

R U S I W E
JUN 15 2007



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File No. 54619

June 11, 2007

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Scott Finley
Assistant Planning Director
Placer County Building and Planning Department
Community Development Resource Agency
3091 County Center Drive
Auburn, CA 95603

Re: Placer Vineyards Specific Plan

Dear Scott:

Thank you for meeting with Placer Vineyards Owners' Group representatives to discuss the status of the federal permitting efforts for the Placer Vineyards Specific Plan in relation to Placer County's pending consideration of the Specific Plan scheduled later this summer.

The Placer Vineyards Owners' Group ("Owners' Group"), following several years of discussions with State and Federal agency representatives concerning the permitting process for the Specific Plan area, initiated the Section 404 process in May 2006 with the filing of the individual permit applications for the Specific Plan infrastructure and 24 development projects within the Specific Plan area. In March of this year, the U.S. Army Corps of Engineers ("Corps") released its Public Notice ("PN") for the Section 404 Permit applications and Notice of Intent ("NOI") to prepare an Environmental Impact Statement ("EIS"). Release of the PN "kick's off" the permit application process; release of the NOI starts the EIS process.

As is often typical with projects requiring an EIS, the Owners' Group initiated the multi-year state and federal process *prior to* the completion of the Specific Plan process, in order to reduce the amount of time necessary to complete a coordinated permitting and entitlement process. As you are aware, in response to the NOI and PN, the Corps received three comment letters from the U.S. Environmental Protection Agency (EPA), including two on the Public Notice and a third on the EIS NOI. Separately, the Corps received a joint letter from the U.S. Fish & Wildlife Service (USFWS), National Marine Fisheries Service (NMFS) and California Department of Fish & Game ("CDFG"), and several interested environmental organizations. On behalf of the Owners Group, we have enclosed for your consideration a copy of the responses to the PN and NOI comments that we have shared with the Corps with the thought that you may find our responses useful during the County's deliberations concerning the Specific Plan.

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We would like to highlight several key points for your consideration. First, it is important to keep in mind that the letters were submitted in the context of the Corps *initiating* its permitting and EIS processes. In that regard, the letters requested that the Corps consider the comments as it proceeded with the EIS, the alternatives analysis and the Corps' application review. Secondly, while these comments were submitted as part of the federal process, they resemble many of the comments previously submitted by many of the same agencies or organizations that participated in the Placer Vineyards Specific Plan EIR process. These comments do not raise any new issues that have not been previously addressed through the Specific Plan process or in the Placer Vineyards Specific Plan EIR.

With respect to the EPA letters dated May 1, 2007 and May 31, 2007, we recommend that the County consider the EPA letters in the context in which they were submitted. That is, EPA submitted the May 1" and May 31" letters in accordance with its obligations set forth in the EPA/Corps Memorandum of Understanding ("MOU"). Under the MOU, EPA has certain timing commitments it must satisfy regarding its comments on a permit application once the Corps releases a Public Notice. These procedural steps are required under the MOU in order to preserve EPA's right to effectively review and be integrated into the Corps' permit process, suggest potential modifications to the proposed permit, and in some infrequent circumstances challenge a proposed permit.

While EPA's May 1" and May 31" letters are intended to satisfy these obligations, EPA's assertion that the site is characterized as an "aquatic resource of national importance" (ARNI) is based on information previously contained in the EIR and various comments on the EIR. This assertion is not based on any new information, nor does the use of the term "ARNI" constitute significant new information; it simply is a label used to describe the aquatic resources already specifically identified and thoroughly evaluated in the EIR. Moreover, in the May 31" letter, EPA acknowledges that many of its concerns could be addressed with further information and analysis and by working together with the Corps and involved parties.

It also is worth noting that the comments EPA submitted on the NOI were intended as comments for the Corps to address in its preparation of the EIS. In many – if not all instances – the requested analyses were contained in the EIR. In this regard, EPA notes that the Corps should consider incorporating by reference the EIR analyses into the EIS in order to provide a more robust analysis.

Further, we wish to reassure you that the joint comment letter submitted by USFWS, NMFS and CDFG does not raise any new issues regarding the EIR's evaluation of biological resources and the project's impacts. In fact, as you will see from the enclosed responses to comments, most – if not all – of the comments contained in the joint comment letter were previously submitted by the wildlife agencies or other interested parties as comments on the EIR and generally constitute the same request for consideration as part of the Corps' process.

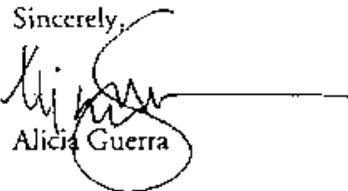
Finally, we appreciate the County's thoughtful deliberations involved in the preparation of the Placer Vineyards Specific Plan. As you know, this effort has been underway for more than a decade. Specific plans and master planned development projects, such as the Placer

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Vineyards Specific Plan, offer the ability to utilize an upfront and large scale planning effort to comprehensively review regional avoidance, minimization and conservation strategies. The proposed Specific Plan reflects the applicants' painstaking efforts accomplished through the local planning process to avoid and preserve interconnected and intact habitat areas, and provide for extensive mitigation for the Specific Plan, as a whole.

While Placer Vineyards has attempted to incorporate as a fundamental feature of the Specific Plan the preservation of aquatic resources and natural communities, the County is the local land use agency with police power authority. This concept is further recognized in the Corps' own regulations. These regulations acknowledge that the primary responsibility for determining zoning and land use matters rests with the state and local governments. (33 C.F.R. § 320.4(j)(2). For these reasons, we believe that it is appropriate for the County to conduct its deliberations regarding the Specific Plan at this time as an indication of the County's exercise of its local land use authority with respect to the development of Placer Vineyards.

We look forward to the successful conclusion of the County's land use approval process so that we may undertake the state and federal process with the knowledge that the County endorses development of the Placer Vineyards plan area.

Sincerely,

Alicia Guerra

Enclosures

cc: Holly Heinzen
Michael Johnson
Paul Thompson
Loren Clark
Kent MacDiarmid
Brian Plant
Jim Moose
Tim Taron

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June 11, 2007

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U.S. Army Corps of Engineers, Sacramento District
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Sacramento, California 95814-2922

**RE: Responses to Comments on Public Notice #199900737 --
Placer Vineyards Specific Plan**

Dear Mr. Cavanaugh:

Please find enclosed the Placer Vineyards Specific Plan (PVSP) project applicants' responses to comments received on the Public Notice for the PVSP permit application and the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the PVSP and associated infrastructure.

The applicants' responses to the following comment letters are enclosed:

- Letter 1: Alexis Strauss, U.S. Environmental Protection Agency (May 1, 2007) and Wayne Nastro, U.S. Environmental Protection Agency (May 31, 2007) (Comment Letters on Public Notice)
- Letter 2: Summer Allen, U.S. Environmental Protection Agency (April 11, 2007) (Comment Letter on Notice of Intent)
- Letter 3: Terry Davis, Sierra Club
- Letter 4: Carol Witham, California Native Plant Society

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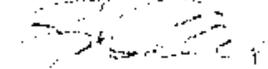
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Letter 5: Kim Delfino, Defenders of Wildlife

Letter 6: Ken Sanchez, U.S. Fish and Wildlife Service; Sandra Morey, California Department of Fish and Game; Maria Rea, National Marine Fisheries Service

Letter 7: Esther McCoy, Landowner

Sincerely,



Brian J. Plant

cc: Kent MacDiarmid
Hal Freeman
Alicia Guerra

PLACER VINEYARDS SPECIFIC PLAN

RESPONSES TO COMMENTS ON PUBLIC NOTICE AND NOTICE OF INTENT

Response to U.S. Environmental Protection Agency (EPA) Comments from May 1, 2007 and May 31, 2007 Letters on Public Notice (Cover Letter "CL"):

Response to CL-1: The commenter supports the joint notice and evaluation of the application for 24 Department of Army permits from the related projects under the Placer Vineyards Specific Plan (PVSP). The commenter asserts that this approach will facilitate improved consideration of cumulative effects and identification of appropriate avoidance and mitigation needs at an appropriate geographic scale. The project applicants agree with commenter's assessment. In addition, the joint application allows for a comprehensive consideration of regional avoidance, minimization, and avoidance strategies as well as cumulative effects of the PVSP as a whole which is consistent with the nature and scope of the PVSP.

Response to CL-2: As noted by the commenter, according to the Public Notice, the PVSP is a 3,996 acre site, mixed-use master planned community with residential, employment, commercial, open space, recreational and public land uses located in the southwestern portion of unincorporated Placer County. In addition, the project site includes approximately 714 acres of wetland and other "waters." This open space is a key element of the Avoidance and Open Space Plan component of the Placer Vineyards Conceptual Conservation Strategy which the Specific Plan area applicants have prepared.

The over 700 acres of open space within the Placer Vineyards Specific Plan land use plan is incorporated into the Avoidance and Open Space Plan, which is based upon the goal of establishing interconnected open space. These corridors which are central to the preserve design, promote connectivity of waters and watersheds, avoid isolating wetlands and drainages, avoid natural occurring wetlands over those created artificially or significantly modified through agricultural manipulation, and promote avoidance efficiency by maximizing wetlands avoided per total open space area. On-site avoidance and conservation has prioritized maintaining the connectivity and integrity of drainage corridors from east to west through the plan area. Based on plan and field level investigations of existing wetlands and wetland/swale corridor configurations and planned adjacent land uses, and through the Avoidance and Open Space Plan, impacts to key on-site aquatic resources will be avoided and minimized.

Response to CL-3: As noted by the commenter, there are approximately 156 acres of waters within CWA jurisdiction on-site. The commenter claims that of the 156 acres on-site, the PVSP proposes to fill approximately 102.7 acres of these interconnected waters. This assumption is incorrect. While the 156 acres approximates the on-site waters only, the 102.7 acres includes impacts to waters on-site, as well as off-site from infrastructure installation. Of the 102.7 acres of impacts, only 61.3 acres of waters of the United States will be impacted by on-site land use development, approximately 41.4 additional acres would be impacted by infrastructure development (with approximately 6.8 acres of the 41.4 acres due to off-site infrastructure), and approximately 60.1 acres will be avoided.

The commenter states that the PN provides insufficient information to inform a detailed analysis of each individual project. The Specific Plan area applicants are in the process of preparing a framework evaluate alternatives to comply with the Section 404(b)(1) of the Clean Water Act ("Guidelines").

This framework will address commenter's concerns regarding impacts of individual projects by establishing a comprehensive avoidance and minimization and low impact development strategy ("LIDS") alternative, and utilizing a two tiered approach to analyzing alternative plans for avoidance and minimization of impacts to aquatic resources.

The Tier One level of analysis will encompass alternative locations for the Specific Plan area and on-site avoidance and minimization measures applicable to Specific Plan infrastructure. Based on the avoidance, minimization and LIDS goals the Specific Plan infrastructure will be assessed to determine the degree to which it will comply with those avoidance, minimization and LIDS standards established at the Tier One level.

The Tier Two level will focus on on-site avoidance for specific parcels within the Specific Plan area. Since Tier One addresses off-site alternatives and since individual parcels proposed for development within the Specific Plan area are not alternatives to themselves, the Tier One analysis will not consider alternative locations for each parcel. However, at Tier Two the development plan for each parcel will be examined to determine the degree it will comply with the avoidance, minimization and LIDS standards.

Specific plans and master planned development projects offer the ability to utilize this upfront and large scale planning effort to comprehensively review regional avoidance, minimization and conservation strategies. The proposed framework for the Alternatives Analysis reflects efforts accomplished through the local planning process to avoid and preserve interconnected and intact habitat areas for the Specific Plan, as a whole, which requires addressing alternatives, their practicability and relative impacts on the two levels. The objective of assessing alternatives on a tiered basis is to provide for a hierarchical analysis of impacts on the aquatic environment, moving from issues germane to the Specific Plan as a whole, to issues that are restricted to development of individual properties within the Specific Plan.

Response to CL-4: The commenter states that vernal pool complexes are high value aquatic resources and that statewide, as much as 85% of the original distribution of vernal pool complexes had been lost to development. The commenter also claims that up to 33% of the original crustacean species that depend on vernal pool habitat (e.g. fairy shrimp) may have already become extinct due to habitat destruction and that between 1994 and 1997 Placer County lost approximately 500 acres/year of vernal pools.

The comment regarding 85% historical loss of vernal pools is not cited, however the source is believed to be Holland (1978). King (1996) summarizes potential historical vernal pool habitat losses as follows: "Estimates of vernal pool habitat loss since pristine times include 66% (Kreissman, 1991) and 60-85% (Holland, 1978 with minor calculation corrections given in Federal Register, 1994). More conservative estimates around 50% have also been made, although not in the published literature." Thus, a more accurate reflection of the available literature might be that estimates of historical loss of vernal pool landscape range from 50% to 85%.

It is important to note that King derives her extinction rate estimate from predictive modeling (Koopowitz et al. 1994) based upon a survey for vernal pool crustaceans along a single 200 km transect. She acknowledges that the model utilizes several assumptions, including estimated habitat conversion rates. She states that "most of the assumptions seem reasonable for the purposes of her analysis." Predictive modeling is an accepted method for estimating such parameters and a valuable

tool for ecological management. However, it is limited by the assumptions incorporated, and by the quality of the data underlying them. This is not a criticism of King's study, only an observation that her results should be viewed as an estimate based upon certain assumptions, and should be distinguished from observable "fact."

Regarding Holland's (1998) estimate regarding Placer County's loss of 500 acres/year of vernal pools between 1994 and 1997, it is important to note that Holland actually was estimating losses of vernal pool habitat (i.e., inclusive of intervening uplands), and not actual vernal pools (i.e., wet acres). In fact, Holland reports "...In the intervening three years, 12 polygons covering 1525 acres disappeared, or over 508 acres per year. This is a 3.1 per cent drop over the interval, or just over 1 per cent per year"(Holland 1998).

The commenter overlooks that, in conjunction with development that contributes to unavoidable impacts on vernal pool complexes, the Clean Water Act and the California and federal Endangered Species Acts require implementation of biological mitigation to address the loss and establish preservation and restoration of aquatic resources. For instance, since 1994 approximately 9600 acres have been placed within established preserve areas or mitigation banks in western Placer County (outside of the City of Roseville). This includes approximately 3900 acres of "vernal pool complex" (as mapped by Placer Legacy).

The commenter states that due to their high ecological value and increasing rarity, EPA considers vernal pool complexes to be aquatic resources of national importance (ARNI). While vernal pool complexes exist on the PVSP site, mitigation is proposed that would result in preservation and restoration of aquatic resources with higher quality habitat to compensate for unavoidable impacts to on-site aquatic resources which, generally, are of a lower quality. The existing aquatic resources of the plan area are degraded as many of the wetlands have been negatively impacted and modified by historical agricultural use. Placer Vineyards 815 (#19) and the Capri property (#23) have been dry-farmed for the past several years. Repeated discing on these properties has softened the definition of seasonal wetland and vernal pool borders, perhaps altered natural drainage courses, and resulted in the replacement of native wetland plant communities with agricultural monocultures. Placer Vineyards 179a (#4A), Placer Vineyards 179B (#4B), Placer Vineyards 356 (#7), Hodel/Doyle (#1), and Watt Baseline (#3) were subjected to the same historical treatment, but have been left fallow during the last few years. Placer Vineyards 200 (#15), Placer Vineyards 290 Parcel 1 (#12A) and Placer Vineyards 290 Parcel 2 (#12B), and Riolo Ranch 237 (#5C) have, during recent years, been managed as irrigated pasture for livestock grazing. Many of the linear wetlands on these properties have been channelized or bermed to manage irrigation flows and the former seasonal plant communities have transitioned toward more perennial function. Placer Vineyards 239 (#10), and D.F. 80 (#14) historically have been more extensively manipulated (e.g., graded/bermed) to manage for irrigated agriculture (e.g., rice and/or row crops), but have been dry-farmed during more recent years. All of these historical agricultural practices have, to varying degrees, altered "natural" wetland function on these properties, resulting in altered topography and drainage patterns, "unnatural" water regimes, and, in some cases, diminished wildlife habitat value.

The proposed project will incorporate vernal pool restoration and creation as noted in the Placer Vineyards Specific Plan Revised Draft EIR, Mitigation Measure 4.4-1b. Actual mitigation requirements will be based on the relative habitat function of vernal pool habitat impacted and the habitat function sought to be preserved and restored. In this context, restoration and creation are intended to construct vernal pools at densities within the range of historical levels as identified on

the 1937 aerial photos, or other valid historical evidence, for the proposed preserve site to be restored. The mitigation measures described in the Revised Draft EIR are intended to serve as the basis for the compensation ultimately obtained by the wildlife agencies as part of the Section 404 permit process.

Response to CL-5: The commenter asserts that the proposed project does not appear to comply with the Guidelines' requirements for avoidance and minimization. The commenter claims that the regulated waters only cover approximately 4% of the project site and suggest applicants develop a project alternative that avoids all or nearly all on-site waters, leaving 96% of the project available for development, and that such an alternative is practicable. The Guidelines state that only practicable project alternatives need be evaluated and define practicable as capable of being done, after taking into consideration cost, existing technology, and logistics in light of overall project purposes. (40 CFR 230.10(a)). Although only 4% of the project site is covered by regulated waters, the waters are not in contiguous sections or in a dense area; they are distributed over the entire plan area. Preserving the 4% would not leave 96% of the project site available for development, as this simplified calculation does not consider the additional buffer areas to protect against secondary and indirect effects to waters and listed invertebrate species habitat.

Furthermore, from a planning perspective, it is the distribution of the waters in relation to the proposed development plan that is critical in determining if an alternative is practicable under the Guidelines. Because of the scattered pattern of the on-site waters, a project alternative which avoids all on-site waters would not allow for parcels of sufficient size for development of a large scale mixed used development and render the project infeasible.

The commenter's suggested alternative also amounts to a "no federal permit" alternative, since, by avoiding all on-site waters of the United States, no federal involvement will be triggered. Commenter's suggested alternative would negate the need for the applicants to both obtain a permit under Section 404 and to preserve these on-site waters with operation and maintenance plans, thus eliminating any authority the EPA may have with respect to this project under the Guidelines. A "no federal permit" alternative, however, will be thoroughly analyzed in the Environmental Impact Statement for the project as well as the Alternatives Analysis under the Guidelines.

Response to CL-6: The commenter states that it finds that the project *may have* substantial impacts to aquatic resources of national importance (ARNI) and recommends denial of the project. The commenter states that this conclusion follows the procedures for the August 1992 Memorandum of Agreement (MOA) between the Environmental Protection Agency and the Department of the Army, Part IV, paragraph 3(a) regarding Section 404(q) of the Clean Water Act.

The Army Corps of Engineers is solely responsible for making final permit decisions pursuant to Section 10, Section 404(a), and Section 103, including final determinations of compliance with the Corps permit regulations, the Section 404(b)(1) Guidelines, and Section 7(a)(2) of the Endangered Species Act. However, through the MOA, the EPA plays a role in the Department of the Army Regulatory Program under the Clean Water Act. Under the MOA Part IV, individual permit decisions can be elevated for review by the EPA, but such cases will be limited to those cases that involve aquatic resources of national importance (ARNI). Cases that do not meet this resource value threshold cannot be elevated under this Part over a dispute concerning practicable alternatives. According to the MOA Part IV(1), the elevation of individual permit cases is limited

to those cases where the net loss from the project, after consideration of mitigation, will result in unacceptable adverse effect to ARNI. The final decision as to whether a specific individual permit case should be elevated rests with the Assistant Secretary of the Army, and not with the EPA.

EPA appears to focus on the density and acreage of vernal pool habitat within the Plan Area as the basis for the claim that there would be substantial impacts to an ARNI. In accordance with the MOA and EPA Regulations (e.g., 40 CFR Part 230), EPA must also consider the avoidance and mitigation measures planned for the project as well as the overall habitat quality within the Plan Area. As stated above, the basis of the Placer Vineyards Conceptual Conservation Strategy, is to provide for wetland mitigation, including avoidance, minimization, and compensation to assure no net loss of wetland functions and values. The proposed Conceptual Mitigation Program focuses on the preservation and restoration of aquatic resources with higher quality habitat (like the types of sites identified for conservation and mitigation in the proposed Placer County Conservation Plan (PCCP) process) to compensate for unavoidable impacts to on-site aquatic resources which, generally, are of a lower quality. (See Response to CL-4, above.) The Conceptual Mitigation Program would incorporate a variety of compensatory wetland mitigation measures, including the acquisition and preservation of vernal pool-dominated grasslands, enhancement of existing wetlands, restoration of previously existing wetlands, and the establishment of new wetlands in appropriate areas to assure "no net loss" of wetland function and values.

The commenter recommends that the applicants coordinate closely with Placer County officials to align meaningfully with ongoing development of the PCCP. The Placer Vineyards property owners have been a part of, and continue to be involved with, the PCCP planning as landowner subcommittee members and biological stakeholders. Furthermore, the project is already designed to be consistent with the PCCP, in the event that it is approved. The County has divided up this planning process into three geographical regions and the conservation and development of lands within Western Placer County is the focus of the PCCP Phase 1. Since activities related to this project may commence prior to the approval of the PCCP Phase 1, the Specific Plan and mitigation measures in the PVSP Revised Draft EIR are designed to be implemented absent the approved conservation plan. The parties agreed that projects, actions, and activities proposed or implemented within areas covered by the Agreement during preparation of the corresponding PCCP should not compromise its successful development or implementation. The parties further agreed that interim projects should not be delayed solely due to preparation of the PCCP and that the interim projects will be subject to interim project review guidelines consistent with the PCCP.

In addition, the Placer Vineyards Conceptual Conservation Strategy has been developed to be consistent with evolving strategies likely to find their way into the Placer County Conservation Plan (PCCP), while also mitigating impacts on open space and agricultural lands. The Conceptual Mitigation Program contemplates upfront acquisition of preserve lands, which will mitigate for unavoidable project impacts, and conserve sensitive habitats within Western Placer County. The basis for the upfront acquisition of these preserve lands is the County requirement for mitigation at a 1:1 ratio for lost open space. Within the areas preserved as 'open space' mitigation, specific habitat mitigation (preservation, creation, and restoration requirements) will occur at accepted mitigation ratios. It is the goal of this strategy to achieve a mixed mosaic of habitats within acquired preserve areas to achieve ecosystem and preserve stability to support and conserve biological resources.

Response to CL-7: The commenter supports the applicants' efforts to consolidate projects having the same infrastructure needs into one Environmental Impact Statement for purposes of fulfilling NEPA requirements and providing a base of information to support 24 CWA Individual Permit actions. Commenter's support for the applicant's proposed approach is noted. The individuals representing the project applicants, having met with the EPA and the Army Corps of Engineers' Staff, will continue to coordinate with the agencies. The project applicants believe that, as described above, the project as currently proposed meets the County goals, the evolving PCCP objectives, and the Section 404(b)(1) Guidelines requirements. The applicants intend to also satisfy requirements under the CWA and the federal ESA regarding unavoidable impacts to "wetlands," "waters," and listed species habitat.

Response to EPA Detailed Comments ("DC"):

Response to DC-1: Commenter details a brief summary of the Placer Vineyards Specific Plan (PVSP) project description set forth in the PN. The environmental setting for the project consists of primarily undeveloped parcels characterized by flat to slightly undulating terrain that supports a predominance of open grassland habitat. For the most part, these areas have been utilized for livestock grazing in the past. Some areas have been used for crop cultivation in the past. There are approximately 150 residences within the Specific Plan area. Although there are a few residences scattered through the agricultural properties, rural residential development occurs primarily in the northwest and southwest corners of the Specific Plan area. A number of home occupation/ancillary uses are located throughout the rural residential areas.

Response to DC-2: The commenter's description is a correct recital of the project components. No further response is required.

Response to DC-3: The commenter states that, pursuant to the 1992 Memorandum of Agreement between the Environmental Protection Agency (EPA) and the Department of the Army per Clean Water Act Section 404(q), it appears that authorization of the proposed project may result in unacceptable adverse effects to aquatic resources of national importance (ARNIs). As described below in Responses to DC-4, DC-5, DC-6, and DC-7, the project applicants do not believe there will be any "unacceptable adverse effects" to ARNIs as a result of the proposed project.

Response to DC-4: The commenter states that Placer County lies within the California Floristic Province, a "biodiversity hotspot," in part due to the presence of vernal pools and associated water resources. The commenter claims that, statewide, as much as 85% of the original distribution of vernal pool complexes had been lost to development and up to 33% of the original crustacean species that depend on vernal pool habitat (e.g. fairy shrimp) may have already become extinct due to habitat destruction. The commenter cites J.L King, *Loss of Diversity as a Consequence of Habitat Destruction in California Vernal Pools*, in support of this contention. See response to CL-4, above. The project applicants' proposed Conceptual Conservation Strategy is a regionally based plan which, promotes preservation of the remaining landscape where it is best located and in a manner consistent with the biological objectives of the PCCP. Through this approach, the project applicants will incorporate a regional watershed based planning approach to establish impact and avoidance measures designed to assure that impacts to on-site aquatic resources will be avoided or minimized to

the maximum extent practicable and result in off-site preservation in large ecologically significant resource blocks.

The commenter also claims that the mosaic of aquatic and terrestrial habitats on the project site are potential habitat for several State and federally-listed species including vernal pool fairy shrimp and vernal pool tadpole shrimp. The commenter states that the high rates of endemism within vernal pool ecosystems and the large-scale destruction due to destruction and degradation has increased the importance of the remaining habitats. While vernal pool complexes exist on the PVSP site, many of the wetlands have been negatively impacted and modified by historical agricultural use, and rural land use practices. As a result, biologic diversity and endemism within the on-site resources have been diminished over time. (See Response to CL-4, above.) In addition, the PVSP Revised Draft EIR Mitigation Measure 4.4-1, required by the County as a part of the CEQA process, presents a global, feasible mitigation program to satisfy the myriad federal, state, and local statutes, regulations, and policies affecting open space, agricultural lands, and biological resources, including regulated wetlands and other waters, and other significant natural habitat areas. Implementation of this mitigation measure would substantially lessen the significant impacts to biological resources due to the conversion of open space and agricultural land and would preserve habitat for a variety of special status species.

To compensate for unavoidable impacts to lower quality, on-site aquatic resources, the applicants' proposed Conceptual Mitigation Program focuses on the preservation and restoration of aquatic resources with higher quality habitat. The Conceptual Mitigation Program contemplates upfront acquisition of preserve lands and conservation sensitive habitats within Western Placer County. The basis for the upfront acquisition of these preserve lands as part of the Open Space/Agricultural Land Mitigation element is the County requirement for mitigation at a 1:1 ratio for lost open space. Within the preserve areas preserved as open space mitigation, specific habitat compensatory mitigation would occur. The goals of this strategy are to achieve a mixed mosaic of habitats within acquired preserve areas and to achieve ecosystem and preserve stability.

The commenter's claim regarding the loss of vernal pool habitat in Placer County between 1994 and 1997 overlooks the habitat preserves that have been established during that period and afterwards, and the significant mitigation for unavoidable impacts that have occurred since 1994. (See Response to CL-4, above.)

Response to DC-5: The commenter describes the vernal pool and grassland habitat of the PVSP site as a "relatively large and unfragmented mosaic of vernal pool and grassland habitat. To describe the on-site habitat as an unfragmented mosaic of vernal pool and grassland habitat is misleading. In reality, much of the site historically has been disturbed/modified for agricultural use (see Response to CL-4, above). At present, large portions of the site are still under agricultural production and should not be mistaken for such pristine habitat. While it is acknowledged that if left undisturbed for a long enough period of time, some portion of the potential original pristine vernal pool landscape would reassert itself, other portions have been permanently altered and would not be expected to recover. Finally, there is no reason to believe that, if not developed, agricultural production wouldn't continue within the plan area.

The commenter mistakenly claims that the PN states the project site is characterized by "integrated" waters and wetlands. The PN does not describe the waters as integrated, but to the extent the contiguous core drainage course/wetland corridors constitute integrated waters, these corridors will

be avoided and preserved pursuant to proposed Conceptual Conservation Strategy which proposes to preserve contiguous core drainage course/wetland corridors in each drainage basin. The Strategy proposes a Low Impact Development Strategies (LIDS) incorporated into project design with setback requirements for preservation of the contiguous core drainage course/wetland corridors in each drainage basin. Under this LIDS, each primary corridor should have an average setback (buffer) of 100 feet extending laterally from the edge of preserved waters of the U.S. Proposed actions that would interrupt or truncate primary drainage course/wetland corridors and modifications of these corridors would be minimized, except for those modifications that are designed to maintain or improve wetland or watershed function over existing conditions. Reaches of these primary corridors that have been channelized into excavated ditches, however, would not be subject to these preservation measures because their wetland and watershed maintenance functions have been severely compromised. Likewise, artificial impoundments created through excavation or berming and whose hydrology is dominated by irrigation water or irrigation return flows would not be subject to these preservation measures. Their remaining watershed function (i.e. conveyance of runoff) will be maintained through measures designed to assure conveyance of flows to downstream waters.

Response to DC-6: The commenter states that this area of Placer County has a limited supply of opportunities for vernal pool compensatory mitigation and that large portions of the PVSP have been considered for conservation in 4 of the 16 alternative scenarios of the PCCP. While portions of the PVSP are have been considered as preservation area by the PCCP Reserve Map Alternatives, only four of these alternatives (Alternative Maps 4, 6, 12 and 14) were chosen as the best alternative reserve maps that meet the current and future needs of Placer County and the City of Lincoln, while still meeting the Least Environmentally Damaging Practicable Alternative (LEDPA) requirement for submission for review and approval by federal resources agencies. Of these four Alternative Maps, only Alternative Map 6 includes portions of PVSP for consideration as preservation area, and, even then, the County staff chose Alternative Map 6 with the exclusion of the reserve acquisition area proposed within the Placer Vineyards project area. (See Placer County Conservation Plan Staff Report, January 23, 2007.) Because the County has considered the PVSP for development under the General Plan for eight years, the County has a plan going forward that does not propose preservation in the PVSP area.

The project applicants agree with the commenter's statement that if regional efforts to protect aquatic resources are to succeed, avoidance of aquatic resources in a conservation strategy that provides for the long-term viability of aquatic resources is necessary. The project applicants' proposed Conceptual Conservation Strategy is a regionally based plan which establishes impact and avoidance measures designed to assure that impacts to on-site aquatic resources will be avoided or minimized to the maximum extent practicable. (See Response to DC-4, above.)

Response to DC-7: The commenter states that the proposed project will result in substantial and unacceptable impacts to vernal pools and integrated aquatic features. As described above in Response to CL-4, most of the on-site aquatic resources are generally degraded and of low quality, as many of the wetlands have been negatively impacted and modified by historical agricultural and rural land use. As stated above, project applicants are preparing the Conceptual Conservation Strategy to provide for wetland mitigation, including avoidance, minimization, and compensation to assure no net loss of wetland functions. This Strategy includes two primary components: an Avoidance and Open Space Plan and a Conceptual Mitigation Program. The Avoidance and Open Space Plan contains principles and standards to avoid and minimize impacts to wetlands and other waters of the

U.S., and incorporates over 700 acres of open space within the Plan Area including significant wetland/swale corridors. The Conceptual Mitigation Program focuses on the preservation and restoration of aquatic resources, including the acquisition and preservation of vernal pool-dominated grasslands, enhancement of existing wetlands, restoration of previously existing wetlands, and the establishment of new wetlands. In an attempt to assure the Conceptual Conservation Strategy's compliance with the avoidance and minimization requirements of Section 404(b)(1) Guidelines, the project applicants are proposing the implementation of certain LIDS with the Strategy. These LIDS include:

1. *Preserve contiguous core drainage course/wetland corridors in each drainage basin.* Each primary corridor should have an average setback (buffer) of 100 feet extending laterally from the edge of preserved waters of the U.S. Minimize proposed actions that would interrupt or truncate primary drainage course/wetland corridors and minimize modifications of these corridors except for those modifications that are designed to maintain or improve wetland or watershed function over existing conditions. Reaches of these primary corridors that have been channelized into excavated ditches, will not be subject to these preservation measures because their wetland and watershed maintenance functions have been severely compromised. Likewise, artificial impoundments created through excavation or berming and whose hydrology is dominated by irrigation water or irrigation return flows will not be subject to these preservation measures. Their remaining watershed function (i.e. conveyance of runoff) will be maintained through measures designed to assure conveyance of flows to downstream waters.
2. *Preserve non-contiguous, non-linear wetlands (e.g. vernal pools, depressional seasonal wetlands, etc.) where they can be included within corridors contiguous with other preserves established to meet the LIDS or where they are large enough and/or concentrated enough to assure long-term maintenance of wetland function and value.* Ideally, this LIDS would be based on a minimum wetland:upland ratio and/or a minimum preserve size. Preserved non-contiguous wetlands should have an average setback (buffer) of 100 feet extending laterally from the edge of preserved wetlands.

The purpose of the minimum wetland concentration and/or preserve size is to define and identify those situations where preserving isolated and/or non-contiguous wetlands would not result in less impact to the aquatic ecosystem. Various factors such as the need to preserve watersheds, minimum viable preserve size, the need to provide adequate buffers and avoiding isolation of wetlands by development all influence the ecological viability of preserving wetland and watershed functions of various wetlands. Other factors considered in the avoidance and minimization of non-contiguous, non-linear wetlands present within the Plan Area include: (1) the high quality of the wetlands (e.g., degree of disturbance); (2) internal fragmentation; (3) type of land/land uses between the aquatic resource and similar aquatic resources within the Plan Area; and (4) degree of incompatibility with adjacent land uses.

3. *Design urban interface to minimize impacts to preserve areas and manage preserves to maintain aquatic resource functions.* Conservation design elements will be incorporated into project area roadways and landscaping where development abuts preserve areas in order to direct drainage toward urban features and away from the preserve boundaries. Compatible land uses, such as parks, hiking trails, athletic fields, and other forms of open space should be

located next to preserves. Cut and fill activities adjacent to the preserve boundaries should be minimized.

4. *Ensure on-site preserves are protected in perpetuity.* Buffers will be established and lot lines will be located outside of proposed on-site preserve areas. Preserves would be protected in perpetuity through conservation easements that are adequately funded for maintenance and managed.

The overall intent of these LIDS is to provide a framework of hierarchical avoidance goals that, if met, would preserve watershed and wetland functions to the maximum extent. The intended implication is that additional preservation would not result in less adverse impacts to the aquatic ecosystem.

The magnitude of proposed filling, stated by commenter, is all proposed fill for the 24 individual project applications as well as all associated infrastructure for the project build out over 20-30 years. Per project, this amounts to approximately four acres of "waters of the U.S." within the plan area and including infrastructure. (See also, Response to CL-3.)

The commenter asserts that filling of the aquatic resources will destroy habitat; cause loss of biodiversity, ecosystem stability, and aquatic resources; and lead to decreased flood water retention. Although the project applicant's plan is to implement on-site avoidance to the extent possible, the project applicant will mitigate for all losses of habitat and/or species of special concern, as required by federal law and by the County mitigation measures. Through its Conceptual Conservation Strategy, the project applicant is also preserving habitat corridors that are regionally important and can be meaningfully preserved in perpetuity.

With respect to the commenter's claim of decreased flood water retention, the Specific Plan includes a system for the management of stormwater runoff, and establishes guidelines for management of urban runoff and the control of erosion and sedimentation through the design of drainage systems and land use regulations. According to the Specific Plan and the Master Project Drainage Study, the drainage system has been designed to accommodate peak flow rates resulting from additional impervious surfaces and proposed drainage modifications. The Drainage Study also includes provisions to maintain the hydrology of sensitive areas by preserving the mean annual and peak flow rates through them.

The project applicants have not yet performed the Section 404(b)(1) Guidelines Alternatives Analysis to determine the Least Environmentally Damaging Practicable Alternative (LEDPA). Thus, the commenter's assertion regarding what constitutes sufficient avoidance for this project is premature. Furthermore, as discussed above, the pattern and distribution of the on-site waters make it manifestly impracticable to attempt to avoid all or nearly all such waters. Doing so could not simply be accomplished with commenter's suggested "realigning" of the 700 acres of planned open space. The applicants are currently preparing documents in compliance with the Guidelines and will coordinate with the EPA, the Service and the Corps on all aspects of federal law.

Response to DC-8: The commenter sets forth the general goals of the Section 404(b)(1) Guidelines and how they can be achieved. The project applicants agree with this assessment and believe they are achieving the goals of the Clean Water Act through their proposed Conceptual Conservation Strategy. (See Responses to CL-3, CL-6, DC-5 & DC-7, above.)

The commenter lists the four main requirements for obtaining a Section 404 permit. The project applicants have complied or are in the process of complying with each requirement. Section 230.10(a) prohibits a discharge if there is a less environmentally damaging practicable alternative to the proposed project. The project applicants are preparing their Conceptual Conservation Strategy as well as the two tiered Section 404(a)(1) Alternatives Analysis which will determine a Least Environmentally Damaging Practicable Alternative. (See Response to CL-3, above.)

Section 230.10(b) prohibits discharges that will result in a violation of the water quality standards, jeopardize a threatened or endangered species, or violate marine protection sanctuary requirements. To comply with Section 230.10(b), the project applicants will obtain the Section 401 State water quality certification necessary for issuance of the 404 Permit. The project applicants are also in the process of complying with the Endangered Species Act. Protocol level surveys for federally listed aquatic invertebrates are underway and as the results of the final surveys are available will be provided to the agencies. In addition, a biological assessment for the Specific Plan area, with detailed, specific information for the infrastructure application and each of the twenty-four individual permit applications is being prepared and will be submitted to the Corps and the U.S. Fish and Wildlife Service. Further, a biological assessment addressing plan area impacts to anadromous fisheries is being prepared for submission to the Corps and NOAA Fisheries.

Section 203.10(c) prohibits discharges that will cause or contribute to significant degradation of waters of the United States. The existing aquatic resources of the plan area, however, are generally degraded, as many of the wetlands have been negatively impacted and modified by historical agricultural use. To compensate for the unavoidable impacts to these lower quality aquatic resources, mitigation is proposed that would result in preservation and restoration of aquatic resources with higher quality habitat. (See Response to CL-4.)

Section 203.10(d) prohibits discharges unless all appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem. Through the project applicants' proposed Conceptual Conservation Strategy and its two primary components: the Avoidance and Open Space Plan and the Conceptual Mitigation Program, along with the on-site avoidance, minimization and LIDS strategy, impacts to the aquatic ecosystem will be minimized. (See Response to DC-7.)

Response to DC-9: The commenter states that the project applicants must comply with the Guidelines by demonstrating that the "preferred" alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the overall project purpose. The project applicants agree that they must comply with Section 404(b)(1) Guidelines and have prepared their Alternatives Analysis framework which will be applied to identify the potentially practicable off-site alternatives and on-site avoidance alternatives. The final Alternatives Analysis will be prepared and submitted to the Corps and EPA for review.

Response to DC-10: The commenter sets forth criteria it believes the alternatives analysis should evaluate. The project applicants, through their Alternative Analysis framework, have begun and will continue to address the various alternatives suggested by EPA. Inherent in the project applicants' strategy for the examination of alternatives is the viability of on-site preserves in the context of urban development and the project purpose.

Response to DC-11: The project applicants agree with the commenter that the alternatives analysis must evaluate direct, secondary, and cumulative impacts for on-and off-site alternatives for the proposed project. The PVSP Revised Draft EIR addressed these direct, secondary and cumulative impacts and the EIS for the proposed project will also examine these impacts.

With respect to the secondary effect of the proposed project cited by commenter, the effects relating to hydrology and water quality, the project applicants will implement their Drainage, Flood Control and the On-Site Avoidance/Open Space System, which is also described in the Specific Plan. As noted in the PN, the Specific Plan includes a system for the management of stormwater runoff, and establishes guidelines for management of urban runoff and the control of erosion and sedimentation through the design of drainage systems and land use regulations. (See Public Notice, p. 4.)

The potential for decreases in biodiversity and ecosystem stability will also be addressed by the applicants On-Site Avoidance/Open Space System as well as mitigation required in the PVSP Revised Draft EIR. The focus of these mitigation measures is the preservation of large open space areas which sustains existing ecosystem stability. Through off-site mitigation, large tracts of lands are acquired and preserved, with the focus on those tracts that are associated with other conservation areas. The goal of this mitigation strategy is to achieve a mixed mosaic of habitats within the mitigation areas that will preserve ecosystem stability and result in the long-term conservation of important biological resources.

Response to DC-12: The commenter indicates that the project could contribute to cumulative impacts due to past, present and reasonably foreseeable direct and secondary impacts. The purpose of the mitigation described in Response to DC-11 is to provide for a strategy that is regionally focused. In addition, the implementation of Mitigation Measure 4.4-1, described in the PVSP Revised Draft EIR would reduce the magnitude of the Specific Plan contribution to the cumulative loss of biological habitat by requiring the off-site preservation of 3,520 acres of open space, most of which is likely to provide a mosaic of habitats similar to or significantly better than the Specific Plan area. The other measures identified above would further protect special-status plant and wildlife from harm by requiring appropriate habitat and/or nesting surveys, avoidance of habitat and/or nests, and compensation for loss of habitat. While individual members of special-status species would be protected from harm, and required off-site open space would not be developed, there would still be a net loss in land available for plant and wildlife habitat as a result of the Specific Plan, as explained in the PVSP Revised Draft EIR.

Response to DC-13: The commenter states that the proposed project does not appear to be the LEDPA. The commenter states that it sees practicable and reasonable to avoid all or nearly all of the on-site waters. Such avoidance is not practicable, however. (See Responses to CL-5 & DC-7.)

Response to DC-14: The commenter states that the Guidelines prohibit granting a permit for a project that causes or contributes to significant degradation of aquatic resources. The commenter states that PVSP may cause or contribute to significant degradation of on-site aquatic resources through discharging fill material. The commenter states that a portion of the PVSP is considered important concentration areas for the Pacific Flyway which will be affected by the proposed fill. The Pacific Flyway, one of four major migratory bird flyways in the United States. The Pacific Flyway encompasses Alaska, western Canada, the western United States, and Mexico (see Placer Vineyards Specific Plan Final EIR (December 2006) Figure 6). As such, all of the currently proposed offsite mitigation areas (as well as any other potential mitigation area within western Placer County) are

similarly situated within the Pacific Flyway. Although the PVSP area contains an estimated 2,152 acres of Important Concentration Area Grassland Pasture, it has no Important Concentration Area-Flooded Agriculture as identified in Important Migrant and Wintering Bird Concentration Areas of Western Placer County (Jones & Stokes 2003). The Plan Area supports limited habitat for water birds, which includes stock ponds, drainageways, and ephemeral features such as vernal pools. During aquatic invertebrate (wet season 2005-2006) surveys conducted within the Specific Plan, no concentrations of waterfowl or other water birds were observed. The mitigation areas proposed under the Placer Vineyards Specific Plan EIR collectively contain an estimated 1,866 acres of Important Concentration Area-Grassland Pasture and an additional 246 acres of Important Concentration Area-Flooded Agriculture. According to JSA 2003, the Important Concentration Area-Flooded Agriculture land cover type is used by water birds, shore birds, and waders. According to these data, the EIR proposed mitigation areas should support a greater diversity and richness of water birds than the Specific Plan area.

The commenter states that vernal pools and their associated aquatic features support some of the most biologically diverse aquatic ecosystems in California. While this may be true generally, as discussed above in Response to CL-4, the vernal pool and associated aquatic features existing on the project site are degraded and generally of a lower quality, as many of the wetlands have been negatively impacted and modified by historical agricultural use.

The commenter states that the aquatic and terrestrial habitats on the project site are potential habitats for state special status and federal threatened and endangered species. The Placer Vineyards Revised Draft EIR sets forth mitigation measures addressing impacts to state-listed species and all species of "special-concern." In addition, the project applicants will participate in a Section 7 consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries. Section 7 of the Endangered Species Act (Act) [16 U.S.C. 1531 et seq.] outlines the procedures for Federal interagency cooperation to conserve Federally listed species. In addition, the applicants must also comply with CDF&G requirements under Section 1600 *et seq.* of the California Fish and Game Code.

Response to DC-15: See Response to DC-14.

Response to DC-16: See Response to DC-14.

Response to DC-17: The commenter states that the failure to adequately offset project impacts is grounds for denial of the permit application, and it is not clear the applicants are able to compensate for proposed project impacts. As stated above in Responses to Comments DC-4, DC-5 & DC-7, the project applicants are preparing a Conceptual Conservation Strategy which proposes both an Avoidance and Open Space Plan and a Conceptual Mitigation Program which establish appropriate and practicable steps to be taken to avoid and minimize direct impacts to aquatic resources and to compensate for unavoidable discharges of dredged or filled material into waters.

Furthermore, the project's proposed global mitigation strategy, see PVSP Revised Draft EIR, Mitigation Measure 4.4-1, similarly strikes a reasonable balance between on-site resource avoidance and off-site preservation and restoration, and provides a single, all-inclusive mitigation measure that would simultaneously mitigate for all biological resources of concern, while also mitigating impacts on open space and agricultural lands. The purpose of the project's proposed mitigation is to

mitigate the project's open space, agricultural, and biological resource impacts at the large resource preservation areas. The mitigation proposal is to establish a core preserve area to address the fragmentation of open space in the Specific Plan area. Subsequent Specific Plan projects would be required to mitigate through the establishment of preserve areas that, to the extent feasible and appropriate, are located adjacent to the core preserve or are associated with other existing preserve sites.

Response to Environmental Protection Agency (EPA) Letter – April 11, 2007 (“EPA NOI”):

Response to EPA NOI-1: Commenter request that the DEIS include a reasonable range of on-site and off-site project alternatives. The range of alternatives considered in the DEIS must include the Least Environmentally Damaging Practicable Alternative (LEDPA) if a CWA permit is to be granted at the end of the process. In response, the DEIS will rigorously explore and objectively evaluate all reasonable alternatives as required by 40 C.F.R. § 1502.14(a). NEPA does not require the identification of a LEDPA in order to assess the potential environmental impacts of a Clean Water Act (CWA) Section 404 permit. However, it is anticipated that the LEDPA identified by the U.S. Army Corps of Engineers (“Corps”) through the CWA 404 permit evaluation similarly will be evaluated and identified as the “preferred” NEPA alternative required by 40 C.F.R. § 1502.14(e).

Response to EPA NOI-2: Comment requests that alternatives information include a full avoidance (no-fill) alternative and alternatives that focus development on the eastern two-thirds of the site and avoid the vernal pools on the western portion of the site consistent with alternatives considered for the Placer County Conservation Plan (PCCP) conservation footprint.

EPA further comments that when a project’s purpose is not water dependent, the EPA’s Section 404(b)(1) Guidelines presume the existence of project alternatives that do not include discharges of fill material to special aquatic sites. However, “where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic system, unless clearly demonstrated otherwise.” 40 C.F.R. § 230.10(a)(3); *Louisiana Wildlife Fed’n v. York*, 603 F. Supp. 518, 527 (W.D.La 1984), *aff’d in part and vacated in part*, 761 F.2d 1044 (5th Cir.1985). Thus, while it is true full avoidance alternatives in upland areas are presumed to exist, this presumption is rebutted when “clearly demonstrated otherwise.”

The Final Environmental Impact Report (EIR) for the PVSP demonstrates that a full avoidance alternative is not feasible under NEPA. This information will be incorporated into the 404(b)(1) analysis of the “No Permit” alternative. Because it is anticipated that the “No Permit” alternative will be found infeasible, the Corps may determine that it should be eliminated from detailed study pursuant to 40 C.F.R. § 1502.14(a). The PVSP Final EIR examined an 85% vernal pool retention alternative, graphically described on Final EIR Figure 9, an almost full avoidance alternative that located development near the center of the PVSP area where a lower occurrence of vernal pools appear to be located. A smaller area that has a low vernal pool occurrence within the west end of the PVSP area exists; however, this lower occurrence is related to the fact that the area is already partially developed with rural residential uses. In addition, this area is not under the control of the Applicants. To the east, in the vicinity of Watt Avenue and Dry Creek, there is also an area that is relatively free of vernal pool occurrences; however, its smaller size and irregular shape make stand-alone development problematic.

The 85% vernal pool retention alternative allows approximately 1,300 acres of development affecting approximately 327 acres of vernal pool landscape. A significant vernal pool complex located in the southwestern corner of the shaded area is included within the 1,300 acres. This area was included to approximate the 85/15 percent ratio while maintaining a relatively regular boundary and appeared preferable to encroachments to the east or west. Other configurations are, of course, possible and the chosen configuration was strictly illustrative. Other configurations would, however, likely be more irregular and would increase the perimeter of the development area. In addition, the

concentration of vernal pools at the southwestern corner of the illustrative development area is bordered along its southern boundary by the Elverta Specific Plan.

The area allocated to development under this alternative would approximate 25% of the development proposed by the PVSP, or approximately 3,500 dwelling units accommodating a population of approximately 8,700 persons. If SACOG Blueprint Plan principles were applied, population could approximate 13,000 persons; however, the "leap frog" nature of the development area surrounded by vernal pool preserves would be contrary to Blueprint Plan principles and other traditional planning principles which encourage compact and contiguous growth. Public infrastructure and services would require extension to serve the projected population, and per unit cost would increase significantly due to the need to extend services and infrastructure through preserve areas that would not receive development entitlements.

Based upon the distribution of vernal pools shown on the PVSP Final EIR Figure 9, most of the basic project objectives could not be achieved under a plan that retains 85% of vernal pools. If development potential were allocated beyond the shaded area shown on the PVSP Final EIR Figure 9, such development would be very discontinuous and leap frog in nature, its feasibility from a financial and market perspective highly suspect. Further scattered development within an area that would be predominantly vernal pool preserve would pose a number of access problems and potential land use conflicts that would undoubtedly lead to vernal pool encroachments and degradation over time. It is anticipated that the 404(b)(1) Alternatives Analysis will further demonstrate that most, if not all, of the project objectives could not be achieved under an alternative in which 85% of the existing vernal pools are protected on site. Accordingly, the Corps may determine that such an alternative does not warrant detailed evaluation in the EIS in accordance with 40 C.F.R. § 1502.14(a).

The Placer County General Plan has designated all of the Specific Plan area for development since 1994, including the construction of 14,132 dwelling units and related retail and employment uses. It is highly unlikely that a design proposal that preserved 85% of vernal pools could be found to be consistent with the Placer County General Plan. In addition, SACOG has considered and assumed development of the Placer Vineyards Specific Plan area due to its proximity to existing employment uses and contiguity to the urban region. Less development on the PVSP site would ultimately push the urban area development perimeter further into open space and existing habitat areas setting the stage for greater conflict and loss while exacerbating other environmental concerns, such as traffic congestion and air pollution. Such a change would conflict with Placer County's General Plan.

With regard to Comment 2's reference to PCCP alternatives, only four of the 16 different alternative maps proposed by the PCCP present vernal pool avoidance scenarios significantly different from that proposed by the PVSP. Only two such maps propose a total or near total avoidance strategy for the PVSP. As mentioned above, the DEIS will reflect the fact that a full avoidance alternative is not feasible. The two remaining PCCP alternative maps propose a western PVSP avoidance component. It is anticipated that these two alternatives also will be found to not be feasible pursuant to 40 C.F.R. § 1502.14(a) for two additional reasons.

First, because none of the PCCP alternatives recently proposed by Placer County Planning Department staff as a potential LEDPA include a total avoidance component for the PVSP or a western PVSP avoidance component beyond preservation already proposed by the PVSP. *Board Transmittal Memorandum Regarding Placer County Conservation Plan – Consideration of the Section of*

a Preferred Alternative Reserve Map, Michael J. Johnson, Director of Planning, January 23, 2007. In fact, Placer County Planning Department staff expressly recommend against a LEDPA including a western PVSP avoidance component beyond preservation already proposed by the PVSP. *Id.* The PCCP recognizes that avoidance plays an important role in any long-term aquatic resources conservation strategy within Placer County. The DEIS will reflect an on-site conservation plan consistent with the PCCP, a regionally based conservation strategy designed to promote avoidance where it is best located. The County proposes selecting a PCCP alternative map that does not preserve large portions of the PVSP area on the basis that preservation elsewhere within Placer County is both more beneficial and more feasible.

Second, the PVSP Avoidance and Open Space Plan incorporates over 700 acres of open space within the PVSP land use plan, and is based on the goal of establishing interconnected open space. The open space includes significant wetland/swale corridors identified within the PVSP area. These corridors, which are central to the preserve design, promote connectivity of waters and watersheds, avoid isolating wetlands and drainages, avoid natural occurring wetlands over those created artificially through agricultural manipulation, and promote avoidance efficiency by maximizing wetlands avoided per total open space area. A comprehensive western PVSP avoidance strategy similar to the one suggested by EPA NOI-2 was not adopted in the PVSP Avoidance and Open Space plan because the vernal pool resources located on the western third of the PVSP include relatively low-grade wetlands, or man-made jurisdictional areas of low habitat quality. In other words, the PVSP Avoidance and Open Space Plan is premised upon the type of reasonableness determination that establishes whether or not an alternative is feasible.

Response to EPA NOI-3: Commenter requests that the DEIS include a clear description of the basic project purpose and need, project alternatives, potential impacts to the environment, and mitigation for these impacts. Particular attention should focus on the evaluation of the environmental impacts of the proposal and alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options for the decision maker and public. In response, the applicants intend to fulfill the recommendations of this comment by complying with the EIS preparation requirements of 40 C.F.R. §§ 1502.13 through 1502.16, inclusive.

Response to EPA NOI-4: Temporary and permanent impacts to aquatic resources resulting from each element of the project design should be differentiated and clearly presented. The LEDPA should be identified by comparing the totality of direct, secondary, and cumulative impacts associated with each practicable alternative. In fact, temporary and permanent impacts to aquatic resources resulting from each element of the project design, including possible indirect effects to potential vernal pool aquatic invertebrate habitat, have been evaluated in the PVSP Environmental Impact Report (EIR). The applicants will provide information for the Corps' consideration regarding the evaluation of temporary construction effects and permanent operational effects of the PVSP on aquatic resources. The DEIS will assess the direct, indirect and cumulative effects of each alternative as such terms are defined in 40 C.F.R. §§ 1508.7 and 1508.8.

Response to EPA NOI-5: Commenter requests that the alternatives analysis in the DEIS estimate, evaluate, and compare direct, secondary, and cumulative impacts for a set of on- and off-site project alternatives. All indirect and cumulative impacts associated with the multiple elements of the project design should be addressed, with particular attention paid to the impacts related to downstream and upstream water sources, flooding potential, water quality and aquatic habitat.

The DEIS will assess the direct, indirect and cumulative effects of each project alternative as such terms are defined in 40 C.F.R. §§ 1508.7 and 1508.8. Pursuant to 40 C.F.R. 1508.8(b), the analysis will assess ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, and health effects, whether direct, indirect, or cumulative, as required by 40 C.F.R. § 1508.8. Such analysis will include, but not be limited to, impacts related to downstream and upstream water sources, flooding potential, water quality and aquatic habitat. The Placer Vineyards Specific Plan includes a system for the management of stormwater runoff, and establishes guidelines for management of urban runoff and the control of erosion and sedimentation through the design of drainage systems and land use regulations. According to the Specific Plan and the Master Project Drainage Study, the drainage system has been designed to accommodate peak flow rates resulting from additional impervious surfaces and proposed drainage modifications. The Drainage Study also includes provisions to maintain the hydrology of sensitive areas by preserving the mean annual and peak flow rates through them.

Response to EPA NOI-6: The commenter is concerned that secondary effects to aquatic resources include, but are not limited to: changes in the hydrology and sediment transport capacity of Dry Creek and associated tributaries resulting from filling tributaries and wetlands; increases in impervious surfaces and the corresponding increases in the volume and velocity of polluted stormwater; decreases in water quality from the impairment of ecosystem services such as water filtration, groundwater recharge, and the attenuation of floods; disruption of hydrological and ecological connectivity between aquatic resources filled, altered or degraded on-site and off-site wetlands and vernal pools; and decreases in biodiversity and ecosystem stability.

The indirect impacts to aquatic resources listed in Comment 6 have been evaluated in the PVSP EIR. With respect to potential vernal pool aquatic invertebrate habitat, a 250-foot buffer distance (typically utilized by the U.S. Fish & Wildlife Service) has been utilized to identify/estimate indirect impacts. The applicants will ensure that the DEIS similarly identifies and assesses the indirect impacts to aquatic resources listed in Comment 6.

Response to EPA NOI-7: The EIS will evaluate cumulative effects which under NEPA requires consideration of past, as well as present and reasonably foreseeable effects. 40 C.F.R. 1508.7. Council on Environmental Quality (CEQ) cumulative effects guidance explains that “[t]he CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions.” *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis*, Council on Environmental Quality, June 24, 2005, page 3. Rather, agencies “look for present effects of past actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives.” *Id.* (emphasis supplied). As such, historical impacts to 95% of California’s wetlands and 85% of California’s vernal pools are not intrinsically relevant to the cumulative effects analysis of the DEIS simply because they involve impacts to similar resources. The DEIS cumulative impacts analysis of past effects is instead limited to past impacts that (i) continue to create present impacts that (ii) have a significant, synergistic cause-and-effect relationship with the impacts of the PVSP. The cumulative effects analysis of the DEIS will therefore include past impacts to aquatic resources to the extent their present effects, if any, exhibit a synergistic, cause-and-effect relationship with the effects of the PVSP.

The comment regarding 85% historical loss of vernal pools is not cited, however the source is believed to be Holland (1978). King (1996) summarizes potential historical vernal pool habitat losses as follows: "Estimates of vernal pool habitat loss since pristine times include 66% (Kreissman, 1991) and 60-85% (Holland, 1978 with minor calculation corrections given in Federal Register, 1994). More conservative estimates around 50% have also been made, although not in the published literature." Thus, a more accurate reflection of the available literature might be that estimates of historical loss of vernal pool landscape range from 50% to 85%.

In general, the vernal pool landscape estimates upon which such loss estimates are based were very broad-brush, landscape level analyses of available aerial photography. This is not a criticism of such studies, as that is really the only way to pragmatically explore the issue. Nevertheless, when considering these loss estimates, it is important to recognize that there are limitations to such studies, and there may quite a bit of room for interpretation among different researchers. For example, the applicant's analysis of the GIS data derived from Holland (1998) and the "Glazner" mapping in western Placer County (released in 2002) indicates that Glazner mapped approximately 20,500 acres of "vernal pool complex" prior to 2002, where Holland mapped approximately 49,000 acres of "vernal pool complex" in 1998. A side-by-side comparison of the two maps indicates that the "overlap" between them (i.e., areas mapped by both researchers) is approximately 15,700 acres, representing approximately 77% of the Glazner data and 32% of the Holland data. Approximately 4,775 acres, representing approximately 23% of the Glazner complexes, are exclusive to Glazner, while 33,724 acres, representing 68% of the Holland complexes, are exclusive to Holland. Again, this is not a criticism of either study, just an observation regarding the variability in results, and a cautionary note regarding historical loss estimates derived from them.

Response to EPA NOI-8: The Commenter asserts that the PVSP along with other proposed development areas threaten at least 50% of the remaining vernal pool complexes in western Placer County. Pending and reasonably foreseeable projects include, but are not limited to, the Placer Parkway, Creekview Specific Plan, Sierra Vista Specific Plan, and the Placer Ranch Specific Plan.

The applicants' analysis of the Placer Legacy GIS data set indicates that allowing for impacts to approximately 1,231 acres of "vernal pool complex" (as mapped by Glazner and revised by Jones and Stokes Associates for Placer Legacy in 2002) that have occurred since the data were originally created, there are approximately 21,000 acres (i.e., 21,027 acres) of vernal pool complexes remaining in western Placer County. Approximately 4,387 of these are protected within existing preserve areas, leaving the remaining 16,640 acres vulnerable to impact. Unless some on-site avoidance is incorporated in them, approximately 5,229 acres would be impacted by all of the following Specific Plans/projects (combined): Placer Vineyards, Riolo Vineyards, Sierra Vista, Curry Creek, Regional University, Creekview, Brookfield Property, and Placer Ranch. Based on available information, the most damaging of the Placer Parkway alternatives would impact approximately 41 acres of vernal pool complex, so "reasonably foreseeable" (as defined by USEPA) impacts to vernal pool complexes may result in approximately 5,260 acres (i.e., 5,229 acres + 41 acres). Based on preliminary estimates, this represents approximately 25% of the 21,027 acres of vernal pool complexes remaining in western Placer County, and approximately 32% of those still vulnerable to impact.

The intended purpose of the PCCP is to coordinate Placer County development and conservation efforts in a manner that reduces cumulative impacts to the fullest practicable extent possible by anticipating each of the pending and foreseeable projects referred to in EPA Comment 8. The applicants intend to ensure that the DEIS incorporates a mitigation program consistent with the

evolving strategies that may be incorporated into the PCCP, while also mitigating impacts on open space and agricultural lands. The mitigation program will endeavor to facilitate adoption of a viable and functioning PCCP because both the Placer County General Plan and the PCCP plan for the ultimate development of the PVSP.

Response to EPA NOI-9: The commenter requests that the DEIS also include a description of the methods used to estimate temporary and permanent direct impacts, secondary effects (indirect impacts), and cumulative impacts. Pursuant to the requirements of 40 C.F.R. 1502.24, the applicants will ensure the professional integrity, including scientific integrity, of the discussions and analyses of the DEIS by identifying methodologies used and scientific and other sources relied upon for conclusions in the statement.

Response to EPA NOI-10: The DEIS should discuss whether or not the applicants are considering the use of Low Impact Development Strategies (LIDS), specifically identify which LIDS will be used and where, and describe how these measures will minimize impacts to water quality resulting from project development. In response, while not required to do so, the applicants are considering the use of LIDS for on-site alternatives as part of the DEIS and 404(b)(1) alternatives analysis. The DEIS would identify the LIDS and location of the LIDS that are proposed to be incorporated into the project, and how these measures will minimize water quality impacts.

Response to EPA NOI-11: In accordance with the commenter's request, the DEIS will clearly identify suitable compensatory mitigation areas for impacted aquatic resources, both within the project site and in the project vicinity. Information regarding the distribution and extent of waters on the compensatory mitigation sites will be included in the DEIS and submitted to the resources agencies. The legal mechanism, such as a conservation easement with a third party, that will be used to protect the mitigation area into perpetuity will also be identified. Long-term management measures for the mitigation areas will be identified to address issues such as invasive species, approved uses, and human disturbances (garbage, trampling, etc.).

The PVSP is subject to an EIR that requires a conceptual mitigation program contemplating the upfront acquisition of a 1000-acre core preserve area or areas totaling this amount, prior to any development activity. These and other preserve lands will mitigate for unavoidable project impacts and conserve sensitive habitats within Western Placer County. The basis for the acquisition of these preserve lands is the Placer County requirement for mitigation at a 1:1 ratio for lost open space. Within the areas preserved as "open space" mitigation, specific habitat mitigation (preservation, creation, and restoration requirements) will occur at accepted mitigation ratios. It is the goal of this strategy to achieve a mixed mosaic of habitats within acquired preserve areas to achieve the level of ecosystem and preserve stability required to support and conserve biological resources.

As such, wetland compensation will assure "no net loss" of wetlands functions or values. The conceptual mitigation program will incorporate a variety of compensatory wetland mitigation measures, including the acquisition of vernal pool-dominated grasslands, enhancement of existing wetlands, restoration of previously existing wetlands and the establishment of new wetlands. In selecting and securing mitigation areas, the emphasis will be on securing large parcels encompassing intact watersheds. Securing larger parcels allows for a more comprehensive ecosystem approach and minimizes indirect impacts and disturbance from activities on adjacent lands.

In furtherance of the conceptual mitigation program requirements, the Applicants have committed to preserve, create, restore and/or enhance appropriate mitigation resources at levels required to compensate for unavoidable impacts to aquatic and habitat resources. The Applicants have identified potential mitigation sites located within the south Placer County areas which total over 3,300 acres of open space containing significant biological resources and wetland complexes. Agricultural lands also provide much potential for wetland restoration. Some of these properties would provide desirable corridor linkages to existing preserved landscapes. A combination of one or more mitigation sites identified by the Applicants would establish the core preserve area of approximately 1,000 acres. The identified properties include:

Antonio Mountain Ranch (~ 660 acres), located immediately adjacent to and fills an intervening gap between the Orchard Creek Conservation Bank and Moore Ranch. The preservation of Antonio Mountain Ranch would result in a variety of benefits within the context of the existing preserved lands, including increased size/area, reduced fragmentation, and improved connectivity.

Redwing (~993 acres), located along the eastern edge of Yankee Slough. These lands adjoin the Coon Creek Conservancy and are in the immediate vicinity of Sheridan East and Hoffman. Agricultural lands currently occupy the intervening lands between these blocks of open space. The addition of Redwing would increase the size of the existing open space, increase connectivity, decrease potential fragmentation, and contribute to regional conservation strategies.

In instances where it was not feasible to identify available lands that are contiguous with existing open space reserves, an effort was made to identify the best available mitigation lands within Placer County, including lands identified in the Placer Legacy Program and in the general vicinity of existing open space reserves (e.g., Reason Farms and Aitkens Ranch). These properties and others contribute to the developing suite of lands set aside for conservation in western Placer County. Three additional parcels (Musolino Children's Trust [-301 acres], Lincoln Ranch [-1,079 acres], and Placer 312 [-312 acres]) totaling approximately 1,690 acres were identified in this effort (refer to Figure 7 of the FEIR). These parcels are currently being used for rice production, and provide existing wildlife habitat value as well as potential for wetland restoration and creation.

The compensatory mitigation standards for wetlands impacts will be based on the U.S. Army Corps of Engineers compensatory mitigation policies as set forth in Regulatory Guidance Letter No. 2-02, dated December 24, 2002. Impacts to "waters of the United States" (not including vernal pools) and other non-jurisdictional wetlands identified in the Placer County General Plan will be mitigated to provide "no net loss" through avoidance, minimization and/or compensatory mitigation techniques. Impacts to vernal pool (fairy shrimp and tadpole shrimp) habitat will be mitigated through preservation or restoration of acreage based on a "no net loss" basis.

The DEIS will employ, and where needed, improve upon, the conceptual mitigation program described above to identify suitable compensatory mitigation areas for impacted aquatic resources, to include detailed information regarding the distribution and extent of waters on the compensatory mitigation sites and to identify the legal mechanism and long term management measures that will be used to protect the mitigation area in perpetuity.

Response to EPA NOI-12: Mitigation strategies for indirect and cumulative impacts will be identified with appropriate implementing parties as requested by the commenter. The DEIS must include a discussion of the means to mitigate adverse environmental impacts. 40 C.F.R. 1502.16(h).

Mitigation measures must be discussed for all impacts, although a lead agency need not present a detailed mitigation plan in the DEIS or commit to implementing the mitigation measures. *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, No. 19(a); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989). However, the applicants will ensure appropriate mitigation measures are identified for indirect and cumulative impacts as such terms are defined in 40 C.F.R. §§ 1508.7, 1508.8, and 1508.20.

Response to EPA NOI-13: Air Quality. The DEIS will address the feasibility of implementing additional air quality-related mitigation to reduce emissions of diesel particulate matter (DPM) and other pollutants from construction. In particular, the DEIS will address the feasibility of a Construction Emissions Mitigation Plan (CEMP). EPA recommends that the following measures be incorporated into the CEMP: that equipment a) not idle for more than 10 minutes; b) not be altered to increase horsepower; c) include particulate traps, oxidation catalysts and other suitable control devices on all construction equipment used at the construction site; d) use ultra low sulfur diesel fuel with a sulfur content of 15 parts per million (ppm) or less or other suitable alternative diesel fuel, unless the fuel cannot be reasonably procured in the geographic area; and e) be tuned to the engine manufacturer's specifications in accordance with a defined maintenance schedule. In addition, the CEMP should establish work limitations such as minimizing trips, and providing staging areas for trucks located away from sensitive receptors through appropriate policies and implementation measures.

The PVSP EIR includes a study of PVSP construction-related air impacts, including DPM emissions. The DEIS will incorporate the EIR analysis of construction-related air quality impacts, as well as mitigation measures designed to reduce the construction-related air impacts identified in the study. A Clean Air Act conformity analysis adhering to the evaluation protocols of the Placer County Air Pollution Control District as required by 42 U.S.C. 7506 will be prepared and included in the DEIS. The DEIS will address the feasibility of a CEMP that includes the measures identified by the EPA in Comment 12.

Response to EPA NOI-14: Environmental Justice. The EIS will address the environmental impacts of the proposed Federal action on low-income and minority communities and opportunities should be provided for affected communities to provide input into the NEPA process. Such an assessment will include a discussion of whether mitigation of localized air impacts was developed in consultation with potentially affected communities.

The DEIS will address the environmental impacts of the proposed Federal action on low-income and minority communities in accordance with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The DEIS development process will include opportunities for the community to provide input into the NEPA process by way of the public notice and comment requirements of 40 C.F.R. § 1506.6

Placer County's General Plan *Housing Element* includes Goal 2.A, calling for a continuing supply of affordable housing to meet the needs of residents of all income categories. Policy 2.A.11 provides that housing projects of one hundred or more units that are developed through a specific plan process shall be required to provide at least 10% of the units to be affordable to low income households. The PVSP complies with Policy 2.A.11 by setting aside 10% of all units to be affordable to low income households.

Response to EPA NOI-15: Incorporation by Reference. If the DEIS refers to other documents, it should provide a summary of critical issues, assumptions and decisions that is complete enough to stand alone. Previous analyses should be updated to address substantive issues raised during the public scoping process. Pursuant to 40 C.F.R. § 1502.21, the DEIS will incorporate documents by reference in a stand-alone manner that provides a summary of the critical issues, assumptions and decisions identified in the PVSP EIR. Such documents include, but are not limited to, the PVSP EIR. The DEIS will update PVSP EIR analyses and other analyses as necessary to address substantive issues raised during the public scoping process.

References

California Department of Fish and Game. (1998) Changes in Great Valley Vernal Pool Distribution from 1989 to 1997. Report to CDFG, Author Robert F. Holland.
http://www.dfg.ca.gov/whdab/wetlands/vp_holland/report_index.htm

King, J.L. (1996). Loss of Diversity as a Consequence of Habitat Destruction in California Vernal Pools. Ecology, Conservation, and Management of Vernal Pool Ecosystems, Sacramento, California Native Plant Society.

Response to Comments from USFWS/NMFS/CDFG ("WA"):

Response to WA-1: The U.S. Fish & Wildlife Service ("USFWS"), National Marine Fisheries Service ("NMFS") and California Department of Fish & Game ("CDFG") submitted a joint letter on the Public Notice and Notice of Intent to prepare an Environmental Impact Statement ("EIS") for the Placer Vineyards Specific Plan. For purposes of this response, these agencies are identified as the, "Wildlife Agencies." We concur with the joint comments submitted by the Wildlife Agencies regarding the project description.

Response to WA-2: The commenter provides background regarding the biological resources characterizing the Specific Plan area. As noted by the commenter, there are approximately 156 acres of waters within CWA jurisdiction on-site. The commenter claims that of the 156 acres on-site, the PVSP proposes to fill approximately 102.7 acres of these interconnected waters. This assumption is incorrect. While the 156 acres approximates the on-site waters only, the 102.7 acres includes impacts to waters on-site, as well as off-site from infrastructure installation. Of the 102.7 acres of impact, 61.3 acres of waters of the United States will be impacted by on-site land use development, approximately 41.4 more acres would be impacted by infrastructure development (approximately 6.8 of these 41.4 would be off-site), and approximately 60.1 acres will be avoided.

Response to Comment WA-3: To describe the on-site habitat as an unfragmented mosaic of vernal pool and grassland habitat is misleading. In reality, much of the site historically has been disturbed/modified for agricultural use (see Response to CL-4, above). At present, large portions of the site are still under agricultural production and should not be mistaken for such pristine habitat. While it is acknowledged that if left undisturbed for a long enough period of time, some portion of the potential original pristine vernal pool landscape would reassert itself, other portions have been permanently altered and would not be expected to recover. Finally, there is no reason to believe that, if not developed, agricultural production wouldn't continue within the plan area.

Response to WA-4: It is acknowledged that DFG is providing comments as a trustee agency and that the USFWS is providing comments in accordance with the ESA. Similarly, it is noted that NMFS is providing comments in accordance with the ESA, and the Magnuson-Stevens Fishery Conservation and Management Act.

Response to WA-5: The Wildlife Agencies request that the EIS analyze and discuss all reasonably foreseeable direct and indirect project-related impacts on biological resources, with a focus on the presence of, and potential habitat for, all state and federally listed species and species of concern, and evaluate direct, indirect and cumulative impacts on vernal pool grassland and riparian resources. The EIS will evaluate the project's direct, secondary and cumulative impacts. This analysis will be based largely on the analyses contained in Chapter 4.4 of the Revised Draft EIR for the Placer Vineyards Specific Plan ("Revised EIR").

Response to WA-6: The commenter requests that the Corps identify and discuss feasible compensation measures to address all reasonably foreseeable project-related impacts on biological resources. Measures must compensate, avoid, minimize or otherwise offset impacts, including, acquisition of existing habitat, restoration and creation.

As indicated in the Revised EIR, the Section 404 Permit applications and the Public Notice, the project applicants are preparing a Conceptual Conservation Strategy to provide for wetland

mitigation, including avoidance, minimization, and compensation to assure no net loss of wetland functions. This Strategy includes two primary components: an Avoidance and Open Space Plan and a Conceptual Mitigation Program. The Avoidance and Open Space Plan contains principles and standards to avoid and minimize impacts to wetlands and other waters of the U.S., and incorporates over 700 acres of open space within the Plan Area including significant wetland/swale corridors. The Conceptual Mitigation Program focuses on the preservation and restoration of aquatic resources, including the acquisition and preservation of vernal pool-dominated grasslands, enhancement of existing wetlands, restoration of previously existing wetlands, and the establishment of new wetlands.

In addition to providing substantial and protected open space areas, the intent of this Conceptual Mitigation Program ("Mitigation Program") is to provide a single, all-inclusive mitigation program that can simultaneously mitigate for all biological resources of concern, including mitigation requirements for unavoidable impacts to Plan area endangered species habitats, wetlands and other "waters." The Mitigation Program has been developed to be consistent with evolving strategies likely to find their way into the Placer County Conservation Program (PCCP), while also mitigating impacts on open space and agricultural lands. The Mitigation Program endeavors to facilitate adoption of a viable and functioning PCCP since the County General Plan and the PCCP plan for the ultimate development of the Placer Vineyards Specific Plan. Response to DC-4, DC-5, DC-7, and DC-17 provide further information regarding the proposed Avoidance and Open Space Plan and Conceptual Mitigation Program. The EIS will describe and evaluate the applicant's proposed Conceptual Mitigation Program.

Response to WA-7: The commenter requests that the Corps specifically identify all off-site lands to be used as compensation for project impacts. Lands encumbered as part of compensation should be acquired in fee title and not by easement. As indicated in Response to WA-6, the applicants are developing a Conceptual Mitigation Program which will identify proposed off-site mitigation lands to compensate for project impacts. Mechanisms for securing such off-site mitigation land will be evaluated including the potential for securing easements. Such an approach is consistent with prior Federal, State and County actions for securing mitigation lands. To limit off-site preservation to fee acquisition would greatly and unnecessarily hinder a landowner's ability to acquire mitigation sites.

Response to WA-8: The Wildlife Agencies request that all off-site infrastructure improvements be identified and that the Corps evaluate compensation measures to address all reasonably foreseeable direct and indirect impacts from these improvements. In response, the applicants submitted an application for the backbone infrastructure improvements in conjunction with the 24 development project applications. The infrastructure is described in the Public Notice and Notice of Intent. Impacts will be evaluated in the EIS, accordingly.

Response to WA-9: The Wildlife Agencies request that the EIS evaluate the project's contribution to habitat fragmentation and population isolation of all plant and animal populations. Feasible compensation measures that will avoid and substantially lessen the impacts should be identified. The Specific Plan Compensatory Mitigation Program is designed in consideration of widely-accepted ecological principles regarding the reduction or loss of habitat value typically associated with habitat fragmentation and isolation. The DEIR directly addresses this issue in the analysis presented at impact discussion 4.4-1. "Development will remove the majority of open space in the Specific Plan area" (page 4.4-94), wherein it is specifically acknowledged that "fragmentation could affect the range of some species, and reduce the value of preserved habitat." This impact discussion

and the associated EIR Mitigation Measures 4.4-1a through 4.4-1j recognize the loss of open space, including fragmentation within the plan area, as a significant impact. It is anticipated that the EIR analysis of habitat fragmentation will provide a foundation for the evaluation of such impacts in the EIS.

Further, one acre of open space will be preserved for each acre of open space impacted by the Specific Plan. To address the fragmentation of open space in the Specific Plan area, the applicants are required to establish a core preserve area or areas totaling approximately 1,000 acres, or minimum 200-acre areas will be added to an existing preserve that it a minimum of 1,000 acres. These properties demonstrate the presence of natural vegetation with limited disturbance. Thus, avoiding internal fragmentation was an important criterion considered in Mitigation Measure 4.4-1s in the EIR and the Appliance Initiated Mitigation Proposal, and will be further addressed in the EIS.

Response to WA-10: The Specific Plan Area is situated within the Pacific Flyway, one of four major migratory bird flyways in the United States. The Pacific Flyway encompasses Alaska, western Canada, the western United States, and Mexico as shown in the Final EIR, Figure 6). As such, all of the proposed off-site mitigation areas are similarly situated within the Pacific Flyway and would provide valuable and diverse habitat for migratory birds. The EIS will contain an analysis of potential impacts to waterfowl migration and mitigation measures to avoid affecting migratory birds, based in part on the analysis contained in Impact 4.4-7 of the Revised Draft EIR and further addressed in Response 27C in the Final EIR. Additionally, the commenter is referred to the Response to DC-14.

Response to WA-11: The commenter indicates that there is no policy requiring a 1:1 ratio for loss of open space and the project must be biologically justified in meeting the standard of no net loss of value and function. The basis for the acquisition of the proposed preserve lands is the County requirement for mitigation at a 1:1 ratio for lost open space. Within the areas preserved as "open space" mitigation, specific habitat mitigation (preservation, creation, and restoration requirements) will occur at accepted mitigation ratios. It is the goal of this strategy to achieve a mixed mosaic of habitats within acquired preserve areas to achieve ecosystem and preserve stability to support and conserve biological resources.

The applicants have made a good faith effort to identify and target for acquisition specific off-site mitigation areas precisely so that their conservation/mitigation value could be assess by the Wildlife Agencies. While a 1:1 ratio has been used provide some framework for targeting appropriate mitigation properties (and to provide some assurance that required mitigation will exceed some minimum level), it is anticipated that approval of mitigation properties will consider the intrinsic values of real mitigation properties in the real-world landscape. It is thus possible, that approved mitigation properties may yield mitigation ratios greater than 1:1, in the sense that, in meeting the County's 1:1 open space requirement and other additional requirements for specific resources at the same time, the County may find that a single acre of property does not simultaneously satisfy both open space and all resource mitigation needs. The commenter is also referred to the Response to DC-17.

Response to WA-12: The Wildlife Agencies request that the Corps develop alternative design scenarios for the project that will achieve most of the project objectives and which will avoid or substantially lessen the project-related impacts on biological resources. Accordingly, the EIS and Section 404(b)(1) Alternatives Analysis will evaluate a reasonable range of alternatives and will

consider alternatives that meet the overall project purpose and are practicable in accordance with 40 C.F.R. 230.10. The Specific Plan area applicants are in the process of preparing a framework to evaluate alternatives to comply with the Section 404(b)(1) of the Clean Water Act ("Guidelines") as further discussed in Response to CL-3. This framework will address commenter's concerns regarding impacts of individual projects by establishing a comprehensive avoidance and minimization and low impact development strategy ("LIDS") alternative, and utilizing a two tiered approach to analyzing alternative avoidance plans. A "no federal permit" alternative also will be thoroughly analyzed in the Environmental Impact Statement for the project as well as the Alternatives Analysis under the Guidelines.

Response to WA-13: The Wildlife Agencies have requested that the 404(b)(1) Alternatives Analysis and EIS include an alternative design that reduces overall project impact by excluding development from western third of the project area. The commenter is referred to Response to EPA NOI-2 and to Response to DC 10 regarding the requested alternative design. As further discussed in the responses to comments contained in the EPA comment letter on the Public Notice, inherent in the project applicants' strategy for the examination of alternatives is the viability of on-site preserves in the context of urban development and the project purpose.

Response to WA-14: The commenter requests that direct, indirect and cumulative impacts to water quantity and quality should be fully addressed and LIDS should be incorporated into the Specific Plan land use plan. The DEIS will assess the direct, indirect and cumulative effects of each project alternative. Such analysis will include, but not be limited to, impacts related to downstream and upstream water sources, flooding potential, water quality and aquatic habitat. Moreover, LIDS have been incorporated into the proposed Specific Plan overall conservation strategy as further discussed in Responses to CL-3 and DC-5, and Response to EPA NOI-10. The Specific Plan includes a system for the management of stormwater runoff, and establishes guidelines for management of urban runoff and the control of erosion and sedimentation through the design of drainage systems and land use regulations. According to the Specific Plan and the Master Project Drainage Study, the drainage system has been designed to accommodate peak flow rates resulting from additional impervious surfaces and proposed drainage modifications. The Drainage Study also includes provisions to maintain the hydrology of sensitive areas by preserving the mean annual and peak flow rates through them.

The commenter also requests that the EIS consider effects to listed fish species and habitat from associated wastewater treatment facilities. The EIS will contain an evaluation of effects to listed fish species habitat due to associated wastewater treatment facilities. This analysis will be based on the analysis of impacts to fish species contained in the Placer Vineyards Specific Plan Biological Assessment and the EIR analysis of potential impacts to fish species and associated habitats which may be found in Chapter 4.4 of the Revised Draft EIR. This analysis concluded that the provision of wastewater treatment services to the Specific Plan development would not result in significant impacts to fish species and associated habitat.

Response to WA-15: The commenter requests that the Corps address effects on listed fish species and habitat from the water supply for Placer Vineyards. The EIS will contain an evaluation of effects to listed fish species habitat associated with the proposed water supply and infrastructure necessary to serve the Plan Area. This analysis will be based on the analysis of impacts to fish species contained in the Placer Vineyards Specific Plan Biological Assessment and the EIR analysis of potential impacts to fish species and associated habitats which may be found in Chapter 4.4 of the

Revised Draft EIR. This analysis concluded that the provision of water supply to the Specific Plan development would not result in significant impacts to fish species and associated habitat.

Response to WA-16: The Wildlife Agencies request that wetland function and value of avoided wetland systems should be evaluated with full consideration of watershed fragmentation and impacts at the micro-watershed level. As indicated in Response to WA-9, above, the Specific Plan and its associated Conceptual Mitigation Program are designed to address the potential for watershed fragmentation associated with the proposed development. Moreover, the Specific Plan area applicants are in the process of preparing a framework to evaluate alternatives to comply with the Section 404(b)(1) of the Clean Water Act ("Guidelines") as further discussed in Response to CL-3. This framework will address commenter's concerns regarding impacts of individual projects on watershed fragmentation by establishing a comprehensive avoidance and minimization and low impact development strategy ("LIDS") alternative, and utilizing a two tiered approach to analyzing alternative avoidance plans.

Response to WA-17: The commenter requests that the EIS include an evaluation a comprehensive analysis of all species that may be impacted, including Conservancy fairy shrimp, based on a March 2007 report that a single Conservancy fairy shrimp (*Branchinecta conservatio*) was found in western Placer County.

The May 2006 Revised Draft EIR and the June 2006 First Partially Recirculated Revised Draft EIR evaluated impacts to special status vernal pool species. Based on the March 2007 report, the Conservancy fairy shrimp is now considered as potentially-occurring within the Placer Vineyards Specific Plan area and potential off-site improvement areas, although it is still considered "unlikely" to occur there, based on its prior-documented limited distribution and the fact that ongoing determinate surveys for vernal pool aquatic invertebrates throughout the plan area have, thus far, not indicated its presence. (SPRRDEIR, pp. 4.4-1 to 4.4-2.)

In conjunction with the state and federal permit processes, the Revised EIR Mitigation Measures 4.4-1 and 4.4.2 will create a comprehensive mitigation strategy that, among many other things, will fully mitigate for any potentially significant impacts to any affected vernal pool invertebrates listed as endangered or threatened under either the federal Endangered Species Act (ESA) or the California Endangered Species Act (CESA). Measure 4.4.1 will require the proponents of site-specific development proposals to prepare Open Space Mitigation and Management Plans that will preserve an acre of open space for every acre of open space lost due to the project. These preserved lands, in some instances, will include vernal pool habitat. The project proponents must also meet stringent performance standards for the mitigation of impacts to these listed species, typically in the form of mitigation ratios for the preservation or restoration of vernal pools and the preservation of surrounding uplands. Where additional surveys are required to ensure compliance with these performance standards, they will be required. Should the County Board of Supervisors approve the Placer Vineyards Specific Plan, moreover, the project proponents will also need to obtain wetland fill permits (404 permits) from the United States Corps of Engineers, which must comply with the National Environmental Policy Act (NEPA) and consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of ESA before issuing any such permits. Wholly independent of the County's CEQA process, these federal processes will also ensure adequate mitigation of the newly-discovered fairy shrimp species, which are not expected to be found, as they have not been discovered in any of the many invertebrate surveys that have already been performed throughout the Placer Vineyards site. As part of the federal NEPA, section 404, and ESA processes, the commenter will have many

additional opportunities to make known its views regarding how much on-site avoidance, as opposed to off-site mitigation, will be appropriate for the project area

The EIS will contain an evaluation of effects to all special status species and associated habitat that may be impacted by the proposed Specific Plan development. This analysis will be based on the analysis of impacts to special status and non-listed species contained in the Placer Vineyards Specific Plan EIR (see Chapter 4.4 of the Revised Draft EIR). Additionally, the EIS will be based upon the evaluation of effects to federally-listed threatened and endangered species contained in the Biological Assessment which is currently under preparation.

Response to California Native Plant Society ("CNPS") Comment Letter:

Response to CNPS-1: Comment noted. No further response is required.

Response to CNPS-2: Commenter provides a description of the California Native Plant Society (CNPS) and states that it is the organization's belief that land use decisions must be accompanied by a thorough assessment of the environmental impacts as required by State and federal law. All the potential environmental impacts of the proposed PVSP will be identified, analyzed and mitigated, where appropriate, in the Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) for the PVSP, as required by CEQA and NEPA, respectively and under the Clean Water Act, the federal Endangered Species Act as well as other state resource laws.

Response to CNPS-3: Commenter accurately notes that the combined total impacts to waters of the United States for all elements of the comprehensive permit application are 102.7 acres. Of this acreage, 41.4 acres would be impacted due to infrastructure construction (34.6 acres on-site and 6.8 acres off-site) and 61.3 acres would be impacted by development construction. Of the 102.7 acres of impacts within the Plan area, 200 acres of habitat corridors would be modified resulting in temporary impacts to 8.5 acres of waters/wetlands. Commenter also accurately states that a total of 60.1 acres of waters will be avoided in approximately 700 acres of open space.

The commenter requests quantification of the acreages of the various wetland types that will be impacted and those that will be avoided. The table below includes calculations of acreages within the Plan area by wetland/waters type. (See Table 4.4-2 of the *Placer Vineyards Specific Plan Revised Draft EIR*, March 2006.)

<u>Existing Wetlands and Waters Within the Specific Plan Area</u>			
Wetland/Waters Type	Properties Surveyed	Properties Requiring Additional Resource Identification	Total
Depressional Wetlands			
Vernal Pool	35.2	5.9	41.1
Seasonal Wetland	27.1	0.0	27.1
Seasonal Wetland Swale	15.8	0.0	15.8
Seasonal Marsh	0.2	0.0	0.2
Pond	18.9	2.9	21.7
Drainage Swale	2.2	0.0	2.2
Stock Pond	5.2	0.0	5.2
Slope Seasonal Wetland	0.0	0.0	0.0
Riverine Wetlands			
Canal/Ditch	0.7	0.0	0.7
Creek	0.5	0.0	0.5
Ephemeral Drainage	4.3	0.0	4.3
Intermittent Drainage	19.9	0.0	19.9
Channel	1.5	0.0	1.5
Riverine Seasonal Wetlands	15.7	2.2	17.8

Existing Wetlands and Waters Within the Specific Plan Area			
Wetland/Waters Type	Properties Surveyed	Properties Requiring Additional Resource Identification	Total
Riverine Seasonal Marsh	5.6	8.2	13.9
Riverine Perennial Marsh	0.6	0.0	0.6
TOTAL	153.4	19.2	172.6

See Figure 4.4-2 of the *Placer Vineyards Specific Plan Revised Draft EIR* (March 2006) for a map depicting the location of the wetlands/waters that will be impacted within the Plan area.

Commenter opines that the "vast majority of the vernal pools on the site will be directly impacted and those that remain will be indirectly impacted by adjacent incompatible land uses." While vernal pool complexes exist within the Plan area, mitigation is proposed that would result in preservation and restoration of aquatic resources with higher quality habitat to compensate for unavoidable impacts to on-site aquatic resources which, generally, are of a lower quality. The existing aquatic resources of the Plan area are degraded as many of the wetlands have been negatively impacted and modified by historical agricultural use. See also Response to Comment CL-4.

For a thorough discussion of the proposed conceptual mitigation strategy for the vernal pool impacts of the PVSP, see Response to Comment DC-17. The proposed project establishes a core preserve area to address the fragmentation of open space in the Specific Plan area. Subsequent development projects within the Specific Plan area would be required to mitigate through the establishment of preserve areas that, to the extent feasible and appropriate, are located adjacent to the core preserve or are associated with other existing preserve sites.

Commenter further states that the Plan area is located within a Core Recovery Unit identified in the Final Recovery Plan for the Vernal Pool Ecosystems of California and Southern Oregon ("Recovery Plan"), dated December 15, 2005, approved by the U.S. Fish and Wildlife Service. This Recovery Plan features 33 plant and animal species that occur exclusively or primarily within a vernal pool ecosystem in California and Southern Oregon. Twenty federally-listed vernal pool ecosystem plant and animal species are identified. The Recovery Plan also addresses 13 species of special concern. The overall goals of the Recovery Plan are to achieve and protect in perpetuity self-sustaining populations of the vernal pool species, provide for delisting of 20 federally-listed plant and animal species, and ensure the long-term conservation of the 13 species of special concern. (Recovery Plan, p. viii.)

Western Placer County, including the Specific Plan area, is identified as a core area within the Southeastern Sacramento Vernal Pool Region. Vernal pool species characterizing this core area include vernal pool fairy shrimp, vernal pool tadpole shrimp, California fairy shrimp, western spadefoot toad, Bogg's Lake hedge-hyssop, Ahart's dwarf rush, and legener. The Recovery Plan designates the western Placer County core area as a "Priority 2" recovery priority area. Although the Recovery Plan does not establish regulatory limits or requirements, Priority 2 recommends the protection of 85% of the suitable vernal pool habitat within the core area. (Recovery Plan, p. III-118.) It is important to note that the Recovery Plan sets goals for the *entire* core area, not just the

PVSP area. The protection goals are not necessarily proscribed to apply on a project-by-project, parcel-by-parcel basis, and indeed focus on "suitable" habitat.

Also notably, "recovery plans" are not enforceable regulatory documents binding on local planning agencies. (See *The Fund for Animals v. Rice*, 1995 U.S. Dist LEXIS 22389, *11-*12 (M.D. Fla. 1995) ("[t]he Florida Panther Recovery Plan . . . presents merely guidelines and not requirements vested with the force of law"); *Oregon Natural Resource Council v. Turner*, 863 F. Supp. 1277, 1284 (D. Or. 1994) ("the development and publication of a recovery plan in and of itself would not have afforded the endangered species any additional protection"; "[t]he recovery plan presents a guideline for future goals but does not mandate any actions, at any particular time, to obtain those goals"; see also *National Wildlife Federation v. National Park Service*, 669 F. Supp. 384, 388-89 (D. Wy. 1987) (noting that the language of the statute does not support the plaintiff's assertion that ESA section 4(f) obligates the Secretary of Interior to develop and implement a recovery plan, and that once the plan is developed, all concerned agencies must adhere to it).)

Response to CNPS-4: Commenter also states that, as proposed, the Placer Vineyards Specific Plan does not appear to meet the Least Environmentally Damaging Practicable Alternative (LEDPA) test required by Section 404(b)(1) of the Clean Water Act. The project applicants will fully comply with Section 404(b)(1) Guidelines and have prepared an Alternatives Analysis framework which will be applied to identify the potentially practicable alternative sites and to the determination of the LEDPA. This framework will also be used in developing the Alternatives Analysis as part of the EIS. The proposed framework for the Alternatives Analysis reflects efforts accomplished through the local planning process to avoid and preserve interconnected and intact habitat areas for the Specific Plan, as a whole.

Under the Section 404(b)(1) Guidelines, the alternatives analysis must demonstrate that there are no *practicable* alternatives to the proposed discharge which would have less adverse impact on the "aquatic ecosystem," provided that the alternative does not have other significant adverse environmental impacts. The 404(b)(1) Guidelines define the "aquatic ecosystem" as waters of the U.S., including wetlands, "that serve as habitat for interrelated and interacting communities and populations of plants and animals." (40 C.F.R. § 230.3(c).) Accordingly, the analysis of alternatives to the proposed discharge will take into consideration an alternative's effects on the aquatic ecosystem in terms of a landscape-based approach which reflects the interrelated and interacting vegetation and wildlife habitat.

The Alternatives Analysis will evaluate an acceptable range of alternatives and incorporate a broad watershed based planning approach to establish avoidance and minimization criteria designed to assure that impacts to aquatic resources will be avoided or minimized to the maximum extent. See also Response to Comments DC-7 and CNPS-3.

Response to CNPS-5: The EIS, and all other analyses required under the federal CWA, will include a complete analysis of the Conceptual Conservation Strategy and an appropriate range of alternatives and the applicants will fully comply with the Section 404(b)(1) Guidelines. For a complete discussion of the Conceptual Conservation Strategy that will be prepared for the PVSP, see Response to Comment DC-7.

Commenter opines that creation of vernal pools within existing vernal pool landscapes causes direct, indirect and cumulative impacts to those naturally occurring vernal pool landscapes the biota that depend on them.

Commenter accurately states that the Placer Vineyards Conceptual Mitigation Program contemplates upfront acquisition of preserve lands, which will mitigate for unavoidable project impacts, and conserve sensitive habitats within Western Placer County. The basis for the upfront acquisition of these preserve lands is the County requirement for mitigation at a 1:1 ratio for lost open space. Within the areas preserved as 'open space' mitigation, specific habitat mitigation (preservation, creation, and restoration requirements) will occur at accepted mitigation ratios. It is the goal of this strategy to achieve a mixed mosaic of habitats within acquired preserve areas to achieve ecosystem and preserve stability to support and conserve biological resources.

The mitigation strategy for the Plan area would establish a core preserve area of approximately one thousand acres, and includes the restoration of habitat to existing conditions. The question of vernal pool restoration and creation within existing vernal pool habitat areas will be addressed during the course of the federal permit process. Coordination with responsible resource agencies with respect to vernal pool creation and restoration is required under federal law as part of the CWA, and the federal ESA.

Response to CNPS-6: Commenter expresses concern that rare plant surveys conducted over the past several seasons are inadequate due to unusual weather patterns, and requests additional surveys for these species be conducted to properly assess impacts to listed and special-status species. The applicants are unaware of any special-status plant survey results having been rejected by either the U.S. Fish and Wildlife Service or the California Department of Fish and Game due to unusual weather patterns during the past few years. As a matter of practice, prior to conducting rare plant surveys, it is usual and customary for botanists to visit known reference populations (available for most target species) in order to "calibrate" their search profiles for the season and verify appropriate survey timing with observed blooming period. Further, it should be noted that during the recent period referenced (2005-2007) several of these target species were detected on other sites.

Response to CNPS-7: Commenter's opinion is noted. In compliance with State and federal laws, all environmental impacts of the PVSP will be identified, analyzed and mitigated in the EIR and EIS being prepared for the project. Ultimately, it is within the discretion of the local (Placer County) land use authorities to decide to approve the project and certify the environmental documents. The Placer County Board of Supervisors will make a policy decision whether to adopt a Statement of Overriding Considerations, as required by CEQA Guidelines section 15091, in order to approve the project despite its significant and unavoidable environmental impacts. Notably, CEQA prohibits public agencies from approving a project with significant adverse impacts when feasible alternatives or feasible mitigation measures can substantially lessen such effects. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; see *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 330-331.) Additionally, and noted above, the project must comply with the CWA Section 404 Guidelines which require that a project grading or urban development permit cannot be issued unless the applicant demonstrates that the project is the least environmentally damaging practicable alternative (LEDPA). See also Response to Comment CNPS-4.

Commenter claims that recent literature indicates that creation or restoration fails to replace the functions and values that exist in natural habitat, but fails to provide citations to these sources. As described in Response to Comment DC-7, the Placer Vineyards Specific Plan Conceptual Conservation Strategy includes avoidance, minimization, and compensation to assure "no net loss" of wetland functions, and to provide adequate protection and maintenance of preserved wetland habitat.

Commenter's assertion that the PVSP mitigation strategy fails to ensure that species and habitat are conserved and afforded the appropriate resources and management to ensure their long-term survival is unfounded. The Conceptual Conservation Strategy for the PVSP, which includes two primary components, an Avoidance and Open Space Plan and a Conceptual Mitigation Program, is aimed at both conservation and long-term protection of sensitive species and their habitat. For a comprehensive discussion of the Conceptual Conservation Strategy, see Responses to Comments DC-5 and DC-7.

Response to CNPS-8: Comment noted. No further response is required.

Response to Sierra Club Comment Letter:

Response to Comment SC-1: Commenter states that onsite avoidance and/or offsite mitigation should be based on the recognized high resource values present on the site. The potential impacts of the Placer Vineyards Specific Plan on all special status species will be properly analyzed and mitigated as required in the EIR, and will be required as a part of this CWA Section 404 permit process, and the federal ESA.

Response to Comment SC-2: The commenter states that retaining “vernal pool complexes” is essential and discusses the “Glazner Survey” performed during the PCCP process. As part Placer County’s CEQA process, the County has provided mitigation for this project that would ensure compliance with the all applicable and controlling resource regulations including the PCCP, if the PCCP is adopted prior to Specific Plan implementation (see Revised Draft EIR Mitigation Measure 4.4-1). However, it is not possible for the County to require compliance with mitigation contained in an incomplete and unadopted PCCP. Revised Draft EIR Mitigation Measure 4.4-1 requires compliance with the PCCP to the extent it is adopted prior to project implementation. The Open Space/Biological Resources Mitigation and Management Strategy presented in the Revised Draft EIR is intended to dovetail with the possible requirements of the draft PCCP. The Revised Draft EIR acknowledges that the PCCP has not yet been officially adopted; however, the comprehensive mitigation strategy will allow the Placer Vineyards Specific Plan to move forward without the PCCP program in place, and also provides the opportunity for the PCCP program to be utilized, if adopted in the future.

The “Glazner Survey” (2003) referenced in the Sierra Club’s letter was actually an aerial photo interpretation exercise wherein Northfork Associates (the company retained to conduct the “Glazner Survey”) mapped “vernal pool complexes” (a relatively undefined term of art subject to individual interpretation). The Glazner data were revised (slightly) by Jones and Stokes Associates using 1999 aerial photographs and incorporated into the Placer Legacy GIS data set compiled in 2002. In general terms, the U.S. Fish and Wildlife Service describes these as assemblages of several pools including upland habitat and interconnecting swales. It is difficult to apply this “definition” to the landscape, particularly in the context of an aerial photo interpretation exercise because of the subjectivity of both the definition of “vernal pool” (vs. isolated seasonal wetland) and the amount of surrounding upland habitat to be included.

Figure 9 of the Final EIR, which illustrates the 85% avoidance alternative, was actually created by defining 250-foot buffers around individually mapped vernal pools, basin-type seasonal wetlands, and drainage swales. Figure 9 was not an attempt to designate “vernal pool complexes” within the PVSP. This assemblage of wetland types is believed to represent what the U.S. Fish and Wildlife Service would likely consider to constitute habitat for federally-listed aquatic invertebrates (e.g., vernal pool fairy shrimp and/or vernal pool tadpole shrimp). Much of the area shown on Figure 9 (approximately 3,996 acres out of 5,238 acres, or 76%), was based upon actual on-ground wetland delineations (according to standards promulgated by the U.S. Army Corps of Engineers). While it may be described as “arbitrary,” U.S. Fish and Wildlife Service interpretation and policy were also the basis for the utilization of the 250-foot buffer, as this buffer distance is incorporated into the *“Programmatic Formal Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans Within the Jurisdiction of the Sacramento*

Field Office, California" (USFWS 1996), and is routinely relied upon for indirect effects determinations in the context of Section 7 consultations.

To describe Figure 9 as "arbitrary" and to imply that Figure 9 is somehow a less accurate depiction of the distribution of "vernal pool complex" habitat is mistaken. The two maps were derived using entirely different methodologies in response to different interpretations of "vernal pool complex" habitat (or vernal pool aquatic invertebrate habitat, or "shrimp habitat", as identified in Figure 9). While there is some correspondence between the maps, this is due to the fact that the wet acres of "vernal pool complex" (as mapped by Glazner) represents a subset of the aquatic invertebrate habitat mapped in Figure 9. Apart from this conceptual overlap, the close correspondence between the Glazner value of 2,233 acres and the Final EIR Figure 9 value of 2182 acres is coincidence.

North Fork Associates did identify 2,233 acres of what was termed "vernal pool complexes" on the PVSP site, as well as others throughout Placer County. The mitigation strategy for the PVSP and as proposed under this federal CWA Section 404 permit process adequately takes into consideration the fact that vernal pools must be large enough to function biologically and must be effectively buffered and protected.

Response to Comment SC-3: Commenter cites the California Department of Fish and Game's May 19, 2006 comment letter on the Revised Draft EIR for the proposition that the 714 acre of habitat proposed to be retained onsite would be of little value biologically. The commenter overlooks the fact that onsite open space, where appropriate, can be used for habitat enhancement and restoration, thus enhancing values for wildlife.

Potential indirect impacts to riparian corridors could negatively affect species even though riparian vegetation is not directly impacted. Project setbacks, which are consistent with the Placer County General Plan, are intended to mitigate impacts to a less than significant level (Revised Draft EIR, page 4.4-112). Further, commenter appears to be suggesting that the project is fragmenting riparian habitat. In fact, little fragmentation of riparian habitat will occur as a result of project implementation. Most riparian habitat is found along the Dry Creek corridor, which will be buffered and left essentially untouched by the project: "Buildout of the Specific Plan development footprint avoids impacts to Dry Creek riparian habitat by adjacent land use, and is consistent with the 100-foot setback from perennial streams (Curry Creek) required by the General Plan. In most places along the stream corridor, the setback is considerably wider" (Revised Draft EIR, page 4.4-112).

The other riparian areas mapped within the Specific Plan area include scattered Goodding's black willow trees along an intermittent drainage west of Palladay Road, and an isolated patch of riparian scrub (i.e., blackberry bramble dominant) in the northeastern portion of the Plan area. The black willows are distributed along the drainage such that the scattered trees are rooted within or on the bank but do not form a corridor of vegetation into the adjacent uplands. These on-site riparian areas are highly fragmented and likely provide diminished wildlife value due to the relatively small area which they encompass and the close proximity to Palladay Road and rural residences. Nevertheless, these areas are proposed for avoidance, and the Operations and Maintenance Plan, which is required as part of the Section 404 permitting process, will detail measures to protect these other riparian resources.

The applicant disagrees with commenter's conclusion that the Specific Plan understates the loss of habitat. The development will result in the direct loss of 3,520 acres of various habitat types. In this case, the impact area is not a preserve area, actively managed for ecological value, but is actually an assemblage of agricultural and some rural residential properties with associated agricultural use, some of which (e.g., active cultivation) are not necessarily favorable to habitat values. Avoided areas will ultimately be surrounded by developed areas, but will still retain habitat value to wildlife and could be used for habitat enhancement and restoration.

Response to Comment SC-4: On May 31, 2007, the United States Fish and Wildlife Service published in the Federal Register its court directed clarification of the economic and non-economic exclusions in the 2005 final rule designating critical habitat for 15 vernal pool species. The clarifications did not result in any additions, deletions or other changes to the areas previously designated or excluded as critical habitat. This includes those areas excluded within the Placer Vineyards Specific Plan area.

Response to Comment SC-5: For a discussion of the PVSP Conceptual Conservation Strategy, see Responses to Comments CL-3, CL-6, DC-5, and DC-7. Mitigation proposed as part of the County process and this CWA Section 404 permit application will comply with the "no net loss" policy, and provide for significant "upland" resources surrounding preserved aquatic habitat and all other habitat used as mitigation for unavoidable impacts caused by the proposed project. Additionally, the project must comply with the mandates of the federal Endangered Species Act ("ESA") and will therefore incorporate required ESA listed species mitigation, inclusive of listed species habitat. These mitigation requirements will assure adequate preserve watershed protection.

Response to Comment SC-6: For a general discussion of the PVSP mitigation strategy see Response to Comment CNPS-3.

The Final Recovery Plan for Vernal Pool Ecosystems designates the western Placer County core area as a "Priority 2" recovery priority area. The Recovery Plan does not establish regulatory limits or requirements; rather, Priority 2 *recommends* the protection of 85% of the suitable vernal pool habitat within the core area. (Recovery Plan, p. III-118.) This goal is established for the *entire* core area, not on a project-by-project or parcel-by-parcel basis. The EIS will examine such an alternative as proposed by commenter.

Moreover, "recovery plans" are not enforceable regulatory documents binding on local planning agencies. (See *The Fund for Animals v. Rice*, 1995 U.S. Dist LEXIS 22389, *11-*12 (M.D. Fla. 1995) ("[t]he Florida Panther Recovery Plan . . . presents merely guidelines and not requirements vested with the force of law"); *Oregon Natural Resource Council v. Turner*, 863 F. Supp. 1277, 1284 (D. Or. 1994) ("the development and publication of a recovery plan in and of itself would not have afforded the endangered species any additional protection"; "[t]he recovery plan presents a guideline for future goals but does not mandate any actions, at any particular time, to obtain those goals"; see also *National Wildlife Federation v. National Park Service*, 669 F. Supp. 384, 388-89 (D. Wy. 1987) (noting that the language of the statute does not support the plaintiff's assertion that ESA section 4(f) obligates the Secretary of Interior to develop and implement a recovery plan, and that once the plan is developed, all concerned agencies must adhere to it).)

The federal FSA reviewing agency must analyze the effect of a proposed action on recovery prospects, however, recovery planning is not based on a project-by-project or a parcel-by-parcel analysis. Rather, proper recovery planning should involve a comprehensive assessment of the extent of total species and habitat. Only in exceptional circumstances could it be concluded that injury to recovery prospects alone would result in a jeopardy finding.

Response to Comment SC-7: The commenter requests that the EIS examine cumulative vernal pool wetland impacts based on projects projected in western Placer County. As required by NEPA, the EIS for the project will analyze the direct, indirect and cumulative impacts of the project. In accordance with guidance from the Council on Environmental Quality (CEQ)'s handbook, "Considering Cumulative Effects Under the National Environmental Policy Act," and the EPA's "Consideration of Cumulative Impacts in EPA Review of NEPA Documents," the EIS will examine the cumulative impacts to vernal pool wetland habitat in western Placer County. (See also 40 C.F.R. 1508.25(a)(2).) According to EPA, geographic boundaries and time periods used in cumulative impact analysis should be based on all resources of concern and all of the actions that may contribute, along with the project effects, to cumulative impacts. According to EPA, considering past, present, and reasonably foreseeable future actions provides a needed context for assessing cumulative impacts. The cumulative analysis in the EIS will adequately consider whether the environment has been degraded and to what extent ongoing activities in the area are causing impacts. The EIS will consider all "reasonably foreseeable" future actions which may contribute to the project's cumulative impacts.

Response to Comment SC-8: Commenter requests that the EIS examine a project design that would provide a 100% vernal pool avoidance alternative. In accordance with NEPA, the evaluation of alternatives is governed by the rule of reason that requires a Draft EIS to consider a range of alternatives that could accomplish the proposed action's purpose and need. The Draft EIS will present the environmental impacts of the proposed action and its alternatives in comparative form, sharply defining the issues and providing a clear basis for choice by decision makers and the public. (40 C.F.R. 1502.14.) Reasonable alternatives are those that may be feasibly carried out based on technical, environmental, and other factors. The lead agency is not required to evaluate alternative beyond the reasonable range. The Draft EIS will evaluate a reasonable range of alternatives, including a no project alternative, as well as a total avoidance alternative, as recommended by the commenter.

Response to Comment SC-9: Commenter states that if the proposed project design is to be retained, offsite mitigation *must* be consistent with the Vernal Pool Recovery Plan. As stated in Response to Comment CNPS-3, the Recovery Plan includes recommendations for the entire core area, not just for the Specific Plan area. The Recovery Plan does not establish mandatory requirements; rather, the Recovery Plan sets forth *goals* for the entire core area.

Response to Comment SC-10: Commenter offers seven criteria for selection of offsite mitigation for the loss of vernal pool complexes. The first six criteria ((1) are parcels contiguous with one another, or contiguous with other preserves?; (2) are they of high quality? (existing vernal pool complexes, degree of disturbance); (3) what is the shape? (long narrow parcels not generally as desirable as more square); (4) internal fragmentation: agriculture/habitat; native/non-native; disturbed/undisturbed; (5) type of land between nearest preserve (agricultural, rural subdivision, urban?); (6) ability to manage: what is the degree of incompatibility with adjacent land uses?) will all

be considered as the project applicants implement the applicant initiated mitigation strategy required by the County (Revised Draft EIR page 4.4-90, Mitigation Measure 4.4-1.) and as required under the federal CWA, the federal ESA and any other applicable state and federal laws. See also Response to Comment CNPS-5. The project applicants are not required, although they may voluntarily choose, to use the final criterion suggested by the commenter, whether or not the parcel is located within the Recovery Plan Core Area, in selecting appropriate offsite mitigation sites.

Response to Comment SC-11: Commenter opines that offsite mitigation through the creation of vernal pools should not be acceptable. The project applicants are required to preserve, create, restore, and/or enhance appropriate mitigation resources at levels required to mitigate project impacts to less than significant levels, where possible, and to mitigate impacts consistent with State and federal requirements. Specifically, the applicants are required to create/restore vernal pools to meet the federal Clean Water Act's "no net loss" requirement.

Commenter cites an e-mail from Ken Sanchez, USFWS, to Loren Clark, Placer County Planning, for the proposition that the creation of additional vernal pool complexes is "not acceptable mitigation." The referenced e-mail did not draw this conclusion. Rather, Mr. Sanchez recommended looking for restoration/creation sites that are not within existing vernal pool landscapes. Mr. Sanchez stated, "[i]f we are asked to evaluate the creation of new vernal pools in existing landscapes that have impacts to listed species it will be very difficult to justify these proposals on biological grounds without [sic] considerable analysis of effects to uplands, wetlands, hydrology, etc." Notably, this e-mail never concludes that the creation of vernal pool complexes in existing landscapes is not acceptable mitigation.

Response to Comment SC-12: The Commenter requests that additional biological surveys be conducted, especially for the Conservancy fairy shrimp. Based report that a individual Conservancy fairy shrimp was located in western Placer County, the Conservancy fairy shrimp is now considered as potentially-occurring within the Placer Vineyards Specific Plan area and potential off-site improvement areas, although it is still considered "unlikely" to occur there, based on its prior-documented limited distribution and the fact that ongoing determinate surveys for vernal pool aquatic invertebrates throughout the plan area have, thus far, not indicated its presence. Protocol level surveys for listed invertebrates, including the Conservancy fairy shrimp have been underway within the plan area. Those surveys will be completed, as required under federal law

Response to Comment SC-13: Comment noted. No further response is required.

Response to Defenders of Wildlife Comment Letter ("DW"):

Response to DW-1: Commenter emphasizes that western Placer County contains 70% of remaining vernal pool habitats in Placer County and that such habitat is threatened by the PVSP. Please see responses to comments in the Joint Wildlife Agency letter.

Response to DW-2: Commenter refers to CDFG's May 19, 2006 letter regarding the Draft Placer Vineyards Specific Plan and Revised Placer Vineyards Draft Environmental Impact Report (the "CDFG Letter"). The CDFG letter states that the PVSP contains approximately 10% of "20,000 acres" of vernal pool grasslands in western Placer County. Please see responses to comments in the Joint Wildlife Agency letter.

Response to DW-3: Commenter notes that the USFWS excluded the PVSP from its 2005 Final Critical Habitat Rule for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants, and states that a federal judge ruled that the exclusion of Placer Vineyards was unlawful. This is incorrect. Rather, "the Court upheld the rationale and methodology employed by the Service in writing its 2005 rule, and dismissed most causes of action by plaintiffs. The Court remanded the 2005 rule for consideration of the recovery benefits of critical habitat pursuant to the *Gifford Pinchot* decision" [*Gifford Pinchot Task Force v. United States Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004)]. *Court-Directed Clarification of 2005 final Rule That Designated Critical Habitat for 15 Vernal Species*, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, May 31, 2007. On May 31, 2007, the USFWS published in the *Federal Register* its court-directed *Gifford Pinchot* clarification of the economic and non-economic exclusions in the 2005 final rule, concluding that the 2005 exclusions – including exclusion of the PVSP – will not hinder recovery of vernal pool species.

Response to DW-4: Commenter incorrectly states that the Recovery Plan issued by the USFWS requires the USACE 404 permit to include preservation of "85% vernal pool grasslands" because "Placer Vineyards development *must* protect the applicable percentages of vernal pool habitat and species occurrences as identified by the recovery plan" (emphasis supplied). This assertion is incorrect for several reasons. First, because the Recovery Plan sets an 85% preservational goal for the *entire* Western Placer County core area, not just the PVSP area. The protection goals are not necessarily proscribed to apply on a project-by-project level, and indeed focus on "suitable" habitat within the core area. This of particular importance because a comparison of the PVSP area to the Western Placer County core area depicted in Figure III-14a of the Recovery Plan suggests that the PVSP consists of less than 10% of the Western Placer County core area. It is therefore possible for the entire PVSP to be developed without any preservation of suitable vernal pool habitat and still achieve the 85% preservational goal of the Recovery Plan. Second, even if an 85% preservational goal were imposed on the PVSP at the project level, it would require preservation of 1,898 of the 2,233 acres of vernal pool grasslands within the PVSP, not 12,504 acres as Commenter suggests (a 560% preservational goal); a suggestion which neither the Recovery Plan nor any other applicable compensatory mitigation standards require as a level of mitigation (see Response to DW-7, below). Third, USFWS, not the USACE, is responsible for implementing recovery plans. Fourth, as stated in Response CNPS-3, recovery plans are not enforceable regulatory documents. (See *The Fund for Animals v. Rice*, 1995 U.S. Dist LEXIS 22389, *11-*12 (M.D. Fla. 1995) ("[t]he Florida Panther Recovery Plan . . . presents merely guidelines and not requirements vested with the force of law"); *Oregon Natural Resource Council v. Turner*, 863 F. Supp. 1277, 1284 (D. Or. 1994) ("the development and publication of a recovery plan in and of itself would not have afforded the

endangered species any additional protection"; "[t]he recovery plan presents a guideline for future goals but does not mandate any actions, at any particular time, to obtain those goals"; see also *National Wildlife Federation v. National Park Service*, 669 F. Supp. 384, 388-89 (D. Wyo. 1987) (noting that the language of the statute does not support the plaintiff's assertion that ESA section 4(f) obligates the Secretary of Interior to develop and implement a recovery plan, and that once the plan is developed, all concerned agencies must adhere to it.) Commenter refers to the *Bartlet* decision, but that decision merely holds that the USFWS explain why it reached a different conclusion from the same evidence, and why a different result is required after having made a "conscientious and educated effort to implement the plans for the recovery of the species." *S.W. Center for Biological Diversity v. Bartel*, 470 F.Supp.2d 1118, 1136-1137 (S.D. Cal. 2006). A similar explanation has already been made with regard to the PVSP: The *Placer Vineyards Specific Plan Revised Final EIR*, explains why an 85% avoidance alternative is not a practicable alternative. This explanation is summarized in Notice of Intent Response EPA. Finally, the standard by which a USFWS recovery plan must be adhered to is irrelevant where, as here, the proper standard is a determination of the Least Environmentally Damaging Practicable Alternative that achieves the overall project purpose under 404(b)(1) of the CWA, for which "Practicable" is defined as "available and capable of being done, taking into account cost, logistics, and technical feasibility." 40 C.F.R. 230.10(a)(2).

Response to DW-5: Commenter urges the Corps to require additional spring survey work of vernal pool grasslands because it opines that survey work to date was insufficient and because the federally endangered Conservancy fairy shrimp has been discovered in western Placer County since the PVSP surveys were conducted. The commenter is referred to Response to Comment 17 in the Joint Agency comment letter. Additionally, appropriate protocol level surveys for listed invertebrate species, inclusive of the Conservancy fairy shrimp, have been conducted, and continue to be conducted in the Plan Area. Thus far, and as would be expected based on the known population distribution, no occurrences have been found in the Plan Area. Additionally, appropriate protocol level surveys for listed invertebrate species, inclusive of the Conservancy fairy shrimp, have been conducted, and continue to be conducted in the Plan Area. Thus far, and as would be expected based on the known population distribution, no occurrences have been found in the Plan Area.

Response to DW-6: Commenter urges the Corps to examine project alternatives in which the project designs leave the landscape largely unfragmented. The proposed project establishes a core preserve area to address the fragmentation of open space in the Specific Plan area. Subsequent Specific Plan projects would be required to mitigate through the establishment of preserve areas that, to the extent feasible and appropriate, are located adjacent to the core preserve or are associated with other existing preserve sites. For a thorough discussion of the proposed global mitigation strategy for the vernal pool impacts of the PVSP, see Response to Comment DC-17. Please refer to Notice of Intent Response EPA, which explains the feasibility of an 85% avoidance alternative. In addition, the Plan proposes an on-site avoidance, minimization and low impact development strategy which results in the preservation of suitable and primary core drainage areas within the Plan Area resulting in over 700 acres of preserved wetland and corridor preservation. In addition, the Plan proposes an on-site avoidance, minimization and low impact development strategy which results in the preservation of sustainable and primary core drainage areas within the Plan Area resulting in over 700 acres of preserved wetland and corridor preservation. See more specifically the responses in EPA/PN letter addressing the avoidance plan.

Response to DW-7: Commenter incorrectly claims that the Recovery Plan requires the PVSP to mitigate vernal pool destruction on a ratio of 5.6 to 1 (i.e., 85%), and therefore preservation of 12,504 acres of vernal pool grassland outside the PVSP as mitigation. Please refer to comment DW-4, above, which explains why the 85% preservational goal of the Recovery Plan is not required of the PVSP and which refers to an analysis of the feasibility of an 85% avoidance alternative. It is important to note that neither the Recovery Plan nor any other applicable compensatory mitigation standards require or even suggest mitigation at a 5.6:1 ratio. Rather, specific compensatory mitigation standards for the PVSP will be based on the Corps compensatory mitigation policies as set forth in Regulatory Guidance Letter No. 2-02 and dated December 24, 2002. Impacts to the "waters of the United States" (not including vernal pools) and other non-jurisdictional wetlands identified in the Placer County General Plan will be mitigated to provide "no net loss" through avoidance, minimization and/or compensatory mitigation techniques. Impacts to vernal pool (fairy shrimp and tadpole shrimp) habitat will be mitigated through preservation or restoration of acreage based on each acre directly impacted. Moreover, PVSP property owners have committed to preserve, create, restore and/or enhance appropriate mitigation resources at levels required to compensate for unavoidable impacts to aquatic and habitat resources. The PVSP property owners have identified potential mitigation sites located within the south Placer County area which total over 3,300 acres of open space containing significant biological resources and wetland complexes. Agricultural lands also provide much potential for wetland restoration. Some of these properties would provide desirable corridor linkages to existing preserved landscapes. A combination of one or more of the mitigation sites identified by the PVSP property owners would establish a core preserve area or areas totaling approximately 1,000 acres.

Response to DW-8: Commenter urges the Corps to require mitigation lands that are of equal quality as those lost to development. The primary mitigation areas proposed for the PVSP were chosen specifically for the purposes of contributing to the formation of larger preserve blocks of land in western Placer County. These areas support a diverse suite of resources, including those used by migratory waterfowl, winter migrant raptors, and other wildlife species. Keystone properties such as Redwing and Antonio Mountain Ranch connect directly with other mitigation lands, increasing the value of the overall preserved blocks through increased connectivity and habitat diversity. Antonio Mountain Ranch (~ 660 acres) is located immediately adjacent to and fills an intervening gap between the Orchard Creek Conservation Bank and Moore Ranch. The preservation of Antonio Mountain Ranch would result in a variety of benefits within the context of the existing preserved lands, including increased size/area, reduced fragmentation, and improved connectivity. Redwing (~993 acres) is located along the eastern edge of Yankee Slough. These lands adjoin the Coon Creek Conservancy and are in the immediate vicinity of Sheridan East and Hoffman. Agricultural lands currently occupy the intervening lands between these blocks of open space. The addition of Redwing would increase the size of the existing open space, increase connectivity, decrease potential fragmentation, and contribute to regional conservation strategies.

In instances where it was not feasible to identify available lands that are contiguous with existing open space reserves, an effort was made to identify the best available mitigation lands within Placer County, including lands identified in the Placer Legacy Program and in the general vicinity of existing open space reserves (e.g., Reason Farms and Aitkens Ranch). These properties and others contribute to the developing suite of lands set aside for conservation in western Placer County. Three additional parcels (Musolino Children's Trust [-301 acres], Lincoln Ranch [-1,079 acres], and Placer 312 [-312 acres]) totaling approximately 1,690 acres were identified in this effort. These

parcels are currently being used for rice production, and provide existing wildlife habitat value as well as potential for wetland restoration and creation.

Response to DW-9: Commenter claims that the USFWS is moving away from the creation of vernal pools, and cites the opinion of Dr. Mark Skinner of the National Plant Data Center in support. The Corps routinely (and as a matter of policy) requires the creation of compensation wetlands or the purchase of compensation credits from established mitigation banks when it authorizes fill of jurisdictional waters/wetlands (including vernal pools) under Section 404 of the Clean Water Act. General Condition 20 of the current Nationwide Permit Program requires that "...compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require preconstruction notification..." Further, the USFWS routinely (and as a matter of policy) requires (and has since 1993) the creation of compensation vernal pool habitat in Biological Opinions issued authorizing the incidental take of federally-listed aquatic invertebrates (e.g., vernal pool fairy shrimp).

Response to Esther McCoy Letter:

Response to Comment: Commenter is concerned about the 102.7 acres of waters of the United States into which dredged or fill material will be discharged in order to construct infrastructure, housing, commercial and institutional facilities in conjunction with development of the Placer Vineyards Specific Plan. The 102.7 acres constitute all on- and off-site interconnected waters, but not one body of water encompassing all 102.7 acres, as commenter suggests. Of these 102.7 acres, only approximately 0.5 acres of perennial creek (i.e., Dry Creek) have been mapped within the Specific Plan area boundary. Riparian habitat occurs along some minor drainages and along Dry Creek, but the riparian habitat associated with Dry Creek is proposed to be avoided under the Specific Plan, thus no direct adverse effects are anticipated within the Specific Plan area. Off-site riparian habitat could be adversely affected by the installation of offsite infrastructure across these drainages (e.g., widening of Watt Avenue Bridge at Dry Creek). The Specific Plan includes Mitigation Measures 4.4-12a and 4.4-12b to address these potential impacts. The potential impacts of the Specific Plan on Dry Creek and associated riparian habitat will be properly analyzed and mitigated as required in the EIR, and will also be required as a part of this CWA Section 404 permit process, and the federal ESA.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105-3901

May 1, 2007

Colonel Ronald N. Light
 District Engineer, Sacramento District
 U.S. Army Corps of Engineers
 1325 J Street, 14th floor
 Sacramento CA, 95814-2922

Re: Public Notice # 199900737 Placer Vineyards Specific Plan.

Dear Colonel Light:

We have reviewed the public notice (PN) of March 13, 2007 regarding an application for 24 Department of the Army permits and Notice of Intent to prepare an Environmental Impact Statement for mixed use development proposed in the Placer Vineyards Specific Plan (PVSP). We support the joint notice and evaluation of these related projects, as this approach will facilitate improved consideration of cumulative effects and identification of appropriate avoidance and mitigation needs at an appropriate geographical scale. We also appreciate extending the comment period to May 12, 2007. We are providing the attached comments under the authority of, and in accordance with, the provisions of the Federal Guidelines promulgated under Section 404(b)(1) of the Clean Water Act (CWA) at 40 CFR 230 (the Guidelines). CL-1

According to the PN, the proposed PVSP is a mixed-use master planned community with residential, employment, commercial, open space, recreational and public land uses. The proposed 3,996 acre project site is located in the southwestern portion of unincorporated Placer County. At full build-out PVSP is expected to provide 14,132 residential units for a population of approximately 33,000 people. CL-2

There are approximately 156 acres of waters within CWA jurisdiction (waters) on-site, including Dry Creek, wetlands, and vernal pools. PVSP proposes to fill approximately 102.7 acres of these interconnected waters, including approximately 28.5 acres of vernal pools, 25.8 acres of seasonal depressional wetlands, 11.4 acres of riverine seasonal wetland, and 37 acres of integrated seasonal wetlands, streams, and other waters. The PN illustrates varying degrees of water body and wetland avoidance among the 24 Individual Permit proposals, but provides insufficient information to inform a detailed analysis of each individual project. While we are responding to the PVSP PN as a whole, we recognize separate individual permits will be needed and intend to focus on those permits with a relatively greater area of jurisdictional waters and/or little proposed avoidance. CL-3

Vernal pools complexes, comprised of interconnected pools, wetlands and other waters are high value aquatic resources that provide habitat for federally threatened and endangered species. Some of the species that vernal pool complexes support occur only in California. High rates of biodiversity and endemism within vernal pool ecosystems and the large-scale destruction and CL-4

degradation of these ecosystems have increased the importance of the vernal pools and interconnected aquatic resources that remain. Statewide, as much as 85% of the original distribution of vernal pool complexes has been lost to development, and up to 33% of the original crustacean species that depend upon vernal pool habitat (e.g., fairy shrimp) may have already become extinct due to habitat destruction.¹ Between 1994 and 1997 Placer County lost approximately 500 acres of vernal pools per year,² and the County's continuing high rate of development threatens remaining vernal pool complexes. Due to the high ecological value and increasing rarity of these systems, EPA considers vernal pool complexes to be aquatic resources of national importance (ARNI).

Based on information provided in the PN, it does not appear that the proposed project complies with the Guidelines' requirements for avoidance and minimization (40 CFR 230.10). Regulated waters cover only approximately 4% of the project site; however, the PVSP proposes to permanently impact 66% of the on-site aquatic resources. EPA believes that project alternatives having fewer impacts to aquatic resources are available and viable. For example, if all on-site waters were avoided, 96% of the project site would remain available for development. The PN indicates that the applicants propose to develop only 83% of the project site and maintain 17% of the site as open space. Based on this information, it appears reasonable that a practicable project alternative can be developed to avoid all or nearly all of the 156 acres of on-site waters. No alternatives analysis has been provided for this project to date. Given the low percentage of waters on-site and the high percentage of proposed fill to these waters, it seems unlikely that the applicants have fully explored all opportunities to avoid direct discharges of fill material to waters. The Guidelines limit issuing permits to only those projects that avoid waters to the maximum extent practicable.

CL-5

The EPA finds that this project may have substantial and unacceptable impacts to aquatic resources of national importance. Therefore, we recommend denial of the project, as currently proposed. This letter follows the field level procedures outlined in the August 1992 Memorandum of Agreement (MOA) between the Environmental Protection Agency and the Department of the Army, Part IV, paragraph 3(a) regarding Section 404(g) of the Clean Water Act. Direct project impacts to vernal pools and interconnected aquatic resources would reduce the site's abundance and diversity of native habitat, terrestrial wildlife, and aquatic species and would contribute to the cumulative losses of vernal pools which currently exceed 85% of historic distribution. The magnitude of proposed fill to these valuable resources is unacceptable considering that jurisdictional waters cover such a small percentage of the project site. We also recommend that the applicant coordinate closely with Placer County officials to align meaningfully with ongoing development of the Placer County Conservation Plan.

CL-6

Staff from EPA and the Army Corps of Engineers met with individuals representing the project applicants on December 20, 2006 to discuss the process for completing the CWA application process for PVSP. EPA supports the applicants' efforts to consolidate projects having the same infrastructure needs into one Environmental Impact Statement for purposes of fulfilling NEPA requirements and providing a base of information to support 24 CWA Individual Permit actions. The value of on-site aquatic resources and the potential for further avoidance of impacts to these

CL-7

¹ King, J. L. (1996). Loss of Diversity as a Consequence of Habitat Destruction in California Vernal Pools. Ecology, Conservation, and Management of Vernal Pool Ecosystems, Sacramento, California Native Plant Society

² CDFG (1998) Changes in Great Valley Vernal Pool Distribution from 1989 to 1997. Report to CDFG. Author Robert F. Holland. http://www.dfg.ca.gov/wildab/wetlands/vp_holland/report_index.htm.

resources support the use of CWA regulatory tools to ensure compliance with the Guidelines. We look forward to working collaboratively with the applicant and the Corps through the NEPA and CWA process to reduce project impacts to a permissible level.

We respectfully request that you do not authorize the project at this time in consideration of our concerns. We look forward to working with your staff and the applicant to resolve the important environmental issues surrounding the proposed project. If you wish to discuss this matter further, please call me at (415) 972-3572 or refer your staff to David Smith, Chief of our Wetlands Regulatory Office at (415) 972-3464.

Sincerely,


Alexis Strauss, Director
Water Division

cc: Mr. Thomas J. Cavanaugh
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Mr. Michael Johnson, Planning Director
Placer County Planning Department
3091 County Center Drive
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Detailed EPA Comments
PN# 199900737 for the proposed Placer Vineyards Project

I. Project Site

According to the public notice (PN), the Placer Vineyards Specific Plan (PVSP) area includes approximately 5,227 acres, 3,996 acres of which are proposed for urban development under the PVSP. The remaining 1,231 acres are reserved as a "Special Planning Area" or are non-participating properties that would continue to be used as rural residential unless the individual landowners apply for zone changes in the future. Most of the properties included in the PVSP are undeveloped parcels characterized by flat to slightly undulating terrain that support a predominance of open grassland habitat. These areas have been used for livestock grazing and/or crop cultivation in the past.

DC-1

The PN describes PVSP as a mixed-use master planned community with residential, employment, commercial, open space, recreational and public land uses. The proposed project is located in the southwestern portion of unincorporated Placer County and includes approximately 2,423 acres of residential units, 280 acres of commercial units, 53 acres of public facilities, 92 acres of religious facilities, 140 acres of educational sites, 217 acres of parks, 330 acres of major roadways, and 714 acres of open space. Full build-out of PVSP is expected to occur over 20-30 years and will provide 14,132 residential units for a population of approximately 33,000 people.

DC-2

II. Elevation of Individual Permit Decisions under CWA 404(q) MOA

Pursuant to the 1992 Memorandum of Agreement between the Environmental Protection Agency (EPA) and the Department of the Army per Clean Water Act ("CWA") Section 404(q), it appears that authorization of the proposed project may result in unacceptable adverse effects to aquatic resources of national importance (ARNIs). The wetlands in question are considered special aquatic sites under the Guidelines, and the vernal pool complexes on the project site support a diversity of unique plants and animals.

DC-3

Aquatic Resources of National Importance

Placer County lies within the California Floristic Province, a "biodiversity hotspot"³ recognized internationally for its high levels of species endemism, in part due to the presence of vernal pools and associated water resources. Statewide, as much as 85% of vernal pools have been lost to development, and up to 33% of the original crustacean species that depend upon vernal pool habitat (e.g., fairy shrimp) may have already become extinct due to habitat destruction⁴. The mosaic of aquatic and terrestrial habitats on the project site are potential habitat for State and federally-listed species such as vernal pool fairy shrimp, vernal pool tadpole shrimp, Northwestern pond turtle,

DC-4

³ http://www.biodiversityhotspots.org/xp/hotspots/hotspotsScience/hotspots_defined.xml and http://www.biodiversityhotspots.org/xp/hotspots/california_floristic/

⁴ King, J. L. (1996). Loss of Diversity as a Consequence of Habitat Destruction in California Vernal Pools. Ecology, Conservation, and Management of Vernal Pool Ecosystems, Sacramento, California Native Plant Society

Swainson's Hawk, burrowing owl, Prairie Falcon, Golden eagle, and tri-colored blackbird.⁵ The high rates of endemism within vernal pool ecosystems and the large-scale destruction and degradation of these ecosystems have increased the importance of the landscapes that remain. Between 1994 and 1997 Placer County lost approximately 500 acres of vernal pools per year,⁶ and it appears this vigorous pattern of loss has continued, as Placer is one of California's fastest growing counties.

The PVSP site is a relatively large and unfragmented mosaic of vernal pool and grassland habitat. According to the PN, the site is characterized by integrated waters and wetlands including approximately 34.6 acres of vernal pools, 27.6 acres of seasonal depression wetlands, 15.5 acres of seasonal wetland swales, 17.8 acres of intermittent drainages, 22.8 acres of riverine seasonal wetland and marsh, 18 acres of ponds, and 25.7 acres of other types of waters. The primary aquatic features that comprise vernal pool complexes (vernal pools, swales, seasonal depression wetlands) account for approximately half of the on-site waters, while linear features, associated wetlands, and ponds make up the remainder.

DC-5

This area of Placer County has a limited supply of opportunities for vernal pool compensatory mitigation and is considered an important part of a large-scale conservation plan for Placer County's aquatic and natural resources. Large portions of the PVSP site have been considered appropriate for conservation in 4 of the 16 alternative scenarios of the Placer County Conservation Plan (PCCP).⁷ If current efforts focused on protecting aquatic resources at the regional level are to succeed, avoidance of aquatic resources in a conservation strategy that provides for the long-term viability of aquatic resources is vital. The vernal pools complexes on the PVSP site appear to serve an important role in the conservation and development strategy for western Placer County.

DC-6

Substantial and Unacceptable Impacts

The proposed project impacts to vernal pools and integrated aquatic features are substantial and unacceptable based on the magnitude of fill, lack of sufficient avoidance, and historical losses of these wetland types in the area. Project construction will result in the permanent loss of approximately 102 acres of waters and wetlands (28 acres of vernal pools, 26 acres of seasonal depression wetlands, 11 acres of riverine seasonal wetland, and 37 acres of integrated seasonal wetlands, streams, and other waters). The current proposal includes filling approximately 82% of on-site vernal pools and 66% of all on-site waters. Similar to other types of wetlands and streams, vernal pools are dependent on interconnected water sources and immediately adjacent upland areas to function as wetlands and retain value as aquatic habitat. The filling of these aquatic resources:

DC-7

- permanently destroys habitat for aquatic species and wildlife including endangered and special status species,
- causes a potentially irreversible loss of biodiversity, ecosystem stability, and valuable aquatic resources (see section on Significant Degradation), and
- may lead to decreased floodwater retention, increased sediment transport and runoff.

⁵ Placer Vineyards Specific Plan Revised Draft Environmental Impact Report, March 2006. Section 4, pages 4.4-11 through 4.4-14. <http://www.placer.ca.gov/CommunityDevelopment/EnvCoordSvcs/PVineyards.aspx>

⁶ CDFG (1998) Changes in Great Valley Vernal Pool Distribution from 1989 to 1997. Report to CDFG, Author Robert F. Holland. http://www.dfg.ca.gov/whdabi/wetlands/vp_holland/report_index.htm

⁷ Staff Report to Placer County Board of Supervisors (January 23, 2007). "Placer County Conservation Plan -- Consideration of the Selection of Preferred Alternative Reserve Map." <http://www.placer.ca.gov/CommunityDevelopment/Planning/PCCP.aspx>

In addition, many of the seasonal wetlands and streams proposed for direct fill may impact avoided pools by altering the sediment and water supply through increasing impervious services and burying streams into pipe culverts. Lastly, the proposal to forego avoidance and fill 82.3% of on-site vernal pools and 66% of on-site aquatic resources is unacceptable given that all or nearly all the waters could be avoided by realigning the 700 acres of planned open space.

III. Clean Water Act Compliance

The purpose of the Section 404(b)(1) Guidelines is to restore and maintain the chemical, physical, and biological integrity of waters of the United States. These goals are achieved, in part, by prohibiting discharges of dredged or fill material that would result in avoidable or significant adverse impacts on the aquatic environment. The burden to demonstrate compliance with the guidelines rests with the permit applicant. The Guidelines contain four main requirements each of which must be complied with to obtain a Section 404 permit:

DC-8

1. Section 230.10(a) prohibits a discharge if there is a less environmentally damaging practicable alternative to the proposed project. These alternatives are presumed for non water dependent activities in special aquatic sites.
2. Section 230.10(b) prohibits discharges that will result in a violation of the water quality standards or toxic effluent standards, jeopardize a threatened or endangered species, or violate requirements imposed to protect a marine sanctuary.
3. Section 230.10(c) prohibits discharges that will cause or contribute to significant degradation of the waters of the United States. Significant degradation may include individual or cumulative impacts to human health and welfare; fish and wildlife; ecosystem diversity, productivity and stability; and recreational, aesthetic or economic values.
4. Section 230.10(d) prohibits discharges unless all appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem.

The applicant proposes to fill wetlands and vernal pools, aquatic resources considered special aquatic sites which are afforded a higher level of protection by CWA regulations. The Guidelines consider the degradation or destruction of special aquatic sites to be among the most severe environmental impacts that cause a potentially irreversible loss of valuable aquatic resources (40 CFR 230.1(d)).

Alternatives Analysis- 40 CFR 230.10(a)

Compliance with the Guidelines requires the applicant to clearly demonstrate that the "preferred" alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the overall project purpose. In addition, the Guidelines presume the existence of project alternatives that do not include discharges of fill material to special aquatic sites when the project is not water dependent (40CFR230.10(a)(3)).

DC-9

Alternatives

The applicants will be providing information regarding project alternatives to the Corps in order to complete the CWA and NEPA processes and we provide the following guidance to support these efforts. Identification of the LEDPA is achieved by performing an alternatives analysis that estimates the direct, secondary, and cumulative impacts to jurisdictional waters resulting from a set

DC-10

of on- and off-site project alternatives. As the project purpose, mixed-use residential development, is not water-dependent, the applicant would have to demonstrate the impracticability of project alternatives that would not require the discharge of dredged or fill material into special aquatic sites. The alternatives analysis should evaluate alternatives that:

- fully avoid fill,
- avoid placement of fill in the vernal pool complexes on the western portion of the site, and
- provide for conservation consistent with the conservation footprint options being considered in the PCCP process.

DC-10

An evaluation of the long-term viability of avoided resources in on-site preserve designs for various alternatives can inform the LEDPA determination.

Analysis of project impacts is commensurate with the magnitude of impacts to aquatic resources. Fewer impacts to aquatic resources require a less comprehensive alternatives analysis. Greater consideration should be given to on-site alternatives that optimize avoidance of aquatic resources.

Impact Assessment

The alternatives analysis must evaluate direct, secondary⁸, and cumulative⁹ impacts for on- and off-site alternatives for the proposed project. Secondary effects include: (1) changes in the hydrology and sediment transport capacity of Dry Creek and associated tributaries resulting from filling tributaries and wetlands; (2) increases in impervious surfaces and the corresponding increases in the volume and velocity of polluted stormwater; (3) decreases in water quality from the impairment of ecosystem services such as water filtration, groundwater recharge, and the attenuation of floods; (4) disruption of hydrological and ecological connectivity between aquatic resources filled, altered, or degraded on-site and off-site wetlands and vernal pools; and (5) decreases in biodiversity and ecosystem stability.

DC-11

Cumulative impacts include past, present and reasonably foreseeable direct and secondary impacts to the aquatic environment. Historical impacts on aquatic ecosystems include California's rapid population growth and resulting losses of approximately 95% of the State's wetlands¹⁰ and up to 85% of the vernal pools. Tens of thousands of acres of land supporting vernal pools and related ecosystems are threatened by numerous proposed developments in western Placer County. PVSP and other proposed development areas potentially impact 50% of the remaining vernal pool complexes in western Placer County.¹¹ Pending and reasonably foreseeable projects include, but are not limited to, the Placer Parkway, Creekview Specific Plan, Sierra Vista Specific Plan, and the Placer Ranch Specific Plan.

DC-12

LEDPA

As stated in the cover letter, the proposed project does not appear to be the LEDPA due to the low acreage of on-site waters avoided and the magnitude of proposed fill. It seems practicable and reasonable to avoid all or nearly all the on-site waters.

DC-13

⁸ Secondary effects are defined by the Guidelines as effects on an aquatic ecosystem that are associated with a discharge of dredge or fill materials but do not result from the actual placement of the dredged or fill material (40 CFR 230.11(h)).

⁹ Cumulative effects are defined by the Guidelines as changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material (40 CFR 230.11(g)).

¹⁰ Dahl, T.E. 1990. Wetland losses in the United States 1780's to 1980's. U.S. Fish and Wildlife Service, Washington, D.C.

¹¹ GIS data collected by Placer County.

Significant Degradation – 40 CFR 230.10(e)

The Guidelines prohibit granting a permit for a project that causes or contributes to significant degradation of aquatic resources. Effects contributing to significant degradation include significantly adverse effects resulting from the discharge of fill material into regulated waters such as: (1) loss of fish and wildlife habitat (40 CFR 230.10(e)(3)), (2) reduction of biological productivity caused by smothering wetland habitat (40 CFR 230.41), and (3) impairment or destruction of endangered species habitat (40 CFR 230.30(2)).

DC-14

PVSP may cause or contribute to significant degradation of on-site aquatic resources because discharging fill material into approximately 80 acres¹² of special aquatic sites will smother and kill aquatic life, permanently destroy habitat for wildlife dependent on these aquatic features, and subsequently reduce on-site ecosystem diversity, productivity, and stability. The proposed fill will destroy habitat for wildlife dependent on the on-site aquatic resources. Approximately 2000 acres of the PVSP site are considered important concentration areas for the Pacific Flyway,¹³ a North American route for migratory birds that depend on aquatic resources in California's Central Valley for water and foraging habitat.

DC-15

Vernal pools and their associated aquatic features support some of the most biologically diverse aquatic ecosystems in California and the United States.¹⁴ Destroying vernal pools and associated aquatic resources represents a potentially irreversible loss of biodiversity and valuable aquatic resources (40 CFR 230.1(d)), is considered a significant adverse effect by the Guidelines (40 CFR 230.41), and therefore may cause or contribute to significant degradation. Similarly, the mosaic of aquatic and terrestrial habitats on the project site are potential habitat for state special status and federal threatened and endangered species such as vernal pool fairy shrimp, vernal pool tadpole shrimp, Northwestern pond turtle, Swainson's Hawk, burrowing owl, Prairie Falcon, Golden eagle, and tri-colored blackbird.¹⁵ Destruction of these habitat resources for endangered and threatened species would be considered significantly adverse by the Guidelines and therefore may cause or contribute to significant degradation.

DC-16

Minimization – 40 CFR 230.10(d)

Failure to adequately offset project impacts is grounds for denial of the permit application, and it is not clear the applicants are able to compensate for proposed project impacts. CWA regulations and guidance require all appropriate and practicable steps be taken to avoid and minimize direct impacts to aquatic resources and to compensate for unavoidable discharges of dredged or fill material into waters (40 CFR 230.10(d)).

DC-17

¹² Estimated from information provided in the public notice and CWA 404 permit application.

¹³ Placer Vineyards Specific Plan Final Environmental Impact Statement (December 2006), Figure 6.

<http://www.placer.ca.gov/upload/cdr/ecsp/vvsp/feirdec06/vvsp-feir-vol-i-sec-3-pgs372-494.pdf>

¹⁴ http://www.biodiversityhotspots.org/ap/Hotspots/HotspotsScience/Hotspots_defined.txt and http://www.biodiversityhotspots.org/xp/Hotspots/california_definite/

¹⁵ Placer Vineyards Specific Plan Revised Draft Environmental Impact Report, March 2006. Section 4, pages 4.4-11 4.4-14 <http://www.placer.ca.gov/CommunityDevelopment/EnvCoord/Sec.PVineyards.aspx>

Specifically, it is important to: (1) increase the proposed avoidance and minimization; (2) document that the remaining proposed impacts are unavoidable; and (3) provide a compensatory mitigation plan for review. There are numerous challenges to compensating for impacts to the functions and values provided by vernal pools in western Placer County. For example, Caltrans and private developers have reported a shortage of available compensatory mitigation opportunities in Placer County to compensate for the unavoidable impacts of pending projects. Mitigation opportunities in nearby counties are also constrained. Local mitigation is strongly preferable to address unavoidable project impacts. Therefore, permit applicants must take all appropriate and practicable steps to avoid and minimize impacts to special aquatic sites and other jurisdictional waters to reduce the need for compensatory mitigation.

DC-17

As the applicants make progress avoiding and minimizing impacts, the need for specific information about proposed compensatory mitigation sites becomes increasingly important. Specific information includes delineations of waters of the US, proposed long-term management plans, proposed third-party management entity with documented capability, estimated endowment, and proposed easement language for protection of the resources in perpetuity. For example, we would not consider lands proposed for 1:1 open space mitigation as compensation for impacts to aquatic resources without first knowing the amount and type of delineated waters on-site and any proposed plans for creation and/or enhancement. Uplands contained within the proposed open space mitigation site are not appropriate compensation for impacts to waters.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

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PLANNING DEPT.

April 11, 2007

Colonel Ronald N. Light
District Engineer
U.S. Army Corps of Engineers
Sacramento District
1325 J Street, 14th floor
Sacramento, California 95814-2922

Subject: Notice of Intent (NOI) to Prepare a Draft Environmental Impact Statement (DEIS) for the Placer Vineyards Specific Plan, Placer County, CA

Dear Colonel Light:

The Environmental Protection Agency (EPA) has reviewed the Notice referenced above. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

On December 20, 2006, EPA and the Army Corps of Engineers met with individuals representing the project applicants to discuss the process for completing the Clean Water Act application process for Placer Vineyards Specific Plan (PVSP). We support the applicants' efforts to consolidate projects having the same infrastructure needs into one Environmental Impact Statement for purposes of fulfilling NEPA and providing a base of information to support 24 CWA Individual Permit actions.

The PVSP covers 3996 acres with build-out anticipated to occur over a 20-30 year period. The communities will include about 14,132 homes, 101 acres of office development, 166 acres of retail development, 918 acres of new parks and open space as well as schools and transit. Given the size of these developments, the growth in the area, and the potential cumulative impacts to waters and air quality, thorough planning and mitigation is necessary. Our detailed comments include more specific recommendations for the DEIS

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We look forward to continuing to work with you and appreciate the opportunity to provide detailed scoping comments (enclosed) for the DEIS. When it is released for public review, please send (3) copies to the address above (mailcode: CMD-2). If you have any questions, please contact me at 415-972-3847.

Sincerely,



Summer Allen
Environmental Review Office

Enclosure: Detailed Comments

cc: Mr. Thomas J. Cavanaugh
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3091 County Center Drive
Auburn, CA 95603

Water Resources – Clean Water Act Section 404

Least Environmentally Damaging Practicable Alternative

According to the public notice, the 3,996-acre project area proposed for the Placer Vineyards Specific Plan and associated infrastructure contains approximately 156.1 acres of jurisdictional waters. Clean Water Act (CWA) Section 404 application materials provided to the Corps and EPA indicate that the proposed project would cause a direct loss of 102.70 acres of waters, including streams, wetlands, and vernal pools.

Compliance with the Clean Water Act (CWA) Section 404(b)(1) Guidelines (Guidelines) requires the applicant to clearly demonstrate that the "preferred" alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the overall project purpose (40 CFR 230). "Practicable" alternatives are alternatives that are available and capable of being done. In addition, the Guidelines presume the existence of project alternatives that do not include discharges of fill material to special aquatic sites when the project purpose is not water dependent (40CFR230.10(a)(3)). The project purpose does not appear to be water dependent. The LEDPA is the alternative with the fewest impacts to aquatic resources, so long as it does not cause other significant adverse environmental consequences. Only the LEDPA can receive a CWA Section 404 permit.

Recommendation:

The DEIS should include a reasonable range of on-site and off-site project alternatives. The range of alternatives considered in the DEIS must include the LEDPA if a CWA permit is to be granted at the end of the process.

EPA-NOI-1

Alternatives information should include a full avoidance (no-fill) alternative and alternatives that focus development on the eastern two-thirds of the site and avoid the vernal pools on the western portion of the site consistent with alternatives considered for the Placer County Conservation Plan conservation footprint.

EPA NOI-2

Alternatives Analysis

Identification of the LEDPA is achieved by performing an alternatives analysis that estimates the direct, secondary, and cumulative impacts to jurisdictional waters resulting from a set of on- and off-site project alternatives. This process is dependent on a clearly defined project purpose statement. CWA regulations and guidance discuss the use and content of basic and overall project purpose statements (40 CFR 230.10(a); Army Corps of Engineers Standard Operating Procedures for the Regulatory Program). The purpose statement limits the range of practicable alternatives under consideration to those that meet the purpose of the proposed project.

Recommendations:

The DEIS should include a clear description of the basic project purpose and need, project alternatives, potential impacts to the environment, and mitigation for these impacts. Particular attention should focus on an evaluation of the environmental impacts of the proposal and alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options for the decision maker and the public.

EPA NOI-3

Temporary and permanent impacts to aquatic resources resulting from each element of the project design should be differentiated and clearly presented. The LEDPA should be identified by comparing the totality of direct, secondary, and cumulative impacts associated with each practicable alternative.

EPA NOI-4

Impact Assessment

The Guidelines require the Corps to consider the effect of secondary and cumulative impacts on aquatic resources before granting a section 404 permit (40 CFR 230.11(g) and (h)). Similarly, NEPA requires evaluation of indirect and cumulative effects which are caused by the action (40 CFR 1508.8(b) and 1508.7). "Indirect effects may include growth-inducing effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." For the purposes of the pending EIS analysis, we consider the terms indirect impacts and secondary effects to be interchangeable.

Recommendations:

The alternatives analysis in the DEIS should estimate, evaluate, and compare direct, secondary¹, and cumulative² impacts for a set of on- and off-site project alternatives. All indirect and cumulative impacts associated with the multiple elements of the project design should be addressed, with particular attention paid to the impacts related to downstream and upstream water sources, flooding potential, water quality, and aquatic habitat.

EPA NOI-5

Secondary effects to aquatic resources include, but are not limited to: changes in the hydrology and sediment transport capacity of Dry Creek and associated tributaries resulting from filling tributaries and wetlands; increases in impervious surfaces and the corresponding increases in the volume and velocity of polluted stormwater; decreases in water quality from the impairment of ecosystem services such as water filtration, groundwater recharge, and the attenuation of floods; disruption of hydrological and ecological connectivity between aquatic resources filled, altered, or degraded on-site and off-site wetlands and vernal pools; and decreases in biodiversity and ecosystem stability.

EPA NOI-6

¹ Secondary effects are defined by the Guidelines as effects on an aquatic ecosystem that are associated with a discharge of dredge or fill materials but do not result from the actual placement of the dredged or fill material (40 CFR 230.11(h)).

² Cumulative effects are defined by the Guidelines as changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material (40 CFR 230.11(g)).

Cumulative impacts include past, present and reasonably foreseeable direct and secondary impacts to the aquatic environment. Historical impacts on aquatic ecosystems include California's rapid population growth and resulting losses of approximately 95% of the State's wetlands³ and up to 85% of the vernal pools.

EPA NOI-7

PVSP along with other proposed development areas threaten at least 50% of the remaining vernal pool complexes in western Placer County.⁴ Pending and reasonably foreseeable projects include, but are not limited to, the Placer Parkway, Creekview Specific Plan, Sierra Vista Specific Plan, and the Placer Ranch Specific Plan.

EPA NOI-8

The DEIS should also include a description of the methods used to estimate temporary and permanent direct impacts, secondary effects (indirect impacts), and cumulative impacts.

EPA NOI-9

Water Quality and Minimization

Residential and commercial development increase the area of land covered by impervious surfaces, which in turn, increases the volume and velocity of stormwater. Often there is an associated increase in stormwater pollutants due to the capability of faster moving water to hold and transport more sediment, availability of petrochemicals washing off of streets and parking lots, and increased use of residential pesticide, insecticide, and household cleaning products. The implementation of Low Impact Development Strategies (LIDS)⁵ can mitigate the negative impacts to water quality that result from increasing impervious surfaces and introduction of residential pollutants to the local water system.

Recommendations:

The DEIS should discuss whether or not the applicants are considering the use of LIDS, specifically identify which LIDS will be used and where, and describe how these measures will minimize impacts to water quality resulting from project development.

EPA NOI-10

Mitigation

Any mitigation proposed for impacts to waters of the United States should be consistent with the avoidance and minimization sequencing established by the Memorandum of Agreement between U.S. Army Corps of Engineers and the Environmental Protection Agency regarding the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines, the 2002 Mitigation Regulatory Guidance Letter, the Mitigation Action Plan, and the pending Final Compensatory Mitigation rule.⁶ Once impacts to waters are avoided and minimized to the greatest extent practicable, compensatory mitigation can be used to offset project impacts. CEQ regulations also

³ Dahl, T.E. 1990. Wetland losses in the United States 1780's to 1980's. U.S. Fish and Wildlife Service, Washington, D.C.

⁴ GIS data collected by Placer County.

⁵ http://www.usc.edu/org/seagrant/calmemo/factsheet_1a.pdf

⁶ <http://www.epa.gov/owow/wetlands/regs/mitigate.html>

state that the EIS should include the "means to mitigate adverse environmental effects" (40 CFR 1502.16(h)). This provision applies to indirect effects, as well as direct effects, in that induced commercial, industrial, and residential growth can adversely affect water quality, wetlands, and other natural resources.

Recommendations:

The DEIS should clearly identify suitable compensatory mitigation areas for impacted aquatic resources, both within the project site and in the project vicinity. Information regarding the distribution and extent of waters on the compensatory mitigation sites should be included in the DEIS and submitted to the resources agencies.

EPA NO1-11

The legal mechanism, such as a conservation easement with a third party, that will be used to protect the mitigation area into perpetuity should be identified. Long-term management measures for the mitigation areas should be identified to address issues such as invasive species, approved uses, and human disturbances (garbage, trampling, etc.).

Mitigation strategies for indirect and cumulative impacts should be identified with appropriate implementing parties.

EPA NO1-12

Air Quality

The project area is in nonattainment for three National Ambient Air Quality Standards (NAAQS): ozone, carbon monoxide (CO), and particulate matter less than 10 microns in diameter (PM-10). The area is considered "extreme" for 1-hour ozone, "severe" for 8-hour ozone, "serious" for PM-10, and "serious" for CO under the Federal Clean Air Act. Mitigation may be available to reduce the project's air emissions, including PM-10, diesel particulate matter (DPM), and ozone precursors [oxides of nitrogen (NOx) and volatile organic compounds]. Because of the air basin's extreme ozone nonattainment status, it is particularly important to reduce emissions of ozone precursors from this project to the greatest extent feasible. For example, diesel particulate filters, in conjunction with low-sulfur diesel fuel, can substantially reduce DPM emissions from construction equipment, greater than reductions from using the fuel alone or using Tier-4 engines without particulate filters.

Recommendations:

The DEIS should address the feasibility of implementing additional air quality-related mitigation to reduce emissions of DPM and other pollutants from construction.

EPA NO1-13

In particular, the DEIS should address the feasibility of a Construction Emissions Mitigation Plan (CEMP). EPA recommends that the following measures be incorporated into the CEMP: that equipment a) not idle for more than ten minutes; b) not be altered to increase engine horsepower; c) include particulate traps, oxidation catalysts and other suitable control devices on all construction

equipment used at the construction site; d) use ultra low sulfur diesel fuel with a sulfur content of 15 parts per million (ppm) or less or other suitable alternative diesel fuel, unless the fuel cannot be reasonably procured in the geographic area; and e) be tuned to the engine manufacturer's specifications in accordance with a defined maintenance schedule. In addition, the CEMP should establish work limitations such as minimizing trips, and providing staging areas for trucks located away from sensitive receptors through appropriate policies and implementation measures.

Environmental Justice

In keeping with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, the EIS should describe the measures taken by the Corps to: 1) fully analyze the environmental effects of the proposed Federal action on low-income or minority communities, and 2) present opportunities for affected communities to provide input into the NEPA process. The DEIS should address the project's consistency with guidance issued by the Council on Environmental Quality (CEQ), "Environmental Justice Under the National Environmental Policy Act." This guidance provides that mitigation in impact statements "should reflect the needs and preferences of affected low-income populations (and) minority populations to the extent practicable."

EPA NOV 14

The DEIS should address whether air mitigation for localized air impacts was developed in consultation with potentially affected communities. Reducing construction-related emissions would be useful in reducing the project's air quality effects to these communities.

Incorporation by Reference

If references to the Environmental Impact Report or other documents are used, the DEIS should provide a summary of critical issues, assumptions, and decisions complete enough to stand alone. This will aid in readability and ensure the use of the most current information available. Previous analyses should be updated to address substantive issues raised during the public scoping process.

EPA NOV 15



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAY 31 2007

OFFICE OF THE
REGIONAL ADMINISTRATOR

Colonel Ronald N. Light
District Engineer, Sacramento District
U.S. Army Corps of Engineers
1325 J Street, 14th floor
Sacramento CA, 95814-2922

Re: Public Notice # 199900737 Placer Vineyards Specific Plan.

Dear Colonel Light:

On 1 May 2007, EPA provided written comments regarding the proposed Placer Vineyards Specific Plan (enclosed). These comments raised concerns regarding potential adverse project impacts to waters of the United States (waters), including wetlands, and the proposed project's compliance with the Federal Guidelines (40 CFR 230) promulgated under Section 404(b)(1) of the Clean Water Act (CWA). This letter also concluded, based upon the available information that the project, as proposed, may result in substantial and unacceptable impacts to aquatic resources of national importance. On May 8, 2007, The United States Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Game submitted comments to the Corps that emphasize the value, scarcity, and vulnerability of aquatic resources and habitat on the proposed Placer Vineyards site.

The proposed project consists of 24 Individual Permits that will be supported by information contained in one National Environmental Policy Act (NEPA) document. On 16 May 2007, we discussed our concerns with Army Corps of Engineers (Corps) staff in a meeting. It is our understanding that changes in the project proposal and supporting information are not expected in the immediate future. Therefore, for the reasons detailed in the attachment, EPA has concluded that the project, as currently proposed, will have a substantial and unacceptable impact on aquatic resources of national importance, pursuant to paragraph 3(b) of the Section 404(q) Memorandum of Agreement.

We believe that it would be possible to address many of our concerns by working with the Corps and other involved parties on the analysis of project impacts and alternatives, and stand ready to participate in such a process. Until such information is available and can be analyzed, however, our evaluation of the project must be based on its current design and the information before us.

We look forward to working with you, your staff, and the applicants to address our concerns about the proposed project. If you wish to discuss this matter further, please call me at (415) 947-8702, or have your staff contact David Smith at (415) 972-3464.

Sincerely yours,



Wayne Natri
Regional Administrator

enc.

cc: Mr. Thomas J. Cavanaugh
U.S. Army Corps of Engineers
Sacramento District
1325 J Street, 14th floor
Sacramento, California 95814-2922

Mr. Patrick Gillum
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Mr. Ken Sanchez
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W2605
Sacramento, CA 95825-1888

Mr. Jeff Finn
California Department of Fish and Game
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Mr. John Baker
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Mr. Michael Johnson, Planning Director
Placer County Planning Department
3091 County Center Drive
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1. L...

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MAY 09 2007



PLANNING DEPT.

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U.S Fish and Wildlife Service File # 1-1-07-I-0960

MAY 8 2007

Mr. Tom Cavanaugh, Project Manager
US Army Corps of Engineers, Sacramento District
San Joaquin Valley Office
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Subject: Comments on the Public Notice and Notice of the Intent to prepare an
Environmental Impact Statement for the Placer Vineyards Specific Plan

Dear Mr. Cavanaugh:

The Department of Fish and Game (DFG), U.S. Fish and Wildlife Service (Service), and the National Marine Fisheries Service (NMFS) have reviewed the Public Notice (PN) (# 199900737) and Notice of the Intent (NOI) to prepare a Draft Environmental Impact Statement (DEIS) for the Placer Vineyards Specific Plan and associated infrastructure. The DEIS would be designed to analyze the environmental impacts associated with approval of the Placer Vineyards Specific Plan on 3,996 acres located in western Placer County. About 714 acres are identified as Open Space, primarily located along drainage areas and utility corridors.

WA-1

Significant natural resources of the plan area include stream and riparian habitats, including the Dry Creek corridor that provides habitat for federally and state listed fish and federally listed invertebrates, wetlands including vernal pool grasslands and associated federally listed invertebrates, and both nesting and foraging habitat for the state listed threatened Swainson's hawk (*Buteo swainsonii*). Specifically, the area, according to the PN, supports about 156 acres of various jurisdictional wetland types including vernal pool, stock ponds, creeks, canals/ditches and riverine marshes. The area in and around the site of the proposed project also provides important resting and foraging habitat for winter migrant bird species including waterfowl of the Pacific Flyway. The majority of the project site is undeveloped although a small acreage of rural residential development occurs primarily along the west boundary. The PN notes that about 103 acres of wetlands will be impacted as a result of project implementation.

WA-2

The site remains primarily a large block of non-fragmented habitat. Based on work completed and provided by Placer County, the site is one of only a few locations remaining in western Placer County that provides over 2,000 acres of vernal pool grassland habitat in a county that supports only about 20,000 acres. The 20,000 acres of remaining vernal pool grassland habitat is only a small percent of historical levels of this habitat type in the County. About 5,000 acres of this total habitat acreage in Placer County is within existing preserves, therefore, about 15,000 acres of this habitat remain vulnerable to urban impact. The proposed project, along with other reasonably foreseeable proposed or considered development in western Placer County, pose significant risk to at least 50%, or more, of these 15,000 acres.

WA-3

The DFG is providing comments in response to the PN and NOI as trustee for the State's fish and wildlife resources, the DFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of such species. In that capacity, the DFG administers the California Endangered Species Act (CESA), the Native Plant Protection Act (NPPA), and other provisions of the California Fish and Game Code that affords protection to the State's fish and wildlife trust resources. The DFG also considers issues as related to the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712) (MBTA). The Service is providing comments in accordance with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the MBTA. NMFS is providing comments in accordance with the ESA, and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855).

WA-4

The DFG, Service, and NMFS recommend that the following be addressed in the DEIS:

1. Analyze and discuss all reasonably foreseeable direct and indirect project-related impacts on biological resources due to project implementation. The analysis should focus, in particular, on the presence of, and potential habitats for, all state and federally listed species and species of concern, and the evaluation of direct, indirect, and cumulative project impacts to these species and their respective habitats. This analysis should include discussion of adjacent habitats outside of the project area that support or could support listed species or species of concern and that may be impacted as a result of project implementation. Specifically address direct, indirect and cumulative impacts to vernal pool grassland and riparian resources with respect to the likelihood of reducing the survival, recovery, or the long term existence of sub-populations or populations of federally listed species associated with these habitats.

WA-5

2. Identify and discuss feasible compensation measures to address all reasonably foreseeable project-related impacts on biological resources. This must include identification of measures that compensate, avoid, minimize, or otherwise offset all project impacts to state and federally listed species, species of concern, and designated critical habitat. In addition to on-site avoidance and conservation measures, the analysis should include discussion of the applicant's ability to mitigate offsite through (a) acquisition of existing natural habitats, (b) restoration of former natural habitats to a condition sufficient for compensation, and (c) creation of natural habitats.

WA-6

3. Specifically identify all offsite lands to be utilized as compensation for project impacts. Include a comprehensive discussion of the ecological values within identified parcels, their contribution toward conservation in general and specifically for listed species, restoration potential to achieve no net loss of wetlands, and costs associated with potential long term operations and management. Due to the complexities involved with respect to operations and management of preserved lands, including monitoring and adaptive management activities, we recommend lands encumbered as part of compensation for project actions be obtained in fee title and that easements not be considered as the primary acquisition tool.

WA-7

4. Identification of any offsite infrastructure improvements required as part of this project and evaluation of potential project impacts due to these activities. Subsequently, the DEIS should identify and analyze compensation measures that avoid or substantially lessen, and offset, all reasonably foreseeable direct and indirect impacts from these improvements to biological resources.

WA-8

5. Evaluate the contribution of the proposed project to habitat fragmentation and population isolation of all plant and animal populations including but not limited to listed species and species of concern. Include identification of feasible compensation measures that will avoid or substantially lessen these impacts.

WA-9

6. Include an analysis of project impacts to winter migrant birds with special emphasis on waterfowl of the Pacific Flyway. Describe measures designed to avoid affecting migratory birds, such as retaining nest trees and wetlands and maintaining buffers around nesting, breeding, or feeding areas.

WA-10

7. As suggested in the PN, we know of no General Plan policy, ordinance, or Board of Supervisors policy dictating a 1:1 ratio for losses of open space. Subsequently and independently, offsite compensation areas must be adequately sized, appropriately configured, and biologically justified in meeting the standard of no net loss of value and function of wetland resources and to adequately offset project impacts on federally listed invertebrates. Compensation must not be solely justified based on any actual or suggested requirement of Placer County.

WA-11

8. Develop alternative design scenarios (both on and offsite) for the proposed project that will achieve most of the project objectives, and which will avoid or substantially lessen the project-related impacts on biological resources. We believe that such a potentially feasible alternative exists with respect to reduced impacts on biological resources generally and, at a minimum, has reduced effects to listed species and species of special concern. Accordingly, we believe that such alternatives (including a No Action alternative) should comprise part of the reasonable range of alternatives addressed in the DEIS.

WA-12

9. Specifically develop an alternative design that reduces overall project impact by the exclusion of development from the western third of the project area and by avoidance of

WA-13

additional and extensive areas of vernal pool and grassland resources throughout the remainder of the project. We believe that this alternative is potentially feasible in that it may well achieve a majority of the project objectives and reduce potentially significant impacts on biological resources. Such an alternative should also be considered as part of the reasonable range of alternatives considered in the DEIS.

10. Issues related to direct, indirect and cumulative impacts to water quantity and quality should be fully disclosed. A continuous riparian conservation corridor along Dry Creek should be maintained and design features should be incorporated into the project to reduce the potential significant impacts of stormwater runoff to aquatic resources. We suggest incorporation of Low Impact Development Strategies (LIDS) as the most current, comprehensive, and state of the art approach to resolve project impacts to water quality. Large projects such as Placer Vineyards should additionally incorporate and delineate water quality infrastructure on all project related maps. The DEIS should also consider effects to the listed fish species and habitat from associated wastewater treatment facilities and operations for Placer Vineyards.

WA-14

11. The DEIS should consider effects to the listed fish species and habitat from the water supply for Placer Vineyards. Diversion of freshwater inflows from the Sacramento and American Rivers to provide water for Placer Vineyards may negatively affect several listed fish species and their designated critical habitat, specifically the state and federally-listed as threatened delta smelt (*Hypomesus transpacificus*), state and federally listed as endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), state and federally listed as threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), federally listed as threatened Central Valley steelhead (*O. mykiss*), and federally listed as threatened North American green sturgeon (*Acipenser medirostris*).

WA-15

12. Wetland function and value of avoided wetland systems should be evaluated with full consideration to watershed fragmentation and impacts at the micro-watershed level. This analysis should include modifications to water and soil chemistry and to the frequency and duration of inundation. Implications of watershed fragmentation to listed invertebrates should also be evaluated. Consistent with this evaluation should be a full and comprehensive analysis of the ability of avoided wetland systems to function through time considering adjacency of human use and the inability to properly manage avoided areas due to their small and fragmented nature. Specifically describe all proposed uses and management strategies and activities associated with all proposed non-urbanized land. Discuss the feasibility of continuing management activities such as controlled burning or regulated livestock grazing as a means to manage and retain full ecological values through time of any wetland areas. Finally, evaluate and discuss the degree to which on-site open space areas will ecologically function and thus serve to perform a long term conservation benefit.

WA-16

13. Since the PN was initially issued, one federally-listed species, the Conservancy fairy shrimp (*Branchinecta conservatio*) has been found in Placer County for the first time.

WA-17

Mr. Tom Cavanaugh

6

The DEIS should include a comprehensive analysis of all species that may be impacted, including Conservancy fairy shrimp.

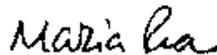
Thank you for the opportunity to review this project. If we can be of further assistance, at DFG please contact Mr. Jeff Finn, Environmental Scientist, at (530) 477-0308 or Mr. Kent Smith, Conservation Planning and Environmental Permitting Program Manager, at (916) 358-2382; at the Service please contact Jana Milliken, Sacramento Senior Staff Biologist, at (916) 414-6561 or Ken Sanchez, Assistant Field Supervisor, at (916) 414-6622; and at NMFS please contact John Baker, Natural Resource Management Specialist, at (916) 930-3616, or Maria Rea, Sacramento Area Supervisor, at (916) 930-3623.



Sandra Morey
Regional Manager
California Department of Fish and Game



Ken Sanchez
Assistant Field Supervisor
U. S. Fish and Wildlife Service



Maria Rea
Sacramento Area Supervisor
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cc: Mr. Kent Smith
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7

Ms. Erin Forsman
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California Native Plant Society

May 12, 2007

Tom Cavanaugh, Project Manager
US Army Corps of Engineers, Sacramento Dist.
San Joaquin Valley Office
1325 J Street, Room 1480
Sacramento, CA 95814-2922

RE: Public Notice #199900737 – Placer Vineyards Specific Plan

Dear Mr. Cavanaugh,

On behalf of the California Native Plant Society, thank you for the opportunity to comment on the Public Notice for the Placer Vineyards Specific Plan permit application and notice of intent to prepare an Environmental Impact Statement.

CNPS-1

The California Native Plant Society (CNPS) is a statewide non-profit organization of some 10,000 scientists, educators, and laypeople dedicated to the conservation and understanding of the California native flora. As a science-based conservation organization, we believe that land use decisions must be accompanied by a thorough assessment of the environmental impacts as required by the state and federal Endangered Species Acts, the Clean Water Act, the National Environmental Policy Act, the California Environmental Quality Act, and other resource protection laws.

CNPS-2

As proposed, the Placer Vineyards Specific Plan (PN # 199900737) will destroy 102.7 acres of wetlands and waters of the United States and temporarily impact an additional 8.5 acres of waters/wetlands. A total of 60.1 acres of waters will be avoided in approximately 700 acres of open space. The public notice fails to quantify the acreages of the various wetland types that will be impacted and those that will be avoided. However, review of the specific plan drawings reveals that the open space areas consist of long, linear corridors and intermittent stream channels. The vast majority of the vernal pools on the site will be directly impacted and those that remain will be indirectly impacted by adjacent incompatible land uses. Considering that the majority of the project is located within a Core Recovery Unit identified in the 2005 *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon*, this level of loss is entirely unacceptable from an endangered species recovery perspective.

CNPS-3

As proposed, the Placer Vineyards Specific Plan does not appear to meet the Least Environmentally Damaging Practicable Alternative test required by Section 404(b)(1) of the Clean Water Act. Various reconfigurations of the specific plan could result in additional on-site avoidance of waters/wetlands and their associated endangered species. CNPS encourages the USACE to explore a thorough range of viable alternatives in its analysis of this project including those that would provide either onsite avoidance and/or offsite mitigation at ratios appropriate to meet the goals of the *Recovery Plan*.

CNPS-4

The proposed Conceptual Conservation Strategy and an appropriate range of alternatives to it must also be analyzed in the EIS. It is CNPS's position that creation of vernal pools within existing vernal pool landscapes causes direct, indirect and cumulative impacts to those naturally occurring vernal pool landscapes and the biota that depend up on them. From the PN it

CNPS-5

Dedicated to the preservation of California native flora

appears that the project proponents will be proposing to do compensatory mitigation within areas preserved as open space in order "to achieve a mixed mosaic of habitats within acquired preserve areas". All environmental impacts of this proposed Conceptual Conservation Strategy must be assessed and analyzed concurrently with the proposed Placer Vineyards Specific Plan in order to fully disclose the full scope of the proposed action.

CNPS is also concerned that rare plant surveys conducted over the past several seasons are entirely inadequate. Many annual vernal pool plant species have not been evident or have occurred in extremely low numbers, even in documented locations, for the past couple of years because of the unusual weather patterns. It is possible that weather may also affect listed branchiopods and special-status amphibians. Additional surveys for these species must be conducted in order to properly assess impacts to listed and special-status biota.

CNPS-6

From a more general perspective, CNPS is disappointed and frustrated that local, state and federal land use authorities continue to find it appropriate to proceed with projects that: 1) have significant and unavoidable impacts on the environment especially when less environmentally destructive alternatives exist, 2) routinely allow habitat creation as mitigation for loss of natural habitat despite the growing evidence in the scientific literature that clearly indicates that creation or restoration fails to replace the functions and values that exist in a natural habitat, and 3) do nothing to ensure that species and habitat are not only conserved, but also afforded the appropriate resources and management to ensure their long-term survival.

CNPS-7

CNPS thanks the U.S. Army Corps of Engineers for the opportunity to comment upon this PN for the Vineyards Specific Plan. We request that we continue to receive all notices related to this project.

CNPS-8

Sincerely,



Carol W. Witham
1141 37th Street
Sacramento, CA 95816



**SIERRA
CLUB**
FOUNDED 1892

MOTHER LODE CHAPTER

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May 11, 2007

via email and USPS

Tom Cavanaugh, Project Manager
US Army Corps of Engineers, Sacramento Dist.
San Joaquin Valley Office
1325 J Street, Room 1480
Sacramento, CA 95814-2922

**Comment Re: Public Notice 199900737 – Placer Vineyards Specific Plan
Section 404 CWA Permit and NOI-EIS**

Dear Mr. Cavanaugh,

Thank you for the opportunity to comment on this EIS/NOI and 404 permit application. We believe that onsite avoidance and/or offsite mitigation should be based on the recognized high resource values present on the site, which is prime habitat for multiple federally listed species. SC-1

Retaining vernal pool complexes is essential. Avoided vernal pools are too small to function biologically since vernal pool species are dependent on both wetted acres and uplands surrounding wetted acres, necessary for hydrologic function and for the presence of pollinators. Surveys done for the Placer County Conservation Plan, the HCP/NCCP, identified 2,233 acres of vernal pool complexes on the Placer Vineyards Specific Plan (PVSP) site (Glazner). SC-2

The California Department of Fish and Game has determined that the proposed project design would impact and compromise the function of all vernal pool complexes on the site (DEIR comment letter of May 19, 2006). The 714 acres of habitat proposed to be retained onsite would be of little value biologically as it would be linear, not in sizable patches, and would be surrounded by urban development. DFG has determined that 4,251 acres of habitat has been impacted and should be mitigated for — that is all the areas outside the special planning area. SC-3

In 2002, the USFWS proposed a vernal pool species Critical Habitat designation that included 3,320 acres of land in the PVSP site. Subsequent economic exclusions were challenged in federal court, and in November 2006, Federal District Court Judge William B. Shubb ruled that economic exclusions cannot be implemented without viable Vernal Pool Recovery Plans. SC-4

Therefore, we make the following requests:

- Any section 404 permit must provide vernal pool avoidance and mitigation based on preserving biologically functional vernal pool complexes, not merely wetted acres. SC-5

Representing 19,000 members in 24 counties in Northern and Central California

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□ Vernal pool mitigation must be consistent with species recovery. About 3,000 acres of PVSP is in the Vernal Pool Recovery Plan Core Area for this unit. Recovery guidelines call for the avoidance of 85% of existing resources. Therefore EIS must examine a project alternative that avoids 85% of the onsite existing resources. SC-6

□ The EIS must examine the cumulative impacts to vernal pool wetland habitat based on the amount of urban development proposed for western Placer County are likely to impact thousands of acres of vernal pool complexes. Projects being processed include Creekview and Sierra Vista (Roseville) and Regional University, Placer Ranch, Curry Creek Community Plan, Brookfield, Placer Parkway and Placer Vineyards. SC-7

□ Given the potential cumulative loss of large acreages of vernal complexes in western Placer County, and the fact that PVSP could develop roughly 50% of the site while avoiding all the existing vernal pool acreage, the EIS should examine a project design that would provide a 100% avoidance alternative. SC-8

□ If the proposed project design is to be retained, which impacts all existing onsite vernal pool complexes, offsite mitigation must be consistent with the Vernal Pool Recovery Plan. Offsite mitigation should include preserving existing vernal pool complexes at a ratio of 5.6 to 1, consistent with 85% preservation of remaining vernal pool complexes in the recovery unit. Based on project impacts to 2,233 acres, 12,504 acres of vernal pool complex acreage elsewhere in Placer County should be protected. SC-9

□ Any acreage provided as offsite mitigation for the loss of vernal pool complexes must be evaluated in light of criteria that have been articulated by the resource agencies and biological consultants in conjunction with the development of the Placer County Conservation Plan. Criteria for mitigation property include: SC-10

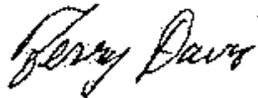
- 1--Are parcels contiguous with one another, or contiguous with other preserves?
- 2--Are they of high quality? (existing vernal pool complexes, degree of disturbance)
- 3--What is the shape? (long narrow parcels not generally as desirable as more square)
- 4--Internal fragmentation: agriculture/habitat; native/non-native; disturbed/undisturbed
- 5--Type of land between nearest preserve (agricultural, rural subdivisions, urban?)
- 6--Ability to manage: What is the degree of incompatibility with adjacent land uses?
- 7--Is the parcel in the VP Recovery Plan Core Area?

□ Offsite mitigation through the creation of vernal pools should not be acceptable. The creation of vernal pool complexes is not only unproven in terms of biological function. Also the creation of additional vernal pools in existing vernal pool complexes is also unproven biologically (Placer County has been notified by USFWS that this practice is not acceptable mitigation (2006 email from Ken Sanchez, USFWS, to Loren Clark, Placer County Planning)). SC-11

□ Additional biological surveys are needed. The PVSP Final Environmental Impact Report indicates that complete surveys have not yet been done. The recent discovery in Placer County of Conservancy fairy shrimp, federally listed as endangered, makes exhaustive surveys absolutely necessary. The Recovery Plan for the species calls for 100% avoidance of take. SC-12

Please provide us with any notices and documents related to the permits for this project as the review process moves forward.

Sincerely,



Terry Davis
Conservation Program Coordinator
Mother Lode Chapter Sierra Club

cc. Kim Delfino, Defenders of Wildlife
Carol Witham, California Native Plant Society
Barbara Vlamis, Butte Environmental Council

Defenders of Wildlife

May 12, 2007

Via Electronic Mail

Tom Cavanaugh, Project Manager
US Army Corps of Engineers, Sacramento District
San Joaquin Valley Office
1325 J Street, Room 1480
Sacramento, CA 95814-2922
Email: Thomas.J.Cavanaugh@usace.army.mil

Re: Public Notice 199900737 (Placer Vineyards Specific Plan)

Dear Mr. Cavanaugh:

On the behalf of Defenders of Wildlife, I am submitting the following comments regarding the Placer Vineyards Specific Plan development proposal (Public Notice 199900737). I also incorporate by reference the May 11, 2007 comments submitted by the Mother Lode Chapter of the Sierra Club.

The Placer Vineyards Specific Plan project (Placer Vineyards) occurs within an area of extraordinary vernal pool habitat. In fact, this region of western Placer County contains 70 percent of remaining vernal pool habitats within the entire county. See Proposed Vernal Pool Critical Habitat Rule for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants, 67 Fed. Reg. 59,884, 59,922 (Sept. 24, 2002). Consequently, western Placer County is noted for its "interconnected hydrologic units of pools, swales and uplands," and has been identified by the Nature Conservancy as one of the "outstanding vernal pool sites remaining in the Sacramento Valley." *Id.* Like many areas of high-quality vernal pools, this habitat is highly threatened by large-scale development projects such as Placer Vineyards.

DW-1

The Placer Vineyards project encompasses 5,230 acres in Western Placer County and affects 4,251 acres. Only 714 acres are proposed to be retained on-site as open space. According to the May 19, 2006, letter from the Department of Fish and Game (DFG) regarding the Draft Placer Vineyards Specific Plan and Revised Placer Vineyards Draft Environmental Impact Report, this area is one of only a few locations remaining in western Placer County with a large block of intact vernal pool grassland habitat. Indeed, according to DFG, the 2,233 acres of vernal pool grassland in this project area is approximately 10% of the remaining 20,000 acre of vernal pool grasslands in this area.

DW-2

A. Recovery Standard Must Be Satisfied.

The U.S. Fish and Wildlife Service (FWS) has recognized that all 2,233 acres of vernal pool grasslands within Placer Vineyards and surrounding areas of western Placer County are essential to the conservation of vernal pool habitats. Thus, the FWS proposed to designate this area as critical habitat for vernal pool fairy shrimp and other federally listed vernal pool

species. FWS, however, subsequently excluded the area from designation in its most recent final rule due to "economic impacts," pursuant to section 4(b)(2) of the Endangered Species Act. See Final Critical Habitat Rule for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants, 70 Fed. Reg. 46,924, 46,930 (Aug. 11, 2005) ("Placer Ranch has been excluded from this final rule designation."). A federal judge recently found that "there [was] insufficient evidence in the record to conclude that the FWS adequately considered the recovery benefits of a critical habitat designation," in its final rule, and thus ruled that its exclusions of habitat—including the land at Placer Vineyards—were unlawful. *Home Builders Ass'n of N. Cal. v. U.S. Fish & Wildlife Serv.*, 36 ELR 22026, *90 (Nov. 2, 2006). The court, however, left the rule in place while FWS reanalyzes its decision.

DW-3

In the absence of critical habitat protection for the vernal pool habitats within Placer Vineyards, it is especially imperative that the "Recovery Criteria" identified in the *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* be rigorously complied with. The Plan divides key vernal pool habitat areas into "Vernal Pool Regions," and further organizes these regions into "Priority Core Areas." Placer Vineyards falls within the southeastern Sacramento Valley Region, and contains "Priority Core 2 Areas" for vernal pool tadpole shrimp and vernal pool fairy shrimp. Under the Recovery Plan, 85% of the core area for both of these species must be protected, as well as at least 80% of species occurrences. Additionally, the Recovery Plan requires that 100% of newly discovered listed species be protected, such as the Conservancy fairy shrimp recently found within this area of Placer County. See Recovery Plan Criteria, III-94-III-106.

DW-4

Under the ESA, recovery plans must contain "the objective, measurable criteria that will indicate when conservation has been achieved," such as the quantified habitat goals contained in the vernal pool recovery plan. *Home Builders Ass'n*, 36 ELR 22026, *57. These criteria are in turn valuable to evaluating the sufficiency of applications for incidental take permits, and other processes that will be at issue with respect to the proposed Placer Vineyards development. See *Sw. Ctr. for Biological Diversity v. Bartel*, 470 F. Supp. 2d 1118, 1136 (S.D. Cal. 2006). Because recovery plans are "pertinent evidence of the measures necessary to prevent the extinction of the vernal pool species . . . FWS [and other agencies] must make a conscientious and educated effort to implement the plans for the recovery of the species." *Id.* at 1136-1137. As part of the issuances of a Section 404 Clean Water Act permit, the U.S. Army Corp of Engineers must consult with the FWS under Section 7 of the federal Endangered Species Act (ESA). As such, under the ESA, the U.S. Army Corps must ensure that the terms of the 404 permit, if granted, assures that the proposed Placer Vineyards development must protect the applicable percentages of vernal pool habitat and species occurrences as identified by the recovery plan.

DW-4

Unfortunately, the project as currently proposed does not come close to meeting the recovery plan criteria for any of the listed vernal pool species. The proposed project does NOT protect 85% (or 12,504 acres) of vernal pool grasslands. Indeed, the recirculated EIR acknowledges that the project developers have not even tried to meet this standard. (See, Response to Comments, Response 24U).

B. Environmental Surveys Must Be Conducted.

While the project proponents have conducted some environmental surveys of the Placer Vineyards property, these surveys have been sporadic, at best. Most survey work was conducted in the winter, with very little spring survey work. In light of the fact that this landscape is one of the few large intact vernal pool grassland landscapes in western Placer County, rigorous survey work should be required to fully understand the biological components impacted by the proposed project.

DW-5

The recent discovery of federally endangered Conservancy fairy shrimp in western Placer County only compounds the need for more surveys. When we raised this point during the recirculated EIR, the project applicants dismissed the need for further survey work by stating that the likelihood of the discovery of Conservancy fairy shrimp on this property is low. However, that point of view may have been sufficient *before* the discovery of Conservancy fairy shrimp in western Placer, but with the discovery of this highly endangered species, such a sentiment is out-dated and biologically flawed. The discovery of Conservancy fairy shrimp in this area demonstrates that it is arbitrary and capricious to ignore the new biological information that Conservancy fairy shrimp may exist in other parts of western Placer County.

Therefore, we strongly urge the U.S. Army Corps to require additional spring survey work of the vernal pool grasslands.

C. Avoidance and Minimization of Impacts

Pursuant to Section 404, proposed projects must avoid impacts first, then minimize impacts, and finally mitigate for any impacts not avoided or minimized. With this project, one of the key components to consider when evaluating project impacts to vernal pool grasslands is the fact that this current area is one of the largest intact grasslands in western Placer County. As DFG pointed out in their May 16, 2006 letter, this larger unfragmented area is biologically very important due mostly to its unfragmented state.

DW-6

The current project fragments this area into much smaller pieces, destroying one of its key biological values. Thus, we urge the U.S. Army Corps to examine project alternatives in which the project designs leave the landscape largely unfragmented. In addition, where fragmentation occurs, such impacts are minimized by avoiding leaving blocks of "protected" areas with long edges, which compromise the biological integrity of the remaining "intact" landscape.

D. Mitigation

Where impacts cannot be avoided or minimized, mitigation is the next step under a Section 404 permit. Here, there are three major concerns with the proposed mitigation for this project: (1) amount of mitigation; (2) kind of mitigation; and (3) creation of vernal pools for mitigation.

- Amount of mitigation: As discussed above, since the Placer Vineyards project falls within a core recovery unit, there must be 85% protection of these lands. Thus, if the ratio of vernal pool mitigation to destruction must be 5.6 to 1. Thus, with 2,233 acres of vernal pool grassland impacted, there should be 12,504 acres of vernal pool complex projected elsewhere. The current project does not even come close to protecting this amount of vernal pool grassland. TW-7

- Kind of mitigation: As discussed by the DFG in its May 19, 2006, letter, the proposed small vernal pool mitigation patches are wholly deficient for compensating for the destruction of a large intact landscape. Indeed, DFG states correctly, "mitigation that trades large patches for small ones, even at two or three times the total area, provide *inadequate mitigation and are very poor conservation strategies*." DFG Letter, p. 5 (emphasis added). Therefore, we urge the U.S. Army Corps to require mitigation that is equal in both kind and amount of the area lost. Thus, destruction of a large intact landscape should require mitigation with large intact landscape. TW-8

- Vernal Pool Creation: As we pointed out in our May 19, 2006, letter on the Recirculated DEIR, we strongly oppose the Placer Vineyards project proposal to pack its mitigation lands with additional created of vernal pools. FWS is currently moving away from the artificial creation of vernal pools due to new science questioning the biological integrity of created pools. According to Dr. Mark Skinner of the National Plant Data Center: TW-9

"Artificial creation of new vernal pools to compensate for destruction of existing pools during development is of concern, since there is no evidence that artificial pools retain their vernal pool plants over a long period of time. Frequently, artificial pools are established without regard for essential associated species, such as specialized pollinators. While it appears that artificial pools may initially be able to retain vernal pool plants, visual appearance and functional values, such as food chain support, do not approximate to conditions in naturally occurring pools (Ferren and Gevirtz 1990). Moreover, created pools are often intermixed with naturally occurring pools. This misguided mitigation may engender outbreeding depression (Dole and Sun 1992) or alteration of natural hydrology, and promote subsequent degradation of both natural pools and the landscape."

Dr Mark W. Skinner (USDA, NRCS, National Plant Data Center,
P.O. Box 74490, Baton Rouge, Louisiana 70874)
(<http://www.nmnh.si.edu/botany/projects/cpd/na/na16g.htm>).

Thank you for the opportunity to provide initial comments on this project. Please keep me informed of any notices and documents related to this project. If you have any questions or comments, please do not hesitate to call me at (916) 313-5800 ex. 109.

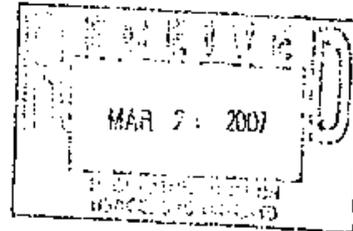
Sincerely,

/s/
Kim Delfino
California Program Director



ESTHER I. McCOY
501 W U Street
Rio Linda, CA 95673-1123

March 22, 2007



Re: Public Notice 199900737

Mr Thomas J. Cavanaugh
Department of the Army
US Army Engineer District Sacramento
Corps of Engineers
Regulatory Branch
1325 J Street
Sacramento, CA 95814-2922

Dear Mr. Cavanaugh

Thank you for sending us the information pertaining to subject notice. Please send us a paper copy of this notice as I am very much concerned about where this body of water encompassing 102.7 acres is located. Please add us to your mailing list for notices of any future public meetings or hearings

Since the Clean Water Act is in effect, how can any request be approved that will subsequently dump dredged or fill material into such a large body of water? Is this by any chance Dry Creek that flows south into Rio Linda from the North?

If this 102.7 acres is an active flowing creek, could dredged or fill material possibly raise the water level to such an extent that flooding could be expected in Rio Linda during raining seasons?

Instead of dumping dredged or fill material into this 102.7 acres of US waters, why doesn't the Placer Vineyards Planning Group consider taking this material to a landfill somewhere and creating a small "Trashmore Mountain" for a public park. Please respond to my questions and forward a copy of the notice to the above address. Thank you

Sincerely,

Esther I. McCoy

Esther I. McCoy

(916) 991-3113

McCoyWE@aol.com