



# FIELD & POND

## DRAFT ENVIRONMENTAL IMPACT REPORT

AUGUST 2019

*Prepared for:*

Yolo County  
Community Services Department  
292 W. Beamer Street  
Woodland, CA 95695

*Prepared by:*

De Novo Planning Group  
1020 Suncastr Lane, Suite 106  
El Dorado Hills, CA 95762

D e N o v o P l a n n i n g G r o u p

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A Land Use Planning, Design, and Environmental Firm





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DRAFT EIR

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## PURPOSE

On July 2, 2018, the Yolo County Superior Court (“Court”) issued a peremptory writ of mandate (“writ”) against the County of Yolo and Yolo County Board of Supervisors (“County”) regarding the County’s Initial Study/Mitigated Negative Declaration (“MND”) under the California Environmental Quality Act (“CEQA”) for the Use Permit of the Field & Pond event center located in western Yolo County. In its writ, the Court ordered the County to undertake further study and preparation of a subsequent Environmental Impact Report (“EIR”) to address only the potential impacts of the Project on the tricolored blackbird, valley elderberry longhorn beetle (“VELB”), and the golden eagle. The writ provided that the Use Permit and related mitigation measures would remain in effect during this period of further environmental analysis, and Field & Pond would be allowed to continue operating the Project under the strict control of the County’s permitting scheme during this period.

Yolo County, as the lead agency, has prepared this Draft EIR to provide the public and responsible and trustee agencies with an objective analysis of the potential environmental impacts resulting from construction and operation of the Field & Pond Project that were identified for subsequent review in the Court’s writ. The environmental review process enables interested parties to evaluate the Project in terms of its environmental consequences, to examine and recommend methods to eliminate or reduce potential adverse impacts, and to consider a reasonable range of alternatives to the Project. While CEQA requires that consideration be given to avoiding adverse environmental effects, the lead agency must balance adverse environmental effects against other public objectives, including the economic and social benefits of a Project, in determining whether a Project should be approved.

This subsequent Draft EIR will be used by the County to determine whether to modify the Field & Pond Project and associated approvals in light of the Project’s environmental effects. The EIR will be used as the primary environmental document to evaluate the effect of the Project and the potential impacts of the Project on the tricolored blackbird, VELB, and the golden eagle. All of the actions and components of the Project are described in detail in Chapter 2.0 of this Draft EIR.

## AREAS OF CONTROVERSY AND ISSUES TO BE RESOLVED

The EIR will be used as the primary environmental document to evaluate the effect of the Project on the tricolored blackbird, VELB, and the golden eagle and addresses environmental impacts associated with these topics that are known to the County, raised during the Notice of Preparation (NOP) scoping process, or were raised during preparation of the Draft EIR. During the NOP process, four comment letters were received from the public. The comments are summarized in Chapter 1.0 (Introduction), and are also provided in Appendix A.

Aspects of the Project that could be of concern or controversy that related to the potential impacts of the Project on the tricolored blackbird, VELB, and golden eagle include the following:

- Baseline used in the Draft EIR for determining impacts to tricolored blackbird, VELB, and the golden eagle, with recommendations that the baseline take into account Project site conditions at the time of the initial Project application and environmental review rather than when the Notice of Preparation for the Draft EIR was published. This issue is addressed in Chapter 3.0.
- Presence of breeding tricolored blackbird at the Project site. This issue is addressed in Chapter 3.0.
- Suitability of the site for tricolored blackbird breeding. This issue is addressed in Chapter 3.0.
- Presence of golden eagle nesting at the Project site. This issue is addressed in Chapter 3.0.
- Presence and extent of valley elderberry bushes. This issue is addressed in Chapter 3.0.
- Project consistency with General Plan Conservation Element policies regarding biological resources. This issue is addressed in Chapter 3.0.
- Implementation of and adherence to mitigation measures. This issue is addressed in Table ES-2.

Concerns related to impacts associated with Swainson's hawk, fire hazards, noise, water quality, and wastewater disposal/septic system capacity were also identified in the NOP comments. These issues were analyzed and addressed in the MND. The MND was reviewed by the Court and no defect was found related to these issues. No further analysis of these issues is required to be provided; the Court's writ limited the scope of the Draft EIR to the potential impacts of the Project on the tricolored blackbird, VELB, and the golden eagle.

## ALTERNATIVES TO THE PROJECT

The CEQA Guidelines require an EIR to describe a reasonable range of alternatives to the project or to the location of the project which would reduce or avoid significant impacts, and which could feasibly accomplish the basic objectives of the project. As discussed in Chapter 3.0, the only significant impacts arising from the Project are the impact of construction and ground-disturbing activities on the VELB. The alternatives that would reduce or avoid these impacts analyzed in this EIR include the following:

### NO PROJECT ALTERNATIVE

The No Project Alternative assumes that the Project site remains in its existing state and the additional development, additional events, lodging, and other activities associated with the Project would not occur. As described in Section 3.0, the Project will not result in significant impacts to tricolored blackbird or golden eagle. The No Project Alternative would have a comparable impact to tricolored blackbird and golden eagle. As described in Section 3.0, while operational activities associated with the Project would not have a significant impact on VELB, construction activities could potentially disturb VELB. While Mitigation Measure 3-1 would reduce potential impacts to VELB associated with the Project to a less than significant level, the No Project Alternative would avoid these impacts. Therefore, this impact would be reduced when compared to the Project.

**ELDERBERRY TRANSPLANTING ALTERNATIVE**

An Elderberry Transplanting Alternative was considered in order to avoid impacts to VELB. This alternative would transplant the five elderberry shrubs to a riparian location on the Project site that is located more than 100 feet from any construction activities. The USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle only recommend transplanting elderberry shrubs if they cannot be avoided. The Project would not directly impact any elderberry shrubs and Mitigation Measure 3-1 would ensure that elderberry shrubs are avoided during all construction and ground-disturbing activities. This alternative would not reduce impacts to VELB when compared to the Project.

**ELDERBERRY REDESIGN ALTERNATIVE**

As described in Chapter 3.0, impacts to VELB are associated with construction and other ground-disturbing activities. An Elderberry Redesign Alternative was considered in order to reduce impacts to VELB. Under this alternative, construction and ground-disturbing activities associated with the Project are required to be set back at least 100 feet from all elderberry shrubs. This would require a portion of the Project's parking area to be relocated. Under this alternative, potential impacts to VELB would be avoided through Project redesign and this alternative would have reduced environmental impacts when compared to the Project.

**ENVIRONMENTALLY SUPERIOR ALTERNATIVE**

A comparative analysis of the Project and each of the Project alternatives is provided in Table ES-1 below. As shown in the table, the No Project Alternative would reduce impacts in all areas, the Elderberry Redesign Alternative would reduce or slightly reduce impacts in one area, and the Elderberry Transplanting Alternative would not decrease impacts in any area. Therefore, the No Project Alternative is the environmentally superior alternative. If the No Project Alternative is the environmentally superior alternative, an EIR must also identify an environmentally superior alternative among the other alternatives (CEQA Guidelines Section 15126.6(e)(2)). The Elderberry Redesign Alternative would avoid all significant environmental impacts associated with the Project and is the Environmentally Superior Alternative, since an environmentally superior alternative must be identified among the alternatives other than the No Project Alternative.

**TABLE ES-1: COMPARISON OF ALTERNATIVE PROJECT IMPACTS TO THE PROJECT**

<i>ENVIRONMENTAL ISSUE</i>	<i>NO PROJECT ALTERNATIVE</i>	<i>ELDERBERRY REDESIGN ALTERNATIVE</i>	<i>ELDERBERRY TRANSPLANT ALTERNATIVE</i>
Significant Impacts to VELB	Less	Less	Equal
Irreversible Effects	Less	Equal	Equal

## SUMMARY OF IMPACTS AND MITIGATION MEASURES

In accordance with the CEQA Guidelines, this EIR focuses on the significant effects on the environment. As required by the Court's writ, this Draft EIR addresses only the potential impacts of the Project on the tricolored blackbird, VELB, and the golden eagle.

The CEQA Guidelines defines a significant effect as a substantial adverse change in the physical conditions which exist in the area affected by the Project. A less than significant effect is one in which there is no long or short-term significant adverse change in environmental conditions. Some impacts are reduced to a less than significant level with the implementation of mitigation measures and/or compliance with regulations. The environmental impacts of the Project, the impact level of significance prior to mitigation, the proposed mitigation measures to mitigate an impact, and the impact level of significance after mitigation are summarized in Table ES-2.

**TABLE ES-2: IMPACTS AND PROPOSED MITIGATION MEASURES**

<i>ENVIRONMENTAL IMPACT</i>	<i>LEVEL OF SIGNIFICANCE WITHOUT MITIGATION</i>	<i>MITIGATION MEASURE</i>	<i>RESULTING LEVEL OF SIGNIFICANCE</i>
<b>BIOLOGICAL RESOURCES</b>			
Impact 3-1: Tricolored blackbird: Project implementation would not substantially reduce the habitat, cause a wildlife population to drop below self-sustaining levels or eliminate an animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, have a substantial adverse effect, either directly or indirectly, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.	LS	<i>None Required</i>	LS
Impact 3-2: Golden eagle: Project implementation would not substantially reduce the habitat, cause a wildlife population to drop below self-sustaining levels or eliminate an animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, have a substantial adverse effect, either directly or indirectly, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies,	LS	<i>None Required</i>	LS

*CC – cumulatively considerable**LCC – less than cumulatively considerable**LS – less than significant**PS – potentially significant**B – beneficial impact**SU – significant and unavoidable*

ENVIRONMENTAL IMPACT	LEVEL OF SIGNIFICANCE WITHOUT MITIGATION	MITIGATION MEASURE	RESULTING LEVEL OF SIGNIFICANCE
<p>or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.</p>			
<p>Impact 3-3: Valley elderberry longhorn beetle: Project implementation has the potential to substantially reduce the habitat, cause a wildlife population to drop below self-sustaining levels or eliminate an animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, have a substantial adverse effect, either directly or indirectly, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service</p>	<p>PS</p>	<p><b>Mitigation Measure 3-1:</b> Maintain a setback from Elderberry Bushes and Chickahominy Slough for construction activities, excluding agricultural activities. In order to avoid direct and indirect impacts to VELB, the Project applicant shall comply with Yolo General Plan Policy CO-2.22 by maintaining a 100-foot no-development setback from the upper bank of Chickahominy Slough. The Project applicant shall also implement the following avoidance and minimization measures:</p> <p><u>Protective Measures</u></p> <ol style="list-style-type: none"> <li>1. Fence and flag all areas within a 100-foot buffer from each valley elderberry shrub that is within the Project construction area. This area within the 100-buffer shall be avoided during construction activities unless encroachment has been approved by the USFWS. If encroachment has been approved by USFWS, a minimum setback of at least 20 feet shall be provided from the dripline of each elderberry plant.</li> <li>2. Brief contractors on the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements.</li> <li>3. During construction, erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment."</li> </ol>	<p>LS</p>

CC – cumulatively considerable

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LCC – less than cumulatively considerable

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ENVIRONMENTAL IMPACT	LEVEL OF SIGNIFICANCE WITHOUT MITIGATION	MITIGATION MEASURE	RESULTING LEVEL OF SIGNIFICANCE
		<p><i>The signs shall be clearly readable from a distance of 20 feet, and shall be maintained for the duration of construction.</i></p> <p>4. <i>Prior to any construction activities, a qualified biologist shall provide written training for all onsite contractors, work crews, and personnel on the status of the VELB, its host plant and habitat, the need to avoid damaging the elderberry shrubs, and the possible penalties for non-compliance.</i></p> <p><u><i>Restoration and Maintenance</i></u></p> <p>1. <i>Following the completion of construction, restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.</i></p> <p><i>These restrictions shall be included on future Improvement Plans in order to ensure compliance. The restrictions do not apply to habitat restoration, maintenance, and enhancement activities. The Improvement Plans shall be subject to review and approval by the Yolo County Community Services Department.</i></p> <p><i>Timing and Implementation of Mitigation Measure: Shown on Improvement Plans, contractor education required prior to any ground-disturbing activities, and requirements adhered to during any construction or other ground-disturbing activities</i></p> <p><i>Enforcement and Monitoring: Yolo County Community Services Department shall review and approve all Improvement Plans prior to any ground-disturbing activities. Yolo County shall monitor compliance throughout construction activities.</i></p>	

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*LS – less than significant*

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This section summarizes the purpose of the Environmental Impact Report (“EIR”) for the Field & Pond Project (the “Project”). The following discussion addresses the environmental procedures that are to be followed according to State law, the intended uses of the EIR, the Project’s relationship to the County’s General Plan, the EIR scope and organization, and a summary of the agency and public comments received during the public review period for the Notice of Preparation (“NOP”).

## 1.1 INDEPENDENT ANALYSIS

Pursuant to California Public Resources Code Section 21082.1, the County of Yolo has independently reviewed and analyzed information contained in this Draft Environmental Impact Report (“Draft EIR”) prior to its distribution. Conclusions and discussions contained herein reflect the independent judgment of the County as to those issues known at the time of publication.

## 1.2 BACKGROUND

On July 2, 2018, the Yolo County Superior Court (“Court”) issued a peremptory writ of mandate (“writ”) against the County of Yolo and Yolo County Board of Supervisors (“County”) regarding the County’s Mitigated Negative Declaration (“MND”) under the California Environmental Quality Act (“CEQA”) for the Use Permit of the Field & Pond event center located in western Yolo County. In its writ, the Court ordered the County to undertake further study and preparation of a subsequent Environmental Impact Report (“EIR”) to address only the potential impacts of the Project on the tricolored blackbird, valley elderberry longhorn beetle, and the golden eagle. The writ provided that the Use Permit and related mitigation measures would remain in effect during this period of further environmental analysis, and Field & Pond would be allowed to continue operating the Project under the strict control of the County’s permitting scheme during this period.

One of the petitioners in the lawsuit challenging the project, Tuleyome, agreed to a settlement with the County and the Project Applicant to dismiss withdrew its appeal. As part of the settlement, Tuleyome and Field & Pond LLC agreed to cooperate on the restoration and enhancement of areas in the vicinity of Chickahominy Slough for the benefit of wildlife habitat. The improvements will be funded by Field & Pond LLC, subject to conditions, with the involvement and engagement of organizations with experience in environmental, ecological, and habitat restoration projects.

## 1.3 PURPOSE AND INTENDED USES OF THE DRAFT EIR

The Draft EIR must disclose the expected environmental impacts identified by the Court’s writ, including impacts that cannot be avoided, impacts found not to be significant, and significant cumulative impacts, as well as identify mitigation measures and alternatives to the Project that could reduce or avoid its adverse environmental impacts. CEQA requires government agencies to consider and, where feasible, minimize significant and potentially significant environmental impacts of proposed development. CEQA further requires public agencies to balance a variety of public objectives, including economic, environmental, and social factors in making a decision to approve a development project with significant and unavoidable environmental impacts.

Yolo County, as the lead agency, has prepared this Draft EIR to provide the public and responsible and trustee agencies with an objective analysis of the potential environmental impacts resulting from construction and operation of the Field & Pond Project that were identified for subsequent review in the Court's writ. The environmental review process enables interested parties to evaluate the Project in terms of its environmental consequences, to examine and recommend methods to eliminate or reduce potential adverse impacts, and to consider a reasonable range of alternatives to the Project. While CEQA requires that consideration be given to avoiding adverse environmental effects, the lead agency must balance adverse environmental effects against other public objectives, including the economic and social benefits of a Project, in determining whether a Project should be approved.

This Draft EIR will be used by the County to determine whether to affirm or modify the Project approvals in light of the Project's environmental effects identified in the EIR. The EIR will be used as the primary environmental document to evaluate the effect of the Project and the potential impacts of the Project on the tricolored blackbird, valley elderberry longhorn beetle, and the golden eagle. All of the actions and components of the Project are described in detail in Chapter 2.0 of this Draft EIR.

### 1.4 TYPE OF EIR

This EIR is an EIR prepared as required by the Court, which examines the environmental impacts of a specific project. This type of EIR should focus primarily on the changes in the environment that would result from the project. The EIR shall examine all phases of the Project including planning, construction and operation. The Project EIR approach is appropriate for the Field & Pond Project because it allows comprehensive consideration of the reasonably anticipated scope of the Project, as described in greater detail in Chapter 2.0.

This Project EIR is prepared as a subsequent EIR, prepared subsequently to the adopted Project MND, that focuses only on impacts to tricolored blackbird, valley elderberry longhorn beetle, and golden eagle as directed by the Peremptory Writ of Mandate issued by the Superior Court of California, Yolo County.

### 1.5 KNOWN RESPONSIBLE AND TRUSTEE AGENCIES

As required by CEQA, this EIR defines lead, responsible, and trustee agencies. Yolo County is the "Lead Agency" for the Project because it holds principal responsibility for approving the Project. The term "Responsible Agency" includes all public agencies other than the Lead Agency that have discretionary approval power over the Project or an aspect of the Project (CEQA Guidelines Section 15381). For the purpose of CEQA, a "Trustee" agency has jurisdiction by law over natural resources that are held in trust for the people of the State of California (CEQA Guidelines Section 15386).

The following agencies are considered Responsible or Trustee Agencies for this Project:

- U.S. Fish and Wildlife Service; and

- California Department of Fish and Wildlife.

## 1.6 ENVIRONMENTAL REVIEW PROCESS

The review and certification process for the EIR has involved, or will involve, the following general procedural steps:

### NOTICE OF PREPARATION

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The County circulated a NOP of an EIR for the Project on July 12, 2018 to trustee agencies, the State Clearinghouse, and the public. A public scoping meeting was held on July 18, 2018 to present the Project description to the public and interested agencies, and to receive comments from the public and interested agencies regarding the scope of the environmental analysis to be included in the Draft EIR. Concerns raised in response to the NOP were considered during preparation of the Draft EIR. The NOP and responses to the NOP by interested parties are presented in Appendix A.

### DRAFT EIR

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This document constitutes the Draft EIR. The Draft EIR contains a description of the Project, description of the environmental setting, identification of Project impacts on the biological resources identified by the Court's writ, and mitigation measures for impacts found to be significant, as well as an analysis of Project alternatives. This Draft EIR identifies issues determined to have no impact or a less than significant impact, and provides detailed analysis of potentially significant and significant impacts. Comments received in response to the NOP were considered in preparing the analysis in this EIR. Upon completion of the Draft EIR, the County has filed the Notice of Completion (NOC) with the State Clearinghouse of the Governor's Office of Planning and Research to begin the public review period.

### PUBLIC NOTICE/PUBLIC REVIEW

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The County has provided a public notice of availability for the Draft EIR, and invites comment from the general public, agencies, organizations, and other interested parties. Consistent with CEQA, a forty-five (45) day review period is required for this Draft EIR. Public comment on the Draft EIR will be accepted in written form and orally at a public meeting before the Board of Supervisors. All comments or questions regarding the Draft EIR should be addressed to:

Stephanie Cormier  
Yolo County Community Services Department  
292 W. Beamer Street  
Woodland, CA 95695  
Stephanie.Cormier@yolocounty.org

### RESPONSE TO COMMENTS/FINAL EIR

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Following the public review period, a Final EIR will be prepared. The Final EIR will incorporate the Draft EIR, and respond to written comments received during the public review period and to oral comments received at a public hearing during such review period.

### CERTIFICATION OF THE EIR/PROJECT CONSIDERATION

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The County will review and consider the Final EIR. If the County finds that the Final EIR is "adequate and complete", the County may certify the Final EIR in accordance with CEQA. The rule of adequacy generally holds that an EIR can be certified if:

- 1) The EIR shows a good faith effort at full disclosure of environmental information; and
- 2) The EIR provides sufficient analysis to allow decisions to be made regarding the proposed project in contemplation of environmental considerations.

The level of detail contained throughout this EIR is consistent with Section 15151 of the CEQA Guidelines and recent court decisions, which provide the standard of adequacy on which this document is based. The Guidelines state as follows:

*An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of the environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.*

Following review and consideration of the Final EIR, the County may take action to affirm or modify the Project approvals based on the EIR. A Mitigation Monitoring Program, as described below, would also be adopted in accordance with Public Resources Code Section 21081.6(a) and CEQA Guidelines Section 15097 for mitigation measures that have been incorporated into or imposed upon the Project to reduce or avoid significant effects on the environment. This Mitigation Monitoring Program will be designed to ensure that these measures are carried out during Project implementation, in a manner that is consistent with the EIR.

## 1.7 ORGANIZATION AND SCOPE

Sections 15122 through 15132 of the State CEQA Guidelines identify the content requirements for Draft and Final EIRs. An EIR must include a description of the environmental setting, an environmental impact analysis, mitigation measures, alternatives, significant irreversible environmental changes, growth-inducing impacts, and cumulative impacts. Discussion of the environmental issues addressed in the Draft EIR was established through review of: the Yolo County Superior Court peremptory writ of mandate against the County of Yolo and Yolo County

Board of Supervisors regarding the County's Mitigated Negative Declaration under CEQA for the Use Permit of the Field & Pond event center (see Chapter 2.0 for additional details); environmental and planning documentation developed for the Project; environmental and planning documentation prepared for recent projects located within Yolo County; applicable local and regional planning documents; and comments submitted to the County in response to the NOP.

This Draft EIR is organized in the following manner:

## EXECUTIVE SUMMARY

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This Executive Summary summarizes the characteristics of the Project, known areas of controversy and issues to be resolved, and provides a concise summary matrix of the Project's environmental impacts and possible mitigation measures. This chapter identifies alternatives that reduce or avoid at least one significant environmental effect of the Project.

## CHAPTER 1.0 – INTRODUCTION

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Chapter 1.0 briefly describes the purpose of the environmental evaluation, identifies the lead, trustee, and responsible agencies, summarizes the process associated with preparation and certification of an EIR, and identifies the scope and organization of the Draft EIR.

## CHAPTER 2.0 – PROJECT DESCRIPTION

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Chapter 2.0 provides a detailed description of the Project, including the location, intended objectives, background information, the physical and technical characteristics, including the decisions subject to CEQA, related infrastructure improvements, and a list of related agency action requirements.

## CHAPTER 3.0 – ENVIRONMENTAL SETTING, IMPACTS AND MITIGATION MEASURES

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Chapter 3.0 contains an analysis of environmental topic areas as identified below. Each subchapter addressing a topical area is organized as follows:

**Environmental Setting.** A description of the existing environment as it pertains to the topical area.

**Regulatory Setting.** A description of the regulatory environment that may be applicable to the Project.

**Impacts and Mitigation Measures.** Identification of the thresholds of significance by which impacts are determined, a description of Project-related impacts associated with the environmental topic, identification of appropriate mitigation measures, and a conclusion as to the significance of each impact after the incorporation of mitigation measures.

The following environmental topic is addressed in this section:

- Biological Resources

## CHAPTER 4.0 – ALTERNATIVES TO THE PROJECT

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State CEQA Guidelines Section 15126.6 requires that an EIR describe a range of reasonable alternatives to the project, which could feasibly attain the basic objectives of the project and avoid and/or lessen any significant environmental effects of the project. Chapter 4.0 provides a comparative analysis between the environmental impacts of the Project and the selected alternatives.

## CHAPTER 5.0 – REPORT PREPARERS

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This section lists all authors and agencies that assisted in the preparation of the EIR, by name, title, and company or agency affiliation.

## CHAPTER 6.0 – REFERENCES

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This section lists all source documents used in the preparation of the EIR.

## APPENDICES

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This section includes all notices and other procedural documents pertinent to the EIR, as well as technical material prepared to support the analysis. The EIR appendices are available in electronic format. The appendices can be viewed online at:

<https://www.yolocounty.org/community-services/planning-public-works/planning-division/current-projects>

## 1.8 SIGNIFICANCE CRITERIA

In general, CEQA Guidelines define a significant effect on the environment as “a substantial, or potentially substantial” adverse change in the physical environment. A potential impact is considered significant if a project would substantially degrade the environmental quality of land, air, water, minerals, flora, fauna, ambient noise, and objects of historic and aesthetic significance (CEQA Guidelines §§15360, 15382).

Definitions of significance vary with the physical condition affected and the setting in which the change occurs. The CEQA Guidelines set forth physical impacts that trigger the requirement to make “mandatory findings of significance” (CEQA Guidelines §15065).

This CEQA document relies on three levels of impact significance:

1. Less-than-significant impact, for which no mitigation measures are warranted;
2. Significant impact that can be mitigated to a level that is less than significant; and
3. Significant impact that cannot be mitigated to a level that is less than significant. Such impacts are significant and unavoidable.

Each resource area uses a distinct set of significance criteria. The significance criteria are identified at the beginning of the impacts discussion for each resource area. These significance criteria

promote consistent evaluation of impacts for all alternatives considered, even though significance criteria are necessarily different for each resource considered.

## 1.9 COMMENTS RECEIVED ON THE NOTICE OF PREPARATION

The County received nine comments from six individuals (four written and five oral) on the NOP for the Field & Pond Project Draft EIR. A copy of each comment letter is provided in Appendix A of this Draft EIR. The comment letters and materials submitted as attachments to the letters are available for review at the Yolo County Community Services Department at 292 W. Beamer Street, Woodland. A public scoping meeting was held on July 18, 2018 to present the Project description to the public and interested agencies, and to receive comments from the public and interested agencies regarding the scope of the environmental analysis to be included in the Draft EIR. Oral comments received at the NOP scoping meeting are also identified in Appendix A. Comments were received from:

1. Letter from Patty Rominger, 8/10/18
2. Letter from Robyn Rominger, 8/12/18
3. Letter from Bruce J. Rominger, 8/12/18
4. Letter from Chad Roberts, Ph.D., 8/13/18
5. Oral comments at the scoping meeting made by Chad Roberts, Bruce Rominger, Patty Rominger, Candee Briggs, and Sheri Rominger

## 1.10 AREAS OF CONTROVERSY

Aspects of the Project that could be of concern or controversy that related to the potential impacts of the Project on the tricolored blackbird, valley elderberry longhorn beetle, and golden eagle include the following:

- Baseline used in the Draft EIR for determining impacts to tricolored blackbird, valley Elderberry Longhorn Beetle, and the Golden Eagle, with recommendations that the baseline take into account Project site conditions at the time of the initial Project application and environmental review rather than when the Notice of Preparation for the Draft EIR was published. This issue is addressed in Chapter 3.0.
- Presence of breeding tricolored blackbird at the Project site. This issue is addressed in Chapter 3.0.
- Suitability of the site for tricolored blackbird breeding. This issue is addressed in Chapter 3.0.
- Presence of golden eagle nesting at the Project site. This issue is addressed in Chapter 3.0.
- Presence and extent of valley elderberry bushes. This issue is addressed in Chapter 3.0.
- Project consistency with General Plan Conservation Element policies regarding biological resources. This issue is addressed in Chapter 3.0.
- Implementation of and adherence to mitigation measures. This issue is addressed in Table ES-2.

## 1.0 INTRODUCTION

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Concerns related to impacts associated with Swainson's hawk, fire hazards, noise, water quality, and wastewater disposal/septic system capacity were also identified in the NOP comments. These issues were analyzed and addressed in the MND. The MND was reviewed by the Court and no defect was found related to these issues. No further analysis of these issues is required to be provided; the Court's writ limited the scope of the Draft EIR to the potential impacts of the Project on the tricolored blackbird, valley elderberry longhorn beetle, and the golden eagle.

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This chapter provides a comprehensive description of the Field & Pond Project (Project), including uses, infrastructure improvements, requested entitlements, and Project objectives.

Figures referenced throughout this section are located at the end of the chapter.

## 2.1 PROJECT LOCATION AND ENVIRONMENTAL SETTING

### PROJECT LOCATION

The Project is located at 26055 County Road (CR) 29, northwest of the City of Winters (Assessor's Parcel Numbers [APNs]: 047-120-011 and 050-150-012). The Project site is located approximately five to six miles northwest of the City of Winters on the northern portion of an 80-acre parcel. The Project's regional location is shown in Figure 2.0-1.

### EXISTING SITE CONDITIONS AND SURROUNDING USES

The Project site is in use as a home site (residence) and event site that includes three dwellings, three barns, a water tower, several grain silos, and a two-acre man-made fishing and recreational pond. Improvements on the Project site include paved and gravel driveways that access the existing homes and outbuildings, as well as paved and gravel parking areas, outdoor gathering areas for both the residents and for event attendees, and associated landscaping and pathways. Regular maintenance activities occur to maintain the dwellings, buildings, outbuildings, and grounds. Figure 2.0-2 shows an aerial view of the Project site.

At the time of the initial Project application, the Project applicant planned to host events "by-right" on the 80-acre A-X zoned property pursuant to Yolo County Code Section 8-2.306(k)(2), which allows one small paid for-profit event per month or up to eight per year, i.e., events that accommodate up to but not more than 150 attendees or that generate up to or less than 100 vehicle trips per event. As such, the applicant hosted a number of events while the Use Permit application was pending. Any use of structures during events must meet all applicable building and fire codes, including accessibility.

On October 11, 2016, the Yolo County Board of Supervisors voted to approve a Use Permit and adopted a Mitigated Negative Declaration pursuant to CEQA. Petitioners filed suit to challenge the approval, and the Superior Court of California, County of Yolo issued a Peremptory Writ of Mandate on July 2, 2018 requiring additional environmental review regarding the tricolored blackbird, valley elderberry longhorn beetle, and golden eagle, and denying the remaining challenges. The Writ allowed the Project Approval and related mitigation measures to remain in effect and allowed the Project to continue operating pursuant to the Use Permit during the environmental analysis to analyze potential impacts on the tricolored blackbird, valley elderberry longhorn beetle, and golden eagle.

The property is under a nine-year Williamson Act contract (Agreement No. 13-47) that was non-renewed in August 2015. The portion of the property not used for events is also under a conservation easement that is held by the Wildlife Heritage Foundation (WHF), successor to the

## 2.0 PROJECT DESCRIPTION

Winters Conservancy, which was recorded on the property in 1998. The conservation easement's primary purpose is to preserve the land in its natural, scenic, agricultural, and open space conditions. The conservation easement agreement generally applies to the approximately 69 acres south of Chickahominy Slough, and exempts the home site areas from its restrictions. The property also contains an easement on the adjoining parcel to the west for accessing the southern portions of the property.

The 80-acre property is surrounded by large rural parcels in active agricultural production, including orchards, row crops, livestock, grazing land, and rural residences. The nearest residence to the Project site is located approximately 0.8 mile to the east and approximately 1.0 mile to the west (although it appears an unoccupied home site is located approximately 0.5 mile northwest of the Project site). Most of the surrounding properties, including the Project site, are under Williamson Act contracts. Surrounding land uses are summarized in the table below.

**TABLE 2.0-1: SURROUNDING LAND USES**

<i>RELATION TO PROJECT SITE</i>	<i>LAND USE</i>	<i>ZONING DESIGNATION</i>	<i>GENERAL PLAN DESIGNATION</i>
North	Agricultural (orchard), County Road 29	A-X	AG
South	Grazing land, rolling hills, oak woodlands	A-X	AG
East	Agricultural (grazing land, row crops, tree and / or vine crops)	A-X	AG
West	Grazing land, rolling hills, oak woodlands	A-X	AG

NOTE: A-X = AGRICULTURAL EXTENSIVE; AG = AGRICULTURE.

The property is accessed off CR 29, near its terminus, towards the western foothills in the unincorporated area of the County. The nearest major roadway is CR 89, which is approximately three miles east of the Project site. CR 88 is approximately two miles to the east. Approximately 0.7 mile west of the intersection at CR 29 and CR 88, CR 29 makes a series of turns until it reaches the Project site, which is located on the south side of CR 29 and includes a few gravel/dirt driveways. There are approximately eight residences, including the applicant's, that share use of CR 29 from its terminus to CR 89. In addition to local residential traffic, the rural county road is also used for hauling cattle and agricultural products, including large farming/ranching implements, to and from the various farm and ranch lands in the vicinity of the Project.

## 2.2 PROJECT BACKGROUND

The original Mitigated Negative Declaration and Initial Study (collectively referred to as MND) for the Project was issued on March 8, 2016. As a result of changes since the original MND was issued, a revised MND (RMND) was completed and recirculated on June 28, 2016. Additional minor changes to the RMND were made in an Errata dated October 5, 2016. Collectively, the MND, RMND, and Errata are referred to herein as the "Project MND."

The Yolo County Planning Commission reviewed the Project application and RMND and denied the requested Use Permit for the Field & Pond Project on August 11, 2016. The decision was appealed to the Yolo County Board of Supervisors. The Yolo County Board of Supervisors approved the Use Permit and adopted the Project MND on October 11, 2017.

A lawsuit regarding the Project was filed with the Yolo County Superior Court on November 14, 2017. The lawsuit (*Farmland Protection Alliance v. County of Yolo* [Case No. CV PT 16-001896]) alleged that the Use Permit was in violation of the California Environmental Quality Act (CEQA), the provisions in the Williamson Act, and the provisions of the County zoning code, and that the CEQA documentation failed to address impacts associated with a range of environmental topics, including traffic, agriculture, and endangered species. Yolo County Superior Court issued a Statement of Decision on January 16, 2018, a Judgment on June 20, 2018, and a Peremptory Writ of Mandate on July 2, 2018 regarding the lawsuit (see Appendix B). The Court found that substantial evidence supported a fair argument that the Project may have a significant environmental impact on tricolored blackbird, valley elderberry longhorn beetle, and golden eagle. The remaining claims were denied. The Judgment and resulting Writ of Mandate requires the County to undertake further study and preparation of an Environmental Impact Report to address only the potential impacts of the Project on the tricolored blackbird, valley elderberry longhorn beetle, and golden eagle.

## 2.3 PROJECT GOALS, OBJECTIVES, AND ENTITLEMENT REQUESTS

### GOALS AND OBJECTIVES

Consistent with CEQA Guidelines Section 15124(b), a clear statement of objectives and the underlying purpose of the Project is discussed. The principal objective of the Project is the approval and subsequent implementation of the Field & Pond Project as described in this chapter.

The Project identifies the following objectives:

1. To connect consumers and visitors to a unique, rural agricultural experience, by bringing them to the Field & Pond site, with its manicured grounds, orchards, pond, and scenic beauty, for events and lodging.
2. To promote Yolo County and Yolo County agriculture by bringing people to this site for lodging and educational opportunities that connect the County's residents, businesses, visitors, and tourists in a rural agricultural setting that reflects the County's agricultural history and provides opportunities to share the County's rich history.
3. To have an economically viable bed and breakfast and event center.
4. Provide an event space for use by Yolo County residents, visitors to the area, and other members of the general public.
5. To promote Field & Pond, Yolo County, and regional agri-tourism by hosting on-site events that attract a broad demographic range, including visitor, tourist, and youth populations, through hosting events on the site, such as weddings, corporate retreats, industrywide events, and charitable events.
6. To provide and promote educational outreach regarding agricultural and farming practices in rural Yolo County through participation in and hosting of weekend farming and urban youth programs.
7. Enhance the agricultural value of the land by converting portions of the property to gardens and orchards, where there is a potential for the land to support food crops that

will enhance the planned events and agricultural/educations programs planned for the site.

### ENTITLEMENT REQUESTS AND OTHER APPROVALS

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Yolo County is the Lead Agency for the Project, pursuant to the CEQA Guidelines Section 15050.

Implementation of the Project requires the following:

- Certification of the EIR; and
- Adoption of the revised Mitigation Monitoring and Reporting Program.

## 2.4 PROJECT DESCRIPTION

### PROJECT OVERVIEW

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The Project was a request for a Use Permit to operate a large bed and breakfast and large special events facility, known as Field & Pond, on agriculturally-zoned property that has historically been identified as the “William Cannedy Farm.” As noted previously, the Project site is located approximately five to six miles northwest of the City of Winters on the northern portion of an 80-acre parcel with two separate APNs, which is currently in use as a home site that includes three dwellings, three barns, a water tower, several grain silos, and a two-acre fishing pond. The home site has been used for special events, both by-right and pursuant to the permit issued by the Board of Supervisors, as previously described. Chickahominy Slough bisects the property separating the 11-acre home site areas where the Project is located, from the southern portions that at one time were used as grazing land and contain oak woodlands in hilly terrain.

The Project includes use of the property grounds and existing structures as a large bed and breakfast and large event center that would accommodate lodging for up to nine guest rooms, as well as indoor/outdoor events for up to 300 attendees per event (with most events drawing around 120 people) with an initial proposal of up to 35 events for the first year of operation.

Mitigation measures imposed by the Board of Supervisors for issuance of the Use Permit limited the number of events to 20 per year, not to exceed 150 attendees, with the exception of four events that may be up to 300 attendees, among other requirements. The Use Permit approved by the Board of Supervisors contained a number of additional conditions of approval. Conditions of approval based on mitigation measures for environmental resources analyzed in the Project MND, other than the tricolored blackbird, valley elderberry longhorn beetle, and the golden eagle, will remain in effect and are not affected by this Draft EIR. The site plan shown on Figure 2.0-3 reflects the Project as approved by the Board of Supervisors.

### EVENTS

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The event component of the Project consists of hosting seasonal events such as weddings and corporate retreats, as well as unpaid or not-for-profit events, approximately nine months out of the year (March through November). Events would be held up to four to five times per month,

with the number of events limited to 20 per year. Weddings are limited to Saturdays, ending by 11:00 PM, with a typical guest count of approximately 120 people but no more than 300. Any for-profit event over 150 people will require use of shuttles. Alternatively, the applicant has also proposed to use shuttles for all for-profit events, regardless of size. Corporate retreats are expected to occur mostly on Fridays from 8:00 AM to 5:00 PM, with an attendee count of approximately 50 people.

Most events, with the exception of corporate retreats, are expected to include amplified music, which, according to the applicant, would not exceed 75dB at the property lines. The Permit requires that noise levels at the nearest residents' property lines shall not exceed 60 dBA during any scheduled event, among other requirements. As per the applicant, all patrons will be required to bring in their preferred licensed vendors to provide services, including food caterers and bartenders. The applicant will also require each event coordinator to carry rental event insurance and to sign a waiver to confirm acceptance of full responsibility for ensuring the safe and lawful participation of their guests. The applicant has also committed to notify potential event users and B&B clientele of the agricultural practices in the vicinity of the Project site to introduce awareness of the potential for perceived nuisances that may occur in the rural locale.

For those events using shuttles, pick-up and drop-off locations would be established through event coordination. According to the applicant, shuttles are typically used from a wedding ceremony location, such as a church, or in some cases from a hotel where guests are staying. In the event where there is an overflow demand for parking, the applicant has indicated that Field & Pond clients will be instructed to use one of the four available Park & Ride locations located in Vacaville, which are conveniently located near the Interstate 80/505 interchange, or another designated private lot as coordinated by Field & Pond.

Typical shuttle pick-up and drop-off schedules would work in hourly intervals, which means guests would begin arriving one to two hours prior to ceremony or event start time, and would begin departing following a reception and/or dinner in two or three waves, i.e., departing at 8:00 PM, 10:00 PM, and concluding by 11:00 PM. Specifically, for those events with guest lists over 150 people, Field & Pond has proposed to use one 47-passenger seat bus and one 28-passenger seat shuttle. The bus would make two round trips to drop guests off at Field & Pond before returning to the depot. The shuttles would make one round trip and remain onsite for the duration of the event. The shuttle would be used to transport the guests back to the original pick-up/drop-off location.

Prior to use permit approval, the property's size and zoning allowed for one small event (not more than 150 attendees or less than 100 trips per event) per month or up to eight per year. The applicant's permit application initially requested up to 35 events for the first year, with an increase in the number of events per year thereafter (i.e., up to two events per week for nine months out of the year), if approved by the County. The Use Permit approved by the Board of Supervisors limited the number of events to 20 per year.

## LODGING

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The main house will be used for lodging guests in a five-bedroom bed and breakfast, with the owners occupying an adjacent smaller cottage-type house. Renovations to the 3,300-square foot house include adding three bathrooms, for a completed floor plan of five bedroom suites with five private bathrooms, and one common area bathroom. There would be no change to the total square footage. If lodging in the five-bedroom bed and breakfast is successful, the applicant may construct up to four additional detached, 500- square foot one-room cottages (no kitchen facilities), resulting in a total of nine guest rooms. A smaller, currently unoccupied, two-bedroom dwelling is located at the western edge of the property, and is proposed to house a future resident farmer.

In addition to renovations made to the main house, the applicant retrofitted one barn to accommodate occasional indoor event use. Vehicle parking for events will be provided in a graveled lot that can accommodate up to 75 cars, with accessible parking as required. Separate entrances for event parking and bed and breakfast parking will be off CR 29.

## AGRICULTURE

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The Project proponents plan to enhance the agricultural value of the land by converting portions of the property that show a potential for supporting food crops, such as herbs, vegetables, nuts, and stone fruit. These crop-producing endeavors would be managed by a resident farmer seeking an opportunity to farm a plot of land and provide educational outreach to visitors of Field & Pond through participation in a weekend farming program and urban youth program. Specifically, the Project includes planting tree crops on the northern portion of the property (along CR 29). At the writing of the Notice of Preparation, the applicant has planted an orchard on the north side of the slough.

The Project also proposes implementation of a program geared toward serving urban youth. An example of such a program is the Fresh Start program that would provide career mentorship in agriculture to urban youth. According to the applicant, the idea behind Fresh Start is to engage urban youth in discussions and education directed at establishing a successful career in agriculture through exercises and field trips designed to provide real life experiences.

## GENERAL PLAN

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The Project site is currently designated Agriculture (AG) by Yolo County. The County AG land use designation includes the full range of cultivated agriculture, such as row crops, orchards, vineyards, dryland farming, livestock grazing, forest products, horticulture, floriculture, apiaries, confined animal facilities and equestrian facilities. It also includes agricultural industrial uses (e.g. agricultural research, processing and storage; supply; service; crop dusting; agricultural chemical and equipment sales; surface mining; etc.) as well as agricultural commercial uses (e.g. roadside stands, "Yolo Stores," wineries, farm-based tourism (e.g. u-pick, dude ranches, lodging), horseshows, rodeos, crop-based seasonal events, ancillary restaurants and/or stores) serving rural areas. Agriculture also includes farmworker housing, surface mining, and incidental habitat.

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## ZONING

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The Project site is currently zoned Agricultural Extensive (A-X) by Yolo County. Prior to Use Permit approval, the Project site was allowed “by-right”, pursuant to Yolo County Code Section 8-2.306(k)(2), to host one small paid for-profit event per month or up to eight per year, i.e., events that accommodate up to but not more than 150 attendees or that generate up to or less than 100 vehicle trips per event. As such, the applicant has hosted a number of events while the original Use Permit application was pending. Any use of structures during events must meet all applicable building and fire codes, including accessibility.

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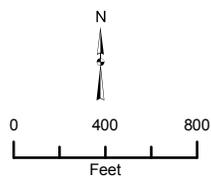


**YOLO COUNTY FIELD AND POND PROJECT**

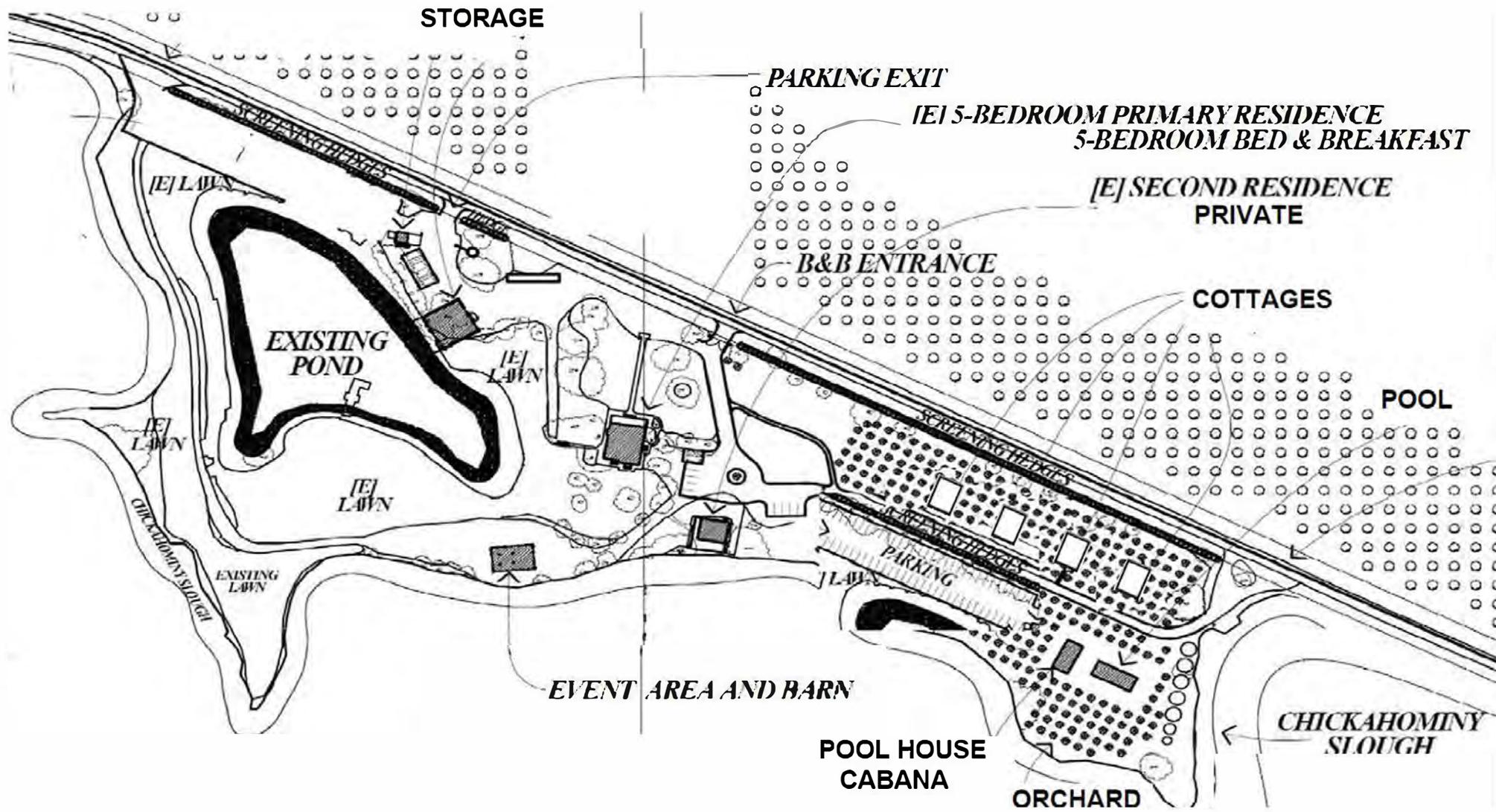
Figure 2.0-2. Aerial View of Property

**Legend**

 Project Boundary



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YOLO COUNTY FIELD AND POND PROJECT

Figure 2.0-3. Site Plan

Source: Project Applicant, 2019

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This section describes the regulatory setting, regional biological resources, and impacts that are likely to result from Project implementation. This section is based in part on the *Technical Memorandum – Subject: Field and Pond Project, Supplemental Survey Data for Focused EIR* completed by Estep Environmental Consulting in 2018, as well as the previous site survey efforts completed by Estep Environmental Consulting, comments related to Tricolored Blackbird, Valley Elderberry Longhorn Beetle, and Golden Eagle submitted to Yolo County in response to the Project MND and in response to the NOP, and an *Observations and Assessment of Field and Pond Site, County Road 29, Yolo County, California* memo provided by Dr. Robert Meese in October 2018.

Comments were received during the public review period or scoping meeting for the Notice of Preparation regarding this topic from the following: written comments from Patty Rominger, Robyn Rominger, and Chad Roberts and oral comments made by Chad Roberts, Bruce Rominger, Patty Rominger, Candee Briggs, and Sheri Rominger. Each of the comments related to this topic are addressed within this section. See Appendix A for comments made in response to the NOP. The comments are summarized in Chapter 1, Introduction.

In addition to comments received in response to the NOP, comments that were identified by the County of Yolo Superior Court as substantial evidence supporting a fair argument that the Project ***may*** (bolded italics added for emphasis) have a significant environmental impact were reviewed and are summarized below. These comments were considered in the preparation of the analysis in this chapter. The Court indicated that, based on Public Resources Code Section 21080(e) and 21082.2(c) and 14 California Code of Regulations Sections 154064(f)(5) and 15384, the following constitute substantial evidence:

- Facts;
- Reasonable assumptions predicated on facts; and
- Expert opinions supported by facts.

The Court further indicated that under the same sections, the following **do not** constitute substantial evidence:

- Argument;
- Speculation;
- Unsubstantiated opinion or narrative;
- Clearly inaccurate or erroneous evidence;
- Evidence that is not credible; and
- Evidence of social and economic impacts that do not contribute to, and are not caused by, physical impacts on the environment.

## 3.0 BIOLOGICAL RESOURCES

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The Court further identified several factors that the County, as lead agency, may consider in determining the reliability of evidence as it relates to whether the information is not only relevant and material, but is sufficiently reliable to have solid evidentiary value. These factors are summarized below:

- Whether the evidence has an adequate foundation in the witness' personal knowledge of facts, noting that expressions of subjective concerns and personal beliefs do not constitute substantial evidence and that speculation, argument, and unfounded conclusions are likewise not substantial evidence.
- Whether the evidence is provided by a qualified source. Opinions can constitute substantial evidence when they are provided by a witness who is qualified to render an opinion on the subject. Fact-based observations by persons qualified to speak to a question qualify as substantial evidence.
- Whether the evidence is not reliable for other reasons. A lead agency may find that hearsay is not sufficiently reliable to be treated as substantial evidence.

This Draft EIR has been prepared because the Court determined that the evidence supported a fair argument that impacts to tricolored blackbird and valley elderberry longhorn beetle ("VELB") might occur and that there had not been a fact-based investigation on the impacts on the golden eagle. Disagreement in the information provided by experts regarding the Project site and three species addressed in this Draft EIR is considered and addressed in the impact analysis presented in this chapter.

### PREVIOUS COMMENTS IDENTIFIED BY COUNTY OF YOLO SUPERIOR COURT

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#### **Hillary White, Ecological Consultant at H.T. Harvey & Associates, April 5, 2016**

Hillary White, Ecological Consultant at H.T. Harvey & Associates, indicated in an April 5, 2016 email identifying data from the Tricolored Blackbird Portal that indicated a tricolored blackbird colony at the Brian Stucker Pond and Field and Pond site. One of the data points was from 2005 that indicated that breeding was unconfirmed. According to Hillary White, there are two confirmed colonies of tricolored blackbird at the on-site pond documented in the UC Davis Tricolored Blackbird Portal. According to the Hillary White report, the data indicates that the pond did have a breeding colony in 2005. It is noted that the data provided by Hillary White states that this breeding colony is "unconfirmed", but the Hillary White report notes that breeding at that location has been confirmed in subsequent years. It is noted that although Hillary White states that breeding at the Project site was confirmed, Ms. White does not provide any documentation of breeding at the site.

**Chad Roberts, Ph.D., July 28, 2016**

Dr. Roberts April 4, 2016 letter addressed a range of biological concerns. The Court referred to Dr. Roberts's recommendations regarding mitigation to address impacts to VELB and tricolored blackbird.

**TRICOLORED BLACKBIRD**

Dr. Roberts indicated that tricolored blackbirds have been observed on the site and potentially occupying a nesting colony, citing an April 2, 2016 photograph provided by Bruce Rominger.

Regarding tricolored blackbird, Dr. Roberts identified Mitigation Measure BIO-X2 to address impacts to the species. This measure included avoiding, reducing, or offsetting impacts to the two-acre pond's habitat functions to some extent through the following measures: 1) consolidating all Project features and use areas in order to minimize the disturbance footprint including relocating the parking lot from its current location north of the two-acre pond, removing the four proposed cabins due to relocation of the parking area, relocating the proposed pool and cabana closer to the main house area, no maintenance of cattail growth in the pond during the breeding season, and 2) to maintain a 100-foot setback around the pond and prohibit visitor access into the setback, particularly during breeding season.

**VELB**

Dr. Roberts' recommendations to address impacts to the riparian function of Chickahominy Slough were identified as Mitigation Measure BIO-X1 in his letter (although there is no discussion of what component of the mitigation provides specific protection for VELB, it is assumed that components of this measure are also intended to address VELB impacts) and included 100-foot setbacks established along the north and south sides of Chickahominy Slough, removing all Project facilities from the 100-foot setback, including the 'event barn', excluding site visitors from the 100-foot riparian setback north of the creek by requiring a fence along the outer margin of the setback, excluding all agricultural operations south of Chickahominy Slough from the 100-foot riparian setback by an impassible fence or barrier, requiring a riparian restoration/enhancement plan for the 100-foot setback on both sides of Chickahominy Slough, restoring and enhancing riparian habitat conditions within the 100-foot setbacks in the southwestern part of the Project site, establishing the outer dripline of all riparian trees as a "no-entry zone" for machinery and people in order to protect root and substrate conditions with all trails located outside of the dripline.

**GOLDEN EAGLE**

Dr. Roberts indicated personal observations of golden eagle on the site in the past, noting that for many years there was a well-documented golden eagle nest on the Project site.

**3.1 ENVIRONMENTAL SETTING****REGIONAL SETTING**

The Project site is located within the southern portion of the Sacramento Valley bioregion, and just north of the Bay/Delta bioregion. The Sacramento Valley bioregion is a watershed of the Sierra Nevada that encompasses the northern end of the great Central Valley, stretching from Redding to

## 3.0 BIOLOGICAL RESOURCES

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Yolo and Sacramento County. The bioregion is generally flat and is rich in agriculture. The bioregion has a climate that is characterized by hot dry summers and cool wet winters. Historically, oak woodlands, riparian forests, vernal pools, freshwater marshes, and grasslands have been the major natural vegetation of the bioregion; however, much of the region has been converted to agricultural uses. This bioregion is the most prominent wintering area for waterfowl, attracting significant numbers of ducks and geese to its seasonal marshes along the Pacific Flyway. Species include northern pintails, snow geese, tundra swans, sandhill cranes, mallards, grebes, peregrine falcons, heron, egrets, and hawks. Black-tailed deer, coyotes, river otters, muskrats, beavers, ospreys, bald eagles, salmon, steelhead, and swallowtail butterflies are some of the wildlife that are common in this bioregion.

### CALIFORNIA WILDLIFE HABITAT RELATIONSHIPS SYSTEM

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The California Wildlife Habitat Relationships (CWHR) habitat classification scheme has been developed to support the CWHR System, a wildlife information system and predictive model for California's regularly-occurring birds, mammals, reptiles and amphibians. When first published in 1988, the classification scheme had 53 habitats. At present, there are 59 wildlife habitats in the CWHR System: 27 tree, 12 shrub, 6 herbaceous, 4 aquatic, 8 agricultural, 1 developed, and 1 non-vegetated.

The Sacramento Valley region is considered to have low biological diversity due to the conversion of native habitat to agricultural and urban uses. As shown in Figure 3.0-1, the CWHR shows the Project site as having the following habitats on the Project site: Annual Grassland (50.76 acres), Cropland (11.82 acres), Valley Foothill Riparian (10.95 acres), Blue Oak Woodland (3.36 acres), and Evergreen Orchard (0.65 acres). Below is a brief description of these CWHR habitats.

**Annual Grassland** habitats occurs mostly on flat plains to gently rolling foothills. Annual Grassland habitats are open grasslands composed primarily of annual plant species. Introduced annual grasses are the dominant plant species in this habitat. These include wild oats, soft chess, riggut brome, red brome, wild barley, and foxtail fescue. Common forbs include broadleaf filaree, redstem filaree, turkey mullein, true clovers, bur clover, popcorn flower, and many others.

Many wildlife species use Annual Grasslands for foraging, but some require special habitat features such as cliffs, caves, ponds, or habitats with woody plants for breeding, resting, and escape cover. Characteristic reptiles that breed in Annual Grassland habitats include the western fence lizard, common garter snake, and western rattlesnake. Mammals typically found in this habitat include the black-tailed jackrabbit, California ground squirrel, Botta's pocket gopher, western harvest mouse, California vole, badger, and coyote. The endangered San Joaquin kit fox is also found in and adjacent to this habitat. Common birds known to breed in Annual Grasslands include the burrowing owl, short-eared owl, horned lark, and western meadowlark. This habitat also provides important foraging habitat for the turkey vulture, northern harrier, American kestrel, black-shouldered kite, and prairie falcon.

**Cropland** habitats are located on flat to gently rolling terrain. When flat terrain is put into crop production, it usually is leveled to facilitate irrigation. Rolling terrain is either dry farmed or

irrigated by sprinklers. Vegetation in this habitat includes a variety of sizes, shapes, and growing patterns. Field corn can reach ten feet while strawberries are only a few inches high. Although most crops are planted in rows, alfalfa hay and small grains (rice, barley, and wheat) form dense stands with up to 100 percent canopy closure. Most croplands support annuals, planted in spring and harvested during summer or fall. In many areas, second crops are commonly planted after harvesting the first. Wheat is planted in fall and harvested in late spring or early summer. Overwintering of sugar beets occurs in the Sacramento Valley, with harvesting in spring after the soil dries.

Croplands have greatly reduced the wildlife richness and diversity of California. Many species of rodents and birds have adapted to croplands and are controlled by fencing, trapping, and poisoning to prevent excessive crop losses.

**Valley Foothill Riparian** habitats are found in valleys bordered by sloping alluvial fans, slightly dissected terraces, lower foothills, and coastal plains. They are generally associated with low velocity flows, flood plains, and gentle topography. Dominant species in the canopy layer are cottonwood, California sycamore and valley oak. Subcanopy trees are white alder, boxelder and Oregon ash. Typical understory shrub layer plants include wild grape, wild rose, California blackberry, blue elderberry, poison oak, buttonbrush, and willows. The herbaceous layer consists of sedges, rushes, grasses, miner's lettuce, Douglas sagewort, poison-hemlock, and hoary nettle. Valley-foothill riparian habitats provide food, water, migration and dispersal corridors, and escape, nesting, and thermal cover for an abundance of wildlife. At least 50 amphibians and reptiles occur in lowland riparian systems. Many are permanent residents, others are transient or temporal visitors.

**Blue Oak Woodland** habitats are usually associated with shallow, rocky, infertile, well-drained soils from a variety of parent materials. Blue oaks are well adapted to dry, hilly terrain where the water table is usually unavailable. The climate is Mediterranean, with mild wet winters and hot dry summers. Climatic extremes are relatively great in these woodlands, because they have a considerable geographic and elevational range. Generally, these woodlands have an overstory of scattered trees, although the canopy can be nearly closed on better quality sites. Data indicates that 29 species of amphibians and reptiles, 57 species of birds, and 10 species of mammals find mature stages of this type suitable or optimum for breeding, assuming that other special habitat requirements are met.

**Evergreen Orchard** habitats can be found on flat alluvial soils in the valley floors, in rolling foothill areas, or on relatively steep slopes. All are irrigated. Some flat soils are flood irrigated, such as with dates, but most evergreen orchards are sprinkler irrigated. Evergreen orchards in California are typically open single species tree dominated habitats. Depending on the tree type and pruning methods they are usually low, bushy trees with an open understory to facilitate harvest. Evergreen orchards include trees, such as, avocados, dates, grapefruit, lemons, limes, olives, oranges, tangerines, tangelos and tangors. Evergreen orchards have been planted on deep fertile soils which once supported productive and diverse natural habitats. Larger and more diverse populations of wildlife were also supported by these native habitats. However, some species of birds and mammals have adapted to the orchard habitats. Many have become "agricultural pests"

which has resulted in intensive efforts to reduce crop losses through fencing, sound guns, or other management techniques.

### LOCAL SETTING

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The Project is located on the northern portion of an 80-acre parcel at 26055 County Road (CR) 29, approximately five to six miles northwest of the City of Winters. The Project site is in use as a home site (residence) and event site that includes three dwellings, three barns, a water tower, several grain silos, and a two-acre man-made recreation and fishing pond. Improvements on the Project site include paved and gravel driveways that access the existing homes and outbuildings, as well as paved and gravel parking areas, outdoor gathering areas for both the residents and for event attendees, and associated landscaping and pathways. Aerial photos of the Project site from 2011 through 2018 are provided in Appendix C.

The property is under a nine-year Williamson Act contract (Agreement No. 13-47) that was non-renewed in August 2015. The property is also under a conservation easement that is held by the Wildlife Heritage Foundation (WHF), successor to the Winters Conservancy, which was recorded on the property in 1998. The conservation easement's primary purpose is to preserve the land in its natural, scenic, agricultural, and open space conditions. The conservation easement agreement generally applies to the approximately 69 acres south of Chickahominy Slough, and exempts the home site areas from its restrictions. The property also contains an easement on the adjoining parcel to the west for accessing the southern portions of the property.

The 80-acre property is surrounded by large rural parcels in active agricultural production, including orchards, row crops, livestock, grazing land, and rural residences. The nearest residence to the Project site is located approximately 0.8 mile to the east and approximately 1.0 mile to the west (although it appears an unoccupied home site is located approximately 0.5 mile northwest of the Project site). Most of the surrounding properties, including the Project site, are under the Williamson Act.

### SPECIAL-STATUS SPECIES

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A lawsuit regarding the Project was filed with the Yolo County Superior Court on November 14, 2017. The lawsuit (*Farmland Protection Alliance v. County of Yolo* [Case No. CV PT 16-001896]) alleged that the Use Permit was in violation of the California Environmental Quality Act (CEQA), the provisions in the Williamson Act, and the provisions of the County zoning code, and that the CEQA documentation failed to address impacts associated with a range of environmental topics, including traffic, agriculture, and endangered species. Yolo County Superior Court issued a Statement of Decision on April 6, 2018, a Judgment on June 20, 2018, and a Peremptory Writ of Mandate on July 2, 2018 regarding the lawsuit (see Appendix B). The Court found that substantial evidence supported a fair argument that the Project may have a significant environmental impact on tricolored blackbird and valley elderberry longhorn beetle (VELB) and that there had not been a fact-based investigation on the impacts on the golden eagle. The remaining claims were denied. The Judgment and resulting Writ of Mandate requires the County to undertake further study and preparation of an Environmental Impact Report to address only the potential impacts of the Project on the tricolored blackbird, VELB, and golden eagle.

The following discussion focuses on these three species: tricolored blackbird, golden eagle, and VELB. A background search was completed for these three species that are documented in the California Natural Diversity Database (CNDDDB), the U.S. Fish and Wildlife Service’s (USFWS) endangered and threatened species lists, and observations from local experts. The background search was regional in scope and focused on the documented occurrences within the nine-quadrangle radius of the Project site, which includes the following USGS quadrangles: Brooks, Esparto, Madison, Lake Berryessa, Monticello Dam, Winters, Capell Valley, Mt. Vaca, and Allendale.

The CNDDDB search revealed the following occurrences within the nine-quadrangle region: eight occurrences of tricolored blackbird, one occurrence of golden eagle, and seven occurrences of VELB. Two of the documented occurrences for tricolored blackbird were located on the Project site (one near the on-site pond, and one near the easternmost corner of the Project site boundary). The nearest documented occurrences for each of the three species are included in Table 3.0-1. Table 3.0-1 provides a list of these three species that are documented in the region, their habitat, potential for Project site occurrence, and current protective status. Figure 3.0-2 illustrates the general location of these records maintained by the CNDDDB.

**TABLE 3.0-1: POTENTIAL FOR SPECIES OCCURRENCE**

<i>ANIMAL</i>	<i>STATUS (FED;CA)</i>	<i>HABITAT ASSOCIATION</i>	<i>POTENTIAL FOR OCCURRENCE</i>
<b>BIRDS</b>			
<i>Agelaius tricolor</i> tricolored blackbird	MBTA; CE	Colonial nester in cattails, bulrush, or blackberries associated with wetland or drainage habitats. Also need foraging areas such as grasslands or agricultural pastures.	Moderate potential to occur. Suitable nesting and foraging habitat present. No evidence of nesting from past surveys or CNDDDB. Three CNDDDB occurrences within 3 miles of the site; two of which include the Project site.
<i>Aquila chrysaetos</i> golden eagle	BGEPA, MBTA; CFP	Winter range spans most of California; breeding range excludes the Central Valley floor. Nests in cliffs, rocky outcrops and large trees. Forages in a variety of open habitats, including grassland, shrubland, and cropland.	Moderate potential to occur. Suitable nesting and foraging habitat present. No CNDDDB occurrences within 3 miles of the site. The nearest occurrence is 10.16 miles west of the western Project site boundary at Lake Berryessa.
<b>INVERTEBRATES</b>			
<i>Desmocerus californicus dimorphus</i> valley elderberry longhorn beetle	FT;--	Dependent upon elderberry plant ( <i>Sambucus mexicana</i> ) as primary host species. Riparian and oak savanna habitats with elderberry shrubs; elderberries are the host plant. Stream side habitats below 3,000 feet throughout the Central Valley.	Moderate potential to occur. Five elderberry shrubs are documented on the Project site. No CNDDDB occurrences within 3 miles of the site. The nearest occurrence is 3.11 miles northeast of the eastern Project site boundary.

SOURCE: CDFW CNDDDB 2018.

Abbreviations:

**Federal Lists**

FT Federal Threatened  
 MBTA Protected by Migratory Bird Treaty Act  
 BGEPA Protected by federal Bald and Golden Eagle Protection Act

**State Lists**

CE California Endangered Species  
 CT California Threatened  
 CFP California Fully Protected

### FIELD SURVEYS

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Estep Environmental Consulting conducted the initial Biological Site Assessment of the Project site on April 27, 2016. Estep Environmental Consulting subsequently updated the initial biological site assessment several times in 2016, prepared a Tricolored Blackbird Survey and Habitat Assessment in 2017, and a supplemental memo in 2018. Dr. Robert Meese prepared a memo discussing the suitability of the site for tricolored blackbird breeding in 2018.

#### **Estep Environmental Consulting - May 8, 2016 Biological Site Assessment**

On May 8, 2016, Estep prepared a Biological Site Assessment of the Project site as part of the County's initial environmental analysis. Jim Estep has over 30 years of experience as an environmental professional and consulting biologist. Estep specializes in resource conservation and wildlife management planning; CEQA and NEPA compliance; biological resource assessments; endangered species surveys, impact assessments, and consultations with state and federal resource agencies; mitigation planning and compliance; wildlife management techniques; and field study design. He works on projects focusing on natural resources and wildlife management planning for a variety of clients and industries, including energy, transportation, communications, and community planning and development clients; state and federal resource and land management agencies; local agencies; and private land and resource conservancies. He manages biological resource assessment projects and prepares mitigation, monitoring, and conservation plans for sensitive habitats and special-status wildlife species. Estep assesses project impacts on wildlife populations, designs field studies, and conducts surveys for threatened and endangered species throughout California, Oregon, and Nevada. Estep has extensive experience working with local, state, and federal agencies, private organizations, and research groups.

From 1984 to 1989, Jim worked as a biologist in the Sacramento Headquarters office of the California Department of Fish and Game. From 1989 to 2005, Jim worked at Jones & Stokes Associates in Sacramento serving as an Associate Principal, Senior Wildlife Biologist, and Team Leader of the Natural Resources Team. In this capacity, he was responsible for a broad range of biological services, management, staff development, business development, and corporate duties. Since 2005, Estep has been the sole proprietor of Estep Environmental Consulting, a small business based in Sacramento.

The May 8, 2016 Biological Site Assessment described the characteristics of the Project site, including the Chickahominy Slough which runs the length of the Project site and supports a narrow riparian corridor, the two-acre pond, including a wooden pier extending approximately 40 feet into the pond, and associated marsh, and the maintained, landscaped grounds in the vicinity of the main homesite. The description of the Project site noted that the homestead site, including all outbuildings and farm/ranch structures, is entirely north of the slough and that most of this area has been disturbed by long-term farming/ranching operations and, other than the slough and emergent marsh associated with the two-acre pond, does not retain significant natural features. The assessment notes that the area in the vicinity of the main house, the second nearby house, and barns is landscaped with lawns and mature native and nonnative trees and shrubs and is subject to regular and typical human activities and disturbances, further nothing that the area

west of the main house in the vicinity of the two-acre pond is more landscaped and includes rail fences, graveled footpaths, and lawns. The two-acre pond is identified as mostly open water, with a small wooden pier on the southern end that extends approximately 40 feet into the pond. Emergent marsh, dominated by dense cattail, was identified to extend around the perimeter of the pond on the south, west, and north sides with the largest patch occurring on the northwest corner of the pond. Wildlife observed on the Project site included red-winged and tricolored blackbirds and the assessment identified common and special-status species that may use the site.

The May 8, 2016 Biological Site Assessment identified that reports of tricolored blackbirds at the two-acre pond were received as recently as 2014, but that there were no confirmed reports of breeding. The May 8, 2016 Biological Site Assessment included a survey of the Project site from 9:30 AM to 2:00 PM on April 27, 2016, which addressed the entire 80-acre property and included a focused assessment of the two-acre pond and associated marsh to determine the presence of tricolored blackbirds. During the survey, 10 individual tricolored blackbirds were detected at the pond marsh. None of the tricolored blackbirds exhibited breeding or territorial behavior. Red-winged blackbirds, including territorial male red-winged blackbirds and numerous female red-winged blackbirds, were observed to occupy the entire perimeter of the marsh. The survey concluded that while it did not appear tricolored blackbirds were nesting at the site, the site was considered occupied by the species and the neighboring lands provide suitable foraging habitat.

The May 4, 2016 memo identified the following potential impacts resulting from the Project to tricolored blackbird, VELB, and golden eagle:

VELB: Habitat for VELB was identified along Chickahominy Slough; however, VELB presence was not confirmed and no VELB habitat was identified in upland sites in the immediate vicinity of Project features. Suitable nesting and foraging habitat for golden eagle was identified south of the Chickahominy Slough. The report concluded that direct or indirect disturbance to elderberry shrubs could result in a take of the species and that compliance with federal guidelines that establish a 100-foot setback from all stems greater than 1-inch in diameter, consistent with the Yolo County General Plan Policy CO-2.22, will sufficiently avoid impacts to VELB.

Golden Eagle: The assessment identified that golden eagle presence had been reported on the Project site. While suitable nesting and foraging habitat for golden eagle was identified on the Project site, no active golden eagle nests were identified on the property. The assessment concluded that implementation of the 45-acre orchard that was part of prior Project plans, but removed from consideration, would remove habitat for a range of special-status species, including golden eagle.

Tricolored Blackbird: The May 4, 2016 Biological Site Assessment indicated that given the small number of individuals and uncertainty of breeding, it was questionable whether Project impacts on tricolored blackbirds met the CEQA definition for significance, but concluded that minimizing impacts to the species to the extent possible is prudent.

The May 8, 2016 Biological Site Assessment included the following recommendations and conclusions associated with tricolored blackbird, VELB, and golden eagle:

1) Maintain a 100-foot setback from Chickahominy Slough and the two-acre pond for all new construction. The assessment concluded that this measure would avoid potential take of VELB, reduce disturbances to nesting birds at the two-acre pond including tricolored blackbird.

2) Minimize noise and other disturbances. Recognizing that use of the homesite and Project site has resulted in human disturbances for many decades that likely results in use of the site by species tolerant of disturbances and avoidance of the area by less tolerant species and that the Project would increase disturbances that could contribute to further wildlife avoidance, the assessment recommended minimizing noise and other human disturbances through consolidating Project features and use areas to minimize the disturbance footprint, maintaining a 100-foot buffer around the two-acre pond and along Chickahominy Slough, restricting visitor access to well-defined use areas and restricting visitors from accessing the northern and western portion of the two-acre pond during the breeding season to reduce the potential disturbance to nesting birds, reducing the number of events per year to no more than every other weekend or up to 20 events per year to reduce the frequency of temporary avoidance of wildlife habitats, enhance riparian habitat values and hydrologic function of Chickahominy Slough by restoring the stream bank where needed and planting riparian vegetation along the stream to fill in vegetation gaps and within the 100-foot buffer.

3) Removal of the 44-acre orchard from the Project. This measure would avoid impacts to foraging habitat for special-status species.

### **Estep Environmental Consulting - May 24, 2016 Biological Site Assessment**

On May 24, 2016, Estep prepared a Biological Site Assessment of the Project site. The May 24, 2016 Biological Site Assessment was an update to the May 8, 2016 Biological Site Assessment that revised the May 8, 2016 assessment to identify additional General Plan policies related to biological resources, identify specific reports of tricolored blackbirds on the Project site from the Tricolored Blackbird Portal, to provide greater detail regarding potential impacts to tricolored blackbird, and to refine recommended mitigation measures.

The May 24, 2016 Biological Site Assessment indicated that the Tricolored Blackbird Portal identified 35 birds detected in 2011, 0 birds identified in 2014, and 1 bird detected in 2016 on the Project site and that a map used during the 2008 statewide survey included a map that appeared to identify the two-acre pond as an unconfirmed location for a breeding colony site. All observations were made during breeding season, but none included confirmation of breeding.

The May 24, 2016 Biological Site Assessment provided greater detail regarding potential impacts to tricolored blackbird, identifying that the small number of birds, lack of confirmed breeding, and presence of red-winged blackbirds as the primary breeding occupant of the marsh suggested that this is not a significant breeding site for the tricolored blackbird, however, detections during breeding season indicate occupancy and potential breeding (breeding has not been confirmed). The impact discussion was updated to describe the sensitivity of tricolored blackbirds to human disturbances near their breeding colonies, particularly during the incubation phase of the breeding cycle. The discussion concluded that Project elements that could affect the continued occupancy by tricolored blackbirds included construction and use of the proposed parking lot just north of the

pond, the conversion of the 45 acres of grassland/pasture to orchards, and an increase in the frequency and magnitude of noise and other disturbances related to events occurring during the breeding season. The discussion concluded that confirming breeding of tricolored blackbirds must be established for a habitat or disturbance-related impact to reach a level of significance and that if breeding were confirmed, these Project elements would constitute a potentially significant impact to tricolored blackbird.

The May 24, 2016 Biological Site Assessment updated the recommendations to minimize noise and disturbances to remove the requirement that only acoustic live music be permitted during events and that recorded music be kept to low decibel levels, to specify a 100-foot buffer around the western and northern portion of the pond and along Chickahominy Slough and prohibiting visitor access into the buffer during the tricolored blackbird breeding season (March through August), and to not allow maintenance of cattail growth during the breeding season. A fourth recommendation was also added to monitor tricolored blackbird activity and further minimize disturbances if breeding is confirmed, implementing Mitigation Measure BIO-3 from the Project MND and Avoidance and Minimization Measure 21 in the Draft Yolo County Habitat Conservation Plan/Natural Resources Conservation Plan, which has since been adopted. This fourth recommendation involved monitoring tricolored blackbird activity at the two-acre pond for a minimum of five years to determine occupancy and breeding status, noting that monitoring could cease if breeding was not confirmed during the five-year period, but if breeding is confirmed, that monitoring shall continue until five consecutive years of non-breeding is confirmed. If breeding is confirmed in any given year, a 1,300-foot buffer is required between breeding locations on the two-acre pond and any construction activities. This would require a preconstruction survey to be conducted each construction year. Further, if breeding is confirmed in a given year, then a 500-foot buffer from breeding is required and all visitor access is prohibited within the 500-foot buffer during breeding season (March through August).

### **Estep Environmental Consulting - June 20, 2016 Biological Site Assessment**

On June 20, 2016, Estep prepared a Biological Site Assessment of the Project site (see Appendix D1). The June 20, 2016 Biological Site Assessment was an update to the May 24, 2016 Biological Site Assessment and was revised to identify the timing of the incubation phase of the tricolored blackbird breeding cycle (typically April/May), to revise the recommendation to minimize noise and other human disturbances to identify that the tricolored blackbird breeding season is approximately March through August, and to revise the recommendation of the May 8, 2016 assessment to identify specific reports of tricolored blackbirds on the Project site from the Tricolored Blackbird Portal, to provide greater detail regarding potential impacts to tricolored blackbird, and to refine recommended mitigation measures.

### **Estep Environmental Consulting - June 24, 2017 Tricolored Blackbird Survey and Habitat Assessment**

On June 22, 2017, Estep Environmental Consulting conducted a tricolored blackbird survey and habitat assessment of the Project site from 10:00 AM to noon, in compliance with the Use Permit

Conditions of Approval and reported findings in the June 24, 2014 Tricolored Blackbird Survey and Habitat Assessment (see Appendix D2). No tricolored blackbirds were observed or heard during the June 2017 survey. Several pairs of red-winged blackbirds were observed.

Estep Environmental Consulting noted that the extent of cattail marsh around the perimeter of the pond had declined since 2016 and that dead cattails were present throughout the perimeter of the pond with large, dry matted vegetation on the west and northwest ends of the pond and further noted that gradually receding water in the pond may have begun prior to 2016, providing a photo taken on April 27, 2016 that shows that the outer perimeter of the cattail marsh was dormant. The survey also noted that a small area of cattails, which was not considered suitable habitat for tricolored blackbirds, had been removed at the eastern end of the pond.

Estep Environmental Consulting concluded that in its current condition there is insufficient cattail marsh habitat around the pond to support breeding tricolored blackbirds, but that an increase in pond water level would re-establish cattail marsh in currently dormant areas around the pond.

### **Estep Environmental Consulting - May 31, 2018 Memo: Field and Pond Project, Supplemental Survey Data for the Focused EIR**

During March through May, 2018, Estep Environmental Consulting conducted additional field surveys to provide supplemental biological information for the Project (see Appendix D3). On March 27, April 17, and May 8, 15, 22, and 29, 2018, Estep Environmental Consulting conducted field surveys to provide supplemental biological information for the Project. The following discussion summarizes the results of Estep's field surveys and assessments of the Project site related to tricolored blackbird, VELB, and golden eagle.

#### **TRICOLORED BLACKBIRD**

The tricolored blackbird (*Agelaius tricolor*) nests in colonies from several dozen to several thousand breeding pairs. They have three basic requirements for selecting their breeding colony sites: open accessible water; a protected nesting substrate, including either flooded or thorny or spiny vegetation; and a suitable foraging space providing adequate insect prey within a few miles of the nesting colony. Nesting colonies are found in freshwater emergent marshes, willows, blackberry bramble, thistles, or nettles, and silage and grain fields. Suitable foraging habitat includes grasslands, pasturelands, seasonal wetlands, and some cultivated habitats.

A two-acre man-made pond occurs in the northwest corner of the Project site. Cattail-dominated emergent vegetation has developed around the perimeter of the pond. Historical aerial photos indicate the pond was originally created in approximately 2003 and that emergent vegetation around the perimeter of the pond did not mature until at least 2008. The first reported occurrence of tricolored blackbird at the pond was in 2011. The pond was originally created by a previous landowner and used for fishing, swimming, and other recreation.

To conduct more intensive surveys to further determine the presence or absence of tricolored blackbirds at the pond, Estep Environmental Consulting conducted a series of surveys of the cattail marsh area and vicinity from approximately 9:00 AM to 11:00 AM on March 27 and from 10:00 AM to 11:30 AM on April 17. Estep Environmental Consulting selected several observation points

around the pond, scanned the area using binoculars, and listened for the bird's distinctive call for approximately 10 minutes at each survey point. Each survey point was visited two to three times. Estep Environmental Consulting conducted additional weekly follow-up surveys on May 8, 15, 22, and 29 to determine presence/absence later in the breeding season.

No tricolored blackbirds were observed or heard during the March 27 survey. During the April 17 survey, four male tricolored blackbirds were observed flying above the pond briefly before flying away. No tricolored blackbirds were observed or heard at the pond. Numerous red-winged blackbirds were observed occupying the marsh. Between 15 and 20 territorial red-winged blackbird males were present, occupying breeding territories spaced throughout the perimeter of the pond. No tricolored blackbirds were observed or heard during the May 8, 15, 22, and 29 surveys. Red-winged blackbirds continued to occupy the entire perimeter of the pond.

The only potential nesting habitat is a narrow band of cattail marsh around the perimeter of the pond, ranging in width from 5- to 10-feet. In 2017, a reduction in the water volume in the pond apparently resulted in a fairly significant drying of the cattail marsh. During the 2018 survey, the marsh vegetation at the pond appeared to be recovering; however, the upper slope of the pond remained dry with no emerging cattail marsh vegetation. The result is that the availability of nesting habitat is limited and more conducive to red-winged blackbird nesting.

There are several other potentially occupied ponds in the vicinity of the Project site, including three ponds with reported occupancy. Two are approximately 0.75 miles northeast of the Project site and one is approximately 1.5 miles northeast of the Project site. There is also a similar pond approximately 0.3 miles north of the Project site, and several others to the northwest and southwest; however, these are all on private property and no survey information is available.

The memo lists observations of tricolored blackbird at the pond since the first reported occurrence in 2011, based on data from the CNDDDB, Tricolored Blackbird Portal, and Estep surveys:

- 2011 – 35 birds detected (Tricolored Blackbird Portal); observation made during the breeding season, so breeding was presumed; however, no evidence of confirmation of breeding is noted;
- 2014 – 0 birds detected (Tricolored Blackbird Portal);
- 2016 – 1 bird detected; breeding not confirmed (Tricolored Blackbird Portal);
- 2016 – 10 birds detected; birds were confirmed not breeding, occurring incidentally above the pond before flying away (April 27, 2016, Estep);
- 2017 – 0 birds detected (June 22, 2017, Estep);
- 2017 – 0 birds detected; the site was reported as unsuitable habitat (Tricolored Blackbird Portal);
- 2018 – 0 birds detected (March 27, 2018 survey, Estep);
- 2018 – 4 birds detected; as in 2016, these adult males were observed flying above the pond briefly before flying away (April 17, 2018, Estep); and
- 2018 – 0 birds detected (May 8, 15, 22, and 29 surveys, Estep).

## 3.0 BIOLOGICAL RESOURCES

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The first reported occurrence was in 2011 (CNDDDB 2018, Tricolored Blackbird Portal), which estimated 35 birds were present and possibly breeding. Surveys conducted in 2014 reported that no birds were present. In 2016, two surveys were conducted, one of which reported just one bird with no confirmed breeding and the other reported 10 birds that were confirmed to be non-breeding. In 2017, two additional surveys were conducted, neither of which reported presence. The 2017 survey reported in the Tricolored Blackbird Portal also refers to the site as unsuitable habitat. In 2018, six surveys were conducted between March 27 and May 29. No birds were detected during the first survey on March 27, four nonbreeding birds were detected during the second survey on April 17, and no birds were detected during the four May surveys.

Overall, Estep Environmental Consulting concluded that the results of past surveys indicate that there have been no tricolored blackbird occurrences at the site for the last two years (with the exception of fly-over occurrences), and no breeding at the site for at least the last five years.

Habitat conditions at the site are considered marginally suitable. The extent of marsh vegetation around the perimeter of the pond is dependent on water levels in the pond, which can fluctuate. The maximum area of emergent marsh vegetation totals approximately 0.4 acres, which is nearing the minimum patch size to support a tricolored blackbird nesting colony. In 2017, the extent of emergent vegetation was reduced to about 0.2 acres, apparently due to lowered water levels in the pond. Additionally, the extent of occupancy by red-winged blackbirds, which were documented as the dominant nesting species during the 2016 through 2018 surveys, further limits the availability of nesting habitat for tricolored blackbirds. The site otherwise meets the requirements for tricolored blackbirds, including the proximity to open foraging habitat which is found primarily in the grassland/pasture south of Chickahominy Slough and neighboring open lands. The adjacent open pastureland is considered essential for occupancy of the site.

The memo noted that while no tricolored blackbird habitat would be removed by the Project, the Project applicants are not required to otherwise maintain water levels in the pond or maintain marsh habitat around the perimeter of the pond. The pond and associated habitat is maintained because it provides aesthetic value to the property and supports a variety of wildlife species, a desirable feature to the landowners.

The memo concluded that disturbance from noise and human presence can also potentially affect occupancy by tricolored blackbirds. Although the use of the Project site as an event center would periodically increase the number of people and related noise levels onsite during scheduled wedding events, the Project site has been subject to ongoing baseline human noise and disturbances since the pond was constructed on or around 2003. The pond is part of the historic farm residence complex and receives regular disturbance from maintenance activities, mowing of the lawns that surround the pond, road traffic along County Road 29, noise and dust from farm activities on the adjacent land on the north side of County Road 29, and from ongoing non-Project use of the house, barn, and pond. Whether or not baseline disturbances have prohibited or limited nesting by tricolored blackbirds is unknown; however, a periodic increase in noise disturbance and human presence is not expected to have a substantial negative affect on the already limited use of the site by tricolored blackbirds.

Estep Environmental Consulting concluded that the Project will not result in habitat-related impacts to the tricolored blackbird. Because of the limited use of the site by tricolored blackbirds, including the lack of nesting records over the last 5 years and lack of occurrence records in the last 2 years; and because of the historic and existing baseline disturbance of the site, impacts related to noise disturbance from scheduled events are not expected to result in substantial adverse effects to the species (CEQA Appendix G) or substantially reduce the number or restrict the range of the species (CEQA Section 15065). This impact is therefore considered less than significant.

#### VALLEY ELDERBERRY LONGHORN BEETLE

The VELB (*Desmocerus californicus dimorphus*) is a medium-sized woodboring beetle, about 0.8 inches long. Endemic to California's Central Valley and watersheds that drain into the Central Valley, this species' presence is entirely dependent on the presence of its host plant, the elderberry shrub (*Sambucus* spp.). VELB is a specialized herbivore that feeds exclusively on elderberry shrubs with the adults feeding on leaves and flowers and the larvae on the stem pith. Habitat for VELB consists of elderberry shrubs with stems greater than one inch in basal diameter. Elderberry grows in upland riparian forests or savannas adjacent to riparian vegetation, but also occurs in oak woodlands and savannas and in disturbed areas. It usually co-occurs with other woody riparian plants, including valley oak, Fremont cottonwood, various willows, and other riparian trees and shrubs. The nearest reported occurrence of VELB is approximately two miles northeast of the Project site.

Estep Environmental Consulting walked the entire Project site on the north side of Chickahominy Slough to confirm the locations of all elderberry shrubs in the vicinity of the Project site. Each shrub was mapped and GPS locations were recorded. Five elderberry shrubs were found within the Project site, and as reported in Estep's initial June 2016 biological assessment, all are along Chickahominy Slough. See Figure 3.0-3. GPS coordinates for these shrubs are as follows:

- Shrub 1: 38.593430N -122.027303W
- Shrub 2: 38.593593N -122.026685W
- Shrub 3: 38.593123N -122.024723W
- Shrub 4: 38.592930N -122.024441W
- Shrub 5: 38.593127N -122.024494W

USFWS Guidelines require a 100-foot construction setback from potentially occupied elderberry shrubs. Estep Environmental Consulting identified that elderberry shrubs and VELB are not known to be sensitive to human presence, so there is no USFWS guidance that restricts proximity to noise or other disturbances and concluded that compliance with USFWS guidance and Yolo County General Plan Policy CO-2.22 by maintaining a 100-foot, no development setback from the upper bank of Chickahominy Slough would reduce impacts on VELB to less-than-significant.

#### GOLDEN EAGLE

The golden eagle (*Aquila chrysaetos*) nests on cliffs or in trees and hunts in nearby open habitats, such as grasslands, oak savannas, and open shrublands. Trees, primarily oak and foothill pine, are more commonly used for nesting in the interior Coast Ranges where suitable cliff nesting habitat is

## 3.0 BIOLOGICAL RESOURCES

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scarce. In the interior central Coast Ranges, golden eagles forage primarily in grazed grasslands, open shrublands, and oak savanna communities supporting large populations of ground squirrels. The nesting distribution of golden eagles in Yolo County is restricted to the higher elevation foothill and mountainous areas on the western side of the county that support a mixture of oak woodland, grassland, and chaparral communities.

There are few official records of golden eagle nests in Yolo County; however, several have been incidentally reported over the years and are likely extant. Eagles have been reported in areas of Blue Ridge, Rocky Ridge, and the Capay Hills east of Capay Valley. Golden eagles are also occasionally observed foraging in the grassland foothills along the western edge of the valley during the breeding season. The species is also occasionally observed on the valley floor, mainly during the winter months. There are undoubtedly more nesting golden eagle pairs along the eastern slope that have not been reported due to the general inaccessibility of much of this area.

A letter commenting on the IS/MND (letter from Chad Roberts, dated April 4, 2016) indicates the presence of a historic golden eagle nest on the Project site; however, no records were found on CNDDDB, e-bird, or other local data sources. There are currently no active golden eagle nests on the Project site; however, several of the oak trees on the southern edge of the property are suitable nest trees, and the grassland/pastureland south of Chickahominy Slough is suitable foraging habitat.

To provide updated information on golden eagle nesting in the vicinity of the Project, Estep Environmental Consulting conducted a search for active golden eagle nests on and in the vicinity of the Project site. All potential nest trees along Chickahominy Slough and surrounding area to a distance of approximately 0.3 miles from the Project site were inspected for the presence of nests. The surrounding area to a distance of approximately one mile from the Project site was also surveyed to detect observations of golden eagles. The CNDDDB, e-bird, and other local sources were also checked for recent records of golden eagles in the vicinity of the Project site.

No golden eagle nests were found on or in the vicinity of the Project site. No golden eagles were observed perched or in flight on or in the vicinity of the Project site. There are no reported golden eagle nests in the vicinity of the Project site from the CNDDDB. The e-bird website reports recent sightings several miles from the Project site, but none in the vicinity of the Project site. The e-bird website reports one possible historic nest along Chickahominy Slough approximately one mile east of the Project site as recently as 1999, but without confirmation or more recent occurrences. No nests or golden eagles were observed at or in the vicinity of this location. No other local sources have reported nests in the vicinity of the Project site.

Estep Environmental Consulting concluded that the Project will not remove nesting or foraging habitat to the golden eagle and that because there are no nesting golden eagles in the vicinity of the Project site, there is no potential for noise disturbance to impact nesting golden eagles.

## **Robert Meese, Ph.D. – Observations and Assessment of Field and Pond Site, County Road 29, Yolo County, California**

In 2018, Robert Meese, Ph.D. prepared a memo summarizing his observations and assessment of the Project site (see Appendix E). Dr. Robert Meese is a recognized expert on tricolored blackbirds, having published numerous scientific papers and reports on the species and is the primary party responsible for the Tricolored Blackbird Portal (<http://tricolor.ice.ucdavis.edu>). Dr. Meese has served as the Principal Investigator for contracts with the USFWS and CDFW. He holds a master banding permit under the USGS Bird Banding Laboratory and has banded 90,000 tricolored blackbirds since 1997. The results of his observations and assessment are described below.

### **BACKGROUND ON THE SPECIES**

The tricolored blackbird is a near-endemic California passerine whose abundance has declined markedly over several decades. The tricolored blackbird was listed as Threatened under the California Endangered Species Act in April, 2018 and the species is increasingly conservation-dependent.

The tricolored blackbird was historically found primarily in the Central Valley and was largely confined to freshwater marshes during the breeding season. However, due to large-scale modifications of its historical breeding habitats, the species has for nearly 100 years been struggling to accommodate landscape changes by nesting and foraging in a wide variety of anthropogenic habitats and introduced, exotic plant species. In the Sacramento and Upper San Joaquin Valleys the species is still mainly found in freshwater marshes during the breeding season, and utilizes ponds primarily intended for waterfowl that occur on National Wildlife Refuges, State Wildlife Areas, and private duck clubs.

### **SITE CONDITIONS AND PAST SURVEYS**

Dr. Meese has visited the site five times over the past seven years. His surveys of the site include:

1. April 15, 2011. I observed 35 birds. Breeding suspected but not confirmed. Observation record in the Tricolored Blackbird Portal.
2. April 18, 2014. No birds observed. Observation record in the Tricolored Blackbird Portal.
3. May 18, 2016. I observed from 0810-0840 and saw and heard one male tricolored blackbird; no evidence of breeding. A record for this observation is in the Tricolored Blackbird Portal.
4. Early May, 2017. I briefly surveyed the site and saw no tricolored blackbirds and only very limited cattails around the perimeter of the pond.
5. Mid-May, 2017. I surveyed the site for 45 minutes and did not see nor hear any tricolored blackbirds.

### **ASSESSMENT OF THE SITE**

The Field and Pond site, called Brian Stucker Pond in the Tricolored Blackbird Portal, is a location where small numbers of tricolored blackbirds, fewer than 50 individuals, were suspected to have

bred in the recent past. Dr. Meese noted his most recent observation of potential breeding at the site was in 2011 when he observed 35 birds during the April to July breeding season and he has observed only a single male tricolored blackbird at the site since then.

The tricolored blackbird is a colonial species, and always nests in groups. This breeding habit places constraints on the species as the primary goal of nesting females is to hide their nests, and thus in nearly all cases where it nests in freshwater marshes, the species occurs in relatively large blocks of vegetation, primarily cattails (*Typha latifolia*), as by nesting in blocks, the nests may be placed inside of perimeter vegetation so that the visibility of nests is much reduced and less apparent to potential predators. Other blackbird species, including red-winged (*A. phoeniceus*) and yellow-headed (*Xanthocephalus xanthocephalus*) blackbirds, are not colonial so do not have the same preference for nesting in large blocks of vegetation and thus their nests may often be found in thin, linear strips of vegetation as are often associated with roadsides and ditches.

Dr. Meese noted that the pond at the Field and Pond site is approximately 1 acre in size and in all of his surveys of the site, more than half of this has been open water, with the cattails forming a thin perimeter strip around the margin of the basin. Since 2011, the condition of these cattails has deteriorated from a preponderance of the young, green, erect stems preferred by nesting birds to an accumulation of dead, lodged stems, especially in the northern reaches of the pond, that are shunned by nesting tricolored blackbirds due to the increased visibility of nests and access to nests by mammalian predators. The birds that I observed in 2011 were concentrated in the northern end of the pond, when this was dominated by fresh cattails, but since then, this portion of the pond has been unsuitable for nesting by tricolored blackbirds as it contains primarily dead, lodged cattail stems that form a thick mat.

Freshwater marshes also provide relatively disturbance-free nesting environments as the water serves as a barrier to most vertebrate animals, including humans. The tricolored blackbird is especially sensitive to disturbance, especially in the earliest stages of the breeding season when the birds arrive and the males set up territories and try to attract females. During this interval, the nesting of birds may be disrupted by the appearance of predators such as coyotes and raccoons or by loud noises associated with human activities.

The Field and Pond site is thus of marginal importance to breeding tricolored blackbirds although a small number of birds may have bred there several years ago and a few birds may still find suitable resting or roosting habitat there. The combination of inappropriate habitat configuration (the narrow perimeter fringe), pond maintenance to conserve open water, and human activity-related noises create conditions that are ill-suited to breeding by this colonial songbird. It is unlikely that more than infrequent breeding by a few birds will occur there in the future as nearby locations (e.g., Conaway Ranch) provide far higher-quality, more extensive, and more suitable breeding habitat that is specifically maintained for breeding tricolored blackbirds due to an existing conservation easement for the species.

### CONFIRMING BREEDING

Previous reports of the presence of birds during the breeding season are insufficient to confirm breeding at the site as the species often inspects multiple potential breeding locations prior to

selecting the site where it ultimately chooses to breed. Groups of birds are also known to rest for brief intervals in appropriate habitats between breeding attempts. To confirm breeding, a single observation would need to consist of specific behaviors, for example nest-building, the feeding of nestlings, or the presence of young out of the nests. Alternatively, there would need to be multiple observations over 2 or more weeks to confirm continuous bird presence and the birds would need to display specific behaviors associated with breeding. Thus, although there have been episodic reports of birds occurring at the site over the past several years, none of these has confirmed breeding and its status as a breeding location is uncertain.

## 3.2 REGULATORY SETTING

There are a number of regulatory agencies whose responsibility includes the oversight of the natural resources of the state and nation including the CDFW, USFWS, USACE, and the National Marine Fisheries Service. These agencies often respond to declines in the quantity of a particular habitat or plant or animal species by developing protective measures for those species or habitat type. The following is an overview of the federal, state and local regulations that are applicable to the Project.

### FEDERAL

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#### **Federal Endangered Species Act**

The Federal Endangered Species Act (FESA), passed in 1973, defines an endangered species as any species or subspecies that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as any species or subspecies that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Section 9 of FESA generally prohibits all persons from causing the "take" of any member of a listed species. (16 U.S.C. § 1538.) This prohibition applies mainly to animals; it only extends to plants in areas "under federal jurisdiction" and plants already protected under state law. (Id., subd. (a)(2)(B); see also Northern Cal. River Watch v. Wilcox (9th Cir. 2010) 620 F.3d 1075.) "Take" is defined in statute as, "... to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 U.S.C. § 1532(19).) Harass is defined in regulation as "...an intentional or negligent act or omission that creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering." (See 50 CFR § 17.3.) Harm is defined in regulation as "...significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering." (Id.) Despite the general prohibition against take, FESA in some circumstances permits "incidental take," which means take that is incidental to, but not the purpose of, the carrying out of an otherwise lawful activity. (16 U.S.C. § 1539(a).)

Compliance with ESA can be achieved under Section 7 or 10 of FESA depending on the involvement of the federal government. Section 7 requires federal agencies to make a finding on all federal

actions, including the approval by an agency of a public or private action, such as the issuance of a “404 permit” for filling wetlands by the U.S. Army Corps of Engineers (USACE), on the potential of the action to jeopardize the continued existence of any listed species impacted by the action or to result in the destruction or adverse modification of such species’ critical habitat. Provisions of Section 10 are implemented when there is no federal involvement in a project except compliance with FESA. A take not specifically allowed by federal permit under Section 7 or Section 10(a)(1)(B) of the FESA is subject to enforcement through civil or criminal proceedings under Section II of the FESA.

Proposed federal actions that would result in take of a federal-listed or proposed species require consultation with USFWS or NMFS under section 7 of FESA. (Id., § 1536.) The objective of consultation is to determine whether the proposed federal action would jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. Where such an outcome would not occur, USFWS or NMFS must still impose reasonable and prudent measures to minimize the effects of the incidental taking. Where such an outcome could occur, USFWS or NMFS must propose reasonable and prudent alternatives that, if implemented, would avoid such an outcome. (Id.)

### **Migratory Bird Treaty Act**

To kill, take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird is a violation of the Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., §703, Supp. I, 1989), unless it is in accordance with the regulations that have been set forth by the Secretary of the Interior.

### **Federal Bald and Golden Eagle Protection Act**

The Federal Bald and Golden Eagle Protection Act provides regulations to protect bald and golden eagles as well as their nests and eggs from willful damage or injury.

## STATE

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### **Fish and Game Code Sections 2050-2097 - California Endangered Species Act**

The California Department of Fish and Wildlife (CDFW) administers a number of laws and programs designed to protect fish and wildlife resources. Principal of these is the California Endangered Species Act of 1984 (CESA Fish and Game Code Section 2050 et seq.), which regulates the listing and take of state endangered and threatened species, as well as candidate species. Under Section 2081 of CESA, CDFW may authorize take of an endangered and/or threatened species, or candidate species, by an incidental take permit or Memorandum of Understanding (MOU) for scientific, educational, or management purposes. In approving an incidental permit, CDFW must ensure, among other things, that “[t]he impacts of the authorized take shall be minimized and fully mitigated.” Further, “[t]he measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives

to the greatest extent possible. All required measures shall be capable of successful implementation.” To be consistent with Federal regulations, CESA created the categories of "threatened" and "endangered" species. It converted all "rare" animals into the Act as threatened species, but did not do so for rare plants, as previously designated under the California Native Plant Protection Act (discussed below). Thus, there are three listing categories for plants in California: rare, threatened, and endangered. Under State law, plant and animal species may be formally designated by official listing by the California Fish and Game Commission.

### **Fish and Game Code Sections 3503, 3503.5, 3800 - Predatory Birds**

Under the California Fish and Game Code, all predatory birds in the order Falconiformes or Strigiformes in California, generally called “raptors,” are protected. The law indicates that it is unlawful to take, possess, or destroy the nest or eggs of any such bird unless it is in accordance with the code. Any activity that would cause a nest to be abandoned or cause a reduction or loss in a reproductive effort is considered a take. This generally includes construction activities.

### **Fish and Game Code §3511, 3513, 4700, and 5050 – Fully Protected Species**

Fish and Game Code Sections 3511, 3513, 4700, and 5050 pertain to fully protected wildlife species (birds in Sections 3511 and 3513, mammals in Section 4700, and reptiles and amphibians in Section 5050) and strictly prohibit the take of these species. CDFW cannot issue a take permit for fully protected species, except under narrow conditions for scientific research or the protection of livestock, or if an NCCP has been adopted.

### **Fish and Game Code §2800-2835 – Natural Communities Conservation Planning Act**

The Natural Communities Conservation Planning Act is set forth in Fish and Game Code Sections 2800–2835. The intent of the legislation is to provide for conservation planning as an officially recognized policy that can be used as a tool to eliminate conflicts between the protection of natural resources and the need for growth and development. In addition, the legislation promotes conservation planning as a means of coordination and cooperation among private interests, agencies, and landowners, and as a mechanism for multispecies and multi-habitat management and conservation. The development of Natural Community Conservation Plans (NCCPs) is an alternative to obtaining take authorization under Section 2081 of the Fish and Game Code.

### **California Environmental Quality Act Guidelines § 15380 – Unlisted Species Worthy of Protection**

The CEQA Guidelines provide that a species that is not listed on the federal or state endangered species list may nevertheless be considered rare or endangered if the species meets certain criteria. (CEQA Guidelines § 15380) Species that are not listed under FESA or CESA, but are otherwise eligible for listing (i.e. candidate, or proposed) may be protected by the local government until the opportunity to list the species arises for the responsible agency.

Species that may be considered for review are included on a list of “Species of Special Concern,” developed by the CDFW. Additionally, the California Native Plant Society (CNPS), a nongovernmental organization, maintains a list of plant species native to California that have low populations, limited distribution, or are otherwise threatened with extinction. This information is published in the Inventory of Rare and Endangered Vascular Plants of California. List 1A contains plants that are believed to be extinct. List 1B contains plants that are rare, threatened, or endangered in California and elsewhere. List 2 contains plants that are rare, threatened, or endangered in California, but more numerous elsewhere.

### LOCAL

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#### **Yolo County Joint Powers Agency/ Yolo Habitat Conservancy**

The Yolo County Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) Joint Powers Agency (now known as the Yolo Habitat Conservancy [YHC]) was formed in August 2002 for the purposes of acquiring Swainson's hawk habitat conservation easements and to serve as the lead agency for the preparation of a county-wide NCCP/HCP, produced as part of the Yolo Natural Heritage Program. The YHC governing Board is composed of representatives from member Agencies, which include two members of the Yolo County Board of Supervisors, one member each from the City Councils of Davis, Woodland, West Sacramento and Winters, and one ex-officio member from UC Davis. The Yolo Habitat Conservation Plan/Natural Community Conservation Plan has been formally adopted by the Conservancy Board and all member agencies. The NCP/HCP was adopted in May 2018. The NCP/HCCP applies to discretionary approvals after the effective date, so does not apply to the Project which was approved prior to NCP/HCCP adoption.

#### **County of Yolo 2030 Countywide General Plan**

The County of Yolo General Plan contains the following goals and policies that are relevant to biological resources:

##### CONSERVATION AND OPEN SPACE ELEMENT

**Goal CO-2:** Biological Resources. Protect and enhance biological resources through the conservation, maintenance, and restoration of key habitat areas and corresponding connections that represent the diverse geography, topography, biological communities, and ecological integrity of the landscape.

**Policy CO-2.1:** Consider and maintain the ecological function of landscapes, connecting features, watersheds, and wildlife movement corridors.

**Policy CO-2.2:** Focus conservation efforts on high priority conservation areas (core reserves) that consider and promote the protection and enhancement of species diversity and habitat values, and that contribute to sustainable landscapes connected to each other and to regional resources.

**Policy CO-2.3:** Preserve and enhance those biological communities that contribute to the county's rich biodiversity including blue oak and mixed oak woodlands, native grassland

prairies, wetlands, riparian areas, aquatic habitat, agricultural lands, heritage valley oak trees, remnant valley oak groves, and roadside tree rows.

**Policy CO-2.4:** Coordinate with other regional efforts (e.g., Yolo County HCP/NCCP) to sustain or recover special-status species populations by preserving and enhancing habitats for special-status species.

**Policy CO-2.9:** Protect riparian areas to maintain and balance wildlife values.

**Policy CO-2.10:** Encourage the restoration of native habitat.

**Policy CO-2.11:** Ensure that open space buffers are provided between sensitive habitat and planned development.

**Policy CO-2.17:** Emphasize and encourage the use of wildlife-friendly farming practices within the County's Agricultural Districts and with private landowners, including:

- Establishing native shrub hedgerows and/or tree rows along field borders.
- Protecting remnant valley oak trees.
- Planting tree rows along roadsides, field borders, and rural driveways.
- Creating and/or maintaining berms.
- Winter flooding of fields.
- Restoring field margins (filter strips), ponds, and woodlands in non-farmed areas.
- Using native species and grassland restoration in marginal areas.
- Managing and maintaining irrigation and drainage canals to provide habitat, support native species, and serve as wildlife movement corridors.
- Managing winter stubble to provide foraging habitat.
- Discouraging the conversion of open ditches to underground pipes, which could adversely affect giant garter snakes and other wildlife that rely on open waters.
- Widening watercourses, including the use of setback levees

**Policy CO-2.20:** Encourage the use of wildlife-friendly Best Management Practices to minimize unintentional killing of wildlife, such as restricting mowing during nesting season for ground-nesting birds or draining of flooded fields before fledging of wetland species.

**Policy CO-2.22:** Prohibit development within a minimum of 100 feet from the top of banks for all lakes, perennial ponds, rivers, creeks, sloughs, and perennial streams. A larger setback is preferred. The setback will allow for fire and flood protection, a natural riparian corridor (or wetland vegetation), a planned recreational trail where applicable, and vegetated landscape for stormwater to pass through before it enters the water body. Recreational trails and other features established in the setback should be unpaved and located along the outside of the riparian corridors whenever possible to minimize intrusions and maintain the integrity of the riparian habitat. Exceptions to this action include irrigation pumps, roads and bridges, levees, docks, public boat ramps, and similar

uses, so long as these uses are sited and operated in a manner that minimizes impacts to aquatic and riparian features. (DEIR MM BIO-1b)

**Policy CO-2.41:** Require that impacts to species listed under the State or federal Endangered Species Acts, or species identified as special-status by the resource agencies, be avoided to the greatest feasible extent. If avoidance is not possible, fully mitigate impacts consistent with applicable local, State, and Federal requirements. (DEIR MM BIO-5a)

### 3.3 IMPACTS AND MITIGATION MEASURES

#### THRESHOLDS OF SIGNIFICANCE

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CEQA Guidelines Appendix G is a sample Initial Study checklist that includes number of factual inquiries related to the subject of biological resources, as it does on a whole series of additional environmental topics. Notably, lead agencies are under no obligation to use these inquiries in fashioning thresholds of significance on the subject of air quality impacts, or indeed on any subject addressed in the checklist. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) Rather, with few exceptions, “CEQA grants agencies discretion to develop their own thresholds of significance.” (*Ibid.*) Even so, it is a common practice for lead agencies to take the language from the inquiries set forth in Appendix G and to use that language in fashioning thresholds. The County has done so here, though it has exercised its discretion to modify the language of the Appendix G threshold focusing the impact analysis to address the three specific species identified in the Superior Court’s writ.

Consistent with Appendix G of the CEQA Guidelines, the Project will have a significant impact on biological resources if it will:

- Substantially reduce the habitat of a fish or wildlife species;
- Cause a fish or wildlife population to drop below self-sustaining levels;
- Threaten to eliminate a plant or animal community;
- Substantially reduce the number or restrict the range of an endangered, rare or threatened species; and/or
- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.

As noted previously, a lawsuit regarding the Project was filed with the Yolo County Superior Court on November 14, 2017. Yolo County Superior Court issued a Statement of Decision on January 16, 2018 and a Judgment on June 20, 2018 regarding the lawsuit (see Appendix B). The Court found substantial evidence supported a fair argument that the Project may have a significant environmental impact on tricolored blackbird, VELB, and golden eagle. The remaining claims were denied. The Judgment and resulting Writ of Mandate requires the County to undertake further

study and preparation of an Environmental Impact Report to address only the potential impacts of the Project on the tricolored blackbird, VELB, and golden eagle.

The following discussion focuses on these three species: tricolored blackbird, golden eagle, and VELB.

### **Baseline Conditions**

During the public participation process after the NOP was issued, the commenters noted that the environmental analysis should consider the Project baseline as of the initial Project application in August 2015, rather than as of the issuance of the Notice of Preparation in July 2018. For purposes of this Draft EIR, both periods are analyzed as potential baselines from which impacts are considered. As discussed below, the impacts are the same, regardless of the time period selected as the initial baseline.

#### **AUGUST 2015 – APPLICATION DEEMED COMPLETE**

The Project site is characteristic of the westernmost extent of the Central Valley as it transitions into the interior Coast Ranges. The property lies within the Chickahominy Slough watershed, which extends northwest to southeast through the lower eastern slope of Blue Ridge. The slough runs through the entire length of the northern half of the property from the northwest corner to the southern boundary and separates the open grassland/pastureland south of the slough from the more disturbed and developed areas north of the slough (Plate 1). The slough supports a narrow riparian corridor dominated by valley oak with Fremont cottonwood and willow as secondary overstory species, along with occasional foothill pine and an understory dominated by California buckeye, toyon, and elderberry. The slough has been narrowed and degraded over time through farming and ranching practices and currently supports a deeply incised channel with steep banks and a narrow, somewhat intermittent corridor of riparian vegetation. A small seasonal tributary also occurs on the property entering at the southwest corner, extending northward and then eastward through the open pasture before meeting Chickahominy Slough near the center of the property. This seasonal stream does not support woody riparian vegetation (Estep, 2016).

The homestead site, including all outbuildings and farm/ranch structures, is entirely north of the slough and bounded on the north by County Road 29. Most of this area has been disturbed by long-term farming/ranching operations and long-term residential uses, and, other than the slough itself and the emergent marsh associated with the 2-acre pond, does not retain significant natural features. The area in the immediate vicinity of the main house, the second nearby house, and barns is landscaped with lawns and mature native and nonnative trees and shrubs and is subject to regular and typical human activities and disturbances. While the open grass area east of the main house is mostly weedy, unused, and maintained through periodic mowing, the area west of the main house in the vicinity of the 2-acre pond has been landscaped and includes rail fences, graveled footpaths, and lawns. The 2-acre man-made pond, which is near the western edge of the homestead area west of the main house, is mostly open water and includes a small wooden pier on the southern end that extends approximately 40 feet into the pond. Emergent marsh, dominated by dense cattail, extends around the perimeter of the 2-acre pond on the south, west,

## 3.0 BIOLOGICAL RESOURCES

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and north sides with the largest patch occurring on the northwest corner of the pond (Estep, 2016).

Baseline conditions on the property include use of the property by the current and previous property owners, their families, and friends, and regular maintenance of the grounds and facilities, irrigation of the grounds, and maintaining the roads and access. The property owners along with their families and friends have regularly used the pond for fishing and catch and release. The prior owners were known to use the pond for swimming, and practiced skeet shooting in the vicinity. The owners' friends and family members may use the site at their pleasure and the owners' workers and landscapers are also invited to visit the site to fish and recreate when they are not working. The current owners have three dogs that have the run of the property when the owners are on site. The buildings on the site are regularly used by the owners, workers, and family and friends of the property owner. The paths and gravel roads in the northern portion of the pond are also regularly used and maintained.

The grounds are maintained on a regular basis by the landscaping crew and workers. The grass area, including the area around the pond, is mowed at least once a week and occasionally twice a week using a riding mower. The pond is maintained on a regular basis, either by the owners and landscapers, using a boat to skim and clean the surface of the pond.

The service road, north of the pond, is used regularly by the property owners, their families, and friends and landscaping and maintenance personnel. The gravel is refreshed on the service roads on an annual basis, using a Bobcat. There is usually someone at the site on a daily basis, whether it is the property owners, their landscaping team, family using the site, or maintenance staff.

Except in the wet season, the lawns are typically irrigated at least once a day and sometimes twice a day. Irrigation usually begins in March or April, depending on the weather, and goes through the end of November. The irrigation system is powered by an irrigation well on the Project site. Operation of the system is very loud, with the irrigation well running and the high-powered sprinklers operating which spray the cattails and the grass. The irrigation system was in place prior to the Project applicants' acquisition of the property in 2014.

In October 2014, the property owners began hosting events on the Project site, as they are permitted by right, which resulted in increased human presence and activity, including lights and noise, particularly in the vicinity of the barn, pond, service road, parking areas, and main house.

Under baseline conditions, there has been regular human activity on the Project site, even before the owners began hosting events there, including use of a riding mower to maintain the grass around the pond, use of the dock and pond for recreation and catch and release fishing, and human and pet activity throughout the site.

Prior to acquisition of the Project site by the Project applicants, the Project owner reports that the previous owner was an avid outdoorsman known to have used the Project site for hunting and shooting activities and fished and recreated in the man-made recreational pond. Historical photos show that the dock has been present to provide access to the pond since 2005. Historical photos of the Project site show that a boat is typically present in the vicinity of the pond. The Project

applicant indicated that the previous owner used the water tower located northwest of the pond for skeet shooting; skeet-shooting equipment was located in the top floor of the tower that would eject pucks out over the pond to be shot at. The previous owner continued to store skeet equipment following the 2014 acquisition of the Project site by the Project applicants (Dahvie James personal communication to Beth Thompson, 2018).

Following the Project application in August 2015, the County conducted environmental review of the Project site. The May 8, 2016 Biological Site Assessment prepared by Estep Environmental Consulting identifies existing conditions on the Project site in May 2016.

#### JULY 2018 – NOTICE OF PREPARATION

At the time of the July 2018 Notice of Preparation, the conditions at the Project site remained largely the same, with regular human activity to maintain and operate the site continued, similar to the level of activity at the time of the 2015 Project Application baseline. There was an occasional increase in human activity associated with weddings and other events hosted on the Project site.

In 2018, a two-acre man-made pond remains in the northwest corner of the Project site. Cattail-dominated emergent vegetation has developed further around the perimeter of the pond. There is a narrow band of cattail marsh mainly to the west and north of the pond, ranging in width from 5- to 10-feet. In 2017, a reduction in the water volume in the pond apparently resulted in a fairly significant drying of the cattail marsh. During the 2018 survey it appeared the marsh vegetation was recovering; however, the upper slope of the pond remained dry with no emerging cattail marsh vegetation (Estep, 2018).

Conditions on the Project site are shown in the July 10, 2018 aerial photo in Appendix C.

#### IMPACTS AND MITIGATION

**Impact 3-1: Tricolored blackbird: Project implementation would not substantially reduce the habitat, cause a wildlife population to drop below self-sustaining levels or eliminate an animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, have a substantial adverse effect, either directly or indirectly, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service (Less than Significant)**

Tricolored blackbirds (*Agelaius tricolor*) are a special-status species, as previously described. They are colonial nesters that favor dense stands of cattails and/or bulrush, but they also commonly utilize blackberry thickets associated with drainages, ditches, and canals.

## 3.0 BIOLOGICAL RESOURCES

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### TRICOLORED BLACKBIRD BREEDING HABITAT

In terms of access to open water, potential nesting substrate, and access to foraging, the Project site supports the minimum requirements for a location to potentially serve as tricolored blackbird breeding habitat. However, there is regular human disturbance on the Project site, under both 2015 baseline conditions and 2018 baseline conditions, and the tricolored blackbird is known to be sensitive to human disturbances when the species is considering a location for breeding. The area around the pond is currently, and historically has been, mowed at least weekly using a riding mower, landscaping equipment (blowers, clippers, etc.) are operated on the Project site and in the vicinity of the pond), humans regularly use the Project site for recreation, including catch and release fishing, a boat is used on the pond to skim and clean the pond, and the owners and their three dogs, their friends, and families socialize and recreate on the Project site. There is also regular disturbance by vehicles associated with the property owners, landscapers, workers, and others that drive or park on the service road north of the pond as well vehicle traffic along County Road 29. These conditions result in regular human disturbances. Dr. Meese has noted that the tricolored blackbird will visit a site to determine if it is potentially suitable for nesting and will readily abandon a site if there is significant human disturbance during the time which the species may attempt to establish a nest.

Site visits to the Project site in 2014 and later have indicated that breeding is not occurring on the Project site and observations of tricolored blackbird subsequent to 2011 have been minimal, as previously described; therefore, it is concluded that the Project site does not serve as a breeding location for tricolored blackbird. Estep Environmental Consulting's reviews of the Project site indicated that the habitat on the Project site was marginally suitable. At the time the Project MND was prepared, Estep Environmental Consulting provided a conservative conclusion that the Project could potentially impact the tricolored blackbird, consistent with the conservative standards for mitigated negative declarations (which consider only whether a fair argument can be made that a significant impact may occur, not whether the impact would occur or not). Subsequently, Mr. Estep further examined past breeding patterns, reviewed historical conditions, and conducted additional surveys to determine the potential for use of the site by tricolored blackbird. Mr. Estep concluded that habitat conditions are marginally suitable and that there has been a baseline of human activity and disturbance occurring at the Project site, such that periodic increases in human presence and noise would not have a substantial negative effect on the already limited use of the site by tricolored blackbirds. Subsequent review of the Project site by Dr. Meese similarly concluded that the conditions on the project site are ill-suited to breeding by this species. The habitat on the site is not considered significant or important for the tricolored blackbird.

Implementation of the Project would result in periodic increases in human activity on the Project site and in the vicinity of the pond. In evaluating the potential for the Project to have a substantial adverse effect, either directly or through habitat modification, on the tricolored blackbird, information provided by experts, including Estep Environmental Consulting and Dr. Meese, was reviewed and considered. Mr. Estep and Dr. Meese have indicated that the habitat on the Project site is considered marginal and is not considered significant breeding habitat for the tricolored blackbird. There is an existing baseline condition of human activity on the site and disturbances, such as mowing, lawn and grounds maintenance, pond maintenance, recreation on the dock and

in the pond, and human and pet presence on the site. The Project does not include the direct disturbance or removal of breeding habitat. Implementation of the Project, including an increase in activity, noise, and disturbances, would not have a substantial adverse effect on potential habitat on the Project site and would not significantly impact the habitat or range of the tricolored blackbird; the impacts associated with loss or reduction in potential habitat is *less than significant*.

#### TRICOLORED BLACKBIRD BREEDING

In evaluating the potential for a significant adverse effect on the tricolored blackbird in association with implementation of the Project, it is important to establish whether the tricolored blackbird has engaged inbreeding at the Project site. Records of tricolored blackbird observations at the Project site were reviewed in order to determine whether the Project site was used as a breeding location by tricolored blackbirds and past history of tricolored blackbird breeding. These records were reviewed by Estep Environmental Consulting, as documented in the May 2018 memos (see Appendix D) and Dr. Robert Meese also provided an evaluation of the site's suitability for tricolored blackbird breeding based on personal observations from 2011 through the present. Comments by environmental experts were also considered, as well as public comments provided in response to the NOP.

Hillary White, Ecological Consultant at H.T. Harvey & Associates, indicated in an April 5, 2016 email identifying data from the Tricolored Blackbird Portal that indicated a tricolored blackbird colony at the Brian Stucker Pond and Field and Pond site. Ms. White indicated that breeding was confirmed in subsequent years, but did not cite any specific year or observers that confirmed breeding. It is noted that the information submitted by Ms. White only documents that a "colony" had been observed at some point (no specific date identified on the data she provided from the Tricolored Blackbird Portal) and that the map Ms. White provided only identified that breeding was unconfirmed at the location. While Ms. White indicated that breeding had been confirmed, none of the data she provided documented this conclusion. The review of CNDDDB data, Tricolored Blackbird Portal data, and documentation of site visits provided by Estep Environmental Consulting and Dr. Robert Meese indicate that breeding was suspected in 2011 and identified as potentially occurring, but unconfirmed on an earlier map, but that breeding has indeed never been confirmed on the Project site.

Public comments in response to the NOP (see Appendix A) claimed that the site was used for breeding by tricolored blackbird, including photos of blackbirds at the site in April and May, 2016, and also claimed there is evidence that the owners have destroyed the cattails and breeding habitat. Additionally, the NOP comments questioned the baseline used to conduct the assessment, and the date of assessments, whether assessments were conducted when nesting would be observed, and evidence that the owners have reduced water levels in the pond, removed tules, planted vegetation not friendly to tricolored blackbirds, and questioned whether assessments occurred when events were taking place. Public comments also included, as an attachment to a comment from Bruce Rominger, an undated letter and photos dated April 7 2016 from Thomas Moore, State Wildlife Biologist with the US Department of Agriculture, indicating the presence of several hundred birds; this letter noted that the birds did not seem to be disturbed by construction activities on a platform in the middle of the pond or by workers doing landscaping

## 3.0 BIOLOGICAL RESOURCES

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activities. The letter also did not distinguish between tricolored blackbirds and red-winged blackbirds and did not confirm any breeding. This letter is not considered evidence of breeding as there is no documentation of nesting or breeding activities and no follow-up site visits. None of the photographs provided documentation of anything other than that the site was visited by blackbirds. As discussed below, the tricolored blackbird is known to visit the site, but has not been confirmed to breed at the Project site.

The site has been regularly observed during breeding season since 2011, with annual observations conducted in 2016, 2017, and 2018. A history of the observations regarding tricolored blackbird presence, or the lack thereof, on the Project site is provided below.

- April 15, 2011 – 35 birds detected during the breeding season, breeding was suspected but not confirmed (Tricolored Blackbird Portal, Dr. Robert Meese);
- April 18, 2014 – 0 birds detected (Tricolored Blackbird Portal, Dr. Robert Meese);
- April 27, 2016 – 10 birds detected; birds were confirmed not breeding, occurring incidentally above the pond before flying away (Estep Environmental Consulting);
- May 18, 2016 – 1 bird detected; breeding not confirmed (Tricolored Blackbird Portal, Dr. Robert Meese);
- Early May, 2017 – 0 birds detected and limited cattails observed (Dr. Robert Meese);
- Mid-May, 2017 – 0 birds detected (Dr. Robert Meese)
- June 22, 2017 – 0 birds detected (Estep Environmental Consulting);
- March 27, 2018 – 0 birds detected (Estep Environmental Consulting);
- April 17, 2018 – 4 birds detected; as in 2016, these adult males were observed flying above the pond briefly before flying away (Estep Environmental Consulting);
- May 8, 2018 – 0 birds detected (Estep Environmental Consulting);
- May 15, 2018 – 0 birds detected (Estep Environmental Consulting);
- May 22, 2018 – 0 birds detected (Estep Environmental Consulting); and
- May 29, 2018 – 0 birds detected (Estep Environmental Consulting).

A colony that is actively nesting and breeding has not been confirmed on the Project site. Although Dr. Meese's observations of the site indicates that there is marginal potential for breeding to occur, the habitat conditions are unsuitable, and breeding has not been confirmed on the site. Estep Environmental Consulting has identified there has been a five-year period of confirmed lack of breeding. While small numbers of tricolored blackbirds have occupied the marsh in some years during the breeding season since 2011 when breeding was suspected, the documented tricolored blackbird sightings have not indicated any breeding or nesting activity. There have been no occurrences of the species at the pond since 2016. In 2016 and 2018, a small number of individuals were observed flying above the pond before flying away, but they were not observed at the pond. The small amount of suitable nesting habitat (approximately 0.2 to 0.4 acre of the pond and immediate surrounding area), the small number of tricolored blackbird occurrences, the lack of confirmed breeding, and presence of red-winged blackbirds as the primary breeding occupant of the marsh suggests the marsh area was not a breeding site for tricolored blackbirds at either baseline period.

As previously described, surveys of the Project site by qualified biologists have been negative for breeding. Based on this information, it is determined that an active colony has not been present on the Project site within the last five years and the site is not considered an adequate breeding site. Therefore, potential impacts to tricolored blackbird, including disturbance of nesting and breeding activities, are *less than significant*.

**Impact 3-2: Golden eagle: Project implementation would not substantially reduce the habitat, cause a wildlife population to drop below self-sustaining levels or eliminate an animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, have a substantial adverse effect, either directly or indirectly, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service (Less than Significant)**

Golden eagle (*Accipiter cooperii*) is designated as a fully protected species afforded special protection by the CDFW. They nest in cliffs, rock outcrops, and large trees, and forage in grassland, shrubland, and cropland habitats. The closest recorded occurrence is approximately 10.16 miles to the west of the Project site at Lake Berryessa.

As previously described in the summary of Estep Environmental Consulting's 2018 memo, a letter commenting on the Project IS/MND (letter from Chad Roberts dated April 4, 2016) indicates the presence of an historic golden eagle nest on the property. However, no records were found on CNDDDB, e-bird, or other local data sources, except that one possible historic nest was reported along Chickahominy Slough approximately one mile east of the Project site as recently as 1999, but without confirmation or reports of more recent occurrences. The e-bird website reports recent sightings several miles from the Project site but does not report any nesting or other activity on or in the immediate vicinity of the Project site. Estep Environmental Consulting conducted an in-person search for active golden eagle nests on and in the vicinity of the Project. All potential nest trees along Chickahominy Slough and surrounding area to a distance of approximately 0.3 miles from the Project site were inspected for the presence of nests. A survey for observations of golden eagles was also conducted to a distance of approximately one mile from the Project site. Estep Environmental Consulting concluded that there were no active golden eagle nests on the property; however, several of the oak trees on the far southern edge of the property were identified as suitable nest trees and the grassland/pastureland south of Chickahominy Slough is suitable foraging habitat.

**SUMMARY**

The Project will not remove nesting or foraging habitat for the golden eagle species. Because there are no nesting golden eagles in the vicinity of Project site and no known nest sites, there is no potential for noise or other human activity disturbance to impact nesting golden eagles. Therefore, impacts to golden eagles are considered *less-than-significant*.

**Impact 3-3: Valley elderberry longhorn beetle: Project implementation has the potential to substantially reduce the habitat, cause a wildlife population to drop below self-sustaining levels or eliminate an animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, have a substantial adverse effect, either directly or indirectly, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service (Less than Significant with Mitigation)**

The VELB (*Desmocerus californicus dimorphus*) is a federally threatened insect that is dependent upon the elderberry plant (*Sambucus* sp.) as a primary host species. Elderberry shrubs are a common component of riparian areas throughout the Sacramento Valley region. As noted previously, five elderberry shrub were observed on the Project site along Chickahominy Slough (see Figure 3.0-3).

There is an existing baseline condition of human activity on the site and disturbances, such as mowing, lawn and grounds maintenance, including along the paths next to Chickahominy Slough, pond maintenance, recreation on the dock and in the pond, human and pet presence on the site, and active agriculture. Elderberry shrubs and VELB are not known to be sensitive to noise or human presence and, the existing baseline includes regular activity on the Project site grounds, including activity in the vicinity of the elderberry shrubs. While the elderberry shrubs could be disturbed or adversely affected by construction activities, as addressed below, it is not anticipated that an increase in human presence associated with events being held on the site would result in any adverse effect the elderberry shrubs, which are located behind a rail fence, and thus would not have a significant impact on VELB. This is consistent with the HCP/HCCP guidance regarding establishing buffers for VELB, which indicates that where existing development is already within the stipulated buffer distance (i.e., existing uses prevent establishment of the full buffer), that the development must not encroach farther into the space between the development and the sensitive natural community. The Project would not result in an increase in development in the area between existing development, which includes all of the existing improvements on the Project site, and the undeveloped area adjacent to Chickahominy Slough.

Construction and similar ground-disturbing activities near elderberry plants have the potential to disturb the VELB's habitat. While the Project would not extend the developed footprint on the Project site closer to the existing elderberry shrubs, the potential for construction activities to disturb the elderberry bushes and result in associated impacts to the VELB is a **potentially significant** impact.

### MITIGATION MEASURE(S)

**Mitigation Measure 3-1:** *Maintain a setback from Elderberry Bushes and Chickahominy Slough for construction activities, excluding agricultural activities. In order to avoid direct and indirect impacts to VELB, the Project applicant shall comply with Yolo General Plan Policy CO-2.22 by maintaining a*

100-foot no-development setback from the upper bank of Chickahominy Slough. The Project applicant shall also implement the following avoidance and minimization measures:

Protective Measures

1. Fence and flag all areas within a 100-foot buffer from each valley elderberry shrub that is within the Project construction area. This area within the 100-buffer shall be avoided during construction activities unless encroachment has been approved by the USFWS. If encroachment has been approved by USFWS, a minimum setback of at least 20 feet shall be provided from the dripline of each elderberry plant.
2. Brief construction contractors on the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements.
3. During construction, erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment."

*The signs shall be clearly readable from a distance of 20 feet, and shall be maintained for the duration of construction.*

4. Prior to any construction activities, a qualified biologist shall provide written training for all onsite contractors, work crews, and personnel on the status of the VELB, its host plant and habitat, the need to avoid damaging the elderberry shrubs, and the possible penalties for non-compliance.

Restoration and Maintenance

1. Following the completion of construction, restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.

*These restrictions shall be included on future Improvement Plans in order to ensure compliance. The restrictions do not apply to habitat restoration, maintenance, and enhancement activities. The Improvement Plans shall be subject to review and approval by the Yolo County Community Services Department.*

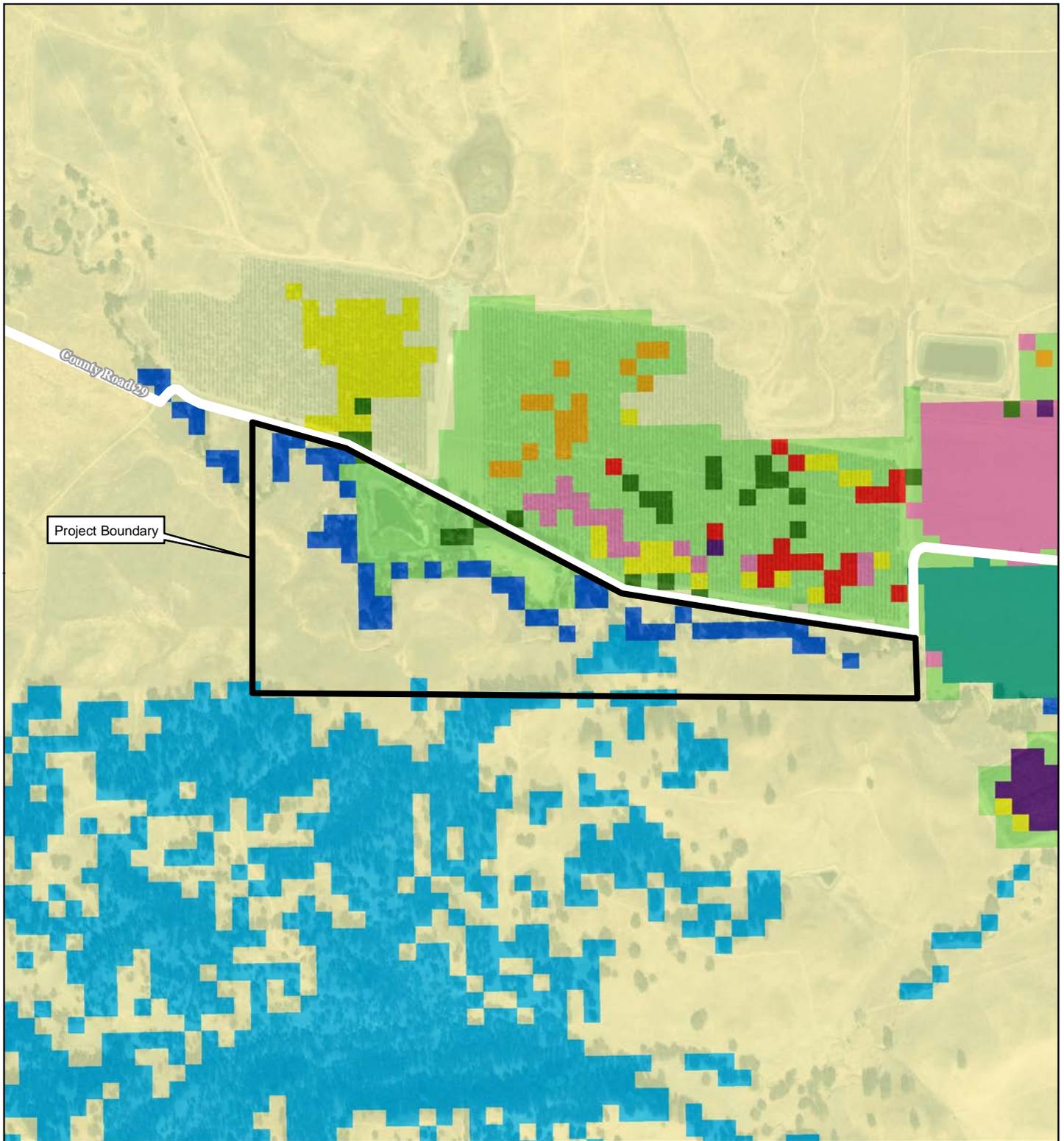
SIGNIFICANCE AFTER MITIGATION

To avoid direct or indirect disturbance to elderberry shrubs that provide potential habitat for VELB during construction activities, USFWS guidelines require a 100-foot construction setback from potentially occupied elderberry shrubs. All elderberry shrubs in the vicinity of the Project site occur within the riparian corridor along Chickahominy Slough and would be protected from direct or indirect disturbances of new construction by maintaining the required 100-foot setback, as required by Mitigation Measure 3-1. Implementation of Mitigation Measure 3-1 would reduce the above identified impact related to direct or indirect effects of the Project on special-status VELB.

## 3.0 BIOLOGICAL RESOURCES

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With implementation of the above mitigation measure, this impact would be considered *less than significant*.



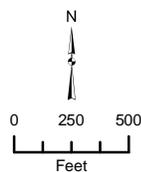
Project Boundary

County Road 29

**Wildlife-Habitat Relationship**

- |   |   |
|---|---|
|  Annual Grassland<br>50.76 acres on site         |  Deciduous Orchard             |
|  Blue Oak Woodland<br>3.36 acres on site         |  Dryland Grain Crops           |
|  Cropland<br>11.82 acres on site                 |  Irrigated Grain Crops         |
|  Evergreen Orchard<br>0.65 acres on site         |  Irrigated Hayfield            |
|  Valley Foothill Riparian<br>10.95 acres on site |  Irrigated Row and Field Crops |
|   |  Vineyard                      |

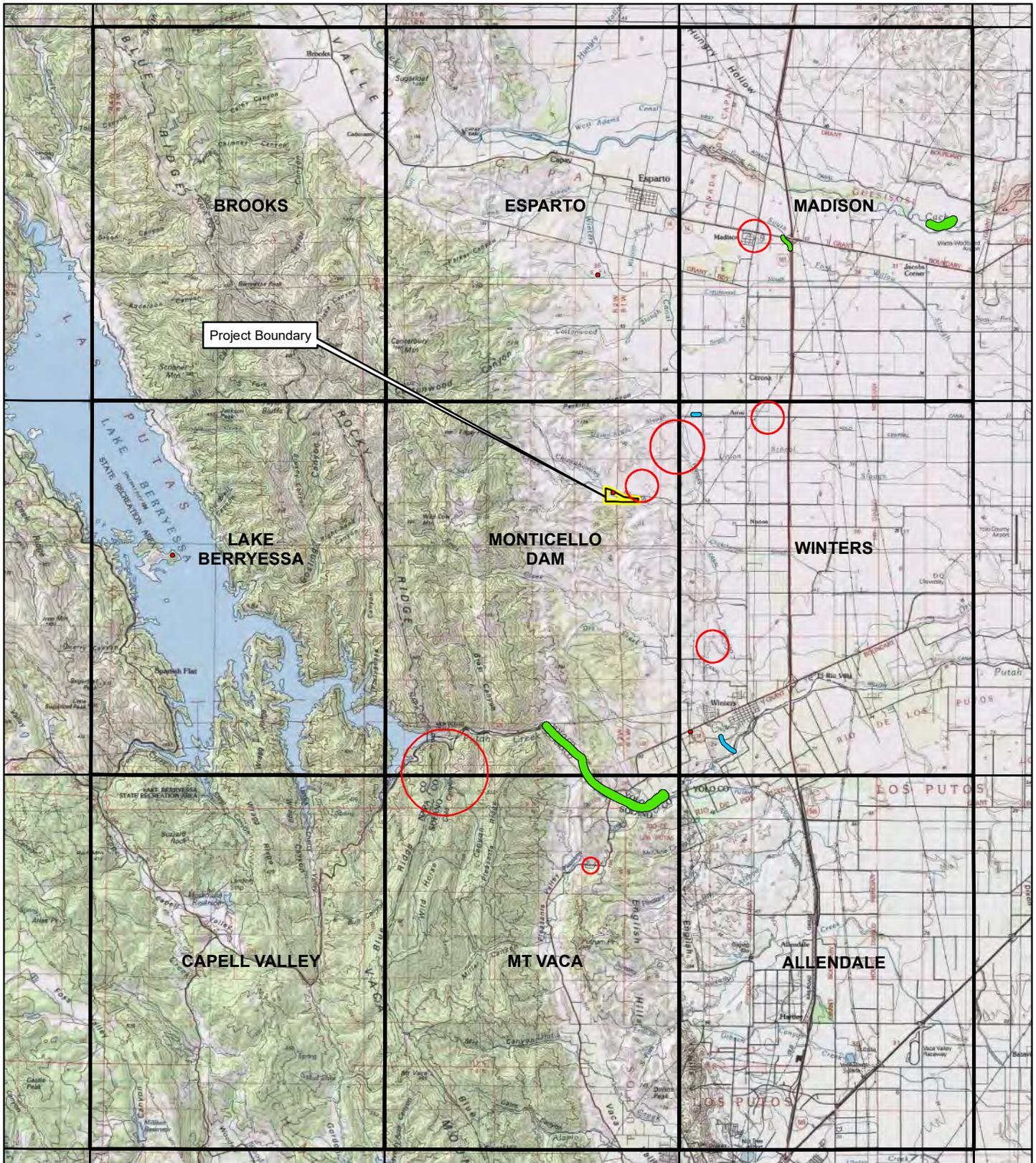
Source: Yolo County; ArcGIS Online Imagery Service; FRAP Vegetation (FVEG15\_1). Date: July 18, 2018.



**YOLO COUNTY FIELD AND POND PROJECT**

Figure 3.0-1. Cover Types

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**Special Status Species Occurrences**

- Animal (80m)
- Animal (specific)
- Animal (non-specific)
- Animal (circular)

CNDDDB version 07/2018. Please Note: the occurrences shown on this map represent the known locations of the species listed here as of the date of this version. There may be additional occurrences or additional species within this area which have not been surveyed and/or mapped. Lack of information in the CNDDDB about a species or an area can never be used as proof that no special status species occur in an area. Basemap: ArcGIS Online Topographic Map Service. Map date: July 18, 2018. Revised 8/8/18.

**YOLO COUNTY FIELD AND POND PROJECT**

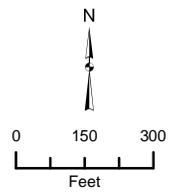
Figure 3.0-2: California Natural Diversity Database  
9-Quad Search

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**Legend**

-  Project Boundary
-  Elderberry Shrub



**YOLO COUNTY FIELD AND POND PROJECT**

Figure 3.0-3. Habitat Features

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This chapter addresses the topical requirements for a Draft EIR identified by Section 15126 of the CEQA Guidelines that are not addressed in the Executive Summary, Chapter 1.0, Chapter 2.0, Chapter 3.0, and Chapter 5.0 of this Draft EIR. This chapter addresses significant irreversible environmental changes, growth inducing impacts, significant and unavoidable impacts associated with the Project, impacts not discussed in the Draft EIR, and analyzes alternatives to the Project.

## 4.1 GROWTH-INDUCING EFFECTS

Section 15126.2(d) of the CEQA Guidelines requires that an EIR evaluate the growth-inducing impacts of a proposed action. A growth-inducing impact is defined by the CEQA Guidelines as:

*The way in which a proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth...It is not assumed that growth in an area is necessarily beneficial, detrimental, or of little significance to the environment.*

Section 15126 of the CEQA Guidelines identifies criteria for evaluating the extent to which growth could be induced, accelerated, intensified, or shifted as a result of the Project. Subsection (d) provides the framework for a discussion of these potential growth-inducing impacts, as follows:

- Would the project foster economic or population growth or the construction of additional housing?
- Would the project remove obstacles to population growth?
- Would the project tax existing community facilities?
- Would the project encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively?

The Project would not construct residential dwelling units or otherwise directly induce population growth. The Project would not result in employment opportunities that would substantially increase growth. The Project would have an on-site manager to oversee the site and would result in short-term employment and economic opportunities associated with the increase in events and lodging associated with the Project and the enhanced agricultural uses. The Project would not remove obstacles to population growth. The Project would be served by an on-site well and on-site septic system. The Project does not include any extensions of public infrastructure and would not oversize infrastructure and thus would not accommodate or indirectly induce growth through increasing infrastructure availability or capacity. The Project would not tax existing community facilities. The Project is consistent with the General Plan land use designation and is consistent with growth anticipated by the General Plan. The Project does not include any features that would result in a substantial direct or indirect increase in growth.

### 4.2 SIGNIFICANT IRREVERSIBLE EFFECTS

CEQA Section 15126.2(c) and Public Resources Code Sections 21100(b)(2) and 21100.1(a), requires that the EIR include a discussion of significant irreversible environmental changes which would be involved in the proposed action should it be implemented. Irreversible environmental effects are described as:

- The project would involve a large commitment of nonrenewable resources;
- The primary and secondary impacts of a project would generally commit future generations to similar uses (e.g., a highway provides access to previously remote area);
- The project involves uses in which irreversible damage could result from any potential environmental accidents associated with the project; or
- The phasing of the proposed consumption of resources is not justified (e.g., the project involves the wasteful use of energy).

Determining whether the Project would result in significant irreversible effects requires a determination of whether key resources would be degraded or destroyed such that there would be little possibility of restoring them. Irrecoverable commitments of resources should be evaluated to assure that such current consumption is justified.

The Project does not involve significant irreversible environmental changes to the Project site. As detailed in this DEIR and the MND, any physical Project changes, including long-term operation of the Project's lodging and special event uses, are not significant. In addition, future conditions could accommodate use of the site as a private residence or as an agricultural site without the tourism component. The use of resources, including land, energy, water, construction materials, and human resources, for the Project's initial construction, and its continued maintenance and operation is not significant. Construction of the Project would require a less than significant commitment of a variety of other non-renewable or slowly renewable natural resources such as lumber and other forest products, sand and gravel, asphalt, petrochemicals, and metals.

Similarly, various resources would be committed to the ongoing operation and life of the Project. The introduction of lodging and increase in special event uses to the site will result in an increase in area traffic and use of on-site energy over existing conditions. Fossil fuels are the principal source of energy and the Project will increase consumption of available supplies, including gasoline and diesel fuel, and natural gas. These energy resource demands relate to initial Project construction, Project operation and site maintenance and the transport of people and goods to and from the Project site. The Project does not include any features that involve or would result in the inefficient, wasteful, or unnecessary use of energy resources.

The Project is not anticipated to result in any significant impacts associated with environmental hazards, including accidental release of hazardous materials, as discussed in the MND.

### 4.3 SIGNIFICANT AND UNAVOIDABLE IMPACTS

CEQA Guidelines Section 15126.2(b) requires an EIR to discuss unavoidable significant environmental effects, including those that can be mitigated but not reduced to a level of insignificance. The Project would not result in any significant and unavoidable impacts.

### 4.4 IMPACTS NOT ADDRESSED IN THE DRAFT EIR

Impacts associated with aesthetics, agriculture and forest resources, air quality, biological resources, with the exception of tricolored blackbird, valley elderberry longhorn beetle, and the golden eagle, cultural resources, geology and soils, greenhouse gas emissions and climate change, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation and traffic, utilities and service systems, and mandatory findings of significance including the project's potential to result in impacts that are individually limited but cumulatively considerable or to have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly, were analyzed and addressed in the adopted Project MND. The adopted Project MND was reviewed by the Court and no defect was found related to these issues and no further analysis of these issues is required to be provided. The Draft EIR did not identify any new significant environmental impacts associated with tricolored blackbird, valley elderberry longhorn beetle, and the golden eagle nor did the Draft EIR identify any increase in the significance of environmental impacts associated with these species. Therefore, there is no significant change in the Project's contribution to cumulative impacts associated with these species and the adopted Project MND's analysis related to cumulative impacts remains valid and no revision is required.

### 4.5 ALTERNATIVES CONSIDERED IN THIS EIR

An EIR is required to describe a reasonable range of feasible alternatives that meet most or all project objectives while reducing or avoiding one or more significant environmental effects of the project. The range of alternatives required in an EIR is governed by a "rule of reason" that requires an EIR to set forth only those alternatives necessary to permit a reasoned choice (CEQA Guidelines Section 15126.6[f]). Where a potential alternative was examined but not chosen as one of the range of alternatives, the CEQA Guidelines require that the EIR briefly discuss the reasons the alternative was dismissed.

Alternatives that are evaluated in the EIR must be potentially feasible alternatives. However, not all possible alternatives need to be analyzed. An EIR must "set forth only those alternatives necessary to permit a reasoned choice." (CEQA Guidelines, Section 15126.6(f).) The CEQA Guidelines provide a definition for a "range of reasonable alternatives" and, thus limit the number and type of alternatives that need to be evaluated in an EIR.

First and foremost, alternatives in an EIR must be potentially feasible. In the context of CEQA, "feasible" is defined as:

*... capable of being accomplished in a successful manner within a reasonable*

## 4.0 OTHER CEQA REQUIREMENTS

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*period of time, taking into account economic, environmental, legal, social and technological factors. (CEQA Guidelines 15364)*

The inclusion of an alternative in an EIR is not evidence that it is feasible as a matter of law, but rather reflects the judgment of lead agency staff that the alternative is potentially feasible. The final determination of feasibility will be made by the lead agency decision-making body through the adoption of CEQA Findings at the time of action on the Project. (Mira Mar Mobile Community v. City of Oceanside (2004) 119 Cal.App.4th 477, 489 see also CEQA Guidelines, §§ 15091(a)(3) findings requirement, where alternatives can be rejected as infeasible); 15126.6 ([an EIR] must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.) The following factors may be taken into consideration in the assessment of the feasibility of alternatives: site suitability, economic viability, availability of infrastructure, general plan consistency, other plan or regulatory limitations, jurisdictional boundaries, and the ability of the proponent to attain site control (Section 15126.6 (f) (1)).

Equally important to attaining the Project objectives is the reduction of some or all significant impacts identified in the EIR, particularly those that could not be mitigated to a less than significant level. The following analysis of alternatives focuses on significant impacts associated with the Project, including impacts that can be mitigated to a less than significant level. This Draft EIR is required to focus on impacts to tricolored blackbird, golden eagle, and valley elderberry longhorn beetle; the only significant impact associated with these species is:

- Impact 3-3: Project implementation has the potential to substantially reduce the habitat, cause a wildlife population to drop below self-sustaining levels or eliminate an animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, have a substantial adverse effect, either directly or indirectly, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service: valley elderberry longhorn beetle (Potentially Significant Impact, Reduced to Less than Significant with Mitigation Measure 3-1).

As described in Chapter 3.0, impacts to tricolored blackbird and golden eagle would be less than significant.

A Notice of Preparation was circulated to the public to solicit recommendations for a reasonable range of alternatives to the Project. Additionally, a public scoping meeting was held during the public review period to solicit recommendations for a reasonable range of alternatives to the Project. The following comments were received related to potential alternatives to the Project to be addressed in the EIR:

- Two alternative scenarios were discussed at the scoping meeting. First, a No Project Alternative would include operation of the Project site with no new improvements or

development and only events and other activities allowed by right (e.g., events and activities allowed without the Project's Use Permit). Second, an Off-Site Alternative could include an event center space within the City of Winters limits. One commenter noted that the Project alternatives would avoid or reduce impacts, or otherwise mitigate impacts.

## PROJECT OBJECTIVES

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The alternatives to the Project selected for analysis in the EIR were developed to minimize significant environmental impacts while fulfilling the basic objectives of the Project. As described in Chapter 2.0, Project Description, the following objectives have been identified for the Field & Pond Project:

1. To connect consumers and visitors to a unique, rural agricultural experience, by bringing them to the Field & Pond site, with its manicured grounds, orchards, pond, and scenic beauty, for events and lodging.
2. To promote Yolo County and Yolo County agriculture by bringing people to this site for lodging and educational opportunities that connect the County's residents, businesses, visitors, and tourists in a rural agricultural setting that reflects the County's agricultural history and provides opportunities to share the County's rich history.
3. To have an economically viable bed and breakfast inn and event center.
4. Provide an event space for use by Yolo County residents, visitors to the area, and other members of the general public.
5. To promote Field & Pond, Yolo County, and regional agri-tourism by hosting on-site events that attract a broad demographic range, including visitor, tourist, and youth populations, through hosting events on the site, such as weddings, corporate retreats, industrywide events, and charitable events
6. To provide and promote educational outreach regarding agricultural and farming practices in rural Yolo County through participation in and hosting of weekend farming and urban youth programs.
7. Enhance the agricultural value of the land by converting portions of the property to gardens and orchards, where there is a potential for the land to support food crops that will enhance the planned events and agricultural/educations programs planned for the site.

## ALTERNATIVES REJECTED FROM FURTHER ANALYSIS

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Under an off-site alternative, the Project would be developed as an event center and bed and breakfast in the City of Winters or on a different agricultural parcel in the County. This alternative was rejected from further consideration. As discussed in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 (Goleta II), where a project is consistent with an approved general plan, no off-site alternative need be analyzed in the EIR. The EIR "is not ordinarily an occasion for the reconsideration or overhaul of fundamental land-use policy." (Goleta II, supra, 52 Cal.3d at p. 573.) In approving a general plan, the local agency has already identified and analyzed suitable alternative sites for particular types of development and has

selected a feasible land use plan. “Informed and enlightened regional planning does not demand a project EIR dedicated to defining alternative sites without regard to feasibility. Such ad hoc reconsideration of basic planning policy is not only unnecessary, but would be in contravention of the legislative goal of long-term, comprehensive planning.” (Goleta II, supra, 52 Cal.3d at pp. 572-573.) Here, the Project is consistent with the types of uses considered in the Yolo County General Plan and implementing zoning codes, and thus, an off-site alternative need not be further discussed in this EIR.

### PROJECT ALTERNATIVES

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Three alternatives to the Project were developed based on Yolo County staff, input from the public during the NOP review period, and the technical analysis performed to identify the environmental effects of the Project. As previously identified, this Draft EIR is required to focus on impacts to tricolored blackbird, golden eagle, and valley elderberry longhorn beetle (“VELB”) and, as discussed in Chapter 3.0, the only potentially significant impact involves effects to the VELB from construction-related activities. Alternatives analyzed in this EIR were limited to alternatives that would reduce significant impacts to these species associated with the Project. This Draft EIR considered the following three alternatives in addition to the Field & Pond Project:

- No Project Alternative
- Elderberry Transplanting Alternative
- Elderberry Redesign Alternative

#### *NO PROJECT ALTERNATIVE*

The CEQA Guidelines (Section 15126.6[e]) require consideration of a No Project Alternative that represents the existing conditions, as well as what would reasonably be expected to occur in the foreseeable future if the Project were not approved. For purposes of this analysis, the No Project Alternative assumes that the Project site remains in its existing state and the additional development, additional events, lodging, and other activities associated with the Project would not occur. The Project site is in use as a home site (residence) that includes three dwellings, three barns, a water tower, several grain silos, and a recreational pond. Improvements on the Project site include paved and gravel driveways that access the existing homes and outbuildings, as well as paved and gravel parking areas, outdoor gathering areas for both the residents and for event attendees, and associated landscaping and pathways.

The Project site may, by right and without County approval, host up to eight events per year of up to 150 attendees or that generate up to 100 vehicle trips per event, as allowed by Yolo County Code Section 8-2.306(k)(2) (see Zoning description), as well as events that are not considered “special events” by Yolo County Code. Active agricultural uses are allowed on the site, as are regular maintenance activities to maintain the dwellings, buildings, outbuildings, and grounds. Under the No Project Alternative, these existing events allowed by the County Code would still occur.

Additionally, under the No Project Alternative, the main house would not be renovated as a bed-and-breakfast lodging facility, and the parking improvements would not occur.

As described in Section 3.0, the Project will not result in significant impacts to tricolored blackbird or golden eagle. Similarly, the No Project Alternative would have a comparable less than significant impact to tricolored blackbird and golden eagle.

As described in Section 3.0, while operational activities associated with the Project would not have a significant impact on VELB, construction activities could potentially disturb VELB. While Mitigation Measure 3-1 would reduce potential impacts to VELB associated with the Project to a less than significant level, the No Project Alternative would avoid these impacts. Therefore, this impact would be reduced when compared to the Project with mitigation, even if only marginally.

It is noted that the No Project Alternative would fail to meet each of the Project objectives identified by Yolo County.

#### *ELDERBERRY TRANSPLANTING ALTERNATIVE*

An Elderberry Transplanting Alternative was considered in order to avoid impacts to VELB. This alternative would transplant the five elderberry shrubs to a riparian location on the Project site that is located more than 100 feet from any construction activities. The USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle only recommend transplanting elderberry shrubs if they cannot be avoided. The Project would not directly impact any elderberry shrubs and Mitigation Measure 3-1 would ensure that elderberry shrubs are avoided during all construction and ground-disturbing activities. This alternative would not reduce impacts to VELB when compared to the Project.

#### *ELDERBERRY REDESIGN ALTERNATIVE*

As described in Chapter 3.0, impacts to VELB are associated with construction and other ground-disturbing activities. An Elderberry Redesign Alternative was considered in order to reduce impacts to VELB. Under this alternative, construction and ground-disturbing activities associated with the Project are required to be set back at least 100 feet from all elderberry shrubs. This would require a portion of the Project's parking area to be relocated. Under this alternative, potential impacts to VELB would be avoided through Project redesign and this alternative would have reduced environmental impacts when compared to the Project.

### ENVIRONMENTALLY SUPERIOR ALTERNATIVE

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CEQA requires that an environmentally superior alternative be identified among the alternatives that are analyzed in the EIR. The environmentally superior alternative is that alternative with the least adverse environmental impacts when compared to the Project.

Both the No Project Alternative and Elderberry Redesign Alternative would reduce environmental impacts in comparison to the Project. The Elderberry Transplant Alternative would be comparable to the Project.

The No Project Alternative would avoid all significant impacts associated with the Project and is considered the Environmentally Superior Alternative. If the No Project Alternative is the environmentally superior alternative, an EIR must also identify an environmentally superior

## 4.0 OTHER CEQA REQUIREMENTS

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alternative among the other alternatives (CEQA Guidelines Section 15126.6(e)(2)). The Elderberry Redesign Alternative would avoid all significant environmental impacts associated with the Project and is the Environmentally Superior Alternative, since an environmentally superior alternative must be identified among the alternatives other than the Project.

COUNTY OF YOLO

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Eric May..... Senior Deputy County Counsel  
 Eric Parfrey .....Principal Planner (retired)  
 Stephanie Cormier ..... Principal Planner

DE NOVO PLANNING GROUP

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Beth Thompson ..... Principal Planner  
 Steve McMurtry .....Principal Planner/Biologist  
 Elise Carroll.....Senior Planner  
 William Crenshaw .....Associate Planner  
 Josh Smith .....Associate Planner  
 Jennifer DeMartino ..... GIS Analyst

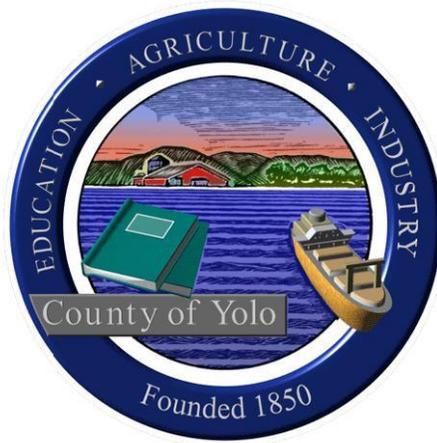
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## **APPENDIX A**

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### **Notice of Preparation and Comment Letters Regarding the Notice of Preparation**





**YOLO COUNTY  
COMMUNITY SERVICES DEPARTMENT**

**NOTICE OF PREPARATION  
ZF # 2015-0018**

**FIELD & POND**

**July 12, 2018**

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## NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

**TO:** State Clearinghouse  
Responsible Agencies  
Trustee Agencies  
Other Public Agencies  
Interested Parties

**FROM:** Eric Parfrey, Principal Planner  
Yolo County Community Services Dept.  
292 W. Beamer Street  
Woodland, CA 95695

**SUBJECT:** Notice of Preparation – Field & Pond ZF # 2015-0018

**Project Title:** Field & Pond ZF # 2015-0018 (Field & Pond Use Permit)

**Scoping Meeting:** July 18, 2018, 10:00 a.m.  
Cache Creek Conference Room, Yolo County Community Services  
Department, 292 W Beamer Street, Woodland

**Comment Period:** July 12, 2018 to August 13, 2018 at 5:00 p.m.

On July 2, 2018, the Yolo County Superior Court issued a peremptory writ of mandate (“writ”) against the County of Yolo and Yolo County Board of Supervisors (“County”) regarding the County’s Mitigated Negative Declaration under the California Environmental Quality Act (“CEQA”) for the Use Permit of the Field & Pond event center located in eastern Yolo County. In its writ, the Court ordered the County to undertake further study and preparation of a subsequent Environmental Impact Report (“EIR”) to address only the potential impacts of the Project on the Tricolored Blackbird, Valley Elderberry Longhorn Beetle, and the Golden Eagle. The writ provided that the Use Permit and related mitigation measures would remain in effect during this period of further environmental analysis, and Field & Pond would be allowed to continue operating the Project under the strict control of Respondents’ permitting scheme during this period.

The EIR will consider potential environmental effects of the Project on the Tricolored Blackbird, Valley Elderberry Longhorn Beetle, and the Golden Eagle to determine the level of significance of the environmental effect, and will analyze these potential effects to the detail necessary to make a determination on the level of significance.

We need to know the views of your agency or organization as to the scope and content of the environmental information germane to your agency's statutory responsibilities or of interest to your organization in connection with the Project.

Due to the time limits mandated by State law, your response must be sent and received by Yolo County by the following deadlines:

- For responsible agencies, not later than 30 days after you receive this notice.
- For all other agencies and interested parties, not later than 30 days following the publication of this Notice of Preparation.

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The 30-day review period ends on August 13, 2018 at 5:00 p.m. If we do not receive a response from your agency or organization, we will presume that your agency or organization has no response to make. Please send your written comments to:

Eric Parfrey, Principal Planner  
Yolo County Community Services Dept.  
292 W. Beamer Street  
Woodland, CA 95695  
Email: eric.parfrey@yolocounty.org

A responsible agency, trustee agency, or other public agency may request a meeting with Yolo County or its representatives in accordance with Section 15082(c) of the California Environmental Quality Act (CEQA) Guidelines. ***A public scoping meeting will be held during the public review period on July 18, 2018, 10:00 a.m. at the Yolo County Community Services Department, Cache Creek Conference Room, located at 292 W. Beamer Street in Woodland.***

Materials related to the Project, including the Mitigated Negative Declaration previously prepared for the project, with revisions and amendments, the Conditions of Approval adopted by the Board of Supervisors, the court order, judgement, and writ, the complete Notice of Preparation, and the Project application, may be viewed at the Yolo County Community Services Department located at 292 W. Beamer Street in Woodland.

If you have any questions, please contact Eric Parfrey, Principal Planner at (530) 666-8043.

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## A. Contact Information

1. **Lead Agency Name and Address:**  
Yolo County Community Services Department  
292 West Beamer Street  
Woodland, CA 95695
2. **Contact Person, Phone Number, E-Mail:**  
Eric Parfrey, Principal Planner  
(530) 666-8043  
eric.parfrey@yolocounty.org
3. **EIR Consultant:** Beth Thompson, Principal Planner  
De Novo Planning Group  
1020 Suncastr Lane, Suite 106  
El Dorado Hills, CA 95762  
Phone: (916) 812-7927
4. **Project Sponsor's Name and Address:**  
Dahvie James and Philip Watt  
26055 County Road 29  
Winters, CA 95694
5. **Land Owner's Name and Address:**  
Philip Watt  
(same as above)

## B. Project Characteristics

### 1. GENERAL PLAN AND ZONING DESIGNATIONS

The following section describes the existing Yolo County General Plan and Zoning designations for the Project site.

#### *YOLO COUNTY GENERAL PLAN LAND USE DESIGNATION*

The Project site is currently designated Agriculture (AG) by Yolo County. The County AG land use designation includes the full range of cultivated agriculture, such as row crops, orchards, vineyards, dryland farming, livestock grazing, forest products, horticulture, floriculture, apiaries, confined animal facilities and equestrian facilities. It also includes agricultural industrial uses (e.g. agricultural research, processing and storage; supply; service; crop dusting; agricultural chemical and equipment sales; surface mining; etc.) as well as agricultural commercial uses (e.g. roadside stands, "Yolo Stores," wineries, farm-based tourism (e.g. u-pick, dude ranches, lodging), horseshows, rodeos, crop-based seasonal events, ancillary restaurants and/or stores) serving rural areas. Agriculture also includes farmworker housing, surface mining, and incidental habitat.

#### *YOLO COUNTY ZONING DESIGNATION*

The Project site is currently zoned Agricultural Extensive (A-X) by Yolo County. Currently, the Project site is allowed "by-right", pursuant to Yolo County Code Section 8-2.306(k)(2), to host one small paid for-profit event per month or up to eight per year, i.e., events that accommodate up to but not more than 150 attendees or that generate up to or less than 100

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vehicle trips per event. As such, the applicant has hosted a number of events while the original Use Permit application was pending. Any use of structures during events must meet all applicable building and fire codes, including accessibility.

## **2. PROJECT LOCATION AND SETTING**

### *PROJECT LOCATION*

The Project is located at 26055 County Road 29, northwest of the City of Winters (APNs: 047-120-011 and 050-150-012). See Figure 1 (Regional Vicinity Map). The Project site is located approximately five to six miles northwest of the City of Winters on the northern portion of an 80-acre parcel.

### *EXISTING SITE CONDITIONS AND SURROUNDING USES*

The Project site is in use as a home site (residence) and event site site that includes three dwellings, three barns, a water tower, several grain silos, and a two-acre fishing pond. Improvements on the Project site include paved and gravel driveways that access the existing homes and outbuildings, as well as paved and gravel parking areas, outdoor gathering areas for both the residents and for event attendees, and associated landscaping and pathways. See Figure 2 (Aerial View of Property). The Project site hosts regular events of up to but not more than 150 attendees or that generate up to or less than 100 vehicle trips per event, as allowed by as allowed by Yolo County Code Section 8-2.306(k)(2) (see Zoning description). Regular maintenance activities occur to maintain the dwellings, buildings, outbuildings, and grounds.

Currently, the 80-acre A-X zoned property is allowed, “by -right” pursuant to Yolo County Code Section 8-2.306(k)(2), to host one small paid for-profit event per month or up to eight per year, i.e., events that accommodate up to but not more than 150 attendees or that generate up to or less than 100 vehicle trips per event. As such, the applicant has hosted a number of events while the Use Permit application is pending. Any use of structures during events must meet all applicable building and fire codes, including accessibility.

The property is under a nine-year Williamson Act contract (Agreement No. 13-47) that was non-renewed in August 2015. The property is also under a conservation easement that is held by the Wildlife Heritage Foundation (WHF), successor to the Winters Conservancy, which was recorded on the property in 1998. The conservation easement’s primary purpose is to preserve the land in its natural, scenic, agricultural, and open space conditions. The conservation easement agreement generally applies to the approximately 69 acres south of Chickahominy Slough, and exempts the home site areas from its restrictions. The property also contains an easement on the adjoining parcel to the west for accessing the southern portions of the property.

The 80-acre property is surrounded by large rural parcels in active agricultural production, including orchards, row crops, livestock, grazing land, and rural residences. The nearest residence to the Project site is located approximately 0.8 mile to the east and approximately 1.0 mile to the west (although it appears an unoccupied home site is located approximately 0.5 mile northwest of the Project site). Most of the surrounding properties, including the Project site, are under the Williamson Act. Surrounding land uses are summarized in the table below

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### Surrounding Land Uses:

Relation to Project	Land Use	Zoning Designation	General Plan Designation
North	Agricultural (orchard), County Road 29	A-X	AG
South	Grazing land, rolling hills, oak woodlands	A-X	AG
East	Agricultural (grazing land, row crops, tree and / or vine crops)	A-X	AG
West	Grazing land, rolling hills, oak woodlands	A-X	AG

#### *SITE ACCESS*

The property is accessed off CR 29, near its terminus, towards the western foothills in the unincorporated area of the County. The nearest major roadway is CR 89, which is approximately three miles east of the Project site. CR 88 is approximately two miles to the east. Approximately 0.7 mile west of the intersection at CR 29 and CR 88, CR 29 makes a series of turns until it reaches the Project site, which is located on the south side of CR 29 and includes a few gravel/dirt driveways. There are approximately eight residences, including the applicant's, that share use of CR 29 from its terminus to CR 89. In addition to local residential traffic, the rural county road is also used for hauling cattle and agricultural products, including large farming/ranching implements, to and from the various farm and ranch lands in the vicinity of the Project.

### 3. PROJECT DESCRIPTION

#### *PROJECT BACKGROUND*

The original Mitigated Negative Declaration and Initial Study (collectively referred to as MND) for the Project was issued on March 8, 2016. As a result of changes since the original MND was issued, a revised MND (RMND) was completed and recirculated on June 28, 2016. Additional minor changes to the RMND were made in an Errata dated October 5, 2016, which is referred to herein as the "Amended RMND."

The Yolo County Planning Commission reviewed the Project application and RMND and denied the requested Use Permit for the Field & Pond Project on August 11, 2016. The decision was appealed to the Yolo County Board of Supervisors. The Yolo County Board of Supervisors approved the Use Permit and adopted the Amended RMND on October 11, 2017.

A lawsuit regarding the Project was filed with the Yolo County Superior Court on November 14, 2017. The lawsuit (*Farmland Protection Alliance v. County of Yolo* [Case No. CV PT 16-001896]) alleged that the Use Permit was in violation of CEQA, the provisions in the Williamson Act, and the provisions of the County zoning code, and that the CEQA documentation failed to address impacts associated with a range of environmental topics, including traffic, agriculture, and endangered species. Yolo County Superior Court issued a Statement of Decision on January 16, 2018 and a Judgment on June 20, 2018 regarding the lawsuit (see Appendix B). The Court found that the Project may have a significant environmental impact on tricolored blackbird, valley elderberry longhorn beetle, and golden eagle. The remaining claims were denied. The Judgment and resulting Writ of Mandate requires the County to undertake further study and preparation of an Environmental Impact Report to address only the potential impacts of the Project on the tricolored blackbird, valley elderberry longhorn beetle, and golden eagle.

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### *PROJECT OBJECTIVES*

The Project identified the following objectives:

1. To connect consumers and visitors to a unique, rural agricultural experience, by bringing them to the Field & Pond site, with its manicured grounds, orchards, pond, and scenic beauty, for events and lodging.
2. To promote Yolo County and Yolo County agriculture by bringing people to this site for lodging and educational opportunities that connect the County's residents, businesses, visitors, and tourists in a rural agricultural setting that reflects the County's agricultural history and provides opportunities to share the County's rich history.
3. To have an economically viable bed and breakfast inn and event center
4. Provide an event space for use by Yolo County residents, visitors to the area, and other members of the general public.
5. To promote Field & Pond, Yolo County, and regional agri-tourism by hosting on-site events that attract a broad demographic range, including visitor, tourist, and youth populations, through hosting events on the site, such as weddings, corporate retreats, industrywide events, and charitable events
6. To provide and promote educational outreach regarding agricultural and farming practices in rural Yolo County through participation in and hosting of weekend farming and urban youth programs.
7. Enhance the agricultural value of the land by converting portions of the property to gardens and orchards, where there is a potential for the land to support food crops that will enhance the planned events and agricultural/educations programs planned for the site.

### *PROJECT CHARACTERISTICS*

The Project was a request for a Use Permit to operate a large bed and breakfast inn and large special events facility, known as Field & Pond, on agriculturally-zoned property that has historically been identified as the "William Cannedy Farm." As noted previously, the Project site is located approximately five to six miles northwest of the City of Winters on the northern portion of an 80-acre parcel with two separate APNs, which is currently in use as a home site that includes three dwellings, three barns, a water tower, several grain silos, and a two-acre fishing pond. The home site has been used for special events, both by-right and pursuant to the permit issued by the Board of Supervisors, as previously described. Chickahominy Slough bisects the property separating the home site areas, which encompass approximately 11 acres and are where the Project will be located, from the southern portions that at one time were used as grazing land and contain oak woodlands in hilly terrain.

The Project includes use of the property grounds and existing structures as a large bed and breakfast and large event center that would accommodate lodging for up to nine guest rooms, as well as indoor/outdoor events for up to 300 attendees per event (with most events drawing around 120 people) with up to 35 events for the first year of operation. Mitigation measures imposed by the Board of Supervisors for issuance of the permit limited the number of events to 20 per year, not to exceed 150 attendees, with the exception of four events that may be up to 300 attendees, among other requirements. The Use Permit approved by the Board of Supervisors contained a number of additional conditions of approval. Conditions of approval based on mitigation measures for environmental resources analyzed in the Amended RMND, other than the Tricolored Blackbird, Valley Elderberry Longhorn Beetle, and the Golden Eagle, will remain in effect.

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## Events

The event component of the Project consists of hosting seasonal events such as weddings and corporate retreats, as well as unpaid or not-for-profit events, approximately nine months out of the year (March through November). Events would be held up to four to five times per month, with the number of events limited to 20 per year. Weddings are limited to Saturdays, ending by 11:00 PM, with a typical guest count of approximately 120 people but no more than 300. The applicant has proposed that any for-profit event over 150 people will require use of shuttles. Alternatively, the applicant has also proposed to use shuttles for all for-profit events, regardless of size. Corporate retreats are expected to occur mostly on Fridays from 8:00 AM to 5:00 PM, with an attendee count of approximately 50 people.

Most events, with the exception of corporate retreats, are expected to include amplified music, which, according to the applicant, would not exceed 75dB at the property lines. The Permit requires that noise levels at the nearest residents' property lines shall not exceed 60 dBA during any scheduled event, among other requirements. As per the applicant, all patrons will be required to bring in their preferred licensed vendors to provide services, including food caterers and bartenders. The applicant will also require each event coordinator to carry rental event insurance and to sign a waiver to confirm acceptance of full responsibility for ensuring the safe and lawful participation of their guests. The applicant has also committed to notify potential event users and B&B clientele of the agricultural practices in the vicinity of the Project site to introduce awareness of the potential for perceived nuisances that may occur in the rural locale.

For those events using shuttles, pick-up and drop-off locations would be established through event coordination. According to the applicant, shuttles are typically used from a wedding ceremony location, such as a church, or in some cases from a hotel where guests are staying. In the event where there is an overflow demand for parking, the applicant has indicated that Field & Pond clients will be instructed to use one of the four available Park & Ride locations located in Vacaville, which are conveniently located near the Interstate 80/505 interchange, or another designated private lot as coordinated by Field & Pond.

As per the applicant, typical shuttle pick-up and drop-off schedules work in hourly intervals, which means guests would begin arriving one to two hours prior to ceremony or event start time, and would begin departing following a reception and/or dinner in two or three waves, i.e., departing at 8:00 PM, 10:00 PM, and concluding by 11:00 PM. Specifically, for those events with guest lists over 150 people, Field & Pond has proposed to use one 47-passenger seat bus and one 28-passenger seat shuttle. The bus would make two round trips to drop guests off at Field & Pond before returning to the depot. The shuttles would make one round trip and remain onsite for the duration of the event. The shuttle would be used to transport the guests back to the original pick-up/drop-off location.

The applicant is requesting up to 35 events for the first year, with an increase in the number of events per year thereafter (i.e., up to two events per week for nine months out of the year), if approved by the County. The Permit approved by the Board of Supervisors limited the number of events to 20 per year. Currently, the property's size and zoning allows for one small event (not more than 150 attendees or less than 100 trips per event) per month or up to eight per year.

## Lodging

The main house is proposed to be used for lodging guests in a five-bedroom bed and breakfast, with the owners occupying an adjacent smaller cottage-type house. Renovations

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to the 3,300-square foot house include adding three bathrooms, for a completed floor plan of five bedroom suites with five private bathrooms, and one common area bathroom. There would be no change to the total square footage. If lodging in the five-bedroom bed and breakfast is successful, the applicant would construct up to four additional detached, 500-square foot one-room cottages (no kitchen facilities) to accommodate a total of nine guest rooms. A smaller, currently unoccupied, two-bedroom dwelling is located at the western edge of the property, and is proposed to house a future resident farmer.

In addition to renovations made to the main house, the applicant proposes retrofitting one barn to accommodate occasional indoor event use, which will require building permits for converting the existing use from storage to hosting events, as discussed above. Vehicle parking for events will be provided in a graveled lot that can accommodate up to 75 cars, with accessible parking as required. Separate entrances for event parking and bed and breakfast parking will be off CR 29.

### **Agriculture**

The Project proponents plan to enhance the agricultural value of the land by converting portions of the property that show a potential for supporting food crops, such as herbs, vegetables, nuts, and stone fruit. These crop-producing endeavors would be managed by a resident farmer seeking an opportunity to farm a plot of land and provide educational outreach to visitors of Field & Pond through participation in a weekend farming program and urban youth program. Specifically, the Project proposes planting tree crops on the northern portion of the property (along CR 29). At the writing of this NOP, the applicant has planted an orchard on the north side of the slough.

The Project also proposes implementation of an urban youth program called Fresh Start that would provide career mentorship in agriculture to urban youth. According to the applicant, the idea behind Fresh Start is to engage urban youth in discussions and education directed at establishing a successful career in agriculture through exercises and field trips designed to provide real life experiences.

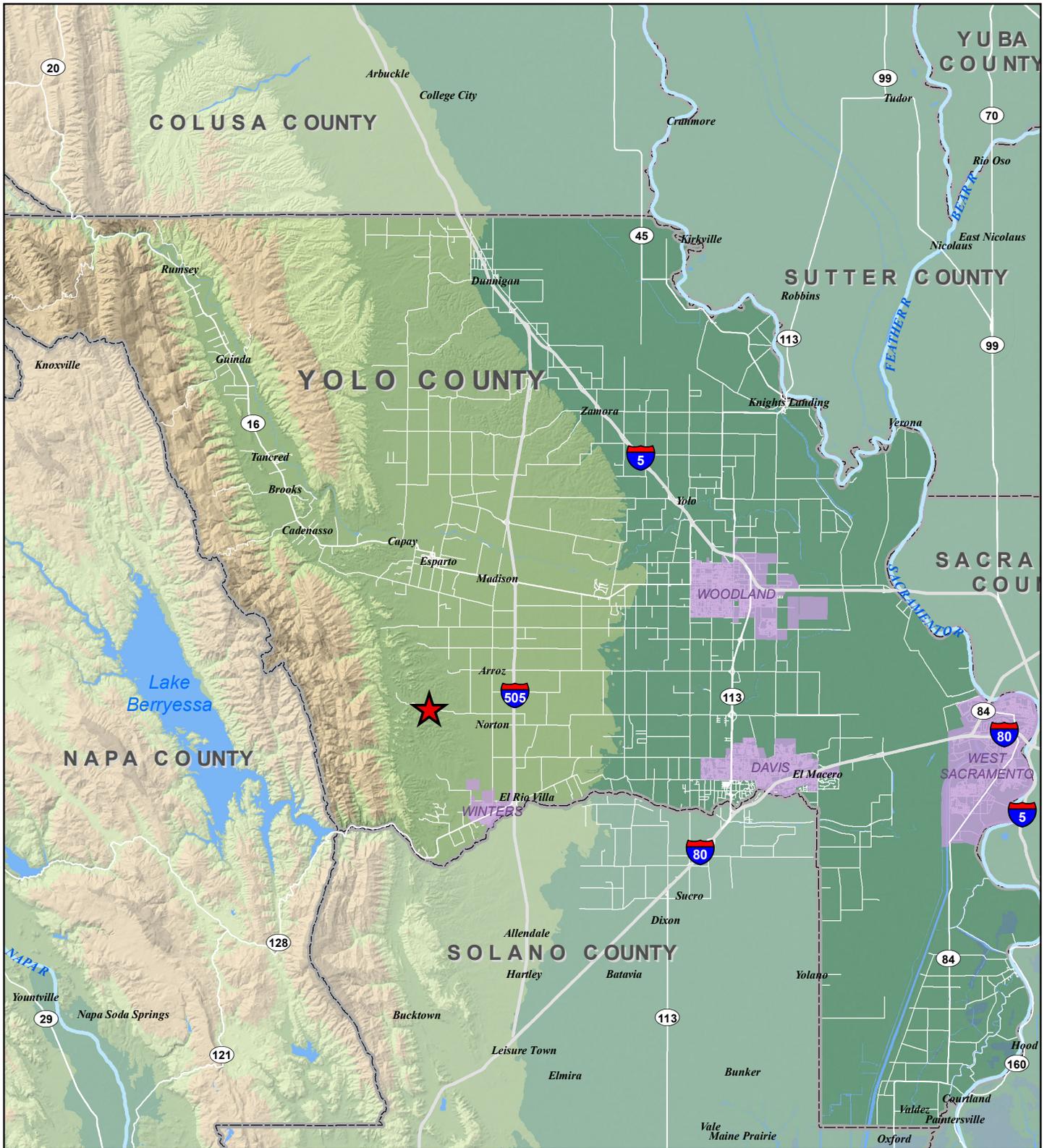
## **4. REQUESTED ENTITLEMENTS AND OTHER APPROVALS**

The County of Yolo will be the Lead Agency for the Project, pursuant to the State Guidelines for Implementation of CEQA, Section 15050. Actions that would be required from the County include, but are not limited to the following:

- Adoption of EIR;
- Adoption of the Mitigation Monitoring and Reporting Program;
- If necessary, approval of a Use Permit to operate a large B&B and large special events facility on the project site;
- If necessary, approval of the proposed renovations and site improvements by the Yolo County Building Division;
- If necessary, approval of the proposed septic system by the Yolo County Environmental Health Division.

## **C. Probable Environmental Effects of the Project**

The EIR will address only the potential impacts of the Project on the Tricolored Blackbird, Valley Elderberry Longhorn Beetle, and the Golden Eagle, as directed by the July 2, 2018 writ. Consistent with the requirements of the writ, no additional environmental topics will be addressed.

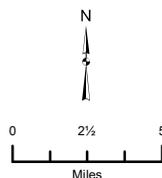


YOLO COUNTY FIELD AND POND PROJECT

Figure 1: Regional Location Map

**Legend**

-  Project Location
-  Cities within Yolo County
-  County Boundary



Sources: CalAtlas; Yolo County. Map date: March 21, 2018.

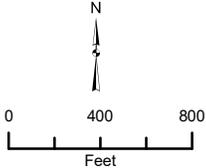


**YOLO COUNTY FIELD AND POND PROJECT**

Figure 2. Aerial View of Property

**Legend**

 Project Boundary



Source: Yolo County GIS; ArcGIS Online World Imagery Map Service.  
Map date: March 17, 2018.

# **NOP APPENDIX B**

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**Judgment**

1 TIMOTHY M. TAYLOR (SB #144335)  
Email: [tim.taylor@stoel.com](mailto:tim.taylor@stoel.com)  
2 CARISSA M. BEECHAM (SB #254625)  
Email: [carissa.beecham@stoel.com](mailto:carissa.beecham@stoel.com)  
3 PARISSA E. FLOREZ (SB #289521)  
Email: [parissa.florez@stoel.com](mailto:parissa.florez@stoel.com)  
4 STOEL RIVES LLP  
500 Capitol Mall, Suite 1600  
5 Sacramento, CA 95814  
Telephone: 916.447.0700  
6 Facsimile: 916.447.4781

7 THOMAS W. BARTH (SB #154075)  
BARTH DALY LLP  
8 431 J St., Suite 201  
Sacramento, CA 95814  
9 Telephone: 916.440.8600  
Facsimile: 916.440.9610  
10 Email: [tbarth@barth-daly.com](mailto:tbarth@barth-daly.com)

11 Attorneys for Real Parties in Interest  
FIELD & POND; DAHVIE JAMES; PHILIP WATT

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF YOLO

14 FARMLAND PROTECTION ALLIANCE,  
15 TULEYOME, YOLO COUNTY FARM  
BUREAU and DOES 1-10,

16 Petitioners and Plaintiffs,

17 v.

18 COUNTY OF YOLO, YOLO COUNTY  
19 BOARD OF SUPERVISORS and DOES 11-  
20 50

21 Respondents and Defendants.

22 FIELD & POND, DAHVIE JAMES, PHILIP  
23 WATT, and DOES 51-500,

24 Real Parties in Interest.

CASE NO. PT16-1896

NOTICE OF ENTRY OF JUDGMENT  
BY FAX

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TO ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 20, 2018 the Court in the above-referenced action entered a Judgment, a true and correct copy of which is attached hereto as Exhibit A.

Dated: June 21, 2018

STOEL RIVES LLP



By: \_\_\_\_\_

Timothy M. Taylor  
Carissa M. Beecham  
Attorneys for Real Parties in Interest  
Field & Pond, Dahvie James, Philip Watt

EXHIBIT A



JUDGMENT

1  
2 The Petition for Writ of Mandate (“Petition”) filed by Petitioners Farmland Protection  
3 Alliance, Tuleyome, and Yolo County Farm Bureau (“Petitioners”) against Respondents County of  
4 Yolo and Yolo County Board of Supervisors (“Respondents”) came before this Court on January  
5 11, 2018 in Department 3, Judge Kathleen W. White, presiding.

6 The Court thereupon issued an Order, followed by a Statement of Decision, granting in part  
7 the Petition as to the impact on the First Cause of Action as to impacts to the Tricolored Blackbird,  
8 the Valley Elderberry Longhorn Beetle, and the Golden Eagle, and denying the remainder of the  
9 Petition. A copy of the Court’s final Statement of Decision is attached hereto.

10 Based on the Statement of Decision, IT IS SO ORDERED THAT:

11 1. Judgment granting a writ of mandate ~~be~~ entered in favor of Petitioners and against ~~the~~  
12 Respondents *as set forth in the attached Statement of Decision.*

13 2. A peremptory writ of mandate directed to Respondents shall issue ordering  
14 Respondents to undertake further study and preparation of a subsequent Environmental Impact  
15 Report (“EIR”) to address only the potential impacts of the Project on the Tricolored Blackbird,  
16 Valley Elderberry Longhorn Beetle, and the Golden Eagle.

17 3. The Project Approval and related mitigation measures shall remain in effect during  
18 this period of further environmental analysis. Real Parties in Interest Field & Pond, Dahvie James,  
19 and Philip Watt shall be allowed to continue operating the Project under the strict control of  
20 Respondents’ permitting scheme during this period.

21 4. At the conclusion of the additional environmental analysis, Respondents shall file a  
22 Return setting forth all actions taken to comply with this Writ and indicating whether or not  
23 Respondents certified the above-referenced subsequent EIR for the Project.

24 5. Pursuant to Public Resources Code section 21168.9(c), this Court does not direct  
25 Respondents to exercise their lawful discretion in any particular way.

26 6. Pursuant to Public Resources Code section 21168.9(b), this Court shall retain  
27 jurisdiction over Respondents’ proceedings until the Court has determined that Respondents have  
28 complied with the provisions of the California Environmental Quality Act and state law.



FILED  
YOLO SUPERIOR COURT

APR 06 2018

BY                       
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF YOLO**

FARMLAND PROTECTION ALLIANCE,  
TULEYOME, YOLO COUNTY FARM BUREAU  
and DOES 1-10,

Petitioners and Plaintiffs,

vs.

COUNTY OF YOLO, YOLO COUNTY BOARD  
OF SUPERVISORS and DOES 11-50,

Respondents and Defendants.

FIELD & POND, DAHVIE JAMES, PHILIP  
WATT, and DOES 51-500,

Real Parties in Interest.

) Case No. CV PT 16-001896

) **STATEMENT OF DECISION**  
) **GRANTING IN PART**  
) **PETITIONERS' PETITION FOR**  
) **WRIT OF MANDATE AND**  
) **COMPLAINT FOR**  
) **DECLARATORY AND**  
) **INJUNCTIVE RELIEF RE**  
) **ADOPTION OF REVISED**  
) **MITIGATED NEGATIVE**  
) **DECLARATION (CEQA)**

) Hearing Date: January 11, 2018  
) Dept.: 3, Judge Kathleen M. White  
) Time: 11:00 a.m.

On January 11, 2018, this court heard oral argument in the above-captioned matter.

Attorneys appearing for the various petitioners were Christian C. Scheuring, Esq., for Yolo  
County Farm Bureau, Donald B. Mooney, Esq., for Tuleyome, and Christopher R. Rodriguez,

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1 Esq. and John S. Poulos, Esq., of Lewis, Brisbois, Bisgaard & Smith LLP for Farmland  
2 Protection Alliance. Appearing for the various respondents were Eric May, Esq., Sr. Deputy  
3 County Counsel for the County of Yolo, Timothy M. Taylor, Esq. of Stoel Rives LLP for real  
4 parties in interest Field & Pond/Davie James/Philip Watt, and Thomas Barth, Esq. of Barth Daly  
5 LLP.

6 On January 16, 2018, this court issued an "Order After Hearing Granting in Part  
7 Petitioner's Petition for Writ of Mandate and Complaint For Declaratory Relief and Injunctive  
8 Relief re Adoption of Revised Mitigated Negative Declaration (CEQA)" ("Jan 16, 2018 Order"),  
9 which order directed Petitioner to prepare a draft statement of decision per Rule 3.1590(c)(3),  
10 California Rules of Court ("CRC"). Petitioners filed their proposed statement of decision January  
11 30, 2018, after which the court received various formal objections and cross-objections to the  
12 proposed statement of decision. The court then issued a proposed statement of decision on March  
13 20, 2018.<sup>1</sup> The court has considered the various objections and comments thereto filed by the  
14 parties, and, where appropriate, incorporated them into the final statement of decision set forth  
15 below. Having considered these filings, and all admissible evidence and argument presented to  
16 the court, and having weighed the admissible evidence, the court enters the following final  
17 Statement of Decision and Order in accordance with CRC Rule 3.1590.

18 //  
19 //  
20 //  
21 //

---

22  
23 <sup>1</sup> The CRC contemplates the filing and consideration of objections *after* the court has issued the  
24 Proposed Statement of Decision, but the various parties filed their objections and comments upon  
25 *Petitioner's* lodging of its proposed SOD (as directed by the court in the January 16, 2018 Order). The  
court considered these objections and comments as advance objections to the *court's* proposed SOD  
under Rule 3.1590(g), and afforded the parties another 15 days for further objection to the court's  
Proposed SOD per Rule 3.1590. Respondents filed a Notice of No Objection to the *Court's* Proposed SOD  
on April 5, 2018. Petitioners filed objections to the court's Proposed SOD, which objections and  
comments have been considered by the court before issuing this final Statement of Decision.

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1 **STATEMENT OF DECISION**

2 The petition of Farmland Protection Alliance (“Farmland” or “Petitioner”) came on  
3 regularly for hearing on January 11, 2018 in Dept. 3 of this court, the Hon. Kathleen M. White,  
4 Judge presiding. Appearances were as noted on the record. In accordance with local rules, the  
5 court issued a tentative ruling, which granted in part Petitioners’ petition for writ of mandate and  
6 complaint for declaratory and injunctive relief. The parties timely requested oral argument,  
7 which the court heard on January 11, 2018 and then took the matter under submission. On  
8 January 16, 2018, the court entered its Order After Hearing Granting in Part Petitioner’s Petition  
9 for Writ of Mandate and Complaint for Declaratory and Injunctive Relief re Adoption of Revised  
10 Mitigated Negative Declaration (CEQA)( the “January 16, 2018 Order”).

11 Having considered the evidence and argument, the court issues this Statement of  
12 Decision (“SOD”), in accordance with Code of Civil Procedure section 632 and Rule  
13 3.1590(c)(3), CRC, in order to formalize the January 16, 2018 Order <sup>2</sup>, and **HEREBY FINDS**  
14 **AND ORDERS** as follows:

15 **I. Standard of Review**

16 In an action to set aside an agency’s determination under the California Environmental  
17 Quality Act (“CEQA”), the trial court reviews whether the agency abused its discretion. Abuse  
18 of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the  
19 determination is not supported by substantial evidence. (*Sierra Club v. Gilroy City Council*  
20 (1990) 222 Cal.App.3d 30, 39-40; Pub. Res. Code, § 21168; Code Civ. Proc., § 1094.5.)

21 CEQA sets a low threshold for preparation for an Environmental Impact Report (“EIR”):  
22 The lead agency must prepare an EIR **“whenever it can be fairly argued on the basis of**  
23 **substantial evidence that the project may have a significant environmental impact.”** (*No*

24 \_\_\_\_\_  
25 <sup>2</sup> This Statement of Decision supersedes the January 16, 2018 Order.

*mm2*

1 *Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under this standard, the agency's  
2 decision may be upheld only if the evidence in the record of its proceedings is insufficient to  
3 support a fair argument that the project may have a significant effect on the environment. If there  
4 is substantial evidence in the record that would support a fair argument that a significant impact  
5 may result, the agency's decision to dispense with an EIR must be set aside. (*Friends of B Street*  
6 *v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

7 This action challenges a mitigated negative declaration, as revised (RMND).

8 A negative declaration, adopted after a project has been revised to avoid or mitigate  
9 environmental impacts, is referred to as a "mitigated negative declaration ("MND")." (Pub. Res.  
10 Code, § 21604.5; 14 Cal.Code Regs., § 15369.5.) An MND is not materially different from an  
11 ordinary negative declaration. The distinction is that, in an MND, mitigation measures to  
12 eliminate significant impacts are adopted after the project has been proposed, while in an  
13 ordinary negative declaration, the project as proposed is found to have no significant  
14 environmental impacts. (14 Cal. Code Regs. §15064, subd. (f)(2).)

15 To lawfully carry out a project based on a MND, an agency must approve mitigation  
16 measures sufficient to reduce potentially significant impacts "to a point where clearly no  
17 significant effects would occur." (CEQA Guidelines §§ 15071, 15070(b) (1).) The determination  
18 of whether a project may impact the environment "calls for careful judgment on the part of the  
19 public agency involved." (*Keep Our Mountains Quiet v. Candice Clark Wozniak* (2015) 236  
20 Cal.App.4th 714, 729.)

21 Reviewing courts also examine whether the agency's decision to adopt a negative  
22 declaration is based on a factual analysis of the project's potential impacts. The agency's  
23 decision can be invalidated if it appears the agency did not actually evaluate the question  
24 whether significant effects might result. (*Sundstrom v. County of Mendocino* (1988) 202  
25 Cal.App.3d 296, 311.)

1 Under these standards, a negative declaration is invalid if either:

2  
3 (1) There is substantial evidence in the record supporting a fair argument that the  
4 project may have a significant effect on the environment; or

5 (2) The agency has failed to undertake a fact-based investigation of the project's  
6 potential environmental impacts.

7  
8 To provide an adequate basis for judicial review, an initial study ordinarily should  
9 disclose the data or evidence supporting the study's environmental findings. (*Citizens Ass'n for*  
10 *Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.) In the leading case of  
11 *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the court rejected a negative  
12 declaration that was supported only by a bare-bones environmental checklist. There was no  
13 indication in the record of the source or content of the data that county staff relied on in  
14 preparing the checklist, nor was there an explanation of the initial study's conclusion that  
15 potentially significant impacts would be fully mitigated.

16 Describing the checklist as a "token observance" of CEQA requirements, the court  
17 held that a lead agency has a duty to investigate potential impacts and provide support for a  
18 negative declaration; the record of its action must demonstrate, and not simply assume, that  
19 significant impacts will not occur. This prevents a lead agency from providing a superficial  
20 analysis of a project's potential impacts in the initial study and then defending its decision to  
21 adopt a negative declaration by pointing to the absence of evidence of any significant  
22 environmental impacts.

23  
24 The agency's task is not to weigh competing evidence and determine whether, in fact,  
25 a significant impact on the environment will occur; rather, the proper task is to determine

1 whether the record before the agency contains substantial evidence supporting a fair  
2 argument that a significant impact may occur. (Pub. Res. Code, § 21080, subs. (c) and  
3 (d); CEQA Guidelines § 15064(f) (Emphasis supplied).

4  
5 Under Public Resources Code section 21080(e) and 21082.2(c) and 14 California Code  
6 of Regulations sections 15064(f) (5) and 15384, the following constitute substantial evidence:

- 7 • Facts;
- 8 • Reasonable assumptions predicated on facts; and
- 9 • Expert opinions supported by facts.

10  
11 Under the same sections, the following do not constitute substantial evidence:

- 12 • Argument;
- 13 • Speculation;
- 14 • Unsubstantiated opinion or narrative;
- 15 • Clearly inaccurate or erroneous evidence;
- 16 • Evidence that is not credible; and
- 17 • Evidence of social and economic impacts that do not contribute to, and are not caused by,  
18 physical impacts on the environment.

19 “Significant effect upon the environment” is defined as “a substantial or potentially substantial  
20 adverse change in the environment.” (Pub. Res. Code, § 21068; 14 Cal.Code Regs, § 15382.). A  
21 project “may” have a significant effect on the environment if there is a “reasonable probability”  
22 that it will result in a significant impact. (*No Oil, Inc.*, p. 83, n. 16; *Sundstrom v. County of*  
23 *Mendocino* (1988) 202 Cal.App.3d 296, 309.) If any aspect of the project may result in a  
24 significant impact on the environment, an EIR must be prepared even if the overall effect of the  
25 project is beneficial. (14 Cal. Code Regs., §15063(b) (1).)

1 An agency's determination whether information in the record constitutes "substantial  
2 evidence" boils down to a determination not only that the information is relevant and material,  
3 but also that it is sufficiently reliable to have solid evidentiary value. To determine the reliability  
4 of the evidence, a lead agency may consider several factors:

- 5 • Whether the evidence has an adequate foundation in the witness's personal knowledge of  
6 facts. (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872.)  
7 Expressions of subjective concerns and personal beliefs do not constitute substantial  
8 evidence. (*Newberry Springs Water Ass'n v. County of San Bernardino* (1984) 150  
9 Cal.App.3d 740.) Speculation, argument, and unfounded conclusions are likewise not  
10 substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68  
11 Cal.App.4<sup>th</sup> 556, 571; *Citizens Comm. To Save Our Village v. City of Claremont* (1995)  
12 37 Cal.App.4<sup>th</sup> 1157, 1171.)
- 13 • Whether the evidence is provided by a qualified source. Opinions can constitute  
14 substantial evidence when they are provided by a witness who is qualified to render an  
15 opinion on the subject. Fact-based observations by persons qualified to speak to a  
16 question qualify as substantial evidence. (*Sierra Club v. Department of Forestry & Fire*  
17 *Protection* (2007) 150 Cal.App.4<sup>th</sup> 370; *Architectural Heritage Ass'n v. County of*  
18 *Monterey* (2004) 122 Cal.App.4<sup>th</sup> 1095, 1117.)
- 19 • Whether the evidence is not reliable for other reasons. A lead agency may find that  
20 hearsay is not sufficiently reliable to be treated as substantial evidence. (*Citizens for*  
21 *Responsible Dev. v. City of W. Hollywood* (1995) 39 Cal.App.4<sup>th</sup> 490, 499, n.2.)

22  
23 When qualified experts present conflicting evidence on the nature or extent of a project's  
24 impacts, the agency must accept the evidence tending to show that the impact might  
25 occur. Evidence to the contrary is usually irrelevant, because the agency cannot weigh

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1 competing evidence. (*Rominger v. County of Colusa* (2014) 229 Cal.App.4<sup>th</sup> 690 [opinion by  
2 traffic expert conflicted with negative declaration's trip generation assumptions]; *City of*  
3 *Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 249 [conflicting  
4 opinions by multiple experts on definition and extent of wetlands].) A disagreement between  
5 experts regarding the significance of one or more environmental effects can require an EIR in  
6 “marginal cases where it is not clear whether there is substantial evidence that a project may  
7 have a significant effect on the environment . . .” (CEQA Guidelines, § 15064(g).)

8  
9 **II. Findings**

- 10 A. Respondents County of Yolo and Yolo County Board of Supervisors and real parties  
11 in interest Field and Pond, Dahvie James, and Philip Watt’s request for judicial notice  
12 is **GRANTED**. (Evid. Code, § 452, subd. (c).)
- 13 B. Petitioners Farmland Protection Alliance (“Farmland”) and Yolo County Farm  
14 Bureau’s request for judicial notice, filed on August 7, 2017, is **DENIED**. Petitioner  
15 does not show that the letter is judicially noticeable or that it is the proper subject of a  
16 motion to augment the record. (Evid. Code, § 452, subds. (c) & (h); *Western States*  
17 *Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576.)
- 18 C. Petitioner Farmland’s request for judicial notice made on November 7, 2017, is  
19 **DENIED**. (Evid. Code, § 452, subds. (c) & (h).) The request is untimely, judicial  
20 notice may not be taken of matters which are the subject of dispute, and the  
21 documents are extra-record evidence. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994)  
22 7 Cal.4th 1057, 1063; *L.B. Research & Education Foundation v. UCLA Foundation*  
23 (2005) 130 Cal.App.4th 171, 180, fn. 2; *Western States Petroleum Assn. v. Superior*  
24 *Court* (1995) 9 Cal. 4th 559, 576.)
- 25 D. Petitioner’s’ petition for writ of mandate and complaint for declaratory and injunctive  
relief is **GRANTED IN PART**, as follows:

1 1. **Impact on Tricolored Blackbird:** The petition is **GRANTED**. The record before  
2 the agency supports a fair argument that the project may have a significant impact  
3 on the Tricolored Blackbird. (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil,*  
4 *Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; AR 6848, 12802-03, 12943,  
5 13736, 13757, 14339, & 15963.) The record includes evidence from both sides'  
6 experts (Doctors Estep and Roberts) that the project may affect the blackbirds'  
7 breeding, although they disagreed on the level of necessary mitigation.  
8 Respondents argue that a disagreement on the scope of mitigation (as opposed to  
9 the impact) does not trigger a full environmental impact report (EIR).  
10 Respondents further argue that Dr. Robert's more "draconian" proposed  
11 mitigation measures are not supported by facts. Yet both Dr. Estep and Dr.  
12 Roberts agree that the blackbird is a species sensitive to disturbance, and that the  
13 species lives around the pond at the project site. Dr. Roberts found evidence of  
14 prior blackbird breeding at the site. Ecological consultant Hilary White confirmed  
15 blackbird breeding at the site. (AR 12802-03.) Dr. Estep did not observe current  
16 blackbird breeding at the Project site, but could not rule out prior or future  
17 breeding. (AR 13736.) Neither Dr. Estep nor Dr. Roberts could define how much  
18 the expanded parking and increased visitors might disturb the birds' breeding. Dr.  
19 Estep recommended monitoring the site for five years to evaluate the impact of  
20 the proposed project on the tricolor blackbirds' breeding. The court infers from  
21 this record that either (a) the tricolored blackbirds no longer breed at the site, in  
22 which case there is no substantial impact from the proposed project because the  
23 damage has already been done (perhaps long ago), or (b) the breeding pattern at  
24 the site is so fragile that any increased human activity would have a substantial  
25

1 impact on this sensitive species. This meets the “substantial evidence of a fair  
2 argument” standard. It is just such questions that an EIR is intended to review.

3 2. **Impact on Valley Elderberry Longhorn Beetle:** The petition is **GRANTED**. The  
4 record before the agency supports a fair argument that the project may have a  
5 significant environmental impact on the Valley Elderberry Beetle. (Pub. Res.  
6 Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 411, 13758, & 14339.)  
7 The RMND protects elderberry bushes (and the protected beetle species that call  
8 such bushes home) for 100 feet from any new construction. It also requires a 100-  
9 foot buffer between event activities and the banks of the Chickahominy slough  
10 where the bushes grow. (AR 811.) Both sides’ experts (Drs. Estep and Roberts)  
11 expressed concern about the beetle and recommended more substantial buffers.  
12 (AR 411(Roberts) and AR 13758 and 14339 (Estep).) Respondent County argues  
13 that this provision is consistent with its General Plan in that it addresses only new  
14 construction, but the RMND must address all substantial biological impacts, not  
15 just those that trigger general plan scrutiny. The county offers no persuasive  
16 authority for the proposition that compliance with its General Plan obviates the  
17 need to evaluate environmental impacts in accordance with CEQA.

18 3. **Impact on Swainson’s Hawk:** The petition is **DENIED**. The mitigation measures  
19 allow for the identification of any Swainson’s hawks in the area during  
20 construction, and mitigation is to be monitored by a biologist. Petitioners fail to  
21 show a detrimental impact on the species as a whole, or that there are impacts  
22 when it is not nesting season for the hawks, or that delegation to a biologist of the  
23 monitoring duties is improper. (One wonders who might be qualified to do the  
24 task if a biologist were not.) Petitioners fail to show substantial evidence in  
25 support of a fair argument that the project might have significant environmental

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1 impact on the Swainson's hawk. (Pub. Res. Code, § 21080, subs. (b) & (c); *No*  
2 *Oil, Inc., supra.*)

3 4. **Impact on all identified species:** The petition is **GRANTED**. Although the  
4 record indicates that none of the other listed species was found (and, therefore,  
5 there is no need to address any impact), there was evidence in the record that Dr.  
6 Estep observed a golden eagle. (AR 1575.) Without any discussion of the impact  
7 of the project on the golden eagle, the RMND is deficient as to this species. The  
8 record does not show that Respondent did a fact-based investigation regarding  
9 any significant environmental impact that the Project might have on the golden  
10 eagle. (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1575.)

11 5. **Impact on agricultural resources:** The petition is **DENIED**. Petitioner fails to  
12 show that there is a fair argument on the basis of substantial evidence that the  
13 project may have a significant environmental impact on agricultural resources.  
14 Petitioners are that there is a "real possibility" that adjacent farmers will be denied  
15 permission to spray their crops. Yet the parties agree that the relevant test is  
16 whether the project involves "changes in the existing environment that, due to  
17 their location or nature, could result in the conversion of farmland to  
18 nonagricultural use." (AR 1506; CEQA Guidelines, App. G, § II, sub. (e).) Here,  
19 there is only one adjacent owner and he operates a walnut orchard. (AR 7227,  
20 8124 and 3866.) Testimony in the record shows the actual buffer for the owner  
21 when spraying is 50' for the pesticide used for walnuts. (AR 3866.) As a result,  
22 "there is a significant buffer already with the road." (AR 3866.) The evidence in  
23 the record supports the conclusion by the Agricultural Commissioner that any  
24 pesticide impacts could be mitigated. Other mitigation measures include the  
25 limitation on the number of events and prior notices to neighbors of events.

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1 Petitioner fails to show that there is substantial evidence supporting a fair  
2 argument that a significant impact may occur.

3 (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1510-1512,  
4 3866, 7227, 8124, & 18706.)

5 6. **Impact on future environmental hazards:** The petition is **DENIED**. Petitioner  
6 argues that Road 29 is insufficient to evacuate project guests in case of fire. But  
7 the Winters Fire Department already addressed compliance with fire codes. (AR  
8 1548.) Cal Fire reviewed the plans and delegated authority for approval to the  
9 County's Chief Building Official, who approved the plan with appropriate  
10 mitigation provisions. (AR 1548.) Parking is prohibited in the locations where it  
11 might impede emergency vehicle access. (AR 1410, 1536.) There is an emergency  
12 safety plan that includes shelter in place (rather than relying solely on egress  
13 through CR 29), a detailed safety plan for staff and guests in the event of fire or  
14 other emergency, and use of shuttles under the direction of fire officials to remove  
15 guests from the site. Further, Petitioner concedes that the rules governing CR 29  
16 do not apply because the State Fire Marshall has not adopted them. Petitioner fails  
17 to show that there is a fair argument on the basis of substantial evidence that the  
18 project may have a significant environmental impact on environmental hazards.  
19 (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1410, 1413,  
20 1420, 1536, 1548, 17738, 17739.)

21 7. **Impact on public services:** The petition is **DENIED**. Events are limited to certain  
22 times and dates, and the frequency is also limited. The project already requires at  
23 least two security guards, an event planner/coordinator and signage. Nothing in  
24 the record suggests that these measures are inadequate. Petitioner fails to show  
25 that there is a fair argument on the basis of substantial evidence that the project

1 may have a significant environmental impact on public services. (Pub. Res. Code,  
2 § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 1409 & 1410.)

3 8. **Impact on hydrology and water quality:** The petition is **DENIED**. Petitioners  
4 rely on an expert hydrological opinion that is not based on facts in the record. The  
5 expert's "findings" are speculative, and not, therefore, substantial evidence.  
6 Petitioners fail to show that there is a fair argument on the basis of substantial  
7 evidence that the project may have a significant environmental impact on  
8 hydrology and/or water quality. (Pub. Res. Code, § 21080, subds. (b) & (c); *No*  
9 *Oil, Inc., supra*; AR 1174-83.)

10 9. **Impact on land use and planning:** The petition is **DENIED**. See the discussion  
11 of land use, zoning and planning, *infra*, at section 15. Petitioner fails to show that  
12 there is a fair argument on the basis of substantial evidence that the project may  
13 have a significant environmental impact on land use and planning. (Pub. Res.  
14 Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 1400-1407.)

15 10. **Impact on utilities:** Petitioner argues that the RMND fails to explain how the  
16 project can comply with septic requirements, but ignores the fact that the RMND  
17 requires the expansion to be reviewed and approved first. The petition is  
18 **DENIED**. Petitioner fails to show that there is a fair argument on the basis of  
19 substantial evidence that the project may have a significant environmental impact  
20 on utilities. (Pub. Res. Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*.)

21 11. **Impact on traffic:** Petitioner cites no evidence that the use of shuttles and signage  
22 as proposed are insufficient to mitigate the traffic impact. As to Petitioner's  
23 complaints about the emergency plan, that is discussed, *supra*. The petition is  
24 **DENIED**. Petitioner fails to show that there is a fair argument on the basis of  
25 substantial evidence that the project may have a significant environmental impact

1 on traffic. (Pub. Res. Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR  
2 1410, 1411, & 1420.)

3 **12. Impact on population, housing, air quality, and aesthetics:** The petition is  
4 **DENIED.** Petitioner argues that the RMND fails to analyze the population and  
5 housing impacts of the Project's plan to build four cottages and a pool house after  
6 the Williamson Act contract expires. Respondent replies that the guesthouses are  
7 for guest use, not for permanent residents, and there is no plan for a pool house.  
8 Petitioner also argues there are potential impacts to aesthetics and air quality, but  
9 cites no evidence in the record to support the argument. Petitioner's concerns  
10 about the County's alleged failure to quantify CHG emissions or adhere to the  
11 mandates of the Yolo County Climate Plan are countered in the record by the  
12 conditions of approval: Condition 65 includes five required conditions to reduce  
13 tailpipe admissions. There are eight conditions to reduce construction dust  
14 (Condition 66) and six required conditions for dust control. (Condition 67).(AR  
15 1416.) Petitioner fails to show that there is a fair argument on the basis of  
16 substantial evidence that the project may have a significant environmental impact  
17 on population, housing, air quality, and aesthetics. (Pub. Res. Code, § 21080,  
18 subds. (b) & (c); *No Oil, Inc., supra*; AR 1416.)

19 **13. Cumulative impacts:** The petition is **DENIED.** Petitioner argues that the RMND  
20 fails to identify the geographic scope of its analysis, fails to address past, present  
21 and future projects producing related impacts, and fails to address the applicants'  
22 plans to increase the number of events and B&B rentals in the future. The RMND  
23 evaluated potential cumulative impacts on both a county-wide and project-vicinity  
24 basis. (AR 1559.) Potentially county-wide cumulative air impacts from temporary  
25 construction activities will be reduced through the implementation of standard air

1 quality measures. (AR 1559, 1513-1517.) The 2030 Countywide General Plan  
2 EIR analyzes the Project's contribution to cumulative county-wide energy  
3 demand and traffic, and the regional and global impacts associated with  
4 greenhouse gas emissions were also analyzed in the 2030 Countywide General  
5 Plan. The Project's potential cumulative impacts to agriculture in the immediate  
6 vicinity are alleviated by the adopted Conditions of Approval and Mitigation  
7 Measures. (AR 1559.) Petitioner does not address why these evaluations were  
8 inadequate, and fails to show that there is a fair argument on the basis of  
9 substantial evidence that the project may have significant cumulative impacts.  
10 (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1513-1517  
11 &1559.)

12 14. **Violation of CEQA procedural requirements:** The Court need not reach whether  
13 Respondent violated CEQA procedural requirements based on its findings, *supra*,  
14 that an EIR should be prepared based on certain specific impacts.

15 15. **Violation of the Williamson Act, inconsistency with the General Plan, and**  
16 **violation of the Yolo County Code:** The petition is DENIED. The Williamson  
17 Act (Govt. Code §§ 51200 *et seq.*) delegates to cities and counties the authority to  
18 determine what are deemed "compatible uses" with the Williamson Act's stated  
19 purpose to preserve agricultural land for agriculture. The county' findings are  
20 reviewed under the 'prejudicial abuse of discretion" standard applicable to  
21 traditional writs of mandamus. (Code Civ. Proc. § 1094.5(b).) Where, as here, the  
22 petition claims that findings are not supported by the evidence, petitioner must  
23 show that "the findings are not supported by substantial evidence in light of the  
24 whole record." (§ 1094.5(c).) Here, the county made detailed findings on each  
25 compatibility standard in § 51238.1. (AR 1404-07). Petitioner does not address

1 any of these findings specifically - other than the issue of pesticide spray on  
2 adjacent farmland. Petitioner argues that the farm operations will be prohibited  
3 from spraying pesticides. But the record demonstrates that the spray buffer for the  
4 adjacent land based on current use – not speculation - is 50.’

5 Petitioner further argues that the Project violates the County’s General  
6 Plan allowing uses incompatible with agricultural uses. The County made  
7 findings that the Project’s uses were consistent with various General Plan policies,  
8 including Land Use, Agriculture and Economic development (See AR 1399-  
9 1400), as well as the zoning codes. (AR 1400-1403.) Petitioner asserts that the  
10 Project site is not now used for agricultural purposes, yet Petitioner concedes that  
11 the project site is now used for livestock grazing and orchards. It can be inferred  
12 from the record that the Project site is being used, at least presently, for  
13 agriculture. Petitioner fails to identify what aspects of these findings are  
14 deficient, and, therefore, fails to show that respondent prejudicially abused its  
15 discretion in finding that the project was consistent with the Williamson Act,  
16 General Plan, and Yolo County Code. (Code Civ. Proc., § 1094.5, subd. (b) & (c);  
17 AR 830 & 1399-1407.)

18 **III. Orders**

- 19 A. The clerk shall serve this order on the parties by e-mail and mail.  
20 B. Upon the entry of this final Statement of Decision, Respondent Yolo County shall  
21 prepare and lodge a Writ of Mandamus reflecting the court’s final Statement of  
22 Decision. The writ shall contain narrowly tailored language to provide that the  
23 current conditions and mitigation shall remain in effect pending further review.  
24 Project approval is, therefore, not rescinded, but rather the writ shall allow Real  
25 Party in Interests’ contracted operators to continue under the strict control of Yolo

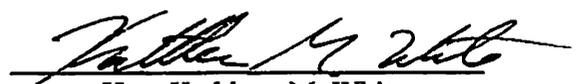
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County's permitting scheme during the period of additional environmental analysis.

**SO ORDERED.**

Dated: April 6, 2018



Hon. Kathleen M. White  
Superior Court of California, Yolo County

1 **SERVICE LIST**

2 Thomas W. Barth, Esq.  
3 Barth Daly LLP  
4 431 I street, Suite 201  
5 Sacramento CA 95814  
6 (916) 440-8600  
7 tbarth@barth-daly.com  
8 Attorney for Real Parties in Interest Field & Pond, et al.

9 Eric May, Esq.  
10 Sr. Deputy County Counsel  
11 625 Court Street, Room 201  
12 Woodland CA 95695  
13 (530) 666-8172  
14 eric.may@yolocounty.org  
15 Attorney for County of Yolo

16 Christopher R. Rodriguez, Esq.  
17 John S. Poulos, Esq.  
18 Lewis, Brisbois, Bisgaard & Smith LLP  
19 2020 West El Camino Ave. Suite 700  
20 Sacramento CA 95833  
21 Tel (916) 564-5400  
22 Fax (916) 564-5444  
23 Chris.Rodriguez@lewisbrisbois.com  
24 John.Poulos@lewisbrisbois.com  
25 Attorney for Petitioner Farmland Protection Alliance

Donald B. Mooney, Esq.  
129 C Street Suite 2  
Davis CA 95616  
(530)758-2377  
dbmooney@dcn.org  
Attorney for petitioner Tuleyome

Christian C. Scheuring, Esq.  
California Farm Bureau Federation  
2300 River Plaza Drive  
Sacramento CA 95833  
(916) 561-5660  
cscheuring@cxbf.com  
Attorney for Petitioner Yolo County Farm Bureau

1 Timothy M. Taylor, Esq.  
2 Stoel & Rives LLP  
3 500 Capitol Mall, Suite 1600  
4 Sacramento CA 95814  
5 (916) 447-0700  
6 [tim.taylor@stoel.com](mailto:tim.taylor@stoel.com)  
7 Attorney for Real Parties in Interest Field & Pond, et al.  
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August 12, 2018

Hello Eric,

These comments are in response to the county's notice of intent to conduct an Environmental Impact Report for Field & Pond as directed by Judge Kathleen M. White.

The **baseline level** that the EIR addresses must begin with the date that the Field & Pond owners applied for their conditional use permit in 2015. There is no other logical point in time when it should begin. There is, for example, evidence that the tricolored blackbirds inhabited the pond before the Field & Pond owners bought the property, as well as evidence that the owners have destroyed the tule grass/cattails where the birds breed and live. The CUP application date was what the property looked like before the subsequent environmental destruction began, and before the peaceful, quiet sounds of nature were consistently interrupted by the loud events that have taken place there. How can the county justify any other start date for the baseline?

Re) **experts' assessments**, the Field & Pond owners are responsible for hiring experts to assess the impact of events and the large bed-and-breakfast operation on all the species of concern: the tricolored blackbird, golden eagle and long-horned elderberry beetle. They are also required to hire a qualified biologist to assess the impact of any construction activities on the Swainson's hawk; that includes the two garden sheds that were recently constructed in the parking area. In order to be relevant, the impacts on the environment need to be witnessed and documented before, during and after the events; to do otherwise would be incomplete and inadequate. Were any of the experts' assessments taken before and during the events, and if not, why? Will any of the experts' assessments be taken during events and afterwards, and if not, why?

Re) the **excessive noise**, the sound levels have exceeded the county's limit of 60 decibels on a regular and on-going basis (and the county has failed to penalize Field & Pond for its continuous violations) thus allowing the Field & Pond owners to harm the environment and numerous wildlife species that live there, endangered or not. After the county instructed the neighbors to record the sound levels, the county said it would send one of its staff members to measure the excessive sound levels—which it purportedly did on one occasion, following at least two years of events being held—but then the county provided no proof that it had done so. In addition to being a nuisance—and one that has been allowed to continue—the sound scares off the wildlife, including the species of concern: the tricolored blackbirds that inhabit the pond and the golden eagles that inhabit the trees. How will the environmental damage from excessive noise levels be addressed in the EIR?

**Fire danger** is real at the Field & Pond property and is an environmental threat that cannot be ignored. The 2018 County Fire was 1.25 miles west of the Field & Pond Property, and the Road 88 fire actually began right across the road from Field & Pond. The Field & Pond property is particularly vulnerable to fire due to the behavior of the guests, including those who have been allowed to park on the dry grass. A fire would also destroy the vegetation, which includes the

elderberry bushes that are inhabited by the elderberry long-horned beetles, an endangered species. The fire danger impacts more than just the three species of concern—it affects all the species, including the visitors to Field & Pond, who could easily become trapped and killed by fire. How will all of these risks be addressed in the EIR?

The **septic system** is inadequate for an event center and large, year-round B&B, and needs to be upgraded to a commercial use so it doesn't overflow and contaminate the ecosystem. Since raw sewage could surround everything and be very harmful to wildlife habitat and the overall environment, how will this be addressed in the EIR?

Thank you,

Robyn Rominger  
26981 County Road 29  
Winters CA 95694  
(530) 662-5569

To: Eric Parfrey, Yolo County Community Services Department

From: Patty Rominger, 23756 County Road 89, Winters, CA 95694

Re: Notice of Preparation – Field & Pond ZF #2015-0018

Date: 8/10/2018

In regard to the above mentioned Notice of Preparation, I have the following comments:

On July 2, 2018, the Yolo County Superior Court issued a peremptory writ of mandate against the County of Yolo and Yolo County Board of Supervisors regarding the County's Mitigated Negative Declaration under the CA Environmental Quality Act for the Use Permit of the Field & Pond event center.

It is my understanding from attending the July 18, 2018 Scoping Meeting that the environmental firm conducting the EIR, De Novo Planning Group, was hired in February 2018 and immediately began conducting environmental assessments on the Field & Pond Property. According to CA Resources Code the agency is to send Notice of Preparation immediately upon determining an EIR will be done. Even though the environmental firm was hired in February, notice was not given to interested parties until July 12, 2018. Was this a violation of notification requirements? If not, please explain why not. If so, please explain why proper notification was not given.

In regard to the tri-colored blackbird:

- Has the environmental assessment of the tri-colored blackbirds been completed? If so, on what date was the assessment completed?
- What is the baseline being used to conduct assessments of the tri-colored blackbirds? To make a fair and accurate environmental assessment the baseline should be based upon the start date of the Field & Pond project (especially since the owners of Field & Pond have purposefully & intentionally destroyed blackbird habitat on their property).
- On what dates were the assessments conducted?
- Were those assessments conducted at a time when tri-colored blackbird nesting sites would have most likely been observed? If not, why not? I believe the assessment should be conducted when the blackbirds are most likely to be nesting to make it an accurate assessment of the environmental concerns.
- What consideration in the EIR assessment is being taken that the owners of Field & Pond, in violation of their Use Permit, destroyed much of the blackbird habitat by pulling out the tules and instead planting vegetation that is not used by tri-colored blackbirds as a nesting site? This destruction was documented & sent to County Counsel. County Counsel agreed this was a violation of Field & Pond's Use Permit. How will this violation be addressed in the EIR findings?
- What consideration in the EIR assessment is being taken that the owners of Field & Pond have substantially reduced the amount of water in the pond, thus negatively impacting the nesting or potential nesting of the tri-colored blackbird?

- Has an assessment of the impact to the tri-colored blackbird been made when events are actually taking place? It is reasonable that the EIR studies should include assessments taken when events are happening to see how the species responds to the increased vehicle, increased noise, increased population, etc. If assessments have not been made while events are occurring, why not?
- Will more assessments be conducted based upon our comments? If not, why not?

In regard to the Elderberry Beetle:

- What is the baseline being used to conduct assessments of the Valley Elderberry Longhorn Beetle?
- Has the assessment for the beetles been concluded? If so, at what date?
- What were the dates the beetles were studied?
- Have any assessments of the beetles been conducted while events are actually occurring? If not, why not? It would seem that the greatest impact would be when wedding guests are present so this should be studied.
- What consideration has been given in the EIR assessment to address the issue that the owners of Field & Pond have violated their Use Permit by allowing wedding guests to congregate in areas (for photos, etc) which are restricted by their Use Permit to prevent harm to the Valley Elderberry Longhorn Beetle?

In regard to the Golden Eagle:

- What is the baseline being used to conduct assessments of the Golden Eagle?
- Did the expert visit the Field & Property on numerous occasions to determine the status of the Golden Eagle? What were those dates?
- Were environmental assessments conducted in the spring when Golden Eagles are most likely to be nesting? If not, why not? It would be most accurate to conduct these studies when the Golden Eagle is most likely to be present.
- Is any consideration given to proven sightings of Golden Eagles by neighbors? If not, why not?

It was my understanding from the Scoping Meeting that the environmental assessments had already been completed. If that is the case, how will any of the concerns we raise be addressed? It seems they will be addressed only on paper and not with any additional on-site environmental evaluations. How can this be considered a fair or accurate analysis of the concerns raised?

Why wasn't the Scoping Meeting held before the environmental assessments began? This way ALL of the concerns raised could be addressed.

I was concerned to learn at the Scoping Meeting that the County can change the determinations made by the experts conducting the EIR. If this is the case, what is the purpose of conducting EIR's at all?

Also, at the Scoping Meeting Mr. Parfrey stated that this was not a typical EIR and the County was going to complete this EIR quickly. What are the reasons for pushing this through in an untypical fashion? A comprehensive study of this type *should* take time.

Thank you for your consideration of my comments. I would appreciate a written response to my questions raised.

Sincerely,

Patty Rominger

23756 County Road 89

Winters, CA 95694

## CHAD ROBERTS, PH.D.

SENIOR ECOLOGIST (ESA), PROFESSIONAL WETLAND SCIENTIST (SWS)



13 August 2018

Eric Parfrey, Principal Planner  
Yolo County Community Services Dept.  
292 West Beamer Street  
Woodland, CA 95695  
[eric.parfrey@yolocounty.org](mailto:eric.parfrey@yolocounty.org)

Subject: Comments, NOP for EIR ZF # 2015-0018 (Field & Pond)

Dear Mr. Parfrey,

The following comments regarding the in-progress Draft Environmental Impact Report (DEIR) for the Field and Pond Event Center Project represent potential environmental issues that should be addressed by the County's EIR consultants. All of my comments submitted to the County for this project pursuant to the California Environmental Quality Act (CEQA) subsequent to the County's draft Negative Declaration in 2016 are incorporated by reference in this comment letter as if fully set forth. Should there be any question regarding the validity of this step pursuant to CEQA, let me know and I'll resubmit copies of all of those comments as addenda to this letter pursuant to the above incorporation by reference.

While the County's Notice of Preparation (NOP) indicates a scope of assessment narrowly focused on potential impacts to three wildlife species and their habitats, reasonable conclusions based on substantial evidence in the County's existing administrative record for the project indicate that additional issues remain environmentally significant which have not been addressed in CEQA documents for this project. In addition, substantive issues remain regarding the project's consistency with policies in the adopted Yolo County 2030 General Plan, other than the agriculture-related policies that were the sole focus of the Superior Court's opinion. These are issues under CEQA because of the requirement that EIRs address planning document consistency (see below); in addition, these General Plan consistency requirements are substantive issues that must be addressed by County decision-makers in considering the project.

### **Biological Effects of the Proposed Project on Covered Species**

It's my understanding that the EIR will incorporate a biological report prepared by Jim Estep, who is clearly qualified to identify potential effects to the species named in the Court's opinion. I have no specific comments regarding the methodology to be used in conducting the study and preparing the report, although I may have comments based on the content of the report when issued.

The baseline conditions used in the assessment are of concern, however. It appears from evidence in the County's administrative record that the project applicants have substantially modified conditions on the project site during the period when the County's review process and the trial were underway. The likely effect of the modifications has been to reduce or remove entirely habitat conditions that were favorable for one or more of the covered species. If the County adopts a finding that conditions on the project site at the time the NOP for the DEIR was issued in July 2018 constitute the baseline for the assessment of impacts to the covered species, then the assessment will clearly not address the proposed project's actual impacts on the species or their habitats, as the original conditions on the site were modified before the NOP was issued.

In order for the DEIR to include a meaningful biological assessment of impacts to the covered species, the baseline used for the assessments needs to be the conditions on the project site no later than the time the applicants first contacted the County regarding the requirements for obtaining permits for the project. If the Community Services Department lacks specific evidence of what the conditions on the site were at that time, then the County's EIR consultants and the contracted biological consultant should be directed to conduct sufficient research to identify the conditions most likely to have been present, such as through recent historical aerial photo analysis, because those are the actual baseline conditions against which the effects of the project must be compared.

Additional concerns for the DEIR arise from the recent adoption by the County Board of Supervisors of the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). This plan was not in effect when the prior CEQA assessment work was completed, but it is now, and the requirements and processes in the HCP/NCCP may affect the CEQA review process and the County's subsequent approval, given that all three species cited by the Superior Court as the basis for the DEIR are covered by the HCP/NCCP. The applicants may elect not to take advantage of the procedures in the HCP/NCCP to mitigate potential effects on these species, or alternatively the applicants could elect to make use of the process for mitigating impacts laid out in the HCP/NCCP. The DEIR needs to clarify the consequences of these alternative approaches for the species, for the applicants, and for the County's approval process.

### **Draft EIR Coverage of Other Potentially Significant Environmental Effects**

The County's NOP is clear that the County anticipates that the Draft EIR will be narrowly focused only on the impacts to three wildlife species. However, a fair argument exists that additional environmental concerns are raised by the proposed project that have not been addressed in CEQA documents. In particular (but not as the only concern under this category), the County's NegDec documentation never included information about potential impacts to water resources and water quality resulting from wastewater disposal. The NegDec deferred consideration of this potential impact to the County Health Department as being the subject of a subsequent permit process.

Such deferrals are reasonable when the subsequent permit is a ministerial process, when it's already clear that no significant environmental effects will result from the project and the only concern is that the subsequent agency review is "ministerial," meaning that the agency reviews the subsequent process as the application of existing standards and that there is no discretion to not approve the proposal. However, when it's not clear that the proposed project can avoid negative environmental consequences for the specific concerns that are deferred, the issues cannot be ministerial, and deferring the consideration of potential effects beyond the primary project approval robs all other agencies and members of the public of the opportunity to understand and comment on the project's real environmental consequences.

A question was raised in the initial review for the Field and Pond project, based on a report by Stephen McCord, an engineer and environmental scientist specializing in water-quality issues, whether the project could dispose of wastewater generated on the site during events while complying with existing water quality standards. In addition, the question was raised whether the construction of onsite waste-disposal facilities would affect the onsite development of other proposed project elements. The County's NegDec deferred the review of waste disposal to a

subsequent Health Department review process, and no evidence was ever presented in the CEQA process that this environmental concern could be addressed, either by a specific set of “standard” measures or by a separate detailed design process, or in fact whether the development of a legally adequate disposal process might significantly alter other aspects of the project to the extent that its environmental effects might increase for other resources of concern.

These are the precise conditions that California courts have ruled constitute a violation of CEQA. Most notably, the 1988 opinion of the First District Court of Appeal in *Sundstrom v. County of Mendocino* (202 Cal.App.3d 296) addresses virtually the same circumstances. In that case the local agency directed that studies documenting wastewater disposal be developed in a study to be conducted after the CEQA process (which resulted in a NegDec, as here) had been completed. The Court of Appeal found this deferral to be contrary to CEQA requirements, stating:

“The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA. California Administrative Code, title 14, section 15070, subdivision (b)(1) provides that if an applicant proposes measures that will mitigate environmental effects, the project plans must be revised to incorporate these mitigation measures ‘before the proposed negative declaration is released for public review....’ (Emphasis added.) Here, the use permit contemplates that project plans may be revised to incorporate needed mitigation measures after the final adoption of the negative declaration. This procedure, we repeat, is contrary to law.”

The Court’s opinion further states:

“While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data. Thus, in *Christward Ministry v. Superior Court, supra*, 184 Cal.App.3d 180, 197, 228 Cal. Rptr. 868, the city adopted an initial study and negative declaration concluding in brief, conclusory language that the project would not have a significant environmental impact. Ordering the preparation of an EIR, the court commented, “the City’s assertion it could find no ‘fair argument’ there would be any potentially significant environment impacts rests, in part, in its failure to undertake an adequate environmental analysis.” CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.”

Yolo County’s Negative Declaration for the Field and Pond proposal was clearly deficient in not providing any evidence for review by other public agencies or by member of the public regarding the potential wastewater-related environmental concerns identified by a technically qualified commenter. The deficiency does, indeed, “actually enlarge the scope of a fair argument by lending a logical plausibility to a wider range of inferences.” The issue of wastewater disposal is specifically an environmental concern for which the Field and Pond DEIR needs to provide additional evidence that the project can be completed as proposed while complying with existing County, state, and federal water pollution control requirements. This conclusion also applies for other environmental concerns raised by the project, regardless of the narrow opinion issued by Judge White.

## **Project Consistency with General Plan Conservation Element Biological Resources Framework**

The proposed Field and Pond project is not consistent with a number of policies in the Section D (“Biological Resources”) of the Conservation and Open Space Element of the adopted Yolo County 2030 General Plan. This inconsistency was clearly described in comments I submitted during the NegDec review process, although neither the inconsistency nor the comments were ever addressed by the County during the CEQA process or in documentation prepared for County decision-makers regarding the project applications. The opinion issued by the Superior Court did not address any General Plan consistency issues resulting from biological effects (focusing solely on agricultural policies), although the ruling regarding impacts on three wildlife species and their habitats arguably rolls the General Plan’s policies that affect sensitive species and habitats into the mandatory coverage elements for the EIR. Goal CO-2 of the Conservation Element states:

“**Biological Resources.** Protect and enhance biological resources through the conservation, maintenance, and restoration of key habitat areas and corresponding connections that represent the diverse geography, topography, biological communities, and ecological integrity of the landscape.”

The Conservation Element includes a number of policies that are intended to guide County decision-making pursuant to Goal CO-2; for ease of reference these policies are quoted in Attachment 1 to this letter. I strongly recommend that the DEIR prepared for the Field and Pond proposal identify as significant issues the environmental significance of the ongoing General Plan conflicts resulting from the project’s impacts to conservationally important resources (e.g., riparian area structure and function; importance of riparian areas for fish and wildlife; riparian area setback requirements, including obligations to establish permanent protection; ecological connectivity through the landscape; and consistency with the adopted HCP, among others).

In general, California law regarding General Plans requires that the entire general plan be “integrated” and internally consistent; that is, each element of the plan must be consistent with every other element. The specific requirement is stated in Government Code section 65300.5:

“In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.”

The internal consistency requirement essentially means that policies in the Conservation Element must be combined with policies in all other elements when considering the compatibility with the General Plan of any proposal considered by the County. This consistency is also an element of all CEQA review processes, because it’s embodied in question X.b of the Environmental Checklist:

“Would the project conflict with any applicable land use plans, policies, or regulations of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating on environmental effect?”

As noted above, the proposed project already has significant conflicts with applicable land use policies enunciated in the adopted 2030 General Plan. Yolo County is obligated under both CEQA and its adopted General Plan to identify and incorporate into its approval all feasible mitigation measures that can eliminate or otherwise minimize these conflicts. This is already an issue for the proposed project, and it will remain an issue when the project EIR reaches County decision-makers

for EIR certification; additionally, findings of General Plan consistency will be required if the decision-makers wish to approve the proposal.

### **Mitigation Measure Development, Implementation, and Compliance Monitoring**

Experience with this project since its original proposal to Yolo County have demonstrated that applicant compliance with County-required measures and practices intended to minimize environmental consequences are a substantial issue, both for the CEQA process and for the County's land use regulatory process. While compliance with County-issued permits is a code-enforcement issue by itself, compliance is also an issue for the DEIR because CEQA requires that Yolo County identify, implement, and monitor the implementation of all feasible measures or project alternatives that will "mitigate" the project's environmental consequences (Public Resources Code §21002).

The CEQA Guidelines (§15370) establish the specific meaning that CEQA intends for "mitigation," including all of the following:

"**Mitigation**" includes:

"(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

"(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

"(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

"(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

"(e) Compensating for the impact by replacing or providing substitute resources or environments.

"**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21002.1, 21081, and 21100(c), Public Resources Code."

CEQA also includes a requirement that Lead Agencies (i.e., Yolo County) identify a "Mitigation Monitoring and Reporting Program" that identifies procedures to assure that mitigation measures are enacted. The CEQA Guidelines (Section 15097) include guidance for the identification of "reporting" and "monitoring" elements of such programs. Given the demonstrated compliance issues experienced with the project in the past, it seems necessary that Yolo County require detailed "monitoring" requirements for all measures included in the EIR, where the initial and continued enactment of the approved measures are documented, and where the success of the measures in achieving the necessary avoidance, reduction, or offset of significant impacts is documented. As specified in Guidelines subsections 15097(c)(2) and (c)(3):

"(2) **Monitoring** is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

"(3) Reporting and monitoring are suited to all but the most simple projects. **Monitoring** ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements."

The biologically focused measures that are required to mitigate impacts to ecologically important resources in the project vicinity will have to be ongoing practices. Their success cannot be gauged by noting whether they're just initially implemented, as past experience has suggested that even initial compliance with permit and mitigation measure requirements cannot be assured for this project, much less continued implementation over longer terms. Consequently, the project's

Eric Parfrey, Principal Planner, Yolo County Community Services Dept.  
Comments, NOP for EIR ZF # 2015-0018 (Field & Pond)  
13 August 2018  
Page 6

approval requires the specification of *ongoing performance-based monitoring*, with the monitoring conducted by biologically qualified persons and with regular reports filed with the County on mitigation measure success in achieving the specified end results. The duration of these monitoring efforts should be sufficient to assure that harmful practices are avoided both in the short term and in the long term (perhaps five or even ten years). I expect to comment on the nature of these measures in response to the DEIR's identification and explanation of how they will succeed in avoiding, reducing, and/or offsetting impacts to ecologically important resources in the project area.

### **Closing**

Thank you for the opportunity to comment on the County's initial response to the Superior Court order. I look forward to further interactions as County staff, applicants, other agencies, and members of the public better understand the CEQA process and the impacts of this project on the County's environment, and as County decision-makers incorporate General Plan requirements into the assessment of this project.

Sincerely,



Chad Roberts  
Conservation Ecologist

Attached: Yolo County 2030 General Plan Conservation Goal CO-2 and policy framework for biological resources

Copies: Don Saylor  
Taro Echiburu  
Don Mooney  
Bob Schneider  
Bruce Rominger

## ATTACHMENT 1

### Excerpt: 2030 Countywide General Plan Conservation and Open Space Element

#### ***D. Biological Resources***

##### **2. Policy Framework**

**GOAL CO-2 Biological Resources. Protect and enhance biological resources through the conservation, maintenance, and restoration of key habitat areas and corresponding connections that represent the diverse geography, topography, biological communities, and ecological integrity of the landscape.**

- |               |   |
|---------------|---|
| Policy CO-2.1 | Consider and maintain the ecological function of landscapes, connecting features, watersheds, and wildlife movement corridors.  |
| Policy CO-2.2 | Focus conservation efforts on high priority conservation areas (core reserves) that consider and promote the protection and enhancement of species diversity and habitat values, and that contribute to sustainable landscapes connected to each other and to regional resources.                                       |
| Policy CO-2.3 | Preserve and enhance those biological communities that contribute to the county's rich biodiversity including blue oak and mixed oak woodlands, native grassland prairies, wetlands, riparian areas, aquatic habitat, agricultural lands, heritage valley oak trees, remnant valley oak groves, and roadside tree rows. |
| Policy CO-2.4 | Coordinate with other regional efforts (e.g., Yolo County HCP/NCCP) to sustain or recover special-status species populations by preserving and enhancing habitats for special-status species.   |
| Policy CO-2.5 | Protect, restore and enhance habitat for sensitive fish species, so long as it does not result in the large-scale conversion of existing agricultural resources.  |
| Policy CO-2.6 | Cooperate with the Department of Fish and Game in inventorying streams with spawning and rearing habitat, evaluating those streams' existing and potential habitat value, and determining current and potential fish population levels.   |
| Policy CO-2.7 | Encourage streamside property owners and appropriate public agencies to participate in fishery enhancement projects.  |
| Policy CO-2.8 | Encourage all public land management agencies to protect, restore, and enhance the fish habitat within their jurisdiction.  |

- Policy CO-2.9 Protect riparian areas to maintain and balance wildlife values.
- Policy CO-2.10 Encourage the restoration of native habitat.
- Policy CO-2.11 Ensure that open space buffers are provided between sensitive habitat and planned development.
- Policy CO-2.12 Support the use of controlled fire management where feasible and appropriate as a natural ecosystem process, to reduce the threat of catastrophic wildfire, to encourage oak recruitment, and to meet other resources management objectives in higher elevation woodland and chaparral communities.
- Policy CO-2.13 Promote the use of oak woodlands conservation banks to mitigate for losses due to development impacts and to provide carbon sequestration for greenhouse gas emissions under applicable State programs.
- Policy CO-2.14 Ensure no net loss of oak woodlands, alkali sinks, rare soils, vernal pools or geological substrates that support rare endemic species, with the following exception. The limited loss of blue oak woodland and grasslands may be acceptable, where the fragmentation of large forests exceeding 10 acres is avoided, and where losses are mitigated. (DEIR MM BIO-3a)
- Policy CO-2.15 Encourage the use of mosquito abatement methods that are compatible with protecting fish and wildlife, including native insect pollinators.
- Policy CO-2.16 Existing native vegetation shall be conserved where possible and integrated into new development if appropriate.
- Policy CO-2.17 Emphasize and encourage the use of wildlife-friendly farming practices within the County's Agricultural Districts and with private landowners, including:
- Establishing native shrub hedgerows and/or tree rows along field borders.
  - Protecting remnant valley oak trees.
  - Planting tree rows along roadsides, field borders, and rural driveways.
  - Creating and/or maintaining berms.
  - Winter flooding of fields.
  - Restoring field margins (filter strips), ponds, and woodlands in non-farmed areas.
  - Using native species and grassland restoration in marginal areas.
  - Managing and maintaining irrigation and drainage canals to provide habitat, support native species, and serve as wildlife movement corridors.
  - Managing winter stubble to provide foraging habitat.
  - Discouraging the conversion of open ditches to underground pipes, which could adversely affect giant garter snakes and other wildlife that rely on open waters.
  - Widening watercourses, including the use of setback levees.

- Policy CO-2.18      Coordinate with the Yolo County Resource Conservation District, Natural Resource Conservation Service, UC Cooperative Extension, and other farm organizations to encourage farming practices and the management of private agricultural land that is supportive of wildlife habitat values.
- Policy CO-2.19      Support the use of sustainable farming methods that minimize the use of products such as pesticides, fuels and petroleum-based fertilizers.
- Policy CO-2.20      Encourage the use of wildlife-friendly Best Management Practices to minimize unintentional killing of wildlife, such as restricting mowing during nesting season for ground-nesting birds or draining of flooded fields before fledging of wetland species.
- Policy CO-2.21      Promote wildlife-friendly farming through mechanisms such as farmland trusts, conservation easements and safe harbor-type agreements.
- Policy CO-2.22      Prohibit development within a minimum of 100 feet from the top of banks for all lakes, perennial ponds, rivers, creeks, sloughs, and perennial streams. A larger setback is preferred. The setback will allow for fire and flood protection, a natural riparian corridor (or wetland vegetation), a planned recreational trail where applicable, and vegetated landscape for stormwater to pass through before it enters the water body. Recreational trails and other features established in the setback should be unpaved and located along the outside of the riparian corridors whenever possible to minimize intrusions and maintain the integrity of the riparian habitat. Exceptions to this action include irrigation pumps, roads and bridges, levees, docks, public boat ramps, and similar uses, so long as these uses are sited and operated in a manner that minimizes impacts to aquatic and riparian features. (DEIR MM BIO-1b)
- Policy CO-2.23      Support efforts to coordinate the removal of non-native, invasive vegetation within watersheds and replacement with native plants.
- Policy CO-2.24      Promote floodplain management techniques that increase the area of naturally inundated floodplains and the frequency of inundated floodplain habitat, restore some natural flooding processes, river meanders, and widen riparian vegetation, where feasible.
- Policy CO-2.25      Support efforts to reduce water temperatures in streams for fish via habitat restoration (e.g. increase shading vegetation) and water management (e.g. control of flows) that are compatible with the Integrated Regional Water Management Plan.
- Policy CO-2.26      Coordinate with local watershed stewardship groups to identify opportunities for restoring or enhancing watershed, instream, and riparian biodiversity.
- Policy CO-2.27      Evaluate the need for additional water to support future riparian enhancement efforts, including the benefits of conjunctive management of groundwater and surface water resources.

- Policy CO-2.28 Balance the needs of aquatic and riparian ecosystem enhancement efforts with flood management objectives.
- Policy CO-2.29 Promote native perennial grass habitat restoration and controlled fire management in grazing lands to reduce invasive species cover and enhance rangeland forage.
- Policy CO-2.30 Protect and enhance streams, channels, seasonal and permanent marshland, wetlands, sloughs, riparian habitat and vernal pools in land planning and community design.
- Policy CO-2.31 Protect wetland ecosystems by minimizing erosion and pollution from grading, especially during grading and construction projects.
- Policy CO-2.32 Support completion of the CDFG Visitors and Interpretive Center near the Vic Fazio Wildlife Area.
- Policy CO-2.33 Create partnerships with landowners, non-government organizations, and other public agencies to implement the Yolo County Oak Woodland Conservation and Enhancement Plan.
- Policy CO-2.34 Recognize, protect and enhance the habitat value and role of wildlife migration corridors for the Sacramento River, Putah Creek, Willow Slough, the Blue Ridge, the Capay Hills, the Dunnigan Hills and Cache Creek.
- Policy CO-2.35 Consider potential effects of climate change on the locations and connections between wildlife migration routes.
- Policy CO-2.36 Habitat preserved as a part of any mitigation requirements shall be preserved in perpetuity through deed restrictions, conservation easement restrictions, or other method to ensure that the habitat remains protected. All habitat mitigation must have a secure, ongoing funding source for operation and maintenance. (DEIR MM BIO-1c)
- Policy CO-2.37 Where applicable in riparian areas, ensure that required state and federal permits/approvals are secured prior to development of approved projects. (DEIR MM BIO-1d)
- Policy CO-2.38 Avoid adverse impacts to wildlife movement corridors and nursery sites (e.g., nest sites, dens, spawning areas, breeding ponds). Preserve the functional value of movement corridors to ensure that essential habitat areas do not become isolated from one another due to the placement of either temporary or permanent barriers within the corridors. Encourage avoidance of nursery sites (e.g., nest sites, dens, spawning areas, breeding ponds) during periods when the sites are actively used and that nursery sites which are used repeatedly over time are preserved to the greatest feasible extent or fully mitigated if they cannot be avoided. (DEIR MM BIO-4a)

- Policy CO-2.39      Require new or retrofitted bridges, and new or expanded roads to incorporate design and construction measures to maintain the functional value of wildlife movement corridors. (DEIR MM BIO-4b)
- Policy CO-2.40      Preserve grassland habitat within 2,100 feet of documented California tiger salamander breeding ponds or implement required mitigation (equivalent or more stringent) as imposed by appropriate agencies or through the County HCP/NCCP, to fully mitigate impacts consistent with local, State, and federal requirements. Implementation and funding of mitigation measures for projects that will be developed in phases over time may also be phased, with the applicable mitigation being implemented and funded prior to the final approval of each phase or sub-phase. (DEIR MM BIO-4c)
- Policy CO-2.41      Require that impacts to species listed under the State or federal Endangered Species Acts, or species identified as special-status by the resource agencies, be avoided to the greatest feasible extent. If avoidance is not possible, fully mitigate impacts consistent with applicable local, State, and Federal requirements. (DEIR MM BIO-5a)
- Policy CO-2.42      Projects that would impact Swainson's hawk foraging habitat shall participate in the Agreement Regarding Mitigation for Impacts to Swainson's Hawk Foraging Habitat in Yolo County entered into by the CDFG and the Yolo County HIP/NCCP Joint Powers Agency, or satisfy other subsequent adopted mitigation requirements consistent with applicable local, State, and federal requirements. (DEIR MM BIO-5b)
- Policy CO-2.43      Projects that have the potential to impact California tiger salamander breeding or terrestrial habitat in the Dunnigan Hills area, shall conduct a project-level biological assessment to determine the potential to impact California tiger salamander upland or breeding habitat (if such assessment has not already been done as part of an approved HCP/NCCP). Such an assessment will be required for all projects located within 1.3 miles of a known or potential breeding site. Development activities that would result in isolation of the breeding or upland habitat will be required to mitigate for such impacts. Mitigation shall consist of two components: 1) habitat preservation and enhancement of suitable upland habitat, and 2) preservation and construction of new breeding habitat. CTS upland habitat must be mitigated at a ratio of 3:1 (preserved:impacted), located within 2,100 feet of an occupied habitat, and include at least one suitable breeding pond. Equivalent or more stringent mitigation may be implemented as determined by trustee and responsible agencies. Mitigation must be coordinated with the HCP/NCCP program if adopted. (DEIR MM BIO-5c)

Eric Parfrey

Department of Community Services

August 12, 2018

Field and Pond EIR

The baseline for this EIR should be when the owners of F & P applied for their permit to have an Event Center and B&B in 2015.

There are several notations about Tri-colored Blackbirds (TCB) at the F&P pond on the UCD TCB portal before the present owners bought the property and evidence of over a hundred TCBs using the pond in 2016 after they bought it. (See attached Tom Moore letter and photos) Photos of the pond at that time show much more extensive growth of tules. (See B. Rominger photos) After the TCB issue was raised the owners destroyed many of the tules to reduce the habitat the TCBs had to nest in. They were also allowed to hold events that the county's own biologist, Jim Estep, suggested could disrupt the TCB use of the pond and drive them away.

Yet the county has allowed events for over two years and now is initiating the study using a baseline created after several years of potentially damaging actions by the owners of F&P. This is unacceptable and could invalidate this EIR by leaving it open for legal challenges.

Golden Eagles have a history of nesting in the Foothill pines on the hills directly south of the F&P event center. The existing nest in one of those trees appears to be empty this year. Is this because of the ongoing loud music (measured above 70 dB at these trees during an event) and bright flashing lights have driven them away? You can't study the impact of this event center on eagles over two years after the events started unless you can compare it to what was there before the events started; thus the baseline needs to be when the permit was applied for in 2015.

How many elderberry bushes have been removed by the present owners since they started their operations? Does the county have a survey of the elderberry bush locations that existed before they started any construction activities? Does the county have a survey of elderberry bush locations that exist today? The owners built a fence on the top edge of the bank for over 1200 feet of Chickahominy Slough. Did the county make them stay a hundred feet away from any bushes present? How many elderberries were pruned or removed in that process? When they extensively remodeled the barn, poured concrete walkways and a patio within 30 feet of the slough edge and did major landscaping around it did they stay a hundred feet away from any elderberry bushes? Did their hired biologist do a Swainson hawk survey before they started any of that construction? Have they been keeping all of their activities and guests a hundred feet away? Photographic evidence from the F & P website suggests their guests are being allowed near the elderberry bushes. If the county does not have documented answers to these questions then what is the point of any of the CUP requirements.

What is the risk to all of these species (and many others) if a fire occurs at this site? If the dry tules burn that would surely have a negative impact on the TCB. If the creek area burns many of the elderberry bushes will be destroyed because mature elderberry bushes have a significant amount of dead wood in them so even a healthy green bush will easily burn. Many wildfire stories in the press in the last couple of months talk about the increased risk of fires in California because we are bringing more people (residing or visiting) into high fire danger areas. Every event held increases the fire danger in this area because people start the vast majority of the fires. This risk has been magnified by allowing guests to park on dry grass in violation of the county's conditions for the granting of the CUP. This summer alone there have been two mandatory evacuations of residents on Co. Rd. 29 and multiple days of such poor air quality that no event could be held. Adding hundreds of guests on many weekends will add to the fire risk and endanger these species, the event guests themselves and all of the other residents on Rd 29.

Has Yolo County required the owners to upgrade the septic system to meet the new state regulations? Even though they bring in portable bathrooms many guests at events are using the house facilities and certainly the B&B guests are. They talk about using the house on their social media accounts after the weddings. Since May of 2013 Yolo County Onsite Wastewater Treatment System Ordinance Chapter 19, Article 3, Sec. 6-19.301 requires the new standards be implemented when any building permit is issued or a special event is held or there is an intensification of use. Since a judge is requiring an EIR I think it is totally unacceptable and most likely illegal for the Director of Environmental Health to grant an exception. There is plenty of room for added leach fields and the soil is suitable for a larger system away from the creek that is designed to meet the new state regulations. If the system is not upgraded the risk of failure to the old system is high and that will result in contamination with fecal wastewater of areas used by guests and possible runoff into Chickahominy Slough or even the pond. This poses a threat to elderberries, the TCB and many other species.

I would like the county to send me and the EIR consultant answers to all of these questions before the EIR draft is completed to allow the consultants to assess for themselves the illegal activities that have gone unchecked at this site for over two years and the impact these may have had on the subject species.

The County is violating the Judge's ruling by not monitoring activities at F&P and thus allowing many violations to occur. These many violations make any baseline that doesn't start in 2015 severely compromised.

Thank you,

Bruce J. Rominger

26981 Co. Rd. 29

Winters, CA 95694







FIELD & POND PROJECT

SCOPING MEETING NOTES

WEDNESDAY, JULY 18, 2018 - 10:00 AM

The Scoping Meeting began with a brief introduction by Eric Parfrey, Principal Planner with the County of Yolo. All members of the meeting introduced themselves by name.

Beth Thompson, Principal with De Novo Planning Group, gave a PowerPoint presentation that summarized the following: the purpose of the Scoping Meeting; the environmental review process; the project location, and project characteristics and entitlements; the issues to be addressed in the Environmental Impact Report (EIR); the methods which the public can provide comments regarding the scope of the EIR; the next steps in the process, pursuant to the California Environmental Quality Act (CEQA); and the tentative schedule for the EIR. Members of the public were then prompted to provide any questions and/or comments regarding the project and the scope of the Draft EIR.

One member of the public asked about the baseline that would be used in the Draft EIR, as well as the merits and credentials of the biologists who would be used for the Draft EIR analyses. Some commenters noted that some existing operations at the project site have altered the on-site habitat. For example, one commenter noted that the noise emanating from the property as a result of the events has likely driven off species from the site. Another commenter noted that the tule and vegetation around the pond has been reduced and/or removed.

One member of the public noted that the site has a conservation easement, and questioned whether or not the applicant has complied with the requirements of the easement.

Additionally, questions that the public would like to be answered include the following: What are the impacts of the current uses on the future habitat for the three studied species, and other species? Is the project in compliance with the 100-foot setback standard set forth in the Conservation Element of the County's General Plan? This commenter also noted that the elderberry shrubs around the on-site pond are likely affected by a lack of setback from the pond.

Some members of the public noted that golden eagle species and their nests have been found on the project site. A couple of commenters also noted that these golden eagle species are affected by the event music, noise, traffic, light, etc.

Further, one commenter questioned whether or not the biological site visits and associated reports would be made publicly available in order to see the details of the surveys and results. A similar comment was also made regarding the previous biological studies and public comments.

One member noted that the biological survey should be completed before events begin. Another member asked when are the nesting seasons for the three species. Some members of the public



generally questioned when and how frequently the project site can be used for events under the current zoning regulations.

In terms of project alternatives, two scenarios were discussed. First, a No Project Alternative would include operation of the project site as-is. Second, an Off-Site Alternative could include an event center space within the City limits. One commenter noted that the project alternatives would avoid or reduce impacts, or otherwise mitigate impacts.

One commenter questioned why the project would use septic, and whether or not the septic system would impact habitat. Some commenters also asked general questions regarding whether the project applicant is meeting the Conditions of Approval (COAs). Another commenter questioned when the public should bring forward potential violations of the COAs.

Once the public was finished commenting and asking questions regarding the project, the meeting was adjourned.

## **APPENDIX B**

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**Yolo County Superior Court**

Statement of Decision

Judgment

Peremptory Writ of Mandate



FILED  
YOLO SUPERIOR COURT

JAN 16 2018

BY C Fall  
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF YOLO

FARMLAND PROTECTION ALLIANCE,  
TULEYOME, YOLO COUNTY FARM BUREAU  
and DOES 1-10,

Petitioners and Plaintiffs,

vs.

COUNTY OF YOLO, YOLO COUNTY BOARD  
OF SUPERVISORS and DOES 11-50,

Respondents and Defendants.

FIELD & POND, DAHVIE JAMES, PHILIP  
WATT, and DOES 51-500,

Real Parties in Interest.

) Case No. CV PT 16-001896

) **ORDER AFTER HEARING**  
) **GRANTING IN PART**  
) **PETITIONERS' PETITION FOR**  
) **WRIT OF MANDATE AND**  
) **COMPLAINT FOR**  
) **DECLARATORY AND**  
) **INJUNCTIVE RELIEF RE**  
) **ADOPTION OF REVISED**  
) **MITIGATED NEGATIVE**  
) **DECLARATION (CEQA)**

) Hearing Date: January 11, 2018  
) Dept.: 3, Judge Kathleen M. White  
) Time: 11:00 a.m.

This matter came on regularly for hearing at the above noted time and place.  
Appearances were as noted on the record. In accordance with local rules, the court issued a  
tentative ruling, which granted in part Petitioners' petition for writ of mandate and complaint for

1 declaratory and injunctive relief. The parties timely requested oral argument, which the court  
2 heard on January 11, 2018 and then took the matter under submission.

3 Having considered the evidence and argument, the court **HEREBY FINDS AND**  
4 **ORDERS** as follows:

5 **I. Standard of Review**

6 In an action to set aside an agency's determination under the California Environmental  
7 Quality Act ("CEQA"), the trial court reviews whether the agency abused its discretion. Abuse  
8 of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the  
9 determination is not supported by substantial evidence. (*Sierra Club v. Gilroy City Council*  
10 (1990) 222 Cal.App.3d 30, 39-40; Pub. Res. Code, § 21168; Code Civ. Proc., § 1094.5.)

11 CEQA sets a low threshold for preparation for an Environmental Impact Report ("EIR"):  
12 The lead agency must prepare an EIR **whenever it can be fairly argued on the basis of**  
13 **substantial evidence that the project may have a significant environmental impact.** (*No*  
14 *Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under this standard, the agency's  
15 decision may be upheld only if the evidence in the record of its proceedings is insufficient to  
16 support a fair argument that the project may have a significant effect on the environment. If there  
17 is substantial evidence in the record that would support a fair argument that a significant impact  
18 may result, the agency's decision to dispense with an EIR must be set aside. (*Friends of B Street*  
19 *v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

20 This action challenges a mitigated negative declaration, as revised (RMND).

21 A negative declaration, adopted after a project has been revised to avoid or mitigate  
22 environmental impacts, is referred to as a "mitigated negative declaration ("MND")." (Pub. Res.  
23 Code, § 21604.5; 14 Cal.Code Regs., § 15369.5.) An MND is not materially different from an  
24 ordinary negative declaration. The distinction is that, in an MND, mitigation measures to  
25 eliminate significant impacts are adopted after the project has been proposed, while in an

*Tur*

1 ordinary negative declaration, the project as proposed is found to have no significant  
2 environmental impacts. (14 Cal Code Regs §15064, subd. (f)(2).)

3 To lawfully carry out a project based on a MND, an agency must approve mitigation  
4 measures sufficient to reduce potentially significant impacts “to a point where clearly no  
5 significant effects would occur.” (CEQA Guidelines §§ 15071, 15070(b) (1).) The determination  
6 of whether a project may impact the environment “calls for careful judgment on the part of the  
7 public agency involved.” (*Keep Our Mountains Quiet v. Candice Clark Wozniak* (2015) 236  
8 Cal.App.4th 714, 729.)

9 Reviewing courts also examine whether the agency’s decision to adopt a negative  
10 declaration is based on a factual analysis of the project’s potential impacts. The agency’s  
11 decision can be invalidated if it appears the agency did not actually evaluate the question  
12 whether significant effects might result. (*Sundstrom v. County of Mendocino* (1988) 202  
13 Cal.App.3d 296, 311.)

14 Under these standards, a negative declaration is invalid if either:

- 15
- 16 (1) There is substantial evidence in the record supporting a fair argument that the  
17 project may have a significant effect on the environment; **or**
- 18 (2) The agency has failed to undertake a fact-based investigation of the project’s  
19 potential environmental impacts.
- 20

21 To provide an adequate basis for judicial review, an initial study ordinarily should  
22 disclose the data or evidence supporting the study’s environmental findings. (*Citizens Ass’n for*  
23 *Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.) In the leading case of  
24 *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the court rejected a negative  
25 declaration that was supported only by a bare-bones environmental checklist. There was no  
indication in the record of the source or content of the data that county staff relied on in

1 preparing the checklist, nor was there an explanation of the initial study's conclusion that  
2 potentially significant impacts would be fully mitigated.

3  
4 Describing the checklist as a “token observance” of CEQA requirements, the court  
5 held that a lead agency has a duty to investigate potential impacts and provide support for a  
6 negative declaration; the record of its action must demonstrate, and not simply assume, that  
7 significant impacts will not occur. This prevents a lead agency from providing a superficial  
8 analysis of a project's potential impacts in the initial study and then defending its decision to  
9 adopt a negative declaration by pointing to the absence of evidence of any significant  
10 environmental impacts.

11 The agency’s task is not to weigh competing evidence and determine whether, in fact,  
12 a significant impact on the environment will occur; rather, the proper task is to determine  
13 whether the record before the agency **contains substantial evidence supporting a fair**  
14 **argument that a significant impact may occur.** (Pub. Res. Code, § 21080, subs. (c) and  
15 (d); CEQA Guidelines § 15064(f) (Emphasis supplied).

16  
17 Under Public Resources Code section 21080(e) and 21082.2(c) and 14 California Code  
18 of Regulations sections 15064(f) (5) and 15384, the following constitute substantial evidence:

- 19
- Facts;
  - Reasonable assumptions predicated on facts; and
  - Expert opinions supported by facts.
- 22

23 Under the same sections, the following **do not** constitute substantial evidence:

- 24
- Argument;
  - Speculation;
- 25

- 1 • Unsubstantiated opinion or narrative;
- 2 • Clearly inaccurate or erroneous evidence;
- 3 • Evidence that is not credible; and
- 4 • Evidence of social and economic impacts that do not contribute to, and are not caused by,  
5 physical impacts on the environment.

6 “Significant effect upon the environment” is defined as “a substantial or potentially substantial  
7 adverse change in the environment.” (Pub. Res. Code, § 21068; 14 Cal.Code Regs, § 15382.). A  
8 project “may” have a significant effect on the environment if there is a “reasonable probability”  
9 that it will result in a significant impact. (*No Oil, Inc.*, p. 83, n. 16; *Sundstrom v. County of*  
10 *Mendocino* (1988) 202 Cal.App.3d 296, 309.) If any aspect of the project may result in a  
11 significant impact on the environment, an EIR must be prepared even if the overall effect of the  
12 project is beneficial. (14 Cal. Code Regs., §15063(b) (1).)

13 An agency's determination whether information in the record constitutes “substantial  
14 evidence” boils down to a determination not only that the information is relevant and material,  
15 but also that it is sufficiently reliable to have solid evidentiary value. To determine the reliability  
16 of the evidence, a lead agency may consider several factors:

- 17 • Whether the evidence has an adequate foundation in the witness’s personal knowledge of  
18 facts. (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872.)  
19 Expressions of subjective concerns and personal beliefs do not constitute substantial  
20 evidence. (*Newberry Springs Water Ass’n v. County of San Bernardino* (1984) 150  
21 Cal.App.3d 740.) Speculation, argument, and unfounded conclusions are likewise not  
22 substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68  
23 Cal.App.4<sup>th</sup> 556, 571; *Citizens Comm. To Save Our Village v. City of Claremont* (1995)  
24 37 Cal.App.4<sup>th</sup> 1157, 1171.)

- Whether the evidence is provided by a qualified source. Opinions can constitute substantial evidence when they are provided by a witness who is qualified to render an opinion on the subject. Fact-based observations by persons qualified to speak to a question qualify as substantial evidence. (*Sierra Club v. Department of Forestry & Fire Protection* (2007) 150 Cal.App.4<sup>th</sup> 370; *Architectural Heritage Ass'n v. County of Monterey* (2004) 122 Cal.App.4<sup>th</sup> 1095, 1117.)
- Whether the evidence is not reliable for other reasons. A lead agency may find that hearsay is not sufficiently reliable to be treated as substantial evidence. (*Citizens for Responsible Dev. v. City of W. Hollywood* (1995) 39 Cal.App.4<sup>th</sup> 490, 499, n.2.)

When qualified experts present conflicting evidence on the nature or extent of a project's impacts, **the agency must accept the evidence tending to show that the impact might occur.** Evidence to the contrary is usually irrelevant, because the agency cannot weigh competing evidence. (*Rominger v. County of Colusa* (2014) 229 Cal.App.4<sup>th</sup> 690 [opinion by traffic expert conflicted with negative declaration's trip generation assumptions]; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 249 [conflicting opinions by multiple experts on definition and extent of wetlands].) A disagreement between experts regarding the significance of one or more environmental effects can require an EIR in “marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment...” (CEQA Guidelines, § 15064(g).)

## II. **Findings**

- A. Respondents County of Yolo and Yolo County Board of Supervisors and real parties in interest Field and Pond, Dahvie James, and Philip Watt's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (c).)

- 1 B. Petitioners Farmland Protection Alliance (“Farmland”) and Yolo County Farm  
2 Bureau’s request for judicial notice, filed on August 7, 2017, is **DENIED**. Petitioner  
3 does not show that the letter is judicially noticeable or that it is the proper subject of a  
4 motion to augment the record. (Evid. Code, § 452, subs. (c) & (h); *Western States*  
5 *Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576.)
- 6 C. Petitioner Farmland’s request for judicial notice made on November 7, 2017, is  
7 **DENIED**. (Evid. Code, § 452, subs. (c) & (h).) The request is untimely, judicial  
8 notice may not be taken of matters which are the subject of dispute, and the  
9 documents are extra-record evidence. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994)  
10 7 Cal.4th 1057, 1063; *L.B. Research & Education Foundation v. UCLA Foundation*  
11 (2005) 130 Cal.App.4th 171, 180, fn. 2; *Western States Petroleum Assn. v. Superior*  
12 *Court* (1995) 9 Cal. 4th 559, 576.)
- 13 D. Petitioner’s petition for writ of mandate and complaint for declaratory and injunctive  
14 relief is **GRANTED IN PART**, as follows:
- 15 1. **Impact on Tricolored Blackbird**: The petition is **GRANTED**. The record before  
16 the agency supports a fair argument that the project may have a significant impact  
17 on the Tricolored Blackbird. (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil,*  
18 *Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; AR 6848, 12802-03, 12943,  
19 13736, 13757, 14339, & 15963.) The record includes evidence from both sides’  
20 experts (Doctors Estep and Roberts) that the project may affect the blackbirds’  
21 breeding, although they disagreed on the level of necessary mitigation.  
22 Respondents argue that a disagreement on the scope of mitigation (as opposed to  
23 the impact) does not trigger a full environmental impact report (EIR).  
24 Respondents further argue that Dr. Robert’s more “draconian” proposed  
25 mitigation measures are not supported by facts. Yet both Dr. Estep and Dr.

1 Roberts agree that the blackbird is a species sensitive to disturbance, and that the  
2 species lives around the pond at the project site. Dr. Roberts found evidence of  
3 prior blackbird breeding at the site. Ecological consultant Hilary White confirmed  
4 blackbird breeding at the site. (AR 12802-03.) Dr. Estep did not observe current  
5 blackbird breeding at the Project site, but could not rule out prior or future  
6 breeding. (AR 13736.) Neither Dr. Estep nor Dr. Roberts could define how much  
7 the expanded parking and increased visitors might disturb the birds' breeding. Dr.  
8 Estep recommended monitoring the site for five years to evaluate the impact of  
9 the proposed project on the tricolor blackbirds' breeding. The court infers from  
10 this record that either (a) the tricolored blackbirds no longer breed at the site, in  
11 which case there is no substantial impact from the proposed project because the  
12 damage has already been done (perhaps long ago), or (b) the breeding pattern at  
13 the site is so fragile that any increased human activity would have a substantial  
14 impact on this sensitive species. This meets the "substantial evidence of a fair  
15 argument" standard. It is just such questions that an EIR is intended to review.

- 16 2. **Impact on Valley Elderberry Longhorn Beetle:** The petition is **GRANTED**. The  
17 record before the agency supports a fair argument that the project may have a  
18 significant environmental impact on the Valley Elderberry Beetle. (Pub. Res.  
19 Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 411, 13758, & 14339.)  
20 The RMND protects elderberry bushes (and the protected beetle species that call  
21 such bushes home) for 100 feet from any **new** construction. It also requires a 100-  
22 foot buffer between event activities and the banks of the Chickahominy slough  
23 where the bushes grow. (AR 811.) Both sides' experts (Drs. Estep and Roberts)  
24 expressed concern about the beetle and recommended more substantial buffers.  
25 (AR 411(Roberts) and AR 13758 and 14339 (Estep).) Respondent County argues

1 that this provision is consistent with its General Plan in that it addresses only new  
2 construction, but the RMND must address all substantial biological impacts, not  
3 just those that trigger general plan scrutiny. The county offers no persuasive  
4 authority for the proposition that compliance with its General Plan obviates the  
5 need to evaluate environmental impacts in accordance with CEQA.

- 6 3. **Impact on Swainson's Hawk**: The petition is **DENIED**. The mitigation measures  
7 allow for the identification of any Swainson's hawks in the area during  
8 construction, and mitigation is to be monitored by a biologist. Petitioners fail to  
9 show a detrimental impact on the species as a whole, or that there are impacts  
10 when it is not nesting season for the hawks, or that delegation to a biologist of the  
11 monitoring duties is improper. (One wonders who might be qualified to do the  
12 task if a biologist were not.) Petitioners fail to show substantial evidence in  
13 support of a fair argument that the project might have significant environmental  
14 impact on the Swainson's hawk. (Pub. Res. Code, § 21080, subs. (b) & (c); *No*  
15 *Oil, Inc., supra.*)
- 16 4. **Impact on all identified species**: The petition is **GRANTED**. Although the  
17 record indicates that none of the other listed species was found (and, therefore,  
18 there is no need to address any impact), there was evidence in the record that Dr.  
19 Estep observed a golden eagle. (AR 1575.) Without any discussion of the impact  
20 of the project on the golden eagle, the RMND is deficient as to this species. The  
21 record does not show that Respondent did a fact-based investigation regarding  
22 any significant environmental impact that the Project might have on the golden  
23 eagle. (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1575.)
- 24 5. **Impact on agricultural resources**: The petition is **DENIED**. Petitioner fails to  
25 show that there is a fair argument on the basis of substantial evidence that the

1 project may have a significant environmental impact on agricultural resources.  
2 Petitioners are that there is a “real possibility” that adjacent farmers will be denied  
3 permission to spray their crops. Yet the parties agree that the relevant test is  
4 whether the project involves “changes in the existing environment that, due to  
5 their location or nature, could result in the conversion of farmland to  
6 nonagricultural use.” (AR 1506; CEQA Guidelines, App. G, § II, sub. (e).) Here,  
7 there is only one adjacent owner and he operates a walnut orchard. (AR 7227,  
8 8124 and 3866.) Testimony in the record shows the actual buffer for the owner  
9 when spraying is 50’ for the pesticide used for walnuts. (AR 3866.) As a result,  
10 “there is a significant buffer already with the road.” (AR 3866.) The evidence in  
11 the record supports the conclusion by the Agricultural Commissioner that any  
12 pesticide impacts could be mitigated. Other mitigation measures include the  
13 limitation on the number of events and prior notices to neighbors of events.  
14 Petitioner fails to show that there is substantial evidence supporting a fair  
15 argument that a significant impact may occur.

16 (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1510-1512,  
17 3866, 7227, 8124, & 18706.)

- 18 6. **Impact on future environmental hazards:** The petition is **DENIED**. Petitioner  
19 argues that Road 29 is insufficient to evacuate project guests in case of fire. But  
20 the Winters Fire Department already addressed compliance with fire codes. (AR  
21 1548.) Cal Fire reviewed the plans and delegated authority for approval to the  
22 County’s Chief Building Official, who approved the plan with appropriate  
23 mitigation provisions. (AR 1548.) Parking is prohibited in the locations where it  
24 might impede emergency vehicle access. (AR 1410, 1536.) There is an emergency  
25 safety plan that includes shelter in place (rather than relying solely on egress

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1 through CR 29), a detailed safety plan for staff and guests in the event of fire or  
2 other emergency, and use of shuttles under the direction of fire officials to remove  
3 guests from the site. Further, Petitioner concedes that the rules governing CR 29  
4 do not apply because the State fire Marshall has not adopted them. Petitioner fails  
5 to show that there is a fair argument on the basis of substantial evidence that the  
6 project may have a significant environmental impact on environmental hazards.  
7 (Pub. Res. Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 1410, 1413,  
8 1420, 1536, 1548, 17738, 17739.)

9 7. **Impact on public services:** The petition is **DENIED**. Events are limited to certain  
10 times and dates, and the frequency is also limited. The project already requires at  
11 least two security guards, an event planner/coordinator and signage. Nothing in  
12 the record suggests that these measures are inadequate. Petitioner fails to show  
13 that there is a fair argument on the basis of substantial evidence that the project  
14 may have a significant environmental impact on public services. (Pub. Res. Code,  
15 § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 1409 & 1410.)

16 8. **Impact on hydrology and water quality:** The petition is **DENIED**. Petitioners  
17 rely on an expert hydrological opinion that is not based on facts in the record. The  
18 expert's "findings" are speculative, and not, therefore, substantial evidence.  
19 Petitioners fail to show that there is a fair argument on the basis of substantial  
20 evidence that the project may have a significant environmental impact on  
21 hydrology and/or water quality. (Pub. Res. Code, § 21080, subds. (b) & (c); *No*  
22 *Oil, Inc., supra*; AR 1174-83.)

23 9. **Impact on land use and planning:** The petition is **DENIED**. See the discussion  
24 of land use, zoning and planning, *infra*, at section 15. Petitioner fails to show that  
25 there is a fair argument on the basis of substantial evidence that the project may

1 have a significant environmental impact on land use and planning. (Pub. Res.  
2 Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 1400-1407.)

3 10. **Impact on utilities:** Petitioner argues that the RMND fails to explain how the  
4 project can comply with septic requirements, but ignores the fact that the RMND  
5 requires the expansion to be reviewed and approved first. The petition is  
6 **DENIED.** Petitioner fails to show that there is a fair argument on the basis of  
7 substantial evidence that the project may have a significant environmental impact  
8 on utilities. (Pub. Res. Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*.)

9 11. **Impact on traffic:** Petitioner cites no evidence that the use of shuttles and signage  
10 as proposed are insufficient to mitigate the traffic impact. As to Petitioner's  
11 complaints about the emergency plan, that is discussed, *supra*. The petition is  
12 **DENIED.** Petitioner fails to show that there is a fair argument on the basis of  
13 substantial evidence that the project may have a significant environmental impact  
14 on traffic. (Pub. Res. Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR  
15 1410, 1411, & 1420.)

16 12. **Impact on population, housing, air quality, and aesthetics:** The petition is  
17 **DENIED.** Petitioner argues that the RMND fails to analyze the population and  
18 housing impacts of the Project's plan to build four cottages and a pool house after  
19 the Williamson Act contract expires. Respondent replies that the guesthouses are  
20 for guest use, not for permanent residents, and there is no plan for a pool house.  
21 Petitioner also argues there are potential impacts to aesthetics and air quality, but  
22 cites no evidence in the record to support the argument. Petitioner's concerns  
23 about the County's alleged failure to quantify CHG emissions or adhere to the  
24 mandates of the Yolo County Climate Plan are countered in the record by the  
25 conditions of approval: Condition 65 includes five required conditions to reduce

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1 tailpipe admissions. There are eight conditions to reduce construction dust  
2 (Condition 66) and six required conditions for dust control. (Condition 67.)(AR  
3 1416.) Petitioner fails to show that there is a fair argument on the basis of  
4 substantial evidence that the project may have a significant environmental impact  
5 on population, housing, air quality, and aesthetics. (Pub. Res. Code, § 21080,  
6 subds. (b) & (c); *No Oil, Inc., supra*; AR 1416.)

7 13. **Cumulative impacts**: The petition is **DENIED**. . Petitioner argues that the RMND  
8 fails to identify the geographic scope of its analysis, fails to address past, present  
9 and future projects producing related impacts, and fails to address the applicants'  
10 plans to increase the number of events and B&B rentals in the future. The RMND  
11 evaluated potential cumulative impacts on both a county-wide and project-vicinity  
12 basis. (AR 1559.) Potentially county-wide cumulative air impacts from temporary  
13 construction activities will be reduced through the implementation of standard air  
14 quality measures. (AR 1559, 1513-1517.) The 2030 Countywide General Plan  
15 EIR analyzes the Project's contribution to cumulative county-wide energy  
16 demand and traffic, and the regional and global impacts associated with  
17 greenhouse gas emissions were also analyzed in the 2030 Countywide General  
18 Plan. The Project's potential cumulative impacts to agriculture in the immediate  
19 vicinity are alleviated by the adopted Conditions of Approval and Mitigation  
20 Measures. (AR 1559.) Petitioner does not address why these evaluations were  
21 inadequate, and fails to show that there is a fair argument on the basis of  
22 substantial evidence that the project may have significant cumulative impacts.  
23 (Pub. Res. Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 1513-1517  
24 &1559.)

1 14. Violation of CEQA procedural requirements: The Court need not reach whether  
2 Respondent violated CEQA procedural requirements based on its findings, supra,  
3 that an EIR should be prepared based on certain specific impacts.

4 15. Violation of the Williamson Act, inconsistency with the General Plan, and  
5 violation of the Yolo County Code: The petition is **DENIED**. Under the  
6 Williamson Act (Govt. Code §§ 51200 *et seq.*), delegates to cities and counties  
7 the authority to determine what are deemed “compatible uses” with the  
8 Williamson Act’s stated purpose to preserve agricultural land for agriculture. The  
9 county’ findings are reviewed under the ‘prejudicial abuse of discretion” standard  
10 applicable to traditional writs of mandamus. (Code Civ. Proc. § 1094.5(b).)  
11 Where, as here, the petition claims that findings are not supported by the  
12 evidence, petitioner must show that “the findings are not supported by substantial  
13 evidence in light of the whole record.” (§ 1094.5(c).) Here, the county made  
14 detailed findings on each compatibility standard in § 51238.1. (AR 1404-07).  
15 Petitioner does not address any of these findings specifically - other than the issue  
16 of pesticide spray on adjacent farmland. Petitioner argues that the farm operations  
17 will be prohibited from spraying pesticides. But the record demonstrates that the  
18 spray buffer for the adjacent land based on current use – not speculation - is 50’.

19 Petitioner further argues that the Project violates the County’s General  
20 Plan allowing uses incompatible with agricultural uses. The County made  
21 findings that the Project’s uses were consistent with various General Plan policies,  
22 including Land Use, Agriculture and Economic development (See AR 1399-  
23 1400), as well as the zoning codes. (AR 1400-1403.) Petitioner asserts that the  
24 Project site is not now used for agricultural purposes, yet Petitioner concedes that  
25 the project site is now used for livestock grazing and orchards. It can be inferred

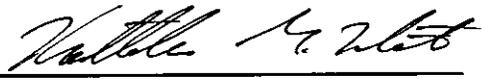
1 from the record that the Project site is being used, at least presently, for  
2 agriculture. Petitioner fails to identify what aspects of these findings are deficient,  
3 and, therefore, fails to show that respondent prejudicially abused its discretion in  
4 finding that the project was consistent with the Williamson Act, General Plan, and  
5 Yolo County Code. (Code Civ. Proc., § 1094.5, subd. (b) & (c); AR 830 & 1399-  
6 1407.)

7 **III. Orders**

- 8 A. The clerk shall serve this order on the parties by e-mail and mail.  
9 B. Petitioner Farmland Protection Alliance requested a Statement of Decision, and is  
10 hereby ordered to prepare and serve a draft SOD and lodge it with the court, and  
11 also send a word.doc editable file of same to the Dept. 3 clerk,  
12 [clau@yolo.courts.ca.gov](mailto:clau@yolo.courts.ca.gov). (Cal. Rules of Court, Rule 3.1590(c) (3).  
13 C. Upon the filing of the final statement of decision, the writ of mandamus shall  
14 issue as set forth above.

15 **SO ORDERED.**

16 Dated: January 16, 2018

17   
18 \_\_\_\_\_  
19 Hon. Kathleen M. White  
20 Superior Court of California, Yolo County

1 **SERVICE LIST**

2 Thomas W. Barth, Esq.  
3 Barth Daly LLP  
4 431 I street, Suite 201  
5 Sacramento CA 95814  
6 (916) 440-8600  
7 [tbarth@barth-daly.com](mailto:tbarth@barth-daly.com)  
8 Attorney for Real Parties in Interest Field & Pond, et al.

9 Eric May, Esq.  
10 Sr. Deputy County Counsel  
11 625 Court Street, Room 201  
12 Woodland CA 95695  
13 (530) 666-8172  
14 [eric.may@yolocounty.org](mailto:eric.may@yolocounty.org)  
15 Attorney for County of Yolo

16 Christopher R. Rodriguez, Esq.  
17 John S. Poulos, Esq.  
18 Lewis, Brisbois, Bisgaard & Smith LLP  
19 2020 West El Camino Ave. Suite 700  
20 Sacramento CA 95833  
21 Tel (916) 564-5400  
22 Fax (916) 564-5444  
23 [Chris.Rodriguez@lewisbrisbois.com](mailto:Chris.Rodriguez@lewisbrisbois.com)  
24 [John.Poulos@lewisbrisbois.com](mailto:John.Poulos@lewisbrisbois.com)  
25 Attorney for Petitioner Farmland Protection Alliance

Donald B. Mooney, Esq.  
129 C Street Suite 2  
Davis CA 95616  
(530)758-2377  
[dbmooney@dcn.org](mailto:dbmooney@dcn.org)  
Attorney for petitioner Tuleyome

Christian C. Scheuring, Esq.  
California Farm Bureau Federation  
2300 River Plaza Drive  
Sacramento CA 95833  
(916) 561-5660  
[cscheuring@cfbf.com](mailto:cscheuring@cfbf.com)  
Attorney for Petitioner Yolo County Farm Bureau

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1 Timothy M. Taylor, Esq.  
2 Stoel & Rives LLP  
3 500 Capitol Mall, Suite 1600  
4 Sacramento CA 95814  
5 (916) 447-0700  
6 [tim.taylor@stoel.com](mailto:tim.taylor@stoel.com)  
7 Attorney for Real Parties in Interest Field & Pond, et al.  
8  
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23  
24  
25

1 TIMOTHY M. TAYLOR (SB #144335)  
Email: [tim.taylor@stoel.com](mailto:tim.taylor@stoel.com)  
2 CARISSA M. BEECHAM (SB #254625)  
Email: [carissa.beecham@stoel.com](mailto:carissa.beecham@stoel.com)  
3 PARISSA E. FLOREZ (SB #289521)  
Email: [parissa.florez@stoel.com](mailto:parissa.florez@stoel.com)  
4 STOEL RIVES LLP  
5 500 Capitol Mall, Suite 1600  
6 Sacramento, CA 95814  
Telephone: 916.447.0700  
Facsimile: 916.447.4781

7 THOMAS W. BARTH (SB #154075)  
BARTH DALY LLP  
8 431 J St., Suite 201  
Sacramento, CA 95814  
9 Telephone: 916.440.8600  
Facsimile: 916.440.9610  
10 Email: [tbarth@barth-daly.com](mailto:tbarth@barth-daly.com)

11 Attorneys for Real Parties in Interest  
12 FIELD & POND; DAHVIE JAMES; PHILIP WATT

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF YOLO

15 FARMLAND PROTECTION ALLIANCE,  
16 TULEYOME, YOLO COUNTY FARM  
BUREAU and DOES 1-10,

17 Petitioners and Plaintiffs,

18 v.

19 COUNTY OF YOLO, YOLO COUNTY  
20 BOARD OF SUPERVISORS and DOES 11-  
50

21 Respondents and Defendants.

22 FIELD & POND, DAHVIE JAMES, PHILIP  
23 WATT, and DOES 51-500,

24 Real Parties in Interest.

CASE NO. PT16-1896

NOTICE OF ENTRY OF JUDGMENT  
BY FAX

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TO ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 20, 2018 the Court in the above-referenced action entered a Judgment, a true and correct copy of which is attached hereto as Exhibit A.

Dated: June 21, 2018

STOEL RIVES LLP



By: \_\_\_\_\_

Timothy M. Taylor  
Carissa M. Beecham  
Attorneys for Real Parties in Interest  
Field & Pond, Dahvie James, Philip Watt

EXHIBIT A



JUDGMENT

1  
2 The Petition for Writ of Mandate (“Petition”) filed by Petitioners Farmland Protection  
3 Alliance, Tuleyome, and Yolo County Farm Bureau (“Petitioners”) against Respondents County of  
4 Yolo and Yolo County Board of Supervisors (“Respondents”) came before this Court on January  
5 11, 2018 in Department 3, Judge Kathleen W. White, presiding.

6 The Court thereupon issued an Order, followed by a Statement of Decision, granting in part  
7 the Petition as to the impact on the First Cause of Action as to impacts to the Tricolored Blackbird,  
8 the Valley Elderberry Longhorn Beetle, and the Golden Eagle, and denying the remainder of the  
9 Petition. A copy of the Court’s final Statement of Decision is attached hereto.

10 Based on the Statement of Decision, IT IS SO ORDERED THAT:

11 1. Judgment granting a writ of mandate ~~be~~ entered in favor of Petitioners and against ~~the~~  
12 Respondents *as set forth in the attached Statement of Decision.*

13 2. A peremptory writ of mandate directed to Respondents shall issue ordering  
14 Respondents to undertake further study and preparation of a subsequent Environmental Impact  
15 Report (“EIR”) to address only the potential impacts of the Project on the Tricolored Blackbird,  
16 Valley Elderberry Longhorn Beetle, and the Golden Eagle.

17 3. The Project Approval and related mitigation measures shall remain in effect during  
18 this period of further environmental analysis. Real Parties in Interest Field & Pond, Dahvie James,  
19 and Philip Watt shall be allowed to continue operating the Project under the strict control of  
20 Respondents’ permitting scheme during this period.

21 4. At the conclusion of the additional environmental analysis, Respondents shall file a  
22 Return setting forth all actions taken to comply with this Writ and indicating whether or not  
23 Respondents certified the above-referenced subsequent EIR for the Project.

24 5. Pursuant to Public Resources Code section 21168.9(c), this Court does not direct  
25 Respondents to exercise their lawful discretion in any particular way.

26 6. Pursuant to Public Resources Code section 21168.9(b), this Court shall retain  
27 jurisdiction over Respondents’ proceedings until the Court has determined that Respondents have  
28 complied with the provisions of the California Environmental Quality Act and state law.



FILED  
YOLO SUPERIOR COURT

APR 06 2018

BY                       
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF YOLO**

FARMLAND PROTECTION ALLIANCE,  
TULEYOME, YOLO COUNTY FARM BUREAU  
and DOES 1-10,

Petitioners and Plaintiffs,

vs.

COUNTY OF YOLO, YOLO COUNTY BOARD  
OF SUPERVISORS and DOES 11-50,

Respondents and Defendants.

FIELD & POND, DAHVIE JAMES, PHILIP  
WATT, and DOES 51-500,

Real Parties in Interest.

) Case No. CV PT 16-001896

) **STATEMENT OF DECISION**  
) **GRANTING IN PART**  
) **PETITIONERS' PETITION FOR**  
) **WRIT OF MANDATE AND**  
) **COMPLAINT FOR**  
) **DECLARATORY AND**  
) **INJUNCTIVE RELIEF RE**  
) **ADOPTION OF REVISED**  
) **MITIGATED NEGATIVE**  
) **DECLARATION (CEQA)**

) Hearing Date: January 11, 2018  
) Dept.: 3, Judge Kathleen M. White  
) Time: 11:00 a.m.

On January 11, 2018, this court heard oral argument in the above-captioned matter.

Attorneys appearing for the various petitioners were Christian C. Scheuring, Esq., for Yolo  
County Farm Bureau, Donald B. Mooney, Esq., for Tuleyome, and Christopher R. Rodriguez,

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1 Esq. and John S. Poulos, Esq., of Lewis, Brisbois, Bisgaard & Smith LLP for Farmland  
2 Protection Alliance. Appearing for the various respondents were Eric May, Esq., Sr. Deputy  
3 County Counsel for the County of Yolo, Timothy M. Taylor, Esq. of Stoel Rives LLP for real  
4 parties in interest Field & Pond/Davie James/Philip Watt, and Thomas Barth, Esq. of Barth Daly  
5 LLP.

6 On January 16, 2018, this court issued an "Order After Hearing Granting in Part  
7 Petitioner's Petition for Writ of Mandate and Complaint For Declaratory Relief and Injunctive  
8 Relief re Adoption of Revised Mitigated Negative Declaration (CEQA)" ("Jan 16, 2018 Order"),  
9 which order directed Petitioner to prepare a draft statement of decision per Rule 3.1590(c)(3),  
10 California Rules of Court ("CRC"). Petitioners filed their proposed statement of decision January  
11 30, 2018, after which the court received various formal objections and cross-objections to the  
12 proposed statement of decision. The court then issued a proposed statement of decision on March  
13 20, 2018.<sup>1</sup> The court has considered the various objections and comments thereto filed by the  
14 parties, and, where appropriate, incorporated them into the final statement of decision set forth  
15 below. Having considered these filings, and all admissible evidence and argument presented to  
16 the court, and having weighed the admissible evidence, the court enters the following final  
17 Statement of Decision and Order in accordance with CRC Rule 3.1590.

18 //  
19 //  
20 //  
21 //

22  
23 <sup>1</sup> The CRC contemplates the filing and consideration of objections *after* the court has issued the  
24 Proposed Statement of Decision, but the various parties filed their objections and comments upon  
25 *Petitioner's* lodging of its proposed SOD (as directed by the court in the January 16, 2018 Order). The  
court considered these objections and comments as advance objections to the *court's* proposed SOD  
under Rule 3.1590(g), and afforded the parties another 15 days for further objection to the court's  
Proposed SOD per Rule 3.1590. Respondents filed a Notice of No Objection to the *Court's* Proposed SOD  
on April 5, 2018. Petitioners filed objections to the court's Proposed SOD, which objections and  
comments have been considered by the court before issuing this final Statement of Decision.

*[Handwritten signature]*

1 **STATEMENT OF DECISION**

2 The petition of Farmland Protection Alliance (“Farmland” or “Petitioner”) came on  
3 regularly for hearing on January 11, 2018 in Dept. 3 of this court, the Hon. Kathleen M. White,  
4 Judge presiding. Appearances were as noted on the record. In accordance with local rules, the  
5 court issued a tentative ruling, which granted in part Petitioners’ petition for writ of mandate and  
6 complaint for declaratory and injunctive relief. The parties timely requested oral argument,  
7 which the court heard on January 11, 2018 and then took the matter under submission. On  
8 January 16, 2018, the court entered its Order After Hearing Granting in Part Petitioner’s Petition  
9 for Writ of Mandate and Complaint for Declaratory and Injunctive Relief re Adoption of Revised  
10 Mitigated Negative Declaration (CEQA)( the “January 16, 2018 Order”).

11 Having considered the evidence and argument, the court issues this Statement of  
12 Decision (“SOD”), in accordance with Code of Civil Procedure section 632 and Rule  
13 3.1590(c)(3), CRC, in order to formalize the January 16, 2018 Order <sup>2</sup>, and **HEREBY FINDS**  
14 **AND ORDERS** as follows:

15 **I. Standard of Review**

16 In an action to set aside an agency’s determination under the California Environmental  
17 Quality Act (“CEQA”), the trial court reviews whether the agency abused its discretion. Abuse  
18 of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the  
19 determination is not supported by substantial evidence. (*Sierra Club v. Gilroy City Council*  
20 (1990) 222 Cal.App.3d 30, 39-40; Pub. Res. Code, § 21168; Code Civ. Proc., § 1094.5.)

21 CEQA sets a low threshold for preparation for an Environmental Impact Report (“EIR”):  
22 The lead agency must prepare an EIR **“whenever it can be fairly argued on the basis of**  
23 **substantial evidence that the project may have a significant environmental impact.”** (*No*

24 \_\_\_\_\_  
25 <sup>2</sup> This Statement of Decision supersedes the January 16, 2018 Order.

*mm2*

1 *Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under this standard, the agency's  
2 decision may be upheld only if the evidence in the record of its proceedings is insufficient to  
3 support a fair argument that the project may have a significant effect on the environment. If there  
4 is substantial evidence in the record that would support a fair argument that a significant impact  
5 may result, the agency's decision to dispense with an EIR must be set aside. (*Friends of B Street*  
6 *v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

7 This action challenges a mitigated negative declaration, as revised (RMND).

8 A negative declaration, adopted after a project has been revised to avoid or mitigate  
9 environmental impacts, is referred to as a "mitigated negative declaration ("MND")." (Pub. Res.  
10 Code, § 21604.5; 14 Cal.Code Regs., § 15369.5.) An MND is not materially different from an  
11 ordinary negative declaration. The distinction is that, in an MND, mitigation measures to  
12 eliminate significant impacts are adopted after the project has been proposed, while in an  
13 ordinary negative declaration, the project as proposed is found to have no significant  
14 environmental impacts. (14 Cal. Code Regs. §15064, subd. (f)(2).)

15 To lawfully carry out a project based on a MND, an agency must approve mitigation  
16 measures sufficient to reduce potentially significant impacts "to a point where clearly no  
17 significant effects would occur." (CEQA Guidelines §§ 15071, 15070(b) (1).) The determination  
18 of whether a project may impact the environment "calls for careful judgment on the part of the  
19 public agency involved." (*Keep Our Mountains Quiet v. Candice Clark Wozniak* (2015) 236  
20 Cal.App.4th 714, 729.)

21 Reviewing courts also examine whether the agency's decision to adopt a negative  
22 declaration is based on a factual analysis of the project's potential impacts. The agency's  
23 decision can be invalidated if it appears the agency did not actually evaluate the question  
24 whether significant effects might result. (*Sundstrom v. County of Mendocino* (1988) 202  
25 Cal.App.3d 296, 311.)

1 Under these standards, a negative declaration is invalid if either:

2  
3 (1) There is substantial evidence in the record supporting a fair argument that the  
4 project may have a significant effect on the environment; or

5 (2) The agency has failed to undertake a fact-based investigation of the project's  
6 potential environmental impacts.

7  
8 To provide an adequate basis for judicial review, an initial study ordinarily should  
9 disclose the data or evidence supporting the study's environmental findings. (*Citizens Ass'n for*  
10 *Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.) In the leading case of  
11 *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the court rejected a negative  
12 declaration that was supported only by a bare-bones environmental checklist. There was no  
13 indication in the record of the source or content of the data that county staff relied on in  
14 preparing the checklist, nor was there an explanation of the initial study's conclusion that  
15 potentially significant impacts would be fully mitigated.

16 Describing the checklist as a "token observance" of CEQA requirements, the court  
17 held that a lead agency has a duty to investigate potential impacts and provide support for a  
18 negative declaration; the record of its action must demonstrate, and not simply assume, that  
19 significant impacts will not occur. This prevents a lead agency from providing a superficial  
20 analysis of a project's potential impacts in the initial study and then defending its decision to  
21 adopt a negative declaration by pointing to the absence of evidence of any significant  
22 environmental impacts.

23  
24 The agency's task is not to weigh competing evidence and determine whether, in fact,  
25 a significant impact on the environment will occur; rather, the proper task is to determine

1 whether the record before the agency contains substantial evidence supporting a fair  
2 argument that a significant impact may occur. (Pub. Res. Code, § 21080, subs. (c) and  
3 (d); CEQA Guidelines § 15064(f) (Emphasis supplied).

4  
5 Under Public Resources Code section 21080(e) and 21082.2(c) and 14 California Code  
6 of Regulations sections 15064(f) (5) and 15384, the following constitute substantial evidence:

- 7
- 8 • Facts;
  - 9 • Reasonable assumptions predicated on facts; and
  - 10 • Expert opinions supported by facts.

11 Under the same sections, the following do not constitute substantial evidence:

- 12
- 13 • Argument;
  - 14 • Speculation;
  - 15 • Unsubstantiated opinion or narrative;
  - 16 • Clearly inaccurate or erroneous evidence;
  - 17 • Evidence that is not credible; and
  - 18 • Evidence of social and economic impacts that do not contribute to, and are not caused by,  
19 physical impacts on the environment.

20 “Significant effect upon the environment” is defined as “a substantial or potentially substantial  
21 adverse change in the environment.” (Pub. Res. Code, § 21068; 14 Cal.Code Regs, § 15382.). A  
22 project “may” have a significant effect on the environment if there is a “reasonable probability”  
23 that it will result in a significant impact. (*No Oil, Inc.*, p. 83, n. 16; *Sundstrom v. County of*  
24 *Mendocino* (1988) 202 Cal.App.3d 296, 309.) If any aspect of the project may result in a  
25 significant impact on the environment, an EIR must be prepared even if the overall effect of the  
project is beneficial. (14 Cal. Code Regs., §15063(b) (1).)

1 An agency's determination whether information in the record constitutes "substantial  
2 evidence" boils down to a determination not only that the information is relevant and material,  
3 but also that it is sufficiently reliable to have solid evidentiary value. To determine the reliability  
4 of the evidence, a lead agency may consider several factors:

- 5 • Whether the evidence has an adequate foundation in the witness's personal knowledge of  
6 facts. (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872.)  
7 Expressions of subjective concerns and personal beliefs do not constitute substantial  
8 evidence. (*Newberry Springs Water Ass'n v. County of San Bernardino* (1984) 150  
9 Cal.App.3d 740.) Speculation, argument, and unfounded conclusions are likewise not  
10 substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68  
11 Cal.App.4<sup>th</sup> 556, 571; *Citizens Comm. To Save Our Village v. City of Claremont* (1995)  
12 37 Cal.App.4<sup>th</sup> 1157, 1171.)
- 13 • Whether the evidence is provided by a qualified source. Opinions can constitute  
14 substantial evidence when they are provided by a witness who is qualified to render an  
15 opinion on the subject. Fact-based observations by persons qualified to speak to a  
16 question qualify as substantial evidence. (*Sierra Club v. Department of Forestry & Fire*  
17 *Protection* (2007) 150 Cal.App.4<sup>th</sup> 370; *Architectural Heritage Ass'n v. County of*  
18 *Monterey* (2004) 122 Cal.App.4<sup>th</sup> 1095, 1117.)
- 19 • Whether the evidence is not reliable for other reasons. A lead agency may find that  
20 hearsay is not sufficiently reliable to be treated as substantial evidence. (*Citizens for*  
21 *Responsible Dev. v. City of W. Hollywood* (1995) 39 Cal.App.4<sup>th</sup> 490, 499, n.2.)

22  
23 When qualified experts present conflicting evidence on the nature or extent of a project's  
24 impacts, the agency must accept the evidence tending to show that the impact might  
25 occur. Evidence to the contrary is usually irrelevant, because the agency cannot weigh

*Zur*

1 competing evidence. (*Rominger v. County of Colusa* (2014) 229 Cal.App.4<sup>th</sup> 690 [opinion by  
2 traffic expert conflicted with negative declaration's trip generation assumptions]; *City of*  
3 *Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 249 [conflicting  
4 opinions by multiple experts on definition and extent of wetlands].) A disagreement between  
5 experts regarding the significance of one or more environmental effects can require an EIR in  
6 “marginal cases where it is not clear whether there is substantial evidence that a project may  
7 have a significant effect on the environment . . .” (CEQA Guidelines, § 15064(g).)

8  
9 **II. Findings**

- 10 A. Respondents County of Yolo and Yolo County Board of Supervisors and real parties  
11 in interest Field and Pond, Dahvie James, and Philip Watt’s request for judicial notice  
12 is **GRANTED**. (Evid. Code, § 452, subd. (c).)
- 13 B. Petitioners Farmland Protection Alliance (“Farmland”) and Yolo County Farm  
14 Bureau’s request for judicial notice, filed on August 7, 2017, is **DENIED**. Petitioner  
15 does not show that the letter is judicially noticeable or that it is the proper subject of a  
16 motion to augment the record. (Evid. Code, § 452, subds. (c) & (h); *Western States*  
17 *Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576.)
- 18 C. Petitioner Farmland’s request for judicial notice made on November 7, 2017, is  
19 **DENIED**. (Evid. Code, § 452, subds. (c) & (h).) The request is untimely, judicial  
20 notice may not be taken of matters which are the subject of dispute, and the  
21 documents are extra-record evidence. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994)  
22 7 Cal.4th 1057, 1063; *L.B. Research & Education Foundation v. UCLA Foundation*  
23 (2005) 130 Cal.App.4th 171, 180, fn. 2; *Western States Petroleum Assn. v. Superior*  
24 *Court* (1995) 9 Cal. 4th 559, 576.)
- 25 D. Petitioner’s’ petition for writ of mandate and complaint for declaratory and injunctive  
relief is **GRANTED IN PART**, as follows:

1 1. **Impact on Tricolored Blackbird:** The petition is **GRANTED**. The record before  
2 the agency supports a fair argument that the project may have a significant impact  
3 on the Tricolored Blackbird. (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil,*  
4 *Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; AR 6848, 12802-03, 12943,  
5 13736, 13757, 14339, & 15963.) The record includes evidence from both sides'  
6 experts (Doctors Estep and Roberts) that the project may affect the blackbirds'  
7 breeding, although they disagreed on the level of necessary mitigation.  
8 Respondents argue that a disagreement on the scope of mitigation (as opposed to  
9 the impact) does not trigger a full environmental impact report (EIR).  
10 Respondents further argue that Dr. Robert's more "draconian" proposed  
11 mitigation measures are not supported by facts. Yet both Dr. Estep and Dr.  
12 Roberts agree that the blackbird is a species sensitive to disturbance, and that the  
13 species lives around the pond at the project site. Dr. Roberts found evidence of  
14 prior blackbird breeding at the site. Ecological consultant Hilary White confirmed  
15 blackbird breeding at the site. (AR 12802-03.) Dr. Estep did not observe current  
16 blackbird breeding at the Project site, but could not rule out prior or future  
17 breeding. (AR 13736.) Neither Dr. Estep nor Dr. Roberts could define how much  
18 the expanded parking and increased visitors might disturb the birds' breeding. Dr.  
19 Estep recommended monitoring the site for five years to evaluate the impact of  
20 the proposed project on the tricolor blackbirds' breeding. The court infers from  
21 this record that either (a) the tricolored blackbirds no longer breed at the site, in  
22 which case there is no substantial impact from the proposed project because the  
23 damage has already been done (perhaps long ago), or (b) the breeding pattern at  
24 the site is so fragile that any increased human activity would have a substantial  
25

1 impact on this sensitive species. This meets the “substantial evidence of a fair  
2 argument” standard. It is just such questions that an EIR is intended to review.

3 2. **Impact on Valley Elderberry Longhorn Beetle:** The petition is **GRANTED**. The  
4 record before the agency supports a fair argument that the project may have a  
5 significant environmental impact on the Valley Elderberry Beetle. (Pub. Res.  
6 Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 411, 13758, & 14339.)  
7 The RMND protects elderberry bushes (and the protected beetle species that call  
8 such bushes home) for 100 feet from any new construction. It also requires a 100-  
9 foot buffer between event activities and the banks of the Chickahominy slough  
10 where the bushes grow. (AR 811.) Both sides’ experts (Drs. Estep and Roberts)  
11 expressed concern about the beetle and recommended more substantial buffers.  
12 (AR 411(Roberts) and AR 13758 and 14339 (Estep).) Respondent County argues  
13 that this provision is consistent with its General Plan in that it addresses only new  
14 construction, but the RMND must address all substantial biological impacts, not  
15 just those that trigger general plan scrutiny. The county offers no persuasive  
16 authority for the proposition that compliance with its General Plan obviates the  
17 need to evaluate environmental impacts in accordance with CEQA.

18 3. **Impact on Swainson’s Hawk:** The petition is **DENIED**. The mitigation measures  
19 allow for the identification of any Swainson’s hawks in the area during  
20 construction, and mitigation is to be monitored by a biologist. Petitioners fail to  
21 show a detrimental impact on the species as a whole, or that there are impacts  
22 when it is not nesting season for the hawks, or that delegation to a biologist of the  
23 monitoring duties is improper. (One wonders who might be qualified to do the  
24 task if a biologist were not.) Petitioners fail to show substantial evidence in  
25 support of a fair argument that the project might have significant environmental

1 impact on the Swainson's hawk. (Pub. Res. Code, § 21080, subs. (b) & (c); *No*  
2 *Oil, Inc., supra.*)

3 4. **Impact on all identified species:** The petition is **GRANTED**. Although the  
4 record indicates that none of the other listed species was found (and, therefore,  
5 there is no need to address any impact), there was evidence in the record that Dr.  
6 Estep observed a golden eagle. (AR 1575.) Without any discussion of the impact  
7 of the project on the golden eagle, the RMND is deficient as to this species. The  
8 record does not show that Respondent did a fact-based investigation regarding  
9 any significant environmental impact that the Project might have on the golden  
10 eagle. (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1575.)

11 5. **Impact on agricultural resources:** The petition is **DENIED**. Petitioner fails to  
12 show that there is a fair argument on the basis of substantial evidence that the  
13 project may have a significant environmental impact on agricultural resources.  
14 Petitioners are that there is a "real possibility" that adjacent farmers will be denied  
15 permission to spray their crops. Yet the parties agree that the relevant test is  
16 whether the project involves "changes in the existing environment that, due to  
17 their location or nature, could result in the conversion of farmland to  
18 nonagricultural use." (AR 1506; CEQA Guidelines, App. G, § II, sub. (e).) Here,  
19 there is only one adjacent owner and he operates a walnut orchard. (AR 7227,  
20 8124 and 3866.) Testimony in the record shows the actual buffer for the owner  
21 when spraying is 50' for the pesticide used for walnuts. (AR 3866.) As a result,  
22 "there is a significant buffer already with the road." (AR 3866.) The evidence in  
23 the record supports the conclusion by the Agricultural Commissioner that any  
24 pesticide impacts could be mitigated. Other mitigation measures include the  
25 limitation on the number of events and prior notices to neighbors of events.

*Handwritten signature*

1 Petitioner fails to show that there is substantial evidence supporting a fair  
2 argument that a significant impact may occur.

3 (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1510-1512,  
4 3866, 7227, 8124, & 18706.)

5 6. **Impact on future environmental hazards:** The petition is **DENIED**. Petitioner  
6 argues that Road 29 is insufficient to evacuate project guests in case of fire. But  
7 the Winters Fire Department already addressed compliance with fire codes. (AR  
8 1548.) Cal Fire reviewed the plans and delegated authority for approval to the  
9 County's Chief Building Official, who approved the plan with appropriate  
10 mitigation provisions. (AR 1548.) Parking is prohibited in the locations where it  
11 might impede emergency vehicle access. (AR 1410, 1536.) There is an emergency  
12 safety plan that includes shelter in place (rather than relying solely on egress  
13 through CR 29), a detailed safety plan for staff and guests in the event of fire or  
14 other emergency, and use of shuttles under the direction of fire officials to remove  
15 guests from the site. Further, Petitioner concedes that the rules governing CR 29  
16 do not apply because the State Fire Marshall has not adopted them. Petitioner fails  
17 to show that there is a fair argument on the basis of substantial evidence that the  
18 project may have a significant environmental impact on environmental hazards.  
19 (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1410, 1413,  
20 1420, 1536, 1548, 17738, 17739.)

21 7. **Impact on public services:** The petition is **DENIED**. Events are limited to certain  
22 times and dates, and the frequency is also limited. The project already requires at  
23 least two security guards, an event planner/coordinator and signage. Nothing in  
24 the record suggests that these measures are inadequate. Petitioner fails to show  
25 that there is a fair argument on the basis of substantial evidence that the project

1 may have a significant environmental impact on public services. (Pub. Res. Code,  
2 § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 1409 & 1410.)

3 8. **Impact on hydrology and water quality:** The petition is **DENIED**. Petitioners  
4 rely on an expert hydrological opinion that is not based on facts in the record. The  
5 expert's "findings" are speculative, and not, therefore, substantial evidence.  
6 Petitioners fail to show that there is a fair argument on the basis of substantial  
7 evidence that the project may have a significant environmental impact on  
8 hydrology and/or water quality. (Pub. Res. Code, § 21080, subds. (b) & (c); *No*  
9 *Oil, Inc., supra*; AR 1174-83.)

10 9. **Impact on land use and planning:** The petition is **DENIED**. See the discussion  
11 of land use, zoning and planning, *infra*, at section 15. Petitioner fails to show that  
12 there is a fair argument on the basis of substantial evidence that the project may  
13 have a significant environmental impact on land use and planning. (Pub. Res.  
14 Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR 1400-1407.)

15 10. **Impact on utilities:** Petitioner argues that the RMND fails to explain how the  
16 project can comply with septic requirements, but ignores the fact that the RMND  
17 requires the expansion to be reviewed and approved first. The petition is  
18 **DENIED**. Petitioner fails to show that there is a fair argument on the basis of  
19 substantial evidence that the project may have a significant environmental impact  
20 on utilities. (Pub. Res. Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*.)

21 11. **Impact on traffic:** Petitioner cites no evidence that the use of shuttles and signage  
22 as proposed are insufficient to mitigate the traffic impact. As to Petitioner's  
23 complaints about the emergency plan, that is discussed, *supra*. The petition is  
24 **DENIED**. Petitioner fails to show that there is a fair argument on the basis of  
25 substantial evidence that the project may have a significant environmental impact

1 on traffic. (Pub. Res. Code, § 21080, subds. (b) & (c); *No Oil, Inc., supra*; AR  
2 1410, 1411, & 1420.)

3 **12. Impact on population, housing, air quality, and aesthetics:** The petition is  
4 **DENIED.** Petitioner argues that the RMND fails to analyze the population and  
5 housing impacts of the Project's plan to build four cottages and a pool house after  
6 the Williamson Act contract expires. Respondent replies that the guesthouses are  
7 for guest use, not for permanent residents, and there is no plan for a pool house.  
8 Petitioner also argues there are potential impacts to aesthetics and air quality, but  
9 cites no evidence in the record to support the argument. Petitioner's concerns  
10 about the County's alleged failure to quantify CHG emissions or adhere to the  
11 mandates of the Yolo County Climate Plan are countered in the record by the  
12 conditions of approval: Condition 65 includes five required conditions to reduce  
13 tailpipe admissions. There are eight conditions to reduce construction dust  
14 (Condition 66) and six required conditions for dust control. (Condition 67.) (AR  
15 1416.) Petitioner fails to show that there is a fair argument on the basis of  
16 substantial evidence that the project may have a significant environmental impact  
17 on population, housing, air quality, and aesthetics. (Pub. Res. Code, § 21080,  
18 subds. (b) & (c); *No Oil, Inc., supra*; AR 1416.)

19 **13. Cumulative impacts:** The petition is **DENIED.** Petitioner argues that the RMND  
20 fails to identify the geographic scope of its analysis, fails to address past, present  
21 and future projects producing related impacts, and fails to address the applicants'  
22 plans to increase the number of events and B&B rentals in the future. The RMND  
23 evaluated potential cumulative impacts on both a county-wide and project-vicinity  
24 basis. (AR 1559.) Potentially county-wide cumulative air impacts from temporary  
25 construction activities will be reduced through the implementation of standard air

1 quality measures. (AR 1559, 1513-1517.) The 2030 Countywide General Plan  
2 EIR analyzes the Project's contribution to cumulative county-wide energy  
3 demand and traffic, and the regional and global impacts associated with  
4 greenhouse gas emissions were also analyzed in the 2030 Countywide General  
5 Plan. The Project's potential cumulative impacts to agriculture in the immediate  
6 vicinity are alleviated by the adopted Conditions of Approval and Mitigation  
7 Measures. (AR 1559.) Petitioner does not address why these evaluations were  
8 inadequate, and fails to show that there is a fair argument on the basis of  
9 substantial evidence that the project may have significant cumulative impacts.  
10 (Pub. Res. Code, § 21080, subs. (b) & (c); *No Oil, Inc., supra*; AR 1513-1517  
11 &1559.)

12 14. **Violation of CEQA procedural requirements:** The Court need not reach whether  
13 Respondent violated CEQA procedural requirements based on its findings, *supra*,  
14 that an EIR should be prepared based on certain specific impacts.

15 15. **Violation of the Williamson Act, inconsistency with the General Plan, and**  
16 **violation of the Yolo County Code:** The petition is DENIED. The Williamson  
17 Act (Govt. Code §§ 51200 *et seq.*) delegates to cities and counties the authority to  
18 determine what are deemed "compatible uses" with the Williamson Act's stated  
19 purpose to preserve agricultural land for agriculture. The county' findings are  
20 reviewed under the 'prejudicial abuse of discretion" standard applicable to  
21 traditional writs of mandamus. (Code Civ. Proc. § 1094.5(b).) Where, as here, the  
22 petition claims that findings are not supported by the evidence, petitioner must  
23 show that "the findings are not supported by substantial evidence in light of the  
24 whole record." (§ 1094.5(c).) Here, the county made detailed findings on each  
25 compatibility standard in § 51238.1. (AR 1404-07). Petitioner does not address

1 any of these findings specifically - other than the issue of pesticide spray on  
2 adjacent farmland. Petitioner argues that the farm operations will be prohibited  
3 from spraying pesticides. But the record demonstrates that the spray buffer for the  
4 adjacent land based on current use – not speculation - is 50.’

5 Petitioner further argues that the Project violates the County’s General  
6 Plan allowing uses incompatible with agricultural uses. The County made  
7 findings that the Project’s uses were consistent with various General Plan policies,  
8 including Land Use, Agriculture and Economic development (See AR 1399-  
9 1400), as well as the zoning codes. (AR 1400-1403.) Petitioner asserts that the  
10 Project site is not now used for agricultural purposes, yet Petitioner concedes that  
11 the project site is now used for livestock grazing and orchards. It can be inferred  
12 from the record that the Project site is being used, at least presently, for  
13 agriculture. Petitioner fails to identify what aspects of these findings are  
14 deficient, and, therefore, fails to show that respondent prejudicially abused its  
15 discretion in finding that the project was consistent with the Williamson Act,  
16 General Plan, and Yolo County Code. (Code Civ. Proc., § 1094.5, subd. (b) & (c);  
17 AR 830 & 1399-1407.)

18 **III. Orders**

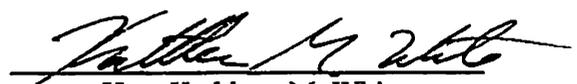
- 19 A. The clerk shall serve this order on the parties by e-mail and mail.  
20 B. Upon the entry of this final Statement of Decision, Respondent Yolo County shall  
21 prepare and lodge a Writ of Mandamus reflecting the court’s final Statement of  
22 Decision. The writ shall contain narrowly tailored language to provide that the  
23 current conditions and mitigation shall remain in effect pending further review.  
24 Project approval is, therefore, not rescinded, but rather the writ shall allow Real  
25 Party in Interests’ contracted operators to continue under the strict control of Yolo

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County's permitting scheme during the period of additional environmental analysis.

**SO ORDERED.**

Dated: April 6, 2018



Hon. Kathleen M. White  
Superior Court of California, Yolo County

1 **SERVICE LIST**

2 Thomas W. Barth, Esq.  
3 Barth Daly LLP  
4 431 I street, Suite 201  
5 Sacramento CA 95814  
6 (916) 440-8600  
7 tbarth@barth-daly.com  
8 Attorney for Real Parties in Interest Field & Pond, et al.

9 Eric May, Esq.  
10 Sr. Deputy County Counsel  
11 625 Court Street, Room 201  
12 Woodland CA 95695  
13 (530) 666-8172  
14 eric.may@yolocounty.org  
15 Attorney for County of Yolo

16 Christopher R. Rodriguez, Esq.  
17 John S. Poulos, Esq.  
18 Lewis, Brisbois, Bisgaard & Smith LLP  
19 2020 West El Camino Ave. Suite 700  
20 Sacramento CA 95833  
21 Tel (916) 564-5400  
22 Fax (916) 564-5444  
23 Chris.Rodriguez@lewisbrisbois.com  
24 John.Poulos@lewisbrisbois.com  
25 Attorney for Petitioner Farmland Protection Alliance

Donald B. Mooney, Esq.  
129 C Street Suite 2  
Davis CA 95616  
(530)758-2377  
dbmooney@dcn.org  
Attorney for petitioner Tuleyome

Christian C. Scheuring, Esq.  
California Farm Bureau Federation  
2300 River Plaza Drive  
Sacramento CA 95833  
(916) 561-5660  
cscheuring@cfbf.com  
Attorney for Petitioner Yolo County Farm Bureau

1 Timothy M. Taylor, Esq.  
2 Stoel & Rives LLP  
3 500 Capitol Mall, Suite 1600  
4 Sacramento CA 95814  
5 (916) 447-0700  
6 [tim.taylor@stoel.com](mailto:tim.taylor@stoel.com)  
7 Attorney for Real Parties in Interest Field & Pond, et al.  
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**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF YOLO**

Farmland Protection Alliance, et al.,  
Petitioners/Plaintiffs,

v.

County of Yolo, et al.,  
Respondents/Defendants.

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Field & Pond, et al.,  
Real Parties in Interest.

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Case No.: PT 16-1896

~~PROPOSED~~ PEREMPTORY WRIT OF  
MANDATE

Department: 3  
Judge: Hon. Kathleen M. White

Complaint Filed: November 14, 2016  
Hearing Date: January 11, 2018



1 **Respectfully submitted by:**

2 

3 \_\_\_\_\_  
4 Counsel for Respondents County of Yolo,  
Yolo County Board of Supervisors

5 **Approved as to form:**

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7 \_\_\_\_\_  
8 Counsel for Petitioner Farmland  
Protection Alliance

9 **Approved as to form:**

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11 \_\_\_\_\_  
12 Counsel for Petitioner Tuleyome

13 **Approved as to form:**

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15 \_\_\_\_\_  
16 Counsel for Petitioner Yolo County  
Farm Bureau

17 **Approved as to form:**

18  
19 \_\_\_\_\_  
20 Counsel for Real Parties in Interest  
Field & Pond, Dahvie James, and  
Philip Watt

(PROOF OF SERVICE BY ELECTRONIC DELIVERY)

STATE OF CALIFORNIA}  
COUNTY OF YOLO }

I am a citizen of the United States and an employee of the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 625 Court Street, Room 201, and Woodland, California 95695.

On April 30, 2018 I served a copy of [PROPOSED] PEREMPTORY WRIT OF MANDATE by e-mailing a pdf of the document to the following individuals:

Petitioner Farmland Protection Alliance

- John S. Poulos - [John.Poulos@lewisbrisbois.com](mailto:John.Poulos@lewisbrisbois.com)
- Christopher R. Rodriguez - [Chris.Rodriguez@lewisbrisbois.com](mailto:Chris.Rodriguez@lewisbrisbois.com)

Petitioner Tuleyome

- Don Mooney - [dbmooney@dcn.org](mailto:dbmooney@dcn.org)

Petitioner Yolo County Farm Bureau

- Chris Scheuring - [cscheuring@cfbf.com](mailto:cscheuring@cfbf.com)
- Diane Chasteen - [dchasteen@cfbf.com](mailto:dchasteen@cfbf.com)

Respondents County of Yolo and Yolo County Board of Supervisors

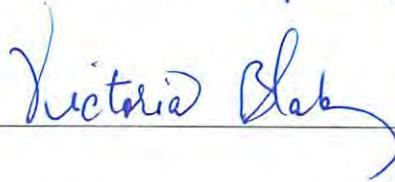
- Eric May - [eric.may@yolocounty.org](mailto:eric.may@yolocounty.org)
- Kate Montieth - [kate.montieth@yolocounty.org](mailto:kate.montieth@yolocounty.org)

Real Parties Field & Pond, Dahvie James, and Philip Watt

- Timothy M. Taylor - [Tim.taylor@stoel.com](mailto:Tim.taylor@stoel.com)
- Parissa E. Florez - [Parissa.florez@stoel.com](mailto:Parissa.florez@stoel.com)
- Thomas W. Barth - [tbarth@barth-daly.com](mailto:tbarth@barth-daly.com)
- Sheryl Pereda - [spereda@barth-daly.com](mailto:spereda@barth-daly.com)

The Parties have all agreed to accept service by e-mail.

I, Victoria Blake, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 30, 2018 at Woodland, California.



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(PROOF OF SERVICE BY ELECTRONIC DELIVERY)

STATE OF CALIFORNIA }  
COUNTY OF YOLO }

I am a citizen of the United States and an employee of the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 625 Court Street, Room 201, and Woodland, California 95695.

On July 3, 2018 I served a copy of **PEREMPTORY WRIT OF MANDATE** by e-mailing a pdf of the document to the following individuals:

Petitioner Farmland Protection Alliance

- John S. Poulos - [John.Poulos@lewisbrisbois.com](mailto:John.Poulos@lewisbrisbois.com)
- Christopher R. Rodriguez - [Chris.Rodriguez@lewisbrisbois.com](mailto:Chris.Rodriguez@lewisbrisbois.com)

Petitioner Tuleyome

- Don Mooney - [dbmooney@dcn.org](mailto:dbmooney@dcn.org)

Petitioner Yolo County Farm Bureau

- Chris Scheuring - [cscheuring@cfbf.com](mailto:cscheuring@cfbf.com)
- Diane Chasteen - [dchasteen@cfbf.com](mailto:dchasteen@cfbf.com)

Respondents County of Yolo and Yolo County Board of Supervisors

- Eric May - [eric.may@yolocounty.org](mailto:eric.may@yolocounty.org)
- Kate Montieth - [kate.montieth@yolocounty.org](mailto:kate.montieth@yolocounty.org)

Real Parties Field & Pond, Dahvie James, and Philip Watt

- Timothy M. Taylor- [Tim.taylor@stoel.com](mailto:Tim.taylor@stoel.com)
- Parissa E. Florez - [Parissa.florez@stoel.com](mailto:Parissa.florez@stoel.com)
- Thomas W. Barth - [tbarth@barth-daly.com](mailto:tbarth@barth-daly.com)
- Sheryl Pereda - [spereda@barth-daly.com](mailto:spereda@barth-daly.com)

The Parties have all agreed to accept service by e-mail.

I, Katharyne Montieth, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 3, 2018 at Woodland, California.



## **APPENDIX C**

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### **Aerial Photos**



Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated July 10, 2018



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated February 5, 2018



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated October 17, 2017



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated May 20, 2017



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated August 13, 2016



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated March 16, 2016



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated April 1, 2015



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated August 23, 2014



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated May 26, 2014



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated June 1, 2013



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated September 1, 2012



Source: Google Earth Pro, 2018

Appendix C – Project Site Aerial Photos

Google Earth Pro, Image Dated August 25, 2011



Source: Google Earth Pro, 2018

## **APPENDIX D1**

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**Estep Environmental Consulting - June 20 2016  
Biological Site Assessment**





## **Biological Site Assessment of the Field and Pond Project**

**June 20, 2016**

### **Introduction**

The proposed Field and Pond Project (project) is currently under review by the Yolo County Department of Community Services (county). The project is seeking a Use Permit to operate a bed and breakfast and special event facility, which requires compliance with the California Environmental Quality Act (CEQA). The county has prepared an Initial Study/Mitigated Negative Declaration IS/MND (March 2016) pursuant to CEQA, which concluded that the project would not have a significant effect on the environment with the implementation of mitigation measures. The IS/MND was made available for a 30-day public review on March 9, 2016. As a result of public comments that focused on potential effects of the project on biological resources, the county determined that a more detailed assessment of biological resources on and around the project be conducted. Therefore, this biological site assessment is considered supplemental to the IS/MND.

### **Project Location**

The proposed project is located on an 80-acre parcel in rural Yolo County approximately 6 miles northwest of the City of Winters along the east side of County Road 29 and approximately 3 miles west of County Road 89.

### **Project Description**

The 80-acre property is part of an historic farm that includes open grazing lands, an approximately 2-acre pond, and an 11 acre homestead site, which includes a large main house, a nearby smaller house, three barns, 6 unused grain silos, and a water tower. Chickahominy Slough, with a mature, but narrow riparian corridor, runs through the property. The property is currently zoned as Agricultural Extensive, which allows for one small event per month or up to eight per year with up to 150 attendees and/or less than 100 vehicle trips per event. The applicant is proposing to expand the use of the property by increasing the frequency and capacity of events, and to operate as a bed and breakfast.

The IS/MND describes the following principal project components:

- Restoring and improving the main house for use as a bed and breakfast. This includes primarily interior improvements, with the exception of an ADA-compliant ramp on the east side of the house.

- Constructing up to four detached, 500-square-foot one-room cottages east of the main house and between Chickahominy Slough and County Road 29.
- Retrofitting one barn to accommodate indoor event use.
- Creating a 45,000 square-foot graveled parking lot between the 2-acre pond and County Road 29 with the capacity for 75 parked vehicles.
- Hosting up to 45 events per year between March and November with a typical guest count of 125 people and a maximum of 300 people.
- Using shuttles for events attended by more than 150 people.
- Planting a 5-acre fruit orchard east of the main house and just south of County Road 29.
- Planting a vegetable garden, pool, and cabana between the proposed location for the four cottages and Chickahominy Slough.
- Installing a 45-acre orchard south of Chickahominy Slough.<sup>1</sup>

## Objectives

The objectives of the biological resources site assessment are to:

- Evaluate land use and natural community associations
- Evaluate general wildlife use
- Determine the presence of unique biological resources and sensitive habitats
- Determine the presence, absence, or potential for occurrence of special-status species
- Assess current baseline levels of human use and disturbance
- Assess the potential for and the extent to which proposed project components could significantly impact biological resources relative to the baseline condition pursuant to CEQA definition
- Provide recommendations to minimize the impact of project elements on biological resources.

## Methods

### Pre-survey Investigation

Prior to conducting the site visit, available information regarding biological resources on or near the project area was gathered and reviewed. Sources include:

- California Natural Diversity Data Base;
- Yolo County Habitat Conservation Plan/Natural Community Conservation Plan species accounts and maps;
- Other environmental documents from the vicinity of the project area;
- Yolo County General Plan,
- Comment letters on the IS/MND, and
- Other published and unpublished biological reports, accounts, and research.

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<sup>1</sup> The County is recirculating a revised IS/MND that removes the 45-acre orchard from the project. The discussion related to the orchard may therefore no longer be relevant to evaluating the impacts of the project.

Aerial photographs and land use/vegetation maps of the project area and surrounding area were also reviewed.

### **Field Surveys**

I conducted a field assessment of the property between 0930 and 1400 hours on April 27, 2016. I walked the entire 80-acre property to observe and characterize natural communities and wildlife habitats present on and adjacent to the property. I documented species occurrences focusing on the potential presence of special-status species. In response to comment letters on the IS/MND, I focused particularly on the 2-acre pond and its associated emergent marsh to determine the presence of tricolored blackbirds (*Agelaius tricolor*), and trees along Chickahominy Slough and elsewhere on the property for the presence of nesting Swainson's hawks (*Buteo swainsoni*) and other raptors. I assessed the potential for and general magnitude of impacts to sensitive resources from project components, the habitat availability and quality for each potentially occurring special-status species, and the likelihood and magnitude of impact from implementation of the proposed project.

### **Regulatory Framework**

Several state and federal laws and regulations are relevant to the proposed project. Each is briefly described below.

#### **California Environmental Quality Act**

The California Environmental Quality Act (CEQA) requires that significant environmental impacts of proposed projects be reduced to a less-than-significant level through adoption of feasible avoidance, minimization, or mitigation measures unless overriding considerations are identified and documented.

During the CEQA review process, environmental impacts are assessed and a significance determination provided based on pre-established thresholds of significance. Thresholds are established using guidance from CEQA, particularly Appendix G of the State CEQA guidelines and CEQA Section 15065 (Mandatory Findings of Significance). CEQA guidance is then refined or defined based on further direction from the lead agency.

Consistent with Appendix G of the State CEQA guidelines, a biological resource impact is considered significant (before considering offsetting mitigation measures) if the lead agency determines that project implementation would result in one or more of the following:

- Substantial adverse effects, either directly or through habitat modifications, on any species identified as being a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by California Department of Fish and Wildlife (CDFW) or US Fish and Wildlife Service (USFWS);
  - A substantial adverse effect on a special-status wildlife species is typically defined as one that would:
    - Reduce the known distribution of a species,
    - Reduce the local or regional population of a species,

- Increase predation of a species leading to population reduction,
  - Reduce habitat availability sufficient to affect potential reproduction, or
  - Reduce habitat availability sufficient to constrain the distribution of a species and not allow for natural changes in distributional patterns over time.
- Substantial interference with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or interference with the use of native wildlife nursery sites.
    - Substantial interference with resident wildlife movement is typically defined as obstructions that prevent or limit wildlife access to key habitats, such as water sources or foraging habitats, or obstructions that prohibit access through key movement corridors considered important for wildlife to meet needs for food, water, reproduction, and local dispersal.
    - Substantial interference with migratory wildlife movement is typically defined as obstructions that prevent or limit regional wildlife movement through the project area to meet requirements for migration, dispersal, and gene flow that exceed the defined baseline condition.

Consistent with CEQA Section 15065 (Mandatory Findings of Significance), a biological resource impact is considered significant if the project has the potential to:

- substantially degrade the quality of the environment;
- substantially reduce the habitat of a fish or wildlife species;
- cause a fish or wildlife population to drop below self-sustaining levels;
- threaten to eliminate a plant or animal community;
- substantially reduce the number or restrict the range of an endangered, rare or threatened species.

CEQA defines the significance of an impact on a state-listed species based on the following:

- Appendix G of the State CEQA guidelines states that a biological resource impact is considered significant (before considering offsetting mitigation measures) if the lead agency determines that project implementation would result in “substantial adverse effects, either directly or through habitat modifications, on any species identified as being a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFG or USFWS”; and
- CEQA Section 15065 (Mandatory Findings of Significance), a biological resource impact is considered significant if the project has the potential to “substantially reduce the number or restrict the range of an endangered, rare or threatened species”.

### **Federal Migratory Bird Treaty Act (MBTA)**

The federal Migratory Bird Treaty Act (MBTA) (Title 16, United States Code [USC], Part 703) enacts the provisions of treaties between the United States, Great Britain, Mexico, Japan, and the Soviet Union and authorizes the U.S. Secretary of the Interior to protect and regulate the taking of migratory birds. It establishes seasons and bag limits for hunted species and protects migratory birds, their occupied nests, and their eggs (16 USC 703, 50 CFR 21, 50 CFR 10). Specifically, the MBTA states: “Unless and except as permitted by regulations ...it shall be unlawful at any

time, by any means, or in any manner to pursue, hunt, take, capture, kill ... possess, offer for sale, sell ... purchase ... ship, export, import...transport or cause to be transported ... any migratory bird, any part, nest, or eggs of any such bird ... (The Act) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior.” The word “take” is defined as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.”

### **Federal Endangered Species Act**

The USFWS administers the federal Endangered Species Act (ESA) as it relates to terrestrial wildlife. The ESA requires USFWS to maintain lists of threatened and endangered species and affords substantial protection to listed species. The USFWS can list species as either endangered or threatened. An endangered species is at risk of extinction throughout all or a significant portion of its range (ESA Section 3[6]). A threatened species is likely to become endangered within the foreseeable future (ESA Section 3[19]). Section 9 of the ESA prohibits the take of any fish or wildlife species listed under the ESA as endangered and most species listed as threatened. Take, as defined by the ESA, means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Harm is defined as “any act that kills or injures the species, including significant habitat modification.” The ESA includes mechanisms that provide exceptions to the Section 9 take prohibitions. For non-federalized projects, Section 10 allows for the issuance of a 10(a)(1)(b) permit to take covered species during otherwise lawful activities with approval of a habitat conservation plan.

### **California Endangered Species Act**

The California Endangered Species Act (CESA) prohibits take of wildlife and plants listed as threatened or endangered by the California Fish and Game Commission. *Take* is defined under the California Fish and Game Code as any action or attempt to “hunt, pursue, catch, capture, or kill.” The CESA allows exceptions to the take prohibition for take that occurs during otherwise lawful activities. The requirements of an application for incidental take under CESA are described in Section 2081 of the California Fish and Game Code. Incidental take of state-listed species may be authorized if an applicant submits an approved plan that minimizes and “fully mitigates” the impacts of this take.

### **California Fish and Game Code 3503.5 (Birds of Prey)**

Section 3503.5 of the Fish and Game Code prohibits the take, possession, or destruction of any birds of prey or their nests or eggs. The California Department of Fish and Wildlife may issue permits authorizing take pursuant to CESA.

### **Yolo County General Plan**

The Yolo County General Plan includes numerous policies regulating and emphasizing the protection of natural resources. Those most relevant to the proposed project include the following:

- Policy CO-2.1. Consider and maintain the ecological function of landscapes, connecting features, watersheds, and wildlife movement corridors.
- Policy CO-2.3. Preserve and enhance those biological communities that contribute to the county’s rich biodiversity including blue oak and mixed oak woodlands, native

grassland prairies, wetlands, riparian areas, aquatic habitat, agricultural lands, heritage valley oak trees, remnant valley oak groves, and roadside tree rows.

- Policy CO-2.9. Protect riparian areas to maintain and balance wildlife values.
- Policy CO-2.10. Encourage the restoration of native habitat.
- Policy CO-2.11. Ensure that open space buffers are provided between sensitive habitat and planned development.
- Policy CO-2.22. Prohibit development within a minimum of 100 feet from the top of banks for all lakes, perennial ponds, rivers, creeks, sloughs, and perennial streams.
- Policy CO-2.30. Protect and enhance streams, channels, seasonal and permanent marshland, wetlands, sloughs, riparian habitat and vernal pools in land planning and community design.
- Policy CO-2.37. Where applicable in riparian areas, ensure that required state and federal permits/approvals are secured prior to development of approved projects. (DEIR MM BIO-1d)
- Policy CO-2.38. Avoid adverse impacts to wildlife movement corridors and nursery sites (e.g., nest sites, dens, spawning areas, breeding ponds).
- Policy CO-2.41. Require that impacts to species listed under the State or federal Endangered Species Acts, or species identified as special-status by the resource agencies, be avoided to the greatest feasible extent. If avoidance is not possible, fully mitigate impacts consistent with applicable local, State, and Federal requirements.
- Policy CO-2.42. Projects that would impact Swainson's hawk foraging habitat shall participate in the Agreement Regarding Mitigation for Impacts to Swainson's Hawk Foraging Habitat in Yolo County entered into by the CDFG and the Yolo County HIP/NCCP Joint Powers Agency, or satisfy other subsequent adopted mitigation requirements consistent with applicable local, State, and federal requirements.

## Biological Setting

### Description of the Project Site

The project site is characteristic of the westernmost extent of the Central Valley as it transitions into the interior Coast Ranges. The property lies within the Chickahominy Slough watershed, which extends northwest to southeast through the lower eastern slope of Blue Ridge. The slough runs through the entire length of the northern half of the property from the northwest corner to the southern boundary and separates the open grassland/pastureland south of the slough from the more disturbed and developed areas north of the slough (Plate 1). The slough supports a narrow riparian corridor dominated by valley oak (*Quercus lobata*) with Fremont cottonwood (*Populus fremontii*) and willow (*Salix* spp.) as secondary overstory species, along with occasional foothill pine (*Pinus sabiniana*) and an understory dominated by California buckeye (*Aesculus californicus*), toyon (*Heteromeles arbutifolia*), and elderberry (*Sambucus Mexicana*) (Plate 2). The slough has been narrowed and degraded over time through farming and ranching practices and currently supports a deeply incised channel with steep banks and a narrow, somewhat intermittent corridor of riparian vegetation. A small seasonal tributary also occurs on the property entering at the southwest corner, extending northward and then eastward through the open pasture before meeting Chickahominy Slough near the center of the property. This seasonal stream does not support woody riparian vegetation.

The homestead site, including all outbuildings and farm/ranch structures, is entirely north of the slough and bounded on the north by County Road 29. Most of this area has been disturbed by

long-term farming/ranching operations and, other than the slough itself and the emergent marsh associated with the 2-acre pond, does not retain significant natural features (Plate 3 and 4). The area in the immediate vicinity of the main house, the second nearby house, and barns is landscaped with lawns and mature native and nonnative trees and shrubs and is subject to regular and typical human activities and disturbances. While the open grass area east of the main house is mostly weedy, unused, and maintained through periodic mowing, the area west of the main house in the vicinity of the 2-acre pond is more landscaped and includes rail fences, graveled footpaths, and lawns (Plate 5). The 2-acre pond, which is near the western edge of the homestead area west of the main house, is mostly open water and includes a small wooden pier on the southern end that extends approximately 40 feet into the pond. Emergent marsh, dominated by dense cattail (*Typha* spp.), extends around the perimeter of the 2-acre pond on the south, west, and north sides with the largest patch occurring on the northwest corner of the pond (Plate 6).



*Plate 1. Looking west from just west of 2-acre pond, through Chickahominy Slough with the slough also in the background as it meanders through the western portion of the property.*



*Plate 2. Typical valley oak-dominated riparian vegetation along Chickahominy Slough. Looking southwest from near the northwest corner of the property.*



*Plate 3. Looking west from the eastern portion of the property. Chickahominy slough is on the left, the main house is in the center background, and County Road 29 is out of view on the right. The gravel road on the right is one of two graveled entrance roads to the main house. This is the proposed location of the cabins, pool and cabana, and garden.*



*Plate 4. Looking south from near County Road 29 on the eastern end of the property. The unused silos are on the left, Chickahominy Slough behind the silos, and oak woodland on the hill top in the background.*



*Plate 5. Looking north along gravel footpath on the west side of the 2-acre pond. Chickahominy Slough is on the left, the pond and marsh is on the right..*

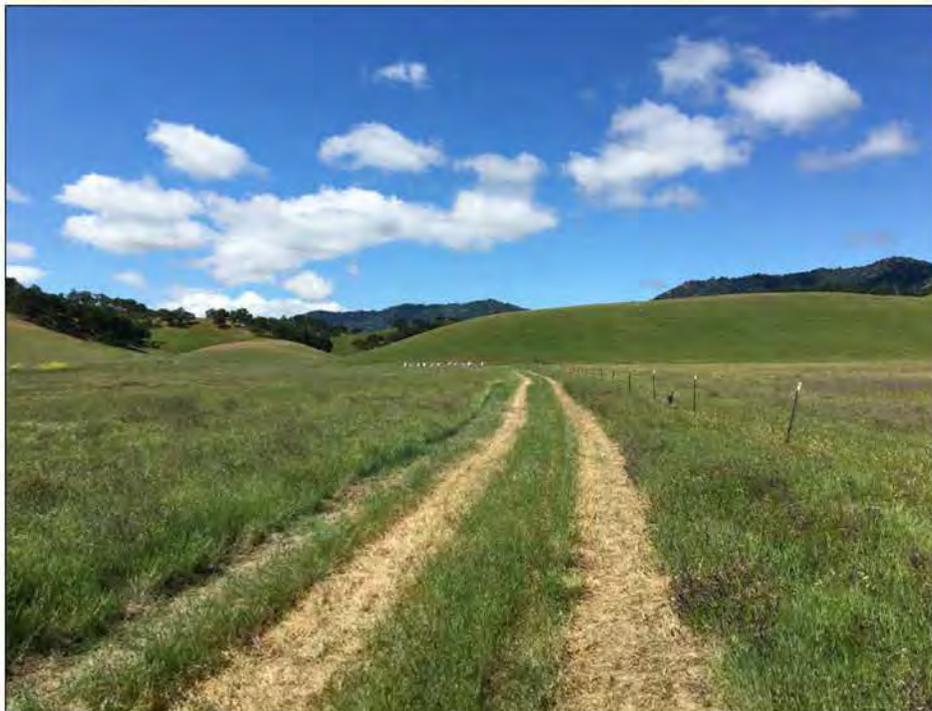


*Plate 6. Looking northwest from the pier on the 2-acre pond. Cattail marsh occurs around the perimeter in foreground and background. County Road 29 is adjacent to the row of olive trees in the background that border the road on the south side.*

The area south of Chickahominy Slough is open pasture that has historically been used for livestock grazing and may have been cultivated at one time. It consists primarily of a naturalized annual grasses typical of the interior Coast Ranges and a variety of introduced pasture grasses and legumes (Plates 7 and 8). There are no structures on this portion of the property. A small stock pond is present on a higher terrace near the southern border and patches of oak woodland are present in the higher elevation areas on the southern edge of the property (Plate 9). The pasture on the eastern end of the property, south of Chickahominy Slough and just southeast of the main house includes a large area that was excavated several years ago and that appears to flood periodically. The extent and duration of inundation is undetermined as are its functional hydrology and wetland status. This site likely provides additional wildlife value for species attracted to shallow ponded habitats.



*Plate 7. Looking southeast toward pastureland south of Chickahominy Slough. The property line is near the tree-lined ridge in the background.*



*Plate 8. Looking south along the western property boundary.*



Plate 9. Looking southeast from Chickahominy slough across the pasture to oak woodland on the higher elevation southern boundary of the property.

### Description of the Surrounding Area

Much of the lower elevation Chickahominy watershed is cultivated. Orchards are present immediately north of the project site on the north side of County Road 29, with a combination of orchards, row crops, and pastures eastward and mostly irrigated and non-irrigated pasture westward. The surrounding rolling hills are mostly annual grass with patches of oak woodland typical of the interior Coast Ranges. Further to the west, woodland communities dominate in the higher elevations, and further eastward, cultivated lands dominate the Central Valley landscape.

### General Wildlife Use

Wildlife use of the property is typical of the transition area between the Central Valley and inner Coast Ranges and includes species associated with cultivated lands and those associated with woodlands and grassland/pasture habitats. A few of the common mammals of this area include grey fox (*Urocyon cinereoargenteus*) coyote (*Canis latrans*), striped skunk (*Mephitis mephitis*), black-tailed jackrabbit (*Lepus californicus*), California ground squirrel (*Otospermophilus beecheyi*), and meadow vole (*Microtus californicus*). A variety of riparian or oak woodland associated birds were noted during the survey along Chickahominy Slough including oak titmouse (*Baeolophus inornatus*), western flycatcher (*Empidonax difficilis*), scrub jay (*Apelocorna coerulescen*), common flicker (*Colaptes auratus*), white-breasted nuthatch (*Sitta carolinensis*), mockingbird (*Mimus polyglottos*), western kingbird (*Tyrannus verticalis*), tree swallow (*Iridoprocne bicolor*), and Bewick's Wren (*Thryomanes bewickii*). The wetland around the 2-acre pond was dominated by red-winged blackbirds (*Agelaius phoeniceus*) with at least 10 tricolored blackbirds also occupying the pond. Birds observed in the grassland/pasture areas include western meadowlark (*Sturnella neglecta*), savannah sparrow (*Passerculus sandwichensis*), Swainson's hawk, common raven (*Corvus corax*), and wild turkey (*Meleagris gallopavo*).

## Special-Status Species

Special-status species are generally defined as species that are assigned a status designation indicating possible risk to the species. These designations are assigned by state and federal resource agencies (e.g., California Department of Fish and Wildlife, U.S. Fish and Wildlife Service) or by private research or conservation groups (e.g., National Audubon Society, California Native Plant Society). Assignment to a special-status designation is usually done on the basis of a declining or potentially declining population, either locally, regionally, or nationally. To what extent a species or population is at risk usually determines the status designation. The factors that determine risk to a species or population generally fall into one of several categories, such as habitat loss or modification affecting the distribution and abundance of a species; environmental contaminants affecting the reproductive potential of a species; or a variety of mortality factors such as hunting or fishing, interference with man-made objects (e.g., collision, electrocution, etc), invasive species, or toxins.

For purposes of environment review, special-status species are generally defined as follows:

- Species that are listed, proposed, or candidates for listing under the federal Endangered Species Act (50 CFR 17.11 – listed; 61 FR 7591, February 28, 1996 - candidates);
- Species that are listed or proposed for listing under the California Endangered Species Act (Fish and Game Code 1992 Sections 2050 et seq.; 14 CCR Sections 670.1 et seq.);
- Species that are designated as Species of Special Concern by CDFW;
- Species that are designated as Fully Protected by CDFW (Fish and Game Code, Section 3511, 4700, 5050, and 5515);
- Species included on Lists 1B or 2 by the California Native Plant Society;
- Species that meet the definition of rare or endangered under CEQA (14 CCR Section 15380).

Table 1 indicates the special-status species that have potential to occur on or in the vicinity of the project, along with their habitat association, the availability of habitat on the project site, and whether or not the species has been detected on the project site.

**Table 1. Special-status species with potential to occur on the Field and Pond project site.**

Species	Status State/Federal	Habitat Association	Habitat Availability on the Project Site	Reported Occurrence on the Project Site
Valley elderberry longhorn beetle <i>Desmocerus californicus dimorphus</i>	-/T	Elderberry shrubs	Elderberry shrubs present along Chickahominy Slough	Yes (habitat only, VELB presence has not been confirmed)
Western pond turtle <i>Actinemys marmorata</i>	CSC/-	Streams, ponds, water conveyance channels	Potential in 2-acre pond, unlikely at Chickahominy slough due to ephemeral flow	No
Mountain plover <i>Charadrius montanus</i>	CSC/PT	Short grassland, plowed cultivated fields	Very limited potential in pasture	No

Species	Status State/ Federal	Habitat Association	Habitat Availability on the Project Site	Reported Occurrence on the Project Site
White-tailed kite <i>Elanus leucurus</i>	FP/-	Nests in trees, forages in grasslands, seasonal wetlands, and fields.	Suitable nesting habitat along slough and suitable foraging habitat in adjacent grasslands.	No, nearest reported nest 0.5 miles from project
Swainson's hawk <i>Buteo swainsoni</i>	T/-	Nests in trees, forages in grassland and cultivated fields	Suitable nesting habitat along slough and suitable foraging habitat in adjacent grasslands	Yes, foraging observed, nearest nest 0.55 miles from project
Northern harrier <i>Circus cyaneus</i>	CSC/-/-	Grasslands, pastures, seasonal marshes, some agricultural edges	Suitable nesting and foraging habitat in grasslands south of slough.	No
Golden eagle <i>Aquila chrysaetos</i>	FP/-/-	Nests on cliffs or in large trees, hunts in grasslands and shrublands	Suitable nesting and foraging south of slough.	Yes
Burrowing owl <i>Athene cunicularia</i>	CSC/-/-	Grasslands, field edges with ground squirrel activity	Marginally suitable habitat south of slough.	No
Loggerhead shrike <i>Lanius ludovicianus</i>	CSC/-/-	Grasslands, scrub, agricultural areas	Suitable nesting habitat in riparian and roadside trees and suitable foraging habitat south of slough.	No
Tricolored blackbird <i>Agelaius tricolor</i>	CSC/-/-	Emergent marshes, blackberry thickets, silage, grasslands, pastures	Suitable nesting habitat in marsh at 2-acre pond, suitable foraging habitat south of slough.	Yes
Grasshopper sparrow <i>Ammodramus savannarum</i>	CSC/-/-	Grasslands on rolling hills, lowland plains and valleys, and on lower mountain slopes	Suitable habitat in grasslands south of slough.	No
American badger <i>Taxidea taxus</i>	CSC/-/-	Open grasslands, grassy slopes.	Suitable grassland habitat on the far southern edge of the property	No
Palid bat <i>Antrozous pallidus</i>	CSC/-/-	deserts, grasslands, shrub lands, woodlands.	No roosting, may hunt in grasslands, ponds, and riparian	No
Townsend's big-eared bat <i>Corynorhinus townsendii</i>	CSC/-/-	Caves, bridges, buildings, rock crevices, tree hollows	No roosting, may hunt grasslands, ponds, and riparian	No
Western red bat <i>Lasiurus blossevillii</i>	-/CSC/-	Roosts in large trees, hunts over woodlands, grasslands and cultivated habitats	Possible roosting in valley oaks and cottonwoods along slough.	No

Species	Status State/Federal	Habitat Association	Habitat Availability on the Project Site	Reported Occurrence on the Project Site
rose-mallow ( <i>Hibiscus lasiocarpus</i> )	-/-/2	Riparian, springs, seeps	Possible habitat along slough	No
bent-flowered fiddleneck ( <i>Amsinckia lunaris</i> )	-/-/1B	Higher elevation grasslands and woodlands	Potential habitat south of slough	No
Adobe-lily ( <i>Fritillana pluniflora</i> )	-/-/1B	Grassy hillsides	Potential habitat south of slough	No
Round-leaved filaree ( <i>Erodium macrophyllum</i> )	-/-/2	Grasslands	Potential habitat south of slough.	No
Dwarf downingia ( <i>Downingia pusilla</i> )	-/-/2	Grasslands and wetlands	Potential habitat south of slough.	No
Fragrant fritillary ( <i>Fritillaria liliacea</i> )	-/-/1B	Grasslands	Potential habitat south of slough.	No
Brewer's western flax ( <i>Hesperolinon breweri</i> )	-/-/1B	Grasslands	Potential habitat south of slough.	No

T=threatened; E=Endangered; PE=Proposed Threatened; CSC=California species of species concern; FP=state fully protected; 1B=CNPS List 1B; 2=CNPS List 2.

**Valley Elderberry Longhorn Beetle.** The valley elderberry longhorn beetle (VELB) (*Desmocerus californicus dimorphus*) is a medium-sized woodboring beetle, about 0.8 inches long. Endemic to California's Central Valley and watersheds that drain into the Central Valley, this species' presence is entirely dependent on the presence of its host plant, the elderberry shrub (*Sambucus* spp.). VELB is a specialized herbivore that feeds exclusively on elderberry shrubs, the adults feeding on leaves and flowers, and the larvae on the stem pith. Habitat for VELB consists of elderberry shrubs with stems greater than 1 inch in basal diameter. Elderberry grows in upland riparian forests or savannas adjacent to riparian vegetation, but also occurs in oak woodlands and savannas and in disturbed areas. It usually co-occurs with other woody riparian plants, including valley oak, Fremont cottonwood, various willows, and other riparian trees and shrubs (Barr 1991, U.S. Fish and Wildlife Service 1984, Collinge et al 2001).

Several mature elderberry shrubs were noted along Chickahominy Slough within the project boundary. No shrubs were found in upland sites in the immediate vicinity of project features. VELB has been reported from the western foothills, the nearest of which is along Union School Slough approximately 2 mile northeast of the project site (CNDDDB 2015).

**Western Pond Turtle.** Western pond turtles (*Actinemys marmorata*) are closely associated with permanent water bodies, such as lakes, ponds, slow moving streams, and irrigation canals that include down logs or rocks basking sites, and that support sufficient aquatic prey. Western pond turtles also require upland habitat that is suitable for building nests and to overwinter. Nests are constructed in sandy banks immediately adjacent to aquatic habitat or if necessary, females will climb hillsides and sometimes move considerable distances to find suitable nest sites (Jennings and Hayes 1994).

Streams, such as Chickahominy Slough provide marginal habitat for pond turtles due to seasonal or intermittent flows. However, because it's a permanent water body, the 2-acre pond may provide suitable aquatic conditions, although basking habitat is lacking. The surrounding grassland/pastures and nearby banks of Chickahominy slough may provide suitable upland nesting and dispersal habitat. The excavated pond south of the slough may provide occasional

seasonal aquatic habitat. No western pond turtles were observed during the field survey and none have been reported from the project site.

**Mountain Plover.** Unlike most other plover species, the mountain plover (*Charadrius montanus*) is an upland species, often found far from water. The mountain plover does not breed in California, but does occur during the winter. The species arrives on its wintering grounds in California from November through December where it remains through March. The wintering habitat of mountain plovers in the Central Valley has been described as pastureland nearly devoid of vegetation, sparsely vegetated fields, grazed grasslands and disked agricultural fields. The species occurs only in areas either devoid of or with very sparse and short vegetation (Stoner 1942, Manolis and Tangren 1975, Hunting et al. 2001, Hunting and Edson 2008).

Mountain plovers are uncommon, localized winter visitors to Yolo County. Small flocks have been observed in recently-plowed agricultural fields near Woodland and Davis, especially along County Roads 16, 25, 27, and 102 and in unflooded portions of the Yolo Bypass. The project site does not support habitat typical of this species. Although some portion of the grassland/pasture habitat south of Chickahominy slough may occasionally provide suitable habitat conditions, in general the vegetation height and density is greater than is typically associated with this species.

**Swainson's Hawk.** The Swainson's hawk is a medium-sized raptor associated with generally flat, open landscapes. In the Central Valley it nests in mature native and nonnative trees and forages in grassland and agricultural habitats. Although a state-threatened species, the Swainson's hawk is relatively common in Yolo County due to the availability of nest trees and the agricultural crop patterns that are compatible with Swainson's hawk foraging. Numerous nest sites have been documented in Yolo County, but relatively few in the far western portion of the valley (Estep 2008).

Suitable nesting habitat for the Swainson's hawk on the property includes all mature trees along Chickahominy Slough. The pasture south of Chickahominy Slough is suitable foraging habitat for the species. During the site visit an adult Swainson's hawk was observed foraging in the pasture south of Chickahominy Slough, indicating foraging use of the property. Further observation of this bird revealed the location of its nest 0.2 miles northwest of the northwest corner of the property and approximately 0.55 miles northwest of the main house. The nest is in a large eucalyptus tree on the north side of County Road 29.

**White-tailed kite.** The white-tailed kite (*Elanus leucurus*) is a highly specialized and distinctively-marked raptor associated with open grassland and seasonal wetland landscapes. It typically nests in riparian forests, woodlands, woodlots, and occasionally in isolated trees, primarily willow, valley oak, cottonwood, and walnut) and some nonnative trees. It forages in grassland, seasonal wetland, and agricultural lands, but is more limited in its use of cultivated habitats compared with the Swainson's hawk. As a result, the species occurs throughout most of Yolo County, but in low breeding densities (Dunk 1995, Erichsen 1995, Estep 2008).

Suitable nesting habitat for the white-tailed kite on the property includes all mature trees along Chickahominy Slough. The pasture south of Chickahominy Slough is suitable foraging habitat for the species. A white-tailed kite was observed during the field visit near the above-mentioned Swainson's hawk nest tree. 0.2 miles northwest of the northwest corner of the property. The kite was exhibiting aggressive territorial behavior toward the Swainson's hawk suggesting that it also had a nest nearby. Several suitable trees are present in the area and the surrounding grassland/pasture is suitable foraging habitat for this species.

**Northern harrier.** The northern harrier (*Circus cyaneus*) is a ground-nesting raptor, constructing rudimentary nest sites on the ground in marsh, grassland, and some agricultural habitats, particularly grain fields. They forage in seasonal wetland, grassland, and agricultural habitats for voles and other small mammals, birds, frogs, and small reptiles, crustaceans, and insects. They also roost on the ground, using tall grasses and forbs in wetlands, or along wetland/field borders for cover (MacWhirter and Bildstein 1996).

This species was not observed during the site visit, but the grassland/pasture south of Chickahominy Slough provides suitable nesting and foraging habitat.

**Golden Eagle.** The golden eagle (*Aquila chrysaetos*) nests on cliffs or in trees and hunt in nearby open habitats, such as grasslands, oak savannas, and open shrublands. Trees, primarily oak and foothill pine are more commonly used for nesting in the interior Coast Ranges where suitable cliff nesting habitat is scarce. In the interior central Coast Ranges, golden eagles forage primarily in grazed grasslands, open shrublands, and oak savanna communities supporting large populations of ground squirrels. The nesting distribution of golden eagles in Yolo County is restricted to the high elevation mountainous areas on the western side of the county that support a mixture of oak woodland, grassland, and chaparral communities (Dixon 1937, Carnie 1954, Connelly *et al.* 1976, Hunt *et al.* 1999).

There are few official records of golden eagle nests in Yolo County; however, several have been incidentally reported over the years and are likely extant. Eagles have been reported in areas of Blue Ridge, Rocky Ridge, and the Capay Hills east of Capay Valley. Golden eagles are also occasionally observed foraging in the grassland foothills along the western edge of the valley during the breeding season, and are occasionally observed, mainly during the winter months, on the valley floor. There are undoubtedly more nesting golden eagle pairs along the eastern slope that have not been reported due to the general inaccessibility of much of this area. A letter commenting on the IS/MWD (letter from Chad Roberts dated April 4, 2016) indicates the presence of an historic golden eagle nest on the property. There are currently no active golden eagle nests on the property; however, several of the oak trees on the far southern edge of the property are suitable nest trees and the grassland/pastureland south of Chickahominy Slough is suitable foraging habitat.

**Western Burrowing Owl.** The western burrowing owl (*Athene cunicularia*) occurs in open, dry grasslands, agricultural and range lands, and desert habitats. In the Central Valley, they are associated with remaining grassland habitats, pasturelands, and edges of agricultural fields. They also occur in vacant lots and remnant grassland or ruderal habitats within urbanizing areas. Historically nesting in larger colonies, due to limited nesting habitat availability most of the more recent occurrences are individual nesting pairs or several loosely associated nesting pairs. The burrowing owl is a subterranean-nesting species, typically occupying the burrows created by California ground squirrels (*S. beecheyi*). They also occupy artificial habitats, such as those created by rock piles and occasionally in open pipes and small culverts. They forage for small rodents and insects in grassland and some agricultural habitats with low vegetative height. Key to burrowing owl occupancy are grassland or ruderal conditions that maintain very short vegetative height around potential nesting sites. They will generally avoid otherwise suitable grassland habitats if vegetation exceeds 12 inches in height (Gervais *et al.* 2008).

In Yolo County, burrowing owls occur mainly in the grassland and pasture habitats of the southern panhandle and in cultivated and ruderal habitats in the Davis area. However, nesting pairs have also been reported from the area immediately north of Winters and elsewhere along the grassland foothills on the west side of the valley. The nearest reported active site is within 2

miles northeast of the property in similar grassland/pasture habitat. No burrowing owls were observed on the property during the survey. The grassland/pasture vegetation south of Chickahominy Slough, while generally suitable, is likely too tall and dense to attract burrowing owls other than for incidental foraging.

**Loggerhead Shrike.** The loggerhead shrike (*Lanius ludovicianus*) occurs in open habitats with scattered trees, shrubs, posts, fences, utility lines, or other perches. It nests in small trees and shrubs and forages for small rodents, reptiles, and insects in pastures and agricultural lands. It has been reported from numerous locations in Yolo County (CNDDDB 2015), including the grassland and oak savannah foothills along the western edge of the valley.

Although no loggerhead shrikes were observed during the survey, the trees and shrubs along Chickahominy Slough and the grassland/pasture south of the slough provide suitable habitat conditions for this species.

**Grasshopper Sparrow.** Grasshopper sparrows (*Ammodramus savannarum*) are found in dry, well-drained grasslands with patches of bare ground that may include scattered, taller shrubs or annuals that are used for song perches. Suitable grassland habitats include native bunchgrass, wild rye, and wet meadows. Pasturelands and annual grasslands dominated by star thistle are rarely used. They are commonly found along grassy hill slopes and sometimes in flat terrain. In Yolo County, they are considered rare and irregular (not annual) breeders in the Yolo Bypass and the grasslands in the lower foothills. Breeding season records include along County Road 105 and near Pleasant's Valley Bridge, and Dunnigan Hills, County Road 88, near the intersection of County Roads 27 and 96, and at the Grasslands Regional Park (Yolo Audubon Society Checklist Committee 2004, Unitt 2008).

This species was not observed on the property during the field survey; however, the grassland/pasture south of Chickahominy slough provide suitable habitat.

**Tricolored Blackbird.** Although currently designated as a state species of special concern, the legal status of the tricolored blackbird has recently been under review by the CDFW and the USFWS. The species was emergency listed as endangered under the state endangered species act in December 2014, which expired in December 2015. The species is currently under review for a permanent state listing. The species is also currently under review by the USFWS following a 90-day finding that formal federal listing may be warranted.

The tricolored blackbird nests in colonies from several dozen to several thousand breeding pairs. They have three basic requirements for selecting their breeding colony sites: open accessible water; a protected nesting substrate, including either flooded or thorny or spiny vegetation; and a suitable foraging space providing adequate insect prey within a few miles of the nesting colony. Nesting colonies are found in freshwater emergent marshes, in willows, blackberry bramble, thistles, or nettles, and in silage and grain fields. Suitable foraging habitat includes grasslands, pasturelands, seasonal wetlands, and some cultivated habitats (Beedy and Hamilton 1999).

There has been limited reported use of the 2-acre pond site by tricolored blackbirds for several years. The Tricolored Blackbird Portal (<http://tricolor.ice.ucdavis.edu/>) reports the following observations since 2011:

- 2011 – 35 birds detected
- 2014 – 0 birds detected

- 2016 – 1 bird detected

The portal also includes a map used during the 2008 statewide survey that appears to identify the 2-acre pond as an unconfirmed location for a breeding colony site, but no other specifics are provided. While breeding may have occurred at the site in previous years, it does not appear to have been confirmed. It is likely that previous observations were made from County Road 29, limiting access to the marsh and the ability to estimate the number of birds or confirm breeding. However, all observations were made during the breeding season, so the observations could be unconfirmed breeding records.

During the site visit, 10 individual tricolored blackbirds were detected at the 2-acre pond marsh. These birds flew into the marsh at the far western end of the pond, remained perched on the cattail vegetation for several minutes, and then flew up from the marsh into the olive trees bordering County Road 29. None exhibited breeding or territorial behavior. Red-winged blackbirds were common around the entire length of the cattail marsh. Territorial male red-winged blackbirds along with numerous females occupied the entire perimeter of the marsh. Although it is possible for red-winged blackbirds and tricolored blackbirds to occupy the same marsh habitat, it did not appear nor was it confirmed that the few tricolored blackbirds observed were nesting at the site.

Whether or not tricolored blackbirds are breeding, the marsh is considered occupied by the species. In addition, the grassland/pasture south of Chickahominy Slough and neighboring open lands are suitable foraging habitat for this species and essential for continued occupancy.

**American Badger.** The American badger occurs primarily on open, dry grassland and pasture habitats. The species has a widespread distribution, but is a solitary animal that occurs in relatively low densities, particularly in the grassland and savannah habitats around the perimeter of the Central Valley. The badger is a burrowing mammal, usually occupying multiple burrows within its territory. The badger also digs for its prey, mostly mice and squirrels, and so is often considered a pest species in working landscapes. There are relatively few records of badgers in Yolo County and most are historic occurrences. Most of the available open grassland habitat occurs in the Dunnigan Hills and the eastern slopes of the Capay Hills and Blue Ridge Mountains.

No badgers or badger sign were observed on the property during the survey; however, the grasslands on the far southern portion of the property provide suitable habitat for this species. A letter commenting on the IS/MWD (letter from Chad Roberts dated April 4, 2016) notes a personal observation of a badger in the vicinity of the property.

**Special-status Bats.** Three special status bats potentially occur in the vicinity of the project site, including pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii townsendii*), and western red bat (*Lasiurus blossevillii*), all state species of special concern. Pallid bat occurs primarily in shrublands, woodlands, and forested habitats, but also can occur in grasslands and agricultural areas. Townsends's big-eared bat occurs in a variety of woodland and open habitats, including agricultural areas. Western red bat occurs in wooded habitats, including orchards, and grasslands. Pallid bat and Townsend's big-eared bat roost in mines, caves, rocky crevices, large hollow trees, and occasionally in large open buildings that are usually abandoned or infrequently inhabited. Western red bat usually roosts in large trees (Pierson and Rainey 1998, Pierson 1998, Fellers and Pierson 2002)

There is no roosting habitat for pallid bat or Townsends big-eared bat on or immediately adjacent to the project site. Western red bat could potentially roost in the large valley oak and cottonwood trees along Chickhominy Slough. All species could potentially forage above the project site.

**Special-status Plants.** Several special-status plants also have potential to occur on or in the vicinity of the project. Grassland-associated species include bent-flowered fiddleneck (*Amsinckia lunaris*), Adobe-lily (*Fritillana pluniflora*), fragrant fritillary (*Fritillaria liliacea*), and Brewer's western flax (*Hesperolinon breweri*), all CNPS List 1B species; and Dwarf downingia (*Downingia pusilla*) and round-leaved filaree (*Erodium macrophyllum*), CNPS List 2 species. Rose-mallow (*Hibiscus lasiocarpus*), a CNPS List 2 species, occurs mainly in riparian habitats. Several other species associated with rocky serpentine soils may occur in the general area, but not on the project site. These include Snow Mountain buckwheat (*Eriogonum nervulosum*), Morrison's jewel flower (*Streptanthus morrisonii* ssp. *Morrisonii*), drymaria-like western flax (*Hesperolinon drymarioides*), Hall's harmonia (*Harmonia hallii*), Jepson's milk vetch (*Astragalus rattanii*) and Colusa layia (*Layia septentrionalis*), all CNPS List 1B species.

## Potential Impacts of the Project

### Habitat Loss.

Project components that would result in substantial loss of habitat are limited to those activities on the south side of Chickahominy Slough. Although a limited amount of conversion would occur from construction of the four cabins, parking area, pool and cabana, and garden area, these project elements are planned for areas within the homestead site that provide relatively limited biological resource value due to long term disturbance and use.

Installation of an orchard on 45 acres north of the slough would remove valuable wildlife habitat and have greater impact on the wildlife use of the area. This conversion would remove habitat for burrowing mammals, ground-nesting birds, and foraging habitat for a variety of birds and mammals. Conversion of this area to an orchard may also pose a barrier to movement from wildlife moving through the watershed and prevent access to a portion of Chickahominy Slough. Alone, this impact may not rise to the level of biological significance as per CEQA guidance; however, with the extent of ongoing orchard and vineyard conversion occurring within the watershed and along the lower east slope of Blue Ridge, it contributes to a cumulative impact that is potentially significant, affecting wildlife habitat availability and wildlife movement corridors.

### Noise and other Human Disturbances

Proposed project activities will increase the frequency and magnitude of noise and other human disturbances around the homestead site from current baseline levels. Events held in the restored barn and attendees accessing the homestead area including the 2-acre pond and within the riparian corridor may temporarily displace wildlife using those habitats during events and could cause some species to avoid breeding within some distance of the disturbance. Given the current use of the homestead site, including use of the facility for similar events up to eight times a year, the extent to which an increase in frequency and magnitude would further affect the resource value of the area above the baseline condition is somewhat unclear with regard to establishing and potentially exceeding a CEQA threshold for significance. However, the minimization measures described below should be employed to reduce the potential level of disturbance related to

proposed project elements to ensure that any potential impacts are reduced to less than significant levels.

The location of the proposed parking area on the north side of the 2-acre pond and the location of the proposed cabins, pool, and cabana may also displace wildlife and prevent breeding use by some species due to their close proximity to the emergent wetland and the riparian habitat along the slough. The current location of these project elements also appears to violate General Plan Policy CO-2.22, which prohibits development within a minimum of 100 feet from the top of banks for all lakes, perennial ponds, rivers, creeks, sloughs, and perennial streams. Although this impact may not reach a level of significance as per CEQA guidance, the project should be redesigned to comply with General Plan Policy CO-2.22 and additional minimization measures employed to further reduce the effects of project-related human disturbances on these sensitive habitats.

### **Special-status Species**

#### **Valley Elderberry Longhorn Beetle**

Mature elderberry shrubs are present along Chickahominy Slough. Because these shrubs could be occupied by the valley elderberry longhorn beetle, direct or indirect disturbance to elderberry shrubs could result in a take of the species pursuant to the federal endangered species act. To avoid impacting the species, federal guidelines establish a 100-foot setback requirement from all elderberry shrubs with stems greater than 1-inch in diameter. Because this setback requirement is consistent with the 100-foot set-back requirement in the Yolo County General Plan (Policy CO-2.22), adhering to Policy CO-2.22 will sufficiently avoid impacts to elderberry longhorn beetle habitat along Chickahominy Slough.

#### **Swainson's Hawk**

The property supports numerous potential nest trees for Swainson's hawk along Chickahominy Slough; however, there are no nests currently on the property and no potential nest trees will be removed. There is one known nest in the immediate vicinity of the property, approximately 0.55 miles northwest of the main house. This distance is sufficient to avoid disturbance to the nest site from noise and other human disturbances resulting from the proposed project. Therefore, the project is not expected to impact Swainson's hawk nests or nesting habitat.

Installation of the orchard proposed in the original IS/MND south of Chickahominy Slough would remove 45 acres of Swainson's hawk foraging habitat. Because this is included as part of the project it is subject to CEQA review and thus is also subject to compensatory mitigation to offset the loss of foraging habitat pursuant to the Agreement Regarding Mitigation for Impacts to Swainson's Hawk Foraging Habitat in Yolo County (Agreement between CDFW and the Yolo County Joint Powers Authority). General Plan Policy CO-2.42 also requires compliance with this agreement. .

#### **Tricolored Blackbird**

Although nesting does not appear to have been confirmed, small numbers of tricolored blackbirds have occupied the marsh during the breeding season since at least 2011, including 10 individuals observed during this survey. Prior to this year, it appears that most or all previous observations were made from County Road 29, thus making it difficult to estimate the number of tricolored blackbirds occupying the marsh and to observe and confirm breeding. However, surveys

conducted this year, which occurred around the entire perimeter of the marsh, did not detect breeding behavior. Still, although the small number of birds, the lack of confirmed breeding, and presence of red-winged blackbirds as the primary breeding occupant of the marsh would suggest this is not a significant breeding site for tricolored blackbirds, detections during breeding season indicate occupancy and potential (but unconfirmed) breeding.

Tricolored blackbirds are sensitive to a variety of human disturbances near their breeding colonies, particularly during the incubation phase of the breeding cycle (typically April/May). The species also requires nearby foraging habitat. The adjacent pasture is essential for continued occupancy and possible use of the marsh as a breeding site. Project elements that could potentially affect continued occupancy by tricolored blackbirds are the construction and use of the proposed parking lot just north of the pond, the conversion of the 45 acres of grassland/pasture to orchard, and an increase in the frequency and magnitude of noise and other disturbances related to proposed events occurring during the breeding season. For purposes of this assessment, confirmed breeding of tricolored blackbirds must be established for a habitat or disturbance-related impact to reach a level of significance. If breeding were confirmed at the site, these project elements would constitute a potentially significant impact to this species.

### **Other Special-status Species**

Installation of the 45-acre orchard would also remove habitat for several other special-status species including white-tailed kite, golden eagle, northern harrier, loggerhead shrike, grasshopper sparrow, and American badger.

## **Recommendations**

1. **Maintain a 100-foot setback for all new construction.** General Plan Policy CO-2.22 and the valley elderberry beetle take avoidance guidelines require a 100-foot setback from Chickahominy Slough and the 2-acre pond. This would avoid potential take of valley elderberry longhorn beetle as per the federal take avoidance guidelines, reduce disturbances to nesting birds at the 2-acre marsh including tricolored blackbird, and reduce disturbance to wildlife using the riparian habitat along Chickahominy Slough. This would necessitate the following changes to the project:

- Relocate the parking lot from its current location north of the 2-acre pond. The most appropriate location for the parking area may be the strip of disturbed grass between County Road 29 and the gravel driveway east of the Main House.
- Remove the four proposed cabins from the project due to the relocation of the parking area.
- Relocate the proposed pool and cabana, which should be moved closer to the main house area to consolidate project elements.

2. **Minimize Noise and other Human Disturbances.** The homestead site has been subject to noise and other human disturbances for many decades. This has likely affected the use of the site and immediately surrounding area by wildlife. Species that are tolerant of disturbances continue to occur and those less tolerant probably avoid the immediate area. The proposed project will increase the level of construction and operational disturbances, which may contribute further to wildlife avoidance. To minimize this impact, the following are recommended:

- Consolidate to the extent possible all project features and use areas in order to minimize the disturbance footprint.
- During scheduled events, similar to General Plan Policies, CO-2.1, CO-2.9, CO-2.11, and CO-2.22, maintain a 100-foot buffer around the western and northern portions of the 2-acre pond and along Chickahominy Slough, and prohibit visitor access into the buffer during the tricolored blackbird's breeding season (approximately March through August). Walking paths should be outside of the 100-foot buffer. Rail fencing can be used to delineate the buffer.
- Reduce the number of events per year by implementing Mitigation Measure AG-2 in the IS/MND. Currently eight events per year are allowed, or about one per month from March through November. The proposed project as described in the IS/MND includes a nearly 6-fold increase to 45 events per year. Reducing this to 25 events per year according to Mitigation Measure AG-2 would reduce the frequency of temporary avoidance of wildlife habitats due to noise and other disturbances.
- Consistent with General Plan Policies CO-2.3, CO-2.9, and CO-2.10, enhance riparian habitat values and hydrologic function of Chickahominy Slough by restoring the stream bank where needed and planting riparian vegetation along the stream to fill in vegetation gaps and within the 100-foot buffer to increase the width of the riparian corridor. This creates additional screening and reduces disturbances to wildlife using the interior of the corridor.
- Maintenance of cattail growth in the 2-acre pond should not occur during the breeding season (approximately March through August).

**3. Remove the 44-acre orchard from the project.** To avoid removing habitat of special-status species, including the Swainson's hawk golden eagle, white-tailed kite, loggerhead shrike, grasshopper sparrow, and tricolored blackbird, and to avoid the need to mitigate for the loss of Swainson's hawk foraging habitat, do not convert the 45 acre pasture to orchard. Use alternative land management, such as live stock grazing, for the grassland/pasture area south of the slough that does not alter the habitat value of the land or restrict wildlife movement or access to the slough. Eliminating the orchard from the project will avoid foraging habitats impacts to Swainson's hawks and the contribution to a potentially significant cumulative impact on wildlife habitat availability and wildlife movement corridors from orchard and vineyard expansion in the western foothills of Yolo County.

**4. Monitor tricolored blackbird activity and further minimize disturbances if breeding is confirmed.** As noted above, the homestead site has been subject to disturbances for many decades and the area is currently subject to regular and ongoing levels of human disturbances from permanent residents, visitors and activities at currently permitted events, maintenance activities, and other related disturbances. Wildlife using the 2-acre pond, including tricolored blackbirds, have habituated to this baseline level of disturbance. Since breeding has not been confirmed, if and the extent to which existing baseline disturbances have prevented breeding by tricolored blackbirds is unknown. However, breeding season occupancy of the 2-acre pond has been reported for several years, indicating the possibility of breeding under baseline disturbance conditions.

Project elements will increase the magnitude and duration of noise, human activity, and other related disturbances above the baseline condition. Although recommendations 1, 2, and 3 each include measures that would reduce the impacts of the proposed project on the tricolored blackbird, some project activities could increase disturbance levels above the baseline condition and potentially affect future breeding use of the 2-acre pond by tricolored blackbirds. If the

tricolored blackbird is confirmed to breed at the 2-acre pond, to further minimize construction and operational impacts and to reduce this potentially significant impact to a less-than-significant level, the following are recommended:

- Implement Mitigation Measure BIO-3 from the IS/MND to reduce construction-related impacts to tricolored blackbirds. Consistent with Avoidance and Minimization Measure 20 in the Draft Yolo County Habitat Conservation Plan/Natural Resources Conservation Plan, this measure will provide a 1,300 foot buffer (subject to reduction based on site-specific conditions through resource agency review) between breeding locations on the 2-acre pond and all construction activities during the breeding season (March through August) in the event breeding is confirmed in any given construction year. This will require a preconstruction survey be conducted each construction year to determine breeding use of the marsh.
- To address future operational impacts (e.g., noise and related disturbances during events), monitor tricolored blackbird activity at the 2-acre pond for a minimum of 5 years to determine occupancy and breeding status. If breeding is not confirmed during the 5-year period, monitoring can cease. If breeding is confirmed, monitoring continues until 5 consecutive years of non-breeding is confirmed.
- If breeding is not confirmed in any given year, than no further restrictions are necessary. If breeding is confirmed in any given year, then further restrict all activities in the vicinity of the breeding pond during the tricolored blackbird breeding season (March through August). If breeding occurs, it will most likely occur at the western end of the pond, which is approximately 500 feet from project facilities including the main house and the restored barn. This distance is consistent with most disturbance-related avoidance and minimization measures for this species. If breeding is confirmed, prohibit all visitor access within the 500-foot buffer during the breeding season (March through August).

## Literature Cited

- Barr, C. B. 1991. The distribution, habitat, and status of the valley elderberry longhorn beetle *Desmocerus californicus dimorphus* Fisher (Insecta: coleoptera: cerambycidae). U.S. Fish and Wildlife Service. Sacramento, CA.
- Beedy, E. C., and W. J. Hamilton III. 1999. Tricolored Blackbird (*Agelaius tricolor*). In The Birds of North America, No. 423 (A. Poole and F. Gill, eds.). The Academy of Natural Sciences, Philadelphia, and The American Ornithologists' Union, Washington, D.C.
- California Natural Diversity Data Base. 2015. Search of Yolo County quadrangles. California Department of Fish and Game, Sacramento, CA.
- Carnie, S.K. 1954. Food habits of nesting Golden Eagles in the coast ranges of California. Condor 56:3-12.
- Connolly, G.E., M.E. Fry, and J. Fammatre. 1976. Prey remains at a Golden Eagle, *Aquila chrysaetos*, nest near Hopland, California. California Fish and Game 62(1):85-86.
- Collinge, S. K., M. Holyoak, C. B. Barr, and J. T. Marty. 2001. Riparian habitat fragmentation and population persistence of the threatened valley elderberry longhorn beetle in Central California. Biological Conservation. 100: 103-113.

- Dixon, J.B. 1937. The Golden Eagle in San Diego County, California. *Condor* 39:49-56.
- Dunk, J.R. 1995. White-tailed Kite (*Elanus leucurus*). In *The Birds of North America*, No. 178 (A. Poole and F. Gill, eds.). The Academy of Natural Sciences, Philadelphia, and The American Ornithologists' Union, Washington, D.C.
- Erichsen, A. L. 1995. The White-tailed kite (*Elanus leucurus*): nesting success and seasonal habitat selection in an agricultural landscape. Thesis. University of California at Davis, Davis, California.
- Estep, J.A. 2008. The Distribution, Abundance, and Habitat Associations of the Swainson's Hawk (*Buteo swainsoni*) in Yolo County. Prepared for Technology Associates International Corporation and the Yolo County Habitat/Natural Community Conservation Plan JPA.
- Fellers, G. M., and E. D. Pierson. 2002. Habitat use and foraging behavior of Townsend's big-eared bat (*Corynorhinus townsendii*) in coastal California. *Journal of Mammalogy*, 83(1):167-177.
- Gervais, J.A., D.R. Rosenberg, and L.A. Comrack. 2008. Burrowing Owl in Shuford, W. D., and Gardali, T., eds. 2008. *California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California*. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- Hunt, W. G., R. E. Jackman, T. L. Hunt, D. E. Driscoll and L. Culp. 1999. A population study of Golden Eagles in the Altamont Pass Wind Resource Area; population trend analysis 1994–1997. *Predatory Bird Res. Group, Univ. of California, Santa Cruz*.
- Hunting, K., and L. Edson. 2008. Mountain Plover in Shuford, W. D., and Gardali, T., eds. 2008. *California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California*. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- Hunting, K. W., S. Fitton, and L. Edson. 2001. Distribution and Habitat Associations of the Mountain Plover (*Charadrius montanus*) in California. *Trans. West. Sect. Wildl. Soc.* 37: 37-42.
- Jennings, M.R. and M.P. Hayes. 1994. Amphibian and reptile species of special concern in California. California Department of Fish and Game, Sacramento, CA.
- MacWhirter, R.B. and K.L. Bildstein. 1996. Northern Harrier (*Circus cyaneus*). In: *The Birds of North America*, No. 210 (A. Poole and F. Gill [eds.]). The Academy of Natural Sciences, Philadelphia, PA, and The American Ornithologists' Union, Washington, D.C.
- Manolis, T. and G. V. Tangren. 1975. Shorebirds of the Sacramento Valley, California. *Western Birds* 6: 45-54.
- Pierson, E. D. 1988. The status of Townsend's big-eared bats in California: Preliminary results 1987–1988. Unpublished Progress Report, Wildlife Management Division, California Department of Fish and Game, Sacramento, CA.

- Pierson, E. D., and W. E. Rainey. 1998. Pallid bat, *Antrozous pallidus*. In Terrestrial Mammal Species of Special Concern in California, Bolster, B. C., editor. Draft Bird and Mammal Conservation Program Report No. 98-14, California Department of Fish and Game.
- Stoner, E. A. 1943. Mountain Plover in Solano County, California. Condor 43: 158.
- Yolo Audubon Society Checklist Committee. 2004. Checklist of the Birds of Yolo County, California. Revised April 2004. Yolo Audubon Society, Davis, CA.

## **APPENDIX D2**

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**Estep Environmental Consulting – June 24, 2017 Tricolored  
Blackbird Survey and Habitat Assessment**





## **Memo**

To: Eric Parfrey, Yolo County; Dahvie James, Field and Pond

From: Jim Estep, Estep Environmental Consulting

Date: June 24, 2017

Subject: 2017 Tricolored Blackbird Survey and Habitat Assessment at Field and Pond

At your request, I conducted a tricolored blackbird survey and habitat assessment at the Field and Pond event center in Yolo County. The survey, conducted on June 22, 2017 from 1000 hours to 1200 hours, was conducted to comply with the Use Permit Conditions of Approval for the facility, which requires an annual survey be conducted to determine the presence or absence of nesting tricolored blackbirds. While onsite, I also examined the status of potential breeding habitat for this species.

There has been limited reported use of the 2-acre pond site by tricolored blackbirds for several years. The Tricolored Blackbird Portal (<http://tricolor.ice.ucdavis.edu/>) reports the following observations since 2011:

- 2011 – 35 birds detected
- 2014 – 0 birds detected
- 2016 – 1 bird detected

On April 27, 2016, I conducted a survey of the pond and reported 10 tricolored blackbird individuals. However, these birds, nor those reported in the Tricolored Blackbird Portal, were confirmed to be breeding.

No tricolored blackbirds were observed or heard during 2017 surveys. Several pairs of red-winged blackbirds were observed.

The extent of cattail marsh around the perimeter of the pond has declined since 2016. This appears to be related primarily to water level in the pond. Growth and extent of cattail marsh is dependent upon the presence of water. Cattails typically are dormant in the winter, but due to its rhizomatous root system, new growth emerges in the spring. However, if water recedes in the pond, cattails that occurred in areas that are no longer inundated will remain dormant until water levels recover. Because water level in the pond is lower than in 2016, the extent of cattail marsh has also subsequently been reduced. During the site visit, dead cattails were present throughout the perimeter of the pond with large, dry, matted vegetation on the west and northwest ends of the pond (Plate 1).



*Plate 1. Looking east from the northwest corner of the pond. Note the large dormant area of cattails. This area was dry, leaving the cattail vegetation in a dormant state and reducing the extent of marsh habitat around the pond.*

Gradually receding water in the pond may have begun prior to 2016. Plate 2 is a photo taken on April 27, 2016. As seen in the photo, the outer perimeter of the cattail marsh was dormant at the time. With continued lack of water, the vegetation will eventually lay down as seen in Plate 3, which is a photo of the same location taken on June 22, 2017. Plate 4 may illustrate the gradual dormancy of the cattails due to receding water level as indicated by the different coloration of the dead vegetation and the narrow band of new living cattails at the edge of the pond. The rhizomatous root system remains intact throughout the perimeter of the pond. If desired, currently dormant portions of the marsh will recover as water level in the pond increases.



*Plate 2. Dead cattail vegetation at the southwest corner of the pond in 2016. Looking east from the west side of the pond.*



*Plate 3. Dead cattail vegetation at the southwest corner of the pond in 2017. Looking east from the west side of the pond. Same location as in Plate 1. Note the larger area of older dead cattail vegetation laying down to form a dense mat.*



*Plate 4. Cattail marsh near the southwest corner of the pond. Looking north from the south side of the pond. The different coloration of the dead vegetation may represent different seasons of dormancy followed by lack of sufficient water for new growth to emerge, which is currently restricted to the edge of the pond.*

In addition to the dormant cattail marsh areas, a small area of cattails was also removed at the eastern end of the pond. This area, immediately east of the observation pier, supported only a narrow band of cattails and was not considered suitable for tricolored blackbirds. Birds that had been observed in previous years were in the larger intact marsh on the northwestern side of the marsh. Plate 5 shows the location of the removed cattails. The intention of the Field and Pond facility is to limit cattail marsh at this location in order to maintain a beach-like area with an unobstructed view of the pond.

Tricolored blackbirds require at least a 15-meter-wide intact cattail marsh for successful breeding (Meese and Beedy 2015). From Plate 5, it is clear that the narrow band of cattails that were removed was insufficient to support breeding tricolored blackbirds. In my opinion, the removal of this narrow band of cattails has had no substantial effect on tricolored blackbird use of the pond. Further, according to Meese and Beedy (2015), with the exception of the northwest corner of the pond, nearly all of the cattail marsh around the pond is considered too narrow to support breeding tricolored blackbirds. But much of this area also remains dormant presumably due to the receding water levels in the pond (Plate 2). In its current condition, there is insufficient cattail marsh habitat around the pond to support breeding tricolored blackbirds. But with an increase in the pond water level, cattail marsh will reestablish in currently dormant areas around the pond.



*Plate 5. Looking west from the eastern edge of the pond where a narrow band of cattails were removed in 2017.*

### **References Cited**

Meese, R.J. and E.C. Beedy. 2015. Managing Nesting and Foraging Habitats to Benefit Breeding Tricolored Blackbirds. Central Valley Bird Club Bulletin, Vol 17: No 2-4.

## **APPENDIX D3**

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**Estep Environmental Consulting - May 31, 2018 Memo: Field  
and Pond Project, Supplemental Survey Data**





## **Privileged and Confidential**

### **Memo**

To: Eric Parfrey, Yolo County

From: Jim Estep, Estep Environmental Consulting

Date: May 31, 2018

Subject: Field and Pond project, supplemental survey data for focused EIR

On March 27, April 17, and May 8, 15, 22, and 29, 2018, I conducted field surveys to provide supplemental biological information that can be used in the development of the focused environmental impact report (EIR) for the Field and Pond project. I conducted the initial biological surveys of the project site on April 27, 2016. The results were included in my June 20, 2016 report and summarized in Initial Study/Mitigated Declaration (IS/MND) for the project. In response to public comments on the IS/MND, I also conducted a follow-up survey on June 22, 2017, with results reported in my June 24, 2017 memo and summarized in a revised MND (RMND). A lawsuit challenging several aspects of the RMND resulted in a Yolo Superior Court finding that three biological issues (tricolored blackbird, valley elderberry longhorn beetle, and golden eagle) were not sufficiently addressed in the RMND and that a focused EIR would be required. The following summarizes the results of March-May 2018 surveys along with a re-assessment of impacts and proposed mitigation measures.

### **Valley Elderberry Longhorn Beetle**

The valley elderberry longhorn beetle (VELB) (*Desmocerus californicus dimorphus*), a federally threatened species, is a medium-sized woodboring beetle, about 0.8 inches long. Endemic to California's Central Valley and watersheds that drain into the Central Valley, this species' presence is entirely dependent on the presence of its host plant, the elderberry shrub (*Sambucus* spp.). VELB is a specialized herbivore that feeds exclusively on elderberry shrubs, the adults feeding on leaves and flowers, and the larvae on the stem pith. Habitat for VELB consists of elderberry shrubs with stems greater than 1 inch in basal diameter. Elderberry grows in upland riparian forests or savannas adjacent to riparian vegetation, but also occurs in oak woodlands and savannas and in disturbed areas. It usually co-occurs with other woody riparian plants, including valley oak, Fremont cottonwood, various willows, and other riparian trees and shrubs (Barr 1991, U.S. Fish and Wildlife Service 1984, Collinge et al 2001). The nearest reported occurrence of VELB is approximately 2 miles northeast of the project site (CNDDDB 2018).

## **Methods**

I walked the entire Field and Pond project site on the north side of Chickahominy Slough to confirm the locations of all elderberry shrubs in the vicinity of the project site. Each shrub was mapped and GPS locations were recorded.

## **Results**

Five elderberry shrubs were found within the project site, and as reported in my initial June 2016 biological assessment, all are along Chickahominy Slough. GPS coordinates for these shrubs are as follows:

Shrub 1: 38.593430N -122.027303W

Shrub 2: 38.593593N -122.026685W

Shrub 3: 38.593123N -122.024723W

Shrub 4: 38.592930N -122.024441W

Shrub 5: 38.593127N -122.024494W

## **Impact**

To avoid direct or indirect disturbance to elderberry shrubs that provide potential habitat for VELB, U.S. Fish and Wildlife Service (USFWS) guidelines require a 100-foot setback from potentially occupied elderberry shrubs. The Yolo County General Plan (Policy CO-2.22) also requires a 100-foot setback from riparian corridors. All elderberry shrubs in the vicinity of the project site occur within the riparian corridor along Chickahominy Slough and would therefore be protected from direct or indirect disturbances of new construction by maintaining the required 100-foot setback. Elderberry shrubs and VELB are not known to be sensitive to noise or human presence and therefore there is no USFWS guidance that restricts proximity to noise or other disturbances. Therefore, no impacts to the valley elderberry longhorn beetle are identified. The following mitigation measure should be implemented to comply with required setbacks.

## **Mitigation**

To avoid direct and indirect impacts to VELB, comply with USFWS guidance and Yolo General Plan Policy CO-2.22 by maintaining a 100-foot no ground disturbance setback from the upper bank of Chickahominy Slough. With implementation of this mitigation measure, impacts on VELB are considered less-than-significant.

## **Golden Eagle**

The golden eagle (*Aquila chrysaetos*), a species protected under the federal Bald and Golden Eagle Protection Act, nests on cliffs or in trees and hunts in nearby open habitats, such as grasslands, oak savannas, and open shrublands. Trees, primarily oak and foothill pine are more

commonly used for nesting in the interior Coast Ranges where suitable cliff nesting habitat is scarce. In the interior central Coast Ranges, golden eagles forage primarily in grazed grasslands, open shrublands, and oak savanna communities supporting large populations of ground squirrels. The nesting distribution of golden eagles in Yolo County is restricted to the higher elevation foothill and mountainous areas on the western side of the county that support a mixture of oak woodland, grassland, and chaparral communities (Dixon 1937, Carnie 1954, Connelly *et al.* 1976, Hunt *et al.* 1999).

There are few official records of golden eagle nests in Yolo County; however, several have been incidentally reported over the years and are likely extant. Eagles have been reported in areas of Blue Ridge, Rocky Ridge, and the Capay Hills east of Capay Valley. Golden eagles are also occasionally observed foraging in the grassland foothills along the western edge of the valley during the breeding season, and are occasionally observed, mainly during the winter months, on the valley floor. There are undoubtedly more nesting golden eagle pairs along the eastern slope that have not been reported due to the general inaccessibility of much of this area.

A letter commenting on the IS/MND (letter from Chad Roberts dated April 4, 2016) indicates the presence of an historic golden eagle nest on the property; however, no records were found on CNDDDB, e-bird, or other local data sources. There are currently no active golden eagle nests on the property; however, several of the oak trees on the far southern edge of the property are suitable nest trees and the grassland/pastureland south of Chickahominy Slough is suitable foraging habitat.

## **Methods**

To provide updated information on golden eagle nesting in the vicinity of the project, I conducted a search for active golden eagle nests on and in the vicinity of the project site. All potential nest trees along Chickahominy Slough and surrounding area to a distance of approximately 0.3 miles from the project site were inspected for the presence of nests. The surrounding area to a distance of approximately 1 mile from the project site was also surveyed to detect observations of golden eagles. The California Natural Diversity Data Base (CNDDDB 2018), e-bird, and other local sources were also checked for recent records of golden eagles in the vicinity of the project site.

## **Results**

No golden eagle nests were found on or in the vicinity of the project site. No golden eagles were observed perched or in flight on or in the vicinity of the project site. There are no reported golden eagle nests in the vicinity of the project site from CNDDDB (2018). The e-bird website reports recent sightings several miles from the project site, but none in the vicinity of the project site. The e-bird website reports one possible historic nest along Chickahominy Slough approximately 1 mile east of the project site as recently as 1999, but without confirmation or

more recent occurrences. No nests or golden eagles were observed at or in the vicinity of this location. No other local sources have reported nests in the vicinity of the project site.

### **Impact**

The project will not remove nesting or foraging habitat for the golden eagle. Because there are no nesting golden eagles in the vicinity of the project site, there is no potential for noise disturbance to impact nesting golden eagles. Therefore, impacts to golden eagles are considered less-than-significant and no mitigation is required.

### **Tricolored Blackbird**

Although currently designated as a state species of special concern, the legal status of the tricolored blackbird has recently been under review by the California Department of Fish and Wildlife (CDFW) and the USFWS. The species was emergency listed as endangered under the state endangered species act in December 2014, which expired in December 2015. The species is currently under review for a permanent state listing. The species is also currently under review by the USFWS.

The tricolored blackbird nests in colonies from several dozen to several thousand breeding pairs. They have three basic requirements for selecting their breeding colony sites: open accessible water; a protected nesting substrate, including either flooded or thorny or spiny vegetation; and a suitable foraging space providing adequate insect prey within a few miles of the nesting colony. Nesting colonies are found in freshwater emergent marshes, in willows, blackberry bramble, thistles, or nettles, and in silage and grain fields. Suitable foraging habitat includes grasslands, pasturelands, seasonal wetlands, and some cultivated habitats (Beedy and Hamilton 1999).

A two-acre man-made pond occurs in the northwest corner of the project site. Cattail-dominated emergent vegetation has developed around the perimeter of the pond. Historical aerial photos indicate the pond was originally created in approximately 2003 and that emergent vegetation around the perimeter of the pond did not mature until at least 2008. The first reported occurrence of tricolored blackbird at the pond was in 2011 (CNDDDB 2018, Tricolored Blackbird Portal). The pond was originally created and used for fishing, swimming, and other recreation by a previous landowner.

### **Methods**

To determine the presence or absence of tricolored blackbirds at the pond, I conducted a survey of the cattail marsh area and vicinity from approximately 0900 hours to 1100 hours on March 27<sup>th</sup> and from 1000 to 1130 hours on April 17. I selected several observation points around the pond and scanned the area using binoculars and listened for the bird's distinctive call for approximately 10 minutes at each survey point, visiting each survey point 2 to 3 times. I

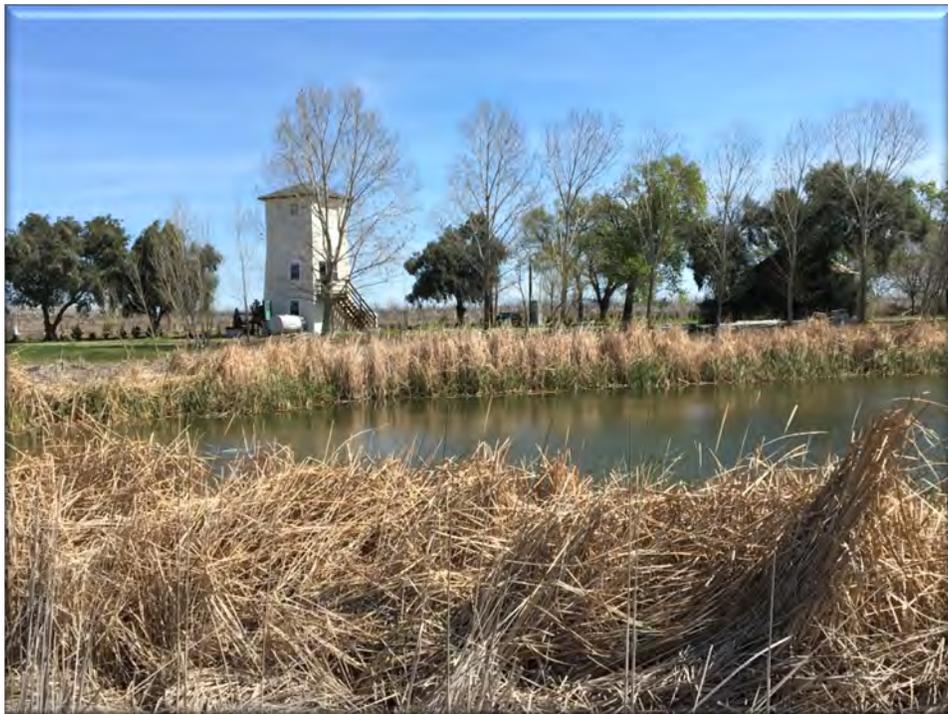
conducted additional weekly follow-up surveys on May 8, 15, 22, and 29 to determine presence/absence later in the breeding season.

## Results

No tricolored blackbirds were observed or heard during the March 27 survey. During the April 17 survey, four male tricolored blackbirds were observed flying above the pond briefly before flying away. No tricolored blackbirds were observed or heard at the pond. Numerous red-winged blackbirds were observed occupying the marsh. Between 15 and 20 territorial males were present, occupying breeding territories spaced throughout the perimeter of the pond.

No tricolored blackbirds were observed or heard during the May 8, 15, 22, and 29 surveys. Red-winged blackbirds continued to occupy the entire perimeter of the pond.

The only potential nesting habitat is a narrow band of cattail marsh around the perimeter of the pond, ranging in width from 5- to 10-feet. In 2017, a reduction in the water volume in the pond apparently resulted in a fairly significant drying of the cattail marsh. During the 2018 survey it appeared the marsh vegetation was recovering; however, the upper slope of the pond remained dry with no emerging cattail marsh vegetation. The result is that the availability of nesting habitat is limited and more conducive to red-winged blackbird nesting (Plates 1-3).



*Plate 1. Looking northeast from the west side of the pond.*



*Plate 2. Looking southeast from the west side of the pond. The restored historic home and the restored barn where events are held is in the background.*



*Plate 3. Looking southwest from the north side of pond.*

There are several other potentially occupied ponds in the vicinity of the project site, including three ponds with reported occupancy (CNDDDB 2018). Two are approximately 0.75 miles northeast of the project site and one is approximately 1.5 miles northeast of the project site. There is also a similar pond approximately 0.3 miles north of the project site, and several others to the northwest and southwest; however, these are all on private property and no survey information is available.

**Historical Occurrences.** The following lists observations of tricolored blackbird at the pond since the first reported occurrence in 2011:

- 2011 – 35 birds detected (source: Tricolored Blackbird Portal); observation made during the breeding season, so breeding was presumed, however, no evidence of confirmation of breeding is noted.
- 2014 – 0 birds detected (source: Tricolored Blackbird Portal)
- 2016 – 1 bird detected (source: Tricolored Blackbird Portal); breeding not confirmed
- 2016 – 10 birds detected (source: 2016 Biological Site Assessment – Estep); these birds were confirmed not breeding, occurring incidentally above the pond before flying away
- 2017 – 0 birds detected (source: 2017 Survey – Estep)
- 2017 – 0 birds detected (source: Tricolored Blackbird Portal); the site was reported as unsuitable habitat
- 2018 – 0 birds detected (source: March 27, 2018 survey – Estep)
- 2018 – 4 birds detected (source: April 17, 2018 survey – Estep); as in 2016, these adult males were observed flying above the pond briefly before flying away
- 2018 – 0 birds detected (source: May 8, 15, 22, and 29 surveys – Estep)

The first reported occurrence was in 2011 (CNDDDB 2018, Tricolored Blackbird Portal), which estimated 35 birds were present and possibly breeding. Surveys conducted in 2014 reported no birds present. In 2016, two surveys were conducted, one of which reported just one bird with no confirmed breeding and the other reported 10 birds that were confirmed to be non-breeding. In 2017, two surveys were again conducted, neither of which reported presence. The 2017 survey reported in the Tricolored Blackbird Portal also refers to the site as unsuitable habitat. In 2018, six surveys were conducted between March 27 and May 29. No birds were detected during the first survey on March 27, 4 nonbreeding birds were detected during the second survey on April 17, and no birds were detected during the four May surveys.

Overall, results of past surveys indicate that there have been no tricolored blackbird occurrences at the site for the last 2 years (with the exception of fly-over occurrences), and no breeding at the site for at least the last 5 years.

Habitat conditions at the site are considered marginally suitable. The extent of marsh vegetation around the perimeter of the pond is dependent on water levels in the pond, which can fluctuate. The maximum area of emergent marsh vegetation totals approximately 0.4 acres, which is nearing the minimum patch size to support a tricolored blackbird nesting colony. In 2017, the

extent of emergent vegetation was reduced to about 0.2 acres, apparently due to lowered water levels in the pond. Also, the extent of occupancy by red-winged blackbirds, which were documented as the dominant nesting species during the 2016 through 2018 surveys, further limits the availability of nesting habitat for tricolored blackbirds. The site otherwise meets the requirements for tricolored blackbirds, including the proximity to open foraging habitat, found primarily in the grassland/pasture south of Chickahominy Slough and neighboring open lands. The adjacent open pastureland is considered essential for occupancy of the site.

### **Impact**

Although nesting does not appear to have been confirmed, small numbers of tricolored blackbirds have occupied the marsh in some years during the breeding season since 2011 (and although there are no records, possibly since 2008 when emergent marsh vegetation around the pond was sufficiently developed to support the species). Since 2011, there have been few individual birds detected and no confirmed breeding. There have been no occurrences of the species at the pond since 2016 (in 2016 and 2018 a small number of individuals were observed flying above the pond before flying away but were not observed at the pond). The small amount of suitable nesting habitat (0.2 to 0.4 acre), small number of tricolored blackbird occurrences, the lack of confirmed breeding, and presence of red-winged blackbirds as the primary breeding occupant of the marsh suggests this is not a significant potential breeding site for tricolored blackbirds.

No tricolored blackbird habitat will be removed by project activities. However, the project applicants are not required to otherwise maintain water levels in the pond or maintain marsh habitat around the perimeter of the pond. The pond and associated habitat is maintained because it provides aesthetic value to the property and supports a variety of wildlife species, a desirable feature to the landowners. So, while it is not required, the intention is to maintain the pond and its habitat value.

Other than removal of habitat, disturbance from noise and human presence can also potentially affect occupancy by tricolored blackbirds. Although the use of the project site as an event center would periodically increase the number of people and related noise levels onsite during scheduled wedding events, the project site has been subject to ongoing baseline human noise and disturbances since the pond was constructed on or around 2003. The pond is part of the historic farm residence complex and receives regular disturbance from maintenance activities, mowing of the lawns that surround the pond, road traffic along County Road 29, noise and dust from farm activities on the adjacent land on the north side of County Road 29, and from ongoing non-project use of the house, barn, and pond. Whether or not baseline disturbances have prohibited or limited nesting by tricolored blackbirds is unknown; however, a periodic increase in noise disturbance and human presence is not expected to have a substantial negative affect on the already limited use of the site by tricolored blackbirds.

The project will not result in habitat-related impacts to the tricolored blackbird. Because of the limited use of the site by tricolored blackbirds, including the lack of nesting records over the last 5 years and lack of occurrence records in the last 2 years; and because of the historic and existing

baseline disturbance of the site, impacts related to noise disturbance from scheduled events are not expected to result in substantial adverse effects to the species (CEQA Appendix G) or substantially reduce the number or restrict the range of the species (CEQA Section 15065). This impact is therefore considered less than significant.

However, to ensure the pond remains available as potential habitat for tricolored blackbirds and other species, the following mitigation measures should be implemented to reduce disturbance to the site and to ensure that suitable adjacent foraging habitat remains.

## **Mitigation**

**Minimize Disturbance to the Pond During Events.** The homestead site has been subject to noise and other human disturbances for many decades. This has likely affected the use of the site and immediately surrounding area by wildlife. Species that are tolerant of disturbances continue to occur and those less tolerant probably avoid the immediate area. The proposed project will increase the level of operational disturbances, which may contribute further to wildlife avoidance. To minimize this impact during scheduled events, restrict access to the pond by keeping visitors within the development envelop around the house and barn, and on the existing pathways.

**Maintain Marsh Habitat.** To maintain suitable habitat for tricolored blackbirds and other marsh species, avoid maintenance of cattail growth in the 2-acre pond during the tricolored blackbird breeding season (approximately March through August).

**Prohibit Parking or other Uses in the Immediate Vicinity of the Pond.** Maintain the open areas around the pond, including on the north and east sides, and prohibit parking or other uses in these areas during the breeding season.

**Maintain the Open Pasture.** Maintain the open pasture south of Chickahominy Slough as open grazing land. Prohibit orchard development or other cultivation to maintain this area as suitable foraging habitat for tricolored blackbirds and other species.

## **Literature Cited**

Barr, C. B. 1991. The distribution, habitat, and status of the valley elderberry longhorn beetle *Desmocerus californicus dimorphus* Fisher (Insecta: coleoptera: cerambycidae). U.S. Fish and Wildlife Service. Sacramento, CA.

Beedy, E. C., and W. J. Hamilton III. 1999. Tricolored Blackbird (*Agelaius tricolor*). In The Birds of North America, No. 423 (A. Poole and F. Gill, eds.). The Academy of Natural Sciences, Philadelphia, and The American Ornithologists' Union, Washington, D.C.

California Natural Diversity Data Base. 2018. Search of Yolo County quadrangles. California Department of Fish and Wildlife, Sacramento, CA.

- Carnie, S.K. 1954. Food habits of nesting Golden Eagles in the coast ranges of California. *Condor* 56:3-12.
- Connolly, G.E., M.E. Fry, and J. Fammatre. 1976. Prey remains at a Golden Eagle, *Aquila chrysaetos*, nest near Hopland, California. *California Fish and Game* 62(1):85-86.
- Collinge, S. K., M. Holyoak, C. B. Barr, and J. T. Marty. 2001. Riparian habitat fragmentation and population persistence of the threatened valley elderberry longhorn beetle in Central California. *Biological Conservation*. 100: 103-113.
- Dixon, J.B. 1937. The Golden Eagle in San Diego County, California. *Condor* 39:49-56.
- Hunt, W. G., R. E. Jackman, T. L. Hunt, D. E. Driscoll and L. Culp. 1999. A population study of Golden Eagles in the Altamont Pass Wind Resource Area; population trend analysis 1994–1997. *Predatory Bird Res. Group*, Univ. of California, Santa Cruz.

## **APPENDIX E**

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**Robert Meese, Ph.D. - Observations and Assessment of Field  
and Pond Site**



## Observations and Assessment of Field and Pond Site, County Road 29, Yolo County, California

Robert J. Meese, Ph.D.  
Staff Research Associate IV (retired)  
Department of Environmental Science & Policy  
University of California  
Davis, CA 95616

### Qualifications

I retired from the University of California, Davis after 23 years working as a Staff Research Associate in the Department of Environmental Science and Policy. I have been working with tricolored blackbirds, *Agelaius tricolor*, for 14 years and have served as Principal Investigator on numerous contracts with the U.S. Fish & Wildlife Service and the California Department of Fish and Wildlife. My work has also been supported by several foundations and non-governmental organizations. I hold a master banding permit under the U.S.G.S. Bird Banding Laboratory and have banded 90,000 tricolored blackbirds since 2007. I have worked with tricolored blackbirds from Butte County to San Diego County and have published numerous scientific papers and reports on the species. I also have primary responsibility for the Tricolored Blackbird Portal ([tricolor.ice.ucdavis.edu](http://tricolor.ice.ucdavis.edu)).

### Introduction

The tricolored blackbird is a near-endemic California passerine whose abundance has declined markedly over several decades. The tricolored blackbird was listed as Threatened under the California Endangered Species Act in April, 2018 and the species is increasingly conservation-dependent.

The tricolored blackbird was historically found primarily in the Central Valley and was largely confined to freshwater marshes during the breeding season. However, due to large-scale modifications of its historical breeding habitats, the species has for nearly 100 years been struggling to accommodate landscape changes by nesting and foraging in a wide variety of anthropogenic habitats and introduced, exotic plant species. In the Sacramento and Upper San Joaquin Valleys the species is still mainly found in freshwater marshes during the breeding season, and utilizes ponds primarily intended for waterfowl that occur on National Wildlife Refuges, State Wildlife Areas, and private duck clubs.

I am very familiar with the Field and Pond site, a ca. 1 acre man-made pond created in 2004 to provide recreational catch-and-release fishing, and have visited the site 5 times over the past 7 years. My surveys of the site include:

1. April 15, 2011. I observed 35 birds. Breeding suspected but not confirmed. Observation record in the Tricolored Blackbird Portal.

2. April 18, 2014. No birds observed. Observation record in the Tricolored Blackbird Portal.
3. May 18, 2016. I observed from 0810-0840 and saw and heard 1 male tricolored blackbird; no evidence of breeding. A record for this observation is in the Tricolored Blackbird Portal.
4. early May, 2017. I briefly surveyed the site and saw no tricolored blackbirds and only very limited cattails around the perimeter of the pond.
5. mid-May, 2017. I surveyed the site for 45 minutes and did not see nor hear any tricolored blackbirds.

### Assessment of the Site

The Field and Pond site, called Brian Stucker Pond in the Tricolored Blackbird Portal, is a location where small numbers of tricolored blackbirds, fewer than 50 individuals, were suspected to have bred in the recent past. My most recent observation of potential breeding at the site was in 2011 when I observed 35 birds during the April to July breeding season and I have observed only a single male tricolored blackbird at the site since then.

The tricolored blackbird is a colonial species, and always nests in groups. This breeding habit places constraints on the species as the primary goal of nesting females is to hide their nests, and thus in nearly all cases where it nests in freshwater marshes, the species occurs in relatively large blocks of vegetation, primarily cattails (*Typha latifolia*), as by nesting in blocks, the nests may be placed inside of perimeter vegetation so that the visibility of nests is much reduced and less apparent to potential predators. Other blackbird species, including red-winged (*A. phoeniceus*) and yellow-headed (*Xanthocephalus xanthocephalus*) blackbirds, are not colonial so do not have the same preference for nesting in large blocks of vegetation and thus their nests may often be found in thin, linear strips of vegetation as are often associated with roadsides and ditches.

The pond at the Field and Pond site is approximately 1 acre in size and in all my surveys of the site more than half of this has been open water, with the cattails forming a thin perimeter strip around the margin of the basin. And since 2011, the condition of these cattails has deteriorated from a preponderance of the young, green, erect stems preferred by nesting birds to an accumulation of dead, lodged stems, especially in the northern reaches of the pond, that are shunned by nesting tricolored blackbirds due to the increased visibility of nests and access to nests by mammalian predators. The birds that I observed in 2011 were concentrated in the northern end of the pond, when this was dominated by fresh cattails, but since then, this portion of the pond has been unsuitable for nesting by tricolored blackbirds as it contains primarily dead, lodged cattail stems that form a thick mat.

Freshwater marshes also provide relatively disturbance-free nesting environments as the water serves as a barrier to most vertebrate animals, including humans. The tricolored blackbird is

especially sensitive to disturbance, especially in the earliest stages of the breeding season when the birds arrive and the males set up territories and try to attract females. During this interval, the nesting of birds may be disrupted by the appearance of predators such as coyotes and raccoons or by loud noises associated with human activities.

The Field and Pond site is thus of marginal importance to breeding tricolored blackbirds although a small number of birds may have bred there several years ago and a few birds may still find suitable resting or roosting habitat there. The combination of inappropriate habitat configuration (the narrow perimeter fringe), pond maintenance to conserve open water, and human activity-related noises create conditions that are ill-suited to breeding by this colonial songbird. It is unlikely that more than infrequent breeding by a few birds will occur there in the future as nearby locations (e.g., Conaway Ranch) provide far higher-quality, more extensive, and more suitable breeding habitat that is specifically maintained for breeding tricolored blackbirds due to an existing conservation easement for the species.

#### Confirming Breeding

Previous reports of the presence of birds during the breeding season are insufficient to confirm breeding at the site as the species often inspects multiple potential breeding locations prior to selecting the site where it ultimately chooses to breed. Groups of birds are also known to rest for brief intervals in appropriate habitats between breeding attempts. To confirm breeding, a single observation would need to consist of specific behaviors, for example nest-building, the feeding of nestlings, or the presence of young out of the nests. Alternatively, there would need to be multiple observations over 2 or more weeks to confirm continuous bird presence and the birds would need to display specific behaviors associated with breeding. Thus, although there have been episodic reports of birds occurring at the site over the past several years, none of these has confirmed breeding and its status as a breeding location is uncertain.