



January 19, 2021

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Sent via email to Lynn.Coster@waterboards.ca.gov

RE: Comments on Tentative Waste Discharge Requirements Order for Vehicle Inspection Center (WDID #5A31CR00535)

Dear Ms. Coster,

Thank you for the opportunity to provide comments on the Section 401 Water Quality Certification Application for the Vehicle Inspection Center Project, WDID #5A31CR00535 (“VIC” or the “Project”) in Placer County. The California Native Plant Society (“CNPS”) is a non-profit environmental organization with over 10,000 members. The CNPS Redbud Chapter has worked for almost 30 years to protect the native plant heritage of Western Placer and Nevada Counties and to preserve its flora for future generations. Redbud promotes sound plant science as the backbone of effective protection for our botanical resources. With over 400 members, Redbud actively participates in administrative reviews of proposed local projects impacting our rich and diverse native plant communities. CNPS and its local chapters work closely with decision-makers, scientists, and local planners to advocate for well-informed and environmentally friendly policies, regulations, and land management practices.

The Central Valley Regional Water Quality Control Board (“Central Valley Water Board”) has issued a tentative Waste Discharge Requirements (“WDR”) Order (“Tentative Order”) for the VIC and will hold a public hearing on the Tentative Order on February 18/19, 2021.¹

CNPS believes that the tentative WDR Order is premature and does not meet Water Board requirements. The Water Board has a policy of ensuring “no overall net loss” of wetlands and “long-term net gain in the quantity, quality, and permanence of wetlands acreage and values.” Issuance of a WDR for the VIC is not consistent this policy.

¹ On October 5, 2020, the USACE disclaimed jurisdiction under the Clean Water Act (“CWA”), and the CWA Section 401 certification requirements no longer apply. The WDR is being issued under Section 13260 of the California Water Code.

The VIC will have detrimental effects on wetlands and the species they support, and its environmental impacts have not been adequately analyzed. Because the environmental analysis and compensatory mitigation proposed for the Project are demonstrably insufficient, CNPS urges the Central Valley Water Board to withdraw the Tentative Order and deny the application until the following issues have been rectified.

Project Description and Impacts

The VIC is a 190,000 square foot automobile repair, resale yard and trucking center with capacity to hold 10,500 vehicles and parking for 850 employees. The Project site is located on 111.6 acres of land within the Sunset Area Plan of unincorporated Placer County. A total of 7.725 acres of waters of the U.S. (wetlands, vernal pools, seasonal marsh, seasonal wetland, and waters/creek) cannot be avoided and will be permanently impacted by the Project. It is expected that water quality will be impacted by soil erosion and construction runoff leading to sedimentation and water quality impairment in downslope aquatic resources. “The proposed Project site would predominantly consist of a paved parking lot to facilitate the storage of the vehicles. In sum, the Project would include ±5.5 acres of concrete, 33.5 acres of light-duty asphalt, 23 acres of standard duty asphalt, 3 acres of heavy-duty asphalt, 1,890 sf for fuel station paving, and 848 sf for fuel tank paving.” (Tentative Order, p. 3). Approximately 16 acres of the Project site will be landscaped.

Throughout the 401 Application the Applicant states that 7.725 acres of waters of the U.S. cannot be avoided and will be impacted. However, the Applicant’s USACE Letter of Permission Application states that the Project will also impact natural land cover types defined by the Placer County Conservation Plan (“PCCP”): 61.451 acres of Vernal Pool Complex and 12.422 acres of Marsh Complex. (401 Application Attachment E, p. 6). The Project Applicant proposes to purchase PCCP mitigation credits to compensate for Project impacts to these PCCP Land Cover Types.

Botanical Surveys for Special Status Plant Species Have Not Been Conducted

An Environmental Impact Report (“EIR”) was not prepared for the VIC because Placer County determined that “the Project is consistent with the existing SAP/PRSP,” and instead relied on the EIR that was prepared for the Sunset Area Plan/Placer Ranch Specific Plan (“SAP/PRSP”) to determine the environmental impacts of the VIC. The only additional environmental review the Project received was preparation of an Environmental Checklist to evaluate whether any “changed conditions” may result in conclusions different from those in the SAP/PRSP FEIR. The county determined that the VIC is consistent with the SAP/PRSP EIR and that no additional environmental review was needed. (Tentative Order, p. 8).

Reliance on the SAP/PRSP EIR is misplaced because, according to the EIR for the SAP/PRSP, “botanical surveys have not been conducted over the entire [Sunset Area Plan] area and protocol-level surveys have not been conducted in the [Placer Ranch Specific Plan] area since 2005,” therefore “it is possible that additional special-status plant species occur in suitable habitats within the project area or that the previously documented species occur at additional locations.” (SAP/PRSP EIR, 4.4-12). There are 10 special status-plant species that have potential to occur in the SAP area (SAP/PRSP EIR, Table 4.4-2). Two of these species, Bogg’s Lake

hedge hyssop (*Gratiola heterosepala*) and Sacramento Orcutt grass (*Orcuttia viscida*) are endangered under the California Endangered Species Act, and Sacramento Orcutt grass is endangered under the federal Endangered Species Act. Because protocol-level botanical surveys have not been conducted within the SAP area, it is impossible to know whether these 10 protected species or any other sensitive plant species are present and will be impacted by the VIC. The Tentative Order, including the CEQA Findings of Fact in Attachment C, do not address impacts to any special-status or sensitive plant species or how those impacts might be mitigated.

According to the 401 Application, a Biological Resources Assessment (“BRA”) was prepared in January 2020 and revised in April 2020, but was not made available with the application materials unless specifically requested by the Central Valley Water Board. If referenced in the Application, the BRA must be included both to enable Board review and also to permit public comment. The assessment involved a 2019 field reconnaissance and query of the California Natural Diversity Database, USFWS Information for Planning and Consultation Report, and the CNPS Inventory of Rare and Endangered Plants. It does not appear that protocol-level surveys were performed with respect to the 2020 BRA, which is not sufficient to determine the presence or absence of protected species. Review of existing databases is not a substitute for comprehensive, protocol-level surveys.

The Tentative Order for the VIC should not be approved until protocol-level, full-floristic surveys of the Project site have been conducted and there is evidence that the Project will not degrade the quality of wetlands and the sensitive plants and habitats that they support. This is necessary to comply with the Central Valley Water Board’s policy of preserving the quality of aquatic resources.

Inadequate CEQA Analysis

As discussed above, Placer County declined to do a full EIR for the VIC because it “determined the Project is consistent with the existing SAP/PRSP and zoning and will not result in any new or more severe environmental effects that are peculiar to the Project or parcels or which were not previously analyzed as significant effects in the SAP/PRSP FEIR.” (Tentative Order, p. 8). Because no EIR was prepared, and the SAP EIR provided only a program level of detail regarding biological resources, the CEQA analysis performed for the VIC is inadequate.

The SAP/PRSP EIR states that “All biological resources impacts are analyzed at a *program level* of detail for the net SAP area.” (SAP/PRSP EIR, 4.4-30) (emphasis added). Placer County subsequently declined to prepare a project-level environmental review of the VIC area, based on the assumption that the impacts of the VIC were captured and analyzed by the SAP/PRSP EIR. This assumption is incorrect. A program-level environmental review is not sufficient to conclude that the environmental impacts of the VIC have been mitigated, especially in light of the fact that protocol-level surveys of the SAP area have not been conducted. The SAP EIR on which the Tentative Order is based even acknowledges that “the exact acreage of aquatic resources that would be lost because of implementing the net SAP cannot be determined until site specific analyses are completed for future projects.” (SAP/PRSP EIR, 4.4-35). **A site specific CEQA analysis has not been completed for the VIC.** To the extent the Tentative Order is based on CEQA Findings of Fact incorporated from the SAP/PRSP EIR, it is insufficient to ensure that acres or quality of aquatic resources will not be lost or degraded by the VIC.

The significant and unavoidable environmental impacts that will result from the VIC merit a full project-level EIR. Instead, there are only conclusory assurances that there are no project-specific environmental effects or potentially significant off-site impacts and cumulative impacts which are peculiar to the project or its site that were not discussed in the FEIR.

Without a full environmental review, it is impossible to know the full scope of immediate, cumulative, and downstream effects of the VIC. Without understanding the impacts of the Project through an appropriate CEQA analysis, the Central Valley Board cannot fulfill its mission of ensuring no net loss of aquatic resources.

The Applicant must also clarify the discrepancies in the Application materials related to acres of impacts to aquatic resources. The Tentative Order imposes requirements for mitigation of 7.725 acres of wetlands, vernal pools, stream channel, seasonal wetland, and seasonal march. (Tentative Order, p. 6). Yet, the Application for a Letter of Permission to the USACE states that 61.451 acres of Vernal Pool Complex and 12.422 acres of Marsh Complex will be impacted. The issuance of a WDR is premature and unwarranted until the Central Valley Water Board has determined the accurate number of acres of aquatic resources will be impacted and ensured that those impacts will be mitigated. If the number and nature of aquatic resources that will be impacted have not been identified, it is impossible to ensure that the impacts will be mitigated.

Inadequate Compensatory Mitigation

Despite repeated references to the PCCP and the Western Placer County In-Lieu Fee Program (“WPILF”) throughout the Application, the proposed mitigation measures for the VIC are vague, speculative, and do not seem reasonably certain to mitigate for the impacts the Project will have on vernal pools, wetlands and other sensitive aquatic resources.

It is unclear based on the 401 Application, Tentative Order, and the January 13, 2021 information session hosted by the Central Valley Water Board whether the Applicant has submitted an application through the PCCP, is in compliance with PCCP procedures and requirements, or has taken the necessary steps to acquire mitigation credits through the WPILF – though it was made clear on January 13, 2020 that the Project is not being permitted through the PCCP. References in the Tentative Order to mitigation through the PCCP are vague and non-committal, (see Tentative Order Attachment C, Mitigation Measure 4.4-6a), and the location of compensatory mitigation sites is listed as “TBD” in the Tentative Order (401 Application, Attachment B). Without more specific identification of mitigation sites, it cannot be determined whether the mitigation credits purchased are commensurate and ecologically suitable to compensate for the types of habitat that will be lost as a result of the VIC.

Furthermore, the Tentative Order does not justify the significant and unavoidable impacts to wetlands and other waters of the state that will result from the VIC. The Tentative Order states:

“The PCCP has been adopted and will likely reduce significant impacts to a greater degree than project-by-project mitigation by developing a large, managed and monitored reserve area that will provide wetland and species habitat restoration, open space and agricultural conservation in perpetuity, rather than smaller, more fragmented and isolated reserves surrounded by urban development. Because no part of the Project is located within the jurisdiction of the City of Roseville, the uncertainty relating to timing and

implementation of mitigation for off-site improvements that was documented in the FEIR is not applicable to this Project. **Therefore, while applicable mitigation measures and Order requirements will reduce significant impacts on wetlands and other waters of the state, given any remaining uncertainty, this impact would remain potentially significant and unavoidable.** A statement of overriding considerations for this impact is presented below.” (Tentative Order, Attachment C, p. 18).

Even if the Applicant does mitigate through the PCCP, therefore, it is not certain that impacts to wetlands and other water of the state will be mitigated to less than significant levels. The statement of overriding considerations provided in Attachment C of the Tentative Order is vague, conclusory, and does not allow the public to assess the Central Valley Water Board’s reasoning for accepting the Project’s significant unavoidable impacts. The Tentative Order merely states, “The Central Valley Water Board has considered the economic, legal, social, technological, and other benefits of the Project against its significant unavoidable impacts to water quality and finds that the specific economic, legal, social, and technological benefits of implementing the Project—including economic benefits, local job growth, and employment opportunities—outweigh the significant and unavoidable impacts identified above.” (Attachment C, p. 23). This conclusory statement does not show that the Central Valley Board has reached its own independent determination that the benefits of the VIC outweigh the significant unavoidable impacts. The Central Valley Water Board should not issue a WDR until a detailed analysis is presented to the public supporting the conclusion that these impacts in fact cannot be avoided, and that they are justified by the VIC’s benefits.

Thank you for the opportunity to comment on the VIC Project and please contact us if you have any questions.

Sincerely,



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