



Ethan J. Walsh
Partner
(916) 551-2825
ethan.walsh@bbklaw.com

File No. 82581.00001

January 23, 2026

VIA E-MAIL
CEQA@saccounty.gov

Sacramento County
Department of Community Development,
Planning and Environmental Review Division
Attention: Julie Newton, Environmental Coordinator
827 7th Street, Room 225
Sacramento, CA 95814

Re: Partially Recirculated Draft Environmental Impact Report for the Upper
Westside Specific Plan (State Clearinghouse No 2020100069,
County Control Number PLNP2018-00284)

To Whom It May Concern:

This law firm represents the Natomas Basin Conservancy (“Conservancy”) as its general counsel, and submits this comment letter on the Conservancy’s behalf. The Conservancy appreciates the opportunity to submit these comments regarding the Partially Recirculated Draft Environmental Impact Report (“PRDEIR”) for the Upper Westside Specific Plan (“Specific Plan”) that has been prepared by the County of Sacramento (“Sacramento County”) for public review pursuant to the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000–21189.3) (“CEQA”). Interested parties are encouraged to submit input regarding “the adequacy and thoroughness of the environmental analysis” related to the Specific Plan. PRDEIR at 1-3. The Conservancy respectfully submits that the environmental analysis pertaining to the Specific Plan’s new water supply option as described in the PRDEIR (“New Water Supply Option”) is wholly inadequate and lacks the thoroughness required under CEQA. The Conservancy is highly concerned that the PRDEIR and Final Environmental Impact Report (“FEIR”) will negatively impact protected species and existing habitat conservation plans in the Natomas Basin.

The Conservancy’s comments address five primary concerns regarding the environmental analysis contained in the PRDEIR and related FEIR:

1. The PRDEIR and FEIR fail to analyze potentially significant impacts that the New Water Supply Option will have on agricultural land that is critical for conservation in the Natomas Basin;

2. The PRDEIR and FEIR fail to consider and adhere to specific orders issued by the federal court that upheld the existing habitat conservation plans in the Natomas Basin;
3. The PRDEIR and FEIR fail to analyze potential impacts on terrestrial species protected under state and federal law;
4. The Specific Plan as described in the PRDEIR and FEIR threatens to interfere with contractual obligations of parties to the agreement implementing existing habitat conservation plans in the Natomas Basin; and
5. New information in the PRDEIR on potential environmental impacts requires recirculation of the FEIR in its entirety.

I. STATEMENT OF INTEREST

a. Background on the Natomas Basin Conservancy

The Conservancy was incorporated on October 21, 1994, as a California non-profit public benefit corporation and has operated since February of 1999. The Conservancy’s primary purpose is to implement two habitat conservation plans, the Natomas Basin Habitat Conservation Plan (“NBHCP”) and the Metro Air Park Habitat Conservation Plan (“MAPHCP”) (together referred to as the “HCPs” or the “Plans”). In this role, the Conservancy acquires and manages land to fulfill the objectives of the HCPs. Its work also includes incorporating acquired land to advance objectives of the Plans through habitat enhancement, marsh and wetland management, biological monitoring and data collection, and on-the-ground experiments to support conservation throughout the Natomas Basin.

Under the HCPs, habitat mitigation fees and acquired mitigation lands are held by the Conservancy to advance mitigation objectives for the benefit of protected species in the Natomas Basin. To date, the Conservancy has acquired more than 5,300 acres of land to fulfill these mitigation requirements. In addition, substantial financial investments have been made toward implementation of the HCPs totaling more than \$139 million in fees and fee-related income. *See, The Natomas Basin Conservancy, 2024 Implementation Annual Report* (June 24, 2025), available at <https://natomasbasin.org/reports/annual-reports/>. These investments are in addition to the significant commitments made by HCP proponents/permittees — the City of Sacramento and Sutter County — to achieve and maintain compliance with the Plans under state and federal law.

b. Formulation of the Plans

The development of the HCPs spanned more than fifteen years and involved numerous iterations and several legal challenges. The resulting 50-year plan encompasses 53,537 acres of land historically used for agriculture. The HCPs and associated permits cover twenty-two listed or candidate species under the federal Endangered Species Act (“ESA”) (16 U.S.C. §§ 1531–1544) and the California Endangered Species Act (“CESA”) (Cal. Fish & Game Code §§ 2050–2116).

The Plans are designed to promote the long-term conservation of these covered species while accommodating authorized and limited urban development. In 2003, the parties to the NBHCP — the Conservancy, the City of Sacramento, Sutter County, the U.S. Fish and Wildlife Service (“USFWS”), and the California Department of Fish and Wildlife (“CDFW”) — entered into an Implementation Agreement establishing the mechanisms for carrying out the NBHCP.

The Plans authorize development of up to 17,500 acres within the Natomas Basin in the City of Sacramento and the Sutter County. Under the NBHCP and the Implementation Agreement, the City of Sacramento agrees not to approve more than 8,050 acres of development, and Sutter County agrees not to approve more than 7,467 acres of development within their respective designated “Permit Areas.”¹ The Plans establish a comprehensive, long-term conservation program — implemented by the Conservancy as plan operator — for the twenty-two covered species, while allowing for limited development to proceed within the Permit Areas.

The NBHCP and Implementation Agreement establish the terms and conditions necessary to support issuance of incidental take permits (“ITPs”) by USFWS under Section 10(a)(1)(B) of the ESA and CDFW under Section 2081 of CESA. The ITPs issued to the City of Sacramento and Sutter County authorize incidental take of the covered species within the Permit Areas. To support issuance of these permits, the NBHCP and Implementation Agreement require substantial mitigation measures, including acquisition of mitigation lands at a ratio of 0.5 acre of protected habitat for every 1 acre of land converted to development. Under these requirements, the Conservancy is responsible for the permanent preservation of 8,750 acres of land to be managed as wildlife reserves. This includes 4,375 acres that will remain in rice cultivation under the Conservancy’s management to benefit protected species.

c. Federal Court Order

The NBHCP was upheld as satisfying the requirements of the ESA by a federal court order issued on September 7, 2005. *Nat'l Wildlife Fed'n v. Norton*, No. CIV-S-04-0579, 2005 WL 2175874 (E.D. Cal. Sept. 7, 2005) (“Federal Court Order”). A central premise of the court’s decision was that any development beyond the 17,500 acres authorized under the Natomas Basin HCP would require additional assessment to ensure consistency with the Plan. Any project that threatens protected species and the HCPs must therefore be carefully scrutinized under the Federal Court Order.

Specifically, the Federal Court Order requires that any further development necessitates a “new evaluation” of impacts to protected species and a “reevaluation of [the] efficiency of the NBHCP in light of proposed development.” *Id.* at *11. In addition, the court emphasized that “[f]urther federal review will be required under any scenario that could impact the efficacy of the NBHCP.” The Federal Court Order anticipated comprehensive review of any development

¹ An additional 1,983 acres of development is allocated to the Metro Air Park project in Sacramento County under the MAPHCP and is analyzed within the NBHCP.

proposed outside the Permit Areas, noting that “[i]f and when a concrete development proposal is put forth, it will be the subject of additional federal and state environmental review.” *Id.* at 11–12.

A key footnote in the Federal Court Order describes the Court’s reasoning and conclusions in upholding the NBHCP:

The court notes, however, that the [U.S. Fish and Wildlife] Service and those seeking an ITP in the future will face an **uphill battle** if they attempt to argue that additional development in the Basin beyond 17,500 acres will not result in jeopardy. The NBHCP, BiOp, EIR/EIS, and Findings and Recommendations are all predicated on the assumption that development in the Basin will be limited to 17,500 acres and that the remaining lands will remain in agricultural use.

Id. at *12 (emphasis added).

In short, under the Federal Court Order, any expansion of development requires full analysis of environmental impacts under state and federal law, including an evaluation of impacts on protected species.

The PRDEIR and related FEIR for the Specific Plan propose development of 2,066 acres that is outside the Permit Areas and in addition to the 17,500 acres authorized under the Plans. The Federal Court Order therefore requires the impacts of the Specific Plan — notably its potential impacts on the efficacy of the HCPs — to be carefully evaluated.

The obligation to carefully evaluate impacts of further development on the efficacy of the Plans falls not on the signatories and permittees of the two adopted HCPs. These entities have already committed and continue to invest significant time and resources into those Plans. Rather, proponents of additional development must themselves demonstrate — through the environmental review process — that proposed plans for further development will not impact the efficacy of the HCPs or that these impacts are adequately mitigated. *See*, Federal Court Order at *10 (emphasizing that “further development or action by any other entity would require additional federal approvals”).² Through independent environmental review, project proponents — not HCP signatories and permittees — have the responsibility of proving that additional development will not negatively impact the efficacy of the Plans.

Moreover, it is critical that third-party project proponents and lead agencies such as Sacramento County recognize that HCP permittees have vested reliance interests in the state and

² It is important to note that while the Federal Court Order emphasizes the federal approval process, state environmental review also requires full analysis of the potentially significant impacts that a project may have on applicable regional plan including existing habitat conservation plans and natural community conservation plans. *See*, Cal. Code Regs. tit. 14, § 15125.

federal issued ITPs. To the extent that proposed development may affect these permits — including through potentially significant impacts on protected species and habitat covered under the Plans — these impacts must be thoroughly evaluated through the environmental review process. As further described below, CEQA specifically mandates a finding of significance where a project threatens to substantially reduce the habitat of a protected species or jeopardize the integrity of an adopted habitat conservation plan. *See*, Cal. Code Regs. tit. 14, §§ 15065, 15125.

The Conservancy is highly concerned with the PRDEIR's inadequate environmental analysis, which fails to satisfy what is required under state and federal law. If deficiencies of the PRDEIR and related FEIR are not addressed, they may impair the Conservancy's ability to fulfill its obligations under the Plans in a manner that maintains consistency with the Federal Court Order.

II. COMMENTS

a. **The PRDEIR fails to analyze the significant environmental impacts of removing agricultural land from production**

CEQA requires analysis of the potentially significant impacts that a project may have on applicable regional plans including existing habitat conservation plans and natural community conservation plans. Cal. Code Regs. tit. 14, § 15125. In addition, CEQA requires an evaluation of the potentially significant impacts of the conversion of farmland to non-agricultural use. Cal. Code Regs. tit. 14, § Div. 6 Ch. 3 App. G. The PRDEIR and FEIR fall short in their analysis of the effects of the Specific Plan on the existing HCPs in the Natomas Basin and fail to adequately address impacts resulting from urbanization of farmland.

Instead of providing an analysis of these impacts, the FEIR incorrectly concludes that the Specific Plan does not conflict with the existing Natomas Basin HCPs, and the PRDEIR reiterates this unsupported conclusion. Urbanization of agricultural land in the Natomas Basin — in a manner that is inconsistent with the HCPs and for which sufficient environmental review has not been conducted — threatens the Conservancy's ability to ensure implementation of the Plans consistent with the ITPs, Implementation Agreement, and the Federal Court Order.

i. **Importance of agricultural land under the HCPs**

The PRDEIR and FEIR fail to acknowledge that the conservation of agricultural land is a central component — perhaps *the* central component — of the HCPs. As noted above, the Conservancy is responsible for the permanent preservation of 8,750 acres of land to be managed as wildlife reserves, including 4,375 acres that will remain in rice cultivation under the Conservancy's management to benefit protected species. The proposed urbanization of agricultural land would be significantly advanced by the changes contemplated under the New Water Supply Option described in the PRDEIR, which is in direct conflict with the management goals established under the Plans. Because the PRDEIR and FEIR do not analyze the anticipated impacts of converting agricultural land to urban uses, they fall short of CEQA's requirements.

ii. Urbanization of agricultural land under the New Water Supply Option

Under the New Water Supply Option of Alternative 5, the Sacramento County Water Agency would enter into an agreement for wholesale purchase of raw water from the Natomas Central Mutual Water Company (“NCMWC”). NCMWC sources its surface water supply from the Sacramento River through a settlement agreement (“Settlement Agreement”) with the U.S. Bureau of Reclamation (“Reclamation”).

NCMWC currently provides surface water from the Sacramento River for agricultural uses in the Natomas Basin. PRDEIR at 2-34. The New Water Supply Option in the PRDEIR contemplates that NCMWC would convert water historically used for agricultural purposes to delivery for municipal uses to serve new development under the Specific Plan. PRDEIR at 2-6. This would require NCMWC to request modification of its Settlement Contract with Reclamation and seek amendments to its state water rights permits to change from strictly agricultural uses — as currently authorized under the Settlement Contract and permits — to include municipal and industrial uses. PRDEIR at 2-34.

Importantly, the central idea of the New Water Supply Option under Alternative 5 is that existing agricultural land uses would convert to developed land uses. PRDEIR at 2-40. However, despite clear direction under CEQA, the PRDEIR neglects to analyze the environmental impacts of the shift in land use from agricultural to municipal. Rather than analyze these impacts, the PRDEIR simply states that impacts related to agricultural resources “would be like those described for the proposed UWSP, as the same amount of farmland within the UWSP area would be converted to urban uses,” thus relying on the FEIR’s inadequate analysis of impacts on agricultural resources. *See*, PRDEIR at 2-49.

The Supreme Court of California has held that a conclusory discussion of a potentially significant environmental impact is not adequate under CEQA. *See, Sierra Club v. Cnty. of Fresno*, 6 Cal. 5th 502, 514, 431 P.3d 1151, 1160 (2018) (describing that a “conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence”).

The FEIR’s discussion of impacts on agricultural land was cursory at best and wholly inadequate to satisfy requirements under CEQA. In its conclusory finding that impacts on agricultural resources would be less than significant, the FEIR relies on the fact that the Specific Plan contemplates the gradual transition of residential uses towards an “agricultural buffer zone” that would provide 542 acres for continued agricultural use within the Specific Plan area. *See*, FEIR at 5-25.

The agricultural buffer zone is insufficient to mitigate the significant impacts of urbanizing agricultural land in the Natomas Basin, as contemplated under the Specific Plan. Conserving 542 acres is meager when compared to the 2,066 acres of farmland proposed for development. This imbalance would result in the development of approximately four acres for every one acre conserved. Notably, the federal court upheld the NBHCP based on the expectation that one acre

of land would be conserved for every two acres developed. *See*, Federal Court Order at *1. The PRDEIR’s conclusion that impacts on agricultural resources will be less than significant due to the agricultural buffer zone fails to meet CEQA’s requirement for a thorough evaluation of potentially significant impacts.³

Moreover, mitigation cannot be deferred unless an agency commits to specific permit conditions, agreements, or other enforceable mechanisms. *See*, Cal. Code Regs. tit. 14, § 15126.4 (requiring that “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instrument”). To the extent Sacramento County plans to rely on deferred mitigation where the loss of agricultural land is mitigated on a project-by-project basis at a later date, it is important to note that this approach is not authorized under CEQA.

In addition, it is important to fully consider the reality that each acre of the NCMWC service area removed from agricultural production has the impact of raising costs for all other shareholders of the mutual organization, who will experience a considerable financial burden. That is, fixed costs (non-water usage component of water rates) must be spread over a decreased shareholder base. The PRDEIR and FEIR fail to consider these impacts, and this deficiency must be addressed. The analysis must fully evaluate how the impacts of removing agricultural land from production will be addressed so that the Specific Plan’s negative externalities do not burden the remaining NCMWC shareholders.

In short, the New Water Supply Option described in the PRDEIR directly contradicts the conservation goals of two adopted HCPs in the Natomas Basin and would negatively impact agricultural land that is critical for habitat of protected species in the basin. CEQA requires these impacts to be addressed. Moreover, as described below, the Specific Plan’s impacts on habitat for protected species and the availability of agricultural land in the Natomas Basin is in clear conflict with the Federal Court Order upholding the HCPs.

b. The PRDEIR fails to consider the Federal Court Order that establishes limitations development in the Natomas Basin

The HCPs cover the entire Natomas Basin and provide concrete mitigation measures to minimize the impacts of the 17,500 acres of planned development on twenty-two covered species. The Specific Plan contemplates development of an additional 2,066 acres, which could permanently disturb or degrade habitat and foraging areas essential to species protected under the Plans. This proposal presents potentially significant impacts on the long-term implementation and success of the Plans, with or without the mitigation measures contemplated by Sacramento County.

³ In addition to the agricultural buffer zone, the FEIR contemplates that a “project proponent shall mitigate the loss of farmland within the plan area, except as otherwise specified in General Plan Policy AG-5 (as amended with UWSP approval), based on a 1:1 ratio through the specific planning process or individual project entitlement requests to provide in-kind or similar resource value protection (such as easements for agricultural purposes).” This project-by-project approach provides no concrete plans for conservation of agricultural land or other forms of mitigation. Without any commitment to conserve agricultural land outside of the agricultural buffer zone, the PRDEIR and FEIR offer no assurance to impacted parties that the significant loss of farmland contemplated under the Specific Plan will actually be mitigated.

The Conservancy is deeply concerned that the proponent has dismissed — in a conclusory manner — all comments regarding the potential for the Specific Plan to impede implementation of the existing NBHCP and MAPHCP. Moreover, the PRDEIR and Specific Plan fail to address potential issues related to compliance with the Federal Court Order.

i. Conflict with the Federal Court Order

The Specific Plan described in the PRDEIR and related FEIR directly conflicts with the Federal Court Order, which establishes clear limitations on the urbanization of agricultural land in the Natomas Basin. *See*, Federal Court Order at *12 (stating that “[t]he NBHCP, BiOp, EIR/EIS, and Findings and Recommendations are all predicated on the assumption that development in the Basin will be limited to 17,500 acres and that the remaining lands will remain in agricultural use”). The Federal Court Order makes clear that the remaining agricultural lands in the Natomas Basin are intended to support the conservation goals of the Plans. Urbanization of 2,066 acres of farmland proposed for development under the Specific Plan is in direct conflict with these judicially recognized limitations on development.

In addition, as noted above, the Federal Court Order describes the “uphill battle” that developers will face for any project that would urbanize additional agricultural land in the Natomas Basin beyond the 17,500 acres contemplated under the Plans. Federal Court Order at *12. Despite these clear guardrails from the federal court, Sacramento County has characterized comments regarding the Federal Court Order as “not relevant.” *See*, FEIR at 26-184. Sacramento County fails to recognize that the environmental analysis for the Specific Plan — including the analysis of the New Water Supply Option under Alternative 5 — must be evaluated in light of the Federal Court Order. Sacramento County’s dismissal of the Federal Court Order as not relevant demonstrates that its approach to environmental analysis in the PRDEIR and FEIR is not only inadequate under CEQA but also inconsistent with the requirements of federal law.

ii. Land availability in the Natomas Basin

As noted above, a key component of the Plans is the ability of the Conservancy to acquire sufficient conservation land within the defined Natomas Basin area to meet the 8,750 acres of land that will be maintained as wildlife reserve. In upholding the NBHCP, the federal court specifically noted that this HCP is premised on the “requirement...that the NBC will never be unable to find and acquire mitigation lands...” Federal Court Order at *3. The Specific Plan as described in the PRDEIR and FEIR puts this premise at risk by urbanizing 2,066 acres of farmland that could otherwise be preserved for mitigation and thus inhibiting the Conservancy’s ability to find and acquire agricultural land suitable for preservation. The PRDEIR and related FEIR fail to adequately consider the impacts that the Specific Plan will have in the overall context of the limited acreage of land available for mitigation in the Natomas Basin.

iii. Connectivity of habitat for protected species

The Federal Court Order recognizes that habitat connectivity is an essential component of the NBHCP and emphasizes the importance of “provisions of the NBHCP that preserve

connectivity.” Federal Court Order at *14. The Specific Plan jeopardizes the effectiveness of the habitat connectivity, a core and foundational element of the HCPs. *See*, U.S. Department of the Interior, 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* (“Biological Opinion”) (June 24, 2023) (stating that “[o]ne of the primary goals of the NBHCP is to ensure connectivity between individual reserves, and connectivity between reserves and surrounding agricultural lands”).

Habitat connectivity enables the necessary mobility of species within their ranges and is essential to ensuring the long-term viability of wildlife populations in the basin. *Id.* at 33. USFWS has highlighted the importance of connectivity, noting that land acquisitions by the Conservancy are specifically aimed at reducing fragmentation and isolation of habitat reserves for key protected species such as the giant garter snake. *Id.* at 34. For key protected species under the Plans, such as the giant garter snake, USFWS determined that the loss and subsequent fragmentation of habitat is the primary threat, stating:

At the time of listing, habitat loss as a result of urbanization and conversion of wetlands was recognized as the primary Factor A threat to the giant garter snake. **Today, habitat loss and fragmentation due to urbanization and changes in the levels and methods of rice production are the largest threat to the giant garter snake.**

U.S. Fish & Wildlife Service, *Recovery Plan for the Giant Garter snake (Thamnophis gigas)*, Pacific Southwest Region (“Giant Garter Snake Recovery Plan”) (Sept. 28, 2017) (emphasis added).

The Conservancy is highly concerned that the proposed action could adversely impact its responsibilities under the HCPs by impeding habitat connectivity, the importance of which has been highlighted by USFWS and emphasized in the Federal Court Order.

Importantly, the Specific Plan would result in substantial development located adjacent to existing mitigation lands acquired under the HCPs. The introduction of urbanization and associated high-traffic corridors in the vicinity of these mitigation lands threatens to degrade the biological value of the existing conservation lands acquired and managed under the HCPs. The PRDEIR and FEIR fail to consider or analyze impacts on habitat connectivity and therefore not only fall short of CEQA requirements but also are inconsistent with a key aspect of the Federal Court Order.

iv. Negative externalities on parties who have made substantial investments towards the success of the Natomas Basin HCPs

Implementation of the Natomas Basin HCPs has resulted in more than \$100 million in mitigation investments for these regional plans. Additionally, the two HCP proponents/permittees — Sutter County and the City of Sacramento — have dedicated substantial resources to acquiring mitigation lands, defending the Plans, and maintaining compliance with state and federal law under their respective ITPs. Proposed development without adequate compensatory mitigation places these public investments and the parties’ commitments under the HCPs at significant risk.

The federal court that upheld the NBHCP recognized the importance of these public investments and acknowledged the intent that public investments would be protected in part through regulatory scrutiny of any additional development in the Natomas Basin by non-permittees. *See*, Federal Court Order at *10 (emphasizing that “further development or action by any other entity would require additional federal approvals”). The PRDEIR and related FEIR prepared by Sacramento County — an entity that opted not to participate in the HCPs — fail to account for the negative externalities the proposed project would impose on the parties that have invested in the HCPs and on the general public that benefits from their successful implementation.

Moreover, CEQA specifically requires a regional perspective of impacts on external parties. An EIR “must include a description of the physical environmental conditions in the vicinity of the project...from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” Cal. Code Regs. tit. 14, § 15125. California courts have interpreted this CEQA Guideline broadly in order to “afford the fullest possible protection of the environment.” *See, Kings Cnty. Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 720 (1990). The intent of CEQA’s regional perspective is to ensure the EIR’s analysis of significant effects is as accurate as possible. *Friends of the Eel River v. Sonoma Cnty. Water Agency*, 108 Cal. App. 4th 859, 874 (2003).

Here, the PRDEIR fails to consider impacts of the Natomas Basin from a regional perspective — including the negative externalities on interested parties that have made substantial investments into the existing HCPs — as required under CEQA. This deficiency must be addressed to ensure compliance with CEQA’s requirement to ensure a regional perspective and the Federal Court Order’s recognition of the need to protect public investments made by interested parties in the region.

c. The PRDEIR and FEIR fail to adequately evaluate potential impacts on protected terrestrial species

As noted above, the HCPs establish a multi-species conservation program designed to mitigate the expected loss of habitat values and the incidental take of species protected under state and federal law. These Plans have been effective in preserving, restoring, and enhancing habitat values in the Natomas Basin while allowing urban development to proceed in accordance with local land use plans.

Importantly, the HCPs provide the basis for issuance of ITPs under Section 10(a)(1)(B) of the ESA and Section 2081 of CESA. Section 10(a)(1)(B) of the ESA allows incidental take of endangered or threatened species subject to its permit requirements. Similarly, Section 2081 of the California Fish and Game Code allows CDFW to enter into management agreements that allows activities which may otherwise result in habitat loss or take of individuals of a state-listed species.

The HCPs and their associated permits authorize covered activities that may result in incidental take of twenty-two protected species that are critical to the ecological health of the Natomas Basin. Coverage under the Plans applies only to the activities of the proponents/permittees (i.e., Sutter County and the City of Sacramento), who must comply with the comprehensive species-protection requirements established under the Plans. As noted above, Sacramento County is not a permittee and therefore has an independent obligation — outside the HCPs — to ensure compliance with state and federal endangered species laws.

The PRDEIR is insufficient in its evaluation of effects on protected endangered species because it arbitrarily limits the analysis to impacts on aquatic habitat and species. This narrow scope is highly concerning to the Conservancy and, as described below, must be addressed to ensure compliance with not only CEQA but also state and federal endangered species law.

i. CEQA requires an evaluation of impacts on protected species

CEQA requires analysis of whether a project would have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species. Cal. Code Regs. tit. 14, § Div. 6 Ch. 3 App. G. A project may have a significant effect on the environment where it threatens to substantially reduce habitat of a protected fish or wildlife species. Cal. Code Regs. tit. 14, § 15065. CEQA Guidelines describe that an impact may be considered significant if the project or alternative includes any of the following:

A substantial adverse effect, either directly or through habitat modification, on any species identified as candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS; or

Substantial interference with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

Cal. Code Regs. tit. 14, § 15000 app. G (2025).

Despite this clear direction under CEQA, the PRDEIR fails to analyze the potentially significant impacts on any terrestrial species. Instead, it limits its review to “the potential effects of diverting water from the Sacramento River at the Riverside Pumping Plant on aquatic habitat and species that may be present in the river” and asserts that “terrestrial biological resources that could be affected by the proposed UWSP were addressed in Draft EIR Chapter 7, Biological Resources.” PRDEIR at 2-6.

The New Water Supply Option described in the PRDEIR contemplates changes that could affect the habitat of a variety of terrestrial species protected under state and federal law. As the PRDEIR explains, this option would increase pumping and annual diversions from the Sacramento River and alter the seasonality of those diversions compared to existing conditions. *See*, PRDEIR at 2-6 (stating that the “change in the use of diverted water at the Riverside Pumping Plant would lead to an increase in annual diversions and a change in seasonality of diversions compared to existing conditions”).

Despite acknowledges these changes, the PRDEIR fails to evaluate how an increase in annual diversions and changes in seasonality could result in adverse habitat impacts for all candidate, sensitive, and special-status species, *including terrestrial species*. Simply concluding that only aquatic species warrant consideration is wholly inadequate to satisfy CEQA’s requirements.

In particular, the Conservancy is concerned about potentially significant impacts on the habitat of the twenty-two species covered under the HCPs. While it is imperative to consider potential impacts on aquatic species in the Natomas Basin, it is equally imperative that Sacramento County fully evaluate the impacts the Specific Plan may have on each of the species covered under the HCPs. The giant garter snake, for example, has specific habitat requirements that include summer aquatic habitat for foraging, bankside basking areas, and wetlands with high-quality vegetation. *See*, Giant Garter Snake Recovery Plan at (iii). Increased annual diversions and changes in seasonality of pumping as contemplated under the New Water Supply Option could have potentially significant effects on these essential habitat components.

The PRDEIR’s conclusory statement that terrestrial species are not impacted is a clear deficiency that must be addressed. The PRDEIR fails to consider the potential impacts that changes in water diversions and seasonality could have on habitat for terrestrial species. This issue is particularly important because the Specific Plan anticipates that these changes will occur in areas adjacent to mitigation lands established under the HCPs. At the minimum, it is necessary for the PRDEIR to include an evaluation of the actions that may be necessary to sustain habitat conditions for the twenty-two species covered under the NBHCP and MAPHCP.

ii. State and federal endangered species law requires an independent assessment of potential impacts on protected species

Section 9 of the ESA prohibits the “take” of federally endangered or threatened wildlife species. *See*, 16 U.S.C. § 1538(a)(1)(B). Similarly, Section 2080 of CESA prohibits the take of state-listed threatened and endangered species. *See*, Cal. Fish & Game Code § 2080. As noted

above, the HCPs provide the basis for issuing ITPs under Section 10(a)(1)(B) of the ESA and Section 2081 of CESA. These permits authorize incidental take to a defined extent and only for activities covered under the Plans. The Conservancy and the HCP proponents/permittees actively coordinate with state and federal wildlife agencies to ensure compliance with these permits and the successful implementation of the conservation programs.

The plan for the New Water Supply Option under the PRDEIR is highly concerning to the Conservancy because the document contains an inadequate analysis of compliance with state and federal endangered species law. As noted above, changes in diversions and seasonality could affect habitat for species protected under the ESA and CESA. Such impacts may result in unauthorized take of protected terrestrial species. In turn, unauthorized take could undermine the efficacy of the HCPs and impede the Conservancy's ability to fulfill its responsibilities under the Plans. Indeed, the federal court that upheld the HCPs emphasized the need for careful review of any action that may affect implementation of these Plans. *See*, Federal Court Order at *11 (noting that "further federal review will be required under any scenario that could impact the efficacy of the NBHCP").

The PRDEIR contains no discussion of the potential for "take" of terrestrial species protected under the ESA and CESA. In addition, the PRDEIR provides no detail regarding avoidance or mitigation measures that may be necessary to protect habitat for these species, nor does it identify any concrete mitigation commitments. These omissions are particularly concerning to the Conservancy with respect to the twenty-two species covered under the HCPs, and these deficiencies must be addressed to ensure compliance with state and federal endangered species law.

iii. Endangered species law requirements must be integrated into the CEQA process

CEQA requires that federal and state endangered species laws are integrated *during* the process, not postponed for a later date when permits are sought. *See*, Cal. Code Regs. tit. 14, § 15124 (requiring that "the lead agency should integrate CEQA review with these related environmental review and consultation requirements"). Here, Sacramento County has ignored its obligation to integrate CEQA review with the requirements of the ESA and CESA, giving little to no consideration to permits required under these laws. Rather than include the required analysis, the description of the potential impacts of the New Water Supply Option on protected species simply states that its impact analysis "assumes that implementation of Alternative 5 would comply with existing applicable regulatory and permitting requirements." PRDEIR at 2-24.

This approach falls short of CEQA requirements. The California Supreme Court has held that CEQA specifically calls for consideration of relevant regulatory requirements, such as the ESA and CESA, when discussing project alternatives such as the New Water Supply Option under Alternative 5. *See, Banning Ranch Conservancy v. City of Newport Beach*, 2 Cal. 5th 918, 936, 392 P.3d 455, 467 (2017) (stating that "CEQA Guidelines specifically call for consideration of related regulatory regimes...when discussing project alternatives"). The PRDEIR's failure to fully

consider and integrate the requirements of the ESA and CESA is a deficiency that must be addressed.

d. The PRDEIR and FEIR threaten to directly interfere with contractual obligations of parties to the Implementation Agreement

The Implementation Agreement for the NBHCP is a contractual agreement among the Conservancy, USFWS, CDFW, City of Sacramento, and Sutter County. It establishes specific rights, obligations, and assurances governing how habitat conservation and development must be carried out in the Natomas Basin. In particular, the Implementation Agreement outlines measures to avoid and minimize “take” of covered species, as well as mitigation requirements, including conservation of agricultural lands that provide essential habitat for protected species. The PRDEIR and related FEIR — in advancing urbanization of agricultural areas without regard to the limited acreage of farmland in the basin — risk undermining and interfering with the Conservancy’s contractual obligations under the Implementation Agreement.

The Supreme Court of California has long recognized that contractual interference claims may arise due to a party’s performance being made more costly or burdensome. *See, Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1129 (1990) (“We have recognized that interference with the plaintiff’s performance may give rise to a claim for interference with contractual relations if plaintiff’s performance is made more costly or more burdensome”).

Here, the PRDEIR threatens not only the financial viability but also the fundamental feasibility of the Conservancy’s obligations under the Implementation Agreement. By proposing a Specific Plan that would impede the acquisition of essential mitigation lands and allowing development within the protected Swainson’s Hawk Zone, Sacramento County is creating conditions that directly obstruct the Conservancy’s ability to meet its performance mandates under the HCPs. Such an interference with a contractually bound conservation framework constitutes a significant and unmitigated impact that must be addressed.

i. The Conservancy’s obligation to acquire mitigation lands

The Implementation Agreement requires the Conservancy to “[a]cquire, locate, operate, and maintain Mitigation Lands” in accordance with the terms and conditions of the NBHCP and the Agreement. *See*, Implementation Agreement, subparagraph 3.2 at 7. This obligation must be fulfilled prior to the approval of any authorized development under the NBHCP, with an additional 200-acre “cushion” of mitigation lands required before development approval. Implementation Agreement, subparagraph 5.5 at 16. Issuance of the incidental take permits by USFWS and CDFW is expressly conditioned on meeting these contractual obligations, and so long as the NBHCP’s terms are properly implemented, these agencies are prohibited from requiring additional mitigation measures. *See*, Implementation Agreement, subparagraphs 6.1 and 6.2 at 17-20.

The significant urbanization of agricultural land proposed in the PRDEIR and related FEIR threatens to frustrate the Conservancy’s contractual obligation to acquire mitigation lands. The Conservancy is highly concerned that there may not be a sufficient amount of suitable agricultural

land remaining in the Natomas Basin to meet its obligations under the Implementation Agreement if the Specific Plan is approved. The PRDEIR and FEIR fail to assess whether the additional 2,066 acres proposed for development would compromise the acquisition of mitigation lands that is already required under the existing HCPs and binding upon the Conservancy under the Implementation Agreement. Without such an analysis, it is impossible to determine whether the Specific Plan would directly interfere with the Conservancy's contractual obligation to acquire mitigation land.

The Conservancy has a legal obligation to ensure it can fulfill its responsibilities under the existing HCPs and the Implementation Agreement, including the acquisition of mitigation lands. It is imperative that the PRDEIR and FEIR fully consider the Conservancy's contractual obligations with respect to acquiring and maintaining these mitigation lands.

ii. Swainson's Hawk One-Mile Buffer Zone

The NBHCP and Implementation Agreement prohibit development in a one-mile-wide strip of land adjacent to the Sacramento River, known as the Swainson's Hawk Zone. *See*, Implementation Agreement, subparagraph 3.1.2 at 4. This zone was explicitly established in the NBHCP to protect essential habitat for the Swainson's hawk, a threatened species under CESA. *See*, NBHCP, Chapter 9 at VII-11. Development within the Swainson's Hawk Zone is categorically prohibited under the existing NBHCP, with the sole exception of 252 acres approved for development by the City of Sacramento. *See*, Implementation Agreement, subparagraph 3.1.2(a) at 4.

The analysis in the PRDEIR and related FEIR for the Specific Plan indicates that significant portions of the proposed development would encroach into the Swainson's Hawk Zone. Such development would fundamentally conflict with the legal obligations of the parties to the NBHCP, which is premised on the exclusion of development within this zone. *See*, Implementation Agreement, subparagraph 3.1.2(c) at 4. The one-mile buffer was established through rigorous biological analysis and constitutes an indispensable component of the Plan's mitigation strategy. *See*, NBHCP, Chapter 9 at VII 11-20. Any action by Sacramento County to approve or allow development within the Swainson's Hawk Zone not only threatens the ecological effectiveness of the NBHCP but also directly conflicts with the enforceable obligations of the Implementation Agreement.

The parties to the NBHCP have clear legal obligations that explicitly prohibit development within the Swainson's Hawk Zone. These obligations are set forth in the Plan and are enforceable through the Implementation Agreement. As currently proposed, the PRDEIR and related FEIR threaten to directly interfere with these contractual obligations.

e. The addition of the New Water Supply Option in the PRDEIR requires recirculation of the FEIR in its entirety

CEQA requires recirculation of an EIR when significant new information is added after the close of the public comment period but before certification. Cal. Pub. Res. Code § 21092.1. The

California Supreme Court has held that this standard requires recirculation when new information demonstrates that the project will have a substantial increase in the severity of the environmental impact, when a project alternative is considerably different from other previously analyzed, or when the draft EIR was fundamentally and basically inadequate. *See, Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 6 Cal. 4th 1112, 1114 (1993).

The New Water Supply Option described in the PRDEIR presents a fundamentally different environmental scenario that could increase the severity of environmental impacts associated with the Specific. Specifically, increases in water diversions and seasonality have the potential to significantly impact terrestrial species protected under state and federal law. In addition, the proposed change in water use from agricultural to municipal would advance urbanization of farmland in a manner that may inhibit implementation of the two existing HCPs in the Natomas Basin. These unexamined consequences associated with the PRDEIR could result in a substantial increase in the environmental impacts of the Specific Plan and therefore require recirculation of the full FEIR.

In addition, as described above, the FEIR's analysis of potential impacts on agricultural land and potential to inhibit the efficacy of the HCPs was cursory at best and conclusory to a point of dismissing comments regarding the Federal Court Order as not relevant. The inadequacy of the FEIR's analysis of environmental impacts warrants recirculation of the document in its entirety. For these reasons, under the standard described in *Laurel Heights*, recirculation of the full EIR is required.

III. CONCLUSION

The Conservancy appreciates your consideration of its comments on the PRDEIR. The Conservancy and the proponents/permittees of the NBHCP and MAPHCP remain committed to upholding the requirements of these Plans and sustaining the ecological health of the Natomas Basin. If you have any questions, please feel free to contact me at the email or phone number listed above.

Sincerely,



Ethan J. Walsh
of BEST BEST & KRIEGER LLP

EJW

cc: John Roberts