

Final Mitigated Negative Declaration/Initial Study, SCH 2023040473

I. Introduction:

This document constitutes the Final Initial Study / Mitigated Negative Declaration (IS/MND) for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment, and Development Plan that consists of Major Subdivision application CDS23-09646, Rezone application CDRZ23-03270, General Plan Amendment application CDGP21-00004, and Development Plan application CDDP23-03012, to allow development of the southern 7.9 acres of the 23.9-acre project site consisting of a residential subdivision of 13 single-family residences with attached accessory dwelling units (ADUs) incorporated into 11 of the residences. The remaining northern 16.0 acres of the site would remain as agricultural open space.

On November 25, 2024, the Contra Costa County Department of Conservation and Development, Community Development Division (CDD), published a draft IS/MND that analyzed potential significant adverse environmental impacts of the proposed project. Pursuant to Section 15073 of the California Environmental Quality Act (CEQA), which requires a minimum 30-day public review period, the draft MND included a comment period extending through December 26, 2024. On December 13, 2024, at the request of the applicant, CDD staff published a revised IS/MND which corrected typographical errors and added clarification to discussion of mitigation measures identified in CEQA checklist sections pertaining to Public Services and Wildfire. The revised draft IS/MND was recirculated on December 13, 2024, and the public comment period was extended through January 15, 2025. The purpose of the public review period is for the public to submit comments on the adequacy of the environmental analysis in the draft IS/MND. CDD received written comments in response to the publication of the draft IS/MND from a total of seven correspondents - five public agencies, one private organization, and one neighboring property owner.

On August 27, 2025, CDD staff was made aware that certain nearby property owners were not notified of the public review period for the previously-circulated draft MND as required by law. Consequently, on September 3, 2025 CDD prepared additional public notices for mailing and recirculated the draft MND to accept additional public comments from September 3, 2025 through October 3, 2025. Staff received an additional twelve comment letters during the additional public comment period.

The Final IS/MND includes the comments received on the draft IS/MND, responses to the comments received, and eleven (11) staff-initiated text changes, either to provide additional clarifying information or to correct typographical errors. The text changes are not the result of any new significant adverse environmental impact, do not alter the effectiveness of any mitigation included in the pertinent section, and do not alter any findings in the section. The Contra Costa County Board of Supervisors will consider the environmental record including the draft IS/MND, the Final MND, and the findings therein prior to taking action on the project as a whole.

II. Comments Received and Responses:

During the November 26, 2024, to January 15, 2025, public review period on the draft IS/MND, CDD received written comments from seven correspondents, including five public agencies, one private organization, and one neighboring property owner. All correspondence received by CDD in response to the draft IS/MND prepared for this project are listed below. During the September 3, 2025, to October 3, 2025, public review period on the draft IS/MND, CDD received an additional 12 additional comment letters/emails of the draft IS/MND, including two public agencies, one private organization, and one neighboring property owner. All correspondence received by CDD in response to the draft IS/MND prepared for this project are listed below. Following the list of comments received is a summary of the written comments and staff responses to the comments (arranged by their respective CEQA Checklist Topics). The staff responses focus on questions raised relative to the adequacy of the environmental analysis of the property project as presented within the draft IS/MND. The comments and responses are organized by CEQA topic. Staff identifies each comment with a number followed by a lowercase letter (#.x). The number, between 1 and 7, corresponds to the numbered comment letters listed below, whereas the letter corresponds to a specific comment or statement identified by staff therein. A copy of each comment letter, including staff annotations labeling each comment in the manner described above is included herein as Attachment A.

1. CA Department of Toxic Substances Control (DTSC) – Letter received December 6, 2024
2. Peter T. Tringale, neighboring homeowner - Letter received December 11, 2024.
3. Contra Costa Local Agency Formation Commission (LAFCO) – Email correspondence received December 16, 2024.
4. East Bay Municipal Utility District (EBMUD) – Letter received on December 17, 2024.
5. California Department of Fish & Wildlife (CDFW) – Letter received on December 23, 2024.
6. Town of Moraga – Letter received January 15, 2025.
7. Sanders Ranch Homeowners Association – Email received January 15, 2025
8. CA Department of Toxic Substances Control (DTSC) – Letter received September 12, 2025
9. East Bay Municipal Utility District (EBMUD) – Letter received on September 26, 2025.
10. Concerned Resident of Moraga – Email received September 17, 2025
11. Larry Varellas – Email received September 22, 2025
12. Phillip Tingale – Letter received September 10, 2025¹
13. Deanna Sheehan – Email received September 23, 2025
14. Chris Whitome – Email received September 24, 2025
15. Ralph Osterling – Email received October 3, 2025
16. Lozeau Drury LLP – Letter received October 1, 2025
17. Nadine Whisnant – Letter received October 2, 2025
18. K. Galbraith – Email received October 3, 2025
19. Robin Cort – Letter received September 29, 2025

¹ The Tringale letter received 9/12/25 includes numbered comments that are substantially similar to those received 12/11/24. Therefore, the staff response to the prior comments shall also serve as responses to the respondents subsequent comments .

A. General Comments

Comment 2.a/2.b: Introductory comments identifying the commenter, his occupation, and place of residence. The commenter indicates the project will result in significant adverse effects, as detailed in this letter.

Response: The comment is acknowledged but does not directly relate to a specific CEQA checklist section. Responses are provided to subsequent numbered/lettered comments in this letter pertaining to Aesthetics, Air Quality, Noise, Geology & Soils.

Comment 2.o: The overall conclusion to the report stating there are no significant adverse impacts is misleading and technically incorrect.

Response: As discussed in response to their comments 2.a through 2.p below, the commenter does not identify potentially significant impacts that were not considered within the IS/MND. There is no basis cited beyond their stated belief that the proposed mitigation measures are inadequate, as discussed in more detail throughout this Final MND.

Comment 15.a – 15.e: The commenter raises several questions about the project. The comments are phrased as general concerns with the project and do not specifically raise any concerns with the published CEQA document.

Response: The comments do not relate to the adequacy of the environmental document or of the proposed mitigation measures. Therefore, no responses are necessary within the respective CEQA sections of this document. The basis for County staff's determination regarding no significant aesthetic impacts are detailed within the aesthetics section of this document, and that of the IS/MND. The project's compliance with County drainage ordinances and dedication of public right-of-way are described in the staff report prepared for the Board's consideration. Lastly, the project conditions of approval include an advisory note specifying additional agency approval(s) that may be necessary, including that of Contra Costa County Vector Control. The applicants compliance with all applicable permit requirements ensures that the project drainage plan does not result in the creation or maintenance of a vector-related nuisance.

Comment 16.a: General statement of opposition to the project indicating that the subsequent comments within the letter will demonstrate substantial evidence supporting a fair argument that the project may have significant unmitigated impacts on biological resources, human health, air quality, and aesthetic resources.

Response: Each of the comments provided in the letter will be addressed by staff within this document.

Comment 16.b: The respondent summarizes the project description for the Camino Pablo project.

Response: No response is necessary.

Comment 16.c: The respondent summarizes the “fair argument” legal standard, citing various case law, in determining the necessity of an EIR vs. an MND for a particular project.

Response: Staff does not contest the legal standard described by the respondent specifying that an EIR must be prepared “whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact”. The relevant CEQA provision, Section 21082.2 reads as follows:

- a) The lead agency shall determine whether a project may have a significant environmental effect on the environment based on substantial evidence in light of the whole record;
- b) The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.
- c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.
- d) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an environmental impact report shall be prepared.

The commenter does not provide substantial evidence necessitating the preparation of an EIR pursuant to CEQA section 21082.2.

Comment 9.a: In a letter dated 9/12/25, CA Department of Toxic Substances Control (DTSC) staff advise that their prior comments in response to the Draft MND, received 12/6/24, still apply to the current MND.

Response: This document acknowledges and responds to each of the comments raised in the DTSC comments of 12/6/24.

Comment 9.a: EBMUD staff letter advising that the District’s prior comments in response to the Draft MND, received 12/27/24, still apply to the current MND. Also, EBMUD staff advise of a typo misidentifying EBMUD as a wastewater provider instead of a water provider.

Response: This document acknowledges and includes responses to EBMUD prior comments. The typo in the Utilities and Services section is correct, as detailed in the text-change section at the end of this document.

Comment 13.a, 14.a: The respondents express opposition to the project, vaguely citing impacts on the neighborhood in terms of traffic, infrastructure demands, noise, air quality, health and safety, and fire.

Response: As discussed in the draft MND, and throughout this document, the project would not result in significant impacts in any of these respects.

Comment 18.g: The respondent expresses strong opposition to the project and conveys disappointment in County staff for the manner in which the application is being processed by the County.

Response: The respondents' comments are noted, however, since they do not specifically relate to an environmental issue discussed within the draft MND, no response is necessary.

B. Aesthetics, Environmental Checklist Section 1

Comment 6.c: The Town of Moraga recognizes that the project is being processed under County regulations but wishes to highlight certain Town of Moraga regulations pertaining to development within a Town-designated scenic corridor (Camino Pablo), as well as Town of Moraga Design guidelines.

Response: The commenter from the Town of Moraga notes regulations that would be applicable to the project if the property were within the Town's jurisdiction. The comments do not identify any specific policy with which the proposed project is in conflict, nor is it asserted that the project would result in significant aesthetic impacts that were not identified and discussed within the draft IS/MND. Therefore, no significant revisions to the draft IS/MND, and no additional mitigation measures are necessary or appropriate in response to this comment.

Comment 2.l: The published IS/MND "ignores the critical and unacceptable visual impact along the east side of the proposed development where steep cuts and elevated fill severely alter the natural landscape and identified ridgelines in this special hillside area". The draft IS/MND inappropriately discusses a public visual impact and ignores unacceptable impacts to existing private residences along eastern project boundary.

Response: The discussion presented in CEQA checklist section 1.c acknowledges that the project would alter views of the hillsides when viewed from vantage points ranging from the Camino Pablo/Tharp Drive intersection, extending south of the existing site to Sky View Court. The fact that the proposed residential development will be visible from these locales is not considered a significant aesthetic impact because the area of development is not a part of a County-designated scenic ridgeline, or scenic vista. The threshold of significance established in the *CEQA Guidelines* explicitly pertains to whether a project would substantially degrade the existing visual character or quality of public views of the site and its surroundings, or otherwise conflict with local policies/ordinances governing scenic quality. There are no County ordinances or General Plan policies protecting views from private residences in this area of the County. Thus, the analysis for project-related aesthetic impacts did not include analysis of views from neighboring residential properties. The comment does not specify any impacts to County-designated scenic resources or to public views of the site that were not evaluated in the draft IS/MND. Therefore, no revisions or additional mitigation measures are necessary in response to this comment.

Comment 2.j: The published IS/MND are inconsistent with current risk analysis standards/considerations for air, noise, odor, vibration, and visual impacts.

Response: See above staff response to comment 2.l regarding visual impacts. Comments relating to air, noise, odor and vibration are addressed separately within Air Quality and Noise sections within this document.

Comment 2.k: The effect of light from the project is significant. The development would cast shadows over existing homes on Sky View Ct.

Response: The project includes residential development on a property that is contiguous with established residential neighborhoods located west and south of the site. The project does not include any facilities or non-residential uses which require extensive outdoor lighting beyond that which is typical of single-family residential development. Additionally, the project is conditioned to require exterior lighting to be directed downward and away from adjoining properties. Thus, potential impacts related to site lighting would not result in significant aesthetic impacts on neighboring properties.

There is no evidence that the proposed two-story homes will cast shadows on existing residences on Sky View Ct., or otherwise substantially block light. The limited shadows that could be cast by the two-story homes could only extend outside the individual lot boundaries, to a very limited degree, for less than an hour shortly after sunrise and shortly prior to sunset, when the sun is lowest on the horizon. The shadows would be projected toward the west and east, respectively, away from the existing homes on Sky View Court. The existing homes on Sky View Court may cast shadows on the development, but the proposed new homes would not cast shadows on any of these homes.

Comment 19.b: The commenter opines that the project description does not accurately describe the nature or extent of the visual impact resulting from proposed grading activities. They further assert that quantity of earthwork involved is such that the project would not retain the natural features of the land, or minimize views of the project as indicated in the project description.

Response: This comment is provided under the heading of “Project description” but appears to suggest aesthetic impacts beyond those considered in the draft MND. The commenter cites the quantity of earthwork as evidence in support of this claim, stating that “the project requires 59,600 cubic yards of grading... enough to bury a football field under almost 28 feet of dirt. This amount of grading would NOT retain natural features of the land.” While the commenter does accurately convey the gross quantity of grading (i.e. cut + fill) proposed by the project, they do not acknowledge or differentiate the quantities of cut vs. fill which comprise that gross total. Since the proposed grading activity would be balanced on site (i.e. no import or export of soils) the total quantity of dirt that is actually moved (or cut) would be 29,800 cubic yards, all of which would be relocated as fill in other areas of the property. On average, this would equate to about 28” of cut over the entirety of the 7.9 acre area of development. This would not be a significant alteration of topography on a site where elevations range from between 554-to-742 feet above sea level. Further, the grading activity would predominantly occur in relation to the construction of the proposed access roadway (identified as Parcel D on the vesting tentative map),

coinciding with a topographical depression on the property nestled between two adjoining hillsides. Considering that the roadway area experiencing the most substantial quantity of grading is visually screened by hillsides to the east, north, and south, and that the project would not significantly alter the elevations on these nearby hillsides, the project will maintain the natural features of these nearby hillsides, when viewed from the east, north, or south. The fact that the two homes at the far eastern end of the subdivision would be visible to southbound motorists on Camino Pablo does not constitute a significant aesthetic impact in and of itself. See response to 19.c for further discussion of the impact of development along the Camino Pablo scenic corridor.

Comment 19.c: The project would have significant aesthetic impacts because project would be visible from southbound Camino Pablo which the Town of Moraga has designated as a scenic corridor. The project would “completely dominate” views of motorists, pedestrians, and or cyclists traveling in this direction.

Response: There are no County-designated resources (e.g. Scenic Routes, Scenic Ridgelines, Scenic Waterways), on or near the site. Additionally, the project has no potential to affect existing scenic resources such as trees, rock outcroppings, or historic buildings located within a state scenic highway.

Portions of the project would be visible from the Camino Pablo right-of-way, however, the more prominent hillsides surrounding the area of development would obscure public views of most proposed homes from portions of Camino Pablo north of Tharp Drive. Therefore, it is staff’s opinion that the development minimizes visual impacts along this right-of-way, as evidenced by the fact that only two of the proposed thirteen homes would be generally visible from southbound Camino Pablo. In a letter dated January 15, 2025 in response to the Draft MND published by the County, the Town of Moraga staff highlight certain Town Regulations, including Moraga Municipal Code Chapter 8.132 – Scenic Corridors. The comments from the Town do not specify any inconsistencies with the project and development standards within Town of Moraga-designated scenic corridors.

There are numerous undulating hillsides throughout the 23.9-acre subject property, the most prominent of which exceed 700 feet in elevation immediately north and east of the area proposed for residential development. The proposed roadway would be built at an elevation of 600 feet or lower and the proposed building pads are generally proposed between 600-620 feet above sea level. Thus, the roofs of the proposed houses would be situated well below the ridgelines beyond, supporting staff’s conclusion that the project maintains distant views of the more prominent hillsides existing north and east of the development. Considering that the development activity is limited to the lower elevations on site, does not significantly alter significant ridgelines or hilltops, and utilizes topography to screen the development from public vantage points (to the extent practicable), staff does not agree that the commenters preference for this private property to remain as undisturbed hillside amount to a significant aesthetic impact. The comments do not identify any conflicts with the proposed project and applicable County Policies or ordinances regulating aesthetics or visual quality. Therefore, the comment does not establish a potentially significant aesthetic impact not evaluated within the draft MND, and no additional mitigation measures are necessary.

Comment 19.d: The landscaping along the frontage may not be as presented in the photo-simulations of the project site included within the draft MND. The County should require the establishment of an Homeowners Association (HOA) to maintain this landscaping.

Response: The project is conditioned to establish an HOA. The HOA responsibilities will include but not be limited to the maintenance of landscaping installed along public roadways adjacent to the development.

Comment 19.e: The draft MND inaccurately characterizes the project as visually consistent with development east of Camino Pablo. The commenter states that this cannot be true because several homes fronting Camino Pablo adjacent to the project site are less than 2,000 square feet in area.

Response: In response to CEQA checklist item 1.c, County staff states that the “proposed development, including new residences and associated landscaping... would be similar to and consistent with existing development in Moraga west of Camino Pablo and with the Sky View Court subdivision to the south.” This statement does not specifically reference the square-footage of the homes and the project is clearly consistent with the surroundings in terms of land use and density. Notwithstanding the commenters observations on the square-footage of a limited number of nearby homes, the proposed homes are not unusually large for the area. For example the fourteen existing single-family residences on Sky View Court (immediately south of the project) range from 3,105 to 5,053 square feet in area, consistent with the proposed subdivision. There are numerous other examples of existing homes in east of Camino Pablo exceeding 2,000 square feet in area. Therefore, the comments do not provide any substantial evidence to demonstrate the potential of significant aesthetic impacts resulting from the size of the proposed homes.

Comment 19.f: The commenter asserts that her above comments (19.b-19.e) constitute significant unavoidable impacts warranting an EIR.

Response: As specified in response to Comments 19.b-19.e, the respondent has not established any significant aesthetic impacts which were not considered in the draft MND. Therefore, no revisions to the aesthetics section of the draft MND are necessary and no additional mitigation measures are appropriate in response to these comments.

Comment 16.h The commenter specifies CEQA review requirements for projects proposed under the Housing Accountability Act (HAA).

Response: The project is not seeking entitlements under the HAA. Therefore, this comment is not relevant to the proposed project, and no response is necessary.

Comment 11.c: The project will destroy the natural beauty of the hills in and around the project location.

Response: The project will be nestled in amongst lower lying hillsides on the subject property and would not substantially alter the existing topography for the nearby hilltops. The project does not result in significant aesthetic impacts.

C. Agricultural Resources, Environmental Checklist Section 2

Comment 19.g: The conversion of agricultural lands to urban land uses is irreversible. Although the project would only affect 7.9 acres of such lands, incremental conversions of this nature can become cumulatively considerable. The mitigation measure requiring the conservation of the 16-acre area not proposed for development does not adequately compensate for the loss of farmland. This constitutes a significant unavoidable impact.

Response: Staff agrees that the incremental loss of agricultural lands can result in cumulatively significant impacts over time. In fact, the Contra Costa County 65/35 Land Preservation Standard was adopted by Contra Costa County voters in 1990 and 2006 to address precisely this issue. The Land Preservation Standard limits urban development Countywide to no more than 35% of the land in the County, with the other 65% of all land in the County to be preserved for agriculture, open space, wetlands, parks, and other nonurban uses. As discussed in detail in the draft MND checklist section II.e, the project poses no immediate threat to the County's compliance with the 65/35 Land Preservation Standard, as urbanized land uses presently constitute only 28% of land area in the County. Additionally, the significance of converting the 7.9-acre area of the site for residential development is relatively low considering that the affected land is not classified as Prime Farmland, Unique Farmland, or Farmland of Statewide importance, which are the standards of consideration in CEQA Checklist questions 2.a relating to the conversion of agricultural lands. Furthermore, the project site is within the Urban Limit Line, wherein urbanized development such as the proposed project is permissible under applicable General Plan policies.

Lastly, the comments do not contest staff's characterization of the quality/type of farmland impacted by the project or the County's present compliance status with the 65/35 Land Preservation Standard. Therefore, in cumulative consideration of the above, the comments do not establish that the conversion of 7.9 acres of farmland within the Urban Limit Line constitutes a significant unavoidable impact on Agricultural Resources within the County. Staff does not agree with the commenter's assertion that the project results in potentially significant unavoidable agricultural impacts. Therefore, no revisions to the draft MND and no additional mitigation measures are appropriate in response to this comment.

D. Air Quality, Environmental Checklist Section 3

Comment 2.c/2.f/2.h/2.o: The Draft IS/MND improperly conducts analysis regarding project impacts on sensitive receptors. Specifically, the commenter opines that the document lacks sufficient analysis of potential project impacts to high-risk high-sensitivity receptors. There is inadequate basis for the IS/MND conclusion of "less than significant" air quality impacts, particularly those potentially affecting sensitive receptors.

Response: The comment asserts that the analyses of impacts specifically exclude sensitive receptors, did not identify the receptors, or address the harm that would result from the project. The noise, air quality, and health risk analyses presented in the Initial Study were particularly focused on sensitive receptors. The health risk assessment discussed on pages 16-17 of the Initial Study explicitly identify sensitive receptors as the key considerations in the analysis. The thresholds of significance adopted by the Bay Area Air Quality Management District and which served as the basis for the air quality analysis also factor in exposure of all residents, including sensitive receptors. Similarly, the noise analysis calculated anticipated noise levels during project construction at the nearest sensitive residential receptors, and the impact analysis and mitigation requirements were based on noise exposure of these residents. The comment asserts that the analyses summarized in the Initial Study were improperly conducted but does not provide any examples or evidence to support this assertion.

As stated in the *Moraga Camino Pablo Residential Project Air Quality, Greenhouse Gas, and Health Risk Assessment Technical Report* (RCH Group, July 19, 2024), the following discussion describes the health impacts associated with existing and proposed residences as a result of existing cumulative sources such as permitted stationary sources (i.e., diesel generators, boilers, gasoline stations), major roadways, and rail activities. Note that this is not new information, rather it summarizes analysis that was already performed during preparation of the IS/MND, the results of which were presented in the IS/MND.

The BAAQMD's *CEQA Air Quality Guidelines* include standards and methods for determining the significance of cumulative health risk impacts. The method for determining cumulative health risk requires the tallying of health impacts from permitted stationary sources, major roadways and any other identified substantial air toxic sources in the vicinity of a project site (i.e., within a 1,000-foot radius) and then adding the individual sources to determine whether the BAAQMD's cumulative health risk thresholds are exceeded. No permitted stationary sources (diesel generators and gasoline fueling) are located within 1,000 feet of the project site.² No major roadways and rail activities are located within 1,000 feet of the project site. Therefore, the project would not result in significant cumulative health impacts to existing or proposed residences.

Secondly, the BAAQMD's Community Air Risk Evaluation (CARE) program was initiated in 2004 to evaluate and reduce health risks associated with exposure to outdoor air toxics in the Bay Area. Based on findings of the latest report, diesel particulate matter (DPM) was found to account for approximately 85 percent of the cancer risk from airborne toxics. Carcinogenic compounds from gasoline-powered cars and light duty trucks were also identified as significant contributors: 1,3-butadiene contributed 4 percent of the cancer risk-weighted emissions, and benzene contributed 3 percent. Collectively, five compounds—diesel PM, 1,3-butadiene, benzene, formaldehyde, and acetaldehyde—were found to be responsible for more than 90 percent of the cancer risk attributed to emissions. All of these compounds are associated with emissions from internal combustion engines. The most important sources of cancer risk-weighted emissions were combustion-related sources of DPM, including on-road mobile sources

² BAAQMD Stationary Source Screening Map,
<https://baaqmd.maps.arcgis.com/apps/webappviewer/index.html?id=845658c19eae4594b9f4b805fb9d89a3>

(31 percent), construction equipment (29 percent), and ships and harbor craft (13 percent). A 75-percent reduction in DPM was estimated between 2005 and 2015 when the inventory accounted for CARB's diesel regulations. Overall, cancer risk from toxic air contaminants (TACs) dropped by more than 50 percent between 2005 and 2015, when emissions inputs accounted for State diesel regulations and other reductions.³

Per the CARE program, modeled cancer risks from TACs were highest near sources of DPM: near core urban areas, along major roadways and freeways, and near maritime shipping terminals. Peak modeled risks were found to be located east of San Francisco, near West Oakland, and the maritime Port of Oakland. BAAQMD has identified the following seven impacted communities in the Bay Area:⁴

- Western Contra Costa County and the cities of Richmond and San Pablo;
- Western Alameda County along the Interstate 880 corridor and the cities of Berkeley, Alameda, Oakland, and Hayward;
- San Jose;
- Eastern side of San Francisco;
- Concord;
- Vallejo; and
- Pittsburgh and Antioch.

The proposed project is within the town of Moraga, which is not part of the seven CARE program impacted communities in the Bay Area.⁵

BAAQMD's *Planning Healthy Places: A Guidebook for Addressing Local Sources of Air Pollutants in Community Planning*⁶ was published to support and promote infill development; which is important to reducing vehicle miles traveled and the associated air emissions, while minimizing air pollution exposure for existing and future residents. The *Guidebook* also provides developers and planners with the information and tools needed to create health-protective communities.

The *Guidebook* recommends Best Practices to Reduce Emissions and Reduce Exposure to Local Air Pollution. Implementing as many Best Practices to Reduce Emissions as is feasible will reduce potential

³ Bay Area Air Quality Management District, *Improving Air Quality & Health in Bay Area Communities, Community Air Risk Program Retrospective & Path Forward (2004 – 2013)*, April 2014, http://www.baaqmd.gov/~media/Files/Planning_percent20and_percent20Research/CARE_percent20Program/Documents/CARE_Retrospective_April2014.ashx?la=en

⁴ Bay Area Air Quality Management District, *Revised CARE Impacted Communities*, <https://www.baaqmd.gov/community-health/community-health-protection-program/community-air-risk-evaluation-care-program> and <https://www.baaqmd.gov/~media/files/planning-and-research/care-program/revised-2013-care-communities-pdf.pdf?la=en>

⁵ Community Air Risk Evaluation Program, *Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area*, March 2014, <http://www.baaqmd.gov/community-health/community-health-protection-program/community-air-risk-evaluation-care-program>

⁶ Bay Area Air Quality Management District, *Planning Healthy Places: A Guidebook for Addressing Local Sources of Air Pollutants in Community Planning*, January 2016, http://www.baaqmd.gov/~media/files/planning-and-research/planning-healthy-places/draft_planninghealthyplaces_marchworkshop-pdf.pdf?la=en

health risks to the greatest extent. The *Guidebook* also lists examples of a variety of strategies to reduce exposure to, and emissions of, air pollution, including the adoption of air quality-specific ordinances, standard conditions of approval, and incorporation of policies into general plans and other planning documents. The BAAQMD recommends implementing all best practices to reduce exposure that are feasible and applicable to a project in areas that are likely to experience elevated levels of air pollution. To reduce exposure to pollutants, the *Guidebook* recommends practices like installing indoor air filtration systems, planting dense vegetation, implementing project design which provides a buffer between sensitive receptors and emission sources, and developing alternative truck routes.

The *Guidebook* links to a web-based interactive map of the Bay Area showing areas with estimated elevated levels of fine particulates and toxic air contaminants, specifically locations next to major roads and freeways and large industrial sites, as well as the downtown districts of most cities.⁷ The interactive map shows locations where further study is recommended prior to approving a project, such as detailed health risk assessment. The interactive map also shows locations where implementation of best practices by local governments and developers are recommended to reduce health risks from air pollution in locations that experience elevated air pollution levels. According to the Planning Healthy Places interactive map, the area near the project site is not a location in which elevated levels of fine particulates and toxic air contaminants exist. See Figure AQ-1 (East Bay Area) and Figure AQ-2 (Project Area), below, which show the location where further study is recommended and implementation of best practices is recommended. The project site is not located within either of the zones. Furthermore, no permitted stationary sources are located near the project site. Therefore, based on the above, the comments do not affect the County's determination that cumulative health impacts of the proposed project would be less than significant.

⁷ Planning Healthy Places,

<https://baaqmd.maps.arcgis.com/apps/webappviewer/index.html?id=51c2d0bc59244013ad9d52b8c35cbf66>

Figure AQ-1: Planning Healthy Places (East Bay Area)

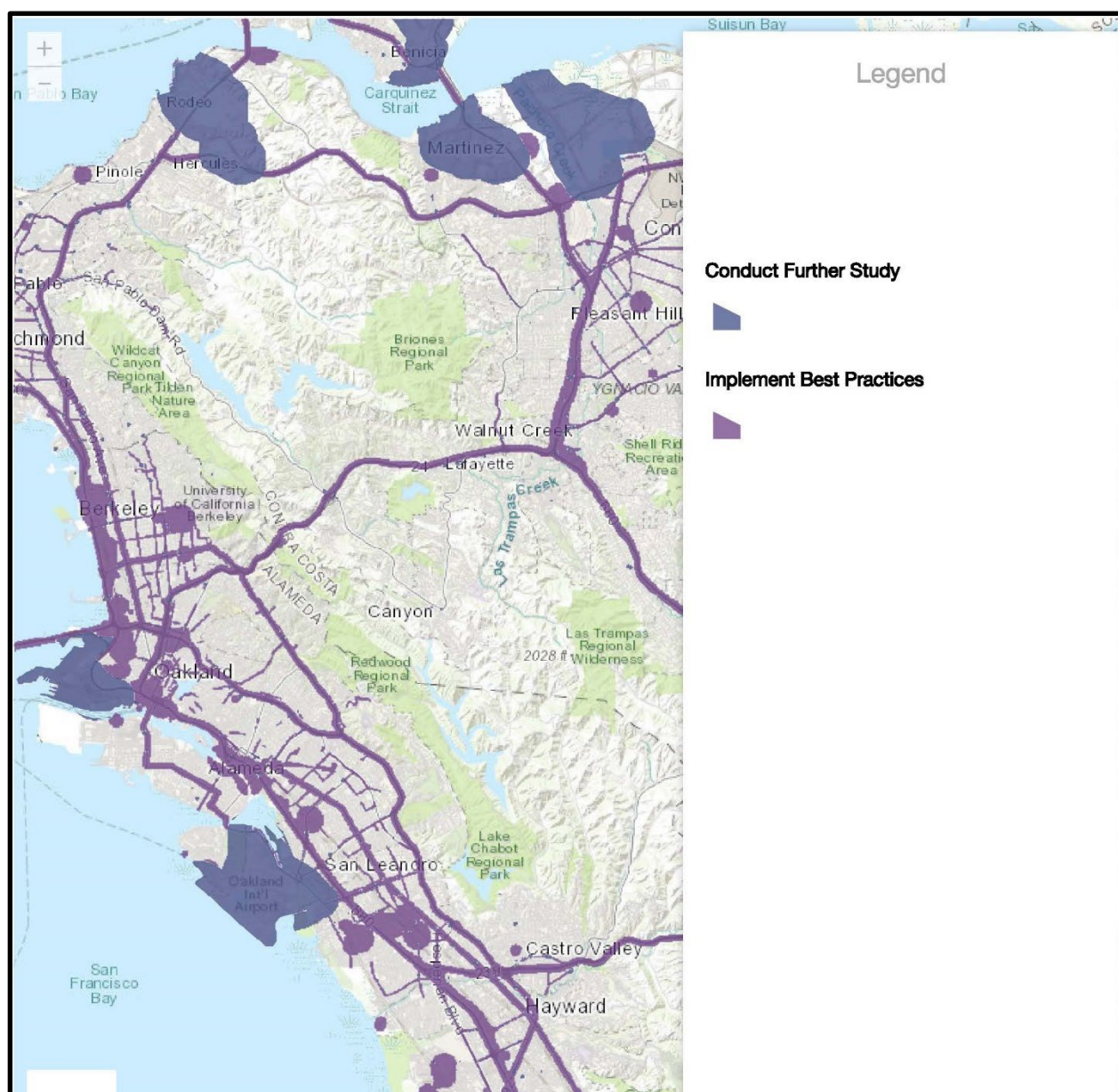
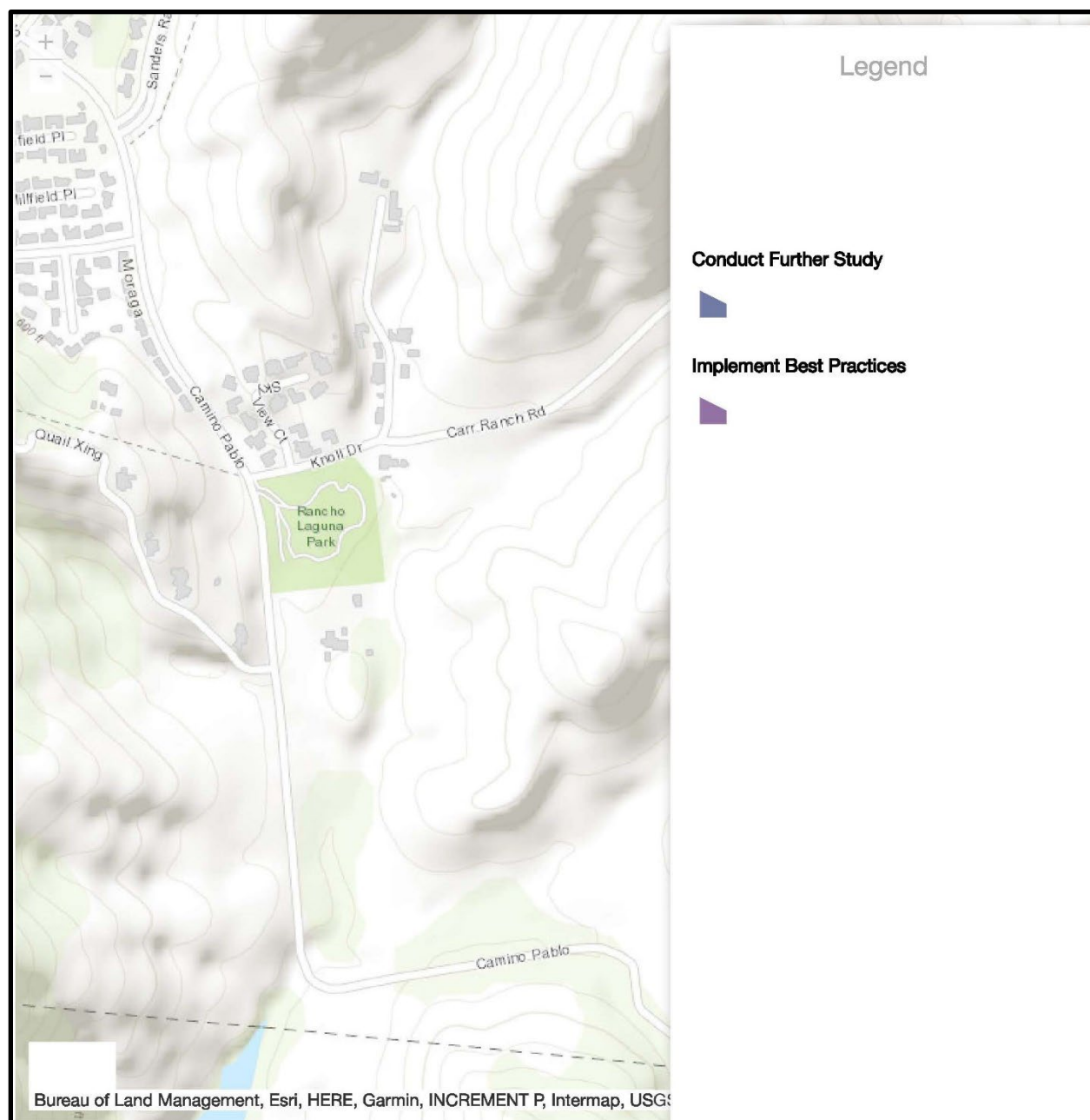


Figure AQ-2: Planning Healthy Places (Project Area)



Comment 2.i: The Draft IS/MND does not include critical analysis or mitigation of the substantial nuisance and other effects to existing sensitive receptors within the immediate project vicinity.

Response: See above response to comments 2.c/2.f/2.h/2.o.

Comment 2.j: The published IS/MND are inconsistent with current risk analysis standards/considerations for air, noise, odor, vibration, and visual impacts.

Response: Regarding the analysis of air quality impacts summarized in the Initial Study, it was conducted in accordance with the Bay Area Air Quality Management District's (BAAQMD's) *CEQA Air Quality Guidelines*, which recommend quantification of construction-related exhaust emissions and comparison of those emissions to significance thresholds. CalEEMod (California Emissions Estimator Model Version 2022.1) was used to quantify construction-related pollutant emissions (CAPCOA, 2022). As detailed in the *Moraga Camino Pablo Residential Project Air Quality, Greenhouse Gas, and Health Risk Assessment Technical Report* (RCH Group, July 19, 2024), project construction would generate emissions of air pollutants, including fugitive dust and equipment exhaust emissions. Table AQ-1 of the Initial Study presents the results of the quantified modeling of the project's emissions and demonstrates that the levels of criteria air pollutant emissions would be far below the applicable significance thresholds.

Because the health risk assessment (HRA) summarized in Section 3-c of the Initial Study resulted in the need for Mitigation Measure AQ-2 and Mitigation Measure AQ-1 is a standard mitigation requirement for all construction projects in the San Francisco Bay Area, the beneficial effects of those mitigation requirements were incorporated into the construction emissions inventory reported in Table AQ-1 for the Mitigated Project. Mitigated carbon monoxide (CO) emissions are greater than the unmitigated CO emissions due to control technologies that are focused on reducing emissions of reactive organic gases (ROG), nitrogen oxides (NO_x), particulate matter (PM₁₀, and PM_{2.5}), which have a reverse effect on CO emissions.

BAAQMD considers the relevant zone of influence for an assessment of air quality health impacts to be within 1,000 feet of a project site. The proposed project site is adjacent to residential areas to the south and east and open space to the north and west. Therefore, an HRA was prepared to analyze health impacts on existing residences from diesel offroad equipment and haul truck emissions (DPM) associated with the project construction activities. The HRA was conducted to determine the health impacts, in terms of excess cancer risk and non-cancer hazards, using the significance levels identified by the BAAQMD's *CEQA Air Quality Guidelines*. In accordance with the BAAQMD guidelines, the HRA also evaluated concentrations of PM_{2.5} (fugitive dust and combustion exhaust). The HRA was prepared in accordance with the California Office of Environmental Health Hazard Assessment (OEHHA)'s *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments* (OEHHA, 2015).

As shown in Table AQ-2 of the Initial Study, the maximum unmitigated cancer risk from project construction emissions for a residential child receptor would be 20.0 per million persons and for a

residential adult receptor would be 1.3 per million persons.⁸ The maximum health impacts occur to the south of the project site, along Skyview Court. Thus, the unmitigated cancer risk due to construction activities is above the BAAQMD threshold of 10 per million and therefore would be potentially significant. However, as shown in IS Table AQ-3, with implementation of Mitigation Measure AQ-2, the maximum mitigated cancer risk from project construction emissions for a residential child receptor would be 3.1 per million persons and for a residential adult receptor would be 0.2 per million persons. Thus, the mitigated cancer risk due to construction activities would be below the BAAQMD threshold of 10 per million and therefore would be less than significant with mitigation, as reported in the Initial Study.

The analysis of potential odor impacts from project construction were not found to be significant, as discussed on pages 17-19 of the Initial Study, and no mitigation would be required or necessary. Similarly, the analysis of visual impacts of the project summarized on pages 7-8 of the Initial Study demonstrate that the project would not have significant aesthetic impacts pursuant to CEQA. The commenter does not provide any evidence to contradict these conclusions.

Comment 19.h: The commenter is skeptical that the dust control measures would be implemented by the developer. They indicate that the developer for the Sky View Court subdivision did not comply with such measures, and is skeptical that the project proponent would follow such measures during construction.

Response: This comment cites the actions of other individuals unrelated to the project or the developers of the Camino Pablo project as a basis for their skepticism of the developer's intent to comply with the Air Quality mitigation measures identified within the Draft MND. The developer must comply with the mitigation measures. In the event that the developer does not comply with applicable Air Quality mitigation measures, concerned parties may refer the matter the County code-enforcement officials, and/or Bay Area Air Quality Management District officials for further investigation.

Comment 16.s: An EIR is required because there is a fair argument that the project may have a significant impact on human health. Air Quality Mitigation measures proposed with the project do not adequately address potential impacts to human health.

Response: See responses to comments 2.c, 2.f, 2.h, 2.i, 2.j and 2.o above discussing the basis for the determination that the project would have less than significant impact to human health.

Comment 16.t: The commenter indicates that Dr. Phillip Tringale affirms that the MND fails to adequately analyze health and environmental impacts. Mr. Tringale is characterized as an expert in analyzing the air quality issues discussed in above comment #16.s.

⁸ This theoretical individual would be born on construction year 1 and subsequently be exposed to the full construction period. Individuals born after construction year 1 would be exposed to shorter construction duration and thus, result in a lower risk and health impacts.

Response: First, the commenter does not establish that Tringale is indeed an expert on Air Quality Analysis. Neither Lozeau & Drury nor Tringale identify him as an expert in this specific discipline in their respective comments. Therefore, staff does not consider this comment to establish a fair argument supported by substantial evidence as presented in the Lozeau & Drury letter dated October 1, 2025. Second, Tringale's comment is not based on substantial evidence as defined in response to comment 16.c.

Comment 17.b: The commenter indicates that the reports suggest air quality issues with no remedy.

Response: As discussed in detail within the Air Quality section of the draft IS/MND, the project would not result in significant air quality impacts with the implementation of Air-Quality mitigation measures. This comment does not accurately characterize Air Quality analysis presented within the draft IS/MND.

E. Biological Resources, Environmental Checklist Section 4

Comment 2.d: The project includes large dwellings and accessory dwelling units increasing impacts on the proposed lots, resulting in mass removal and relocation near "jurisdictional areas" which are a concern given the long-term and protected nature of this sensitive environmental area.

Response: The project plans depict Accessory Dwelling Units within eleven of the proposed thirteen single-family residences, however, these elements of the project are not included within the discretionary project presently under review. Under current State housing law, ADUs must be permitted ministerially by local planning jurisdictions, subject to objective building code standards, meaning they are not subject to environmental review pursuant to CEQA. Nonetheless, the IS/MND does factor the proposed ADUs into the environmental impact analysis of the proposed project. The analysis of potential impacts to jurisdictional waters summarized on pages 37-39 of the Initial Study was based on the current site plan and the proximity of the proposed development to potential jurisdictional waters. No significant impacts to wetlands or other jurisdictional waters were identified.

Comment 5.a: A California Endangered Species Act (CESA) Incidental Take Permit must be obtained from the California Department of Fish & Wildlife (CDFW) if the project will impact CESA listed species.

Response: It is acknowledged that an Incidental Take Permit (ITP) would be required if the project would result in the "take" of plant or animal species covered under the California Endangered Species Act (CESA), as well as CESA candidate species. However, the applicant has agreed to implement all applicable mitigation measures for potential impacts to sensitive species identified in this IS/MND, which are expected to prevent a "take" of protected species, thereby avoiding the need for obtaining an ITP. In the event that protected species are identified on the site during the pre-construction surveys required by the mitigation measures, those measures require consultation with CDFW and/or the U.S. Fish and Wildlife Service (USFWS), as appropriate, to develop and implement a mitigation plan that meets approval of the applicable regulatory agency (CDFW and/or USFWS). The applicant has acknowledged that in such cases, they could be required to obtain an ITP.

To further reduce the potential for any “take” of protected species, the County has refined mitigation measures to include Mitigation Measure Biological Resources 3-d. Refer to Text Changes to the Initial Study, starting on page 46, for the text of the expanded mitigation measure. The additional measures will enhance the mitigation already identified for potentially significant impacts to Alameda whipsnake and other special-status species identified in the IS/MND.

Comment 5.b: CESA-listed species including but not limited to Alameda whipsnake (*Masticophis lateralis euryxanthus*) may occur in the project area. Additionally, candidate species for listing under CESA, including western bumble bee (*Bombus occidentalis*) and burrowing owl (*Athene cunicularia*) may occur in the project area. Lastly, plants identified as rare or endangered by the California Fish and Game Commission may occur in the area, including but not limited to the following species ranked as 1B.2 by the California Native Plant Society: bent-flowered fiddleneck (*Amsinkia lunaris*), Mt. Diablo fairy-lantern (*Calochortus pulchellus*), and Diablo helianthella (*Helianthella castanea*)

Response: The Alameda whipsnake is identified as a State and federal Threatened species in the discussion of the whipsnake on pages 33-35 of the Initial Study, and Mitigation Measure Biological Resources 3, requires a pre-construction survey immediately prior to ground disturbance or removal of vegetation from the site in order to determine the presence or absence of this species on the project site. Additional mitigation is required if any whipsnakes are encountered, as discussed in Response to Comment 5.a. Furthermore, as discussed in more detail in Response to Comment 5.l, the applicant will be required to install wildlife exclusion fencing, to be approved and verified by a qualified wildlife biologist, prior to conducting the pre-construction survey. Thus, once the absence of the Alameda whipsnake from the project development area is confirmed by the biologist, the fencing will preclude any snakes from moving onto the site during project construction.

The bent-flowered fiddleneck, Mt. Diablo fairy-lantern, and Diablo helianthella are discussed as special-status plants on page 24 of the IS, and Mitigation Measure Biological Resources 1 requires pre-construction surveys to determine their presence or absence from the project site, with additional mitigation required if they are encountered.

The burrowing owl is discussed on pages 27-28 of the IS/MND, but this species was determined to have low potential for occurring on the project site due to the lack of suitable nesting or refuge habitat.

The western bumble bee is discussed on pages 36-37 of the IS/MND and a potentially significant impact to the bee is identified. Measure Biological Resources 4 requires a pre-construction survey by a qualified biologist no more than 48 hours prior to any vegetation removal or ground disturbance on the site. In the event the western bumble bee is found on site during the survey, Measure Biological Resources 4 also requires implementation of additional mitigation to protect the bee, subject to approval by CDFW and/or USFWS.

Comment 5.c: CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. The lead agency cannot approve a project all impacts to the

environment are avoided or mitigated to less-than-significant levels, or the lead agency makes and supports Findings of Overriding Consideration for impacts that remain significant.

Response: No potentially significant impacts have been identified in the IS/MND that could not be reduced to a less-than-significant level with the implementation of identified mitigation measures. Therefore, Findings of Overriding Consideration are not necessary in relation to this environmental review. Furthermore, CEQA does not allow a lead agency to make a Statement of Overriding Considerations for a project evaluated in a Mitigated Negative Declaration. However, the IS/MND for the proposed project does identify several potentially significant impacts to threatened or endangered species, as discussed in Response to Comment 5.b, and there is no substantial evidence to suggest that implementation of the identified mitigation measures would not be sufficient to reduce the impact to less than significant levels.

Comment 5.d: Fully protected species, such as golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*) may not be taken or possessed at any time, and no licenses or permits may be issued for their take, except under certain specified conditions.

Response: The golden eagle and white-tailed kite are identified as fully protected species in the discussions of these raptors on pages 26-27 of the IS/MND. Because no suitable nesting habitat was identified on the site for these species and because the majority of the foraging habitat present on the site would be preserved and there are substantial foraging areas adjacent to the site and in the surrounding area, the County concluded that the project would have a less-than-significant impact on these and other special-status bird species. However, the applicant would be required to comply with State law, wherein Fish and Game Code Sections 3503, 3503.5, and 3513 prohibit the taking, possession, or needless destruction of the nest or eggs of any bird, including raptors and migratory non-game birds, as designated in the federal Migratory Bird Treaty Act (16 U.S.C. Section 703 *et seq.*). Regarding the need for an ITP, see Response to Comment 5.a.

Comment 5.e: CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds.

Response: See above responses to comments 5.a and 5.d.

Comment 5.f: CDFW requires a Lake and Streambed Alteration (LSA) notification for project activities affecting rivers, lakes or streams and associated riparian habitat. Notification is also required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements.

Response: Pages 37-39 of the IS/MND discuss potential impacts to Waters of the U.S., which include wetlands, lakes, ponds, drainages, creeks, streams, and other traditionally navigable water bodies.

Waters of the U.S. thus encompass the ephemeral streams, drainage ditches, and water courses on the site that could be subject to a Lake and Streambed Alteration Agreement. As stated in the IS/MND, the project would not involve any work in close proximity to the potential seasonal wetland and ephemeral drainage features on the site. On this basis, the County determined that the project would have a less-than-significant impact on wetlands and other waters of the U.S., and no mitigation was required. However, the discussion acknowledges that were any project work to encroach on these wetlands or water features, permits from the U.S. Army Corps of Engineers (Corps), San Francisco Bay Regional Water Quality Control Board (RWQCB), and/or the CDFW would be required.

Comment 5.g: Comment indicating that subsequent comments and recommendations within this letter are provided to assist in adequately identifying and/or mitigating the project's significant, potentially significant, direct and indirect impacts on biological resources. The comment concludes that a Mitigated Negative Declaration is appropriate for the project.

Response: This comment is noted but does not pertain to the adequacy of the IS/MND, therefore no response is necessary.

Comment 5.h: The draft IS/MND does not account for local wildfire abatement and defensible space requirements in its analysis of potential impacts to biological resources. Applicable Fire District requirements for the provision of defensible space may affect ephemeral drainage features on site. includes large dwellings and accessory dwelling units increasing impacts on the proposed lots, resulting in mass removal and relocation near "jurisdictional areas" which are a concern given the long-term and protected nature of this sensitive environmental area.

Response: The property owner has long relied on grazing of the property by cattle as the primary means of vegetation management on site in addition to regularly maintaining a 30-foot fire break along the perimeter of the property where it abuts the existing homes on Sky View Court, immediately south of the project site, and along Camino Pablo to where it connects to a fire break maintained by the Sanders Ranch Homeowners Association (HOA) at the northern end of the project site. The fire break is mown once or twice a year, depending on the growth of weeds. The grasses and weeds are mown to a height of 3 inches or less to act as defensible space, in compliance with Moraga-Orinda Fire District regulations. The licensed weed abatement contractor who has performed this work for many years also performs weed-whacking between the sidewalk and the barbed-wire fence that excludes cattle, from Knoll Drive (at the south end of the Sky View Court development) to just past the V-ditch drain box near Tharp Drive, where it ties into the Sanders Ranch HOA property that extends along Sanders Ranch Road and Camino Pablo north of Tharp Drive. The project is conditioned as part of Mitigation Measure Public Services 1, to maintain 100 feet of defensible space (fire breaks) around each of the proposed homes, with more intense fuel reductions being utilized between 5 and 30 feet around the structures, and an ember-resistant zone being required within 5 feet of the structures, in compliance with Public Resources Code Section 4291.

Regarding potential impacts to biological resources associated with maintaining the defensible space described above, cattle grazing of the property has been ongoing for many decades and, as noted above,

the fire break maintenance on the property has been occurring for many years. As such, these activities are considered by staff to represent existing conditions, not new project effects. The nearest ephemeral drainage feature is located approximately 77-feet distant from the northwestern corner of Lot 1, and over 100 feet distant from residential development on Lot 1. All other drainage features are located between 200 to 700 feet distant from the area of development on open space Parcel A. In response to this comment from CDFW, the consulting biologist Olberding Environmental Inc., (Olberding) notes that while cattle grazing will remain the primary means of vegetation removal on site, additional methods would likely be needed to supplement cattle grazing to maintain MOFD required fuel breaks. Olberding notes that a 30-foot buffer is required between residential development. Thus, fuel management activities on the adjoining residential lots would have no impact on this ephemeral drainage.

With regards to fuel maintenance activities within the undeveloped open space (identified on the VTM as “Parcel A”), Olberding advises that some methods for vegetation removal such as discing or mowing are more intrusive than others such as string trimming. Although Olberding did not characterize impacts resulting from these activities as potentially significant, they did recommend that vegetation within the channel be limited to string trimming to ensure that project impacts on wildlife are minimized. In the opinion of peer-reviewing biologists Monk & Associates, concurs with Olberding that ongoing cattle grazing for fire suppression in the drainage area and elsewhere would not be a new project effect. Additionally, Monk & Associates agree with the recommendation to implement only hand operated string trimming within this channel while the drainage is dry (which is almost always the case as the drainage only flows for short periods after large storm events) to avoid impacts to wildlife.

Based on the above, the fire suppression activities which will occur on site to comply with Moraga Orinda Fire District defensible space fuel management requirements would not result in new potentially significant project related impacts. However, based on the recommendation of the consulting and peer review biologists, the project is conditioned to require vegetation removal within the ephemeral drainage channel to be performed via hand operated string trimming.

Comment 5.i: The IS/MND identifies two ephemeral drainages and two potential seasonal wetlands within the subject property but does not specify the distance between these features and the development area.

Response: The closest jurisdictional waters to the proposed development is the ephemeral drainage that’s roughly 250 feet north of Tharp Drive and about 75 feet east of Camino Pablo. The closest residential lot would be Lot 1, which would be located more than 75 feet south of the drainage feature. Grading activities would not come closer than 37 feet to this drainage and development would be even further. The seasonal wetlands are considerably further from the proposed development area and would not be affected by the project.

King Canyon Creek is located approximately 370 feet south of the project site and no construction activities or new development would occur anywhere near the creek. Consequently, the project would have no effect on King Canyon Creek.

Comment 5.j: Moraga Orinda Fire District Wildfire Hazard Abatement requirements necessitate removal or cutting of grasses to a height of 3-inches or less, creating a vertical spacing of 6 feet between branches and foliage or ground, and removing all non-irrigated brush within 30-100 feet distance of any structure, while page 39 of the IS/MND concludes less than significant impacts because project activities would not occur within 50 feet of wetlands. Vegetation removal activities could result in potentially significant impacts if occurring near seasonal wetlands and must be evaluated as part of the project's CEQA review.

Response: Although grading activity would occur closer, as noted in the IS/MND, the nearest residential structure to the closest jurisdictional waters—i.e., the ephemeral drainage located slightly east of Camino Pablo and about 250 feet north of Tharp Drive—would be more than 170 feet away at its closest point. No construction work would encroach into the ephemeral drainage. Furthermore, the development area is downhill from the drainage, so there is no potential for erosion of sediment into the drainage from the development area, even though there will be strict erosion controls implemented throughout the construction site.

It is acknowledged that the project sponsor will be required to comply with applicable MOFD Exterior Wildfire Hazard Abatement Requirements. See Response to Comment 5.h for additional details. Individual homeowners will not be required to maintain defensible space that extends outside their properties. Compliance with the wildfire abatement requirements is not expected to result in adverse impacts to the habitat within the ephemeral drainage.

Comment 5.k: The draft IS/MND does not adequately analyze potential project impacts to riparian habitat and/or wetlands and should be revised and recirculated to disclose the distance between defensible space boundaries and riparian habitat or ephemeral drainages and evaluate all potential project-related impacts to these habitats including those resulting from wildfire abatement and defensible space maintenance. CDFW recommends a defensible space setback from these features be incorporated into the project design plans to reduce impacts to less than significant levels.

Response: For the reasons set forth in Response to Comment 5.h, above, compliance with the defensible space requirements will not result in adverse impacts to the nearby ephemeral drainage or to the other wetlands and drainages on the project property, most of which will be preserved in its existing state as open space. The IS/MND has already disclosed all of the project's potentially significant impacts and has identified mitigation measures to reduce all potentially significant impacts to a less-than-significant level. Consequently, there is no basis in CEQA for the County to revise and recirculate the IS/MND on this basis.

Comment 5.l: Mitigation Measure **Biological Resources-3** is insufficient to reduce project-related impacts to Alameda whipsnake to less than significant levels. Additional mitigation measures are recommended to minimize the project potential to adversely impact this CESA-listed threatened species.

Response: All of the habitats on the project property have been mapped and are depicted on Figure BIO-1 in the IS/MND. As shown on the figure, the site does not support oak savanna, oak-bay woodland, mixed evergreen forest, riparian habitat, or rock outcrop features, though it is dominated by annual grassland. The IS/MND acknowledges that Alameda whipsnake (AWS) could be present on the project site due to its location within Critical Habitat (Unit 2) designated for the species by the U.S. Fish and Wildlife Service (USFWS). However, it is unlikely to occur due to the prolonged, intense grazing that has been occurring on the site for many decades. This activity keeps the height of the grasses and weeds very low and, as a consequence, the vegetation does not provide suitable protection and coverage from AWS predators, nor does it provide shade for critical temperature regulation.

Nonetheless, the IS/MND acknowledges that AWS may utilize the site for dispersal only and requires a preconstruction survey to be conducted by a qualified wildlife biologist no more than 48 hours before any vegetation removal or ground disturbance takes place. Appropriate exclusion fencing shall be installed pursuant to Mitigation Measure Biological Resources 3-b around the entire area of disturbance, with a suitable buffer, before the required preconstruction survey is conducted. In this way, a biologist will confirm that there are no Alameda whipsnakes within the project development footprint and the previously installed exclusion fencing will prevent any snakes, red-legged frogs, or other wildlife from encroaching onto the site. The foot of the exclusion fencing will be buried sufficiently deep to prevent wildlife from crawling or tunneling under the fence and the upper portion of the fence will be curved outward, such that any snakes or frogs attempting to scale the fence will fall off the fence once they become inverted, preventing their incursion onto the site.

To ensure implementation of the exclusion fencing, the proposed mitigation measures have been updated to reflect CDFW-suggested edits thereto. The Text Changes to the Initial Study are detailed at the end of this document. The mitigations measures will enhance the mitigation previously identified for the potentially significant impact to AWS identified in the IS/MND.

Regarding the commenter's Recommendation 3, Mitigation Measure Biological Resources 3-a through 3-d, along with Mitigation Measures Biological Resources 2 and 5, will reduce potential impacts to wildlife including nesting birds to a less-than-significant level.

Comment 5.m: Mitigation Measure **Biological Resources-4** is insufficient to reduce project-related impacts to western bumble bees to less than significant levels. Additional mitigation measures are recommended to minimize the project potential to adversely impact this CESA candidate species.

Response: A survey of the site prior to grading would identify whether any western bumble bees are present at that time and, were they to be encountered, the contingent requirements set forth in Mitigation Measure Biological Resources 4 would ensure that impacts to the bumble bee would be less than significant. Nonetheless, the proposed mitigation measures have been updated to reflect CDFW-suggested edits thereto. The Text Changes to the Initial Study are detailed at the end of this document.

Comment 5.n: Mitigation measure Biological Resources 5 would not adequately reduce impacts to nesting birds to a less-than-significant level, as the proposed survey dates and radii would not

adequately detect all nesting birds which may be impacted by Project activities. Following surveys, sufficient protective buffers and monitoring would also need to be implemented to fully avoid impacts to nesting birds.

Response: In the opinion of the consulting and peer review biologists having reviewed the Camino Pablo project, the mitigation measures included in the draft MND were sufficient to reduce impacts to nesting birds to less than significant levels. Nevertheless, the County has implemented the CDFW-recommended revision to Mitigation Measure Biological Resources-5 to enhance its effectiveness to the benefit of nesting birds. The Text Changes to the Initial Study are detailed at the end of this document.

Comment 5.o: The IS/MND indicates that there will be no impact to riparian habitat or other sensitive natural communities identified by CDFW. However, two ephemeral drainages are identified on the subject property and potential impacts to these drainages are analyzed in conjunction with analysis of impacts to two potential seasonal wetlands identified within the property. The comment advises that ephemeral drainages can support sensitive natural communities and should be treated as one if botanical surveys have not been performed to identify their absence.

Response: Although no special-status plants were identified in or adjacent to the ephemeral drainages during the biological survey of the site, the botanical surveys required by Mitigation Measure Biological Resources 1 will encompass the ephemeral drainage features on the site, so it is expected that any sensitive species or communities would be identified during these surveys. In the event such species or communities are identified during the surveys, Biological Resources 1 requires consultation with CDFW and/or the USFWS, as appropriate, to develop an approved mitigation plan to ensure that potential impacts are less than significant, and the full implementation of the plan prior to the initiation of any construction activity. Regarding LSA Notification, pertaining to a Lake and Streambed Alteration Agreement, see Response to Comment 5.f.

Comment 5.p: Concluding remarks reiterating the CDFW recommendation that the IS/MND be revised to evaluate potentially significant impacts discussed in their above comments.

Response: The proposed mitigation measures have been updated to reflect CDFW-suggested edits thereto. The Text Changes to the Initial Study are detailed at the end of this document.

Comment 4.d: The EBMUD Low Effect East Bay HCP is adjacent to the project site. The project is not expected to affect this HCP, but it would be prudent to install a wildlife exclusion fence around the subject property to exclude HCP species from the site.

Response: As shall be required by Mitigation Measure Biological Resources 3-b, the applicant shall install a wildlife exclusion fence around the proposed development area, which will include a buffer around the grading footprint. The foot of the fencing will be buried, and the fence will curve outward to prevent species such as the California red-legged frog and Alameda whipsnake from climbing up the fence and into the project disturbance area.

Comment 4.e: Page 30 of the IS/MND states that the closest California Red-Legged Frog (CRLF) occurrence is 2.2 miles from the project site. There are known occurrences of CRLF within EBMUD Upper San Leandro Reservoir that may not show up in California Natural Diversity Database (CNDDDB) database. The mitigation measures are considered protective of the species, but installation of wildlife exclusion fencing would be more protective.

Response: The project biologist was unaware of the CRLF occurrence referenced in the comment since it is not listed in the CNDDDB. As requested in the comment, a wildlife exclusion fence will be erected around the project's area of disturbance prior to the initiation of construction. See Response to Comment 4.d for additional information.

Comment 4.f: Page 36 of the IS/MND states that the closest occurrence in the CNDDDB for American Badger is 4.5 miles away. There have been confirmed sightings of American Badgers and their dens about 3 miles east of the site on Rocky Ridge on the Upper San Leandro watershed. The biological measures described in the IS/MND are protective of the species.

Response: Similarly, the closer occurrence of an American badger was not reflected in CNDDDB queries performed by the consulting biologist, so they were unaware of it. As noted in the comment, implementation of the biological mitigation measures identified in the IS/MND are sufficient to ensure protection of any American badgers that could be present in the project vicinity.

Comment 19.i: The project could result in potentially significant impacts to sensitive plant species. The mitigation measure proposed is inadequate as it only requires preconstruction surveys and does not provide adequate specificity as to the potential mitigation plan in the event that special status plant species are detected during pre-construction surveys.

Response: As part of the CNDDDB review of occurrences of Special Status Plant Species performed by Olberding Environmental, Inc. in preparation of the 2019 and 2023 Biological Resources Assessment for the project, identifies three such Special Status Plant species having a "moderate" potential to occur on the subject property (Bent-Flowered Fiddleneck, Mount Diablo fairy-lantern, and Diablo Helianthella) based on suitable habitat existing on the project site. Numerous field surveys have been conducted on the project site over the last 10+ years, including several conducted during the blooming season of these species. Not one of these species has ever been detected on the project site during prior plant surveys. Despite the results of all biological surveys on site suggesting the absence of these species, mitigation measure BIO-1 was still included solely based on the existence of habitat suitable for these species on site as well as the potential for protected species to migrate on site subsequent to past surveys. Thus, the mitigation measure requiring preconstruction plant surveys (BIO-1) is included to ensure that conditions on site are consistent with those observed by consulting biologists in the performance of prior field surveys. At the request of the County, the Olberding BRA has been peer reviewed by staff biologists with Monk & Associates Environmental Consultants. The peer-reviewing biologist concurs with the findings of Monk & Associates that no special status plant species have the potential to occur on site other than the three identified in the Draft MND. Monk & Associates further

opines that the potential for these species to occur on site should be considered “low” (as opposed to Olberding’s “moderate characterization) based on the lack of detection of any of these species during prior surveying activities. Lastly M&A agrees that the formal plant studies conducted in compliance with all survey guidelines published by the CDFW, U.S. Fish and Wildlife Service (USFWS) and California Native Plant Society (CNPS) required under mitigation measure BIO-1 are appropriate to verify the absence of special status plant species prior to ground disturbance. The comments do not provide any substantial evidence disputing the conclusions of the consulting or peer review biologists regarding the potential for impacts to any protect plant species. Therefore, no revisions to the draft MND or new mitigation measures are necessary in response to this comment.

Comment 19.j: The commenter indicates that same concern communicated in comment 19.i above applies to proposed mitigation measure for California Red Legged Frog, which the neighbor considers vague.

Response: The consulting biologist has concluded that the project site does not contain seasonal ponds, wetlands, or riparian features that hold water long enough to support CRLF aquatic breeding and non-breeding habitat. Therefore, the CRLF is considered to have a moderate potential to occur on the subject property in a dispersal capacity only. The peer reviewing biologist agrees that there is no suitable aquatic-breeding or aquatic non-breeding habitat for this species on site and that the CRLF only has the potential to occur on the property in a dispersal capacity. M&A further opines that the likelihood of such occurrences should be characterized as “very low” given the distance between the obstacles present in the developed environment surrounding the project site. The purpose of the preconstruction surveys required under **BIO-2** is to confirm the absence of these species. This measure reflects a conservative approach given the protected status of this species and should not be interpreted as an indication that the project would expectedly impact this species. The comments do not provide any substantial evidence challenging the findings of the consulting or peer review biologists or supporting a fair argument that potentially significant impacts may occur.

Comment 19.k: The IS/MND acknowledges the project site is within critical habitat for the alameda whipsnake. The project may contribute to habitat loss and fragmentation for this species, requiring an incidental take permit. The loss of critical habitat should be considered a significant unavoidable impact.

Response: The IS/MND acknowledges that portions of the site are designated by the United States Fish and Wildlife Service (USFWS) as “critical habitat”, the Olberding BRA prepared for the project concludes that the “primary habitat types for Alameda Whipsnake, chaparral and scrub, along with rock crevices or other suitable habitat refuge habitat are absent from the property”. Olberding also notes that due to the low vegetation height resulting from prolonged, intense cattle grazing have produced conditions that do not provide suitable protection and coverage from aerial predators nor provide shade for temperature regulation. For these reasons, the project site is not considered suitable for breeding or foraging habitat for Alameda Whipsnake, and therefore, the species potential to occur on this property would be in a dispersal capacity only. Given the limited habitat value present on this site, it is considered to have a minimal potential to occur on site for dispersal only. The peer reviewing biologist with M&A

concurred with the Olberding's conclusions regarding potential impacts to these species. The commenter does not offer any substantial evidence challenging the veracity of the conclusions of the consulting biologist, or supporting the assertion that project-related impacts to this species would exceed those described in the draft MND. Therefore, impacts to this species are not considered significant unavoidable impacts, and no additional mitigation measures are necessary in relation to this species.

Comment 19.l: Proposed grading activities within 50 feet of potential seasonal wetland or ephemeral drainages on site would be subject to U.S. Army Corp of Engineers (USACE) review of jurisdictional delineation, but the IS/MND does not include any mitigation measures to ensure that this happens. As such, the commenter concludes that any grading activity proposed within 50 feet of such features should be considered a potential significant unavoidable impact.

Response: The IS/MND acknowledges the need for such USACE review in the event that the project impacts waters of the United States. The requirement of the developer to comply with this requirement exists independent of any mitigation measures imposed by the County as a condition of project approval. This issue has not been identified by the consulting or peer review biologists as potentially significant impact resulting from the project and no mitigation measures have been recommended by the consulting biologists, therefore, the draft MND does not include any such proposed mitigation measures. The project is not expected to impact any Waters of the United States, however, only the USACE can determine the presence of jurisdictional waters, and they reserve the right to regulate on a case-by-case basis to determine that a particular water body can be regulated as jurisdictional water. In the event that USACE review/approval is necessary to complete the project, it is the applicant's responsibility to obtain any permits required under federal and/or state regulations in addition to permits issued by the County. There is no substantial evidence in the record supporting the assertion that the project would result in potentially significant unavoidable impacts on jurisdictional waters of the US, and no evidence is offered or described by the commenter as a basis for this assertion. Therefore, the project would not result in potentially significant unavoidable impacts to jurisdictional waters, and no additional mitigation measures are necessary in response to this comment.

Comment 19.m: The commenter claims that the draft IS/MND ignores or conflicts with general plan policies calling for preservation of important wildlife habitats, and further asserts that the project would eliminate 7.9 acres of critical habitat inconsistent with general plan policies, thereby resulting in a significant and unavoidable biological impact.

Response: The comments do not identify any specific general plan policies with which the project is in conflict. Staff has identified two relevant policies within the Conservation, Open Space, and Working Lands Element of the Contra Costa County General Plan including COS-P4.1 and COS-P4.3, which read as follows:

- **COS-P4.1:** Maintain ecologically significant resource areas in their natural state to the greatest extent possible. Limit development in and near these areas to compatible low intensity uses with

adequate provisions to protect sensitive resources, including setbacks around resource areas. Prohibit projects that would lead to fragmentation of ecologically significant resource areas.

- **COS-P4.3:** Require a biological resources assessment prepared according to State and federal protocols for projects with the potential to impact rare, threatened, endangered, or special-status species or their habitat, and implement appropriate mitigation for identified impacts, preferably near the impact and within the county.

General Plan Figure COS-3 identifies priority conservation areas throughout the County for which there is broad consensus on the need for long-term protection given the ecological resources present as well as urban development pressures. Neither the project site nor the surrounding area are identified as priority conservation areas. Additionally, the consulting and peer review biologists have concluded that the project site provides marginal habitat value for Alameda Whipsnake, having only low to moderate potential for occurrence of this species. The project does not impact ecologically significant resource areas for the Alameda Whipsnake and therefore maintaining the development limits specified in COS-P4.1 do not apply to the project site. The Biological Resources section of the draft MND was informed by multiple Biological Resources Assessments, consistent with Policy COS-P4.3, and includes appropriate mitigation measures for the protection of special status species of plant and animals. Therefore, staff does not agree that the project is in conflict with applicable general plan policies as purported by the commenter. No substantial evidence is provided to substantiate this assertion. Therefore, the comment does not establish a potentially significant unavoidable impact relating to destruction of special status plant or wildlife habitat, including Alameda Whipsnake critical habitat.

Comment 16.d, 17.g: The draft IS/MND fails to accurately describe the project's environmental setting because it does not discuss all special status plant species having the potential to occur on the project site. The MND relies on improper deferred mitigation for several admittedly significant impacts.

Response: The respondent cites a 2015 peer review by Wood Biological Consulting which evaluated a 2014 Special Status Plant Species Assessment by Zentner and Zentner. Neither of these documents were relied upon for the preparation of the Biological Resources analysis presented in the draft IS/MND. The shortcomings identified by the Wood peer review were addressed in numerous Biological Resources Assessments (BRA's) prepared for the project. Specifically, Wood identified 11 special status plant species that were not evaluated by the superseded Zentner and Zentner analysis. The most recent BRA for the project was prepared by Olberding Environmental, Inc, in November of 2023. Olberding identifies 65 special status plant species having documented CNDDB occurrences within 5 miles of the project site, and evaluated the potential for each to occur on the project site. The potential presence of each of the 11 species identified by Wood are listed amongst the 65 species considered by the 2023 Olberding BRA. Based on the existing habitat conditions on site, Olberding concluded that of the 65 special status plant species known to occur in the vicinity, 62 could be presumed absent from the project site due to a lack of suitable habitat necessary to those species on the project site. The three special status plant species that could not be presumed absent include the Bent Flowered Fiddleneck, Mount-Diablo Fair Lantern, and Diablo Helianthella, each of which is characterized as having "moderate" potential to occur on site. The Olberding BRA was peer reviewed by a third-party biologist

with Monk & Associates, who concurred with the conclusion that no special status plant species other than the three identified by Olberding have the potential to occur on the site. Accordingly, the draft MND discussion of impacts on special status plant species is limited to those three species having the potential to occur on site. Since there are no special status plant species having potential to occur on the property which were not evaluated by the BRA, the draft MND adequately describes the project's environmental setting in this respect. The commenter provides no substantial evidence in support of a fair argument that the project may have a significant environmental effect on special status plant species.

With respect to mitigation measures requiring pre-construction screening for special status plant/animal species, this does not amount to deferred mitigation. Of the numerous special status plant/wildlife species identified as having potential to occur on site, none were observed on site screening surveys performed by consulting/peer review biologists, and each are specifically discussed within the draft IS/MND. The preponderance of evidence presented in numerous Biological Resources Assessments prepared for the project site consistently conclude low likelihood of such species occurring on the project site, conclusions that are backed up by numerous biological screening surveys prepared by licensed biologists. However, due to the ability of such species to migrate within the project vicinity, their absence has not been determinatively ruled out, and the requirement for preconstruction surveys represent a conservative approach to ensure no significant impacts on any such species. In no circumstances were analysis of impacts to a special status species of plant or animal with potential to occur on site disregarded or deferred as suggested by the commenter. The commenter does not provide substantial evidence that any impact to a special status plant/animal species would occur with or without the implementation of mitigation measures identified within the draft IS/MND.

Comment 16.k: The proposed mitigation measure Biological Resources-1 does not adequately address potential impacts to special status species of plants. The mitigation measure amounts to deferred mitigation.

Response: See staff response 19.i for discussion of the adequacy of this mitigation. Based on the findings of screening surveys performed in preparation of the 2023 Olberding Biological Resources Assessment, no special status plant species are present on the site. Thus, there is no basis to the commenters assertion that project impacts to such species have been identified – and mitigation deferred - within the IS/MND. Based on surveyed conditions, the project is not expected to impact such species. However, given the special protected status of the Bent Flowered Fiddleneck, Mount-Diablo Fair Lantern, and Diablo Helianthella, and potential for plants to migrate/propagate on site during the application process, the requirement for preconstruction survey represents a conservative approach to allow for the presumed absence of these species to be verified prior to ground disturbing activities. The commenter does not offer any substantial evidence suggesting that additional or revised mitigation is necessary or appropriate.

Comment 16.l: The proposed Biological Resources mitigation measures does not adequately address potential impacts to Alameda Whipsnake. The mitigation measure amounts to deferred mitigation.

Response: See staff response to 19.k for discussion of the adequacy of this mitigation. Based on the findings of screening surveys performed in preparation of the 2023 Olberding Biological Resources Assessment, Alameda Whipsnake were not present on the site. Thus, there is no basis to the commenters assertion that project impacts to Alameda Whipsnake have been identified – and mitigation deferred - within the IS/MND. Based on surveyed conditions and marginal habitat value provided by the subject property, the project is not expected to impact Alameda Whipsnake. However, given the special protected status of this species and the potential for Alameda Whipsnake to migrate across the site prior to construction activities, the requirement for preconstruction survey represents a conservative approach to allow for the presumed absence of this species to be verified prior to ground disturbing activities. The commenter does not offer any substantial evidence suggesting that additional or revised mitigation is necessary or appropriate.

Comment 16.m: The proposed mitigation measure Biological Resources-4 does not adequately address potential impacts to Western Bumblebee. The mitigation measure amounts to deferred mitigation.

Response: The proposed Western Bumblebee mitigation measures are consistent with the recommendations of consulting biologists for the protection of this species. Additionally, the proposed mitigation measure is consistent with that recommended by the California Department of Fish and Wildlife (CDFW) staff in a letter to County staff dated December 23, 2024. Based on the findings of screening surveys performed in preparation of the 2023 Olberding Biological Resources Assessment, Western Bumblebee were not present on the site. Thus, there is no basis to the commenters assertion that project impacts to Western Bumblebee have been identified – and mitigation deferred - within the IS/MND. Based on surveyed conditions and marginal habitat value provided by the subject property, the project is not expected to impact Western Bumblebee. However, given the special protected status of this species and the potential for Western Bumblebee to migrate onto the site prior to construction activities, the requirement for preconstruction survey represents a conservative approach to allow for the presumed absence of this species to be verified prior to ground disturbing activities. The commenter does not offer any substantial evidence suggesting that additional or revised mitigation is necessary or appropriate.

Comment 16.n: The project does not propose appropriate mitigation for potential impacts to nesting birds.

Response: The project has a relatively low chance of impacting nesting birds due to the lack of trees on the project site, however, there are numerous trees in the area in which a bird can build/occupy a nest at any time. The commenter asserts that proposed mitigations for nesting birds lack sufficient specificity to guarantee their efficacy. However, a high degree of specificity is not possible with this particular mitigation measure considering that the location of active bird nests around the site can vary frequently throughout the year. Just because there were no active nests at the time that field surveys were performed does not necessarily mean that will be the case post entitlement. Thus, considering the protected status of nesting birds, it is prudent to include this condition to require the developer to

identify nesting birds (if any) in the immediate project vicinity and to employ appropriate measures based on the species/location of such nests.

Comment 16.p: The commenter alleges that the project will have significant unmitigated impacts on special status species of bird and raptors, including, white tailed kite, cooper hawk, American peregrine falcon, loggerhead shrike, red tailed hawk, red-shouldered hawk, and American Kestrel.

Response: The 2023 Olberding Biological Resources assessment prepared for the project specifically evaluates the potential for each of these species to occur on site, and any potential project-related impacts on these species. In all cases, Olberding concluded that the project site lacks suitable breeding habitat. Therefore, all of these species have the potential to occur on the project site in a foraging capacity only. Considering that the majority (67%) of the project site will be undisturbed by project activities, as well as the fact that the project site is contiguous to the +338-acres of EBMUD watershed lands as well as the +604-acre Carr Ranch (conservation lands managed by the John Muir Land Trust) which also provides foraging habitat for special status raptors, amongst other species, the project would have a negligible impact on the availability of foraging land for such species in/around the project site. Olberding did not recommend any mitigation measures for any of these species, concluding less than significant impacts would occur absent mitigation. The peer reviewing biologist with Monk and Associates agreed with this determination that no mitigation measures were appropriate. The commenter does not provide substantial evidence that potentially significant impacts to protected raptor species would occur in relation to the proposed project.

Comment 16.q: The commenter alleges that the project will have significant unmitigated impacts on California Red Legged Frog (CRLF). The mitigation measure amounts to deferred mitigation.

Response: According to consulting biologists with Olberding Environmental, Inc. and peer reviewing biologist with Monk and Associates, this species has a low potential for occurrence on site due to a lack of suitable breeding or non-breeding aquatic habitat on site. Therefore, the species is concluded to have only a very-low to moderate potential to occur on site in a dispersal capacity only. Based on the findings of screening surveys performed in preparation of the 2023 Olberding Biological Resources Assessment, CRLF were not present on the site. Thus, there is no basis to the commenters assertion that project impacts to CRLF have been identified – and mitigation deferred - within the IS/MND. Based on surveyed conditions and marginal habitat value provided by the subject property, the project is not expected to impact CRLF. However, given the special protected status of this species and the potential for CRLF to migrate across the site prior to construction activities, the requirement for preconstruction survey represents a conservative approach to allow for the presumed absence of this species to be verified prior to ground disturbing activities. The commenter does not offer any substantial evidence suggesting that additional or revised mitigation is necessary or appropriate.

Comment 17.c: The reports do not address springs on the property previously identified.

Response: The comment does not specify the location of “springs” or the report in which these were purportedly identified within. Assuming this comment is in reference to existing seasonal drainages

and/or wetlands existing on site, these elements were specifically discussed within the Biological Resources section of the draft IS/MND.

Comment 11.g: The project results in unnecessary damage to the environment and natural ecosystem.

Response: As discussed in detail within the Biological Resources section of the IS/MND and throughout this document, the project does not result in significant impacts to plant or wildlife species.

F. Energy, Environmental Checklist Section 6

Comment 16.r: The draft MND does not adequately analyze project related energy impacts.

Response: The commenter suggests that significant energy impacts may result from wasteful, inefficient or unnecessary consumption relating to the project. The commenter notes that “the ‘wise and efficient use of energy’ is achieved by ‘(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas, and oil, and (3) increasing reliance on renewable energy resources’”. The project is clearly compliant with respect to each of these criteria. As detailed in pages 48-50 of the draft IS/MND, the project is designed to comply with the County’s Climate Action Plan through the adoption of building energy efficiency standards (also required under Title 24) and by constructing rooftop solar energy systems upon each proposed home. Additionally, the proposed homes would be all-electric and the project does not include the installation of natural gas utility connections. As mentioned on pgs. 59-60 (Greenhouse Gas Checklist Section 8) of the draft IS/MND, the project would not result in a significant adverse environmental impact relating to GHG, which can be assumed to occur solely through the installation of natural gas appliances or plumbing. The all-electric design of the project is implied, but not explicitly stated in this section. Therefore, CDD staff has added clarifying language to this section of the IS/MND. The text change to the response to Checklist section 8.a does not substantially alter the findings or conclusions discussed in that section, nor does it relate to a potentially significant impact not discussed within the draft IS/MND. Therefore, no potentially significant impacts result from the text change and no additional mitigation measures arise therefrom.

Based on the all electric design of the residences, and the provision of alternative energy sources within the subdivision, and compliance with building efficiency measures required under applicable building codes, the project would not result in significant energy impacts relating to wasteful/inefficient use of energy. The commenter does not provide substantial evidence that the operation of the project (i.e. habitation of the proposed dwellings) would result in significant impacts in this respect.

The IS/MND explicitly discusses energy use/efficiency for the construction phase of the project, and discusses mitigation measure Air Quality-2, identified elsewhere in the IS/MND, as mitigation ensuring that construction equipment meets more stringent Tier 3 and Tier 4 combustion efficiency measures, and prohibits unnecessary engine idling as a means to ensure that wasteful energy use does not occur during the construction phase of the project. The commenter does not provide substantial evidence that significant energy impacts will occur during project construction.

G. Geology and Soils, Environmental Checklist Section 7

Comment 2.e: Despite changes in the scope of the project, the report incorrectly relies on outdated engineering or other studies prepared many years ago and which anticipated a different scope of work and defined conditions at that time.

Response: All of the geotechnical and other engineering studies that were previously prepared for the project were reviewed by the firms that prepared them, and they were updated or the engineers of record prepared memos confirming that the prior analysis was still valid. For example, ENGEO, which performed the geotechnical analysis, confirmed that their 2015 geotechnical investigation report prepared for a slightly different version of the project was still accurate and the conclusions and recommendations remain valid for the current iteration of the project. ENGEO has confirmed that the geological conditions at the site have not changed since their 2015 report; and will be re-analyzing slope conditions at the site during the completion of design-level studies and all grading work will be observed and supervised by a qualified on-site geotechnical engineer. The conclusions and recommendations contained within the 2015 geotechnical investigation and subsequent update letters were peer reviewed by the County's peer review geologist and no concerns consistent with this comment were raised.

Comment 2.m: The report identifies numerous landslides on the property as well as drainage features and does not address the depths of landslides on the property.

Response: The Initial Study does not omit critical discussion of the landslides on the property, as asserted in the comment. Figure GEO-1 shows the locations of prior landslides, and it is stated on page 50 that the landslides occur as relatively shallow slumps and earth flows that range in depth from about 5 to 15 feet. As reported in the Initial Study, the corrective grading plan displayed on Figure GEO-2 calls for over-excavation of all landslide debris and compressible colluvium, and ENGEO, the geotechnical engineer of record, has provided specific standards and criteria for the placement and compaction of engineered fill. The corrective grading plan also calls for excavation of keyways with subdrains at the base of backcut. The keyways would be excavated into firm, competent bedrock. The back filling of the keyway excavation is to consist of compacted, moisture conditioned fill.

Additional slope stability would come from limiting slopes with more than 8 feet in vertical height to a maximum inclination of 3:1 (horizontal: vertical), while 2:1 slope would be permitted on shorter slopes. The corrective grading plan also includes a 15-foot-wide debris bench extending along the uphill side of the development area to intercept water and sediment and arrest potential erosional soil slides or sloughing originating on the upper slopes above the proposed development area.

Also, see response to Comment 2.e above.

Comment 2.n: The report does not consider the earthquake fault that has been clearly mapped to traverse the property, as documented by consulting geotechnical engineers associated with the project.

Response: The geotechnical engineering firm ENGEO excavated a 176-foot-long exploratory trench (Trench T-1) on the project site to an average depth of 9 feet in order to evaluate the southwest-dipping thrust fault mapped on the project site by R.C. Crane in 1988. The southeast wall of the trench was cleaned with hand tools and examined by ENGEO geologists. The exposure was logged at a horizontal and vertical scale of 1 inch to 5 feet. A level line was established in the trench and measurements were referenced to this line.

Bedrock of the Mulholland formation was encountered at both the northeast and southwest ends of the trench. In the central section of the trench, thick colluvial soil deposits were encountered and bedrock was not exposed. As indicated on the trench log, several soil strata were mapped and were observed to be continuous across the trench exposure. No shears, clay gouge, or other indications of faulting were observed in the trench exposure.

The services of a soil scientist, Dr. Glen Borchardt, were retained to evaluate the relative age of the colluvial soils exposed in the trench. Dr. Borchardt prepared a detailed log of the soil profile, performed laboratory testing and analysis of the soil stratigraphy. The report prepared by Dr. Borchardt indicates that the colluvial soils exposed in the trench represent deposition and soil development that has occurred over roughly the last 40,000 years. As noted in the Initial Study, to be considered active, a fault must rupture the ground surface during Holocene time (i.e. the last +11,700 years). Based on this finding, no evidence of active faulting was found in Trench T-1.

ENGEO also identified a southwest-dipping thrust fault mapped by James R. Wagner in 1978 and by R. W. Graymer *et al.* in 1994 that is roughly coincident with Camino Pablo and determined that this fault is also not considered active or potentially active.

The comment asserts that the Initial Study downplays the identification of the fault, calling it a “saddle/valley line” instead of its mapping as a geologic fault. However, there is no place in Section 7, on Geology and Soils, that refers to a saddle or valley line, and the preceding information was clearly presented in the Initial Study. Most importantly, based on their extensive experience and qualifications, ENGEO determined that the fault did not present a significant potential for fault rupture at the project site. The ENGEO findings were peer reviewed by the County’s peer review geologist and no such concerns relating to active faults were raised.

The projects’ compliance with the detailed mitigation requirements set forth in Section 7 of the IS/MND, including Mitigation Measures Geology 1, Geology 2, Geology 3, Geology 4, Geology 5, and Geology 6, will ensure that any seismic impacts at the project site will be less than significant.

Comment 4.c: Numerous landslides have been mapped on the subject property, some of which have been recently active. Upon submittal of an application to East Bay Municipal Utility District to establish

water service to the site, they will need to provide landslide mitigation measures such that no landslide threat is posed to water main extensions serving the development.

Response: The proposed project includes implementation of a corrective grading plan designed by ENGEO, Inc., a firm having extensive experience in geotechnical design of public and private projects of great complexity in earthquake-prone regions in the U.S. and abroad. The corrective grading plan calls for over-excavation of all landslide debris and compressible colluvium both within the proposed development area and in the adjacent hillside slopes to the east and north, and the placement of compacted, moisture-conditioned, engineered fill with keyways and subdrains at the base of excavated areas. The keyways would be excavated into firm, competent bedrock. The engineered slopes would prevent future landslides that could adversely affect the homes and infrastructure, including water pipelines.

Comment 19.n: The Geotechnical report relies substantially on a 2014 Geotechnical Report prepared by ENGEO for a prior iteration of the development involving only 10-12 homes. The commenter suggests that current proposal differs from the prior iteration of the project to such a degree that the geotechnical conclusions can no longer be relied upon.

Response: The commenter does not accurately characterize the documents which form the basis for the conclusions in this section of the draft MND. The Geology and Soils section of the draft MND relies upon geotechnical investigation prepared for the project by ENGEO, Inc. (*Preliminary Geotechnical Exploration 1211 Camino Pablo Property*– January 21, 2014) and a subsequent supplemental report by ENGEO (*Supplemental Geotechnical Exploration South Camino Pablo Annexation Project – Subdivision 9396*, October 26, 2015). ENGEO also provided an update letter dated June 29, 2023, confirming that the current proposal is substantially in conformance with their prior geotechnical recommendations. Lastly, each of the aforementioned ENGEO documents was forwarded to the County Peer Review geologist to provide an additional opinion on the adequacy of the measures/recommendations presented therein.

The commenter states that since the 2014 letter, which considered preliminary plans for a 10-12 home development, was prepared without plans detailing the exact quantity of grading, it could not have contemplated the substantial grading activity proposed with the current project iteration. The commenter therefore concludes that it is improper to infer that the prior conclusions would stand for the revised project description, which includes 59,800 cubic yards (combined cut/fill) of earthwork. The subsequent 2015 ENGEO report includes a revised project description as well as then-current Tentative Map and grading plans. Similarly, the 2023 ENGEO letter includes an updated project description to reflect the current project proposal and concludes. Thus, the record does not support the commenters claim that ENGEO did not have sufficient details on proposed grading activities in providing the 2023 update letter. Lastly, the ENGEO geotechnical documents have been forwarded to the County Peer Review geologist to confirm the adequacy of the site reconnaissance info provided therein for purposes of completing CEQA review for the project. Thus, the record shows that the conclusions presented in the Geology and Soils section of the draft MND are based on professional opinions formed based on the current project plans. The commenter does not provide substantial

evidence supporting their stated doubts on the adequacy of the geotechnical investigations performed for the project.

Comment 19.o: The IS/MND acknowledges that there is a fault line that crosses the site, potentially affecting the public roadway or other improvements proposed above.

Response: The consulting Geotechnical Engineers (ENGEO, Inc.) opine that the existing fault traversing the property displays no indicia of active faulting and thus consider the potential for ground rupture from active faulting at the site to be low and do not recommend any setbacks from this geologic feature. The peer review geologist does not contest this characterization of potential hazards associated with faulting. Therefore, no revisions to the MND or additional mitigation measures are necessary.

Comment 19.p: The commenter opines that the numerous landslides documented to have occurred on site should lead one to the conclusion that property is unsuitable for development, They further opine that the slope stability results in significant unavoidable impacts.

Response: There is no evidence in the record supporting this suggestion that historical landslides have rendered the land is unsuitable for development. In fact, the consulting geotechnical engineers with ENGEO, INC, unambiguously concluded that development of the site is feasible with the implementation of corrective grading measures to mitigate prior landslides on site. Additionally, upon review of the ENGEO geotechnical investigations, the County peer reviewing geologist raised no such concerns with the feasibility of the site for residential development. The commenter does not provide any substantial evidence supporting their stated opinion on site soil stability. Therefore, this comment does not establish any potentially significant impacts/hazards related to landslides which were not evaluated within the draft IS/MND and no additional mitigation measures are necessary or appropriate.

Comment 16.o: The proposed mitigation measure inadequately defers the preparation of design level geotechnical report until after the entitlement is issued. The public would have no way of evaluating the adequacy of this plan at that point.

Response: The recommended geologic mitigation measures are predicated based on a preliminary geotechnical investigation performed by ENGEO, Inc. involving subsurface exploration through targeted bore holes drilled throughout the area of development. Based on this preliminary investigation, the consulting engineer has made inferences as to the composition of subsurface areas and makes preliminary recommendations based thereon. The geotechnical reports by ENGEO were forwarded to the County peer review geologist, Darwin Myers Associates (DMA), to confirm their adequacy. According to the DMA peer review letter dated August 14, 2023 “the provisions of CEQA and associated case law acknowledge that final design studies are not needed for the purposes of CEQA compliance, however there must be sufficient information on the extent of potential geologic and geotechnical hazards, and guidance must be provided to the project designers pertaining to the layout of the planned improvements”. DMA opines that the preliminary geotechnical studies in combination with reconnaissance data presented within his peer review, constitute sufficient data to deem the

application complete and commence CEQA review. The commenter does not provide any substantial evidence supporting claims on the inadequacy of this mitigation measure, or that the project may result in significant unavoidable impacts.

Comment 17.d: The reports do not address the earthquake fault in the proximity of the project.

Response: The existing fault is explicitly discussed within the draft IS/MND as well as within this document (see response to comment 19.o above).

H. Greenhouse Gas Emissions, Environmental Checklist Section 8

Comment 19.g: The GHG section of the IS/MND does not adequately explain the project's compliance with the County's Climate Action Plan (CAP), which is cited as the basis for Less Than Significant determination on GHG impacts.

Response: The draft IS/MND cites 2022 BAAQMD CEQA guidelines, projects determined to be in compliance with local GHG reduction strategies meeting CEQA guidelines section 15183.5(b) may be considered to have less than significant GHG impacts. The Contra Costa County Climate Action Plan (CAP) includes the County's GHG reduction strategy, which is consistent with CEQA guidelines section 15183.5(b). The CAP GHG reduction strategies relevant to the proposed residential project include installing more renewable electricity, utilizing energy efficient construction materials, and all-electric building design. The project does not propose the use of natural gas and includes solar panels providing a source of renewable energy for each proposed home, consistent with the CAP. The project's compliance with residential building efficiency requirements required under Title 24 ensures the utilization of efficient building materials consistent with the CAP.

The comments conclude that the draft IS/MND determination that of consistency with the Contra Costa County CAP is not justified absent VMT analysis, however, the Contra Costa County CAP does not include any policies relating to VMT as claimed by the commenter. Therefore, no such conflict with CAP policies exists. As discussed in the Transportation section of the draft IS/MND (checklist section 17.b), Contra Costa County Transportation Analysis guidelines specify that projects involving 20 or fewer single-family residences should be considered to have less than significant VMT impacts, and no further VMT analysis is warranted for such projects. Thus, the 13-unit project proposal was determined to be exempt from further VMT analysis based on this criteria.

I. Hazards and Hazardous Materials, Environmental Checklist Section 9

Comment 1.a: The presence of a number of contaminants of concern (COCs) can be present on agricultural lands and should be considered when converting such lands for residential use. The lead agency shall identify the amounts of pesticides and organochlorine pesticides (OCPs), or other COCs historically used on the property and take appropriate actions to mitigate.

Response: The project property has been under the ownership and control of the current owner for over 100 years, and their use of the project site has been limited to grazing cattle. As such, there is no history of agricultural use involving the application of pesticides or other agricultural chemicals or smudge pots to the property. There is no evidence of, and no reason to suspect, any soil contamination on the property. As noted in the Initial Study, a recent review of regulatory databases maintained by County, State, and federal agencies—including the Hazardous Waste and Substances Site List (Cortese List) maintained by the California Department of Toxic Substances Control (DTSC)—found no documentation of hazardous materials violations or discharge on the site or within 1,000 feet of the site.

Comment 1.b: DTSC recommends that all imported soil and fill material be tested to assess any contaminants of concern to meet screening levels outlined in DTSC's Preliminary Endangerment Assessment (PEA) Guidance Manual.

Response: As reported on page 3 of the Initial Study, grading would be balanced on the site, requiring no import or export of fill. Therefore, the soil testing recommended by the commenter would not be necessary.

Comment 6.g: The Town of Moraga provides a link to the Town's emergency operations plans and evacuation zones.

Response: The new access road for the proposed project would conform with California Fire Code regulations for adequate emergency access, including roadway width and cul-de-sac perimeter for turnarounds by fire trucks and other emergency vehicles. The project was previously evaluated for consistency with the Town of Moraga's *Emergency Operations Plan* and was also reviewed for consistency with the *Contra Costa County Emergency Operations Plan*, as well as the County's *Local Hazard Mitigation Plan*, during preparation of the current Initial Study, and no conflicts were identified.

As reported in the Initial Study, Hexagon Transportation Consultants performed an evacuation analysis for the project in the event of a wildfire event in the area. Hexagon reported that Camino Pablo along with Larch Avenue, a two-lane arterial street running parallel to and north of Camino Pablo, would be used in the event of an emergency requiring evacuation of neighborhoods in the project vicinity. There are an existing 1,215 homes within the evacuation area, which would generate 2,187 evacuation trips under existing conditions, assuming 100 percent of the traffic within the evacuation area would evacuate and a trip generation rate of 1.8 trips per household. Trips added by the project would increase this to 2,210 trips. Hexagon estimated an evacuation time under existing conditions of approximately 219 minutes, which would increase to about 221 minutes with the addition of project-generated traffic, an increase of less than 1 percent. This would not represent a significant impact. The comments do not take issue with the analysis presented within the IS/MND, nor do they assert new impacts that were not analyzed within the draft IS/MND or the need for additional mitigation measures.

J. Land Use Planning, Environmental Checklist Section 11

Comment 19.s The commenter contests staff's determination that the project would not result in a significant environmental impact resulting from conflict with any land use policy, or resolution adopted for the purpose of mitigating an environmental effect. They further suggest that the project's incompatibility with existing zoning should be addressed as a significant unavoidable impact.

Response: Staff does not agree that a project should automatically be assumed to result in significant avoidable impacts based solely on a request for a rezone or general plan amendment. There is nothing in statute or case law supporting such an assertion. Staff's determination that no significant impacts would result from conflicts to land use plan or policies (see CEQA checklist section 11.b) is based on site specific characteristics, the project's surroundings, and evaluation of actual impacts that may realistically be expected to result from the project. Thus, the evaluation of the proposed project for consistency with the proposed zoning district and general plan designations is necessary and appropriate. No potentially significant impacts resulting from conflict with land use policies within the Draft IS/MND. The commenter does not provide substantial evidence that any such impacts would occur.

Comment 19.t: The project site is not stable and is riddled with landslides. Therefore, approval of the project would not be consistent with general plan policies requiring housing to be located on stable and secure lands.

Response: As discussed in response to comment 19.p, the consulting geotechnical engineers and peer review geologist have concluded that the establishment of stable and secure building pads on the subject property is feasible with the implementation of corrective grading in the areas where landslides have previously occurred. The commenter does not provide any substantial evidence supporting their stated belief that the project site is unsuitable for residential development.

Comment 19.u: The project is in conflict with policies associated with development on scenic routes as Camino Pablo is a scenic corridor in the Town of Moraga. The County should respect this scenic designation.

Response: The policies referred to by the commenter are codified in Moraga Municipal Code Chapter 8.132 – Scenic Corridors. The project site is not located within the Town of Moraga, and therefore, these ordinances do not apply to the proposed development within unincorporated Contra Costa County. As mentioned in response to comment 19.c, the project was referred to the Town of Moraga for comment, and no such concerns with the project consistency with these standards was identified by Town staff. Therefore, the project does not conflict with an applicable policy in this regard.

Comment 19.v: The project is in conflict with policies discouraging development in areas of ecological significance due to the existence of critical habitat for Alameda Whipsnake on and around the project site.

Response: See response to comment 19.k.

Comment 16.f: The project is inconsistent with General Plan Policy HS-P7.1, which requires denial of entitlements sought within the VHFHSZ.

Response: Pursuant to the California Subdivision Map Act, section 66474.2, “the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined the application is complete”. The project was deemed complete on October 2, 2023, over a year before the adoption of policy HS-P7.1. Therefore, this policy shall not constitute a basis for denial of the project pursuant to the Subdivision Map Act. Also, see responses to comments 19.r (Wildfire) and 19.x (Public Services).

K. Noise, Environmental Checklist Section 13

Comment 2.j/2.k: The project would result in unacceptable noise levels. The report and its appendices are inconsistent with current risk analysis standards/consideration with regard to noise.

Response: The comment does not indicate what noise standards or regulations the project would violate, but the Initial Study does not ignore any anticipated violation. The noise assessment conducted by Illingworth & Rodkin, Inc.—and upon which the County based the noise analysis presented in the Initial Study—explicitly discusses the relevant noise standards and regulations, including the State’s *CEQA Guidelines*, the Contra Costa County General Plan, the Contra Costa County Municipal Code, and the Town of Moraga General Plan and Municipal Code. The noise assessment demonstrates that the project would not conflict with any applicable noise standard or regulation. It also indicates that the construction noise analysis was based on thresholds established by the Federal Transit Administration’s *Transit Noise and Vibration Impact Assessment Manual*. The Initial Study acknowledges that project construction activities would cause temporary but significant noise impacts and identifies mitigation measures designed to reduce construction noise and render the impact less than significant.

The noise and vibration analysis prepared for the project consistent with industry standard methods, and the proposed project's noise and vibration impacts were found to be less-than-significant when compared to applicable regulatory criteria. Construction best management practices were developed to minimize noise levels and reduce the amount of time that residents in the project vicinity would be exposed to the highest construction noise levels. The intent of Mitigation Measure Noise 2 is to construct the units on the west and south boundaries of the site first to provide a noise barrier that would then reduce noise levels at the nearest receptors during the remainder of project construction activities. The construction best management practices were recommended in addition to the construction hours restrictions established by Contra Costa County.

Based on the above, the noise impacts described by the commenter have been adequately evaluated within the IS/MND. No additional mitigation measures are appropriate in response to this comment.

Comment 6.d: The Town of Moraga comments note that the Town's grading ordinance prohibits grading activities on weekends, Town of Moraga holidays, and outside the hours of eight a.m. to five p.m.

Response: The draft IS/MND includes Mitigation Measure Noise-1, which limits grading and construction activities during weekday hours identical to those identified in the Town comments. Similarly, construction and grading activities are prohibited on weekends and holidays pursuant to said mitigation measure. Thus, no conflict with Town of Moraga noise ordinance is expected to result from the project.

Comment 19.w: The project will result in unacceptable noise levels for neighboring residents throughout the grading phase of the project.

Response: The noise section of the draft IS/MND specifies that noise levels resulting from construction activities could reach levels as loud as 88 dbA at a distance of 50 feet. The neighbor approximates her home to be about 40 feet from the subject property, and thus concludes that her home would be regularly subjected to these high noise levels. In fact, the Camino Pablo right-of-way is 59 feet wide between the nearest property lines between the respondents property and the project site. Additionally, very little grading activity is proposed near the Camino Pablo frontage of the subject property as the grading activity would predominantly occur in the area of the proposed building pads and roadway improvements – over 100 feet further distant from the respondents nearest property boundary. The building pads nearest to the commenters home at 1876 Camino Pablo would be those proposed on lots 10 & 11, which are situated between approximately 180-210 feet from the respondent's home. Per the inverse square law, the perceived intensity of sound diminishes very quickly as distance increases. For example, the estimated 88 dBA maximum noise level measured at 50 feet would decrease by a factor of 4 (down to 22 dBA) when that distance is doubled to 100 feet. Given that the vast majority of graded areas are well beyond 100 feet distant from the commenters home, it is expected that noise levels experienced on their property would be well below acceptable noise levels during typical grading and construction activities on site.

The existing homes nearest to the proposed grading activities are located immediately east of the project site on Sky View Ct. The nearest area of proposed grading ranges from 75 – 100 feet distant from these homes, however the vast majority of the proposed grading activity would be over 100 feet distant (i.e. experiencing 22 dBA noise levels or lower) from these homes. Therefore, these homes would not expectedly be exposed to prolonged unacceptable noise levels despite the closer proximity to the project.

Although project grading and construction activities would definitely be audible from adjacent properties, this is typical of grading/construction activities that routinely occur throughout the County. The project includes noise mitigation measures limiting the hours of construction specified hours on weekdays, and prohibiting work on weekends/holidays, in order to minimize the extent to which these noise levels intrude upon the enjoyment of nearby properties. Therefore, based on the above, the project would not result in significant unavoidable noise impacts described by the respondent.

L. Public Services, Environmental Checklist Section 15

Comment 6.e: The draft IS/MND does not address potential impacts on the Town of Moraga relating to police services provided by the Town of Moraga or the use of public parks maintained by the Town.

Response: As reported on page 74 of the Initial Study, the proposed addition of 13 single-family residences and 11 attached ADUs would increase the Moraga area population by approximately 65 persons, representing less than 0.4 percent of Moraga's population and a far smaller portion of the County's population. There is no evidence to suggest that this minor increase in population would unduly burden either the Contra Costa County Sheriff's Office or the Moraga Police Department.

Similarly, based on the marginal population increase, the associated incremental increase in park visitation by only a portion of these residents (many residents do not visit parks, or do so only very occasionally) would not expectedly cause degradation to or require increased maintenance of local parks. There would be no physical adverse effect requiring mitigation by the project applicant.

Comment 19.x: A new fire station in Moraga is necessary to adequately provide fire service to the project.

Response: As discussed in response to comment 19.r(wildfire), Mitigation Measure **Public Services-1** is included in the draft IS/MND at the recommendation of MOFD fire officials. According to the fire district staff, the provision of the Fire Protection Plan will serve as sufficient mitigation for the project's proximity from existing MOFD stations. Furthermore, the MOFD has specifically indicated that a fair share contribution towards new fire facilities is not desirable as the Town lacks funding to staff a new department. Thus, the alternative mitigation to build a new fire station, as suggested by the commenter would not actually improve fire service in the area if building cannot be staffed.

Comment 16.i: The Fire Protection Plan required by Mitigation Measure **Public Services-1** does not adequately mitigate potential wildfire risks related to the project.

Response: See response to 19x (Public Services), and 19.r (Wildfire) . The project mitigation measure has been deemed acceptable by Moraga Orinda Fire District officials. The district did not identify the need for any additional mitigation measures. The details and requirements of this plan required by this mitigation measure are clearly defined under California Fire Code Chapter 49 Section 4903 & 4903.2.1.2. The plan would provide specific information to the district on the types of plans proposed as landscaping, identify irrigated and non-irrigated zones, ensure vegetation reduction around emergency access and evacuation routes, identification of points of access for equipment/personnel, and include legally binding statements specifying responsibility for fuel management within the subdivision. Therefore, the record contains specific information that is adequate for the public review of the proposed mitigation measure and to assess the plan's adequacy.

Comment 16.j: The commenter indicates that addition fire protection mitigation proposes widening Camino Pablo to a four-lane road.

Response: The project does not propose to widen Camino Pablo to a four-lane road, for fire protection reasons or otherwise. No such proposal is discussed within the draft IS/MND. All evacuation scenarios discussed in response to CEQA checklist item 20.a on page 93 of the draft IS/MND are based on the existing two-lane configuration of this roadway.

M. Transportation, Environmental Checklist Section 17

Comment 6.f: The Town of Moraga provide transportation comments relating to frontage improvements along Camino Pablo as well as the need for encroachment permits and hauling permits issued by the Town.

Response: The Town comments do not assert that the transportation analysis presented within the draft IS/MND was inadequate or failed to analyze transportation-related impacts. Therefore, no revisions or new mitigation measures are necessary in response to this comment. The comments have been implemented in project COA's to ensure appropriate consultation with the Town of Moraga relating to frontage improvements and other project activities affecting the Camino Pablo right-of-way.

Comment 19.y: The commenter is concerned that the implementation of 4-way stop controls at the intersection of Tharp Drive and Camino Pablo will impede traffic traveling along Camino Pablo.

Response: The project does not propose the installation of a four-way stop control, however, the project is conditioned to study the installation of stop control at this intersection. Even if the implementation of stop control at an intersection where none presently exists incrementally increases travel across portions of Camino Pablo, this would not be considered a potentially significant transportation impact pursuant to CEQA. Therefore, no revisions to the transportation section and no new mitigation measures are appropriate to address this concern.

Comment 19.z: The draft IS/MND improperly dismisses VMT impacts related to the project.

Response: County staff determined that VMT analysis for the project is not necessary pursuant to Contra Costa County Transportation Analysis Guidelines which specifies that such analysis is not required for residential projects resulting in fewer than 20 residential dwellings. The project proposes 13 single-family residences, therefore, forgoing VMT analysis for this project is consistent with the County's adopted Transportation Analysis Guidelines.

Comment 19.aa: The Draft IS/MND does not recognize existing hazards resulting from drivers speeding on Camino Pablo. The project would add to existing hazards from speeding drivers, which should be considered a significant unavoidable impact.

Response: The commenter describes existing conditions unrelated to the project. Since the project would only result in a marginal increase in daily vehicular traffic, there is no expectation that the project would significantly impact existing traffic conditions. In the event that a four-way stop control is installed at the intersection of Tharp Drive and Camino Pablo, it would presumably serve as a traffic calming measure which will reduce the speed of vehicles travelling along Camino Pablo in the area of the project site.

N. Utilities and Service Systems, Environmental Checklist Section 19

Comment 3.a/4.a: The project will require annexation into the service district boundaries and spheres of influence for East Bay Municipal Utility District and Central Contra Costa Sanitary district to provide municipal water and sanitary sewer services to the project. The applicant is required to submit an application to the Local Agency Formation Commission (LAFCO) for review and approval of the proposed annexation.

Response: As noted on pages 84 and 85 of the Initial Study, the applicant intends to tie into the municipal water system of the East Bay Municipal Utility District (EBMUD) and into the municipal sewer system maintained by the Central Contra Costa Sanitary District (CCCSD). The discussion in the Initial Study acknowledges that connecting to these utility systems will require annexation and approval by these provider agencies and by LAFCO.

Comment 4.b: The EBMUD comments advise that if annexation is approved, separate meters will be required for each lot. Additional guidance is provided pertaining to design guidelines and refers the developer to EBMUD's new business office for service cost estimates and conditions.

Response: The civil plans for the project show it tying into an existing 16-inch-diameter water main at the intersection of Camino Pablo and Tharp Drive. It is acknowledged that the applicant will be responsible for constructing a water main to serve the proposed development, with separately metered lateral lines to provide water to each of the 13 homes. The comment does not address the adequacy of the IS/MND, and no further response is necessary.

Comment 4.g: EBMUD requests that the project be conditioned to require compliance with the California Model Water Efficient Landscape Ordinance.

Response: It is acknowledged that the applicant would be required to comply with the requirements of the Model Water Efficient Landscape Ordinance (MWELO). It is County policy, codified in Chapter 82-26 of the County Code, to require all new construction projects with an aggregate landscape area of 500 square feet or more requiring a building or landscape permit, plan check, or design review (among other covered projects) to comply with the County's Water Efficient Landscape Ordinance, which was adopted from the California Department of Water Resources' Model Water Efficient Landscape Ordinance. The proposed project would have more than 500 square feet of landscaping and thus is subject to these requirements. The project includes a condition of approval requiring that the applicant

submit a final landscaping plan which demonstrates conformance with MWELo as well as applicable County landscaping ordinances.

O. Wildfire, Environmental Checklist Section 20

Comment 19.r: The draft IS/MND does not adequately characterize the risk associated with developing the property, which is within a CAL Fire designated Very High Fire Hazard Severity Zone (VHFHSZ) within a State Responsibility Area.

Response: Section 20 (Wildfire) specifically evaluates the potential impacts of the fire prone environment on the proposed residential development. The IS/MND specifies that due to this VHFHSZ construction on the project site would be required to conform to California Building Code Chapter 7A (Materials and Construction Methods for Exterior Wildfire Exposure), California Fire Code Chapter 49 (Requirements for Wildland-Urban Interface Fire Areas), and Title 24 of the California Code of Regulations (California Building Standards). The utilization of materials and methods designed for fire prone areas will result in a development that is more fire resilient than typical residential construction.

In an email dated November 14, 2024, Fire Marshall Jeff Isaacs with the Moraga Orinda Fire District specified the District's recommendations to require the provision of a Fire Protection Plan complying with California Fire Code Chapter 49 Section 4903 & 4903.2.1.2. The plan would provide specific information to the district on the types of plans proposed as landscaping, identify irrigated and non-irrigated zones, ensure vegetation reduction around emergency access and evacuation routes, identification of points of access for equipment/personnel, and include legally binding statements specifying responsibility for fuel management within the subdivision. The MOFD recommendations of the district are included within the draft IS/MND as Mitigation Measures **Public Services – 1**. There were no additional MOFD recommendations beyond that specified in Public-Service-1.

Additionally, the draft IS/MND evaluates the project's potential to impair an emergency response plan or emergency evacuation plan. Based on the fact that the project would marginally increase the estimated 1,215 existing households in the area, the project would not result in a significant number of additional vehicular trips to accommodate in the event of an evacuation. It is estimated that under existing conditions, an evacuation would take approximately 219 minutes, whereas it is estimated that the project would increase this evacuation time to 221 minutes. Thus, the project would not significantly impair emergency evacuation plans for the area.

Thus, the project would not result in significant impacts given the fire-resilient construction materials and methods required for the development, the implementation of mitigation measure **Public Services -1** as recommended by the MOFD, and the fact that the project would not significantly impair fire response times or emergency evacuation of the area in the event of wildfire.

Comment 19.bb: The project's location within a Very High Fire Hazard Severity Zone should be more thoroughly considered in a full EIR.

Response: See response to 19.r (Wildfire) and 19.x (Public Services).

Comment 16.e: The project location within a Very High Fire Hazard Severity Zone (VHFHSZ) and consists of numerous wildfire risk factors including grassland, vegetation, and high wind speeds.

Response: See response to 19.r (Wildfire) and 19.x (Public Services).

Comment 16.g: The potential wildfire hazards present on the project site are subject to CEQA review.

Response: See response to 19.r (Wildfire) and 19.x (Public Services) for discussion of wildfire hazards. The commenter does not provide any new information or substantial evidence supporting a claim of a fair argument that the project may have a significant environmental effect that was not analyzed within the draft IS/MND.

Comment 10.a, 11.b: The project result in hazards relating to wildfire escape routes for nearby residents.

Response: See response to 19.r above. The project will not adversely affect the implementation of emergency evacuation plans for the area.

P. Mandatory finding of Significance, Environmental Checklist Section 21

Comment 19.cc: For the reasons outlined in comments 19.a through 19.bb, the project would result in significant unavoidable impacts, necessitating preparation of an EIR.

Response: As specified in staff responses to Comments 19.a through 19.bb, the commenters contentions are generally not supported by factual evidence in the record. In numerous cases, the conclusions presented within this letter are at odds the analysis provided by licensed professionals consulted for the preparation of the IS/MND, with no evidence beyond the writers stated opinion that the analysis is incorrect and/or inadequate. Thus, the comments do not present a fair argument based on substantial evidence that the project would result in potentially significant impacts that were not analyzed within the draft MND. Therefore, the comments do not establish that the project will result significant unavoidable impacts warranting preparation of an EIR.

III. Staff-Initiated Text Changes

Based on the public comments received as well as internal review, the following text changes to the Initial Study are hereby made (deleted text shown as strikethrough text; added text shown as double-underlined text). It should be noted that these changes do not result in a new, significant avoidable impact being identified and do not represent changes in the mitigation requirements that must be added in order to reduce an identified potentially significant impact to a less than significant level. These changes are made in response to written comments on the circulated IS/MND that are not required to reduce previously identified avoidable significant impacts. The changes merely clarify and amplify the discussion and analysis that was

already circulated in the IS/MND. Accordingly, recirculation of the IS/MND pursuant to Section 15073.5 of the *CEQA Guidelines* prior to adoption by Contra Costa County is not required.

Description of Project, MND Section 8

The following clarifying information is added to the project description, beneath the fourth paragraph on pg. 2 of the draft IS/MND.

The project would utilize existing sewer main and water line infrastructure located within the Camino Pablo right-of-way maintained by the Central Contra Costa Sanitary District (CCCSD) and East Bay Municipal Utility District respectively. The project would be required to Local Agency Formation Commission (LAFCO) annexation into the CCCSD and EBMUD districts before service may be provided.

Environmental Checklist Section 2. Agricultural Resources

The mitigation measure presented in the second paragraph on page 11 has been revised as follows:

***Agricultural Resources 1: A ~~conservation easement~~ A restricted development/scenic easement for the subdivision shall be established over the 16-acre open space Parcel A of the Vesting Tentative Map, requiring its preservation in perpetuity as open space.** This will substantially limit the extent to which future conversion of agricultural lands could occur in the vicinity by providing permanent protection of open space land that comprises roughly 65% of the project site.*

Environmental Checklist Section 3. Air Quality

The final paragraph on page 16, continuing to page 17, has been revised to correct typographical errors and to provide clarification, as follows:

*For the construction phase of the project, it is expected that the maximum health impacts from the project would occur immediately south of the project, along Skyview Court, would result in a cancer risk of 20 per million for a residential child receptor (absent mitigation), where the threshold of significance is 10 per million. The project would not exceed any other thresholds of significance. ~~Absent mitigation, As discussed in Environmental Checklist Section 3.b, absent mitigation the project could present an elevated risk to child receptors. Therefore, the applicant is required to implement mitigation measure Air Quality 1.~~
~~elevated health risk to child receptors would be considered a potentially significant adverse environmental impact.~~*

Environmental Checklist Section 4. Biological Resources

The mitigation measure presented in the final paragraph of page 34 has been revised as follows:

Biological Resources 3-a: *Prior to commencement of ground disturbance or vegetation removal from the project site, a qualified wildlife biologist shall perform a preconstruction survey the project site for Alameda whipsnake to determine the presence or absence of this species. The survey shall be conducted no more than 48 hours prior to vegetation removal or ground disturbance. If any whipsnakes are identified, the biologist shall develop appropriate mitigation to protect the species and compensate for lost Alameda whipsnake habitat. The mitigation shall be determined in consultation with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) and implemented to the satisfaction of those agencies. Incidental take permits shall be obtained from these agencies prior to the County issuing a grading permit.*

Biological Resources 3-b: *Prior to the implementation of Mitigation Measure Biological Resources 3-a, the project applicant shall install appropriate exclusion fencing around the entire area of project disturbance, with a suitable buffer to be determined by a qualified wildlife biologist, to prevent any snakes or other wildlife from encroaching onto the site. The foot of the exclusion fencing shall be buried sufficiently deep to prevent wildlife from crawling or tunneling under the fence and the upper portion of the fence shall be curved outward, such that any snakes or other wildlife attempting to scale the fence will fall off the fence once they become inverted, preventing their incursion onto the site. The fencing shall be installed to the satisfaction of the wildlife biologist.*

Biological Resources 3-c: *The project sponsor shall require the construction contractor to implement the following protective measures during project construction:*

Open Trenches: Any open trenches, pits, or holes with a depth larger than one-foot shall be covered at the conclusion of work each day with a hard, non-heat-conductive material (i.e., plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing large (i.e., deer) and small (i.e., snakes and frogs) from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, a qualified biologist or on-site personnel shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord.

Open Pipes Restriction: All pipes, culverts, or similar structures that are stored vertically or horizontally at the construction site for one or more overnight periods shall be securely capped on both ends prior to storage and thoroughly inspected by a qualified biologist or on-site personnel for wildlife prior to utilization in construction of the project.

Fence and Signpost Restriction: Any fencing posts or signs installed temporarily or permanently throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.

The Qualified Biologist or on-site personnel shall be responsible for ensuring compliance with this measure throughout the course of the Project and shall inspect each post.

Biological Resources 3-d: Onsite Worker Education Program. A qualified biologist shall administer a pre-construction training program for all employees, contractors, and personnel working at the project site prior to performing any project activities, to be hosted at the project site. The presentation shall include, at minimum, a discussion of sudden oak death prevention, critical root zone protection, the biology of the habitats and species identified in this IS/MND and those with potential to be present at the project site, which shall include a walkthrough. The Qualified Biologist shall also include, as part of the education program, information about the distribution and habitat needs of any species that may be potentially present, legal protections for those species, penalties for violations, and project-specific protective measures identified in the biological mitigation measures required by this IS/MND. Interpretation shall be provided for non-English speaking employees, contractors, or personnel otherwise working on the project site, prior to their performing any work at the project site.

Environmental Checklist Section 4. Biological Resources

The mitigation measure presented in the 2nd and 3rd paragraphs of page 37 has been revised as follows:

Biological Resources 4: *Implementation of the below mitigation measure would reduce construction period impacts on the Western bumblebee to a less than significant level.*

Prior to commencement of ground-disturbing activities ~~disturbance or vegetation removal from the project site~~, a qualified wildlife biologist shall perform a habitat assessment of the project site and surrounding landscape to identify and map suitable nesting, foraging, and overwintering habitat for the Western bumble bee. If suitable habitat is identified, a qualified wildlife biologist shall perform focused preconstruction surveys of the project site for Western bumblebee to determine the presence or absence of this species. The survey shall be conducted no more than 48 hours prior to vegetation removal or ground disturbance. To maximize probability of detection, a minimum of three focused surveys shall be conducted during the colony active period (i.e., April through September) and when floral resources are in peak bloom. If any Western bumblebee are identified or if surveys are not conducted and presence is presumed, the biologist shall develop appropriate mitigation to protect the species and compensate for potential habitat loss. The mitigation shall be determined in consultation with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) and implemented to the satisfaction of those agencies. Incidental take permits shall be obtained from these agencies prior to the County issuing a grading permit.

If suitable nesting, foraging, or overwintering habitat is identified within the project site during the habitat assessment, a biological monitor with experience conducting surveys for special-status bumble bee species shall be present onsite during vegetation removal and/or ground-disturbing

activities that take place during any of the “Queen and Gyne Flight Period and Colony Active Period” (February through October).

Environmental Checklist Section 4. Biological Resources

The mitigation measure presented on pages 40-41 has been revised as follows:

Biological Resources 5: *If project grading or construction is scheduled to take place between February 1 and ~~September 15~~ ~~August 31~~, a preconstruction survey of the project vicinity for nesting birds shall be conducted by a qualified biologist experienced with the nesting behavior of bird species of the region. The survey shall determine if active nests are present within the planned area of disturbance or within ~~250~~ ~~200~~ feet of the construction zone for ~~passerines and within 500 feet for non-raptors and 1,000 feet for raptors~~. The survey shall be performed no more than 14 days prior to the commencement of construction activities, and a second focused survey shall be conducted within 48 hours prior to construction activities that would occur during the nesting/breeding season. If ground disturbance activities are delayed following a survey, then an additional preconstruction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. If a lapse of project-related activities of seven days or longer occurs, another focused survey shall be conducted before project activities can be initiated. Copies of the preconstruction survey(s) shall be submitted to the Contra Costa County Department of Conservation and Development, Community Development Division (CDD) and the California Department of Fish and Wildlife.*

*If an active bird nest is found within the survey radii, species-specific measures shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. ~~If an active nest is present, a minimum exclusion buffer of 100 feet shall be maintained during construction activities for passerine birds, and a minimum of 200 feet for raptors. The~~ A protective buffer shall be established by a qualified biologist, with the distance to be determined by a competent biologist based on the site conditions—such as whether the nest is in a line of sight of the construction—and the sensitivity of the birds nesting. Typical protective buffers are as follows: 1) 1,000 feet for large raptors such as *buteos*, 2) 500 feet for smaller raptors such as *accipiters*, and 3) 250 feet for passerines. No project personnel or equipment shall be allowed to enter the protective buffer until the qualified biologist determines that the young have fully fledged and will no longer be adversely affected by the project.*

A qualified biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings, and the ~~The~~ nest site(s) shall be monitored by the biologist periodically to see if the birds are stressed by the construction activities and if the protective buffer needs to be increased. The perimeter of the nest setback zone shall be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, shall be submitted prior to initiation of grading in the nest-setback zone. The qualified biologist shall

serve as a biological monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. All buffers shall be shown on all sets of construction drawings.

Environmental Checklist Section 4. Biological Resources

The third paragraph on page 39 has been revised as follows:

While any project-related construction activity in or adjacent to these features would require jurisdictional delineation and permitting by the Corps, which would be subject to mitigation requirements, the project as proposed would not intrude into any of these wetlands/waters or come closer than 50 feet in close proximity to them. Accordingly, the project impacts on wetlands or other waters of the U.S would be less than significant.

Environmental Checklist Section 8. Greenhouse Gas Emissions

The second paragraph in response to checklist item 8.a (IS/MND page 60) has been revised to provide clarifying information as follows:

The installation of the cul-de-sac and drainage improvements, and the construction and operation of the single-family residences on the 13 residential parcels will generate some GHG emissions; however, the amount generated would not result in a significant adverse environmental impact. The 2022 BAAQMD CEQA Guidelines state that for a project to have a less-than-significant impact related to operational GHG emissions, it must include, at a minimum, no natural gas appliances or natural gas plumbing in the residences, and no wasteful, inefficient, or unnecessary energy use. The proposed all-electric building design (i.e. no proposed natural gas plumbing/appliances) is consistent with this minimum criterion. As discussed in Environmental Checklist Section 6 above, the future single-family residences would be operated and constructed in accordance with the California Buildings Codes, which includes specific requirements for residential construction to reduce the amount of energy required for lighting and heating, as well as to promote energy conservation.

Environmental Checklist Section 15. Public Services

The last sentence of the third paragraph on page 78 (Checklist item 15.a) has been revised to correct a typographical error and to add clarification as follows:

Notwithstanding these requirements, the MOFD has stated that the applicant is required to submit a ~~Wildfire Protection Plan (WPA)~~ Fire Protection Plan (FPP) for review and approval by the MOFD to address project ~~wildfire~~ risks associated with its fire-prone surroundings.

Environmental Checklist Section 19. Utilities and Service Systems

The fifth sentence of the second paragraph on page 88 (Checklist item 19.a) has been revised to correct a typographical error as follows:

In the event the project site is not annexed into ~~EBMUD~~ the CCCSD service area, the 13 single-family residences and 11 attached ADUs would be served by septic systems, with no effect on any municipal sewer system.

Environmental Checklist Section 20. Wildfire

The second sentence of the first paragraph on page 93 (Checklist Item 20.a) has been revised for clarification as follows:

As discussed in Environmental Checklist Section 9.f, the applicant proposes to widen Camino Pablo, ~~which is the a~~ a two-lane arterial street that connects to Canyon Road – Moraga Road, ~~the two to four lane County-designated arterial road,~~ from 28 feet to 36 feet in width at the project frontage.

ATTACHMENT A



Yana Garcia
Secretary for
Environmental Protection



Department of Toxic Substances Control

Katherine M. Butler, MPH, Director
8800 Cal Center Drive
Sacramento, California 95826-3200
dtsc.ca.gov



Gavin Newsom
Governor

SENT VIA ELECTRONIC MAIL

December 6, 2024

Adrian Veliz
Senior Planner
Contra Costa County Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
adrian.veliz@dcd.cccounty.us

RE: MITIGATED NEGATIVE DECLARATION FOR THE CAMINO PABLO SINGLE-FAMILY RESIDENTIAL SUBDIVISION, REZONE, GENERAL PLAN AMENDMENT, AND DEVELOPMENT PLAN DATED NOVEMBER 26, 2024, STATE CLEARINGHOUSE NUMBER [2024110934](#)

Dear Adrian Veliz,

The Department of Toxic Substances Control (DTSC) reviewed the Mitigated Negative Declaration (MND) for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment, and Development Plan (project). The proposed project includes Major Subdivision application CDSD23-09646. Rezone application CDRZ23-03270, General Plan Amendment application CDGP21-00004, and Development Plan application CDDP23-03012, to allow development of the southern 7.9 acres of the 23.9-acre project site consisting of a residential subdivision of 13 single-family residences with attached accessory dwelling units (ADUs) incorporated into 11 of the residences. The remaining northern 16.0 acres of the site would remain as agricultural open space. The project site is a legal lot in the AL Agricultural Lands, General Plan land use designation. DTSC recommends and requests consideration of the following comments:

- 1.a
1. When agricultural crops and/or land uses are proposed or rezoned for residential use, a number of contaminants of concern (COCs) can be present. The Lead Agency shall identify the amounts of Pesticides and Organochlorine Pesticides (OCPs) historically used on the property. If present, OCPs requiring further analysis are dichloro-diphenyl-trichloroethane, toxaphene, and dieldrin. Additionally, any level of arsenic present would require further analysis and sampling and must meet [HHRA NOTE NUMBER 3, DTSC-SLs](#) approved thresholds. If they are not, remedial action must take place to mitigate them below those thresholds.

Additional COCs may be found in mixing/loading/storage areas, drainage ditches, farmhouses, or any other outbuildings and should be sampled and analyzed. If smudge pots had been routinely utilized, additional sampling for Polycyclic Aromatic Hydrocarbons and/or Total Petroleum Hydrocarbons may be required.

- 1.b
2. DTSC recommends that all imported soil and fill material should be tested to assess any contaminants of concern meet screening levels as outlined in [DTSC's Preliminary Endangerment Assessment \(PEA\) Guidance Manual](#). Additionally, DTSC advises referencing the [DTSC Information Advisory Clean Imported Fill Material Fact Sheet](#) if importing fill is necessary. To minimize the possibility of introducing contaminated soil and fill material there should be documentation of the origins of the soil or fill material and, if applicable, sampling be conducted to ensure that the imported soil and fill material are suitable for the intended land use. The soil sampling should include analysis based on the source of the fill and knowledge of prior land use. Additional information can be found by visiting [DTSC's Human and Ecological Risk Office \(HERO\) webpage](#).

DTSC appreciates the opportunity to comment on the MND for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment, and Development Plan project. Thank you for your assistance in protecting California's people and environment from the harmful effects of toxic substances. If you have any

Adrian Veliz
December 6, 2024
Page 3

questions or would like clarification on DTSC's comments, please respond to this letter or via [email](#) for additional guidance.

Sincerely,

A handwritten signature in cursive script that reads "Tamara Purvis".

Tamara Purvis
Associate Environmental Planner
HWMP - Permitting Division – CEQA Unit
Department of Toxic Substances Control
Tamara.Purvis@dtsc.ca.gov

Adrian Veliz
December 6, 2024
Page 4

cc: (via email)

Governor's Office of Land Use and Climate Innovation
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Kevin Thomas
Project Manager
Kimley-Horn and Associates, Inc. / Consulting Firm
Kevin.Thomas@kimley-horn.com

Corey File
Principal
Willis Development / Project Applicant
corey@willisdev.com

Dave Kereazis
Associate Environmental Planner
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Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov

Scott Wiley
Associate Governmental Program Analyst
HWMP - Permitting Division – CEQA Unit
Department of Toxic Substances Control
Scott.Wiley@dtsc.ca.gov

To: Contra Costa County; Dept of Conservation and Development

Attn: Adrian Veliz; 30 Muir Road; Martinez, CA 94553

adrian.veliz@dcd.cccounty.us

From: Philip T Tringale, Homeowner 2175 Sky View Court Moraga (unincorporated Contra Costa County)
pt.tringale@gmail.com

Date: December 11, 2024

Subject: Public Comments to Proposed Mitigated Negative Declaration for Camino Pablo Subdivision
Rezone, General Plan Amendment; Assessor's Parcel Number 258-290-029

Dear Ms. Veliz,

My name is Philip Tringale, and I have owned the home at 2175 Sky View Court in Moraga with my wife since the home was built in 1998. We currently live in Lafayette and intend to have one of our family members reoccupy the Moraga home that is currently leased to a family with children.

I am a Senior Consultant with a major international engineering firm. I have a PhD in Civil Engineering and a Master in Engineering from UC Berkeley as well as a second Master of Civil Engineering Degree focusing on Engineering Geology and a Bachelor Degree in Civil Engineering. During my extensive career practicing throughout the Bay Area and the United States, I have also testified in State and Federal Court as a designated expert on engineering and environmental matters. I am registered professional engineer in the State of California. For this public response, I am commenting as a private citizen and not yet on behalf of any firm or a specific client or group.

As shown on numerous site plans for the proposed development, the property boundary of our home and others on Sky View Court form the southern boundary of the proposed major construction zone. The applicant's planned massive excavation, steep cuts, ridgeline altering, excessive filling, and prolonged site preparation activities clearly result in establishing that area of Sky View Court and its residents as one of, if not the most, highly sensitive receptor areas for this proposed project. Residents on Camino Pablo adjacent to and in the vicinity of the proposed construction site likewise would clearly be classified as sensitive receptors. Numerous other residents throughout Moraga also would be directly and adversely affected by the proposed development as clearly demonstrated when this plan was initially proposed several years ago.

I received the 21 November 2024 NOTICE OF PUBLIC REVIEW AND INTENT TO ADOPT A PROPOSED MITIGATED NEGATIVE DECLARATION for the subject project. Based on my review of the mitigated negative declaration and several technical and other reports prepared for this proposed project, I have several initial comments and opinions as follows:

2.a

2.b

1. The proposed project, presented multiple times over the past several years, has been consistently and strongly opposed by unincorporated Contra Costa County residents in the Knoll and Sky View Sphere of Influence, by numerous nearby Town of Moraga residents, and by many others throughout the area; numerous private and public meetings were held with the applicant, with the Carr Ranch parcel owners, with residents in the affected unincorporated portion of Contra Costa County, and with the Town of Moraga; numerous significant flaws with the proposed development were identified with no or limited meaningful response from the applicant or any regulatory, governmental or administrative body; relevant documents are available as examples of opposition positions at that time; many of those opposed are only now being informed of current actions with limited time available over this holiday season to fully respond (November 26, 2024 – Dec 26, 2024);
2. Given the extended period of time since any meaningful correspondence has occurred, many constituents believed that the County, Town of Moraga, the developer, and the Carr Ranch parcel owners dropped plans to further consider the proposal to develop the property; however, it is apparent that this is not the case; it is also apparent that the developer has now re-instituted the process to develop the Carr Ranch parcel without attempting to legally and fully address the many significant adverse consequences to adjacent residents as well as those in the affected vicinity; several of the prior technical reports clearly identified high risk concerns which apparently have been purposely omitted in the current report; it also appears that the county has now had to proceed down this unfortunate path using precious limited resources despite knowing its residents and nearby constituents’ strong opposition and valid objections;
3. Specifically, regarding the most recent Proposed Mitigated Negative Declaration, there are clearly numerous and substantial deficiencies, errors, omissions, and incomplete areas of study that are readily apparent throughout the document and its appendices such as:

2.c

- a. The revised project is documented to be large in scope and includes language concluding there are anticipated adverse impacts to sensitive receptors; the most recent and prior documents reflect improperly conducted analyses that specifically exclude highly sensitive receptors; the current report with purpose downplays or did not include the identification of high risk-high sensitivity receptors or address the damages and harm that would result from this project;

2.d

- b. The revised plan now includes not only large dwellings but also includes additional accessory dwelling units further increasing impacts on the proposed lots; these dwellings and resulting mass removal and relocation near “jurisdictional areas” are also a concern given the long-term and protected nature of this sensitive environmental area;

2.e

- c. Despite changes in the scope of the overall and individual lot developments from the original plan, the report incorrectly relies on outdated engineering and other studies prepared many years ago anticipating the original scope and defined conditions at that time;

- 2.f d. The reports (more detail and risk concerns are given in the technical reports included in prior submittals) clearly state that the greatest impacts will be to existing sensitive receptors in nearby/adjacent residences; details regarding those impacts are explicitly EXCLUDED from the report with a baseless excuse that there are only a “few”, and the applicant does not even attempt to specifically identify or quantify the number or classification of those sensitive receptors; to imply that “other than nearby residences, there are no sensitive receptors in the immediate vicinity” is technically indefensible and negligent with a deliberate consequence of inappropriately being self-serving to the applicant as well as being clearly detrimental to the nearby residents;
- 2.g e. The report documents a significant adverse air quality impact especially to those very close to the massive earth moving and construction operations given the prolonged major site grading and preparation and the movement of roughly 59,000 cubic yards of soil over a period of years;
- 2.h f. The report reflects the fact that there will be health impacts to sensitive receptors near the proposed development including significant increase in cancer risk to sensitive receptors along the Sky View boundary, yet it provides no information on the cumulative health effects to the highly sensitive receptors; the applicant does not identify, mitigate, or reasonably acknowledge the absolute liability associated with causing adverse cumulative health and other impacts to existing residents that will result from the massive earth work and construction project as proposed; there are children who would be clearly harmed;
- 2.i g. The report does not include an essential critical analysis or mitigation of the substantial nuisance and other effects to existing sensitive receptors within the immediate zone directly impacted by the massive and prolonged excavation, filling, and construction operations;
- 2.j h. The report and its appendices clearly are inconsistent with current risk analysis standards/considerations, especially with regard to AIR, NOISE, ODOR, VIBRATION, AND VISUAL IMPACTS, all of which are clearly shown to result in adverse impacts, especially to the existing residents at most risk yet blatantly excluded from the analyses; to present a “mitigation” of first building homes next to Sky View for over a year to alleviate longer term noise and other damaging impacts is negligent in the least and indefensible;
- 2.k i. The unacceptable effects predicted from noise are documented to be expected and to be in violation, yet the applicant ignores any anticipated violation and still proposes to proceed even with inducing the considerable noise level that is planned; and the effect of light from the project is significant resulting from an increase on the project site and the detrimental blocking of light by the proposed homes onto Sky View Court homes where they will be “shadowed” by the proposed development.
- 2.l j. The applicant attempts to depict the existing and post-development visual impacts along Camino Pablo but IGNORES THE CRITICAL AND UNACCEPTABLE VISUAL IMPACT ALONG THE EAST SIDE OF THE PROPOSED DEVELOPMENT where steep cuts and elevated fill severely



alter the natural landscape and identified ridgelines in this special Hillside Area; instead the report includes only a portion of the public visual impact and does not include private residence impact along the eastern border because of the obvious unacceptable impact to existing residences; the report documents the impact to those private homes will be substantial and acknowledges “shadows” in plans from the ill-fated development;

k. The report identifies numerous landslides on the property as well as specially-protected drainage features and does not address the unknown depths of landslides on the property, which is a critical omission;

l. The report does not consider the EARTHQUAKE FAULT that has been clearly mapped to transverse the property as documented by one of the applicant’s previous consultants; instead, subsequent documents are contradictory and vaguely propose to deal with the presence of a fault if evidence of faulting arises during construction, which appears technically indefensible; to downplay the identification of the fault, the applicant is now calling it a “saddle/valley line” instead of its mapping as a geologic fault;

m. The overall conclusion to the report stating there are no significant adverse impacts is not only misleading, but also technically incorrect and appears to intentionally misinform the reader given the apparent deliberate exclusion of many critical and necessary components. When sensitive receptors are not included in the analyses resulting in a clear and unwarranted benefit to the applicant in the approval process, the analyses cannot be valid or defensible and result in the appearance of negligent or unethical intent; upon review, it appears that the substantial health, nuisance, and other adverse impacts to sensitive receptors have been specifically excluded in all the analyses to misinform and sway the reader to the wrong conclusion.

It is clear that the current report has been crafted to specifically omit prior language identifying the true nature and level of risks to county residents, especially along the proposed project boundary along home sites. Careful evaluation of all the documents associated with this proposed project leads to the conclusion that it absolutely will have a significant effect on the environment and public health. This proposal is not a “less than significant impact” endeavor. The impacts are real, and they are significant even with the deficient mitigations proposed.

The proposed mass excavation, ridgeline altering, filling, and development project appears dependent on the approval by the county and others. As all those opposed to this flawed proposed development now prepare to regroup and finalize its unified and justified actions to prevent undue harm, I conclude with the statement that this plan as presented REFLECTS SUBSTANTIAL ADVERSE IMPACTS TO HUMAN HEALTH AND THE ENVIRONMENT. Any consideration of Adopting the Proposed Mitigated Negative Declaration is not technically defensible and cannot be justified especially given that the document is based on omissions and incomplete and inaccurate assumptions and analyses.

Please know that there will be substantial and continued opposition to this proposed development. This effort will likely involve significant technical expertise in engineering, geology, earth sciences and quantitative risk assessment, as well as any required administrative, medical and legal opposition considered necessary to protect the Human Health of those potentially impacted and the environment.

I trust that the county and others will dutifully represent its constituents, will concur with the findings presented herein as well as other consistent findings, and will reject the applicant's proposal to pursue development in this highly sensitive and environmentally special area.

If you have any questions, need any additional information, or would like to discuss any element of this current or any previous correspondence, please contact me at the email address below.

Thank you for your consideration,

Philip Tringale, Ph.D., P.E.

pt.tringale@gmail.com

From: [Lou Ann Texeira](#)
To: [Adrian Veliz](#)
Subject: CDS23-09646 (REVISED TO EXTEND PUBLIC COMMENT PERIOD)
Date: Monday, December 16, 2024 4:54:19 PM

Hi Adrian,

Hope all is well.

3.a

Will this project need municipal sewer and/or water services? If so, they will need to apply to LAFCO for the boundary changes.



Lou Ann Texeira, Executive Officer
Contra Costa LAFCO
40 Muir Road, 1st Floor
Martinez, CA 94553
925-313-7133
LouAnn.Teixeira@lafco.cccounty.us

December 17, 2024

Adrian Veliz, Senior Planner
Contra Costa County Department of Conservation & Development
30 Muir Road
Martinez, CA 94553

Re: Notice of Public Review and Intent to Adopt a Proposed Mitigated Negative Declaration for Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment and Development Plan, Moraga

Dear Mr. Veliz:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment and Development located in the Town of Moraga (Town). EBMUD has the following comments.

WATER SERVICE

4.a

The proposed development is located outside EBMUD's current service area and would need to be annexed into EBMUD's current service area before receiving water service from EBMUD. Please note that EBMUD will not deliver water to any annexed property until a formal approval is issued by the U.S. Bureau of Reclamation. A description of the requirements pertaining to annexation is enclosed (Attachment A). The project sponsor should contact the Contra Costa County Local Agency Formation Commission (LAFCO) to apply for annexation.

4.b

If annexation is approved, EBMUD's Bryant Pressure Zone, with a service elevation range between 450 and 650 feet, will serve the proposed development. Once the property is subdivided, separate meters for each lot will be required. A main extension, at the project sponsor's expense, will be required to serve the proposed development. Please see the attached EBMUD documents for California (Waterworks Standards) Code of Regulations, Title 22, Section 64572 (Water Main Separation) and EBMUD requirements for placement of water mains (Attachment B). When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions for providing water service to the proposed development. Engineering and installation of water mains and services require substantial lead time, which should be provided for in the project sponsor's development schedule. For water mains to be installed in private roads or private property, the project sponsor should work with EBMUD's New Business Office to create the proper rights-of-way or easements.

GEOLOGY

- 4.c In the Geology and Soils section of the IS/MND, it states that numerous landslides have been mapped throughout the development area with some that have been recently active. When the project sponsor applies for water service, they will need to provide EBMUD with any proposed landslide mitigation measures for the development so that no landslide impact hazard is posed to proposed water main extensions that will serve the development.

BIOLOGY

- 4.d On page 41 of the IS/MND, the document states that there is only one adopted Habitat Conservation Plan (HCP) in Contra Costa County, the East Contra Costa HCP. It should be noted that the EBMUD Low Effect East Bay HCP was approved in 2008 and covers EBMUD's East Bay watershed lands, including Upper San Leandro watershed which is adjacent to the project site. The EBMUD watershed is immediately adjacent to the project site to the east. The proposed project should not affect EBMUD's HCP. However, it would be prudent to install a wildlife exclusion fence around the project site to exclude any HCP species, such as California red-legged frog and Alameda whipsnake from entering the project site from EBMUD's adjacent watershed lands
- 4.e On page 30 of the IS/MND, the document states that the closest California Red-Legged Frog (CRLF) occurrence is 2.2 miles from the site. There are known CRLF occurrences closer than 2.2 miles on the EBMUD Upper San Leandro Reservoir watershed that may not show up in the California Natural Diversity Database (CNDDDB). The biological measures described in the IS/MND are protective of the species. However, a wildlife exclusion fence would be more protective of CRLF by keeping them from moving through the project site from the adjacent EBMUD watershed lands.
- 4.f On page 36 of the IS/MND, the document states that the closest occurrence in the CNDDDB for American Badger is 4.5 miles away. There has been confirmed sightings of badgers and their dens about 3 miles east of the site on Rocky Ridge on the EBMUD Upper San Leandro Reservoir watershed. The biological measures described in the IS/MND are protective of the species.

WATER CONSERVATION

- 4.g The project presents an opportunity to incorporate water conservation measures. EBMUD requests that Contra Costa County include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

Adrian Veliz, Senior Planner
December 17, 2024
Page 3

If you have any questions concerning this response, please contact Sandra Mulhauser, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-7032.

Sincerely,



David J. Rehnstrom
Manager of Water Distribution Planning

DJR:WTJ:djr

wdpd24_229 Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment and Development Plan.doc

Attachments: A. Annexation to EBMUD Current Service Area Requirements
B. Main Extension Criteria

cc: Benoit McVeigh
Dk Engineering
1931 San Miguel Drive
Walnut Creek, CA 94596

ANNEXATION TO EBMUD CURRENT SERVICE AREA REQUIREMENTS

Changes to EBMUD's water supply commitments, such as supplying water to lands outside EBMUD's existing customer service area, require EBMUD to seek and obtain approval from the U.S. Bureau of Reclamation (USBR), with whom EBMUD has a contract for supplemental water supply in dry years. To support its approval of any expansion of EBMUD's customer service area, USBR requires environmental documentation that extends beyond what is typically needed to meet the CEQA requirements. This documentation is required to satisfy federal environmental laws including the National Environmental Protection Act (NEPA), the Endangered Species Act (ESA), and Section 106 of the National Historic Preservation Act (NHPA). EBMUD will require any developer requesting annexation to provide such documentation, which EBMUD will use to support its request for USBR's consent to the provision of water service to the annexed area. In evaluating the adequacy of this environmental documentation, USBR typically consults with other federal agencies, including the U.S. Fish and Wildlife Service. In situations where the U.S. Army Corps of Engineers (Corps), in fulfilling its obligations for issuing permits and documenting environmental impacts under the Clean Water Act, ESA, NEPA and other federal environmental laws, USBR has indicated to EBMUD that it would prefer that the Corps complete all of its requirements under these laws, after which USBR would augment the documentation only as necessary to fulfill its own requirements to support the expansion of EBMUD's customer service area.

Since documentation that fulfills CEQA requirements is generally also sufficient to meet the majority of NEPA requirements, it is advisable when undertaking work to satisfy CEQA to also be cognizant of the parallel NEPA requirements as well as those NEPA requirements that go beyond CEQA requirements. Early discussions with EBMUD in this regard are highly recommended.

Because the NHPA Section 106 requirements are generally less well understood than other environmental requirements under USBR's purview, guidelines have been issued for conducting studies and preparing documentation to address these requirements. In particular, USBR requires a stand-alone report addressing Section 106 requirements. EBMUD will review the developers' Section 106 report and submit it for USBR's approval. Once satisfied with the Section 106 report, USBR may forward it to the State Historic Preservation Officer for approval.

It is important to note that EBMUD's Central Valley Project water supply contract requires payment of USBR's costs incurred to review the relevant documentation supporting any annexation request and to fulfill its own documentation responsibilities under the applicable federal laws. EBMUD requires the developer of any proposed annexation to reimburse EBMUD for these costs. Once a developer approaches EBMUD for annexation approval, EBMUD will require the developer to enter into an agreement (or separate agreements, if necessary) to advance sufficient funds for any related studies or work, including CEQA documentation, if necessary, as well as the USBR costs that will be charged to EBMUD.

Charges and agreements related to the installation of water delivery facilities and connections are subject to EBMUD's Regulations Governing Water Service to Customers of EBMUD.



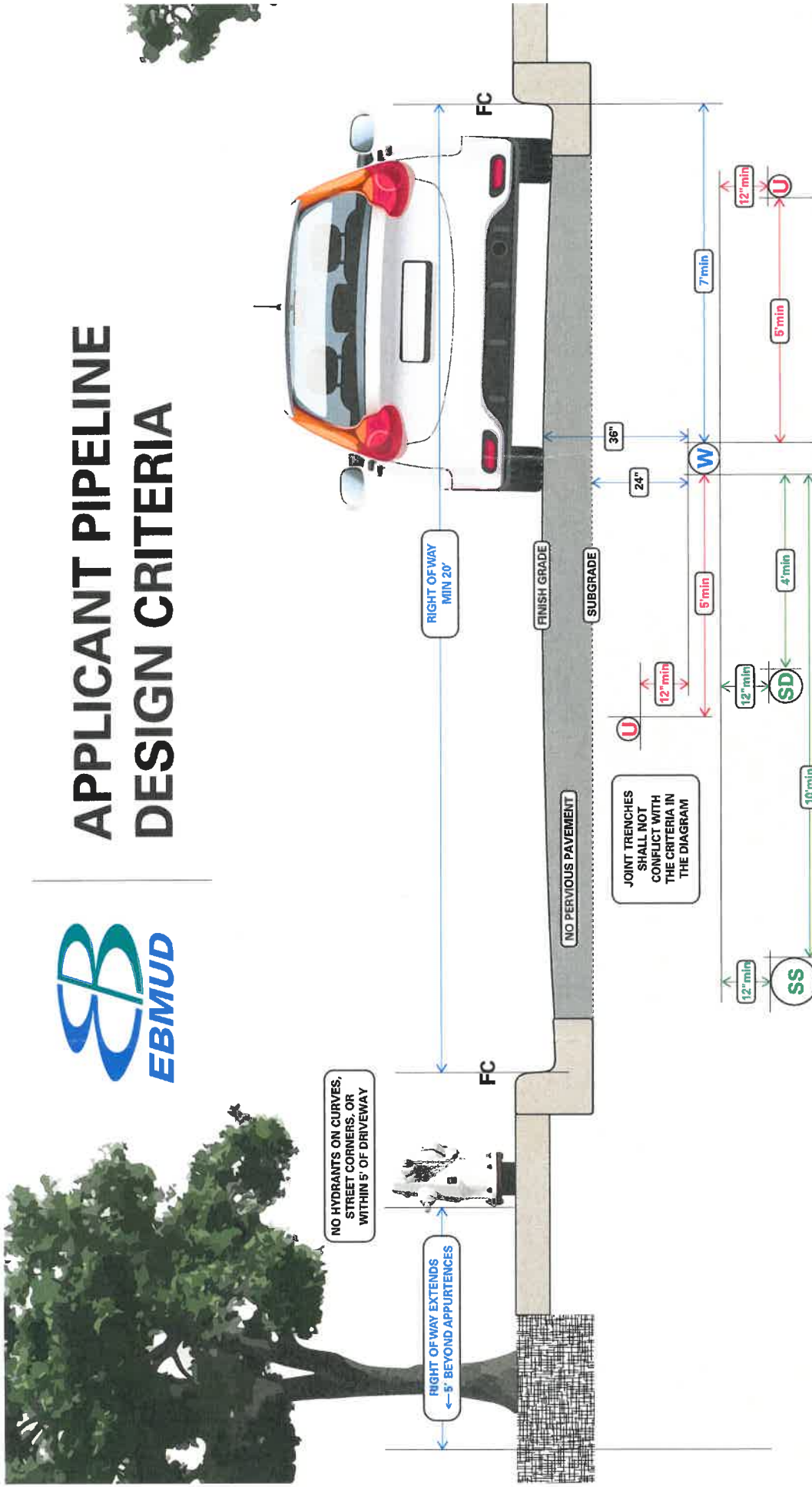
Applicant Pipeline Design Criteria

EBMUD values applicant pipeline projects and is committed to providing a thorough and efficient design. To ensure an efficient design process and to avoid significant delays the design criteria below should be adhered to when submitting improvement plans.

Design Criteria

- Water mains shall be seven (7) feet from face of curb.
- Water mains shall maintain a minimum one (1) foot vertical and five (5) foot horizontal clearance from other utilities.
- Gas mains shall meet the one (1) foot vertical separation requirement by installing the gas main below the water main only.
- Water mains shall maintain a minimum ten (10) foot horizontal clearance (O.D. to O.D.) and be located a minimum one (1) foot above any sewer main. Title 22 CCR
- Water mains shall maintain a minimum four (4) feet horizontal clearance (O.D. to O.D.) and be located a minimum one (1) foot above any storm drain. Title 22 CCR
- Water mains shall have a 36-inch cover to final grade and 24-inch cover to pavement subgrade.
- Joint trenches that are in conflict with the criteria above may delay the project. Submit to EBMUD final joint trench plans (no intent plans) which include the size of the joint trench and the utilities located inside.
- Water mains shall not be installed under pervious pavement.
- Water mains installed under decorative pavement, pavers, or stamped concrete will require an additional paving agreement.
- Hydrants shall not be located on curved sections of street, street corners, or within five feet of a driveway.
- Right of ways for 6-inch and 8-inch water mains shall be a minimum of 20 feet wide and extend five (5) feet past the water main centerline.
- Right of ways for 12-inch to 24-inch water mains shall be a minimum of 20 feet wide and extend eight (8) feet past the water main centerline.

Please contact the New Business Office representative assigned to your project if there are any questions regarding the requirements listed above. Meeting this criteria will enable the most efficient design possible.



APPLICANT PIPELINE DESIGN CRITERIA

W = WATER	U = UTILITY	SS = SANITARY SEWER	SD = STORM DRAIN	FC= FACE OF CURB
24" cover to subgrade	min 12" vertical clearance	min 12" below water	min 12" below water	
36" cover to final grade	min 5' horizontal clearance	min 10' horizontal clearance	min 4' horizontal clearance	
7' inset from face of curb				



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



RECEIVED on 12/21/2024 **CDSD23-09646**
By Contra Costa County
Department of Conservation and Development

December 23, 2024

Adrian Veliz, Senior Planner
Contra Costa County Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Adrian.Veliz@dcd.cccounty.us

Subject: Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment, and Development Plan, Initial Study/Mitigated Negative Declaration, SCH No. 2024110934, Contra Costa County

Dear Mr. Veliz:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from Contra Costa County for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment, and Development Plan (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

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

Adrian Veliz
Contra Costa County Department of Conservation and Development
December 23, 2024
Page 2

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

PROJECT DESCRIPTION SUMMARY

Proponent: Benoit McVeigh

Objective: The objective of the Project is to develop 7.9 acres of a 23.9-acre property into a residential subdivision consisting of 13 single-family homes with attached accessory dwelling units incorporated into 11 of the residences. The remaining 16.0 acres will remain as open space. Primary Project activities include on-site grading; construction of residences; installation of stormwater bioretention basins and an on-site storm drain system which will discharge to an existing storm drain system; construction of a new access road; and widening of two existing roadways.

Location: The Project site is located in the Town of Moraga, CA in Contra Costa County, immediately east of the Tharp Avenue and Camino Pablo intersection. The Project coordinates are Latitude [37.813056], Longitude [-122.115556].

Timeframe: The applicant expects Project construction to span a total of 32 months, including 14 months for grading, infrastructure installation, and building pads, and 18 months for homes construction.

REGULATORY AUTHORITY

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.) CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit.

5.a

Adrian Veliz
 Contra Costa County Department of Conservation and Development
 December 23, 2024
 Page 3

5.b CESA-listed species identified that may occur within the Project area include, but are not limited to, Alameda whipsnake (*Masticophis lateralis euryxanthus*).

Candidate species for listing under CESA are afforded the same legal protections as CESA-listed species while under review (Fish and Game Code § 2608). Candidate species which may occur within the Project area include western bumble bee (*Bombus occidentalis*) and burrowing owl (*Athene cunicularia*).

Plants identified as rare or endangered by the California Fish and Game Commission identified that may occur within the Project area include, but are not limited to, the following species ranked as 1B.2 by the California Native Plant Society: bent-flowered fiddleneck (*Amsinkia lunaris*), Mt. Diablo fairy-lantern (*Calochortus pulchellus*), and Diablo helianthella (*Helianthella castanea*).

5.c CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Fully Protected Species

5.d Fully protected species, such as golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species;
- Live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the Project planning process.

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Raptors and Other Nesting Birds

5.e CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

Lake and Streambed Alteration Agreement

5.f CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank **(including associated riparian or wetland resources)**; or deposit or dispose of material where it may pass into a river, lake, or stream. **Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements.** In addition, infrastructure installed beneath such aquatic features, such as through horizontal directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the IS/MND and complied with its responsibilities as a responsible agency under CEQA.

COMMENTS AND RECOMMENDATIONS

5.g CDFW offers the comments and recommendations below to assist Contra Costa County in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project’s avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: Wildfire Abatement Requirements and Associated Impacts

5.h **Issue:** The IS/MND does not account for local wildfire abatement and defensible space requirements in its analysis of potential Project impacts upon biological

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5.h resources. The Project site is located in the Town of Moraga, and the IS/MND identifies the subject property as occurring in a Very High Fire Hazard Severity Zone in a State Responsibility Area (page 90). In the Public Services section on page 75, the IS/MND indicates that fire protection within the Project vicinity will be provided by the Moraga-Orinda Fire District (MOFD). MOFD requires all property owners to maintain a defensible space from wildfire as part of their Exterior Wildfire Hazard Abatement Requirements. Without an evaluation of Project impacts in the context of defensible space from wildfires, the Project will have reasonably foreseeable undisclosed and unanalyzed potentially significant impacts to the environment.

5.i The IS/MND identifies two ephemeral drainages and two potential seasonal wetlands within the subject property. The IS/MND does not specify the distance between these features and the development area, though one of the ephemeral drainages is mapped near the northern boundary of the development on the Site Plan (Figure PD-1). In addition to the two ephemeral drainages and two seasonal wetlands, King Canyon Creek is located 0.07 miles east of the southern portion of the property. Parcels planned for residential development are located on the southern end of the property.

5.j As of March 2024, MOFD Exterior Wildfire Hazard Abatement Requirements include removing all dead or dying trees, removing or cutting of grasses and weeds to a height of 3 inches or less, creating a vertical spacing of 6 feet between branches and foliage or ground, and removing all non-irrigated brush within the area 30-100 feet from any structure or attached deck (Zone 2). On page 39, the IS/MND concludes that there will be less-than-significant impacts upon state or federally protected wetlands because construction work will not occur within 50 feet of such features. Depending upon the distance from each planned residence to seasonal wetlands, ephemeral drainages, or from King Canyon Creek and associated riparian resources, compliance with wildfire abatement requirements may result in modification or removal of these habitats. Such impacts must be evaluated as part of the Lead Agency's CEQA review.

5.k **Recommendation:** CEQA Guidelines require the Lead Agency to consider direct physical changes in the environment which may be caused by the Project and reasonably foreseeable indirect physical changes during its evaluation (CEQA Guidelines § 15064, subd. (d)). Given Project objectives and location, it is reasonably foreseeable that defensible space requirements will result in physical changes to the environment over the life of the Project. These impacts were not assessed in the IS/MND, and without this consideration, it cannot be concluded that Project impacts to riparian habitat and/or wetlands will be less-than-significant. CDFW recommends that the IS/MND be revised and recirculated to disclose the distance between defensible space boundaries and riparian habitat or ephemeral drainages and evaluate all potential Project-related impacts to these habitats,

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including those resulting from wildfire abatement and defensible space maintenance. If Project activities have the potential to significantly adversely impact riparian habitat or ephemeral drainages, CDFW recommends a defensible space setback from these features be incorporated into Project design plans to reduce impacts to less-than-significant levels in the revised and recirculated IS/MND.

COMMENT 2: Mitigation for Impacts to Special-Status Species

Alameda Whipsnake; Section 4, Page 34

5.l

Issue: Mitigation measure Biological Resources 3 is insufficient to reduce Project impacts to Alameda whipsnake to less-than-significant levels. Biological Resources 3 states that mitigation will be proposed and an ITP will be obtained if Alameda whipsnake are detected during a preconstruction survey. There are currently no systemic protocol-level surveys that have been adopted by CDFW or developed by an independent science panel to demonstrate the presence or absence of Alameda whipsnake within a Project site, and a lack of detection during preconstruction surveys is insufficient evidence to conclude Alameda whipsnake are absent from the habitats within the Project site.

The IS/MND concludes that Alameda whipsnake have potential to utilize the Project site in a dispersal capacity. Alameda whipsnake are fast-moving daytime hunters (U.S. Fish and Wildlife Service [USFWS], 2011) and are therefore most likely to be active during the time of day when construction activities will occur. Alameda whipsnake is listed as threatened under the CESA, and as such, any “take” is prohibited without an ITP. Project activities such as clearing or grading during construction may result in direct take of Alameda whipsnake through inadvertent crushing of snakes moving through the Project site or entrapment of snakes in construction materials. Development of the Project site will result in permanent loss of habitat for Alameda whipsnake and may contribute to habitat loss and fragmentation, resulting in indirect take, over the life of the Project.

Recommendation 1: Due to the potential for Alameda whipsnake to occur within the Project site and the potential for the Project to result in take of Alameda whipsnake pursuant to Fish and Game Code section 86, CDFW recommends that an ITP be obtained for the Project.

Recommendation 2: To ensure significant impacts are mitigated to a level of less-than-significant, CDFW recommends the feasible mitigation measure described below be incorporated as an enforceable condition into the final CEQA document for the Project:

Alameda Whipsnake Mitigation. CDFW recommends that known Alameda whipsnake habitat types, including annual grassland, oak savanna, oak-bay

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woodland, mixed evergreen forest, riparian, and areas with rock outcrop features, should be mapped on the Project site and Project impacts such as permanent destruction or fragmentation of habitat, including through the ongoing maintenance of a defensible space from wildfire, and ongoing impacts from roadways be identified and evaluated in a revised and recirculated IS/MND. CDFW recommends that the IS/MND require enforceable mitigation for these impacts to Alameda whipsnake and their habitats to a less-than-significant level by requiring compensatory mitigation in the form of conserved lands for permanent impacts resulting from housing development and roadways, as well as for temporary impacts. Conserved lands should be protected in perpetuity under a legal instrument such as a conservation easement, be required to be managed in perpetuity through an endowment with an appointed land manager and be required to have a land trust named on the legal instrument as a beneficiary. CDFW recommends that priority for conserved lands be given to on-site locations for this Project. The IS/MND should also be revised to address cumulative impacts to the Alameda whipsnake from fragmentation of habitat, permanent loss of habitat and impacts from vehicle traffic on roadways.

Recommendation 3: CDFW also recommends the following avoidance and minimization measures be included in a revised IS/MND:

Open Trenches: Any open trenches, pits, or holes with a depth larger than one-foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (i.e. plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing large (i.e. deer) and small (i.e. snakes) from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, a Qualified Biologist or on-site personnel shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord.

Open Pipes Restriction: All pipes, culverts, or similar structures that are stored at the construction vertically or horizontally on-site for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation at the Project site by a Qualified Biologist or Biological Monitor.

Fence and Signpost Restriction: Any fencing posts or signs installed temporarily or permanently throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey. The Qualified Biologist or Biological Monitor shall be

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responsible for ensuring compliance with this measure throughout the course of the Project and shall inspect each post.

5.m

Western Bumble Bee; Section 4, Page 36

Issue: Mitigation measure Biological Resources 4 is insufficient to reduce Project impacts to western bumble bee to less-than-significant levels. Biological Resources 4 states that mitigation will be proposed and an ITP will be obtained if western bumble bee are identified during a single preconstruction survey conducted no more than 48 hours prior to vegetation removal or ground disturbance. A single preconstruction survey conducted at a time of year which is dependent upon Project activity rather than periods of bumble bee activity would be inadequate to conclude presence or absence of the species.

Western bumble bee are a candidate species for listing under CESA, and as such, are afforded the same protections as CESA-listed species (Fish and Game Code § 2608). Project activities such as vegetation removal, clearing, grubbing, and grading work on-site may result in direct mortality through crushing or filling of active bee colonies and hibernating bee cavities. Project development may result in indirect take through loss of suitable breeding and foraging habitats, and loss of native vegetation that may support essential foraging habitat.

Recommendation 4: CDFW recommends the following changes to mitigation measure Biological Resources 4. Please note that further guidance on habitat assessments and presence surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (<https://wildlife.ca.gov/Conservation/CESA>). Recommended changes are in **bold** and language recommended for removal is identified by ~~strikethrough~~.

Biological Resources 4: Prior to commencement of ~~ground disturbance or vegetation removal from the project site,~~ **ground disturbing activities, a qualified wildlife biologist shall perform a habitat assessment of the Project site and surrounding landscape to identify and map suitable nesting, foraging, and overwintering habitat. If suitable habitat is identified, a qualified wildlife biologist shall perform a focused preconstruction surveys of the project site for western bumble bee to determine the presence or absence of this species. The survey shall be conducted no more than 48 hours prior to vegetation removal or ground disturbance. To maximize probability of detection, a minimum of three focused surveys should be conducted during the colony active period (i.e., April through September) and when floral resources are in peak bloom. If any western bumble bee are identified or if surveys are not conducted and presence is presumed,** the biologist shall develop appropriate mitigation to protect the species and compensate for

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potential habitat loss. The mitigation shall be determined in consultation with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) and implemented to the satisfaction of those agencies. Incidental take permits shall be obtained from these agencies prior to the County issuing a grading permit.

Recommendation 5: CDFW also recommends the following avoidance and minimization measure be included in a revised IS/MND:

Construction Monitoring for Western Bumble Bee: If suitable nesting, foraging, or overwintering habitat is identified within the Project site during the habitat assessment, a biological monitor with experience conducting surveys for special-status bumble bee species shall be present onsite during vegetation or ground-disturbing activities that take place during any of the “Queen and Gyne Flight Period and Colony Active Period” (February – October).

COMMENT 3: Nesting Bird Impacts Avoidance

Nesting Birds; Section 4, Page 40

5.n

Issue: Mitigation measure Biological Resources 5 would not adequately reduce impacts to nesting birds to a less-than-significant level, as the proposed survey dates and radii would not adequately detect all nesting birds which may be impacted by Project activities. Following surveys, sufficient protective buffers and monitoring would also need to be implemented to fully avoid impacts to nesting birds.

The IS/MND identifies multiple bird species with potential to occur within the Project area, including white-tailed kite and golden eagle. Though suitable nesting habitat is absent from the Project site, the IS/MND identifies large trees adjacent to the Project site which may provide suitable nesting habitat. Construction activities, including grading, ground disturbance, operation of heavy machinery, and the movement of workers, may generate noise or visual disturbances which may in turn result in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young.

Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the federal MBTA is a violation of Fish and Game Code (§ 3503, 3503.5, 3513). Consistent with CEQA Guidelines, Section 15380, the status of the white-tailed kite and golden eagle as Fully Protected species (Fish & G. Code § 3511) qualifies them as endangered, rare, or threatened species under CEQA.

Recommendations: CDFW recommends the following changes to Biological Resources 5 in order to mitigate impacts to less-than-significant levels.

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Recommended changes are in **bold** and language recommended for removal is identified by ~~strikethrough~~.

5.n

Biological Resources 5: If project grading or construction is scheduled to take place between **February 1 – September 15**, a preconstruction survey of the project vicinity for nesting birds shall be conducted by a qualified biologist experienced with the nesting behavior of bird species of the region. The survey shall determine if active nests are present within the planned area of disturbance or within ~~200 feet of the construction zone for passerines and within 500 feet for raptors~~ **250 feet for non-raptors and 1,000 feet for raptors**. The survey shall be performed no more than 14 days prior to the commencement of construction activities, **and a second focused survey shall be conducted within 48 hours prior to construction activities** that would occur during the nesting/breeding season. If ground disturbance activities are delayed following a survey, then an additional preconstruction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. **If a lapse of Project-related activities of seven days or longer occurs, another focused survey will be conducted before Project activities can be reinitiated.** Copies of the preconstruction survey(s) shall be submitted to the Contra Costa County Department of Conservation and Development, Community Development Division (CDD) and the California Department of Fish and Wildlife.

If an active bird nest is found within the survey radii, species-specific measures shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. ~~If an active nest is present, a minimum exclusion buffer of 100 feet shall be maintained during construction activities for passerine birds, and a minimum of 200 feet for raptors.~~ **A protective buffer shall be established by a qualified biologist** distance shall be determined by a competent biologist based on the site conditions—such as whether the nest is in a line of sight of the construction—and the sensitivity of the birds nesting. **Typical protective buffers are as follows: 1) 1,000 feet for large raptors such as buteos, 2) 500 feet for smaller raptors such as accipiters, and 3) 250 feet for passerines. No Project personnel or equipment shall be allowed to enter the protective buffer until the Qualified Biologist determines that the young have fully fledged and will no longer be adversely affected by the Project.**

A Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings, and the nest site(s) shall be monitored by the biologist periodically to see if the birds are stressed by the construction activities and if the protective buffer needs to be increased. The

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perimeter of the nest setback zone shall be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, shall be submitted prior to initiation of grading in the nest-setback zone. The qualified biologist shall serve as a biological monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. All buffers shall be shown on all sets of construction drawings.

5.o

II. Editorial Comments and/or Suggestions

The IS/MND indicates that there will be no impact to riparian habitat or other sensitive natural communities identified by CDFW. However, two ephemeral drainages are identified on the subject property and potential impacts to these drainages are analyzed in conjunction with analysis of impacts to two potential seasonal wetlands identified within the property. Please be advised that ephemeral drainages can support sensitive natural communities and should be treated as one if botanical surveys have not been performed to identify their absence. Please also be advised that LSA Notification may be required for Project-related impacts to these features.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

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CONCLUSION

5.p

CDFW recommends that the IS/MND be revised to evaluate the potentially significant impacts above, identify any previously undisclosed impacts, and identify enforceable mitigation measures to reduce identified significant impacts to a level of less-than-significant with mitigation. CDFW appreciates the opportunity to comment on the IS/MND to assist Contra Costa County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Torrey Soland, Environmental Scientist, at (707) 266-2878 or Torrey.Soland@wildlife.ca.gov; or Sara Kern, Senior Environmental Scientist (Supervisory), at (916) 531-4465 or Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

B77E9A6211EF486

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024110934)

REFERENCES

Moraga Orinda Fire Protection District. (n.d.) *Exterior Wildfire Hazard Abatement Requirements*. <https://www.mofd.org/our-district/fuels-mitigation-fire-prevention/abatement-requirements-english>.

USFWS. (2011, September). Alameda Whipsnake (*Masticophis lateralis eurxanthus*) 5-Year Review: Summary and Evaluation.



RECEIVED on 01/15/2025 **CDSD23-09646**
By Contra Costa County
Department of Conservation and Development

TOWN OF MORAGA
PLANNING DEPARTMENT

January 15, 2025

Adrian Veliz, Senior Planner
Department of Conservation and Development
Community Development Division
30 Muir Road, Martinez, CA 94553

Sent via email to: Adrian.Veliz@dcd.cccounty.us

Re: TOWN OF MORAGA COMMENTS ON THE CAMINO PABLO SINGLE-FAMILY RESIDENTIAL SUBDIVISION, REZONE, GENERAL PLAN AMENDMENT AND DEVELOPMENT PLAN MITIGATED NEGATIVE DECLARATION

6.a

This letter provides the Town's comments on the Camino Pablo single-family residential subdivision, rezone, general plan amendment and development plan ("project") mitigated negative declaration (MND) dated November 26, 2024. On December 4, 2024, the Town of Moraga received correspondence that the project MND had been circulated for public comment. On December 13, 2024, the Town received additional correspondence with a revised MND, which included an extended comment period to January 15, 2025.

A similar version of this project had been previously submitted to the Town of Moraga in April of 2015. It included applications for a general plan amendment, pre-zoning (zoning code amendment), vesting tentative subdivision map, conceptual development and general development plan and grading permit. These were identified as "Phase 1" approvals. The project would have also been required to obtain a Local Agency Formation Commission (LAFCO) annexation approval, before coming back to the Town for approval of the precise development plan, final subdivision map and design review. However, on March 21, 2021, the Moraga Planning Commission denied the Phase 1 approvals. This decision was appealed by the applicant to the Moraga Town Council, where on August 25, 2021, they heard and denied the appeal and the project. The findings for denial are in the attached Town Council Resolution No. 46-2021.

The project site is located within the Town of Moraga sphere of influence. The Town has designated the northern portion of the site, approximately 16 acres, as Open Space and the southern portion of the site, approximately 7.9 acres, as one dwelling unit per acre. The proposed density of the project submitted to the County is 1.95 residential units per acre, which exceeds the one dwelling unit per acre density designated by the Town for the portion of the property proposed for residential development.

6.b Moraga General Plan Policy G-4.6 states: *“Consider annexation of areas within Moraga’s sphere of influence where urban services such as sewer and water will be provided.”* As the project proceeds under the County, prior to public hearings, Town staff requests consultation with County staff to discuss potential for and logistics of annexation of the project, and potentially other properties within the sphere of influence. All services for this project will likely be provided by, or require access through the Town, as detailed in the comments of this letter.

Town staff has reviewed the MND and has the following comments:

6.c 1. Aesthetics: While the Town understands that this development is being processed under County regulations, the Town would like to highlight the following Town regulations.

- a. The Town of Moraga General Plan designates Camino Pablo as a scenic corridor (Policy CD-3.1). Within the Town, development within 500 feet of a scenic corridor is subject to the development guidelines within Moraga Municipal Code (MMC) Chapter 8.132 – Scenic Corridors.
- b. Development within the Town is subject to conformance with the [Town of Moraga Design Guidelines](#). Chapters relevant to this project are 3 (Applicable to All Development), 4 (Protect Ridgeline and Hillside Areas), 5 (Complement Existing Landscaping) 6 (Enhance Town’s Scenic Corridors), 7 (Minimize the Impacts of Development), and 8 (Thoughtfully Design Single-Family Residential Neighborhoods)

6.d 2. Noise: The Town’s grading ordinance prohibits grading activities, per MMC §14.04.033.C *“On weekends and town of Moraga holidays and outside the hours of eight a.m. to five p.m. Monday through Friday except where required to abate an emergency situation as specified in Section 14.04.032(C) of this chapter.”* As noise impacts will have an impact on the Town, this mitigation measure is requested to apply to grading and construction activities on the site.

6.e 3. Public Services:

- a. Police Protection: The MND states that “Police protection and patrol services in the project vicinity are provided by the Contra Costa County Sheriff’s Office.” While this is technically correct, in practice, if there were an incident within the project that required police services, the Moraga Police Department in most scenarios would be the first to respond, which will have an impact on the Moraga Police Department. The MND did not address the potential impacts to the Town finances or mitigations of these impacts.
- b. Parks: The MND states that project “has ample access to existing parks, including Rancho Laguna Park” which is owned and maintained by the Town of Moraga. The MND did not address the potential impacts to the Town finances or mitigations of these impacts.

6.f 4. Transportation:

- a. Any changes to Camino Pablo shall be reviewed and permitted by the Town.
- b. The developer will be required to obtain an encroachment permit from the Town of Moraga for work within the Town owned right-of-way.
- c. The developer will be required to obtain a hauling permit from the Town of Moraga if their grading generates more than 500 CY.
- d. At this time, the Town does not support changing the roadway designation of Camino Pablo from “arterial” to “collector” as proposed, as it conflicts with the Town’s General Plan and other documents. Further evaluation and study(s) would be required to do so. **Instead**
 - i. As identified by the **Camino Pablo Subdivision Transportation Analysis**; Implement speed reduction measures on Camino Pablo south

- of Sanders Ranch Road to the southern terminus to reduce the 85th percentile travel speed to 25 miles per hour to the satisfaction of the Town
- ii. Or study the impacts to parking removal in this area to provide a Class II bike facility.
 - e. Consider installing all-way stop-control at the intersection of Tharp Drive and Camino Pablo with crosswalks across all legs of the intersection.

6.g 5. Emergency Evacuation:

- a. The Town of Moraga has an emergency operations plan and evacuation zones that would apply to the projects future residents, which can be found at the following link: <https://www.moraga.ca.us/255/Emergency-Operations-Plan>.

Please contact me if you have any questions via email at bhorn@moraga.ca.us, or by phone at (925) 88-7044.

Sincerely,



Brian Horn
Principal Planner

CC: Scott Mitnick, Town Manager

Attachment:

- Town Council Resolution No. 46-2021



Yana Garcia
Secretary for
Environmental Protection



Department of Toxic Substances Control

Katherine M. Butler, MPH, Director
8800 Cal Center Drive
Sacramento, California 95826-3200
dtsc.ca.gov



Gavin Newsom
Governor

SENT VIA ELECTRONIC MAIL

September 12, 2025

Adrian Veliz
Senior Planner
Contra Costa County Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
adrian.veliz@dcd.cccounty.us

RE: MEMORANDUM FOR MITIGATED NEGATIVE DECLARATION FOR CAMINO PABLO SINGLE-FAMILY RESIDENTIAL SUBDIVISION REZON GENERAL PLAN AMENDMENT AND DEVELOPMENT PLAN DATED SEPTEMBER 4, 2025, STATE CLEARINGHOUSE NUMBER [2024110934](#)

Dear Adrian Veliz,

The Department of Toxic Substances Control (DTSC) reviewed and submitted a [Comment Letter](#) on the Mitigated Negative Declaration (MND) for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment, and Development Plan on December 6, 2024. Since DTSC's recommendations were not addressed in the previous MND, DTSC would like the comments reflected and recorded on the updated proposed MND. DTSC respectfully requests those comments be reflected on the record.

Thank you for your assistance in protecting California's people and environment from the harmful effects of toxic substances. If you have any questions or would like clarification on this memorandum or DTSC's comments for the Project, please respond to this letter or via our [CEQA Review email](#) for additional guidance.

Adrian Veliz
September 12, 2025
Page 2

Sincerely,

Tamara Purvis

Tamara Purvis
Associate Environmental Planner
HWMP - Permitting Division – CEQA Unit
Department of Toxic Substances Control
Tamara.Purvis@dtsc.ca.gov

cc: (via email)

Governor's Office of Land Use and Climate Innovation
State Clearinghouse
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Scott Wiley
Associate Governmental Program Analyst
HWMP - Permitting Division – CEQA Unit
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Scott.Wiley@dtsc.ca.gov

From: [Navarro, Karina](#)
To: [Adrian Veliz](#)
Cc: [Rehnstrom, David](#); [Mulhauser, Sandra](#); [Navarro, Karina](#)
Subject: RE: Notice of Public Review and Intent to Adopt a Proposed Mitigated Negative Declaration for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment and Development Plan, Moraga
Date: Friday, September 26, 2025 1:07:38 PM
Attachments: [wdpd25_153_Camino Pablo Single-Family Residential Subdivision Rezone General Plan Amendment and Development Plan.pdf](#)

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[This message has been approved by the Manager of Water Distribution Planning - David J. Rehnstrom](#)

Dear Mr. Veliz:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Initial Study/Mitigated Negative Declaration for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment and Development Plan located in the Town of Moraga. EBMUD commented on an IS/MND for the Project on December 17, 2024. EBMUD's original comments still apply regarding water service, geology, biology, and water conservation. Please see attached document for EBMUD's original and additional comments.

If you have any questions concerning this response, please contact Sandra Mulhauser, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-7032.

Sincerely,
David J. Rehnstrom
Manager of Water Distribution Planning

September 26, 2025

Adrian Veliz, Senior Planner
Contra Costa County Department of Conservation & Development
30 Muir Road
Martinez, CA 94553

Re: Notice of Public Review and Intent to Adopt a Proposed Mitigated Negative Declaration for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment and Development Plan, Moraga (CDSD23-09646/CDRZ23-03270/CDGP21-00004/CDDP23-03012)

Dear Mr. Veliz:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) for the Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment and Development Plan (Project) located in the Town of Moraga (Town). EBMUD commented on an IS/MND for the Project on December 17, 2024. EBMUD's original comments (see Attachment) still apply regarding water service, geology, biology, and water conservation. EBMUD has the following additional comments.

GENERAL

9.a

On page 88 of the IS/MND, under Utilities and Service Systems, a) Sanitary Sewer Service section, it states that the 13 single-family residences and 11 attached ADUs would be served by septic systems "in the event the project site is not annexed into EBMUD". The Project site would not be annexed into EBMUD for wastewater service, as the Project site is outside of the EBMUD wastewater service boundary. References to EBMUD in the Sanitary Sewer Service section of the IS/MND should be removed.

If you have any questions concerning this response, please contact Sandra Mulhauser, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-7032.

Sincerely,



David J. Rehnstrom
Manager of Water Distribution Planning

DJR:RT:

wdpd25_153_Camino Pablo Single-Family Residential Subdivision Rezone General Plan Amendment and Development Plan.doc

Adrian Veliz, Senior Planner
September 26, 2025
Page 2

Attachment: Previous Comment Letter (December 17, 2024)

cc: Benoit McVeigh
Dk Engineering
1931 San Miguel Drive
Walnut Creek, CA 94596

From: [JJ](#)
To: [Adrian Veliz](#)
Subject: Camino Pablo Single-Family Residential Subdivision - Opposition (CDS23-09646/CDRZ23-03270/CDGP21-00004/CDDP23-03012)
Date: Wednesday, September 17, 2025 1:07:32 PM

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Dear Mr. Veliz,

The proposed development planned for 0 Camino Pablo in Moraga CA will negatively impact our community. Our neighborhood is congested enough with an infrastructure that cannot support this type of development. In reality the town is small and not meant to be a large one. There is legitimate concern that in the event an evacuation is ever needed, residents will not be able to escape with the one main road leading out. There are plenty of other places in the Bay Area that can adequately meet the needs of developer - Lamorinda just isn't one of them.

Thank you for your time.

Sincerely,

Concern resident of Moraga

10a

From: [Larry Varellas](#)
To: [Adrian Veliz](#)
Cc: pt.tringale@gmail.com; "Robyn Varellas"
Subject: 0 Camino Pablo Proposed Residential Development
Date: Monday, September 22, 2025 10:49:18 AM

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Adrian- this note is in regard to the proposed Residential Development beginning at the corner of Tharp and Camino Pablo in Moraga, Assessors parcel number 258-290-029. I live with Robyn Varellas at 1898 Camino Pablo in Moraga, residents of Moraga since 1988.

Robyn and I strenuously object to this project for all the reasons already stated by others:

- 11.a • Unnecessary and damaging impact to the environment and natural ecosystem in this area
- 11.b • Dangerous added risk to wildfire escape routes for any resident beyond Tharp on or off Camino Pablo
- 11.c • Destroying the natural beauty of the hills in and around the project locations

The City has objected to this project for good reasons. We strenuously object as well. Don't approve this.

Robyn and me are happy to provide more observations if needed.

Larry Varellas
lpvarellas@gmail.com
925 437 4109

From: [Philip Tringale](#)
To: [Adrian Veliz](#)
Cc: [Philip Tringale](#)
Subject: Comments to Neg Dec
Date: Wednesday, September 10, 2025 1:30:54 PM
Attachments: [Comments to Neg Dec.9.10.25.docx](#)

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Good afternoon Adrian Veliz,

Attached and in response to your September 3, 2025 letter, please find my comments to the Proposed Camino Pablo Development in Contra Costa County/Moraga.

I would appreciate your confirming receipt of my comments that are submitted for consideration by the County Board of Supervisors.

Thank you,
Phil Tringale
pt.tringale@gmail.com

To: Contra Costa County; Dept of Conservation and Development

Attn: Adrian Veliz; 30 Muir Road; Martinez, CA 94553

adrian.veliz@dcd.cccounty.us

From: Philip T Tringale, Homeowner 2175 Sky View Court Moraga (unincorporated Contra Costa County)
pt.tringale@gmail.com

Date: September 9, 2025

Subject: Public Comments to Proposed Mitigated Negative Declaration for Camino Pablo Subdivision
Rezone, General Plan Amendment; Assessor's Parcel Number 258-290-029

Dear Adrian Veliz,

My name is Philip Tringale, and I have owned the home at 2175 Sky View Court in Moraga with my wife since the home was built in 1998. We currently live in Lafayette and intend to have one of our family members reoccupy the Moraga home that is currently leased to a family with children.

I am a Senior Consultant with a major international engineering firm. I have a PhD in Civil Engineering and a Master in Engineering from UC Berkeley as well as a second Master of Civil Engineering Degree focusing on Engineering Geology and a Bachelor Degree in Civil Engineering. During my extensive career practicing throughout the Bay Area and the United States, I have also testified in State and Federal Court as a designated expert on engineering and environmental matters. I am registered professional engineer in the State of California. For this public response, I am commenting as a private citizen and not yet on behalf of any firm or a specific client or group.

As shown on numerous site plans for the proposed development, the western property boundary of our home and others on the western portion of Sky View Court forms the eastern boundary of the proposed major construction zone. The applicant's planned massive excavation, steep cuts, ridgeline altering, excessive filling, and prolonged site preparation activities clearly result in establishing that area of Sky View Court and its residents as one of, if not the most, highly sensitive receptor areas for this proposed project. Residents on Camino Pablo adjacent to and in the vicinity of the proposed construction site likewise would clearly be classified as sensitive receptors. Numerous other residents throughout Moraga also would be directly and adversely affected by the proposed development as clearly demonstrated when this plan was initially proposed several years ago.

I received the September 3, 2025 NOTICE OF PUBLIC REVIEW AND INTENT TO ADOPT A PROPOSED MITIGATED NEGATIVE DECLARATION for the subject project. Based on my review of the mitigated negative declaration and numerous other documents, I have several initial comments and opinions as follows:

1. The proposed project, presented multiple times over the past several years, has been consistently and strongly opposed by unincorporated Contra Costa County residents in the Knoll and Sky View Sphere of Influence, by numerous nearby Town of Moraga residents, and by many others throughout the area; numerous private and public meetings were held with the applicant, with the Carr Ranch parcel owners, with residents in the affected unincorporated portion of Contra Costa County, and with the Town of Moraga; numerous significant flaws with the proposed development were identified with no or limited meaningful response from the applicant or any regulatory, governmental or administrative body; relevant documents are available as examples of opposition positions at that time; many of those opposed are now regrouping to again formally oppose this proposed ill-conceived development.
2. Given the extended period of time since any meaningful correspondence has occurred, many constituents believed that the County, Town of Moraga, the developer, and the Carr Ranch parcel owners dropped plans to further consider the proposal to develop the property; however, it is apparent that this is not the case; it is also apparent that the developer has now re-instituted the process to develop the Carr Ranch parcel without attempting to legally and fully address the many significant adverse consequences to adjacent residents as well as those in the affected vicinity; it also appears that the county has now had to proceed down this unfortunate path using precious limited resources despite knowing its residents and nearby constituents' strong opposition and valid objections;
3. Specifically, regarding the most recent Proposed Mitigated Negative Declaration, there are clearly numerous and substantial deficiencies, errors, and incomplete areas of study that are readily apparent throughout the document and its appendices such as:
 - a. The revised project is documented to be large in scope and includes language concluding there are anticipated adverse impacts to sensitive receptors; the most recent and prior documents reflect improperly conducted analyses that specifically exclude highly sensitive receptors; mitigations proposed will result in Significant Impacts and not less than Significant;
 - b. The revised plan now includes not only large dwellings but also includes additional accessory dwelling units further increasing impacts on the proposed lots;
 - c. Despite changes in the scope of the overall and individual lot developments from the original plan, the report incorrectly relies on outdated engineering and other studies prepared many years ago anticipating the original scope and defined conditions at that time;
 - d. The reports clearly state that the greatest impacts will be to existing sensitive receptors in nearby/adjacent residences; details regarding those impacts are explicitly EXCLUDED from the report with a baseless excuse that there are only a "few", and the applicant does not even attempt to specifically identify or quantify the number or classification of those sensitive receptors; to imply that "other than nearby residences, there are no sensitive receptors in the immediate vicinity" is technically indefensible and negligent with a

deliberate consequence of inappropriately being self-serving to the applicant as well as being clearly detrimental to the nearby residents;

- e. The report documents a significant adverse air quality impact especially to those very close to the massive earth moving and construction operations given the prolonged major site grading and preparation and the movement of over 60,000 cubic yards of soil over a period of even more years than originally proposed;
- f. The report reflects the fact that there will be health impacts to sensitive receptors near the proposed development, yet it provides no information on the cumulative health effects to the highly sensitive receptors; the applicant does not identify, mitigate, or reasonably acknowledge the absolute liability associated with causing adverse cumulative health and other impacts to existing residents that will result from the massive earth work and construction project as proposed; there are children who would be clearly harmed;
- g. The report does not include an essential critical analysis or mitigation of the substantial nuisance and other effects to existing sensitive receptors within the immediate zone directly impacted by the massive and prolonged excavation, filling, and construction operations;
- h. The report and its appendices clearly are inconsistent with current risk analysis standards/considerations, especially with regard to AIR, NOISE, ODOR, VIBRATION, AND VISUAL IMPACTS, all of which are clearly shown to result in adverse impacts, especially to the existing residents at most risk yet blatantly excluded from the analyses;
- i. The unacceptable effects predicted from noise are documented to be expected and to be in violation, yet the applicant ignores any anticipated violation and still proposes to proceed even with inducing the considerable noise level that is planned;
- j. The applicant attempts to depict the existing and post-development visual impacts along Camino Pablo but IGNORES THE CRITICAL AND UNACCEPTABLE VISUAL IMPACT ALONG THE EAST SIDE OF THE PROPOSED DEVELOPMENT where steep cuts and elevated fill severely alter the natural landscape and identified ridgelines in this special Hillside Area; instead the report includes only a portion of the public visual impact and does not include private residence impact along the eastern border because of the obvious unacceptable impact to existing residences; the report documents the impact to those private homes will be substantial and acknowledges "shadows" in plans from the ill-fated development;
- k. The report identifies numerous landslides on the property as well as specially-protected drainage features and does not address the unknown depths of landslides on the property, which is a critical omission;
- l. The report does not consider the EARTHQUAKE FAULT that has been clearly mapped to transverse the property as documented by one of the applicant's previous consultants; instead, subsequent documents are contradictory and vaguely propose to deal with the

presence of a fault if evidence of faulting arises during construction, which appears technically indefensible;

- m. The overall conclusion to the report stating there are no significant adverse impacts is not only misleading, but also technically incorrect and appears to intentionally misinform the reader given the apparent deliberate exclusion of many critical and necessary components. When sensitive receptors are not included in the analyses resulting in a clear and unwarranted benefit to the applicant in the approval process, the analyses cannot be valid or defensible and result in the appearance of negligent or unethical intent; upon review, it appears that the substantial health, nuisance, and other adverse impacts to sensitive receptors have been specifically excluded in all the analyses to misinform and sway the reader to the wrong conclusion.

The proposed mass excavation, ridgeline altering, filling, and development project appears dependent on the approval by the county and others. As all those opposed to this flawed proposed development now regroup and finalize its unified and justified actions to prevent undue harm, I conclude with the statement that this plan as presented REFLECTS SUBSTANTIAL ADVERSE IMPACTS TO HUMAN HEALTH AND THE ENVIRONMENT. Any consideration of Adopting the Proposed Mitigated Negative Declaration is not technically defensible and cannot be justified especially given that the document is based on incomplete and inaccurate assumptions and analyses.

Please know that there will be substantial and continued opposition to this proposed development. This effort will likely involve significant technical expertise in engineering, geology, earth sciences and quantitative risk assessment, as well as any required administrative, medical and legal opposition considered necessary to protect the Human Health of those potentially impacted and the environment.

I trust that the county and others will dutifully represent its constituents, will concur with the findings presented herein as well as other consistent findings, will recognize the reports' deficiencies and misinformation, and will reject the applicant's proposal to pursue development in this highly sensitive and environmentally special area.

If you have any questions, need any additional information, or would like to discuss any element of this current or any previous correspondence, please contact me at the email address below.

Thank you for your consideration,

Philip Tringale, Ph.D., P.E.

pt.tringale@gmail.com

From: [Deanna Sheehan](#)
To: [Adrian Veliz](#)
Subject: Tharp Resident
Date: Tuesday, September 23, 2025 5:42:00 PM

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Dear Mr Veliz,

As a resident of Tharp Drive I am in complete opposition to the proposed development for the open hills on South Camino Pablo. The impact on our neighborhood from the adverse increase in traffic, increased infrastructure demands, noise, poor air quality, health and safety issues as well fire department concerns will be detrimental.

Please do not allow this development to proceed.

Deanna Sheehan
431 Tharp Drive
Moraga, Ca 94556
925-212-6766

13a

From: [Chris Whittome](#)
To: [Adrian Veliz](#)
Cc: [Supervisor John Gioia](#); [Supervisor Burgis](#); [Supervisor Carlson](#); [Supervisor Scales-Preston](#)
Subject: Camino Pablo Single-Family Residential Subdivision
Date: Wednesday, September 24, 2025 12:15:47 PM

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Dear Mr Veliz,

I am a resident living in Sanders Ranch at No. 2 Peralta Court, Moraga, and I would like to express my objection to the proposed development in Camino Pablo.

Following multiple failed attempts to gain approval from the Town of Moraga, which formally denied the project in 2021, the developer has now brought this flawed proposal to Contra Costa County for review.

This proposed plan poses several **detrimental effects** on our neighborhoods. It will significantly impact:

Hundreds of residents: Especially those who travel along Camino Pablo to schools and rely on vital escape routes.

Neighborhood quality of life: By increasing traffic, noise, and air pollution.

Infrastructure: Demanding increased resources.

Health and Safety: Creating significant related risks.

I am also concerned that the hill behind the proposed development poses a significant risk of landslides and will become more prone to landslides as a result of this development.

Please consider these points at your next meeting. Thank you for taking the time to review these concerns.

Yours sincerely,

Chris Whittome

14.a

From: [Ralph Osterling](#)
To: [Adrian Veliz](#)
Subject: Re: Proposed Camino Pablo Development
Date: Friday, October 3, 2025 12:08:22 PM
Attachments: [ROC-Logo.png](#)
[image001.png](#)
[image002.png](#)

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- 15a Adrian, thank you for calling this morning and welcome back! My concerns are:
- 15b ~Visual analyses does not address the blank wall in Section AA in front of lot 13 area.
- 15c ~The drain in front of Lot 13 frequently overflows, with the added flow is it adequate?
- 15d ~The text speaks of the rolling hills now proposed to be lowered. Does the Visual address that?
- 15e ~The bio-retention pond will not be a vector problem?
- ~For the parcels (C&D?) dedicated to the City, have they accepted them and what are the permanent landscape measures and maintenance?
- Thank you for added my name to the BOS notification list.
- Respectfully,
- Ralph

Ralph Osterling

President

Registered Professional Forester No. 38

ralph@ralphosterling.com

Ralph Osterling Consultants, Inc.

346 Rheem Blvd.

Suite 104

Moraga, California

94556

(650) 573-8733 ph

(877) 855-1059 fax

(415) 860-1557 cell

From: [Toyer Grear](#)
To: [Adrian Veliz](#)
Cc: [Drury, Richard](#)
Subject: Camino Pablo Single-Family Residential Subdivision Rezone, General Plan Amendment and Development Plan, County File No. CDSD23-09646/CDRZ23- 03270/CDGP21-00004/CDDP23-03012. Mitigated Negative Declaration
Date: Wednesday, October 1, 2025 10:09:54 AM
Attachments: [2025.10.01.Camino Pablo MND ComLtr-w exhibits.pdf](#)

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Dear Mr. Veliz,

Attached please find correspondence written on behalf of Save Camino Pablo ("SCP") and its members living and working in and around the Town of Moraga and unincorporated Contra Costa County regarding the Mitigated Negative Declaration ("MND") for the Camino Pablo Single-Family Residential Subdivision Rezone, General Plan Amendment and Development Plan, County File No. CDSD23-09646/CDRZ23 3270/CDGP21-00004/CDDP23-03012.

Should you have any questions, please feel free to contact our office.

Sincerely,
[Toyer Grear](#)
Office Administrator / Paralegal
Lozeau Drury, LLP
1939 Harrison Street, Suite 150
Oakland, CA 94612
510-836-4200 ofc
510-607-8237 cell
510-836-4205 fax
email: toyer@lozeaudrury.com



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
richard@lozeaudrury.com

BY E-MAIL AND US MAIL

October 1, 2025

Adrian Veliz, Senior Planner
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Adrian.Veliz@dcd.cccounty.us

**RE: Camino Pablo Single-Family Residential Subdivision Rezone, General Plan
Amendment and Development Plan, County File No. CDS23-09646/CDRZ23-
03270/CDGP21-00004/CDDP23-03012.
Mitigated Negative Declaration**

Dear Mr. Veliz:

I am writing on behalf of Save Camino Pablo ("SCP") and its members living and working in and around the Town of Moraga and unincorporated Contra Costa County regarding the Mitigated Negative Declaration ("MND") for the Camino Pablo Single-Family Residential Subdivision Rezone, General Plan Amendment and Development Plan, County File No. CDS23-09646/CDRZ23-03270/CDGP21-00004/CDDP23-03012, including the construction of 13 single-family residences with 11 accessory dwelling units (ADUs) on a 23.9 acre project site, located immediately outside the Town of Moraga. ("Project"). Members of the community have voiced strong opposition to the Project for several years, gathered even more names for a petition in support of stopping this Project, and have retained legal counsel given the Project's many fatal flaws including its inconsistency with established policies and legal precedencies as well as its inconsistency with the General Plan itself.

As discussed below, there is substantial evidence supporting a fair argument that the Project may have significant and unmitigated impacts on biological resources, human health, air quality, and aesthetic resources, necessitating the preparation of an EIR. SCP respectfully requests that staff address these shortcomings in an EIR and circulate that EIR for public review and comment.

PROJECT DESCRIPTION

The Camino Pablo Single-Family Residential Subdivision, Rezone, General Plan Amendment, and Development Plan project includes Major Subdivision application CDS23-09646. Rezone application CDRZ23-03270, General Plan Amendment application CDGP21-00004, and Development Plan application CDDP23-03012, to allow development of the southern 7.9 acres of the 23.9-acre project site consisting of a residential subdivision of 13 single-family

residences with attached accessory dwelling units (ADUs) incorporated into 11 of the residences. The remaining northern 16.0 acres of the site would remain as agricultural open space.

The project site is a legal lot in the AL Agricultural Lands, General Plan land use designation. The applicant has submitted a Major Subdivision application to create an 18-lot subdivision, including 13 residential lots (Parcels 1 through 13), open space Parcel A, landscape Parcels B and C, and street Parcels D and E. Parcels 1 through 13 and Parcels B through E encompass the proposed residential development on the southern portion of the site. Parcel A is the northern 16.0 acres of the site that would remain as open space. As part of the project, Parcel A would be redesignated from its present AL General Plan designation, to a Resource Conservation (RC) designation, and this portion of the property would be deed restricted to prevent future urban development thereon.

To allow the Major Subdivision to proceed the applicant requests a General Plan Amendment to redesignate the southern 7.9 acres as RL Residential–Low Density to allow the development of 13 single-family residences on this portion of the site. The applicant also requests that the County Rezone the southern 7.9-acre portion of the project site from the A-2 General Agricultural District to a P-1 Planned Unit District and has submitted a Development Plan application for the P-1 District to allow development of 13 one- and two-story detached single-family residences on individual lots. The lots would range in size from 15,368 square feet to 27,827 square feet, with an average lot size of approximately 19,969 square feet. Attached ADUs would be included in 11 of the homes, while Parcels 7 and 8 would not include an ADU. The 7.9-acre southern portion would have a net development area of 6.65 acres (without street Parcels D and E) with a resultant net density of 1.95 residential units per acre, which would be within the range of 1-to-3 dwelling units per net acre density range for the RL General Plan land use designation.

The applicant expects project construction to last for a total of 32 months, including 14 months for grading, infrastructure installation, and building pads, and 18 months for construction of the proposed homes. The homes would range in size from 3,463 square feet to 4,474 square feet, not including garages or porches. The ADUs would all consist of one-bedroom units with separate kitchen/living/dining areas, ranging in size from 920 square feet to 1,117 square feet.

LEGAL STANDARD

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-20.) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code [“PRC”] § 21068; see also 14 CCR § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t v. Cal. Res.*

Agency (2002) 103 Cal.App.4th 98, 109.)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens, supra*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.)

16.c

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (PRC § 21080(d); see also, *Pocket Protectors, supra*, 124 Cal.App.4th at 927.) An MND instead of an EIR is proper only if project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and (are these periods intentional?). . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331 [quoting PRC §§ 21064.5, 21080(c)(2)].) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-05.)

An EIR must be prepared rather than an MND “whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.” (*No Oil, Inc. v City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under this “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (14 CCR § 15064(f)(1); *Pocket Protectors, supra*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors, supra*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental

16.c impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zishcke, Practice Under CEQA, §6.29, pp. 273-74.) The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review." (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

DISCUSSION

I. The MND Fails to Accurately Describe the Project's Environmental Setting.

CEQA requires the lead agency to describe the "environmental setting" of the Project. (CEQA Guidelines §15063(d)(2); *Mejia v. City of Los Angeles*, 130 Cal. App. 4th 322 (2005).) The "environmental setting" is defined as "the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (Guidelines, § 15360; see § 21060.5; *Lighthouse Field Beach Rescue v. City of Santa Cruz*, 131 Cal. App. 4th 1170, 1192 (2005).)

16.d The MND fails to accurately describe the Project's environmental setting with respect to special status species. A peer review prepared by Wood Biological Consulting in 2015 concluded that the Project site may provide habitat for at least 11 special status plant species, *Blepharizonia plumosa*; *Centromadia parryi* ssp. *Congdonii*; *Holocarpha macradenia* (Fed Endangered, 1B.1); *Navarretia nigelliformis* ssp. *radians* (1B.2); *Leptosiphon acicularis* (4.2); *Balsamorhiza macrolepis* (1B.2); *Eriogonum truncatum* (1B.1); *Lasthenia conjugens* (Fed. Endangered, 1B.1); *Madia radiata* (1B.1); *Sanicula saxatilis* (1B.2); *Androsace elongata* ssp. *acuta* (4.2). (Exhibit A, p. 4). Wood noted that *Dichondra donelliana* was detected on the Project site. (Exhibit A, p. 5). Reports prepared subsequent to the 2015 Wood report fail to adequately address the critical conditions identified in the Wood report.

However, the MND only discusses three special status plant species: Bent-Flowered fiddleneck (*Baraninaceae*); Mount Diablo Fairy-Lantern; and Diablo helianthella. (MND p. 24). The MND is inadequate for failing to discuss all 11 potential special status species.

"[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts. 'If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.' (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal. App. 4th 1544.) The failure of the MND to discuss the Project's impacts on these species itself creates a fair argument that the Project may have significant environmental impacts that must be analyzed in an EIR.

II. There is a Fair Argument that the Project May Have Significant Adverse Environmental Impacts that have not been Adequately Mitigated.

A. The MND Relies on Improper Deferred Mitigation for Several Admittedly Significant Impacts.

The MND admits that the Project may have significant adverse impacts related to biological impacts, wildfire risks and other impacts, but it relies on undefined, as yet undeveloped mitigation measures to address these impacts. CEQA prohibits reliance on deferred mitigation since it cannot be known if feasible mitigation is possible or enforceable.

“[M]itigation measure[s] [that do] no more than require a report be prepared and followed” do not provide adequate information for informed decisionmaking under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; Guidelines § 15126.4(a)(1)(B).) Feasible mitigation measures for significant environmental effects must be set forth in the CEQA document for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. Guidelines, section 15126.4(a)(1)(B) states: "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." "A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.)

1. Wildfire Risk.

The Project site is located within a Very High Fire Hazard Severity Zone. (Exhibit B (wildfire map). CEQA requires agencies to analyze “any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected.” (CEQA Guidelines § 15126.2(a); *California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 385.) This includes “any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., . . . wildfire risk areas).” (CEQA Guidelines § 15126.2(a) [explaining the types of significant impacts that should be evaluated in an EIR]; see also *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193 [recognizing potential for significant environmental effects when project brings new development to a wildfire-prone area]; CEQA Guidelines Appendix G, §§ IX(g), XX.)

16.e

The entire Project site has been designated as a Very High Wildfire Hazard Severity Zone (VHWSZ). (Exhibit B) The Project site features numerous wildfire risk factors, including grassland vegetation, steep slopes, and high wind speeds. Steep hillsides increase the rate of wildfire spread.

a. CEQA.

The Project is inconsistent with the County's General Plan, Health and Safety Element, HS-P7.1, which states as follows:

Deny entitlements for projects creating additional residential units (i.e., units not allowed by-right) in Very High Fire Hazard Severity Zones in the LRA or SRA. Discourage such projects in High Fire Hazard Severity Zones in the SRA and discourage them in the LRA unless adequate fire protection services are provided. (Contra Costa County 2045 General Plan – Health and Safety Element p. 9-3 3).

The Project's conflict with a policy of the duly adopted General Plan that is intended to protect the public health and environment, this inconsistency constitutes a significant impact as a matter of law that must be analyzed in an EIR. Where a local or regional policy of general applicability is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts); *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358.)

The staff apparently has taken the position that this inconsistency must be allowed because the wildfire hazard status was changed after the Project was "deemed complete." While this argument may or may not raise issues under General Plan law, it does not resolve the significant impact under CEQA, and the impact must be analyzed and mitigated under CEQA. Also, the Housing Accountability Act ("HAA") expressly requires full compliance with CEQA. (Gov. Code 65589.5(e) (Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code); see also, Gov. Code §65589.5(o).) So even if there are Housing Accountability Act issues, this in no way relieves the County of its duty to fully comply with CEQA. The HAA does not exempt projects from CEQA. (*Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1250, 1261-62, citing Gov.Code, § 65589.5, subd. (e) ["Nothing in this section shall be construed ... to relieve the local agency from ... complying with the [CEQA]".]) The HAA "pegs its applicability to the approval, denial or conditional approval of a 'housing development project' [citations], which, as previously

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noted, can occur only after the EIR is certified.” (*Schellinger Brothers v. City of Sebastopol, supra*, 179 Cal.App.4th at 1262.)

Furthermore, the County is not required to certify a mitigated negative declaration for the Project and may require a full EIR because the Project site is a Very High Fire Severity Zone and it provides habitat for special status species. The HAA provides at Gov. Code §65589,.5(j), as follows:

(J) Fails to adopt a negative declaration or addendum for the project, to certify an environmental impact report for the project, or to approve another comparable environmental document, such as a sustainable communities environmental assessment pursuant to Section 21155.2 of the Public Resources Code, as required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if all of the following conditions are satisfied:

(i) There is substantial evidence in the record before the local agency that the site of the housing development project is not located on either of the following:

(I) On a site specified in subparagraphs (A) to (C), inclusive, or subparagraphs (E) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 [this section includes habitat for special status species].

(II) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

16.i Furthermore, the MND relies on two inadequate mitigation measures to address wildfire risks. First the MND states, “the applicant is required to submit a Fire Protection Plan for review and approval by the MOFD [Moraga Orinda Fire Department] to address wildfire risks. Without the creation and implementation of a Fire Protection Plan, the project could exacerbate wildfire risks in the project vicinity, thereby causing potentially significant adverse environmental impacts.” (MND, p. 94). This is clearly improper deferred mitigation. The public has no way to review the fire plan before it is adopted. Indeed, the public has no way to determine if the fire plan will ever be developed, or if it will reduce fire risks to less than significant levels. CEQA demands that the fire plan must be developed prior to project approval so the public can review the plan, suggest additional mitigation, and assess the plan’s adequacy.

16.j The second fire mitigation proposed is for the Project proponent to propose to widen the two-lane Camino Pablo to a four-lane road. However, the MND admits that the widening proposal may or may not be approved. (MND, p. 93). Thus, this mitigation measure is uncertain, unenforceable and inadequate to mitigate project impacts. A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (14 CCR § 15364.) Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (14 CCR § 15126.4(a)(2).) The road-

widening mitigation is admittedly uncertain. It therefore may not be relied upon in an MND to reduce the Project's impacts to less than significant.

b. General Plan.

The Project may not be approved at all because it is inconsistent with the General Plan. As discussed above, The Project is inconsistent with the County's General Plan, Health and Safety Element, HS-P7.1, which flatly prohibits new residential development in Very High Fire Severity Zones. Since the Project is proposed to be constructed in a VHFSZ, it is inconsistent with the General Plan.

"The Legislature has mandated that every county and city must adopt a 'comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning.'" (*Citizens of Goleta Valley v. Bd. of Sups.* (1990) 52 Cal.3d 553, 570 (quoting Gov. Code §65300).) The Supreme Court has described the general plan as "the constitution for all future developments within the city or county." (*Id.* (internal quotation marks omitted).) The "propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." (*Id. DeVita v. Cty. of Napa*, 9 Cal. 4th 763, 803 (1995).) Central to the Court's review is whether the rezoning ordinance conflicts with "fundamental, mandatory and specific general plan policies." (*Old East Davis Neighborhood Assn. v. City of Davis* (2021) 73 Cal.App.5th 895, 909.) The nature of the policy and the nature of the inconsistency are critical factors for consideration. (*Id.*) The City in its discretion is free to weigh and balance non-mandatory policies, but it cannot ignore its clear and mandatory requirements. (*Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1342.)

HS-P7.1 is a mandatory provision that requires the County to "Deny entitlements for projects creating additional residential units (i.e., units not allowed by-right) in Very High Fire Hazard Severity Zones." Therefore, the County may not approve the Project and any such approval would be *ultra vires* and ineffective.

County staff contends that the Project is "grandfathered in" because at the time that the Project application was initially "deemed complete," the Project site was a High Fire Severity Zone, not a Very High Fire Severity Zone. However, staff ignores the fact that General Plan Policy HS-P7.1 states that the County must "Discourage such projects in High Fire Hazard Severity Zones." Thus, even in Very High Fire Zones, the County has discretion to deny Project approval.

The Housing Accountability Act ("HAA"), Gov. Code section 65589.5, requires the County to approve projects that are consistent with the General Plan or zoning at the time the project was first "deemed complete." (Gov. Code §65589.5(d)(5).) However, Subsection j of the HAA (Gov. Code 65589.5(j)), provides that the agency may deny a project that is consistent with the General Plan at the time it was first deemed complete if the project would pose a **risk to public health or safety** that cannot be adequately mitigated. It is hard to imagine a better example than a project, such as this one, that places families in the most severe fire hazard zone possible – with inadequate, uncertain and undefined mitigation. Subsection j provides as follows:

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

- (A) The housing development project would have a *specific, adverse impact upon the public health or safety* unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

Since approving this residential project in a Very High Fire Severity Zone will have specific, adverse impacts on public health or safety, the County must deny the Project.

2. Biological Impacts.

a. Plant Species.

The MND admits that “the project site provides potentially suitable habitat for bent-flowered fiddleneck, Mt. Diablo fairly lantern, and Diablo helianthella... If any of the special status plant species are present, construction activities could result in the loss of the special-status species, resulting in a potentially significant adverse environmental impact.” (MND pp. 24-25). While the MND recognizes that mitigation is required, the mitigation is: “If the survey finds any of the listed special-status plant species on the project site, the applicant shall consult with the USFWS and/or CDFW, as appropriate, to develop an approved mitigation plan to ensure that potential impacts to the identified species are less than significant.” (Id.) This is clearly deferred mitigation since the mitigation is undefined, unenforceable, and there is no way to assure that the mitigation will be adequate when and if it is developed after Project approval.

b. Alameda Whipsnake

The Project site provides “critical habitat” for the threatened Alameda Whipsnake. (MND p. 33). The MND states, “construction activities could injure or kill the snakes, which would be a significant, adverse impact to this Threatened species. Project construction activities could injure or kill individual whipsnakes, resulting in a potentially significant adverse environmental impact.” (MND, p. 34). The MND concludes that mitigation is necessary, but proposes, “If any whipsnakes

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are identified, the biologist shall develop appropriate mitigation to protect the species and compensate for lost Alameda whipsnake habitat.” This is clearly improper deferred mitigation. The public has no way to evaluate whether the mitigation will be adequate to mitigate the impacts to less than significant levels. Furthermore, the MND suggests that compensatory mitigation may be used. It is almost impossible to compensate for the loss of critical habitat, since by its nature, such habitat is rare and not readily available elsewhere. Offsite mitigation does not reduce impacts to less than significant because it does not create new habitat to compensate for the habitat that is destroyed, it merely sets aside pre-existing habitat. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 610–611, 614–626.)

c. Western Bumblebee.

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The MND concludes that the Project may have impacts on the protected Western Bumblebee. (MND, p. 38). The MND states, “project construction activities could destroy burrows in use by the Western bumblebee or kill individual bumblebees, resulting in a potentially significant adverse environmental impact.” (Id.) The MND proposes as mitigation, “if any Western bumblebee are identified, or if surveys are not conducted and presence is presumed, the biologist shall develop appropriate mitigation to protect the species and compensate for potential habitat loss.” (MND, p. 38). Again, this is improper deferred mitigation. It is unknown if adequate mitigation is possible, or if it will be developed at a later stage.

d. Nesting Birds.

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The MND concludes that the Project may have significant impacts on nesting birds, stating, “there would be a potentially significant adverse environmental impact on nesting birds during project construction.” (MND, p. 42). The MND proposes as mitigation, “If an active bird nest is found within the survey radii, species-specific measures shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest.” (MND, p. 43). Again, this is improper deferred mitigation.

3. Geotechnical Impacts.

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The MND concludes that the Project may have significant geotechnical impacts, stating that, “the site has experienced numerous prior landslides, including some that have been recently active.” (MND, p. 53). As mitigation, the MND proposes, “the project proponent shall submit a design-level geotechnical report for the project, based on adequate subsurface exploration, laboratory testing and engineering analysis.” (MND, p. 54). This is improper deferred mitigation. The public has no way to assure that the mitigation will be adequate to reduce risks to less than significant levels, or even to determine if it is possible to reduce impacts to less than significant.

B. The Project Will Have Significant Unmitigated Impacts on Special Status Species.

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The MND admits that there is a “high potential for the white-tailed kite to forage on the site,” “Cooper’s hawk has a high potential to forage within the grassland habitat on the site,” “American peregrine falcon has a moderate potential to occur on the site in a foraging capacity,” “loggerhead shrike has a moderate potential to occur on the site in a foraging capacity.” (MND pp.

16.p 26-27). These are all special status species, protected under CEQA. The MND also states that “red-tailed hawk, red-shouldered hawk, and American Kestrel, are protected under the Migratory Bird Treaty Act and have a high potential to occur on the site in a foraging capacity. (MND p. 28). Loss of habitat for special status species is a significant impact that must be mitigated under CEQA. Yet the MND proposes no mitigation – not even deferred mitigation.

16.q The MND admits that the California Red Legged Frog (CRLF) “may use the site as a dispersal corridor between the creeks and ponds that surround the property, project construction activities could disturb the CRLF, interfere with their migration, and/or result in the death of individual frogs, resulting in a potentially significant adverse environmental impact.” (MND p. 31-32). The MND concludes that mitigation is required, but proposes the following, “If any CRLF are found during initial site disturbance, a qualified biologist possessing a valid federal Endangered Species Act (ESA) Section 10(a)(1)(A) permit or USFWS-approved under an active biological opinion, shall be contracted to trap and to move amphibians to nearby suitable habitat outside the fenced project site.” While the MND identifies mitigation, relocation of endangered species is rarely successful. Most relocated species do not survive after location since alternative habitat may not be available, and even if available, is likely inhabited by other members of the species at carrying capacity.

C. The Project May Have Significant Energy Impacts that are Not Adequately Analyzed or Mitigated in the MND.

The MND contains a very short section on energy usage. (MND, pp. 47-49.) The MND relies on the Project’s compliance with Title 24 regulations to conclude that the impact is less than significant. (MND, p. 48). This fails to comply with CEQA.

16.r The standard under CEQA is whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Failing to undertake “an investigation into renewable energy options that might be available or appropriate for a project” violates CEQA. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213.) Energy conservation under CEQA is defined as the “wise and efficient use of energy.” (CEQA Guidelines, app. F, § I.) The “wise and efficient use of energy” is achieved by “(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources.” (*Id.*; *League to Save Lake Tahoe et al. v. County of Placer* (2022) 75 Cal.App.5th 63.) Noting compliance with the California Building Energy Efficiency Standards (Cal.Code Regs., tit. 24, part 6 (Title 24) does not constitute an adequate analysis of energy. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65 (*Ukiah Citizens*)). Similarly, the court in *City of Woodland* held unlawful an energy analysis that relied on compliance with Title 24, that failed to assess transportation energy impacts, and that failed to address renewable energy impacts. (*City of Woodland, supra*, 225 Cal.App.4th at pp. 209-13.) As such, the MND’s reliance on Title 24 compliance does not satisfy the requirements for an adequate discussion of the Project’s energy impacts.

The MND summarily concludes that the project would not result in the inefficient, wasteful and unnecessary consumption of energy. There is no discussion of the project's cost effectiveness in terms of energy requirements. There is no discussion of energy consuming equipment and

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processes that will be used during the construction or operation of the project. The project's energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, and maintenance were not identified. The effect of the project on peak and base period demands for electricity has not been addressed. The greenhouse gas (GHG) discussion in the EIR addresses GHG emissions resulting from energy production and energy savings measures, but it does not analyze energy conservation. As such, the Addendum's conclusions are unsupported by the necessary discussions of the Project's energy impacts under CEQA.

The MND should consider feasible energy efficiency measures such as the use of heat pumps rather than air conditioning, cool roofs, positioning homes in a manner that minimizes sun exposure, energy star appliances, requiring xeriscaping to reduce water use, requiring water-efficient appliances, requiring all-electric kitchen appliances, requiring LED-lighting, requiring electric car charging for each unit, requiring greater use of solar panels with battery storage, banning gas fire places and fire pits, and other measures. The MND fails to include any meaningful analysis of energy usage or mitigation.

D. An EIR is Required Because there is a Fair Argument that the Project May Have a Significant Impact on Human Health.

In addition to the numerous adverse impacts such as an abundance of significantly heavy construction equipment on town roads with schools as well as resulting increases in traffic, noise and vibration levels, the MND concludes that Project construction will create significant cancer risks from Diesel Particulate Matter (DPM) emissions released during construction. DPM is a toxic air contaminant ("TAC"). The MND concludes that Project construction will create a cancer risk of 20 per million for children along Skyview Court – 100% above the 10 per million significance threshold. (MND, pp. 16-17).

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When a project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. (*See, e.g. Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 [County applies Air District's "published CEQA quantitative criteria" and "threshold level of cumulative significance"]; *see also Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-11 ["A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"].) The California Supreme Court has shown the importance an air district significance threshold has in providing substantial evidence of a significant adverse impact. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 [estimated emissions in excess of air district's significance thresholds "constitute substantial evidence supporting a fair argument for a significant adverse impact"].)

Diesel Particulate Matter is a potent human carcinogen, which is listed as a known human carcinogen under California's Proposition 65. The California Air Resources Board summarizes DPM's health and environmental impacts as follows (<https://ww2.arb.ca.gov/resources/summary-diesel-particulate-matter-health-impacts>):

Diesel engines emit a complex mixture of pollutants, including very small carbon particles, or "soot" coated with numerous organic compounds, known as diesel particulate matter (PM). Diesel exhaust also contains more than 40 cancer-causing substances, most of which are readily adsorbed onto the soot particles. In 1998, California identified diesel PM as a toxic air contaminant (TAC) based on its potential to cause cancer. Other agencies, such as the National Toxicology Program, the U.S. Environmental Protection Agency and the National Institute of Occupational Safety and Health, concluded that exposure to diesel exhaust likely causes cancer. The most recent assessment (2012) came from the World Health Organization's International Agency for Research on Cancer (IARC). IARC's extensive literature review led to the conclusion that diesel engine exhaust is "carcinogenic to humans," thereby substantiating and further strengthening California's earlier TAC determination.

Diesel engine emissions are believed to be responsible for about 70% of California's estimated known cancer risk attributable to toxic air contaminants. Also, diesel PM comprises about 8% of outdoor fine particulate matter (PM_{2.5}), which is a known health hazard. As a significant fraction of PM_{2.5}, diesel PM contributes to numerous health impacts that have been attributed to particulate matter exposure, including increased hospital admissions, particularly for heart disease, but also for respiratory illnesses, and even premature death.² ARB estimates that diesel PM contributes to approximately 1,400 (95% confidence interval: 1,100-1,800) premature deaths from cardiovascular disease annually in California.³ Additionally, exposure to diesel exhaust may contribute to the onset of new allergies; a clinical study of human subjects has shown that diesel exhaust particles, in combination with potential allergens, may actually be able to produce new allergies that did not exist previously.

Several factors exacerbate the health risks of diesel PM exposure:

Diesel PM is often emitted close to people so high exposures occur
Diesel PM is in a size range that readily deposits in the lung
Diesel PM contains compounds known to damage DNA and cause cancer
Additionally, diesel PM pollution can affect the environment:

Diesel PM causes visibility reduction
Diesel black carbon (soot) is a potent contributor to global warming

The MND imposes Air Quality Mitigation Measure 1, which requires dust mitigation such as covering trucks, washing tires, watering exposed surfaces. (MND, p. 15). While these measures reduce dust (which is large particulate matter), they do little to reduce DPM (which is composed for fine particulate matter (PM-2.5 and toxic chemicals), which comes from engine exhaust. The MND admits that DPM cancer risk will remain significant after imposition of AQ MM1. As such it imposes Air Quality Mitigation Measure 2, which requires certain equipment to use Tier 4 pollution controls, reduced idling times and proper tuning of construction equipment. (MND, p. 16). While these measures reduce DPM, the MND nowhere calculates whether these measures will reduce DPM cancer risks to below 10 per million especially at immediately adjacent existing homes, other homes in the general proximity of the Project, and at pedestrian locations along Camino Pablo and Rancho Laguna Park/playground. The MND simply makes an unsupported

conclusory statement that the measures will reduce cancer risk to less than significant. (MND, p. 17).

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The agency must not only impose all feasible mitigation measures, but it must calculate whether those measures reduce impacts to less than significant. If the measures are not sufficient to reduce impacts to less than significant, an EIR is required. (*Friends of Oroville v. City of Oroville*, 219 Cal. App. 4th 832 (2013)), The court further held that failing to calculate existing air emissions at the project site, and “failing to quantitatively or qualitatively ascertain or estimate the effect of the Project’s mitigation measures on those emissions,” amounted to misapplication of the threshold-of-significance standard. (*Id.* at 842-843.) To facilitate CEQA’s informational role, the CEQA document must contain facts and analysis, not just the agency’s bare conclusions or opinions. The CEQA document must accurately reflect the net health effect of proposed air quality mitigation measures. (*Sierra Club v. Cty. of Fresno*, 6 Cal. 5th 502, 522, 431 P.3d 1151, 1166 (2018).)_

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Dr. Philip Tringale, Ph.D., affirms that the MND fails to adequately analyze the health and environmental impacts related to DPM and other constituents in his letters dated September 10, 2025 and prior letters/testimony. Dr. Tringale holds a PhD in Civil Engineering and a Master in Engineering from UC Berkeley as well as a second Master of Civil Engineering Degree focusing on Engineering Geology and a Bachelor Degree in Civil Engineering. He is clearly an expert in this field.

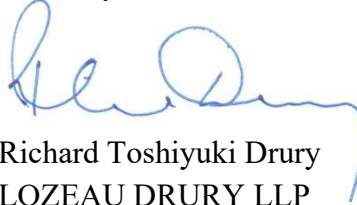
As a matter of law, “substantial evidence includes . . . expert opinion.” (Pub.Res.Code § 21080(e)(1); CEQA Guidelines § 15064(f)(5).) CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. (CEQA Guidelines § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, 124 Cal.App. 4th at 935.) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code § 21068; see also Guidelines 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 83.) “If there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR. [Citations.]” (*Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th at pp. 1316–1317; *Moss v. Cty. of Humboldt*, 162 Cal. App. 4th 1041, 1049 (2008).)

Since the MND fails to calculate whether the mitigation measures reduce the impact of cancer-causing DPM to less than significant, an EIR is required.

CONCLUSION

Since there is a fair argument that the Project may have significant impacts on special status species, wildfire risk, human health, and air quality, an EIR must be prepared for the Project. Furthermore, the County may not approve the Project at all because it is inconsistent with the General Plan.

Sincerely,



Richard Toshiyuki Drury
LOZEAU DRURY LLP

EXHIBIT A



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August 27, 2015

Douglas Herring & Associates
Mr. Douglas Herring
1331 Linda Vista Drive
El Cerrito, CA 94530

RE: Biological Peer Review, South Camino Pablo Annexation Project, Moraga

Dear Doug:

At your request I have conducted a review of materials prepared in support of the proposed South Camino Pablo Annexation Project located in unincorporated Contra Costa County. Specifically, this memorandum presents a peer review of biological technical reports prepared on behalf of the developer, Dobbins Properties, LLC, which is proposing to build a 13 lot subdivision on a 23.92-acre parcel (APN 258-290-023). The subject property is located at 1121 Camino Pablo.

The objective of this effort is to determine the adequacy of the biological technical studies in terms supporting the preparation of a Mitigated Negative Declaration (MND) and completing an adequate environmental review pursuant to the California Environmental Quality Act (CEQA).

Methods

Technical documents prepared in support of the development and the parcel's annexation to the Town of Moraga and reviewed as part of this effort include the following:

- Zentner and Zentner. 2014. *Camino Pablo Property; Biotic Resources Assessment*. March
- Zentner and Zentner. 2014. *Camino Pablo; Special Status Plant Species Assessment*. May.
- Zentner and Zentner. 2015. *Camino Pablo; Section 404 Jurisdictional Delineation*. March.
- D/K Consulting. 2015. *Vesting Tentative Map, South Camino Pablo Annexation Project, Subidivision #9396*. July.

In addition to the review of these documents, this analysis included the following:

- Review of current databases maintained by the California Department of Fish and Wildlife (CNDDDB, 2015) and the California Native Plant Society (CNPS, 2015); printouts are provided in Attachments 1 and 2.
- Performance of a single reconnaissance-level survey by a qualified biologist on August 27, 2015.

Results

Setting

The Biotic Resources Assessment (BRA) includes a rather brief discussion of the project setting (vegetation and wildlife). Characterization of the site as consisting of heavily grazed grassland dominated by non-native annual grasses and forbs is accurate and appropriate. While the Setting section of the BRA makes no mention of the presence of seasonal wetlands and other waters of the U.S. they are discussed in the Special Status Habitat section of the report. Text provided in the Plant Species Assessment and Jurisdictional Delineation reports provide additional narrative describing the setting and context of the subject property.

Special-Status Habitats

I concur with the conclusion contained in the BRA that no special-status natural communities (other than the wetlands) are present on site. I also concur with the characterization and mapping of wetlands and other waters of the U.S. presented in the jurisdictional delineation report. This report provides adequate detail to permit an analysis of impacts under CEQA. However, there is no assessment of impacts. Furthermore, the mitigation measures relating to wetlands and waters of the U.S. outlined in the BRA are incomplete and would need to be expanded to meet CEQA standards.

Special-Status Animals

Regarding special-status species, the BRA is based on a review of a review of the California Natural Diversity Database (CNDDDB). While not mentioned in the Methods section, their list of target species is based on a query of only two USGS 7.5-minute quadrangles (Oakland East and Las Trampas Ridge). While these are the two quadrangles in which the subject property is centered, a proper list of target species is typically based on the quadrangle in which a site occur and the eight surrounding quadrangles (i.e, Las Trampas Ridge, Hayward, San Leandro, Clayton, Diablo, Dublin, Walnut Creek, Briones Valley, and Oakland East).

Based on a review of these nine quadrangles, the target species list contains an additional 35 animal species that should have been evaluated. Based on existing habitats, the potential for occurrence of all but three can be ruled out due to the lack of suitable habitat or the fact that the project site is well outside of the known range. Special-status animals for which further analysis is warranted include burrowing owl, California horned lark, and San Francisco

dusky-footed woodrat. The BRA does not account for potential occurrence of and significant impacts on nesting migratory birds; no impact avoidance, minimization or mitigation measures are proposed and would need to be incorporated into the CEQA review. The BRA provides very little detail in how the potential for occurrence of target species was assessed, as is often provided in a tabular format.

The BRA presents only a brief mention of the federally and state-listed threatened species Alameda whipsnake (AWS; *Masticophis lateralis euryxanthus*). While I don't disagree that AWS is not likely to occur on site, the arguments made in the BRA are not strong enough to support a CEQA review. The BRA also makes a slight misrepresentation the conclusions in our report for the Rancho Laguna project (Wood Biological Consulting and M. Jennings). While we concluded that habitats at that site "are not considered optimal for AWS breeding", we also stated that there is a "low to moderate potential for AWS to disperse across the property". The BRA omitted that conclusion. As a result, fencing and biological monitoring were required during construction. To withstand scrutiny during CEQA review, this would be a more conservative approach in addressing this species.

The BRA makes only passing mention of the fact the subject property falls within designated Critical Habitat (see Attachment 3). A more detailed discussion of the species' primary constituent habitat elements, as well as the context of the site in relation to Critical Habitat and known occupied habitats is warranted. Although Critical Habitat only receives protection under Section 7 of the federal Endangered Species Act through the prohibition against destruction or adverse modification of Critical Habitat with regard to actions carried out, funded, or authorized by a Federal agency. As stated in the BRA states, impacts to wetlands would result from project implementation; this constitutes a federal nexus and would trigger consultation with the U.S. Fish and Wildlife Service (USFWS).

Even if impacts to wetlands can be avoided and no other federal nexus exists, the CEQA analysis should provide more a rigorous assessment of the potential effects on AWS. In communication with Brian Acord¹, development within Critical Habitat should be based on "communication / consultation with the US Fish and Wildlife Service and with the Department's Habitat Conservation and Planning Branch, probably through the HabCon representative at the CDFW Region 3 office".² Furthermore, in their response to comments included in the Final Rule for the designation of AWS Critical Habitat, the USFWS writes, "the Final Economic Analysis assumes that all future development in critical habitat will require mitigation, regardless of whether a Federal nexus or some other mechanism (e.g., a signal to local officials that the land has ecological value with protection implemented through CEQA)".³ No such analysis has been

¹ CNDDDB Zoology Lead

² Email dated August 25; see Attachment 4

³ FR 71, No. 190, October 2, 2006, p. 58186, available at <http://www.gpo.gov/fdsys/pkg/FR-2006-10-02/html/06-8367.htm>

prepared. At a very minimum, the proposed project should include avoidance measures to ensure no AWS are taken during construction, as described above.

Special-Status Plants

As stated above, the list of target special-status plant species is based on a review of occurrence records for only two USGS quadrangles. A review of records for nine quadrangles is generally performed when creating lists of target species. Based on the CNDDb, the potential for occurrence of an additional 33 plant species should have been evaluated. Based on the CNPS data set, another ten species would be added to the list of target species. Considering a more inclusive target species list, suitable or marginally suitable habitat is present on site for seven special-status plant species.

The accepted protocol for conducting rare plant surveys (CDFG, 2009; CNPS, 2001; USFWS, 2001) specify that they be performed during each season in which target species, if present, would be identifiable. Field work for the plant assessment survey was performed on January 2 and April 14; a summer survey was not performed. During my brief site reconnaissance, I noted the presence of an additional three native herbs and seven non-native forbs not included on the species inventory.⁴

Potentially occurring special-status plant species for which suitable or marginally suitable habitat is present and which would not have been detectable during January and April surveys include:

- *Blepharizonia plumosa* (1B.1) – potential for occurrence: low.
- *Centromadia parryi* ssp. *congdonii* (1B.2) – potential for occurrence: very low.
- *Holocarpha macradenia* (Fed Endangered, 1B.1) – potential for occurrence: very low.
- *Navarretia nigelliformis* ssp. *radians* (1B.2) – potential for occurrence: low.
- *Leptosiphon acicularis* (4.2) – potential for occurrence: low.

Potentially occurring special-status plant species for which suitable or marginally suitable habitat is present and which were not included on the list of target species prepared for the January and April surveys include:

- *Balsamorhiza macrolepis* (1B.2) – potential for occurrence: very low.
- *Eriogonum truncatum* (1B.1) – potential for occurrence: very low.
- *Lasthenia conjugens* (Fed. Endangered, 1B.1) – potential for occurrence: very low.
- *Madia radiata* (1B.1) – potential for occurrence: low
- *Sanicula saxatilis* (1B.2) – potential for occurrence: very low.

⁴ Additional native plant taxa identified during the site reconnaissance include *Epilobium brachycarpum*, *Juncus bufonius* var. *congestus*, and *Lagophylla ramossissima* (the unidentified willow on the inventory is *Salix lasiolepis*); non-native taxa identified include *Aira caryophylla*, *Chamaesyce maculata*, *Lactuca serriola*, *Lactuca saligna*, *Polopogon monspeliensis*, *Trifolium frageriferum*, and *Torillis arvensis*.

- *Androsace elongata* ssp. *acuta* (4.2) – potential for occurrence: low.

The Plant Assessment report provides very little detail in how the potential for occurrence of target species was assessed, as is often provided in a tabular format. The BRA includes more discussion on both counts, and it was prepared prior to the completion of the last focused plant survey.

In reviewing the species inventory included with the rare plant assessment report I see that *Dichondra donnelliana* was detected. Moraga represents a substantial geographic disjunction for this species, which known in Contra Costa County only from the edge of San Francisco Bay (e.g., Point Molate). It is considered locally significant, having a ranking of A1 (Lake, 2010), meeting the criteria for consideration under CEQA. If present, this species should be enumerated and mapped. If impacts would occur, mitigation measures should be proposed.

Another species listed in the inventory, *Epilobium ciliatum* should have been identified to sub-specific status; *E.c.* ssp. *c.* is common and widespread. However, *E.c.* ssp. *watsonii* is included on Lake's list of rare, unusual and significant plants. It is assigned a rarity rank of "B", considered a high priority watch list. Although species on this list are not deemed significant in the sense of CEQA, the protocol for a proper "floristic survey" require the identification of all plant species to a level sufficient to determine their status as rare (CDFG, 2009).

Discussion

To be deemed adequate, the environmental document (i.e., Mitigated Negative Declaration, Environmental Impact Report) must include a complete and accurate description of the project setting. An adequate "Setting" section must be based on the following:

1. An accurate description of the vegetation communities including dominant species, significant secondary species, level of historic and/or recent disturbance, etc.
2. Accurate habitat mapping.
3. Review of available data and relevant literature.
4. Appropriately time surveys following correct protocol.
5. A proper evaluation of all special-status habitat features and plant and animal species occurring in the region.
6. Consideration of Critical Habitat for federally listed species.
7. Evaluation of applicable Habitat Conservation Plans and local laws, policies and guidelines.

As the support documents for the environmental review, the technical reports must provide the necessary information to meet these standards. Furthermore, they must provide sufficient

Conclusion

The characterization of the setting, albeit highly abbreviated, is accurate. Although the narrative is sparse by current standards, there is sufficient information contained in the BRA, the Plant Assessment report and the Jurisdictional Delineation report to complete the setting section of the CEQA document.

The delineation of wetlands and other waters of the U.S. is complete and adequate for incorporation into a CEQA document.

The evaluation of potentially occurring special-status wildlife species is not sufficient to complete an adequate CEQA review. The list of target species is incomplete. There is no discussion of the potential for occurrence of migratory birds. There is no discussion of the significance of developing within Critical Habitat for AWS. The analysis of potential effects on AWS is unlikely to hold up to review by the agencies, and there is no discussion of suitable impact avoidance measures for this species.

The evaluation of potentially occurring special-status plant species is not sufficient to complete an adequate CEQA review. The list of target species is incomplete. A summer survey was not performed and is warranted for summer-flowering special-status plant species. The Plant Assessment report notes the presence of one species, impacts on which would be regarded as significant under CEQA; the species is neither mapped nor enumerated in the report.

Sincerely,



Michael Wood

Enclosures: Literature Cited
Attachment 1 – CNDDDB printout
Attachment 2 – CNPS printout
Attachment 3 – Alameda whipsnake Critical Habitat map
Attachment 4 – Communication with Brian Acord, CNDDDB

Literature Cited

- California Department of Fish and Game (CDFG). 2009. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. November 24. Available online at [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols for Surveying and Evaluating Impacts.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols_for_Surveying_and_Evaluating_Impacts.pdf)
- California Native Plant Society (CNPS). 2001. *Botanical Survey Guidelines*. Revised June 2. Available on line at http://www.cnps.org/cnps/rareplants/pdf/cnps_survey_guidelines.pdf
- California Native Plant Society (CNPS). 2015. *Inventory of Rare and Endangered Plants* (online edition, v8-02). Query for the Las Trampas Ridge, Hayward, San Leandro, Clayton, Diablo, Dublin, Walnut Creek, Briones Valley, and Oakland East USGS 7.5' Quadrangles. California Native Plant Society, Sacramento, CA. Accessed August 24 at www.rareplants.cnps.org/
- California Natural Diversity Database (CNDDDB). 2015. Query of for the Las Trampas Ridge, Hayward, San Leandro, Clayton, Diablo, Dublin, Walnut Creek, Briones Valley, and Oakland East USGS 7.5' Quadrangles. RareFind 5.0. California Department of Fish and Wildlife, Biogeographic Data Branch. Sacramento, California. Information dated August 4.
- Lake, D. 2010. *Rare, Unusual and Significant Plants of Alameda and Contra Costa Counties*. Eighth Edition. California Native Plant Society, East Bay Chapter. March 15. Available online at <http://www.ebcnps.org/unusualplants.html>
- United States Fish and Wildlife Service (USFWS). 2000. *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants*. January. Available online at http://www.fws.gov/ventura/species_information/protocols_guidelines/docs/botanicalinventories.pdf
- Wood Biological Consulting and Mark Jennings. 2003. *Site Assessment for Alameda Whipsnake at the Proposed Rancho Laguna Residential Development Site, Town of Moraga, Contra Costa County, California*. Unpublished technical report prepared for Sponamore Associates and the Town of Moraga. March 1.



Selected Elements by Scientific Name
California Department of Fish and Wildlife
California Natural Diversity Database



Query Criteria: Quad is (Briones Valley (3712282) or Clayton (3712188) or Diablo (3712178) or Dublin (3712168) or Hayward (3712261) or Las Trampas Ridge (3712271) or Oakland East (3712272) or San Leandro (3712262) or Walnut Creek (3712281))

Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
<i>Accipiter cooperii</i> Cooper's hawk	ABNKC12040	None	None	G5	S4	WL
<i>Accipiter striatus</i> sharp-shinned hawk	ABNKC12020	None	None	G5	S4	WL
<i>Agelaius tricolor</i> tricolored blackbird	ABPBXB0020	None	None	G2G3	S1S2	SSC
<i>Ambystoma californiense</i> California tiger salamander	AAAAA01180	Threatened	Threatened	G2G3	S2S3	SSC
<i>Amsinckia lunaris</i> bent-flowered fiddleneck	PDBOR01070	None	None	G2?	S2?	1B.2
<i>Anomobryum julaceum</i> slender silver moss	NBMUS80010	None	None	G4G5	S2	4.2
<i>Antrozous pallidus</i> pallid bat	AMACC10010	None	None	G5	S3	SSC
<i>Aquila chrysaetos</i> golden eagle	ABNKC22010	None	None	G5	S3	FP
<i>Archoplites interruptus</i> Sacramento perch	AFCQB07010	None	None	G2G3	S1	SSC
<i>Arctostaphylos auriculata</i> Mt. Diablo manzanita	PDERI04040	None	None	G2	S2	1B.3
<i>Arctostaphylos manzanita ssp. laevigata</i> Contra Costa manzanita	PDERI04273	None	None	G5T2	S2	1B.2
<i>Arctostaphylos pallida</i> pallid manzanita	PDERI04110	Threatened	Endangered	G1	S1	1B.1
<i>Ardea herodias</i> great blue heron	ABNGA04010	None	None	G5	S4	
<i>Astragalus tener var. tener</i> alkali milk-vetch	PDFAB0F8R1	None	None	G2T2	S2	1B.2
<i>Athene cunicularia</i> burrowing owl	ABNSB10010	None	None	G4	S3	SSC
<i>Balsamorhiza macrolepis</i> big-scale balsamroot	PDAST11061	None	None	G2	S2	1B.2
<i>Blepharizonia plumosa</i> big tarplant	PDAST1C011	None	None	G2	S2	1B.1
<i>Bombus caliginosus</i> obscure bumble bee	IIHYM24380	None	None	G4?	S1S2	
<i>Branta hutchinsii leucopareia</i> cackling (=Aleutian Canada) goose	ABNJB05035	Delisted	None	G5T3	S2	



Selected Elements by Scientific Name
California Department of Fish and Wildlife
California Natural Diversity Database



Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
<i>Buteo regalis</i> ferruginous hawk	ABNKC19120	None	None	G4	S3S4	WL
<i>Buteo swainsoni</i> Swainson's hawk	ABNKC19070	None	Threatened	G5	S3	
<i>California macrophylla</i> round-leaved filaree	PDGER01070	None	None	G3?	S3?	1B.1
<i>Callophrys mossii bayensis</i> San Bruno elfin butterfly	IILEPE2202	Endangered	None	G4T1	S1	
<i>Calochortus pulchellus</i> Mt. Diablo fairy-lantern	PMLIL0D160	None	None	G2	S2	1B.2
<i>Campanula exigua</i> chaparral harebell	PDCAM020A0	None	None	G2	S2	1B.2
<i>Centromadia parryi ssp. congdonii</i> Congdon's tarplant	PDAST4R0P1	None	None	G3T2	S2	1B.1
<i>Charadrius alexandrinus nivosus</i> western snowy plover	ABNNB03031	Threatened	None	G3T3	S2	SSC
<i>Chloropyron maritimum ssp. palustre</i> Point Reyes salty bird's-beak	PDSCR0J0C3	None	None	G4?T2	S2	1B.2
<i>Chorizanthe robusta var. robusta</i> robust spineflower	PDPGN040Q2	Endangered	None	G2T1	S1	1B.1
<i>Cicuta maculata var. bolanderi</i> Bolander's water-hemlock	PDAP10M051	None	None	G5T3T4	S2	2B.1
<i>Circus cyaneus</i> northern harrier	ABNKC11010	None	None	G5	S3	SSC
<i>Cirsium andrewsii</i> Franciscan thistle	PDAST2E050	None	None	G3	S3	1B.2
<i>Clarkia concinna ssp. automixa</i> Santa Clara red ribbons	PDONA050A1	None	None	G5?T3	S3	4.3
<i>Clarkia franciscana</i> Presidio clarkia	PDONA050H0	Endangered	Endangered	G1	S1	1B.1
<i>Cordylanthus nidularius</i> Mt. Diablo bird's-beak	PDSCR0J0F0	None	Rare	G1	S1	1B.1
<i>Corynorhinus townsendii</i> Townsend's big-eared bat	AMACC08010	None	Candidate Threatened	G3G4	S2	SSC
<i>Danaus plexippus pop. 1</i> monarch - California overwintering population	IILEPP2012	None	None	G4T2T3	S2S3	
<i>Delphinium californicum ssp. interius</i> Hospital Canyon larkspur	PDRAN0B0A2	None	None	G3T3	S3	1B.2
<i>Dipodomys heermanni berkeleyensis</i> Berkeley kangaroo rat	AMAFD03061	None	None	G3G4T1	S1	
<i>Dirca occidentalis</i> western leatherwood	PDTHY03010	None	None	G2	S2	1B.2



Selected Elements by Scientific Name
California Department of Fish and Wildlife
California Natural Diversity Database



Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
<i>Efferia antiochi</i> Antioch efferian robberfly	IIDIP07010	None	None	G1G2	S1S2	
<i>Elanus leucurus</i> white-tailed kite	ABNKC06010	None	None	G5	S3S4	FP
<i>Emys marmorata</i> western pond turtle	ARAAD02030	None	None	G3G4	S3	SSC
<i>Eremophila alpestris actia</i> California horned lark	ABPAT02011	None	None	G5T3Q	S3	WL
<i>Eriastrum erterae</i> Lime Ridge eriastrum	PDPLM030F0	None	None	G1	S1	1B.1
<i>Eriogonum luteolum var. caninum</i> Tiburon buckwheat	PDPGN083S1	None	None	G5T2	S2	1B.2
<i>Eriogonum truncatum</i> Mt. Diablo buckwheat	PDPGN085Z0	None	None	G2	S2	1B.1
<i>Eucyclogobius newberryi</i> tidewater goby	AFCQN04010	Endangered	None	G3	S3	SSC
<i>Eumops perotis californicus</i> western mastiff bat	AMACD02011	None	None	G5T4	S3S4	SSC
<i>Euphydryas editha bayensis</i> Bay checkerspot butterfly	IILEPK4055	Threatened	None	G5T1	S1	
<i>Extriplex joaquinana</i> San Joaquin spearscale	PDCHE041F3	None	None	G2	S2	1B.2
<i>Falco mexicanus</i> prairie falcon	ABNKD06090	None	None	G5	S4	WL
<i>Fissidens pauperculus</i> minute pocket moss	NBMUS2W0U0	None	None	G3?	S2	1B.2
<i>Fritillaria liliacea</i> fragrant fritillary	PMLIL0V0C0	None	None	G2	S2	1B.2
<i>Geothlypis trichas sinuosa</i> saltmarsh common yellowthroat	ABPBX1201A	None	None	G5T3	S3	SSC
<i>Grimmia torenii</i> Toren's grimmia	NBMUS32330	None	None	G2	S2	1B.3
<i>Haliaeetus leucocephalus</i> bald eagle	ABNKC10010	Delisted	Endangered	G5	S2	FP
<i>Helianthella castanea</i> Diablo helianthella	PDAST4M020	None	None	G2	S2	1B.2
<i>Helminthoglypta nickliniana bridgesi</i> Bridges' coast range shoulderband	IMGASC2362	None	None	G3T1	S1	
<i>Hesperolinon breweri</i> Brewer's western flax	PDLIN01030	None	None	G2	S2	1B.2
<i>Hoita strobilina</i> Loma Prieta hoita	PDFAB5Z030	None	None	G2	S2	1B.1



Selected Elements by Scientific Name
California Department of Fish and Wildlife
California Natural Diversity Database



Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
<i>Holocarpha macradenia</i> Santa Cruz tarplant	PDAST4X020	Threatened	Endangered	G1	S1	1B.1
<i>Horkelia cuneata</i> var. <i>sericea</i> Kellogg's horkelia	PDR0S0W043	None	None	G4T2	S2?	1B.1
<i>Isocoma arguta</i> Carquinez goldenbush	PDAST57050	None	None	G1	S1	1B.1
<i>Juglans hindsii</i> Northern California black walnut	PDJUG02040	None	None	G1	S1	1B.1
<i>Lasionycteris noctivagans</i> silver-haired bat	AMACC02010	None	None	G5	S3S4	
<i>Lasiurus cinereus</i> hoary bat	AMACC05030	None	None	G5	S4	
<i>Lasthenia conjugens</i> Contra Costa goldfields	PDAST5L040	Endangered	None	G1	S1	1B.1
<i>Lateralus jamaicensis coturniculus</i> California black rail	ABNME03041	None	Threatened	G3G4T1	S1	FP
<i>Linderiella occidentalis</i> California linderiella	ICBRA06010	None	None	G2G3	S2S3	
<i>Madia radiata</i> showy golden madia	PDAST650E0	None	None	G2	S2	1B.1
<i>Malacothamnus hallii</i> Hall's bush-mallow	PDMAL0Q0F0	None	None	G2	S2	1B.2
<i>Masticophis lateralis euryxanthus</i> Alameda whipsnake	ARADB21031	Threatened	Threatened	G4T2	S2	
<i>Meconella oregana</i> Oregon meconella	PDPAP0G030	None	None	G2G3	S1	1B.1
<i>Melospiza melodia maxillaris</i> Suisun song sparrow	ABPBXA301K	None	None	G5T3	S3	SSC
<i>Melospiza melodia pusillula</i> Alameda song sparrow	ABPBXA301S	None	None	G5T2?	S2?	SSC
<i>Microcina leei</i> Lee's micro-blind harvestman	ILARA47040	None	None	G1	S1	
<i>Microcina lumi</i> Lum's micro-blind harvestman	ILARA47050	None	None	G1	S1	
<i>Monolopia gracilens</i> woodland woollythreads	PDAST6G010	None	None	G3	S3	1B.2
<i>Myotis yumanensis</i> Yuma myotis	AMACC01020	None	None	G5	S4	
<i>Navarretia gowenii</i> Lime Ridge navarretia	PDPLM0C120	None	None	G1	S1	1B.1
<i>Navarretia nigelliformis</i> ssp. <i>radians</i> shining navarretia	PDPLM0C0J2	None	None	G4T2	S2	1B.2



Selected Elements by Scientific Name
California Department of Fish and Wildlife
California Natural Diversity Database



Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
<i>Neotoma fuscipes annectens</i> San Francisco dusky-footed woodrat	AMAFF08082	None	None	G5T2T3	S2S3	SSC
<i>Northern Coastal Salt Marsh</i> Northern Coastal Salt Marsh	CTT52110CA	None	None	G3	S3.2	
<i>Northern Maritime Chaparral</i> Northern Maritime Chaparral	CTT37C10CA	None	None	G1	S1.2	
<i>Nyctinomops macrotis</i> big free-tailed bat	AMACD04020	None	None	G5	S3	SSC
<i>Oenothera deltooides ssp. howellii</i> Antioch Dunes evening-primrose	PDONA0C0B4	Endangered	Endangered	G5T1	S1	1B.1
<i>Perognathus inornatus</i> San Joaquin Pocket Mouse	AMAFD01060	None	None	G2G3	S2S3	
<i>Phacelia phacelioides</i> Mt. Diablo phacelia	PDHYD0C3Q0	None	None	G1	S1	1B.2
<i>Phrynosoma blainvillii</i> coast horned lizard	ARACF12100	None	None	G3G4	S3S4	SSC
<i>Plagiobothrys diffusus</i> San Francisco popcornflower	PDBOR0V080	None	Endangered	G1Q	S1	1B.1
<i>Plagiobothrys glaber</i> hairless popcornflower	PDBOR0V0B0	None	None	GH	SH	1A
<i>Polemonium carneum</i> Oregon polemonium	PDPLM0E050	None	None	G3G4	S2	2B.2
<i>Polygonum marinense</i> Marin knotweed	PDPGN0L1C0	None	None	G2Q	S2	3.1
<i>Rallus longirostris obsoletus</i> California clapper rail	ABNME05016	Endangered	Endangered	G5T1	S1	FP
<i>Rana boylei</i> foothill yellow-legged frog	AAABH01050	None	None	G3	S3	SSC
<i>Rana draytonii</i> California red-legged frog	AAABH01022	Threatened	None	G2G3	S2S3	SSC
<i>Reithrodontomys raviventris</i> salt-marsh harvest mouse	AMAFF02040	Endangered	Endangered	G1G2	S1S2	FP
<i>Rynchops niger</i> black skimmer	ABNNM14010	None	None	G5	S2	SSC
<i>Sanicula maritima</i> adobe sanicle	PDAP11Z0D0	None	Rare	G2	S2	1B.1
<i>Sanicula saxatilis</i> rock sanicle	PDAP11Z0H0	None	Rare	G2	S2	1B.2
<i>Scapanus latimanus parvus</i> Alameda Island mole	AMABB02031	None	None	G5T1Q	S1	SSC
<i>Senecio aphanactis</i> chaparral ragwort	PDAST8H060	None	None	G3?	S2	2B.2



Selected Elements by Scientific Name
California Department of Fish and Wildlife
California Natural Diversity Database



Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
<i>Serpentine Bunchgrass</i> Serpentine Bunchgrass	CTT42130CA	None	None	G2	S2.2	
<i>Setophaga petechia</i> yellow warbler	ABPBX03010	None	None	G5	S3S4	SSC
<i>Sorex vagrans halicoetes</i> salt-marsh wandering shrew	AMABA01071	None	None	G5T1	S1	SSC
<i>Spirinchus thaleichthys</i> longfin smelt	AFCHB03010	Candidate	Threatened	G5	S1	SSC
<i>Sternula antillarum browni</i> California least tern	ABNNM08103	Endangered	Endangered	G4T2T3Q	S2	FP
<i>Streptanthus albidus ssp. peramoenus</i> most beautiful jewelflower	PDBRA2G012	None	None	G2T2	S2	1B.2
<i>Streptanthus hispidus</i> Mt. Diablo jewelflower	PDBRA2G0M0	None	None	G1	S1	1B.3
<i>Stuckenia filiformis ssp. alpina</i> slender-leaved pondweed	PMPOT03091	None	None	G5T5	S3	2B.2
<i>Suaeda californica</i> California seablite	PDCHE0P020	Endangered	None	G1	S1	1B.1
<i>Taxidea taxus</i> American badger	AMAJF04010	None	None	G5	S3	SSC
<i>Trifolium hydrophilum</i> saline clover	PDFAB400R5	None	None	G2	S2	1B.2
<i>Triquetrella californica</i> coastal triquetrella	NBMUS7S010	None	None	G2	S2	1B.2
<i>Tropidocarpum capparideum</i> caper-fruited tropidocarpum	PDBRA2R010	None	None	G1	S1	1B.1
<i>Tryonia imitator</i> mimic tryonia (=California brackishwater snail)	IMGASJ7040	None	None	G2	S2	
<i>Valley Needlegrass Grassland</i> Valley Needlegrass Grassland	CTT42110CA	None	None	G3	S3.1	
<i>Viburnum ellipticum</i> oval-leaved viburnum	PDCPR07080	None	None	G4G5	S3?	2B.3
<i>Vulpes macrotis mutica</i> San Joaquin kit fox	AMAJA03041	Endangered	Threatened	G4T2	S2	

Record Count: 120

CNPS *California Native Plant Society* Rare and Endangered Plant Inventory

Plant List

71 matches found. *Click on scientific name for details*

Search Criteria

Found in 9 Quads around 37122G1

Scientific Name	Common Name	Family	Lifeform	Rare Plant Rank	State Rank	Global Rank
<u>Amsinckia lunaris</u>	bent-flowered fiddleneck	Boraginaceae	annual herb	1B.2	S2?	G2?
<u>Androsace elongata ssp. acuta</u>	California androsace	Primulaceae	annual herb	4.2	S3S4	G5?T3T4
<u>Anomobryum julaceum</u>	slender silver moss	Bryaceae	moss	4.2	S2	G4G5
<u>Arabis blepharophylla</u>	coast rockcress	Brassicaceae	perennial herb	4.3	S4	G4
<u>Arctostaphylos auriculata</u>	Mt. Diablo manzanita	Ericaceae	perennial evergreen shrub	1B.3	S2	G2
<u>Arctostaphylos manzanita ssp. laevigata</u>	Contra Costa manzanita	Ericaceae	perennial evergreen shrub	1B.2	S2	G5T2
<u>Arctostaphylos pallida</u>	pallid manzanita	Ericaceae	perennial evergreen shrub	1B.1	S1	G1
<u>Astragalus tener var. tener</u>	alkali milk-vetch	Fabaceae	annual herb	1B.2	S2	G2T2
<u>Balsamorhiza macrolepis</u>	big-scale balsamroot	Asteraceae	perennial herb	1B.2	S2	G2
<u>Blepharizonia plumosa</u>	big tarplant	Asteraceae	annual herb	1B.1	S2	G2
<u>Calandrinia breweri</u>	Brewer's calandrinia	Montiaceae	annual herb	4.2	S34	G4
<u>California macrophylla</u>	round-leaved filaree	Geraniaceae	annual herb	1B.2	S3?	G3?
<u>Calochortus pulchellus</u>	Mt. Diablo fairy-lantern	Liliaceae	perennial bulbiferous herb	1B.2	S2	G2
<u>Calochortus umbellatus</u>	Oakland star-tulip	Liliaceae	perennial bulbiferous herb	4.2	S4	G4
<u>Campanula exigua</u>	chaparral harebell	Campanulaceae	annual herb	1B.2	S2	G2
<u>Castilleja ambigua var. ambigua</u>	johnny-nip	Orobanchaceae	annual herb (hemiparasitic)	4.2	S4	G4T5
<u>Centromadia parryi ssp. congdonii</u>	Congdon's tarplant	Asteraceae	annual herb	1B.1	S2	G3T2
<u>Chloropyron maritimum ssp. palustre</u>	Point Reyes bird's-beak	Orobanchaceae	annual herb (hemiparasitic)	1B.2	S2	G4?T2
<u>Chorizanthe robusta var. robusta</u>	robust spineflower	Polygonaceae	annual herb	1B.1	S1	G2T1
<u>Cirsium andrewsii</u>	Franciscan thistle	Asteraceae	perennial herb	1B.2	S3	G3
<u>Clarkia concinna ssp. automixa</u>	Santa Clara red ribbons	Onagraceae	annual herb	4.3	S3	G5?T3

ATTACHMENT 2

<u>Clarkia franciscana</u>	Presidio clarkia	Onagraceae	annual herb	1B.1	S1	G1
<u>Collomia diversifolia</u>	serpentine collomia	Polemoniaceae	annual herb	4.3	S4	G4
<u>Cordylanthus nidularius</u>	Mt. Diablo bird's-beak	Orobanchaceae	annual herb (hemiparasitic)	1B.1	S1	G1
<u>Delphinium californicum ssp. interius</u>	Hospital Canyon larkspur	Ranunculaceae	perennial herb	1B.2	S3	G3T3
<u>Dirca occidentalis</u>	western leatherwood	Thymelaeaceae	perennial deciduous shrub	1B.2	S2	G2
<u>Eriastrum ertterae</u>	Lime Ridge eriastrum	Polemoniaceae	annual herb	1B.1	S1	G1
<u>Eriogonum luteolum var. caninum</u>	Tiburon buckwheat	Polygonaceae	annual herb	1B.2	S2	G5T2
<u>Eriogonum truncatum</u>	Mt. Diablo buckwheat	Polygonaceae	annual herb	1B.1	S2	G2
<u>Eriophyllum jepsonii</u>	Jepson's woolly sunflower	Asteraceae	perennial herb	4.3	S3	G3
<u>Extriplex joaquinana</u>	San Joaquin spearscale	Chenopodiaceae	annual herb	1B.2	S2	G2
<u>Fissidens pauperculus</u>	minute pocket moss	Fissidentaceae	moss	1B.2	S2	G3?
<u>Fritillaria liliacea</u>	fragrant fritillary	Liliaceae	perennial bulbiferous herb	1B.2	S2	G2
<u>Grimmia torenii</u>	Toren's grimmia	Grimmiaceae	moss	1B.3	S2	G2
<u>Helianthella castanea</u>	Diablo helianthella	Asteraceae	perennial herb	1B.2	S2	G2
<u>Hesperolinon breweri</u>	Brewer's western flax	Linaceae	annual herb	1B.2	S2	G2
<u>Hoita strobilina</u>	Loma Prieta hoita	Fabaceae	perennial herb	1B.1	S2	G2
<u>Holocarpha macradenia</u>	Santa Cruz tarplant	Asteraceae	annual herb	1B.1	S1	G1
<u>Horkelia cuneata var. sericea</u>	Kellogg's horkelia	Rosaceae	perennial herb	1B.1	S2?	G4T2
<u>Iris longipetala</u>	coast iris	Iridaceae	perennial rhizomatous herb	4.2	S3	G3
<u>Juglans californica</u>	Southern California black walnut	Juglandaceae	perennial deciduous tree	4.2	S3	G3
<u>Juglans hindsii</u>	Northern California black walnut	Juglandaceae	perennial deciduous tree	1B.1	S1	G1
<u>Lasthenia conjugens</u>	Contra Costa goldfields	Asteraceae	annual herb	1B.1	S1	G1
<u>Lathyrus jepsonii var. jepsonii</u>	Delta tule pea	Fabaceae	perennial herb	1B.2	S2	G5T2
<u>Leptosiphon acicularis</u>	bristly leptosiphon	Polemoniaceae	annual herb	4.2	S3	G3
<u>Malacothamnus hallii</u>	Hall's bush-mallow	Malvaceae	perennial evergreen shrub	1B.2	S2	G2
<u>Meconella oregana</u>	Oregon meconella	Papaveraceae	annual herb	1B.1	S1	G2G3
<u>Micropus amphibolus</u>	Mt. Diablo cottonweed	Asteraceae	annual herb	3.2	S3S4	G3G4
<u>Monardella antonina ssp. antonina</u>	San Antonio Hills monardella	Lamiaceae	perennial rhizomatous herb	3	S1S3	G4T1T3Q
<u>Monolopia gracilens</u>	woodland woolythreads	Asteraceae	annual herb	1B.2	S2S3	G2G3
<u>Navarretia gowenii</u>	Lime Ridge navarretia	Polemoniaceae	annual herb	1B.1	S1	G1
<u>Navarretia nigelliformis ssp. radians</u>	shining navarretia	Polemoniaceae	annual herb	1B.2	S2	G4T2

ATTACHMENT 2

<u>Oenothera deltooides ssp. howellii</u>	Antioch Dunes evening-primrose	Onagraceae	perennial herb	1B.1	S1	G5T1
<u>Phacelia phacelioides</u>	Mt. Diablo phacelia	Boraginaceae	annual herb	1B.2	S1	G1
<u>Piperia michaelii</u>	Michael's rein orchid	Orchidaceae	perennial herb	4.2	S3	G3
<u>Plagiobothrys diffusus</u>	San Francisco popcorn-flower	Boraginaceae	annual herb	1B.1	S1	G1Q
<u>Plagiobothrys glaber</u>	hairless popcorn-flower	Boraginaceae	annual herb	1A	SH	GH
<u>Polemonium carneum</u>	Oregon polemonium	Polemoniaceae	perennial herb	2B.2	S2	G3G4
<u>Polygonum marinense</u>	Marin knotweed	Polygonaceae	annual herb	3.1	S2	G2Q
<u>Ranunculus lobbii</u>	Lobb's aquatic buttercup	Ranunculaceae	annual herb	4.2	S3	G4
<u>Sanicula maritima</u>	adobe sanicle	Apiaceae	perennial herb	1B.1	S2	G2
<u>Sanicula saxatilis</u>	rock sanicle	Apiaceae	perennial herb	1B.2	S2	G2
<u>Senecio aphanactis</u>	chaparral ragwort	Asteraceae	annual herb	2B.2	S2	G3?
<u>Streptanthus albidus ssp. peramoenus</u>	most beautiful jewel-flower	Brassicaceae	annual herb	1B.2	S2	G2T2
<u>Streptanthus hispidus</u>	Mt. Diablo jewel-flower	Brassicaceae	annual herb	1B.3	S1	G1
<u>Stuckenia filiformis ssp. alpina</u>	slender-leaved pondweed	Potamogetonaceae	perennial rhizomatous herb	2B.2	S3	G5T5
<u>Suaeda californica</u>	California seablite	Chenopodiaceae	perennial evergreen shrub	1B.1	S1	G1
<u>Trifolium hydrophilum</u>	saline clover	Fabaceae	annual herb	1B.2	S2	G2
<u>Triquetrella californica</u>	coastal triquetrella	Pottiaceae	moss	1B.2	S2	G2
<u>Tropidocarpum capparideum</u>	caper-fruited tropidocarpum	Brassicaceae	annual herb	1B.1	S1	G1
<u>Viburnum ellipticum</u>	oval-leaved viburnum	Adoxaceae	perennial deciduous shrub	2B.3	S3	G5

Suggested Citation

CNPS, Rare Plant Program. 2015. Inventory of Rare and Endangered Plants (online edition, v8-02). California Native Plant Society, Sacramento, CA. Website <http://www.rareplants.cnps.org> [accessed 24 August 2015].

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Mike Wood

Subject: FW: suppressed data request
Attachments: 20150825 Camino Pablo.pdf

From: Acord, Brian@Wildlife [<mailto:Brian.Acord@wildlife.ca.gov>]
Sent: Tuesday, August 25, 2015 12:08 PM
To: Mike Wood
Subject: RE: suppressed data request

Good morning Mike,

I'm not in a position to advise or comment on a development project within designated critical habitat for a particular species, or even in the case of where an area is suitable habitat that may impact a listed species. This just simply isn't my job or expertise. For Alameda whipsnake (AWS, *Masticophis lateralis euryxanthus*), both a federally and state Threatened species, there needs to be communication/consultation with the US Fish and Wildlife Service and with the Department's Habitat Conservation and Planning Branch, probably through the HabCon representative at the CDFW Region 3 office (<https://www.wildlife.ca.gov/Regions/3/Contact>). It is never appropriate to use the CNDDDB database as a justification for a negative declaration; on the ground field investigation is always needed to properly assess impacts.

There are several known occurrences within 3 miles of this site (detailed below), and the site appears to be within continuous and suitable habitat. It is impossible for the CNDDDB to know where all AWS are at, but considering the proximity, I don't think it would be surprising to find AWS at or near the site of interest.

There are 24 Element Occurrences (EO) for Alameda whipsnake within 5 miles of this site. However, for simplicity, I've chosen to detail the 9 EOs that intersect a 3 mile buffer of the site of interest:

EO# 23 is the nearest occurrence, about 1.4 miles SSE of 1211 Camino Pablo; several were detected here in a 1989-1990 study, including gravid females.

EO# 21 is about 1.6 miles SSE; similarly, there were detections here during a 1989 study.

EO# 32 is about 1.8 miles SE; one adult male was captured, marked, and released in 1990.

EO# 22 is about 2 miles SE; one sub-adult female was captured, marked and released in 1989.

EO# 31 is about 2.3 miles E; 2 adult females were captured, marked, and released in 1990.

EO# 83 is about 2.5 miles ENE; 1 adult was detected here in 2004.

EO# 71 is about 3 miles ENE; 1 juvenile was trapped, and one young of year was detected in 2004.

EO# 84 is about 2.5 miles SSW; 1 adult was detected in 2006.

EO# 1 is right at, and little further than, 3 miles SW; this occurrence represents two specimens, one collected in 1904 & the other in 1953.

I hope this helps with your review.

Sincerely,
Brian

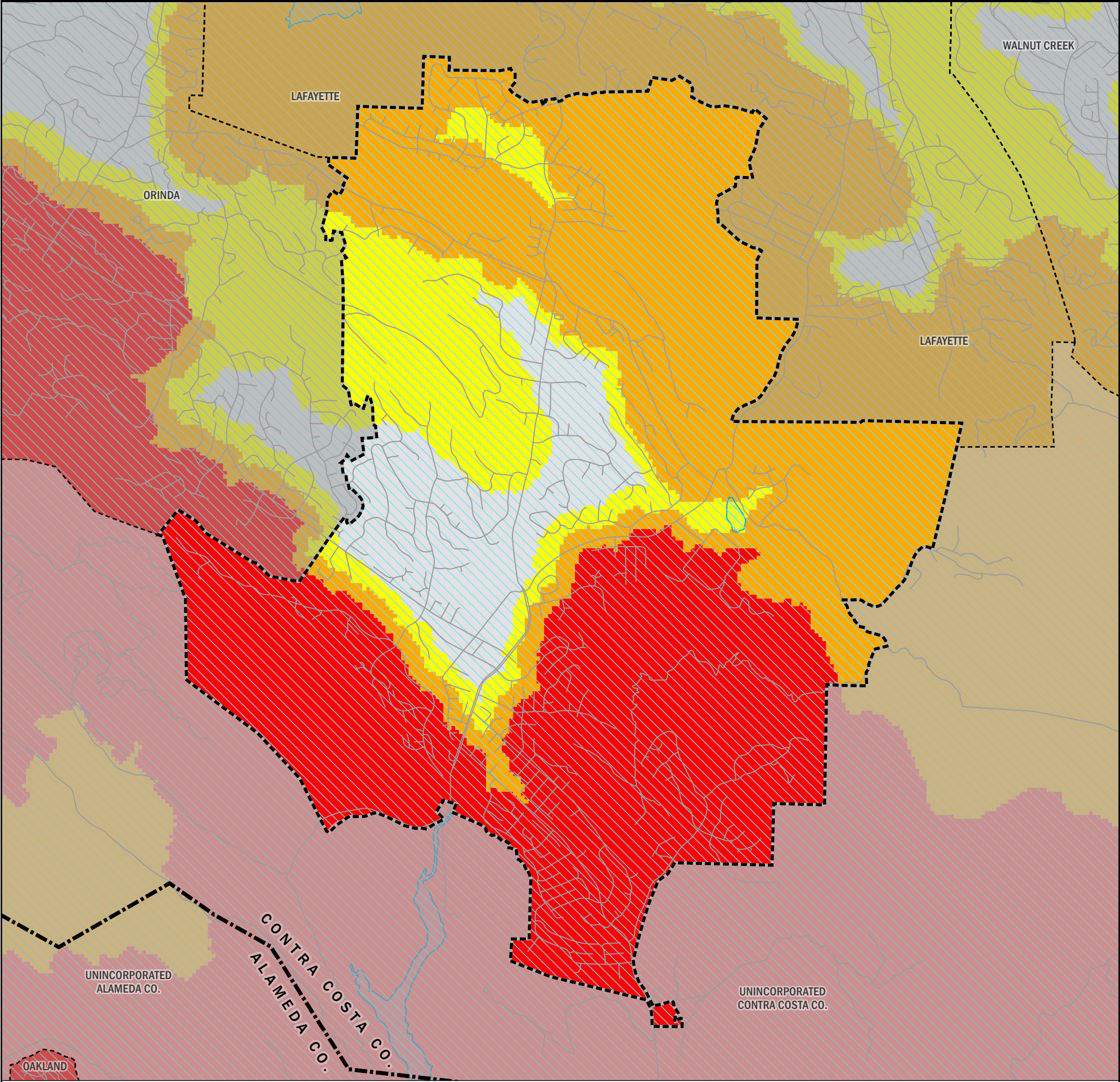
Brian Acord
CNDDDB Zoology Lead
(916) 322-7307
Brian.acord@wildlife.ca.gov
www.dfg.ca.gov/biogeodata/cnddb/

EXHIBIT B



Local Responsibility Area Fire Hazard Severity Zones

As Identified by the
State Fire Marshal
February 24, 2025

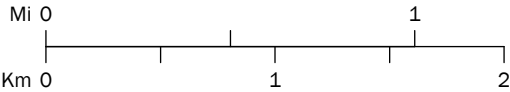


Fire Hazard Severity Zones (FHSZ) in Local Responsibility Area (LRA), as Identified by the State Fire Marshal

Very High High Moderate

Fire Hazard Severity Zones in State Responsibility Area (SRA), Effective April 1, 2024

Very High High



Projection: NAD 83 California Teale Albers
Scale: 1:33,000 at 11" x 17"

Incorporated City Waterbody
Unzoned LRA

Government Code section 51178 requires the State Fire Marshal to identify areas in the state as moderate, high, and very high fire hazard severity zones based on consistent

statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. Moderate, high, and very high fire hazard severity zones shall be based on fuel loading, slope, fire weather,

and other relevant factors including areas where winds have been identified by the Office of the State Fire Marshal as a major cause of wildfire spread.

The State of California and the Department of Forestry and Fire Protection make no representations or warranties regarding the accuracy of data or maps. Neither the State nor the Department shall be liable under any circumstances for any direct, special, incidental, or consequential damages with respect to any claim by any user or third party on account of, or arising from, the use of data or maps.

Gavin Newsom, Governor, State of California
Wade Crowfoot, Secretary for Natural Resources, CA Natural Resources Agency
Joe Tyler, Director/Fire Chief, CA Department of Forestry and Fire Protection
Daniel Berlant, State Fire Marshal, CA Department of Forestry and Fire Protection

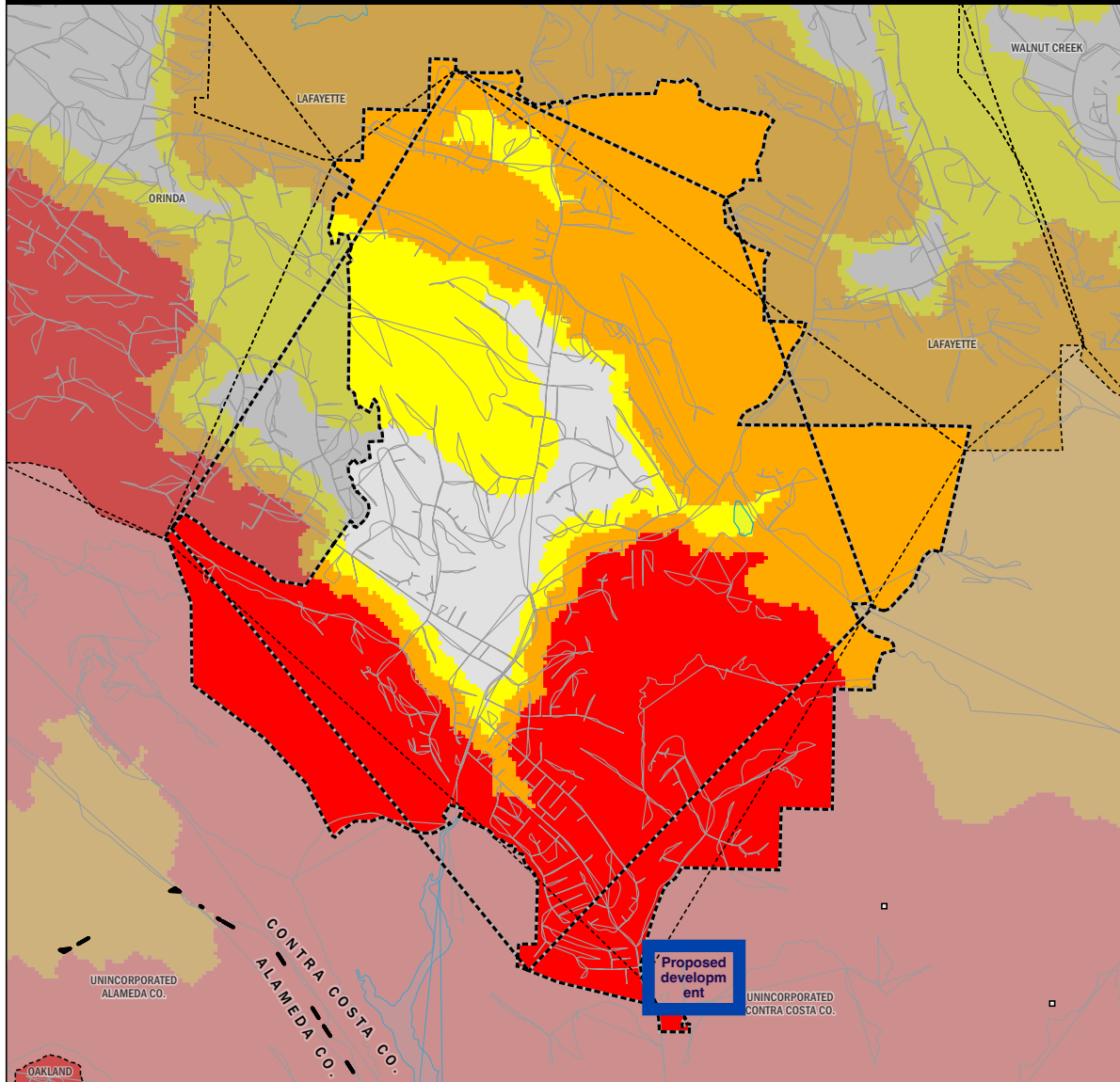
Data Sources:
CAL FIRE Fire Hazard Severity Zones (FHSZSRA23_3, FHSZLRA_25_1)
CAL FIRE State Responsibility Areas (SRA25_1)
City and County boundaries as of 10/22/24 (CA Board of Equalization)



Local Responsibility Area Fire Hazard Severity Zones

As Identified by the
State Fire Marshal

February 24, 2025



Fire Hazard Severity Zones (FHSZ) in Local Responsibility Area (LRA), as Identified by the State Fire Marshal

Very High High Moderate

Fire Hazard Severity Zones in State Responsibility Area (SRA), Effective April 1, 2024

Very High High

MI 0 1 2
Km 0 1 2

Projection: NAD 83 California Teale Albers
Scale: 1:33,000 at 11" x 17"

--- Incorporated City Waterbody

Unzoned LRA

Government Code section 51178 requires the State Fire Marshal to identify areas in the state as moderate, high, and very high fire hazard severity zones based on consistent

statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. Moderate, high, and very high fire hazard severity zones shall be based on fuel loading, slope, fire weather,

and other relevant factors including areas where winds have been identified by the Office of the State Fire Marshal as a major cause of wildfire spread.

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Gavin Newsom, Governor, State of California
Wade Crowfoot, Secretary for Natural Resources, CA Natural Resources Agency
Joe Tyler, Director/Fire Chief, CA Department of Forestry and Fire Protection
Daniel Berlant, State Fire Marshal, CA Department of Forestry and Fire Protection

Data Sources:
CAL FIRE Fire Hazard Severity Zones (FHSZSRA23_3, FHSZLRA_25_1)
CAL FIRE State Responsibility Areas (SRA25_1)
City and County boundaries as of 10/22/24 (CA Board of Equalization)

From: [Nadine Whisnant](#)
To: [Adrian Veliz](#)
Cc: [Michael Whisnant](#)
Subject: Camino Pablo Single-Family Residential Subdivision Rezone, General Plan Amendment and Development Plan, County File No. CDS23-09646/CDR23-03270/CDGP21-00004/CDDP23-03012. Mitigated Negative Declaration
Date: Thursday, October 2, 2025 5:16:08 PM
Attachments: [100125 AVeliz.docx](#)

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Hello Mr. Veliz,

Would you please confirm receipt of our comments?

Thank you,

Nadine Whisnant

Nadine & Michael Whisnant
100 Sleepy Hollow Lane
Orinda, CA 94563

October 2, 2025

Adrian Veliz, Senior Planner
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Adrian.Veliz@dcd.cccounty.us

**RE: Camino Pablo Single-Family Residential Subdivision Rezone, General Plan
Amendment and Development Plan, County File No. CDS23-09646/CDRZ23-
03270/CDGP21-00004/CDDP23-03012.
Mitigated Negative Declaration**

Dear Mr. Veliz;

We are writing you with our comments and opposition to the above referenced project.

First and foremost, the proposed project is not in compliance with Contra Costa County's general plan chapter 9 section HS-P7.1, which reads:

Deny entitlements for projects creating additional residential units (i.e., units not allowed by-right) in Very High Fire Hazard Severity Zones in the LRA or SRA. Discourage such projects in High Fire Hazard Severity Zones in the SRA and discourage them in the LRA unless adequate fire protection services are provided.

The subject proposed development is in a very high fire zone and is in the LRA. Thus the entitlements should be denied. Per the planning commission hearing on 8/27/2025 we understand that you have taken the position that this project in essence is "grandfathered" in. We question the legality of non-compliance as New regulations should take priority where there are no Vested Rights. The project should be denied on this alone.

Our additional concerns are numerous:

1. The subject property has not been properly vetted for environmental issues. A 2015 peer review of the reports submitted by the developer was cause for concern, this report is in possession of your office. The solution from the developer was not to address this issue, it was to hire a new expert who focused on vegetative issues vs any issues regarding animals. We ask that this issue be addressed.

17.a

- 17.b 2. The reports suggest air quality issues with no remedy.
- 17.c 3. The reports do not address the springs on the property identified previously.
- 17.d 4. The reports do not address the earthquake fault in the proximity of the project.
- 17.e For these reasons, as well as those addresses by other residents, we ask that the County have a full Environmental Impact Report conducted by the developer prior to any approvals.

Thank you for your consideration of these concerns.

Sincerely,

Nadine, Michael, David and Danielle Whisnant

From: [kathryn.brown](#)
To: [Adrian Veliz](#)
Subject: Opposition On Development For Camino Pablo
Date: Friday, October 3, 2025 3:01:50 PM

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Dear Mr. Veliz,

I am weighing in on my opposition for the proposed development on Camino Pablo by Sanders Ranch. It truly is such a vulgar display from the Contra Costa County Board to prioritize making money and communicating "it is a done deal" rather than protecting and serving the welfare of Moraga and its citizens; which you should not even have jurisdiction over considering the placement of your "done deal" project.

I am starting with a higher thesis by which you choose to underscore your communications. Sending letters to a select numbers of residents is so disrespectful. Yes- you will no doubt find a way to tell everyone that you navigated between the beacons by law, but you need to ask yourself- who do you represent? The out of state developer or the neighborhood and all of its citizens who will be affected by this colossal project.

Secondly, you have taken on a project that was voted down by the town of Moraga. I know you and the Board will have well prepared rebuttles for all of the concerns, however please note I and 327 (and counting) signatures do have a plethora of concerns and facts of contention against your "done deal". A copy of this email along with a longer letter will be sent to The Governor, The Governor's Planning and Research Department(OPR), The California Department of Finance, local government, businesses, media- because Mr. Veliz rural development and financing is subject to review and debate. Something your Board has lost sight of.

Today I stand firmly ready to articulate each one of my points in a public hearing that you decided would be beneficial days before Thanksgiving and Christmas. Again, such a vulgar display of your lack of responsibility. You have communicated proudly that you set those days on purpose.

Looking forward to being able to communicate each point in person.

K. Galbraith
Microsoft Data and AI Science Team
San Francisco Co- Innovation Lab
1045 La Avandia Street
Mountain View, CA
94043

18.a

From: [Robin Cort](#)
To: [Adrian Veliz](#)
Subject: Comments on Camino Pablo Single-Family Residential Subdivision Rezone IS/MND
Date: Monday, September 29, 2025 1:07:07 PM
Attachments: [RCort Comments on Camino Pablo Neg Dec 2025.pdf](#)

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My comments on the IS/MND are attached. Please let me know when the hearing date before the County Board of Supervisors is scheduled.

Thank you,
Robin Cort
1876 Camino Pablo
Moraga, CA 94556

September 29, 2025

Robin Cort, Ph.D.
1876 Camino Pablo
Moraga, CA 94556

Adrian Veliz
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Subject: Camino Pablo Single Family Residential Subdivision

Dear Mr. Veliz

I write to urge the County not to shirk its responsibilities under the California Environmental Quality Act (CEQA) and to prepare a full Environmental Impact Report to address the substantial impacts associated with the Camino Pablo Single Family Residential Subdivision. As I will demonstrate in this letter there is substantial evidence to support a fair argument that an EIR is required due to the potential for a number of significant unavoidable adverse impacts associated with the project, including:

- Significant visual impacts that would destroy the visual character of the Camino Pablo scenic corridor;
- Significant cumulative contribution to loss of agricultural land;
- Significant air quality impacts associated with generation of dust during construction;
- Significant impacts associated with the loss of Alameda whipsnake critical habitat and associated conflicts with County policies for protection of open space and wildlife;
- Significant geotechnical risks associated with landslides on the property;
- Significant conflicts with GHG reduction policies;
- Significant noise impacts associated with 14 months of grading at the site;
- Significant cumulative impact to fire service, requiring the construction of a new fire station at the southern end of Moraga;
- Potentially significant impacts to Vehicle Miles Travelled associated with new development so far from shopping, jobs and transit.
- Significant wildfire hazards associated with development on the suburban/wildland interface.

I am an environmental scientist with a Ph.D. in ecology and over 40 years of experience in preparing environmental documentation under CEQA and the National Environmental Policy Act. In the past, I have prepared several environmental documents for the Town of Moraga, including the IS/MNDs for infill residential developments on Corte Maria and Madsen Court, and for Ageno Hall on the St. Mary's campus. I have also prepared environmental documents for Contra Costa County, including the EIR for the Keller Canyon Landfill.

19.a



Those infill projects in Moraga are exactly the kinds of housing projects that the County should be encouraging, with development in areas that are already zoned for residential use. The County should not be accommodating developers who want to destroy agricultural land to build homes on the far outskirts of County, away from commercial centers and transit.

I submit these comments about the totally inadequate IS/MND that the County has published in hopes that a more thorough assessment of impacts, and of the merits of this ill-conceived project will be completed as part of a thorough Environmental Impact Report.

Project Description

The IS/MND says that “Residential development would retain the natural features of the land to the extent feasible”. This is a total distortion of the facts and is presented as a sales pitch intended to convince decision makers that they should approve this horrible project. The real truth is that the project requires 59,600 cubic yards of grading. That’s enough dirt to bury a football field under almost 28 feet of dirt. This amount of grading would NOT retain natural features of the land. As for the views from Camino Pablo, just take a look at the visual simulations and you will see that the project does not minimize visibility of homes as seen from Camino Pablo. The homes on the west side of the proposed new street will be completely visible from Camino Pablo, which is a scenic corridor in the Town of Moraga.

Aesthetics

It is ridiculous to say that “the project’s impact on the overall aesthetic quality of the project vicinity is less than significant”. The new development would completely dominate views for everyone traveling south on Camino Pablo toward Rancho Laguna park, whether they are walking, biking or driving past the site. Camino Pablo is designated as a scenic corridor in the Town of Moraga, and the IS/MND ignores that fact.

The IS/MND cites the applicant’s photo simulations of the project (which are buried in an appendix that’s not even referenced in the aesthetics section of the IS/MND) and claims that “Since the more significant views of the distant ridgelines would remain, the project would have less than significant impacts on a scenic vista.” But the IS/MND totally ignores the fact that the currently unobstructed views of natural hillsides at the southern end Camino Pablo would be overwhelmed by close-up views of enormous homes on graded lots. The southern end of Camino Pablo is currently a bucolic landscape with cattle grazing on hillsides framed by distant views of scenic hills. The IS/MND grossly mischaracterizes the project site as “embankments covered by weedy grasses and areas of disturbed soil” in an apparent effort to denigrate the existing scenic quality of the site. The existing landscape is open grassland; it is verdant green in the winter and shines with a golden light in the late summer sunshine. It has its own type of beauty that would be destroyed by the proposed development. The language in the initial study has obviously been crafted with a forgone conclusion in mind – to figure out some way to describe a significant impact as less than significant, so as to avoid the time, money and effort to prepare a full Environmental Impact Report.

19.d

The change from open grassland with cows to enormous homes is a tremendous change in the landscape. We can argue until the cows come home about whether one is prettier than the other, but the two different views are inarguably very different. We are also asked to take on faith that the actual landscaping will look like the simulations that are presented in the IS/MND. They are pretty little cartoons, but that's exactly what they are. The reality of what things will actually look like will undoubtedly be far different, unless the County is proposing to require the development to include a Homeowners Association with a commitment to maintaining the landscaping on the Camino Pablo frontage.

19.e

It is also completely untrue that the proposed project is visually consistent with existing development in Moraga west of Camino Pablo. Nothing could be further than the truth. The proposed homes are ENORMOUS McMansions, with square footage ranging from 3,463 square feet to 4,474 square feet. The homes fronting on the west side of Camino Pablo are all modest ranch houses less than 2,000 square feet in size. The largest is 1,966 square feet, and my own home, which is directly across the street from the proposed site, is only 1,518 square feet. The proposed homes are in no way comparable to the homes on Camino Pablo.

19.f

This is a **significant unavoidable impact** and the County should acknowledge that and be required to prepare a statement of overriding considerations before approving a project that will destroy the visual character of the Camino Pablo scenic corridor.

Agriculture

19.g

The existing County zoning for the project site is agriculture, and just because the project includes rezoning that does not change the fact that the project is NOT compatible with the existing zoning of the site. This project would result in the permanent and irreversible loss of agricultural land. Yes, it's just 7.9 acres, but agricultural land is irreplaceable. Once lost it is gone forever, and there is no possible mitigation that can compensate for the loss of agricultural land. This is a significant unavoidable adverse impact of the project, and the County must prepare an EIR and complete a statement of overriding considerations if they choose to go ahead and approve the project.

You also need to look at the loss of agricultural land from a cumulative perspective. This may seem like a drop in the bucket, but the millions of acres of agricultural land that have been lost to development across the state were all lost in small incremental bits that were claimed to be less than significant for each loss, but total to a huge cumulative loss. The contribution of this project to that cumulative loss of agricultural land is cumulatively considerable when considered in the context of the small amount of agricultural land that remains. While I approve the mitigation that requires a deed restriction for the 16-acre parcel A that would mandate its preservation in perpetuity as open space, this does not make up for the loss of agricultural land.

CEQA case law is very clear that while dedication of agricultural land as mitigation for loss of agricultural land is acceptable, it does NOT fully mitigate for the loss of farmland because a net loss of farmland still occurs. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 322-324). The loss of agricultural land is a **significant unavoidable impact**.

Air Quality

19.h

The air quality analysis states that the project would require 32 months of construction and requires mitigation to control dust during construction. However, I do not trust the developer to implement the required mitigation or the County to enforce it. And I hope the County Board of Supervisors will consider how much THEY would like it if a project that requires 59,600 cubic yards of grading was taking place across the street from their homes for almost three years. Our family survived the grading project that was required for the Sky View development, and I can assure you that the required dust control was NOT implemented adequately. We spent months living in a dust bowl with a thin film of grime covering everything in our yard, our cars, and the windows of our home. We complained to the BAAQMD, and an inspector came out to cite the contractor, but when did you ever encounter a developer that didn't want to cut corners on watering? The County will have to be out here every day enforcing dust control measures if they don't want a repeat of the Sky View fiasco.

Biological Resources

19.i

According to the IS/MND there is a possibility that sensitive plant species could be present on site. Without knowing if those plants are present there's no way to determine if impacts are significant. The mitigation as proposed is inadequate as it only requires pre-construction surveys and if special-status plants are found requires the applicant "to develop an approved mitigation plan to ensure that potential impacts to the identified species are less than significant." There is absolutely no indication of what that mitigation plan might be or whether it could possibly be successful. It is unclear whether mitigation might involve transplanting plants or purchasing of mitigation credits, and the feasibility of either is not evaluated. For example, transplanting sensitive plants is notoriously unsuccessful as it is very hard to predict the set of conditions needed for plant communities to establish. The mitigation does not specify the location where the plants would be relocated if this option is pursued. There is no information about whether mitigation credits for the species potentially present on the site are available or where these credits can be obtained or where habitat can be preserved. Without the specifics of whether plants are present and if present how impacts could be mitigated this impact needs to be considered significant. The mitigation for California red-legged frog is similarly vague and without confirming its feasibility the mitigation is of dubious efficacy.

19.j

The IS/MND acknowledges that the project site is within Critical Habitat for the Alameda whipsnake, but proposes inadequate mitigation for impacts. The California Department of Fish and Wildlife (CDFW) comments on the IS/MND and recommends that because the project would result in permanent loss of habitat for Alameda whipsnake and may contribute to habitat loss and fragmentation, resulting in indirect take over the life of the Project, the project would require an Incidental Take Permit. The County's response to this comment was inadequate, claiming, without justification, that the project would not result in take. The mitigation must be revised to require that the applicant obtain an Incidental Take Permit.

19.k

The purpose of critical habitat designation by the U.S. Fish and Wildlife Service is to protect geographic areas that contain physical or biological features "essential to the conservation of the

species”. Even if that habitat is not currently occupied the intent of preserving critical habitat is to maintain habitat with the aim of eventually restoring populations of listed species to areas that can support them. If this project required any sort of federal action, the federal agency would be required to consult with the U.S. Fish and Wildlife Service regarding the loss of critical habitat. If development continues to nibble away at the edges of critical habitat, there will eventually be insufficient area for the maintenance of the Alameda whipsnake. The County needs to acknowledge that this is a **significant unavoidable impact** both at a project level and as a cumulative impact. There is simply no mitigation that can compensate for the loss of critical habitat.

The mitigation does absolutely nothing to compensate for the loss of critical habitat; because in fact there is no way that such a loss can be replaced. This is inarguably a **significant unavoidable adverse impact**.

The IS/MND states that grading would occur within 40 feet of a jurisdictional drainage with seasonal wetlands, and states that “If any work occurs within 50 feet of the potential seasonal wetland or ephemeral drainage features on site, then a U.S. Army Corps of Engineers jurisdictional delineation would need to be conducted and include preparation of an aquatic resources map delineating all onsite waters/wetlands that may qualify as waters of the U.S./State subject to regulation by the Corps and RWQCB, respectively.” However, the IS/MND does not require any mitigation to ensure that this occurs. Mitigation should require that grading plans be revised so that no grading occurs within 50 feet of jurisdictional features or to require that the applicant obtain a jurisdictional delineation from the U.S. Army Corps of Engineers. Without such mitigation the impacts are **significant and unavoidable**.

The IS/MND ignores the fact that the project conflicts with policies in the General Plan that call for protection of wildlife habitats. The General Plan Conservation Element calls for preservation of important wildlife habitats. This project would eliminate 7.9 acres of critical habitat for the Alameda whipsnake. Destruction of critical habitat is not consistent with the County’s policy for protection of wildlife areas. This is a **significant and unavoidable impact**.

Geology and Soils

The IS/MND relies substantially on a geotechnical investigation conducted by ENGEO, Inc. in January 2014. While the geology of the site has not changed since then, the definition of the project most certainly has. The ENGEO report states specifically that “We understand that the extent of grading for the project has not been determined at this time.” The project applicants now have a grading plan that includes 59,600 cubic yards of grading. The geotechnical evaluation was conducted for 10 to 12 homes without accessory dwelling units. The proposed project now includes 13 lots with 13 very large homes and 11 new accessory dwelling units, which were not even discussed in the original concept for which the study was conducted. It is thus difficult to believe that the “currently proposed grading and site development plans are ‘substantially in conformance with the geotechnical recommendations’ presented” in the original ENGEO report. What is made clear is that enormous amounts of grading would be required because the site is riddled with existing landslides.

19.o

The IS/MND acknowledges that there is a fault trace that crosses the site, which appears to be in exactly the location where the road is proposed. The geotechnical report notes that “Fault zones sometimes contain weak, highly expansive material that can adversely affect roadways and/or foundations.” So the project applicant is proposing to build a road right on top of this fault trace. Will this be a private road and will the residents be responsible for repairing it when the road fails or will the County be stuck with the price tag for ongoing maintenance and repair of yet another failing piece of infrastructure? This is a significant impact and should at least require mitigation in the form of a financial commitment for ongoing maintenance and repair of the road so that it does not become a burden on existing taxpayers.

19.p

The IS/MND acknowledges that “the site has experienced numerous prior landslides”. Examination of Figure GEO-1 shows that there are 17 MAPPED LANDSLIDES, on this site. A site with 17 prior landslides can in no way be considered suitable for residential development. The IS/MND describes a complex corrective grading plan requiring over-excavation of landslide debris and placement of engineered fill, which contributes to the massive grading impacts associated with development of the site. The entire site will have to be covered by a network of subdrains so that poor drainage does not result in ongoing landsliding. Even with implementation of this scheme, the IS/MND states that “a strong seismic event could seriously damage the proposed project and put its occupants at risk”. Mitigation is proposed to address this, but what assurances do we, or the future residents of this development, have that this study can develop sufficient measures to ensure stability of homes on this site? This is deferred mitigation and leaves us with only one possible conclusion, which is that the landslide instability of this site makes it unsuitable for development and that construction of homes on this site should not be approved. This is a **significant unavoidable impact** of the project.

GHG

19.q

IS/MND acknowledges that the County has a Climate Action Plan (CAP), but then simply states that impacts would be less than significant because the project would be subject to the CAP without explaining how the project would be designed for consistency with the CAP. The CAP includes a policy to reduce vehicle miles traveled. New development on the far southern end of County encourages increased car dependency and would have greater per capita GHG emissions than development in more appropriate location near commercial centers in the center of the County. The IS/MND has not demonstrated consistency with plans for the reduction of GHG’s and this impact should be considered to be **significant and unavoidable** because the only way to mitigate it would be to construct the homes in a more appropriate location. The County needs to prepare a complete Environmental Impact Report to more fully evaluate this significant impact and to address alternative sites that would avoid this impact.

Hazards

19.r

Because the project is located directly on the edge of wildlands, the project would unavoidably expose both people and structures directly to the risk of loss, injury and death involving wildland fires. In 2019, the entire project site was threatened by the Merrill Fire, a wildfire caused by a vape pen that was carelessly tossed away on the wildland/suburban interface within Sanders Ranch, which required evacuation of the entire residential area in the southern end of Moraga.



19.r

Although there was no loss of life or property, thanks to the extremely rapid and effective response of the Moraga-Orinda Fire Protection District, the Merrill Fire highlights the risks of development on the edge of wildlands. The fire is not even mentioned in the IS/MND, which attempts to write this impact off as less than significant, with a cursory evaluation despite the fact that the project site is in a Very High Fire Hazard Severity Zone. This impact is **significant and unavoidable** and should be more thoroughly described in a full Environmental Impact Report. The County should not be approving new development in Very High Fire Hazard Severity Zones.

Land Use and Planning

19.s

The IS/MND asserts that building 13 homes on a 7.9-acre site that is designated for 1 dwelling unit per 5 acres is not a significant impact, because the County will just change the zoning. If changes in zoning are required, then the project is not consistent with existing zoning and this should be addressed as a significant unavoidable effect of the project. The County is under absolutely no obligation to ignore existing zoning and approve whatever any developer proposes, regardless of the appropriate use of the site. The IS/MND mischaracterizes the site as a “vacant lot” when in fact it has been actively used for grazing cattle for decades, a use that continues to this day.

19.t

In the discussion of consistency with General Plan policies the IS/MND points out that policies call for new housing project to be located on stable and secure lands. The project site is NOT stable as it is riddled with landslides and IS/MND admits that the site is “unstable or marginally stable at present”. The policy is intended to discourage development on steeply sloping sites such as this one and the fact that extensive grading is required to mitigate slope stability issues does not reduce the conflict with policies intended to limit development on steep slopes.

19.u

The project is definitely in conflict with policies associated with development on scenic routes as Camino Pablo is a scenic corridor in the Town of Moraga; the county should respect this local scenic designation. The project site is critical habitat for Alameda whipsnake and development is thus definitely in conflict with policies discouraging development in areas of ecological significance. If approved, this would be a **significant unavoidable impact**.

19.v

Noise

19.w

A noise assessment by Illingworth and Rodkin is cited in the noise section of the IS/MND, but is not provided as an appendix to the document so it is not possible to evaluate the accuracy of their assessment of impacts. However, the IS/MND does state that noise levels within 50 feet of the area where construction activity is occurring could be up to 88 dBA. This means that there would be 14 MONTHS of the noisiest phase of construction producing noise levels of up to 88 dBA at a distance of 50 feet. I live at 1876 Camino Pablo and my property line is only about 40 feet from the area where grading will occur. Even if they are measuring the distance to my home the distance is still only about 65 feet. For the homes south of the project site there is essentially a 0 foot distance between the edge of the backyards of homes on Skyview Court and the area along the southern end of the site where grading would occur. While the actual homes are about 50 feet from the property line, noise impacts should be calculated at the edge of the property line, not at

the location of the structure. Residents in the area around the construction site would be deprived of any ability to enjoy the use of their yards because of the constant construction noise associated with heavy grading equipment and the even more intrusive noise of back-up beepers on the construction equipment.

The mitigation proposed is NOT going to be effective because it's full of weasel words that completely void the effectiveness of the mitigation. Requiring temporary noise barriers "where feasible" means that the developer can just say that barriers are not feasible because of steep slopes or lack of space – so no noise barrier, no mitigation. There is no discussion of what the developer must do to reduce noise if the barriers are not feasible. Constructing residences on the west and south boundaries of the site "as early as possible" means nothing as the loudest noise is going to be associated with grading and none of the homes can be constructed until the grading is complete. Mitigation that is qualified by "if feasible" is not mitigation, it is an unenforceable suggestion.

Giving me a phone number for noise complaints is fine, but how are you going to enforce the requirement for corrective action? Construction-related complaints should be reported not just to the construction company but to somebody at the County so that there's some mechanism for enforcement.

The County needs to address the fact that this is not a typical residential development on a level site, where the noise of home construction is annoying, but reasonably tolerable. This is an enormous grading project requiring many months of constant heavy equipment use. This impact cannot legitimately be written off as less than significant even with the mitigation that is proposed. The mitigation is, in fact, barely mitigation, but rather just a list of standard boiler plate construction noise measures that are implemented for project that are in areas that are far less sensitive than the proposed site, combined with some unenforceable "if feasible" suggestions. Although compliance with the noise ordinance time limits is appropriate, it does not change the fact that residents in the project area will be exposed to noise levels far in excess of acceptable noise levels for over a year. The construction noise impact is **significant and unavoidable**.

Public Services

The IS/MND uses completely specious reasoning in an attempt to make a determination that public service impacts can be mitigated to a less than significant level. According to the MOFD, "the project site is outside both the response time and distance standards specified in the General Plan." However, the IS/MND claims that mitigation to create a Fire Protection Plan for wildfire hazards would fully mitigate this impact. That is patently ridiculous. That measure does not address the real need, which is that a fire station closer to the southern end of Moraga is needed. The County has already approved one new development in an unincorporated area outside the southern end of the Town boundary and now you are considering a SECOND development. The only real mitigation for the inadequate response times for the southern end of Moraga is to build a new fire station. Yet I'm sure the County will not do anything to address this need while heedlessly approving new development.

While the proposed project did not create this problem, approval of new residences at the far end of County would constitute a substantial contribution to a cumulatively significant impact. Does the project result in the need for new governmental facilities? Yes, in combination with the extensive development that already exists outside an acceptable radius for fire service this project highlights the need to construct a new fire station, “the construction of which could cause significant impacts, in order to maintain acceptable service ratios, response times or other performance objectives.” This is the criterion that the IS/MND should be addressing and has failed to fully consider. The criterion is not whether the project needs a fire protection plan. The criterion is whether this project contributes to the need to build a whole new fire station and the answer to that is, emphatically, yes! The County should not approve a single additional home outside the acceptable service radius for the fire department without developing a new fire station, and addressing the environmental impacts of that new station.

The project’s contribution to the requirement for a new fire station constitutes a **significant unavoidable cumulative impact**. While CEQA case law establishes that it is not necessarily true that, even where cumulative impacts are significant, any level of incremental contribution must be deemed cumulatively considerable. (*Communities for a Better Environment*, supra, 103 Cal.App.4th at p. 120.) Still, “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” The addition of an entire new residential development so far outside of the acceptable fire service radius must be deemed to be a significant contribution to a cumulative impact.

Transportation

I am greatly concerned that the County is proposing an all-way stop sign at the intersection of the entrance to the new development at the Camino Pablo/Tharp Avenue intersection. Because I live south of that intersection that would mean that I have yet another stop sign to impede my progress from my home to central Moraga. There is absolutely no reason why traffic on Camino Pablo should be impeded by this new development. The low levels of traffic traveling north on Camino Pablo do not justify a stop sign for vehicles traveling along Camino Pablo.

I also disagree with the dismissal of VMT impacts just because the project is below the 20 residential units threshold for VMT analysis. Although the development is small, it is located as far from commercial and employment centers as one could possibly get in this part of Contra Costa County. It makes no sense to introduce new housing in this area instead of in more centralized locations with ready access to shopping, jobs and transit.

The evaluation of traffic hazards points out that the 15 percent slope is barely acceptable for a street without a grooved concrete surface, which is required for grades between 16 and 20 percent to allow access for fire vehicles. The roadway will be steep enough that the consultant recommends signs reminding drivers to curb their wheels when parking. More importantly, the traffic consultant recognized the fact that 85 percent of the vehicles traveling on Camino Pablo are traveling at 35 mph, in total disregard of the 25 mph speed limit. I can absolutely attest to the truth of this, as drivers speed past my house all day long at speeds far in excess of 25 mph. There is virtually no enforcement of the speed limit at the southern end of Camino Pablo, and the IS/MND should recognize that this poses a significant adverse impact to the safety of bicyclists

19.aa and pedestrians. However, the IS/MND does nothing to address how the project would add to this existing hazard of drivers speeding on Camino Pablo. Adding additional speeding drivers to the mix would only exacerbate an existing safety hazard for bicyclist and pedestrians, including the many children who walk and bike along Camino Pablo to Camino Pablo Elementary. This is a **significant unavoidable impact** associated with the project. Again, the County should be preparing a complete Environmental Impact Report that corrects the deficiencies in the IS/MND.

Wildfire

19.bb As I note in my comments on the hazards section of the IS/MND, the IS/MND ignores the recent Merrill Fire. The site is a Very High Fire Hazard Severity Zone, and this impact should be more thoroughly considered in a full Environmental Impact Report.

Mandatory Findings of Significance

As I have demonstrated throughout this letter, there is substantial evidence to support a fair argument that an EIR is required due to the potential for a number of significant unavoidable adverse impacts associated with the project.

The loss of Alameda whipsnake critical habitat is a significant unavoidable impact that could potentially restrict the range of an endangered species. The Initial Study should conclude that this is a significant impact and an Environmental Impact Report must be prepared.

The IS/MND totally fails to address the actual cumulative impacts, which are largely ignored throughout the document. The project would result in a number of cumulatively significant impacts including:

- Loss of agricultural land
- Cumulative loss of Alameda whipsnake habitat
- Cumulative contribution to impacts on fire service, requiring a new fire station.

19.cc Finally, the project would undeniably have adverse effects on human beings, namely all of nearby residents on Sky View Drive and along the south end of Camino Pablo. We would be subjected to totally unacceptable noise and air quality impacts during construction and would forever have to live with the loss of the scenic hillside that we all value as the irreplaceable backdrop for our lives. My daughter took pictures of that hillside during the autumnal equinox, winter solstice and vernal equinox to illustrate the movement of the sun for a school science project. We spend every evening watching the light on the hillside as the sun is going down – shimmering green in the rainy season and with a golden glow in the summer. Many Moraga families walk past the hill on their way to Rancho Laguna Park. I cannot tell you how many parents I watch as they stop with their children and point out the cows on the hillside.

The County should take the following actions:

- Require preparation of a complete and adequate Environmental Impact Report that truly depicts the impacts of the project.

- Consider the significant unavoidable effects of the project before any thought is given to whether this project should be approved.
- Require consideration of alternative sites for development; this developer does not have to purchase this particular property and develop at this site.
- Deny the project as proposed. I would favor denying the project completely, but at a minimum the density of the project should be drastically reduced.
- Instead of 13 homes with 11 accessory dwelling units, consider an appropriate density for homes without the need for massive grading. This site might be able to support two homes if the grading is kept to a reasonable amount.

I sincerely hope that the County will not consider approval of this project. Over 25 years ago the Town of Moraga opposed the Sky View Development, which was approved by Contra Costa County without input from the Town of Moraga, because the site was not within the Town's Sphere of Influence. When the Town extended its sphere of influence to cover the proposed project site, I thought this would protect its citizens against another inappropriate development at the far end of County. The Town of Moraga DENIED the current application pointing out that more housing should be focused in the center of town, and citing problems such as landslide areas and wildfires. Now the County is considering approving an essentially unchanged project and is trying to assert that the project is so benign that environmental review can be completed through adoption of an IS/MND that whitewashes the impacts of the project.

Please do your job and consider the welfare and wellbeing of the citizens of Contra Costa County who live at the southern end of Camino Pablo. Please do not bend over and let us be trampled on by a money-grubbing developer who wants to destroy our open space, agricultural land and scenic resources to make a buck. Please require appropriate environmental review in the form of a complete Environmental Impact Report that considers alternatives, including a no project alternative, a lower density alternative and an alternative, more appropriate site for this type of development.

Sincerely,



Robin Cort, Ph.D.