

MEMORANDUM

DATE June 24, 2020

TO Attn: Yolande Barial Knight, Clerk of the Board
East Bay Regional Park District, Board of Directors
Robert E. Doyle, General Manager
2950 Peralta Oaks Court
Oakland, California 94605

FROM PlaceWorks

SUBJECT Responses to Comment Letters Received After the Close of the Public Review Period

PlaceWorks has reviewed the comment letters received from Farella Braun + Martel (“Comment Letter A”) and the California Native Plant Society (“CNPS,” “Comment Letter B”) on the Concord Hills Regional Park Land Use Plan Environmental Impact Report (EIR). This technical analysis provides responses to the comments contained in these letters. The responses were prepared in consultation with Environmental Science Associates, East Bay Regional Park District (District) staff, and the District’s legal counsel Downey Brand LLP.

Copies of the comment letters are attached to this technical analysis, along with annotations that identify each individual comment number. The numbering below corresponds to the annotated comment numbers in the attached letters. Further, because the comments provided by Farella Braun + Martel and CNPS were not timely submitted as part of the duly noticed public comment period on the Draft Environmental Impact Report, they are considered late comments for which no response is required. (Pub. Resources Code, § 21091(d)(1) [“The lead agency shall consider comments it receives on a draft environmental impact report . . . if those comments are received within the public review period.”].) Nonetheless, this technical analysis is provided voluntarily by the District for informational purposes. (*Id.*, § 21091(d)(2)(A) [“The lead agency *may* also respond to comments that are received after the close of the public review period.”]; see also Guidelines, § 15088(a).) In some cases, revisions have been made to the Draft EIR, as shown in the Errata to the Concord Hills Land Use Plan Final EIR (“Errata”), incorporated as Attachment C to this technical analysis. The Errata containing additions and revisions to the EIR that are proposed to be included as part of the Board of Directors’ certification of the EIR.

Responses to Comment Letter A

Response A-01

The comment is an introduction to the comments that follow. Comment Letter A raises several concerns related to the extent of development and the level of detail provided in the EIR. In doing so,

however, Comment A-01 and the comments to follow misconstrue and greatly exaggerate the scope of the Regional Park, its footprint, and the level of impacts associated with the limited recreation and visitation anticipated to occur within a relatively small portion of the former Concord Naval Weapons Station (“CNWS”). As described on page 3-1 of the Draft EIR:

“The project site is located on approximately 2,543 acres in the City of Concord. The vast majority of the proposed project, approximately 2,417 acres, or 95 percent of the site, would be designated as a conservation area and preserved for conservation and management of natural and cultural resources. Public access within the conservation area would be limited to passive recreation trails. The remainder of the property, approximately 126 acres, or 5 percent of the site, would be available for recreation and park facilities, primarily on land already developed with existing facilities (building sites, paved and unpaved roads, parking areas, bunkers, and railroad tracks from the United States Department of the Navy’s (Navy) operation of the property) that will be reused.”

Thus, the vast majority of the former CNWS will be preserved in its natural state. The “development” that the comment alludes to comprises only 5 percent of the former CNWS. Of that, only a fraction involves any “new” development, as the balance maximizes the reuse of existing developed areas such as buildings, roadways, rail lines, and trails. The comment thus fails to acknowledge that the portion of the Regional Park actually devoted to physical human activity is extraordinarily limited and confined to discrete areas that are almost all disturbed or previously developed due to prior use as an active Naval base. For the balance of the former CNWS—2,415 acres or 95 percent—park lands will remain in their open space and natural condition, and managed for cultural, historical, and biological values.

In addition, the proposed Concord Hills Regional Park Land Use Plan, as a land use plan, is a policy document that will guide development and management of the future Regional Park; the proposed Plan analyzed in the EIR *is not* a specific development project. There are details of the Land Use Plan that are not, and cannot be, known about precise development plans or specific trail connections or alignments unless and until other developments immediately adjacent to the Park are resolved.

Despite the Land Use Plan’s relatively small footprint, limited human use, and preservation of existing open space values, the EIR thoroughly identified, reviewed, and evaluated the potentially significant adverse impacts of converting the former Navy use to Regional Park uses.

Lastly, the comment provides some case law regarding the general standards governing EIRs prepared under CEQA. Please see Responses A-02 through A-35 for specific analysis addressing each of the issues referenced in this introductory section of Comment Letter A.

Response A-02

The commenter correctly notes that the EIR is a program-level EIR, and that future, site-specific projects within the proposed Regional Park will be subject to the appropriate level of environmental analysis when plans for those specific projects are proposed. As stated on page 2-5 of the Draft EIR,

“this program EIR is not project-specific, and does not evaluate the impacts of individual projects that may be proposed in the future. All future development projects within the Concord Hills Regional Park area that qualify as a ‘project’ under CEQA are subject to compliance with CEQA, which may require additional, project-specific environmental analysis.” A program EIR is particularly appropriate to support this level of planning document. (See *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1047 (“*Treasure Island*”) [“a ‘program EIR’ evaluates the broad policy direction of a planning document, such as a general plan, but does not examine the potential site-specific impacts of the many individual projects that may be proposed in the future consistent with the plan.”], citing Pub. Resources Code, §§ 21068.5, 21093; Guidelines, §§ 15168, 15385.) The level of specificity, in turn, is determined “by the nature of the project and the ‘rule of reason’ [citation], rather than any semantic label accorded to the EIR.” (*Treasure Island*, 227 Cal.App.4th at 1048 [internal quotations omitted], quoting *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 533.) Tellingly, the First Appellate District in *Treasure Island* granted the City and County of San Francisco significant leeway in the level of detail assigned an EIR designed to support a plan for redevelopment of a former naval station over a 15 to 20-year period, which is less than the planning horizon for the Concord Hills Regional Park and for much more intense development.

Response A-03

The comment states that the EIR does not have sufficient detail to support individual components of the Land Use Plan (e.g., the visitor complex, campgrounds, parking lots, and trails). This is not accurate. Pages 3-15 through 3-40 of the Draft EIR describe the components of the proposed Plan in detail. For example, Section 3.3.6, Park Circulation, describes and maps public vehicular roads, maintenance roads, and trails; this section also includes Table 3-1, which provides the surface material, width, permitted uses, reuse amount, new development amount, and total length of these circulation routes. Trails are also described in Section 3.3.7.2. The Visitor Center Complex is described in Section 3.3.7.1; as described on page 3-29 of the Draft EIR, it would be a retrofit of existing Building IA-24. The locations of proposed campsites are described on page 3-31 and are mapped on Figure 3-7. A conceptual site plan for the Visitor Center Complex is provided in Figure 3-9, which illustrates the anticipated building footprint, outdoor areas, and parking. Section 3.5, Site Preparation, describes the specific areas of the site where grading, construction staging, demolition, and other construction activities would occur. Table 3-2 provides detailed phasing information for when each component of the Regional Park is intended to be implemented.

A project description needs only so much detail as necessary to evaluate the impacts at that level of review—that is, the level of detail befitting the “nature of the project” and according to the “rule of reason”—here, a land use plan. (See *Treasure Island*, 227 Cal.App.4th 1036, 1047-1052.) An EIR need not “produce detailed information about the environmental impacts of a future [] facility whose scope is uncertain.” (*Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 681 (finding EIR did not evaluate environmental impacts of expansion of a wastewater treatment plant designed to serve the project area when the details regarding the size and nature of any plant expansion were uncertain).) Here, as described in Response A-08 below, final park program and

specific building plans are yet to be developed as they rely on future assembly of land and further evaluation of existing buildings and site for adaptive reuse as future park amenities and maintenance buildings. Moreover, the Land Use Plan is a programmatic EIR—not a project-level document—precisely because of the longtime horizon and the details that will still need to be developed. Specifically, when a project is to be implemented in phases, the EIR is not deficient simply because the description of future approvals is not precisely defined. (See *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533 (upholding EIR’s project description when EIR described the project site, the project boundary, and the city’s sphere of influence but the EIR did not precisely define what areas the city would annex in the future as the city had not yet determined the boundaries of the area to be annexed).) Please also see Responses A-04 through A-12.

Response A-04

The comment does not explain how the EIR fails to adequately analyze potential impacts to biological resources. Therefore, a detailed response cannot be provided. However, the Draft EIR identified and evaluated in some detail the considerable biological data collected to date, as well as the potentially significant impacts of the Plan on biological resources generally and on threatened and endangered species specifically (Draft EIR, at pages 4.3-1 through 4.3-63). Contrary to the comment, the biological data relied on by the EIR was more than sufficient. Indeed, as the comment notes, approximately 95 percent of the Regional Park will be preserved and managed expressly for the sensitive biological resources on-site, which is intended to improve—not degrade—the natural baseline condition for species and habitats.

Response A-05

The comment incorrectly states that the EIR relies on unsupported assumptions regarding weekday and peak hour vehicle trips. The Draft EIR provided the calculated weekday and peak hour trips and explained why a detailed traffic study and analysis for the project was not required. As stated on page 4.14-15 of the Draft EIR, the proposed project would generate approximately 590 weekday vehicle trips, with approximately 35 and 77 trips during the AM and PM peak hour, respectively. This includes trips by both park employees and visitors. As described on page 4.14-15 of the Draft EIR, the project’s estimated peak-hour vehicle trips would be well below the 100-trip threshold set by the Contra Costa Transportation Authority (CCTA) and the City of Concord for a full (detailed) traffic impact analysis.¹

As discussed in detail below, trip estimates for the proposed Regional Park were calculated based on visitor estimates prepared for the project by the District, and the conservative assumption that at least 10 percent of visitors would walk or bike to the site. Table 1 below presents visitor data, trip estimates, and trip generation assumptions that formed the basis of the Draft EIR’s analysis, and are now included in the EIR by the Errata (see Attachment C).

¹ http://ccta.net/wp-content/uploads/2018/12/Final_Technical_Procedures_Full_Jan2013-1.pdf

TABLE 1 TOTAL PROJECTED EMPLOYEES, VISITORS, AND TRIPS PER DAY BY MODE (AT FULL BUILDOUT, 2050)

	Typical Weekday Visitors and Employees	Typical Weekend Visitors and Employees	Typical Weekday Trips	Typical Weekend Trips
Employees	52	52	104 ^a	104 ^a
Auto	52	52	104	104
Bike or Walk	0	0	0	0
Visitors	1,074	2,665	591	1,466
Auto	966	2,398	483 ^b	1,199 ^c
Bike or Walk	107	266	107	266
Total Auto	1,018	2,450	587	1,303
<i>Peak Hour</i>	<i>N/A</i>	<i>N/A</i>	<i>AM: 35</i> <i>PM: 77</i>	<i>N/A</i>
Total Bike or Walk	107	266	107	266
Total	1,126	2,717	695	1,570

Notes:

a. Employee trips include 2 trips per day for 52 employees.

b. Weekday visitor trips reflect the following assumptions: approximately 30 percent of visitors will utilize more than one on-site facility (e.g. a visitor will use both a trail and a picnic area); one third of visitors are families and/or group carpoolers (i.e. 4 visitors per car); three school buses or school buses will visit the site daily (accommodating approximately 100 people); all other visitors will visit with an average of 2 visitors per car.

c. Weekend visitor trips reflect the following assumptions: approximately 20 percent of visitors will utilize more than one on-site facility (e.g. a visitor will use both a trail and a picnic area); two thirds of visitors are families and/or group carpoolers (i.e. 4 visitors per car); three school buses or school buses will visit the site daily (accommodating approximately 100 people); all other visitors will visit with an average of 2 visitors per car.

Source: PlaceWorks, 2020.

The Table 1 trip generation calculations are conservative and, if anything, likely overstate the reasonably likely trip generation rates by (1) under-estimating the percentage of park visitors expected to walk or bike to the Regional Park, and (2) over-estimating park visitation during the week. As stated on page 3-39 of the Draft EIR, “While the majority of visitors would be expected to arrive by car, some visitors, especially those from adjoining residential neighborhoods, would arrive by bike or by walking. . . . Based on use patterns at existing regional parks with similar surroundings, the District anticipates that 20 percent, and ultimately as many as 50 percent, of visits would arrive on foot or on bikes.”²

² See also Personal communications with Brian Holt, Chief of Planning/GIS, June 17, 2020.

Similarly, the District developed its visitor estimates based on possible worst-case demand estimates, as well as the capacity of proposed park features (e.g., trail mileage and number of picnic areas and access features). In estimating visitation, the District considered visitation data from the National Park Service's nearby sites, District staffing projections, National Recreation and Park Association (NRPA) standards, and visitation levels observed at other District facilities. The District found this method to be conservative. For example, based on the NRPA standards for urban trails, trail capacity was assumed to be 90 users per day per mile. That rate is much higher than the NRPA standards for rural trails, which in some ways are more analogous to the Concord Hills Regional Park. Likewise, the National Park Service data for visitation at nearby parks ranges from 45,000 to 75,000 annual visitors; whereas, the District assumed that up to 60,000 annual visitors in Phase 3 of the Regional Park at the proposed Visitor Center alone. The District's visitation numbers are well within the existing National Park Service data, even though Concord Hills Regional Park may receive less visitors than certain federal parks in the region. Lastly, the District considered visitation rates at other District parks, including Anthony Chabot Regional Park.³ Located near more densely populated urban centers, Chabot received about 419,000 visitors in 2016;⁴ the Draft EIR, however, assumed a total visitation for Phase 3 of the Project at 560,909 total annual visitors. That visitation level is substantially greater than Chabot, even though the Project has fewer attractions, less recreational area, and is proposed to be located in a more remote and less populated area than Chabot.⁵

Although the District's method for estimating trip generation rates relied on data more specific to existing District and surrounding park facilities, the District and its consultants PlaceWorks and ESA also referenced and applied the Institute of Transportation Engineers (ITE) Trip Generation Manual (9th and 10th Editions) for purposes of evaluating this comment. Using standard trip rates from the ITE Manual (10th Edition) for a "public park" land use, the proposed project could be expected to generate only 98 average trips *per day* on weekdays, with only a fraction of those trips expected to occur during peak hours. (See Errata, Table 2 – Trip Generation Using ITE Trip Generation Manual, 10th Edition, in Attachment C.)⁶ This is only a fraction of the estimated 587 vehicle trips per day disclosed and analyzed in the Draft EIR. While now superseded by the 10th Edition, the 9th Edition of the ITE Manual included trip generation rates for a "regional park" land use, which is more analogous to the Concord

³ See communication from Brian Holt, Chief of Planning/GIS, East Bay Regional Park District, to Isby Fleischmann, Senior Associate, PlaceWorks (dated July 17, 2017, at 12:50 PM) regarding park visitation data for the District's parks for the years 2015 through 2017.

⁴ See *id.*

⁵ See *id.*

⁶ The public park land use designation is defined in the ITE Manual (10th Edition) as public parks owned by a municipal, county, state, or federal agency. See also Rosenblum, Shadde. Senior Technical Associate, Environmental Science Associates. Personal communication with Alexis Mena, PlaceWorks. June 5, 2020.

Hills Regional Park. Based on the trip generation rates included in the 9th Edition, the proposed project was estimated to generate approximately 576 weekday daily trips—about 10 trips fewer per day than disclosed and analyzed in the Draft EIR. (See Errata, Table 3 – Trip Generation Using ITE Trip Generation Manual, 9th Edition, in Attachment C.) This further demonstrates that the trip generation rates utilized in the Draft EIR were conservative and reasonable.

Fourth, and finally, given that the Regional Park will have three distinct points of ingress/egress to the Regional Park, peak-hour trips are expected to be distributed among the three distinct points. Thus, empirical evidence suggests that there is no reasonable possibility that the Regional Park's trip generation at any given intersection or roadway would result in significant adverse impacts. Indeed, the comment presents no evidence otherwise. Thus, more a detailed traffic impact analysis was not warranted.

Response A-06

The comment incorrectly states that the absence of a full traffic impact analysis resulted in a flawed air quality and greenhouse gas (GHG) emissions impacts analysis. Chapters 4.2, Air Quality, and 4.7, Greenhouse Gas Emissions, of the Draft EIR provide detailed analyses of air quality and GHG emissions impacts based on modeling conducted for the EIR. (See, e.g., Draft EIR, at pages 4.2-28 and 4.2-29, 4.7-21 through 4.7-26.) As set forth in Response A-05, the peak-hour vehicle trips estimated at full buildout of the Regional Park are appropriate as they are conservative, particularly given the fact that during the week (when peak trips occur), regional parks experience substantially lower visitation than weekends (off-peak).⁷ Consequently, the EIR's calculations of the air and GHG emissions were likewise conservative, and will result in less-than-significant impacts in these areas. The comment does not show otherwise.

Response A-07

While a stand-alone acoustical study was not developed for the EIR, noise impacts were analyzed as described in Chapter 4.11, Noise, of the Draft EIR. The cumulative analysis in Chapter 4.11 of the Draft EIR includes a discussion of cumulative construction noise and vibration, which explains that project construction would involve a relatively small development area (35 acres out of 2,543 acres, or 0.014 percent) (Draft EIR, at page 4.11-18). As discussed in the Draft EIR noise analysis, the most intensive construction activities would be associated with construction of the Corp Yard, which is approximately 1,260 feet (a quarter mile) northeast of residences. The proposed facility closest to future residents on the Faria/Southwest Hills development site (based on the figure on page 17 of the comment letter; see Comment A-36) would be the Eagle's Nest Backcountry Campsite. Based on the Land Use Plan, the campsite would be approximately 250 to 500 feet from the project site boundary. As described on page 3-31 of the Draft EIR, this campsite would be accessible only by trail. Therefore, its use would be

⁷ Personal communications with Brian Holt, Chief of Planning/GIS, and Devan Reiff, Principal Planner, East Bay Regional Park District, June 17, 2020.

relatively low intensity, and heavy construction equipment and visitor vehicles would not be able to access the site. Consequently, no loud construction or land use noises would occur from that site.

Page 4.11-19 of the Draft EIR explains that, at a distance of over 350 feet from potential future developments (and conservatively not accounting for any shielding by natural terrain, landscaping, or ground absorption), construction noise levels would range from 62 to 73 dBA and would not exceed the FTA threshold of 80 dBA. Construction of the Eagle's Nest Backcountry Campsite would not involve the use of a substantial number of large off-road construction equipment. Construction activities are anticipated to include a minor amount of site clearing and grading. No buildings would be created; the only structure would be a vault restroom, which is a small free-standing structure. The nearest adjacent properties are within the City of Pittsburg, which borders Concord. Although it would not apply within the Regional Park and City of Concord, the City of Pittsburg Municipal Code Chapter 9.44 prohibits the use of pile driving, steam shovels, pneumatic hammers, derrick, and electric hoists during the hours of 10:00 p.m. and 7:00 a.m. None of these pieces of equipment are anticipated for construction of Eagle's Nest Backcountry Campsite, nor would the construction include nighttime work. Further, Section 18.82.040 of the Pittsburg Municipal Code limits construction noise to 65 decibels at the property line of the receiving sensitive use. The most noise-intensive construction equipment anticipated for use at the Eagle's Nest Backcountry Campsite is a backhoe. The reference noise level for backhoes from the Federal Highway Administration Roadway Construction Noise Model is 78 dBA Lmax (maximum A-weighted decibels) at a distance of 50 feet (FHWA 2008). At a distance of approximately 250 feet (the shortest potential distance from the campsite to the property line) from the proposed Eagle's Nest Backcountry Campsite to the proposed Faria/Southwest Hills Annexation Project, construction noise would attenuate to 64 dBA Lmax *or less* and would therefore not exceed the City of Pittsburg's limit of 65 decibels. This computation conservatively does not factor in the dense vegetation that exists between the proposed campsite and Faria/Southwest Hills Annexation Project or topographical features which would provide acoustical shielding and further reduce construction noise levels. Plus, there are currently no sensitive receptors or other uses at the property line. Consequently, there is no possibility of an adverse noise impact at this location and for the limited work proposed.

In terms of operational noise, as discussed in the Draft EIR, campsites and trails would not generate substantial noise levels. The proposed Land Use Plan does not propose active recreation facilities (e.g., team sports fields, hardcourts). Proposed outdoor lighting would be for safety and security purposes only, and not to enable nighttime use of recreational facilities. There is no parking lot proposed for the Eagle's Nest Backcountry Campsite, further limiting visitation and associated sources of noise. Again, this analysis of noise does not factor in the dense vegetation that exists between the proposed campsite and Faria/Southwest Hills Annexation Project or topographical features which would provide acoustical shielding and further reduce construction noise levels. Therefore, it is not expected that establishment of camping facilities at this site would have the potential to create any significant construction or operational impacts to future sensitive receptors at the Faria/Southwest Hills development site.

Response A-08

Without citing any evidence, the comment claims the Draft EIR did not sufficiently analyze the potential for liquefaction, lateral spreading, or unstable geologic units to the proposed development of the Regional Park. To the extent the comment is suggesting that the Draft EIR should have evaluated the existing environment's impact on future buildings or uses of the Regional Park, such analysis is not required. (See Response A-48; see also *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386 [“CEQA generally does not require an analysis of how existing environmental conditions will impact a project’s future users or residents.”]; *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 892.) Further, the Draft EIR did, in fact, evaluate the possibility of these geologic hazards on-site, finding that the proposed Plan’s impacts related to liquefaction, lateral spreading, and unstable geologic units would be less than significant. (See Draft EIR, at pages 4.6-1 through 4.6-22.)

There are approximately 50 existing buildings and sites which have been evaluated for potential suitability for incorporation into the future Regional Park (Land Use Plan, at page 59). As discussed on page 59 of the Land Use Plan, as a result of this evaluation, several structures and associated sites were identified as having high potential for reuse. Table 2-2 of the Land Use Plan provides an overview of existing buildings and a discussion of suitability for incorporation into the future Regional Park. However, a further evaluation and constraints analysis will be conducted prior to finalizing decisions about reuse of particular buildings or sites (Land Use Plan, at pages 59 to 60). Moreover, the program for the park is yet to be refined as the implementation of the proposed park will depend on incremental land conveyance to the District, among other factors (e.g., financing, adjacent land uses, phasing of improvements and management) (Land Use Plan, at page 59, and Response to A-39). Thus, the extent of reuse of existing buildings and sites is not fully known without further evaluation and specific building plans that, to date, have not been developed for the proposed Regional Park. Because specific building plans have not been developed for the proposed Regional Park, site-specific geotechnical analyses will need to be conducted at the individual project stage. Please also see Response A-44. Nevertheless, with State and local regulatory mandates mandating adherence to building codes, the project’s possible effects in this area are less than significant. (See *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 [adherence to State building codes addressed possible geologic hazards]; *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. Of Directors* (2013) 216 Cal.App.4th 614, 633-635 [relying in part on California Building Code, upheld EIR’s consideration of geologic conditions and seismic hazards].) Again, the Regional Park redevelopment of roadways, trails, buildings, or other structures is extraordinarily limited, and is not expected to exacerbate any geologic hazards. Indeed, most of the area (95 percent) will remain in its baseline state, and preserved as open space. The Plan does not propose to construct or repurpose structures in an unstable geologic unit or otherwise directly or indirectly cause any substantial adverse effects, including the risk of loss, injury, or death involving liquefaction or lateral spreading.

Response A-09

As discussed above in Response A-08, final park program and specific building plans for the park are yet to be developed. Accordingly, impact discussion HYD-1 in the Draft EIR acknowledges that,

“depending on location and building site characteristics, new and replaced impervious areas have the potential to provide new sources of non-point source pollution to receiving waters such as Mount Diablo Creek and Rattlesnake Creek.” The comment fails to acknowledge that the area that may be subject to some new development and impervious surfaces is very small—about 16.5 acres—and is not immediately adjacent to any local water bodies. Moreover, as described in Response 07-04 in the Final EIR, stormwater would be managed on-site through a combination of low impact development (LID), source control best management practices (BMPs) and treatment control measures. Stormwater control would be implemented in compliance with Mitigation Measures HYD-1.1 and HYD-1.2 in the Draft EIR and the City of Concord’s Municipal Code, which together provide significant protections for local water quality. These are common and effective means to treat and manage on-site stormwater. (See *Endangered Habitats League*, 131 Cal.App.4th at 795.)

Please also see Response A-20.

Response A-10

Please see Response A-47.

Response A-11

The proposed Land Use Plan provides a vision for potential future trail connections but does not propose specific, detailed trail alignments. As described in the Land Use Plan on page 124, “the potential to develop regional trail connections . . . will be determined in part by future acquisitions of adjacent lands and/or partnerships with other entities.” As future connections to off-site locations would be dependent on the desire of neighboring landowners to work with the District to implement trail connections, these details cannot be finalized at this time and would be speculative. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com’rs* (2001) 91 Cal.App.4th 1344, 1360-1362 [when evaluating airport development plan, agency was not required to evaluate certain runway projects that “existed only as concepts in long-range plans”]; *Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist.* (2007) 147 Cal.App.4th 643, 647, 651 [when considering transfer of right-of-way, agency was not required to consider development of surrounding property when nature of that development was unknown].)

Response A-12

The water tank referenced by the Contra Costa Water District (CCWD) comment letter would be located on District land but is not part of the proposed Plan. As stated in Response 06-01 of the Final EIR, mention of the planned water storage tank for the Concord Reuse Project was added to the Draft EIR (Chapter 4.15, Utilities and Service Systems) in Chapter 3 of the Final EIR simply at the request of CCWD. The water tank would be installed as a separate project with its own independent utility; it is not required to serve the proposed Regional Park and is not part of the proposed Land Use Plan that is the project analyzed in the EIR. According to CCWD, the water tank is expected to be installed to serve the Concord Reuse Project, for which the City of Concord is still in the planning stages. Because the specifications and location of the water tank are currently unknown and beyond the acreage retained and reserved by the U.S. Navy for future conveyance to the Park District, it would be speculative to

assess the potential environmental impacts of the water tank placement as a cumulative project. If and when a water tank is proposed in the future, it would be required to undergo environmental analysis under CEQA.

Response A-13

The comment summarizes Comments A-03 through A-12. Please see Responses A-03 through A-12.

Response A-14

The comment suggests that the Draft EIR lacks sufficient information as to the baseline or environmental setting to allow for an understanding of those conditions and project impacts. Under CEQA, “[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project.” (Guidelines, § 15125(a).) That description of the environmental setting, however, “shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives.” (*Id.*; see also *California Oak Foundation v. The Regents of the University of California* (2010) 188 Cal.App.4th 240 at 263–264 [rejecting charge that the EIR’s environmental setting failed to include information from a draft fault rupture study].) The EIR’s description of the setting may include additional information in appended studies. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 540.)

Here, the Draft EIR described the regional and local setting, as well as the regulatory framework governing biological resources, noise, and traffic. (Draft EIR, in Sections 4.3.1, 4.11.1, and 4.14.1, respectively.) As a remote site with existing development and historical use as an active Naval base, the environmental setting and site conditions described in the EIR and appended studies were more than sufficient to provide an understanding of the effects of the Project and its alternatives. The discussion of existing conditions accurately reflects that, while the site is currently largely inactive and contains large areas of grassland and other natural resources, its prior use as a naval weapons station has degraded the environmental quality of the site (Draft EIR, at pages 4.3-11 to 4.3-12). The project’s restoration activities, limited development footprint, and reuse of previously developed areas of the site would be largely beneficial when compared to both the existing conditions and prior uses of the site.

Please also see Responses A-15 through A-18.

Response A-15

The comment suggests that the Draft EIR relies on incomplete and outdated data with regard to its biological resources analysis and in evaluating existing baseline conditions. Contrary to the suggestion by the commenter, the reliance on decades of wildlife survey results, from the early 1980s to the present, strengthens the environmental baseline on which the EIR is based by allowing for analysis of patterns of species’ distributions in the project area. For example, surveys dating back to 1982, with additional surveys conducted over the course of nearly four decades, have consistently demonstrated that California tiger salamanders are present in certain parts of the project site (and the larger Concord Reuse Project area) and are absent from others. Such long-term datasets are rarely available

to support impact analyses, yet this project is one of few that can rely on a long series of surveys to corroborate the conclusions in the EIR.

In addition, over the past 10 years, the City of Concord and District have coordinated with natural resources agencies on the biological resources in the project area. Beginning in 2010, the City of Concord convened an interagency meeting that included the District and all relevant natural resources agencies, including the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW), to discuss plans for the City's Concord Reuse Project and the Regional Park for habitat conservation and park planning. Over the past decade, the City has continued to meet with these agencies, and the District has been included in many of these meetings. The City and District were engaged in an intensive consultation with the USFWS during preparation of the USFWS's Biological Opinion, which covered both projects. As new biological information (e.g., resulting from surveys conducted by Navy contractors) became available, that information was incorporated into the consultation, resulting in a comprehensive May 2017 Biological Opinion that covered both the City's and District's activities. The 2017 Biological Opinion lends further support to the conclusions and analysis of the EIR, and the EIR's determination that the Regional Park's impacts on special-status species will be less than significant. Further, throughout the past decade, the Navy has had consultants perform a number of biological surveys in conjunction with the Navy's remediation activities, which have occurred in numerous locations throughout the Concord Reuse Project/Concord Hills Regional Park area. These surveys, which have focused on special-status plants and animals, have been made available to the District, and their results were incorporated into the impact assessment in the EIR as appropriate. The City is currently consulting with the CDFW pursuant to the California Endangered Species Act, and the District has been involved in those conversations with respect to issues pertaining to the Regional Park. As a result, up-to-date information on biological resources is incorporated into District's assessment of resources on the project site and has been discussed at length with the USFWS and CDFW.

The comment also neglects to acknowledge that, under CEQA, biological and topographical surveys and maps are not required for every species addressed in the EIR, particularly where, as here, the project's effects are less than significant. (See *San Joaquin Raptor Rescue Center. V. County of Merced* (2007) 149 Cal.App.4th 645, 666 [analysis of impacts need not be "so exhaustively detailed as to include every conceivable study or permutation of the data"]; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1468 [quantified analysis of biological impacts not required].) Again, with 95 percent of the Regional Park to be dedicated to habitat preservation and management for sensitive species, along with the long history of reliable and consistent data available at the former CNWS, there is no gap in the data that the comment suggests.

Response A-16

The comment incorrectly states that the no traffic studies were cited in the Draft EIR. As shown on page 4.14-9 of the Draft EIR, the EIR cites a traffic analysis prepared by Kittleson and Associates for the 2014 Draft Environmental Impact Statement for the Disposal and Reuse of the Former Naval Weapons Station Seal Beach, Detachment Concord.

As described on page 4.14-15 of the Draft EIR, the project’s estimated peak-hour vehicle trips would be well below the 100-trip threshold set by the CCTA and the City of Concord for a full (detailed) traffic impact analysis. For this reason, it was not necessary to conduct new traffic counts for the proposed project, and the analysis of existing traffic conditions on roadway segments, freeway segments, freeway ramps, and intersections relied upon the existing conditions traffic analysis provided in the Draft Environmental Impact Statement for the Disposal and Reuse of the Former Naval Weapons Station Seal Beach, Detachment Concord. Please also see Response A-05.

Response A-17

Please see Response A-06.

Response A-18

Please see Response A-07.

Response A-19

The comment cites general case law on the environmental baseline, and suggests that the EIR for this project must be recirculated to provide more information on the baseline. It is worth noting that both cases cited in the comment—*Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549 and *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439—upheld the respective baselines at issue. Here, as stated above, significant information is provided on the overall setting, yet CEQA mandates only so much detail as necessary to address the particular impact. (Guidelines, § 15125(a) [an EIR’s description of the project’s environmental setting “shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives.”].) Here, the Regional Park proposes to preserve (or actually enhance) the baseline environmental conditions for 95 percent of the project area, and the remaining 5 percent will include minimal new development and passive recreation. Thus, while the overall acreage of the Regional Park is large, the potential area of impact is small. With such a small footprint, the level of information on the project’s environmental setting is more than sufficient.

Please also see Responses A-15 through A-18.

Response A-20

Without providing specifics, the comment suggests that certain mitigation measures have been impermissibly deferred. Deferral of mitigation is permitted if “the agency (1) commits itself to mitigation; and (2) spells out . . . the possible mitigation options that meet ‘specific performance criteria’ contained in the report.” (*Save Cuyama Valley v. Santa Barbara County* (2013) 213 Cal.App.4th 1059, 1070–1072 [rejecting challenge to mitigation related to hydrology impacts of a mine].) Such deferral may include mitigation in an EIR that relies on “completion of a future study” to determine “the details of exactly how mitigation will be achieved under the identified measures.” (*Oakland Heritage Alliance*, 195 Cal.App.4th at 906 [citations omitted]; see also *City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 855.) Further, contrary to the comment’s summary of the

law, “a condition requiring compliance with environmental regulations is a common and reasonable mitigating measure.” (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1070 [internal quotations omitted], quoting *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1276.)

As outlined below, the project’s mitigation does not defer mitigation or the mitigation appropriately relies on review by the applicable regulatory agencies or compliance with regulatory mandates to address impacts related to biological resources, wetlands, stormwater, and geology and soils. Please see Responses A-21 through A-24.

Response A-21

The comment incorrectly states that the Long Term Management Plan (LTMP) has not been completed and that the EIR relies on the LTMP for mitigation. The LTMP was prepared jointly by the City of Concord and the District to describe the biological resources present on the project site and how those resources would be managed both in the near-term and in perpetuity. The LTMP has been completed and was approved by the USFWS on December 3, 2018. The Final EIR is hereby revised to expressly reference the approved LTMP (see Errata in Attachment C). Moreover, the LTMP is not, as the comment suggests, mitigation for the impacts of the Regional Park; rather, it is to help manage and improve the existing baseline habitat so that it may be protected in perpetuity. It is required by the Navy and U.S. Fish & Wildlife Service as a condition of the underlying transfer of the CNWS, and thus is imposed as a land management framework for the habitat within the Regional Park by these federal agencies, not as a requirement of the District’s Land Use Plan.

The EIR imposes numerous mitigation measures for the protection of biological resources, including Mitigation Measures BIO-1.1 through BIO-5. Mitigation may take many forms, and includes any measure that avoids, minimizes, rectifies, reduces, or compensates for the impact. (Guidelines, § 15370; *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 528–529 [measures may reduce and minimize, but need not avoid impact altogether].) The EIR, in turn, need not analyze every measure imaginable. (See *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 935; *San Franciscans for Responsible Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1519.) Indeed, the lead agency has discretion to impose specific mitigation measures and determine which measures are effective at mitigating the impact. (*Association of Irrigated Residents v. Madera County* (2003) 107 Cal.App.4th 1383, 1397–1398; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1041 [lead agency properly evaluated effectiveness of mitigation for loss of Swainson’s hawk habitat].) Nowhere does Comment Letter A attempt to provide any evidence to suggest that Mitigation Measures BIO-1.1 through BIO-5 would be ineffective at avoiding, minimizing, or mitigating specific impacts of the Regional Park on biological resources, impacts to which are minimal to begin with.

Response A-22

The comment suggests that the Draft EIR must specify which resource agencies will need to issue permits and approvals for impacts to wetlands. First, the Regional Park anticipates minimal impacts to

federal and State waters and wetlands (if any), amounting to a total loss of up to 0.05 acres of wetlands or other waters incidental to the construction or modification of drainage crossings (Draft EIR, at pages 4.3-57 to 4.-58; Mitigation Monitoring and Reporting Program [MMRP], at page 1-13.) The areas of potential impact, however, do not provide high-quality aquatic or wetland habitat for wildlife (Draft EIR, at page 4.3-58). Further, the District's proposed Land Use Plan employs siting and design guidelines developed expressly to protect undeveloped habitats, and the majority of roads and trails will be located along the existing road and rail network. Of the few new trail alignments proposed, they will avoid impacts on jurisdictional waters where feasible.

Second, Mitigation Measure BIO-3a and BIO-3b already specify which resources agencies would be responsible for issuance of permits and approvals for mitigation related to jurisdictional wetlands, and BIO-3b expressly includes minimization measures. This is an appropriate form of mitigation. (See *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777 [approving habitat preservation or "one of several possible habitat loss permits from relevant agencies."]; *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621 ["the agency does not have to commit to any particular mitigation measure in the EIR" and "the details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study."].) To help refine the mitigation, however, the following revisions can be incorporated in MM BIO-3a:

Mitigation Measure BIO-3a: Permitting. Prior to placing any fill in jurisdictional wetlands and/or other waters of the U.S. or state, the District will provide the necessary permit application/notification materials to the USACE for a Clean Water Act Section 404 permit, to the RWQCB for Clean Water Act Section 401 water quality certification, and to the CDFW for a Fish and Game Code Section 1602 Streambed Alteration Agreement, as applicable (e.g., impacts to jurisdictional wetlands that are not in a channel may not necessitate CDFW notification). The District will comply with all conditions of these permits/ agreements when performing the work; ~~for example, if any~~ At a minimum, the District shall provide compensatory mitigation at a ratio of at least 1:1 (acres lost to acres preserved or restored). Compensatory mitigation shall ensure that replacement wetlands or waters provide equal or greater habitat and aquatic function and value either on-site or off-site is required by one or more permit/agreement, then the District will provide such mitigation in accordance with permit/agreement requirements.

Response A-23

The comment argues that the Draft EIR's stormwater mitigation impermissibly relies on regulatory requirements and standards and lacks sufficient evidence of the mitigation's effectiveness.

The EIR describes the effectiveness of Mitigation Measure HYD-1.1 on page 4.9-18 and of Mitigation Measure HYD-1.2 on pages 4.9-19 to 4.9-20. Mitigation Measures HYD-1.1 and HYD-1.2 mandate that, before construction, the District prepare a Storm Water Pollution Prevention Plan (SWPPP) and Stormwater Control Plan (SCP) in consultation with applicable agencies and in compliance with the statewide NPDES Construction General Permit, Chapter 16 of the City of Concord's Municipal Code 16,

and the regional NPDES MS4 Permit, respectively. In turn, the Mitigation Measures HYD-1.1 and HYD-1.2 (and the NPDES permits references) prescribe design requirements, best management practices (BMPs), and other features that must be included to control all sources of potential stormwater runoff and to completely eliminate, control, or treat all non-stormwater discharges as necessary to protect receiving water quality. Such control features include, but are not limited to “Low impact development (LID) site design principles (e.g., preserving natural drainage channels, treating stormwater runoff at its source rather than in downstream centralized controls)” and “Treatment control measures (e.g., bioretention, porous pavement, vegetated swales) targeting any potential pollutants such as sediment, pathogens, metals, nutrients (nitrogen and phosphorus compounds), oxygen-demanding substances, organic compounds (e.g., PCBs, pesticides), oil and grease, and trash and debris.” (MMRP, at pages 1-20 and 1-21.) These are common and effective means to treat and manage stormwater management on-site, and do not constitute improper deferral. (See *Endangered Habitats League*, 131 Cal.App.4th at 795 [upholding BMPs as a form of mitigation].)

Please also see Response A-43.

Response A-24

Please see Response A-44.

Response A-25

The comment states that the District cannot rely on compliance with regulatory standards as mitigation, and that the Draft EIR is incomplete for this reason. There is a long line of CEQA case law finding compliance with applicable regulatory standards to provide a basis for determining that the project will not have a significant environmental impact in appropriate situations. (See, e.g., *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 933-934 [finding City proceeded in the manner required by law when it relied on the California Building Energy Efficiency Standards in determining that the project would not have a significant energy impact]; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906 [finding compliance with regulations as proper where it is reasonable to expect compliance and upholding the city’s reliance on standards in the building code and city building ordinances to mitigate seismic impacts].) Similarly here, where park program is yet to be finalized and specific site plans for future development projects under the Land Use Plan have not yet been developed as they rely on further evaluation of existing buildings on-site for adaptive reuse and future land assembly, reliance on compliance with regulatory measures such as the City’s and State’s building codes to reduce impacts from seismic ground shaking and liquefaction is common, reasonable, and historically proven to be effective. This is particularly true here, since the project would require building permits from the City.

Further, in absence of information for some of the project elements in part due to dependence on further funding, land assembly status, and further evaluation to determine adaptive reuse of existing buildings, CEQA Guidelines Section 15145 does not require a review of impacts that are based on speculation.

Please also see Responses A-21 through A-24.

Response A-26

Comment A-26 introduces the next section of the letter without providing any factual or other specific information regarding the EIR or the proposed Plan. Therefore, please see Responses A-27 through A-34.

Response A-27

Without providing any evidence or otherwise identifying a particular cumulative project or impact, the comment suggests that the Draft EIR neglected to address the cumulative impacts of planned nearby projects. The comment is not accurate, as the Draft EIR evaluated cumulative projects in each individual impact analysis chapter. (See, e.g., Draft EIR, at pages 4.2 through 4.5 [describing approach to cumulative impacts analysis].) Given the very small footprint and largely passive uses of the Regional Park considered in the Land Use Plan Amendment and the Draft EIR, the fact that almost all of the project's possible cumulative impacts would be less than cumulatively considerable or less than significant is not surprising.

An EIR must “discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable.” (Guidelines, § 15130(a).) Cumulative impacts are those incremental effects of a project added to the effects of other “closely related past, present, and reasonably foreseeable probable future projects.” (Pub. Resources Code, § 21083 (b)(2); Guidelines, § 15355.) Where, however, the incremental effect “is not ‘cumulatively considerable,’ a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.” (Guidelines, § 15130(a); *San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 222.) The discussion “need not provide as great detail as is provided for the effects attributable to the project alone” and “should be guided by the standards of practicality and reasonableness.” (Guidelines, § 15130(b).) Courts have readily upheld an EIR's truncated cumulative effects analysis where the overall problem and the project's incremental effects are difficult to quantify. (See, e.g., *Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 700–702 [incremental impacts of a proposed water transfer not cumulatively considerable simply due to the presence of other water transfers within the watershed]; *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1559–1560 [no cumulative effects analysis to groundwater was required where causal link could not be established].) The same is true here, where the Regional Park's incremental contribution to cumulative impacts is either miniscule (e.g., traffic, noise, air quality, or GHG emissions) or may actually result in some environmental benefits (e.g., biological resources).

Please also see Response A-49 below.

Response A-28

The commenter states that Chapter 3, Project Description, of the Draft EIR presents inconsistent vehicle miles traveled (VMT) data. The Project Description in the Draft EIR presents visitor estimates

(see Table 3-3 in the Draft EIR) but does not present vehicle trip or VMT data. Table 3-3 mistakenly refers the total visitors as total trips. The Errata (see Attachment C) clarifies the trip generation data used in the Draft EIR. As stated in the Draft EIR, total daily vehicle trips to and from the Regional Park during the week (when peak hours occur) are only 587.

The commenter incorrectly states that trip data is inconsistent between the Project Description, GHG emissions, and energy analyses. Table 3-3 on page 3-40 of the Draft EIR states that 2,716 people would visit the Regional Park (2,450 by auto) on a typical weekend day at full buildout (2050). This number represents total *visitors* and includes both park visitors and employees; it does not represent vehicle trips. Page 4.7-22 in Chapter 4.7, Greenhouse Gas (GHG) Emissions, of the Draft EIR states that 2,665 people would visit the Regional Park. This number represents visitors only (employees are reflected in the analysis as well but are described separately) and does not represent vehicle trips or VMT. Page 4.5-11 of Chapter 4.5, Energy, of the Draft EIR states that the project would generate approximately 1,300 typical weekend trips. This number represents vehicle trips and not visitors. Please see Response A-05 and A-49 regarding clarification on calculation of project trips.

Regarding phasing, as described on page 3-36 of the Draft EIR and in Table 3-2 on page 3-38 of the Draft EIR, development and opening of the park would occur over *three development phases*. The three development phases do not include an initial phase, referred to as “Land Bank Status,” during which the park would remain closed to the public as funding becomes available to initiate the three development phases. Consequently, the EIR was accurate in describing only three *development* phases. Please also see Response A-39.

Response A-29

The comment suggests that certain comments on the Notice of Preparation (NOP) were not addressed in the Draft EIR. While any person may submit relevant information to the lead agency to assist in the preparation of the draft EIR, the lead agency must consider this information and, it may at its election, include it in the EIR. (Pub. Resources Code, § 21082.1(b); Guidelines, § 15084(c).) However, only the significant effects of a particular project must be carried forward and addressed in the EIR. (Guidelines, §§ 15126, 15126.2 [“An EIR shall identify and focus on the significant environmental effects of the proposed project.”].) In this instance, the District considered all public comments submitted on the NOP and Draft EIR, and each of the issues raised in the comments have been addressed in the Draft or Final EIR (as amended by the Errata in Attachment C).

Please see Responses A-30 through A-33.

Response A-30

The comment suggests that certain comments on the Draft EIR were not addressed in the Final EIR, including two comments related to the red-legged frog preserve. Given the EIR’s in-depth and exhaustive responses, the comment is incorrect. Further, as a threshold matter, individual responses to comments need not be “exhaustive and thorough.” (*Twain Harte Homeowners Assn. Inc. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 686.) Indeed, “[w]here a general comment is made, a general

response is sufficient.” (*Browning-Ferris Indus. v. City Council* (1986) 181 Cal.App.3d 852, 862.) And failure to respond to a particular comment is not prejudicial where the comment is “demonstrably repetitive of material already considered” or “adequately addressed elsewhere.” (*Environmental Protection Information Ctr. v. Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 487 fn.9.)

As explained in Response 01-01 in the Final EIR, the referenced red-legged frog ponds are located within an area of the proposed Regional Park that will be managed as a “Natural Unit” and will be maintained privately as part of a mitigation program following an oil pipeline leak that was identified in 2011 in the Phillips 66 Company’s Line 200.⁸ The proposed Plan does not propose any active uses or physical improvements within this area, and will not in any way alter or impede the ongoing nature of that reserve. Consequently, the response was sufficient.

Response A-31

The comment complains that the District’s response to the City concerning trail locations did not adequately explain why coordination on trail alignments could not occur at this stage. The response is self-explanatory. To date, the City has not undertaken sufficient planning of its own to identify specific trail alignments, and the City did not seek in its comment or since to identify any specific trail alignments. The District, on the other hand, has identified the possible trail alignments within the Regional Park, nearly all of which occur on existing roads or other disturbed or developed pathways. The District has proposed no new trails, either on-site or off-site, connecting adjacent properties. Rather, connections to trails off-site, if any, would be dependent entirely on the City and other adjacent landowners. For the District to undertake that level of planning, particularly at this early stage and without any details provided by adjacent landowners or the City, would amount to pure speculation. The District will continue to consult with the City and other adjacent land owners and conduct further environmental review to the extent that new trails are identified that will result in new or more severe impacts to the physical environment.

Please also see Response A-11.

Response A-32

CEQA Guidelines Section 15145 does not require review of impacts based on speculation. The comment correctly notes that the design and size of the Diablo Center have not yet been determined. And while it is known that the Diablo Center could fit within the existing 15,000-square-foot footprint of Building 87, it is unknown at this stage whether the Diablo Center will encompass a building or will simply amount to an outdoor venue. Adoption of the Land Use Plan itself does not amount to any

⁸ San Francisco Bay Regional Water Quality Control Board (“RWQCB”), 2016, Site Cleanup Requirements for Phillips 66 Company Line 200 Release Initial Study & Mitigated Negative Declaration, available https://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2016/May/phillips66/Mitigated_Negative_Declaration.pdf online at

determination by the District to actually carry out the Diablo Center. And without knowing the type of building, size of structure, timing of construction, proposed building materials, utility demands, and other project-specific information, it would be speculative to analyze the project-level impacts of the future Diablo Center. If the Diablo Center is constructed as a building within the existing footprint of Building 87, its construction and operation impacts would be limited given its reuse of an existing building footprint, replacement of an existing building, and distance from sensitive receptors. If the Diablo Center is constructed as an outdoor space, its construction impacts would be even more limited.

The EIR is a program-level document that analyzes the potential effects of the District's adoption of the proposed Land Use Plan. This approach is consistent with Section 15168(a)(3) of the CEQA Guidelines, which provides that a program EIR may be prepared for a series of actions that are related "in connection with the issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program." The proposed Land Use Plan illustrates the schematic organization of a future Regional Park and will guide the development and management of the Regional Park, but it does not provide a detailed development program for specific future site improvements. As stated on page 2-5 of the Draft EIR, "this program EIR is not project-specific, and does not evaluate the impacts of individual projects that may be proposed in the future. All future development projects within the Concord Hills Regional Park area that qualify as a 'project' under CEQA are subject to compliance with CEQA, which may require additional, project-specific environmental analysis."

Response A-33

The required rezoning would ensure consistency between City zoning and the proposed Regional Park. The rezoning would not, in itself, create any physical impacts or result in any changes to the proposed Plan. Future development of the proposed Regional Park would occur consistent with the proposed Land Use Plan.

Response A-34

Rather than offering any specific alternatives for consideration, Comment A-34 suggests that the District was obligated under CEQA to consider and evaluate alternatives beyond those evaluated under the EIR—the No Project and Limited Footprint Alternatives. The comment misconstrues the requirements of CEQA and the limited nature of the project, which itself necessitates a narrower set of alternatives.

CEQA does not require an EIR to consider every conceivable project alternative and the selection of alternatives is subject only to a rule of reason. (Guidelines, § 15126.6(a), (f); *Citizens of Goleta Valley v. Bd. Of Supervisors* (1990) 52 Cal.3d 553, 556 ("*Goleta*").) To satisfy CEQA, the EIR's range of alternatives must examine in detail only those that would feasibly attain most of the basic project objectives while *avoiding* or *substantially lessening* any of a project's significant effects. (Guidelines, § 15126.6(a), (f) [emphasis added].) But "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn

must be reviewed in light of the statutory purpose.” (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 987, citing *Goleta*, 52 Cal.3d at 566-567.)

Further, an EIR need not address proffered alternatives that do not provide distinct environmental advantages over the project or are already within the range of alternatives addressed in the EIR. (Guidelines, § 15126.6(b); *Village Laguna of Laguna Beach, Inc. v. Bd. Of Supervisors* (1982) 134 Cal.App.3d 1022, 1028–1029 [rejecting call to evaluate alternative falling within the densities already included in the EIR]; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 929–930 [rejecting call for reduced-size store alternative because alternative would not reduce significant impacts of the project].) The District was not required to evaluate additional variations of the Land Use Plan, particularly where, as here, such alternatives would not provide meaningful environmental benefits beyond over the alternatives already evaluated. (*Marin Municipal Water Dist. V. KG Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1666 [Final EIR properly rejected alternatives where, among other things, alternative did not provide substantial environmental advantages]; see also *California Native Plant Society*, 177 Cal.App.4th at 993.)

The Draft EIR considered two project alternatives in detail: (1) a no project alternative; and (2) a limited footprint alternative. Under the No Project Alternative, the proposed Land Use Plan would not be adopted, the future Regional Park would not be developed, and the project site would remain largely in its existing use, with the exception that the remediation activities planned by the United States Navy would occur. Under the Limited Footprint Alternative, the proposed Land Use Plan would be amended such that future Regional Park uses would be scaled back to focus the intensity of use in the previously developed areas of the project site. The EIR further determined that the proposed Land Use Plan would not result in any significant environmental impacts after mitigation; thus, the EIR’s alternative analysis was reasonable under CEQA.

Please also see Response A-45.

Response A-35

Claiming that the Draft EIR must be overhauled to address the issues raised above, the comment suggests that the Draft EIR must be revised and recirculated for public review. While repeatedly misstating that the claimed deficiencies are severe, nowhere does the comment identify any “significant new information” satisfying the criteria for recirculation under CEQA. Neither the Final EIR nor the comment itself point to any new or substantially more severe impacts than those already identified in the Draft EIR, nor do they evidence the rejection of a new and feasible mitigation measure or project alternative that would clearly lessen the environmental impacts of the project.

Recirculation of an EIR is only required when the lead agency adds “significant new information” to an EIR after circulation for public review. (Pub. Resources Code, § 21092.1; Guidelines, § 15088.5(a).) Recirculation is required where the new disclosure shows a “new significant impact,” a “substantial increase in the severity” of an impact that cannot be mitigated, or a “feasible project alternative or mitigation measure considerably different from the others previously analyzed would clearly lessen” the project’s impacts “but the project’s proponents decline to adopt it.” (Guidelines, § 15088.5(a)(1)–

(3); *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal. App. 5th 941, 964, citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1129 (“*Laurel Heights II*”).) However, “[r]ecirculation is *not required* where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.” (Guidelines, § 15088.5(b); *San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242 Cal.App.4th 202, 224–225.) “Recirculation is intended to be the exception, rather than the general rule” and “is not intended ‘to promote endless rounds of revision and recirculation of EIRs.’” (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 133–134, quoting *Laurel Heights II*, 6 Cal.4th at 1132.)

In each of the areas identified by the comment—biological resources, GHG emissions, and air quality—the EIR evaluated the Land Use Plan’s potentially significant impacts, disclosed those potential impacts, and adopted mitigation where necessary to reduce those impacts to a less-than-significant level. With such a relatively small portion of the former CNWS proposed for redevelopment, a focus on reuse of previously developed sites, and a substantial restoration component, the proposed Land Use Plan would not result in any “new significant impact” or “substantial increase in the severity” of an impact that cannot be mitigated. Consequently, there is no “significant new information” triggering the need to recirculate the EIR.

Response A-36

The comment is a map showing points of interest on the proposed Regional Park alongside the Faria/Southwest Hills proposed land use plan.

Response A-37

Please see Responses A-02 and A-32 regarding why further project details cannot be provided and are not necessary for analysis in this program-level EIR. In short, a lead agency preparing a program EIR must disclose what it *reasonably can*. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 440.) As Comment Letter A acknowledges, the EIR identifies several project-level components that, depending on the ultimate scope and alignment of those components, may require future CEQA review. This comports with Guidelines Section 15168. (*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 607-608 [agency may dispense with further environmental review of future activities *if* adequately covered in program EIR]; *Citizens for a Sustainable Treasure Island v. City and County of San* (2014) 227 Cal.App.4th 1036, 1051 [components not adequately covered in program EIR may be subject to subsequent environmental review].)

Response A-38

Regarding the adequacy of baseline information in the evaluation of biological resource impacts, please see Response A-15.

Regarding references, the EIR provides footnote references in the document footer throughout the document. Please also see Response A-50.

As noted in Response A-21, an LTMP was prepared jointly by the City of Concord and District to describe the biological resources present on the project site and how those resources would be managed both in the near-term and in perpetuity. The LTMP has been completed and was approved by the USFWS on December 3, 2018.

Regarding buffers between recreational facilities and California red-legged frog and California tiger salamander breeding sites, the Draft EIR finds that buffers would be sufficient to avoid impacts to these species. As described on pages 4.3-41 to 4.3-42 of the Draft EIR⁹:

The majority of California red-legged frog and California tiger salamander breeding habitat on the project site would be located within Natural Units, which would be planned and managed to preserve and enhance natural habitat with only lower intensity recreational uses and facilities (primarily trails) permitted. In addition, approximately 620 acres within the Natural Units, including the majority of known California red-legged frog and California tiger salamander breeding sites, would be distinguished as Special Protection Features (SPFs) within which public access would be restricted. Further, the proposed Plan includes siting and design guidelines for the protection of biological resources, including the following measures relevant to the California red-legged frog and California tiger salamander:

- All new trails, roads, and all other recreational facilities will maintain a buffer of at least 500 feet from California red-legged frog and California tiger salamander breeding habitat.
- Group picnic sites and camping areas will be sited over 1,000 feet from any California red-legged frog or California tiger salamander breeding habitat.
- Existing roads used for regional park access should maintain a buffer of at least 500 feet from California red-legged frog and California tiger salamander breeding habitat, wherever possible. Where buffers are not feasible, fencing, signage, reduced speed limit, and other management barriers will be used to restrict trail users to the designated trails.

Regarding the baseline noise environment, noise conditions are evaluated qualitatively because a more detailed noise analysis was not warranted due to the distance (in addition to the natural terrain and landscaping providing natural attenuation) between future on-site construction activities and sensitive receptors. Development under the proposed Land Use Plan would not require the use of heavy construction equipment within 1,500 feet of sensitive receptors or require substantial amounts

⁹ Also see the May 2017 Biological Opinion issued by the USFWS, which further confirms that any development and passive recreation within the Regional Park will not jeopardize nor preclude recovery of the California red-legged frog and Central California tiger salamander. (May 30, 2017 Letter from U.S. Fish & Wildlife Service to U.S. Army Corps of Engineers and Department of the Navy re *Formal Consultation on the Proposed Transfer and Redevelopment of the Former Concord Naval Weapons Station, Contra Costa County, California* (“Biological Opinion”), pages 63-64.)

of haul (Draft EIR, at pages 4.11-15 to 4.11-16). In addition, the 35 acres of developed recreation and operations facilities that are envisioned in the Land Use Plan would be constructed incrementally over several years (Draft EIR, at page 4.11-15).

Regarding the baseline traffic environment, a full traffic analysis was not warranted due to the relatively low peak-hour vehicle trips that would be generated by the project. As described on page 4.14-15 of the Draft EIR, the project's estimated peak-hour vehicle trips would be well below the 100-trip threshold set by the CCTA and the City of Concord for a full (detailed) traffic impact analysis. Please also see Response A-05. Further, in light Senate Bill 743 (2013), auto delay, Level of Service, and other similar measures of vehicular capacity or traffic congestion have been eliminated as a basis for determining significant impacts under CEQA. (See Pub. Resources Code, § 21099; *Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609 (finding automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, shall not be considered a significant impact on the environment).)

Response A-39

Regarding whether the project would be developed in three or four phases, please see Response A-28. Regarding timing, Land Bank Status began with the 2019 conveyance of the project site from the National Parks Service to the District. Implementation will be incremental and based on the availability of funding and could extend beyond 2050. Also, some aspects of the park, such as trail connections to off-site properties, will depend on the willingness of adjacent landowners to work with the District as well as proposed buildout of those projects which may or may not align with the Concord Reuse Project, all of which are out of the District's control. While the Land Use Plan assumes a 50-year buildout (i.e. by approximately 2070), the EIR assumes that Phase 3 would be completed by the year 2050 (reflecting a 31-year buildout) to reflect a conservative and worst-case scenario for CEQA purposes.

As stated in Response A-21, the LTMP was completed and approved by USFWS in December 2018.

Response A-40

Please see Response A-22 and Errata (see Attachment C). Mitigation Measure BIO-3a has been strengthened to mandate compensatory mitigation at a minimum of a 1:1 ratio. This satisfies CEQA. (See *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1041-1042 [upholding 0.5:1 mitigation ratio for loss of Swainson's hawk habitat]; *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 611, 619-623 [upholding minimum mitigation ratio of 1:1 for loss of 15.65 acres of vernal pool and seasonal wetlands].)

Response A-41

As described on page 4.14-15 of the Draft EIR, the project's estimated peak-hour vehicle trips would be well below the 100-trip threshold set by the CCTA and the City of Concord for a full (detailed)

traffic impact analysis.¹⁰ Please see Response A-05 regarding visitor estimates and other assumptions for calculation of vehicle trips for the proposed project.

Response A-42

Please see Response A-28. Modeling conducted for the GHG analysis utilized default trip lengths in the California Emissions Estimator Model (CalEEMod), which is 9.5 miles for commercial-to-work trips and 7.3 miles for commercial-to-commercial (i.e., non-work) trips. Because the CalEEMod land use categories do not include all land use types, these categories were used to represent employees and visitors, respectively.

Response A-43

Because specific site plans for future development projects under the Land Use Plan have not yet been developed, it would be speculative to calculate site-specific stormwater volumes and rates. As reflected in impact discussion HYD-1 in Chapter 4.9, Hydrology and Water Quality, of the Draft EIR, the EIR analysis uses an estimate of total acres of impervious area to determine that a potentially significant impact could occur, and recommends Mitigation Measure HYD-1.2 to ensure that future project design plans adhere to stormwater best management practices. As noted on page 4.9-18 of the Draft EIR:

“it is estimated that development of the proposed Regional Park would install approximately 16.5 acres of new development, most of which would be impervious area, and replace 40.5 acres of existing impervious area in certain areas of the site, including buildings (such as the Visitor Center and Native Plant Nursery structures) and paved roads and trails. In other areas, impervious surfaces (such as roads) would be removed. Overall the project would reduce the total impervious area on the site by approximately 41 acres or 33 percent.”

Given the size of the project site (2,543 acres) and the fact that the vast majority of the site will remain as pervious coverage, future specific development projects can be reasonably expected to be designed to handle and manage stormwater on-site.

Response A-44

The comment suggests that the Draft EIR’s discussion of liquefaction, lateral spreading, and unstable geologic units impacts is inadequate and relies on compliance with existing regulations.

The Draft EIR does conclude that the Land Use Plan’s effects related to geology and soils would remain less than significant. What the comment fails to acknowledge, however, is that the Regional Park buildings and facilities would be developed almost entirely on land *already developed with*

¹⁰ http://ccta.net/wp-content/uploads/2018/12/Final_Technical_Procedures_Full_Jan2013-1.pdf.

existing facilities. The vast majority of the Regional Park (95 percent) would be preserved as habitat and open space, and left in its current and natural condition. Moreover, the existing buildings on the site—all of which were constructed long before modern building codes—have not been affected by any existing geotechnical issues that pose a concern for redevelopment.¹¹ Conversely, all future development on the site will be subject to the City of Concord’s building and grading permitting processes and require compliance with the City’s performance standards provided in the California Building Code (CBC) and the City’s Municipal Code.

As described on page 4.6-2 of the Draft EIR, the CBC provides “minimum standards to protect property and public safety by regulating the design and construction of excavations, foundations, building frames, retaining walls, and other building elements to mitigate the effects of seismic shaking and adverse soil conditions. The CBC contains provisions for earthquake safety based on factors including occupancy type, the types of soil and rock on-site, and the strength of ground shaking with specified probability of occurring at a site.” As noted in impact discussion GEO-1 in the Draft EIR, “Any grading permit for development activities within a hillside must have an engineering geology report prepared and submitted to the City.” In addition, the City’s Municipal Code Section 16.10.030 allows the City Engineer to require a geologic report prior to the issuance of any grading permit. Through this process, and through compliance with the California Building Code, project-specific geotechnical issues will be thoroughly addressed consistent with State and local requirements as specific building proposals are developed. (See *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 [no deferral of mitigation of geologic hazards where mandated to comply with building code].) Furthermore, as stated on page 4.6-14 of the Draft EIR:

“Pursuant to the *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369 and *Ballona Wetlands Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473-474, CEQA does not require an EIR to analyze the environmental effects of attracting development and people to a hazardous area, except when the project exacerbates an existing environmental hazard or condition, or when specifically required by statute. Therefore, the discussion of geologic hazards . . . focuses on the extent to which the proposed project could *exacerbate* [emphasis added] existing hazards.”

The Plan’s proposed uses of future buildings and marginal new development does not exacerbate any existing hazardous condition; rather, future uses will improve those structures and site characteristics as needed to satisfy the extraordinarily strict building codes now in effect.

Response A-45

The comment incorrectly states that the Limited Footprint Alternative evaluated in the Draft EIR includes development throughout the project site. Under both the proposed Plan and the Limited

¹¹ Personal communications with Brian Holt, Chief of Planning/GIS, and Devan Reiff, Principal Planner, East Bay Regional Park District, June 17, 2020.

Footprint Alternative, the development footprint would be relatively small compared to the size of the total project site. As stated on page 3-1 of the Draft EIR:

“The vast majority of the proposed project, approximately 2,417 acres, or 95 percent of the site, would be designated as a conservation area and preserved for conservation and management of natural and cultural resources. [...] The remainder of the property, approximately 126 acres, or 5 percent of the site, would be available for recreation and park facilities, primarily on land already developed with existing facilities (building sites, paved and unpaved roads, parking areas, bunkers, and railroad tracks from the United States Department of the Navy’s (Navy) operation of the property) that will be reused.”

The Limited Footprint Alternative would involve an even more limited extent of development; as described on page 5-13 of the Draft EIR, this alternative would remove “several miles of trail, the proposed orchard and Diablo Center, two campsites, and several picnic areas and overlooks.” As stated on page 5-4 of the Draft EIR, this alternative would only partially achieve all of the project objectives. As the proposed Plan would leave 95 percent of the project site as designated conservation areas, and the Limited Footprint Alternative would leave more of the site in their existing conditions or returned to a more natural state, a third alternative that leaves even more of the site undeveloped is not required.

The commenter requests an alternative consistent with the City of Concord’s Reuse Plan, Specific Plan, and General Plan. As noted on page 4.10-13 in Chapter 4.10, Land Use and Planning, of the Draft EIR, the proposed Plan would be consistent with the City of Concord’s General Plan land use designation. As noted in Table 4.10-2 of the Draft EIR, the proposed Plan is consistent with the policies of the Concord Reuse Project Area Plan. Additionally, in its comment letter on the Draft EIR, the City of Concord did not express any concerns regarding the consistency of the proposed Plan with the General Plan or its planning documents for the Concord Reuse Project, nor did it express any concerns regarding the alternatives evaluated in the Draft EIR. Therefore, no new alternatives are required.

Please also see Responses A-34, A-46, and A-48.

Response A-46

The CEQA Guidelines do not provide specific guidance for how to characterize the impacts of project alternatives in comparison to the proposed Plan. For example, Section 15126.6(d) of the CEQA Guidelines states “A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison.” Chapter 5, Alternatives, of the Draft EIR provides information at an adequate level of detail for the reader to understand the effects of the project alternatives and how they compare to the significant impacts of the proposed Plan. The discussion of noise impacts under the No Project Alternative acknowledges that this alternative would not generate construction or operational noise. As noted on page 5-11 of the Draft EIR, neither the proposed Plan nor the No Project Alternative would result in significant noise impacts. Therefore, the impacts are considered to be similar.

Response A-47

The evaluation of agricultural and forestry resources was conducted consistent with Appendix G of the CEQA Guidelines, which identifies the following resources of concern: Prime Farmland, Unique Farmland, Farmland of Statewide Importance, zoning for agricultural use, land subject to a Williamson Act contract, zoning of forest land or timberland, forest land, and farmland or forest land that would be converted to a non-agricultural or non-forest use. As stated on pages 6-1 to 6-2 of the Draft EIR, “There are no agricultural lands classified as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance within Concord. In addition, the Contra Costa County Department of Conservation does not identify lands in Concord that are under Williamson Act contract.¹² Therefore, future development as a result of adoption and implementation of the proposed Plan would not conflict with farmlands of importance or lands under Williamson Act contract. According to 2006 mapping data from the California Department of Forestry and Fire Protection, the City of Concord does not contain any woodland or forestland cover;¹³ therefore, the City does not contain land zoned for Timberland Production nor does the Concord Zoning Map identify any areas zoned for Timberland Production.¹⁴” The project site is located within the city of Concord; therefore, none of these uses are mapped within the project site. Moreover, with 95 percent of the Regional Park remaining in open space and in need of active vegetation management, there is no plan to cease the current grazing that occurs on-site. Indeed, grazing is identified as one of several active management tools to help manage the future conservation area for special-status species and their habitats. The LTMP includes Interim Habitat Monitoring, Management, Maintenance, and Reporting Task INT-14, “Manage Localized Grassland Biomass through Selective Grazing.” It also includes Long-Term Habitat Monitoring, Management, Maintenance, and Reporting Task INT-13, “Manage Grazing around Ponds to Maintain or Enhance Habitat.”¹⁵ Likewise, the Biological Opinion issued by the U.S. Fish and Wildlife Service includes Conservation Measure 10a, “Maintenance of appropriate grass heights for listed species via grazing within areas proposed as On-Site Conservation Lands in the 2017 Disposal BO [Biological

¹² Contra Costa County Department of Conservation and Development, 2013, 2012 Agricultural Preserves Map, Contra Costa County.

¹³ California Department of Forestry and Fire Protection, 2006, Fire and Resource Assessment Program, Land Cover Map, http://frap.fire.ca.gov/data/frapgismaps/pdfs/fvegwhr13b_map.pdf, accessed May 2, 2018.

¹⁴ City of Concord, 2012, Zoning Map effective August 23, 2012, <http://www.menlopark.org/DocumentCenter/View/187>, accessed on May 2, 2018.

¹⁵ City of Concord and East Bay Regional Park District, December 3, 2018, Concord Reuse Project Area Plan On-Site Conservation Lands Long-Term Management Plan, prepared by H.T. Harvey & Associates., Table 7 and Table 8.

Opinion].”¹⁶ Consequently, there is no adverse impact to agricultural or forestry resources, whatsoever.

Response A-48

The comment suggests that the Draft EIR failed to consider or conduct certain tests or additional surveys recommended by the City of Concord and others, including with regard to visual simulations, project alternatives, vector control, and botanical surveys. The comment fails to acknowledge that “CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project.” (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396, citing Guidelines, § 15204(a); *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 102; *Society for California Archaeology v. County of Butte* (1977) 65 Cal.App.3d 832, 838-839.) Furthermore, the District here had the “discretion to reject a proposal for additional testing or experimentation.” (*Association of Irrigated Residents*, 107 Cal.App.4th at 1396.)

Regarding visual simulations, the District considered the City’s comment and whether to include some visual simulations in the EIR, but decided that such simulations would not be meaningful from off-site locations due to the very low-intensity nature of the project and the relatively small building area in the context of the entire 2,543 acre site. Under the CEQA Guidelines, Appendix G, the relevant inquiry is whether the project would “[s]ubstantially degrade the existing visual character or quality of the site or its surroundings.” The fact that there are already buildings, water tanks, bunkers, roadways, rails, and fire and walking trails scattered throughout the former CNWS under baseline conditions—some of which on prominent hilltop locations—combined with the limited scenic vistas from off-site locations and marginal development proposed for the Regional Park, further highlights the lack of any possible adverse aesthetic or visual impacts associated with converting the area to a regional park and habitat preserve. (See, e.g., *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1026-1027 [significance of aesthetic impact must be measured in light of the context where it occurs], citing *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 589; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243-244; *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1337-1338.)

Regarding alternatives, please see Responses A-34, A-45, and A-46.

Regarding vector (mosquito) control, the comment references the Contra Costa Mosquito & Vector Control District’s comments on the NOP, and raises concerns about mosquito population impacts on sensitive receptors and future park visitors. The Final EIR addressed comments submitted by the

¹⁶ United States Department of the Interior, Fish and Wildlife Service, January 12, 2018, Second Reinitiation of Formal Consultation for the Environmental Investigations on the Formal Naval Weapons Station Seal Beach, Detachment Concord, Concord, Contra Costa County, California, page 22.

Vector Control District, which provided background on the existing mosquito sources and programs to address vector control and the possible impacts of those existing sources on future Regional Park users. (Final EIR, at pages 5-8 through 5-10.) As acknowledged by the Vector Control District and Chapter 5 of the Final EIR, risks to human health by disease vectors is not a significance threshold addressed in Appendix G of the CEQA Guidelines, and the presence of mosquitos and the ongoing vector control is part of the existing baseline condition. Moreover, to the extent the current comment is suggesting that the EIR must address the possible impacts of the existing environment on future users of the Regional Park, that too is not a topic for CEQA review. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386 [“CEQA generally does not require an analysis of how existing environmental conditions will impact a project's future users or residents.”]; *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 892; *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 582-584; *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193-195 [no fair argument that locating homes in a fire hazard zone would increase fire risks to the environment].)

Here, in addition to comprising a pre-existing environmental condition, the proposed Plan is not proposing features or activities that would exacerbate the existing sources of mosquitos. Indeed, existing vector control practices administered by the District and Contra Costa County will likely help reduce the existing sources for mosquitos from baseline conditions. (See, e.g., Final EIR, at page 5-10.) Moreover, as referenced above, the District implements integrated pest management (IPM) strategies consistent with its adopted Pest Management Policies and Practices resolution throughout its park system. The District uses an IPM Checklist to implement, monitor, and refine the adopted Policies and Practices. The District also prepares an IPM annual report. A principal goal of the District’s IPM program is to protect the public from pests that may be a threat to public health. The District publishes annual reports with updated data on its IPM program.¹⁷ The Regional Park manages vegetation with mowing and grazing. Under the proposed project, the District would continue its standard abatement procedures, which include vegetation control, draining puddles that form in parking areas, and managing vegetation in ponds. The District will also continue its partnership with the Vector Control District to coordinate more intensive abatement needs when they arise. But these are all standard, pre-existing practices for the District and its park system, and not a potentially significant impact or mitigation measure arising from this Plan. (See, e.g., *Citizens for Environmental Responsibility v. State ex rel. 14th Ag. Assn.* (2015) 242 Cal.App.4th 555, 568-569 [a rodeo’s manure management plan was not a “new measure” but rather a “preexisting measure previously implemented to address a preexisting concern” as part of “ongoing ‘normal operations’ of the Fairground.”].)

Finally, development of the Regional Park would also improve access throughout the project site in comparison to existing conditions, which would allow for improved maintenance and access for District staff and mosquito and vector abatement technicians. The project area is also remote, and

¹⁷ <https://www.ebparks.org/civicax/filebank/blobload.aspx?blobid=33267>.

there is no evidence of sensitive receptors within the appropriate distance. Consequently, this was not a topic that needed to be addressed further in the EIR.

As to the call for additional botanical surveys, such surveys and maps are not required for every species addressed in the EIR, particularly where, as here, the proposed Plan's effects are less than significant. (See *San Joaquin Raptor Rescue Center. v. County of Merced* (2007) 149 Cal.App.4th 645, 666 [analysis of impacts need not be "so exhaustively detailed as to include every conceivable study or permutation of the data"]; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1468 [quantified analysis of biological impacts not required].) This is particularly true here, where the botanical species referenced have never been identified on the entirety of the former CNWS and 95 percent (or 2,417 acres) of the Regional Park will be preserved and managed to enhance (not degrade) the baseline biological resources setting and the areas slated for passive recreational use or new development are mostly disturbed or already developed. Mitigation Measure BIO-1.1a through BIO-1.1c, as revised in the Errata (see Attachment C), will ensure that sensitive botanical resources will be avoided or protected. Regarding surveys, please also see Responses A-15, B-02, and B-03.

Response A-49

Potential impacts to future cumulative development projects, including the Faria/Southwest Hills Development, are evaluated throughout the Draft EIR.

Regarding cumulative air quality effects, as stated on page 4.2-33 of the Draft EIR, "A project that exceeds the BAAQMD's significance criteria in the context of emissions from all other development projected within the entire SFBAAB would cumulatively contribute to impacts. Thus, per BAAQMD guidelines, the potential for the proposed project to result in cumulative air quality impacts is evaluated on an individual basis irrespective of other projects that may be occurring concurrently in the area (e.g., Concord Reuse Project)."

Regarding cumulative noise effects, please see Response A-07 and discussion on pages 4.11-18 and 4.11-19 of the Draft EIR regarding why the project's cumulative noise impacts will be less than significant.

Regarding cumulative traffic effects, please see Response A-05, which explains why a full traffic analysis is not required. Further, in light Senate Bill 743 (2013), automobile delay as a measure of Level of Service (LOS), and other similar measures of vehicular capacity or traffic congestion have been eliminated as a basis for determining significant impacts under CEQA. (*Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 625-626 [as of certification of the Guidelines in 2018, automobile delay based on LOS "shall not be considered a significant impact on the environment" under CEQA], citing Pub. Resources Code, § 21099(b)(2); Guidelines, § 15064.3.) The Draft EIR complies with CEQA Guidelines Section 15148 which, as noted, requires an EIR to "cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR." The CEQA Statute and Guidelines do not stipulate a specific format for citations. The Draft EIR provides footnote references throughout the document.

Responses to Comment Letter B

Response B-01

The comment is an introduction to the comments that follow. The District appreciates this input from CNPS. Please see Responses B-02 and B-03.

Response B-02

The District concurs with the suggestion that surveys for big tarplant be conducted in a year with near-average or above-average precipitation. Such language was originally included in Mitigation Measure BIO-1.1a in the Draft EIR. Although it was struck for the Final EIR, the District will restore the original language to ensure that any surveys that are conducted for big tarplant are conducted during a year in which rainfall has been adequate for the species to be detectable if present. See the revised Mitigation Measure BIO-1.1a in the Errata in Attachment C. The District will conduct any such surveys far enough in advance of construction to ensure that Mitigation Measures BIO-1.1b and BIO-1.1c can be implemented, if necessary.

Response B-03

As described in the Draft EIR, grasslands within the project site are ostensibly suitable for big tarplant, and the botanists who conducted the site-wide special-status plant surveys in 2008 determined that rainfall may not have been adequate for that species to have been detected during those 2008 surveys, if it were present. Therefore, the Draft EIR included Mitigation Measures BIO-1.1a, BIO-1.1b, and BIO-1.1c to ensure that adequate surveys are conducted for big tarplant prior to any construction in grassland habitat, and that any tarplant occurrences are either avoided or are compensated for by management of existing populations.

However, there is a very low probability that big tarplant will be impacted by Regional Park construction activities, for several reasons. First, the species has not been seen anywhere in the larger Concord Reuse Project/Concord Hills Regional Park area during a number of biological surveys conducted over the years, including the original 2008 surveys; 2010 wetland delineation field work performed throughout the larger area by H. T. Harvey & Associates plant ecologists; a focused big tarplant survey conducted in August 2019 by H. T. Harvey & Associates that covered more than 2,000 acres of the City's proposed development area, as well as a portion of the Regional Park within which water tanks may be constructed in the future;¹⁸ and field work by biological consultants to the U.S. Navy who have performed pre-activity surveys and monitoring associated with the Navy's remediation activities. Second, the absence of any special-status plants observed throughout the larger area during any of these surveys suggests that there is no a priori reason to believe that sensitive habitats supporting special-status plants are likely to be present in the construction area. Third, Regional Park

¹⁸ Steve Rottenborn, H.T. Harvey & Associates, personal communication to the East Bay Regional Park District.

construction activities would affect only a very small proportion of available habitat for this species (approximately 16.5 acres), making it extremely unlikely that big tarplant would be impacted by these activities.

If big tarplant is present in the Regional Park at all, it is far more likely to occur in the vast grasslands that will not be impacted by construction activities than in the 16.5 acres of grassland that will be impacted. The District believes that in the unlikely event that big tarplant is present in construction areas and cannot be avoided, there is a reasonable probability that a population exists within the conservation area that will not be impacted by construction, and that such a population could provide an opportunity for compensatory mitigation. Any big tarplant population in the conservation area is likely to be well-managed by the management and monitoring actions described in the LTMP.

Nevertheless, the District agrees that in the case of a plant that is as regionally rare as big tarplant, it is important that any impacts be adequately mitigated, and that focused mitigation for this species, rather than reliance on the LTMP, is appropriate. The District also agrees with CNPS's suggestion that mitigation should be provided at a 2:1 ratio. The acreage occupied by rare plants such as big tarplant depends on a variety of factors, including habitat quality and resulting plant densities. For example, 100 individuals of a plant species may be spread out over 10 acres if habitat quality and plant density are low, or they may be concentrated in 0.1 acre if habitat quality is high, resulting in high plant densities. For this reason, the District believes that it is appropriate to apply the 2:1 mitigation ratio to the number of individuals rather than occupied acreage. Mitigation Measure BIO-1.1c has been revised accordingly, as shown in the Errata in Attachment C.

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May 29, 2020

Via E-Mail only

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**Re: Comments on Final Environmental Impact Report (FEIR) for Concord Hills
Regional Park Land Use Plan: SCH No. 2017062063
Agenda Item No. D.2.a.**

Dear General Manager Doyle, Board of Directors, and Clerk of the Board:

In advance of the Board of Directors hearing on June 2, 2020, this letter is submitted on behalf of Discovery Builders, Inc. and Faria Land Investors, LLC (“Faria”) (collectively, “Discovery”) to provide comments on the adequacy of the Final Environmental Impact Report (“FEIR”) for the proposed Concord Hills Regional Park Land Use Plan (the “Project”), which impacts the planned Faria residential development (“Faria”) on a 606-acre parcel directly adjacent to the proposed Project. A map showing the location of Faria and the Concord Hills Project is attached as Exhibit 1.

By incorporating and relying upon the substantially flawed analysis of the Draft EIR (“DEIR”), the FEIR contains analyses and conclusions that are arbitrary, capricious, and not supported by substantial evidence, contrary to the requirements of the California Environmental Quality Act (“CEQA”). For example:

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- The biological data relied upon in the analysis is decades old, and does not consider the current state of animal and plant species, which runs contrary to CEQA and to recent staff claims that a primary Project goal is to create a “biological hotspot” for animal and plant species.
- Inadequate consideration of impacts on the Project—and from the Project—related to visitors and traffic, particularly when accounting for reasonably foreseeable projects nearby. For instance, the DEIR assumes only minimal increase in traffic for a conclusion that no detailed traffic study is required. However, it also fails to adequately study the number of potential visitors and the large residential and other developments planned nearby, which means that assumption is speculative and without factual basis.
- As the City of Concord (the “City”) and Contra Costa County agencies pointed out in their comment letters, the DEIR lacks specificity regarding trail connections, stormwater runoff, and various other critical planning aspects like the size and scope of the planned Diablo Center and other facilities and the incorrect zoning for the Project as proposed. Rather than building these items into the analysis, the DEIR defers consideration to an uncertain future time.
- Similarly, the mitigation of numerous impacts is deferred, or existing mitigation refers to plans, guidelines, and actions that have themselves not been developed, while also purporting to be a programmatic DEIR such that any future projects related to this DEIR could inappropriately escape thorough environmental review.
- The DEIR and FEIR fail to address all public comments properly, in many cases just giving conclusory remarks. In one case, and in response to a comment from a Contra Costa County agency, the FEIR actually inserts for the first time in this process a reference to a six (6) million gallon water tank as part of the Project, but without any analysis of its impacts or how such a project may impact mitigation measures.

A-01
cont.

This letter summarizes Discovery’s comments on the DEIR and includes, attached as Exhibit 2, a technical letter submitted on behalf of Discovery by RCH Group (“RCH Letter”). The comments in the technical letter are incorporated herein by reference and supplement this comment letter.

The Board of Directors (“Board”) should decline to certify the FEIR due to its failure to uphold CEQA. Instead, the Board should require that the East Bay Regional Park District (the “District”) prepare and recirculate a new draft EIR that adequately analyzes the Project’s impacts.

I. OVERVIEW

On October 8, 2019, the East Bay Regional Park District released the Draft EIR for the Project, which consists of an unplanned and undefined 2,543-acre regional park on property that

is part of the Concord Naval Weapons Station (“CNWS”). DEIR at 1-5. Development of the Project will include construction of undefined staging facilities, parking lots, campgrounds, picnic areas, a park residence, a visitor center complex, an event center, and other recreational, educational, and interpretive facilities, in addition to the development of hiking and biking trails. DEIR at 3-15.

The DEIR purported to perform the environmental analysis required under CEQA, including examination of aesthetics, biological resources, traffic, air quality, greenhouse gases, noise, geology, hazards, and other potential impacts. However, the Draft EIR’s analysis of the Project’s potential impacts on the environment was woefully insufficient, particularly in the areas of biological resources, traffic, air quality, greenhouse gas emissions, noise, geology and soils, hydrology and water quality, and others.

The FEIR, released on May 1, 2020, does nothing to address these deficiencies. Rather, there continue to be significant legal, factual and analytical problems in several areas of the Draft EIR that are not resolved in the FEIR, which are described in more detail below and in the attached technical letter from the RCH Group. Discovery objects to these and other flaws in the analyses, findings, assumptions and mitigation measures presented by the DEIR, as addressed in detail below and in the accompanying technical letter. The issues Discovery has identified render the Draft EIR and Final EIR insufficient as a matter of law and preclude the Board’s certification.

II. ANALYSIS

The EIR is widely recognized as the “heart of CEQA.” *Schellinger Bros. v. City of Sebastopol*, 179 Cal. App. 4th 1245, 1257 (2009). Accordingly, CEQA provides that “[a]n EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.” 14 Cal. Code Regs. § 15151. To that end, CEQA requires that an EIR address all of the Project’s significant environmental effects, including direct, indirect, and long-term effects. Public Resources Code § 21100(b); 14 Cal Code Regs. §15126.2(a). Agency conclusions, findings, and determinations must be supported by substantial evidence. *Residents Against Specific Plan 380 v. Cty. of Riverside*, 9 Cal. App. 5th 941, 968 (2017). Otherwise, they are deemed a prejudicial abuse of discretion, mandating rejection of the EIR. *See Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 426 (2007).

Here, the DEIR lacks the analytical rigor and evidentiary support required to meet CEQA’s well-established standards. As detailed in the enclosed technical letter and described below, the DEIR’s analysis of potential impacts and mitigation measures fails to “include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 405 (1988).

In sum, these deficiencies render the EIR wholly inadequate under CEQA and preclude certification by the Board.

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cont.

A. The Program EIR Is Insufficient To Cover Future Projects Referenced In The Land Use Plan

This programmatic EIR lacks any environmental analysis of numerous later developments envisioned in the Land Use Plan, including the visitor center complex, the Diablo Center, a park residence, interpretive facilities, campgrounds, staging areas, parking lots, picnic areas, and trails.

As such, project-specific CEQA review of these subsequent projects will be required for those later developments—preparation of the DEIR/FEIR does not and will not excuse that obligation. Each project will need to be individually examined to determine what additional environmental review documents must be prepared. 14 Cal. Code Regs. § 15168. The District is prohibited from relying upon this broad program EIR where project-specific review is warranted. As the California Supreme Court has explained, “[f]uture environmental documents may incorporate by reference general discussions from the broader EIR, but a separate EIR is required for later projects that may cause significant environmental effects inadequately addressed in the earlier report.” *In re Bay-Delta Programmatic Env’t Impact Report Coordinated Proceedings*, 43 Cal. 4th 1143, 1173 (2008). Given the magnitude of these later development projects, without question subsequent EIRs will be necessary.

To comply with CEQA, the District therefore must not only prepare a new DEIR, but must also ensure that in the future separate EIRs are prepared for each of these later projects that have not undergone any environmental review.

B. The DEIR Cannot Rely On The “Program EIR” Label As A Basis To Defer Required Analysis

While program EIRs are occasionally used in order to minimize redundant environmental review where the lead agency contemplates a series of subsequent projects, a program EIR must still contain the detailed analysis that CEQA requires. Here, the DEIR defers analysis of anticipated significant impacts that can and should be evaluated now, including on biological resources, transportation and traffic, air quality and greenhouse gas emissions, noise, geology and soils, hydrology and water quality, and agricultural and forestry resources. The purported justification is that such analysis can be performed at a later stage of development. That justification is mistaken, as explained below, which renders the DEIR inadequate.

The DEIR purports to be a program-level EIR, despite not having been described as such in the Notice of Preparation (“NOP”) and failing to identify future activities or phased program elements. RCH Letter, § I. Specifically, the DEIR states in the introduction section that “[t]his Draft EIR is a program-level EIR that analyzes implementation of the proposed project.” DEIR at 2-4. Under CEQA, a program EIR may be used to simplify the task of preparing later environmental documents for activities within the program as they are proposed for approval. 14 Cal Code Regs. § 15168(b)–(d). Program EIRs are most commonly utilized in the context of tiering, which “is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the

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first-tier approval decision but are specific to the later phases.” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 431 (2007).

However, tiering cannot be used out of convenience to avoid full CEQA obligations. Rather, CEQA makes explicitly clear that “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.” *Id.* (quoting 14 Cal. Code Regs. § 15152(b)); *see also Stanislaus Nat. Heritage Project v. Cty. of Stanislaus*, 48 Cal. App. 4th 182, 199 (1996) (“[T]iering’ is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause.”).

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cont.

Here, the EIR has failed to adequately analyze an array of reasonably foreseeable significant environmental impacts, including, but not limited to, the following:

- **Biological Resources:** Despite the fact that approximately 95% of the Project area “would be designated as a conservation area and preserved for conservation and management of natural and cultural resources,” the DEIR contains a troubling lack of analysis regarding the potential impacts of development on biological resources. RCH Letter, § II. As stated by District staff during the Board Executive Committee meeting on May 7, 2020, a primary goal of the Project is to create a “biological hotspot” for animal and plant species. The DEIR’s insufficient biological data undermines this purpose.
- **Transportation and Traffic:** Rather than fully calculating and analyzing weekday vehicle trips and peak hour trips, the DEIR relies on unsupported assumptions in asserting that traffic impacts on local roadways would be minimal. RCH Letter, § V. Given the uncertainty of District staff regarding the expected amount of visitation by residents of Pittsburg—which was discussed at the most recent Board Executive Committee meeting—a more detailed traffic analysis must be performed to quantify and evaluate potentially significant impacts.
- **Air Quality and Greenhouse Gas Emissions:** In the absence of a sufficient traffic analysis, the DEIR’s assessments of air quality and greenhouse gas emissions impacts are necessarily flawed. Therefore, updated evaluations of air quality and greenhouse gas emissions must be performed using the data gathered from the required traffic analysis.
- **Noise:** The DEIR necessarily contains inadequate analysis of foreseeable noise impacts because there is no indication that an acoustical study was performed. RCH Letter, § II. Moreover, the DEIR does not address potential noise impacts to sensitive receptors in planned developments in the vicinity of the Project. RCH Letter, § II.
- **Geology and Soils:** The DEIR does not sufficiently analyze potential impacts of liquefaction, lateral spreading, or unstable geologic units relating to development of

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the site. RCH Letter, § VIII. Because the site’s geological conditions are unlikely to change, there is no sound reason to defer this analysis.

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- **Hydrology and Water Quality:** While the Project envisions development of additional impervious areas, the DEIR does not analyze the potential impacts to local water quality of resulting increased stormwater runoff. RCH Letter, § VII. As stated by the Contra Costa County Flood Control and Water Conservation District in its public comments on the DEIR, the DEIR should discuss the impacts of additional runoff from future Project development on the existing drainage facilities in the downstream areas, including those areas outside of the Project site. FEIR at 5-17, Comment 07-04.
- **Agricultural and Forestry Resources:** While the DEIR acknowledges the existence of agricultural and forestry resources at the site, including cattle grazing and experimental stands of trees planted by the U.S. Forest Service, no substantive analysis of these resources has been performed. RCH Letter, § XI.
- **Trail Connections:** The DEIR references plans to construct trail connections to surrounding areas, but provides no detail regarding their location or their potential impacts. DEIR at 3-25. This issue was raised by the Board of Directors at the most recent Board Executive Committee meeting and by committee members at the most recent Park Advisory Committee meeting, but District staff did not provide additional information in response. Similarly, the City also identified this issue in its public comments on the DEIR. FEIR at 5-11, Comment 04-01. As reflected by these comments from the Board and the City, the DEIR must provide a greater level of analysis with regard to the potentially significant impacts of planned trail connections.
- **CCWD Water Tank:** The FEIR revises the DEIR by incorporating a brief reference to “a new 6-million-gallon CCWD storage tank and related facilities” that the Contra Costa Water District is planning to construct within the boundaries of the Project. FEIR at 3-6. Not only does this addition further demonstrate the inadequacy of the DEIR, but it raises a number of important questions about the potentially significant impacts of this previously unmentioned water tank. As CCWD states in its comment letter on the DEIR, “[w]hile we recognize that the new water tank is in support of the City of Concord's Concord Reuse Plan, it will be located on EBRPD land, thus the description should be included in this Land Use Plan EIR.” FEIR at 5-16, Comment 06-02. Even if the District is not aware of certain details of the planned water tank, the DEIR, as a program EIR, must include a more substantive analysis of the water tank based on current information.

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Such analysis is required and cannot be avoided and deferred. By relying on its “programmatic” label to excuse or delay analysis that could be performed at this time, the DEIR is contrary to CEQA, which mandates that tiering must “not prevent adequate identification of

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significant effects of the planning approval at hand.” 14 Cal. Code Regs. § 15152. As courts have explained, “designating an EIR as a program EIR does not by itself decrease the level of analysis otherwise required in the EIR.” *Cleveland Nat’l Forest Found. v. San Diego Assn. of Governments*, 17 Cal. App. 5th 413, 426 (2017). Instead, courts “focus on whether the EIR provided decision makers with sufficient analysis to intelligently consider the environmental consequences of the project.” *Id.*

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cont.

Here, the DEIR fails to provide the required level of analysis with regard to a host of potentially significant impacts, and does not comply with CEQA and cannot be certified as-is.

C. The DEIR Fails To Adequately Define The Environmental Baseline

An EIR’s purpose is to assess a project’s potential impacts on the environment. Thoroughly documenting the existing environmental conditions is therefore a critical initial step in the CEQA analysis. Here, however, the DEIR does not contain enough information to allow for an understanding of existing conditions, particularly with regard to biological resources, traffic, and noise. Further study and documentation of the environmental setting is required to satisfy CEQA.

Every EIR must include a description of the physical environmental conditions in the vicinity of the project, referred to as the environmental “baseline.” 14 Cal. Code Regs. § 15125. As the California Supreme Court has explained, in order to evaluate a project’s impact, the EIR “must delineate environmental conditions prevailing absent the project, defining a ‘baseline’ against which predicted effects can be described and quantified.” *Neighbors for Smart Rail v Exposition Metro Line Constr. Auth.*, 57 Cal. 4th 439, 447 (2013).

This is an essential component of analysis, for “[w]ithout accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the EIR adequately investigated and discussed the environmental impacts of the development project.” *Cleveland Nat’l Forest Found. v. San Diego Assn. of Governments*, 17 Cal. App. 5th 413, 439–40 (2017) (internal alterations and quotations omitted); *see also Cadiz Land Co. v. Rail Cycle, L.P.*, 83 Cal. App. 4th 74, 87 (2000) (“If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA.”). CEQA requires that generally, “the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published”—in this case, June 2017. 14 Cal. Code Regs. § 15125(a)(1).

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cont.

In this instance, the DEIR has altogether failed to perform analysis sufficient to establish the environmental baseline for a number of important areas, including biological resources, traffic, and noise. Particularly concerning is the District’s lack of examination of the existing biological and ecological conditions at the site using relevant, up-to-date information and data. Although the Project site is planned to consist primarily of a “conservation” area, the DEIR largely ignores the Project’s potential impacts on the precise resources purportedly intended for protection under this conservation area designation.

The DEIR’s lackluster analysis fails to define the environmental baseline for multiple categories of potential impacts, including but not limited to the following:

- **Biological Resources:** The DEIR relies on incomplete and outdated data with regard to plant and animal communities potentially present at the site, including certain endangered and special-status species. RCH Letter, § II. For instance, in describing the reptiles and mammals potentially occurring at the site, the DEIR cites wildlife surveys performed as far back as 1999. DEIR at 4.3-18, fn. 15. Biological data that is two decades old does not establish existing environmental conditions. Without an adequate environmental baseline, potential impacts to these important resources cannot be measured and effective mitigation measures cannot be devised and implemented.
- **Traffic:** No traffic studies are cited or studied in the DEIR, despite the Project’s location near significant roadways in a densely populated suburban area. RCH Letter, § V. A full traffic study must be performed for the Project’s potential traffic impacts to be measured.
- **Air Quality and Greenhouse Gas Emissions:** Because a traffic study was not performed, air quality and greenhouse gas emissions are not measured. The required traffic study must be prepared, and the DEIR’s discussion of air quality and greenhouse gas emissions will need to be revised to accurately reflect the environmental baseline.
- **Noise:** The DEIR does not indicate that an acoustical study was performed or that any noise measurements were taken in order to determine the existing ambient noise level at the site. RCH Letter, § II. Without quantification of existing noise levels, the DEIR has not adequately defined existing environmental conditions.

Failing to adequately develop the environmental baseline renders subsequent analysis deficient, because without an accurate description of existing conditions an agency cannot meaningfully assess environmental impacts. 14 Cal. Code Regs. § 1525(a) (explaining that the description of the environmental setting “constitute[s] the baseline physical conditions by which a lead agency determines whether an impact is significant”). Therefore, the DEIR fails to fulfill its requirements under CEQA. *Citizens for E. Shore Parks v. State Lands Com.*, 202 Cal. App. 4th 549, 557 (2011) (“[A]n inappropriate baseline may skew the environmental analysis flowing from it, resulting in an EIR that fails to comply with CEQA.”).

The DEIR’s inadequate baseline analysis also imperils the legitimacy of subsequent programmatic environmental review. While agencies are permitted to adjust the baseline over time (*Citizens for E. Shore Parks v. State Lands Com.*, 202 Cal. App. 4th 549, 563 (2011)), the promise of later environmental review does not remove the obligation of preparing a vigorous initial analysis of the existing environmental conditions. Given the practical possibility of performing a more thorough baseline analysis of the potentially significant impacts discussed above, there is no legitimate reason the District cannot perform the requisite analysis. *See*

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Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth., 57 Cal. 4th 439, 449 (2013) (describing that “CEQA analysis [must] employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project’s likely impacts”).

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cont.

Accordingly, the District must prepare and recirculate a new draft EIR that includes sufficient analysis to define the Project’s environmental baseline.

D. The DEIR Cannot Defer Mitigation Of Impacts By Relying On Assurances Of Future Regulatory Compliance

A critical component of any EIR is the formulation of mitigation measures that will minimize the project’s potential environmental impacts. As described below, the DEIR claims that compliance with applicable regulatory measures will ensure that potential impacts in the areas of biological resources, wetlands, stormwater, and geology and soils will be less than significant. However, without a more detailed description of these measures and their mitigating effects, the DEIR does not permit a full analysis of the Project’s potential impacts and therefore fails to meet the requirements of CEQA.

Rather than address certain potentially significant impacts, the DEIR indicates that various mitigation measures are being deferred until later stages of the Project. However, “[g]enerally, it is improper to defer the formulation of mitigation measures.” *Ctr. for Biological Diversity v. California Dep’t of Conservation, etc.*, 36 Cal. App. 5th 210, 238 (2019). Courts have permitted deferral in certain cases where agencies have demonstrated a need for it. *Coastal Hills Rural Pres. v. Cty. of Sonoma*, 2 Cal. App. 5th 1234, 1258 (2016). Deferral is permissible only where “the agency (1) commits itself to mitigation; and (2) spells out, in its environmental impact report, the possible mitigation options that would meet ‘specific performance criteria’ contained in the report.” *Id.* The agency must also identify the type of potential actions that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. 14 Cal. Code Regs. § 15126.4(a)(1)(B).

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Here, the DEIR lacks the specific performance criteria required under CEQA. The DEIR describes plans and regulations with which the Project will comply, including a Long Term Management Plan, but fails to specify how the Project will comply and how compliance would ensure that the Project’s impacts will be less than significant. CEQA regulations require that “[c]ompliance with a regulatory permit or other similar process” constitutes permissible mitigation only “if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.” 14 Cal. Code Regs. § 15126.4(a)(1)(B).

The DEIR also fails to point to substantial evidence in the record that shows that compliance with any of the following regulatory processes will reduce potentially significant impacts of the Project.

- **Biological Resources:** Consistent with the DEIR’s overarching approach, its mitigation measures fail to adequately address impacts to biological resources present

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at the site. RCH Letter, § II. While the Notice of Preparation explains that the District will ensure protection of special-status species pursuant to a Long Term Management Plan (“LTMP”), the DEIR contains a notable lack of information about this purported LTMP—which does not appear to have been completed at this point. RCH Letter, § II. As such, there is no meaningful way for the District to ensure that the Project will comply with a plan that has not yet been completed and about which the District appears to have little information. Thus, the DEIR’s reliance on the LTMP to mitigate potential biological resources impacts falls far short of CEQA’s requirement that the District set forth specific performance criteria for the deferred mitigation, since even broad outlines of the LTMP are not provided and were not considered.

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- **Wetlands:** The DEIR needs to specify what Resource Agencies will need to issue permits and proposed mitigation, subject to Resource Agency approvals.
- **Stormwater:** The DEIR addresses mitigation of potentially significant construction-related stormwater impacts by asserting that the Project will be required to incorporate regulatory requirements and standards into project design and implementation. RCH Letter, § VII. The DEIR does not provide nor refer to any evidence that compliance with these requirements and standards will ensure mitigation of the potentially significant impacts of stormwater, either during construction or after site development. RCH Letter, § VII.
- **Geology and Soils:** While acknowledging potential impacts such as liquefaction and unstable soils, the DEIR states that compliance with existing regulations will ensure the impact remains less than significant. RCH Letter, § VIII. However, the DEIR does not provide adequate information regarding the potential impacts or the applicable regulations to satisfy CEQA. RCH Letter, § VIII.

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An agency cannot simply assert that regulatory compliance will prevent significant adverse impacts without project-specific analysis of potential impacts and the mitigating effect the asserted regulatory compliance would have. For example, in *Californians for Alternatives to Toxics v. Dep’t of Food & Agriculture*, the Fourth District Court of Appeal found that a state agency violated CEQA by failing to perform independent analysis of the project and instead relying on compliance with existing regulatory provisions to essentially mitigate impacts to a less than significant level. 136 Cal. App. 4th 1, 16 (2005). The court explained that by “repeatedly deferr[ing] to the [applicable] regulatory scheme instead of analyzing environmental consequences,” the agency “fell short of its duty under CEQA to meaningfully consider the issues raised by the proposed project.” *Id.* Accordingly, the court held that “[c]ompliance with the law is not enough to support a finding of no significant impact under the CEQA.” *Id.* at 17.

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The same scenario exists here. The District has not offered justification for failing to explain at this stage why the formulation of mitigation measures for certain potentially significant impacts can be deferred to a later point in time, nor has it indicated how eventual

compliance with unspecified regulatory requirements will serve as sufficient mitigation. As seen in *Californians for Alternatives to Toxics*, threadbare references to compliance with applicable laws and regulations does not suffice.

Moreover, the simple fact that further information may be available at a later time does not justify delaying the analysis of the Project’s impacts or the formulation of necessary mitigation measures. As courts have held, “[t]he fact more precise information may be available during the next tier of environmental review does not excuse [an agency] from providing what information it reasonably can now.” *Cleveland Nat’l Forest Found. v. San Diego Assn. of Governments*, 17 Cal. App. 5th 413, 440 (2017). Under these circumstances, deferring formulation of mitigation measures “run[s] counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.” *Sundstrom v. Cty. of Mendocino*, 202 Cal. App. 3d 296, 307 (1988); *see also* Cal. Pub. Res. Code § 21003.1(b) (“Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available *as soon as possible* by lead agencies, other public agencies, and interested persons and organizations.”) (emphasis added).

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Accordingly, the DEIR is not in compliance with CEQA and cannot be certified.

E. Additional Shortcomings Render The DEIR Inadequate As A Matter Of Law

In addition to those discussed above, the DEIR contains a number of additional substantial flaws. These include the failure to consider future projects in assessing cumulative impacts, the failure to adequately address public comments (which failure is amplified in the FEIR’s Responses to Comments), and the failure to provide a reasonable range of alternatives. In addition, the DEIR includes incomplete and inconsistent data. Taken together, these oversights further erode the DEIR’s intended value to decisionmakers and the public as a source of credible environmental analysis.

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1. The DEIR Fails To Consider Reasonably Foreseeable Future Projects And Their Impacts

CEQA requires consideration of all reasonably foreseeable environmental impacts. Even if certain of a project’s impacts are individually minor, such impacts must be analyzed in the EIR when, in combination with additional impacts from the Project or other projects, they are cumulatively considerable. 14 Cal. Code Regs. § 15130(a); *Citizens for Open Gov’t v. City of Lodi*, 205 Cal. App. 4th 296, 320 (2012). The EIR must account for all impacts that are reasonably foreseeable in light of future activities or developments. *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 398 (1988).

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In this case, the DEIR has not adequately addressed potential cumulative impacts in light of planned nearby projects. RCH Letter, § XIII. While the DEIR references the potential for cumulative impacts resulting from the Project and a number of listed development projects planned for the vicinity, the DEIR’s cumulative impacts analysis is conclusory and not based on

substantial evidence. By failing to adequately analyze including these cumulative impacts, the DEIR does not meet its requirements under CEQA. *See Santa Clarita Org. for Planning the Env't v. Cty. of Los Angeles*, 106 Cal. App. 4th 715, 721 (2003) (“Among the matters that the EIR must consider is the cumulative impact of past, present and probable future projects.” (citing Cal. Pub. Res. Code § 21083(b))).

The failure to adequately address cumulative impacts casts further doubt on the validity of the entirety of the DEIR, because many of the Project’s environmental impacts are inseparable from the impacts of other nearby projects. For instance, the DEIR’s transportation and traffic analysis—which is insufficient on its own, as described above—would be even less accurate when accounting for potential impacts of other projects. In light of the foreseeable impacts of planned future development in the vicinity, the DEIR’s limited cumulative impacts analysis does not suffice.

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2. The DEIR Contains Incomplete And Internally Inconsistent Data And Analysis

Because an EIR’s “purpose [is] to inform the public and its responsible officials of the environmental consequences of their decisions before they are made,” it must contain complete and accurate information. *Stanislaus Nat. Heritage Project v. Cty. of Stanislaus*, 48 Cal. App. 4th 182, 190 (1996).

Here, the DEIR contains numerous inconsistencies that undermine its purported accuracy—an issue that has also been noted by other commenters, including the Contra Costa Water District. *See* FEIR at 5-16, Comment 06-02. For instance, the project description contains estimates of vehicle trips and vehicle miles traveled (VMT) that are different from those provided in the sections discussing Project impacts on energy and greenhouse gas emissions. RCH Letter, § VI. Furthermore, the project description contains conflicting statements concerning the number of phases in which the Project will be completed. RCH Letter, § III. Relatedly, the DEIR also fails to provide sufficient information regarding the staging and duration of the Project’s development. In addition, the scope and scale of the planned development of the park is not defined.

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Accordingly, the DEIR does not provide sufficient information to fully inform decisionmakers and the public about the Project’s environmental impacts, and thereby violates CEQA.

3. The DEIR And FEIR Fail To Adequately Address Meritorious Public Comments

In preparing a draft EIR, “[t]he lead agency must consider all information and comments received.” 14 Cal. Code Regs. § 15084; *see also* Cal. Pub. Res. Code § 21082.1 (public comments submitted to agency during preparation of draft EIR “shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration”). Here, numerous public comments were submitted in response to the NOP and during the public scoping process.

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Certain comments were not addressed in the DEIR, including those relating to trail connectivity, improper deferral of the LTMP, and concerns regarding consistency with the Reuse Plan, Area Plan, Specific Plan, and Concord General Plan. RCH Letter, § XII.

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The DEIR’s failure to address these comments—which correspond with some of the major analytical deficiencies identified above—further undermines the legitimacy of its environmental analysis.

Similarly, the FEIR fails to adequately address a number of legitimate public comments submitted on the DEIR, including the following:

- Two commenters expressed concern regarding the Project’s impact on the red-legged frog reserve located at the southern tip of the Project site. FEIR at 5-2, Comments 01-01 and 01-02. While the District responds that “[t]hese ponds are located on the project site but are privately maintained and managed,” the DEIR should have contained a more detailed analysis to ensure that Project operations do not disturb the reserve.
- In its formal comment letter, the City commented that “[s]pecific trail connections into the Concord Hills Regional Park from the [Concord Reuse Project] Specific Plan area still need to be determined and coordinated.” FEIR at 5-11, Comment 04-01. The District responds by indicating that coordination will occur in the future; however, the District does not explain why coordination cannot occur at this stage, nor does it provide any basis for delaying analysis of the potential environmental impacts of these trail connections.
- The City also comments on the lack of specificity with regard to the Diablo Center, stating that the DEIR does not provide the intended size of the Diablo Center or explain whether it will be a fully enclosed building or an outdoor staging facility. FEIR at 5-11, Comment 04-03. While the District responds by stating that the size and design of the Diablo Center have not yet been determined, this fact does not excuse the District from providing any information or analysis whatsoever at this stage—particularly because the District intends for the FEIR to provide a basis for future tiering.
- The City comments that the Project “is within the City of Concord City limits and as such would require a rezoning from the current Study (S) zoning district to an appropriate zoning district.” FEIR at 5-12, Comment 04-05. In response, “[t]he District recognizes that rezoning will be necessary prior to development of the proposed Regional Park” but provides no further information regarding how that process will occur or what its impacts may be. Because rezoning is a substantial endeavor that may significantly affect the development and timing of the Project, the District must provide the City and the general public with a greater level of information than it has done thus far.

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The District’s conclusory responses to these public comments do not satisfy CEQA, which expressly mandates that “[c]onclusory statements unsupported by factual information will not suffice” with regard to agency responses to comments submitted on a draft EIR. 14 Cal. Code Regs. § 15088(c). The District must incorporate a more detailed discussion of the issues raised by these public comments in a new draft EIR prepared for the Project.

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4. The DEIR Must Include Additional Project Alternatives

CEQA obligates agencies to identify and discuss potential project alternatives. The DEIR provides only two alternatives, the “no-project” alternative and the so-called “limited footprint” alternative. However, the limited footprint alternative will still entail substantial development on the site, resulting in an array of potentially significant impacts. RCH Letter, § VIII. Because CEQA mandates consideration of alternatives that will “avoid or substantially lessen” potential environmental impacts, the DEIR must include a more limited alternative that focuses on preservation of biological resources and habitat while reducing development. Cal. Pub. Res. Code § 21002. Such an alternative would still largely serve the Project’s purposes, chief among which is the conservation and management of natural and cultural resources. DEIR at 1-5.

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Failing to provide such an alternative undermines one of the District’s core obligations in preparing an EIR and violates the express requirements of CEQA. *See Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 564 (1990) (“The core of an EIR is the mitigation and alternatives sections.”); 14 Cal. Code Regs. § 15126.6 (“[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives.”).

Accordingly, the DEIR fails to comply with CEQA.

F. A New Draft EIR Must Be Prepared And Recirculated

For the reasons described above, a new draft EIR must be prepared that addresses the many significant deficiencies in the environmental review conducted by the District. The revised DEIR must then be recirculated for public review and comment in order to fulfill CEQA.

Under CEQA, “[a] lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR . . . before certification.” 14 Cal. Code Regs. § 15088.5(a); *see also* Cal. Pub. Res. Code § 21092.1. Such circumstances exist when, for instance, “[t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” 14 Cal. Code Regs. § 15088.5(a)(4). Here, the flaws of the current DEIR are so severe as to render it fundamentally inadequate under CEQA, requiring recirculation of a new DEIR.

A-35

Much of the analysis in the DEIR must be overhauled in order to address the many deficiencies identified above. For example, the DEIR must be revised and recirculated to allow the public a meaningful opportunity to comment on the biological surveys and traffic studies that must be conducted in order to sufficiently establish the environmental baseline. The updated traffic section will also lead to updated GHG and air quality analysis. Unless the DEIR is dramatically revised to address these and other identified deficiencies, and unless the DEIR is recirculated for further public review, the public and decisionmakers will be deprived of an opportunity for full input and informed decisionmaking, in violation of CEQA. Accordingly, a new version of the DEIR must be prepared and recirculated.


III. CONCLUSION

As a result of the many deficiencies of the DEIR, the FEIR violates CEQA by “omit[ting] material necessary to informed decisionmaking and informed public participation.” *Cty. of Amador v. El Dorado Cty. Water Agency*, 76 Cal. App. 4th 931, 946 (1999) (“Case law is clear that, in such cases, the error is prejudicial.”). Thus, regardless of the merits of the Project, the FEIR cannot be certified as fully compliant with CEQA. *See* 14 Cal. Code Regs. § 15090(a)(1) (“Prior to approving a project the lead agency shall certify that . . . [t]he final EIR has been completed in compliance with CEQA.”). As California courts have repeatedly recognized, “the ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public with the information about the project that is required by CEQA.” *Santiago Cty. Water Dist. v. Cty. of Orange*, 118 Cal. App. 3d 818, 829 (1981).

The Board should not certify the FEIR, and should prepare and circulate a new EIR that fully analyzes and mitigates each potential environmental impact of the Project on the basis of substantial evidence, as required to fulfill its obligations under CEQA.

Very truly yours,

Farella Braun + Martel LLP


James H. Colopy

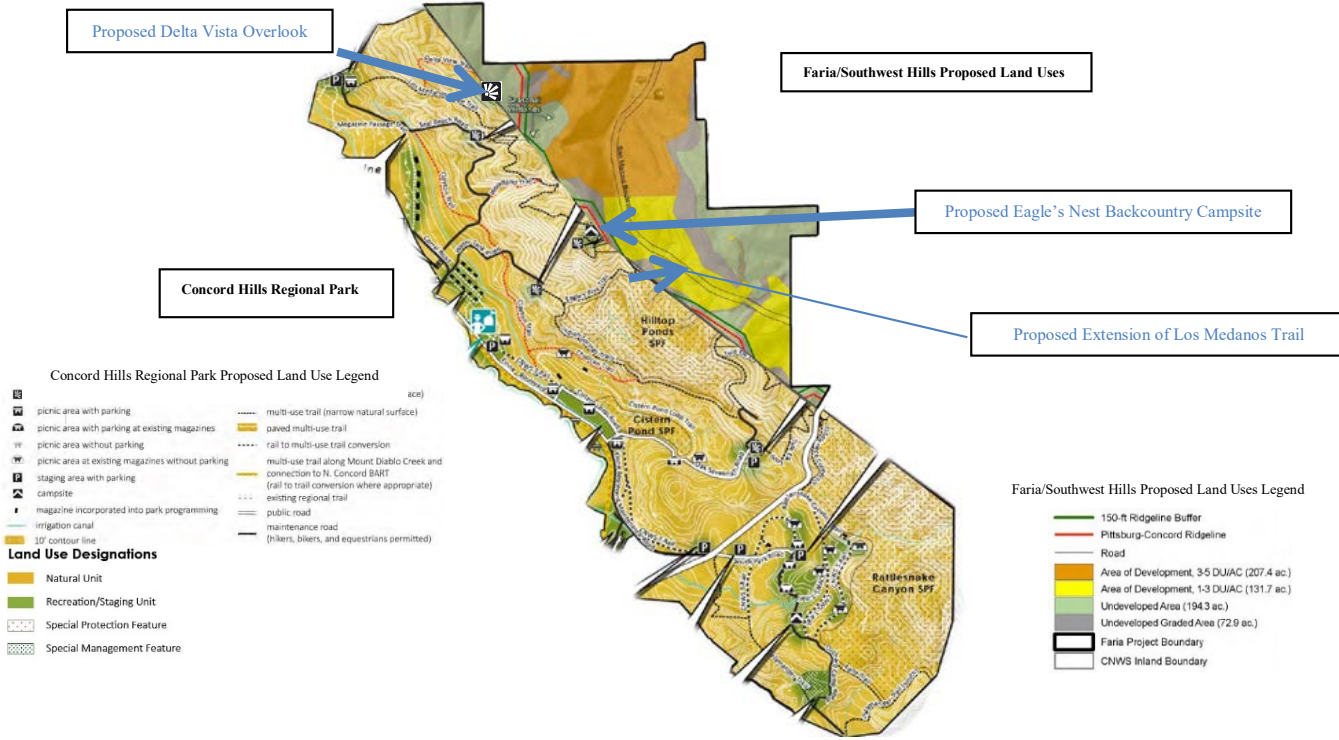
Enclosures:

- Exhibit 1: Map of Faria and Concord Hills Projects
- Exhibit 2: RCH Group Comment Letter Addressing DEIR

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cont.

EXHIBIT 1

Concord Hills Regional Park Land Use DEIR – Points of Interest Figure



Source: Concord Hills Regional Park Land Use Plan Draft EIR, Figure 3-7 Overview of Proposed Park, 2019.
 Source: Concord Hills Regional Park Land Use Plan Draft EIR, Figure 3-8 Proposed Park Access and Circulation Strategy, 2019.
 Source: Faria/Southwest Hills Annexation Project, Figure 2 Project Site and Proposed Land Uses, 2018.

EXHIBIT 2



May 29, 2020

James H. Colopy
Farella Braun + Martel LLP
Russ Building
235 Montgomery Street
San Francisco, CA 94104

**SUBJECT: COMMENTS ON THE EAST BAY REGIONAL PARK DISTRICT
CONCORD HILLS REGIONAL PARK LAND USE PLAN DRAFT ENVIRONMENTAL
IMPACT REPORT (OCTOBER 18, 2019) (SCH# 2017062063)**

Mr. Colopy,

RCH Group (RCH) has performed a comprehensive review of the East Bay Regional Park District (District) Concord Hills Regional Park Land Use Plan (LUP) Draft Environmental Impact Report (DEIR) dated October 18, 2019. This letter highlights the major deficiencies and technical inadequacies of the DEIR based on the California Environmental Quality Act (CEQA) statute, CEQA Guidelines and published court decisions interpreting CEQA.

I. IMPROPER CATEGORIZATION AS A PROGRAM EIR

The DEIR states on Page 1-3 that the document is a Program EIR. However, this is not reflected in the title of the document nor is it disclosed or reflected in the Notice of Availability (NOA) nor was it described in the Notice of Preparation (NOP) (see Appendix A1 of the DEIR). There is no listing of future activities or phased elements of the LUP anticipated to be covered by a Program EIR and these must be described and disclosed by the District in the interest of full public disclosure.

CEQA allows preparation of a Program EIR (CEQA Guidelines § 15168), however the rationale for doing so is not provided in the DEIR. This deficiency must be corrected in a revised, recirculated Project DEIR and the complete list of potential future activities to be undertaken by the District under the CEQA Program EIR umbrella must be fully described and disclosed in the revised DEIR.

A-37

The DEIR should also list any specific construction “projects” to be constructed as part of the proposed project based on the DEIR as opposed to conceptual project elements that are still being designed and/or refined and for which additional, subsequent or supplemental environmental documentation (i.e., CEQA and or NEPA) is anticipated to be required.

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II. INADEQUATE EXISTING BASELINE SETTING FOR BIOLOGICAL RESOURCES AND NOISE

The DEIR provides inadequate existing baseline setting information in the Biological Resources section of the DEIR due to the reliance on outdated information and surveys. The data in Table 4.3-2 in the Biological Resources section of the DEIR appears to be based on vegetation community/habitat mapping conducted more than a decade ago. It is also incomplete as it does not cover the entire 2,543-acre proposed project site. It does not appear that as part of the current CEQA review process undertaken by the District for the proposed project, that any current and independent biological resource surveys were conducted for the proposed project. This is a major oversight and a fundamental flaw of the DEIR.

It is impossible to accurately determine the significance of impacts of the proposed project to onsite biological resources if ten-year-old (or older) data was used as the basis of existing conditions (e.g., baseline). In some cases, footnotes in the Biological Resources section of the DEIR cite studies were conducted more than 20 years ago, dating back to 1999.

A-38

The wetland delineations for the project site were conducted in 2011. Wetland/Waters of the US/State determination methodologies (USACE and CDFW) and criteria have changed significantly since that time and need updating to current standards.

All the existing conditions discussions in the Biological Resources section of the DEIR (see Pages 4.3-11 through 4.3-27) are in need of verification and updating for factual accuracy since they are the basis of the impact determinations in Chapter 4.3.

The DEIR lacks a “References” section as required by CEQA so the reader must try to piece together the various technical reports and other data sources relied in this section of the EIR. Some EIRs consolidate references at the end of each Chapter (such as Chapter 4.3), whereas this EIR does not even provide that tool for the public and agency reviewer. This is convenient for the Biological Resources Chapter 4.3 since it masks the fact that almost all the

References are 10-20 years old. A review of the technical appendices to the DEIR (Appendix C) and the LUP and its related technical appendices does not reveal the presence of any current vegetation mapping or onsite biological resource surveys (other than a reference to some California Tiger Salamander annual surveys) more current than 2011.

How can the proposed project be designed to avoid impacts to all onsite natural resources when a recent survey has not yet been completed? Moreover, how can the proposed project be designed specifically to preserve natural resources when there is no complete or current understanding of the inventory of resources onsite, their locations and the current status of the habitats? The DEIR must be based upon a scientific data set that is current. A current and comprehensive listing of all potentially rare or sensitive species, or habitats capable of supporting rare species, must be included in the environmental review per CEQA Guidelines Section 15380(b) relative to Endangered, Rare, or Threatened Species. As such, the impact conclusions contained in the Biological Resources section are not supported by evidence in the record.

In their letter on the Notice of Preparation (July 26, 2017), the California Native Plant Society (CNPS) recommended that “comprehensive botanical surveys be conducted for the Environmental Impact Report on the Concord Hills Regional Park Land Use Plan. Additionally, we recommend that the Land Use Plan include a long term management plan for species protection.”

CNPS further indicated that “The park district should perform comprehensive surveys and formulate an accompanying species management plan simultaneously along with preparations for public access. Or, a species management plan should be prepared before progressing with permits and plans for public access. But not after. This is because the process for documenting the occurrences of special-status species on the project site and preparing for their long term needs will necessarily inform appropriate options for placement of park facilities such as roads, trails, buildings, and parking lots.” (Emphasis added).

Unfortunately, because current biological surveys were not conducted, the placement of park facilities such as roads, trails, buildings, and parking lots was determined without current biological resources surveys.

The current status of the federally listed (and state protected) California Tiger Salamander and the Red Legged Frog is not well documented in the EIR. Based on EIR Figure 4.3-3, the endangered salamanders and frogs could be almost anywhere on the Project Site. Unlike plants, the endangered salamander and frogs have daily and annual movement patterns. With the

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information provided on Figure 4.4-3 it appears they could be anywhere. The DEIR reinforces that by stating on page 4.3-42, "California red-legged frogs could occur virtually anywhere on the project site, especially during wet-season dispersal." The DEIR also states on page 4.3-42, "In addition, California tiger salamanders use upland habitats surrounding their breeding sites for aestivation and for dispersal between breeding sites and aestivation area."

Without current baseline data on biological species it is difficult to figure out where the trails and roadways should be. The EIR appears to be guessing where recreational facilities should be. Are the proposed buffers (see page 4.3-42) between breeding areas and picnic sites and camping areas, trails, roads, and other recreational facilities sufficient? What is the health of the current populations of the federally protected salamander and frogs? The DEIR should have conducted field surveys to measure the baseline setting of these special-status plant and animal species.

The DEIR also fails to include adequate existing baseline setting information related to noise. The description of the existing noise environment on Page 4.11-10 in the Noise section of the DEIR does not include any noise measurements taken to determine the ambient noise level on the project site. There are no measurements to determine the existing noise levels near sensitive receptors adjacent to the project site or noise levels along any roadways that would be used by project traffic. Without an acoustical study that includes noise measurements of the existing noise environment, there is no evidence that the proposed project will be consistent with local regulations (Contra Cost County – Event Noise Limitations, City of Concord Noise and Land Use Compatibility Standards, etc.).

The DEIR also fails to include adequate existing baseline setting information related to transportation and traffic. Page 4.14-9 of the DEIR states the following: "A traffic analysis of existing traffic conditions on roadway segments, freeway segments, freeway ramps, and intersections in the vicinity of the former CNWS was conducted by Kittleson and Associates in 2013, updating data used in the Concord Community Reuse Plan EIR." The DEIR relies upon existing traffic conditions data that was collected prior to 2010 (Concord Community Reuse Plan EIR) and updated in 2013. It is impossible to accurately determine the significance of impacts of the proposed project to traffic and transportation if seven-year-old (or older) data was used as the basis of existing conditions (e.g., baseline).

According to CEQA, existing (baseline) conditions are intended to be those in existence at the time an NOP is issued. However, the DEIR does not provide existing conditions data (Noise) and improperly relies on outdated "existing

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conditions” data (Biological Resources) that cannot be used as the basis for impact determinations in the DEIR, particularly if they are used to support significance conclusions in the DEIR. The District must prepare a noise study that determines existing baseline conditions at key locations adjacent to the project site boundaries and adjacent to roadways that would accommodate project traffic, and must update the baseline biological resources studies with contemporary data if they are to be used as the basis of the impact conclusions in the DEIR.

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III. INCONSISTENCY REGARDING THE NUMBER OF DEVELOPMENT PHASES AND FAILURE TO DESCRIBE THE EXECUTION OF PHASES AND PROJECT IMPLEMENTATION

Page 3-36 of the DEIR states that the “Future Regional Park is conceived in three phases...”. However, on the same page the DEIR states, “Development of the proposed Regional Park would be implemented over the following four phases....”. The District should clarify this error.

The DEIR should also describe the expected duration of time anticipated for each of the three (or four) phases that are being contemplated by the District. Section 3.7 of the DEIR states that buildout is anticipated to be complete in 2050 but it is unclear when any of the Phases would be initiated, what the anticipated duration of the individual phases will be, and whether or not any of the phases would overlap with one another. This is basic information that must be disclosed to the public. Table 3-2 of the DEIR states that during the “Land Bank Status” Phase of the proposed project, the restoration / enhancement efforts identified in the Long Term Management Plan (LTMP) will be initiated. If the LTMP is to be implemented as part of the initial phasing of the proposed project, it is unclear why the LTMP has not yet been prepared. In this context, a Program EIR for the LUP that relies on a LTMP as a foundation that does not yet exist is problematic. It appears that preparation of this program DEIR may be premature given that this precursor event (e.g., development of the LTMP for the Regional Park) has not yet occurred.

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Page 3-38 of the DEIR states that Phase 3 buildout is anticipated to occur in 15-50 years (i.e., as early as 2035 and late as 2070) presumably depending on funding availability of up to \$100 Million needed for the proposed project, site remediation/clean-up of the CERCLA sites (see Land Use Plan Figure 5-1) and a host of other variables including regulatory permitting efforts (USACE, CDFW, RWQCB among others) and yet the DEIR states that buildout is anticipated to be complete in 2050. These two dates must be reconciled by the District and revised in the EIR.

IV. IMPROPER DEFERMENT OF WETLANDS MITIGATION

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Under the requirements of CEQA, impact determinations must be based on substantial evidence in the record and mitigation measures must be specifically formulated before project approval. The DEIR should be revised to include potential mitigation measures to wetlands and/or other waters of the U.S. or state in accordance with the requirements of the Resource Agencies.

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V. WHY NO TRAFFIC STUDY? FAILURE TO PROVIDE SUPPORTING EVIDENCE FOR TRIP GENERATION AND INCONSISTENT TRIP GENERATION BETWEEN THE PROJECT DESCRIPTION AND TRAFFIC SECTION OF DEIR

The DEIR includes no traffic study for this 2,543-acre project that Proposed Project in an urban area that regularly experiences substantial traffic congestion. The DEIR justifications for no traffic report are because:

1. The peak hour trips from the proposed project are below the 100-trip threshold set by both the CCTA and the City of Concord, which would require a full (detailed) traffic impact analysis; and
2. Under Section 15064.3(b)(1) of CEQA Guidelines, generally land use “projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact.”

As noted below, our review indicates that the Proposed Project would have more than 100 peak hour trips. Furthermore, there are no major transit stops within one-half mile of the Proposed Park boundaries (see Figure 3-1 in the DEIR). It appears that the Bart stations are closer to 3 miles from the Proposed Park boundaries.

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The DEIR should be revised to include a full (detailed) traffic impact analysis. The DEIR needs to assess the traffic impact of the Proposed Project on Bailey Road and Willow Pass Road. Are there additional mitigations that should be included into the project operations?

Page 4.14-15 in the Traffic section of the DEIR states, “Based on the estimated visitor levels upon buildout of the Regional Park, the proposed project would generate approximately 590 weekday vehicle trips, with approximately 35 and 77 trips during the AM and PM peak hour, respectively.” The DEIR fails to provide any supporting evidence or assumptions for the weekday vehicle trips and peak hour trips assumed in the Traffic section and it is unclear if the trip generation came from a qualified traffic engineer or industry standard guidance such as the ITE Trip Generation Manual.

Furthermore, Table 3-3 on Page 3-40 of the DEIR project description indicates that typical weekday automobile visitor trips traveling to the project site would be 1,018 visitor trips per day at full buildout. The number of weekday vehicle trips per day could also be assumed to be twice that number if one trip to the site and one trip from the site per automobile visitor trip is assumed. However, the DEIR provides no supporting assumptions and there is no way to tell if these are one-way trips or round trips.

However, if the number of vehicle trips stated in the project description (1,018) is assumed and the percentage of AM and PM peak hour visitor trips (6% and 13%, respectively) from the Traffic section of the DEIR is assumed, AM and PM peak hour trips from the proposed project should be 61 and 132, respectively. This number of PM peak hour trips from the proposed project is well above the 100-trip threshold set by both the CCTA and the City of Concord, which would require a full (detailed) traffic impact analysis.

The DEIR should be revised to include supporting evidence for trip generation and so that the project description is consistent with the impact analysis within the DEIR. Additionally, based upon the trip generation provided within the DEIR project description, a full (detailed) traffic impact analysis should be provided in the revised DEIR as well.

VI. INCONSISTENT TRIP GENERATION NUMBERS BETWEEN THE PROJECT DESCRIPTION AND VARIOUS IMPACT DISCUSSIONS

The DEIR contains several inconsistencies between the project description and impact discussions other than traffic such as air quality, energy and greenhouse gas emissions.

Air Quality

Page 4.2-29 in the Air Quality section of the DEIR states, *“the proposed project would generate a total of 125 average daily weekday trips on opening day and 1,303 weekend trips at buildout.”* Table 3-3 on Page 3-40 in the Project Description of the DEIR shows that at full buildout on the weekend 2,450 visitors per day would travel to the proposed project by automobile. The air quality analysis is not consistent with the Project Description and underestimates the amount of vehicle trips generated by the proposed project. Therefore, the proposed project operational emissions in Table 4.2-5 on Page 4.2-30 of the DEIR are also underestimated and are based on a much lower trip generation than what is defined in the DEIR project description.

Energy

Page 4.5-12 in the Energy section of the DEIR states, *“at project buildout (year 2050) the proposed project would increase VMT by 1,689,229 annually.”* However,

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A-42

the project buildout VMT estimate is based on a trip generation that is inconsistent with the DEIR project description. The annual VMT estimate of 1,689,229 is based on approximately 587 weekday trips and approximately 1,302 weekend trips per day. Table 3-3 on Page 3-40 in the Project Description of the DEIR shows that at full buildout 1,018 visitors per day would travel to the proposed project by automobile on weekdays and 2,450 visitors per day would travel to the proposed project by automobile on the weekends. The daily trip generation used to calculate the annual VMT estimate in the Energy section is not consistent with the Project Description and underestimates the annual VMT generated by the proposed project, which underestimates the energy consumed by the proposed project.

Greenhouse Gas Emissions

Page 4.7-22 in the Greenhouse Gas (GHG) Emissions section of the DEIR states, *“Future potential development of the proposed project would accommodate approximately 2,665 average weekend daily visitors, generate one new residence, and employ 52 people at buildout, resulting in an increase in vehicle trips,”* which is consistent with the estimated daily visitors identified in Table 3-3 on Page 3-40 of the DEIR Project Description. However, the proposed project operational GHG emissions estimates are based on approximately 1,302 weekend trips per day, which is inconsistent with the number of trips stated in the GHG emissions section and the Project Description. While the GHG emissions operational analysis does not call out the number of weekday trips per day, the Project Description defines this number in Table 3-3 on Page 3-40 of the DEIR as 1,018 visitors per day at buildout. However, the proposed project operational GHG emissions estimates are based on approximately 587 weekday trips per day. Therefore, the proposed project operational emissions in Table 4.7-5 on Page 4.7-23 of the DEIR are based on a much lower trip generation than what is defined in the DEIR’s Project Description and the DEIR underestimates the GHG emissions generated during future proposed project operations.

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VII. INADEQUATE ANALYSIS OF HYDROLOGIC AND WATER QUALITY IMPACTS AND RELIANCE ON REGULATORY REQUIREMENTS INCORPORATED INTO MITIGATION MEASURES

Under the proposed project, stormwater runoff rates and volumes would be increased as a result of the proposed 16.5 acres of new development, most of which would be impervious area (DEIR page 4.9-18). Increased stormwater runoff would increase the transport of pollutants off-site, especially from roads and parking facilities experiencing increased use from park visitors and park staff. Increased stormwater runoff volumes and rates would increase the potential for degrading water quality, erosion and sedimentation, hydromodification, and flooding in receiving surface waters.

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Impacts in the Hydrology and Water Quality section of the DEIR relating to water quality, altered drainage patterns, erosion, sedimentation, hydromodification, and flooding both on- and off-site are all determined to be less than significant with implementation of Mitigation Measures HYD-1.1 and HYD-1.2, which require incorporation of regulatory requirements and standards into project design and implementation.

Adherence to regulatory requirements may already be assumed under CEQA. The DEIR offers no supporting analyses to satisfactorily demonstrate that adherence to regulatory requirements incorporated into Mitigation Measures HYD-1.1 and HYD-1.2 ensure impacts under CEQA would be less than significant. Adherence to the law does not automatically mean that CEQA significance thresholds have not been exceeded; adherence to permit conditions can still result in significant impacts under CEQA.

The analyses presented in the Hydrology and Water Quality section of the DEIR must be revised to include supporting analyses that demonstrate that regulatory requirements related to stormwater retention, stormwater treatment, and water quality objectives may feasibly be met, and potential impacts reduced to less-than-significant levels through application of regulatory requirements. Currently the EIR does not include these supporting analyses (evidence).

Furthermore, the DEIR omits details or analysis regarding the degree to which stormwater runoff from the site would increase following development. A full quantification of the potential increase in stormwater volume and flow rates caused by the proposed project is essential to adequately assessing impacts related to water quality, erosion, flooding, sediment transport, and hydromodification both on- and off-site. A full quantification of increases in stormwater volume and flow rates caused by the proposed project is especially critical given that stormwater could be conveyed to Mount Diablo Creek, which is listed as impaired under Section 303(d) of the Clean Water Act (CWA) (DEIR Page 4.9-15). Although the proposed project is assessed at a programmatic level (DEIR Page 2-5), the analyses in the DEIR must reasonably incorporate conservative assumptions relating to future project design, such as building envelopes and stormwater management design and capacity, as well as increases in stormwater volume.

The Hydrology and Water Quality section of the DEIR must be revised to include data and analysis that adequately quantifies site stormwater drainage resulting from implementation of the proposed project and demonstrate consistency with the stormwater retention requirements defined in the regulatory requirements detailed in DEIR Section 4.9.1.1. Supporting analyses

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must assess the proposed stormwater treatment and conveyance systems in the context of quantified stormwater increases to ensure adequate capacity.

Further, the DEIR must be revised to demonstrate how proposed mitigation measures achieve adherence to Municipal Regional Stormwater NPDES Permit (MRP) Provision C.3 requiring that post-development hydrologic conditions substantially mimic pre-development hydrology by minimizing imperviousness and then by detaining, infiltrating, and filtering runoff in landscape-based features.

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VIII. INADEQUATE ANALYSIS OF GEOLOGICAL AND SOILS IMPACTS AND RELIANCE ON REGULATORY REQUIREMENTS TO SUPPORT SIGNIFICANCE CONCLUSIONS

The discussion of potential liquefaction, lateral spreading and unstable geologic units impacts in the Geology and Soils section of the DEIR is inadequate and relies upon compliance with existing regulations and preparation of future engineering reports instead of fully analyzing potential impacts.

Liquefaction

The impact analysis for liquefaction on Page 4.6-15 of the DEIR does not clearly or completely explain why the impact would be less than significant. The analysis should elaborate on what precisely is meant by *“mandatory compliance with existing regulations”* and how *“submittal of engineering reports and implementation of any proposed recommendations”* can reduce liquefaction impacts. Merely stating that compliance with existing regulations and following recommendations in submitted engineering reports does not present sufficient evidence that liquefaction would not be a less than significant geologic hazard. This impact analysis in the DEIR must be revised to explain specifically what, if any, industry-accepted standard practices for addressing liquefaction-prone soils could be employed to reduce liquefaction hazards, why those remedies would be effective at the project site, and if application of those remedies could effectively reduce potential ground failure impacts.

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Lateral Spreading

The lateral spreading impact analysis on Page 4.6-16 of the DEIR broadly presumes that *“site-specific grading and compaction that could occur as part of future development on the site would mitigate any potential impacts from seismically-induced lateral spreading”* without providing any description or substantial evidence that that would indeed occur. Lateral spreading can impact large areas and cause considerable damage and, while project specific grading could alleviate ground failure hazards in some areas, it may not reduce the

potential impact in other areas. The DEIR does not identify specific areas prone to lateral spreading nor does it sufficiently characterize the soils to determine whether the soils are truly prone to failure. This impact analysis of the DEIR should be revised to provide additional details on the extent and type of failure-prone soils and explain how proposed grading and compaction could reduce impacts of seismically induced ground failures to ensure that the impact is less than significant.

Unstable Geologic Units

The impact analyses of the five ground failure mechanisms discussed in impact GEO-3 on Page 4.6-17 of the DEIR are too broad to adequately describe how and why the impacts would be reduced to less than significant. Merely stating that the proposed project would comply with existing regulations, prepare and submit soils engineering reports, and/or conduct grading and compaction, does not provide substantial evidence that the potential ground failure impacts can be reduced to a less than significant level. The DEIR must be revised to comprehensively describe the details of the individual actions and explain specifically how these actions would reduce the impact. Without these details, it is not possible to reliably assess the degree of the potential impact.

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IX. FAILURE TO DESCRIBE A RANGE OF REASONABLE PROJECT ALTERNATIVES

The DEIR fails to describe a range of reasonable alternatives to the project, or the location of the project as required by CEQA Section 15226.6. The DEIR only includes two alternatives, the no project alternative and the limited footprint alternative. However, the limited footprint alternative still includes development throughout the project site.

The DEIR should at the very least include a third alternative, such as an alternative which limits development of park facilities (other than trails) to one defined area of the project site and increases conservation areas on the project site, focusing developed park features farther away from special protection and management features to reduce potentially significant impacts on sensitive areas and biological resources.

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The DEIR also should have included an alternative to the proposed project that achieves consistency with the Reuse Plan and/or Specific Plan and City General Plan as outlined by the City of Concord in their comment letter on the NOP.

X. INACCURATE PROJECT ALTERNATIVES IMPACT ASSESSMENT THAT UNDERESTIMATES IMPACTS

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Table 5-1 on Page 5-5 of the DEIR shows a comparison of impacts from project alternatives and the proposed project. While analysis of project alternatives in a CEQA document is typically less exhaustive, in this case the comparison between the Proposed Project and the No Project Alternative is inaccurate and underestimates the impact comparisons between several environmental impacts (Air Quality, Greenhouse Gases, Energy and Noise). The DEIR states on Page 5-6 of the DEIR that under the No Project Alternative, “the District anticipates that the future Regional Park would not be developed and the project site would remain largely in its existing use, with the exception that the remediation activities planned by the United States Navy would occur.”

For example, noise impacts from the No Project Alternative in the EIR are considered similar to the proposed project. The comparison of noise impacts on Table 5-1 of the DEIR underestimates the noise generated from site preparation, construction activities and operational noise generated from the proposed project and associated uses (overlooks, picnic areas, staging areas, nursery/orchards, parking areas, campsites, trails, public roads and maintenance roads). Considering the proximity from proposed campsites, overlooks and trails on the eastern boundary of the site (bordering a pending residential development project) and the community orchard that is within 500 feet of residences on the western boundary of the site, it is expected that construction and operational noise from the No Project Alternative should be considered an improvement in comparison to the Proposed Project (either symbol > or >> in the Table 5-1) and should not be considered similar to noise impacts generated from the full buildout of the regional park (as currently identified in Table 5-1).

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XI. INADEQUATE ANALYSIS OF AGRICULTURE AND FORESTRY RESOURCES

The DEIR dismisses potential impacts to agriculture and forestry resources by only discussing potential impacts in the Impacts Found Not to be Significant section of the DEIR on Page 6-1 and 6-2. The discussion focuses on the greater City of Concord but not the site specifically. According to the LUP, Chapter 2, Existing Conditions, there are existing agriculturally-related livestock grazing activities / uses occurring onsite and there are federally related US Forest Service forest resources on site as well. Page 53 of the LUP notes, “*Researchers from the U.S. Forest Service Institute of Forest Genetics planted approximately 90 acres of experimental stands of various pine and eucalyptus species within the CNWS site. Two of these areas are within the project site, both located north of Bailey Road.*” These Agricultural and Forestry Resources should be fully described and evaluated in the DEIR, as well as newly proposed cattle corral and grazing infrastructure (see LUP Page 103) rather than summarily

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dismissed without any analysis and without any evidence to support such a dismissal.

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XII. FAILURE TO ADDRESS MERITORIOUS PUBLIC COMMENTS RECEIVED FROM PUBLIC AGENCIES DURING NOP SCOPING

The DEIR failed to address several meritorious public comments received from public agencies and organizations during the public scoping process for the NOP, yet Page 2-2 of the DEIR states, “All comments were considered by the District in preparing the DEIR.

For example, the City of Concord requested visual simulations from several locations of the project vicinity. Although the DEIR addresses concerns related to changes to the existing visual character of the project site from structures, a road and rail network, magazines, and experimental forest stands (page 4.1-13), the DEIR did not provide visual simulations requested from the City’s comment letter, including visual simulations from Highway 4, the Bunker City Area, and Newhall Park looking toward the hills. The DEIR provided no rationale to explain why certain viewsheds were depicted, while other visual simulations expressly requested by the City were not included. Accordingly, the DEIR’s analysis of potential visual impacts is incomplete and inadequate.

Also as noted previously, the City of Concord noted that an alternative that achieves consistency with the Reuse Plan and/or Specific Plan and City General Plan should be considered.

A-48

Furthermore, Contra Costa Mosquito & Vector Control District’s response to the EBRPD’s NOP (2017) detailed an awareness and concern of mosquito sources that exist on the current CNWS (ponds, canals, creeks, ditches and magazines that retain water) and access to the sites already being monitored and treated by the Vector Control District. The Contra Costa Mosquito & Vector Control District requested that the impacts of mosquito sources on the proposed park facilities be discussed in the EIR.

Page 1-6 of the DEIR disclosed mosquito control as an Area of Controversy based on submitted comments received to the NOP. However, the EIR fails to disclose any analysis or mitigation related to existing or future mosquito population impacts on existing and future sensitive receptors as well as visitors of the park, which is expected to reach 560,000 persons annually at full buildout.

In addition, as mentioned above in Section II, Inadequate Existing Baseline Setting For Biological Resources, the DEIR did not address the public

comments from the California Native Plant Society (CNPS) that requested “comprehensive botanical surveys be conducted for the Environmental Impact Report on the Concord Hills Regional Park Land Use Plan. Additionally, we recommend that the Land Use Plan include a long term management plan for species protection.” Neither the comprehensive botanical surveys or the Long Term Management Plan were included in the DEIR.

**A-48
cont.**

XIII. INADEQUATE CONSIDERATION OF CUMULATIVE IMPACTS

CEQA requires a cumulative impacts analysis (CEQA Guidelines § 15130). The DEIR on page 4-3 lists approximately 14 planned development projects in the immediate vicinity of the project site but fails to consider potential cumulative impacts.

For example, the air quality section on page 4.2-19 of the DEIR states, “The proposed project will not include heavy construction equipment use within 1,500 feet of sensitive receptors.” However, the DEIR does not take into account future sensitive receptors, such as pending residential development located adjacent to the northeast boundary of the project site.

Furthermore, the noise section of the DEIR on page 4.11-10 states, “However, no noise sensitive land uses within the vicinity are proximate to the park (the nearest residence is 2,350 feet from the project site boundary and even farther from the planned active areas). Therefore, the noise limits of the City of Pittsburg Municipal Code would not be directly applicable to activities within the project site.” The DEIR does not consider potential noise impacts on proposed developments, such as the adjacent proposed Faria/Southwest Hills Annexation Project in the City of Pittsburg.

A-49

The DEIR also dismisses cumulative traffic impacts by comparing the number of proposed project trips (which were not based upon substantial evidence and were not consistent throughout the DEIR) to larger development projects such as the Concord Community Reuse Project. The DEIR contains no discussion of how traffic could be potentially significant given the cumulative projects in the immediate vicinity such as pending residential development projects like the proposed Faria/Southwest Hills Annexation Project. The DEIR dismisses potential cumulative impacts by stating that the proposed project is much smaller than other cumulative projects in the immediate area.

Since the proposed Plan is a long-term plan and assumes full buildout by 2050 (or sometime between 2035 and 2070?), the DEIR should take into account all proposed/planned projects within the vicinity of the proposed project.

XIV. DEIR LACKS A FULL LIST OF REFERENCES AS REQUIRED BY CEQA

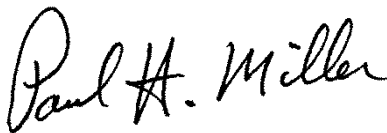
The DEIR fails to include a list of References utilized in the preparation of the DEIR. Per CEQA Section 15148, *“Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.”* All documents used in the preparation of an EIR must be cited in a single location for the benefit of the public in the interest of the EIR serving as an informational document. Without the required References section, members of the public reading the DEIR must try to piece together the various technical reports and other data sources relied upon in the various impact discussions of the DEIR. This is a major deficiency in the DEIR because a fundamental purpose of CEQA is to disclose information to the public and to enhance public participation in the environment review process.

A-50

CONCLUSION

Per the issues addressed above in this letter, a revised DEIR should be prepared to correct the major deficiencies and technical inadequacies of the DEIR, and the revised DEIR should be recirculated for public comment in accordance with CEQA Guidelines Section 15088.5 (Recirculation of an EIR Prior to Certification).

Sincerely,



Paul Miller, M.S.
Managing Principal
RCH Group



CALIFORNIA
NATIVE PLANT SOCIETY

East Bay Chapter, www.ebcnps.org
PO Box 5597, Elmwood Station, Berkeley, CA 94705

June 2, 2020

Board of Directors
2950 Peralta Oaks Court
Oakland, CA 94605
Members of the Board

RE: Concord Hills Regional Park FEIR

Dear Members of the Board:

These comments are submitted on behalf of the California Native Plant Society (CNPS) on the Final Environmental Impact Report (FEIR) for the proposed Concord Hills Regional Park project.

First, it is great to see the culmination of years of District work to transform the former Concord Naval Weapons Station turned into plans for a 2,500 acres regional parkland. With you, the East Bay Chapter of the California Native Plant Society welcomes the District's plans to enhance and restore the grasslands, oak woodland, and riparian natural resources, to transform old pavement into new trails that will allow park users to explore this grand landscape, and to provide a venue to tell the area's natural, cultural, social and military history within this new parkland site.

The proposed Final Environmental Impact Report (FEIR) for the Concord Hills Regional Park, as well as baseline information in the Draft EIR describes several activities that will help to achieve these objectives. The plan includes restoration plans for oak woodlands and riparian areas. The long-term land management measures described in Land Use Plan Appendices (Measures 6 through 20) describe grazing and invasive weed management commitments that will improve the park for park users and wildlife over time.

We appreciate Final EIR's plans to protect native plant species and recommend the following two points to avoid and mitigate for project impacts. The following points address baseline information and mitigation for impacts to big tarplant (*Blepharizonia plumosa*). We believe that the proposed FEIR mitigation measures would not reduce impacts to this plant to less than significant, but could do so with minor changes to the FEIR.

B-01

Main FEIR Comments:

1. FEIR Bio 1.1a (pg. 1-3) Proposed modification: Re-survey for big tarplant during periods of normal to above-normal rainfall.

Surveys conducted by Vollmar and HT Harvey consulting were conducted in 2008 and 2010 (12 and 10 years ago respectively) and are insufficient to be used as representative floristic surveys of the project area. The surveys for big tarplant should be repeated during a year with normal or above-average rainfall to accurately document the existence of special status plants, locally rare plants, and Sensitive Natural Communities. If performed during a year when average precipitation is below average, it is possible that special status species will not be evident. The surveys should be conducted well before any project construction activity so that mitigation measures can be put in place prior to the start of construction.

B-02

2. FEIR Bio 1.1c (pg. 1-4): Proposed modification: Mitigate for big tarplant at a 2:1 replacement ratio.

The FEIR notes that additional populations of big tarplant could exist on site, however there were insufficient surveys for this special status species. Further, the FEIR suggests that mitigation for the loss of big tarplant would occur automatically out of managing “Natural Units” for grazing and invasive species management (as described in mitigation measures Bio 6 through Bio 20). However, there is insufficient survey information to indicate that this species exists in the Natural Units. Also, the protection of rare plant species through appropriate site management is already part of District goals, and this measure would not replace rare plant populations that would be lost through construction activity. Therefore, the presence of these species within the planned 16.5 acres of construction in grasslands should be mitigated for at a 2:1 ratio.

B-03

Thank you for the opportunity to provide comments on the FEIR. We look forward to continuing to work with the Park District to improve protection of native plants and their natural communities.

Sincerely,

Jim Hanson, Conservation Committee Chair

Cc: Devan Reiff, Principal Planner

Attachment C



MEMORANDUM

DATE June 24, 2020

TO Attn: Yolande Barial Knight, Clerk of the Board
East Bay Regional Park District, Board of Directors
Robert E. Doyle, General Manager
2950 Peralta Oaks Court
Oakland, California 94605

FROM PlaceWorks

SUBJECT Errata to the Concord Hills Land Use Plan Final EIR

This Errata to the Concord Hills Land Use Plan Final Environmental Impact Report (EIR) is provided in response to late public comments. This Errata further documents and explains the trip generation calculations supporting the air quality, GHG, and traffic analysis in the EIR. It also includes revisions to the EIR.

Addition - Trip Generation Data

DRAFT EIR TRIP AND VISITOR ESTIMATES

Draft EIR Trip Estimates

Trip estimates for the proposed project were calculated based off of the visitor estimate prepared for the project and reflects the assumption that 10 percent of visitors would walk or bike to the site. Table 1 presents the trip estimates utilized in the Draft EIR analysis.

As reflected in the sections below, the trip data utilized in the Draft EIR (and shown in Table 1) are based on conservative (i.e., high) visitor estimates and are higher than trip data based on the Institute of Transportation Engineers (ITE) Trip Generation Manual. Therefore, the trip data used in the Draft EIR analysis is considered to be robust and more than reasonable to support the conclusions in the Draft EIR, and no revisions to the Draft EIR are required.

TABLE 1 DRAFT EIR TRIP GENERATION

	Number		Trip Generation			
	Weekday	Weekend	Weekday Daily	AM Peak		Typical Weekend Trips
				Hour	PM Peak Hour	
Employees	52	52	104	6	14	104
Visitors	686^a	1,932	483	29	63	1,199
Family/Group ^b	--	--	113	7	15	638
Bus ^c	--	--	6	0	1	6
Non-Family/Group ^d	--	--	364	22	47	555
Total	--	--	587	35	77	1,303

Notes:

a. Visitor data in the Draft EIR (966 weekday, 2,398 weekend) reflected total site usage of all facilities and did not account for visitors who would utilize more than one facility. For the purposes of trip generation, the visitor number assumes the following visitors are making internal trips (i.e. they are accessing another on-site use during their visit): Small Picnic, Group Picnic (weekend only), Group Campsite, Backcountry Campsite, and Phase 3 Increased Joint Visitor Center.

b. Assumes one third of weekday visitors and two thirds of weekend visitors are families and/or group carpoolers (i.e. 4 visitors per car).

c. Assumes three buses or school buses will visit the site daily (accommodating approximately 100 people).

d. Assumes 2 people per car for all other visitors.

Source: PlaceWorks, ESA, 2020.

Visitor Estimates

The visitor estimates on which the Draft EIR trip estimates are based are in Table 4 at the end of this Errata. The visitor estimates are conservatively high, as described further below. By using the visitor estimates as the basis of trip calculations, the EIR reflects a conservative approach.

The assumption that 10 percent of park visitors at full buildout would walk or bike to the Regional Park is conservative, in that a higher percentage of visitors can be reasonably expected to walk or bike to the park. As stated on page 3-39 of the Draft EIR:

While the majority of visitors would be expected to arrive by car, some visitors, especially those from adjoining residential neighborhoods, would arrive by bike or by walking. . . . Based on use patterns at existing regional parks with similar surroundings, the District anticipates that 20 percent, and ultimately as many as 50 percent, of visits would arrive on foot or on bikes. However, for the purposes of the analysis in this EIR, it is assumed that 10 percent of trips at full buildout are expected to arrive via transit or on bikes or on foot.

Visitor estimates were developed for each phase of the project buildout based on the anticipated demand and capacity of the proposed access features (including trail mileage and number of picnic

areas and other access features). Estimates considered visitation data from the National Park Service's nearby sites, District staffing projections for Land Bank Status and Phase 1, National Recreation and Park Association standards for estimating visitation, and visitation at other District facilities. All estimates were intentionally conservative (i.e. representing a "worst-case" scenario). For example, trail capacity was assumed to be 90 users per day per mile, based on National Recreation and Park Association standards for urban trails, rather than the standards for rural trails (the National Recreation and Park Association standard is 90 users per day per mile on urban trails and 40 users per day per mile on rural trails). Estimates for the Regional Park visitor center considered National Park Service data for visitation at nearby sites (ranging from 45,000 to 75,000 annual visitors) and assumed over 40,000 in Phase 2 and over 60,000 in Phase 3 for the visitor center alone. Estimates were also considered against visitation rates at other District parks. Based on 2016 visitation data, annual park visitation ranges from approximately 60,000 to over 1 million annually for parks with more amenities and attractions that are located in proximity to higher density areas. Concord Hills Regional Park will have important destinations such as the Joint Use Visitor Center but will primarily be used for passive recreation, and therefore would be expected to have visitation rates similar to other passive recreation areas such as Anthony Chabot Regional Park which received 419,000 visitors in 2016.

Whereas visitor data is calculated for park planning purposes based on anticipated visitor demand for planned features and amenities (e.g., anticipating the number of trail users, the number of parking spaces needed throughout the site at various facilities, the number and location of restrooms needed, etc), the trip data is calculated based on anticipated mode share and mobility patterns. As noted in Table 1, whereas visitor estimates reflect the total number of users of all facilities at the Regional Park, trip estimates account for the expectation that many visitors will utilize more than one facility during their visit. For example, a person using a campsite or picnic area will also utilize a trail during their visit. As mentioned in the notes in Table 1, for the purposes of trip generation, it was assumed that the following visitors are making internal trips (i.e., they are accessing another on-site use during their visit): Small Picnic, Group Picnic (weekend only), Group Campsite, Backcountry Campsite, and Phase 3 Increased Joint Visitor Center. (These visitor categories align with the categories used in the visitor estimates in Table 4 of this Errata.)

As further noted the references in Table 1, trip estimates also reflect that many visitors will travel to the site as groups or as families. It is assumed that one third of weekday and two thirds of weekend visitors will be making group trips. All other park visitors arriving via car are assumed to travel with two persons per vehicle. Many of the park facilities will be geared toward families and groups, such as the Visitor Center Complex multi-purpose room for community gatherings, amphitheater for outdoor programming, reservable group picnic areas and smaller informal picnic areas, and the proposed Diablo Center.

Additionally, trip estimates reflect that up to three buses will access the site daily. As shown on Figure 3-3 of the Draft EIR, the Regional Park is located in close proximity to many schools. As described above, the Regional Park would include many facilities geared toward and reservable for groups. In addition to the facilities noted above, the Regional Park would include many educational facilities and would be a desirable location for field trips. The proposed Visitor Center Complex would provide

information about the park and historic information about the Port Chicago Naval Magazine National Memorial. In addition, the Regional Park would provide magazine exhibit space, a War and Peace Interpretive Trail, outdoor classrooms, trails along historic rail corridors, overlooks, and a community orchard with educational programming.

Trip estimates also reflect the assumption that 10 percent of park visitors will walk or bike to the site. As described on page 3-39 of the Draft EIR, this assumption is conservatively low, as the District anticipates that up to half of visitors may ultimately walk or bike to the site. Moreover, trip estimates do not assume that any users will access the site via transit, despite the Land Use Plan's proposed connection to the Mount Diablo Creek Trail that is planned as a greenway to connect to North Concord/Martinez BART station. Again, this means the visitor and trip generation rates are remarkably conservative.

Lastly, the total visitation estimate for Phase 3 (560,909 total annual visitors) assumes that visitation will be greater than visitation to Anthony Chabot Regional Park, even though Chabot is located in much closer proximity to dense Bay Area communities and has numerous attractions compared to the Regional Park being analyzed in this EIR.

INSTITUTE OF TRANSPORTATION ENGINEERS TRIP GENERATION MANUAL

Trip generation calculations presented below that use the Institute of Transportation Engineers (ITE) Trip Generation Manual are based on the Land Use Plan's Recreation/Staging Units area of 126 acres.¹ Because land use categories for parks were revised in the 10th edition of the ITE Trip Generation Manual, the information below presents trip generation calculations for both the 9th and 10th editions.

ITE Trip Generation Manual, 10th Edition

Using standard trip rates from the most recent ITE Trip Generation Manual, 10th Edition, for a Public Park (land use category 411), which is defined in the manual as public parks owned by a municipal, county, State, or federal agency, the proposed project could be expected to generate 98 weekday daily trips (i.e., approximately six times lower than the trip data utilized for the Draft EIR and shown in Table 1). Please see Table 2.

¹ The trip generation estimates are based on the Recreation/Staging Units area of 126 acres as ITE's description of this land use category (411) acknowledged that park areas that are used more intensively varied across the studies considered and cautioned against use of acreage as an independent variable. The 126-acre area includes the area of park under trail use and expected to accommodate active and passive uses by park visitors. Given that the remaining 95 percent of the Regional Park is dedicated to conservation and is severely restricted for public access and use, applying the ITE trip generation rate to the 126 acres of park area was deemed appropriate and reasonable.

TABLE 2 TRIP GENERATION USING ITE TRIP GENERATION MANUAL, 10TH EDITION

Land Use	ITE Code	Size (Acres)	Rate per Acre			Trip Generation		
			Weekday Daily	AM Peak Hour	PM Peak Hour	Weekday	AM Peak Hour	PM Peak Hour
Public Park	411	126	0.78	0.02	0.11	98	3	14

Source: Institute of Transportation Engineers, Trip Generation Manual, 10th Edition, 2017.

ITE Trip Generation Manual, 9th Edition

Because land use categories for parks were revised in the 10th edition of the ITE Trip Generation Manual, and reflect a reduced rate per acre, the information below presents trip generation calculations for the 9th edition using two ITE land use categories.

As shown in Table 3, using standard trip rates for a Regional Park (land use category 417), the proposed project could be expected to generate 576 weekday daily trips (i.e., 10 trips fewer than the trip data utilized for the Draft EIR and shown in Table 1).

As shown in Table 3, using standard trip rates for a County Park (land use category 412), the proposed project could be expected to generate 287 weekday daily trips (i.e., less than half of the trips considered in the Draft EIR and shown in Table 1).

TABLE 3 TRIP GENERATION USING ITE TRIP GENERATION MANUAL, 9TH EDITION

Land Use	ITE Code	Size (Acres)	Rate per Acre			Trip Generation		
			Weekday Daily	AM Peak Hour	PM Peak Hour	Weekday	AM Peak Hour	PM Peak Hour
Regional Park	417	126	4.57	0.04	0.20	576	6	25
County Park	412	126	2.28	0.02	0.09	287	3	11

Source: Institute of Transportation Engineers, Trip Generation Manual, 9th Edition, 2012.

TABLE 4 LAND USE PLAN ESTIMATE OF VISITOR USE

Phasing	Typical Visitation			Events			
	Weekday	Weekend	Annual	Event Size	Events/Year	Annual Visitors	Annual Visitor
Land Bank Status	--	--	--	--	--	100	100
Naturalist-led Tours	--	--	--	5	20	100	100
Phase 1 – South of Baily Road	220	736	133,752	--	--	50	133,802
Trails	165	496	94,492	--	--	--	94,492
Group Picnic	25	75	14,300	--	--	--	14,300
Small Picnic	15	45	8,580	--	--	--	8,580
Group Campsite	10	100	13,000	--	--	--	13,000
Community Orchard	5	20	3,380	--	--	50	3,430
Phase 2 - Joint Visitor Center Complex and Initial Park Trails	564	1,766	330,222	--	--	2,250	332,472
Continued visitation from Phase 1	220	736	133,752	--	--	50	133,802
Trails - Phase 2	268	805	153,569	--	--	--	153,569
Joint Visitor Center and Associated Structures	75	225	42,900	--	--	--	42,900
<i>POCH Annual Commemorative Event</i>	--	--	--	1	1,000	1,000	1,000
<i>Mid-sized events</i>	--	--	--	4	300	1,200	1,200
Phase 3 - Build Out	1,074	2,665	556,309	--	--	4,600	560,909
Continued visitation from Phase 1 and Phase 2	564	1,766	330,222	--	--	--	332,472
Trails - Phase 3	200	600	114,417	--	--	--	114,417
Joint Visitor Center- Assumed increased use in Phase 3	225	56	64,350	--	--	--	65,550
POCH Annual Commemorative Event	--	--	--	1	1,000	1,000	1,000
Mid-sized events	--	--	--	4	300	1,200	1,200
Group Picnic	38	113	21,450	--	--	--	21,450
Small Picnic	18	53	10,010	--	--	--	10,010
Backcountry Campsite	13	25	5,850	--	--	--	5,850
The Diablo Center Education/Event Space	18	53	10,010	12	200	2,400	12,410

Source: Institute of Transportation Engineers, Trip Generation Manual, 9th Edition, 2012.

Revisions to the EIR

The text below presents changes to the Draft EIR that resulted from preparation of responses to comment letters received from Farella Braun + Martel and the California Native Plant Society. In each case, the page and location on the page in the Draft EIR is presented, followed by the text revision. Underline text represents language that has been added to the EIR; text with ~~strikethrough~~ has been deleted from the EIR. The revisions in this chapter do not require recirculation of the Draft EIR because they do not constitute “significant new information” under Section 15088.5 of the CEQA Guidelines.

Table 3-3 on page 3-40 of the Draft EIR is hereby amended as follows:

TABLE 3-3 TOTAL PROJECTED VISITORS PER DAY BY MODE (TYPICAL DAY AT FULL BUILDOUT, 2050)

Mode	Typical Weekday Visitors	Typical Weekend Visitors
Auto	1,018	2,450
Bike or Walk	107	266
Total <u>Visitors</u> Trips	1,125	2,716

Note: These totals include staff ~~trips~~.

Source: PlaceWorks, 2018.

The last paragraph on page 4.3-39, continuing onto page 4.3-40, of the Draft EIR is hereby amended as follows:

Although no special-status plant species have been identified on the project site, there is potential for one species with a California rare plant ranking of Rank 1B (rare, threatened, or endangered in California and elsewhere), big tarplant, to be present on the site. Conservation of CRPR 1B species is important because their populations contribute to preserving the genetic resources for the species and ensuring persistence of rare species in the county and state. Thus, the proposed Land Use Plan, which has been prepared consistent with the Long-Term Management Plan (LTMP), includes a management prescription (identified as BIO 25)⁵¹ to monitor and document the presence and relative abundance of special-status species, including big tarplant, within the project site over time and inform management to aid this species.⁵² In addition, the proposed Land Use Plan includes management prescriptions BIO 17 through BIO 20 to minimize the spread of existing nonnative invasive plants and prevent the unintentional introduction and spread of invasive plant species that can degrade the value of habitat for native species (see also the discussion under Impact BIO-2).

⁵¹ Concord Hills Regional Park Land Use Plan, 2019, Table 4-1

⁵² City of Concord and East Bay Regional Park District, December 3, 2018, Concord Reuse Project Area Plan On-Site Conservation Lands Long-Term Management Plan, prepared by H.T. Harvey & Associates.

Mitigation Measure BIO-1.1a on page 4.3-40 of the Draft EIR was revised in the Final EIR; the text is hereby restored to its original language, as follows:

Mitigation Measure BIO-1.1a: Pre-Activity Survey. A focused survey for big tarplant will be conducted within suitable habitat in areas of the project site that may experience ground disturbing activities. The surveys will be conducted prior to initial ground disturbance and during the appropriate blooming period (late summer and early fall). The survey area will include all suitable habitat that may be impacted as well as a 50-foot buffer. Surveys are to be conducted in a year with near-average or above-average precipitation. The purpose of the surveys will be to assess the presence or absence of big tarplant. If this species is not found in the survey area, then no further mitigation will be warranted. If big tarplant is found in the impact area, then Mitigation Measures BIO-1.1b and BIO-1.1c will be implemented.

Mitigation Measure BIO-1.1c on page 4.3-41 of the Draft EIR is hereby amended as follows:

Mitigation Measure BIO-1.1c: ~~Implementation of Plan Management Prescriptions BIO 8 through BIO 16. Management of Existing Populations.~~ The destruction of populations of big tarplant on the project site shall be mitigated by specifically managing portions of the Regional Park's open grasslands within designated Natural Units that support for this species, or occupied habitat on other District lands. The vast majority of the Los Medanos Hills and areas located southeast of Bailey Road are not proposed for development. These same areas represent the most suitable habitat for big tarplant on the project site. A review of the regional occurrences of this species reported in various databases reveals that off-site populations generally occur on specific soil types (namely Altamont clay, Altamont-Fontana Complex, and Diablo clay). These same soil types underlie much of the Natural Units within the project boundaries. As such, in the event that big tarplant is impacted by construction activities, the species may also be present within areas that will not be impacted. Either within the project site or on other District lands that support big tarplant, the District will manage and monitor the population in perpetuity as part of the District's long-term management of the area supporting big tarplant. Such management will occur at a 2:1 (mitigation:impact) ratio in terms of the number of individual plants. ~~specific habitat management measures (i.e., Plan management prescriptions BIO 8 through BIO 16 identified in Chapter 4 of the proposed Land Use Plan) to enhance the open space for the California red legged frog, California tiger salamander, and burrowing owl, will also benefit the germination, growth, and long term viability of populations of the big tarplant, if it is present.~~

Mitigation Measure BIO-3a on page 4.3-58 of the Draft EIR is hereby amended as follows:

Mitigation Measure BIO-3a: Permitting. Prior to placing any fill in jurisdictional wetlands and/or other waters of the U.S. or state, the District will provide the necessary permit application/notification materials to the USACE for a Clean Water Act Section 404 permit, to the RWQCB for Clean Water Act Section 401 water quality certification, and to the CDFW for a Fish and Game Code Section 1602 Streambed Alteration Agreement, as applicable (e.g.,

impacts to jurisdictional wetlands that are not in a channel may not necessitate CDFW notification). The District will comply with all conditions of these permits/ agreements when performing the work; ~~for example, if any~~ At a minimum, the District shall provide compensatory mitigation at a ratio of at least 1:1 (acres lost to acres preserved or restored). Compensatory mitigation shall ensure that replacement wetlands or waters provide equal or greater habitat and aquatic function and value either on-site or off-site is required by one or more permit/agreement, then the District will provide such mitigation in accordance with permit/agreement requirements.

The section “Construction Noise and Vibration” on page 4.11-18, continuing onto page 4.11-19, of the Draft EIR is hereby amended as follows:

Like stationary-source noise, construction noise and vibration impacts are confined to a localized area of impact. Cumulative impacts would only occur if other projects were being constructed in the immediate vicinity of the project’s construction activities at the same time as the project. Construction noise and vibration associated with implementation of the proposed Plan would be phased over 31 years. Proposed project construction would involve a limited construction effort in relation to the 2,543-acre proposed project site, due both to the relatively small development area (35 acres) and because many proposed facilities would involve adaptive reuse of existing buildings or reuse of parts of existing buildings. In addition, construction sites would be scattered throughout the site. The proposed visitor center is likely to be the closest portion of the Plan that would involve the construction of buildings and grading to potential future developments under the Concord Reuse Project. As discussed above, at a distance of 100 feet from a construction or demolition site, 8-hour average noise from the various types of equipment will, at times, range from 73 to 84 dBA. At a distance of over 350 feet from potential future development under the Concord Reuse Project (and conservatively not accounting for any shielding or ground absorption), construction noise levels would range from 62 to 73 dBA and would not exceed the FTA threshold of 80 dBA. At this distance, construction noise from buildout of the proposed Regional Park would not contribute substantially to a cumulative construction noise or vibration impact.

The proposed facility closest to future residents on the Faria/Southwest Hills development (which is located within the City of Pittsburg) would be the Eagle’s Nest Backcountry Campsite. Although the specific location of the campsite has not yet been determined, based on the Land Use Plan, the campsite would be approximately 250 to 500 feet from the project site boundary. As described on page 3-31 of the Draft EIR, this campsite would be accessible only by trail. Therefore, its use would be relatively low intensity, and heavy construction equipment and visitor vehicles would not be able to access the site. Consequently, no loud construction or land use noises would occur from that site. Construction of the Eagle’s Nest Backcountry Campsite would not involve the use of a substantial number of large off-road construction equipment. Construction activities are anticipated to include a minor amount of site clearing and grading. No buildings would be created; the only structure would be a vault restroom, which is a small free-standing structure. The City of Pittsburg Municipal Code Chapter 9.44 prohibits the use of pile driving, steam shovels, pneumatic hammers, derrick, and electric hoists during the hours of 10:00 p.m. and 7:00 a.m. None of these pieces of equipment are

anticipated for construction of Eagle's Nest Backcountry Campsite and nighttime work is not proposed. Further, Section 18.82.040 of the Pittsburg Municipal Code limits construction noise to 65 decibels at the property line of the receiving sensitive use. The most noise-intensive construction equipment anticipated for use at the Eagle's Nest Backcountry Campsite is a backhoe. The reference noise level for backhoes from the Federal Highway Administration Roadway Construction Noise Model is 78 dBA Lmax (maximum A-weighted decibels) at a distance of 50 feet (FHWA 2008). At a distance of approximately 250 feet (the shortest potential distance from the campsite to the property line) from the proposed Eagle's Nest Backcountry Campsite to the proposed Faria/Southwest Hills Annexation Project, construction noise would attenuate to 64 dBA Lmax or less and would therefore not exceed the City of Pittsburg's limit of 65 decibels. This computation conservatively does not factor in the dense vegetation that exists between the proposed campsite and Faria/Southwest Hills Annexation Project or topographical features which would provide acoustical shielding and further reduce construction noise levels. Therefore, this impact is considered to be *less than significant*.