Hembree Lane Oaks Subdivision Project
Final Initial Study

Town of Windsor
State Clearinghouse No. 2023020001

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1. Introduction

The Town of Windsor has evaluated the comments received on the Hembree Lane Oaks Subdivision Project Public Draft Initial Study and Mitigated Negative Declaration (IS/MND). The California Environmental Quality Act (CEQA) and CEQA Guidelines do not require responses to comments provided on the Initial Study. However, the Town's CEQA Guidelines, adopted by Resolution 905-00, require responses to comments; therefore, responses are provided herein. The responses to comments, errata, and final mitigation measures in this document, together with the Public Draft IS/MND and appendices, and the Mitigation Monitoring and Reporting Program, comprise the Final IS/MND for use by the Town of Windsor in its review and consideration of the Hembree Lane Oaks Subdivision Project.

1.1 PROJECT SUMMARY

The project site is on a 5.1-acre site that is proposed for development by DRG Builders (project applicant) and consists of one lot that is assigned Assessor's Parcel Number (APN) 163-080-047. The project site is at 7842 Hembree Lane, surrounded by residential uses to the north, south, and west, and parkland to the east. The project site is currently undeveloped and covered in a mix of vegetation, including mature trees.

The proposed project would include the development of 24 single-family dwelling units, each with a one- or two-car garage. Five units would have an attached accessory dwelling unit (ADU). Each dwelling unit would be two stories, for a height ranging between 26 and 29 feet at the roofline.

The General Plan land use designation for the project site is Very Low Density Residential (VLDR) and is zoned Surrounding Residential (SR), which allows for single-family homes, or duplexes and triplexes with a density of three to six dwelling units per acre. The maximum height for development on the project site is 35 feet.[1] A detailed description of the proposed project is provided in Chapter 3, *Project Description*, of the Public Draft IS/MND.

[1] Town of Windsor Municipal Code Title XVII, *Zoning*, Table 2-3, *Residential District General Development Standards*.

1.2 REPORT ORGANIZATION

This Final Initial Study is organized into the following chapters:

- Chapter 1: Introduction. This chapter provides an introduction and overview of the Final IS/MND document and a brief summary of the project.
- Chapter 2: Responses to Comments. This chapter provides an overview of the CEQA process and replication of the comments received on the Public Draft IS/MND with responses provided in Table 1, *Responses to Comments on the Public Draft Initial Study.*
- Chapter 3: Errata. This chapter describes text revisions to the Public Draft IS/MND that were made in response to agency and individual comments, as well as staff-directed changes.
- Chapter 4: Final Mitigation Measures. This chapter lists anticipated impacts from the proposed project and the corresponding mitigation measures that were identified in the Public Draft IS/MND. It also contains the signed applicant's agreement, which demonstrates the applicant's commitment to implement the mandatory mitigation measures.
- Appendix. The appendix for this Final IS/MND contains the following:
  - Appendix A: Comment Letters
  - Appendix B: 2016 Biological Update Report

2. Response to Comments

The Town of Windsor distributed a Notice of Intent to adopt a Mitigated Negative Declaration (MND) for the Hembree Lane Oaks Subdivision Project on Wednesday February 1, 2023. This initiated a 30-day public comment period for agencies and the public to submit comments on the Public Draft Initial Study. The comment period ended on Thursday, March 2, 2023. Three comment letters were received during the 30-day public comment period and are included as Appendix A, *Comment Letters*, of this Final IS/MND.

Although CEQA and the CEQA Guidelines do not require a Lead Agency to prepare written responses to comments received on an Initial Study, the Town has prepared the following written responses with the intent of conducting a comprehensive evaluation of the proposed project.

Responses to the comment letters received on the Public Draft Initial Study are provided in Table 1, *Responses to Comments on the Public Draft Initial Study*. The table is organized by comment letter number, with the full text of the comment replicated in the table and the response to the comment.

All comments included in this document are formally acknowledged for the record and will be forwarded to the decision-making bodies as part of this Final IS/MND for their consideration in reviewing the project.

2.1 LIST OF COMMENTERS

Comments on the Public Draft IS/MND were received from the following agencies, organizations, and individual members of the public:

- Comment Letter 1: Erin Chappell, Regional Manager Bay Delta Region, California Department of Fish and Wildlife, February 24, 2023.
- Comment Letter 2: Isabella Roman, Environmental Scientist, Department of Toxic Substances Control, California Environmental Protection Agency, March 1, 2023
- Comment Letter 3: Valarie Meldahl, Individual, March 1, 2023

2.2 RESPONSE TO COMMENTS

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
Isabella Roman, Environmental Scientist, Department of Toxic Substances Control, California Environmental Protection Agency		
1-1	The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Town of Windsor (Town) for the Hembree Lane Oaks Subdivision Project (project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines. CDFW is submitting comments on the MND to inform the Town, as the Lead Agency, of our concerns regarding potentially significant impacts to biological resources associated with the project. CDFW ROLE CDFW is a **Trustee Agency** with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources. PROJECT DESCRIPTION SUMMARY **Proponent**: Falcon Point Associates and DRG Builders **Objective**: The project would include the development of 24 single-family dwelling units, each with a one- or two-car garage. Five units would have an attached accessory dwelling unit. Each dwelling unit would be two stories, for a height ranging between 26 and 29 feet at the roofline. The project would also include two street extensions, creek restoration, landscaping, and a walking path within dedicated	The comment provides information regarding the commentors role, the project description, and the regulatory setting, and introduces the comments that follow (Comments 1-2 to 1-6). The comment does not address the adequacy of the environmental analysis. The comment is noted for the record and no further response is required.

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	open space. The site is currently undeveloped and covered in a mix of vegetation, including mature trees. **Location:** The project is located at 7842 Hembree Lane in the Town of Windsor, Sonoma County, California. The project site is on an Assessor's Parcel Number 163-080-047 in the Healdsburg, California, United States Geographical Survey 7.5-minute Topographic Quadrangle Map, Township 8 North, Range 8 West, Section 18 (Latitude 38.535897° North; Longitude-122.795240° West). REGULATORY REQUIREMENTS California Endangered Species Act Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the project has the potential to result in "take" of plants or animals listed under CESA, or CESA candidate species, either during construction or over the life of the project. **The project has the potential to result in take of Crotch bumblebee (*Bombus crotchii*), a candidate species, and Sonoma sunshine (*Blennosperma bakeri*), Sebastopol meadowfoam (*Limanthes vinculans*), Burke's goldfields (*Lasthenia burkei*), and many-flowered navarretia (*Navarretia leucocephala* ssp. *plieantha*), which are listed as endangered species, as further described below.** Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA ITP. Lake and Streambed Alteration Agreement CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow;	

RESPONSE TO COMMENTS

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **The project would fill an unnamed drainage, remove riparian vegetation, and restore portions of an existing creek; therefore, an LSA Notification is warranted. Thank you for including a mitigation measure requiring the project to obtain an LSA Agreement prior to impacting these features**. CDFW will consider the CEQA document for the project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency. **Fully Protected Species** Fully Protected species, such as 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 for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if 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). **Raptors and Other Nesting Birds** CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession, or destruction of any birds of prey or their nests or eggs), and 3513 (regarding unlawful take of	

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act. **COMMENTS AND RECOMMENDATIONS** CDFW offers the comments and recommendations below to assist the Town in adequately identifying and/or mitigating the project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Based on the project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below CDFW concludes that an MND is appropriate for the project. **Attachment 1** includes a Draft Mitigation Monitoring and Reporting Program for CDFW's recommended mitigation measures.	
1-2	***Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?*** **Environmental Setting and Mitigation Measures and Related Impact Shortcoming** **COMMENT 1: Page 4-27** Issue: The MND indicates that wetlands within the project site have the potential to support four CESA and federally listed as endangered plants: Sonoma sunshine, Burke's goldfields, many-flowered navarretia, and Sebastopol meadowfoam; however, these species were not detected during surveys. Burke's goldfields has been documented 0.6 miles south of the project site (California Natural Diversity Database [CNDDB] Occurrence Number 7). The Santa Rosa Plain Conservation Strategy, Appendix D: *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain* (https://www.fws.gov/library/collections/santa-rosa-plain-	The concerns of the commentor over possible presence of special-status plant species on the project site, including four CESA and federally-listed species is noted. A discussion of the potential for presence of special-status plant species on the site is provided on page 4-27 in Section III, *Biological Resources*, of Public Draft IS/MND. A total of 66 special-status plant species were evaluated for potential presence, as summarized in the Biological Assessment of October 27, 2022 prepared by the applicant's consulting biologist. As concluded in the Public Draft IS/MND, no special-status plant species were detected or are suspected to occur on the site based on the negative results of systematic surveys conducted in 2006, 2008, and 2022. The commentor questioned whether all surveys for rare plants were conducted in accordance with the 2018 *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (2018 Protocols). While the surveys conducted by Charles Patterson in 2006 and 2008 may not have met every provision in the 2018 Protocols, they were

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TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	conservation-strategy) and CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants) provide guidelines for acceptable survey documentation for protocol-level surveys for CESA and federally listed plants on the Santa Rosa Plain. According to Appendix C of the MND, rare plant surveys were conducted in 2006, 2008, and 2022. It appears the surveys in 2022 were conducted according to the Santa Rosa Plain Conservation Strategy and CDFW 2018 protocols and provided acceptable documentation. However, Appendix C of the MND provides only partial documentation for surveys conducted in 2006 and 2008. Appendix C of the MND also states, "Details (plant list, habitat mapping, field notes) of the botanical surveys are available upon request." Given that a full report of the protocol-level surveys was not provided, it is unclear if surveys were conducted according to the Santa Rosa Plain Conservation Strategy and CDFW 2018 protocols. Specific impacts and why they may occur and be significant: If CESA and federally listed plants that may be impacted by the project go undetected, the project may result in mortality of individuals from direct impacts or degradation of habitat adjacent to ground disturbance. CESA and federally listed plant mentioned above are considered endangered under CEQA pursuant to CEQA Guidelines section 15380. Therefore, if CESA and federally listed plants are present on or adjacent to the project site where they may be directly or indirectly impacted, the project may substantially reduce the number or restrict the range of these species, which would be a *mandatory finding of significance* pursuant to CEQA Guidelines section 15065, subdivision (a)(1).	performed by a qualified plant ecologist and were presumably conducted in accordance with the accepted surveys guidelines at the time. A copy of a 2016 review of the work performed by Mr. Patterson on the site is contained in Appendix B, *2016 Biological Update Report*, of this Final Draft IS/MND, which includes a summary of the survey timing and results from the rare plant survey work performed in 2006, 2007, and 2008. These negative results combined with the systematic surveys conducted in 2022 as described in the Biological Assessment provide adequate documentation for CEQA purposes that no special-status plant species occur on the site. As discussed on page 4-27 of the Public Draft IS/MND, an occurrence of Lobb's aquatic buttercup (*Ranunculus lobbii*) was encountered in the seasonal wetland area in the southeastern corner of the project site. Lobb's aquatic buttercup has no state or federal listing status and is Ranked 4.2 in the California Native Plant Society's Inventory. Plants in this ranking category are of limited distribution or found infrequently throughout a broader area in California. They are not "rare" from a statewide perspective but are uncommon enough that their status should be monitored regularly. As such Lobb's aquatic buttercup is not considered a special-status species. This portion of the site would remain undeveloped as part of the proposed project and would not be directly affected by proposed construction. The commentor recommends that an additional MM-BIO-1 be incorporated into the IS/MND to ensure the project conforms with the CDFW 2018 Protocols and the Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plan in Appendix D of the Santa Rosa Plain Conservation Strategy (SRPCS). A review of conformance of the project to the SRPCS is provided on pages 4-41 and 4-47 in Section III of the

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	Recommended mitigation measure: For an adequate environmental setting and to reduce impacts to Sonoma sunshine, Sebastopol meadowfoam, Burke's goldfields, and many-flowered navarretia to less-than-significant, and to comply with CESA, CDFW recommends including the following mitigation measure in the MND. **MM-BIO-1.** The project shall submit to CDFW two years of completed botanical survey results and obtain CDFW's written approval of the results. The botanical survey results shall follow CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* and the Santa Rosa Plain Conservation Strategy, Appendix D: *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain*. If CDFW is unable to accept the survey results, the project applicant shall conduct additional surveys prior to initiation of project activities or may assume presence of Sonoma sunshine, Burke's goldfields, many-flowered navarretia, and Sebastopol meadowfoam. Please be advised that for CDFW to accept the results, they should be completed in conformance with CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* and the Santa Rosa Plain Conservation Strategy, Appendix D: *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain,* including, but not limited to, conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts such as altering off-site hydrological conditions where the above species may be present. Surveys conducted during drought conditions may not be acceptable. If the botanical surveys result in the detection of the above CESA listed plants that may be impacted by the project, or the presence of these species is assumed, the project shall obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP.	Public Draft IS/MND, which includes acknowledgement that the site is located more than 4,000 feet from the closest boundaries of the Windsor Plant Conservation Areas designated in the SRPCS. Given the permitting obligations in securing authorizations from regulatory agencies, the applicant would be obligated to fulfill the requirements under Mitigation Measures BIO-2.1,-3.1,-3.2,-3.3,-3.4 and-3.5. These include securing authorizations from CDFW and providing mitigation for the loss of 0.192-acres of suitable federally endangered vernal pool plant habitat through the purchase of federally endangered vernal pool plant species credits at a 1.5:1 mitigation ratio at an agency approved plant preservation bank. It is up to CDFW to make the determination on whether the applicant has fulfilled the necessary botanical surveys in accordance with their permitting authority under CESA. The additional MM-BIO-1 recommended by the commentor is not believed to be warranted under CEQA, given the negative results of the rare plant surveys conducted in 2006, 2008, and 2022. No additional mitigation measure or revisions to the Public Draft IS/MND are considered necessary in response to this comment.

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TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
1-3	**COMMENT 2: Pages 4-37 – 4-38** **Issue**: The project would result in permanent impacts to grassland and oak woodland habitats, which may be suitable to support Crotch bumblebee. The MND indicates that special-status bumblebee species such as Crotch bumblebee may be present within the project site. The project site contains flowering plants that may serve as food sources and undisturbed potential nesting habitat for Crotch bumblebee. The MND provides a mitigation measure for bumblebees; however, the measure does not require surveys for them or the project to obtain a CESA ITP for impacts to Crotch bumblebee which is a CESA candidate species. **Specific impacts and why they may occur and be significant:** If Crotch bumblebee are present on or adjacent to the project site and go undetected, the project may result in mortality of individuals from direct impacts or degradation of habitat adjacent to ground disturbance. As a CESA candidate species, Crotch bumblebee is considered threatened, endangered, or rare under CEQA pursuant to CEQA Guidelines section 15380. Therefore, if Crotch bumblebee are present on or adjacent to the project site where they may be directly or indirectly impacted, the project may substantially reduce the number or restrict the range of this species, which would be a *mandatory finding of significance* pursuant to CEQA Guidelines section 15065, subdivision (a)(1). **Recommended mitigation measure:** For an adequate environmental setting and to reduce impacts to Crotch bumblebee to less-than-significant, and to comply with CESA, CDFW recommends including the following mitigation measure in the MND. **MM-BIO-2.** All ground-disturbing work, including, but not limited to, staging of equipment on bare soil, grass, or other vegetation and trenching to remove underground infrastructure such as water and sewer lines, shall take place between the period of October 15 to	The concerns of the commentor over possible presence of Crotch bumble bee on the site, need for confirmation surveys, and possible need for an Incidental Take Permit from CDFW is noted. A discussion of the potential for presence of Crotch bumble bee and other special-status bumble bee species on the site is provided on pages 4-31 and 4-32 in Section III, *Biological Resources*, of the Public Draft IS/MND. As noted on page 4-32, the Crotch bumble bee has experienced a substantial decline in the northern part of its range and is now believed to be extirpated from the Windsor vicinity. However, the commentor is correct that detailed surveys have not been conducted to confirm presence or absence, and that an Incidental Take Permit would be required in the remote instance an occurrence of Crotch bumble bee or western bumble bee remain on the site. In response to the comment, Mitigation Measure BIO-1c on page 4-38 of the Public Draft IS/MND has been revised to require preconstruction surveys and necessary authorization from CDFW, if necessary, which would serve to address these additional concerns of the commentor. Additions are indicated with <u>double underlined</u> text and deletions in ~~strikethrough~~ text. **Mitigation Measure BIO-1c.** Adequate measures shall be taken to preserve and enhance suitable habitat for special-status bee species on the project site. This shall be accomplished by taking the following steps. ▪ A qualified biologist shall prepare and oversee implementation of a Special-Status Bee Species Habitat Mitigation Plan (SSBSHMP). The SSBSHMP shall be prepared in conjunction with the Riparian Restoration Plan required to address potential impacts on riparian habitat described in Mitigation Measure BIO-~~1e.1~~<u>2.1.</u>

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	March 15. This period has been developed using local Crotch bumble bee data and may not be applicable to other regions or projects. If ground-disturbing work must occur between March 16 and August 14, a minimum of three focused surveys for Crotch bumblebee, spaced at least three weeks apart and with at least one survey occurring during the peak flight season of Crotch bumble bee and at least one survey occurring during the peak bloom period for the site, shall be conducted prior to the start of ground-disturbing activities. The biologist conducting the survey and the survey protocol must be approved in writing by CDFW prior to the survey. The Project shall submit a survey report to CDFW prior to ground-disturbing work and shall notify CDFW within 24 hours if Crotch bumblebee or other special-status bumblebees are detected. The project shall obtain a CESA ITP from CDFW if impacts to Crotch bumblebee cannot be avoided.	▪ All initial ground-disturbing work for the project, including, but not limited to, staging of equipment on bare soil, grass, and other vegetation and trenching to remove underground infrastructure such as water and sewer lines, shall take place between the period of October 15 to March 15. ▪ If initial ground-disturbing work for the project must occur between March 16 and August 14, preconstruction surveys shall be conducted by a qualified biologist. A minimum of three focused surveys, spaced at least three weeks apart and with at least one survey occurring during the peak flight season of Crotch bumble bee and at least one survey occurring during the peak bloom period for flowering plants on the site, shall be conducted prior to the start of ground-disturbing activities. The biologist conducting the surveys and the survey protocol must be approved in writing by the Town and CDFW prior to conducting the initial survey. The applicant shall submit a survey report of findings to the Town and CDFW prior to ground-disturbing work. The qualified biologist shall notify the Town and CDFW within 24 hours if Crotch bumble bee or other special-status bumble bee species are detected. A detailed avoidance and minimization program shall be prepared by the qualified biologist if any special-status bumble bees are encountered on the site, the results of which shall be incorporated into the SSBSHMP. ▪ The applicant shall obtain a CESA Incidental Take Permit from CDFW if impacts to Crotch bumble bee or other state-listed special-status bumble bee cannot be avoided. ▪ The SSBSHMP shall include improvements to nesting burrowing habitat and a floral resource enhancement planting plan to provide a diversity of native flowering plant species that can be utilized by a diversity of bee and

RESPONSE TO COMMENTS

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
		other insect species. Species used in the planting plan shall be indigenous to the Windsor area and shall be suitable for planting in areas of grassland and oak woodland habitat. ▪ Improvements and enhancement plantings under the SSBSHMP shall be implemented in the proposed open space area on the project site and shall be compatible with other mitigation contemplated for this area to address potential impacts on seasonal wetlands, riparian habitat and native tree loss. ▪ The SSBSHMP shall be reviewed and approved by the Town prior to initiation of vegetation removal and grading.
1-4	**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service?** **Environmental Setting and Mitigation Measures, and Related Impact Shortcoming** **COMMENT 3: Pages 4-30 – 4-31** **Issue:** The project is within the wintering distribution of burrowing owl (*Athene cunicularia*) and contains and is adjacent to grasslands that may be suitable wintering habitat for the species (Klute et al. 2003). Burrowing owls have been documented overwintering in the project vicinity (CNDDB Occurrence Number 2023). Appendix C to the MND indicates that burrowing owl would not be impacted by the project because no suitably sized burrows or evidence of potential burrows are present on or immediately adjacent to the project site. However, suitable burrows may be excavated within a single day by, for example, American badger (*Taxidea taxus*) (Ministry of Environment Ecosystems 2007 as cited in Brehme et al.	The concerns of the commentor over possible presence of western burrowing owl on the site is noted. As concluded on page 4-31 in Section III, *Biological Resources*, of the Public Draft IS/MND, suitable ground nesting habitat for northern harrier, California horned lark, and western burrowing owl is absent on the project site. As indicated in Figure 4-1, *Habitat Map*, of the Public Draft IS/MND, most of the site is dominated by oak woodland cover and the entire site is surrounded by existing development and the managed turf and landscaping of Robbins Park. The extent of urbanization in the surrounding area is shown in Figure 3-2, *Aerial View of the Existing Site*, of the Public Draft IS/MND. A habitat assessment for potential nesting of burrowing owl and other native bird species was performed by the Initial Study biologist on November 30, 2022, as noted on page 4-21 of the Public Draft IS/MND. The entire ground surface was inspected for possible burrows and a general habitat assessment was performed in accordance with the 2012 *Staff Report on Burrowing Owl Mitigation* noted by the commentor. The results of the habitat assessment conducted by the Initial Study biologist were summarized in Section III of the Public Draft

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	2015). Additionally, burrowing owls can be impacted up to 500 meters or 1,640 feet away from a project from auditory and visual disturbances and may utilize burrow surrogates, such as culverts, piles of concrete rubble, piles of soil, burrows created along soft banks of ditches and canals, pipes, and similar structures (CDFW 2012). Therefore, the absence of natural burrows does not necessarily exclude burrowing owls. **Specific impacts and why they may occur and be significant:** If burrowing owls that may be impacted by the project are not detected, the project may result in reduced health and vigor, or mortality, of owls from direct impacts to occupied wintering habitat or from wintering burrow abandonment caused by auditory and visual disturbances. Burrowing owl is a California Species of Special Concern and protected under Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act. Therefore, if wintering burrowing owls are present on or within 1,640 feet of the project site, project impacts to burrowing owl would be *potentially significant*. **Recommended mitigation measure:** For an adequate environmental setting and to reduce impacts to burrowing owl to less-than-significant, CDFW recommends implementing following mitigation measure: **MM-BIO-3.** If the project occurs during the burrowing owl wintering season from September 1 to January 31, prior to project activities a qualified biologist shall conduct a habitat assessment several months prior to the start of construction, and if habitat is present shall conduct surveys, in accordance with the California Department of Fish and Game (now CDFW) *2012 Staff Report on Burrowing Owl Mitigation* (CDFW 2012 Staff Report, available at https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-	IS/MND, including absence of any sign or habitat suitability for burrowing owl. Figure 4-4, *Special-Status Animals and Critical Habitat*, of the Public Draft IS/MND indicates that the closest record of burrowing owl reported by the California Natural Diversity Database (CNDDB) is over a mile to the southwest of the site and separated by dense urban development of south Windsor. No suitable burrows or burrow surrogates were observed on the site by the Initial Study biologist, and given the dense tree cover, the presence of potential foraging habitat is very low on the site. This absence of suitable habitat is compounded further by the intensity of human activity on the site, including pedestrians, dog walking and bike riding. Several dirt bike courses have been excavated through the trees, and the site appears to experience frequent activity by pedestrians and their pets. The intensity of human activity on the site, the dominance by dense oak woodland, and fact that the site is surrounded by dense existing residential development, precludes the potential for future dispersal and breeding occupation by burrowing owl on the site. The conclusion in the Public Draft IS/MND that suitable habitat for burrowing owl is absent on the site remains unchanged in response to the comment and the recommended additional MM-BIO-3 regarding additional assessments and mitigation for burrowing owl is not warranted.

RESPONSE TO COMMENTS

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	birds) habitat assessment and survey methodology. The habitat assessment and survey area shall encompass a sufficient buffer zone to detect owls nearby that may be impacted, which shall be a minimum of 1,640 feet where suitable habitat occurs, unless otherwise approved in writing by CDFW. Time lapses between surveys or project activities shall trigger subsequent surveys, as determined by a qualified biologist, including, but not limited to, a final survey within 24 hours prior to ground disturbance and before construction equipment mobilizes to the project area. If the habitat assessment does not identify suitable habitat and surveys are not conducted, an additional habitat assessment shall be conducted within 14 days prior to construction and if new refugia are present surveys shall be conducted as described above, unless otherwise approved in writing by CDFW. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report, unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a "take" avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site specific conditions, and completed before project construction unless otherwise approved in writing by CDFW. It shall also include placement of a conservation easement and preparation, implementation, and funding of a long-term management plan prior to project construction.	
1-5	COMMENT 4: Page 4-34 **Issue:** Mitigation Measure BIO-1a requires a pre-construction nesting bird survey within 100 feet of the project site, which may	The concerns of the commentor over potential impacts of the project on nesting native birds, including white-tailed kite, is noted. A detailed discussion of the possible presence of nesting habitat on

TABLE 1 RESPONSES TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY

Number	Comment	Response
	not be adequate to avoid impacts to special-status and common nesting birds such as white-tailed kite, a California Fully Protected species. Recommended mitigation measure: To reduce impacts to nesting birds to less-than-significant, CDFW recommends implementing the following measure: MM-BIO-4. If construction, grading, vegetation removal, or other project-related activities are scheduled during the nesting season, February 1 to August 31, a qualified biologist shall conduct a survey for active bird nests within 5 days prior to the beginning of project-related activities. The survey shall consist of the entire project site and a minimum 500-foot buffer. If a lapse in project-related work of 5 days or longer occurs, another survey shall be conducted before project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established. The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during project work until the young have fully fledged (have completely left	the site is provided on pages 4-30 and 4-31 in Section III, *Biological Resources,* of the Public Draft IS/MND. No nesting locations have been identified by the CNDDB for special-status bird species in the site vicinity or were observed during the field surveys of the site. However, because of the possibility that new nests could be established in the future before construction proceeds, Mitigation Measure BIO-1a was recommended to ensure adequate measures are taken to avoid inadvertent take of bird nests when in active use. The provisions in Mitigation Measure BIO-1a were based on standard practices and conditions of the site. In particular, the requirement to include an area of 100 feet from the site for the survey boundaries rather than 500 feet as called for in MM-BIO-4 recommended by the commentor was based on the fact that the site is surrounded by existing residential development. The existing residential development, including the one- and two-story residences, fencing, and landscaping, would block any disturbance associated with on-site construction activities beyond this 100-foot distance. Basically, the existing residences and associated human activity would attenuate any project-related construction disturbance to active bird nests beyond this 100-foot distance, and the survey limits in Mitigation Measure BIO-1a has not been revised to the 500-foot distance recommended by the commentor. However, there are a number of details in MM-BIO-4 recommended by the commentor that would be useful in ensuring adequate buffer distances are provided around any active nests and the authority of the qualified biologist. In response to the comment, Mitigation Measure BIO-1a on page 4-34 of the Public Draft IS/MND has been revised to further define buffer distances and role of the qualified biologist, which would address these concerns of the commentor. Additions are indicated with <u>double underlined</u> text and deletions in ~~strikethrough~~ text.

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Number	Comment	Response
	the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.	Mitigation Measure BIO-1a: Adequate measures shall be taken to avoid inadvertent take of bird nests protected under the federal Migratory Bird Treaty Act and Department of Fish and Game Code when in active use. This shall be accomplished by taking the following steps. ▪ If tree removal and initial construction is proposed during the nesting season (February 1 to August 31), a focused survey for nesting raptors and other migratory birds shall be conducted by a qualified biologist within five days prior to the onset of tree and vegetation removal in order to identify any active nests on the site and surrounding area within 100 feet of proposed construction. The project site shall be resurveyed to confirm that no new nests have been established if vegetation removal and demolition has not been completed or if construction has been delayed or curtailed for more than five days during the nesting season. ▪ If no active nests are identified during the construction survey period, or development is initiated during the non-breeding season (September 1 to January 31), tree and vegetation removal and building construction may proceed with no restrictions. ▪ If bird nests are found, an adequate setback shall be established around the nest location and vegetation removal and construction activities restricted within this no-disturbance zone until the qualified biologist has confirmed that any young birds have fledged and are able to function outside the nest location. Required setback distances for the no-disturbance zone shall be based on input received from the CDFW, and may vary depending on species and sensitivity to disturbance. As necessary, the no-disturbance zone shall be fenced with temporary

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Number	Comment	Response
		orange construction fencing if construction is to be initiated on the remainder of the project site. ▪ The buffer distance around active nests shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel and construction equipment, standing up from brooding position, and flying away from the nest. ▪ The qualified biologist shall have the authority to order the cessation of all nearby project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established. ▪ The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest location to ensure that they are not disturbed by project work. Nest monitoring shall continue during project work until the young have fully fledged (have completely left the nest and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved as part of further consultation with CDFW. ▪ A report of findings shall be prepared by the qualified biologist and submitted to the Town for review and approval prior to initiation of vegetation removal and other construction during the nesting season (February 1 to August 31). The report shall either confirm absence of any active nests or should confirm that any young are within a designated no-disturbance zone and construction can proceed. No report of findings is required if vegetation removal and other construction is initiated during the non-nesting season (September 1 to January 31) and continues uninterrupted according to the above criteria.

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Number	Comment	Response
1-6	ENVIRONMENTAL DATA CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 CNDDB. The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals. ENVIRONMENTAL DOCUMENT FILING FEES The project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). CONCLUSION CDFW appreciates the opportunity to comment on the MND to assist the Town in identifying and mitigating project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Nick Wagner, Senior Environmental Scientist (Specialist), at (707) 428-2075 or nicholas.wagner@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov.	The comment provides directions on how to submit information to the CNDDB and how to pay CDFW filing fees in the event that potential future development has the potential to impact biological resources, as well as closing remarks. The comment does not address the adequacy of the environmental analysis. The comment is noted for the record and no further response is required.

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Number	Comment	Response
	Sincerely, Erin Chappell Regional Manager Bay Delta Region Attachment 1: Draft Mitigation Monitoring and Reporting Program ec: Office of Planning and Research, State Clearinghouse, Sacramento **REFERENCES** Brehme, C.S., S.A. Hathaway, R. Booth, B.H. Smith and R.N. Fisher. 2015. Research of American Badgers in Western San Diego County, 2014. Data Summary prepared for California Department of Fish and Wildlife and the San Diego Association of Governments. 24pp. (42pp. with Appendix) California Department of Fish and Wildlife (formerly California Department of Fish and Game). 2012. Staff Report on Burrowing Owl Mitigation. Available online at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTPR6001-2003, Washington, D.C.	
Isabella Roman, Environmental Scientist, Department of Toxic Substances Control, California Environmental Protection Agency		
2-1	I represent the Department of Toxic Substances Control (DTSC) reviewing the Initial Study (IS) for the Hembree Lane Oaks Project. The IS states that the site was used as an orchard from at least 1933 to 1983. The IS states the following: "While information regarding past agricultural uses at the orchard was not available, it is likely that industry-standard agricultural chemicals and fertilizers were applied to the orchard consistent with recommended practices." No information was available for review, yet an assumption was made that best practices were implemented and therefore there is no risk to public health or the environment. Past land uses could have	While the commenter correctly asserts that past land uses can indicate the need for a Phase 2 Environmental Site Assessment (ESA) (i.e., further investigation such as soil testing), as described on page 4-74 in Section VIII, *Hazards and Hazardous Materials*, of the Public Draft IS/MND, a Phase I ESA, dated July 22, 2021, was prepared for the project site, which is included as Appendix F, *Phase I Environmental Site Assessment*, of the Public Draft IS/MND. The Phase I ESA was prepared in conformance with American Society of Testing and Materials (ASTM) *Standard Practice for Environmental Site Assessments: Phase I Environmental Site*

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Number	Comment	Response
	resulted in hazardous materials releases within the project area that should be investigated for public health protection. Past land uses typically indicate the need for conducting a Phase 2 Environmental Site Assessment or other environmental sampling activities. Please feel free to reach out if you have any questions or concerns.	*Assessment Process* (ASTM E 1527-13). The Phase I ESA was reviewed by PlaceWorks and incorporated into the Public Draft IS/MND. As described in both the Phase I ESA and the Public Draft IS/MND, the Phase I ESA was prepared to evaluate whether or not past property uses have created any environmental or other nuisance conditions which would indicate a recognized environmental conditions (RECs), i.e., hazardous substances or petroleum products, thereby creating a significant hazard to the public or the environment. As described in the Public Draft IS/MND, a review of historical information indicates that a plum (prune) orchard was present at the site from at least the early 1930's until sometime in the late 1980's to early 1990's. Accordingly, the existence of fertilizers and pesticides are possible in the shallow soil due to this historical land use. The application of pesticides in accordance with applicable laws and labeling requirements is generally considered an acceptable agricultural practice and does not constitute a REC. Published information indicates that the application of pesticides to row crops does not result in the application of chemicals that would constitute a REC. Pesticide accumulation in near-surface soils is not generally considered a soil contamination problem requiring cleanup, as long as their application is conducted in accordance with applicable laws and labeling requirements. Further, if an agricultural site did not contain an area where chemical management occurred (filling, mixing, rinsing, storage, or disposal), then use of these chemicals in accordance with industry standards does not appear to cause a historical land use finding to be classified as a REC unless evidence of a spill.

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Number	Comment	Response
		A review of historical aerial photographs from 1952, 1953, 1968, and 1983 shows that the former orchard was uniform in distribution across the project site, and that no conspicuous storage or mixing areas were observed on the project site. Based on the review of historical photographs, there is no reason to suspect that the past owner of the orchard applied pesticides out of conformance with the recommendations of the labeling on the containers. Therefore, the historical orchard land use is not likely to have resulted in any hazardous materials release such that there is threat to public health. Further, as described on page 4-78 of the Public Draft IS/MND, the project is not located on a site which is included on a list of hazardous material sites compiled pursuant to Government Code Section 65962.5, providing additional evidence that there has been no use of pesticides that would create a significant hazard to the public or the environment. As such, this historical property use is considered a *de minimis* condition and no soil testing is warranted. By definition, *de minimis* conditions do not present a material risk of harm to public health or the environment and conditions determined to be *de minimis* are not RECs (ATSM, 1527-13). Additionally, as described in Section II, *Air Quality*, of the Public Draft IS/MND, the proposed project is required to implement Mitigation Measure AQ-1 to reduce impacts related to the release of reducing construction emissions of fugitive dust (PM_{10} and $PM_{2.5}$) as required by the Bay Area Air Quality Management District *Revised California Environmental Quality Act Air Quality Guidelines*, and Mitigation Measure AQ-2 to ensure that sensitive receptors within 0.25 miles (1,325 feet) of the project site would not be exposed to substantial pollutant concentrations during construction.

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Number	Comment	Response
		In summary, it is the opinion of the Town that no additional soil testing as a result of past agricultural practices on the site approximately 30 years ago is required for the proposed project.
Valarie Meldahl, Individual		
3-1	I reside directly adjacent to the proposed Hembree Lane Oaks development on Meadowlark Way in the subdivision Country Meadow built by Gardner Construction 35 years ago.	The comment does not address the adequacy of the environmental analysis. The comment is noted for the record and no further response is required.
3-2	After speaking with Ms. Voge a few days ago, she advised me to make known to the council and the developer about our concern with respect to grading. The grading that was done and passed inspection in 1988 left some homes in this development with the problem of standing water beneath our homes requiring sump-pumps in inclement weather. This remains so as of today and could possibly affect the homes adjacent when built as there is considerable standing water out there today. I would like you to speak to this concern and also answer the following questions.	The commenter's concern that current drainage conditions on developed properties may also occur on the site of the proposed project if care is not taken during the grading phase is noted for the record. As described on pages 4-60 and 4-61 in Section VI, *Groundwater and Soils*, of the Public Draft IS/MND, there are high groundwater conditions and seasonal standing water on the project site, and the site soils have low infiltration rates when thoroughly saturated. As described in Impact GEO-3 on pages 4-64 and 4-65 in Section VI of the Public Draft IS/MND, the site-specific Geotechnical Report prepared for the proposed project includes design standards to further ensure the proposed development would not be on unstable soil. Impacts would be reduced to a *less-than-significant* level with implementation of Mitigation Measure GEO-3 which requires the project applicant to apply the site-specific building and design standards in the Geotechnical Report. The Geotechnical Report for this project recommends construction measures that are required to be implemented in the design and construction of the project to alleviate the issues of concern by the commenter. Specifically, the requirement is to remove the top three feet of the soil and recompact it, which should eliminate or minimize the problem of standing water for this project. The Geotechnical Report also requires positive surface gradients so that surface runoff is not permitted to pond adjacent to building foundations or slabs. The Geotechnical Report describes that care should be taken

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Number	Comment	Response
		so that discharges from roof gutters and downspout systems are not allowed to infiltrate the subsurface near the structure or in the vicinity of slopes. Furthermore, as described in Section IX, *Hydrology and Water Quality,* of the Public Draft IS/MND, Windsor Municipal Code Section 9-4-304, *Requirements for Construction Sites That Cause Land Disturbance of One Acre or More,* requires that an Erosion and Sediment Control Plan be prepared and submitted to the Town for review prior to the start of grading activities. Implementation of the Erosion and Sediment Control Plan would address any potential erosion and sediment issues associated with the proposed grading and site preparation activities. With these requirements, the issue of seasonal standing water and grading activities as described by the commenter would be adequately addressed.
3-3	1) Since the Town of Windsor will own the proposed open space, there will now be additional costs to be considered such as Mosquito Abatement and upkeep required by the fire department to avoid fires to name a few. I have been told that this will be taxed to the new home owners on this property. Is this correct?	The comment does not address the adequacy of the environmental analysis. The comment is noted for the record and no further response is required.
3-4	2) It is the plan to cut down 160 plus trees for this development, many-old growth trees among them.	According to the US Department of Agricultural, Forest Service, there is no one definition for what constitutes an old-growth tree or forest and definitions can vary by types of trees and ecosystems. While the Town also does not provide a definition of an old-growth tree or forest, as described on pages 3-6 and 3-7 in Section 3.1.3.3, *Other Town of Windsor Requirements*, of the Public Draft IS/MND, Chapter 27.36, *Tree Preservation and Protection,* of the Town's Zoning Ordinance regulates the removal of native trees that qualify as "protected" size with a trunk diameter of six inches or more measured at 4.5 feet above existing grade. Smaller trees may also be protected under special circumstances. As described on page 4-20 in Section III, *Biological Resources,* of the Public Draft IS/MND, three Tree Inventory Reports (TIRs) were prepared for the project site and no habitat on the project site was identified as being old growth.

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Number	Comment	Response
		The TIRs indicate a total of 375 trees of protected size on the project site and adjacent areas were evaluated, consisting of 350 valley oaks, 15 coast live oaks, and three black oaks, together with seven planted trees that are not native or indigenous to the Windsor area. Most of the oaks are of sapling and young size, with trunk diameters of 12 inches or less. Only 11 oaks assessed in the TIRs are mature specimens with trunk diameters exceeding 24 inches. As described on page 3-16 in Section 3.2.8, *Dedicated Open Space*, of the Public Draft IS/MND, the proposed project would dedicate approximately 2.1 acres to the Town as permanent open space to be preserved in perpetuity, which would become an extension of Robbins Park. The approximately 2.1 acres includes the denser valley oak woodland, including most of the mature specimen valley oak trees with trunk diameters greater than 24 inches. Furthermore, the preservation of this open space is required by Mitigation Measure BIO-2.2 to allowing the long-term preservation of trees and other habitats. As described on page 4-45 of the Public Draft IS/MND, to convey the relative size of trees proposed for removal and preservation as part of the proposed project, each tree of protected size in the Tree Preservation Plan was assigned one of three size classes based on trunk diameter (six to 12, over 12 to 24, and over 24 inches). This data was overlain on top of the Tree Preservation Plan as indicated in Figure 4-5, *Tree Resources*, of the Public Draft IS/MND. The vast majority of the trees on the project site are saplings and young trees (six to 12 inches), including those to be removed. Most of the trees of medium size (over 12 to 24 inches) would be retained in the proposed open space areas and yards of individual residences. All but one of the mature specimen trees (over 24 inches) would be preserved in the proposed open space area in the eastern half of the project site. According to the Tree Preservation Plan, an estimated 181 trees of protected size would be retained as part of the proposed project. With

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Number	Comment	Response
		the proposed on-site preservation, this would represent a preservation to removal ratio of about 1:1.24.
3-5	Please advise who will receive the revenue for the lumber this will provide.	The comment does not address the adequacy of the environmental analysis. The comment is noted for the record and no further response is required.
3-6	Over the years there have been many proposals for this land and in the past the council has been outspokenly opposed to accepting any offering of open space for a waiver of tree in-lieu fees and understandably so because we already have a lovely park immediately adjacent. I am not opposed to this development but I do not feel the council has done right for the residents of Windsor with respect to the trees.	The comment does not address the adequacy of the environmental analysis. The comment is noted for the record and no further response is required.

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3. *Errata*

This chapter includes text revisions to the Public Draft IS/MND that were made in response to agency and organization comments, as well as staff-directed changes. These text revisions include typographical corrections, insignificant modifications, amplifications and clarifications of the Public Draft IS/MND. In each case, the revised page and location on the page is presented, followed by the textual, tabular, or graphical revision. Underlined text represents language that has been added to the Public Draft IS/MND; text with ~~strikethrough~~ represents language that has been deleted from the Public Draft IS/MND. None of the revisions to the Public Draft IS/MND constitutes significant new information as defined in CEQA Guidelines Section 15073.5; therefore, the Public Draft IS/MND does not need to be recirculated.

3.1 BIOLOGICAL RESOURCES

The text on page 4-34 of the Public Draft IS/MND is hereby amended as follows:

Impact BIO-1a: Tree and vegetation removal could result in loss or destruction of native bird nests in active use in violation of the Migratory Bird Treaty Act and State Fish and Game Code unless proper procedures and coordination with California Department of Fish and Wildlife (CDFW) are implemented as part of any avoidance measures.

Mitigation Measure BIO-1a: Adequate measures shall be taken to avoid inadvertent take of bird nests protected under the federal Migratory Bird Treaty Act and Department of Fish and Game Code when in active use. This shall be accomplished by taking the following steps.

- If tree removal and initial construction is proposed during the nesting season (February 1 to August 31), a focused survey for nesting raptors and other migratory birds shall be conducted by a qualified biologist within five days prior to the onset of tree and vegetation removal in order to identify any active nests on the site and surrounding area within 100 feet of proposed construction. The project site shall be resurveyed to confirm that no new nests have been established if vegetation removal and demolition has not been completed or if construction has been delayed or curtailed for more than five days during the nesting season.
- If no active nests are identified during the construction survey period, or development is initiated during the non-breeding season (September 1 to January 31), tree and vegetation removal and building construction may proceed with no restrictions.
- If bird nests are found, an adequate setback shall be established around the nest location and vegetation removal and construction activities restricted within this no-disturbance zone until the qualified biologist has confirmed that any young birds have fledged and are able to function outside the nest location. Required setback distances for the no-disturbance zone shall be based on input received from the CDFW, and may vary depending on species and sensitivity to

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disturbance. As necessary, the no-disturbance zone shall be fenced with temporary orange construction fencing if construction is to be initiated on the remainder of the project site.

- The buffer distance around active nests shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel and construction equipment, standing up from brooding position, and flying away from the nest.
- The qualified biologist shall have the authority to order the cessation of all nearby project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.
- The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest location to ensure that they are not disturbed by project work. Nest monitoring shall continue during project work until the young have fully fledged (have completely left the nest and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved as part of further consultation with CDFW.
- A report of findings shall be prepared by the qualified biologist and submitted to the Town for review and approval prior to initiation of vegetation removal and other construction during the nesting season (February 1 to August 31). The report shall either confirm absence of any active nests or should confirm that any young are within a designated no-disturbance zone and construction can proceed. No report of findings is required if vegetation removal and other construction is initiated during the non-nesting season (September 1 to January 31) and continues uninterrupted according to the above criteria.

The text on page 4-36 of the Public Draft IS/MND is hereby amended as follows:

Impact BIO-1b: Tree pruning, and removal could result in loss or injury to roosting bats unless proper procedures and coordination with California Department of Fish and Wildlife (CDFW) are implemented as part of any avoidance measures.

Mitigation Measure BIO-1b. Adequate measures shall be taken to avoid inadvertent take of special-status and more common bat species if present in trees on the project site. This shall be accomplished by taking the following steps.

- A qualified biologist shall visually inspect trees to be removed for bat roosts within seven days prior to their removal or pruning. The biologist shall look for signs of bats including sightings of live or dead bats, bat calls or squeaking, the smell of bats, bat droppings, grease stains or urine stains around openings in trees, or flies around such openings. Trees with multiple hollows, crevices, forked branches, woodpecker holes, or loose and flaking bark have the highest chance of occupation and shall be inspected the most carefully.
- If signs of bats are detected, confirmation on presence or absence shall be determined by the qualified biologist, which may include night emergency or acoustic surveys.
- Due to restrictions of the California Health Department, direct contact by workers with any bat is not allowed. The qualified bat biologist shall be contacted immediately if a bat roost is discovered during project construction.

- If an active maternity roost is encountered during the maternity season (April 1 to August 31), the CDFW shall be contacted for direction on how to proceed and an appropriate exclusion zone established around the occupied tree until young bats are old enough to leave the roost without jeopardy. The size of the buffer would take into account:
  - Proximity and noise level of project activities;
  - Distance and amount of vegetation or screening between the roost and construction activities; and
  - Species-specific needs, if known, such as sensitivity to disturbance.
- Where the qualified biologist has determined that a tree provides suitable habitat for bat roosting, the qualified biologist shall oversee its removal according to the following procedure.
  - Pruning or removal of living trees or snags shall preferably not occur during the maternity season between April 1 and August 31 to minimize the disturbance of young that may be present and unable to fly.
  - Pruning or removal of living trees or snags that provides suitable habitat for bats shall preferably occur between the hours of 12 pm and sunset on days after nights when low temperatures were 50° or warmer to minimize impacting bats that may be present in deep torpor.
  - When it is necessary to perform crown reduction on trees over 12 inches in diameter breast height or remove entire trees or branches over six inches in diameter there shall be preliminary pruning of small branches less than two inches in diameter performed the day before. The purpose of this is to minimize the probability that bats would choose to roost in those trees the night before the work is performed.
- The qualified biologist shall oversee installation of a minimum of six bat boxes in large trees to be preserved on the project site to provide compensation for the loss of potentially suitable bat roosting habitat as a result of tree removal. <u>The bat boxes shall be installed after any tree removal and vegetation treatment for construction and fire fuel management has been completed.</u>
- A report of findings shall be prepared by the qualified biologist and submitted to the Town for review and approval prior to initiation of tree removal summarizing the results of the preconstruction survey. The report shall either confirm absence of any active roosts or define appropriate controls to be implemented under the supervision of the qualified biologist in accordance with the above criteria.

The text on page 4-38 of the Public Draft IS/MND is hereby amended as follows:

Impact BIO-1c: Vegetation removal and grading could result in the loss of special-status bee species and suitable habitat for these species if present on the project site.

Mitigation Measure BIO-1c. Adequate measures shall be taken to preserve and enhance suitable habitat for special-status bee species on the project site. This shall be accomplished by taking the following steps.

- A qualified biologist shall prepare and oversee implementation of a Special-Status Bee Species Habitat Mitigation Plan (SSBSHMP). The SSBSHMP shall be prepared in conjunction with the

Riparian Restoration Plan required to address potential impacts on riparian habitat described in Mitigation Measure BIO-~~1c.1~~2.1.

- All initial ground-disturbing work for the project, including, but not limited to, staging of equipment on bare soil, grass, and other vegetation and trenching to remove underground infrastructure such as water and sewer lines, shall take place between the period of October 15 to March 15.
- If initial ground-disturbing work for the project must occur between March 16 and August 14, preconstruction surveys shall be conducted by a qualified biologist. A minimum of three focused surveys, spaced at least three weeks apart and with at least one survey occurring during the peak flight season of Crotch bumble bee and at least one survey occurring during the peak bloom period for flowering plants on the site, shall be conducted prior to the start of ground-disturbing activities. The biologist conducting the surveys and the survey protocol must be approved in writing by the Town and CDFW prior to conducting the initial survey. The applicant shall submit a survey report of findings to the Town and CDFW prior to ground-disturbing work. The qualified biologist shall notify the Town and CDFW within 24 hours if Crotch bumble bee or other special-status bumble bee species are detected. A detailed avoidance and minimization program shall be prepared by the qualified biologist if any special-status bumble bees are encountered on the site, the results of which shall be incorporated into the SSBSHMP.
- The applicant shall obtain a CESA Incidental Take Permit from CDFW if impacts to Crotch bumble bee or other state-listed special-status bumble bee cannot be avoided.
- The SSBSHMP shall include improvements to nesting burrowing habitat and a floral resource enhancement planting plan to provide a diversity of native flowering plant species that can be utilized by a diversity of bee and other insect species. Species used in the planting plan shall be indigenous to the Windsor area and shall be suitable for planting in areas of grassland and oak woodland habitat.
- Improvements and enhancement plantings under the SSBSHMP shall be implemented in the proposed open space area on the project site and shall be compatible with other mitigation contemplated for this area to address potential impacts on seasonal wetlands, riparian habitat and native tree loss.
- The SSBSHMP shall be reviewed and approved by the Town prior to initiation of vegetation removal and grading.

3.2 CULTURAL RESOURCES

The text on page 4-51 of the Public Draft IS/MND is hereby amended as follows:

Mitigation Measure CULT-1: The project applicant shall comply with the following procedures:

1. Prior to issuance of building permits by the Town, a qualified "archaeological monitor" under the supervision of a qualified "archaeologist" and a qualified "Native American monitor" shall be retained by the project applicant for Cultural Awareness Training pursuant to item 2 and archaeological monitoring pursuant to item 3.

2. Prior to construction, the qualified archaeological monitor and Native American monitor retained by the project applicant pursuant to item 1 shall provide Cultural Awareness Training for all supervisors, contractors, and equipment operators, and staff from the Town of Windsor in order to familiarize them with the types of artifacts that could be encountered and the procedures to follow if subsurface cultural resources are unearthed during construction. The applicant shall notify the Town's Public Works Department and Building Division up to two weeks in advance of the time and location of the Cultural Awareness Training. Following the Cultural Awareness Training, project applicant shall provide the Town with written verification that the Cultural Awareness Training has occurred.

3. The qualified archaeological monitor and Native American monitor retained by the project applicant pursuant to item 1 shall observe all project-related ground disturbing activities within limits of the ground-disturbing footprint of the proposed project. Ground-disturbing activities include, but are not limited to, asphalt removal, grading, exaction, and hand excavation, clearing, grubbing, and removing and/or recompacting unconsolidated soils near the ground surface. The Town shall be notified up to two weeks in advance of project-related ground disturbing activities. Following the monitoring, project applicant shall provide the Town with written verification that the monitoring has occurred.

   If a suspected archaeological resource(s) (find) is encountered at any point during the project-related ground-disturbing activities on the project site, work within a minimum of 60 feet of the find shall be halted and the find shall be evaluated by the qualified archaeologist and Native American monitor to determine if the find qualifies for listing in the California Register of Historic Places (CRHR) and to determine if the find is human remains. The qualified Native American monitor, or other qualified representative of the appropriate tribe if the Native American monitor is not in the position to do so, shall determine if the find is a tribal cultural resource (TCR), and if the find is human remains, if the remains are Native American.

   If the find does not qualify for listing in the CRHR, is not a TCR, and is not human remains, then ground-disturbing activities may commence and no further archaeological investigation or mitigation shall be required. If the find qualifies for listing in the CRHR or is TCR, follow the procedures in item 4. If the find is determined to be human remains, follow the procedures in item 5.

4. If the find qualifies for listing in the CRHR or is a TCR, the qualified archaeologist, in consultation the Native American monitor (or other qualified representative of the appropriate tribe if the Native American monitor is not in the position to do so), Town, and project applicant shall determine whether preservation in place is feasible. If perseveration in place is feasible, a Preservation Plan shall be prepared by the archaeologist and Native American monitor and implemented by the project applicant. If preservation in place is infeasible in light of project design or layout, or is unnecessary to avoid significant effects, a Cultural Resources Data Recovery Plan (CRDRP) shall be developed by the qualified archaeologist and the Native American monitor, to outline excavation and laboratory procedures, and if appropriate, curation at a university

depository or other treatment considered appropriate by the tribe. The CRDRP shall include, but is not limited to, the following:

- A description of the excavation and laboratory procedures, and if appropriate, curation at a university depository or other appropriate facility.
- Identify a proposed data recovery program and how the program would preserve the significant information the archaeological resource or TCR is expected to contain.
- Specify compliance with the applicable requirements of PRC Section 21083.2 for the treatment of the unique archaeological resources. Note that the treatment for most resources would consist of, but would not be limited to, sample excavation, artifact collection, site documentation, and historical research, with the aim of targeting the recovery of important scientific data contained in the portion(s) of the significant resource to be impacted by the project.
- Provisions for analysis of data in a regional context; reporting of results within a timely manner and subject to review and comments by the appropriate Native American representative, where applicable, before being finalized; curation of artifacts and data at a local facility acceptable to the Town and appropriate Native American representative, if applicable; and dissemination of final confidential reports to the appropriate Native American representative, if applicable, the Northwest Information Center of the California Historical Resources Information System and the Town.

5. If the find is determined to be human remains, the Sonoma County Coroner must be notified immediately. It is especially important that the suspected human remains, and the area around them, are undisturbed and the proper authorities are called to the scene as soon as possible, as it could be a crime scene. The coroner will determine if the remains are precontact period Native American remains or of modern origin and if there are any further investigation by the coroner is warranted. If the remains are suspected to be those of a precontact period Native American, the coroner shall contact the Native American Heritage Commission (NAHC) by telephone within 24-hours. The NAHC will immediately notify the person it believes to be the most likely descendant (MLD) of the remains. The MLD has 48-hours to make recommendations to the landowner for treatment or disposition of the human remains. If the MLD does not make recommendations within 48-hours, the landowner is required by law to reinter the remains in an area of the property secure from further disturbance. If the project applicant does not accept the recommendation of the MLD, the owner or the descendant may request mediation by NAHC. The applicant shall also retain a qualified archaeologist to evaluate the historical significance of the discovery, the potential for additional remains, and to provide further recommendations for treatment of the site in coordination with the MLD.

3.3 GEOLOGY AND SOILS

The text on page 4-66 of the Public Draft IS/MND is hereby amended as follows:

Mitigation Measure GEO-5: Prior to the start of construction, a qualified paleontologist, or his or her designee, shall conduct training for construction personnel and staff from the Town of Windsor regarding the appearance of fossils and the procedures for notifying a paleontologist should fossils be discovered by during project-related ground-disturbing activities. The applicant shall notify the Town's Public Works Department and Building Division up to two weeks in advance of the time and location of the training. Following the training, project applicant shall provide the Town's Public Works Department and Building Division with written verification that the training has occurred. The qualified paleontologist ~~should~~ shall prepare a Paleontological Mitigation and Monitoring Program to be implemented during ground disturbance activity for the proposed project. Additionally, a paleontologist shall be on-call to respond in the event a fossil is recovered and to perform subsequent work to determine whether it can be identified and whether it meets significance criteria. A paleontological cross-trained archaeologist can also respond in the possible event of vertebrate fossil exposure during grading. In the event of a fossil discovery by construction personnel, all work in the immediate vicinity of the find shall cease until the paleontologist has the opportunity to inspect and evaluate the discovery. If it is determined that the fossil(s) is (are) scientifically significant, the qualified paleontologist shall monitor remaining ground disturbing activities (including grading, trenching, foundation work, and other excavations) on a full-time basis. Monitoring ~~should~~ shall be conducted by a qualified paleontological monitor, who is defined as an individual who has experience with collection and salvage of paleontological resources. The duration and timing of the monitoring shall be determined by the project paleontologist. If the project paleontologist determines that full-time monitoring is no longer warranted, he or she may recommend that monitoring be reduced to periodic spot-checking or cease entirely. Monitoring would be reinstated if any new or unforeseen deeper ground disturbances are required, and reduction or suspension would need to be reconsidered by the Principal Paleontologist. Ground disturbing activity that does not occur in areas mapped as high sensitivity or that do not exceed five feet in depth in areas overlying potentially high sensitivity units would not require paleontological monitoring.

ERRATA

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4. Final Mitigation Measures

This chapter lists all impacts and mitigation measures that were identified in the Public Draft IS/MND and provides the applicant's agreement, which demonstrates the applicant's commitment to implement the mandatory mitigation measures. This list of mitigation includes the revisions made in Chapter 3, *Errata*, of this Final IS/MND.

4.1 MANDATORY MITIGATION MEASURES

4.1.1 AIR QUALITY

Impact AQ-1: Fugitive dust (PM_{10} and $PM_{2.5}$) generated by the proposed project during construction could potentially result in significant regional short-term air quality impacts without implementation of the Bay Area Air Quality Management District's best management practices related to reducing fugitive dust emissions.

Mitigation Measure AQ-1: The project's construction contractor shall comply with the following best management practices for reducing construction emissions of fugitive dust (PM_{10} and $PM_{2.5}$) as required by the Bay Area Air Quality Management District Revised California Environmental Quality Act Air Quality Guidelines:

- Water all active construction areas at least twice daily, or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- Pave, apply water twice daily or as often as necessary to control dust, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- Sweep daily (with water sweepers using reclaimed water if possible) or as often as needed all paved access roads, parking areas and staging areas at the construction site to control dust.
- Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material.
- Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
- Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt/sand).
- Limit vehicle traffic speeds on unpaved roads to 15 miles per hour.

- Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until the vegetation is established.
- Install sandbags or other erosion control measures to prevent silt runoff from public roadways.

Impact AQ-2: The proposed project could expose sensitive receptors to substantial pollutant concentrations during construction.

Mitigation Measure AQ-2: During construction, the construction contractor(s) shall:

- Use construction equipment that have engines that meet either United State Environmental Protection Agency (USEPA) or California Air Resources Board (CARB) Tier 4 Interim emission standards for off-road diesel-powered construction equipment with more than 50 horsepower, unless it can be demonstrated to the Town of Windsor Building Division that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by Tier 4 Interim emissions standards for a similarly sized engine, as defined by the CARB's regulations.
- Prior to issuance of any construction permit, ensure that all construction plans submitted to the Town of Windsor Planning Division and/or Building Division clearly show the requirement for Tier 4 Interim emission standards for construction equipment more than 50 horsepower.
- Maintain a list of all operating equipment in use on the project site for verification by the Town of Windsor Building Division Official or their designee. The construction equipment list shall state the makes, models, and number of construction equipment on site.
- Ensure that all equipment shall be properly serviced and maintained in accordance with manufacturer recommendations.
- Communicate with all sub-contractors in contracts and construction documents that all nonessential idling of construction equipment is restricted to five minutes or less in compliance with CARB Rule 2449 and is responsible for ensuring that this requirement is met.

4.1.2 BIOLOGICAL RESOURCES

Impact BIO-1a: Tree and vegetation removal could result in loss or destruction of native bird nests in active use in violation of the Migratory Bird Treaty Act and State Fish and Game Code unless proper procedures and coordination with California Department of Fish and Wildlife (CDFW) are implemented as part of any avoidance measures.

Mitigation Measure BIO-1a: Adequate measures shall be taken to avoid inadvertent take of bird nests protected under the federal Migratory Bird Treaty Act and Department of Fish and Game Code when in active use. This shall be accomplished by taking the following steps.

- If tree removal and initial construction is proposed during the nesting season (February 1 to August 31), a focused survey for nesting raptors and other migratory birds shall be conducted by a qualified biologist within five days prior to the onset of tree and vegetation removal in order to identify any active nests on the site and surrounding area within 100 feet of proposed construction. The project site shall be resurveyed to confirm that no new nests have been

established if vegetation removal and demolition has not been completed or if construction has been delayed or curtailed for more than five days during the nesting season.

- If no active nests are identified during the construction survey period, or development is initiated during the non-breeding season (September 1 to January 31), tree and vegetation removal and building construction may proceed with no restrictions.
- If bird nests are found, an adequate setback shall be established around the nest location and vegetation removal and construction activities restricted within this no-disturbance zone until the qualified biologist has confirmed that any young birds have fledged and are able to function outside the nest location. Required setback distances for the no-disturbance zone shall be based on input received from the CDFW, and may vary depending on species and sensitivity to disturbance. As necessary, the no-disturbance zone shall be fenced with temporary orange construction fencing if construction is to be initiated on the remainder of the project site.
- The buffer distance around active nests shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel and construction equipment, standing up from brooding position, and flying away from the nest.
- The qualified biologist shall have the authority to order the cessation of all nearby project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.
- The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest location to ensure that they are not disturbed by project work. Nest monitoring shall continue during project work until the young have fully fledged (have completely left the nest and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved as part of further consultation with CDFW.
- A report of findings shall be prepared by the qualified biologist and submitted to the Town for review and approval prior to initiation of vegetation removal and other construction during the nesting season (February 1 to August 31). The report shall either confirm absence of any active nests or should confirm that any young are within a designated no-disturbance zone and construction can proceed. No report of findings is required if vegetation removal and other construction is initiated during the non-nesting season (September 1 to January 31) and continues uninterrupted according to the above criteria.

Impact BIO-1b: Tree pruning, and removal could result in loss or injury to roosting bats unless proper procedures and coordination with California Department of Fish and Wildlife (CDFW) are implemented as part of any avoidance measures.

Mitigation Measure BIO-1b. Adequate measures shall be taken to avoid inadvertent take of special-status and more common bat species if present in trees on the project site. This shall be accomplished by taking the following steps.

- A qualified biologist shall visually inspect trees to be removed for bat roosts within seven days prior to their removal or pruning. The biologist shall look for signs of bats including sightings of live or dead bats, bat calls or squeaking, the smell of bats, bat droppings, grease stains or urine

stains around openings in trees, or flies around such openings. Trees with multiple hollows, crevices, forked branches, woodpecker holes, or loose and flaking bark have the highest chance of occupation and shall be inspected the most carefully.

- If signs of bats are detected, confirmation on presence or absence shall be determined by the qualified biologist, which may include night emergency or acoustic surveys.
- Due to restrictions of the California Health Department, direct contact by workers with any bat is not allowed. The qualified bat biologist shall be contacted immediately if a bat roost is discovered during project construction.
- If an active maternity roost is encountered during the maternity season (April 1 to August 31), the CDFW shall be contacted for direction on how to proceed and an appropriate exclusion zone established around the occupied tree until young bats are old enough to leave the roost without jeopardy. The size of the buffer would take into account:
  - Proximity and noise level of project activities;
  - Distance and amount of vegetation or screening between the roost and construction activities; and
  - Species-specific needs, if known, such as sensitivity to disturbance.
- Where the qualified biologist has determined that a tree provides suitable habitat for bat roosting, the qualified biologist shall oversee its removal according to the following procedure.
  - Pruning or removal of living trees or snags shall preferably not occur during the maternity season between April 1 and August 31 to minimize the disturbance of young that may be present and unable to fly.
  - Pruning or removal of living trees or snags that provides suitable habitat for bats shall preferably occur between the hours of 12 pm and sunset on days after nights when low temperatures were 50° or warmer to minimize impacting bats that may be present in deep torpor.
  - When it is necessary to perform crown reduction on trees over 12 inches in diameter breast height or remove entire trees or branches over six inches in diameter there shall be preliminary pruning of small branches less than two inches in diameter performed the day before. The purpose of this is to minimize the probability that bats would choose to roost in those trees the night before the work is performed.
- The qualified biologist shall oversee installation of a minimum of six bat boxes in large trees to be preserved on the project site to provide compensation for the loss of potentially suitable bat roosting habitat as a result of tree removal. The bat boxes shall be installed after any tree removal and vegetation treatment for construction and fire fuel management has been completed.
- A report of findings shall be prepared by the qualified biologist and submitted to the Town for review and approval prior to initiation of tree removal summarizing the results of the preconstruction survey. The report shall either confirm absence of any active roosts or define appropriate controls to be implemented under the supervision of the qualified biologist in accordance with the above criteria.

Impact BIO-1c: Vegetation removal and grading could result in the loss of special-status bee species and suitable habitat for these species if present on the project site.

Mitigation Measure BIO-1c. Adequate measures shall be taken to preserve and enhance suitable habitat for special-status bee species on the project site. This shall be accomplished by taking the following steps.

- A qualified biologist shall prepare and oversee implementation of a Special-Status Bee Species Habitat Mitigation Plan (SSBSHMP). The SSBSHMP shall be prepared in conjunction with the Riparian Restoration Plan required to address potential impacts on riparian habitat described in Mitigation Measure BIO-2.1.
- All initial ground-disturbing work for the project, including, but not limited to, staging of equipment on bare soil, grass, and other vegetation and trenching to remove underground infrastructure such as water and sewer lines, shall take place between the period of October 15 to March 15.
- If initial ground-disturbing work for the project must occur between March 16 and August 14, preconstruction surveys shall be conducted by a qualified biologist. A minimum of three focused surveys, spaced at least three weeks apart and with at least one survey occurring during the peak flight season of Crotch bumble bee and at least one survey occurring during the peak bloom period for flowering plants on the site, shall be conducted prior to the start of ground-disturbing activities. The biologist conducting the surveys and the survey protocol must be approved in writing by the Town and CDFW prior to conducting the initial survey. The applicant shall submit a survey report of findings to the Town and CDFW prior to ground-disturbing work. The qualified biologist shall notify the Town and CDFW within 24 hours if Crotch bumble bee or other special-status bumble bee species are detected. A detailed avoidance and minimization program shall be prepared by the qualified biologist if any special-status bumble bees are encountered on the site, the results of which shall be incorporated into the SSBSHMP.
- The applicant shall obtain a CESA Incidental Take Permit from CDFW if impacts to Crotch bumble bee or other state-listed special-status bumble bee cannot be avoided.
- The SSBSHMP shall include improvements to nesting burrowing habitat and a floral resource enhancement planting plan to provide a diversity of native flowering plant species that can be utilized by a diversity of bee and other insect species. Species used in the planting plan shall be indigenous to the Windsor area and shall be suitable for planting in areas of grassland and oak woodland habitat.
- Improvements and enhancement plantings under the SSBSHMP shall be implemented in the proposed open space area on the project site and shall be compatible with other mitigation contemplated for this area to address potential impacts on seasonal wetlands, riparian habitat and native tree loss.
- The SSBSHMP shall be reviewed and approved by the Town prior to initiation of vegetation removal and grading.

Impact BIO-1d: Construction of the proposed project could result in the loss of the western pond turtle, which is a species of special concern (SSC) by the California Department of Fish and Wildlife (CDFW), and suitable habitat for these species if present on the project site.

Mitigation Measure BIO-1d. A pre-construction survey for western pond turtle shall be performed at the site by a qualified biologist to determine if western pond turtles occur in the seasonal wetland

swale or adjacent areas at the site. If a western pond turtle is observed, it should be allowed to leave the construction area on its own. Construction activities will not commence until the western pond turtle has left the construction area.

Impact BIO-2: The proposed project would result in the loss of riparian woodland habitat and valley oak woodland on the project site.

Mitigation Measure BIO-2.1. Prior to receiving construction permits from the Town, the project applicant shall implement the following:

- Obtain permit authorization from the California Department of Fish and Wildlife under 1600 Lake or Streambed Alteration Agreement for the loss of 0.06-acres of riparian woodland. habitat and 75-linear feet of seasonal drainage and implement all agency permit conditions.
- Prepare and implement a Riparian Restoration Plan for the loss of 0.06-acres of riparian woodland habitat and 75-linear feet of seasonal drainage.

Mitigation Measure BIO-2.2. As part of the project approval process, the project applicant shall dedicate approximately 2.1 acres of valley oak woodland habitat to the Town of Windsor to be preserved in perpetuity as part of the development agreement with the Town of Windsor, thereby allowing the long-term preservation of trees and other habitats.

Impact BIO-3: The proposed project would result in loss of seasonal wetland habitat on the project site.

Mitigation Measure BIO-3.1. Prior to receiving construction permits from the Town, the project applicant shall obtain permit authorization from the United States Army Corps of Engineers under the 404 Nationwide Permit Program for the loss of 0.192-acres of seasonal wetland habitat and implement all agency permit conditions.

Mitigation Measure BIO-3.2. Prior to receiving construction permits from the Town, the project applicant shall obtain permit authorization from the State Water Resources Control Board (SWRCB) under the 401 Water Quality Certification Program for the loss of 0.192-acres of seasonal wetland habitat and implement all agency permit conditions.

Mitigation Measure BIO-3.3. Prior to receiving construction permits from the Town, the project applicant shall request the United States Army Corps of Engineers (Corps) to append the project to the United States Fish and Wildlife Services (USFWS) Programmatic Biological Opinion-Reinitiation of Formal Consultation of Issuance of Clean Water Act, Section 404 Permits by the Corps on the Santa Rosa Plain, Sonoma County, California dated June 11, 2020 and implement all conditions required by the USFWS under the Programmatic Biological Opinion.

Mitigation Measure BIO-3.4. Prior to receiving construction permits from the Town, the project applicant shall mitigate for the loss of 0.192-acres of seasonal wetland habitat through the purchase of seasonal wetland habitat credits at a 1:1 ratio at an agency approved wetland mitigation bank.

Mitigation Measure BIO-3.5. Prior to receiving construction permits from the Town, the project applicant shall mitigate for the loss of 0.192-acres of suitable federally endangered vernal pool plant habitat through the purchase of federally endangered vernal pool plant species credits at a 1.5:1 mitigation ratio at an agency approved plant preservation bank.

4.1.3 CULTURAL RESOURCES

Impact CULT-1: The proposed project could cause a substantial adverse change in the significance of a buried (unknown) archaeological resource pursuant to CEQA Guidelines Section 15064.5.

Mitigation Measure CULT-1: The project applicant shall comply with the following procedures:

1. Prior to issuance of building permits by the Town, a qualified "archaeological monitor" under the supervision of a qualified "archaeologist" and a qualified "Native American monitor" shall be retained by the project applicant for Cultural Awareness Training pursuant to item 2 and archaeological monitoring pursuant to item 3.

2. Prior to construction, the qualified archaeological monitor and Native American monitor retained by the project applicant pursuant to item 1 shall provide Cultural Awareness Training for all supervisors, contractors, and equipment operators, and staff from the Town of Windsor in order to familiarize them with the types of artifacts that could be encountered and the procedures to follow if subsurface cultural resources are unearthed during construction. The applicant shall notify the Town's Public Works Department and Building Division up to two weeks in advance of the time and location of the Cultural Awareness Training. Following the Cultural Awareness Training, project applicant shall provide the Town with written verification that the Cultural Awareness Training has occurred.

3. The qualified archaeological monitor and Native American monitor retained by the project applicant pursuant to item 1 shall observe all project-related ground disturbing activities within limits of the ground-disturbing footprint of the proposed project. Ground-disturbing activities include, but are not limited to, asphalt removal, grading, exaction, and hand excavation, clearing, grubbing, and removing and/or recompacting unconsolidated soils near the ground surface. The Town shall be notified up to two weeks in advance of project-related ground disturbing activities. Following the monitoring, project applicant shall provide the Town with written verification that the monitoring has occurred.

   If a suspected archaeological resource(s) (find) is encountered at any point during the project-related ground-disturbing activities on the project site, work within a minimum of 60 feet of the find shall be halted and the find shall be evaluated by the qualified archaeologist and Native American monitor to determine if the find qualifies for listing in the California Register of Historic Places (CRHR) and to determine if the find is human remains. The qualified Native American monitor, or other qualified representative of the appropriate tribe if the Native American monitor is not in the position to do so, shall determine if the find is a tribal cultural resource (TCR), and if the find is human remains, if the remains are Native American.

If the find does not qualify for listing in the CRHR, is not a TCR, and is not human remains, then ground-disturbing activities may commence and no further archaeological investigation or mitigation shall be required. If the find qualifies for listing in the CRHR or is TCR, follow the procedures in item 4. If the find is determined to be human remains, follow the procedures in item 5.

4. If the find qualifies for listing in the CRHR or is a TCR, the qualified archaeologist, in consultation the Native American monitor (or other qualified representative of the appropriate tribe if the Native American monitor is not in the position to do so), Town, and project applicant shall determine whether preservation in place is feasible. If perseveration in place is feasible, a Preservation Plan shall be prepared by the archaeologist and Native American monitor and implemented by the project applicant. If preservation in place is infeasible in light of project design or layout, or is unnecessary to avoid significant effects, a Cultural Resources Data Recovery Plan (CRDRP) shall be developed by the qualified archaeologist and the Native American monitor, to outline excavation and laboratory procedures, and if appropriate, curation at a university depository or other treatment considered appropriate by the tribe. The CRDRP shall include, but is not limited to, the following:
   - A description of the excavation and laboratory procedures, and if appropriate, curation at a university depository or other appropriate facility.
   - Identify a proposed data recovery program and how the program would preserve the significant information the archaeological resource or TCR is expected to contain.
   - Specify compliance with the applicable requirements of PRC Section 21083.2 for the treatment of the unique archaeological resources. Note that the treatment for most resources would consist of, but would not be limited to, sample excavation, artifact collection, site documentation, and historical research, with the aim of targeting the recovery of important scientific data contained in the portion(s) of the significant resource to be impacted by the project.
   - Provisions for analysis of data in a regional context; reporting of results within a timely manner and subject to review and comments by the appropriate Native American representative, where applicable, before being finalized; curation of artifacts and data at a local facility acceptable to the Town and appropriate Native American representative, if applicable; and dissemination of final confidential reports to the appropriate Native American representative, if applicable, the Northwest Information Center of the California Historical Resources Information System and the Town.

5. If the find is determined to be human remains, the Sonoma County Coroner must be notified immediately. It is especially important that the suspected human remains, and the area around them, are undisturbed and the proper authorities are called to the scene as soon as possible, as it could be a crime scene. The coroner will determine if the remains are precontact period Native American remains or of modern origin and if there are any further investigation by the coroner is warranted. If the remains are suspected to be those of a precontact period Native American, the coroner shall contact the Native American Heritage Commission (NAHC) by telephone within 24-hours. The NAHC will immediately notify the person it believes to be the most likely descendant

(MLD) of the remains. The MLD has 48-hours to make recommendations to the landowner for treatment or disposition of the human remains. If the MLD does not make recommendations within 48-hours, the landowner is required by law to reinter the remains in an area of the property secure from further disturbance. If the project applicant does not accept the recommendation of the MLD, the owner or the descendant may request mediation by NAHC. The applicant shall also retain a qualified archaeologist to evaluate the historical significance of the discovery, the potential for additional remains, and to provide further recommendations for treatment of the site in coordination with the MLD.

Impact CULT-2: The proposed project could disturb human remains, including those interred outside of formal cemeteries.

Mitigation Measure CULT-2: Implement Mitigation Measure CULT-1, specifically item 5.

4.1.4 GEOLOGY AND SOILS

Impact GEO-1. The proposed project has the potential to directly or indirectly cause potential substantial adverse effects due to a seismic event.

Mitigation Measure GEO-1. The project applicant shall comply with the recommendations identified in the site-specific Geotechnical Report prepared for the proposed project related to seismic design. The recommendations shall be shown on the construction site plans prior to issuance of building permits.

Impact GEO-2. Construction and operation of the proposed project has the potential to result in soil erosion or the loss of topsoil.

Mitigation Measure GEO-2. The project applicant shall comply with the recommended drainage design standards identified in the site-specific Geotechnical Report prepared for the proposed project. The recommendations shall be shown on the construction site plans prior to issuance of building permits.

Impact GEO-3. The proposed project would be developed on soils that could be unstable.

Mitigation Measure GEO-3. The project applicant shall comply with the recommendations identified in the site-specific Geotechnical Report prepared for the proposed project related to site grading and earthwork, and foundation options. The recommendations shall be shown on the construction site plans prior to issuance of building permits.

Impact GEO-4. The proposed project has the potential to create substantial direct or indirect risks to life or property as a result of expansive soils.

Mitigation Measure GEO-4. The project applicant shall comply with the recommendations identified in the site-specific Geotechnical Report prepared for the proposed project related to expansive soils.

The recommendations shall be shown on the construction site plans prior to issuance of building permits.

Impact GEO-5: Construction of the proposed project would have the potential to directly or indirectly affect an unknown unique paleontological resource.

Mitigation Measure GEO-5: Prior to the start of construction, a qualified paleontologist, or his or her designee, shall conduct training for construction personnel and staff from the Town of Windsor regarding the appearance of fossils and the procedures for notifying a paleontologist should fossils be discovered by during project-related ground-disturbing activities. The applicant shall notify the Town's Public Works Department and Building Division up to two weeks in advance of the time and location of the training. Following the training, project applicant shall provide the Town's Public Works Department and Building Division with written verification that the training has occurred. The qualified paleontologist shall prepare a Paleontological Mitigation and Monitoring Program to be implemented during ground disturbance activity for the proposed project. Additionally, a paleontologist shall be on-call to respond in the event a fossil is recovered and to perform subsequent work to determine whether it can be identified and whether it meets significance criteria. A paleontological cross-trained archaeologist can also respond in the possible event of vertebrate fossil exposure during grading. In the event of a fossil discovery by construction personnel, all work in the immediate vicinity of the find shall cease until the paleontologist has the opportunity to inspect and evaluate the discovery. If it is determined that the fossil(s) is (are) scientifically significant, the qualified paleontologist shall monitor remaining ground disturbing activities (including grading, trenching, foundation work, and other excavations) on a full-time basis. Monitoring shall be conducted by a qualified paleontological monitor, who is defined as an individual who has experience with collection and salvage of paleontological resources. The duration and timing of the monitoring shall be determined by the project paleontologist. If the project paleontologist determines that full-time monitoring is no longer warranted, he or she may recommend that monitoring be reduced to periodic spot-checking or cease entirely. Monitoring would be reinstated if any new or unforeseen deeper ground disturbances are required, and reduction or suspension would need to be reconsidered by the Principal Paleontologist. Ground disturbing activity that does not occur in areas mapped as high sensitivity or that do not exceed five feet in depth in areas overlying potentially high sensitivity units would not require paleontological monitoring.

4.1.5 NOISE

Impact NOISE-1a: The proposed project could result in the generation of a substantial temporary increase in ambient noise levels at noise sensitive receptors in the vicinity of the project site during construction activities that would be in excess of the established Federal Transit Administration (FTA) threshold of 80 dBA Leq.

Mitigation Measure NOISE-1a: The following shall be incorporated in all activity phases and construction plans, pursuant to General Plan Policy 8.10, *Construction Site Nosie Restrictions*, and as required by Windsor Municipal Code Section 7-1-1018, *Construction Hours,* in Title VII, *Building and*

Housing. Construction activities shall take place only during daytime hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and 8:00 a.m. to 7:00 p.m. on Saturday. No construction, alteration or repair activities shall be permitted on Sunday unless expressly authorized by the Building Official; but in no event shall such construction activity be permitted on Sunday before 9:00 a.m. or after 5:00 p.m. In addition, the construction manager shall ensure that the following best management practices are implemented:

- At least 30 days prior to the start of any construction, demolition, or grading activities, all off-site residents within 350 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the project, the construction activities that would occur, the hours when activity would occur, and the construction period's overall duration. The notification shall include the telephone numbers of the contractor's authorized representatives that are assigned to respond in the event of a noise complaint.
- Prior to start of construction, a temporary noise barrier/curtain between the construction zone and adjacent residences and along the entire project site boundary with no gaps or breaks with the exception for the project site entrance/access way shall be installed. The temporary sound barrier shall have a minimum height of 12 feet and be free of gaps and holes. The barrier can be either a 0.75-inch-thick plywood wall – OR – a hanging blanket/curtain with a surface density or at least two pounds per square foot. A temporary wall built to these minimum specifications and breaking the line of sight from construction activities to the sensitive receptors would provide at least a 10 dBA attenuation.
- The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the Town's Building Department and Code Enforcement for review and approval prior to issuance of any tree removal, grading, demolition, and/or building permits. The Construction Noise Control Plan shall demonstrate compliance with the Federal Transit Administration (FTA) 80 dBA L_{eq} limit. The details of the Construction Noise Control Plan, including those details listed herein, shall be included as part of the building/construction permit drawing set. Text identifying this requirement on the building/construction permit drawing sets shall be confirmed by the Town prior to approval of building/construction permit and shall be implemented by the on-site construction manager. The following are controls that for the Construction Noise Control Plan may include to comply with the 80 dBA L_{eq} limit:
  - At least ten days prior to the start of construction activities, post a sign at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the Town's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the action to the Town.
  - During the entire active construction period, utilize the best available noise control techniques (e.g., improved engine mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds) for equipment and trucks used for project construction.
  - Include noise control requirements such as performing work in a manner that minimizes noise and undertaking the noisiest activities during times of least disturbance to nearby sensitive receptors.

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- During the entire active construction period, locate stationary noise sources as far from sensitive receptors as possible, muffle stationary noise sources and enclose stationary noise sources within temporary sheds, or insulation barriers or other measures.
- Post signs at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment shall be turned off if not in use for more than five minutes.
- During the entire active construction period use noise producing signals, including horns, whistles, alarms, and bells for safety warning purposes only. Use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.

Impact NOISE-1b: The heating, ventilation, and air conditioning units associated with the proposed project could result in the generation of a substantial permanent increase in excess of noise standards established in the Town of Windsor Zoning Ordinance (Title XVII, *Zoning*) at nearby sensitive receptors.

Mitigation Measure NOISE-1b: The project applicant shall select mechanical equipment that is designed to reduce impacts on surrounding uses to meet the Town of Windsor Zoning Ordinance (Title XVII, *Zoning*), Chapter 27.20, *General Property Development and Use Standard,* Section 27.20.030, *General Performance Standards,* Subsection F*, Noise*, noise limits of 55 dBA and 50 dBA at residential uses during daytime and nighttime, respectively. The project applicant shall retain a qualified acoustical consultant to review the selected mechanical noise systems selected to determine specific noise reduction measures necessary to comply with the Town's noise level requirements. Noise reduction measures could include, but are not limited to:

- Selection of equipment that emits low noise levels;
- Installation of noise dampening techniques, such wall and acoustical blanket enclosures to block the line-of-sight between the noise source and the nearest receptors; or
- Locating equipment at a distance to where noise levels would naturally attenuate to levels that comply with the Windsor Municipal Code. This distance shall be determined by a qualified acoustical consultant based on the sound power specifications of the heating, ventilation, and air conditioning equipment attained.

Impact NOISE-2: The proposed project could result in the generation of excessive groundborne vibration at residential structures in the vicinity of the project during the construction activities that would be in excess of the established 0.2 inches per second (in/sec) Peak Particle Velocity (PPV) vibration threshold.

Mitigation Measure NOISE-2: During the construction phase of the proposed project, all grading and earthwork activities within 15 feet of existing adjacent residential structures shall be conducted with off-road equipment that is limited to 100 horsepower or less. Text identifying this requirement and a map showing existing, adjacent residential structures within 15 feet of the construction zone on the building/construction permit drawing sets shall be confirmed by the Town prior to approval of building/construction permits and shall be implemented by the on-site construction manager.

4.2 APPLICANT MITIGATION MEASURE AGREEMENT

We, the undersigned, hereby attest that we have reviewed the Final IS/MND for the Hembree Lane Oaks Subdivision Project (State Clearinghouse No. 2023020001) and agree to implement all the mitigation measures contained therein.

Signature (Applicant) Falcon Point Assoc. - DJH Heaton Managing Member

Printed Name (Applicant) Doyle Heaton Date 3/8/23

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