

Central Valley Regional Water Quality Control Board
18/19 February 2021 Board Meeting

Response to Written Comments on
Tentative Waste Discharge Requirements for
Coastal Partners, LLC
Vehicle Inspection Center Project
Placer County

At a public hearing scheduled for 18/19 February 2021, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) will consider the adoption of Waste Discharge Requirements for Coastal Partners, LLC Vehicle Inspection Center Project. This document contains responses to significant written comments received from interested parties in response to the tentative Waste Discharge Requirements (Tentative Order). Written comments from interested parties were required to be received by the Central Valley Water Board by 19 January 2021 in order to receive full consideration. Comments were received prior to the deadline from:

1. Amber Beckler (Concerned resident of Placer County) (received 8 January 2021) [Related comment/response: C-2, D-4, E-1, E-2]
2. Cheryl Berkema (received 19 January 2021) [Related comment/response: D-3, D-4, F-1]
3. Larissa Berry (received 22 May 2020) [Related comment/response: C-2, D-1, D-3, G-1]
4. Larissa Berry (Member, Defend Granite Bay) (received 8 January 2021) [Related comment/response: C-2, D-1, D-2, D-3, E-1]
5. Larissa Berry (Member, Defend Granite Bay) (received 19 January 2021) [Related comment/response: B-2]
6. Michael Garabedian (Placer County Tomorrow) (received 22 May 2020) [Related comment/response: C-1, I-1]
7. Michael Garabedian (Placer County Tomorrow) (received 22 May 2020) [Related comment/response: C-1, E-1]

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8. Michael Garabedian (Placer County Tomorrow) (received 23 May 2020)
[Related comment/response: H-1]
 9. Michael Garabedian (Placer County Tomorrow) (received 19 January 2021)
[Related comment/response: A-1, B-1, B-3, D-1, D-3, E-1, F-2, I-1, I-4]
 10. Isabella Langone (Conservation Analyst, California Native Plant Society)
(received 19 January 2021) [Related comment/response: A-1, B-3, C-2, D-5,
D-6, E-1, F-3, I-2]
 11. Diana Suarez (received 7 January 2021) Leslie Warren (received 22 May 2020)
[Related comment/response: B-2, D-1, D-3]
 12. Leslie Warren (Chair, Alliance for Environmental Leadership) (received
22 May 2020) [Related comment/response: A-1, G-1, H-1]
 13. Leslie Warren (Chair, Alliance for Environmental Leadership) (received
3 October 2020) [Related comment/response: D-1, D-3]
 14. Leslie Warren (Chair, Alliance for Environmental Leadership) (received
29 October 2020) [Related comment/response: D-1, D-3, H-1, J-1]
 15. Leslie Warren (California Native Plant Society Redbud, Conservation
Advocacy Committee) (received 19 December 2020) [Related
comment/response: E-2, H-1, I-3, J-2]
 16. Leslie Warren (Chair, Alliance for Environmental Leadership) (received
2 January 2021) [Related comment/response: D-3]
 17. Leslie Warren (Chair, Alliance for Environmental Leadership) (received
19 January 2021) [Related comment/response: B-2, C-1, C-2, D-1, D-2, D-3,
D-4, D-5, E-1, E-2, F-3, H-1, I-3, J-2]

Significant written comments from the above interested parties are summarized below, followed by the response of Central Valley Water Board staff.

A. ANTI-DEGRADATION AND NO NET LOSS POLICY COMMENTS

A-1 COMMENT – An anti-degradation analysis needs to be prepared to assess the project’s impacts on water quality.

RESPONSE:

State Water Resources Control Board Resolution No. 68-16, “Statement of Policy with Respect to Maintaining High Quality of Waters in California” (Antidegradation Policy), requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably affect present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained.

Executive Order W-59-93, dated 23 August 1993, establishes a California Wetlands Conservation Policy including an objective to ensure no overall net loss of and a long term net gain in the quantity, quality, and permanence of wetland acreage and values in California (No Net Loss Policy). The State Water Resources Control Board and Regional Water Quality Control Boards are committed to increasing the quantity, quality, and diversity of wetlands that qualify as waters of the state.

Filling wetlands and other waters causes partial or complete loss of the beneficial uses provided by those waters. To reconcile such losses with the State’s No Net Loss and Antidegradation Policies, this Order requires adherence to the requirements in the mitigation monitoring and reporting program, including compensatory mitigation for impacts that cannot be feasibly avoided or minimized; implementation of the approved compensatory mitigation plan; and other requirements to minimize the potential effects of construction on water quality and resources. As detailed in the Project’s Biological Evaluation, conducted to provide information to support informal Section 7 Endangered

Species Act Consultation, the Project design includes an 8.5-acre avoidance area, which includes a tributary to Pleasant Grove Creek representing 0.628-acre of aquatic features. Regarding compensatory mitigation, this Order requires aquatic resource impacts be mitigated at a 1.5:1 ratio (1.5 acres of mitigation credits required for every 1 acre of impacted aquatic resources) by purchasing credits through the Western Placer County In-Lieu Fee Program or a similar program. The Western Placer County In-Lieu Fee Program provides for establishment, restoration, and preservation of sites within the Placer County Conservation Program's interconnected preserve system. The Program will enhance the efficiency of mitigation efforts undertaken in Placer County and enable the acquisition of larger and more strategic reserve properties, subject to robust performance standards and preserved in perpetuity, than would be possible if mitigation were done on a property-by-property basis. These measures ensure impacts are mitigated through avoidance and minimization and that unavoidable loss of beneficial uses is offset with appropriate compensatory mitigation. To the extent there is degradation from Project discharges despite avoidance, minimization, and compensatory mitigation measures which constitute best practicable treatment or control, such degradation is necessary to accommodate important economic and social development in the area, such as increased employment as documented in the lead agency environmental review documents and supporting materials, and is consistent with the maximum benefit to the people of the state. Accordingly, Order requirements are consistent with the provisions of the No Net Loss and Antidegradation Policies.

The below findings have been added to the Tentative Order in response to this comment.

TENTATIVE REVISION TO ORDER IN RESPONSE TO COMMENT

Addition to Findings, Regulatory Considerations

State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California" (Antidegradation Policy), requires that the quality of existing high-quality water be maintained unless any change

will be consistent with the maximum benefit to the people of the state, will not unreasonably affect present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained.

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Filling wetlands and other waters causes partial or complete loss of the beneficial uses provided by those waters. To reconcile such losses with the State's No Net Loss and Antidegradation Policies, this Order requires adherence to the requirements in the mitigation monitoring and reporting program, including compensatory mitigation for impacts that cannot be feasibly avoided or minimized; implementation of the approved compensatory mitigation plan; and other requirements to minimize the potential effects of construction on water quality and resources. As detailed in the Project's Biological Evaluation, conducted to provide information to support informal Section 7 Endangered Species Act Consultation, the Project design includes an 8.5-acre avoidance area, which includes a tributary to Pleasant Grove Creek representing 0.628-acre of aquatic features. Regarding compensatory mitigation, this Order requires aquatic resource impacts be mitigated at a 1.5:1 ratio (1.5 acres of mitigation credits required for every 1 acre of impacted aquatic resources) by purchasing credits through the Western Placer County In-Lieu Fee Program or a similar program. The Western Placer County In-Lieu Fee Program provides for establishment, restoration, and preservation of sites within

the Placer County Conservation Program's interconnected preserve system. The Program will enhance the efficiency of mitigation efforts undertaken in Placer County and enable the acquisition of larger and more strategic reserve properties, subject to robust performance standards and preserved in perpetuity, than would be possible if mitigation were done on a property-by-property basis. These measures ensure impacts are mitigated through avoidance and minimization and that unavoidable loss of beneficial uses is offset with appropriate compensatory mitigation. To the extent there is degradation from Project discharges despite avoidance, minimization, and compensatory mitigation measures which constitute best practicable treatment or control, such degradation is necessary to accommodate important economic and social development in the area, such as increased employment as documented in the lead agency environmental review documents and supporting materials, and is consistent with the maximum benefit to the people of the state. Accordingly, Order requirements are consistent with the provisions of the No Net Loss and Antidegradation Policies.

B. AQUATIC RESOURCE DELINEATION COMMENTS

B-1 COMMENT – A California wetlands delineation analysis is needed for the project; specifically, a three-factor analysis that considers area hydrology, plants, and soils is needed.

RESPONSE:

An aquatic resources delineation was conducted by WRA, Inc. for the Project area in accordance with the *Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory 1987) and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (U.S. Army Corps of Engineers [USACE 2008]). The above referenced delineation manual requires positive evidence of hydrophytic vegetation, hydric soils, and wetland hydrology for a wetland determination. This delineation took place in two parts, both of which received a preliminary jurisdictional

determination (PJD) from the USACE. The PJDs were issued by the USACE on 27 August 2014 and 1 April 2016.

On 5 October 2020, Army Corps of Engineers issued an Approved Jurisdictional Determination, concurring with the aquatic resources delineation (referenced in the above paragraph) for the Project site and depicted on the *Proposed Impacts to Waters of the U.S.* drawing prepared by ECORP Consulting, Inc. (Tentative Order, Attachment A, page 2).

B-2 COMMENT – There are inconsistencies between the California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (USFWS), Citizen Initiated Smart Growth Plan (CISGP), and wetland delineation maps submitted for the project.

RESPONSE:

Per records on file with the Central Valley Water Board, the aquatic resources delineation submitted to CDFW is the same as that submitted with the application to the Central Valley Water Board and is the analysis relied upon by the Central Valley Water Board. A map prepared by Vollmer & Associates that was commissioned by USFWS and Bureau of Reclamation for the Sunset Industrial Area shows vernal pool habitat but does not delineate aquatic resources for the Project site. The Central Valley Water Board is currently unaware of a delineation map prepared or commissioned by CISGP.

B-3 COMMENT – The Application for a Letter of Permission submitted to the U.S. Army Corps of Engineers states that 61.451 acres of Vernal Pool Complex and 12.422 acres of Marsh Complex will be impacted by the Project, which differs from the 7.725 acres of impacts to wetlands, vernal pools, stream channel, seasonal wetland, and seasonal marsh listed in the application submitted to the Central Valley Water Board.

RESPONSE:

The 61.451 acres of Vernal Pool Complex and 12.422 acres of Marsh Complex listed as impacts in the U.S. Army Corps of Engineers Letter of Permission application refers to the project's proposed impacts to natural land cover types, as defined by the Placer County Conservation Plan (PCCP), not impacts to waters of the state as listed in the Central Valley Water Board application. The Tentative Order regulates impacts to waters of the state.

C. AVOIDANCE AND MINIMIZATION COMMENTS

C-1 COMMENT – Environmentally responsible alternatives which may be less damaging to the aquatic environment were not considered for the project.

RESPONSE:

The Central Valley Water Board is a Responsible Agency under the California Environmental Quality Act for this Project. (Public Resources Code, section 21069.) As Responsible Agency, the Board must consider the Lead Agency's environmental document and reach its own conclusions on whether and how to approve the Project. (California Code of Regulations, title 14, section 15096, subdivision (a).) In particular, the Board shall not approve a Project if it finds any feasible alternatives or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. (California Code of Regulations, title 14, section 15096, subdivision (g).) While the Lead agency is responsible for considering all environmental impacts of a project before approving it, the Responsible Agency's role is limited to considering those aspects of the project subject to its jurisdiction. (*RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201-1202.)

Central Valley Water Board staff reviewed onsite alternatives that were evaluated by ECORP Consulting, Inc. Onsite alternatives with greater environmental impacts than the

proposed Project were not considered as they would not substantially lessen or avoid any significant effect the Project would have on the environment. ECORP Consulting, Inc.'s alternative analysis complied with federal regulations governing the discharge of dredged or fill material, which regulations while not directly applicable to this Project's proposed discharges to waters of the state, are instructive here. Under the Guidelines for restrictions on discharge, "[e]xcept as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." (40 C.F.R. section 230.10(a).) The Guidelines further state, "[a]n alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered."

An alternative that would avoid the individual vernal pools within the northern portion of the Project area was not considered, as it would result in development of a small, isolated preserve that is not connected to an existing preserve and would not substantially lessen or avoid any significant effect the Project would have on the environment. Fragmented and isolated preserves often do not provide sufficient opportunities for wildlife dispersal and migration, which can lead to a loss of genetic diversity and leave populations more vulnerable to predation, disease, or changing environmental conditions. This alternative would be inconsistent with the Placer County Conservation Program landscape-level conservation planning, although the PCCP is not yet fully adopted.

Onsite Alternative 1 would avoid impacts to 6.11 acres of wetland in the southern portion of the Project area by building a multilevel parking structure to achieve the total 10,000 parking spaces for the Project. Although the alternative would have less impact

on waters of the state, the cost per acre for construction would increase by approximately 167% compared to the proposed Project. Due to the increased cost, Alternative 1 was determined to be financially infeasible and impracticable to construct by the applicant.

Onsite Alternative 2 would avoid all impacts to waters and would achieve the 10,000 parking spaces through the construction of a multilevel parking structure. Although the alternative would avoid impacts to all waters, the cost per acre to construct would increase approximately 85.8% compared to the proposed Project and was therefore determined to be financially infeasible and impracticable by the applicant.

The proposed Project is consistent with the Placer County General Plan, Sunset Area Plan, the draft Placer County Conservation Program (PCCP), the draft Placer County Aquatic Resources Program (CARP), and will minimize effects to waters by constructing stormwater facilities and water quality basins in strategic locations within the Project area and avoiding impacts to 0.628 acre of waters. Additionally, the Tentative Order requires compensatory mitigation for unavoidable impacts through the purchase of Wetland, Vernal Pool, and Riverine/Riparian Aquatic Resource Credits at a ratio of 1.5:1 from the Western Placer County In-Lieu Fee Program or through the purchase of commensurate credits from an approved mitigation bank or in-lieu fee program. Accordingly, Central Valley Water Board staff have considered the feasibility of Project alternatives and concur with ECORP Consulting, Inc.'s conclusion that the proposed Project is the least environmentally damaging practicable alternative.

C-2 COMMENT – The Project will destroy precious wetlands, vernal pools, and migratory bird habitats.

RESPONSE:

The Project will permanently impact a total of 7.725 acres of aquatic resources consisting of wetlands, vernal pools, seasonal marsh, seasonal wetlands, and stream channel. The Tentative Order requires compensatory mitigation for authorized impacts

through the purchase of Wetland, Vernal Pool, and Riverine/Riparian Aquatic Resource Credits at a ratio of 1.5:1 from the Western Placer County In-Lieu Fee Program or through the purchase of commensurate credits from an approved mitigation bank or in-lieu fee program.

Fees paid into the Western Placer In-Lieu Fee program will fund mitigation projects that will result in establishment, reestablishment, rehabilitation, and preservation of aquatic resources of Placer County, including wetlands, riverine systems, vernal pools, and other aquatic resources. The Program's intent is to enable the acquisition of larger and more strategic reserve properties than would be possible if mitigation was done on a property-by-property basis. More information about the Program's operation can be found in the Western Placer County In-Lieu Fee Program Enabling Instrument.

D. CEQA COMMENTS

D-1 COMMENT – A Project-specific EIR is warranted.

RESPONSE:

Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15164 govern when additional environmental documentation is required when an environmental impact report has been previously certified for a project. Additionally, Public Resources Code section 21083.3 and CEQA Guidelines section 15183 provide a streamlined review process for projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified. This streamlined review reduces the need to prepare repetitive environmental studies. Under this streamlined review, no additional environmental review is necessary except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project, were not analyzed as significant effects in the prior EIR, are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR, or are previously

identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the previous EIR.

On 16 July 2020, the Placer County Zoning Administrator approved a Minor Use Permit and Design Review Agreement (PLN20-00053) for the Project and determined the Project is consistent with the existing Sunset Area Plan/Placer Ranch Specific Plan and zoning and will not result in any new or more severe environmental effects that are peculiar to the Project or parcels or which were not previously analyzed as significant effects in the SAP/PRSP Final Environmental Impact Report (FEIR), and is therefore exempt from additional environmental review under CEQA provided by Government Code section 65457, Public Resources Code section 21083.3, and CEQA Guidelines section 15183. To assist in its determination, Placer County prepared an Environmental Checklist to evaluate environmental resource categories in terms of any “changed condition” that may result in environmental impact significance conclusions different from those in the SAP/PRSP FEIR and concluded that the Project is consistent with the previously certified SAP/PRSP FEIR and no additional environmental review under CEQA Guidelines sections 15162 through 15164 is required.

The Placer County Planning Commission upheld the Zoning Administrator’s approval of the Minor Use Permit and Design Review Agreement at a 10 September 2020 hearing. The Placer County Board of Supervisors upheld the Zoning Administrator’s approval of the Minor Use Permit and Design Review Agreement at a 3 November 2020 hearing. Placer County filed a Notice of Determination with the County Clerk of Placer County on 10 September 2020 (SCH No. 2016112012, Project No. PLN20-00053) and filed a subsequent Notice of Determination with the County Clerk of Placer County on 4 November 2020 following approval of the project by the Placer County Board of Supervisors.

The Central Valley Water Board is a responsible agency under CEQA (Public Resources Code, section 21069) and in making its determinations and findings, must

presume that Placer County's certified environmental document comports with the requirements of CEQA and is valid. (Public Resources Code, section 21167.3; California Code of Regulations, title 14, section 15231.) As a responsible agency, the Central Valley Water Board's CEQA obligations are more limited than those of the lead agency. (Public Resources Code, section 21002.1, subdivision (d); *San Diego Navy Broadway Complex Coal. v. City of San Diego* (2010) 185 Cal. App. 4th 924; *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201-1202.)

Central Valley Water Board staff reviewed and considered the environmental documentation prepared by Placer County and found it addresses the Project's impacts within the scope of the Board's jurisdiction and that no additional environmental review is required. (California Code of Regulations, title 14, sections 15096, subdivision (f), 15183, 15162, 15163.) Central Valley Water Board staff independently reviewed and considered Placer County's Environmental Checklist that was prepared to evaluate the Project's environmental impacts and its consistency with the SAP/PRSP FEIR in accordance with CEQA Guidelines sections 15162 through 15164 and 15183. Central Valley Water Board staff concur with Placer County's determination that (1) there are no project-specific environmental effects which are peculiar to the project or its site that the County's FEIR failed to analyze as significant effects, (2) there are no potentially significant off-site impacts and cumulative impacts which were not discussed in the FEIR, and (3) there are not previously identified significant effects which, as a result of substantial new information which was not known at the time the FEIR was certified, would result in a more severe adverse impact than discussed in the prior EIR. Accordingly, a project-specific EIR is not required.

D-2 COMMENT – Sunset Area Plan/Placer Ranch Specific Plan (SAP/PRSP) EIR is inadequate as it did not anticipate the intensity of water usage, high volume of water runoff that may impact waterways with pollutants, highly toxic waste, and a disproportionate number of vehicles on the roads and it relies on a false promise of a California State University to support its economics analysis.

RESPONSE:

The Central Valley Water Board is a responsible agency under CEQA (Public Resources Code, section 21069) and in making its determinations and findings, must presume that Placer County’s certified environmental document comports with the requirements of CEQA and is valid. (Public Resources Code, section 21167.3; California Code of Regulations, title 14, section 15231.) “After an initial EIR is certified, there is a strong presumption against additional environmental review.” (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal. App. 4th 924, 934.) Challenges to the adequacy of the EIR are insufficient—an agency may not require subsequent or supplemental review unless one of the triggering events under Public Resources Code section 21166 occurs. Further, “[w]hen determining whether a subsequent or supplemental EIR is required, the agency need only take into account environmental issues that are within the scope of the discretionary decision that is considering. The agency is not required to assess environmental impacts that are outside the scope of its discretionary authority.” (Kostka & Zischke, § 19.39 [citing *San Diego Navy Broadway Complex Coal. v. City of San Diego* (2010) 185 Cal. App. 4th 924].)

As detailed in the response to D-2 Comment above, no additional environmental review is required here. The Central Valley Water Board staff reviewed and considered the SAP/PRSP Final EIR (FEIR) and found that the environmental document prepared by Placer County addresses the Project’s impacts within the scope of the Board’s jurisdiction and that no additional environmental review is required. (California Code of Regulations, title 14, section 15096, subdivision (f), 15183, 15162, 15163.)

D-3 COMMENT – Placer County’s Environmental Checklist for the Vehicle Inspection Center, which concluded the project is consistent with the Sunset Area Plan/Placer Ranch Specific Plan EIR, is inadequate because it did not evaluate the project’s intensity of usage and cumulative environmental impacts from several development projects.

RESPONSE:

Under Public Resources Code section 21083.3 and CEQA Guidelines section 15183, no additional environmental review is necessary for projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. Additionally, pursuant to Public Resources Code section 21083.3, subdivision (c), and CEQA Guidelines section 15183, subdivision (j), “[if a significant offsite or cumulative impact was adequately discussed in the prior EIR, then [section 15183] may be used as a basis for excluding further analysis of that offsite of cumulative impact.

Central Valley Water Board staff independently reviewed and considered Placer County’s environmental documentation, including the Environmental Checklist that was prepared to evaluate the Project’s environmental impacts and its consistency with the SAP/PRSP FEIR in accordance with CEQA Guidelines sections 15162 through 15164 and 15183. Central Valley Water Board staff concur with Placer County’s determination that (1) there are no project-specific environmental effects which are peculiar to the project or its site that the County’s FEIR failed to analyze as significant effects, (2) there are no potentially significant off-site impacts and cumulative impacts which were not discussed in the FEIR, and (3) there are not previously identified significant effects which, as a result of substantial new information which was not known at the time the FEIR was certified, would result in a more severe adverse impact within the scope of the Board’s jurisdiction than discussed in the prior EIR.

D-4 COMMENT – Sunset Area Plan/Placer Ranch Specific Plan EIR is under legal challenge by the Center for Biological Diversity.

RESPONSE:

A final EIR prepared by a Lead Agency shall be conclusively presumed to comply with CEQA for use by Responsible Agencies unless the EIR is “finally adjudged in a legal proceeding not to comply with the requirements of CEQA.” (California Code of Regulations, title 14, section 15231.) If a lawsuit is commenced challenging the adequacy of an EIR, responsible agencies must continue to presume the EIR complies with CEQA. (Public Resources Code, section 21167.3; California Code of Regulations, title 14, section 15233.) If no injunction or stay is granted in the pending lawsuit, responsible agencies must presume that the EIR is adequate and continue to process the application. (California Code of Regulations, title 14, section 15233, subdivision (b).) In this instance, any approval by the responsible agency “provides only permission to proceed with the project at the applicant’s risk prior to a final decision in the lawsuit.” (California Code of Regulations, title 14, section 15233, subdivision (b).) Even when an injunction or stay has been granted in the pending lawsuit, a responsible agency retains the authority to disapprove the project or grant a conditional approval. (California Code of Regulations, title 14, section 15233, subdivision (a).)

The Center for Biological Diversity filed a lawsuit against the County of Placer, challenging its FEIR for the Sunset Area Plan. (*Center for Biological Diversity v. County of Placer, et al.*, Placer County Superior Court Case No. SCV0044277.) Notwithstanding this pending litigation and in the absence of a final judgment determining the FEIR does not comply with CEQA, the Central Valley Water Board must continue to presume the adequacy of the FEIR for its use as Responsible Agency.

D-5 COMMENT – The Tentative Order does not justify the significant and unavoidable impacts to wetlands and other waters of the state that will result from the Project. The Statement of Overriding Considerations is vague and does not provide the Central Valley Water Board’s reasoning for accepting the Project’s significant and unavoidable impacts.

RESPONSE:

When a lead agency certifies an EIR which identifies one or more significant environmental impacts, the responsible agency may approve a project with significant environmental impacts if it finds such effects can be avoided by making changes or alterations to the project or, if the mitigation measures or alternatives identified in the EIR are not feasible, the unavoidable effects are acceptable because of overriding considerations. (Public Resources Code, sections 21002, 21002.1, subdivisions (b) & (c), 21081; California Code of Regulations, title 14, sections 15091, 15093, & 15096.) This statement of overriding considerations requires the decision-making agency to balance the benefits of a proposed project against its unavoidable environmental impacts. In so doing, the agency must state the specific reasons to support its action based on the final EIR or other information in the record. (California Code of Regulations, title 14, section 15093.)

The Placer County FEIR identified certain significant impacts to the environment that cannot be avoided or substantially lessened with the application of feasible mitigation measures or feasible alternatives. The significant and unavoidable impacts and the benefits related to implementing the Project are disclosed in the FEIR, CEQA Findings of Fact, and Statement of Overriding Considerations, and project-specific checklist.

The unavoidable impacts within the Central Valley Water Board’s jurisdiction are discussed in Attachment C, subsection C of the Tentative Order. Because there are significant and unavoidable impacts within the Central Valley Water Board’s jurisdiction, the Tentative Order includes a Statement of Overriding Considerations in compliance with CEQA, which provides the specific reasons to support its action, including

economic benefits, local job growth, and employment opportunities. (Public Resources Code, section 21081, subdivision (b); California Code of Regulations, title 14, section 15093.) In response to this comment, Central Valley Water Board staff propose updated findings as detailed below which clarify its review and consideration of the Lead Agency's documentation and findings when developing its independent Statement of Overriding Considerations and which state the specific reasons for proposing approval of the Project supported by substantial evidence in the record. (California Code of Regulations, title 14, sections 15096 & 15121, subdivision (c).)

TENTATIVE REVISION TO ORDER IN RESPONSE TO COMMENT

Attachment C, Section D, Statement of Overriding Considerations Original Language:

The Placer County FEIR identifies certain significant impacts to the environment that cannot be avoided or substantially lessened with the application of feasible mitigation measures or feasible alternatives. Because there are significant and unavoidable impacts within the Central Valley Water Board's jurisdiction, the Central Valley Water Board provides this Statement of Overriding Considerations in compliance with CEQA. (Public Resources Code, section 21081, subdivision (b); California Code of Regulations, title 14, section 15093.)

The significant and unavoidable impacts and the benefits related to implementing the Project are disclosed in the FEIR, CEQA Findings of Fact, and Statement of Overriding Considerations. The unavoidable impacts within the Central Valley Water Board's jurisdiction are discussed in subsection C above.

The Central Valley Water Board has considered the economic, legal, social, technological, and other benefits of the Project against its significant unavoidable impacts to water quality and finds that the specific economic, legal, social, and technological benefits of implementing the Project—including economic benefits, local job growth, and employment opportunities—outweigh the significant and unavoidable impacts identified above.

Attachment C, Section D, Statement of Overriding Considerations Revised

Language:

The Placer County FEIR identifies certain significant impacts to the environment that cannot be avoided or substantially lessened with the application of feasible mitigation measures or feasible alternatives. Because there are significant and unavoidable impacts within the Central Valley Water Board's jurisdiction, the Central Valley Water Board provides this Statement of Overriding Considerations in compliance with CEQA. (Public Resources Code, section 21081, subdivision (b); California Code of Regulations, title 14, section 15093.)

The significant and unavoidable impacts and the benefits related to implementing the Project are disclosed in the FEIR, CEQA Findings of Fact, and Statement of Overriding Considerations, and project-specific checklist. The unavoidable impacts within the Central Valley Water Board's jurisdiction are discussed in subsection C above.

The Central Valley Water Board has independently reviewed and considered the Lead Agency's documentation and findings. The Central Valley Water Board has considered the economic, legal, social, technological, and other benefits of the Project against its significant unavoidable impacts to water quality and finds that the specific economic, legal, social, and technological benefits of implementing the Project as detailed by the Lead Agency—including economic benefits, local job growth, and employment opportunities—outweigh the significant and unavoidable impacts identified above. The Central Valley Water Board defers to the Lead Agency's land use planning decisions and its vision for continued growth and development in Placer County. Additionally, Project impacts on wetlands and other waters of the state that cannot be feasibly avoided or minimized will be offset with appropriate compensatory mitigation as detailed above.

D-6 COMMENT – Protocol-level botanical surveys were not conducted within the Sunset Area Plan area so it is unknown whether the Project will impact protected or sensitive plant species. The Tentative Order for the Project does not address impacts to any special-status or sensitive plant species or how impacts might be mitigated.

RESPONSE:

The SAP/PRSP FEIR states that because botanical surveys have not been conducted over the entire SAP area and protocol-level surveys have not been conducted in the PRSP area since 2005, it is possible that additional special-status plant species occur in suitable habitats within the project area or that the previously documented species occur at additional locations.

The Sunset Area Plan (SAP) includes policies for protection of natural resources within the plan area. Project proponents within Placer County's jurisdiction will be required to identify and avoid special-status plant populations to the extent feasible and provide compensation for the unavoidable loss of special-status plants through establishment of new populations, conservation easements, or other appropriate measures.

As stated in the Lead Agency's Environmental Checklist, a protocol-level botanical survey was conducted for the Project by ECORP Consulting, Inc. The Tentative Order includes required findings pursuant to CEQA Guidelines section 15091 related to its discretionary approval of the Project and required mitigation for permanent impacts due to loss of waters of the state and supported habitat.

E. IMPACT TO AQUATIC SPECIES AND WILDLIFE COMMENTS

E-1 COMMENT – Runoff from this Project will negatively impact Endangered Steelhead and Threatened Chinook Salmon in Auburn Ravine and the Sacramento River. In particular, asphalt runoff is known to contaminate and kill fish.

RESPONSE:

An Endangered Species Act (ESA) Consultation was prepared for the Project by ECORP Consulting, Inc. on 15 June 2020. The 111.6 acre Project area and 8.5 acre avoidance area comprised the consultation Action Area.

Database queries were conducted for federally listed species that have the potential to occur within the Action Area. A site survey was conducted by ECORP Consulting, Inc. biologists to assess the suitability of onsite habitat to support PCCP Covered Species and federally listed species identified with potential for occurrence. The database queries and field reconnaissance eliminated all species based on the absence of habitat or absence as documented in protocol-level surveys, with the exception of the Valley elderberry longhorn beetle (VELB). The ESA concluded the Project may affect but is unlikely to adversely affect the VELB. The Project proposes to implement conservation measures during construction to reduce the likelihood of adverse effects to VELB through avoidance of all elderberry shrubs; installation of high-visibility fencing; limitation of the use of herbicides and mechanical weed removal; dust control; and adherence to timing recommendations to avoid adult flights should beetles be present.

Impacts to Steelhead and Chinook Salmon were not identified in the Lead Agency's environmental review documentation. As detailed in Section D responses above, the Board, as Responsible Agency, presumes the adequacy of the Lead Agency's documentation and concurs with the Lead Agency's determination that no additional review is required for this Project pursuant to CEQA Guidelines.

See comment E-2, below, for an explanation of how storm water from the site is regulated to prevent the discharge of pollutants and to protect beneficial uses of receiving waters.

E-2 COMMENT – Concern for impacts to aquatic and wildlife species from a spill or seasonal drainage from the site.

RESPONSE:

The Permittee is required to comply with the County of Placer’s requirements under the National Pollutant Discharge Elimination System (NPDES) General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order No. 2013-0001-DWQ, as amended (Small MS4 General Permit). Construction site discharges of pollutants and impacts on beneficial uses of receiving waters are prohibited and low impact development (LID) standards are required to be implemented into the Project design to reduce runoff, treat stormwater, and provide baseline hydromodification management to meet the Numeric Sizing Criteria for Storm Water Retention and Treatment under section E.12.e(ii)(c) of the Small MS4 General Permit.

The facility may also require coverage under the Statewide NPDES Industrial General Permit which requires specific categories of industrial facilities discharging storm water to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate industrial storm water pollution. As noted in Placer County’s Sunset Area Plan policies, the Project proponent shall consult with the Central Valley Water Board to determine specific permit requirements, including applying for coverage under the Industrial General Permit.

F. MITIGATION COMMENTS

F-1 COMMENT – Vehicle Inspection Center Project should be postponed until the Placer County Conservation Program is approved.

RESPONSE:

The Tentative Order is not dependent on approval of the PCCP. The Central Valley Water Board retains independent authority to adequately condition the Project under the

Porter Cologne Water Quality Control Act. The compensatory mitigation plan that was submitted by the Permittee and was accepted by the Central Valley Water Board provides for the purchase of in-lieu fee credits from the Western Placer County In-Lieu Fee Program. The Western Placer County In-Lieu Fee Program provides for establishment, restoration, and preservation of sites within the Placer County Conservation Program's interconnected preserve system. The Program will enhance the efficiency of mitigation efforts undertaken in Placer County and enable the acquisition of larger and more strategic reserve properties, subject to robust performance standards and preserved in perpetuity, than would be possible if mitigation were done on a property-by-property basis. More information about the Program's operation can be found in the Western Placer County In-Lieu Fee Program Enabling Instrument. If credits are not available for purchase, the Tentative Order includes a provision that commensurate credits may be purchased from an approved mitigation bank or in-lieu fee program. Such compensatory mitigation for protect impacts is appropriate to ensure no-net loss of aquatic resources.

F-2 COMMENT – The project is proposing to purchase in-lieu fee credits through the Placer County Conservation Plan (PCCP). The PCCP is impermissible because it does not provide ecosystem level protection as required for California Natural Community Conservation Plans.

RESPONSE:

See response to comment F-1.

F-3 COMMENT – Specific identification of the compensatory mitigation site(s) is not clear in the Tentative Order, and therefore it cannot be determined whether mitigation credits are commensurate and ecologically suitable to compensate for the types of habitat lost as a result of the Project.

RESPONSE:

The Tentative Order requires compensatory mitigation for authorized impacts through the purchase of Wetland, Vernal Pool, and Riverine/Riparian Aquatic Resource Credits from the Western Placer County In-Lieu Fee Program at a ratio of 1.5:1 or through the purchase of commensurate credits from an approved mitigation bank or in-lieu fee program. The required type of aquatic resource credits to be purchased is commensurate with the type of aquatic resources impacted by the Project.

The fees collected through the In-Lieu Fee Program are used to fund conservation measures such as land acquisition, mitigation projects that protect, enhance, and restore aquatic resources, and long-term management and monitoring within acquisition areas. Specific conservation measures to be funded with fees paid to the Western Placer County In-Lieu Fee Program are not necessarily known at the time of credit purchase. The Program's intent is to enable the acquisition of larger and more strategic reserve properties than would be possible if mitigation was done on a property-by-property basis. More information about the Program's operation can be found in the Western Placer County In-Lieu Fee Program Enabling Instrument.

While not applicable to the Tentative Order, the State Water Resources Control Board's Procedures for Discharges of Dredged or Fill Material to Waters of the State recognize in-lieu fee program credits as an appropriate type of compensatory mitigation. Under such programs, a permittee's compensatory mitigation requirements may be met by securing an appropriate number and type of credits from an in-lieu fee program sponsor, which may occur before an in-lieu fee project is known or has been implemented.

G. PROCESS COMMENTS

G-1 COMMENT – Interested persons were not given adequate notice to comment on the application for the Project.

RESPONSE:

Adequate notice of the then-pending application for a Clean Water Act section 401 water quality certification was provided pursuant to California Code of Regulations, title 23, section 3858, subdivision (a). Notice of the pending application was posted on the Central Valley Water Board website for public comment from 1 May 2020 through 22 May 2020, and comments were received. No such notice requirement exists for applications for waste discharge requirements to be issued under Water Code section 13263.

H. STORMWATER COMMENTS

H-1 COMMENT – City of Lincoln storm water drainage passes into and through the Project site from the east. Comments raised concerns regarding the size of the storm water retention ponds, hazardous runoff, and overflow of the retention pond(s).

RESPONSE:

The Permittee is required to comply with the County of Placer's requirements under the National Pollutant Discharge Elimination System (NPDES) General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order No. 2013-0001-DWQ, as amended (Small MS4 General Permit). Construction site discharges of pollutants and impacts on beneficial uses of receiving waters are prohibited and low impact development (LID) standards are required to be implemented into the Project design to reduce runoff, treat storm water, and provide baseline hydromodification management to meet the Numeric Sizing Criteria for Storm Water Retention and Treatment under section E.12.e(ii)(c) of the Small MS4 General Permit.

As per section E.12.e(ii)(d) of the Small MS4 General Permit, "The Permittee shall implement Site Design Measures (as defined in Section E.12.b. Site Design Measures

and Section E.12.e(ii)(a) Site Assessment), site layout and design measures, based on the objective of achieving infiltration, evapotranspiration and/or harvesting/reuse of the 85th percentile 24-hour storm runoff event. Site design measures shall be used to reduce the amount of runoff, to the extent technically feasible, for which retention and runoff is required. Any remaining runoff from impervious DMAs may then be directed to one or more bioretention facilities as specified in Section E.12.e.(ii)(f), below.”

The County of Placer, as the Small MS4 Permittee, is required to implement a storm management program and must require all regulated projects within its boundary to implement measures for site design, source control, runoff reduction, storm water treatment, and baseline hydromodification as defined in the Small MS4 Permit. Coastal Partners, LLC has submitted a Post-Construction Storm Water Quality Plan to the County of Placer that is currently under review by the County Engineering and Surveying Department. As per the requirement in section G.5.a of the Tentative Order, the Project’s storm water management facilities must be constructed concurrently with the Project’s creation of impervious surfaces.

I. WATER QUALITY IMPACT COMMENTS

I-1 COMMENT – The Project will fill wetland headwaters, impacting downstream water quality.

RESPONSE:

A draft Hydrology, Hydraulics and Water Quality Report was prepared for the Project by Kimley-Horn and Associates, Inc.(June 2020) to verify hydraulic adequacy of on-site drainage improvements, pre- and post-development flow rates, sizing and outlet structure design of on-site stormwater basins, and compliance with water quality criteria specified within the *National Pollutant Discharge Elimination System (NPDES) General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems*, Order No. 2013-0001-DWQ, as amended (Small MS4 General Permit). The report includes a site-specific water quality analysis

that included an analysis of non-point pollutant sources and potential contaminants; Project source control and site design measures; and use of Low Impact Development Measures to achieve compliance with numeric water quality treatment and hydromodification management standards based on the creation and replacement of impervious surfaces. The analysis took Project soils into consideration, although more conservative infiltration rates based on the standard values in the Placer County Stormwater Management Manual were used for modeling purposes. The report, which is under review by the County of Placer, concludes that the Project's two stormwater detention basins meet water quality treatment standards.

As per the requirement in section G.5.a of the Tentative Order, the Project's storm water management facilities must be constructed concurrently with the Project's creation of impervious surfaces.

I-2 COMMENT – Water quality will be impacted by soil erosion and construction runoff.

RESPONSE:

The Permittee is required to obtain coverage under the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, Order No. 2009-0009-DWQ, as amended, for discharges to surface waters comprised of storm water associated with construction activity, including, but not limited to, demolition, clearing, grading, excavation, and other land disturbance activities of one or more acres, or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres. The permit requires implementation of Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT), including erosion and sediment controls, to reduce or eliminate pollutants in storm water runoff. The permit also requires compliance with all applicable water quality standards.

As per the application submitted by the Permittee, Best Management Practices (BMPs), including erosion and sedimentation control measures, will be employed to prevent sediment from leaving the site or entering avoided aquatic features; to prevent spills during equipment operation/maintenance; and to prevent soil erosion. Erosion and sediment controls such as silt fence straw wattles/fiber rolls, and mulch or straw will be deployed. At the end of each construction season, vegetation will be reestablished in disturbed areas by hydroseeding with a native seed mix. Additionally, a Storm Water Pollution Prevention Plan will be prepared by a qualified stormwater consultant prior to construction.

I-3 COMMENT – Excavation and reconstitution of soils will affect natural hydrologic functions on-site and to existing wetlands and vernal pools within the watershed.

RESPONSE:

A draft Hydrology, Hydraulics and Water Quality Report was prepared for the Project by Kimley-Horn and Associates, Inc.(June 2020). The report includes a post-development hydrology model to simulate hydrology of on-site watersheds in a fully developed condition and off-site watersheds at a fully built-out level of development. The post-development model accounts for flow attenuation provided by the Project's two storm water retention basins and is also used to derive the effect on flow rates for a built-out unmitigated scenario. The report, under review by the County of Placer, concludes that the Project design complies with the County's hydromodification standards.

As per the requirement in section G.5.a of the Tentative Order, the Project's storm water management facilities must be constructed concurrently with the Project's creation of impervious surfaces.

I-4 COMMENT – The Board has a duty under the Public Trust Doctrine to protect water resources.

RESPONSE:

Under the Public Trust Doctrine, “[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” (National Audubon Society v. Superior Court (1983) 33 Cal. 3d 419, 446-447.) Even assuming the Central Valley Water Board must consider the public trust doctrine when issuing water quality orders, which would be an expansion of the existing doctrine, the Tentative Order is structured to protect public trust resources by protecting beneficial uses as required by the Porter-Cologne Water Quality Control Act and the Board’s Water Quality Control Plan and is consistent with the State’s No Net Loss and Antidegradation Policies. See response to Comment A-1.

J. REGULATED UNDER OTHER CENTRAL VALLEY RWQCB PERMIT COMMENTS

J-1 COMMENT – The Project site drains north in Auburn Ravine Watershed and may be hazardous to populations at the Thunder Valley Casino.

RESPONSE:

The Permittee is required to comply with the County of Placer’s requirements under the National Pollutant Discharge Elimination System (NPDES) General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order No. 2013-0001-DWQ, as amended (Small MS4 General Permit). Construction site discharges of pollutants and impacts on beneficial uses of receiving waters are prohibited and low impact development (LID) standards are required to be implemented into the Project design to reduce runoff, treat storm water, and provide baseline hydromodification management to meet the Numeric Sizing Criteria for Storm Water Retention and Treatment under section E.12.e(ii)(c) of the Small MS4 General Permit.

The facility may also require coverage under the Statewide NPDES Industrial General Permit which requires specific categories of industrial facilities discharging storm water to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate industrial storm water pollution.

J-2 COMMENT – Replaced car parts, oils, solvents, fuels, and detergents from the Project will enter the sewer system or landfill. Fluids deposited into the sewer may threaten sewer/water treatment facilities and may persist in treated water when discharged. Chemical solvents may leach through the landfill membranes into surrounding lands.

RESPONSE:

The Permittee is required to comply with the County of Placer's requirements under the National Pollutant Discharge Elimination System (NPDES) General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order No. 2013-0001-DWQ, as amended (Small MS4 General Permit). Construction site discharges of pollutants and impacts on beneficial uses of receiving waters are prohibited and low impact development (LID) standards are required to be implemented into the Project design to reduce runoff, treat storm water, and provide baseline hydromodification management to meet the Numeric Sizing Criteria for Storm Water Retention and Treatment under section E.12.e(ii)(c) of the Small MS4 General Permit.

The facility may also require coverage under the Statewide NPDES Industrial General Permit which requires specific categories of industrial facilities discharging storm water to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate industrial storm water pollution.

The Land Disposal Program regulates the discharge to land of certain solid and liquid wastes. These wastes include municipal solid waste (MSW), hazardous wastes,

designated wastes, and nonhazardous and inert solid wastes. In general, these wastes cannot be discharged directly to the ground surface without impacting groundwater or surface water, and therefore must be contained to isolate them from the environment. The regulations applicable to these discharges are found in Title 27, for nonhazardous wastes, or Chapter 15 of Title 23, for hazardous wastes, of the California Code of Regulations. These regulations have both prescriptive and performance standards for waste containment, monitoring, and closure. The requirements are implemented through the adoption of Waste Discharge Requirements for the disposal facilities (not applicable to the Permittee for the Vehicle Inspection Center Project).

OTHER TENTATIVE REVISIONS TO ORDER

Finding 17, Project Location Revised Language (to correct Industrial Way to Industrial Avenue)

The Project area is located to the west of Industrial Avenue, north of West Sunset Boulevard, east of North Foothills Boulevard, and south of Athens Avenue in an unincorporated area of Placer County. The nearest city is the City of Lincoln. Maps showing the Project location are found in Attachment A of this Order. The Project will be located in the following township/range: Section 4 and 9, Township 11 North, Range 6 East, MDB&M. The Project coordinates are as follows: Latitude: 38.825° and Longitude: -121.314°.

Attachment A, Figure 2 Revised Language (to correct Impacts to Waters of the United States to Impacts to Waters of the State)

Figure 2. Impacts to Waters of the State

Attachment C, section C(2)a, Significance after Mitigation, line 14 (correction to specify the particular PCCP program referenced)

The PCCP In-Lieu Fee Program has been approved and will likely reduce significant impacts to a greater degree than project-by-project mitigation by developing a large, managed and monitored reserve area that will provide wetland and species habitat

restoration, open space and agricultural conservation in perpetuity, rather than smaller, more fragmented and isolated reserves surrounded by urban development.

Attachment C, section C(2)b, Significance after Mitigation, line 12 (correction to specify the particular PCCP program referenced)

The PCCP In-Lieu Fee Program has been approved and will likely reduce significant impacts on vernal pool branchiopods and western spadefoot to a greater degree than project-by-project mitigation by developing a large, managed and monitored reserve area that will provide vernal pool and associated habitat restoration, and open space and agricultural conservation in perpetuity, rather than smaller, more fragmented and isolated reserves surrounded by urban development.