
cont.

#### IV. CONCLUSION

Thank you for the opportunity to submit comments on the Draft Environmental Impact Report for the Paoli/Watson Lane Annexation. We urge the City to correct the deficiencies in the DEIR to protect the residents of American Canyon from serious environmental impacts.

Given the possibility that the Center will be required to pursue legal remedies in order to ensure that the City complies with its legal obligations including those arising under CEQA, we would like to remind the City of its statutory duty to maintain and preserve all documents and communications that may constitute part of the “administrative record” of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733. The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the City with respect to the Project, and includes “pretty much everything that ever came near a proposed [project] or [] the agency’s compliance with CEQA . . . .” (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the City’s representatives or employees, that relate to the Project, including any correspondence, emails, and text messages sent between the City’s representatives or employees and the Applicant’s representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

P.5-9

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Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

P.5-9

Sincerely,

A handwritten signature in black ink, appearing to read 'FT', followed by a long horizontal flourish.

Frances Tinney  
Legal Fellow  
1212 Broadway, Suite #800  
Oakland, CA 94612  
Tel: (509) 432-9256  
[ftinney@biologicaldiversity.org](mailto:ftinney@biologicaldiversity.org)

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## Letter P.5

**COMMENTER:** The Center for Biological Diversity

**DATE:** April 28, 2023

### Response P.5-1

*The commenter states that the Center for Biological Diversity is a non-profit public interest environmental organization with over 1.7 million members throughout the country. The commenter states their concerns over the lack of disclosure of greenhouse gas emissions, impacts to special status species, and incorrect water supply analysis.*

The City thanks the commenter for their interest in the project. Please refer to responses below for specific information regarding various concerns to issues addressed in the DEIR. No additional revisions to the DEIR are required in response to this comment.

### Response P.5-2

*The commenter states that lead agencies must thoroughly evaluate a project's impact on climate change and if an agency's analysis indicates that a proposed project will have a significant project-specific or cumulative impact on climate change, the agency must identify and adopt feasible mitigation measures to address this impact. The commenter states an opinion that the DEIR's analysis of the project's GHG emissions is flawed.*

The City acknowledges the commenter's explanation of a lead agency role for identifying potentially significant impacts and reducing those impacts with mitigation measures to the extent feasible. This comment is not related to the adequacy of the DEIR.

Greenhouse gas emissions were analyzed in Section 4.8, *Greenhouse Gas Emissions*. Impacts were found to be less than significant with implementation of identified mitigation measures.

This commenter provides no substantial evidence in this comment why they believe the DEIR GHG emissions and impacts analysis is flawed. No additional revisions to the DEIR are required in response to this comment.

### Response P.5-3

*The commenter cites numerous reports and publications emphasizing the threat of climate change to humans and wildlife and the need to reduce greenhouse gas emissions.*

The City acknowledges receipt of climate change reports and publications. This comment does not pertain to the DEIR. Therefore, no additional revisions to the DEIR are required in response to this comment.



## Response P.5-4

*The commenter states the opinion that the DEIR fails as an informational document because it does not provide readers with information that is essential to understanding the project's GHG emissions. The commenter states that the City claims to analyze GHG impacts of the project without disclosing or quantifying the GHG emissions associated with the project. The commenter states that a GHG inventory could be done using CalEEMod and cites other projects for which CalEEMod was used to create a full GHG inventory.*

As discussed on Page 4.8-16 of the DEIR, the latest guidance from the Bay Area Air Quality Management District (BAAQMD), the local air district, is to assess project impacts qualitatively (BAAQMD 2022). The BAAQMD no longer recommends a brightline or service population approach to assessing GHG impacts under CEQA. The thresholds are based on the evaluation of whether a project would contribute its “fair share” towards achieving long-term climate goals. Applying the fair share approach to the determination of an individual project’s contribution to climate change, BAAQMD developed qualitative thresholds for new land use development projects and how they would need to be designed and built to ensure they are consistent with the long-term goal of carbon neutrality by 2045 in California. Section 15064.4(a) of the CEQA Guidelines states that a lead agency shall have discretion to determine whether to quantify GHG emissions or rely on a qualitative analysis or performance-based standards. Among other factors, a lead agency should consider the extent to which a project complies with regulations or requirements adopted to implement a statewide plan for GHG reduction. In the *Center for Biological Diversity v. Department of Fish & Wildlife*, (62 Cal.4th 204, 2015), the California Supreme Court had “expressed approval for a methodology that uses consistency with greenhouse gas reduction plans as a significance criterion for project emissions under CEQA.” The City determined that a qualitative and performance-based approach is appropriate and, therefore, quantification of project GHG emissions is not necessary to make a significance determination. The commenter states that “readers of this EIR are given no sense of the scale of GHGs this Project will emit, so they are left unable to evaluate the impact of the emissions.” However, since the City has taken a qualitative approach supported by the BAAQMD and the outcome of the *Mission Bay Alliance v. Office of Community Investment and Infrastructure* case (6 Cal.App.5th 160, 2016), it is not necessary to quantify project GHG emissions. Therefore, no additional revisions to the DEIR are required in response to this comment.

## Response P.5-5

*The commenter states that a lead agency’s selection of a threshold of significance must be supported with substantial evidence. The commenter states that it is not appropriate to use BAAQMD’s thresholds for climate land use impacts because the project contains commercial, industrial and hotel uses which do not fit into the office space category for which these thresholds were created.*

As the CEQA lead agency, the City exercises its discretion to use the BAAQMD approach and GHG thresholds. The 2022 BAAQMD guidance states that “a lead agency should not use these thresholds if it is faced with a unique or unusual project.” The BAAQMD guidance is applicable to the proposed project, as it is not atypical. The BAAQMD thresholds are consistent with the three GHG reduction areas outlined by the California Air Resources Board (CARB) 2022 Scoping Plan Appendix D, *Local Actions*, for land use development projects: 1) transportation electrification, 2) VMT reduction, and 3) building decarbonization. All three of these priority GHG reduction areas are applicable to the

proposed project and are covered by the BAAQMD thresholds, which were applied to the proposed project. Therefore, no additional revisions to the DEIR are required in response to this comment.

### **Response P.5-6**

*The commenter expresses concern over the lack of disclosure of GHG emissions associated with heavy trucks. The commenter states that industrial land use which is included in the proposed project involves the use of heavy diesel-powered trucks. The commenter expresses the opinion that the lack of inclusion of heavy truck emissions means the DEIR has neglected what might be the largest source of emissions associated with the project. The commenter states that the DEIR is required to disclose and analyze emissions from heavy trucks.*

Emissions associated with heavy-duty trucks involved in goods movements are controlled and through fleet turnover of older trucks and engines to newer and cleaner trucks and engines. As discussed in the DEIR, in June 2020, CARB approved the Advanced Clean Trucks (ACT) regulation, which requires manufacturers who certify Class 2b-8 chassis or complete vehicles with combustion engines to sell zero-emission trucks as an increasing percentage of their annual California sales from 2024 to 2035. In addition, the regulation requires company and fleet reporting for large employers and fleet owners with 50 or more trucks. By 2045, all new trucks sold in California must be zero-emission. Implementation of this Statewide regulation would reduce consumption of nonrenewable transportation fuels as trucks transition to alternative fuel sources. Therefore, the GHG emissions of trips associated with heavy vehicles serving industrial uses are addressed through the implementation of Statewide programs such as the ACT regulation.

To further address GHG emissions associated with future heavy truck trips associated with the project, provisions have been added to Mitigation Measure GHG-2 to reduce GHG emissions from trucks to ensure that the project is contributing its “fair share” towards achieving long-term climate goals, as included in Section 3, *Minor Revisions to the Draft EIR* (see pages 3-3 to 3-5, which shows the revisions to Mitigation Measure GHG-2). Therefore, no additional revisions to the DEIR are required in response to this comment beyond those identified in Section 3.

### **Response P.5-7**

*The commenter states that the claim in the DEIR that the project would have less than significant impacts without mitigation to Swainson’s hawk and white-tailed hawk is not substantiated with evidence. The commenter cites CEQA Guidelines that indicate that a project can have significant impacts to a species either directly or through habitat modifications. The commenter states that the project’s impacts to Western burrowing owl, Swainson’s hawk, and white-tailed hawk must be considered significant and be fully evaluated.*

As discussed on page 4.4-4 in Section 4.4, *Biological Resources*, of the DEIR, Western burrowing owls are known to occur throughout the region and are determined to have a moderate potential to occur within the project site. Suitable Western Burrowing Owl habitat is present throughout the project site within the nonnative annual grassland.

As discussed on page 4.4-4 in Section 4.4, *Biological Resources*, of the DEIR, there are several records of Swainson’s hawks nesting within five miles of the project site, with the last record from 2013. No Swainson’s hawks were observed during the reconnaissance survey. There is suitable nesting and foraging habitat within the project site. The nesting habitat in the project site is limited to eucalyptus trees and ornamental trees within the low-density housing area. Swainson’s hawk has a moderate potential to forage and nest within the project site. As stated in Response A2-10,

Mitigation Measure BIO-2 has been revised to include the Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Mitigation Measure BIO-2 has also been revised to ensure clarity on the timing and requirements around Swainson's hawk surveys. Please refer to Section 3, *Minor Revisions to the Draft EIR*, for the revisions to the DEIR, including to Mitigation Measure BIO-2.

As discussed on page 4.4-5 in Section 4.4, *Biological Resources*, of the DEIR, there are several records for white-tailed kite within five miles of the project site and the project site provides foraging habitat and suitable nesting habitat. White-tailed kite would be protected with Mitigation Measure BIO-2.

As discussed in Section 4.4, *Biological Resources*, the grassland areas within the project site provide foraging habitat and suitable nesting habitat for Swainson's hawk, Western burrowing owls, and white-tailed kite on the project site. Development facilitated by the project would be subject to mitigation measures in the DEIR, with applicable revisions contained in Section 3, *Minor Revisions to the Draft EIR*. No additional revisions to the Draft EIR are required in response to this comment.

### **Response P.5-8**

*The commenter expresses concern over the assumption included in the DEIR that the project would be served by water from the City of Vallejo. The commenter states this assumption ignores the Place of Use Restrictions associated with this water, relies on a contested interpretation of the water rights agreement between Vallejo and American Canyon that is subject to current litigation, and does not consider Vallejo's concerns about American Canyons 2020 Urban Water Management Plan. The commenter states the opinion that the EIR must be revised with a full analysis of what water would be available for the project and recirculated to the public.*

Please refer to Response A.3-2. No revisions to the DEIR are necessary.

### **Response P.5-9**

*The commenter thanks the City for the opportunity to comment on the DEIR and urges the City to correct the DEIR. The commenter reminds the City to retain the administrative record associated with the project. The commenter also requests to be added to the notice list for all future updates to the project.*

The City will add the commenter to the project mailing/notification list. Please refer to Section 3, *Minor Revisions to the Draft EIR*, of this FEIR for all revisions made to the DEIR. The City has maintained a complete administrative record of all documents and communications that relate to this project. No additional revisions to the DEIR are required in response to this comment.

## 3 Minor Revisions to the Draft EIR

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This chapter presents specific text changes made to the DEIR since its publication and public review. The changes are presented in the order in which they appear in the original Draft EIR and are identified by the Draft EIR page number. Text deletions are shown in ~~striketrough~~, and text additions are shown in underline. The information contained within this chapter clarifies and expands on information in the Draft EIR and does not constitute “significant new information” requiring recirculation, as described in Section 4, *Recirculation Not Warranted*.

### 3.1 Revisions to the Draft EIR

#### Executive Summary

On page ES-11 (Section 0, *Executive Summary*) in Table ES-1 in the “Residual Impact” column, the text was changed to read No Impact in relation to Impact BIO-2. This change corrects an typographical error and does not reflect changes to the analysis found in Section 4.4, *Biological Resources*.

#### Project Description

The following text has been added to page 2-16 (Section 2.8, *Required Approvals*).

In addition, a Settlement Agreement between Napa County, the Napa County Airport Land Use Commission, and the City of American Canyon was executed on May 3, 2022. The Settlement Agreement provides that the City will not approve any residential use application in Zone D until an amendment to the Airport Land Use Compatibility Plan has been approved or December 31, 2023, whichever occurs first. Napa County has initiated an update to the ALUCP, which is anticipated to be completed by Summer 2024. The Settlement Agreement does not prohibit the City from processing an application for a residential proposal within Zone D. Nonetheless, as described in Section 2.5.7, *Project Buildout*, the proposed project would not induce additional residential development beyond existing conditions.

#### Biological Resources

The following text has been revised on pages 4.4-14 and 4.4-15 (Section 4.4, *Biological Resources*).

##### *BIO-1 Site-Specific Biological Resources Assessment*

The City shall implement the following measures during environmental review of future development within the project site. For all projects facilitated by the annexation, a preliminary review and reconnaissance survey shall be conducted by a qualified biologist prior to project approval. A review of project plans, aerial imagery and agency databases as well as other relevant background information will be conducted prior to a reconnaissance survey for context and understanding of the biological concerns of the project. The reconnaissance survey shall include documentation of existing biological conditions, the habitat condition and characteristics, mapping of vegetation communities including aquatic features, and assessment of the site’s potential to support special-status species. ~~On a project-by-project basis, a preliminary biological resource screening shall be performed to determine whether a specific~~

~~project has the potential to impact biological resources.~~ If it is determined that the project has no potential to impact biological resources, no further action is required. If the project would have the potential to impact biological resources, prior to construction, a qualified biologist shall complete a biological resources assessment (BRA) or similar type of study to document the existing biological resources within the project footprint plus an appropriate buffer determined by a qualified biologist and to determine the potential impacts to those resources. The BRA shall evaluate the potential for impacts to all sensitive biological resources including, but not limited to special-status species, American badgers, nesting birds, bats, wildlife movement, sensitive plant communities/critical habitat and other resources judged to be sensitive by local, state, and/or federal agencies. Pending the results of the BRA, design alterations, further technical studies (i.e., protocol surveys) and/or consultations with the USFWS, CDFW and/or other local, state, and federal agencies may be necessary. Consultation with CDFW would be required in the instance of discovery of roosting bats during the BRA reconnaissance survey or further technical studies. The City shall review and approve the BRA prior to project approval.

Habitat assessments for special-status plants shall specifically be included for the BRA. If habitat is present, a botanical survey shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities and results submitted to CDFW. If the botanical survey indicates special-status plant species on the project site, the project applicant shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to construction activities. If impacts cannot be avoided, the project shall provide compensatory habitat at a minimum 3:1 ratio including preparing, implementing, and funding in perpetuity a long-term management plan, unless otherwise approved in writing by CDFW.

#### *BIO-2 Pre-construction Surveys for Swainson's Hawk, Other Raptors and Nesting Birds*

Ground disturbance and vegetation removal activities shall be restricted to the non-breeding season (September 16 to January 31), when feasible. If construction activities occur during the nesting bird season (February 1 to September 15), the following mitigation measures are recommended to reduce impacts to Swainson's hawk, protected raptor species, and other nesting birds protected by the MBTA and CFGC.

A qualified biologist shall conduct surveys for Swainson's hawk during Swainson's hawk nesting season (March 1 to August 31) prior to construction activities ~~between January 1 and March 20.~~ A preconstruction survey for other raptors and nesting birds shall be conducted no more than seven days prior to initiation of ground disturbance and vegetation removal. The survey shall be conducted within the project site and include a 150-foot buffer for passerines, with the exception of tricolored blackbirds which require a 500-foot buffer, 500-foot buffer for other raptors, and 0.5 mile buffer for active Swainson's hawk nests. The surveys shall be conducted by a biologist familiar with the identification of avian species known to occur in the region. It is ~~recommended~~ required that surveys follow the Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. If a Swainson's hawk or white-tailed kite nest is found, the biologist shall set up appropriate buffers in consultation with CDFW.

If the nesting bird survey results are negative, no further action is required. If nests are found, the biologist shall determine and demarcate an appropriate avoidance buffer with high visibility material. For Swainson's hawk nests, the biologist shall establish an avoidance buffer of up to

0.5 mile based on the nest location in relation to the construction activity, the line-of-sight from the nest to the construction activity, and observed hawk behavior at the nest.

The qualified biologist shall notify all construction personnel of the buffer zones and to avoid entering buffer zones during the nesting season. No ground disturbing activities shall occur within the buffer until the biologist has confirmed that breeding/nesting is complete, and the young have fledged the nest. Encroachment into the buffer shall occur only at the discretion of the biologist. If take of Swainson's hawk or tricolored blackbird cannot be avoided, the project applicant or City shall consult with CDFW pursuant to CESA and obtain an ITP.

Results of the preconstruction nesting bird survey shall be submitted to the City in a brief letter report no more than 30 days after completion of the survey.

### *BIO-3 Pre-construction Surveys for Western Burrowing Owl*

Prior to ground disturbance activities, a qualified biologist shall conduct pre-construction ~~clearance~~ breeding season (February 1 to August 31) surveys within suitable natural habitats and ruderal areas throughout the project site, to confirm the presence/absence of active western burrowing owl burrows unless otherwise approved by CDFW. It is recommended that ~~The surveys shall be~~ also conducted during the non-breeding wintering season (September 1 to January 31). All surveys shall be consistent with the recommended survey methodology provided by CDFW's Staff Report on Burrowing Owl Mitigation. ~~Clearance~~ Additionally, take avoidance surveys shall be conducted within 14 days prior to construction and ground disturbance activities, whether or not owls were discovered during the detection surveys. If no western burrowing owls are observed, no further actions are required. If western burrowing owls are detected during the pre-construction ~~detection or clearance~~ take avoidance surveys, CDFW shall be notified and the following measures shall apply:

- Avoidance buffers of a minimum of 500 meters (1,640 feet) during the breeding and non-breeding season shall be implemented by a qualified biologist in accordance with the CDFW's Staff Report on Burrowing Owl Mitigation minimization mitigation measures, unless otherwise approved by CDFW. To prevent encroachment, the established buffers shall be clearly marked by high visibility material. Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012), unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review.
- If avoidance of western burrowing owls is not feasible, then additional measures such as off-site habitat compensation (habitat compensation acreages shall be approved by CDFW), placement of a conservation easement and preparation, implementation, and funding of a long-term management plan, ~~passive relocation during the nonbreeding season and~~ construction buffers of ~~200~~500 feet during the breeding season shall be implemented, in consultation with CDFW. In addition, a Western Burrowing Owl Exclusion Plan and Mitigation and Monitoring Plan shall be developed by a qualified biologist in accordance with the CDFW (2012) and Burrowing Owl Consortium (1993).

## Greenhouse Gas Emissions

The following text has been revised on pages 4.8-20 through 4.8-23 (Section 4.8, *Greenhouse Gas Emissions*).

However, without requirements for electric vehicles and electric vehicle parking, the project would conflict with the BAAQMD threshold to meet CALGreen Tier 2 EV parking and this impact would be significant. Implementation of Mitigation Measure GHG-2 would ensure that CALGreen Tier 2 EV parking levels are provided, and that heavy-duty vehicles and off-road equipment associated with the industrial uses are electric.

Pursuant to the BAAQMD thresholds, projects that include natural gas appliances or natural gas plumbing (in both residential and nonresidential development) would result in a potentially significant GHG impact. Without a provision prohibiting the use of natural gas in future project buildings, this impact would be significant. Implementation of Mitigation Measure GHG-3 would require that all new buildings include all-electric appliances and water heaters. In addition, Mitigation Measure GHG-4 would require that buildings be designed to meet the Tier 2 advanced energy efficiency requirements in the California Green Building Standards Code. Furthermore, Mitigation Measure GHG-5 would require that electricity for future buildings be supplied with 100 percent carbon-free electricity sources through the year 2045 with on-site photovoltaic solar.

### *GHG-2 Electric Vehicle Charging Stations and Electric Vehicle and Electric Off-Road Equipment Usage Requirements*

Prior to issuance of any building permits, the project applicant shall demonstrate to the satisfaction of the City (e.g., shown on-site plans), that the proposed parking areas for passenger automobiles and trucks are designed and will be built to accommodate electric vehicle (EV) charging stations. At a minimum, the parking shall be designed to accommodate EV charging stations equal to the Tier 2 Nonresidential Voluntary Measures of the California Green Building Standards Code, Section A5.106.5.3.2.

Prior to the issuance of any building permits, the project applicant shall demonstrate to the satisfaction of the City (e.g., shown on-site plans), that each loading dock is outfitted with at least one 240-volt outlet to accommodate truck and Transport Refrigeration Unit (TRU) charging and/or electrical power connection while trucks are loading and unloading goods.

In addition, the City shall require the following:

- At least 25 percent of heavy-duty vehicles entering or operated on the industrial sites shall be zero emission by 2030.
- All on-site equipment such as forklifts and yard trucks shall be electric with the necessary electrical charging stations provided.
- Industrial and commercial tenants shall use zero emission light- and medium-duty vehicles as part of business operations.

“Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, other current projects, and probable future projects (CEQA Guidelines Section 15355). Most projects do not generate sufficient GHG emissions to create a project-specific impact through a direct influence on climate change. Therefore, climate change analysis for the project involved an analysis of

whether the project's contribution toward an impact would be cumulatively considerable. In addition, the project is cumulative in nature as it represents growth through the annexed area because of future development. The project is not one individual project. A number of as yet undefined future projects may occur due to the annexation associated with the project. Therefore, cumulative impacts with respect to GHG emissions represents emissions associated with buildout of individual projects and thus cumulative emissions. Because emissions facilitated by the project would not be consistent with BAAQMD GHG thresholds, the project would not be consistent with State GHG reduction plans without mitigation and this impact would be significant. Mitigation measures GHG-1 through GHG-5 would be implemented for development facilitated by the project to reduce impacts. Therefore, the project's contribution to cumulative impacts with respect to GHG emissions would be less than cumulatively considerable with mitigation.

## Transportation

The following text has been revised on pages 4.11-4, 4.11-5, 4.11-7, and 4.11-9 (Section 4.11, *Transportation*).

### **Senate Bill 375 and California Air Resources Board**

Senate Bill 375 (SB 375), passed in 2009, focuses on reducing vehicle miles traveled (VMT) and urban sprawl. SB 375 was enacted specifically address the transportation and land use components of greenhouse gas emissions. The California Air Resources Board (CARB) published the 2016 Mobile Source Strategy and 2017 Climate Change Scoping Plan, which aim to reduce light-duty vehicle VMT statewide by 15 percent by 2050 compared to business as usual. In September 2021, CARB published the 2020 Mobile Source Strategy that uses the same targets for reducing VMT as the 2016 Mobile Source Strategy and 2017 Climate Change Scoping Plan.

SB 375 requires CARB to develop and set regional targets for greenhouse gas (GHG) emission reductions from passenger vehicles. CARB has set regional targets to help achieve significant additional GHG emission reductions from changed land use patterns and improved transportation in support of the State's climate goals, as well as in support of statewide public health and air quality objectives. Metropolitan planning organizations (MPOs) must prepare a sustainable community strategy (SCS) that will reduce GHG emissions to achieve these regional targets, if feasible to do so. CARB is tasked to update the regional targets every eight years, with the option of revising them every four years. Targets are expressed as a percent change in per capita passenger vehicle greenhouse gas emissions relative to 2005. Effective October 1, 2018, the CARB target for the nine-county San Francisco Bay Area region is a 19 percent reduction in per capita greenhouse gas emissions from passenger vehicles by 2035, when compared to 2005.

VMT impacts would be considered potentially significant if the forecasted rate of residential VMT per capita or VMT per employee for the project were to exceed ~~85~~81 percent of the existing rate of VMT in each category for American Canyon, based on the American Canyon travel demand model. This significance threshold is based on the CARB target for the nine-county San Francisco Bay Area region that aims to achieve a 19 percent reduction in per capita greenhouse gas emissions from passenger vehicles by 2035, relative to 2005.



Table 3.1-1 summarizes the existing weekday daily rates of VMT and corresponding significance thresholds. There are an estimated 22,959 residents<sup>1</sup> and 4,442 jobs in American Canyon under existing conditions according to the City's Traffic Model (based on U.S. Census Bureau estimates for the years 2017 and 2018, which were adjusted to reflect land use changes since 2018). The existing rate of residential VMT per capita is estimated to be 16.6 miles and the existing daily rate of VMT per employee is estimated to be 34.1 miles per employee. VMT impacts resulting from the proposed 2040 General Plan would therefore be considered significant if the forecasted year 2040 rate of residential VMT per capita under the proposed General Plan were to exceed ~~14.1~~13.4 miles, or if the forecasted year 2040 rate of VMT per employee were to exceed ~~29.0~~27.6 miles.

**Table 3.1-1 VMT Impact Thresholds**

Scenario	Residential VMT per Capita	VMT per Employee
Existing Conditions	16.6	34.1
<b>Significant Impact Threshold (<del>85.81</del> percent of Existing rate)</b>	<b><del>14.1</del><u>13.4</u></b>	<b><del>29.0</del><u>27.6</u></b>
Source: American Canyon Travel Demand Model, GHD, December 2022		

As described in the Methodology subsection of Section 4.15.3, *Impact Analysis*, VMT impacts from the project were analyzed using the City of American Canyon travel demand model. VMT impacts would be considered potentially significant if the forecasted rate of VMT per employee for the project exceed ~~29.0~~27.6 miles or the rate of residential VMT per capita of the project exceeded ~~14.1~~13.4 miles.

**Table 3.1-2 Project VMT**

Scenario	VMT per Resident	VMT per Employee
Existing/Baseline Conditions	16.6	34.1
Future (2040) Conditions	12.0	17.9
Significance Threshold	<del>14.1</del> <u>13.4</u>	<del>29.0</del> <u>27.6</u>
Impact Finding	Less than Significant	Less than Significant
Source: American Canyon Travel Demand Model, GHD, December 2022		

<sup>1</sup> These estimates are based on the City's Traffic Model, which included some properties outside the City limits. For this reason, this population number does not match the population number identified in other sections of this environmental impact report. Nonetheless, both estimates are similar.

## 4 Recirculation Not Warranted

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As presented in Chapter 3, *Minor Revisions to the Draft EIR*, minor revisions to the Draft EIR would not result in new significant impacts or a substantial increase in the severity of previously identified significant impacts. The Minor Revisions (Chapter 3) identifies textual modifications to the Final EIR. The revised text serves to amplify, correct, supplement or clarify, information in the public review Draft EIR. It does not substantively affect the level of impact nor the conclusions presented. Therefore, recirculation of the Draft EIR is not warranted.

CEQA requires recirculation of a Draft EIR only when “significant new information” is added to a Draft EIR after public notice of the availability of the Draft EIR has occurred but before the EIR is certified (Public Resources Code Section 21092.1; *CEQA Guidelines* Section 15088.5). Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR (*CEQA Guidelines* Section 15088.5(b)).

The relevant portions of *CEQA Guidelines* Section 15088.5 (items a, b and e) read as follows:

- (a) *A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless 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 or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation include, for example, a disclosure showing that:*
  - 1) *A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.*
  - 2) *A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.*
  - 3) *A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.*
  - 4) *The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.*
- (b) *Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.*
- (e) *A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.*

The revision to the Draft EIR in Section 0, *Executive Summary*, in Table ES-1 reconciles a typographical error. This does change the analysis within the Draft EIR.

The revisions to the Draft EIR in Section 2, *Project Description*, provides additional information regarding the Napa County Airport Land Use Compatibility Plan. This informational revision provides context to support the text included in the Draft EIR. Recirculation is not required where new

information added to the EIR merely clarifies or amplifies or makes minor modifications in an EIR (*CEQA Guidelines* Section 15088.5(b)). Revisions to Section 2, *Project Description*, makes minor modifications to project context and they would not result in any secondary or otherwise undisclosed effect.

The revisions to Section 4.4, *Biological Resources*, refine and clarify mitigation measures BIO-1 through BIO-3. These revisions would strengthen the mitigation measures themselves and the ability of the City to implement and enforce measures BIO-1 through BIO-3. Recirculation is not required where new information added to the EIR merely clarifies or amplifies or makes minor modifications in an EIR (*CEQA Guidelines* Section 15088.5(b)). Revisions to Section 4.4, *Biological Resources*, clarify and amplify the standards established by these measures and they would not result in any secondary or otherwise undisclosed effect.

The revisions to Section 4.8, *Greenhouse Gas Emissions*, refine and clarify which impacts are potentially significant, strengthen Mitigation Measure GHG-2, and clarify cumulative impacts. The revisions to Mitigation Measure GHG-2 would reduce GHG emissions from trucks to ensure that the project is contributing its “fair share” towards achieving long-term climate goals. Recirculation is not required where new information added to the EIR merely clarifies or amplifies or makes minor modifications in an EIR (*CEQA Guidelines* Section 15088.5(b)). Revisions to Section 4.8, *Greenhouse Gas Emissions*, amplify the standards established by mitigation and they would not result in any secondary or otherwise undisclosed effect.

The information and revised wording of mitigation measures BIO-1 through BIO-3 and GHG-2 added to this Final EIR would not result in a substantial increase in the severity of an environmental impact, nor a new significant environmental impact that would result from the revised mitigation. Finally, additional information provided in this Final EIR does not present a feasible project alternative or mitigation measure considerably different from others previously analyzed in the EIR that the City has declined to adopt and that would lessen an environmental impact.

The information added to this Final EIR supplements, clarifies, amplifies, and corrects information in the Draft EIR. The City has reviewed the information in the Minor Revisions and has determined that it does not change any of the basic findings or conclusions of the EIR, does not constitute “significant new information” pursuant to *CEQA Guidelines* Section 15088.5, and does not require recirculation of the Draft EIR. This decision is supported by substantial evidence provided in this EIR.