



**DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922**

**RECORD OF DECISION**

**ACTION ID: SPK-1999-00590**

**APPLICANT: Elliott Homes, Inc. and Easton Development Company, LLC.**

**PROJECT NAME: Rio del Oro**

I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning the permit application for the proposed action, as well as the stated views of interested agencies and the public. In doing so, I have considered the possible consequences of the proposed action in accordance with regulations published in 33 Code of Federal Regulations (CFR) Parts 320 through 332 and 40 CFR Part 230.

As described in the July 2010 Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS), prepared jointly by the City of Rancho Cordova (City) under the California Environmental Quality Act (CEQA) and the U.S. Army Corps of Engineers, Sacramento District (Corps) under the National Environmental policy Act (NEPA), the proposed action is to construct a mixed-use development consisting of 1,518.5 acres of single-family residential uses, 260 acres of medium density residential uses, 98 acres of high density residential uses, 522 acres of commercial and industrial uses, 152 acres of schools, and 1,282 acres of open space and public uses, including a 510-acre wetland preserve, landscape corridors, storm water detention facilities and public parks. The proposed action involves the discharge of dredged or fill material into 27.90 acres of waters of the United States under Section 404 of the Clean Water Act to construct the mixed-use development. As such, a Department of the Army permit under the Regulatory Program is required for the proposed action.

**I. Background**

A complete application for a Department of the Army permit under Section 404 of the Clean Water Act (CWA) was received on December 8, 2006.

The U.S. Army Corps of Engineers, Sacramento District, (Corps) determined an Environmental Impact Statement (EIS) would be prepared on August 5, 2003. Scoping for the EIS began on February 5, 2004 with publication of a Notice of Intent to Prepare an EIS in the Federal Register (69 FR 5516). The Corps issued a public notice for scoping meetings on February 13, 2004. Public scoping meetings were held on February 25, 2004 at Rancho Cordova City Hall, and Mills Station. The Federal Aviation Administration (FAA) agreed to be a cooperating agency.

In December 2006, a Draft Environmental Impact Statement (EIS) was issued by Corps. A Notice of Availability was published in the Federal Register on December 8, 2006 (71 FR 71142). A public meeting was held on January 11, 2007. During the DEIS public review period, 32 comment letters were received.

In April 2008, a Supplemental Draft EIS was issued by the Corps. A Notice of Availability was published in the Federal Register on May 7, 2008. The Corps issued a CWA Public Notice on May 23, 2008. A public meeting was held on May 22, 2008.

The Corps issued a Final EIS in July 2010. A Notice of Availability was published in the Federal Register on July 12, 2010 (75 FR 39668). A public notice announcing the FEIS was issued July 9, 2010.

## II. Project Purpose and Need

**a. Purpose:** The purpose of the Rio del Oro project is to construct a master-planned, mixed-use development to serve the growing population of south-eastern Sacramento County.

**b. Need:** Sacramento County has been undergoing continuous growth, and increased housing needs have been identified within eastern Sacramento County.

## III. Alternatives Considered

### a. Alternatives Evaluated Fully in EIR/EIS

**1. No Federal Action:** This alternative was designed to allow some development of the project site, while avoiding the placement of dredged or fill material into waters of the U.S., eliminating the need for a permit from the Corps. This alternative would result in a mixed use development with 1,447 acres of single family residential uses, 210 acres of medium density residential uses, 85 acres of high-density residential uses, 431 acres of commercial and industrial uses, and an 835 acre open space area. In order to avoid waters of the U.S., this alternative would result in the installation of utility lines through horizontal directional drilling, and would eliminate the proposed southern end of either Rancho Cordova Parkway or Americanos Boulevard. This alternative would not result in the placement of fill material into waters of the U.S.

**2. No Project:** Under this alternative, a mixed-use development would not be constructed. Instead, aggregate mining operations to remove portions of the existing dredge tailings on the project site would continue under existing and proposed Rancho Cordova and Sacramento County permits. This alternative would not result in the placement of fill material into waters of the U.S.

**3. Proposed Project:** The proposed project would involve the construction of a mixed-use development consisting of 1,518.5 acres of single-family residential uses; 260 acres of medium density residential uses; 98 acres of high density residential uses; 522 acres of commercial and industrial uses; 152 acres of schools; and 1,282 acres of open space and public uses, including a 510 acre wetland preserve, landscape corridors, storm water detention facilities, and public parks. This alternative would result in the placement of fill material into 27.90 acres of waters of the U.S., and the preservation of 28.73 acres of waters of the U.S. The waters of the U.S. that would be filled under this alternative include: 15.1 acres of vernal pools, 2.9 acres of ponds, 3.6 acres of seasonal wetland swale, 3.3 acres of seasonal wetlands, and 3.3 acres of seasonal drainages, including a portion of Morrison Creek.

**4. High Density Alternative:** This alternative would result in a greater density of residential development on a similar footprint as the proposed project. This alternative would result in the same amount of fill of waters of the U.S. as the proposed project.

**5. Impact Minimization Alternative:** This alternative was designed to reduce the environmental impacts, when compared with the proposed project. This alternative would result in the construction of a mixed-use development consisting of 1,032.5 acres of single-family residential uses; 240 acres of medium density residential uses; 173.5 acres of high density residential uses; 493 acres of commercial and industrial uses; and would result in the creation of a 995 acre preserve. This alternative

would result in the placement of fill material into 13.5 acres of waters of the U.S. Although the applicants have not provided any information on the practicability of this alternative, this alternative would result in a similar preserve configuration as the 1,106-acre preserve alternative discussed in *Section III(c)(15)*, and would result in greater preserve than the 668-acre preserve alternatives discussed in *Section III(c)(13) and III(c)(14)*. Because we have determined that the 1,106-acre preserve and the 668-acre preserve alternatives are not practicable, we have determined that the Impact Minimization Alternative is not practicable, as it would result in substantially greater infrastructure costs, and would result in the relocation of the regional retail center to a location at the north-east intersection of the proposed Rio del Oro Parkway and Sunrise Boulevard, which would limit the feasibility of development of a regional retail center.

**b. Alternatives Considered but Rejected from Further Analysis**

**1. Southeast Off-Site Alternative:** This alternative site is an approximately 3,833 acre site located approximately 6 miles south of the proposed project site, in eastern Sacramento County, near the Folsom South Canal. The majority of this site is located north-west of Grant Line Road, although a small portion extends to the south-east of Grant Line Road. Florin Road, Eagles Nest Road and Sloughouse Road are all located within this area. Although a formal wetland delineation was not conducted for the entire site, the area contains an estimated 184.59 acres of aquatic features which may be waters of the U.S. The Southeast Off-Site alternative contains an existing gravel mining operation (Triangle Rock), wetland preserve areas (e.g. Bryte Ranch, Werre Property, Klotz Property), and existing agricultural properties. Because of the existing development on the site, and the number of properties, we determined that this site is not available to the applicant. Therefore, because this alternative is not available, and because it is likely that the construction of a mixed-use development on this site would impact more waters of the U.S. than the proposed project, this alternative was eliminated from further analysis.

**2. Northwest Off-Site Alternative:** This alternative site is an approximately 3,823 acre site, located approximately 6 miles south-west of the proposed project site. This site is located north and south of Jackson Road, west of Excelsior Road, east of Hedge Avenue, and north of Elder Creek Road. Although a formal wetland delineation was not conducted for the entire site, the area contains an estimated 63.38 acres of aquatic features which may be waters of the U.S. The majority of the Northwest Off-Site Alternative site consists of existing or proposed aggregate mining operations, operated by Teichert and Granite Mining. The remaining portions of the site are located within the North Vineyard Station Specific Plan area (NVSSP) (SPK-2002-00410), which had previously been proposed for development. Because of the existing and proposed aggregate mines within this area, and because the remainder of this site is located within the NVSSP area, we determined that this site is not available to the applicants, and therefore this alternative was eliminated from further analysis.

**3. Reduced Preserve Alternative:** This alternative would result in the complete development of the entire 3,828 acre project site. Because this alternative would involve the fill of all of the waters of the U.S. on the site, and therefore would result in greater impacts to the aquatic environment, we determined that this alternative does not meet the requirements of the USEPA's Section 404(b)(1) Guidelines, and therefore this alternative was eliminated from further analysis.

**4. Increased Preserve/No Regional Town Center Alternative:** This alternative would increase the amount of wetland preserve by 599 acres, as compared to the proposed project, resulting in a 1,106 acre preserve. The area south of Rio del Oro Parkway and north of the proposed drainage parkway (near the corner of Sunrise Boulevard and Douglas Road) would be included within the preserve. This alternative would result in no construction of the proposed Regional Town Center. This alternative would result in impacts to approximately 11.22 acres of waters of the U.S. This alternative was eliminated from further consideration as it would not meet the key CEQA project objectives for the City of Rancho

Cordova. Although this alternative was not evaluated within the EIR/EIS, this alternative was evaluated for compliance with the Section 404(b)(1) Alternatives, as described in *Section III(c)*.

**5. Alternative 5: Significant Traffic Impact Avoidance Alternative:** This alternative was designed to reduce significant impacts on area roadway segments. A 70% reduction in development would be required in order to eliminate the majority of significant impacts to U.S. Highway 50. Because a 70% decrease in development of the site would not provide the residential, commercial and industrial units necessary to pay for necessary infrastructure, this alternative was eliminated from further analysis.

**c. Additional Section 404(b)(1) Alternatives:** These alternatives represent the additional off-site and on-site alternatives designed to meet the Section 401(b)(1) Guidelines. These alternatives consist of variations of the alternatives evaluated within the EIS, with additional areas of avoidance, as well as those alternatives considered but rejected from further analysis within the EIR/EIS. The applicant provided a *Final Section 404(b)(1) Alternatives Analysis*, prepared by ECORP Consulting, on July 16, 2009. An additional analysis regarding compliance with the Section 404(b)(1) Guidelines was provided by Remy, Thomas, Moose and Manley, LLP., on May 25, 2010. The Corps has reviewed the information submitted by the applicant, and has conducted the following Section 404(b)(1) Alternatives Analysis, in order to make a determination on the least environmentally damaging practicable alternative.

**1. Proposed Project:** The impacts of this alternative are described in *Section III(a)(1)* above. The applicant provided additional information on the practicability of this alternative as it relates to costs. Total improvements costs of the proposed project are approximately \$804,434,133, including the development of infrastructure, parks/open space, schools, etc.). These costs are, for the most part, static, and therefore the fewer acres there are available to develop, the greater the cost per acre to develop the project. Of the approximately 3,828 acre project area, 1,236 acres are public uses (i.e. parks, open space, wetland preserve, major roads, etc.) that will not generate land sale profit. The eastern 1/3 of the site was previously dredger mined with a large dredge that reached a depth of approximately 60 feet. The dredging operation created long mounds of tailings consisting of cobbles which are 30-40 feet tall. Between the mounds at lower elevations are valleys filled with "slickens" (fine grained clays and silts) that are not suitable for building foundations. The mounds and valleys have steep slopes (15%-50%) that require substantial grating to make the areas suitable for buildings (2% - 10%). The geotechnical standards require that the mine tailings be removed and compacted to a depth of 5 feet below future building grade. In addition, the "slickens" must be removed, mixed with the cobble and compacted to a depth of 10 feet below future building grade to create an engineered fill material suitable for building. The process of removing and compacting the tailings and "slickens" is referred to as "reclamation" and is a necessary component of the proposed project or any other on-site alternative. The applicant has stated that the estimated cost for the "reclamation" of the eastern 1/3 of the site is approximately \$75,250,000. In addition, although the majority of the eastern 2/3 of the site contains smaller dredge tailings that do not contain the "slickens," located in the center 1/3 of this site, has been aggregate mined by Teichert over the past 10-15 years, and therefore has substantial grade differentials, which would need to be leveled out with slopes not exceeding 5%. The cost for conducting grading in this section would be approximately \$25,600,000. In addition, the proposed project would also result in costs of \$43,000,000 for the installation of a sewer trunk line. The installation of proposed backbone installation (e.g. on-site sewer, storm drainage, on-site water, roadways, trails, open space, landscape corridor, etc.) would cost approximately \$119,964,751. According to the applicant, the proposed project is only marginally feasible, and is not feasible unless the applicant's work with the City of Ranch Cordova to develop agreements that more reasonably assign infrastructure requirements within the project and thereby reduce overall project costs.

**2. 378-acre Preserve:** This alternative would involve the placement of fill material into approximately 34.788 acres of waters of the U.S., and the preservation of 21.85 acres of waters of the U.S.

within a 378-acre preserve. Because this alternative would result in greater impacts to waters of the U.S. than the proposed project, this alternative is not the LEDPA.

**3. 668-Acre Preserve – Loss of Regional Town Center and High and Medium Density Residential:** This alternative would involve the placement of fill material into 18.35 acres of waters of the U.S., and the preservation of 38.29 acres of waters of the U.S. within a 668-acre preserve. This alternative would result in 11.98 fewer acres of waters of the U.S. than the proposed project. This alternative would result in the re-location of the detention basin proposed by the proposed project, and would require that water and sewer lines be installed utilizing a jack-and-bore method, in order to provide utilities to the eastern portion of the site. This alternative would also result in the elimination of the proposed Regional Town Center (RTC) as well as 65 acres of medium density and 20 acres of high density housing. Under this alternative, the costs for the installation of infrastructure would be \$164,964,751, including those costs associated with boring of sewer and water lines, construction of bridges, the relocation of the detention basin and the installation of a pump station. These infrastructure costs for this alternative are \$45,000,000 higher than the proposed project, representing an approximately 37.5% increase in costs.

The applicants have provided a July 20, 2005 letter from the City of Rancho Cordova (see Attachment J in the applicants July 16, 2009 alternatives information), stating that the lack of a regional retail center on the proposed project site would result in either denial of the plan, or a City recommendation that plans be modified to include regional retail sites. The City stated regional retail sites provide a sales tax base for the financial health of the City, and a regional retail site on the Rio del Oro property is necessary as the Sunridge Specific Plan was approved without regional retail sites and the SunCreek Specific Plan area is not geographically suited towards regional retail. In addition, on December 10, 2007, the City provided another letter, stating that the location of a regional retail site at the intersection of Sunrise Boulevard and Douglas Road is critical, as these are two main thoroughfares used by City residents, especially those living in the new large master-planned areas. In addition, the City provided information that the optimum acreage to support a regional retail center is, at minimum, 50 acres. Finally, the City provided information that it is currently under-served with retail shopping, stating that Rancho Cordova's current annual general retail per capita sales taxes of \$29 is only 71% of the Statewide and 76% of the Sacramento County sales taxes per capita for general retail items.

Because this alternative would result in infrastructure costs that are 37% greater than the proposed project, and would eliminate the regional town center needed by the City of Rancho Cordova, we have determined that this alternative is not the LEDPA.

**4. 668-Acre Preserve – Regional Town Center Shifted North:** This alternative would involve the placement of fill material into 18.356 acres of waters of the U.S., and the preservation of 38.29 acres of waters of the U.S. within a 668-acre preserve. This alternative would shift the regional town center, 65 acres of medium density residential uses and 20 acres of high density residential used to the north, and would decrease the developable area for the project by 121 acres. Under this alternative, the regional town center would be located at the north-east intersection of the proposed Rio del Oro Parkway and Sunrise Boulevard. Under this alternative, the costs for the installation of infrastructure would be \$164,964,751, including those costs associated with boring of sewer and water lines, construction of bridges, the relocation of the detention basin and the installation of a pump station. These infrastructure costs for this alternative are \$45,000,000 higher than the proposed project, representing an approximately 37.5% increase in costs.

This alternative would result in an increase cost of \$45,000,000 for the construction of infrastructure, including those costs associated with boring of sewer and water lines, construction of bridges, the relocation of the detention basin and the installation of a pump station. These infrastructure costs for this alternative would represent an approximately 37.5% increase in the installation of infrastructure as compared to the proposed project.

The applicant has provided information from two retail planning companies, Grubb & Ellis, and LPA Sacramento, Inc., on the feasibility of relocating the regional town center to the north of the location currently proposed. On April 13, 2005, Grubb & Ellis stated that, other than a location at the intersection of the proposed Rio del Oro Parkway and U.S. Highway 50 (located on the Westborough site), the best location for a regional town center is at the intersection of Sunrise Boulevard and Douglas Road, as this location would take advantage of the Sunrise Boulevard access and exposure, which is vital for the success of the project, and provides access to the future proposed Rio del Oro interchange at U.S. Highway 50. On March 7, 2006, LPA Sacramento, Inc. evaluated the feasibility of a regional town center at the north-east intersection of the proposed Rio del Oro Parkway and Sunrise Boulevard. LPA stated that a regional town center at this location would only allow major vehicular access and visibility from Sunrise Boulevard, with secondary access from the proposed Rio del Oro Parkway. This alternative location would provide only 800' of frontage to a major road, and 2,500 feet to 3,000 feet of frontage along a secondary street, resulting in the opposite of the desired proportions of an ideal retail center. According to LPA, this will significantly limit the viability of the site as a regional town center and most likely would make it difficult or impossible to find a qualified real estate developer to work with this site location.

Because this alternative would result in 37% greater infrastructure costs than the proposed project and because of the limited feasibility of a regional town center at this, we have determined that this alternative is not practicable due to cost and logistics, and therefore is not the LEDPA.

**5. 1,106 Acre Preserve:** This alternative would result in impacts to approximately 16.84 acres of waters of the U.S., and the preservation of 39.80 acres of waters of the U.S. within an 1,106-acre preserve. Because the additional portions of the preserve occur within areas that have not been previously mined in the past, preservation of this area would require that additional soil be imported to the site, as topsoil within the preserve area of this alternative could not be used. Under this alternative, the costs for the installation of infrastructure would be \$411,464,751, including those costs associated with boring of sewer and water lines, construction of bridges, the relocation of the detention basin and the installation of a pump station. These infrastructure costs for this alternative are \$291,500,000 higher than the proposed project, representing an approximately 248% increase in costs.

Because this alternative would result in a 248% increase in costs associated with the installation of infrastructure, we have determined that this alternative is not practicable and therefore is not the LEDPA.

**6. No Permit – 50' Buffers to Jurisdictional Wetlands:** This alternative would result in the avoidance of all waters of the U.S. on-site, with 50-foot buffers from the on-site waters of the U.S. This alternative would result in a 353.66 acre preserve area. Under this alternative, Rancho Cordova Parkway would require the construction of 6 bridges over waters of the U.S., and Americanos Boulevard would require the construction of 5 bridges over waters of the U.S. In addition, the other subdivision roads would require the construction of 10-12 bridges over waters of the U.S. In addition, all utility lines would either have to be installed through boring beneath the wetlands, or constructed in alternative off-site corridors along Sunrise Boulevard. Under this alternative, the costs for the installation of infrastructure would be \$307,464,751 including those costs associated with boring of sewer and water lines, construction of bridges, the relocation of the detention basin and the installation of a pump station. These infrastructure costs for this alternative are \$187,500,000 higher than the proposed project, representing an approximately 156% increase in costs.

Because this alternative would result in a 156% increase in costs associated with the installation of infrastructure, we have determined that this alternative is not practicable and therefore is not the LEDPA.

#### **IV. Comment on the Final Environmental Impact Statement**

**a. U.S. Environmental Protection Agency (USEPA):** On August 13, 2010, USEPA commented that they appreciated the detailed response to the USEPA's previous comments on the Draft EIS and Supplemental Draft EIS, and that the responses provided important information concerning the impacts to waters of the U.S., the process for determining the least environmentally damaging practicable alternative, and the water conservation and reuse features of the proposed project. However, USEPA stated that concerns remain over the number of acres of jurisdictional waters of the U.S. and isolated waters of the U.S. proposed to be filled, and recommended that the final project avoid wetland impacts to the greatest extent possible. In addition, USEPA recommended that the Corps adopt the Impact Minimization Alternative and incorporate the recommendations the U.S. Fish and Wildlife Service included in their Draft Biological Opinion, but increasing the proposed wetland preserve to 1,310 acres.

**b. U.S. Fish and Wildlife Service (USFWS):** On August 12, 2012, the USFWS commented that since their February 12, 2007 comment letter on the proposed project, the applicant has worked in coordination with the USFWS to address the items identified in the USFWS comment letter. The USFWS commented that because of revisions to the proposed project, more than 70% of suitable vernal pool crustacean habitat within the Mather Core Recovery Area will be preserved in perpetuity through conservation easements and endowment funds, including approximately 35 acres of existing habitat on-site and at the Cook Property. The USFWS commended the efforts of the Corps', the City of Rancho Cordova, and the applicant in working closely with the USFWS to revise, supplement, and strengthen the project and reduce impact and maximize conservation potential.

**c. William D. Kopper, Attorney at Law:** On July 6, 2010, Mr. William Kopper commented that it is inappropriate for the City of Rancho Cordova to schedule a Planning Commission meeting that would occur before the end of the 10-day review period of the FEIR, and stated that the Rancho Cordova Planning Commission cannot make a recommendation until after the review period ends.

**d. Kristy Chew, Chair of the Gold River Interchange Committee:** On August 11, 2012, Ms. Kristy Chew commented that a number of existing residents within Rancho Cordova oppose to the proposed Rancho Cordova Parkway Interchange, as it will create significant air quality, traffic, noise, health and safety, and visual impacts on existing residential areas. In addition, Ms. Chew questioned why members of the Rancho Cordova Parkway Interchange Citizen Committee were not notified of the proposed project and the environmental documents. Ms. Chew provided the following concerns with the FEIS:

(1) Implementation of the Specific Plan will result in substantial, detrimental impacts to listed species and their habitats.

(2) The Specific Plan will exacerbate existing congested roadways.

(3) The FEIR/FEIS claims to mitigate for impacts of the Specific Plan by implementation of other projects that will be analyzed separately with another EIR and/or EIS. Ms. Chew stated that CEQA requires that the Specific Plan analysis also identify the impacts of the Rancho Cordova Parkway Interchange, at least on a cumulative impact basis.

(4) Ms. Chew stated that the FEIR/FEIS may be incorrect in the characterization of the Rancho Cordova Parkway Interchange, as page 1-52 of the FEIR/FEIS states, "The Zinfandel Drive Extension falls under the jurisdiction of the County, and the Rancho Cordova Parkway and its associated interchange fall under the jurisdiction of Caltrans and the County." Ms. Chew stated that the interchange had always been portrayed as solely a project of the City of Rancho Cordova and that clarification on the roles of varying agencies would be appreciated.

**e. Jimmy L. Spearow:** On July 24, 2012, Mr. Jimmy Spearow commented on the exposure to hazards and hazardous materials. Mr. Spearow provided the following comments:

(1) Mr. Spearow commented that he does not agree that there are no direct or indirect impacts of the proposed project and other alternatives to exposure from contaminated soil or groundwater, and stated that the EIR/EIS needs to recognize that this is part of a Superfund Cleanup site that is still in

the process of being remediated and still contains contaminants that pose a threat to human health. Mr. Spearow also commented that the EIR/EIS does not mitigate for the fact that much of the site has not received a no further action approval from the overseeing state environmental agencies.

(2) The EIR/EIS needs to provide a map that clearly identifies the regions and sub-regions containing toxic material, which should be superimposed over a map of final development plans for the site.

(3) The Final EIR/EIS is inadequate as it does not consider and report the cumulative potential cancer risk and hazard of all contaminants on the property to human health.

(4) The EIR/EIS needs to make it clearer how exposure to contaminants in surface and near surface soil in regions that still pose a threat to human and environmental health will be mitigated.

(5) There are inconsistencies in the EIR/EIS, with regards to the Sigma Complex and the levels of perchlorate in the soils.

(6) There is still a concern of vapor intrusion at two of the contaminated site, and the EIR/EIS needs to address how human health will be protected in nearby developments prior to obtaining approval from state regulatory agencies.

(7) There is an insufficient description of the impacts to the human and ecological environment from the contamination at the Kappa/Gamma Complex.

(8) The EIR/EIS did not adequately consider the human and ecological health risks due to ingestion of plants that have taken up perchlorate.

(9) The EIR/EIS should evaluate and ensure that soils are remediated to that ecological health is protected.

(10) Appendix S of the FEIR/FEIS contains a number of errors that understate the risk of arsenic contaminant at the site and that the EIR/EIS needs to describe the region with elevated levels of arsenic and how these levels of arsenic are being addressed so as to protect human and ecological health.

(11) The Final EIR/EIS needs to consider the cumulative effects and potential for interactions between arsenic and other carcinogenic or mutagenic compounds in groundwater, including nitrosodimethylamine, nitrosodiethylamine, Trichloroethylene and other contaminants, on the Aerojet superfund site.

(12) The EIR/EIS needs to describe the cleanup standards for Groundwater Extraction Treatment (GET) water. In addition, the EIR/EIS should consider the cumulative cancer risk and non-cancer hazard of all contaminants in GET remediated water.

(13) The EIR/EIS does not adequately describe the standards that will be used to determine when treated or untreated groundwater can be used for potable use purposes.

(14) Questioned whether GET water discharges to the American River will continue at the same rate or at a reduced rate if extreme drought or seasonal water shortage conditions, and that the EIR/EIS needs to ensure that the cumulative risk of all contaminants remaining in the diluted GET remediated water does not pose a risk to human or ecological health before GET remediated water is released into the American River or nearby creeks.

(15) The EIR/EIS does not describe contingencies for funding the completion of remediation efforts if Aerojet/Gencorp or the Boeing Corporation become bankrupt.

(16) None of the project alternatives adequately mitigate for the fact that portions of the surface and near surface soils have not been cleaned up and still contain contaminants that pose a threat to human health. Stated that the No Project Alternative would be the environmentally superior alternative under CEQA, but if an alternative must be chosen under CEQA, stated that he prefers the Impact Minimization Alternative, as it also reduces air emissions.

(17) Stated that it is very important to provide Class 1 and Class 2 bicycle lanes and bicycle facilities that promote pedestrian and bicycle friendly uses.

## V. Consideration of Applicable Laws and Policies

**a. National Environmental Policy Act (NEPA):** The EIR/EIS was completed to evaluate a reasonable range of land-use and water-supply alternatives and the cumulative impacts associated with the development of the Rio del Oro site. The Corps followed the NEPA process, including noticing and

timeline requirements, to produce a document that discloses to the public the probable impacts of the Proposed Action, taking into account mitigation. The EIS will be utilized to make a decision on the proposed project.

**b. Section 401 of the Clean Water Act Section 401 of the CWA:** The proposed project is in compliance with the Section 401 of the CWA. Following two pre-application meetings with the Central Valley Regional Water Quality Control Board (RWQCB), the applicants applied for a Section 401 Water Quality Certification on April 30, 2010. On May 25, 2010, the RWQCB requested additional information for a complete application. On February 10, 2011, the applicant submitted the requested information. On August 11, 2011, the RWQCB again requested additional information via email, including the same information that was requested in the May 25, 2010 letter. Additional email requests for information were sent by the RWQCB on September 2, 2011 and December 2, 2011. Section 401 of the Clean Water Act (33 U.S.C. 1341 (a)(1)) states that "(i)f the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application." In addition, the Corps' regulations at 33 CFR 325 states "(a) waiver may be explicit, or will be deemed to occur if the certifying agency fails or refuses to act on a request for certification within sixty days after receipt of such a request unless the district engineer determines a shorter or longer period is reasonable for the state to act." Because the RWQCB has failed to act on the request for certification since the April 30, 2010 application was submitted, the Corps has determined that the Section 401 Water Quality Certification has been waived.

**c. Endangered Species Act of 1973:** The project is in compliance with Section 7 of the Endangered Species Act. On October 3, 2003, the Corps initiated consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act. On November 2, 2011, the U.S. Fish and Wildlife Service (USFWS) issued a biological opinion (BO) for the proposed project, due to impacts to the Federally-listed vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), and the valley elderberry longhorn beetle (VELB) (*Desmocerus californicus dimorphus*). In addition, the USFWS concurred that the proposed project is not likely to adversely affect the California tiger salamander (*Ambystoma californiensis*), as the site is not within the current range of the salamander and surveys conducted between the mid-1990's through 2003 have failed to document the species within the project area. The USFWS also stated that, based on late season rare plant surveys, the slender Orcutt grass (*Orcuttia tenuis*), and Sacramento Orcutt grass (*Orcuttia viscida*) do not occur on the site, and therefore the USFWS determined that the project is not likely to adversely affect the grasses. The USFWS BO would become a condition of the Corps permit, if issued.

**d. Fish and Wildlife Coordination Act:** The proposed project is in compliance with the Fish and Wildlife Coordination Act. The Corps has worked with the USFWS on the proposed project, including meetings to obtain input. During EIS preparation, the Corps requested USFWS be a cooperating agency. Although it declined, the USFWS reviewed the draft of the EIR/EIS and provided comments.

**e. Magnuson-Stevens Fishery Conservation and Management Act:** The proposed project is in compliance with the MSFCMA. The project site does not contain habitat for anadromous fish, and therefore there would be no impacts to essential fish habitat from the proposed project.

**f. Section 106 of the National Historic Preservation Act:** The proposed project is in compliance with Section 106 of the National Historic Preservation Act. On February 5, 2010, the Corps contacted the California State Historic Preservation Officer (SHPO), requesting their concurrence on the area of potential effect (APE) of the project, and their review and comment on a proposed Research Design to address the remaining inventory and evaluation required for the project area. On February 16, 2010, the SHPO concurred on the APE for the project, and concurred that a new pedestrian survey of the APE is necessary for the project. In addition, the SHPO agreed with the approach within the Research Design, although they recommended that the Research Design include a geoarchaeological study. On May

17, 2011, the Corps initiated consultation with the SHPO, requesting their concurrence on the determination of eligibility and effect on historic properties and consultation on the intent to develop a Memorandum of Agreement (MOA) for resolution of an adverse effect. On July 29, 2011, the SHPO concurred with the Corps determination of eligibility and effect and requested that a draft MOA be forwarded for review and comment. On August 11, 2011, the Corps forwarded a draft copy of the MOA to the SHPO for review and approval. In addition, on August 11, 2011, the Corps wrote to the Advisory Council on Historic Preservation (ACHP), to request their consultation regarding the proposed project. The ACHP declined to participate in consultation on August 31, 2011. On December 20, 2011, the Corps forwarded three copies of the MOA to the SHPO for signature. The MOA between the Corps and the SHPO was executed on January 24, 2012. The executed MOA was forwarded to the ACHP on March 12, 2012.

**g. Section 176(C) of the Clean Air Act (CAA) General Conformity Rule Review:** The proposed action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. The Corps has determined that direct emissions from the proposed activities that require a DA permit will not exceed de minimis levels of a criteria pollutant or its precursors and are exempted by 40 CFR 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons, a conformity determination is not required for this action.

**h. Executive Order 11998: Floodplain Management:** Morrison Creek flows through the southern portion of the proposed project site. Although Morrison Creek is not within a floodplain as mapped by the Federal Emergency Management Agency (FEMA), it has been mapped as a 100-year floodplain by the California Department of Water Resources, under the Awareness Flood Mapping Program (AFMP). However, because the AFMP lacks detailed stream topography, these maps only approximate possible flood conditions, and do not provide specific depth or flood hazard data. The proposed project would place the majority of Morrison Creek into a wetland preserve. The remaining downstream segments of Morrison Creek, on the western portion of the site, would be placed into a drainage corridor. No structures would be placed within the floodplain of Morrison Creek, as mapped by the California Department of Water Resources.

**i. Executive Order 13175: Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians:** Native American consultation was initiated by contact with the California Native American Heritage Commission on 11 June 2010, which provided a letter regarding the presence/absence of sacred sites within the APE, and a list of contacts in the Native American community. ECORP Consulting, Inc. contacted all persons or organizations on the Native American Heritage Commission list by letter on 7 July 2010 to request information on unrecorded cultural resources that may exist within the current Project Area, or to inquire about any concerns regarding sacred sites or traditional cultural properties in the vicinity that might be affected by the proposed action. Each individual was subsequently telephoned between 16 July 2010 and 20 July 2010 to ensure that the materials had been received and to further solicit comments. Responses for all consultation efforts are provided in the enclosed ECORP Consulting, Inc. report (April 2011, Attachment 4).

**j. Environmental Justice (Title VI of the Civil Rights Act and Executive Order 12898):** The proposed action is not expected to negatively impact any community, and therefore is not expected to cause disproportionately high and adverse impacts to minority or low-income communities.

## **VI. Consideration of Mitigation Measures**

The EIR/EIS included a number of mitigation measures to reduce or offset impacts that fall outside of the Corps responsibility and generally cannot be practicably controlled by the Corps, like traffic, air quality, and noise. Many of the mitigation measures are requirements of the local land use agency (City of Folsom) and were addressed in the EIR/EIS for compliance with the CEQA and would be approved through

grading and construction permits by the City of Folsom. As such, these mitigation measures are enforced by the City of Folsom and not the Corps.

The Corps requires mitigation measures to reduce or offset impacts to waters of the U.S. as special conditions of each DA permit issued. These special conditions will be developed and refined during the preparation of supplemental decision documents prepared for each of the individual permit applications pending and received in the future for projects within the SPA. These special conditions will take into account mitigation measures 3.10-1a and 3.10-1b, as described in Chapters 3.10 of the DEIR/DEIS, and would also include additional conditions that avoid, minimize and compensate for impacts to waters of the U.S. and those that ensure compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

**VII: Compliance with 404(b)(1) Guidelines**

Based on the discussion in Section 4.0, are there available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into “waters of the U.S.” or at other locations within these waters? Yes \_\_\_ No X

If the project is in a special aquatic site and is not water dependent, has the applicant clearly demonstrated that there are no practicable alternative sites available? Yes X No \_\_\_

Will the discharge:

Violate state water quality standards? Yes \_\_\_ No X

Violate toxic effluent standards under Section 307 of the Clean Water Act? Yes \_\_\_ No X

Jeopardize endangered or threatened species or their critical habitat? Yes \_\_\_ No X

Violate standards set by the Department of Commerce to protect marine sanctuaries?  
Yes \_\_\_ No X

Evaluation of the information in Section 6 above indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s):

( ) based on the above information, the material is not a carrier of contaminants.

( ) the levels of contaminants are substantially similar at the extraction and disposal sites and the discharge is not likely to result in degradation of the disposal site and pollutants will not be transported to less contaminated areas.

(X) acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the boundaries of the disposal site. Portions of the proposed project site are located within a designated Superfund area. The U.S. Environmental Protection Agency has delegated the responsibility for the contaminated soils to the California Department of Toxic Substances Control (DTSC). No activities may occur within contaminated areas on site until DTSC issues a Certification of Completion when soil cleanup activities are complete, indicating that risks to human health and the environment have been found to be at or below minimum threshold levels.

Will the discharge contribute to significant degradation of “waters of the U.S.” through adverse impacts to:

Human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife and/or special aquatic sites? Yes \_\_\_ No X

Life stages of aquatic life and/or wildlife? Yes \_\_\_ No X

Diversity, productivity, and stability of the aquatic life and other wildlife? Or wildlife habitat or loss of the capacity of wetlands to assimilate nutrients, purify water or reduce wave energy? Yes \_\_\_ No X

Recreational, aesthetic and economic values? Yes \_\_\_ No X

Will all appropriate and practicable steps be taken to minimize adverse impacts of the discharge on the aquatic ecosystem? Does the proposal include satisfactory compensatory mitigation for losses of aquatic resources? Yes X No \_\_\_

### VIII. Special Conditions

The following special conditions will be included in the permit to ensure the project is not contrary to the public interest and complies with the 404 (b)(1) Guidelines:

1. Prior to the initiation of each phase of development, you shall submit to the Corps, for review and approval, a plan-view drawing of the work proposed to be conducted within that phase, and cross-section view drawings of all crossings of waters of the U.S. In addition, you shall include a description of any deviations (including changes in phasing sequence or boundaries of phases) from the authorized work, including the amount and type of waters that would be impacted, and the amount and type of compensatory mitigation.

**Rationale:** *This condition is necessary to ensure compliance with the permit and applicable conditions and to ensure that no changes have occurred to the proposed project prior to each phase.. (33 USC 1344(a), 33 USC 401 et. seq., 33 CFR 320.4(r)(1), 33 CFR 325.4(a)(3); 33 CFR 326).*

2. Prior to the initiation of impacts to 2.35 acres of waters of the U.S. in Phase 1a, as identified on the enclosed *Wetland Impacts By Phase, Exhibit 1 of 2* and *Exhibit 2 of 2*, prepared by ECORP consulting, Inc., you shall:

a. Create a 505 acre wetland preserve containing 28.52 acres of preserved waters of the U.S., including 22.49 acres of vernal pools, 1.12 acres of seasonal wetland swales, 2.40 acres of seasonal wetland, 1.89 acres of ephemeral drainage, and 0.62 acre of pond.

b. Establish a 6.95 acre open space drainage preserve consisting of a water quality/detention basin.

c. Purchase 7.24 vernal pool creation credits and 5.76 seasonal wetland creation credits at the Clay Station Mitigation Bank.

d. Create a 160 acre preserve containing 2.67 acres of vernal pools, 9.90 acres of seasonal marsh, 2.63 acres of seasonal wetland swales, 6.51 acres of pond and 0.58 acres of intermittent drainage at the Cook Property, located at the north-west intersection of Florin Road and Eagles Nest Road, in Sacramento County, California.

**Rationale:** *This special condition is necessary to ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332).*

3. Prior to, or concurrent with the initiation of impacts 2.96 acres of waters of the U.S. and 1.09 acres of waters of the state in Phase 2, as identified on the enclosed *Wetland Impacts By Phase, Exhibit 1 of 2* and *Exhibit 2 of 2*, prepared by ECORP consulting, Inc., you shall:

- a. Create a 93.66 acre open space drainage preserve containing 10.49 acres of seasonal wetlands and 4.24 acres of low flow channels within the drainage corridor.
- b. Enhance 2.98 acres of vernal pools within the 505 acre preserve required in Special Condition 2(a).
- c. Restore 5.37 acres of vernal pools and 0.07 acres of seasonal wetland swale within the 505 acre preserve required in Special Condition 2(a).
- d. Enhance Morrison Creek through the re-distribution of spoil material and installation of grade control structures at two head-cut locations.

**Rationale:** *This special condition is necessary to ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332).*

4. Prior to, or concurrent with the initiation of impacts 7.92 acres of waters of the U.S. in Phase 3, as identified on the enclosed *Wetland Impacts By Phase, Exhibit 1 of 2* and *Exhibit 2 of 2*, prepared by ECORP consulting, Inc., you shall:

- a. Create a 28.3 acre open space drainage preserve containing 0.25 acre of low flow channel within the drainage corridor.

**Rationale:** *This special condition is necessary to ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332).*

5. Prior to, or concurrent with the initiation of impacts 0.25 acres of waters of the U.S. and 1.31 acres of waters of the state in Phase 4, as identified on the enclosed *Wetland Impacts By Phase, Exhibit 1 of 2* and *Exhibit 2 of 2*, prepared by ECORP consulting, Inc., you shall:

- a. Create a 14.19 acre open space drainage preserve containing 0.14 acre of seasonal wetlands and 2.00 acres of low flow channel within the drainage corridor.

**Rationale:** *This special condition is necessary to ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332).*

6. Prior to, or concurrent with the initiation of impacts 0.291 acres of waters of the U.S. and 4.249 acres of waters of the state in Phase 6, as identified on the enclosed *Wetland Impacts By Phase, Exhibit 1 of 2* and *Exhibit 2 of 2*, prepared by ECORP consulting, Inc., you shall:

- a. Create a 12.54 acre open space drainage preserve containing 3.99 acres of seasonal wetlands and 0.65 acre of low flow channel within the drainage corridor.

**Rationale:** *This special condition is necessary to ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332).*

7. Prior to, or concurrent with the initiation of impacts 0.11 acres of waters of the U.S. and 3.60 acres of waters of the state in Phase 7, as identified on the enclosed *Wetland Impacts By Phase, Exhibit 1 of 2* and *Exhibit 2 of 2*, prepared by ECORP consulting, Inc., you shall:

- a. Create 7.153 acre vernal pool habitat and 0.695 acre seasonal wetland swale habitat within the 505-acre wetland preserve required in Special Condition 2(a).

**Rationale:** *This special condition is necessary to ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332).*

8. Prior to, or concurrent with the initiation of impacts 9.02 acres of waters of the U.S. in Phase 8, as identified on the enclosed *Wetland Impacts By Phase, Exhibit 1 of 2 and Exhibit 2 of 2*, prepared by ECORP consulting, Inc., you shall:

a. Create a 30.83 acre open space drainage preserve containing 2.31 acres of seasonal wetlands and 1.27 acres of low flow channel within the drainage corridor.

**Rationale:** *This special condition is necessary to ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332).*

9. You shall develop a final comprehensive mitigation and monitoring plan, which must be approved, in writing, by the Corps prior to initiation of construction activities within waters of the U.S. You shall ensure the required mitigation and monitoring plan shall include all of the mitigation required in Special Conditions 2 through 8, the mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, and shall be presented in the format of the *Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines*, dated December 30, 2004. The purpose of this requirement is to ensure replacement of functions of the aquatic environment that would be lost through project implementation.

**Rationale:** *This special condition is necessary to ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332, 40 CFR 230).*

10. You shall place all preserved waters of the U.S. into a separate "preserve" parcel for each phase of development, prior to initiation of construction activities within waters of the U.S. associated with that phase. Permanent legal protection shall be established for all preserve parcels, following the Corps' approval of the legal instrument.

a. You shall develop specific and detailed Final Operations and Management Plans for the 505-acre wetland preserve and the 187-acre open-space drainage corridor. These plans shall be submitted to and specifically approved, in writing, by the Corps prior to initiation of construction activities within waters of the U.S. This plan shall describe in detail any activities that are proposed within the preserve areas and the long term funding and maintenance of each of the preserve areas.

b. You shall not construct any roads, utility lines, outfalls, trails, benches, firebreaks or other structure, and shall not conduct any grading, mowing, grazing, planting, discing, pesticide use, burning, or other activities within the on-site preservation and avoidance areas (other than those identified within an approved O&M plan) without specific, advance written approval from the Corps. You shall not construct any outfalls that flow toward the preserve areas without prior approval of the Corps. If approved, outfalls shall be designed such that they do not contribute to erosion of upland areas or waters of the U.S. within the preserve.

**Rationale:** *This special condition is necessary to ensure avoidance and minimization of impacts to waters of the U.S., ensure successful compensatory mitigation for the unavoidable losses of waters of the U.S. due to the construction of the proposed project, and to ensure that the functions of the aquatic environment are protected. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332, 40 CFR 230).*

11. You shall submit a fencing and signage plan for the 505 acre wetland preserve and the 187 acre open-space drainage preserve to the Corps for review and written approval prior to the initiation of each phase of development. The fencing plan shall include the location and type of fencing and signage to be installed, as well as the timing for the installation of the fencing and signage. The purpose of the fencing and signage is to protect the preserves from unauthorized access, discourage vandalism, destruction or

disturbance, as well as enable wildlife passage.

**Rationale:** *This special condition is necessary to ensure avoidance and minimization of impacts to waters of the U.S., as it would prevent unauthorized impacts to waters of the U.S. (33 CFR 320.4(r)(1), 33 CFR 325.4(a)(3), 33 CFR 332, 40 CFR 230).*

12. You shall implement the following financial assurance measures to ensure long-term viability of the preservation and avoidance areas:

a. Establish a fully-funded endowment for each phase to provide for maintenance and monitoring of on-site preservation areas. Information on the proposed endowment holder and the proposed endowment agreement shall be provided to the Corps for approval prior to establishment. The timing and implementation of the endowment shall be described in the Final Operations and Management Plan required in Special Condition 10(a) and shall be submitted to the Corps for review and approval before establishment. The endowment shall not be established until the Corps has provided its approval in writing.

b. Designate an appropriate conservation-oriented third-party entity to function as preserve manager and to hold the required conservation easements. Information on the proposed conservation easement holder shall be provided to the Corps for approval prior to designation and prior to the start of construction within waters of the U.S.

c. Record permanent conservation easements for each phase maintaining all preservation areas as wetland preserve and/or wildlife habitat in perpetuity. Copies of the proposed conservation easement language shall be provided to the Corps for approval prior to recordation and prior to the initiation of each phase of development.

d. Provide copies of the recorded documents for each phase to the Corps of Engineers no later than 15 days prior to the start of construction of any phase of the activities authorized by this permit.

**Rationale:** *This special condition is necessary to ensure avoidance and minimization of impacts to waters of the U.S. as well as ensure preservation of the avoided waters of the U.S., in perpetuity (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332, 40 CFR 230).*

13. The permittee shall notify the Corps in writing of any intention to assign rights or obligations of the conservation easements to a new grantee and no such assignment shall be made without the Corps' written approval of the Grantee. Any assignment of the rights and obligations under the conservation easement(s) shall only be made to an organization/individual qualified to hold such interests under the applicable laws and who is committed to holding these easements exclusively for conservation purposes. Any assignment of the conservation easement shall be in writing and a copy of the assignment shall be provided to the Corps. The conservation easements shall then be re-recorded and indexed in the same manner as any other instrument affecting title to real property. A copy of the newly recorded conservation easements shall be furnished to the Corps within 90 days of recordation.

**Rationale:** *This special condition is necessary to ensure permanent protection of the preservation. (33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 332).*

14. You shall implement the attached January 24, 2012 Memorandum of Agreement (MOA), entitled *Memorandum of Agreement between the United States Army Corps of Engineers and the California State Historic Preservation Officer Regarding the Rio Del Oro Project*, and signed by these entities, in its entirety. The Corps is the lead federal agency responsible for implementing and enforcing the Memorandum of Agreement, as signed. If you fail to comply with the implementation and associated enforcement of the MOA, the Corps may determine that you are out of compliance with the conditions of

you Department of the Army permit and suspend the permit. Suspension may result in modification or revocation of the authorized work.

**Rationale:** *This condition is necessary to ensure compliance with Section 106 of the National Historic Preservation Act (16 USC 470, 33 CFR 320.3(g); 33 CFR 325.2(b)(3); 33 CFR 325, Appendix C; 36 CFR 800).*

15. This Corps permit does not authorize you to take an endangered species, in particular the vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), Sacramento Orcutt grass (*Orcuttia viscida*), slender Orcutt grass (*Orcuttia tenuis*) and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion (Number 81420-2010-F-0891-1, dated November 2, 2011), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The U. S. Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its Biological Opinion, and with the Endangered Species Act. You must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

**Rationale:** *This condition is necessary to ensure compliance with Section 7 of the Endangered Species Act (16 USC 1531 et seq; 50 CFR 402; 33 CFR 320.4(j)(4); 33 CFR 325.2(b)(5); 33 CFR 325.4(a)(1)).*

16. You shall notify the Corps of the start and completion dates for each phase of the authorized work within 10 calendar days prior to initiation of construction activities within waters of the U.S. and 10 calendar days following completion of construction activities.

**Rationale:** *This condition is necessary to assist the Corps in scheduling compliance inspections to ensure compliance with the permit and applicable conditions (33 CFR 325.4; 33 CFR 326).*

17. You are responsible for all work authorized herein and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of this permit authorization. You shall ensure that a copy of the permit authorization and associated drawings are available for quick reference at the project site until all construction activities are completed.

**Rationale:** *This condition is necessary to ensure that all workers on site are aware of the terms and conditions of the permit in order to ensure compliance with the permit and applicable conditions (33 CFR 325.4; 33 CFR 326).*

18. You shall clearly identify the limits of disturbance in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of each phase of construction activities in waters of the U.S. You shall maintain such identification properly until construction is completed and the soils have been stabilized. You are prohibited from any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits.

**Rationale:** *This condition is necessary to ensure the construction activities do not occur outside of the project area, which could cause adverse impacts to the aquatic ecosystem (33 CFR 325.4(a)(3)).*

19. You shall use only clean and nontoxic fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

*Rationale: This condition is necessary to ensure that contaminated material is not placed within waters of the U.S. (33 CFR 325.4(a)(3); 40 CFR 230).*

20. You shall conduct all work within Morrison Creek and on-site avoided waters when the project area is naturally dewatered, or is dewatered in accordance with a Corps approved dewatering plan. No work shall be conducted in flowing water.

*Rationale: This condition is necessary to minimize downstream impacts to the aquatic environment from suspended sediments and turbidity to the maximum extent practicable. (33 CFR 320.3(a), 33 CFR 320.4(d); 33 CFR 325.4(a)(3); 40 CFR 230).*

21. Prior to initiation of each phase of construction activities within waters of the U.S., you shall employ construction best management practices (BMPs) onsite to prevent degradation to avoided on-site and off-site waters of the U.S. Methods shall include the use of appropriate measures to intercept and capture sediment prior to entering waters of the U.S., as well as erosion control measures along the perimeter of all work areas to prevent the displacement of fill material. All BMPs shall be in place prior to the initiation of each phase of the project and shall remain until construction activities are completed. You shall maintain erosion control methods until all on-site soils are stabilized. You shall submit a description of and photo-documentation of your BMPs to our office within 10 days of commencement of each phase of construction. Photos may be submitted electronically to [regulatory-info@usace.army.mil](mailto:regulatory-info@usace.army.mil). The project file number (SPK-1999-00590) shall be included with each submittal.

*Rationale: This condition is necessary to minimize adverse impacts to water quality, from construction activities, to the maximum extent practicable (33 CFR 320.3(a), 33 CFR 320.4(d), 33 CFR 325.4(a)(3)).*

## IX. Public Interest Review

**a. The relative extent of the public and private need for the proposed work has been considered:** The proposed project is intended to meet a local demand for mixed-use development. As such, local approval indicates a public need for the project. The proposed project would provide a mixed-use development for the public within the target market.

**b. The practicability of using reasonable alternative locations and/or methods to accomplish the objective of the proposed structure or work has been evaluated:** We have determined that there are no practicable alternate locations that would accomplish the purpose of the proposed work. We have also determined that there is no practicable alternative method to accomplish the purpose of the proposed work that would have fewer direct or indirect impacts than the proposed project. The applicant's proposed project represents the LEDPA, as described above.

**c. The extent and permanence of the beneficial and/or detrimental effects that the proposed structures or work may have on the public and private uses which the area is suited has been reviewed:** The proposed project would result in the placement of fill material into, and the permanent loss of 27.99 acres of WOUS, including wetlands, for the construction of a mixed-use development. The loss of 27.99 acres of WOUS would cause a permanent detrimental effect. The loss of WOUS on-site would be offset by the required mitigation. The proposed preservation of Morrison Creek and adjacent wetland is expected to provide a permanent beneficial effect to wildlife. In addition, the proposed parks and recreational trails are also expected to provide a permanent recreational benefit to the

public. The residential, commercial and recreational areas built in the development would provide a permanent benefit to the community.

#### **X. Findings**

a. The evaluation of the proposed action and alternatives was done in accordance with all applicable laws, executive orders, regulations, and agency regulations. The EIS and supporting documents are adequate and contain sufficient information to make a reasoned permit decision.

b. The selected alternative is the applicant's proposed project, with appropriate and practicable mitigation measures to minimize environmental harm and potential adverse impacts of the discharges on the aquatic ecosystem and the human environment. The applicant's proposed project, as mitigated by these conditions, is considered the environmentally preferred alternative under NEPA.

c. The discharge complies with the Section 404(b)(1) guidelines and is considered the least environmentally damaging practicable alternative, with the inclusion of appropriate and practicable general and special conditions in the permit to minimize pollution or adverse effects to the affect ecosystem.

d. Issuance of a Department of the Army permit is not contrary to the public interest, with the inclusion of special conditions in the permit, as prescribed by regulations published in 33 CFR Parts 320 to 330, and 40 CFR Part 320.

e. Preservation as compensatory mitigation for impacts to the on-site vernal pools within the Mather Core Recovery Area, in conjunction with establishment, restoration and enhancement is appropriate because:

(1) Vernal pools provide important functions within the watershed, including, but not limited to: habitat for federally listed threatened and/or endangered species; water filtration; and water storage;

(2) Vernal pools within the Mather Core Recovery Area are under continued threat of destruction or adverse modification, as this area has been designated for development by Sacramento County and the City of Rancho Cordova; and

(3) The preservation areas would be permanently protected through conservation easements.

f. The compensatory mitigation requirements for the proposed project are consistent with *Section IX(e)* of the Record of Decision for the Sunridge Properties project.

g. The compensatory mitigation identified in the special conditions, which consists of 1.88:1 on-site and off-site establishment, re-establishment and enhancement, and 2.47:1 on-site and off-site preservation, is sufficient to ensure no-net loss of aquatic resources functions and services for impacts to 27.90 acres of waters of the U.S.

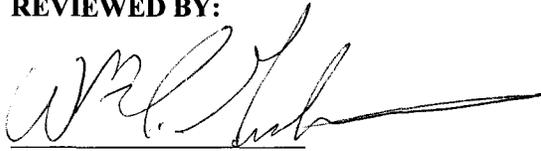
**PREPARED BY:**



Lisa M. Gibson  
Senior Project Manager  
California Delta Branch

6/12/12  
Date

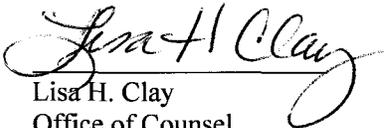
**REVIEWED BY:**



William H. Guthrie  
Senior Project Manager  
California Delta Branch

6/13/12  
Date

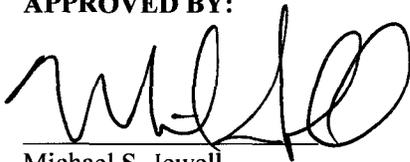
**REVIEWED BY:**



Lisa H. Clay  
Office of Counsel  
Sacramento District

6/13/2012  
Date

**APPROVED BY:**



Michael S. Jewell  
Chief, Regulatory Division

13 Jun 2012  
Date