



ECOS

ENVIRONMENTAL
♦ COUNCIL ♦
OF SACRAMENTO

Post Office Box 1526 | Sacramento, CA 95812-1526

March 18, 2024

Sacramento County Environmental Coordinator
Sacramento County Department of Planning and Environmental Review
Via email to CEQA@sacounty.gov
Planning and Environmental Review
827 7th Street, Room 225,
Sacramento, California, 95814.

SUBJECT: Comments on the Draft Supplemental Environmental Impact (DSEIR)
SACRAMENTO COUNTY WATTEV INNOVATIVE FREIGHT TERMINAL
(SWIFT) PROJECT, Control Number: PLER2023-00069

Dear Environmental Coordinator,

The project is described on p. 59 of the Draft Supplemental Environmental Impact Review (DSEIR) as:

The proposed project would provide a publicly accessible Electric Vehicle (EV) charging facility that would be built on a 110-acre parcel of land adjacent to Interstate 5 (I-5) and proximate to State Route 99 (SR-99), both major freight corridors. Facility development would include the installation of Direct Current Fast Chargers (DCFC) and Megawatt Chargers powered by a new solar array that would support charging for shippers and transporters as well as public transportation and passenger vehicles. In addition, the proposed project would include accessory uses, such as restrooms, resting lounges, a convenience store, and a visitor center.

In the pages below, please see our comments on these topics.	Page
Air Quality Impacts	2
Biological Impacts	3
Alternatives Analysis	8
Cumulative Impacts	9
NOP Comments not addressed	9

We appreciate this opportunity to review the DSEIR for the Watt EV project. The document has substantial omissions and should be revised and recirculated. Please keep us informed of further opportunities to comment and participate in public hearings on the Watt EV project.

Sincerely,

Susan Herre AIA AICP
President of the ECOS Board of Directors

Judith Lamare
Friends of the Swainson's Hawk

Air Quality Impacts

This project proposes to install solar panels over 92 acres of Farmland of Local Importance¹.

While the DSEIR addresses fugitive dust controls during the construction phase, it is silent with respect to fugitive dust controls during the operational phase.

Windblown dust from solar arrays is a significant issue in solar farms elsewhere in the state due to the practice of significantly disturbing soil crusts through the removal of all vegetation and wholesale grading of array sites.

Please address these questions:

1. What are the soil types and fractional coverages at the array site?
2. What are the ranges of clay, silt, and sand within each of these soil types?
3. What are the potentials for wind erosion within each soil type?
4. What measures will be employed to reduce the potential for windblown dust within the solar array site during the operational phase?
5. How frequently will the dust control measures be applied during the operational phase?
6. How will the effectiveness of operational phase dust control measures be assessed?
7. What criteria will be used to identify the timing of reapplication of dust control measures during the operational phase?

CEQA requires the EIR to identify impacts and mitigate impacts to less than significant. How will the ground under the solar arrays be maintained? What are the environmental impacts of solar field maintenance? What mitigation measures will be added to the FSEIR or RSEIR to reduce impacts to less than significant?

¹ <https://www.conservation.ca.gov/>: "either currently producing crops, has the capability of production, or is used for the production of confined livestock"

Biological Impacts

Project Operation

The DSEIR does not consider the impacts of the project operation on the viability of two acknowledged nesting sites at the periphery of the project area and on the Swainson's Hawk Zone of the NBHCP. The DSEIR mitigation measure for impacts to nest sites applies only to construction of the project:

"The purpose of the survey requirement is to ensure that construction activities do not agitate nesting hawks, potential resulting in nest abandoned or other harm to nesting success." (p. 7-32-33).

There is no analysis of how the human activities would change the nesting conditions and reproductive success at the site for Swainson's Hawks. The project site is a long-standing traditional area for nesting Swainson's Hawks. (In 1991, the airport illegally removed a nesting tree in close proximity to the project site, but the DSEIR shows that nesting pairs are along Bayou.) Increased truck traffic on Bayou, increased human presence at the site and other impacts have not been described or assessed. The likelihood of nest site abandonment under the conditions described for the project site after construction is high. The loss of nesting sites in the Basin is a very significant impact that is not identified nor mitigated.

"In the Natomas Basin in the Sacramento Valley, reproductive success and population-level recruitment of Swainson's hawks was associated equally or more closely with nest site availability than with land cover type distribution, which included high-quality grassland and alfalfa foraging habitat, in that study area (Fleishman, E., Anderson, J., Dickson, B.G., Krolick, D., Estep, J.A., Anderson, R.L., Elphick, C.S., Dobkin, D.S. and Bell, D.A., 2016. Space Use by Swainson's Hawk (*Buteo swainsoni*) in the Natomas Basin, California. *Collabra*, 2(1): 5, pp. 1–12)."

We are concerned also that no analysis has been performed regarding the impact of the solar facility upon the locally nesting Swainson's Hawk population and activities in the adjacent Swainson's Hawk zone to the west/southwest. What evidence can applicants present that the reflection, heat and sound frequency of a 92-acre solar field that close to many Swainson's hawk nests, and the Swainson's Hawk Zone, will not jeopardize nesting success in this critical area nor undermine the substantial Natomas Basin Conservancy mitigation properties in the area? We see no evidence presented to affirm that the 94-acre solar photovoltaic field poses no threat to the threatened Swainson's Hawk which nest and forage in the vicinity from March to September.

The DSEIR is also inadequate for failure to address bird and bat fatality from the solar installation. Grading removes habitat that supports wildlife. Direct impacts are described by Smallwood as:

"Once constructed, utility-scale solar projects pose multiple fatality risk factors. Volant wildlife can collide with solar collectors, power block structures, project buildings, medium-voltage overhead lines, gen-tie lines (i.e., generator lead or transmission lines), fencing, and automobiles servicing the project. Some birds might collide with photovoltaic (PV) panels because of the lake effect, or the birds' perception of many closely spaced PV panels as a waterbody onto which they attempt to land (Kagan et al. 2014). Polarized light from PV panels might attract prey of insectivorous birds and hence the birds themselves (Horváth et al. 2010), or it might fool birds into trying to lick water from the panel while in flight (Horváth et al. 2009, 2010). Reflected self-images on mirrors of solar thermal projects, or even of PV panels, might elicit aggressive responses of birds motivated to defend territory (Hager and Craig 2014, Kahle et al. 2016). Collisions might result from high-speed predator prey encounters in which the pursuer or pursued collide with a project feature (Dunn 1993). Bats might fail to detect angled collector panels or mirrors because of reduced echolocation output (Gorresen et al. 2017, Corcoran and Weller

2018) or confused echolocation feedback (P. R. Long, retired military pilot, personal communication). Bats might also misinterpret echolocation-detected flat panels as water bodies from which they attempt to drink while in flight (Greif and Siemers 2010). At power tower projects, birds and bats die because of acute exposure to the zone of solar flux (Kagan et al. 2014). Data summarized herein indicate that birds also perish because of electrocution on energized portions of the project, entrapment or entanglement."

(K. S. Smallwood. 2021. Utility-Scale Solar Impacts to Wildlife. Journal of Wildlife Management, p. 3.)

The DSEIR should assess these impacts, including how they will impact the 22 species protected by the Natomas Basin Habitat Conservation Plan, and how impacts would be mitigated.

Conflict with the Natomas Basin Habitat Conservation Plan (NBHCP)

The NBHCP is a basin wide conservation strategy for federal and state listed species, adopted by both state and federal wildlife agencies. The DSEIR review of the potential conflict of the project with the Natomas Basin Habitat Conservation Plan is inadequate. The finding that it does not conflict is not supported by substantial evidence.

The NBHCP at I-3 states:

"Any additional urban development within the Natomas Basin that occurs outside of the City's and Sutter's Permit Areas, with the exception of the MAP development, including any development with Sacramento County or within the jurisdiction of another Potential Permittee, also would constitute a significant departure from the Plan's OCP [Operating Conservation Program] and would trigger a new effects analysis, a new conservation strategy, and issuance of Incidental Take Permits to the Potential Permittee for that additional urban development."

It also specifically addresses any future development in Sacramento County as follows (p. I-12):

"The County of Sacramento is not a participant in this NBHCP nor is it proposing to obtain incidental take permits based on this NBHCP. If the County considers new projects within the unincorporated area of the Natomas Basin within Sacramento County, the County would review the biological impacts of these new projects and require these projects to demonstrate that adequate mitigation would compensate for biological impacts in accordance with state and federal law. The County may seek to address mitigation for biological impacts via amendments to this NBHCP or through a habitat conservation plan designed to achieve the biological goals and objectives for the Natomas Basin outlined in the NBHCP in a manner compatible with the conservation strategy of the NBHCP. In particular, such mitigation would be required to address the effect of reduced agricultural lands on the biological viability of the NBHCP."

The Watt EV DSEIR does not address the effect of reduced agricultural lands on the biological viability of the NBHCP, nor does it disclose this mandate of the state and federally adopted Natomas Basin Habitat Conservation Plan.

The Watt EV project is within the Basin and subject to the same findings that required the NBHCP to be developed. The entire Basin is habitat to 22 listed species. To be consistent with the NBHCP, the project should obtain take permits from both state and federal governments to ensure that the project impacts are mitigated to less than significant and do not conflict with an adopted habitat conservation plan.

As noted below in the US Fish and Wildlife Service Biological Opinion, federally funded flood control for the Basin requires take permits in the Natomas Basin.

"In 1994, the Sacramento Area Flood Control Agency (SAFCA) proposed a flood control project for the Natomas Basin (Basin) that required a Section 404 Clean Water Act permit from the U.S. Army Corps of Engineers (Corps). In order to comply with its responsibilities under the Act, the Corps consulted with the Service. In its March 11, 1994, biological opinion (Service File #1-1-94-F-0013) for the project, the Service determined that the project would remove an obstacle to urbanization in the Basin and that such development would result in the take of federally listed species. The Corps issued a Section 404 Permit for SAFCA's flood control project, conditional on the preparation of a habitat conservation plan (HCP) for the Basin. Following the Corps' action, the local land use agencies (City, Sutter, and Sacramento County), with additional participation by the water agencies (Reclamation District Number 1000 [RD 1000] and Natomas Central Mutual Water Company [Natomas Mutual]), began preparing an HCP. In 1997, the City submitted its application to the Service for an incidental take permit to authorize take of 26 Covered Species within its portion of the Natomas Basin based on the 1997 basin-wide Natomas Basin HCP. The other land use agencies did not apply for incidental take permits based on the NBHCP at that time." (US Fish and Wildlife Service, "Intra-Service Biological and Conference Opinion on Issuance of a Section 10(a)(1)(B) Incidental Take Permit to the City of Sacramento and Sutter County for Urban Development in the Natomas Basin, Sacramento and Sutter Counties, California.")

While the DSEIR states that the applicant will consult with state and federal wildlife agencies, it falls short of requiring application for take permits, which are appropriate in this case because the project is in the Natomas Basin. Mitigation to reduce impacts to less than significant should include the commitment to apply for take permits since the agencies can best determine how that can be achieved and have the enforcement capability to guarantee compliance. To ensure that there is no conflict between the project and the adopted habitat conservation plans for the Basin as a whole, it is essential that the applicant apply for take permits from the state and federal wildlife agencies. This permit process allows the agencies themselves to perform a consistency analysis and make a finding that ensures no conflict exists. Take permits (USFWS Section 10, CDFW 2081) should be required to be obtained prior to grading permit issuance by the County of Sacramento.

Swainson's Hawk Mitigation

The DSEIR at page 7-32 states that nesting has occurred at and adjacent to the project site. The project is very likely to interfere with the nesting activity.

"Dudek in 2020 for another nearby project located Swainson's hawk actively nesting in two trees along Bayou Way (Dudek, 2023). One nest was along the Bayou Way frontage of the project site, and another was just west of the project site."

The CDFW guidance is quite clear that this is a project requiring 2081 (take) permit:

"Loss or alteration of foraging habitat or nest site disturbance which results in:

(1) nest abandonment; (2) loss of young; (3) reduced health and vigor of eggs and/or nestlings (resulting in reduced survival rates), may ultimately result in the take (killing) of nestling or fledgling Swainson's hawks incidental to otherwise lawful activities. The taking of Swainson's hawks in this manner can be, a violation of Section 2080 of the Fish and Game Code. This interpretation of take has been judicially affirmed by the landmark appellate court decision pertaining to CESA (DFG v. ACID, 8 CA App.4, 41554). The essence of the decision emphasized that the intent and purpose of CESA applies to all activities that take or kill endangered or threatened species, even when the taking is incidental to otherwise legal activities. To avoid potential violations of Fish and Game Code Section 2080, the Department recommends and encourages project sponsors to obtain 2081 Management Authorizations for their projects." (California Department of Fish and Wildlife, Memorandum, Staff Report Regarding Mitigation

for Impacts to Swainson's Hawks [*Buteo Swainsonii*] in the Central Valley of California. November 8, 1994. P. 4-5)

In addition, the Department guidance requires protecting nesting sites (at page 11) with a buffer zone of a minimum of ¼ mile from nesting, but in most locations would require ½ mile buffer zone:

"No intensive new disturbances (e.g. heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project related activities which may cause nest abandonment or forced fledging, should be initiated within 1/4 mile (buffer zone) of an active nest between March 1 - September 15 or until August 15 if a Management Authorization or Biological Opinion is obtained for the project. The buffer zone should be increased to ½ mile in nesting areas away from urban development (i.e. in areas where disturbance [e.g. heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities] is not a normal occurrence during the nesting season). Nest trees should not be removed unless there is no feasible way of avoiding it. If a nest tree must be removed, a Management Authorization (including conditions to off-set the loss of the nest tree) must be obtained with the tree removal period specified in the Management Authorization, generally between October 1- February 1. If construction or other project related activities which may cause nest abandonment or forced fledging are necessary within the buffer zone, monitoring of the nest site (funded by the project sponsor) by a qualified biologist (to determine if the nest is abandoned) should be required. . . . "

The DSEIR does not explain why the ¼ mile buffer is accepted as adequate in this situation and why the ½ mile was not used.

The SWH mitigation measure conflicts with the NBHCP in that mitigation land need only be located within 10 miles of the Natomas Basin rather than in the Basin itself.

"For permanent loss of foraging habitat, mitigation sites will be within 10 miles of the Natomas Basin so that habitat would be provided for Swainson's hawks nesting or foraging in and near the Natomas Basin." (MM BR3, p. 7-40, SDEIR)

While the Natomas Basin HCP includes a section on mitigation land acquisition criteria outlining a path to out of Basin mitigation, that option was closed in the final approvals of the Plan by City, Sutter and wildlife agencies to ensure that all mitigation benefits listed species in the Basin. (See footnote 1 below.)

Moreover, Fleishman et al. (Space Use by Swainson's Hawk (*Buteo swainsoni*) in the Natomas Basin, California. *Collabra*, 2(1): 5, pp. 1-12) have found that in the Natomas Basin "the vast majority of adult Swainson's Hawks traveled distances up to 8-10 km from the nest throughout the breeding season." This is a distance of 5-6 miles, and 10 miles would be well beyond the norm for foraging Swainson's Hawks nesting in the Natomas Basin, adding a significant burden to maintaining nestlings through the fledge period.

Reliance on the impact analysis by Dudek is also faulty due to:

1. Failure to conduct field study during Swainson's Hawk nesting season. Field study was done in August after nestlings have fledged;
2. Failure to accurately describe the Swainson's Hawk population exceeding 90 nesting territories in the Basin as established by numerous monitoring surveys performed by the Natomas Basin Conservancy (no reference at all is made to this documentation of the nesting population of Natomas Swainson's Hawks which is described as having 35 territories);
3. The SDEIR incorrectly states: "The guidelines for reserve acquisition allow for up to 20 percent of the reserve system to be located outside of the Natomas Basin in the adjacent "Area B" (which is primarily in Sutter

and Placer counties) if the acquisitions are approved by USFWS and CDFW." This statement is false in that both City of Sacramento and County of Sutter take permits from the Wildlife Agencies limit mitigation land acquisition to the Basin.²

4. Incorrectly describes the conservation strategy for the Natomas Basin, omitting the continued presence of thousands of acres of private farmland throughout the Basin as a necessary condition for the conservation strategy to work. See NBHCP IV 13-14.

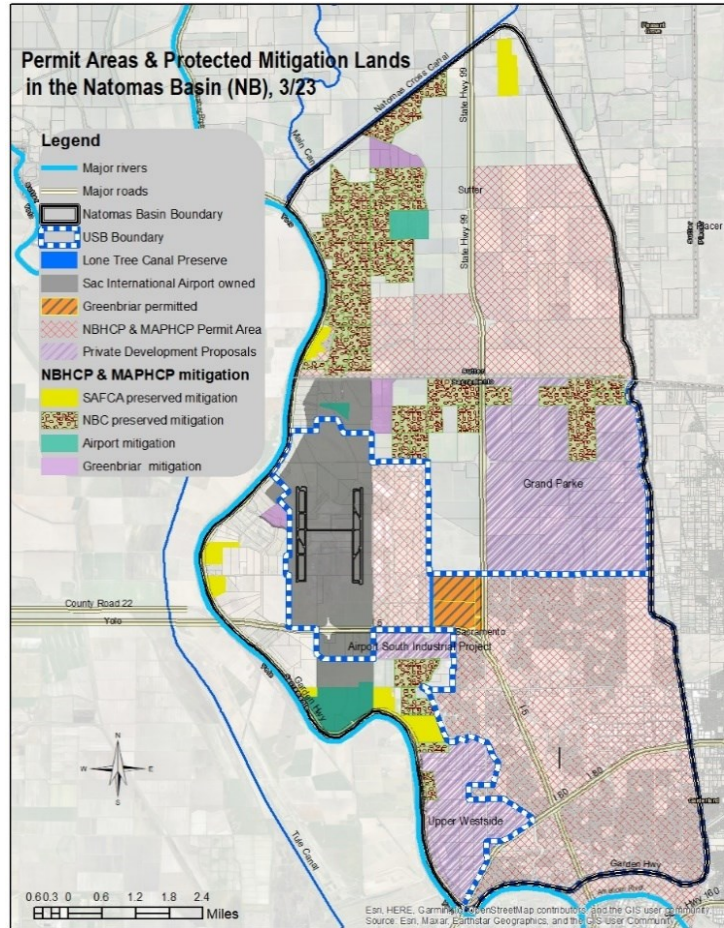
5. While the SDEIR states that two nesting trees will not be removed, the project includes widening of Bayou at the project frontage, and the SDEIR does not disclose how the widening will avoid removing the trees.

6. The EIR fails to acknowledge the proximity of permanently protected mitigation land to the project site and does not evaluate the impact of the solar array and increased human presence on the protected Natomas Basin Conservancy lands and mitigation properties belonging to SAFCA and Sacramento County Department of Airports. The map at right (prepared by Habitat 2020 volunteers) shows the Permit Areas and the protected lands and landowner proposed developments outside the City and Sutter Permit Areas. The map was prepared before ECOS and Habitat 2020 were aware of the Watt EV project, so it is not designated as such on the map.

7. The EIR does not consider maintaining the solar array on mowed vegetation which would preserve some foraging value for wildlife and mitigate for the urban heat island effect created by the project. (See IP Darden I, LLC and Affiliates, "Darden Clean Energy Project 5 Swainson's Hawks and the Darden Project").

8. Other considerations not disclosed in the SDEIR are: what is the water availability for ongoing dust control? Will project use sheep grazing on site which is common in other large solar sites? Mowing presents a risk for sparking fires in dry brush. What consideration has been given to mowing? Another method of control for grasses/weeds is the use of herbicides which

certainly pose a risk to wildlife, the groundwater, and canals in the area which are giant garter snake habitat; the SDEIR should disclose and analyze the impacts. The SDEIR is deficient in not disclosing and mitigating the impacts of maintenance of the solar field in this environmentally sensitive area covered by an adopted Habitat Conservation Plan.



² U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO, CALIFORNIA, SPECIAL TERMS AND CONDITIONS FOR TE-073663-0 (Sutter County), p. 4, J. "Consistent with the Final NBHCP, IA, County Resolution Number 03-030 (approved on May 13, 2003), and County ordinance (approved on June 10, 2003): no mitigation lands will be acquired in Area B, an area outside of the Basin; all mitigation lands shall be acquired in the Natomas Basin."

U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO, CALIFORNIA SPECIAL TERMS AND CONDITIONS FOR TE-073665-0 (City of Sacramento), p. 4, "J. Consistent with City Ordinance Number 2003-290, the final NBHCP and the IA: no mitigation lands will be acquired in Area B, an area outside of the Basin; all mitigation lands shall be acquired in the Natomas Basin."

Alternatives Analysis

The Alternatives Analysis is significantly flawed and lacks substantial evidence that an alternative location that meets the project objectives and avoids environmental impacts cannot be identified. The project objectives are described on p. 3-1:

"The project objectives for the proposed project are presented below.

1. Provide a charging facility for electric mobility and freight in the Sacramento area that is accessible and convenient to major freight and transportation corridors and meets the objectives and evaluation criteria of the California Transportation Commission's Trade Corridor Enhancement Program and supports the goals of the National Highway Freight Program, the California Freight Mobility Program, and the California Sustainable Freight Action Plan.
2. Provide green energy onsite to support a large part of the need for EV charging.
3. Reduce the freight emissions in the Sacramento region.
4. Contribute to the economic development of the region.
5. Create equitable access to zero-emission technology for small carriers and independent owner operators."

The EIR fails to show why all these objectives could not be met by a location in Metro AirPark or South Sutter County, or within the Airport footprint north of I-5, locations which do not have the biological impacts that the proposed location has.

The Alternatives Analysis considered a no project alternative, a no solar array project, and a reduced footprint alternative. It did not consider an alternative site ¼ mile to the northeast (Metro AirPark) and did not consider a location in South Sutter County, already permitted by the NBHCP for development. ("The project is located near Metro Air Park, a business park zoned for industrial, manufacturing, distribution & high-tech commercial use, is under development approximately a quarter mile to the northeast, . . . ") Metro Airpark is a much better location in terms of biological impacts since the area already has obtained a take permit for Swainson's Hawk, is not adjacent to the Swainson's Hawk Zone, and is covered by the Metro AirPark HCP which is consistent with the Natomas Basin Habitat Conservation Plan. Also available (not mentioned in the EIR) is substantial vacant land in South Sutter County that is permitted for development by the Natomas Basin HCP.

While the EIR acknowledges that the Swainson's Hawk zone in the NBHCP is a critical part of the conservation strategy for the Swainson's Hawk, the location for this facility immediately adjacent to the Swainson's Hawk zone, in an area of dense Swainson's Hawk nesting, is not discussed as a conflict with the NBHCP nor in the Alternatives Analysis.

The Alternatives Analysis also claims that the proposed use for this property is better for the environment than a likely future proposal, that the award of a grant for this project at this location makes consideration of alternatives moot, and that the County Department of Airports ownership of the land renders other site locations for the project unworthy. We find no statutory support that these claims are relevant to CEQA Alternative Analysis.

Cumulative Impacts

The EIR claims that (p. 18-11):

"Given these mitigation measures, and that the proposed project by itself will only individually contribute to conversion of approximately 110 acres of foraging habitat for Swainson's hawk, the proposed project's contribution to cumulative impacts to special-status species would not be cumulatively considerable, and the cumulative impact associated with the proposed project with respect to special-status species would be less than significant."

We think the NBHCP establishes that any conversion of agricultural land in Natomas Basin is a significant change to the Natomas Basin Habitat Conservation Plan, and therefore the project's contribution to cumulative impacts to Swainson's Hawks in the Natomas Basin is significant and must be fully mitigated. Again, we refer the preparers to the NBHCP I-3 and I-12.

Since this project is the first of over 8,000 acres of projects in Natomas Basin, outside existing Permit Areas, to undergo CEQA review, if certified without cumulative impact mitigation, it may be a catalyst or precedent for other project approvals that piecemeal approvals and fail to mitigate for cumulative impacts. The purpose of assessing cumulative impact is to avoid the piecemeal elimination of environmental benefit through serial denial of significance.

The likelihood of significantly more cumulative impacts is enhanced if this project does not mitigate for cumulative impacts. A change in land use in this parcel from agriculture to industrial use will affect the environmental assessment on the parcel to the east which is seeking to rezone from agriculture to industrial (South Airport Industrial Project).

NOP Comments Not Addressed

An EIR is an information document. Please address why information requested in our NOP letter was not addressed in the DSEIR. These include:

1. why nearby suitable locations were not considered in the Alternatives Analysis (p. 1);
2. whether the project is located in the Swainson's Hawk Zone of the NBHCP (p. 5);
3. the purpose and status of 495 acres of mitigation conserved on Airport property south of I-5 (p. 6)
4. the project conflicts with the state 30 x 30 land conservation program.

Please address these issues in response to comment.