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Harper Canyon (Encina Hills) Subdivision Project
Final Supplemental
Environmental Impact Report
SCH# 2003071157
PLN 000696

December 2024

Prepared For:

County of Monterey
2441 Schilling Place
Salinas, California 93901



Prepared By:

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Chapter 1.0 Introduction

1.1 Background

The County of Monterey (County) Housing and Community Development Department (HCD), as Lead Agency, prepared a Supplemental Draft Environmental Impact Report (SDEIR) under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code (PRC) Section 21000 et seq. and Section 15163 of the CEQA Guidelines. The SDEIR was prepared to provide the public and responsible and trustee agencies with information on the potential environmental effects on wildlife corridors that may be impacted from the implementation of the Harper Canyon (Encina Hills) Subdivision (proposed project). The SDEIR was circulated for a 45-day public review period, between March 3 and April 26, 2024.

As Lead Agency, the County prepared this document pursuant to CEQA Guidelines Section 15132, which specifies the following requirements for a Final Environmental Impact Report (Final EIR):

The Final EIR shall consist of:

- a) The Draft EIR or a revision of the draft.
- b) Comments and recommendations received on the Draft EIR either verbatim or in summary.
- c) A list of persons, organizations, and public agencies commenting on the Draft EIR.
- d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
- e) Any other information added by the Lead Agency.

This Final Supplemental EIR (Final SEIR) contains a list of the comments submitted on the SDEIR, copies of the comment letters received on the SDEIR during the public review period (and one comment letter received outside of the public review period), responses to the environmental points raised in those comments, and revisions to the SDEIR made as a result of the public review process. This document, together with the SDEIR, constitute the Final SEIR for the Harper Canyon (Encina Hills) Subdivision Project.

1.2 Project Overview

The proposed project is a 17-lot residential subdivision on approximately 164 acres, with a remainder parcel, approximately 180 acres in size, left as open space in Monterey County. The proposed project is located along the State Route 68 corridor of Monterey County off San Benancio Road. A Draft EIR (DEIR) was prepared and distributed for review in October 2008. Upon review of the DEIR, County staff determined that significant new information existed, and issues raised during the public review period were to be addressed. As such, County staff recirculated the relevant portions of the DEIR pursuant to CEQA Guidelines Section 15088.5. The Recirculated DEIR (RDEIR) for the Harper Canyon Subdivision was prepared by PMC in December 2009 and the Final Environmental Impact Report (FEIR) in December 2013. The Monterey County Board of Supervisors certified the Harper Canyon (Encina Hills) Subdivision EIR and approved the proposed project on April 7, 2015 (PLN000696, State Clearinghouse #2003071157). For the purposes of this document, the Harper Canyon Subdivision EIR, which includes the DEIR (2008), RDEIR (2009), and FEIR (2013), is collectively referred to as the 2015 EIR.

The 2015 Board of Supervisor's decision was challenged and ultimately resulted in the Sixth District Court of Appeal's opinion (Opinion) that the EIR lacked analysis concerning the proposed project's potential impacts to the Toro Creek wildlife corridor (*Landwatch Monterey, et al. v. County of Monterey, et al., Case No. H046932*). As a response to the Opinion, a supplemental draft EIR was requested to evaluate the proposed project's potential impacts on the wildlife corridors in the vicinity of the proposed project site. Therefore, the County prepared and circulated a SDEIR, which included the revised portions of **Section 3.3, Biological Resources**, of the 2015 EIR to adequately address the wildlife corridors issues identified in the Opinion. Except for this deficiency, the 2015 EIR previously certified by the County was upheld as to all other issues (A copy of the Monterey County Superior Court's Second Amended Peremptory Writ of Mandate dated July 1, 2021, and a copy of the Sixth District Court of Appeal's opinion dated March 29, 2021, are provided as **Appendix J** of the SDEIR). As described in **Section 1.1.3, Supplemental Draft EIR**, of the SDEIR, the SDEIR was prepared pursuant to Section 15234 of the CEQA Guidelines, which only requires additional environmental review of portions of the 2015 EIR that the Court of Appeal found did not to comply with CEQA, consistent with principles of res judicata. The County need not expand the scope of analysis on remand beyond that specified by the Court. Therefore, the SDEIR only addressed portions of the 2015 EIR determined not to comply with CEQA, which included portions of **Section 3.3, Biological Resources**. All other portions of the 2015 EIR and corresponding findings remain valid.

1.3 Public Review of SDEIR

CEQA Guidelines Section 15163 requires that a supplement to an EIR shall be given the same kind of notice and public review as is given to a Draft EIR. CEQA Guidelines Section 15087(a) requires that a Notice of Availability (NOA) of a Draft EIR be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing. Section 15087(a) also requires that in addition to the above notifications, at least one of the following procedures be implemented:

- Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project;
- Posting of notice by the public agency on and off the site in the area where the Project is to be located; or
- Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the Project is located.

Section 15087(d) requires the NOA be posted for at least 30 days in the office of the county clerk of each county in which the project will be located. Section 15087(a)(1) states that publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project is an appropriate method of public notice. Section 15087(f) requires that an NOA be sent to state agencies through the State Clearinghouse. The method by which these requirements were satisfied is provided below:

- On March 11, 2024, the NOA and Notice of Completion were sent to the State Clearinghouse/Governor's Office of Planning and Research, along with an electronic copy of the SDEIR. In addition, the County distributed the NOA for the SDEIR to responsible and trustee agencies, interested groups, organizations, and to all property owners within 300 feet of the project site by direct mailing at the address listed on the latest equalized assessment role. The distribution list included all parties that commented on the Notice of

Preparation (NOP) and all parties that contacted the County requesting to be notified about the project.

- A hard copy of the SDEIR was made available for review during normal business hours at the County HCD office, 1441 Schilling Place, Second Floor, Salinas, CA 93901. The SDEIR was also available online on the County website at:

<https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/library-current-major-projects/harper-canyon-encina-hills-subdivision-eir>

- On March 12, 2024, the County posted the NOA at the Monterey County Clerk.

1.4 Final SEIR Certification

The County Board of Supervisors (Board) will review and consider the Final SEIR prior to taking final action on the project. Pursuant to PRC Section 21092.5, the Final SEIR will be made available to the public agencies who provided comments on the SDEIR a minimum of ten days prior to the Board's consideration of the Final SEIR. If the Board finds that the Final SEIR reflects the County's independent judgment and has been prepared in accordance with CEQA and the CEQA Guidelines, the Board will certify the adequacy and completeness of the Final SEIR. A decision to approve the proposed project would be accompanied by written findings prepared in accordance with CEQA Guidelines Section 15091.

If in approving the proposed project, the Board adopts mitigation measures to reduce significant effects, it will adopt a Mitigation Monitoring and Reporting Program (MMRP), as required by Section 15097 of the CEQA Guidelines. The MMRP describes how each of the mitigation measures will be implemented and provides a mechanism for monitoring and/or reporting on their implementation.

1.5 Organization of the Final SEIR

This Final SEIR is organized into the following sections:

- **Chapter 1.0, Introduction**, contains this introduction to the Final SEIR, including a discussion of the background of the environmental review, a description of the contents of the Final SEIR, and a summary of the project decision-making process.
- **Chapter 2.0, List of Comments**, contains a list of all written comments received on the SDEIR.
- **Chapter 3.0, Comments and Responses on the SDEIR**, contains copies of all comment documents received on the SDEIR, and responses to each identified comment within the comment documents.
- **Chapter 4.0, Changes to the SDEIR**, contains revisions to the text of the SDEIR made in response to the public review process.

1.6 Document Availability

A hard copy of the Final SEIR is available for public review during normal business hours at the County HCD office, 1441 Schilling Place, Second Floor, Salinas, CA 93901. The Final SEIR is also available online on the County website at: <https://www.co.monterey.ca.us/government/departments-a-h/housing->

[community-development/planning-services/library-current-major-projects/harper-canyon-encina-hills-subdivision-eir](#) and the CEQA database <https://ceqanet.opr.ca.gov/2003071157/10>.

Chapter 2.0 List of Comments

2.1 Introduction

This section provides the list of comments on the SDEIR in accordance with CEQA Guidelines Sections 15088 and 15132. A total of four (4) comment letters on the SDEIR were received during the 45-day public review period. One (1) additional letter was received after the close of the 45-day review period from a state agency; it is also listed below and responded to in this Final SEIR.

2.2 List of Comments

Table 2-1, below, identifies the comment letters received on the SDEIR for the proposed project. Each of the comment letters has been assigned a letter designation or identifier (ID); this letter designation corresponds to the organization of **Chapter 3.0** of the Final SEIR, which includes copies of the comments and responses to identified comments.

Table 2-1. List of Comment Letters Received

Comment Letter ID	Agency/Organization (if applicable)	Date Received	Author Name
A	Pathways for Wildlife	4/25/2024	Tanya Diamond
B	Meyer Community Group	4/25/2024	Richard H. Rosenthal
C	Individual	4/25/2024	Mike Weaver
D	Big Sur Land Trust	4/26/2024	Rachel Saunders
E	California Department of Fish and Wildlife	5/29/2024 ¹	Julie A. Vance

¹ This comment letter was received after the public comment period closed.

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Chapter 3.0 Comments and Responses on SDEIR

3.1 Introduction

This section provides responses to the comments received on the SDEIR. A list of the comment letters received during the public review period is presented in **Section 2.2**, and copies of each of the comment letters are included in this chapter with responses to each comment provided following each comment letter.

3.2 Comment Letters and Responses to Comments

Each letter and comment card received as a comment on the SDEIR is included herein and assigned a letter of the alphabet. Within that letter, all individual comments are assigned numbers located in the right-hand margin of the letter. Responses to each comment are provided immediately following each comment letter. In those instances, in which a comment states an agency position or opinion and does not comment on issues relevant to the environmental analysis presented in the SDEIR, the response reads: "No response is required." If the comment is directed to the County regarding the decision on the project, the response reads: "The comment is referred to decision makers as a consideration on the proposed project." Typically, these comments do not raise issues relevant to the environmental analysis. Where the response notes an addition or deletion to the text, tables, or figures in the SDEIR, the reader is directed to **Chapter 4.0, Changes to the SDEIR**.

Letter A

Friedrich, Michele

From: Tanya Diamond <tanya@pfwildlife.com>
Sent: Thursday, April 25, 2024 4:11 PM
To: ceqacomments
Subject: PFW Comment Letter-Harper Canyon Subdivision Supplemental DEIR March 2024
Attachments: PFW Comment Letter-Harper Canyon Subdivision Supplemental DEIR March 2024.pdf;
CDFW Comment Letter-California High-Speed Rail Project, San Jose to Merced Section,
RDEIR SDEIR.pdf

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Hello,

Please see my attached comment letter on the Harper Canyon Subdivision Supplemental DEIR March 2024.
Thank you for your consideration and review of my comment letter.

Best,
Tanya

Tanya Diamond
Co-Principal: Wildlife Ecologist-GIS Analyst
Pathways for Wildlife
Cell (408) 891-9833
<https://www.pfwildlife.com/>
Connecting Habitats for Wildlife





Tanya Diamond, Co-Principal & Wildlife Ecologist.

Contact info: tanya@pfwildlife.com

Phone: (408) 891-9833.

Comment Letter of Regarding: Harper Canyon Subdivision Supplemental DEIR March 2024

Date: April 25, 2024

To: Craig Spencer, Acting Director of Housing & Community Development, County of Monterey
Housing & Community Development.

From: Pathways for Wildlife

This comment letter is regarding the Harper Canyon Subdivision Supplemental DEIR March 2024. Pathways for Wildlife has conducted three wildlife connectivity studies in relation to the Harper Canyon Project site: the Highway 68 Scenic Plan Wildlife Connectivity Study 2016-2017 for the Transportation Agency of Monterey County and the Central Coast Connectivity Studies 2013-2014 and 2008-2010 for the Big Sur Land Trust and Caltrans.

A-2

The overall conclusion of the Supplemental DEIR is that: **POTENTIAL SIGNIFICANT ENVIRONMENTAL EFFECTS:** The SDEIR identifies impacts to wildlife corridors that are significant but can be mitigated to a less-than-significant level.

We disagree with this conclusion based on two important key findings from the camera data analysis and study that was conducted by Denis Duffy and Associates for the Supplemental DEIR. **The camera study conducted by Denis Duffy and Associates recorded 52 records of mountain lions traveling within the Harper Canyon project area (3-3-13). That is a significant finding as mountain lions are currently a candidate species for listing as a threatened species, which is undergoing review by the CA Department of Fish and Wildlife.**

A-3

On April 21, 2020, the California Fish and Game Commission accepted a petition to list an ESU of mountain lion in southern and central coastal California as threatened under CESA (CDFW 2020a). As a CESA-candidate species, the mountain lion in southern and central coastal California is granted full protection as a threatened species under CESA (please see CDFW comment letter below regarding HSR Mountain lion Supplemental DEIR).

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Comment and Question 1: The Harper Canyon Subdivision Supplemental DEIR fails to address including any mitigation required for addressing the presence of mountain lions recorded at the project sites. Will the FEIR include mitigation set up by CDFW for mountain lions on the project site?

Question 2: CDWF recommends a 4:1 mitigation for loss of mountain lion habitat. Will this mitigation be included in the FEIR?

Please see the CDFW attached comment letter California High-Speed Rail Project, San Jose to Merced Section (Project), Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Study (RDEIR/SDEIS), SCH No. 2009022083 June 2010.

Evidence impact would be significant: The mountain lion is a specially protected mammal in the State (Fish and G. Code, § 4800). In addition, on April 21, 2020, the California Fish and Game Commission accepted a petition to list an ESU of mountain lion in southern and central coastal California as threatened under CESA (CDFW 2020a). As a CESA-candidate species, the mountain lion in southern and central coastal California is granted full protection of a threatened species under CESA.

CDFW finds that the Project would continue to have significant impacts because mitigation as proposed in the RDEIR/SDEIS would not result in adequate and successful mitigation for the unavoidable direct and indirect, permanent, or temporal losses, of genetic connectivity between subpopulations of mountain lion.

This area is essential for the viability of the CC-N subpopulation, particularly the Santa Cruz mountains, which is experiencing restricted gene flow. Greater landscape permeability would promote gene flow among distinct subpopulations. The CC-C subpopulation provides essential gene flow to the CC-N subpopulation which is critically important for their long-term viability. The CC-C subpopulation is vulnerable to habitat loss from additional development pressure necessitating improving habitat connectivity to facilitate gene flow between adjacent areas through permanently protected lands (e.g., conserved through a conservation easement (CE)) and managed in perpetuity (Dellinger et al., 2020). The CC-C region could have major effects on connectivity and population genetics in the adjacent mountain lion populations if further constrained.

The CC-N population has low genetic diversity, and the CC-C population has relatively intermediate levels. Gene flow through maintenance of existing occupied habitat within improved and additional wildlife corridors will promote long term persistence of isolated subpopulations (Gustafson et al. 2019). It is important that the CC-N subpopulation remain connected to adjacent mountain lion populations via suitable habitat and unobstructed sizeable movement corridors. Decreased and impeded connectivity in this area would quickly increase the decline in genetic diversity of mountain lions in southern and central parts of the State (Dellinger et al., 2020). Permanently conserving and restoring habitat connectivity and corridors is essential for mitigating impacts to mountain lions.

In the SR 152 Pacheco Pass Permeability and Pacheco Creek Wildlife Connectivity Study Mountain Lion Report 2018-2020 (Pathways for Wildlife 2020) noted the detection of mountain lion using Pacheco Creek multiple times and the SR 152 bridge undercrossing at least once. The Pacheco Creek and the Pacheco Creek Reserve facilitates movement between the CC-N and CC-C subpopulations. The Santa Clara

Figure 1. CDFW comment letter California High-Speed Rail Project, San Jose to Merced Section (Project), Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Study (RDEIR/SDEIS) June 2010.

Furthermore, there was a pair of 2 mountain lions recorded in two separate events. These mountain lions could be a breeding pair or a female traveling with a juvenile. The Harper Canyon Subdivision project would result in loss of this critical wildlife corridor and create a

bottleneck, which would restrict the ability for wildlife to travel through it, especially for species such as mountain lions. This project would also introduce human-wildlife conflict with the presence of mountain lions.

↑
A-7
(cont'd)

The loss of habitat within this wildlife linkage will restrict the ability for wildlife to 1. find necessary resources such as food and water, 2. restrict the ability for wildlife to find viable mates, and 3. restrict the ability for juveniles to travel out of their home range to find and establish their home range. These restrictions will further jeopardize the Central Coast mountain lion population that already has a documented low genetic effective population size (Gustafson et al. 2018).

A-8

Therefore, the mitigations provided in the Harper Canyon Subdivision Supplemental DEIR do not mitigate the impacts of the project to a less-than-significant level.

Sincerely,

Tanya Diamond
Pathways for Wildlife



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 9, 2021

Serge Stanich
Director of Environmental Services
California High-Speed Rail Authority
770 L Street, Suite 620 MS1
Sacramento, California 95814

**Subject: California High-Speed Rail Project, San Jose to Merced Section (Project)
Revised Draft Environmental Impact Report/Supplemental Draft
Environmental Impact Study (RDEIR/SDEIS)
SCH No. 2009022083**

Dear Mr. Stanich:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a RDEIR/SDEIS from the California High-Speed Rail Authority (Authority) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously commented on related environmental documents as stated in our comment letter for the Draft EIR/EIS (DEIR/EIS) for the San Jose to Merced Section on June 23, 2020.

Following the Authority's publication of the DEIR/EIS in April 2020, the Authority learned that the California Fish and Game Commission published a notice of findings, on May 1, 2020, to designate the Southern California/Central Coast population (evolutionarily significant unit) of mountain lion (*Puma concolor*) as a candidate species under the California Endangered Species Act (CESA). Additionally, the monarch butterfly (*Danaus plexippus*) became a candidate for listing under the federal Endangered Species Act (FESA) on December 15, 2020. These listing actions led to the Authority to revise the DEIR/EIS for analysis of impacts to mountain lion and monarch butterfly, as well as including additional mitigation measures for impacts to wildlife resulting from noise and lighting during construction and during Project operation.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: California High-Speed Rail Authority (Authority)

Objective: The approximately 90-mile, San Jose to Central Valley Wye Project (Project) of the 145-mile-long Project Section (San Jose to Merced Section (SJ-M)) comprises mostly of dedicated High-Speed Rail (HSR) system infrastructure, HSR station locations at San Jose Diridon and Gilroy, a maintenance of way facility (MOWF) either south or southeast of Gilroy, and a maintenance of way siding (MOWS) west of Turner Island Road in the Central Valley. HSR stations at San Jose Diridon and Gilroy would provide links with regional and local mass transit services as well as connectivity to the Santa Clara County and Central Valley highway network. The Project comprises the following five subsections: 1) San Jose Diridon Station Approach—Extends approximately 6 miles from north of San Jose Diridon Station at Scott Boulevard in Santa Clara to West Alma Avenue in San Jose. This subsection includes the San Jose Diridon Station. 2) Monterey Corridor—Extends approximately 9 miles from West Alma Avenue to Bernal Way in the community of South San Jose. This subsection is entirely within the city of San Jose. 3) Morgan Hill and Gilroy—Extends approximately 30 miles from Bernal Way in the community of South San Jose to Casa de Fruta Parkway/State Route (SR) 152 in Santa Clara County. 4) Pacheco Pass—Extends approximately 25 miles from Casa de Fruta Parkway/SR 152 to east of Interstate (I-) 5 in unincorporated Merced County. 5) San Joaquin Valley—Extends approximately 20 miles from I-5 to Carlucci Road in unincorporated Merced County.

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There are four end-to-end Project alternatives (Alternative 1 to 4), including stations. The Authority's Preferred Alternative under National Environmental Policy Act (NEPA), which serves as the proposed Project for CEQA, is Alternative 4. It includes two stations (San Jose Diridon and Downtown Gilroy), MOWF, MOWS, two tunnels and attraction power facilities.

Location: The Proposed San Jose to Merced Project Section is located in Santa Clara, San Benito, and Merced Counties near the cities of Santa Clara, San Jose, Morgan Hill, Gilroy, and Los Banos. The Project extends from Scott Boulevard in Santa Clara County (lat/long 37° 21' 48.996 "N/121° 57' 36"W) to Carlucci Road in Merced County (lat/long 37° 5' 28.716"N/120° 40' 15.6"W). The nearest major state highways are SR 33, SR 85, SR 87, SR 89, SR 152 165, U.S. Highways 10, I-5, I-280, and I-880.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Comments and recommendations that were previously provided in the June 23, 2020 comment letter for the DEIR/EIS remain the same and will not be restated in this letter with the exception of some editorial comments. Additional editorial comments or other suggestions may also be included to improve the document.

Currently, the RDEIR/SDEIS indicates that the Project's impacts would be less than significant with the implementation of mitigation measures described in the RDEIR/SDEIS. However, as currently drafted, it is unclear whether the mitigation measures described will be enforceable or sufficient in reducing impacts to a level that is less than significant. CDFW is concerned regarding the adequacy of mitigation measures for special-status species including, but not limited to: the State Candidate Species for listing as threatened, Southern California/Central Coast evolutionarily significant unit (ESU) mountain lion (*Puma concolor*) and the U.S. Fish and Wildlife Service (USFWS) candidate for listing monarch butterfly (*Danaus plexippus plexippus*).

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1: Mountain Lion (ML) Issue: The Project alignment transects the Southern California/Central Coast ESU. The RDEIR/SDEIS acknowledges that mountain lion have the potential to occur within or near the Project. The Central Coast North (CC-N) genetic subpopulation falls within the alignment and the Central Coast-

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Central (CC-C) subpopulation is adjacent to the SJ-M alignment. The SJ-M alignment is where there are existing mountain lion connectivity problems where two ESUs meet. However, the RDEIR/SDEIS (Section 3.7) lacks Project impact analysis of the genetically distinct subpopulations of the Southern California/Central Coast ESU (CC-N and CC-C) and the source of genetics they contribute to each other. The CC-N subpopulation will be the most impacted by this Project and already requires genetic enhancement; the CC-N- effective subpopulation size is **17** and the estimated adult subpopulation size is **33-66**. The impacts to gene flow for the species is the larger concern when contrasted with individual take. Isolation of subpopulations limits the genetic exchange of populations at risk of local extinction through genetic and environmental factors preventing the recolonization of suitable habitats following local extirpation, ultimately putting the species at risk of extinction. An effective way to reduce these impacts is avoidance of take and reduction of population impacts with Project design features such as increased wildlife crossing opportunities in the critical area of the Diablo Range to the Santa Cruz Mountains and the connecting Coyote Valley which would allow movement for the CC-N into the CC-C subpopulation areas to allow for genetic exchange along with habitat protections/land conservation easements (CE) for areas on either ends of wildlife crossings.

The RDEIR/SDEIS does not address the Project related impacts of potentially worsening gene flow disruption between these subpopulations, nor does it address how impacts to the population genetic source would impact the subpopulations. CDFW recommends Section 3.7 be revised to contain specific analysis on the mountain lion Southern California/Central Coast ESU (CC-N and CC-C genetic subpopulations) impacts to dispersal and genetic exchange between populations, including issues of connectivity and fragmentation of habitat adjacent to the Project. CDFW also recommends the RDEIR/SDEIS be revised to include robust feasible avoidance, minimization, and mitigation measures to reduce impacts to less than significant to these isolated subpopulations by providing connectivity for CC-N and CC-C subpopulations. CDFW recommends referencing the attached map (Attachment 1) to further analyze the impacts of gene flow disruption between the CC-N and CC-C subpopulations, to identify areas that provide permeability, and areas to conserve to facilitate movement between the subpopulations.

Highway 101 is a significant barrier for mountain lion movement between the CC-N and CC-C subpopulations and the Project will very likely further compound this issue absent conservation strategies to ensure mountain lion movement opportunities. Opportunities for the Project to enhance other nearby areas and facilitate, design, and fund movement opportunities and wildlife corridor repairs or enhancement should be pursued as mitigation strategies.

Specific impacts: The Project as proposed (construction and operation and maintenance) will impact the Southern California/Central Coast mountain lion ESU by potentially severing the source of genetics and impeding movement between the CC-N and CC-C subpopulations. The Project has the potential to cause impacts during construction and operation by increasing human presence, traffic, noise, vibration, air

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pollutants and dust, artificial lighting, habitat removal, severing access to or impacting habitat resources (e.g. springs and streams, dens site, impacts to prey-base, etc.), causing disruption during breeding cycles, impacting den selection, forcing animals into movement paths and areas that could increase their vulnerability to vehicle strikes, and significantly and permanently reducing and eliminating existing wildlife movement corridors necessary for gene flow.

Evidence impact would be significant: The mountain lion is a specially protected mammal in the State (Fish and G. Code, § 4800). In addition, on April 21, 2020, the California Fish and Game Commission accepted a petition to list an ESU of mountain lion in southern and central coastal California as threatened under CESA (CDFW 2020a). As a CESA-candidate species, the mountain lion in southern and central coastal California is granted full protection of a threatened species under CESA.

CDFW finds that the Project would continue to have significant impacts because mitigation as proposed in the RDEIR/SDEIS would not result in adequate and successful mitigation for the unavoidable direct and indirect, permanent, or temporal losses, of genetic connectivity between subpopulations of mountain lion.

This area is essential for the viability of the CC-N subpopulation, particularly the Santa Cruz mountains, which is experiencing restricted gene flow. Greater landscape permeability would promote gene flow among distinct subpopulations. The CC-C subpopulation provides essential gene flow to the CC-N subpopulation which is critically important for their long-term viability. The CC-C subpopulation is vulnerable to habitat loss from additional development pressure necessitating improving habitat connectivity to facilitate gene flow between adjacent areas though permanently protected lands (e.g., conserved through a conservation easement (CE)) and managed in perpetuity (Dellinger et al., 2020). The CC-C region could have major effects on connectivity and population genetics in the adjacent mountain lion populations if further constrained.

The CC-N population has low genetic diversity, and the CC-C population has relatively intermediate levels. Gene flow through maintenance of existing occupied habitat within improved and additional wildlife corridors will promote long term persistence of isolated subpopulations (Gustafson et al. 2019). It is important that the CC-N subpopulation remain connected to adjacent mountain lion populations via suitable habitat and unobstructed sizeable movement corridors. Decreased and impeded connectivity in this area would quickly increase the decline in genetic diversity of mountain lions in southern and central parts of the State (Dellinger et al., 2020). Permanently conserving and restoring habitat connectivity and corridors is essential for mitigating impacts to mountain lions.

In the *SR 152 Pacheco Pass Permeability and Pacheco Creek Wildlife Connectivity Study Mountain Lion Report 2018-2020* (Pathways for Wildlife 2020) noted the detection of mountain lion using Pacheco Creek multiple times and the SR 152 bridge undercrossing at least once. The Pacheco Creek and the Pacheco Creek Reserve facilitates movement between the CC-N and CC-C subpopulations. The Santa Clara

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Valley Natural Community Conservation Plan (NCCP)/Habitat Conservation Plan (HCP) recognizes Pacheco Creek as an important linkage and is an area included in the biological goals and objectives, reserve system design, and long-term monitoring for the NCCP/HCP.

Mountain lions will use caves and other natural cavities, thickets in brush, and timber for cover and denning. Mountain lions require extensive areas of riparian vegetation and brushy stages of various habitats, with interspersions of irregular terrain, rocky outcrops, and tree/brush edges. These habitat types are throughout the Project area. Mountain lions are active yearlong (mostly nocturnal and crepuscular). The home range for males are a minimum of 40 km² (15 mi²) and female home ranges usually are 8-32 km² (3-12 mi²). The main diet for mountain lion is deer (CWHR). Deer migration corridors will also be impeded by the Project. Mountain lions have a wide-ranging nature and large territories, as well as the need for dispersal (especially of young males). In order to maintain genetic diversity, large blocks of permanently conserved habitat and unobstructed and sizable safe travel corridors between them are essential for long term population persistence and stability (Vickers, 2014). Thermal characteristics cause mountain lions to select north-facing slopes at high elevations, with more vegetation and cooler temperatures in the summer and south-facing slopes with little snow cover in winter. These habitats were also strongly correlated with the density and distribution of deer. Den sites are preferentially located in nearly impenetrable vegetation areas and mountain lion feed on cached prey primarily after sunset and often rested long distances from the cache site during the day (Pierce and Bleich 2003). Cutting off or restricting access to these habitats will reduce opportunities for genetic exchange, foraging, and fecundity.

Recommended Potentially Feasible Mitigation Measure(s):

Because the RDEIR/SDEIS identifies the potential for mountain lion to occur within the Project footprint, CDFW recommends conducting the following evaluation of the Project, updating the RDEIR/SDEIS to include the following measures, and that these measures be made conditions of approval for the Project. CDFW recommends quantitative and enforceable measures that will reduce the impacts to less than significant levels.

Recommended Mitigation Measure 1: ML Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment and suitable habitat mapping of individual Project areas in advance of Project implementation, to determine if the Project area or its vicinity contains suitable habitat as well as caves and other natural cavities and thickets of brush and timber which provide cover and are used for denning. Mapping should also include the following: the Project area with identified wildlife linkages within the ESU subpopulations, identified Project undercrossing, overcrossing, tunnels, viaducts, and designated wildlife crossing locations and adjacent habitat to assist with development and implementation of avoidance, minimization, and mitigation measures.

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Recommended Mitigation Measure 2: ML Wildlife Crossing Monitoring

CDFW recommends that the Authority devise and implement a Mountain Lion Crossing Monitoring Plan. CDFW recommends the Authority consult with CDFW during the drafting of the Monitoring Plan and obtain approval of the Plan prior to Project implementation. CDFW recommends that the proposed Mitigation Measure #77a Design Wildlife Crossings to Facilitate Wildlife Movement, include a design that establishes specific criteria for monitoring the performance of the crossings (viaducts, undercrossing, overcrossings) for routine and ongoing use by mountain lion and its prey. The monitoring plan should be contingent with action-based monitoring performance objectives and be adaptive. Goals of the monitoring plan should at a minimum include: 1) to provide data to assist in designing crossings and inform placement for future HSR segments in Northern California (San Jose to Merced and San Francisco to San Jose); 2) conduct long-term population monitoring for use by the mountain lion subpopulations; 3) track progress of use; and 4) evaluate overall effectiveness of the crossings.

Recommended Mitigation Measure 3: ML-Avoidance-Buffer for Corridor Areas

CDFW recommends that during construction, movement corridors such as drainages and riparian areas maintain a ¼ mile buffer to minimize impacts to mountain lion movement through these areas.

Recommended Mitigation Measure 4: ML-No Night Work in Corridor Areas

To minimize impacts to movement of mountain lion during construction, CDFW recommends that no night work occur in or immediately adjacent to drainages and riparian areas of the Project.

Recommended Mitigation Measure 5: ML-Avoidance Use of Rodenticides

CDFW discourages the use of rodenticides and second-generation anticoagulant rodenticides due to their harmful effects on the ecosystem and wildlife. CDFW recommends the Authority include a mitigation measure prohibiting the use of such materials during construction and operation and maintenance of the HSR.

Recommended Mitigation Measure 6: ML-Provide Dedicated Wildlife Crossings

CDFW recommends that dedicated wildlife crossings for mountain lion and deer be a “required” design feature in the final design of the Project.

Recommended Mitigation Measure 7: ML-Take Authorization

There should be no net loss of suitable habitat for mountain lions. CDFW recommends that the Authority identify opportunities for the Project to enhance nearby areas and movement opportunities including wildlife corridor restoration or enhancement as potential mitigation strategies. Since the RDEIR/SDEIS assumes wildlife movement and corridor impacts, and the concomitant inherent loss of gene flow cannot be avoided between the subpopulations, we recommend that the Authority ensure some level of permanent conservation is present in the areas that are known to currently provide connectivity. CDFW recommends improving habitat connectivity (e.g., wildlife road-

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crossing structures) to facilitate unimpeded wildlife movement and gene flow between adjacent areas. CDFW recommends the replacement habitat be located adjacent to the Project and Wildlife Linkage and Corridor, as depicted in Attachment 1.

The Authority should consult and collaborate with CDFW to conserve areas beneficial to the Southern California/Central Coast ESU and the CC-N and CC-C subpopulations that may improve and maintain connectivity. The mitigation lands should be protected in perpetuity under a CE held by a non-profit conservation organization or other appropriate entity that has been approved by CDFW to hold and manage mitigation lands.

In the event that a mountain lion or den is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If avoidance is not feasible, acquisition of an Incidental Take Permit (ITP), pursuant to Fish & Game Code section 2081 subdivision (b) prior to any ground-disturbing activities would be warranted in order to comply with CESA.

COMMENT 2: Monarch Butterfly (MB)

Issue: The Project falls within the monarch butterfly spring and summer breeding area (Pelton 2016). Project related activities have the potential to impact monarch butterfly. It is unclear how implementation of BIO-MM#14 and BIO-MM#86 would avoid and minimize impacts from construction to monarch butterflies. Without appropriate avoidance and minimization measures for the species mentioned above, potential significant impacts associated with the Project's milkweed removal activities include, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or larvae, and direct mortality of individual monarch butterflies.

Specific impact: The document lacks analysis on how operations and maintenance (O&M) activities such as vegetation removal adjacent to the HSR would remove and degrade habitat and host plants, or how train strike could injure/kill monarch butterflies. CDFW recommends addressing the following O&M impacts: dust impacts to the host plants (*Asclepia ssp.*, milkweed) and nectar producing flowers during construction and operation.

Evidence impact would be significant: The availability of milkweed is essential to monarch butterfly reproduction and survival; reduction in milkweed is cited as a key driver in monarch butterfly decline (USFWS 2020). Habitat loss and fragmentation is among the primary threats to the population (USFWS 2020). During the breeding season monarch butterflies lay their eggs on the milkweed host. Monarchs also need milkweed for both oviposition and larval feeding and nectar producing habitat (USFWS 2020). Project activities have the potential to significantly impact the species by reducing possible nectar producing plants and milkweed host plant for breeding. Habitat where monarch butterflies are found may be subject to insecticide use and these impacts are primarily influenced by the extent to which monarch butterflies are exposed to insecticides throughout their range (USFWS 2020).

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Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts of the Project to special-status species, CDFW recommends conducting the following assessment of the Project area, including the following mitigation measures, and requiring them as conditions of approval for the Project.

Recommended Mitigation Measure 8: MB Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment, well in advance of Project implementation, to determine if the Project area or its immediate vicinity contain habitat suitable to support life stages of the monarch butterfly.

Recommended Mitigation Measure 9: MB Surveys

If suitable habitat is present, CDFW recommends assessing presence of monarch butterflies (eggs and larvae) and native milkweed by conducting surveys following recommended protocols or protocol-equivalents.

Recommended Mitigation Measure 10: MB Take Avoidance

CDFW recommends that all milkweed be avoided if ground-disturbing activities will occur during the overwintering period (October through February) by a minimum of 50 feet to avoid potentially significant impacts, and to avoid insecticide use within the Project area during construction and operation. Detection of a special-status species within or in the vicinity of the Project area warrants consultation with CDFW and USFWS to discuss how to implement ground-disturbing activities and avoid take. Potential minimization measures include restoring and enhancing native milkweed and nectar resources via seed mix mixes approved by CDFW and USFWS, and removal of non-native milkweed.

COMMENT 3: Section 3.7.5.3 Methods for Impact Analysis-Wildlife Movement Page 2

This section states that the following report was a reference in Section 5.2 of the Wildlife Connectivity Assessment (WCA) of the DEIR/EIS: *Wildlife Permeability and Hazards across Highway 152 Pacheco Pass: Establishing a Baseline to Inform Infrastructure and Restoration* (Pathways for Wildlife 2020). It should be noted that the WCA was released with the DEIR/EIS and the Pathways for Wildlife 2020 report was not included as a reference. This study was not referenced in analyzing wildlife permeability of Pacheco Pass in the WCA.

COMMENT 4: Section 3.7.6.2 Biological Conditions-Special Status Species Pages 4-5

This section states, "The petition highlighted that although low effective population size alone is cause for conservation concern, habitat loss and fragmentation due to roads and development have led to extreme levels of isolation and high mortality rates." It is unclear how the RDEIR/SDEIS addresses the subpopulation isolation due to

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fragmentation; CDFW recommends addressing the CC-N and CC-C subpopulation impacts caused by the Project.

COMMENT 5: Section 3.7.6.2 Biological Conditions-Wildlife Movement Pages 5-7

This section states, “The project extent crosses several wildlife corridors of regional importance. Although corridors occur in all subsections, those in the Santa Clara Valley (specifically, the Coyote Valley) and San Joaquin Valley Grasslands Ecological Area (GEA) have been identified by the CDFW and local stakeholders as particularly important to wildlife movement and habitat connectivity at the regional and state scale.” It should be noted that the western Pacheco Pass subsection (Pacheco Creek) has not been included as a wildlife movement corridor despite this area being identified as a concern of the local stakeholders and CDFW. CDFW recommends including the Pacheco Pass subsection as an important wildlife corridor.

This section also states, “Where moderate or high potential effects were identified, recommendations to facilitate wildlife movement were made in the WCA and were subsequently incorporated into the proposed project to the extent feasible.”³ The footnote for this statement states, “³The WCA, Section 7.2.2, noted that additional dedicated wildlife underpasses, not included in the project design, should be considered in the eastern Pacheco Pass area near Casa de Fruta.”

It should be noted that the modeling results in the WCA indicate that the pre-existing conditions of permeability and after construction of the Project as being the same. It is unclear how such a conclusion was reached by the modeling. In particular, the Pacheco Creek area where this location provides wildlife movement and the current Project design would have an embankment constructed on the western portals in the western section of Pacheco Pass; this would be a barrier and would not provide permeability. CDFW recommends the Authority include the facilitation of wildlife movement in the Pacheco Pass area for large target species such as mountain lion and Tule elk (*Cervus elaphus nannodes*).

Comment 6: Table 3.7-1 Direct Impacts on Special-Status Wildlife Species Habitat by Project Alternative (acres) Page 8

CDFW recommends that this table describe how direct, indirect, permanent, and temporary impact acreages were calculated for each species and specifically for mountain lion and monarch butterfly. CDFW also recommends the footnote for the table include the definitions for high-priority foraging and dispersal habitat and low-priority foraging and dispersal habitat.

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COMMENT 7: Section 3.7.7.2 Constructional Impacts-Impact BIO#26a: Loss of Breeding, Foraging, and Dispersal Habitat for and Direct Mortality or Disturbance of Mountain Lion Page 10

This section states, "The primary impact would be the loss or disturbance of breeding habitat, including the potential to kill cubs if they are present in the area at the time of construction. The impacts on breeding habitat are nearly identical among alternatives because the majority of breeding habitat occurs in the Pacheco Pass Subsection, and all alternatives are identical in this subsection." CDFW is concerned that this is not the primary impact of the Project to mountain lion but rather the lack of connectivity impacting gene flow between the CC-N and CC-C subpopulations.

Comment 8: Impact BIO#26a: Loss of Breeding, Foraging, and Dispersal Habitat for Direct Mortality or Disturbance of Mountain Lion:

This section states, "Construction-related ground disturbance (e.g., grading, excavation) and vehicle traffic may injure or kill mountain lions, including cubs, by crushing occupied dens or colliding with moving lions." It should be noted that injury or killing of mountain lions including cubs is take and in order to comply with CESA, will require from CDFW acquisition of an ITP, section 2081 subdivision (b).

COMMENT 9: 3.7.7.7 Wildlife Movement -Construction Impacts-Impact BIO#42: Temporary Disruption of Wildlife and Wildlife Movement Pages 13-14

This section states, "With respect to mountain lion, impacts on movement during construction are expected to be significant, with potential temporary disruptions to genetic flow between subpopulations." It should be noted that temporary disruptions from construction activities can last up to 5 years or more. CDFW recommends spatial and temporal disruption to gene flow between the two subpopulations and impacts to wildlife during the construction period be addressed.

COMMENT 10: 3.7.7.7 Wildlife Movement -Construction Impacts-Impact BIO#43: Permanent Impacts on Wildlife Movement Page 14-16

This section states, "Changes to the project design (primarily the placement of viaduct sections and dedicated wildlife crossings) would provide for wildlife movement across the alignment in Coyote Valley, the Soap Lake floodplain, most of Pacheco Pass, and the Central Valley; barriers to movement would remain on the west slope of Pacheco Pass where the rail alignment parallel to Pacheco Creek would be placed on a series of continuous cut-and-fill slopes."

CDFW recommends that the Authority provide wildlife movement across the alignment in the area of the Pacheco Reserve/Pacheco Creek and CDFW is unclear as to why the Authority left out impacts and project design elements to provide wildlife movement for this area. This location also provides connectivity and habitat for Tule elk, tricolored blackbird (*Agelaius tricolor*), bald eagle (*Haliaeetus leucocephalus*), California tiger

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salamander (*Ambystoma californiense*), foothill yellow-legged frog (*Rana boylei*), California red-legged frog (*Rana draytonii*), and spawning South Central Coast steelhead (*Oncorhynchus mykiss*).

COMMENT 11: 3.7.7.7 Wildlife Movement Operations Impacts-Impact BIO#44: Intermittent Noise Disturbance of Wildlife Using Corridors during Operations Pages 16-17

“These effects are moderated because the [San Joaquin kit] fox is most active between midnight and 6 a.m., when operations on the HSR alignment would be limited to intermittent, slower-speed maintenance vehicles.” It is unclear what the frequency of intermittent operations will be, and this should be quantified. Further, it should be noted that this statement is in conflict with Appendix 3.7-E Noise Analysis on Terrestrial Species and Appendix 3.7-F Supplemental Light Analysis on Terrestrial Species, as the Appendices indicates 24-hour operation of the train. Mountain lions are active not only during the midnight hours; they are also active through the day, particularly the crepuscular periods, and can be disturbed by noises at all times of the night and day. CDFW recommends the analysis of “intermittent” maintenance activities impacts on mountain lion.

COMMENT 12: 3.7.7.7 Wildlife Movement Operations Impacts-Impact BIO#46: Intermittent Visual Disturbance of Wildlife Using Corridors during Operations Pages 18-19

CDFW recommends including an impact analysis that address visual obstruction to mountain lions, as well as the mountain lion prey base. Visual obstruction for these species would include design features such as: Intrusion Protection Barrier (IPB), sound barrier walls, embankment, and Mechanically Stabilized Earth (MSE) walls.

COMMENT 13: 3.7.7.7 Wildlife Movement Operations Impacts-Impact BIO#47: Intermittent and Permanent Lighting Disturbance of Wildlife and Wildlife Using Corridors during Operations Pages 19-20

This section states, “The Authority has incorporated BIO-IAMF#12 into project design to avoid and minimize impacts from operational lighting sources by several methods, including using appropriate shielding to reduce horizontal or skyward illumination and avoiding the use of high-intensity lights (e.g., sodium vapor, quartz, and halogen). Additionally, BIO-IAMF#12 specifies that no lighting be installed under viaduct and bridge structures in riparian habitat areas.” These measures are recommendations and not requirements, and therefore not enforceable. Because these IAMFs lack measurable, quantifiable actions and enforceability to minimize, avoid, or mitigate impacts on wildlife movement during project operation and CDFW recommends that the measure be changed to an enforceable condition of approval.

This section states, “Continuous sources of operations lighting would have little potential to affect wildlife, including mountain lion, because lighting would be directed toward the

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site and is predominantly of a fairly low intensity (approximately 5 lux for security lighting and approximately 20 to 50 lux at stations and the MOWF).” It is unclear if these lighting intensities have been documented to cause little effect to wildlife; CDFW recommends further analysis.

COMMENT 14: 3.7.7.7 Wildlife Movement Operations Impacts-Impact BIO#48: Mortality Resulting from Train Strike during Operations Page 20

This section states, “Although the entire track alignment would be fenced with an 8-foot chain-link fence, except under Alternative 4 where there are breaks in the fencing for road crossings, it is possible that terrestrial species could enter the alignment and be struck by a moving train.” CDFW is concerned that having the entire track fenced further impacts the mobility of wildlife through the alignment. We recommend clarification on how these temporary disruptions of wildlife movement would impact the gene flow between CC-N and CC-C subpopulations of mountain lion. CDFW recommends analysis of mountain lion movement and/or their prey-base and impacts to their foraging opportunities. Potential effects could result in additional stressors during breeding cycles, effects of den selection, and force animals into movement paths/areas that could increase their vulnerability to vehicle strikes. We recommend evaluating the known locations of wildlife vehicle strikes and addressing the cumulative impact of the addition of the HSR.

Comment 15: Section 3.7.8 BIO-MM#1: Prepare and Implement a Restoration and Revegetation Plan Pages 21-22

This section states, “Restoration activities may include, but not be limited to: grading landform contours to approximate pre-disturbance conditions, stockpiling and spreading topsoil, removing invasive plant species, revegetating disturbed areas with native plant species (including host plants for butterflies), and using certified weed-free straw and mulch.” The RDEIR/SDEIS is unclear on what specifically will be done (disposal offsite or used on-site) with such large quantities of excess soils from the cut of slopes and tunneling material. CDFW recommends providing information in the RDEIR/SDEIS that describes the ultimate placement of all the excavated spoil material.

Comment 16: Section 3.7.8 BIO-MM#14: Avoid Direct Impacts on Bay Checkerspot and Monarch Butterfly Host Plants Page 22

It is unclear in BIO-MM#14 who is responsible to determine if the habitat is suitable and the timing of surveys. In addition, this measure lacks a survey methodology and it is also unclear how and when presence is assumed. CDFW also recommends using monarch conservation measures from Xerces Society (2015) BMPs for Pollinators in Rangelands for minimization measures for monarch butterfly. For additional applicable conservation measures that can minimize impacts to monarch butterflies, please see the 2020 Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation

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Lands(https://www.fws.gov/savethemonarch/pdfs/Final_CCAA_040720_Fully%20Executed.pdf).

Comment 17: Section 3.7.8 BIO-MM#70: Prepare and Implement an Annual Vegetation Control Plan (VCP) Page 22

“To the extent feasible and consistent with the Caltrans (2014) Maintenance Manual requirements, the Authority would also include pollinator conservation measures in the VCP from the Xerces Society *Best Management Practices for Pollinators on Western Rangelands* (Xerces Society 2018), conservation measures in the *Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands* (Cardno 2020), or other applicable sources.” This measure defers mitigation and is not enforceable. If it is not feasible CDFW recommends the Authority propose something that would be feasible, quantifiable, and enforceable to implement.

Comment 18: Section 3.7.8 BIO-MM#76: Minimize Impacts on Wildlife Movement during Construction Page 22-23

This section states, “Where an existing underpass or culvert must be closed or obstructed, a temporary crossing structure or an alternative movement corridor would be created.” To determine if BIO-MM#76 minimizes impacts, CDFW recommends describing how and where would alternative movement corridors would be created.

This section states, “Construction would be timed to minimize impacts on movement by providing at least one crossing feature in a region. For example, to minimize impacts on wildlife using the Fisher Creek culvert, construction at Fisher Creek would not commence until the construction of the Tulare Swale undercrossing is complete.” It should be noted construction occurring at crossings in adjacent regions within the segment could have potential impacts to mountain lion movement.

This section, as well as in Appendix 3.7-E Noise Analysis on Terrestrial Species and Appendix 3.7-F Supplemental Light Analysis on Terrestrial Species also states, “Lighting will use the minimum levels approved by OSHA (29 C.F.R. § 1926.56) for general construction (i.e., 5 foot-candles or 54 lux). Additionally, the plan will include instructions to minimize the direction of construction vehicle headlights toward off-site locations and using low beams or turning off headlights when safety considerations permit.” It should be noted the minimum levels of lighting approved by OSHA are minimums established for humans. It is unclear how these levels correlate to wildlife and if the levels are appropriate to reduce impacts to mountain lion.

“To the extent feasible, the plan will require minimizing the duration of lighting by using methods other than lighting to ensure security of the construction site during hours it is not in use. To avoid impeding movement of aquatic species, the Authority would employ the use of vibratory (rather than impact) pile driving for work in or within 200 feet of waterbodies that provide habitat for steelhead or giant garter snake, where feasible.” This measure is not enforceable if it is only implemented if feasible. CDFW

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recommends the Authority propose quantifiable and enforceable measures to reduce impacts.

“Additionally, the Authority would establish wildlife-friendly fencing at soil stabilization areas and tunnel portals where a large right-of-way would be required.” It is unclear if the soil stabilizing areas would require MSE wall. It is also unclear if these areas with wildlife friendly fence will function in providing wildlife movement. CDFW recommends clarification to determine if the measure would minimize impacts as intended. This section lists various attributes of wildlife-friendly fence. It should be noted that these attributes benefit cattle and grazing animals and it is unclear what the benefit would be for special status species, mountain lions and their prey. The proposed fence described is permeable and will result in wildlife/mountain lion potentially entering areas that are planned to exclude wildlife from entering.

Comment 19: Section 3.7.8 BIO-MM#77a: Design Wildlife Crossings to Facilitate Wildlife Movement Page 23-25

This section states the following, “To the extent feasible, the Authority would design all wildlife crossings created specifically for terrestrial species consistent with the guidelines and recommendations in the WCA (Authority 2020a: Appendix C).” It should be noted that recommendations of this measure are not enforceable design requirements for wildlife crossings. CDFW advises that these be required guidelines and not recommendations. CDFW also recommends that the creation of new crossing structures incorporate land-overcrossings to facilitate movement of mountain lion and other large mammals. CDFW recommends that these be required crossing features and provide the crossing design requirements for openness factor and clear line of sight from end to end (entrance to exit) distances. Crossing designs and locations should not result into pushing animals to small areas adjacent to highways subject to vehicle strikes. CDFW has concerns with what the proposed locations for wildlife crossings connect to. CDFW recommends that crossing location entrance/exits be co-located with habitat areas that will be immediately encountered or adjacent and further, these habitat areas be perpetually conserved and protected (e.g. through recordation of a CE) to maintain effective movement corridors to sustain functional habitat for mountain lions.

CDFW recommends the Authority coordinate with the Santa Clara Valley Habitat Agency (SCVHA), California Department of Transportation (Caltrans), and CDFW in their effort in conducting a regional connectivity study of SR 152 wildlife crossing study (Pacheco Pass), to obtain roadkill data, inventoried culvert and bridges identified to be improved for connectivity and to ensure that these locations are not further impaired by the Project and correspond with improvements of crossing locations of the Project. This coordination would also help prevent conflicts with the implemented goals of the SCVHA Local Assistance Grant, which is a State funded grant.

“The guidelines and recommendations include the following features:”

- “Funnel fencing would be designed to benefit the greatest number of movement guilds feasible.”

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- “Wildlife crossing width and height would be maximized and length minimized to the extent feasible.”
- “Consideration of habitat modification and/or habitat restoration at crossings to facilitate cover for crossing animals.”

To the “extent feasible” and “consideration” are not requirements and therefore not enforceable measures. CDFW recommends that the specifics that pertain to establishing wildlife crossings for mountain lion be included in this measure. In addition to funnel fencing, the habitat modification and restoration should provide needed cover and strata for wildlife approaching the crossing and should include construction of wildlife trails to attract carnivores and deer to the crossing structures.

“Because land use and other factors could change prior to construction of the project, the Authority would work with agency and stakeholder partners—CDFW, USFWS, [National Marine Fisheries Service] NMFS, the [Santa Clara Valley Open Space Authority] SCVOSA, SCVHA, Peninsula Open Space Trust, and The Nature Conservancy—to validate and optimize wildlife crossing locations at the 75 to 90 percent design phase.” It is unclear if validation of locations needs the “approval” from these stakeholder partners or if it simply a notification. It should also be noted the Grasslands Water District (GWD) is missing from the listed stakeholders and CDFW recommends including GWD to the list of stakeholders.

“The Authority would plan and prioritize species and wetland and natural community (e.g., sycamore alluvial wetland) mitigation land acquisition in coordination with the agencies and stakeholders listed above—at or near wildlife crossing entrances to minimize future development and maintain the natural and rural land cover types surrounding wildlife crossing entrances and exits.” It is unclear when the plan and prioritization would take place and when mitigation land would be acquired to ensure the function of the wildlife crossings. CDFW recommends not deferring this mitigation action.

“Further, the Authority would prepare a Wildlife Crossing Design, Inspection, and Maintenance Plan. The Wildlife Crossing Design, Inspection, and Maintenance Plan would be developed in coordination with wildlife agencies—CDFW, USFWS, and NMFS—and local wildlife movement stakeholders (e.g., SCVOSA, SCVHA, Peninsula Open Space Trust, and The Nature Conservancy).” It is unclear how and when this would be prepared. CDFW recommends the Authority provide a plan that is enforceable and ensures that final approval come from the wildlife agencies.

Comment 20: Section 3.7.8 BIO-MM#77b: Monitoring and Adaptive Management of Wildlife Crossings Page 25

This section states the following, “The Authority would develop a monitoring and adaptive management plan to monitor the effectiveness and use of crossing designs.” It is unclear when this plan will be developed and who is responsible for implementing this plan.

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“Including modifications to design features, if feasible, such as cover and substrate; use of new technologies to attract animals to the crossing; fencing; adjacent land management changes, if feasible; or other measures that may be determined to be feasible in the future. The monitoring and adaptive management plan would be developed in coordination with wildlife agency staff and local wildlife movement stakeholders such as the SCVHA, the SCVOSA, The Nature Conservancy, and the Peninsula Open Space Trust.” It should be noted that this language is not enforceable, CDFW again recommends the Authority provide a plan that is approved by the wildlife agencies.

Comment 21: Section 3.7.8 BIO-MM#80: Minimize Permanent Intermittent Noise, Visual, and Train Strike Impacts on Wildlife Movement

This section states the following, “To this purpose, the Authority would build opaque noise/visual barriers to cover or obscure some or all of the train, including the [Overhead Contact System] OCS, if feasible, at the following locations: In the GEA IBA near Volta, between Stations B4550+00 and B4630+00 (all alternatives)”.

Comment 22: Section 3.7.8 BIO-MM#81: Minimize Permanent Intermittent Impacts on Terrestrial Species Wildlife Movement

This section states, “These features include the following, which are specified in detail in the WCA (Authority 2020a: Appendix C). Jump out exit features that allow large mammals such as deer or mountain lion to exit the fenced right-of-way would be placed near at-grade road crossings in Coyote Valley at the following station numbers: B688, B691, B703, B730, B759, B761, B822, B823, B862, B863, B902, B935, B971, and B972.” CDFW recommends the eastern and western Pacheco Pass areas include jump-outs as a requirement to facilitate movement for mountain lion and other large mammals. CDFW further recommends including and requiring jump out exit features for elk and deer in areas of Upper Cottonwood Wildlife Area and San Luis Reservoir Wildlife Area and jump outs for deer from Volta Wildlife Area through Mud Slough CE.

Comment 23: Section 3.7.8 BIO-MM#87: Conduct Pre-Construction Surveys and Implement Avoidance and Minimization Measures for Mountain Lion Dens Pages 28-29

“Prior to any ground-disturbing activity, regardless of the time of year, the Project Biologist would conduct pre-construction surveys for known or potential mountain lion dens within suitable habitat located within the work area and within 1,970 feet of the work area, where access is permitted.” It is unclear how areas not accessible to the Project would be surveyed and it is unclear what is considered suitable habitat components.

“The Project Biologist will use location-specific survey methods to identify known and potential dens. The survey method will consider topography, vegetation density, safety, and other factors. Surveys will be conducted by a qualified biologist (i.e., a biologist

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with demonstrated experience in mountain lion biology, identification, and survey techniques) and may involve the establishment of camera stations, scent stations, pedestrian surveys (looking for tracks, caches, etc.), the use of scent detection dogs, or other appropriate methods. Survey methods used will be designed to avoid the disturbance of known or potential dens to the extent feasible." CDFW is concerned with the overall practicability of this approach. It should be noted that dens can be very difficult to detect even for mountain lion experts. Another possible approach to be incorporated into detection surveys is camera station surveys.

"If known, or potential, mountain lion dens are identified or observed during pre-construction surveys, mountain lion dens will be assumed to have kittens present until the Project Biologist can document that they are not present and/or that the den is not being used." CDFW recommends additional information be included in the measure on how dens will be checked to see that dens are no longer occupied without disturbing the adult female and kittens.

"However, ground disturbance would be limited to those days between October 1 and January 31 within 1,970 feet of known or potential dens to the extent feasible." If it is not feasible to work within the proposed work window, CDFW recommends including another option to minimize and avoid impacts. Buffer establishment should be implemented every time a den is detected with kittens. If such a discovery is made, then project activities in the defined buffer area would need to halt for 2 months and a re-survey conducted to determine if the female has abandoned the den and relocated the kittens. Also recommended is immediate consultation with CDFW upon detection of an active den. Mountain lions will den throughout the year so a proposed work window may not be an effective minimization measure. CDFW recommends the reference to a work window to reduce impacts to mountain lions be removed from the document.

Comment 24: Section 3.7.8 BIO-MM#88: Provide Compensatory Mitigation for Impacts on Mountain Lion Habitat Page 29

The Authority has proposed to provide compensatory mitigation for impacts to mountain lion breeding and foraging habitats. The RDEIR/SDEIS indicates that each alternative for the Project has approximately 2,597.4 to 2,851.5 acres of permanent impacts and 944.8 to 1,192.9 acres of temporary impacts to breeding and foraging and high and low priority foraging and dispersal habitats. CDFW believes the proposed ratios of 2:1 for permanent impacts on breeding/foraging habitat and high priority foraging and dispersal habitat; and 1:1 for low priority foraging and dispersal habitat do not sufficiently account for loss of habitat and is not well supported based on the RDEIR/SDEIS analysis of the impacts, which was a coarse level spatial modeling exercise. Overall, the analysis of direct, indirect, permanent, and temporal impacts appears to be underestimated, including the impact to loss of gene flow between subpopulations and impacts to ESUs due to the loss of connectivity. Therefore, it is unclear whether the proposed 2:1 mitigation to impacts ratio is sufficient to reduce impacts to less than significant levels.

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Comment 25: Section 3.7.8 BIO-MM#89: Minimize the Impacts of Operational Lighting on Wildlife Species Page 29

This section and Appendix 3.7-E Noise Analysis on Terrestrial Species and Appendix 3.7-F Supplemental Light Analysis on Terrestrial Species states the following: “Outdoor lighting at operational facilities would be consistent with minimum OSHA requirements established by 29 C.F.R. Section 1926.56 when the facilities are in use.” It should be noted that the OSHA requirements are for humans not wildlife.

“To the extent feasible, the Authority would minimize the duration of lighting at operational facilities by using methods other than lighting (e.g., remote monitoring systems) to ensure security of facilities during nighttime hours when they are not in use. Train headlights would use the minimum standard allowed by the FRA under 49 C.F.R. Section 229.125 (a single headlight of at least 200,000 candelas). It is unclear why Coyote Valley is the only area that this measure addresses ALAN (Artificial Light at Night) exposure impacts.

Comment 26: Section 3.7.8 Table 3.7-3 Comparison of Project Alternative Impacts for Biological and Aquatic Resources (acres) Page 30

Missing from Impact BIO# 26a, Impact BIO#32, Impact BIO#42, Impact BIO#43, are mountain lion ESU impacts of gene flow between the CC-N and CC-C.

Comment 27: Section 3.7.9.6 Wildlife Movement Pages 36-37

“With respect to mountain lion, the inclusion of dedicated crossings and viaducts in the project design are expected to facilitate the continued genetic flow between subpopulations; however, some uncertainty exists around this conclusion because the movement of mountain lions and thresholds for movement are not well understood. Consequently, impacts causing disruptions to genetic flow between subpopulations are possible.” This statement infers no changes to project design and overcrossings and viaducts would be examined or put into place. There is a lack of analysis in the RDEIR/SDEIS regarding what a design change or low functioning design features would mean to the CC-N subpopulation.

Comment 28: Section 3.7.10 CEQA Significance Conclusions Impact BIO#26a: Loss of Breeding, Foraging, and Dispersal Habitat for and Direct Mortality or Disturbance of Mountain Lion Page 42

“BIO-MM#87 would minimize direct impacts on individual mountain lions during construction by identifying and avoiding occupied mountain lion dens within the project footprint. BIO-MM#88 identifies minimum compensatory mitigation requirements for mountain lion that would be included in the CMP developed under BIO-MM#10.” CDFW is concerned MM#87 is not an effective and adequate methodology to detect mountain lion and dens due to the low likelihood of detection and MM#88 is not adequate

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compensation and would not sufficiently offset impacts to breeding, foraging, dispersal, gene flow, and direct mortality likely as a result of the Project.

Comment 29: Section 3.19.6.6 Cumulative Impacts-Biological and Aquatic Resources-Wildlife Movement Page 2

“The project would contribute to these gene flow issues, especially between the CC-C and CC-N subpopulations within the ESU. The Authority would implement mitigation that includes avoiding and minimizing temporary impacts on wildlife movement (BIO-MM#76), modifying project design to accommodate wildlife movement (BIO-MM#77a and BIO-MM#78), monitoring the success and providing adaptive management for crossings (BIO-MM#77b), and protecting land in the Santa Cruz to Gabilan Wildlife Linkage or the Soap Lake 10-year floodplain (BIO-MM#79).” It should be noted that the Pacheco Creek is not included in the area to which movement to allow gene flow is addressed and should be incorporated.

Comment 30: Section 3.19.6.6 Cumulative Impacts-Biological and Aquatic Resources-CEQA Conclusion Wildlife Movement Page 3

“While mitigation measures are proposed to reduce these impacts, there would still be substantial interference with wildlife movement. The project specific impacts would combine with those related to construction of other planned projects such that there would be a new cumulative impact on wildlife movement. There is no additional feasible mitigation.” If the mitigation measures cannot reduce impacts to less than significant for mountain lion, what will the Authority do to ensure impacts are minimized to the greatest extent feasible? CDFW recommends including a CEQA significance conclusion for impacts to the mountain lion ESUs and the corresponding genetic impacts.

Comment 31: APPENDIX 3.7-A: SPECIAL-STATUS SPECIES SUBJECT TO PROJECT IMPACTS-Table 2 Special-Status Wildlife Species Potentially Subject to Project Impacts Page 2

CDFW recommends that the table include CC-N and CC-C populations of the mountain lion ESU.

Comment 32: APPENDIX 3.7-D: SUPPLEMENTAL SPECIES HABITAT MODEL DESCRIPTIONS-Mountain lion (*Puma concolor*); Candidate under the CESA (Southern California/Central Coast Evolutionarily Significant Unit) Pages 5-7

“Breeding and Foraging Habitat —Potentially suitable breeding and foraging habitat in the regional study area meets the following criteria (Figure 3.7-D-2) and High-Priority Foraging and Dispersal Habitat—High-priority foraging and dispersal habitat in the regional study area meets the following criteria (Figure 3.7-D-2).” It is unclear how and by whom these criteria are set for high and low priorities. The current range referenced for modeling was Zeiner et al. 1990; this is not the most current literature reference. CDFW recommends referencing Dellinger et al. 2020.

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**Comment 33: APPENDIX 3.7-D: SUPPLEMENTAL SPECIES HABITAT MODEL DESCRIPTIONS-Mountain lion (*Puma concolor*); Candidate under the CESA (Southern California/Central Coast Evolutionarily Significant Unit)
Figure 3.7-D-2 Coastal Mountain Lion Habitat Page 9**

Figure 3.7-D-2 is missing the CC-N and CC-C ESUs and does not depict areas of connectivity. CDFW has provided Attachment 1 for the Authority to reference mapping of the subpopulation locations.

**Comment 34: APPENDIX 3.7-E: SUPPLEMENTAL NOISE ANALYSIS ON TERRESTRIAL WILDLIFE SPECIES-2 NOISE EXPOSURE IN THE STUDY AREA
Page 3**

“It is assumed that a typical train would be 660 feet long and that approximately 176 trains would pass any given point in any given 24-hour period, with up to 148 trains between 7 a.m. and 10 p.m. and up to 28 trains between 10 p.m. and 7 a.m. A train moving past a given point would take 2.05 seconds to pass at a speed of 220 mph or 4.10 seconds at 110 mph; thus, maximum noise levels would be experienced for 5.8 minutes per day along parts of the alignment where trains were moving 220 mph or 11.6 minutes per day where trains were moving 110 mph”. This statement indicates that there is an operating train 24 hours of the day and therefore that noise impacts are not intermittent. CDFW recommends conducting a revised analysis of non-intermittent noise and light impacts to wildlife be completed.

“Noise barriers protecting sensitive human receptors are predominantly located in urban areas, where they offer little benefit for wildlife.” It is unclear if new receptors will be located and used for wildlife and if the noise barriers would reduce impacts to mountain lion movements in the areas. CDFW recommends further analysis.

Comment 35: APPENDIX 3.7-E: SUPPLEMENTAL NOISE ANALYSIS ON TERRESTRIAL WILDLIFE SPECIES-3 MAMMALIAN WILDLIFE RESPONSES TO NOISE Pages 8-9

“...recent camera trapping efforts at bridges along SR 152 by Pathways for Wildlife (2020) found that within the twelve month monitoring period, multiple species including deer (*Odocoileus hemionus*), American badger (*Taxidea taxus*), coyote (*Canis latrans*), bobcat (*Lynx rufus*), gray fox (*Urocyon cinereoargenteus*), raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), and opossum (*Didelphis virginiana*) were recorded consistently traveling under each of the three bridges. Based on this evidence, it is clear that despite the presence of existing noise sources in the form of major highways, both common and sensitive wildlife do successfully use existing passage routes in the study area.” It should be noted that this information reinforces the need for connectivity of wildlife crossings in this area for these species.

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**Comment 36: APPENDIX 3.7-E: SUPPLEMENTAL NOISE ANALYSIS ON
TERRESTRIAL WILDLIFE SPECIES- 4.1 San Joaquin Kit Fox**

“Potential noise impacts on kit foxes were assessed by USFWS (2009) in its biological opinion for the Merced to Fresno Project Section of the HSR system. It determined that “noise disturbance from operation of the HST will not occur during nocturnal activities of San Joaquin kit fox in areas adjacent to the alignment from 12:00 a.m. through 6:00 a.m.” and that “it is likely that San Joaquin kit fox will become quickly adapted to the increased noise disturbance generated by operation of the HST3.” In summary, there would be a considerable potential for operational noise to affect foraging and alignment crossing by San Joaquin kit fox, and measures to minimize those effects are discussed below.” It should be noted that citing biological opinion determination for a different regional segment is not an adequate comparison. The Merced to Fresno biological opinion did not account for 24-hour train operation. As a result, the referenced biological opinion is not applicable to the Project analyzed by the RDEIR/SDEIS.

**Comment 37: APPENDIX 3.7-E: SUPPLEMENTAL NOISE ANALYSIS ON
TERRESTRIAL WILDLIFE SPECIES- 4.3 Mountain Lion**

“There is a high potential that train noise would affect mountain lion foraging effectiveness and that it would add to the existing barriers represented by SR 152 in deterring mountain lions from crossing the valley through this area.” These conclusions on noise should be applied to corridor movement for mountain lion.

**Comment 38: APPENDIX 3.7-E: SUPPLEMENTAL NOISE ANALYSIS ON
TERRESTRIAL WILDLIFE SPECIES- Figure 3 Proposed Noise Barrier near Upper
Pacheco Creek Page 18**

CDFW is concerned that there are no proposed dedicated wildlife crossings for the Pacheco Creek area.

**Comment 39: APPENDIX 3.7-E: SUPPLEMENTAL NOISE ANALYSIS ON
TERRESTRIAL WILDLIFE SPECIES- Figure 4 Proposed Noise Barrier near
California Aqueduct Page 19**

It should be noted that Figure 4 of the proposed noise barrier near the California Aqueduct illustrates the Project (the alignment being at grade, trenched, noise/light barrier, designated wildlife crossing) on property that is protected under a CE. CDFW is concerned over impacts occurring on a CE and recommends a specific analysis of these impacts.

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Comment 40: APPENDIX 3.7-F: SUPPLEMENTAL ARTIFICIAL LIGHT ANALYSIS ON TERRESTRIAL WILDLIFE SPECIES Page 1

Section 1.1 states, "BIO-MM#51: Nighttime light disturbance would be reduced in and adjacent to suitable habitat where known California condor roosting habitat occurs at Lover's Leap south of State Route 152. Nighttime lighting would be focused, shielded, and directed away from the nighttime roost site. The project biologist would be on site during nighttime light use to determine the lighting risk to condors and to implement lighting avoidance measures (e.g., lighting shields) if necessary." It is unclear what determines implementation of this measure, and aspects of the measure are not requirements and therefore not enforceable.

Comment 41: APPENDIX 3.7-F: SUPPLEMENTAL ARTIFICIAL LIGHT ANALYSIS ON TERRESTRIAL WILDLIFE SPECIES 1.4.5 Dusky-Footed Woodrat and Fresno Kangaroo Rat Page 10

"In the Pacheco Pass Subsection, construction lighting would be limited to tunnel portals, and, in the Central Valley, construction lighting would be avoided." It is unclear if nighttime lighting would be prohibited during construction in the Pacheco Pass and Central Valley subsections. CDFW recommends analyzing impacts of construction lighting in these two subsections.

Comment 42: APPENDIX 3.7-F: SUPPLEMENTAL ARTIFICIAL LIGHT ANALYSIS ON TERRESTRIAL WILDLIFE SPECIES 1.5 Measures to Reduce Effects Page 12

"The following additional measures are recommended to further reduce lighting impacts within the areas identified in Table 1." The measures proposed to reduce lighting impacts are recommendations and not requirements. CDFW recommends proposing measures that are feasible, measurable, and enforceable.

II. Editorial Comments and/or Suggestions

Wildlife Corridor Movement: The RDEIR/SDEIS asserts, "Wildlife would be able to cross the alignment between at-grade segments where the HSR would be elevated on a viaduct or an underground tunnel." This statement assumes that the viaduct locations will remain in place; however, as with other HSR segments currently under construction, these viaduct locations could later be redesigned to be fenced at-grade and impermeable to wildlife. CDFW advises that a stronger design criterion should be developed and included into the RDEIR/SDEIS to ensure that areas of planned viaduct cannot later be changed to less permeable features by the Design-Build contractor.

As CDFW has discussed during early consultation and in previous comment letters to the Authority, the single biggest potential biological impact arising from construction of the HSR project is the impact on regional movements of wildlife and connections between habitats. The HSR has the potential to disrupt wildlife movement corridors that are already hindered with existing obstacles, create long stretches of impediments, and further narrow areas of low or compromised permeability, many of which are already

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threatening the continued viability of several species. Construction of access-controlled rail lines may create additional barriers to the movement of wildlife, thereby cutting them off from important food, shelter, and breeding areas. Resulting isolation of subpopulations limits the exchange of genetic material and puts populations at risk of local extirpation through genetic and environmental factors. Barriers can prevent the re-colonization of suitable habitat following natural population expansions, ultimately putting the species at risk of extinction.

The construction and operation of the HSR will severely inhibit north-south as well as east-west wildlife movement along the San Jose to Merced segment. While the Authority suggests it will examine the feasibility of implementing a variety of wildlife passages to aid animal movement along both sides of the rail alignment, it is unclear where and at what intervals these will be placed. This is a concern, especially considering recent design changes in the Fresno to Bakersfield segment of the Project where originally designed elevated structures were changed to an at-grade design and elevated structures over waterways were significantly reduced in length, narrowing the available space for open wildlife passage.

In addition, CDFW is concerned that any changes in crossing design or location due to significant build changes with the alignment during the interim between environmental review and 80 to 90 percent (%) engineering, creates delays and impediments to ensuring functional permeability for all focal species. This could limit the ability of species such as SJKE, Tule elk, and mountain lion to move unhindered throughout their historic range. A recent 2021 master's thesis by California State University, Fresno student, Abigail Dziegiel, analyzed CDFW's 2015-2019 Tule elk tracking collar data and identified current home ranges within the Pacheco Pass area along SR 152. Work by James Thorne and others from the University of California, Davis, in 2002 and 2006, tracking data from mountain lion and Tule elk research, and work associated with the Santa Clara Habitat Conservation Plan (HCP)/Natural Community Conservation Plan (NCCP), have specifically identified 17 corridors in Santa Clara County of significant importance. Therefore, crossing locations and design are advised to be provided and fully disclosed in the CEQA document so that CDFW can analyze the potential effectiveness of maintaining these known wildlife corridors.

Elevated railways are critical in areas where the movement of wildlife is already reduced due to existing and/or proposed geographic transportation infrastructure and structural barriers such as those that exist in western Merced County near the intersections of SR 152, SR 33 and I-5.

Potential future design changes that could result in reduced wildlife permeability and increased wildlife impacts need to either be considered in the RDEIR/SDEIS, or somehow precluded from occurring at the construction phase. An elevated or below ground rail design could reduce the impacts that the HSR system would have on animal movement and migration, by allowing wildlife to pass unimpeded underneath or over the top of the entire length of the railway while providing access-controlled tracks. Elevated or below ground railways would be more effective in facilitating animal movement than

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the proposed wildlife underpasses and overpasses, which are not always effective or have untested efficacy for most taxa. Because wildlife would be more likely to move underneath an elevated rail, or over a below ground rail, as opposed to using a tunnel or vegetated overpass, CDFW advises the at-grade embankment described in the RDEIR/SDEIS be thoroughly analyzed as a barrier to movement, gene flow, reproductive success, loss of colonization opportunities, and to discuss this in the context of frequency, design, and location of planned wildlife crossings.

CDFW recommends considering the following for design features for dedicated wildlife crossings: minimize lengths (entry to exit) of dedicated wildlife crossings for certain species guilds and/or incorporate designs (grates, shelving, terracing, etc.) that still allow light penetration, maximize heights of crossings or add bridges for larger species guilds, provide natural cover types to encourage use, incorporate bench designs to allow use of the crossings during flooding, and provide smaller animal escape within or adjacent to the dedicated wildlife crossings.

If wildlife passage structures will be used instead of elevated or below ground rail, CDFW continues to recommend that an extensive evaluation be conducted before final wildlife passage locations are selected to determine the appropriate and most effective locations and number and types of such wildlife passage structures. As was recommended in previous correspondence, methods to determine best locations of wildlife passage structures or avoidance should include things such as: 1) track station surveys; 2) ditch and canal crossing surveys; 3) monitoring trails with infrared or Trailmaster cameras; and 4) geographic information system (GIS) habitat modeling to identify likely wildlife travel corridors and anthropogenic barriers (such as highways, canals, reservoirs) at the landscape level. In addition, wildlife habitat passage structures, such as underpasses, overpasses, elevating or placing below grade the alignment and tunnels, may not be suitable for all species and locations and would need to be evaluated carefully. Dedicated wildlife crossing structures should ensure permeability, be evaluated on a species-specific basis, and be required to meet specific minimum dimensions for increased probability of wildlife utilizing these structures.

Specific care should be afforded to ensure that any wildlife crossing structure design incorporates generous openness and clear line of sight from entry to exit to maximize detection of the crossing by species at the time of encounter and to ensure use. Currently, the DEIR/EIS does not provide specific dimensions listed for the openness, what constitutes a "slight grade of approaches to prevent flooding", and the number of crossings that would ensure permeability for such a long linear feature. Without these specifics and other relevant assumptions, it is not possible to determine if the effectiveness of this mitigation measure will reduce the level of significance. CDFW recommends that wildlife crossing locations, configurations, and demonstrated efficacy for target species use (e.g., mountain lion, tule elk, SJKE, etc.) be a requirement of the final design.

Finally, the RDEIR/SDEIS does not analyze the impact of design elements, such as the IPBs and Access Restriction (AR) fencing, in terms of impacts to wildlife corridor movements and/or the reduction of effectiveness of wildlife crossings compounded by

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the additional fencing infrastructure. The RDEIR/SDEIS includes information that the at-grade segments of the project would be entirely fenced or walled and thereby eliminate adverse interactions with wildlife, including direct strikes. While this may be true in some instances at the individual or localized level, the total length and linear nature of the project's fencing/walls, along with other projects in the area, may cause site-specific and cumulative impacts involving species habitat fragmentation and impediments to wildlife movement. CDFW agrees that inclusion of proper placement and design of the dedicated wildlife crossings will be a very important component of the environmental planning process for the Project. CDFW also agrees that wildlife movement areas (open connectivity) are also important for plant species.

It is paramount that the final appropriate and effective design features, dimensions, and locations for elevated rail, viaduct, tunnel, and wildlife crossings through Pacheco Pass and Central Valley remain as minimum criteria and not a design-build option to reduce dimensions or alter locations without approval from the wildlife agencies to ensure connectivity of gene flow for the mountain lion subpopulations (CC-C and CC-N).

Use of Modeling for Impact Analysis

CDFW has previously expressed its concern with using coarse-level predictive models for the impact analysis without having site-specific surveys to supplement the modeling effort. We are concerned that the lack of current, site-specific information to accurately quantify the magnitude of impact to CESA-listed species may cause delays in the impact of the taking analyses necessary for CESA and issuance of an ITP. CDFW is also concerned how the modeled output is proposed to be used for areas where there are no occurrence data. As a reminder, CNDDDB captures voluntarily reported detections only; areas without records should not be treated as areas where species do not occur. Our primary concerns with using modeling without site-specific protocol surveys to assess and quantify impacts for purposes of CESA include the following:

- Modeling alone may not capture the full extent of species occurrences and habitat suitability due to data sources, timing of surveys, limited access to significant portions of the alignments, and the inherent accuracy issues associated with using regionally-based data to determine site-specific impacts without a reliable verification method (e.g., protocol surveys). Using predictive modeling only to evaluate species presence/absence and to quantify project-specific impacts (acreages) could miss marginal or atypical habitat usage, especially by highly mobile species, and impose a risk of unauthorized take. In addition, some areas not ranked as suitable have not been surveyed recently or have never been surveyed.
- Due to the stochasticity and cryptic nature of some species, it is very difficult to accurately “detect” species and determine mitigation requirements using modeling. Some species are unpredictable due to variables the modeling may not or cannot adequately capture, habitat requirements that are constantly evolving over time or space and/or have distributions that can be analyzed statistically but not be predicted precisely. For example, opportunistic species

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can have dynamic ranges and use areas not ranked at all by the model based on its current parameters.

- As an estimation of reality, the current model includes a defined range of species and conditions (using the rules selected) based on a snapshot of time and may not accurately capture use by all species when impacts occur and/or translate down to the site-specific (e.g., footprint) level. Modeling alone can provide a statistically significant underrepresentation of habitats potentially occupied by State-listed species. For example, some listed plants may only occur at specific times of the year under certain conditions and only be adequately evaluated with protocol surveys within the project footprint at the appropriate time. Likewise, some State fully-protected bird species not known to nest or breed in the project area (e.g., white-tailed kite, peregrine falcon and bald eagle) could be transient to the area at certain times of the year.

It should be noted that the WCA is not an adequate analysis of the genetic landscape. The landscape connectivity/permeability vs. the genetic connectivity. Habitat quality landscape does not capture the movement through the Project for the CC-C subpopulation of mountain lions who breed and pass on genes to other subpopulations. The WCA (Appendix 3.7A of the RDEIR/SDEIS) modeling limitations pose issues and assumptions that are problematic in addressing the genetic permeability of mountain lion. Permeability Analysis Results for American badger, bobcat, mountain lion, deer, Tule elk, and bay checkerspot butterfly (*Euphydryas editha bayensis*) does not indicate changes in existing permeability to post-permeability once the Project is complete.

CDFW continues to emphasize that although the current modeling can be a helpful tool for the Authority's own preliminary evaluation, as well as for compensatory mitigation planning, it will not be a substitute for our analysis when it comes to CESA permitting. CDFW will need to conclude whether or not listed species will be impacted by the project. If predictive modeling is used in lieu of biological surveys by the Authority, CDFW's ITP related analysis we will need to err on the side of assuming presence in the Project footprint where suitable habitat is present.

Department Owned and Managed Lands

To date, CDFW has not been provided a comprehensive analysis of impacts to CDFW-owned land and therefore cannot agree at this time with the Authority's assumption that a Section 4(f) is warranted. CDFW is advising the Authority to formulate other feasible alternatives that avoid these lands because CDFW cannot agree that a Section 4(f) is a reasonable supposition in planning the HSR alignment.

The Secretary of Transportation may approve a project requiring the use of publicly owned land of a wildlife and waterfowl refuge **only** if there is no prudent and feasible alternative to using that land; and the project includes **all** possible planning to minimize harm to the wildlife and waterfowl refuges from the use. "Use" includes substantial impacts to wildlife resources due to close proximity of a transportation project

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(Department of Transportation Act 49 U.S.C. Section 303, formerly Section 4[f]). All four alternatives considered, and the Project alignment will have significant impacts to State owned wildlife areas.

CDFW Wildlife Areas are acquired for the protection and enhancement of habitat for a wide variety of species and are open to the public for wildlife viewing, hiking, hunting, fishing, and nature tours. The construction and operation of HSR within or near CDFW lands could severely limit the wildlife and public use values of these lands as well as alter the way these lands are managed by CDFW. Most Wildlife Areas depend on visitor fees for operation, maintenance and management. CDFW has concerns that the HSR may negatively impact the number of visitors to Wildlife Areas resulting in reduced revenues; thereby reducing or eliminating the future enhancement of public recreational opportunities and wildlife habitat provided by these areas. The consequence of this may prevent youth from future hunt participation on these CDFW owned lands and impact recruitment of youth into the sport of hunting impacting the CDFW Recruitment, Retention and Reactivation Action Plan initiative. There would be diminished funding to CDFW's Wildlife Program and the operating budget for CDFW during construction (up to a 5-year period or more) of the HSR Project and on-going fiscal impacts once the HSR Project is complete.

Specific CDFW-owned lands that are adjacent to, bisected by, or occur within 1 mile of the San Jose to Merced alignment include Cottonwood Creek Wildlife Area (Upper and Lower), San Luis Reservoir Wildlife Area, O'Neill Forebay Wildlife Area, Volta Wildlife Area, Los Banos Wildlife Area, Grasslands Wildlife Area, and Cañada de los Osos Ecological Reserve.

Another concern of CDFW is the Grassland Environmental Educational Center (GEEC). The GEEC is visited by local area school children for educational outreach and enrichment and in some cases is the only outdoors educational experience in their area. The annual average number of visitors are 6,317. The alignment alternatives are within 1,000 feet of the GEEC, thus the value and experience to its visitors will be impacted during construction and long-term operation and maintenance of the HSR. All four alternatives proposed in the DEIR/EIS will have the same impact to the GEEC; CDFW advises consideration of another alignment or alternative.

Moreover, this section lacks analysis of indirect impacts to conservation plans and CEs. The alignment will go through the Mud Slough CE (CDFW is grantee) and other CE lands purchased for conservation of SJKF and other special-status species by the State of California and other entities. The impacts to the perpetual conservation values set forth in CEs were not evaluated and analyzed. CDFW is concerned that the potential impacts of the HSR Project will impact the biological values, the continued management, and potentially violate the conditions of the Mud Slough CE. The CE has terms of conditions that preserve the natural character and maintain in perpetuity the habitat values set forth in the required site-specific management plan for waterfowl habitat value and/or waterfowl use. CDFW recommends this be analyzed and included in the RDEIR/SDEIS, including the legal mechanism that the Authority would utilize to

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condemn or otherwise impact lands permanently conserved by the State of California. As indicated previously during early consultation, CDFW recommends that an alternative location for that portion of the Project alignment be identified to avoid impacts to permanently conserved lands and the associated legal implications.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, monarch butterfly. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

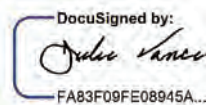
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the Authority in identifying and mitigating the Project's impacts on biological resources.

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More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring (MMRP) table which corresponds with recommended mitigation measures in this comment letter. If you have any questions, please contact Ms. Primavera Parker, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 320-6666, or by e-mail at Primavera.Parker@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment 1- Mountain Lion ESU Subpopulation Mapping
Attachment 2- MMRP

ec: See Page Thirty-One

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ec: **Office of Planning and Research**
State Clearinghouse (state.clearinghouse@opr.ca.gov)

United States Fish and Wildlife Service
Justin Sloan (Justin.Sloan@fws.gov)
Margaret Sepulveda (Margaret.Sepulveda@fws.gov)

State Water Resources Control Board
Jessica Nadolski (Jessica.Nadolski@waterboards.ca.gov)

United States Army Corps of Engineers
Zachary Fancher (Zachary.J.Fancher@usace.army.mil)
Zachary Simmons (zachary.m.simmons@usace.army.mil)

Central Valley Regional Water Quality Control Board
Matt Scroggins (Matt.Scroggins@waterboards.ca.gov)

CDFW Region 4: Ferranti, Stafford, Tomlinson, Allen, Parker
CDFW Region 3: Craig Weightman, Brenda Blinn

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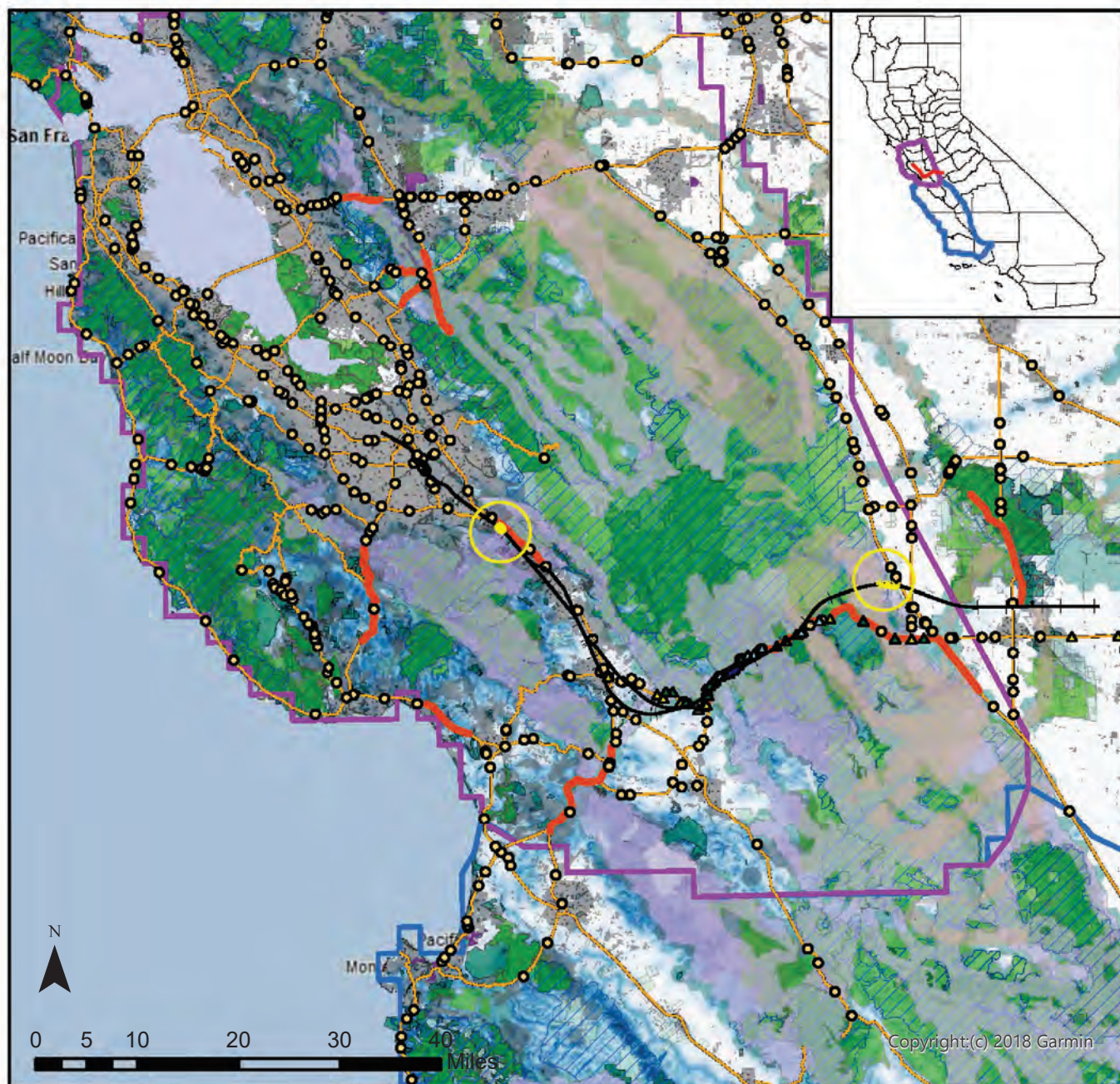
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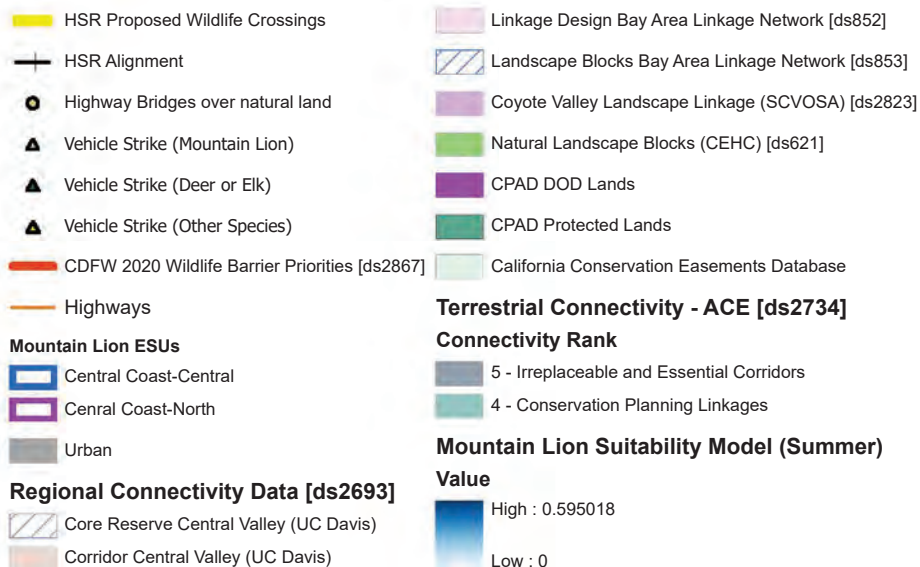
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Data sources:
 HSR Alignment and Proposed Crossings: High Speed Rail Program
 Highways and Bridges: Caltrans
 Vehicle strike locations: Pathways for Wildlife and CDFW data
 Urban: CalFire and National Landcover Dataset
 CPAD: California Protected Areas Database
 Mountain Lion Suitability Model: Dellinger et al. 2020
 Dataset numbers (e.g., ds1234) refer to the CDFW BIOS (www.wildlife.ca.gov/Data/BIOS) dataset number.



Attachment 2

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: California High-Speed Rail Project (San Jose to Merced
Section)**

SCH No.: 2009022083 (Revised DEIR/Supplemental DEIS)

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: ML Habitat Assessment	
Mitigation Measure 2: ML Wildlife Crossing Monitoring	
Mitigation Measure 3: ML Avoidance-Buffer for Corridor Areas	
Mitigation Measure 4: ML No Night Work in Corridor Areas	
Mitigation Measure 5: ML Avoidance Use of Rodenticides	
Mitigation Measure 6: ML Provide Dedicated Wildlife Crossings	
Mitigation Measure 8: MB Habitat Assessment	
Mitigation Measure 9: MB Surveys	
<i>During Construction</i>	
Mitigation Measure 2: ML Wildlife Crossing Monitoring	
Mitigation Measure 3: ML Avoidance-Buffer for Corridor Areas	
Mitigation Measure 4: ML No Night Work in Corridor Areas	
Mitigation Measure 5: ML Avoidance Use of Rodenticides	
Mitigation Measure 6: ML Provide Dedicated Wildlife Crossings MB Take Avoidance	
Mitigation Measure 7: ML Take Authorization	
Mitigation Measure 10: MB Take Avoidance	

Letter A: Pathways for Wildlife

- A-1** No response is required.
- A-2** Comment is acknowledged. The cited studies were reviewed for the wildlife corridor impact analysis and summarized and referenced in **Chapter 3.3, Biological Resources**, and **Chapter 7.0, Report Preparers and References**, respectively. No response is required.
- A-3** Comments accurately summarize the findings of the Harper Canyon Subdivision Project Wildlife Camera Trapping Study Report prepared by Denise Duffy & Associates, Inc. (DD&A) (DD&A Wildlife Study) (beginning on page 3.3-6 of the SDEIR) and the determination that the proposed project would have a potentially significant impact on wildlife corridors (beginning on page 3.3-17 of the SDEIR). No response is required.
- A-4** Comment accurately describes the regulatory status of the California mountain lion. No response is required.
- A-5** The comment suggests that the SDEIR fails to address the presence of mountain lions and does not include mitigation for mountain lion impacts. The presence of mountain lions at the project site is discussed throughout **Section 3.3, Biological Resources**, beginning on page 3.3-2 of the SDEIR. Mountain lions were included as a focal species in the DD&A Wildlife Study (page 3.3-8 of the SDEIR) and identified as present at the project site (**Table 3.3-2** and pages 3.3-14 through 3.3-16 of the SDEIR). The mitigation measures from the 2015 EIR (**Mitigation Measures 3.3-2a** through **3.3-2d**, **Mitigation Measures 3.3-3a** through **3.3c**, and **Mitigation Measures 3.3-4** through **3.3-6**) and **Mitigation Measures 3.3-8a** through **8f** from the SDEIR would reduce potentially significant impacts to all wildlife species and their movement, including mountain lions.
- However, in response to comments on the SDEIR as they relate to wildlife movement and corridors, additional measures have been added to **Mitigation Measure 3.3-8f** as a component of the Wildlife Corridor Plan and **Mitigation Measure 3.3-8g** has been added to further reduce impacts to mountain lion movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- A-6** Comment states that the California Department of Fish and Wildlife (CDFW) recommends a 4:1 mitigation ratio for loss of mountain lion habitat, and attached a comment letter that CDFW submitted on the California High-Speed Rail, San Jose to Merced Section Project (Attachment to **Letter A**). Neither that letter nor the comment letter from CDFW on the proposed project (**Letter E** in this Final SEIR) recommend a 4:1 mitigation ratio for loss of mountain lion habitat. The California High-Speed Rail, San Jose to Merced Section Project involves the construction and operation of a 90-mile section of high-speed rail, which is not comparable in scale or context to the proposed 17-lot subdivision analyzed in the SDEIR. The proposed project involves the construction of 17 residential lots, ranging from 5 to 23 acres, on approximately 164 acres. The proposed project design would maintain a 180-acre open space area between Harper Creek and Toro County Park and the applicant has committed to donating approximately 154 acres of this parcel by deeding the property to the County of Monterey as an expansion of the Toro County Park pursuant to Section 66428(a)(2) of the Subdivision Map Act. As a result, the proposed project would retain a significant amount of open space in the project site and area. Therefore, a 4:1 mitigation ratio for loss of mountain lion habitat is not appropriate or applicable to the proposed project.

A-7 Please refer to **Response A-3**.

A-8 Please refer to **Response A-3 and A-5**.

Letter B

Friedrich, Michele

From: Richard H. Rosenthal <rrosenthal62@sbcglobal.net>
Sent: Thursday, April 25, 2024 5:47 PM
To: Spencer, Craig; ceqacomment
Cc: Richard H. Rosenthal; Greg James; Susan Bacigalupi; Joanne Webster
Subject: Harper Canyon SDEIR comment letter
Attachments: 460.24.04.24.COMMENTLETTERSDEIR.pdf

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Craig: Please find attached comment letter on Harper Canyon Subdivision SDEIR.

Thank you,

RHR

Richard H. Rosenthal, Esq.
Attorney at Law
P.O. Box 1021
Carmel Valley, CA 93924
831.625.5193
831.625-0470 (fax)



B-1

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25 APRIL, 2024

460.24.04.24.COMMENTLETTERSDEIR

Via Email

Mr. Craig Spencer
Housing and Community Development
1441 Schilling Place
South 2nd Floor
Salinas, CA 93901

Re: Comment letter: SDEIR Harper Canyon Subdivision Project

Dear Craig:

This is a comment letter on behalf of Meyer Community Group regarding the SDEIR for the Harper Canyon Subdivision Project, SCH# 2003071157. You'll recall that Meyer was the Petitioner that prevailed at the court of appeal on the wildlife corridor issues.

I'll divide the comment into three parts. The first part will be general comments regarding the court of appeal opinion and Meyer's view on what the court required of the SDEIR. The second part will comment on specific sections of the SDEIR. The last part will provide concluding comments and suggestions for additional study and review.

I. General Comments:

Stand-alone CEQA Document. It is Meyer's contention that the SDEIR should be a stand-alone document that addresses all issues relating to wildlife corridor issues, including impact assessment, mitigation measures, alternatives, and any issue stemming from the impact assessments findings on significant impacts including cumulative impacts.

Failure to Describe the Dimensions of the Wildlife Corridor and whether the Project overlaps the Corridor and the Impacts of the Project on the Wildlife Corridor. The Court of Appeal contained the following mandates that are relevant to the preparation of the Supplemental EIR:

{T}he Final EIR does not provide basic information about the wildlife corridor of which this passage is a part, such as its dimensions, or even definitively state

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B-2

B-3

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whether or not the corridor overlaps a portion of the project site. This baseline determination is the first step in the environmental review process by which an agency can determine whether an impact is significant. (citation omitted). Opinion, p.44.

[T]he EIR for the project fails to describe the basic information necessary for a reader of the EIR for this project to understand the topic of wildlife corridor, such as where the wildlife corridor “begins and ends, its width, and how far the Project intrudes upon the corridor. Opinion, p. 45

The Board is ordered not to take any further action to approve the project without the preparation, circulation and consideration under CEQA of a legally adequate EIR with regard to wildlife corridor issues as discussed in the opinion. Opinion, p. 49.

The DEIR fails to comply with the mandates of the Court of Appeal because it does not provide a delineation of the wildlife corridor or even a map depicting the wildlife corridor and showing the location of the project in relation to the wildlife corridor.

The DSEIR’s environmental setting should define the beginning, middle and end of the wildlife corridor, the habitat contained therein, and should also describe the nature and magnitude of wildlife movement and traffic in the vicinity of the project site. This would constitute the baseline determination. Opinion, p. 44. In assessing the baseline, Guidelines 15125 (c) requires special emphasis to be placed on environmental resources that are rare or unique to the region and would be affected by the project. Id. at (c). Special emphasis should be given to mountain lions with their 2020 listing by the Fish and Game Commission as a candidate species under California Endangered Species Act (CESA) protected species. Mountain Lions were identified in the Wildlife Camera Tracking Study Report. Photos 13-20. SDEIR Table 3.3-2, 3.3-13.

Once the baseline is determined, the nature and magnitude of the project’s impact on the wildlife corridor and on wildlife movement can be assessed. The DSEIR lacks the information to determine the nature and magnitude of the project’s intrusion into the corridor. The DSEIR does conclude the proposed project would interfere substantially with the movement of wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nurse sites, AR: 773¹. An adequate description and discussion of the nature and magnitude of adverse environmental effects is necessary to inform the critical discussion of mitigation measures and project alternatives at the core of the EIR. *Sierra Club v. County of*

¹ AR: Citation to the Administrative Record of the lower court proceedings, *Meyer Community Group v. County of Monterey*, Case number M131913.

B-4
(cont'd)

B-5

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B-8

Fresno (2018) 6 Cal 5th 502, 514, *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal 5th 918. The nature and magnitude of the adverse environmental impacts is missing.

↑
B-8
(cont'd)

Although the SDEIR concludes the Project will have significant impacts, it does not consider adequate mitigation measures or alternatives² to the project or reconsider alternatives from the DEIR, including Alternative 3, the environmentally superior alternative, AR: 957-959 that eliminates 4 lots: 11, 13, 14, and 15. County (Planner Laura Lawrence) determined that a project alternative that eliminated these lots reduced impacts to wildlife movement, traffic and visual impacts. AR:957-959, 4973. Moreover, although the DD&A Wildlife Study found that wildlife activity is the densest within Lots 16 and 17, there is no discussion of a project alternative that eliminates these lots.

B-9

Meyer provided numerous comment letters leading up to the SDEIR suggesting the SDEIR provide comment and assessment on possible lot movements and the need to assess the 26 acre remainder parcel for the viability of receiving one or more of the 4 lots proposed by alternative 3, the environmentally superior alternative. Judge Wills' opinion noted that possibility. The SDEIR ignored that suggestion.

Improper Deferral of the Preparation of the Wildlife Corridor Plan. A serious deficiency of the DSEIR is the deferral of the preparation of the critical Wildlife Corridor Plan. On page 3.3-19, the DSEIR acknowledges that:

While wildlife activity was more concentrated in some lots and not others; all of the lots within the project site provide habitat for wildlife movement and occur within a documented wildlife corridor. Development of the proposed project would discourage, interrupt, or otherwise impact the use of this wildlife corridor.

The principal mitigation measure identified in the SDEIR to mitigate the Project's impact on the wildlife corridor is the preparation of a Wildlife Corridor Plan, Mitigation Measure MM 3.3-8f provides:

B-10

In order to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument, the owner/applicant shall submit a Wildlife Corridor Plan (WCP) for all the lots on the vesting tentative map. The WCP shall be prepared in consultation with a qualified biologist with expertise in wildlife connective planning and is subject to approval by Monterey County Housing and

² This would be fruitless because the environmental assessment failed to determine the nature and magnitude of the project's impact on the wildlife corridor.

Community Development. The WCP shall identify measures to ensure effective wildlife movement that apply to subdivision improvements to be implemented through subdivision improvement plans and measures that would be made enforceable restrictions or conditions of development of individual lots within the subdivision.

CEQA requires that mitigation measure describe the specific actions that will reduce or avoid an impact. It is unacceptable to defer formulation of a mitigation measure to the future, unless it is impractical or infeasible to specify the details of mitigation during the EIR review process. (CEQA Guidelines section 15126.4(a)(1)(B)). The DSEIR provides no explanation as to why it would be impractical or infeasible to complete the Wildlife Corridor Plan during the EIR review process, yet, it is this plan that will determine the mitigation measures that will be implemented to ensure effective wildlife movement within the project area and within the wildlife corridor impacted by the project.

The Wildlife Corridor Plan, including a delineation of riparian habitat boundaries within the project area, must be completed before an accurate assessment can be made of whether the Project will adversely affect wildlife. Such an accurate assessment is impossible without identifying and describing the measures that will be implemented to ensure effective wildlife movement within the Project area. Only after the plan is completed can a map be presented that shows how wildlife will move through the project area after buildout of the Project. Thus, a completed Wildlife Corridor Plan should be included in the SDEIR and not deferred until after the completion of the EIR review process.

Wildlife Nursery Sites. One last general point, there doesn't seem to be any analysis of potential native wildlife nursery sites within the project area.

II. Specific Comments to SDEIR

A. Environmental Setting: 3.3.1 and Cumulative Impacts. Previous wildlife studies in the vicinity of the project were reviewed. None of the reviewed studies had data on wildlife movement thru the project site or the project's potential impact on wildlife movement.

The discussion on Environmental setting ignored the 14 lot Broccoli project that was approved in the 1990's that sits adjacent to the proposed project. See Map attached as Exhibit 1. The infrastructure for these 14 lots will be constructed at the same time as the Project. AR:5383 These lots will have an impact on the wildlife movement as witnessed by comparing SDEIR 3.3-5 and Exhibit1(AR: 1118). These 14 lots will contribute significant noise impacts generated by construction activity. The combined impact of the Project and the Broccoli project is a potential significant cumulative impact of the Project; however, the SDEIR omits any discussion of this potential cumulative impact.

B-10
(cont'd)

B-11

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B-13

The environmental setting also omits a discussion of the 26 acre remainder parcel and its suitability to accept lots moved from other locations within the project area. AR:14285, 167,182.

B-14

B. Wildlife Study Conclusions: The wildlife activity captured during the study suggests that the Study Area (project vicinity) provides suitable habitat and movement corridors for focal species, as well for various other wildlife species. 3.3-15. However, the DD&A Wildlife Study doesn't answer the Court of Appeal's question, "where does the wildlife corridor begin and end, its width, and how far the Project intrudes upon the corridor." Opinion, p. 45. It is true that the study provides Heat Maps are provided for all Focal Species, 3.3-15 and individual species, B-1 thru B-7. However, this information in the study does not describe migration paths, nor the beginning or end or width of the wildlife corridor. The Heat sighting maps do not provide potential building envelopes to assess potential impacts from buildout on the migration paths although some of this information is available and even more critical information would be available if the Wildlife Corridor Plan was included in the SDEIR. Finally, the wildlife study failed to determine if wildlife movement moves outside of the project area into the dedication parcel.

B-15

C. Project Impacts and Mitigation Measures. The SDEIR concluded that development of the proposed project would discourage, interrupt, or otherwise impact the use of a documented wildlife corridor. SDEIR 3.3-19. It notes that noise generated by the construction activities associated with development will discourage wildlife from using this wildlife corridor but concludes the noise will be temporary and wildlife will likely return. There is no basis in fact for this presumption. First, the project, together with the Broccoli subdivision includes another 14 lots that will have infrastructure installed with the Subdivision. AR: 5383. Therefore, the cumulative impact of the Project and the Broccoli subdivision will be 31 potential lots that are shovel ready.

B-16

Second, these 31 parcels are not going to be build out by the owner, they are going to be sold and constructed on an individual basis. Therefore, construction noise and activity may go on for years. The question is how much noise and for what duration does it take to discourage wildlife out of the corridor. Is there any data or studies to support this proposition? If wildlife is discouraged from the corridor, or if the corridor is severed it will create a bottleneck that restricts animals to move thru the landscape thus restricting or eliminating essential linkage becoming an island creating a significant impact. How do you get the linkage back is the question. The SDEIR does not discuss these potential significant cumulative impacts. This exact issue was raised by Martin Petersen in a July 31, 2022 comment to the NOP. The SDEIR does not address the issue notwithstanding admitting the noise from the construction of 31 homes over a multiple year effort could discourage wildlife from the corridor.

B-17

D. Mitigation Measures

Mitigation Measures 3.3-2a, 3.3-2b, 3.3-2c, 3.3-2d: These are rehashed mitigation measures from the DEIR AR:778-779 generated from the Zander Associates biological surveys. The mitigation measures are not based upon the Wildlife Camera Trapping Study. There is no discussion on the mitigation measures effectiveness in mitigating or reducing the projects impact on wildlife movement or corridors. Mitigation measures and project alternatives should be considered to effectively reduce the project's impact on the wildlife corridor and permit the wildlife to move through the landscape.

B-18

Mitigation Measures 3.3-3a thru 3.3-3c: These are rehashed mitigation measures from the DEIR AR:780-781 generated from the Zander Associates biological surveys. The mitigation measures are not based upon the Wildlife Camera Trapping Study. These are impermissible deferred mitigation measures. There is no discussion on the mitigation measures effectiveness in mitigating or reducing the projects impact on wildlife movement or corridors. Mitigation measures and project alternatives should be considered to effectively reduce the project's impact on the wildlife corridor and permit the wildlife to move through the landscape.

B-19

Mitigation Measures 3.3-4 thru 3.3-6: These are rehashed mitigation measures from the DEIR AR:780-781 generated from the Zander Associates biological surveys. The mitigation measures are not based upon the Wildlife Camera Trapping Study. There is no discussion on the mitigation measures effectiveness in mitigating or reducing the projects impact on wildlife movement or corridors. Mitigation measures and project alternatives should be considered to effectively reduce the project's impact on the wildlife corridor and permit the wildlife to move through the landscape.

B-20

Mitigation Measures 3.3-8a thru 3.3-8f: These are an accumulation of various measures that are deferred until after the final map is recorded. As previous discussed, they are deferred in violation of CEQA. There is no discussion of the mitigation measures effectiveness in mitigating or reducing the project's impact on wildlife movement or corridors. It's not clear if the measures were generated from the Wildlife Camera Trapping Study in as much the building envelopes were not reflected on the heat maps.

B-21

Mitigation Measure 3.3-8f requires the preparation of Wildlife Corridor Plan by the owner/applicant and submitted to the Planning Department for review and approval prior to the recording of the first final map. The stated purpose of the plan is to identify measures to ensure effective wildlife movement through the Project area. There will be no public review of the Plan or of the mitigation measures identified in the Plan. The elements of the Plan should be presented in the SDEIR instead of deferring the Plan's preparation to a later date without public review. SDEIR 3.3-20-3.3-22. As previously discussed, the deferral of the preparation of this plan is in violation of CEQA.

B-22



The Plan contains numerous obligations on the applicant including providing alternative corridors outside of the single family residence and infrastructure development envelopes by limiting access to existing cattle paths and other wildlife trails. 3.3-21. Since the preparation of the Wildlife Corridor Plan is deferred, this mitigation measure doesn't explain how these alternative corridors will be established. The mitigation measure states that the WCP shall identify measures to ensure effective wildlife movement that apply to subdivision improvements but they don't say how this is going to be undertaken other than to say through enforceable conditions of project approval. There is no discussion of the effectiveness of these purported project conditions since they are not identified or described. The SDEIR should have provided enough information to determine what measures should be undertaken to ensure effective wildlife movement and that the condition would meet the objective. In other words, as note above the WCP should be undertaken as part of the SDEIR.

B-22
(cont'd)

E. Alternative Analysis

Since the SDEIR concludes that based on the preparation of the deferred Wildlife Corridor Plan and other mitigation measures, the Project will not have significant adverse impacts, the DSEIR contains no alternative analysis. The Wildlife Corridor Plan should be prepared during the EIR review process, and then determinations made as to whether the Project will have significant adverse impacts. If such impacts are foreseeable, alternatives to the Project should be discussed. Such potential alternatives are identified in the DEIR's alternative discussion found at AR: 949-960. Alternative 3, the Environmentally Superior Alternative, is found at 957-960. Alternative 3 eliminates four lots from the project, lots 11, 13, 14, and 15. County Planner Lawrence noted that this would reduce impacts to the corridor. AR:4973. The SDEIR should undertake an alternative analysis and also consider whether these lots could be moved onto the 26 acre remainder parcel to open up the corridor.

B-23

F. Mountain Lion

The Camera Trapping Study recorded 14 sightings and 52 tagged photos of mountain lions. SDEIR 3.3-13. Photos of mountain lions at located at photos 13-20. Photos 14 and 18 show two mountain lions traveling together that implies they are breeding pair or a female with a juvenile. The SDEIR doesn't give any special assessment of the fact that mountain lions were detected let alone detected in pairs. In assessing the baseline, Guidelines 15125 (c) requires special emphasis to be placed on environmental resources that are rare or unique to the region and would be affected by the project. Id. at (c). Special emphasis should be given to mountain lions with their 2020 listing by the Fish and Game Commission as a candidate species under California Endangered Species Act (CESA) protected species. On April 20, 2020 the California Fish and Game Commission accepted a petition to list an ESU of mountain lion in southern and central coastal California as threatened under DESA d(CDFW 2020a). As a CESA-candidate species, the mountain lion in southern and central coastal California is granted full protection of a threatened species under CESA. The SDEIR is woefully deficient of any

B-24

discussion of the impacts to the mountain lion or consideration of mitigation measures or project alternatives relating thereto.

↑
B-24
(cont'd)

The prevalence of mountain lions in the vicinity of the project is witnessed with a recent picture of a mountain lion outside the house on Meyer Road leading up to the project. See Exhibit 2

G. Residential Pets

No discussion of potential impacts from residential pets such as dogs or cats. This may upsetting to wildlife moving through the landscape.

B-25

III. Conclusion

For all of the reasons stated above, the DSEIR should be revised and recirculated. If there are any questions please feel free to contact me.

B-26

Thank you,



Richard H. Rosenthal
Enclosures as noted
Cc: Clients, Greg James

EXHIBIT 1

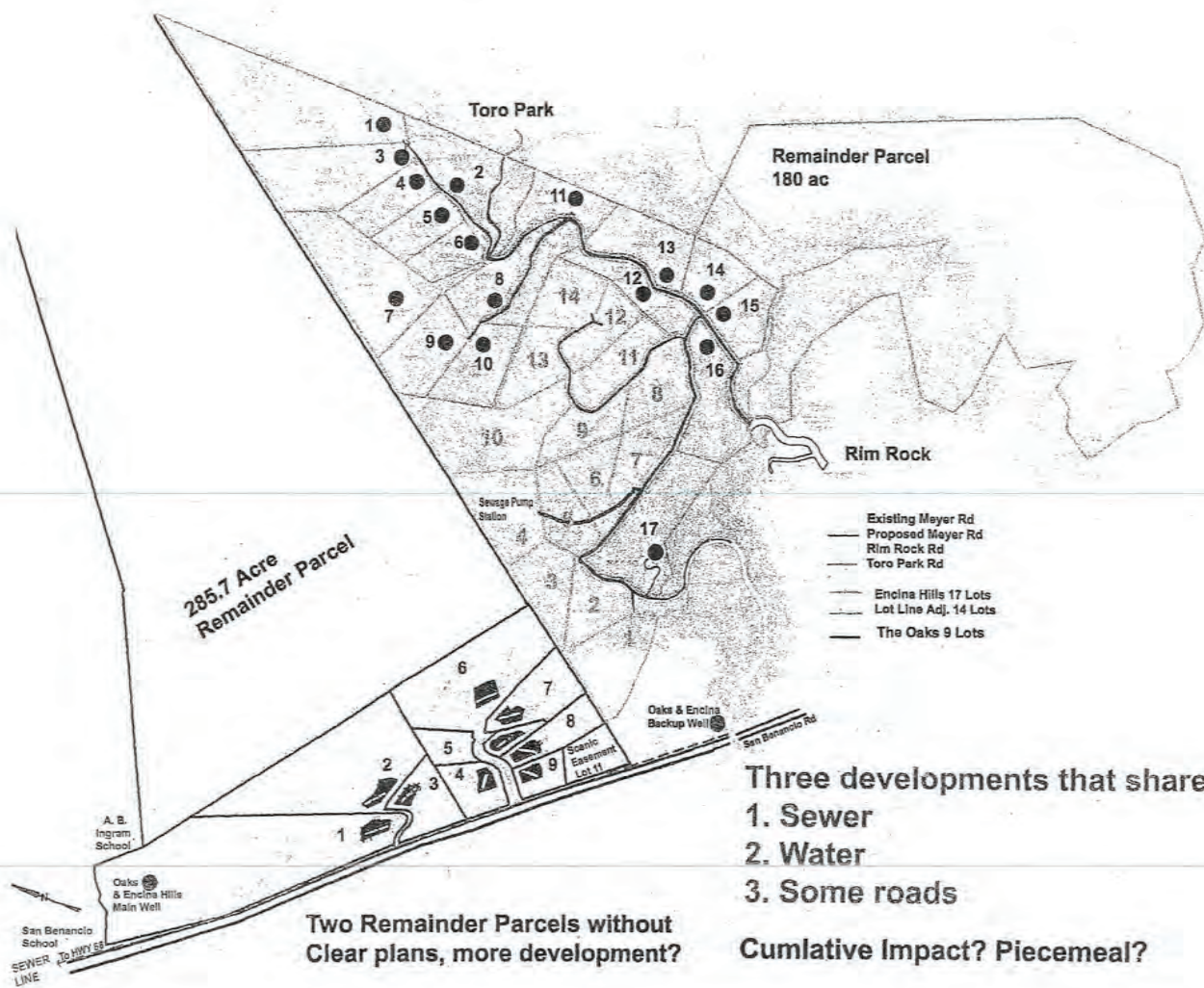


EXHIBIT 2



Letter B: Meyer Community Group

- B-1** No response is required.
- B-2** No response is required.
- B-3** As described in **Section 1.1.2, Project Litigation and Resolution**, of the SDEIR, as a response to the Court of Appeal opinion, a supplemental draft EIR was requested to evaluate only the proposed project's potential impacts on the wildlife corridors in the vicinity of the proposed project site. The SDEIR was prepared pursuant to Section 15234 of the CEQA Guidelines, which only requires additional environmental review of portions of the 2015 EIR that the Court of Appeal found did not to comply with CEQA, consistent with principles of res judicata (See *Ione Valley Land, Air, & Water Defense Alliance, LLC v. County of Amador* (2019) 33 Cal.App.5th 165). The County need not expand the scope of analysis beyond that specified by the Court and is not required to revisit impacts or issues other than wildlife corridor and movement impacts. Therefore, the SDEIR only addresses portions of the 2015 EIR determined not to comply with CEQA, including portions of **Section 3.3, Biological Resources**. All other portions of the 2015 EIR and corresponding findings remain valid, including **Chapter 5.0, Cumulative Impacts Summary**.
- B-4** Comments accurately state excerpts of the Opinion. No response is required.
- B-5** Assuming the comment is referring to the SDEIR, please refer to **Section 3.3.1, Environmental Setting** (pages 3.3-1 through 3.3-6 of the SDEIR), which describes the various wildlife corridor studies conducted in the project area to analyze the movement between the Santa Lucia Mountain Range and the Bureau of Land Management property on the former Fort Ord (the Fort Ord National Monument) and the linkages within the corridor (Highway 68/El Toro Bridge and Salinas Rive Corridor linkages). **Figures 3.3-1** and **3.3-2** depict the project site in context of the wildlife corridor and linkages analyzed in the studies. The Environmental Setting and figures comprehensively delineate and depict the wildlife corridor, including where it begins and ends and the location of the project in relation to the wildlife corridor. To further clarify the project location in context of the wildlife corridor, **Figure 3.3-2** has been revised to specifically name the proposed developments, including the proposed project. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- B-6** Please refer to **Response B-5**; in addition, **Section 3.3.1, Environmental Setting** (pages 3.3-1 through 3.3-6 of the SDEIR) includes summaries of the results of the wildlife corridor studies, which describe the wildlife species encountered and the traffic along Highway 68, along with associated mortalities to wildlife.
- B-7** Please refer to **Response A-5**.
- B-8** Comment accurately states that the SDEIR determined that the proposed project would have a potentially significant impact on wildlife corridors (beginning on page 3.3-17 of the SDEIR). Please refer to **Response B-5**.
- B-9** Beginning on page 3.3-19 of the SDEIR, the SDEIR concluded that the project design features and required mitigation measures from the 2015 EIR would reduce potentially significant impacts to wildlife movement and corridors; however, they would not reduce impacts to a less-than-significant level. Therefore, additional mitigation measures were identified to adequately mitigate the potentially significant impacts to a less-than-significant impact. The SDEIR determined that the implementation of these mitigation measures combined with the

project design features and required mitigation measures from the 2015 EIR would reduce potentially significant impacts to wildlife movement and corridors to a less-than-significant level.

As described in **Section 1.1.2, Project Litigation and Resolution**, of the SDEIR, the Board's 2015 action was challenged in Monterey Superior Court by Landwatch Monterey County and Meyer Community Group (Petitioners) on various grounds, including traffic, water, and general plan consistency. On December 3, 2018, the trial court issued its Final Statement of Decision and Ruling on Remedy in the case. The trial court rejected the vast majority of the claims raised by Petitioners and upheld the County's action except as to recirculation of the groundwater analysis and project wildlife corridors. The County and applicant appealed on these issues. Petitioners appealed on the adequacy of the EIR's groundwater analysis. On March 29, 2021, the Court of Appeal ruled for the County and applicant on the water issues and for Petitioners on the wildlife corridor issue.

The Court of Appeal remanded the matter to the trial court with directions to vacate its original order and issue a new writ of mandate ordering the Court to vacate Resolution No. 15-084, and to vacate the Board's approval and certification of the EIR for the project only as it relates to project wildlife corridor issues.

As described in **Section 1.1.3, Supplemental Draft EIR**, of the SDEIR, the SDEIR was prepared pursuant to Section 15234 of the CEQA Guidelines, which only requires additional environmental review of portions of the 2015 EIR that the Court of Appeal found did not to comply with CEQA, consistent with principles of res judicata. The County need not expand the scope of analysis on remand beyond that specified by the Court. Therefore, the SDEIR only addressed portions of the 2015 EIR determined not to comply with CEQA, which included portions of **Section 3.3, Biological Resources**. All other portions of the 2015 EIR and corresponding findings remain valid, including **Chapter 4.0, Alternatives to the Project**.

Pursuant to CEQA Guidelines Section 15163(e), when the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. Thus, the Board will consider the valid portions of the 2015 EIR, including alternatives to the project, along with the Final SEIR to the extent necessary to comply with the Sixth District Court of Appeal's opinion and Monterey County Superior Court's Second Amended Peremptory Writ of Mandate.

B-10 This comment states that **Mitigation Measure 3.3-8f** constitutes deferred mitigation under CEQA, and states the WCP, including a delineation of riparian habitats within the project area, must be completed before an accurate assessment can be made of whether the project will adversely affect wildlife.

Mitigation Measure 3.3-8f does not constitute deferred mitigation under CEQA. Relevant case law defines deferred mitigation as the practice of putting off the precise determination of whether an impact is significant, or precisely defining required mitigation measures, until a future date. Case law further identifies that the deferral of a specific mitigation measure may be appropriate under specific circumstances. Specifically, an agency may elect to defer the specific mitigation approach if: a) the agency commits itself to the mitigation by identifying and adopting one or more measures for the identified impact and the measures include performance standards; or b) the agency provides a menu of feasible mitigation options from which the applicant or agency may choose to achieve the stated performance standards. Further, "when a public agency has evaluated the potentially significant impacts

of a project and has identified measures that will mitigate those impacts, and has committed to mitigating those impacts, the agency may defer precisely how mitigation will be achieved under the identified measure pending further study” (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, citing *California Native Plant Society v. City of Rancho Cordova* (2010) 172 Cal.App.4th 603.)

Here, the County identified that the proposed project would result in potentially significant impacts to wildlife movement and corridors. The County further reasonably identified several mitigation measures required to ensure that potentially significant impacts would be reduced to a less than significant level, including, but not limited to, specific, detailed measures that shall be included in a Wildlife Corridor Plan (WCP) that apply to all of the lots on the Vesting Tentative Map (VTM) (**Mitigation Measure 3.3-8f**). The measures in the WCP will be made enforceable restrictions or conditions of development of each individual lot within the subdivision.

Specifically, the County identified that the plan shall include various resource protection measures to address potential wildlife movement and corridor impacts that would result from development. Those measures include wildlife-friendly fencing and lighting, best management practices such as reducing lighting impacts, prohibiting planting of invasive plants, providing crossing structures, maintaining or improving riparian habitat, encouraging small building footprints, combining habitat conservation with public goals, developing and education campaign, discouraging residents from interacting with wildlife, installing wildlife-proof trash receptacles, discouraging the killing of native species, and reducing or restricting the use of pesticides. In addition, this mitigation measure has been revised to include an additional measure that requires that a wildlife corridor expert identify wildlife corridors where no development shall be permitted and shall be depicted on the final map. The components of the WCP establish performance standards for which the WCP is required to meet.

CEQA Guidelines Section 15126.4 requires that an EIR describe feasible mitigation measures which could minimize significant adverse impacts, and that the formulation of mitigation measures shall not be deferred until some future time. However, the specific details of a mitigation measure may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency 1) commits itself to the mitigation, 2) adopts specific performance standards the mitigation will achieve, and 3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated into the mitigation measure. (See *Save Our Capitol! v. Dept. of Gen. Servs.* (2023) 87 Cal.App.5th 655, 687.)

Mitigation Measure 3.3-8f does not constitute improper deferred mitigation. The proposed project involves the approval of a VTM to subdivide the property into 17 lots ranging in size from 5 to 23 acres. In the future, applications will be submitted to develop each of these lots with a single-family residence. While the VTM shows an approximate location of proposed home sites, the precise location is not known and will not be known until future development applications are submitted. Because the detailed, specific measures identified in the WCP relate to future construction or operation of the project, and details of each individual project are not known at this time, it is not practical or feasible to develop the WCP now.

Further, **Mitigation Measure 3.3-8f** fully complies with all the factors identified in CEQA Guidelines Section 15126.4, listed above. First, the County has committed itself to **Mitigation**

Measure 3.3-8f. The WCP must be reviewed and approved by Monterey County Housing and Community Development prior to recordation of the first final map, and the recommendations in the approved WCP will be made “enforceable restrictions or conditions of development of individual lots” through inclusion in each final map, the CC&Rs, and the subdivision improvement plans. Second, **Mitigation Measure 3.3-8f** identifies a specific performance measures the mitigation will achieve: the WCP must “identify measures to ensure effective wildlife movement” and is reinforced by the purpose of the WCP, which is to “remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument. Thus, **Mitigation Measure 3.3-8f** contains specific performance standards and identifies the types of potential actions that could feasibly achieve those requirements in the form of buffer zones with specific distances and ranges, establishing corridors to facilitate wildlife movement, fencing and lighting requirements, adherence to best management practices related to wildlife corridors, among other features of the mitigation as proposed.

The commenter states that a portion of **Mitigation Measure 3.3-8f** as related to the provision of alternative corridor paths does not explain how those paths will be established. As explained above, CEQA Guidelines Section 15126.4 allows specific details of a mitigation measure to be developed later. However, **Mitigation Measure 3.3-8f** has been revised to include more detail and require that a wildlife corridor expert identify and depict corridors where no development shall occur on the final map.

Drainages within and adjacent to the project site area shown in **Figures 3.3-3, 3.3-4, 3.3-5, and 3.3-6** of the SDEIR. **Figures 3.3-4, 3.3-5, and 3.3-6** of the SDEIR show the drainages in context with wildlife camera and lot locations. Therefore, drainages and their associated riparian habitats were considered in the environmental analysis and are not deferred.

Mitigation 3.3-8f does not constitute deferred mitigation under CEQA. Instead, it represents a comprehensive strategy to ensure that the County and applicant will implement appropriate actions to minimize potentially significant impacts.

B-11 Please refer to **Response B-9**.

B-12 The comment is accurate that some of the previous wildlife studies discussed in **Section 3.3.1, Environmental Setting**, did not specifically analyze the project. However, the previous studies that were reviewed and summarized present comprehensive data on the wildlife species, their movement, the wildlife corridor and linkages, and threats in the project area, which provide context to the public and decision-makers to understand potential project impacts. Please refer to **Response B-5 and B-6**. Because the previous studies did not analyze the project site, a wildlife study was conducted to develop a baseline inventory of wildlife using the project site (DD&A Wildlife Study, **Appendix C** of the SDEIR).

B-13 **Chapter 5.0, Cumulative Impacts Summary**, of the 2015 EIR remains valid under the Opinion. Please refer to **Response B-9**.

B-14 Please refer to **Response B-9**.

B-15 As described on page 3.3-6 of the SDEIR, the objective of the DD&A Wildlife Study was to develop a baseline inventory of wildlife usage throughout the Study Area acting as a basis for the wildlife corridor impact assessment. The SDEIR relies on the previous wildlife corridor

studies to describe the wildlife corridor and linkages in the project area, including 154-acre remainder parcel. Please refer to **Responses B-5 and B-12**.

- B-16** Construction within the Highway 68 corridor, including the construction of various projects adjacent to the project site, has been occurring for decades, and wildlife continues to remain in the project vicinity, as evidenced by the results of previous wildlife studies and the DD&A Wildlife Study. As described on page 3.3-19 of the SDEIR, construction activities and associated noise would be temporary and intermittent, and would not result in significant impacts to wildlife and their movement within the project site. **Chapter 5.0, Cumulative Impacts Summary**, of the 2015 EIR remains valid under the Opinion. Please refer to **Response B-9**.
- B-17** Please refer to **Response B-16**.
- B-18** Please refer to **Response B-9**.
- B-19** Please refer to **Responses B-9 and B-10**.
- B-20** Please refer to **Response B-9**.
- B-21** **Mitigation Measures 3.3-8a, 3.3-8b, 3.3-8d, and 3.3-8e** shall be incorporated into the design and development of each lot. Clarification on the timing of implementation and approval has been added to each of these measures. Please refer to **Chapter 4.0, Changes to the SDEIR**. **Mitigation Measures 3.3-8c and 3.3-8f** require implementation prior to the recordation of the final map, as stated. Please also refer to **Response B-10**.
- B-22** Please refer to **Responses B-10 and B-21**.
- B-23** Please refer to **Responses B-9 and B-10**.
- B-24** Please refer to **Responses A-5**.
- B-25** Potential impacts from residential pets would be addressed by implementation of **Mitigation 3.3-2c**, which requires that the project applicant consult with a qualified biologist to develop Covenants, Conditions, and Restrictions (CC&Rs) that describes the native flora and fauna and provides guidelines for homeowners to follow to limit disturbance of native habitat.
- In addition, **Mitigation Measure 3.3-8f** has been revised to include additional measures to reduce potential impacts from residential pets on native wildlife movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- B-26** None of the comments, response to comments, or revisions to the SDEIR trigger recirculation under CEQA Guidelines Section 15088.5.

Letter C

Friedrich, Michele

From: Spencer, Craig
Sent: Friday, April 26, 2024 3:55 PM
To: ceqacomment
Subject: FW: Undelivered Mail Returned to Sender
Attachments: HarperCynEncinaHillsSEIR42524.docx



From: Michael Weaver <michaelrweaver@mac.com>
Sent: Thursday, April 25, 2024 7:28 PM
To: Spencer, Craig <SpencerC@countyofmonterey.gov>; SpencerC@countyofmonterey.gov
Subject: Fwd: Undelivered Mail Returned to Sender

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Begin forwarded message:

From: Mail Delivery System <postmaster@icloud.com>
Subject: Undelivered Mail Returned to Sender
Date: April 25, 2024 at 1:22:44 PM PDT
To: michaelrweaver@mac.com

This is a system-generated message to inform you that your email could not be delivered to one or more recipients. Details of the email and the error are as follows:

<spenserc@countyofmonterey.gov>: host
countyofmonterey-gov.mail.protection.outlook.com[52.101.9.19] said: 550
5.4.1 Recipient address rejected: Access denied.
[BL02EPF0001B419.namprd09.prod.outlook.com 2024-04-25T20:22:43.479Z
08DC6379B20461A6] (in reply to RCPT TO command)
Reporting-MTA: dns; mr85p00im-hyfv06011401.me.com
X-Postfix-Queue-ID: AC4E3357AC5E
X-Postfix-Sender: rfc822; michaelrweaver@mac.com
Arrival-Date: Thu, 25 Apr 2024 20:22:41 +0000 (UTC)

Final-Recipient: rfc822; *****@*****
Original-Recipient: rfc822;SpencerC@countyofmonterey.gov
Action: failed
Status: 5.4.1
Remote-MTA: dns; countyofmonterey-gov.mail.protection.outlook.com
Diagnostic-Code: smtp; 550 5.4.1 Recipient address rejected: Access denied.
[BL02EPF0001B419.namprd09.prod.outlook.com 2024-04-25T20:22:43.479Z
08DC6379B20461A6]

From: Michael Weaver <michaelrweaver@mac.com>

Subject: Comments to Harper Canyon (Encina Hills) Subdivision Supplemental EIR Review Period March 12, 2024 to April 25, 2024 Revised Draft EIR

Date: April 25, 2024 at 1:22:38 PM PDT

To: SpencerC@countyofmonterey.gov, "Spencer, Craig" <SpencerC@co.monterey.ca.us>

Hello Craig,

Please let me know if you got this. It is in WORD format so it should open easily for you.

Thank you,

Mike Weaver

831-484-2243



**Monterey County Housing and Community Development
% Craig Spenser**

**Subject: Comments to Harper Canyon (Encina Hills) Subdivision
Supplemental EIR Review Period March 12, 2024 to April 25, 2024
Revised Draft EIR**

**APN's: 416-611-001-000, 416-611-002-000, 416-621-001-000
North of San Benancio Rd, East of Highway 68, Salinas**

Planning Area: Toro Area Plan

April 25, 2025

Dear Mr. Spenser,

I would like to offer some historical perspective to this housing subdivision application. First, many years ago this property was referred to the Toro Area Land Use Advisory Committee. I was a member of the Toro Committee. The LUAC made a field trip to the site entrance where we were met by the property owner's attorney, Michael Cling, and a man introduced as a friend of his, Ken Whitson, of Whitson Engineer's.

The LUAC asked what was this application about? From my memory, Mr. Cling explained that he had recently completed perfecting some lots on this property. He explained that these were old lots that had now gone through a State process to make them legal lots of record. What were they and what was this before?, was a question asked. It was explained that it had been family property that was quite old and that an old map showed some areas of the property with names and that areas of the property had piles of stones/rocks indicating a lot. Mr. Cling continued by explaining the reason for the LUAC Site Visit was his request to move these Lots closer to this project entrance because building closer to the entrance would mean a lot less environmental issues as it was wild land territory further back. It would also mean a lot less grading and road building.

Page 2

From memory, discussion by the LUAC at the site that day focused on being appreciative of protecting wildlife habitat and habitat in general. If the perfected lots were buildable, (not sure if it was 7), it only made sense to move them closer to this entrance gate and leave the rest alone, open space. I do not recall a specific map of the property being available.

C-2

The Toro LUAC returned to its meeting room at the MCRFD and as I recall, voted unanimously to recommend moving lot lines (old lots) closer to the project entrance.

Monterey County H&CD must have a copy of these Toro LUAC Minutes?

Secondly, I had the opportunity to visit with the Diaz girl whose family owned property at the very top of San Benancio. The Diaz family had owned the property since Spanish Land Grant days. It was a cattle ranch and had been one for many generations. I asked Ms. Diaz about rock piles indicating lots.

Her answer was in the old days, family's buried their dead on the property. They would select a site, bury their dead loved one, then mark the spot with a pile of rocks for two reasons, one was to mark the burial site, the second was to keep Coyote's from digging it up. She remarked it had been the same on the Diaz property in the early days. A family map of the property with these sites was like a family Bible with an ancestry tree enclosed, a record.

Third, this subject property, now called Encina Hills, was purchased by the Broccoli Family in the latter 1960's early 1970's. Broccoli was a film producer

C-3

who was creating James Bond Films at the time. Cattle ranches were a popular income tax write off. I believe this is the reason the property was purchased, to partially offset all the profits being made with James Bond films. The Broccoli family heirs had hired attorney Michael Cling to represent them in an application converting the cattle ranch property to a housing subdivision.

I had the opportunity to visit briefly with two of the Broccoli heirs following a public hearing in Salinas. I stated that the family had purchased a cattle ranch some years before. They agreed. The family enjoyed the tax benefits

of owning a cattle ranch. They agreed. They live in the Santa Monica area. They agreed.

So, if the family bought a cattle ranch, enjoyed the income tax benefits, and no longer wanted a cattle ranch, had they considered just selling the cattle ranch, as a cattle ranch?

They became a bit huffy and said that is not what they wanted to do.

Page 3

Recently going online to the Monterey County Accela site and reviewing what is there, I find the tentative map that depicts building lots spread pretty much all across the Broccoli cattle ranch. I can envision new owners grading building pads and individual driveways, and fencing their entire parcel, to keep the critters out and away from the owner's puppies and cats.

I have had the opportunity to read the Supplemental EIR recently produced by

Denise Duffy and Associates. I think it is a good one. The Encina Hills tentative subdivision map found online is not protective of wildlife nor the wildlife habitat. Please limit and revise the proposed project accordingly.

Respectfully,

Mike Weaver
Monterey County Toro Area

↑
C-3
(cont'd)

C-4

C-5

C-6

Letter C: Mike Weaver

- C-1** No response is required. The comment is referred to decision makers as a consideration on the proposed project.
- C-2** No response is required. The comment is referred to decision makers as a consideration on the proposed project.
- C-3** No response is required. The comment is referred to decision makers as a consideration on the proposed project.
- C-4** **Mitigation Measure 3.3-8f** requires the installation of wildlife-friendly fencing.
- C-5** No response is required.
- C-6** No response is required. The comment is referred to decision makers as a consideration on the proposed project.

Friedrich, Michele

From: Rachel Saunders <rsaunders@bigsurlandtrust.org>
Sent: Friday, April 26, 2024 4:53 PM
To: ceqacommments
Subject: "Harper Canyon Subdivision Supplemental Draft EIR Comments"

Importance: High

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Monterey County HCD

ATTN: Craig Spencer Acting Director of Housing & Community Development
2441 Schilling Place Salinas, California 93901

Dear Mr. Spencer,

Big Sur Land Trust is a nationally accredited land trust, whose mission is to inspire love of land across generations, conservation of our unique Monterey County landscapes, and access to outdoor experiences for all. Thank you for the opportunity to comment on the Supplemental DEIR (SDEIR) for the Harper Canyon Subdivision.

D-1

The Land Trust has conserved lands in the Sierra de Salinas Mountain range, where the Harper Canyon subdivision is located, including Marks Ranch next to Toro Park. We have supported field research by wildlife tracking experts at Pathways for Wildlife, which documented a high degree of wildlife activity in this area and its importance as a wildlife corridor. We appreciate that much of that work is now included in the SDEIR. We provided scoping comments on the SDEIR at the County public meeting on August 15, 2022. One of our recommendations was to conduct a camera trapping study. We appreciate the County contracting with DD&A to do this work and incorporate the results into the SDEIR. We understand that this work was used as a baseline of wildlife usage for the wildlife corridor impact assessment, and that it was conducted for 6 months beginning in December 2022, capturing information for two seasons (winter, spring). Even though it only covered half a year, DD&A was able to document more than 20 different wildlife species utilizing the Study Area, including mountain lions, a candidate species for listing in the State of California. Overall, the study determined that there is robust wildlife usage within the Study Area. Given this, we strongly support that at a minimum, all the mitigations identified in the SDEIR be required and implemented should the development project move forward. Every effort should be made to reduce impacts to wildlife and remove barriers to wildlife movement given the importance of the particular area to wildlife movement. As a candidate species for listing, further mitigation should be considered for mountain lions. This should include mitigation for the loss of mountain lion habitat. Additional mitigation should be considered to ensure that the Central Coast mountain lion population is not further jeopardized.

D-2

D-3

Thank you for your consideration.

Sincerely,
Rachel Saunders

Rachel T. Saunders | Director of Conservation
Office (831) 625-5523 x109 | Fax (831) 658-0716
509 Hartnell Street | Monterey, CA 93940
Mailing Address | P.O. Box 4071 | Monterey, CA 93942



Support the Lands You Love!
bigsurlandtrust.org/donate/

The mission of Big Sur Land Trust is to inspire love of land across generations, conservation of our unique Monterey County landscapes, and access to outdoor experiences for all.

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Letter D: Big Sur Land Trust

- D-1** Comment is acknowledged. No response is required.
- D-2** If in approving the proposed project the Board adopts mitigation measures to reduce significant effects, it will adopt a Mitigation Monitoring and Reporting Program (MMRP), as required by Section 15097 of the CEQA Guidelines. The MMRP describes how each of the mitigation measures will be implemented and provides a mechanism for monitoring and/or reporting on their implementation (a draft MMRP is included as **Appendix A** of this document).
- D-3** In response to comments on the SDEIR as they relate to wildlife movement and corridors, additional mitigation has been added to **Mitigation Measure 3.3-8f** as a component of the Wildlife Corridor Plan and **Mitigation Measure 3.3-8g** has been added to further reduce impacts to mountain lion movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 29, 2024

Craig Spencer, Acting Director
County of Monterey Housing & Community Development
1441 Schilling Place, 2nd Floor
Salinas, California 93901
Phone: (831) 755-5233
spencerc@co.monterey.ca.us

Subject: Harper Canyon (Encina Hills) Subdivision Project (Project)
Supplemental Draft Environmental Impact Report (SDEIR)
SCH No.: 2003071157

Dear Craig Spencer:

The California Department of Fish and Wildlife (CDFW) received an SDEIR from Monterey County for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that Monterey County still consider our comments.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

E-1

E-2

Craig Spencer, Acting Director
County of Monterey Housing & Community Development
May 29, 2024
Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

E-2
(cont'd)

PROJECT DESCRIPTION SUMMARY

Proponent: Harper Canyon Realty LLC

Objective: The proposed Project is 17-lot residential subdivision on approximately 164 acres, with a remainder parcel, approximately 180 acres in size, to remain as open space in unincorporated Monterey County. The proposed Project would also include the removal of 79 oak trees within the residential subdivision.

The SDEIR examines wildlife movement in more detail for the Project and focuses on the areas within and surrounding the Project, between the Fort Ord National Monument (Fort Ord), Santa Lucia Ranges, Toro Creek via under-crossing of State Route (SR) 68, overpasses along Portola Drive, and local/onsite drainages and culverts, and includes the review of previous research, including the Central Coast Connectivity Project and the 2008 WRA Environmental Consultants memorandum developed for the Ferrini Ranch EIR (SCH #2005091055).

E-3

Location: The proposed Project is located along the SR 68 corridor of Monterey County off San Benancio Road. The following Assessor's Parcel Numbers (APNs) comprise the Project site: 416-611-001 and 416-611-002.

Timeframe: Not specified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Monterey County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

E-4

Craig Spencer, Acting Director
County of Monterey Housing & Community Development
May 29, 2024
Page 3

The Project Draft Environmental Impact Report (DEIR), circulated in 2012, originally evaluated the potential for the Project to impact biological resources. Currently, the SDEIR acknowledges the potential for impacts to wildlife connectivity and evaluates the impact that the Project would have on connectivity between Fort Ord and Toro Regional Park (Toro Park) and proposes specific mitigation measures to reduce impacts to less than significant. CDFW is concerned that the mitigation measures proposed in the SDEIR are not adequate to mitigate for impacts to wildlife connectivity within the Project site as the current development footprint appears to significantly impact the vital wildlife habitat corridor between Fort Ord and the natural habitats south of SR 68, including Toro Park. CDFW's concerns are explained in more detail below.

E-4
(cont'd)

Wildlife Connectivity

The Project's 17-lot residential subdivision would almost entirely block a primary wildlife corridor between Fort Ord and Toro Park and further isolate Fort Ord and the wildlife species that inhabit the monument (Attachment 1, Figure 1). Attachment 1, Figures 1 and 2, utilize The Nature Conservancy (TNC) Omniscape Connectivity Web Map (TNC 2024) dataset to model wildlife movement within and surrounding the Project site. As Attachment 1, Figures 1 and 2, depict, the majority of the residential subdivision is directly within the sole migratory pathway between Fort Ord and Toro Park. While the SDEIR recognizes the potential impacts to wildlife connectivity associated with the siting of the Project site, and specifically provides mitigation measures to protect a portion of the El Toro Creek corridor, CDFW is concerned that without the protection of the surrounding movement pathways identified in Attachment 1, Figures 1 and 2, the Project would not adequately mitigate for the impacts to wildlife movement.

E-5

The Central Coast Connectivity Project (CCCP), a collaborative project between The Big Sur Land Trust and Connectivity for Wildlife LLC (CFW) to study connectivity along the Central Coast, further highlights the importance of the Project site and surrounding area for wildlife connectivity. The CCCP specifically identifies important connectivity linkages between core habitat areas for wildlife between the Central Coast Mountain ranges including the Sierra de Salinas, Santa Lucia, Santa Cruz and Gabilan mountains, and, within the Project vicinity, notes that, "Any proposed and future development in these relatively intact natural lands without primary regard for wildlife, their habitat requirements and movement patterns could effectively and completely isolate populations and individuals of such sensitive and large ranging species as the North American badger and mountain lion. The isolation of these populations could lead to their local extinction in otherwise viable lowland and coastal habitats along the southern portion of Monterey Bay." Essentially, the CCCP notes that any development within the Project site that isn't focused on wildlife and enhancing connectivity has the potential to completely isolate wildlife populations within Fort Ord.

E-6

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While the DEIR and SDEIR provide several mitigation measures to reduce wildlife connectivity impacts to less than significant, including limiting the installation of solid fencing and lighting, preparing a Wildlife Corridor Plan (WCP), and maintaining a 180-acre open space between Harper Creek and Toro County Park, CDFW is concerned that measures are not sufficient to reduce impacts to less than significant. For instance, the 180-acre open space identified in the SDEIR to mitigate for wildlife connectivity impacts and protect corridor areas identified in the CCCP, does not incorporate any of the movement pathways modeled in Attachments 1, Figures 1 and 2. CDFW would like to note that the entirety of the development area is located in these movement areas. Ultimately, CDFW is concerned the proposed Project footprint would permanently disrupt wildlife movement between Fort Ord and Toro Park, resulting in limited genetic diversity and gene flow, less resilient populations, and potentially a loss of populations over time. As noted in Hennings (2010), restricted gene flow between isolated populations, such as Fort Ord, could result in “cascading ecological effects”, especially for less mobile species.

E-7

Based on the information provided in Attachment 1, Figures 1 and 2, the CCCP, and the DEIR and SDEIR, CDFW is concerned that if the Project were to be implemented as currently proposed, and with the mitigation measures currently proposed, there is a strong likelihood that the linkage to Fort Ord would be severely constricted or lost entirely, especially for species that are less mobile or have large home ranges. Essentially, CDFW is concerned the proposed Project would likely lead to further fragmentation of already constrained habitat for a multitude of species.

E-8

As the proposed Project is located within a vital wildlife habitat corridor between Fort Ord and Toro Park, and the proposed mitigation measures do not appear sufficient to mitigate for impact to wildlife habitat connectivity, CDFW strongly recommends the following:

E-9

Comment 1: Retaining a minimum linkage width

As the proposed Project is likely to significantly restrict wildlife movement between Fort Ord and Toro Park, CDFW recommends the SDEIR be revised and that the Project site be redesigned to allow for a minimum 1.2-mile-wide corridor through the movement areas identified in Attachment 1, Figures 1 and 2 that are within the Project site, to maintain the linkage between Fort Ord and Toro Park. This corridor width recommendation follows the recommendations noted in the South Coast Missing Linkages Project (Penrod et al., 2006), a project focused on finding missing linkages, or corridors, in southern California, which notes that a minimum 1.2 miles width allows, “For a variety of species [...] a wide linkage helps ensure availability of appropriate habitat, host plants (e.g., for butterflies), pollinators, and areas with low predation risk.

E-10

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[...] A wide linkage also enhances the ability of the biota to respond to climate change, and buffers against edge effects.”

↑
E-10
(cont'd)

Comment 2: Consultation with CDFW

It is recommended to consult with CDFW prior to redesign of the Project site to provide guidance on measures to reduce the potential for impacts to wildlife connectivity.

In addition to the concerns that CDFW has related to the Project’s impacts to wildlife connectivity, CDFW also has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State candidate threatened and specially protected mammal Southern California/Central Coast Evolutionary Significant Unit (ESU) Mountain lion (*Puma concolor*), the State and federally threatened California tiger salamander - central California Distinct Population Segment (DPS) (*Ambystoma californiense* pop. 1), and the State candidate endangered western bumble bee (*Bombus occidentalis*) and Crotch’s bumble bee (*Bombus crotchii*).

E-11

Mountain Lion

The mountain lion is a State specially protected mammal (Fish and G. Code, § 4800). In addition, on April 21, 2020, the California Fish and Game Commission accepted a petition to list the Southern California/Central Coast ESU of Mountain lion (mountain lion) as threatened under CESA (CDFW 2020a). As a CESA-candidate species, the mountain lion in southern and central coastal California receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Central Coast Central (CC-C) subpopulation of mountain lion is present within the Project site and the Central Coast North (CC-N) subpopulation is located to north near Santa Cruz. Both of these subpopulations are known to have connectivity problems where the two ESUs meet, and the impacts to gene flow for the species within and surrounding the Project site is of significant concern as isolation reduces genetic exchange of populations at risk of local extinction through genetic and environmental factors, preventing the recolonization of suitable habitats following local extirpation, ultimately potentially putting the species at risk of extinction.

E-12

The CC-C subpopulation provides essential gene flow to the CC-N subpopulation which is critically important for their long-term viability. The CC-C subpopulation is vulnerable to habitat loss from additional development pressure necessitating improving habitat connectivity to facilitate gene flow between adjacent areas though permanently protected lands (e.g., conserved through a conservation easement (CE)) and managed



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in perpetuity (Dellinger et al., 2020). The CC-C region could have major effects on connectivity and population genetics in the adjacent mountain lion populations if further constrained. As such, CDFW is concerned that the proposed Project would have the potential to significantly impact mountain lion subpopulations that traverse SR 68 near the Fort Ord and Toro Park corridor identified in Attachment 1, Figures 1 and 2. As discussed above, the Project would restrict one of the only linkages between the two protected areas, likely isolate Fort Ord lands and limit movement of the CC-C mountain subpopulation north of SR 68 into monument lands, ultimately significantly fragmenting the available habitat for mountain lion to traverse. Additionally, the mitigation measures outlined in the SDEIR are unlikely to mitigate for the unavoidable direct and indirect, permanent, or temporal losses, of genetic connectivity between the CC-C and other subpopulations of mountain lion.

E-12
(cont'd)

CDFW strongly recommends the SDEIR to be revised to contain a specific and focused analysis of impacts to dispersal and genetic exchange between mountain lion subpopulations, including a detailed analysis of issues with connectivity and fragmentation of mountain lion habitat adjacent to the Project. CDFW recommends that Attachment 1, Figures 1 and 2, be utilized to assist with further analyzing the impacts of gene flow disruption, to identify areas that provide permeability, and to assist with identifying the areas to conserve to facilitate movement. CDFW also recommends the SDEIR be revised to incorporate comments and 1 and 2 above and redesign the Project to adequately mitigate for impacts to mountain lion connectivity between Fort Ord and Toro Park. In addition, CDFW recommends the SDEIR also include the following:

E-13

Comment 3: Mountain Lion - No Night Work

To minimize impacts to movement of mountain lion during construction, CDFW recommends that no night work occur during construction of the Project.

E-14

Comment 4: Mountain Lion - Avoiding Use of Rodenticides

CDFW discourages the use of rodenticides and second-generation anticoagulant rodenticides due to their harmful effects on the ecosystem and wildlife. CDFW recommends prohibiting the use of such materials during Project activities.

E-15

Comment 5: Mountain Lion – Avoidance and Take Authorization

In the event that a mountain lion or den is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If avoidance is not feasible, CDFW recommends the Project obtain an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b).

E-16

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Comment 6: Human and mountain lion conflict

The Project would increase human presence adjacent to and within mountain lion habitat via increased residences and ongoing vegetation treatment in the remaining open areas. Increased human presence and associated factors such as traffic, noise, and light pollution, restrict mountain lion movement across the landscape. Most factors affecting the ability of mountain lion to survive and reproduce are caused by humans (Yap et al. 2019). As California's human population has continued to grow and communities expand into wildland areas, there has been a commensurate increase in direct and indirect interaction between mountain lions and people (CDFW 2013). As a result, the need to relocate or humanely euthanize mountain lions (depredation kills) may increase for public safety, particularly if mountain lions do not receive CESA protection in the future. Mountain lions are exceptionally vulnerable to human disturbance (Lucas 2020). For example, mountain lions tend to avoid roads and trails by the mere presence of those features, regardless of how much they are used (Lucas 2020). This restriction in mountain lion movement may reduce gene flow and could increase the decline in genetic diversity of mountain lions in southern and central parts of the State (Dellinger et al. 2020). In addition, increased traffic could cause vehicle strike mortality. Also, mountain lions avoid areas with low woody vegetation cover and artificial outdoor lighting (Beier 1995). Ultimately, as human population density increases, the probability of mountain lion persistence decreases (Woodroffe 2000).

E-17

Comment 7: Mountain Lion –Awareness Signage

CDFW recommends that signage be installed at trailheads and posted within any community open space within the residential development identifying that the area is located in mountain lion habitat. Additional information from CDFW's Keep Me Wild Mountain Lion brochure may be included on the sign:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=57523&inline>

E-18

California Tiger Salamander

The SDEIR does not evaluate Project impacts to California Tiger Salamander (CTS) and the previous DEIR conducted some preliminary CTS surveys and noted that there were no CTS CNDDDB occurrences within the Project site and that CTS would not be impacted by the proposed Project. CDFW would like to note that CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in CNDDDB does not mean a species is not present. CDFW would also like to note that it does not appear that surveys to inform the DEIR were conducted following the *Interim Guidance*

E-19



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on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander (USFWS 2003) guidance document.

The Project site is within the known range of CTS and contains suitable habitat for the species, and CTS have been documented within both Fort Ord and Toro Park (CDFW 2024). Additionally, it does not appear that CTS surveys have been conducted since 2012, and the original surveys were potentially not adequate to detect CTS. CDFW would like to highlight the importance of the Project site for CTS connectivity, movement, and breeding. Attachment 1, Figure 3 illustrates potential areas of breeding habitat for CTS within the Project site. The highlighted areas (i.e., blue areas) within Attachment 1, Figure 3, depict (similarly to Attachment 1, Figures 1 and 2) that the Project is within an essential linkage area between Fort Ord and Toro Park for CTS breeding and movement. Any development within the Project site would likely limit genetic diversity and gene flow, impact the resiliency of CTS populations, and potentially impact entire CTS populations over time.

E-19
(cont'd)

As such, CDFW strongly recommends the SDEIR incorporate comments 1 and 2 above and revise the SDEIR and redesign the Project to adequately mitigate for impacts to CTS connectivity between Fort Ord and Toro Park. In addition, CDFW recommends the SDEIR also include the following:

E-20

Comment 8: Consultation with CDFW

Consultation is recommended with CDFW to review the 2019 correspondence and surveys, confirm whether surveys following “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) guidance document were last conducted, to provide guidance on further analyses and surveys, and to assist with determining whether the Project can avoid take.

E-21

Comment 9: CTS Surveys Prior to Project Implementation

CDFW recommends that a qualified biologist evaluate potential Project-related impacts to CTS the survey season(s) immediately prior to Project implementation using the “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) guidance document.

E-22

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Comment 10: CTS -Take Authorization

If through consultation with CDFW, surveys, or during construction, it is determined that CTS are occupying the Project site and take cannot be avoided, CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b). In the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and immediately focus on obtaining an ITP. For information regarding ITPs, please see the following link:

<https://www.wildlife.ca.gov/Conservation/CESA>. Included in the ITP would be measures required to avoid and/or minimize direct take of CTS in the Project site, as well as measures to fully mitigate the impact of the take.

E-23

Crotch's Bumble Bee and Western Bumble Bee

Since the circulation of the Project DEIR in 2012, Crotch's bumble bee (CBB) and western bumble bee (WBB) have been listed under CESA. As of September 30, 2022, CBB and WBB are candidate species under CESA, and as such, receive the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). It is illegal to import, export, take (hunt, pursue, catch, capture, or kill, or attempt engage in any of these activities), possess, purchase, or sell CBB or any part or product thereof (Fish & G. Code, §§ 86, 2080, 2085). As CBB and WBB were not included as part of the biological resource analyses in the DEIR and SDEIR and there is potential for the species to occur within the Project site, CDFW recommends the following:

E-24

Comment 11: WBB and CBB - Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support WBB and CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment

E-25

Comment 12: WBB and CBB -Focused Surveys Prior to Project Implementation

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB and WBB, and their requisite habitat features, following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023). If WBB or CBB needs to be captured or handled as part of the survey effort, please note that a 2081(a) Memorandum of Understanding (MOU) with CDFW will be needed (CDFW 2023).

E-26

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Comment 13: CBB and WBB Take Authorization

If CBB and or WBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum buffer of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project construction warrants consultation with CDFW to discuss how to avoid take.

E-27

If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

EDITORIAL NOTES AND SUGGESTIONS

Lake and Stream Alterations

Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

E-28

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

Cumulative Impacts

CDFW recommends evaluating how this Project alongside other pending projects will impact this area. A full and thorough analysis of cumulative impact is strongly recommended as to contribute to the full understanding of how this project will impact this area and the wildlife that depends on it. CDFW recommends that this cumulative impact analysis be conducted for all biological resources that will either be significantly

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or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed for the following species using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

E-29
(cont'd)

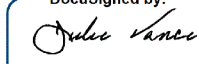
CONCLUSION

CDFW appreciates the opportunity to comment on the SDEIR to assist Monterey County in identifying and mitigating this Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed, Attachment 2, Mitigation Monitoring and Reporting Program (MMRP) table, which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

E-30

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

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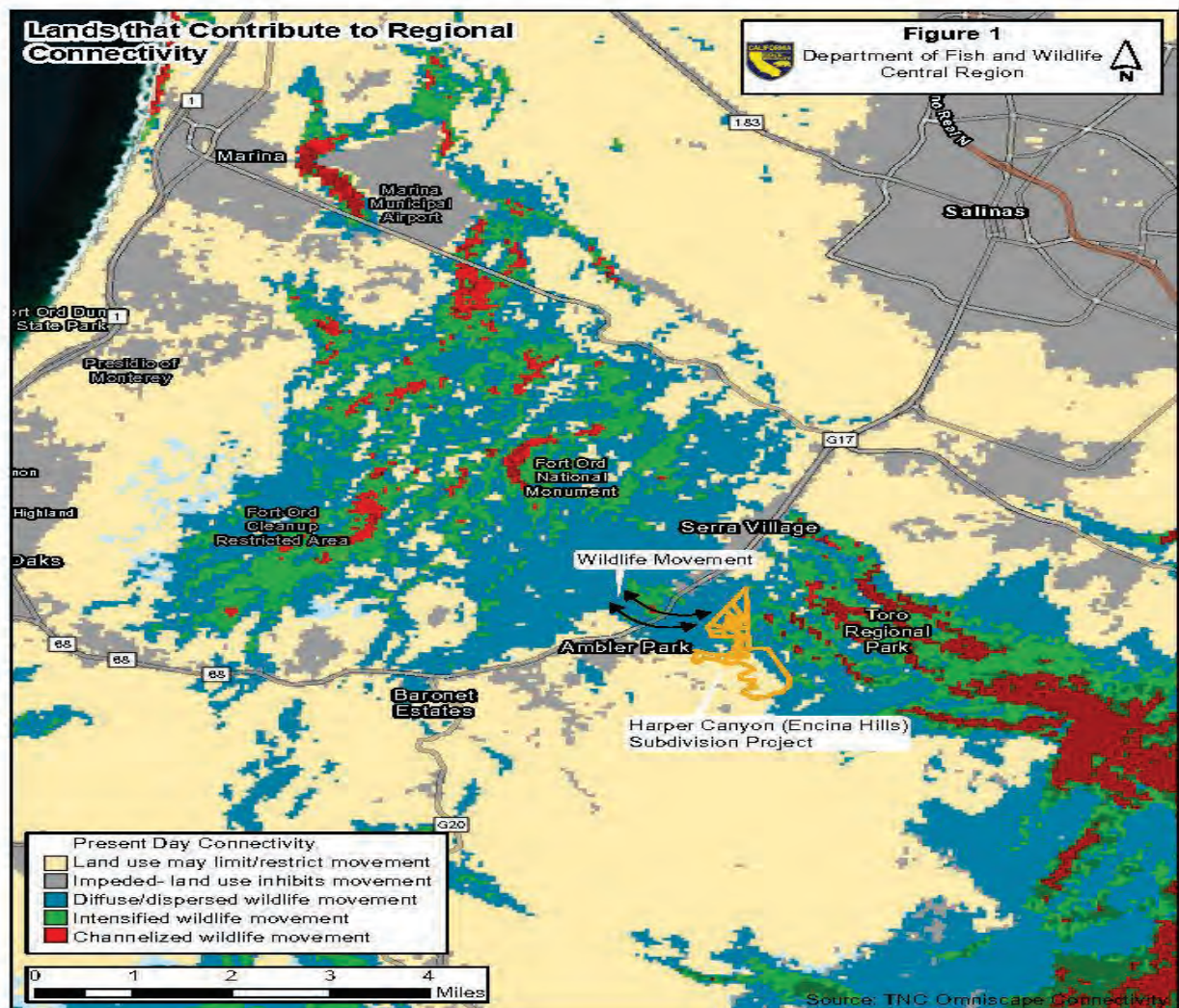
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ATTACHMENT 1

MODELED WILDLIFE CONNECTIVITY WITHIN THE PROJECT SITE

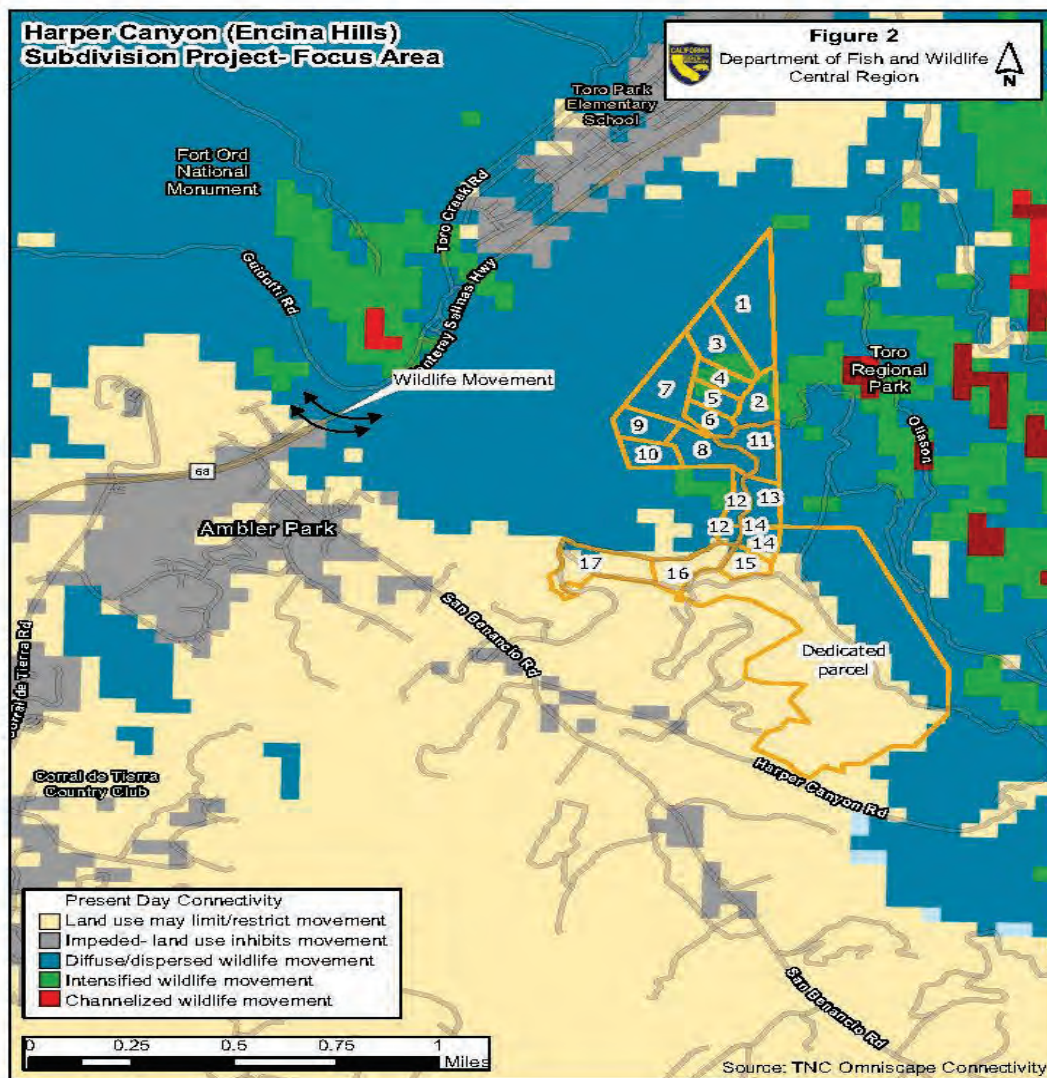
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FIGURE 1 - The Nature Conservancy (TNC) Omniscap Connectivity Web Map dataset depicting the ability for wildlife to travel through an area via limited, dispersed, intensified, or channelized movement corridors. Diffused/Dispersed movement areas (blue color) are areas with high flow having open space and limited human modification. These areas within the Project site depict that there are currently minimal barriers to wildlife moving through.



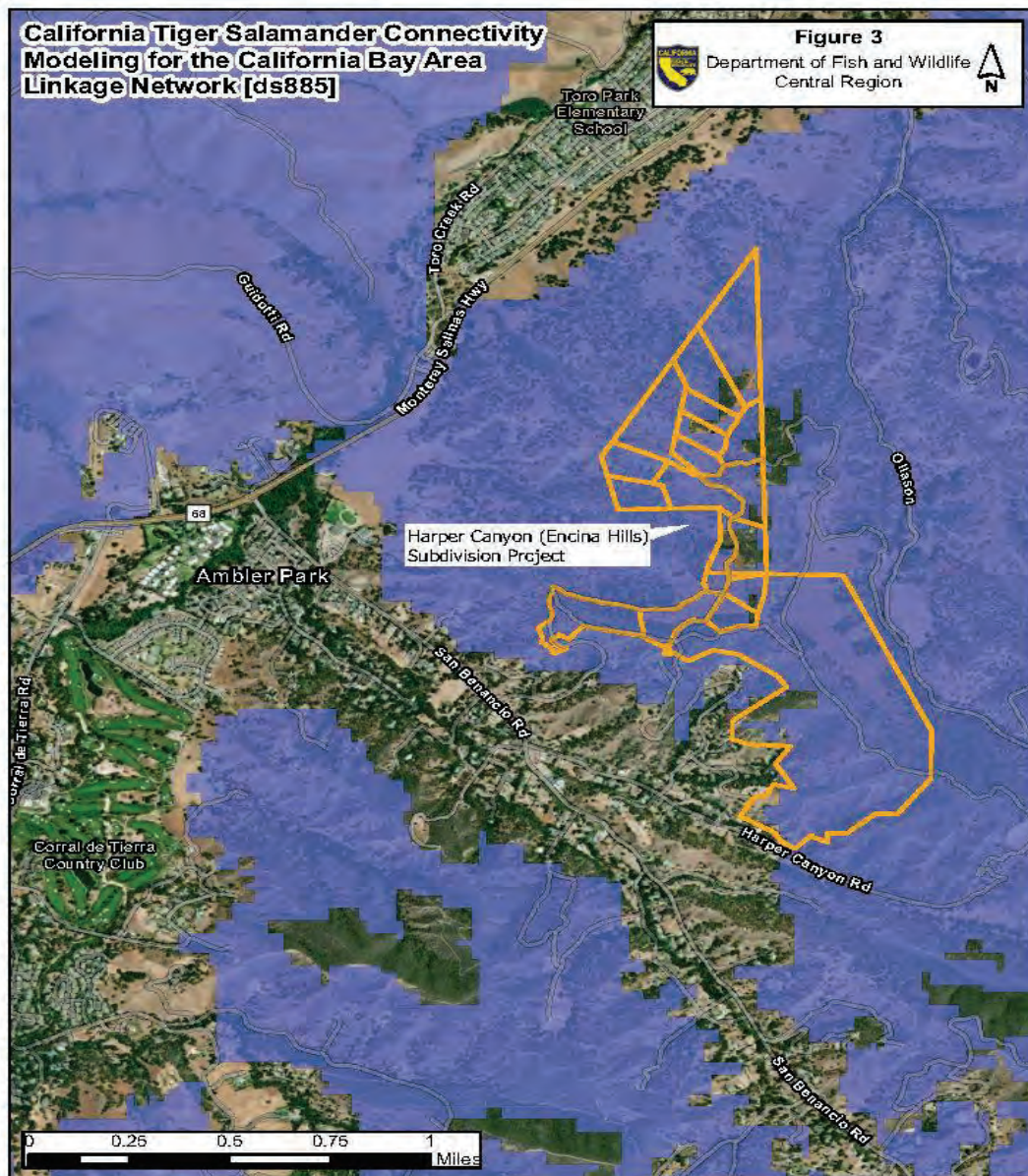
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FIGURE 2 – The Nature Conservancy (TNC) Omniscap Connectivity Web Map dataset depicting the ability for wildlife to travel within the immediate Project site via limited, dispersed, intensified, or channelized movement corridors. Diffused/Dispersed movement areas (blue color) are areas with high flow having open space and limited human modification. The areas within the Project site depict that there are currently minimal barriers to wildlife moving through.



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FIGURE 3 – The California Tiger Salamander Connectivity Modeling for the California Bay Area Linkage Network dataset depicting potential core breeding areas and patches of breeding habitat for CTS (blue color). The Project site is located within an area modeled as an essential linkage for CTS between Fort Ord and Toro Park.



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ATTACHMENT 2

RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)

Project: Harper Canyon (Encina Hills) Subdivision Project (Project)
Supplemental Draft Environmental Impact Report (SDEIR)
SCH No.: 2003071157

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Mitigation measure: Wildlife Connectivity	
Comment 1: Retaining a minimum linkage width	
Comment 2: Consultation with CDFW	
Mitigation measure: Mountain Lion	
Comment 3: no night work	
Comment 4: avoiding use of rodenticides	
Comment 5: avoidance and take	
Comment 6: Human and mountain lion conflict	
Comment 7: Awareness signage	

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Mitigation Measure: California Tiger Salamander (CTS)	
Comment 8: Consultation with CDFW	
Comment 9: Surveys Prior to Project Implementation	
Comment 10: Take Authorization	
Mitigation Measure: Crotch's Bumble Bee and Western Bumble Bee	
Comment 11: Habitat Assessment	
Comment 12: Focused Surveys Prior to Project Implementation	
Comment 13: Avoidance Take Authorization	

Letter E: California Department of Fish and Wildlife

- E-1** No response is required.
- E-2** No response is required.
- E-3** No response is required.
- E-4** The SDEIR included a comprehensive analysis of the wildlife corridor and the proposed project's potential impacts to the corridor and wildlife movement. The SDEIR determined that the project would have potentially significant impacts to wildlife movement and corridors, and identified mitigation measures to reduce impacts to a less-than-significant level. Please refer to **Response B-9**.
- E-5** The proposed project involves the construction of residences on 17 lots on approximately 164 acres, with a remainder parcel, approximately 180 acres in size that would remain as open space. As stated on page 3.3-19 of the SDEIR, the proposed project design would maintain a 180-acre open space area between Harper Creek and Toro County Park and the applicant has committed to donating approximately 154 acres of this parcel by deeding the property to the County of Monterey as an expansion of the Toro County Park pursuant to Section 66428(a)(2) of the Subdivision Map Act. As a result, this portion of the wildlife corridor identified in the CCCP study by Diamond et al. (2010) would be maintained as open space. This open space corridor with a minimum width of approximately 1,500 feet would maintain a corridor between Toro County Park and El Toro Creek allowing for safe wildlife passage. In addition, **Mitigation Measure 3.3-8a** requires the proposed development be designed so that homesites, landscaped areas, and outbuildings are located a minimum of 75 to 100 feet from drainage channels and to remove or relocate development away from the riparian corridor to allow sufficient wildlife movement and access and preserve other biological resources and habitat. No new development or improvements, including fencing, shall occur within 200 feet of the riparian edge. The project applicant shall contract with a qualified biologist to delineate the riparian habitat boundaries. Further, **Mitigation Measure 3.3-8f** requires the preparation and implementation of a Wildlife Corridor Plan (WCP) in order to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument. The WCP would include requirements for wildlife-friendly fencing, lighting, and implementation of best management practices to avoid blocking the wildlife corridor. In addition, **Mitigation Measure 3.3-8f** has been revised to include an additional measure to require a wildlife corridor expert to identify corridors of adequate width that connect Toro County Park to the Fort Ord National Monument where no development will be permitted and will be depicted on the final map. All other project design features and identified mitigation from the 2015 EIR and SDEIR would reduce impacts to wildlife corridors and movement through the project site by allowing unimpeded access for wildlife along drainage channels, trails, and riparian corridors.

The comment acknowledges that the mitigation measures identified in the SDEIR protect a portion of the El Toro Creek corridor. However, the comment expresses concern that without protection of the surrounding movement pathways (identified in Figures 1 and 2 of the attachment to Letter E), that project would not adequately mitigate for the impacts to wildlife movement. As stated in this response, the proposed project would provide additional

protection of the surrounding movement pathways by maintaining a 180-acre open space parcel, donating 154 acres of that parcel to expand Toro County Park. Portions of this parcel fall within the diffused/dispersed movement areas, which are those categorized by The Nature Conservancy as areas with high flow (e.g., areas of open space with limited human modification). It should be noted that the other surrounding movement pathways identified as diffused/dispersed movement areas in Figures 1 and 2 include the Fort Ord National Monument, Toro County Park, and Marks Ranch, which are currently protected as open space. Lastly, as a mitigation requirement, corridors through the project site will be identified in the final map where no development shall occur.

- E-6** The referenced study, the *Central Coast Connectivity Project Northern Monterey County Linkages: Report on the Mount Toro to Fort Ord Reserve Study 2008-2009* (CCCP) for the Big Sur Land Trust (BSLT), was reviewed and summarized in the SDEIR (**Section 3.3.1, Environmental Setting**, beginning on page 3.3-1). This, and other referenced studies, present comprehensive data on the wildlife species, their movement, the wildlife corridor and linkages, and threats in the project area, which provide context to the public and decision-makers to understand potential project impacts. The proposed project is focused on wildlife and preserving connectivity, as described in **Response E-5**.
- E-7** Please refer to **Response E-5**.
- E-8** Please refer to **Response E-5**.
- E-9** Please refer to **Response E-5**.
- E-10** CDFW recommends that the SDEIR be revised and the project site redesigned to allow for a minimum 1.2-mile-wide corridor through the movement areas identified in attachment to their comment letter. It is important to note that the distance from Lot 17 to Lot 1 within the project site is approximately 6,800 feet (approximately 1.3 miles), and redesigning the project to include the requested 1.2-mile corridor would not be feasible.
- The wildlife corridor analysis in the SDEIR included a review of scientific literature on the recommended movement corridor widths, which identified a wide range of recommended widths and studies suggest that there are “no hard and fast rules for corridor width design; educated but subjective decisions must be made” (page 3.3-16). Many studies concurred that corridors should be at least 328 feet to provide for most wildlife movement and habitat functions (page 3.3-16). Given the permeability for movement provided by project design, including creating and maintaining a minimum 1,500-foot-wide corridor of open space, and implementation of the identified mitigation measures including the establishment of corridors through the site, the proposed project would not significantly restrict wildlife movement between Fort Ord and Toro Park.
- E-11** Please refer to **Responses E-5** and **E-10**; species-specific responses are included in **Responses E-12** through **E-27**.
- E-12** Please refer to **Responses A-6, E-5, and E-10**.
- E-13** The SDEIR analyzed potential impacts to wildlife corridors and movement that may result from implementing the proposed project, in accordance with the Opinion. The SDEIR determined that the project would have potentially significant impacts to wildlife movement and corridors, and identified mitigation measures to reduce impacts to a less-than-significant level. Please refer to **Responses A-6, B-9, E-5, and E-10**. Please also refer to **Response A-5**

describing the analysis of project impacts to mountain lions. In response to comments on the SDEIR as they relate to wildlife movement and corridors, additional mitigation has been added to **Mitigation Measure 3.3-8f** as a component of the Wildlife Corridor Plan and **Mitigation Measure 3.3-8g** has been added to further reduce impacts to mountain lion movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.

- E-14** In response to comments on the SDEIR as they relate to wildlife movement and corridors, additional mitigation, including the measure recommended in this comment, has been added to **Mitigation Measure 3.3-8f** as a component of the Wildlife Corridor Plan to further reduce impacts to the movement of mountain lions and other wildlife species. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- E-15** **Mitigation Measure 3.3-8f** in the SDEIR includes the following best management practice: “Reduce or restrict the use of pesticides, insecticides, herbicides, and rodenticides, and educate the public about the effects these chemicals have throughout the ecosystem,” which minimizes impacts to mountain lion and other wildlife species per the recommendation of CDFW.
- E-16** The SDEIR addressed the presence of mountain lions at the project site in **Section 3.3, Biological Resources**, beginning on page 3.3-2 of the SDEIR. Mountain lions were included as a focal species in the DD&A Wildlife Study (page 3.3-8 of the SDEIR) and identified as present at the project site (**Table 3.3-2** and pages 3.3-14 through 3.3-16 of the SDEIR). The mitigation measures from the 2015 EIR (**Mitigation Measures 3.3-2a** through **3.3-2d**, **Mitigation Measures 3.3-3a** through **3.3-3c**, and **Mitigation Measures 3.3-4** through **3.3-6**) and **Mitigation Measures 3.3-8a** through **8f** from the SDEIR would avoid and reduce impacts to all wildlife species and their movement, including mountain lions.
- The take prohibition of the California Endangered Species Act (CESA) specifically states that no person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts (California Fish and Game Code, Section 2080; CCR, tit. 14, Section 783.1). In this context, the term “take” is defined by Fish and Game Code Section 86 as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.
- Based on the definition of take, CESA regulations, project design, and required mitigation, the proposed project is unlikely to result in take of mountain lions. However, to further reduce impacts to the movement of mountain lions and avoid take of this species, the requirement to conduct pre-construction surveys has been added (**Mitigation Measure 3.3-8g**). Please refer to **Chapter 4.0, Changes to the SDEIR**.
- E-17** The mitigation measures from the 2015 EIR (**Mitigation Measures 3.3-2a** through **3.3-2d**, **Mitigation Measures 3.3-3a** through **3.3-3c**, and **Mitigation Measures 3.3-4** through **3.3-6**) and **Mitigation Measures 3.3-8a** through **8g** from the SDEIR and Final SDEIR, combined with the project design, would avoid and reduce impacts to all wildlife species and their movement, including mountain lions. These measures also avoid and reduce impacts that may result from human and mountain lion conflict. Additionally, the project includes very low density housing (17 units on 154 acres).
- E-18** In response to comments on the SDEIR as they relate to wildlife movement and corridors, additional mitigation, including the measure recommended in this comment, has been added

- to **Mitigation Measure 3.3-8f** as a component of the Wildlife Corridor Plan to further reduce impacts to mountain lion movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- E-19** As described in **Section 1.1.2, Project Litigation and Resolution**, of the SDEIR, as a response to the Court of Appeal opinion, a supplemental draft EIR was requested to evaluate the proposed project's potential impacts on the wildlife corridors in the vicinity of the proposed project site. The SDEIR was prepared pursuant to Section 15234 of the CEQA Guidelines, which only requires additional environmental review of portions of the 2015 EIR that the Court of Appeal found did not to comply with CEQA, consistent with principles of res judicata. The County need not expand the scope of analysis on remand beyond that specified by the Court. Therefore, the SDEIR only addresses portions of the 2015 EIR determined not to comply with CEQA, including portions of **Section 3.3, Biological Resources** (i.e., the analysis of impacts to wildlife corridors and movement). All other portions of the 2015 EIR and corresponding findings remain valid.
- However, in response to this comment as it relates to the movement of California tiger salamander, additional mitigation has been added (**Mitigation Measure 3.3-8i**) to further reduce impacts to wildlife movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- Regarding CTS and other wildlife species movement, gene flow, and the recommended width of wildlife corridors, please refer to **Response E-10**.
- E-20** Please refer to **Response E-10** and **E-11**.
- E-21** In response to this comment as it relates to the movement of California tiger salamander, additional mitigation has been added (**Mitigation Measure 3.3-8i**) to further reduce impacts to wildlife movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- E-22** In response to this comment as it relates to the movement of California tiger salamander, additional mitigation has been added (**Mitigation Measure 3.3-8i**) to further reduce impacts to wildlife movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- E-23** In response to this comment as it relates to the movement of California tiger salamander, additional mitigation has been added (**Mitigation Measure 3.3-8i**) to further reduce impacts to wildlife movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- E-24** Comment is acknowledged. In accordance with the Opinion, the SDEIR only addresses those portions of the 2015 EIR determined not to comply with CEQA (i.e., those that relate to wildlife corridor and movement issues). All other portions of the 2015 EIR and corresponding findings remain valid, including the analysis of impacts to special-status species in **Section 3.3, Biological Resources**. Please refer to **Response B-3**.
- E-25** In response to comments on the SDEIR as they relate to wildlife movement and corridors, additional mitigation, including the measure recommended in this comment, has been added (**Mitigation Measure 3.3-8h**) to further reduce impacts to wildlife movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- E-26** In response to comments on the SDEIR as they relate to wildlife movement and corridors, additional mitigation, including the measure recommended in this comment, has been added (**Mitigation Measure 3.3-8h**) to further reduce impacts to wildlife movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.

- E-27** In response to comments on the SDEIR as they relate to wildlife movement and corridors, additional mitigation, including the measure recommended in this comment, has been added (**Mitigation Measure 3.3-8h**) to further reduce impacts to wildlife movement and corridors. Please refer to **Chapter 4.0, Changes to the SDEIR**.
- E-28** The proposed project would not result in impacts to the bed, bank, or channel of any river, stream, or lake that are subject to CDFW's jurisdiction. Therefore, the issuance of a Lake or Streambed Alteration Agreement is not required.
- E-29** Please refer to **Response B-3**.
- E-30** No response is required.

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Chapter 4.0 Changes to the SDEIR

4.1 Introduction

The following section provides revisions to the text of the SDEIR, in amendment form. The revisions are listed by page number. All additions to the text are presented in underline, and all deletions are shown in ~~strikeout~~.

4.2 Changes to Section 3.3, Biological Resources

Page 3.3-4 **Figure 3.3-2** is revised as shown on the following page.

Page 3.3-20 **Mitigation Measure 3.3-8a** is revised as follows:

MM 3.3-8a Consistent with mitigation measure **Mitigation Measure (MM) 3.3-2d**, the project applicant shall design the proposed development on the project site so that homesites, landscaped areas, and outbuildings are located a minimum of 75 to 100 feet from the top of bank of active drainage channels and to remove or relocate development away from the riparian corridor to allow sufficient wildlife movement and access and preserve other biological resources and habitat. Additionally, no new development or improvements, including fencing, shall occur within 200 feet of the riparian edge. The project applicant shall contract with a qualified biologist to delineate the riparian habitat boundaries. This mitigation measure shall be placed as a note on each final map and in the CC&Rs. Riparian habitat boundaries and drainage channels and associated buffer areas where development is prohibited shall be depicted on each final map and submitted to Monterey County Housing and Community Development for review and approval.

Page 3.3-20 **Mitigation Measure 3.3-8b** is revised as follows:

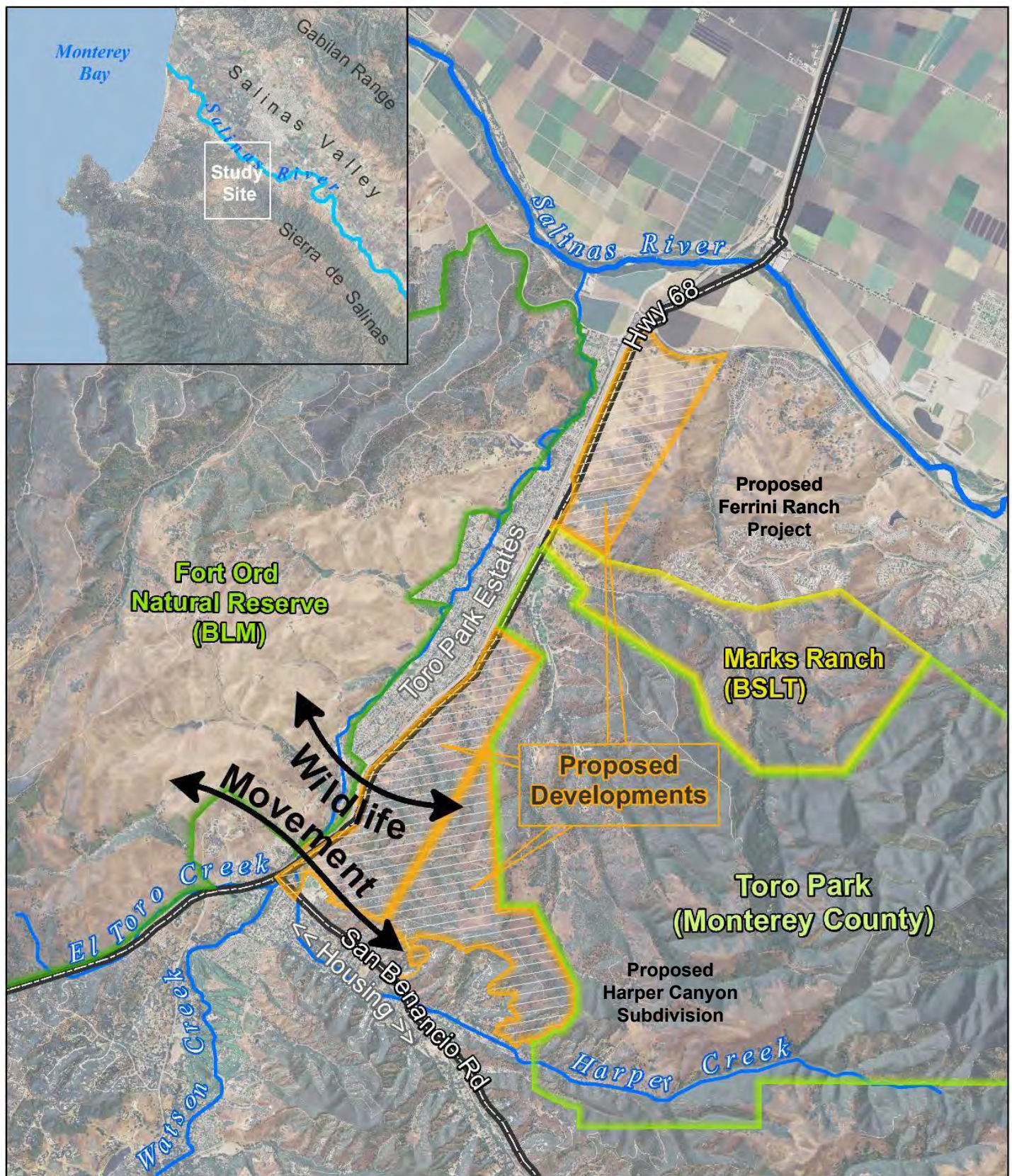
MM 3.3-8b Prior to recordation of the final map, CC&Rs shall be established for the subdivision the limit the use and installation of solid barrier fencing beyond future building envelopes and yard areas. Fencing will be designed to allow for wildlife movement but still contain cattle and allow for continued grazing on open space lands, as applicable.

Page 3.3-20 **Mitigation Measure 3.3-8d** is revised as follows:

MM 3.3-8d Road lighting will be restricted to that necessary to illuminate the road surface and will not be directed into open space areas. This mitigation measure shall be placed as a note on each final map and in the CC&Rs. Proposed lighting will be depicted on each final map and submitted to Monterey County Housing and Community Development for review and approval.

Page 3.3-20 **Mitigation Measure 3.3-8f** is revised as follows:

MM 3.3-8e Any culverts or bridges over drainages will be designed with sufficient capacity to allow for small animal (generally a few inches high and up to 16 inches long) passage (generally a cross-sectional area of 2 to 4 feet for the structure entrance is recommended for small mammals). This mitigation measure shall be placed as a note on each final map and in the CC&Rs. Proposed culverts or bridges over drainages will be



Source: Connectivity for Wildlife, 2010

0 Miles 1



depicted on each final map and submitted to Monterey County Housing and Community Development for review and approval.

Page 3.3-20

Mitigation Measure 3.3-8f is revised as follows:

MM 3.3-8f In order to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument, the owner/applicant shall submit a Wildlife Corridor Plan (WCP) for all the lots on the vesting tentative map. The WCP shall be prepared in consultation with a qualified biologist with expertise in wildlife connective planning and is subject to approval by Monterey County Housing and Community Development. The WCP shall be depicted on the final map with areas dedicated to wildlife movement dedicated as open space and shall identify measures to ensure effective wildlife movement that apply to subdivision improvements to be implemented through subdivision improvement plans and measures that would be made enforceable restrictions or conditions of development of individual lots within the subdivision. Measures shall include, but areis not limited to, the following:

- The wildlife corridor expert shall review the findings of the camera trap study prepared by Denise Duffy and Associates, Inc. for this project as well as other relevant information and studies on wildlife movement in the area and shall identify corridors of adequate width (i.e., minimum 328 feet or 100 meters) that connect Toro County Park to the east with former Fort Ord/Fort Ord National Monument to the west through the project site. Corridors may include, but are not limited to, the established buffer areas along drainage channels and riparian habitat, dirt trails and paths, or other movement corridors identified by the wildlife corridor expert. Corridors identified shall be depicted on the final map and no development shall be permitted within these corridors. If the corridors are bisected by roads or other subdivision improvements, the applicant/owner shall identify how these improvements will not impede wildlife movement or provide for adequate under- or overcrossings where appropriate. If the corridors render any of the sites undevelopable, the applicant shall eliminate or move lots within the subdivision that conflict with the identified corridor.
- ~~Fencing: limit fencing height (how tall as well as ground clearance), ensure adequate opening in fencing (e.g., post and rail), identify fence types, and identify areas where no fencing will be allowed (e.g., areas adjacent to natural drainage courses). The WCP may allow limited solid fencing in the developed areas within the building envelopes, which are required to be designated in accordance with adopted **Mitigation Measure 3.1-2b**. Fencing specifications shall follow recommendations from "A Landowner's Guide to Wildlife Friendly Fences: How to Build a Fence with Wildlife in Mind" (available _____ at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161708#:~:text=We%20recommend%3A&text=A%20top%20wire%20or%20rail,%E2%80%A2%20Preferably%2C%20no%20vertical%20stays>).~~
- ~~Lighting: incorporate wildlife friendly lighting and identify placement of lighting that minimizes impacts to wildlife.~~
- ~~Providing alternative corridors outside of the single family residence and infrastructure development envelopes by limiting access to existing cattle paths and other wildlife trails could help to lessen this impact.~~

- Best Management Practices have been developed for wildlife corridors (Beier et al. 2008) and should be considered for inclusion in the WCP, made a note on the final map, and included as enforcement covenants or restrictions on development of lots:
 - Fencing: limit fencing height (how tall as well as ground clearance), ensure adequate opening in fencing (e.g., post and rail), identify fence types, and identify areas where no fencing will be allowed (e.g., areas adjacent to natural drainage courses). The WCP may allow limited solid fencing in the developed areas within the building envelopes, which are required to be designated in accordance with adopted **Mitigation Measure 3.1-2b**. Fencing specifications shall follow recommendations from “A Landowner’s Guide to Wildlife Friendly Fences: How to Build a Fence with Wildlife in Mind” (available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161708#:~:text=We%20recommend%3A&text=A%20top%20wire%20or%20rail,%E2%80%A2%20Preferably%2C%20no%20vertical%20stays.)).
 - Lighting: incorporate wildlife friendly lighting and identify placement of lighting that minimizes impacts to wildlife. Minimize impacts of outdoor night lighting by regulating brightness, shielding, light direction, location, etc.
 - To minimize impacts to the movement of mountain lions and other wildlife species during construction, no night work shall occur during construction.
 - Prohibit intentional planting of invasive plants.
 - Provide crossing structures on all thoroughfares and maintain them for access.
 - Maintain or improve native riparian vegetation.
 - Encourage small building footprints on large parcels with a minimal road network.
 - Combine habitat conservation with compatible public goals such as recreation and protection of water quality.
 - Develop a public education campaign to inform those living and working within the linkage area about living with wildlife, and the importance of maintaining ecological connectivity; encourage keeping pets indoors/accepting depredation on domestic animals as part of rural lifestyle.
 - Discourage residents and visitors from feeding or providing water for wild mammals, or otherwise allowing wildlife to lose their fear of people.
 - Install wildlife-proof trash and recycling receptacles and encourage people to store their garbage securely.
 - Do not install artificial night lighting on rural roads that pass through the linkage design. Reduce vehicle traffic speeds in sensitive locations by speed bumps, curves, artificial constrictions, and other traffic calming devices.
 - Encourage the use of wildlife-friendly fencing on property and pasture boundaries, and wildlife-proof fencing around gardens and other potential wildlife attractants.
 - Discourage the killing of “threat” species such as rattlesnakes.

- Reduce or restrict the use of pesticides, insecticides, herbicides, and rodenticides, and educate the public about the effects these chemicals have throughout the ecosystem.
- Encourage keeping pets indoors/accepting depredation on domestic animals as part of rural lifestyle.
- Signage will be installed at trailheads and posted within any community open space within the residential development identifying that the area is located in mountain lion habitat. Additional information from CDFW's Keep Me Wild Mountain Lion brochure may be included on the sign: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=57523&inline>.

This mitigation measure shall be placed as a note on each final map and in the CC&Rs. Prior to recording the first final map, the Owner/Applicant shall submit the WCP to Monterey County Housing and Community Development for review and approval. Recommendations of the WCP shall be incorporated in the subdivision improvements plans or made enforceable conditions of development for individual lots in the subdivision.

Page 3.3-22

Mitigation Measure 3.3-8g is added as follows:

MM 3.3-8g Prior to any ground-disturbing activities at the project site, the project applicant shall retain a qualified biologist to conduct pre-construction surveys and implement avoidance and minimization measures for any identified mountain lion dens. Prior to any ground-disturbing activity, regardless of the time of year, a qualified biologist will conduct preconstruction surveys for known or potential mountain lion dens within suitable habitat located within the work area and within 600 meters of the work area. These surveys will be conducted no less than 14 days and no more than 30 days prior to the start of ground-disturbing activities in a work area. Known and potential mountain lion den types will be defined as follows:

- Known den. Any existing natural den or human-made structure that is used or has been used at any time in the past by a mountain lion. Evidence of use may include historical records; past or current radio telemetry or tracking study data; mountain lion sign, such as tracks, scat, and/or prey remains; or other reasonable proof that a given den is being or has been used by a mountain lion.
- Potential den. Any thick vegetation, boulder piles, rocky outcrops, or undercut cliffs within the species' range for which available evidence is insufficient to conclude that it is being used or has been used by a mountain lion. Potential dens will include the following characteristics: (1) refuge from predators (coyotes, golden eagles, other mountain lions) or (2) shielding of the litter from heavy rain and hot sun.

The qualified biologist will use location-specific survey methods to identify known and potential dens. The survey method will consider topography, vegetation density, safety, and other factors. Surveys will be conducted by a qualified biologist (i.e., a biologist with demonstrated experience in mountain lion biology, identification, and survey techniques) and may involve the establishment of camera stations, scent stations, pedestrian surveys (looking for tracks, caches, etc.), or other appropriate methods. Survey methods used will be designed to avoid the disturbance of known or potential dens to the extent feasible. If

known or potential mountain lion dens are identified or observed during preconstruction surveys, mountain lion dens will be assumed to have kittens present until the qualified biologist can document that they are not present and/or that the den is not being used. A non-disturbance buffer of at least 600 meters (1,970 feet) will be established around the known or potential den until the qualified biologist can document and confirm that the den is not occupied. If the den is determined to be occupied, the 600-meter non-disturbance buffer will be maintained until the den is confirmed abandoned by the qualified biologist. The 600-meter non-disturbance buffer shall remain in place for two (2) months after the initial survey and a re-survey at that time shall be conducted by the qualified biologist to determine if the female has abandoned the den and relocated the kittens. The County shall consult with CDFW on detection of an active den. Construction may proceed if the qualified biologist determines that a reduced buffer could be implemented because of topography or other factors, or that the den is not being used by mountain lions.

If avoidance is not feasible, an incidental take permit may be required.

Page 3.3-22

Mitigation Measure 3.3-8h is added as follows:

MM 3.3-8h Prior to ground-disturbing activities at the project site, the project applicant shall retain a qualified biologist will conduct a habitat assessment to determine if the project site and immediate surrounding vicinity contain suitable habitat for the western bumble bee (WBB) and Crotch's bumble bee (CBB). Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs, will be documented as part of the assessment.

If potentially suitable habitat is identified, a qualified biologist will conduct focused surveys for WBB and CBB and their requisite habitat features, following the methodology outlines in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Surveys (2023). IF WBB or CBB needs to be captured or handled as part of the survey effort, a 2081(a) Memorandum of Understanding (MOU) will be obtained from CDFW.

If WBB and/or CBB are detected during surveys, all small mammal burrows and thatched/bunch grasses will be avoided during ground-disturbing activities by a minimum buffer of 50 feet to avoid take. If ground-disturbing activities will occur during the overwintering period (October through February), the applicant will consult with CDFW to discuss how to implement project activities and avoid take. If take cannot be avoided, an incidental take permit may be required.

Page 3.3-22

Mitigation Measure 3.3-8i is added as follows:

MM 3.3-8i The project applicant shall retain a qualified biologist to evaluate potential impacts to California tiger salamander (CTS) the survey season(s) immediately prior to project implementation (i.e., ground-disturbance) following the "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (U.S. Fish and Wildlife, 2003). If through consultation with the CDFW, U.S. Fish and Wildlife Service (USFWS), surveys, or during construction, it is determined that CTS are occupying the project site and take cannot be avoided, the applicant shall obtain an incidental take permit pursuant to the state and federal Endangered Species Acts. In the absence of protocol-level surveys, the applicant

can assume presence of CTS within the project site and immediately focus on obtaining an incidental take permit.

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