

November 2, 2016

Vickie Sanders  
Parks Manager  
County of El Dorado  
Chief Administrative Office, Parks Division  
330 Fairlane  
Placerville, CA 95667

**RE: Henningsen Lotus Park Improvements Project Initial Study/ Mitigated Negative Declaration (SCH #2016082064) – Response to Public Comments**

Dear Ms. Sanders:

This letter documents and responds to public and agency comments received by the County of El Dorado Parks Division concerning the public review draft Initial Study/Mitigated Negative Declaration (per CEQA Guidelines Section 15074(b)).

The County of El Dorado, Parks Division is proposing the development of 11 proposed improvements to the 47-acre Henningsen Lotus Park, located in El Dorado County as recommended by the *Henningsen Lotus Park Concept Plan*. The proposed improvements would accommodate park users providing additional recreation opportunities. The proposed improvements include an easement for the trail connection to Highway 49, a new group picnic facility, new site furnishings, new shade shelters, development for a connector trail to Highway 49, river access improvements, Monroe Ridge Trailhead, wetland boardwalk trail system, downstream park trails, river bank stabilization and restoration, and interpretive signage.

On behalf of the County of El Dorado, Foothill Associates prepared an Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) for the project, analyzing and discussing the potential environmental effects to reduce the level of significance of any impacts to a level below significant. Pursuant to Section 15073(a) of the State California Environmental Quality Act (CEQA) Guidelines, the *Henningsen Lotus Park Improvements Project Initial Study/ Mitigated Negative Declaration* (State Clearinghouse Number 2016082064) was circulated for public review for a 30-day comment period between August 24, 2016 and September 23, 2016.

The State Clearinghouse (SCH) confirmed compliance with CEQA review requirements in correspondence dated September 23, 2016 (**Attachment 1**).

Public comments received by the County Parks Division and forwarded to Foothill Associates include the following:

1. August 26, 2016 Email from Keith Merson on behalf of ThunderButte Holdings, LLC (**Attachment 2**);
2. September 16, 2016 Letter from Stephanie Tadlock, Environmental Scientist, Central Valley Regional Water Quality Control Board (CVRWQCB) (**Attachment 3**); and
3. September 23, 2016 Email from Gabriele Quillman, California Department of Fish and Wildlife Environmental Scientist (**Attachment 4**).

Foothill Associates offers the following responses to comments received on the *Henningsen Lotus Park Improvements Project Initial Study/ Mitigated Negative Declaration*.

**Comment Letter #1:**

August 26, 2016 Email from Keith Merson on behalf of ThunderButte Holdings, LLC (**Attachment 2**).

Keith Merson's comments are relevant to Section 4.2, Agriculture and Forest Resources, subsections b and c:

*"On page 4-7, both paragraphs headed Easement and Development for Trail Connection to Highway 49 state that the referenced parcel is zoned as Residential when, in fact, it is zoned as Commercial."*

**Response 2:**

Comment(s) noted.

The commenter is correct. Page 4-7 of the Initial Study (IS) incorrectly identifies the Easement and Development for Trail Connection parcel as being zoned Residential. The analysis within the portion of the IS pertains to project-related conflicts with improvements proposed on parcels designated as forest or agricultural lands. Therefore, while the zoning for the Easement and Development for Trail Connection parcel is incorrectly identified as Residential (rather than Commercial), the parcel is not designated as Agricultural or TPZ lands and therefore no modification to the analysis is required.

Analysis pertaining to Land Use and Planning is presented within Section 4.10 of the IS. Page 4-67 correctly identifies the Easement and Development for Trail Connection parcel as zoned for Commercial use and concludes that no impacts related to conflicts with existing zoning would result from development of proposed improvements.

No modifications to the analyses or findings within the IS/MND are warranted.

**Comment Letter #2:**

September 16, 2016 Letter from Stephanie Tadlock, Environmental Scientist, Central Valley Regional Water Quality Control Board (**Attachment 3**).

*Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.*

## **I. Regulatory Setting**

### **Basin Plan**

*The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.*

*The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.*

*For more information on the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, please visit our website:*

*[http://www.waterboards.ca.gov/centralvalley/waterIssues/basin\\_plans/](http://www.waterboards.ca.gov/centralvalley/waterIssues/basin_plans/).*

### **Antidegradation Considerations**

*All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan.*

*The Antidegradation Policy is available on page IV-15.01 at:*

*[http://www.waterboards.ca.gov/centralvalleywater\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalleywater_issues/basin_plans/sacsjr.pdf).*

*In part it states:*

*Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*

*This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

*The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.*

## **II. Permitting Requirements**

### **Construction Storm Water General Permit**

*Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).*

*For more information on the Construction General Permit, visit the State Water Resources Control Board website at:*

*<http://www.waterboards.ca.gov/waterissues/programs/stormwater/constpermits.shtml>.*

### **Phase I and II Municipal Separate Storm Sewer System (MS4) Permits<sup>1</sup>**

*The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.*

*For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:*

*[http://www.waterboards.ca.gov/centralvalley/waterissues/storm\\_water/municipal\\_permits/](http://www.waterboards.ca.gov/centralvalley/waterissues/storm_water/municipal_permits/).*

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<sup>1</sup> Municipal Permits = The Phase 1 Municipal Separate Storm Water System (MS4) Permit covers medium sized municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/phaseIImunicipal.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/phaseIImunicipal.shtml).

**Industrial Storm Water General Permit**

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/industrialgeneralpermits/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrialgeneralpermits/index.shtml).

**Clean Water Act Section 404 Permit**

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

**Clean Water Act Section 401 Permit - Water Quality Certification**

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

**Waste Discharge Requirements - Discharges to Waters of the State**

If USACOE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/help/business\\_help/permit2.shtml](http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml).

### **Dewatering Permit**

*If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file Notice of Intent with the Central Valley Water Board prior to beginning discharge.*

*For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:*

*[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wq02003-0003.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wq02003-0003.pdf).*

*For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:*

*[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/waivers/r52013-0145\\_res.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r52013-0145_res.pdf).*

### **Regulatory Compliance for Commercially Irrigated Agriculture**

*If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:*

- 1) **Obtain Coverage Under a Coalition Group.** *Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: [http://www.waterboards.ca.gov/centralvalley/waterissues/irrigatedlands/for\\_growers/apply\\_coalition\\_group/index.shtml](http://www.waterboards.ca.gov/centralvalley/waterissues/irrigatedlands/for_growers/apply_coalition_group/index.shtml) or contact water board staff at (916) 464-4611 or via email [atlrrlands@waterboards.ca.gov](mailto:atlrrlands@waterboards.ca.gov).*
- 2) **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** *Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands*



Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).

**Low or Limited Threat General NPDES Permit**

*If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for Dewatering and Other Low Threat Discharges to Surface Waters (Low Threat General Order) or the General Order for Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water (Limited Threat General Order). A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.*

*For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_order\\_slr5-2013-0074.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_order_slr5-2013-0074.pdf).*

*For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_order\\_s/r5-2013-0073.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_order_s/r5-2013-0073.pdf).*

**Response 2:**

Comment(s) noted.

Table 3.2-1 identifies biological communities (including potential waters of the U.S. and/or waters of the State) within the project site. Table 2.6 identifies the anticipated need for permitting through the U.S. Army Corps of Engineers under Section 404 of the Federal Clean Water Act as well as the State Water Resources Control Board under Section 401. IS Section 4.4 (c) identifies individual improvements that may have the potential to result in impacts to federally or State jurisdictional aquatic resources, and concludes with the following:

*“Potentially jurisdictional wetlands identified in the Project Site include: two seasonal marshes and one perennial marsh. Other waters of the U.S. include ten ephemeral drainages, and one perennial drainage (South Fork of the American River) divided into nine segments. The Proposed Project would impact aquatic resources through river access improvements, a wetland boardwalk trail system, downstream park trails, and river bank stabilization and restoration. Implementation of Mitigation Measures BIO – 6 and Mitigation Measure BIO – 7 would require Section 404 Authorization for the fill of any federally jurisdictional waters and would require that a Section 401 Water Quality Certification be obtained from the RWQCB. In addition, a 1600 Streambed Alteration Agreement would be required for impacts to the streamzone. Compliance with these*

*measures would ensure that impacts to federally jurisdictional waters, including wetlands, as well as other aquatic resources are implemented in a manner consistent with current regulatory standards and that impacts are offset through applicable regulatory standards, ensuring no-net-loss of aquatic functions and values. Therefore, impacts to aquatic features are considered less than significant with mitigation incorporated.”*

Requirements under NPDES are discussed within **Section 4.6, Geology and Soils**, and **Section 4.9, Hydrology and Water Quality**.

No modifications to the analyses or findings within the IS/MND are warranted.

### **Comment Letter #3**

September 23, 2016 Email from Gabriele Quillman, Environmental Scientist, California Department of Fish and Wildlife (**Attachment 4**).

*The Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Mitigated Negative Declaration (MND) for the Henningsen Lotus Park Improvements Project (project) [State Clearinghouse No. 2016082064]. The Department is responding to the MND as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 et seq.) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).*

*The project site is located within Henningsen Lotus Park at 950 Lotus Road, in the Town of Lotus, County of El Dorado, California. The project proposes several improvements to the park, including trail improvements, development of a new trailhead, construction of a new group picnic area, installation of site furnishings and shade shelters, river bank stabilization and restoration, and construction of a wetland boardwalk trail system.*

### **Comments and Recommendations**

*Following review of the MND, the Department offers the comments and recommendations presented below to assist the County of El Dorado (County; the CEQA lead agency) in adequately identifying and/or mitigating the project’s significant, or potentially significant, impacts on biological resources:*

#### *Lake and Streambed Alteration*

*Mitigation measure MM Bio-7 states that a Streambed Alteration Agreement shall be entered into “[i]f it is determined that project development would affect the bed, bank, or associated riparian vegetation of the South Fork American River or ephemeral drainages.” Because the project description includes plans to use boulder and cobble terracing to stabilize the river bank,*



*and because trail improvements within the riparian zone appear to be proposed, the Department assumes that the project will affect the bed, bank, or associated riparian vegetation of the South Fork American River or ephemeral drainages.*

*For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river, lake, or stream or use material from a streambed or lakebed, the project applicant (or “entity”) must provide written notification to the Department pursuant to Section 1602 of the FGC. Based on this notification and other information, the Department then determines whether a Lake and Streambed Alteration (LSA) Agreement is required. The Department’s issuance of an LSA Agreement is a “project” subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the environmental document should fully identify the potential impacts to the lake, stream or riparian resources and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.*

*The following information will be required for the processing of a Notification of Lake or Streambed Alteration and the Department recommends incorporating this information into the MND to avoid subsequent documentation and project delays. Please note that failure to include this analysis in the project’s environmental document could preclude the Department from relying on the County’s analysis to issue a LSA Agreement without the Department first conducting its own, separate Lead Agency subsequent or supplemental analysis for the project:*

- 1. Delineation of lakes, streams, and associated habitat that will be temporarily and/or permanently impacted by the proposed project (include an estimate of impact to each habitat type);  
Discussion of avoidance and minimization measures to reduce project impacts; and,*
- 2. Discussion of potential mitigation measures required to reduce the project impacts to a level of insignificance. Please refer to section 15370 of the CEQA Guidelines.*

*Please note that the formulation of mitigation measures should not be deferred to future projects (i.e., the issuance of a Lake or Streambed Alteration Agreement). While it is not always possible to devise complete, specific, and fully detailed mitigation measures while the project is still in the early planning stages, it is not appropriate to adopt an MND unless the lead agency is reasonably certain that the proposed project will have no significant impacts on the environment. Such certainty is not possible if the formulation of mitigation measures is deferred until after the adoption of the MND, and the lack of public review of the mitigation plan deprives the public of the opportunity to comment on the mitigation plan’s adequacy, feasibility, and enforceability. “[I]t is improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur before the project is approved” (California Native Plant Society v. City of Rancho Cordova (2009)*

*172 Cal.App.4th 603, 621 [91 Cal. Rptr. 3d 571] (CNPS), citing Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296 [248 Cal. Rptr. 352] (Sundstrom) and Gentry v. City of Murrieta (1995) 36 Cal.App.4th 1359 [43 Cal. Rptr. 2d 170] (Gentry).) Therefore, the Department recommends that the MND be revised to describe and quantify the project's foreseeable impacts on riparian and riverine habitat, and to include a specific mitigation proposal to address the project's significant or potentially significant impacts to riverine and riparian habitat.*

#### *Tricolored Blackbird*

*The project's Biological Resources Assessment concludes that there is no potential for tricolored blackbird (*Agelaius tricolor*) to occur on-site because "the riparian and Himalayan blackberry scrub are not large enough to support a minimum of 50 nesting pairs. However, figure 4.4-2 identifies 4.64 acres of Himalayan blackberry scrub and 3.82 acres of riparian habitat on site. Please clarify how the conclusion that these habitat areas are not large enough to support 50 nesting pairs of tricolored blackbirds was reached.*

*If tricolored blackbirds do nest on-site, the proposed trail improvements may negatively impact the species by encouraging heavier use of the trails and resulting in an increased human presence near nesting sites. If it is determined that tricolored blackbirds have the potential to nest on-site, the MND should be revised to include an analysis of the potential impacts on the species and appropriate mitigation measures as needed. The Department further recommends that, in the event that any threatened, endangered, candidate, or fully protected bird species is identified nesting near enough to the trail that it may be negatively impacted by human presence, the trail be temporarily closed until the nest is no longer active (i.e., the young have fledged and are foraging independently of their parents).*

#### *Nesting and Migratory Birds*

*Mitigation measure MM Bio-1 requires preconstruction surveys for nesting birds to be conducted within 15 days prior to the start of construction activities if construction activities are scheduled during the nesting season. Please note that many bird species are capable of building a nest and beginning to lay eggs in fewer than 15 days; some take as little as three or four days to construct the nest. Therefore, the Department recommends that nesting bird surveys be conducted no more than three days prior to the initiation of ground disturbing or vegetation removal activities.*

#### *Western Pond Turtle*

*Mitigation measure MM Bio-3 requires that preconstruction surveys for western pond turtle (*Emys marmorata*) be conducted prior to commencing ground-disturbing activities within 500 feet of the river and marshes. Because western pond turtles lay their eggs in small excavated nests on land, ground disturbing activities may damage or destroy turtle eggs. In order to avoid impacts to western pond turtle nests, the Department recommends that MM Bio-3 be revised to require the surveying biologist to also survey the area for turtle nests. If a turtle nest is located,*

*the surveying biologist should demarcate an avoidance buffer around the nest site that is wide enough to ensure that project activities will not damage the nest.*

**Further Coordination**

*The Department appreciates the opportunity to comment on the MND for the Henningsen Lotus Park Improvements Project (SCH No. 2016082064), and requests that the County address the Department’s comments and concerns prior to adopting the MND. If you should have any questions pertaining to these comments, please contact me at (916) 358-2955 or [gabriele.quillman@wildlife.ca.gov](mailto:gabriele.quillman@wildlife.ca.gov).*

**Response #3**

Comment(s) noted.

The anticipated need for a Streambed Alteration Agreement is identified within the IS in Table 2.6-1.

Throughout the IS, anticipated measures required to offset potential project-related impacts, including impacts to aquatic and biological resources, have been identified as mitigation. Mitigation Measures BIO – 1 through BIO – 9 are identified by the analyses within the IS/MND to reduce potential impacts related to biological resources to less than significant levels. Compliance with Mitigation Measure GEO – 1, Mitigation Measure GEO – 2, and Mitigation Measure BIO – 6 would reduce potential impacts related to water quality to a less than significant level. If necessary, as identified through the CDFW Notification process anticipated for improvements proposed within CDFW jurisdictional areas, the County will work with CDFW to implement additional measures, if deemed necessary by the CDFW.

No modifications to the analyses or findings within the IS/MND relevant to CDFW Notification and/or proposed mitigation are warranted.

***Tricolored Blackbird***

Foothill Associates has prepared a formal response letter addressing the lack of potential for Tri-colored blackbird to occupy the Henningsen Lotus Park Site (**Attachment 5**), which concludes:

*“Although tricolored blackbirds may occasionally nest in willow thickets and small trees, they rarely nest in areas of dense canopy cover such as that found on the site. The only open areas on the site are the parking lots, playing fields and active park areas with little vegetation, which are not suitable foraging habitat for tricolored blackbirds. Since the marsh and blackberry thickets on site provide only marginal nesting habitat due to their relatively dense overstory and the developed parkland is not suitable foraging habitat, the nearest known recent populations of tricolored blackbirds are located almost 15 miles west of the project site in Central Valley habitats, and tricolored blackbirds were not observed on or in the immediate vicinity of the site during the 2015 site surveys, there is no potential for tricolored blackbird to be found on the site.”*

No modifications to the analyses or findings within the IS/MND are warranted.

CDFW also includes a comment recommending temporary closures to park trails in the event any threatened, endangered, candidate, or fully protected bird species is identified nesting near enough to the trail that it may be negatively impacted by human presence. As the park is currently characterized by a network of formal and informal trails, and subjected to a range of use frequencies, it is anticipated that avian species that would select nest sites in proximity to the trail would not be negatively impacted by human presence.

No modifications to the analyses or findings within the IS/MND are warranted.

### ***Nesting and Migratory Birds***

In order to address CDFW concerns surrounding the potential for project-related activities to impact nesting birds, the following edits (inserted text shown as underlined) are proposed to Mitigation Measure BIO – 1:

#### **Mitigation Measure BIO – 1:**

If construction is proposed during the nesting season for non-raptor migratory birds (February 1 through August 15), a pre-construction survey shall be conducted by a qualified biologist within 3 days prior to commencing any activities involving removing or trimming vegetation including trees and shrubs. For all other construction activities, a pre-construction survey shall be conducted by a qualified biologist within 15 days of the start of project-related activities. If nests of migratory birds are detected onsite, or within 100 feet of the Project Site, the County shall consult with CDFW to determine the size of a suitable buffer in which no new site disturbance is permitted until August 15, or until the qualified biologist determines that the young are foraging independently, or the nest has been abandoned.

### ***Western Pond Turtle***

In order to address CDFW concerns regarding potential impacts to western pond turtle nests, the following edits (shown in underlined text) are proposed to Mitigation Measure BIO – 3:

#### **Mitigation Measure BIO – 3:**

A qualified biologist shall conduct a pre-construction survey for western pond turtle and western pond turtle nests within 14 days prior to the start of ground disturbance within 500 feet of the river and the marshes. If no western pond turtles or nests are observed, then a letter report documenting the results of the survey shall be provided to the County for their records, and no

additional measures are recommended. If construction does not commence within 14 days of the pre-construction survey, or halts for more than 14 days, a new survey is required.

If western pond turtles are found, additional avoidance measures are required including having a qualified biologist conduct a pre-construction survey within 24 hours prior to commencement of construction activities, performing a worker awareness training to all construction workers, and being present on the Project Site during any grading activities within 500 feet of the river and marshes for the purpose of relocating any western pond turtles found within the construction footprint to suitable habitat away from the construction zone, but within the Project Site.

If western pond turtle nests are identified, the surveying biologist shall demarcate an avoidance buffer around the nest site that is wide enough to ensure that project activities will not damage the nest.

### Conclusion

As summarized by the responses presented above, no modifications to the analyses or findings within the IS/MND are warranted. However, in order to address CDFW comments pertaining to potential impacts to nesting birds and western pond turtle nests, modified language is proposed to Mitigation Measure BIO – 1 and Mitigation Measure BIO – 3 as presented above. An updated version of the Mitigation Monitoring and Reporting Program is enclosed (**Attachment 6**).

We look forward to working with you on the completion of the environmental review for this project. If you have any questions concerning these responses, please feel free to contact me by telephone at (916) 435-1202 x 216 or by email [kshields@foothill.com](mailto:kshields@foothill.com).

Sincerely,



Kyrsten Shields  
Senior Regulatory Specialist

Enclosures (6)



EDMUND G. BROWN JR.  
GOVERNOR

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



KEN ALEX  
DIRECTOR

September 23, 2016

Vickie Sanders  
El Dorado County  
3000 Fair Lane Court, Suite 1  
Placerville, CA 95667

Subject: Henningsen Lotus Park Improvements Project  
SCH#: 2016082064

Dear Vickie Sanders:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on September 22, 2016, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency



**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2016082064  
**Project Title** Henningsen Lotus Park Improvements Project  
**Lead Agency** El Dorado County

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**Type** **MND** Mitigated Negative Declaration  
**Description** The Henningsen Lotus Park Improvements project would result in the development of 11 proposed improvements to the approximately 47 acre park, as recommended by the HLP concept plan. Improvements for the park include land acquisition, construction of new facilities, trail improvements and new trail construction, as well as resource improvements.

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**Lead Agency Contact**

**Name** Vickie Sanders  
**Agency** El Dorado County  
**Phone** (530) 621-7538 **Fax**  
**email**  
**Address** 3000 Fair Lane Court, Suite 1  
**City** Placerville **State** CA **Zip** 95667

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**Project Location**

**County** El Dorado  
**City**  
**Region**  
**Lat / Long** 38° 48' 13.3" N / 120° 54' 21.1" W  
**Cross Streets** Lotus Rd  
**Parcel No.** various  
**Township** 11N **Range** 10E **Section** 18 **Base** MDBM

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**Proximity to:**

**Highways** hwy 49  
**Airports** Bacchi Valley Industries  
**Railways**  
**Waterways** South Fork of American River  
**Schools**  
**Land Use**

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**Project Issues** Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Wetland/Riparian; Landuse; Cumulative Effects; Other Issues

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**Reviewing Agencies** Resources Agency; Department of Fish and Wildlife, Region 2; Department of Parks and Recreation; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 3 S; Regional Water Quality Control Bd., Region 5 (Sacramento); Air Resources Board, Transportation Projects; Native American Heritage Commission

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**Date Received** 08/24/2016 **Start of Review** 08/24/2016 **End of Review** 09/22/2016



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR ENVIRONMENTAL PROTECTION

**Central Valley Regional Water Quality Control Board**

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9/22/16  
B

16 September 2016

Governor's Office of Planning & Research

Vickie Sanders  
County of El Dorado  
330 Fair Lane, Suite 1  
Placerville, CA 95667

SEP 19 2016

STATE CLEARINGHOUSE

CERTIFIED MAIL

91 7199 9991 7035 8362 8981

**COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, HENNINGSEN LOTUS PARK IMPROVEMENTS PROJECT, SCH# 2016082064, EL DORADO COUNTY**

Pursuant to the El Dorado County's 23 August 2016 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Henningsen Lotus Park Improvements Project, located in El Dorado County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

**I. Regulatory Setting**

**Basin Plan**

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments

only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:  
[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/).

### **Antidegradation Considerations**

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Policy is available on page IV-15.01 at:  
[http://www.waterboards.ca.gov/centralvalleywater\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalleywater_issues/basin_plans/sacsjr.pdf)

In part it states:

*Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*

*This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

## **II. Permitting Requirements**

### **Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan

(SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml).

### **Phase I and II Municipal Separate Storm Sewer System (MS4) Permits<sup>1</sup>**

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/municipal\\_permits/](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/).

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/phase\\_ii\\_municipal.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml)

### **Industrial Storm Water General Permit**

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/industrial\\_general\\_permits/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml).

### **Clean Water Act Section 404 Permit**

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water

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<sup>1</sup> Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

**Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

**Waste Discharge Requirements – Discharges to Waters of the State**

If USACOE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/help/business\\_help/permit2.shtml](http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml).

**Dewatering Permit**

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0003.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf)

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/waivers/r5-2013-0145\\_res.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf)

### **Regulatory Compliance for Commercially Irrigated Agriculture**

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: [http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/app\\_appoval/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/app_appoval/index.shtml); or contact water board staff at (916) 464-4611 or via email at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).

### **Low or Limited Threat General NPDES Permit**

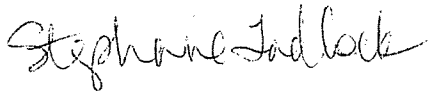
If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Dewatering and Other Low Threat Discharges to Surface Waters* (Low Threat General Order) or the General Order for *Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water* (Limited Threat General Order). A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.



For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0074.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf)

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0073.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0073.pdf)

If you have questions regarding these comments, please contact me at (916) 464-4644 or [Stephanie.Tadlock@waterboards.ca.gov](mailto:Stephanie.Tadlock@waterboards.ca.gov).



Stephanie Tadlock  
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento



Kyrsten Shields &lt;kshields@foothill.com&gt;

## Fwd: error in Henningsen Lotus Park Improvements Project Initial Study / Draft Mitigation Negative Declaration

1 message

**Vickie Sanders** <[vickie.sanders@edcgov.us](mailto:vickie.sanders@edcgov.us)>

Fri, Aug 26, 2016 at 1:49 PM

To: Kate Kirsh <[kkirsh@foothill.com](mailto:kkirsh@foothill.com)>, Kyrsten Shields <[kshields@foothill.com](mailto:kshields@foothill.com)>

FYI

Vickie Sanders  
Parks Manager  
County of El Dorado  
Chief Administrative Office  
[530-621-7538](tel:530-621-7538)  
FAX: [530-642-0301](tel:530-642-0301)



----- Forwarded message -----

From: **Keith Merson** <[keith@sierranevadahouse.com](mailto:keith@sierranevadahouse.com)>

Date: Fri, Aug 26, 2016 at 12:18 PM

Subject: error in Henningsen Lotus Park Improvements Project Initial Study / Draft Mitigation Negative Declaration

To: [vickie.sanders@edcgov.us](mailto:vickie.sanders@edcgov.us)

Hi Vickie,

In reviewing the Henningsen Lotus Park Improvements Project Initial Study / Draft Mitigation Negative Declaration, I believe that I've found a couple of errors.

On page 4-7, both of the paragraphs headed *Easement and Development for Trail Connection to Highway 49* state that the referenced parcel is zoned as Residential when, in fact, it is zoned as Commercial.

The corresponding paragraph on page 4-67 correctly states that the parcel is commercially zoned.

As you may know, my wife and I own that parcel (through ThunderButte Holdings LLC, of which I am the sole member). I look forward to working with the county on the easement but I thought you should know about the errors in the document.

Best,

Keith Merson  
cell: [530-368-2581](tel:530-368-2581)

EDMUND G. BROWN JR.  
GOVERNORMATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Central Valley Regional Water Quality Control Board

16 September 2016

Vickie Sanders  
County of El Dorado  
330 Fair Lane, Suite 1  
Placerville, CA 95667

CERTIFIED MAIL  
91 7199 9991 7035 8362 8981

### COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, HENNINGSEN LOTUS PARK IMPROVEMENTS PROJECT, SCH# 2016082064, EL DORADO COUNTY

Pursuant to the El Dorado County's 23 August 2016 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Henningsen Lotus Park Improvements Project, located in El Dorado County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

#### I. Regulatory Setting

##### Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | [www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley)

only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

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### **Antidegradation Considerations**

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Policy is available on page IV-15.01 at:

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In part it states:

*Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*

*This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

## **II. Permitting Requirements**

### **Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan

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### **Phase I and II Municipal Separate Storm Sewer System (MS4) Permits<sup>1</sup>**

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

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For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/phase\\_ii\\_municipal.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml)

### **Industrial Storm Water General Permit**

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

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### **Clean Water Act Section 404 Permit**

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water

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<sup>1</sup> Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

**Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

**Waste Discharge Requirements – Discharges to Waters of the State**

If USACOE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:

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**Dewatering Permit**

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0003.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf)

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:



[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/waivers/r5-2013-0145\\_res.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf)

### **Regulatory Compliance for Commercially Irrigated Agriculture**

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: [http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/app\\_approval/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/app_approval/index.shtml); or contact water board staff at (916) 464-4611 or via email at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).

### **Low or Limited Threat General NPDES Permit**

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Dewatering and Other Low Threat Discharges to Surface Waters* (Low Threat General Order) or the General Order for *Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water* (Limited Threat General Order). A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.

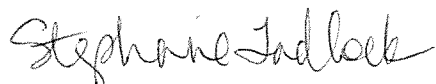
For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0074.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf)

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0073.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0073.pdf)

If you have questions regarding these comments, please contact me at (916) 464-4644 or [Stephanie.Tadlock@waterboards.ca.gov](mailto:Stephanie.Tadlock@waterboards.ca.gov).



Stephanie Tadlock  
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento



Kyrsten Shields &lt;kshields@foothill.com&gt;

## Fwd: CDFW's comments on the MND for the Henningsen Lotus Park Improvements Project (SCH No. 2016082064)

1 message

Vickie Sanders <[vickie.sanders@edcgov.us](mailto:vickie.sanders@edcgov.us)>

Fri, Sep 23, 2016 at 11:06 AM

To: Kate Kirsh <[kkirsh@foothill.com](mailto:kkirsh@foothill.com)>, Kyrsten Shields <[kshields@foothill.com](mailto:kshields@foothill.com)>

Vickie Sanders  
 Parks Manager  
 County of El Dorado  
 Chief Administrative Office  
 530-621-7538  
 FAX: 530-642-0301



----- Forwarded message -----

From: **Quillman, Gabriele@Wildlife** <[Gabriele.Quillman@wildlife.ca.gov](mailto:Gabriele.Quillman@wildlife.ca.gov)>

Date: Fri, Sep 23, 2016 at 9:29 AM

Subject: CDFW's comments on the MND for the Henningsen Lotus Park Improvements Project (SCH No. [2016082064](#))To: "[vickie.sanders@edcgov.us](mailto:vickie.sanders@edcgov.us)" <[vickie.sanders@edcgov.us](mailto:vickie.sanders@edcgov.us)>Cc: Wildlife R2 CEQA <[R2CEQA@wildlife.ca.gov](mailto:R2CEQA@wildlife.ca.gov)>

Ms. Vickie Sanders

Parks Manager

El Dorado County

2850 Fairlane Court, Building C

Placerville, CA 95667

Subject: Mitigated Negative Declaration  
 Henningsen Lotus Park Improvements Project  
 State Clearinghouse No. [2016082064](#)

Dear Ms. Sanders:

The Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Mitigated Negative Declaration (MND) for the Henningsen Lotus Park Improvements Project (project) [State Clearinghouse No. [2016082064](#)]. The Department is responding to the MND as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*)

and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).

The project site is located within Henningsen Lotus Park at 950 Lotus Road, in the Town of Lotus, County of El Dorado, California. The project proposes several improvements to the park, including trail improvements, development of a new trailhead, construction of a new group picnic area, installation of site furnishings and shade shelters, river bank stabilization and restoration, and construction of a wetland boardwalk trail system.

**Comments and Recommendations**

Following review of the MND, the Department offers the comments and recommendations presented below to assist the County of El Dorado (County; the CEQA lead agency) in adequately identifying and/or mitigating the project's significant, or potentially significant, impacts on biological resources:

*Lake and Streambed Alteration*

Mitigation measure MM Bio-7 states that a Streambed Alteration Agreement shall be entered into “[i]f it is determined that project development would affect the bed, bank, or associated riparian vegetation of the South Fork American River or ephemeral drainages.” Because the project description includes plans to use boulder and cobble terracing to stabilize the river bank, and because trail improvements within the riparian zone appear to be proposed, the Department assumes that the project will affect the bed, bank, or associated riparian vegetation of the South Fork American River or ephemeral drainages.

For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river, lake, or stream or use material from a streambed or lakebed, the project applicant (or “entity”) must provide written notification to the Department pursuant to Section 1602 of the FGC. Based on this notification and other information, the Department then determines whether a Lake and Streambed Alteration (LSA) Agreement is required. The Department’s issuance of an LSA Agreement is a “project” subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the environmental document should fully identify the potential impacts to the lake, stream or riparian resources and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

The following information will be required for the processing of a Notification of Lake or Streambed Alteration and the Department recommends incorporating this information into the MND to avoid subsequent documentation and project delays. Please note that failure to include this analysis in the project’s environmental document could preclude the Department from relying on the County’s analysis to issue a LSA Agreement without the Department first conducting its own, separate Lead Agency subsequent or supplemental analysis for the project:

- 1) Delineation of lakes, streams, and associated habitat that will be temporarily and/or permanently impacted by the proposed project (include an estimate of impact to each habitat type);
  - 2) Discussion of avoidance and minimization measures to reduce project impacts;
- and,
- 3) Discussion of potential mitigation measures required to reduce the project impacts to a level of insignificance. Please refer to section 15370 of the CEQA Guidelines.

Please note that the formulation of mitigation measures should not be deferred to future projects (i.e., the issuance of a Lake or Streambed Alteration Agreement). While it is not always possible to devise complete, specific, and fully detailed mitigation measures while the project is still in the early planning stages, it is not appropriate to adopt an MND unless the lead agency is reasonably certain that the proposed project will have no significant impacts on the environment. Such certainty is not possible if the formulation of mitigation measures is deferred until after the adoption of the MND, and the lack of public review of the mitigation plan deprives the public of the opportunity to comment on the mitigation plan's adequacy, feasibility, and enforceability. "[I]t is improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur before the project is approved" (California Native Plant Society v. City of Rancho Cordova (2009) 172 Cal.App.4th 603, 621 [91 Cal. Rptr. 3d 571] (CNPS), citing Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296 [248 Cal. Rptr. 352] (Sundstrom) and Gentry v. City of Murrieta (1995) 36 Cal.App.4th 1359 [43 Cal. Rptr. 2d 170] (Gentry).) Therefore, the Department recommends that the MND be revised to describe and quantify the project's foreseeable impacts on riparian and riverine habitat, and to include a specific mitigation proposal to address the project's significant or potentially significant impacts to riverine and riparian habitat.

#### *Tricolored Blackbird*

The project's Biological Resources Assessment concludes that there is no potential for tricolored blackbird (*Agelaius tricolor*) to occur on-site because "the riparian and Himalayan blackberry scrub are not large enough to support a minimum of 50 nesting pairs. However, figure 4.4-2 identifies 4.64 acres of Himalayan blackberry scrub and 3.82 acres of riparian habitat on site. Please clarify how the conclusion that these habitat areas are not large enough to support 50 nesting pairs of tricolored blackbirds was reached.

If tricolored blackbirds do nest on-site, the proposed trail improvements may negatively impact the species by encouraging heavier use of the trails and resulting in an increased human presence near nesting sites. If it is determined that tricolored blackbirds have the potential to nest on-site, the MND should be revised to include an analysis of the potential impacts on the species and appropriate mitigation measures as needed. The Department further recommends that, in the event that any threatened, endangered, candidate, or fully protected bird species is identified nesting near enough to the trail that it may be negatively impacted by human presence, the trail be temporarily closed until the nest is no longer active (i.e., the young have fledged and are foraging independently of their parents).

#### *Nesting and Migratory Birds*

Mitigation measure MM Bio-1 requires preconstruction surveys for nesting birds to be conducted within 15 days prior to the start of construction activities if construction activities are scheduled during the nesting season. Please note that many bird species are capable of building a nest and beginning to lay eggs in fewer than 15 days; some take as little as three or four days to construct the nest. Therefore, the Department recommends that nesting bird surveys be conducted no more than three days prior to the initiation of ground disturbing or vegetation removal activities.

#### *Western Pond Turtle*

Mitigation measure MM Bio-3 requires that preconstruction surveys for western pond turtle (*Emys marmorata*) be conducted prior to commencing ground-disturbing activities within 500 feet of the river and marshes. Because western pond turtles lay their eggs in small excavated nests on land, ground disturbing activities may damage or destroy turtle eggs. In order to avoid impacts to western pond turtle nests, the Department recommends that MM Bio-3 be revised to require the surveying biologist to also survey the area for turtle nests. If a turtle nest is located, the surveying biologist should demarcate an avoidance buffer around the nest site that is wide enough to ensure that project activities will not damage the nest.

#### **Further Coordination**

The Department appreciates the opportunity to comment on the MND for the Henningsen Lotus Park Improvements Project (SCH No. [2016082064](#)), and requests that the County address the Department's comments and concerns prior to adopting the MND. If you should have any questions pertaining to these comments, please contact me at (916) 358-2955 or [gabriele.quillman@wildlife.ca.gov](mailto:gabriele.quillman@wildlife.ca.gov).

Sincerely,

Gabriele (Gabe) Quillman

Environmental Scientist

North Central Region

1701 Nimbus Road

Rancho Cordova, CA 95670

[\(916\) 358-2955](tel:(916)358-2955)



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ENVIRONMENTAL CONSULTING • PLANNING • LANDSCAPE ARCHITECTURE

November 2, 2016

Vickie Sanders  
Park Manager  
County of El Dorado  
Chief Administrative Office, Parks Division  
330 Fairlane  
Placerville, CA 95667

**RE: Potential for Tri-Colored Blackbird to Occupy the Henningsen Lotus Park Project Site**

Dear Ms. Sanders:

The purpose of this letter is to further discuss the conclusion that there is no potential for tricolored blackbird (*Agelaius tricolor*) to occur on the Henningsen Lotus Park project site, in response to concerns raised by the California Department of Fish and Wildlife (CDFW) in their September 23, 2016 comments on the project's Mitigated Negative Declaration. CDFW questioned the conclusion that tricolored blackbird was unlikely to be found due to potential nesting habitat being insufficient to support at least 50 pairs.

Tricolored blackbirds are colonial nesters that generally require minimum colony size of 50 nesting pairs. Nest territories are small, approximately 3.3 m<sup>2</sup>, which results in a minimum required habitat size of approximately 165 m<sup>2</sup> (1,780 SF) (CWHR 2008). Breeding colony sites must be located near accessible water, have nest sites protected either by location over water or surrounded by spiny vegetation, and have suitable foraging habitat nearby. Marshes, fallow fields, and emergent wetlands with dense vegetation are suitable breeding habitat. Tricolored blackbird colonies are now found most commonly in triticale fields and near dairies. Nests are built within three meters of the ground and attached to vertical plant stems (Beedy and Hamilton 2014). Tricolored blackbirds forage on insects and grains and are known to forage in croplands, grassy fields, flooded land, and around the edges of ponds up to four miles from their nesting colony (CWHR 2008). They generally inhabit the breeding colony from March to early April through June, then move to late summer and winter foraging areas in the Central Valley and coast (Beedy and Hamilton 2014). Tricolored blackbirds will return to the same nesting site each year, if conditions allow (ICE 2016).

This species was considered in the Biological Resources Assessment (BRA) prepared for the Henningsen Lotus Park Improvements Project (Foothill Associates 2016) because of an occurrence identified in the CDFW California Natural Diversity Database (CNDDDB). This occurrence (Map Index #12562) was a small nesting colony of approximately 75 individuals located approximately 3.5 miles southeast of the project site. It was recorded at an unknown

date prior to 1986 and the location was last surveyed in 1992 when no tricolored blackbirds were observed (CDFW 2016). Recent occurrences in El Dorado County, from 2014 through 2016, are all found near the County line at lower elevations, mostly along Carson Creek. The nearest of these known recent breeding populations is almost 15 miles from the project site (**Figure 1**) (ICE 2016).

As described in the BRA and visible on aerial photographs, the Himalayan blackberry scrub consists of dense thickets of blackberry canes with an almost complete overstory of various native and non-native trees (**Attachment A, Photograph 1**) and the seasonal and perennial marsh habitats are located within the mixed oak woodland. Although tricolored blackbirds may occasionally nest in willow thickets and small trees, they rarely nest in areas of dense canopy cover such as that found on the project site. The only open areas on the site are the parking lots, playing fields, and active park areas with little vegetation, which are not suitable foraging habitat for tricolored blackbirds (**Attachment A, Photograph 2**). Since the marsh and blackberry thickets on site provide only marginal nesting habitat due to their relatively dense overstory and the developed parkland is not suitable foraging habitat, the nearest known recent populations of tricolored blackbirds are located almost 15 miles west of the project site in Central Valley habitats, and tricolored blackbirds were not observed on or in the immediate vicinity of the site during the 2015 site surveys, there is no potential for tricolored blackbird to be found on the Henningsen Lotus Park project site.

If you have any questions concerning these responses, please feel free to contact me by telephone at (916) 435-1202 x 214 or by email [mbranstad@foothill.com](mailto:mbranstad@foothill.com).

Sincerely,



Meredith Branstad  
Principal Biologist

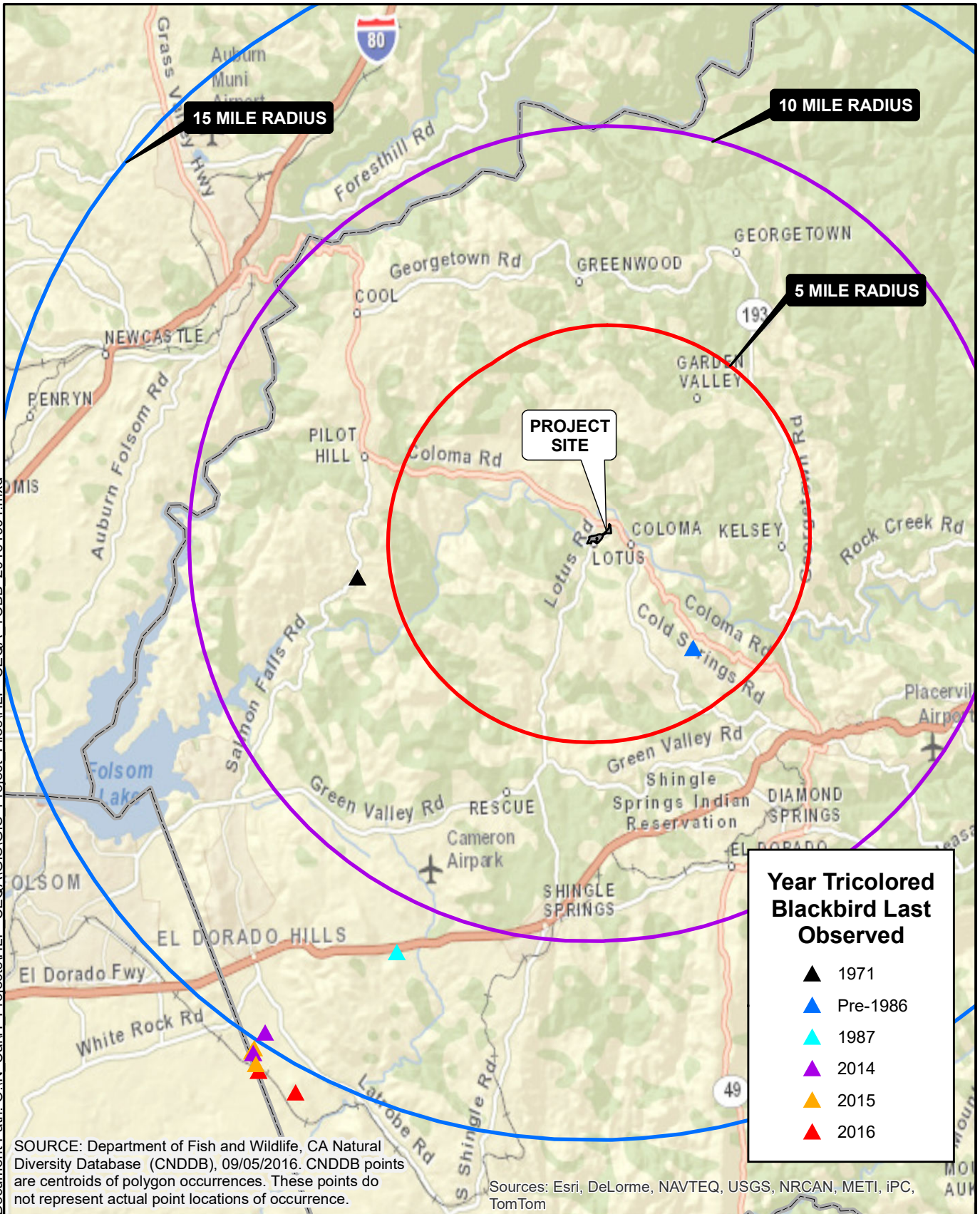
Enclosures (2)



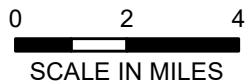
## REFERENCES

- Beedy, Edward C. and William J. Hamilton, III. 2014. "Tricolored Blackbird" in *Birds of North America*. July 15, 2014. Available online at [www.birdsna.org](http://www.birdsna.org). Accessed September 28, 2016.
- California Department of Fish and Wildlife (CDFW). 2016. California Natural Diversity Database (CNDDDB). California Department of Fish and Wildlife, Sacramento, CA. Version 5.2.7. Accessed September 28, 2016.
- California Wildlife Habitat Relationship System (CWHR). 2008. *Tricolored Blackbird Life History*. California Department of Fish and Wildlife, Sacramento, CA. Updated August 2008. Available online at [nrm.dfg.ca.gov](http://nrm.dfg.ca.gov). Accessed September 28, 2016.
- GoogleEarth. 2015. *Aerial Imagery*. April 16, 2015.
- Information Center for the Environment (ICE). 2016. *Tricolored Blackbird Portal*. UC Davis. Available online at [tricolor.ice.ucdavis.edu](http://tricolor.ice.ucdavis.edu). Accessed September 28, 2016.

Document Path: O:\N\_Cal\H\_Projects\HLP\_CEQ\GIS\GIS Project Files\HLP\_CEQA\_TCBB\_20161004.mxd



## HENNINGSEN LOTUS PARK TRICOLORED BLACKBIRD OBSERVATIONS



Drawn By: MUB  
Date: 10/12/2016

FIGURE 1





Photograph 1: View of Himalayan blackberry scrub habitat.

Date: May 29, 2015

Photographer: K. Bayne



Photograph 2: Typical view of active park area and playing field.

Date: May 29, 2015

Photographer: K. Bayne

## REPRESENTATIVE PHOTOGRAPHS



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PAGE 1 OF 1

ATTACHMENT A

### Henningsen Lotus Park Improvements Project Mitigation Monitoring and Reporting Program

Mitigation Measure (MM)	Implementing Responsibility	Monitoring Responsibility	Timing*	Verification of Compliance (Initials/Date)
<b><i>Air Quality</i></b>				
<p><b>AQ — 1:</b> Prior to implementation of any proposed future improvements that require a grading permit, the County shall consult with the El Dorado County AQMD. These consultations shall determine if a project-specific air quality analysis and/or GHG analysis for project construction would be required. If a project-specific air quality analysis or GHG analysis is required, the County shall conduct the analysis using the applicable standards in place at the time of development. The methodology may include, but not be limited to; project screening identified by the El Dorado County AQMD, the California Emissions Estimator Model (CalEEMod), Urban Emissions Model (URBEMIS) for air quality, or other methodology identified by El Dorado County AQMD. Should the project-specific analysis estimate that emissions, (including GHG emissions) could exceed = thresholds, the project shall incorporate the appropriate level of mitigation measures, which may include additional fugitive dust/particulate matter control as well as the applicable standard construction mitigation measures, or other measures identified to reduce GHG emissions in accordance with the current standards applicable at the time of development.</p>	County	County	Prior to Construction	
<b><i>Biological Resources</i></b>				
<p><b>BIO — 1:</b> If construction is proposed during the nesting season for non-raptor migratory birds (February 1 through August 15), a pre-construction survey shall be conducted by a qualified biologist within <u>3 days prior to commencing any activities involving removing or trimming vegetation including trees and shrubs.</u> <u>For all other construction activities, a pre-construction survey shall be conducted by a qualified biologist within 15 days of the start of project related activities.</u> If nests of migratory birds are detected onsite, or within 100 feet of the project site, the</p>	County	County and CDFW if Applicable	15 days Prior to Construction (during nesting season February 1 through	

Mitigation Measure (MM)	Implementing Responsibility	Monitoring Responsibility	Timing*	Verification of Compliance (Initials/Date)
County shall consult with CDFW to determine the size of a suitable buffer in which no new site disturbance is permitted until August 15, or until the qualified biologist determines that the young are foraging independently, or the nest has been abandoned.			August 15)	
<b>BIO — 2:</b> Vegetation clearing operations, including pruning or removal of trees and shrubs, shall be completed between September 1 and January 31, if feasible, to avoid migratory birds protected under 50 CFR 10 of the MBTA and/or Section 3503 of the California Fish and Game Code. If construction is proposed during the raptor breeding season (March 1 through August 31), a pre-construction raptor nest survey shall be conducted within 30 days prior to beginning of construction activities by a qualified biologist. If no active nests are found during the pre-construction survey, no further mitigation is required. If active nests are found, a quarter-mile (1,320 feet) initial temporary nest disturbance buffer area shall be established. If project related activities within the temporary nest disturbance buffer are determined to be necessary during the nesting season (approximately March 1 through August 31), then an onsite biologist/monitor experienced with raptor behavior shall be retained by the County to monitor the nest, and shall along with the project proponent, consult with the CDFW to determine the best course of action necessary to avoid nest abandonment or take of individuals. Work may be allowed to proceed within the temporary nest disturbance buffer if raptors are not exhibiting agitated behavior. The designated onsite biologist/monitor shall be onsite daily or less if approved by CDFW while construction related activities are taking place and shall have the authority to stop work if raptors are exhibiting agitated behavior.	County	County and CDFW if Applicable	Prior to Construction (during breeding season March 1 through August 31) and During Construction (vegetation clearing September 1 through January 1)	
<b>BIO — 3:</b> A qualified biologist shall conduct a pre-construction survey for western pond turtle <u>and western pond turtle nests</u> within 14 days prior to the start of ground disturbance within 500 feet of	County	County and CDFW if Applicable	14 Days Prior to Construction	

Mitigation Measure (MM)	Implementing Responsibility	Monitoring Responsibility	Timing*	Verification of Compliance (Initials/Date)
<p>the river and the marshes. If no western pond turtles <u>or nests</u> are observed, then a letter report documenting the results of the survey shall be provided to the County for their records, and no additional measures are recommended. If construction does not commence within 14 days of the pre-construction survey, or halts for more than 14 days, a new survey is required.</p> <p>If western pond turtles are found, additional avoidance measures are required including having a qualified biologist conduct a pre-construction survey within 24 hours prior to commencement of construction activities, performing a worker awareness training to all construction workers, and being present on the project site during any grading activities within 500 feet of the river and marshes for the purpose of relocating any western pond turtles found within the construction footprint to suitable habitat away from the construction zone, but within the Project Site.</p> <p><u>If western pond turtle nests are identified, the surveying biologist shall demarcate an avoidance buffer around the nest site that is wide enough to ensure that project activities will not damage the nest.</u></p>				
<p><b>BIO — 4:</b> A qualified biologist shall conduct a pre-construction survey within 14 days prior to the start of construction activities for the coast horned lizard. If no coast horned lizards are observed, a letter report documenting the results of the survey shall be submitted to the County for their records, and no additional measures are recommended. If construction does not commence within 14 days of the pre-construction survey, or halts for more than 14 days, a new survey is required.</p>	County	County and CDFW if Applicable	14 Days Prior to Construction	
<p><b>BIO — 5:</b> A qualified biologist shall conduct a pre-construction survey for foothill yellow-legged frog within 14 days prior to the start of ground disturbance activities within 500 feet of the South Fork American River. If no foothill yellow-legged frogs are</p>	County	County and USFWS if Applicable	14 days Prior to Construction	

Mitigation Measure (MM)	Implementing Responsibility	Monitoring Responsibility	Timing*	Verification of Compliance (Initials/Date)
<p>observed, then a letter report documenting the results of the survey shall be provided to the County for their records, and no additional measures are recommended. If construction does not commence within 14 days of the pre-construction survey, or halts for more than 14 days, a new survey is required.</p> <p>If foothill yellow-legged frogs are found, additional avoidance measures are required including having a qualified biologist conduct a pre-construction survey within 24 hours prior to commencement of construction activities, performing a worker awareness training to all construction workers, and being present within the Project Site during grading activities within 500 feet of the river for the purpose of relocating any foothill yellow-legged frogs found within the construction footprint to suitable habitat away from the construction zone, but within the Project Site.</p>				
<p><b>BIO — 6:</b> For any permanent or temporary placement of fill into jurisdictional waters of the U.S., authorization under Section 404 of the Federal Clean Water Act Permit shall be obtained from the Corps and a Section 401 Water Quality Certification shall be obtained from the RWQCB prior to the issuance of a grading permit. Any waters of the U.S. or jurisdictional wetlands that would be lost or disturbed shall be replaced or rehabilitated on a “no-net-loss” basis in accordance with the Corps mitigation guidelines. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to the Corps and RWQCB.</p>	County	County and Corps	Prior to Construction	
<p><b>BIO — 7:</b> If it is determined that project development would affect the bed, bank, or associated riparian vegetation of the South Fork American River or the ephemeral drainages, a Streambed Alteration Agreement shall be entered into with the CDFW pursuant to §1600 of the California Fish and Game Codes prior to the issuance of a grading or building permit by El Dorado County. If required, the County shall coordinate with</p>	County	County and CDFW	Prior to Construction	

Mitigation Measure (MM)	Implementing Responsibility	Monitoring Responsibility	Timing*	Verification of Compliance (Initials/Date)
CDFW in developing mitigation appropriate for potential impacts to riparian and/or wetland impacts and shall abide by the conditions of any executed agreement.				
<b>BIO — 8:</b> If the removal of oak trees is anticipated to occur, an Arborist Survey and Arborist Report shall be prepared for the site by an International Society of Arboriculture (ISA)-Certified Arborist to determine any mitigation that may be required to maintain consistency with the <i>El Dorado County Oak Woodland Management Plan</i> , which sets forth guidance on Policy 7.4.4.4 of the El Dorado County General Plan.	County	County	Prior to construction	
<b>Cultural Resources</b>				
<b>CR — 1:</b> Should buried archaeological deposits or artifacts be inadvertently exposed during the course of any construction activity, work shall cease in the immediate area and the El Dorado County Parks and Recreation Department shall be immediately contacted for inadvertent discovery of archaeological resources. A qualified archaeologist will be retained to document the find, assess its significance, and recommend further treatment. Work on the Project Site shall not resume until the archaeologist has had a reasonable time to conduct an examination and implement mitigation measures deemed appropriate and necessary by the agency with local jurisdiction in consultation with the qualified archaeologist to reduce impacts to a less than significant level.	County and Contractor	County	During Construction	
<b>CR — 2:</b> If evidence of a paleontological site is uncovered during grading or other construction activities, work shall be halted within 100 feet of the find and the El Dorado County Parks and Recreation Department shall be contacted for inadvertent discovery of resources associated with project construction. A qualified paleontologist shall be retained to conduct an on-site evaluation and provide recommendations for removal and/or preservation. Work on the Project Site shall not resume until the paleontologist has had a reasonable time to conduct an	County and Contractor	County	During Construction	



Mitigation Measure (MM)	Implementing Responsibility	Monitoring Responsibility	Timing*	Verification of Compliance (Initials/Date)
examination and implement mitigation measures deemed appropriate and necessary by the agency with local jurisdiction in consultation with the qualified paleontologist to reduce impacts to a less than significant level.				
<b>CR — 3:</b> In the event that any human remains or any associated funerary objects are encountered during construction, all work will cease within the vicinity of the discovery and the El Dorado County Parks and Recreation Department shall be immediately contacted for inadvertent discovery of resources associated with park construction. In accordance with CEQA (Section 1064.5) and the California Health and Safety Code (Section 7050.5), the El Dorado County coroner should be contacted immediately. If the human remains are determined to be Native American, the coroner shall notify the Native American Heritage Commission, who will notify and appoint a Most Likely Descendent (MLD). The MLD will work with a qualified archaeologist to decide the proper treatment of the human remains and any associated funerary objects. Construction activities in the immediate vicinity will not resume until a notice-to-proceed is issued.	County and Contractor	County	During Construction	
<b>Geology and Soils</b>				
<b>GEO – 1:</b> El Dorado County Parks and Trails Department shall apply for and comply with all current construction-related storm water permitting, monitoring and reporting requirements required by the RWQCB under NPDES, as applicable to project development at the time of construction of proposed improvements/facilities.	County	County and RWQCB	Prior to construction	
<b>GEO – 2:</b> Annually, prior to October 15 (the onset of the rainy season), El Dorado County Parks and Trails Department shall inspect and repair the Connector Trail to Highway 49, downstream park trails, river access trails, and other park areas that have the potential to contribute to substantial erosion and soil loss. Repairs shall prioritize any areas subject to erosion, as well as	County	County	Annually After Construction (prior to October 15)	

Mitigation Measure (MM)	Implementing Responsibility	Monitoring Responsibility	Timing*	Verification of Compliance (Initials/Date)
improper drainage and areas likely to form gullies during the rainy season.				
<b>Noise</b>				
<b>Noise — 1:</b> Construction activities shall be limited to: Monday through Friday 7:00 A.M. to 7:00 P.M. and 8:00 A.M. to 5:00 P.M. on Saturday, Sunday, and all federally recognized holidays. Any exceptions to these hours shall be evaluated on a case by case basis and require approval by the County of El Dorado.	Contractor	County	During Construction	
<b>Noise — 2:</b> All construction equipment shall be fitted with factory installed muffling devices and all construction equipment shall be maintained in good working order. All stationary construction noise sources (e.g. generators, compressors) shall be located as far away from noise sensitive land uses as feasible.	Contractor	County	Prior to Construction and During Construction	