

## **INFORMATION TO SUPPORT RECORD OF DECISION**

**ACTION ID: SPK-2004-00323**

**APPLICANT: Elverta Owners Group**

**PROJECT NAME: Elverta Specific Plan Project**

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 Final Environmental Impact Statement (FEIS), prepared by the U.S. Army Corps of Engineers, Sacramento District (Corps), for the Elverta Specific Plan (ESP) for compliance with the National Environmental Policy Act (NEPA), the purpose of the Elverta Specific Plan (ESP) is to construct a mixed use, mixed density master planned community in north-central Sacramento County. The ESP consists of approximately 1,763 acres and contains approximately 88.5 acres of waters of the United States, including wetlands. The ESP analyzed in the FEIS was approximately 1745 acres. The Proposed Action, the development of currently participating parcels within the Plan area, which constitutes approximately 649 acres of the 1,763-acre Plan area, involves the discharge of dredged or fill material into 29.12 acres of waters of the United States, including wetlands. The FEIS analyzed 27.57 acres of wetlands and other waters of the US (WOUS). As the engineering of the backbone infrastructure progressed, it was discovered that the backbone roads (i.e., Elverta, Loop, 16<sup>th</sup>, and Palladay) would require additional width for grading. This resulted in additional acreage to the Phase 1 footprint. In addition, the potential need of an interim waterline was added to the Phase 1 footprint. The increase of an additional 1.55 acres of proposed impacts to wetlands and other WOUS does not represent a substantial change to the scope of impacts analyzed in the EIS, therefore a supplement was not required. Development of participating parcels also includes roadway and other infrastructure improvements (Backbone Infrastructure).

The Proposed Action includes the Backbone Infrastructure which is intended to construct the ESP Backbone Infrastructure for all of the proposed individual development projects. The Backbone Infrastructure includes ±224.4 acres of road improvements and expansions, construction of Loop Road and Dry Creek Road, and a Drainage Master Plan (DMP) consisting of drainage corridors through the ESP area. The proposed Backbone Infrastructure involves the discharge of dredged or

fill material into 15.906 acres of waters of the United States under Section 404 of the Clean Water Act.

Additionally, the Proposed Action includes the Lial Trust Project and the Elverta 245 Project which involve constructing residential developments consistent with approved land uses of the ESP. The Lial Trust Project would contain a total of 125 approved dwelling units consisting of single-family residential (RD-6, 7) lots, and would require discharge of fill material into 0.457 acre of waters of the U.S. The Elverta 245 Project would contain a total of 682 single family dwelling units with a greater concentration of units in the medium density land categories and 155 RD-20 multifamily units. The Elverta 245 Project would require discharge of fill material into 2.740 acres of waters of the U.S. The remaining approximately 10 acres of impacts to waters of the U.S. are proposed for the other seven development projects listed in Table 1, below. It should be noted here that all of the proposed projects discussed in this ROD as well as the seven projects listed in Table 1, were included in the list of participating parcels at the time of the EIS, however, all of the project names, with the exception of Lial Trust, have been altered by the applicants, eg. Elverta 245 was previously referred to as Elverta Associates.

In the FEIS, the Corps explained that future development of the non-participating properties within the ESP area was analyzed at a program level and that development of participating parcels was analyzed at a project level. In order to evaluate the environmental effects of the Proposed Action as a whole and to give due consideration to impacts from full buildout and development within the overall ESP area, the Corps considered the environmental impacts of developing the entire ESP area in a manner generally consistent with the County's approved ESP even though the Corps is not currently processing any Department of the Army (DA) permit applications for development at the non-participating properties.

Complete development of the ESP participating parcels under the Proposed Action would involve the filling of approximately 29.12 acres of waters of the United State, including wetlands. As such, DA permits under Section 404 of the Clean Water Act are required for the Proposed Action.

## **I. Background**

At the request of the ESP Property Owners Group, the Sacramento County Board of Supervisors (Board) initiated a Specific Plan process for the SPA area in 1998. A draft land use plan, Specific Plan text and maps, and background reports were prepared in support of the ESP. In addition, a Draft Environmental Impact Report (EIR) and a Revised Draft EIR were prepared and circulated to satisfy the requirements of the California Environmental Quality Act (CEQA). The Final EIR was published by the Sacramento County Department of Environmental Review and Assessment (DERA) and certified on May 30, 2007. On August 8, 2007, the Board of Supervisors adopted the ESP, Community Plan Amendment, Zoning Ordinance Amendment, Rezones, and Financing Plan. Subsequent to the adoption of the ESP,

a Revised Drainage Master Plan and revised land use plan for the ESP were submitted to the County for review and approval. On July 30, 2014, the County determined these revisions constituted minor amendments as underlying land uses approved in 2007 were maintained.

On December 13, 2005, the Corps received 22 applications for a DA permit under Section 404 of the Clean Water Act to fill waters of the United States to develop individual properties within the ESP area, as well as an application to construct the backbone infrastructure for the ESP area. In April 2011, the applicants withdrew all of the applications in order to work with Sacramento County regarding the ESP. On October 17, 2011, the Corps received 13 applications for a DA permit under Section 404 of the Clean Water Act to fill water of the United States to develop individual properties within the ESP area, as well as an application to construct the backbone infrastructure for the ESP area. Since then, some of the properties have been combined to form 9 proposed developments instead of 13. The 10 pending DA permit applications within the ESP area are listed in the table below.

**Table 1. 10 Pending Applications for DA Permit**

Project Name	Corps Action ID	APN No.	Applicant
Elverta 59.5 North	200400571	202-0070-0015	Red Tail Acquisitions, LLC
Elverta 59.5 South	200600176	202-0080-053	Red Tail Acquisitions, LLC
Elverta 25	200500541	202-0080-019 202-0080-020 202-0080-058	Tony Gallas, Inc.
Lial Trust	200600173	202-0080-053	HalBear Enterprises
Elverta 136A	200600171	202-0070-013	RCH Group
Elverta 136B	200600169	203-0040-007 & 203-0040-008	RCH Group
Elverta 136C	200600172	203-0080-039	RCH Group
Elverta 78	200600167	203-0080-038	RCH Group
Elverta 245	199900593	202-0170-019 & 202-0170-024	Red Tail Acquisitions, LLC
Infrastructure	200400323	N/A	Elverta Owners Group

The Corps, determined an Environmental Impact Statement (EIS) would be prepared due to the potential for significant effects on biological resources, water quality, air quality, and traffic. Scoping for the EIS began on June 9, 2009, with publication of a Notice of Intent to Prepare an EIS in the Federal Register (74 FR 27292). Public scoping meetings were held on June 24, 2009, at Rio Linda Elverta Community Center, in Rio Linda, California. A scoping report was finalized in October 2009. The U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), Sacramento County, and Sacramento Metropolitan Air Quality Management District (SMAQMD) agreed to be cooperating agencies.

On December 21, 2012, a Draft Environmental Impact Statement (DEIS) was issued by the Corps. A Notice of Availability was published in the Federal Register on December 21, 2012, (77 FR 75632), and a public notice for the DEIS was issued by Sacramento District on December 21, 2012, for a 45-day public review period. A public meeting was held on January 16, 2013, at the Rio Linda Elverta Community Center in Rio Linda, California. During the January 16, 2013, public meeting, three (3) individuals provided verbal comments to the court recorder that were recorded and transcribed. During the DEIS public review period, fifteen (15) written comments were received.

The Corps issued the FEIS on July 31, 2015. A Notice of Availability was published in the Federal Register on July 31, 2015, (80 FR 45652). A public notice announcing the FEIS was issued on July 30, 2015. The comment period for the FEIS closed on August 31, 2015.

The EIS evaluated the environmental impacts of proposed development in the ESP area, as well as four on-site and four off-site alternatives. The ESP Backbone Infrastructure configuration remained constant across all alternatives addressed in the EIS for the ESP.

## **II. Project Purpose and Need**

**a. Purpose:** The purpose of the Proposed Action is to construct a large scale, mixed use, mixed density master planned community in north-central Sacramento County. The Proposed Action includes the ESP Backbone Infrastructure which involves constructing the ESP backbone infrastructure to facilitate transportation and drainage of the ESP area. The Proposed Action also includes the Lial Trust Project and the Elverta 245 Project which involve constructing residential developments consistent with approved land uses of the ESP.

**b. Need:** As described in the FEIS for the ESP, the Rio Linda/Elverta Community Plan identifies the need for development in the Rio Linda/Elverta area. The project is intended to assist in meeting the future needs for housing and accommodate projected population growth. In addition, the Sacramento County General Plan identifies the need for “an orderly pattern of land use that concentrates urban development, enhances community character and identity through the creation and maintenance of neighborhoods, is functionally linked with transit, and protects the County’s natural, environmental and agricultural resources.”

**III. Alternatives Considered:** A reasonable range of alternatives were considered in the FEIS for the Proposed Action. The alternatives evaluated include 4 on-site alternatives (including a No Corps Permit/No Action alternative) and 4 off-site alternatives. The EIS also identified those alternatives that were considered but rejected from further analysis (4 offsite alternatives, plus the 2005 Permit Application alternative and the Approved Specific Plan with Original Density alternative).

On July 28, 2016, the applicant submitted information regarding the practicability of ESP Backbone Infrastructure alternatives in light of the overall project purpose. This alternatives document was revised on November 20, 2017. The applicant also submitted alternatives information for the Lial Trust Project and Elverta 245 Project on March 3, 2016, and July 13, 2016, respectively.

## **EIS ESP Alternatives Considered**

### **Offsite Alternatives from the EIS**

Four offsite locations were evaluated as potential alternative locations for the Proposed Action. These included lands in southern Placer County (Placer Vineyards), southern Sutter County (Sutter Pointe), and northern Sacramento County (Panhandle and Natomas Joint Vision Area). However, after further analysis of these locations, all potential offsite locations were considered infeasible due to site constraints and/or inability to meet the ESP's purpose and need to provide development in north central Sacramento County. Specific constraints of offsite alternatives are discussed below.

Placer Vineyards is located within Placer County and Sutter Pointe is located within Sutter County; therefore, neither of these offsite alternatives would meet the project purpose of development within north central Sacramento County. The Panhandle is only 600 acres; therefore, it would not fulfill the project purpose of a large, mixed-use development. Though the Natomas Joint Vision Area (NJVA) could meet the project purpose, there are several factors that complicate development. The NJVA is located within the North Natomas Habitat Conservation Plan (HCP) and is subject to additional development fees as a result. The land is also owned by multiple entities that may not all be willing to sell. Additionally, the NJVA contains a variety of biological resources, including waters of the U.S., and federal and state listed species suitable habitat, which would be impacted if the proposed project was developed on this land.

### **Onsite Alternatives from the EIS**

#### **a. Applicant's Preferred Alternative (A)**

Alternative A was described in the EIS as the Applicant's Preferred Alternative. Alternative A proposes urban and agricultural residential uses at various densities, commercial uses, parks and open space, drainage/riparian corridors, detention, and major roadways. Alternative A would impact 29.12 acres of waters of the U.S., including wetlands. Alternative A would allow for development of 6,190 residential units at full build-out, compared with the 4,950 units identified in the locally approved Specific Plan (25% more units).

Alternative A (Proposed Action) satisfies the criteria established for the project purpose, is already approved by Sacramento County, can be constructed at a practicable cost, and allows for creation and enhancement of resources within multi-

purpose drainage and open space corridors, resulting in more diverse and higher quality habitat than currently exists in the ESP.

**b. Reduced Impact Alternative (B)**

Alternative B has larger drainage corridors than Alternative A and incorporates areas that would avoid development to reduce impacts to waters of the U.S. Alternative B would reduce impacts to waters of the U.S. to approximately 24.53 acres and avoid 4.59 acres of waters of the U.S. (16% of total). The engineering changes described on page one of this document also contributed to the increase in impacts for this alternative. Alternative B would allow for development of 6,189 residential units at full build-out.

Alternative B satisfied the criteria established for the project purpose and environmental impacts. However, the Alternative B does not meet the logistical and cost criteria. Appendix O of the FEIS includes the 404(b)(1) for Phase 1. Alternative B resulted in a 36% increase in total development cost per acre compared to the preferred alternative. This increase was considered impracticable and therefore did not meet the cost criteria. Alternative B would require re-entitlement of the ESP due to increased densities on the remaining developable land. Alternative B would require a Specific Plan Amendment, an amendment to the EIR, a new Drainage Master Plan, and more community meetings. In addition, the land use modification required by Alternative B does not meet the land use standards set by the County or the Elverta – Rio Linda Community, which in turn does not meet the logistical criteria.

**c. Approved Specific Plan with 25% Density Bonus Alternative (C)**

Alternative C would increase residential density by 25% compared with the Approved Specific Plan analyzed in the EIR, from 4,950 units to 6,190 at full buildout. Alternative C differs from Alternatives A and B in that the drainage/riparian corridors are substantially different, as they would be smaller and more trapezoidal but loss of waters of the U.S. would be the same as Alternative A. Alternative C would impact 29.12 acres of waters of the U.S. Alternative C would allow for development of 6,190 residential units at full build-out.

Alternative C satisfied the criteria established for the project purpose, as well as logistical and cost criteria. However, Alternative C does not replace or enhance or allow space for creation and enhancement of resources within multi-purpose drainage and open space corridors. Natural drainage corridors are realigned in a concrete trapezoidal manner to coincide with parcel ownership boundaries. Therefore, Alternative C is not the environmentally preferred alternative compared with Alternative A.

**d. No Permit (No Action) Alternative (D)**

Alternative D avoids all jurisdictional wetlands and other waters of the U.S., and assumes a 25-foot buffer around all wetland swales and a 10-foot buffer around all other jurisdictional waters. Alternative D would not require a Corps Section 404

permit, as no fill would be placed in jurisdictional waters. Approximately 70% of the land developed under Alternative A would need to be avoided to achieve this alternative. Alternative D would allow for only 530 residential units on 547.3 acres within participating parcels.

Alternative D does not meet the project purpose and is impracticable due to logistics and cost because of the substantially reduced developable acres and additional entitlements required.

**e. Determination of Practicable Alternatives:** We have determined that Alternatives B and D would not meet the overall project purpose and/or are not practicable due to cost, logistics, and/or existing technology. Specifically, Alternatives B and D would require re-entitlement of the ESP and a Specific Plan Amendment to the EIR. We have determined that Alternative C and the Proposed Action would both meet the overall project purpose and are practicable.

**f. Environmentally Preferred Alternative:** The environmentally preferred alternative is the Proposed Action, as Alternatives B and D do not meet the overall project purpose and practicability, and Alternative C does not replace or enhance allow space for creation and enhancement of resources within the multi-purpose drainage and open space corridors. Though Alternative C has similar impacts to waters of the U.S., the Proposed Action allows for greater environmental benefit through drainage and open space corridor improvements.

### **Alternatives Considered but Rejected**

#### **Prior Site Plans**

The 2005 Permit Application Alternative and the Approved Specific Plan with Original Density alternative were both rejected due to infeasibility of both plans and incompatibility with current participating property configurations and applicable laws and regulations. The applicant withdrew the applications in April 2011, and resubmitted application in October 2011, without these two alternatives.

### **Backbone Infrastructure, Lial Trust, and Elverta 245 Alternatives Considered**

The ESP Backbone Infrastructure configuration remained constant across all alternatives addressed in the EIS for the ESP. A similar configuration, with slight modification along the west side of Elverta Road, was used in the alternatives analysis for the backbone infrastructure. Multiple alternatives were considered for two aspects of the Backbone Infrastructure: bridge locations and drainage corridors. The alternatives for bridges and drainage corridors were evaluated separately, as any bridge alternative could be combined with any drainage corridor alternative. Bridge alternatives were analyzed as part of the alternatives analysis for the Lial Trust Project and Elverta 245 Project. Thus, these two projects have been

incorporated into the current analysis and record of decision. These alternatives aren't specifically discussed in the FEIS. Additional alternatives information was submitted after the FEIS was completed based on the Corps' determination that the individual projects composing the Proposed Action required an additional degree of alternatives analyses, on a project by project basis to review the potential for more avoidance and minimization. The applicants submitted additional alternatives information for each of the three projects, Backbone Infrastructure, Lial Trust and Elverta 245. However, these additional alternatives analyses were not intended to make large-scale changes that would require or warrant a supplemental EIS.

### **Onsite Bridge Location Alternatives**

Since all waters of the U.S. within the onsite drainage corridors are proposed to be completely impacted as they are planned to be re-contoured to meet current onsite drainage requirements, it is not practicable to place CON/SPAN® bridges (a precast modular bridge system) within the drainage corridors as this would provide no avoidance. One bridge is associated with the Lial Trust Project and two are associated with the Elverta 245 Project. The alternatives for these two projects are described below and included the analysis of CON/SPAN® bridges in three locations. The fourth bridge is not associated with any of the development projects and was analyzed on its own as part of the backbone infrastructure.

There are four water crossing alternatives considered in this analysis that are not associated with the backbone infrastructure drainage corridors but are part of the backbone infrastructure. The four crossings are summarized below.

#### **a. Lial Trust Bridge Alternative (avoid central wetland features)**

This alternative was described in the "Information to Support Clean Water Act Section 404(b)(1) Alternatives Analysis for the Lial Trust Project." This alternative would avoid the central wetland features (seasonal wetlands and vernal pool) with a 50-foot buffer, creating an open space preserve corridor across the center of the project site. In addition, a portion of the Loop Road (part of the ESP Phase 1 Backbone Infrastructure) would need to be constructed to avoid the seasonal wetland. A CON/SPAN® bridge would be required as part of Loop Road to avoid impacts to the portions of the seasonal wetlands within the ESP Phase 1 Backbone Infrastructure. This alternative would impact 0.039 acres of waters of the U.S. This alternative would result in 99 dwelling units. Construction of a CON/SPAN® bridge and avoidance of the wetland features would increase infrastructure cost per unit by 53 percent and cause the loss of approximately 21 percent of the buildable space on the Lial Trust Project. Based on these findings this design was considered impracticable due to substantial cost increases.

#### **b. Lial Trust Project Preferred Alternative**

The Lial Trust Project preferred alternative would impact 0.457 acres of waters of the U.S. and does not include a CON/SPAN® bridge. This alternative contains a total of

125 single-family residential lots on 20 acres, and meets the project purpose outlined in the FEIS. It is the only practicable alternative for the Lial Trust Project.

**c. Elverta 245 Alternative 1**

On-site Alternative 1 attempts to reduce impacts to Waters of the U.S. by placing a 50-foot buffer around one of the central wetland/swale systems consisting of several vernal pools and wetland swales. This alternative would establish an approximately 14-acre open space preserve, consisting of 0.675 acre of preserved waters of the U.S. This alternative would impact 2.206 acres of waters of the U.S. This alternative would reduce the amount of residential units to 589 compared to 682 of residential units under the preferred alternative. Under this alternative three CON/SPAN® bridges would be required to avoid and minimize impacts to waters of the U.S., two of which would be required for the ESP Phase 1 Backbone Infrastructure (Loop Road and Dry Creek Road).

Alternative 1 meets the project purpose and minimizes environmental impacts. However, to maintain the functions and services of the preserved wetlands, treatment basins would have to be constructed. Based on the existing topography of the site, these basins would require pumping. In a letter dated May 13, 2016, Sacramento County DWR has stated they will not approve any project that requires pumping of treatment basins if a gravity-driven alternative is available; therefore, this alternative could not be approved and is considered impracticable due to logistical constraints. Additionally, this alternative would result in a loss of 93 (approximately 14 percent) dwelling units compared to the preferred alternative. The infrastructure cost burden for Alternative 1 is approximately 16 percent higher than the preferred alternative. Given these substantial logistical and cost constraints, Alternative 1 is not considered a practicable alternative.

**d. Elverta 245 Alternative 2**

Alternative 2 attempts to reduce impacts to waters of the U.S. by placing a 50-foot buffer around one of the central wetland system consisting of several vernal pools and wetland swales and a 50-foot buffer around two larger vernal pools north of the central wetland system. This alternative would establish a 19.5-acre open space preserve consisting of 1.305 acres of preserved waters of the U.S. and would impact 1.576 acres of waters of the U.S. This alternative would reduce the amount of dwelling units to 559 compared to 682 of residential units under the preferred alternative. Under this alternative three CON/SPAN® bridges would be constructed to avoid waters of the U.S., two of which would be required for the ESP Phase 1 Backbone Infrastructure (Loop Road and Dry Creek Road).

Alternative 2 meets the project purpose and minimizes environmental impacts. However, to maintain the functions and services of the preserved wetlands, treatment basins would have to be constructed. Based on the existing topography of the site, these basins would require pumping. Sacramento County DWR has stated

they will not approve any project that requires pumping of treatment basins, therefore this alternative could not be approved and is considered impracticable due to logistical constraints. Additionally, this alternative would result in a loss of 123 (18 percent) dwelling units compared to the preferred alternative. The infrastructure cost burden for Alternative 2 is approximately 20 percent higher than the preferred alternative. The infrastructure cost burden for Alternative 2 is approximately 23 percent higher than the preferred alternative. Given these substantial logistical and cost constraints, Alternative 2 is not considered a practicable alternative.

**e. Elverta 245 Alternative 3**

Alternative 3 would preserve a large vernal pool with a 50-foot buffer, which is located in the southeastern corner of the project site. However, in an attempt to design this alternative, it was determined that the preservation of this vernal pool was not practicable. If preserved, the vernal pool would be hydrologically isolated from other waters and would be surrounded by development, which would most likely substantially degrade the functions and services of the wetland. In order to maintain the functions and values of the vernal pool, the preserve would most likely need to be substantially larger than that provided by a 50-foot buffer. To do so would require additional costs for the loss of developable land. In order to maintain the functions and values of the vernal pool, the preserve would need to be provided with correct hydrology, which would result in a significant increase in infrastructure costs. Even if the alternative could maintain hydrology, this preserve would be 1.18 acre. Even if the alternative could maintain hydrology needed to sustain the wetland, this preserve would be approximately an acre in size. Protecting such a small isolated open space preserve under a conservation easement and/or deed restriction in perpetuity would be considered impracticable. This alternative was not analyzed further.

**f. Elverta 245 Project Preferred Alternative**

The preferred alternative for the Elverta 245 Project would impact all of the approximately 2.740 acres of waters of the U.S. There would be no avoidance. The development would consist of 682 medium density residential lots and 155 multifamily dwelling units, along with parks and open space on 248 acres. This alternative is the only practicable Elverta 245 Project alternative.

**g. Bridge Alternative 4**

The applicant proposed an alternative with a CON/SPAN® bridge located on the Loop Road as a component of the backbone infrastructure. Use of a bridge at this location would not result in loss of lots from any of the participating properties. Therefore, cost per unit of infrastructure would not increase. Additionally, upstream and downstream waters connected to Crossing 4 are not proposed for impact under the current applications. Therefore, this alternative was considered a practicable

alternative to minimize impacts to waters of the U.S. This is the only practicable CON/SPAN® bridge location alternative.

**h. Determination of Practicable Alternatives:** We have determined that all CON/SPAN® bridge alternatives, other than the proposed Bridge Alternative 4, are not practicable due to cost and/or logistics. Specifically, all of the alternatives other than Alternative 4 would appreciably reduce the developable acres of participating properties and increase infrastructure construction costs. We have determined that the CON/SPAN® bridge described above as Bridge Alternative 4 is the only alternative that both meets the overall project purpose and is practicable.

**i. Environmentally Preferred Alternative:** The environmentally preferred alternatives are the Bridge Alternative 4 alternative, the Lial Trust Project and Elverta 245 Project preferred alternatives. There are no other alternatives that both meet the overall project purpose and are practicable.

### **Onsite Drainage Corridor Alternatives**

**a. Onsite Drainage Corridor Alternative (1):** The Onsite Drainage Corridor Alternative (1), a gravity driven drainage system, would impact 15.906 acres of waters of the U.S. (10.827 acres for the drainage corridors, 0.202 acre for utilities, and 4.876 acres for roads). These impacts include 3.465 acres of vernal pools, 0.578 acre of seasonal wetlands, 7.696 acres of wetland swale, 0.036 acre of seep, 0.320 acre of channel, 0.382 acre of ditch, and 3.428 acres of pond. It would avoid a total of 0.049 acre of waters of the U.S. due to utilization of a free span bridge over one wetland swale.

The Onsite Drainage Corridor Alternative (1) would align proposed drainage corridors with the area's existing drainage patterns, incorporate these multiple-use corridors into open spaces, and establish and enhance riparian and seasonal wetland habitat within these corridors. The increased width associated with the corridors is anticipated to provide for increased functionality that would be able to accommodate increased drainage flows, higher value habitat, and recreational opportunities. However, construction of these drainage corridors is not considered mitigation for the proposed impacts.

**b. Avoid Corridors- Detention Basins (2):** Alternative 2 would avoid impacts to the existing drainage corridors by constructing detention basins to detain and treat stormwater throughout the ESP before discharging into the existing natural drainageways. Alternative 2 would require the use of water quality treatment detention basins and pump stations to treat and pump stormwater from the detention basins into the existing drainageways. Alternative 2 provides 100-year flood protection; however, due to public health and safety concerns and increased maintenance and operating costs, the County DWR (May 13, 2016, letter) will not approve plans requiring pumping if there is a gravity-driven alternative available.

Alternative 3 would result in the loss of approximately 10 percent of the developable acres (53 acres) and 18 percent of the commercial/office associated with the ESP. Alternative 3 would result in sizable cost increases due to the installation of multiple pumps and associated equipment, and ongoing operations and maintenance costs associated with the basins and pumping systems. This alternative was eliminated based on the need of pumps. Even though the cost was discussed it was never quantified.

**c. Avoid Corridors- Berms (3):** Alternative 3 would reduce impacts to the natural drainage corridors by placing berms adjacent to the corridors and diverting stormwater into small detention basins for treatment. Within the ESP, the flow lines of the drainage system (i.e., detention basin depth) must terminate considerably lower than the depth of the stormwater elevation in the existing natural drainages. Exacerbating the issue, the profile data indicate that construction of the berms would raise the water surface elevations during storm conditions in the natural drainageways by two to four feet in the middle drainage, and by one to four feet in the southern drainage. Therefore, the only way to empty the receiving detention basins is by the use of pumps. Due to public health and safety concerns and increased maintenance and operating costs, the County DWR will not approve plans requiring pumping if there is a gravity-driven alternative available. This alternative was eliminated based on the need of pumps. Even though the cost was discussed it was never quantified.

Alternative 3 would result in the loss of 10 percent of the developable acreage (49 of 509 acres) and 45 percent of the commercial/office acreage. Further, Alternative 3 would necessitate construction of Federal Emergency Management Agency (FEMA)-certified 100-year flood berms, which would result in additional costs from construction, the needed soil and compaction testing required before and after construction, third-party maintenance, and annual recertification.

**d. Avoid Corridors- Parallel Channels (4):** Alternative 4 would avoid impacts to the natural drainageways by constructing drainage channels to convey stormwater parallel to the existing drainageways. The proposed parallel channels vary in width from 210-280 feet on each side of the middle drainage and from 80-290 feet on each side of the southern drainage. These widths do not include a 50-foot upland buffer from the existing drainages. Given the width of the parallel channels, several detention basins will still be required to treat urban runoff. Alternative 4 would require the use of water quality treatment and pump stations to treat and pump stormwater from the detention basins into the parallel channels and/or the natural drainages. As stated above, the County DWR will not allow pumping of detention basins and does not approve plans requiring pumping if a gravity-driven alternative is available.

Alternative 4 would result in the loss of 32 percent of the developable acres (161 acres) and approximately 73 percent of the commercial/office property associated with the ESP.

**e. Determination of Practicable Alternatives:** We have determined that the Detention Basins (2), Berms (3), Parallel Channels (4) alternatives (including the No Action Alternative, [No Permit (No Action) Alternative (d)], see page 5, above) other than the Onsite Drainage Corridor Alternative (1), are not practicable due to cost, logistics, and/or existing technology, although alternatives (2),(3), and (4) do meet the overall project purpose. Specifically, all of these alternatives would require pumping of stormwater to off-site facilities, which Sacramento County DWR (May 13, 2016, letter) stated they will not allow if a gravity-driven alternative is available. Additionally, all of the alternatives (except Alternative 1) would seriously reduce the developable acres and increase construction costs. We have determined that only the Proposed Action (Alternative 1) would meet the overall project purpose and is practicable.

**f. Environmentally Preferred Alternative:** The environmentally preferred alternative is the Onsite Drainage Corridor Alternative (1), as no other alternatives meet the overall project purpose and are practicable, though they would have lesser impacts to the aquatic environment.

#### **IV. Comments on the Final Environmental Impact Statement:**

**a. U.S Environmental Protection Agency Region IX:** The United States Environmental Protection Agency (USEPA) commented that their February 4, 2013, comment letter rated the Draft EIS as Environmental Concerns – Insufficient Information (EC-2); however, these issues were sufficiently addressed in the Final EIS. USEPA also commented that the Final EIS and Applicant’s Section 404(b)(1) Alternatives Information do not provide the information needed for the evaluation of alternatives under the Section 404(b)(1) Guidelines; for this reason, the USEPA stated it is unable to fully evaluate whether the Proposed Action may be the Least Environmental Damaging Practicable Alternative (LEDPA).

**Corps Response:** As noted in the USEPA comment letter, the Applicant’s Section 404(b)(1) Alternatives Information report was provided to the USEPA. Additional information has been provided by the Applicant to the Corps to support a determination of the LEDPA in the Record of Decision. The Corps forwarded this information to the EPA.

**b. Federal Emergency Management Agency:** The Federal Emergency Management Agency (FEMA) requested that the Corps review the current effective countywide Flood Insurance Rate Maps (FIRMs) for the County of Sacramento (Community Number 060262), revised June 16, 2015. FEMA also commented that Sacramento County is a participant in the National Flood Insurance Program (NFIP) and included a summary of NFIP floodplain management building requirements.

**Corps Response:** The Corps has reviewed the current effective FIRMs for the project site and vicinity. The maps revised June 16, 2015, are located west of the project site area. The effective maps for the project site are dated

August 16, 2012, and consistent with the areas identified in the Final EIS. There are no designated areas within the 100-year floodplain on the participating parcels.

**c. Jeffrey Pemstein, RCH Group:** RCH commented on behalf of the Elverta Specific Plan Owners Group (Applicant) regarding the definition of participating parcels, the evaluation of effects to potential suitable habitat for vernal pool crustaceans, and proposed compensation for effects to endangered species. In email correspondence dated February 14, 2018, RCH stated they will forgo a formal response from the Corps as these issues will be addressed in the Record of Decision.

**Corps Response:** Following the release of the Final EIS, the Corps has been working with the Applicant and U.S. Fish and Wildlife Service on Endangered Species Act Section 7 consultation and the requirements for Corps compensatory mitigation. The Corps agrees that the issues have been addressed in coordination with the Applicant and final mitigation requirements will be reflected in the Record of Decision.

**d. Russ Hood:** The commenter lives on land bordering the Elverta Specific Plan and expressed opposition to urbanization of the rural community.

**Corps Response:** As discussed in Section 1.4 of the Final EIS, increased housing needs have been identified as part of planning efforts addressed in the Regional Housing Needs Plan (RHNP), Sacramento County General Plan and Rio Linda/Elverta Community Plan. The Elverta Specific Plan guides land use development within the Plan area, including housing density, and was reviewed and approved by Sacramento County. It should be noted that the Corps is not proposing to build the project.

**e. Russ Hood:** The comment questioned the role of the Corps in the urbanization of the area.

**Corps Response:** Please refer to Response to Comment “d.”, above. It should be noted that the Corps is not proposing to build the project. The Corps’ role was to review Section 404 permit applications submitted by the project applicants to develop specific parcels consistent with the Elverta Specific Plan. The consideration of authorization of the permit applications constitutes a major federal action, requiring preparation of an EIS, consistent with the National Environmental Policy Act.

**f. Russ Hood:** The comment raised concern that proposed housing would increase impervious surfaces which could alter runoff and lead to flooding.

**Corps Response:** Please refer to Section 4.10.1, Impact 10.2, of the Final EIS regarding potential changes in drainage and flooding patterns. A Storm Drainage Master Plan for the Specific Plan was revised and approved by the

Sacramento County Board of Supervisors in 2013 and included in the FEIS as Appendix A. The Drainage Master Plan includes modeling demonstrating that the proposed drainage improvements would adequately handle stormwater flows.

**g. Russ Hood:** The comment suggested first improving the two-lane narrow roads that would handle increased traffic resulting from the project. Additionally, the commenter stated that he prefers Dry Creek Road (vs. 16th Street) as the main north-south route for project traffic.

**Corps Response:** Please refer to Section 4.14.1 of the Final EIS. Implementation of Mitigation Measures 14.1a-14.1e would improve access on two-lane roads and propose widening of Baseline Road, Elverta Road, Watt Avenue, Dry Creek, and Raley Boulevard. It is noted that the feasibility of these improvements is uncertain for reasons outside of Corps jurisdiction (e.g. acquisition of necessary right-of-way, lack of authority, lack of secure funding). Determination of ultimate roadway capacity is reviewed and approved by the County and would be consistent with the Elverta Specific Plan and Circulation Element of the County General Plan. As shown in the County General Plan Circulation Element, 16th Street is proposed to serve as the main arterial through the Specific Plan.

**h. Russ Hood:** The comment raised concerns regarding higher than normal levels of hexavalent chromium in local well water and suggests sampling water with small test wells in the project area.

**Corps Response:** As discussed in Section 4.13.1 of the Final EIS, municipal water service for the Elverta Specific Plan area would be provided by the Rio Linda/Elverta Community Water District through groundwater wells. Additionally, future surface supplies would be introduced from the RiverARC project, supplying surplus Sacramento River water. In January 2016, the District Board adopted a Water Supply Strategy, which provides for both short- and long-term water service within the District Boundaries. As described in the Water Supply Study, the District monitors and maintains its groundwater wells for health safety standards, in compliance with all State of California Title 22 Drinking Water Standards and the Sacramento Groundwater Authority.

**i. Russ Hood:** The commenter stated his preference that the project not move forward; however, if the project moved forward, it should cause the least amount of harm to current and future residents.

**Corps Response:** Comment noted. It should be noted that the Corps is not proposing to build the project. The Corps will consider the findings of the Final EIS regarding environmental consequences and make a series of factual determinations regarding the LEDPA in the Record of Decision.

**j. Mark and Nancy Pheatt:** The comment suggested correcting the EIS to state that Mitigation Measure 9.4, as well as any mitigation measure that incorporates LA-5, apply only to APN 202-0070-020.

**Corps Response:** Comment noted. Consistent with the County's adopted Mitigation Monitoring and Reporting Program (MMRP) for the Elverta Specific Plan, Mitigation Measure 9.4 applies only to APN 202-0070-020.

**k. Mark and Nancy Pheatt:** The comment suggested that the EIS should conclude that the Monroe Landfill poses no environmental or health hazard based on the findings from the Regional Water Quality Control Board, dated August 28, 2012.

**Corps Response:** The letter from the Regional Water Quality Control Board is noted. The EIS notes in Section 4.9 that methane and groundwater contamination were tested previously in 2004 by Jacobson Helgoth Consultants (JHC) and JHC concluded that risks associated with impacts to the water supply are low.

**l. Mark and Nancy Pheatt:** The commenter asked how they will know when Monroe Landfill Mitigation Measures in the EIS are corrected to reflect the change in land use policies LA-5 and LA-6.

**Corps Response:** See Response to Comment "j." above regarding clarification in the Record of Decision. The Record of Decision will be posted on the Corps Sacramento District website.

**m. Mark and Nancy Pheatt:** The commenter asked if there will be gas monitoring wells installed on the perimeter of the landfill property lines rather than adjacent properties, as required by state regulations and recommended by JHC Consultants in their June 2004 report.

**Corps Response:** The landfill property is not a participating parcel as no Section 404 permit applications have been submitted for development on this parcel. As indicated by the Central Valley Regional Water Quality Control Board (CVRWQCB) letter dated August 28, 2012, because the waste has been in place for over 50 years, it is not anticipated that gas or groundwater concentrations have increased since the 2004 sampling event where they were detected below regulatory limits. However, as described in Mitigation Measure 9.4 of the Final EIS, prior to any future development on APN 202-0070-020, a gas assessment would be conducted and protection from landfill gas would be provided if deemed necessary.

**n. Mark and Nancy Pheatt:** The comment stated that the landfill was operated by a subordinate, dependent district of Sacramento County and that Sacramento County Environmental Management Department is in charge of enforcing landfill clean-up. The comment suggested this is a conflict of interest that the EIS needs to address.

**Corps Response:** This landfill property is not a participating parcel as no Section 404 permit applications have been submitted for development on this parcel. Additionally, as indicated by the commenter, and the August 28, 2012, CVRWQCB letter, the landfill does not present an environmental health risk. While Sacramento County Environmental Management Department may enforce clean-up actions, other agencies (CVRWQCB and/or the Department of Toxic Substances Control) provide oversight when an environmental risk or health risk is present.

**o. Mark and Nancy Pheatt:** The comment stated that groundwater flows from northeast to southwest, passing under the commenter's property before passing under the landfill.

**Corps Response:** The commenter is referring to statements and figures in the 2004 Jacobson Helgoth Consultants study. The statement and conclusions regarding groundwater movement do not appear in the EIS; therefore, no correction is necessary.

**p. Mark and Nancy Pheatt:** The commenter asks how they would know when the EIS has been corrected to reflect groundwater findings.

**Corps Response:** See Response to Comment "j." above, no correction is necessary.

**q. Mark and Nancy Pheatt:** The comment asked if the "first phase" refers to development by all the currently participating parcels or just the first one.

**Corps Response:** As described in Section 1.8 of the Final EIS, the initial phase refers to development of all participating parcels.

**r. Mark and Nancy Pheatt:** The commenter asked when the County or Applicant will acquire their property, as infrastructure passes through it.

**Corps Response:** The commenter's property (APN 202-0070-026) does not lie within the participating parcels or initial infrastructure improvements as shown on Figure 2-1a of the Final EIS. Per the updated Elverta Specific Plan Drainage Master Plan, adopted by the Sacramento County Board of Supervisors in 2013, development of the participating parcels will not require development of drainage improvements on non-participating parcels. As such no acquisition is currently proposed. This property lies within the proposed drainage system improvements for the full Specific Plan as shown in Figure 2-1b of the Final EIS. Whether the County determines it necessary to acquire the property at a future date, due to surrounding development on other non-participating parcels, is outside of the scope of the EIS and Corps jurisdiction.

**s. Vivian Johnson:** The commenter expressed opposition to the project because the Rio Linda Elverta Community Water District lacks a surface water source, properties have been rezoned without landowner consent, and the population will increase in the rural area.

**Corps Response:** As discussed in Section 4.13.1 of the Final EIS, municipal water service for the Elverta Specific Plan area would be provided by the Rio Linda/Elverta Community Water District through groundwater wells. Additionally, future surface supplies would be introduced from the RiverARC project. Water Supply Assessments for the project concluded that sufficient and reliable water supplies would be available to serve the water demands of the project in addition to the public water system's existing and planned future uses.

As discussed in Section 1.4 of the Final EIS, increased housing needs have been identified as part of planning efforts addressed in the Regional Housing Needs Plan (RHNP), Sacramento County General Plan and Rio Linda/Elverta Community Plan. The Elverta Specific Plan and accompanying zoning guide land use development within the Plan area, including housing density, and were reviewed and approved by Sacramento County. It should be noted that the Corps is not proposing to build the project but is reviewing Section 404 permit applications for development of the participating parcels.

**t. Vivian Johnson:** The comment raised concerns regarding flooding downstream to the west of the project and provisions for private wells past the 500-foot perimeter.

**Corps Response:** Refer to Response to Comment "f." above, regarding downstream flooding. The Drainage Master Plan includes modeling demonstrating that the proposed drainage improvements would adequately handle stormwater flows.

As discussed in Section 4.13.1 of the Final EIS, municipal water service for the Elverta Specific Plan area would be provided by the Rio Linda/Elverta Community Water District subject to the groundwater management requirements for protecting the sustainable yield of the North Area groundwater basin as set forth in the Water Forum Agreement and Rio Linda/Elverta Community Plan (RLECP) Policy PF-8. RLECP Policy PF-8 is intended to protect and regulate the use of groundwater in this area. In January 2016, the District Board adopted its Water Supply Strategy, which provides for both short- and long-term water service within the District Boundaries. Additionally, future surface water supplies would be introduced from the RiverARC project to reduce groundwater reliance.

**u. Vivian Johnson:** The comment raised concerns regarding traffic on Elverta Road resulting from increased development and suggests widening the road to four lanes.

**Corps Response:** Please refer to Comment “g.” above, regarding Elverta Road widening. Mitigation 14.1b in Section 4.10.1 of the Final EIS proposes to widen Elverta Road from SR 99 to Watt Avenue from two to four lanes. It is noted that the feasibility of these improvements is uncertain for reasons outside of Corps jurisdiction (e.g. acquisition of necessary right-of-way, lack of authority, lack of secure funding). Determination of ultimate roadway capacity is reviewed and approved by the County and would be consistent with the Elverta Specific Plan and Circulation Element of the County General Plan.

**v. Vivian Johnson:** The comment stated that Dry Creek road should not be used as the main north-south route for development as it passes four schools. The commenter suggests using 16th street as the main route and building a bridge over the creek.

**Corps Response:** As shown in the County General Plan Circulation Element, 16th Street is proposed to serve as the main arterial through the Specific Plan.

**w. Vivian Johnson:** The comment raised concerns regarding the effect of proposed development on services, including law enforcement, and the effect on the communities of Rio Linda and Elverta.

**Corps Response:** Please refer to Section 4.13.1 of the Final EIS regarding public services. The proposed development would contribute to the Sacramento County General Fund, which funds the Sheriff’s Department, through increased property tax and sales tax collection. Additionally, proposed development would contribute to the funding of fire protection and emergency medical response through property taxes and impact/mitigation fees. The Elverta Specific Plan guides land use development within the Plan area, including housing density, and was reviewed and approved by Sacramento County. It should be noted that the Corps is not proposing to build the project but is reviewing Section 404 permit applications for development of the participating parcels.

**x. Vivian Johnson:** The comment stated September 18th is not an additional 30 days to comment from August 31st.

**Corps Response:** Some respondents were provided additional time to submit comments and all comments received prior to publishing the Record of Decision have been considered for substantive issues.

## **V. Consideration of Applicable Laws and Policies**

**a. National Environmental Policy Act (NEPA):** The Proposed Action is in compliance with NEPA. The DEIS and FEIS for the entire ESP was completed to evaluate a reasonable range of alternatives and the direct, indirect, and cumulative

effects associated with four (4) alternatives. The Corps followed the NEPA process identified in 40 CFR 1500, 33 CFR 230, and 33 CFR 325, Appendix B, including noticing and timeline requirements, to produce a DEIS and FEIS that disclose to the public the probable impacts of each alternative, taking into account mitigation. The FEIS is being utilized to make a permit decision on the Proposed Action. All of the alternatives information contained in this analysis aren't specifically discussed in the FEIS. Additional alternatives information was submitted after the FEIS was completed based on the Corps' determination that the individual projects composing the Proposed Action required an additional degree of alternatives analyses, on a project by project basis to review the potential for more avoidance and minimization. The applicants submitted additional alternatives information for each of the three projects, Backbone Infrastructure, Lial Trust and Elverta 245. However, these additional alternatives analyses were not intended to make large-scale changes that would require or warrant a supplemental EIS.

**b. Section 401 of the Clean Water Act Section 401 of the CWA:** The Proposed Action is in compliance with Section 401 of the CWA. The Water Quality Certificate/Waiver (WQC/W) was issued on March 14, 2016, and amended on March 21, 2016; these documents are included in Appendix C to this Record of Decision. Pursuant to 33 U.S.C. 1341(d), special conditions of the Section 401 WQC/W will be added as a special condition of any DA permit.

**c. Endangered Species Act of 1973 (ESA):** The Proposed Action is in compliance with Section 7 of ESA. Chapter 4.4 of the FEIS identifies the impacts of the Proposed Action on Federally listed threatened and/or endangered species. On September 19, 2017, the U.S. Fish and Wildlife Service (USFWS) issued a Biological Opinion (BO) (*USFWS # 08ESMF00-2010-F-0621-3*) for proposed impacts to vernal pool fairy shrimp (*Branchinecta lynchi*) and giant garter snake (*Thamnophis gigas*). Compliance with the BO will be added as a special condition of any DA permit. The BO is located in Appendix B to this Record of Decision.

**d. Fish and Wildlife Coordination Act (FWCA):** The Proposed Action is in compliance with the FWCA. Chapter 3.4 of the Final EIS identifies the impacts of the Proposed Action on fish and wildlife species. The Corps has worked with the USFWS on the Proposed Action, including meetings to obtain input, and providing a copy of the FEIS. During preparation of the FEIS, the Corps requested that USFWS be a cooperating agency. USFWS did not provide comments on the DEIS for compliance with the Fish and Wildlife Coordination Act.

**e. Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA):** The Proposed Action is in compliance with the MSFCMA: Chapter 4.4 of the FEIS identifies the impacts of the Proposed Action on essential fish habitat. The Proposed Action would not result in any adverse effects to EFH, as the site is not located in or near EFH.

**f. Section 106 of the National Historic Preservation Act (NHPA):** The Proposed Action is in compliance with Section 106 of the NHPA. Chapter 4.6 of the FEIS identifies impacts of the Proposed Action on cultural resources.

The Corps has determined that the Proposed Action would have no effect to resources listed on or eligible for listing on the National Register of Historic Places, because none of the historical or archeological resources found on-site meet the National Register Criteria. The Corps initiated consultation under with the State Historic Preservation Officer (SHPO) on April 2, 2013. We received a request for additional information on June 11, 2014. We provided the requested information on September 2, 2014. We received no response. The Corps contacted SHPO in February 2015, requesting a response. None was received. The District's cultural resources staff specialist concluded the Corps had provided sufficient time for the SHPO to provide a response. On July 8, 2015, the Corps concluded Section 106 for the ESP, Phase 1, was complete.

**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 11988: Floodplain Management:** Approximately 10 acres of the proposed action is located within the FEMA 100-year floodplain. A small portion of a proposed drainage corridor in the southwest corner of the project, as well as a small portion of Elverta Road, are located within the floodplain. No housing or other facilities would be located within the floodplain, therefore, the proposed project would have no impacts to the floodplain.

**i. Executive Order 13175: Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians:** The Proposed Action is in compliance with Executive Order 13175. The Corps initiated tribal coordination in 2000, with letters sent to a number of groups and individuals in the Sacramento area who were thought to have knowledge and interest in the resources in the Plan area. An information request was sent by Peak & Associates to the Native American Heritage Commission (NAHC) on February 12, 2008, and their reply received on February 19, 2008 noted that no resources listed as Sacred Lands were identified in the project vicinity. Letters and emails were sent to the contacts recommended by the NAHC. Follow-up emails and telephone calls between Peak & Associates and the NAHC contact list on May 5, 2008, revealed no additional knowledge regarding cultural sites in the project area. Documentation of all Native American coordination is located in the administrative record.

**j. Title VI of the Civil Rights Act and Executive Order 12898:**

**Environmental Justice:** The Proposed Action is in compliance with Title VI of the Civil Rights Act and Executive Order 12898. Chapter 4.7 of the FEIS identifies the impacts of the Proposed Action on environmental justice. 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. Further, the Proposed Action is not located within a mile of any “low income” populations.

**VI. Consideration of Mitigation Measures:** The FEIS 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, such as those associated traffic, air quality, and noise. Many of the mitigation measures are requirements of the local land use agency (County of Sacramento). As such, these mitigation measures are enforced by the County of Sacramento 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 are identified in Section VIII, and take into account the mitigation measures identified in Chapters 4.4, 4.5, 4.6, and 4.10 of the FEIS, and also include additional conditions that avoid, minimize, and compensate for effects to waters of the U.S., and those that ensure compliance with Section 7 of the ESA, Section 106 of NHPA, and Section 401 of the Clean Water Act.

The applicants have proposed to mitigate for all impacts to waters of the U.S. through purchasing compensatory mitigation credit from the National Fish and Wildlife Foundation’s (NFWF) Sacramento District California In Lieu Fee Program (ILF) at a 2:1 ratio, prior to work in waters of the U.S. The Corps completed the South Pacific Division’s Mitigation Ratio Setting Checklists for the proposed impacts to waters of the U.S., concluding that the proposed 2:1 ratio is appropriate to compensate for proposed impacts to waters of the US. The applicants will need to submit project-specific mitigation plans to the Corps for approval. The proposals will need to list the proposed acreage of impacts to vernal pools and other aquatic resources to be mitigated through purchase of available credits from the NFWF ILF.

The ESP Proposed Action, which includes the backbone infrastructure and nine housing developments, proposes to fill approximately 29.12 acres of waters of the US. To compensate for the loss of 12.05 acres of vernal pools, you shall purchase 24.10 vernal pool credits. To compensate for the loss of 10.61 acres of wetland swale, 1.84 acre of seasonal wetlands, 0.35 acre of intermittent stream, 3.85 acres of ponds, 0.38 acre of ditches, and 0.04 acre of seeps, you shall purchase 34.14 aquatic resource credits.

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

### a. Restrictions on Discharge:

Yes  No  Based on the discussion in Section III, 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  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?

Will the discharge:

Yes  No  Violate state water quality standards?

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

Yes  No  Jeopardize endangered or threatened species or their critical habitat?

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

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.

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.

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

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

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

Yes  No  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  Recreational, aesthetic and economic values?

Yes  No  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?

**b. Factual Determinations:**

(1) Physical Substrate Determination: Chapter 4.8 of the FEIS identifies the nature and degree of effect that the Proposed Action would have, individually and cumulatively, on the characteristics of the substrate at the disposal site for development of the Proposed Action. The FEIS concluded that implementation of the Specific Plan would result in changes to the topography of the site; this is considered a less than significant impact. There are no unique geologic features on the site so there is no potential for loss of significant physical features. Therefore the Proposed Action would have a less than significant impact on the physical substrate.

(2) Water circulation, fluctuation, and salinity determinations: Chapter 4.10 of the FEIS identifies the nature and degree of effect that the Proposed Action would have, individually and cumulatively on water, current patterns, circulation including downstream flows, and normal water fluctuation for development of the Proposed Action. Implementing the mandatory measures detailed in Chapter 4.10 of the I FEIS including the DMP would have a less than significant impact on water circulation, fluctuation, and salinity determinations.

(3) Suspended particulate/turbidity determinations Chapter 4.10 of the FEIS, identifies the nature and degree of effect that the Proposed Action would have, individually and cumulatively, in terms of potential changes and concentrations of suspended particulate/turbidity in the vicinity of the disposal site for the Proposed Action. Adherence to the Section 401 Water Quality Certification and National Pollutant Discharge Elimination System (NPDES) permit, and the Special Conditions identified in Section VIII would minimize effects from suspended particulates and turbidity.

(4) Contaminant determinations: Chapters 4.9 and 4.10 of the FEIS, identify the degree to which the material proposed for discharge would introduce, relocate, or increase contaminants for the Proposed Action. No known contaminants occur on the Proposed Action site, and imported fill material would be obtained from an existing commercial source. In addition, Special Condition 6 requires that only clean

and non-toxic fill material shall be used, which would ensure that imported material does not contain contaminants, thereby minimizing effects.

(5) Aquatic ecosystem and organism determinations: Chapters 4.4 and 4.5 of the FEIS, identify the nature and degree of effect that the Proposed Action would have on the aquatic ecosystem and organism determinations. The required compensatory mitigation required in Special Condition 1, and the other Special Conditions identified in Section VIII would minimize effects and ensure no net loss of aquatic resource functions and serviced, this includes compliance with the conservation measures required in the BO for the Preferred Action.

(6) Proposed disposal site determination: Because the proposed project does not include discharge of dredged materials and the work would occur when the site is dewatered, no effects to the mixing zone would occur.

(7) Determination of cumulative effects on the aquatic ecosystem: Section 4.16 of the FEIS identifies the cumulative effects of development of the Proposed Action on the aquatic ecosystem. The compensatory mitigation in Special Condition 1 with the conservation measures required in the BO for the Preferred Action ensures no net loss of aquatic resource functions and services. The requirements of Special Conditions 1, 2, and 4 plus the requirements of the FEIS and regulatory permits, as discussed in the FEIS would ensure that cumulative effects on the aquatic ecosystem are minimized to the maximum extent practicable.

(8) Determination of secondary effects on the aquatic ecosystem: As discussed in Chapter 4.4.1 of the FEIS, the proximity of project activities to vernal pool crustacean habitat presents the possibility of secondary effects to the habitat due to project related disturbances. The BO for the Proposed Action includes conservation measures for all potential habitats within 250 feet of project activities, plus the BO analyses hydrological connectivity that extends throughout the watersheds of these habitats. Implementing the conservation measures plus complying with the requirements of Special Conditions 1, 2, and 4, and adherence to the Section 401 Water Quality Certification and NPDES permit will reduce secondary effects to the extent practicable.

## **VIII. Special Conditions**

The following special conditions will be included in the DA permit for the Phase 1 Backbone Infrastructure to ensure the projects are not contrary to the public interest and complies with the 404 (b)(1) Guidelines:

1. To compensate for the loss of 1.22 acres of vernal pools, you shall purchase 2.44 vernal pool credits from the National Fish and Wildlife Foundations (NFWF) Sacramento District California In-Lieu Fee Program for the Southeastern Sacramento Valley Vernal Pool Service Area. To compensate for the loss of 1.75 acres of other aquatic resources (1.13 acres of wetland swale, 0.13 acre of seasonal

wetlands, 0.11 acre of intermittent stream, 0.03 acre of seep, and 0.35 acre of ditches), you shall purchase 3.50 aquatic resource credits from the National Fish and Wildlife Foundations (NFWF) Sacramento District California In-Lieu Fee Program for the American River Aquatic Resources Service Area. Contact information for NFWF can be found on their website at: [www.nfwf.org/ilf](http://www.nfwf.org/ilf). Evidence of this purchase shall be provided to this office prior to initiation of construction activities in waters of the U.S. authorized by this permit.

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).

**2.** This Corps permit does not authorize you to take an endangered species, in particular vernal pool fairy shrimp (*Branchinecta lynchi*) and giant garter snake (*Thamnophis gigas*). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed *U.S. Fish and Wildlife Service (USFWS) BO (Number 08ESMF00-2010-F-0621-3, dated September 19, 2017)*, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. 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 BO, 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 BO, 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 USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

Rationale: This condition is necessary to ensure compliance with Section 7 of the Endangered Species Act for impacts to threatened and/or endangered species (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)).

**3.** At least 10 days prior to initiation of construction activities in waters of the U.S. authorized by this permit, you shall notify this office in writing of the anticipated start date for the work. No later than 10 calendar days following completion of construction activities in waters of the U.S. authorized by this permit, you shall notify this office in writing that construction activities have been completed.

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).

**4.** Prior to initiation any construction activities in waters of the U.S. authorized by this permit, you shall install and maintain construction best management practices (BMPs) on-site to prevent degradation to on-site and off-site avoided 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 within 25 feet of on-site and off-site avoided waters of the U.S. to prevent the displacement of fill material. All BMPs shall be in place prior to initiation of (each phase of) construction activities in waters of the U.S. authorized by this permit. You shall ensure the BMPs are inspected weekly, and maintained in good condition while ground disturbing activities are occurring, until construction activities in waters of the U.S. authorized by this permit are complete. All BMPs shall remain until construction activities within 25 feet of waters of the U.S. are completed and all disturbed soils are stabilized. You shall submit a description of and photo-documentation of your BMPs to this office within 10 days following commencement of construction activities authorized by this permit. Photos may be submitted electronically to [cespk-regulatory-info@usace.army.mil](mailto:cespk-regulatory-info@usace.army.mil).

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)).

**5.** 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. You shall ensure that a copy of the permit and associated drawings are available for quick reference at the project site until all construction activities in waters of the U.S. authorized by this permit 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).

**6.** 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. In addition, you shall allow all newly poured concrete to cure for a minimum of 10 days prior to coming into contact with open water.

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

**7.** Within 60 days following completion of the authorized work or at the expiration of the construction window of this permit, whichever occurs first, you shall submit as-built drawings and a description of the work conducted on the project site to this office for review. The drawings shall be signed and sealed by a registered professional engineer and include the following:

- a. The Department of the Army Permit number.
- b. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings. The drawing should show all "earth disturbance", wetland impacts, structures, and the boundaries of any on-site and/or off-site mitigation or avoidance areas.
- c. Ground and aerial photographs of the completed work. The camera positions and view-angles of the ground photographs shall be identified on a map, aerial photograph, or project drawing.
- d. A description and list of all minor deviations between the work as authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings the location of any deviations that have been listed.

Rationale: This condition is necessary to ensure compliance with the permit and applicable conditions and to ensure that the proposed work and final restoration work has been conducted in accordance with the permit and all applicable conditions. (33 USC 1344(a); 33 USC 401 et. seq.; 33 CFR 320.4(r)(1); 33 CFR 325.4(a)(3); 33 CFR 326).

Prior to the initiation of each authorization of development, you shall compensate for the permanent loss of waters of the U.S. within that authorization through the purchase of mitigation credits from NFWF Sacramento District In-Lieu Fee Program at a 2:1 ratio.

## **IX. Public Interest Review**

- a. The relative extent of the public and private need for the proposed work has been considered: The ESP is intended to meet a local demand for mixed-use development. As such, local approval indicates a public need for the project. The ESP Backbone Infrastructure would provide necessary infrastructure for mixed-use developments for the public within the target market area.
- b. The practicability of using reasonable alternative locations and/or methods to accomplish the objective of the proposed structure or work has been evaluated: The Corps has determined that there are no practicable alternate locations that would accomplish the purpose of the proposed work. The Corps has also determined that there are no practicable alternative methods to accomplish the purpose of the proposed work that would have fewer direct or indirect impacts than the proposed project. The Proposed Action for the ESP and the ESP Backbone Infrastructure as described in Section III represent the LEDPA.
- 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 for which the area is suited has been reviewed: The Proposed Action for the ESP would result

in the placement of fill material into, and the permanent loss of 29.12 acres of waters of the U.S., including wetlands, for the construction of a mixed-use development.

The Proposed Action for ESP Backbone Infrastructure would result in the placement of fill material into, and the permanent loss of 15.906 acres of waters of the U.S., including wetlands, for the construction of infrastructure for a mixed-use development.

Indirect impacts may occur to the adjacent waters of the U.S. to the ESP, which would be minor due to the installation of best management practices. The loss of waters of the U.S for the Proposed Action would cause a permanent detrimental effect to the functions and services of the aquatic resources. The loss of waters of the U.S resulting from the Proposed Action would be offset by the required compensatory mitigation. The ESP and Backbone Infrastructure would result in a permanent beneficial effect to economics for the County of Sacramento and the applicants, and a beneficial effect to nearby residents due to the increase in recreation and commercial opportunities and more effective infrastructure to support it.

A project specific review of public interest factors will be conducted for each of the remaining seven pending permit applications and will be documented in the supplemental NEPA documents prepared for each project.

## **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 alternatives are: Alternative A for the overall ESP, Alternative 4 for the Backbone Infrastructure bridge location, and Alternative 2 for the Backbone Infrastructure drainage corridor, the Preferred Alternative for the Elverta 245 Project, and the Preferred Alternative for the Lial Trust 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 Proposed Action, 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 the Proposed Action 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 affected ecosystem. For the remaining seven participating projects within the ESP with pending DA applications at the time of this ROD, the Corps will prepare supplemental NEPA documents, as necessary, that tier from the EIS. If the Corps

determines that a supplemental NEPA document is not necessary, the Corps will prepare a ROD based on the FEIS that is specific to a project or group of related projects. A supplemental NEPA document (if required) and permit decision will only be completed after the applicant submits on-site avoidance consistent with the environmentally preferred alternative and minimization information for compliance with the 404(b)(1) Guidelines. In addition, the Corps must determine project compliance with Section 7 of the Endangered Species Act.

**d.** Issuance of a DA permit, with the inclusion of special conditions on the permit, as prescribed by regulations published in 33 CFR Parts 320 to 330, and 40 CFR Part 320 is not contrary to the public interest. For the properties within the ESP without pending DA permit applications at the time of this ROD (non-participating parcels), the Corps will prepare site-specific NEPA documents. A NEPA document will only be prepared following receipt of a complete DA permit application and issuance of a public notice. The NEPA document may be a supplemental Environmental Assessment or EIS, depending on the nature of the proposed project, consistency with the environmentally preferred alternative, length of time that has elapsed since issuance of the FEIS, and changes to the affected environment.

**e.** The required compensatory mitigation deviates from the order of options presented in 33 CFR 332.3(b)(2) – (6), as there is no mitigation bank available and/or there are not sufficient mitigation bank credits available, and therefore the required compensatory mitigation is purchase of National Fish and Wildlife Foundation's Sacramento District California in-lieu fee program credits.

**PREPARED BY:**



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Marc A. Fugler  
Senior Project Manager  
California South Section

August 2, 2018  
Date

**REVIEWED BY:**

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Michael G. Nepstad  
Deputy Chief, Regulatory Division  
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