

## 9.4 APPLICANT COMMENT LETTER AND RESPONSES

The applicant has submitted comments on the Draft EIR.

**Table 9.4-1. Applicant Comments**

<b>Respondent</b>	<b>Code</b>	<b>Contact Information</b>	<b>Page</b>
<b>Dana Reserve LLC (via RRM Design Group)</b> Letter dated: 08/01/2022	DRL	3765 South Higuera Street, Suite 102 San Luis Obispo, CA 93401 <i>Contact: Nick Tompkins, Dana Reserve LLC Matt Ottoson, Senior Planner, RRM Design Group</i>	9.4-3

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## 9.4.1 Dana Reserve LLC (via RRM Design Group)



August 1, 2022

**Transmitted via email: [jguetschow@co.slo.ca.us](mailto:jguetschow@co.slo.ca.us)**

Jennifer Guetschow  
County of San Luis Obispo  
Department of Planning and Building  
976 Osos St, Ste 200  
San Luis Obispo, CA 93401

**RE: Dana Reserve Specific Plan Draft Environmental Impact Report**

Dear Jennifer,

Thank you for the opportunity to provide comments on the Dana Reserve Specific Plan Draft Environmental Impact Report, SCH No. 202160558, SWCA Project Number 64873, dated June 2022.

Attached you will find the applicants comments on pages 1-24. We have attached the applicant's comments arranged in tabular format referencing the DEIR Chapter Number, Chapter Title, section number, page, or paragraph for each comment. Our comments are purposely brief to focus on specific facts, errors, inconsistencies, or issues we identified. We are available to explain each of the comments that are not self-explanatory. We are available to further review and clarify with you (and/or SWCA) any comment or issue we have identified.

Please don't hesitate to contact us with any questions you or SWCA may have about our comments.

Sincerely,

Matt Ottoson, Senior Planner  
RRM Design Group

Nick Tompkins  
Dana Reserve LLC

cc: Victor Montgomery, RRM Design Group  
Laurie Tamura, Urban Planning Consultants  
Matt Ottoson, RRM Design Group  
Robert Camacho, RRM Design group

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DANA RESERVE  
 DRAFT EIR

Comment Letter  
 August 1, 2022

General Comments	
<p>There are a number of instances in which the author of the EIR concludes that there is a potential inconsistency between the proposed project and various policies contained in the County’s General Plan; however, the analysis that the EIR author has employed is inconsistent with how such a policy consistency analysis should be undertaken. While Applicant provides specific comments to these points below, Applicant provides these general comments on this issue to avoid excessive duplication given the overlapping issues that apply throughout the EIR.</p> <p>As a legal matter, General Plan policies are not to be considered in isolation but rather must be understood in the context of the General Plan as a whole. As the courts have explained, General Plan policies seemingly in tension with one another (e.g., pro-development and anti-development policies) should be reconciled and harmonized to the extent reasonably possible (<i>No Oil, Inc. v. City of Los Angeles</i> (1987) 196 Cal.App.3d 223, 244.) The EIR author does not appear to apply this principle, but rather frequently interprets specific General Plan policies in complete isolation from other relevant policies.</p> <p>The author of the EIR also fails to account for the principle that a proposed project is only inconsistent with the governing general plan if the project “conflicts with a general plan policy that is fundamental, mandatory, and clear.” (<i>Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Supervisors</i> (1998) 62 Cal.App.4th 1332, 1341-1342, italics added; see also <i>Endangered Habitats League, Inc. v. County of Orange</i> (2005) 131 Cal.App.4th 777, 782 [“[a] project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear”].) Perfect conformity with every general plan policy is neither achievable nor required. (<i>Ibid.</i>)</p>	

DRL-1

Executive Summary		
ES-1	Para 3	Please add to the description Dana Ridge is 388 acres.
Impact Table		<p>Throughout this letter the Applicant has provided comments on MM’s and other items that will require corresponding changes in this table as they are updated. Applicant has not restated those comments here so as to reduce potential redundancies in this letter.</p> <p>There are several instances in the EIR where the impact identified in the heading does not match associated Table. For example, Hydrology/Water Quality-page 4.10-29-HYD impact 6 Table note noted as Class II but Class III in rest of table. Please verify that everything is consistent and update as necessary.</p>

DRL-2



Draft EIR Comments  
 August 1, 2022  
 Page 2

<b>Chapter 2: Project Description</b>		
2-3	Para 2	To the south is residential-suburban but also commercial uses along the Frontage Road.
2-8	Item 7 Figure 2-5	Item 7 improvement is not shown on Figure 2-5; it should be.
2-18	Para 4	Along Collector A will also “provide access and infrastructure connections as well as public facilities such as a park and ride and a potential fire stations, as described below”. Please add this information to this paragraph.
2-20 2-22 2-23	Table 2-2 Sec. 2.5.3.11 Table 2-5	Density was revised for DR-SF2 to 11-13 du/ac (correspondence to County on 01/14/22). Revise Table DR-SF2 Allowable Density to 11-13 du/ac
2-22	Table 2.4	Add footnote 4 stating that there will be a transit center, park and ride, and fire station in the RR parcel for Collector A.
2-26	Para 2	Provide updated information from the 2020 census.
2-29	Table 2.9	To make sure that alternative fuel stations, such as hydrogen and EV charging are allowed, please add “Alternative Fueling Installations” as permitted use in the Commercial Zones. Alternative fuels will be important for TDM and GHG reduction Mitigation Measure.
2-30	Sec 2.5.3.1.3	Missing Table 2-10 Rec and OS Development Standards from Specific Plan. Should insert in this section.
2-40	Cherokee Place	Please find attached an exhibit that illustrate the Cherokee Road improvements at the Collector A and B intersections.

DRL-3  
 DRL-4  
 DRL-5  
 DRL-6  
 DRL-7  
 DRL-8  
 DRL-9  
 DRL-10  
 DRL-11

<b>Chapter 3: Environmental Setting</b>		
3-1	Para 4	There is no reference to the US Census 2020. The population of Nipomo should be added in this section.
3-2	Para 1	This property has had documented use primarily for cattle grazing as well as periodic, seasonal dry farming for feed. Every section that refers to the agricultural use of this property should note this historic use of the property.
3-2	Para 3	Please add the Dana Ridge acreage: 388 acres
3-7	Para 1	The cumulative lists need a total for the build out. 300-unit housing units and ADUs and commercial sq. ft. The total build out should be at the end of the list.

DRL-12  
 DRL-13  
 DRL-14  
 DRL-15

Draft EIR Comments  
 August 1, 2022  
 Page 3

<b>4.1: Aesthetics</b>		
4.1-5	Para 1	Please add grazing and cultivation dry farming for feed as noted above.
4.1-13-18	Goal 2 Policy VR 2.1 Policy VR 2.2	See General Comment above.  The policies that refer to the rural character of the site should note that the DRSP is immediately adjacent and surrounded by development and was planned growth in the SCAP and in the Sphere of Influence for NCSD. This is not rural property and these findings of inconsistency need to be amended.
4.1-26	AES/mm 3-1	The existing So Cal Gas easement is 20 feet wide. Applicant agrees to an additional 30 feet for planting trees for a total of 50 feet for a landscaping buffer. Revise this Mitigation Measure and correct throughout the document and EIR.
4.1-27	AES/mm 3.2	This MM only adds up to 50% of the trees in various sizes we suggest that the MM be revised.  "Any replacement trees planted within the 'on-site' property boundary along US Highway 101 shall be of varying sizes. Such replacement trees shall include the following container sizes - <u>45% in 15-gallon, 45% in 24-inch box, and 10% in 48-inch box trees.</u> These trees are part of the Applicant proposed 1,500 oak trees to be planted in the DRSP. These trees will be monitored for seven years for maintenance and any trees that do not survive will be replaced.
4.1-29	AES/mm 7.1	This EIR has already done the visual assessment for this project. The only areas of visual impact are those buildings along US Highway 101 and they have already been analyzed in this EIR. This is a redundant MM and should be deleted.

DRL-16  
 DRL-17  
 DRL-18  
 DRL-19  
 DRL-20

Draft EIR Comments  
 August 1, 2022  
 Page 4

<b>4.3: Air Quality</b>		
4.3-15	Policy AQ-1.2	<p>See General Comment above.</p> <p>Policy AQ-1.2 does not, as the EIR author seems to assume, dictate the conclusion that any significant VMT impact under CEQA necessarily translates into a policy violation. Rather, the policy itself only states broadly that the County should “[r]equire projects subject to discretionary review to minimize additional vehicle travel.” With mitigation, the project satisfies this very general obligation. In addition, as noted in other sections, the VMT is only 5% over the threshold, and GHG emissions and air pollutants associated with VMT will reduce over time as more electric vehicles are purchased.</p>
4.3-20	Infill 8	<p>See General Comment above.</p> <p>The project should be considered consistent with this policy (Infill 8). Although the policy states that the County should support mixed use and infill development, the policy does <i>not</i> provide that development that cannot be characterized as infill development is <i>disallowed</i>. The proposed project is with the SCAP and Nipomo SOI, and thus is clearly contemplated for development by the SLO County General Plan. Please revise this discussion as the Nipomo URL will be expanded when this project is approved and then will be considered infill.</p>
4.3-20-23	Policy 11-24	<p>See General Comment above.</p> <p>Please add in each of these discussions that this property is planned for development in the SCAP and is in the Nipomo SOI and adjacent to the current service line.</p>

DRL-21

DRL-22

DRL-23

Draft EIR Comments  
 August 1, 2022  
 Page 5

4.3: Air Quality		
4.3-25	L-3	<p>See General Comment above.</p> <p>Land Use Planning Strategy L-3 does not use mandatory language. Rather it states that “[w]ithin cities and unincorporated communities, the gap between the availability of jobs and housing <i>should</i> be narrowed and <i>should</i> not be allowed to expand.” “Should” is not the same as “shall.” In general, a proposed project is only inconsistent with the governing general plan if the project “conflicts with a general plan policy that is fundamental, mandatory, and clear” (<i>Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Supervisors</i> (1998) 62 Cal.App.4th 1332, 1341-1342, italics added; see also <i>Endangered Habitats League, Inc. v. County of Orange</i> (2005) 131 Cal.App.4th 777, 782 [“[a] project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear”].) Perfect conformity with every general plan policy is neither achievable nor required. (<i>Ibid.</i>)</p> <p>Here, moreover, Land Use Planning Strategy L-3 should be construed in a <i>regional</i> context and in light of recent state legislation declaring a statewide housing crisis. (See, e.g., Gov. Code, § 65589.5, subd. (a).) The current finding of potential inconsistency does not address the <i>regional</i> need for housing in the existing employment centers in the City of SLO. This project will provide a variety of housing for these existing employees that are needed now. Please add this regional perspective in this section.</p>
4.3-34-35	AQ/mm-3.3	<p>7. Remove this MM – the transit center and park and ride has been designed to meet relevant standards for the DRSP.</p> <p>19. Delete “valet” bike parking as the project does not have any entertainment venues.</p>

DRL-24

DRL-25

Draft EIR Comments  
 August 1, 2022  
 Page 6

<b>4.4: Biological Resources</b>		
4.4-9	Para 2	This paragraph states that there are 18 plants potentially on this site but table 4.4-3 only lists 17 plants. Add <i>Dienandra paniculata</i> that was not detected onsite. Please correct.
4.4-40 - 4.4-48	Table 4.4-6 (Preliminary Policy Consistency Evaluation)	<p>See General Comment above.</p> <p>The table finds the proposed project to be “potentially inconsistent” with a number of goals and policies from the General Plan (For example Goal BR-1, Policies BR-1.2, 1.4, 1.9, and 2.6, Goal BR-3 and Policies BR-3.1, BR-3.2, and BR-3.30). The interpretations here are inflexible and would appear to make any kind of development very difficult.</p> <p>The General Plan, through the South County Area Plan for example, treats the project area as one in which development is appropriate. Yet various policies are interpreted in this table in a way that would negate this prior County policy determination. The policies addressed in the table must be interpreted in light of the fact that the Board of Supervisors has already determined that relatively dense development of the site is appropriate.</p> <p>Policies that include vague or flexible language (e.g., “minimize” impacts) should not be interpreted as though they set stringent quantitative standards that absolutely must be satisfied. Nor should compensatory mitigation be precluded as a method of achieving consistency.</p> <p>In some instances, the analysis suggests that the reliance on conservation required under CEQA (Pub. Resources Code, § 21083.4, subd. (b)(2)) conflicts with more protective General Plan policies and yet the General Plan specifically incorporates the CEQA approach (see Implementation Strategy BR 3.3.1).</p> <p>Many of the “potentially inconsistent” conclusions appear to be based on impacts to species that are not formally listed under the California Endangered Species Act (CESA) or the Endangered Species Act (ESA) but rather are only “listed” by the California Native Plant Society (CNPS), a nongovernmental organization (the only listed species of concern is the Pismo Clarkia). Thus, impacts on CNPS-listed species are being invoked in order</p>

DRL-26

DRL-27

Draft EIR Comments  
 August 1, 2022  
 Page 7

<b>4.4: Biological Resources</b>		
4.4-40 - 4.4-48 - (continued from previous page)	Table 4.4-6 (Preliminary Policy Consistency Evaluation) - (continued from previous page)	<p>to render development difficult or impossible based on a very stringent reading of the goals and policies at issue.</p> <p>The “no net loss” requirement in Policy BR-1.4 is applied to oak woodlands even though there is a separate policy – BR-3.3 – that applies specifically to oak woodlands. Associated with the latter policy is an implementation measure that specifically incorporates the CEQA approach, which allows for preservation as mitigation.</p> <p>Importantly, nothing in the law requires the County to give so much weight to potential impacts on species “listed” by the CNPS (see <i>Sierra Club v. Gilroy City Council</i> (1990) 222 Cal.App.3d 30, 44-48 [CEQA Guidelines section 15380 did not require the respondent lead agency to make a “specific finding or determination as to whether” a particular species “was ‘rare’ or ‘endangered’”]; see also <i>id.</i> at pp. 41-42 [CEQA does not “requir[e] public agencies to deny approval of any project where the perpetuation of rare or endangered species on the site cannot be guaranteed”]).</p> <p>The project Applicant does not believe that, in adopting the various policies addressed in Table 4.4-6, the Board of Supervisors intended to greatly ratchet back the development potential of sites such as the project site due to impacts on species that do not rise to the level of being formally listed as endangered or threatened under either CESA or ESA. Rather, the author of the table seems to be subjectively giving undue weight to impacts to CNPS-listed species – so much weight as to make any substantial development on the project site seemingly problematic.</p>
4.4-40 4.4-42 4.4-45	Goal BR-1 Policy BR-1.4 Goal BR-3 Policy BR-3.1 Policy BR-3.2	<p>The second paragraph in the discussion makes no mention of the project description that includes ~1,500 oak trees that will be retained on the project site ~1,500 oak trees that will be planted throughout the site ~10,000 to 14,000 oaks trees at the Dana Ridge site And the Applicant proposed native garden onsite. Please revise these discussions and add this information.</p>

DRL-27  
(cont'd)

DRL-28

Draft EIR Comments  
 August 1, 2022  
 Page 8

<b>4.4: Biological Resources</b>		
4.4-41	Policy BR 1.2	This policy should be deleted as it does not apply to this project. The biological report did not describe the DRSP habitats as “essential” as this term applies to linkages between blocks of intact habitat, “particularly as corridors for wildlife” (CDFW 2022). The Cal. Essential Habitat Connectivity Project does not identify Dana Reserve.
4.4-42  4.4-46 4.4-47	Policy BR 1.4 Policy BR 1.9 Policy BR 2.6  Policy BR 3.3 Policy OS 1.1 Policy OS 2.1 Policy Obj. 6.4	Please revise all these discussions:  “The Applicant proposes a 4.27-acre native garden to be planted on site to restore the Burton Mesa Chaparral and other plants with scattered oak trees. The Applicant will preserve this open space for these plants.”  Since these plants are already on this site it only makes sense for the County to encourage and support a restoration project on this site for the benefit of the plants and the community like the Nipomo Native Gardens. See attached memo and plans previously submitted to the County, which are incorporated by reference.
4.4-43	Goal BR 2	Please revise this discussion as follows: “Populations of Pismo Clarkia, a state-listed rare plant, will be protected on site through a conservation easement. An approved Incidental Take Permit from the CDFW will include mitigation measures to replace a small patch of plants removed for construction of Collector B. Other mapped patches and adjacent suitable habitat will be conserved on site to allow for expansion of the plant population as part of the incidental take permit process.”
4.4-43	Policy BR 2.1 Policy BR 2.2	Please revise this discussion as follows: Mitigation Measures require the project Applicant and/or NCSO to obtain all necessary wetland/waterway permit approvals from USACOE, CDFW, RWQCB prior to issuance of grading permits for off-site infrastructure improvements.  Grading in the area where the Pismo Clarkia is located will require an ITP permit under Fish and Game Code 2081(b) from CDFW before starting.

DRL-29

DRL-30

DRL-31

DRL-32

Draft EIR Comments  
 August 1, 2022  
 Page 9

4.4: Biological Resources		
4.4-46	Policy BR 3.5 Policy BR 4.1 Policy BR 4.2 Policy BR 4.7 Policy BR 5.1 Policy BR 5.2	Please revise to state "Applicant <b>and/or NCS</b> " will conduct a wetland delineation ....
4.4-47	Policy 3	
4.4-63	BIO/mm-5.1	The first sentence in this MM needs to be deleted. The discussion above states that these off-site eucalypti are marginal for aggregating monarch butterflies. We suggest the MM be rewritten as follows:  "Monarch Butterfly Preconstruction Survey. Preconstruction surveys of potential monarch butterfly overwintering habitat on site or adjacent to the site shall be conducted by a qualified monarch butterfly biologist beginning October 1 <sup>st</sup> and continue through February. If site disturbance is proposed within 200 feet of potential monarch butterfly overwintering locations during the aggregation season (October 1 through February) surveys shall be conducted from the Dana Reserve and/or public roads for three mornings at least one week before planned disturbance. If clustering monarch butterflies are observed, site disturbance and construction activity within 200 feet of monarch butterfly overwintering habitat shall be prohibited while monarch butterflies are in an overwintering aggregation. A 200-ft buffer shall be installed with T-posts and rope, labeled as Environmentally Sensitive Habitat every 75 to 100 feet. If monarch butterflies are observed in overwintering aggregation, monitoring shall be conducted during daily active construction visits to document numbers and assure that no disturbance of the aggregation is caused by construction."
4.4-64, -65	BIO/mm-6.1	Bullet 4 is not necessary. Bullet 7 should be explicit that a qualified biologist must hold a Scientific Collecting Permit per Title 14 California Code of Regulations § 650 to handle Species of Special Concern (SSC).  Residual Impacts: Remove reference to BIO/mm-14.1, BIO/mm-15.1, and BIO/mm18.2 as they do not apply to this impact.

DRL-33

DRL-34

DRL-35



Draft EIR Comments  
 August 1, 2022  
 Page 10

4.4: Biological Resources			
4.4-66,-67	BIO/mm-8.1	In both Implement MM and Residual Impacts: Remove reference to BIO/mm-14.1, BIO/mm-15.1, and BIO/mm18.2 as they do not apply to this impact.	DRL-36
4.4-67,-68	BIO/mm-9.1	In both Implement MM and Residual Impacts: Remove reference to BIO/mm-14.1, BIO/mm-15.1, and BIO/mm18.2 as they do not apply to this impact. In the second paragraph of this mitigation measure delete <b>“and avoidance is not feasible”</b> . Avoidance is not possible within the DRSP property, and it is safer for the badger and workers to have the badger relocated.	DRL-37
4.4-69	BIO/mm-10	The improvements for the Frontage Road extension will not impact any identified species so delete reference to BIO /mm2.1 through BIO/mm-2.3, BIO/mm3.1. BIO/mm-4.1 and 4.2 in both the first section and Residual Section.	DRL-38
4.4-70	BIO/mm-11	This MM only applies to animals, not plants, so delete reference to BIO /mm2.1 through BIO/mm-2.3, BIO/mm3.1. BIO/mm-4.1 and 4.2 in both the first section and Residual Section.	DRL-39
4.4-71	BIO/mm-12.1 Line 6	Since this mitigation measure is focused on a section of water pipeline installation near Nipomo Creek, we suggest that this mitigation measure clearly state that the <b>“suitable habitat located up stream in Nipomo Creek outside of the construction Zone(s).”</b>	DRL-40
4.4-93	BIO/mm-19.1	Recommend changing the third line to say <b>“certified arborist” instead of qualified arborist.</b>  To be consistent with other mitigation measures in this EIR, the following should be added to this mitigation measure.  <b>“Impacted oak trees shall be monitored for 5 years and if found to be in declined, shall be replaced at a 4 to 1 ratio. A draft replacement plan with specific receiver site such as parks in the Nipomo area shall be approved by the County of San Luis Obispo prior to threatening within the CRZ of any oak tree.”</b>	DRL-41
4.5: Cultural Resources			
4.5-21	CLRmm-3.1	Please add the following text to this MM: <b>“...retained by the Applicant or utility district/company”</b>	DRL-42

Draft EIR Comments  
 August 1, 2022  
 Page 11

<b>4.6: Energy</b>		
4.6-10	Princ. 1, Policy 5	3CE - might not be an option in the future? But it should be noted that PG&E also needs to have a green portfolio for electricity generation and can serve this project as well as 3CE.
4.6-12		Not 11-acre public park, reword to 10-acre park and 1-acre equestrian staging area. This edit should be done through the document.

DRL-43

DRL-44

<b>4.7: Geology and Soils</b>		
4.7.31-32	GEO/mm 8.1 GEO/mm 8.2 GEO/mm 8.3	<p>The discussion in this impact section states that there is low paleontological potential for this site. It is excessive to have to hire a paleontologist to write monitoring and mitigation plans, WEAP's, and handling plans when the EIR states that there is low potential of any finds. Observing grading and construction adds additional unnecessary costs.</p> <p>These MMs should be deleted or be revised to state "if discovery during grading is found..."</p> <p>If the staff believes that they need something for this low impact, we will agree that the WEAP could be prepared for the construction phase of this project.</p>

DRL-45

<b>4.8: Greenhouse Gas Emissions</b>		
4.8-3 4.6-6 4.8-7 4.8-8 4.8-12	Para 2 Para 4 Para 5 Para 5 Para 1	Each of these sections should state that the 1990 level of GHG was 530 MM tons. California has successfully reduced GHG levels to 419 MM tons in 2020 level. This is over a 20% reduction since 1990 levels. These GHG levels will continue to fall as the state reduces reliance on fossil fuel for electricity and transportation (see page 4.8-25 last sentence).
4.8-12	Para 2	The Dana Reserve incorporates all the RTP/SCS standards into this project. This should be noted in this paragraph.
4.8-13	Policy AQ 1.2	This statement should clearly state that the VMT only exceed the threshold by 4.8% and 9%. These are minor exceedances.

DRL-46

DRL-47

DRL-48

Draft EIR Comments  
 August 1, 2022  
 Page 12

4.8: Greenhouse Gas Emissions		
4.8-14	Policy E 1.1	Please note that the nonresidential uses are still planned to be served by natural gas. There will be a natural gas service line installed along Collector A. This natural gas will serve the commercial and school buildings which only cover 17% of the overall project site.
4.8-15	Policy E 3.1	
4.8-15	Policy E 3.2	
4.8-15	Policy E 4.1	
4.8-15	Policy E 4.4 Policy E 5.4	
4.8-19	Infill 8 Infill 11 Infill 12	See General Comment above.
4.8-20	Livable 12 Livable 13 Livable 14 Livable 15	As noted earlier, the project should be considered consistent with Policy Infill 8, which, though supporting mixed use and infill development, does <i>not</i> disallow development that cannot be characterized as infill.
4.8-21	Trans 18 Trans 19 VMT 20-24	This project is consistent with the SCAP and the NCSO SOI is an identified area for infill development. When the Nipomo URL <b>and the NCSO annexation</b> is expanded to include this property then it will be considered infill. Revise this statement here and note in these other sections of the EIR.
4.8-27	GHG/mm-1.1	#8. High reflective roofing material should only be installed on flat roofs as these reflective roofs could cause significant aesthetic impacts if required in residential areas with houses with sloped roofs or along US highway 101. Please revise this MM.  Add measures to reduce GHG: #10 All residential structures will include PV, consistent with state requirements.  #11 EV stations will be provided in the multifamily units, commercial, school and hotel, consistent with state requirements.

DRL-49

DRL-50

DRL-51

4.10: Hydrology and Water Quality		
4.10-1	Para1 Opening sentence	Eliminate the word "adverse".
4.10-1	Para 3 Line 6	Revise to note that the other northern parcel, which is APN 091-301-030 for point of reference, has existing agricultural structures and unpaved ranch roads.
4.10-5	Para 2 Line 4	"Municipal mix" is also referred to as "blended" water.

DRL-52

DRL-53

DRL-54

Draft EIR Comments  
 August 1, 2022  
 Page 13

<b>4.10: Hydrology and Water Quality</b>		
4.10-15	Policy WR 1.9	Eliminate the words "service area". It should just state annex to NCSD. This should be changed throughout the EIR.
4.10-25	Groundwater recharge	Add the following in a new paragraph,  "The project will be entirely served by NCSD water. Effluent generated within this project will be transported to the NCSD's Southland Wastewater Treatment facility, treated, and made available for recharge to the groundwater of the management area, thereby increasing return flows of water available for recharge. Up to 50% of the water used in this project can return to the groundwater basin."

DRL-55  
 DRL-56

<b>4.11: Land Use and Planning</b>		
4.11.7	Para 4	The Dana Reserve Specific plan has incorporated all these features and is consistent with the RTP/SCS.
4.11.8	Policy AQ 1.1	See earlier comment regarding General Plan policies.  This project is consistent with this policy. Please correct the other discussions in the rest of the EIR related to this policy.
4.11.22	Infill 8	See earlier Comment regarding General Plan policies.  For reasons discussed earlier, this project is consistent with this policy. Please correct the other discussions in the rest of the EIR related to this policy.
4.11-36	LUP Impact 3 (Class 1)	This site is vacant. There is no job/housing balance "within the project area". This should not be a Class I impact.
4.11-31 4.11-38	Goals Policies	See earlier Comment regarding General Plan policies.  This section restates Goals, Policies, and Objectives that were deemed to be Potential Inconsistent throughout this EIR.  Any policy discussions that are updated elsewhere pursuant to specific comments need to be update here as well.
4.11-40	Para 5 Line 4	Delete reference to maintenance of the bus stop on North Thompson Avenue. There is no nexus for this requirement for a regional off-site improvement. Delete this elsewhere in the EIR.

DRL-57  
 DRL-58  
 DRL-59  
 DRL-60  
 DRL-61  
 DRL-62

Draft EIR Comments  
 August 1, 2022  
 Page 14

4.11: Land Use and Planning		
4.11.41	Para 2 Table	Please correct the first sentence and the rest of the paragraph and the table as the request for this project is to adjust the Nipomo URL and Annexation to the Nipomo NCSD. This project cannot be approved without these adjustments. The project will be consistent with the SCS and other policies for infill once these boundaries are adjusted. Please make this correction throughout the EIR.

DRL-63

4.13: Noise		
4.13-18	Para 4	We request that in this paragraph you state that the site design of this project places all the commercial buildings along the freeway and these buildings will serve as sound buffers for the neighborhoods 1, 2, and 3.  It should be noted that the Applicant Preferred Alternative moves Neighbor 10 (PSHH PARCEL) out of <b>these noise contours so is an environmentally superior alternative addressing noise impacts as well as a superior environmental justice alternative.</b>
4.13-19	N/mm-1.2	1. Noise studies for neighborhoods 1, 2, and 3. This MM should clearly state that the commercial buildings should serve as an adequate buffer for these neighborhoods.
4.13-19	N/mm-1.2	2. Noise studies are not required if the listed equipment is installed on the east side (facing 101) of the proposed buildings.  Please add this statement to this MM.

DRL-64

DRL-65

DRL-66

4.14: Population and Housing		
4.14-1 4.14	Para 4	Correct "decrease" should be "increase".  Throughout this section and the rest of the EIR please resolve the discrepancy between 272 and 273 new jobs. The whole document should state 273 new jobs.
4.14-15	Para 2&3	Please explain in this section that the Growth Management Ordinance will not apply to the DRSP. It is a stand-alone planning document.
4.14-6	Para 3	Change reference to Table 4.14-12 to Table 4.14-13 in this paragraph.

DRL-67

DRL-68

DRL-69

Draft EIR Comments  
 August 1, 2022  
 Page 15

4.14: Population and Housing		
4.14-18	Princ. 2, policy 2	See earlier discussion regarding General Plan policies.  This determination needs to be rewritten to state. <b>Potentially Consistent:</b> Upon the approval of the adjustment of the Nipomo URL and the annexation to the NCSD, the DRSP with residential and commercial uses will be consistent with this policy.
4.14-25	Para 1	This paragraph is not consistent with the population numbers in the Recreation section, Table 14.15-9 states that the 2030 population will be 24,326. Correct this paragraph.
4.14-26	Para 2	The DRSP is in response to the South County Area plan, which required a Specific Plan for the Canada Ranch. The housing needs in the County are severe and this project addresses the range of needed housing in this area.
4.14-28	Para 1	This paragraph should also address the need to plan for the RHNA housing numbers that are assigned to the County every 8 years. This site was designated for development and housing as the Canada planning area in the South County Area Plan. This is not unplanned growth and should not be a class I impact.

DRL-70  
 DRL-71  
 DRL-72  
 DRL-73

4.15 Public Services		
4.15-7	Para 4	This section of the document should rely on the final 2020 Census numbers.
4.15-12 4.15-14 4.15-15	Policy 2.2 Public Facilities #1 Public Facilities #2,3	All these policies state that funding has not been secured for long-term maintenance of the neighborhood park. Before this project is approved by the Board of Supervisors, this funding source will need to be resolved. All the policies statements need to be changed to state that that <b>“upon approval of the DRSP with future funding sources for this park this project is consistent with these policies”</b> .
4.15-14	Princ. 1, Policy 2 Strategy 4	This determination needs to be rewritten in that no development will be approved or built unless this project is within the Nipomo URL and annexed to the NCSD service area. <b>With this annexation action the project will be consistent with this policy and strategy.</b>

DRL-74  
 DRL-75  
 DRL-76

Draft EIR Comments  
 August 1, 2022  
 Page 16

4.15 Public Services		
4.15-17	Para 4 Line 4	This statement needs to be revised.  The capital plan for the fire service includes the property at Black Lake for a future station, but it is not in the best location for service this section of Nipomo. CalFire has requested that a fire station be located on this site and funds to be allocated to this new station.
4.15-18	PS/mm-1	This mitigation measure is only for the dedication of the improved land for the fire station. Also, this project will pay it developer fees. The construction of the building and the future operation will be the responsibility of the County.
4.15-19	Figure Table	This section should include the concept figure of the fire station location for reference to all these mitigation measures. See attached site plan.
4.15-21 4.15-26	Table 4.15-5 Table 4.15-9	This table is not consistent with Table 4.15-9.  Population projections in 2030 for Nipomo in this table is 19,812 but in Table 4.15-9 the 2018 population is 29,040 and then in 2030 it is 24,326. Both tables need to be corrected.
4.15-27 4.15-31	Para 1 Line 16 Para 2 Line 13	Correct this sentence in both sections. Quimby Fees are capital funds for land purchase for new park land. These funds cannot be used for long-term maintenance of the public park.

DRL-77  
DRL-78  
DRL-79  
DRL-80  
DRL-81

4.16 Recreation		
4.16-9 4.16-10 4.16-15 4.16-16 4.16-16 4.16-17	Policy 2.2-7 Objective B Policy 6.4 Policy 6.9 Policy 6.10 So. Co. Inland Plan	See earlier discussion regarding General Plan policies.  All these policies state that funding has not been secured for long-term maintenance of the neighborhood park. Before this project is approved by the Board of Supervisors, this funding source will need to be resolved. All the policies statements need to be changed to state that <b>“upon approval of the DRSP future funding sources for the park this project is consistent with these policies”</b> .
4.16-14	Policy 4.2	Policy 4.2 does not apply to project – remove.

DRL-82  
DRL-83

Draft EIR Comments  
 August 1, 2022  
 Page 17

4.17 Transportation			
4.17-1	Para 3, line 10	...provided in the "tis" TIS. Make correction.	DRL-84
4.17-2	Figure 4.17-1	Camino Caballo is not shown on the 4.17-1 map. Should also include Hetrick Ave all the way to Pomeroy and Cory Way (emergency access).	DRL-85
4.17-3	Para 4 Para 5	Cherokee Place - public right-of-way comprised of (2) 25-foot-wide centered along the northern property line of the DRSP. Currently there is a 20-foot wide dirt road existing in the northern 25-foot section on the adjacent properties.  Hetrick Avenue right-of-way does go all the way to Pomeroy so need to correct the last sentence in this description.  Should include Cory Way for emergency and trail access.	DRL-86
4.17-9		These should be another bullet stating that the fee update included improvements to Hetrick Avenue. However, these improvements will not be needed now that Collector B will be installed through the Dana Reserve project. The AB 1600 developer fees for Hetrick should be credited to Collector B.	DRL-87
4.17-10	Policy AQ 1.2	This finding should state that:  <b>"Buildout of the DRSP would result in an increase of residential VMT (4.8% over the VMT threshold) and employee VMT (9.5% over the VMT threshold) even with implementation of Mitigation Measure TR/mm-3.1".</b> TR/mm 2 should be corrected to TR/mm-3.1	DRL-88
4.17-11	Policy 7	TR/mm- 2 should be TR/mm-3.1	DRL-89
4.17-12	Policy 9	"....include fair-sharing contribution for needed transportation improvements" – This phrase should be deleted as this project is providing two transit centers with dedicated land and infrastructure or at least state so in this finding.	DRL-90
4.17-13	Policy 2	TR/mm-2 change to TR/mm-3.1	DRL-91
4.17-15 4.17-18	Circ Objective a. Goal #3	TR/mm-2 change to TR/mm-3.1 The TDM strategies are for the whole project not individual neighborhoods. Restate this finding.	DRL-92
4.17-16 4.17-19 4.17-20 4.17-22	Circ Objective d. Public Transit #2 Park and Ride #1 Pol. Obj. 1.2	TR/mm-2 change to TR/mm-3.1	DRL-93



Draft EIR Comments  
 August 1, 2022  
 Page 18

<b>4.17 Transportation</b>			
4.17-35	Para 3  Para 7	Collector B is between Hetrick and Sandydale Dr.  Add this clarification to the first sentence; Improvements at the intersection of Cherokee Place/Collector A and B will be limited to installation of a County standard driveway apron, ADA path of travel along the back of the driveway, and a 20 foot wide by 20 foot wide paved driveway to transition back to the existing dirt access road.	DRL-94
4.17-36		And another bullet that lists improvements for Hetrick and now are being part by the new proposed Collector B.	DRL-95
4.17-37	Para 1	Last sentence needs to be deleted. There is no nexus to the extension of Class II bike trail on Thompson Avenue/County Bikeway Goal 1-6 4-17-32-33	DRL-96
4.17-37	Para 2	Delete the last phrase. Dana Reserve is providing two transit stops with the project. There is no nexus of this project impacting the existing bus stop located along N. Thompson Avenue. Therefore, there is no reason for this project to be responsible for the maintenance of this bus stop.	DRL-97
4.17-39	Para 3	This paragraph should include discussion of new transit route on Frontage Road to connect with the new transit stop in the center of the commercial village and the transit center at Willow Road and Collector A. These new facilities will be part of the overall TDM and will help reduce VMT.	DRL-98
4.17-42	TR/mm 3.1	This TDM will be done for the project as a whole, not individual future projects. Delete the second sentence in the MM.	DRL-99
4.17-45	TR Impact 7	No mention for future fire station on Collector A.	DRL-100
<b>4.19: Utilities/Service Systems</b>			
4.19-3	First bullet	Replace "basin" with "management area".	IDRL-101
4.19.3	Para 2	"The NCSd service area is located within the NMMA. The NMMA Technical Group is the court-assigned entity responsible for assessment of groundwater within the NMMA and the basin management area."	DRL-102

Draft EIR Comments  
 August 1, 2022  
 Page 19

<b>4.19: Utilities/Service Systems</b>			
4.19-3	Last Para	The following statement, "Through groundwater supply, the NCS D has self-allocated 2,533 AFY" should be revised to state, <b>"Based on the average pumping volumes over the five-year period of 2009-13 it has been determined that the historic average maximum pumping volume is 2,533 AFY".</b>	DRL-103
4.19-4	Last Para	Delete the first sentence and replace with the following:  <b>The 2,167 AFY is of the NCS D allocation of the total 3,000 AFY of NSWP and accounts for the sale of 833 AFY to GSWC and the Woodlands Mutual Water District.</b>	DRL-104
4.19-36	USS Impact 3	The impact statement incorrectly suggests that there may not be adequate water supplies for the project, but this suggestion is contradicted by the analysis that follows. More specifically, the information following this misleading impact statement cites the WSA and the NCS D UWMP, which clearly state that there is sufficient water to serve the DRSP. This impact statement should be rewritten to avoid the misleading suggestion that water supplies may not be adequate.	DRL-105
4.19-37	Para 1	Not 11 acres public park, reword to 10-acre public park and 1-acre equestrian staging area.	DRL-106
4.19-38	Last Para		
4.19-37	Table 4.19-19	This table is out of date and only reflects 1270 units. It should be updated to 1,289, as reflected in the DRSP December 2021.	DRL-107
4.19-41	Table 4.19-21		
4.19-39	USS/mm 3.1	This MM is redundant. The annexation to the district will include a contract assuring water for the whole project and there is no need to have each neighborhood receive a new "can and will serve letter".  Delete this MM.	DRL-108
4.19-48	Para 1	Cumulative - Delete reference to additional service letters for each project.	DRL-109
<b>4.20: Wildfire</b>			
4-20.16	Para 2 Line 10	Please delete the words "fire water storage". This project will be served by NCS D and will not have any on-site water storage tanks.	DRL-110

Draft EIR Comments  
 August 1, 2022  
 Page 20

Chapter 5: Alternative Analysis		
5.17	Para 2	Traffic impacts the region of Tefft Street will continue to <b>increase without the Frontage Road connection</b> as other areas of Nipomo develop. Please note this in this paragraph.
5.17	Para 4	As noted in the NCS D reports there are many needed infrastructure improvements that the existing residents of Nipomo will have to pay for if DRSP is not approved. Also, the residents would have to pay increased water bills for the water NCS D is contracted to take. This would be a huge negative impact on the community of Nipomo and should be noted in this paragraph.
5.18	Para 1 Line 10	Collector B would connect "Pomeroy" to Willow Road.
5.20	Para 3 Line 9-11	This sentence should be deleted and replaced with this sentence "The DRSP is the Guiding Document for this area with provisions for development and architectural design". The only aesthetic impacts are those along US Highway 101.
5.31	Para 1	This paragraph needs to include the following sentence. <b>"This Alternative will not provide land donated for the day center, affordable housing, Cuesta College, transit center, and the fire station."</b>  <b>Also this Alternative</b> is described as having 60.8 acres of commercial land available for development of commercial and light industrial uses. At typical development intensity assuming 30% land coverage by buildings there could be approximately 795,000sf of building area. This would be in addition to residential use potentially as high as 535 MF residential units. Using the same job generation rate as the project would result in Alt. 2 providing 1088 jobs or 816 more than the project but with fewer housing units. The evaluation assumes VMT would be reduced through less commuting from the project site but offers no analysis to demonstrate this. What if the jobs are taken by residents of other nearby communities such as Santa Maria and commuting miles, which would therefore result in an increase in a "reverse commute" into the site? Then AQ, VMT and GHG would increase relative to the project. The table 5.3 needs to be revised to reflect these increased impacts.

DRL-111

DRL-112

DRL-113

DRL-114

DRL-115

Draft EIR Comments  
 August 1, 2022  
 Page 21

<b>Chapter 5: Alternative Analysis</b>			
5-37	Para 3	As noted in the NCS D reports there are many needed infrastructure improvements that the existing residents of Nipomo will have to pay for if DRSP is not approved. Also, the residents would have to pay increase water bills for the water NCS D is contracted to take. This would be a huge negative impact on the community of Nipomo and should be noted in this paragraph. This paragraph needs to include the actual water use for this mix of uses.	DRL-116
5-38	Para 2	This paragraph should also note that Alternative 2 would not include affordable housing, day care, Cuesta College, transit center, and fire station. Also, would not meet the infrastructure polices required to be annexed to NCS D.	DRL-117
5-43	Para 6	Add an additional line that states: "This Alternative will not provide any affordable housing units or workforce housing as the large lots will be designed for upper income level households. This Alternative would have negative impacts from an environmental justice perspective compared to the proposed project because it does not provide wide variety and diverse housing."	DRL-118
5-46	Para 3	This analysis states that this Alternative would have the same impacts on biology as the original project. However, there is no way to know how this Alternative would avoid oak trees and other plants as there is no requirement for dedication of open space except for the 49.8 acres. The 195.3 acres would be owned by private landowners that could do what they want within their rural estate lots including raising animals, vineyards, orchards, and private farms. This is a major increase in the impact on the biological resources on the site when compared to the proposed project.	DRL-119
5-48,-49	GHG	The VMT per capita would increase since there will not be any neighborhood serving commercial uses or jobs on the project. Just because there are fewer housing units does not justify a conclusion that there will be less GHG. In fact, there will be higher per capita GHG impacts with larger homes, and more travel for daily needs. This would likely result in an increase in impacts to GHG on a per capita basis.	DRL-120

Draft EIR Comments  
 August 1, 2022  
 Page 22

Chapter 5: Alternative Analysis			
5-50	Para 3	This Alternative has potentially greater inconsistencies than the proposed project with many of the Goals and Policies of the General Plan, including the Land Use Element, the SCAP and, most importantly, the Housing Element. Just because an Alternative has fewer lots does not make it a superior alternative. In fact, it is substantially worse because of the many more inconsistencies this Alternative has with County policies.	DRL-121
5-52	Para 3	This section needs to be clear that there is substantial uncertainty as to whether the proposed trail amenities could be developed or maintained. The proposed project anticipates that these trail amenities would be open to the public but maintained by the HOA in the DRSP. With so few proposed homes in this Alternative, there is no way that the HOA would be able to carry the cost of seven miles of trails. Therefore, either the trails will not be built, or the County would have to take responsibility for the long-term maintenance of these trails. This is an increase in impacts for recreation.	DRL-122
5-53	Para 1, 2	This section states that Alternative 3 would include the trails systems proposed in the DRSP. As noted above, please note that most, if not all, of the proposed trail will not be installed because the County will have to maintain them.  Please change the first sentence in paragraph 2:  "Since the number of units would range from <u>78 to 390</u> residential "estate" dwellings..."  The VMT rates on a per capita basis will be higher with this Alternative because there is no commercial in the area to provide for daily needs. This Alternative has an increase impact on VMT and traffic impacts.	DRL-123
5-54	Para 1	This section needs to calculate the water use for this Alternative. It will be important to include the water use for these large homes and lots for irrigation. Most lots over 20,000 sq ft use between .5 and 1.0 AFY, and it is unclear where this water would come from without sufficient demand and infrastructure to permit annexation into NCS D's service area, as well as due to limitations on groundwater pumping.	DRL-124

Draft EIR Comments  
 August 1, 2022  
 Page 23

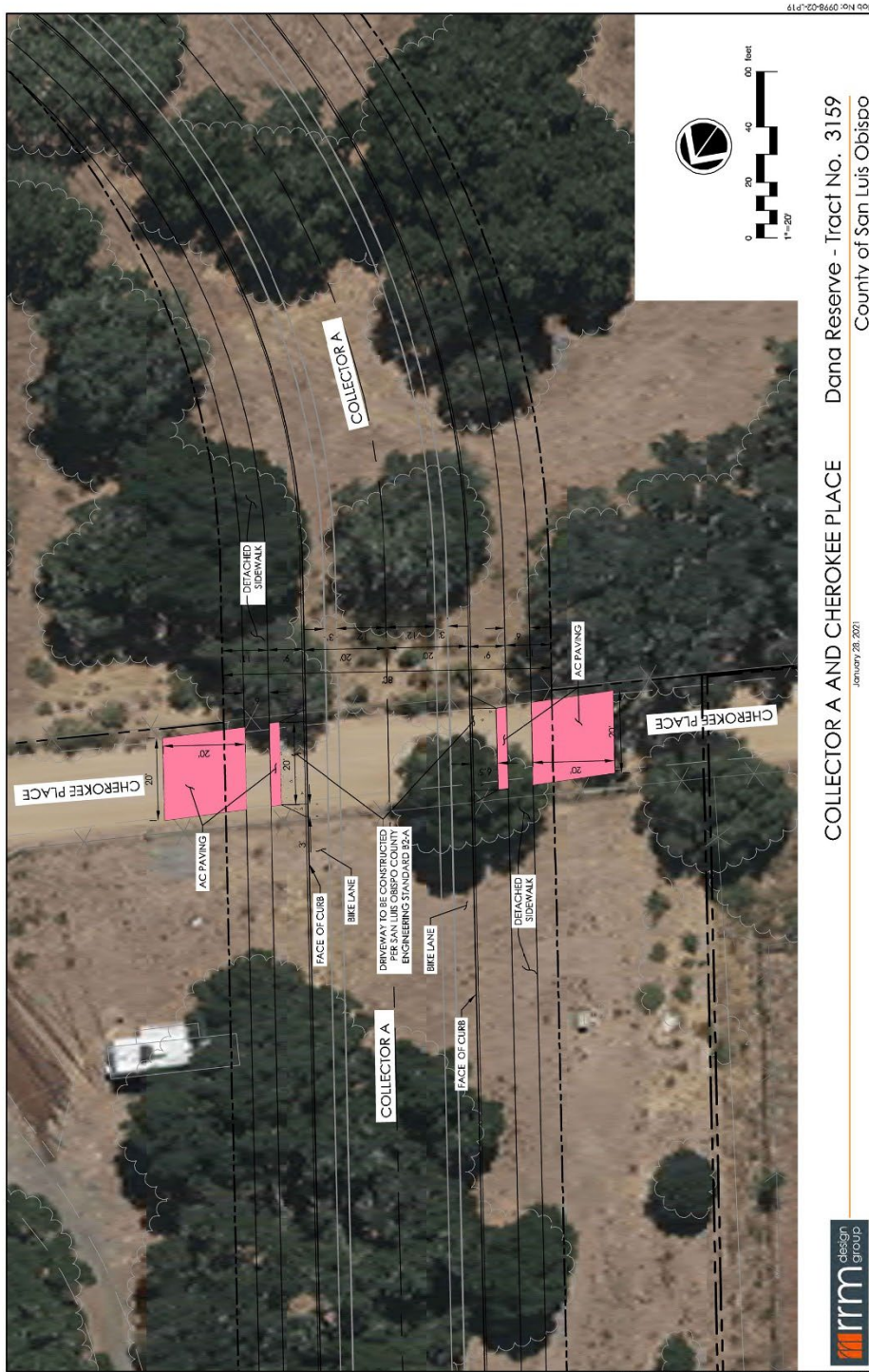
<b>Chapter 5: Alternative Analysis</b>			
5-55	Alternative 4	<p>This description needs to include about 15 acres for private roads. This road acreage would reduce land for housing or open space. This Alternative is also short for park land by 2 acres.</p> <p>This Alternative relies on access from Hetrick for many units and this access was not reviewed in the EIR or supported by the number of landowners along this road. In Table 5-3 this Alternative would have increased in impacts on Recreation and Transportation.</p>	DRL-125
5-79	Para 2	<p>Alternative 3 does not include commercial development. The third sentence needs to be corrected as Alternative 3 has fewer units than Alternative 2.</p> <p>Line 6 and 7. As discussed above most of these impact increase on a per capita basis with this alternative and the land use and housing impact are increased by only providing for estate lots.</p> <p>Overall, Alternative 3 cannot be considered an environmentally superior alternative and is not a superior project based on environmental justice concerns.</p>	
	Para 3	<p>Line 2: most of the trails will not be developed because of the long-term maintenance costs.</p> <p>Line 4: Alternative 3 does not provide for a diversity of housing types.</p> <p>Line 6-7: does not save water on large houses and larger lots, this reduced project would not be annexed to the NCSD.</p> <p>Please delete these items in the second sentence and add them to the third sentence.</p> <p>Line 13: this sentence is incorrect as this Alternative will not help meet the diversity of housing prices and rents required to meet the County RHNA allocation.</p> <p>The two conclusion sentences are incorrect as Alternative 3 has more increase impacts and more inconsistency with the and DRSP.</p>	DRL-127

Draft EIR Comments  
 August 1, 2022  
 Page 24

<b>Chapter 6: Other CEQA Consideration</b>		
6.2	Para 2	<p>Also include Pomeroy as another assess to this site.</p> <p>Section 6.1.3 How is preparation of a required Specific Plan for an area designated as a location for future growth a precedent setting Action? The language requiring the Specific Plan prior to development identifies commercial uses as an objective of the Specific Plan – how can these types of uses when proposed in the required DRSP be considered precedent setting?</p>
6.3	Para 1	<p>Why is this a Class 1? The discussion above indicates that this will be an infill project with annexation to NCS D and Nipomo URL.</p> <p>This project is consistent with SCAP, RHNA, and many other policies.</p> <p>Please remove this Class 1 impact.</p>

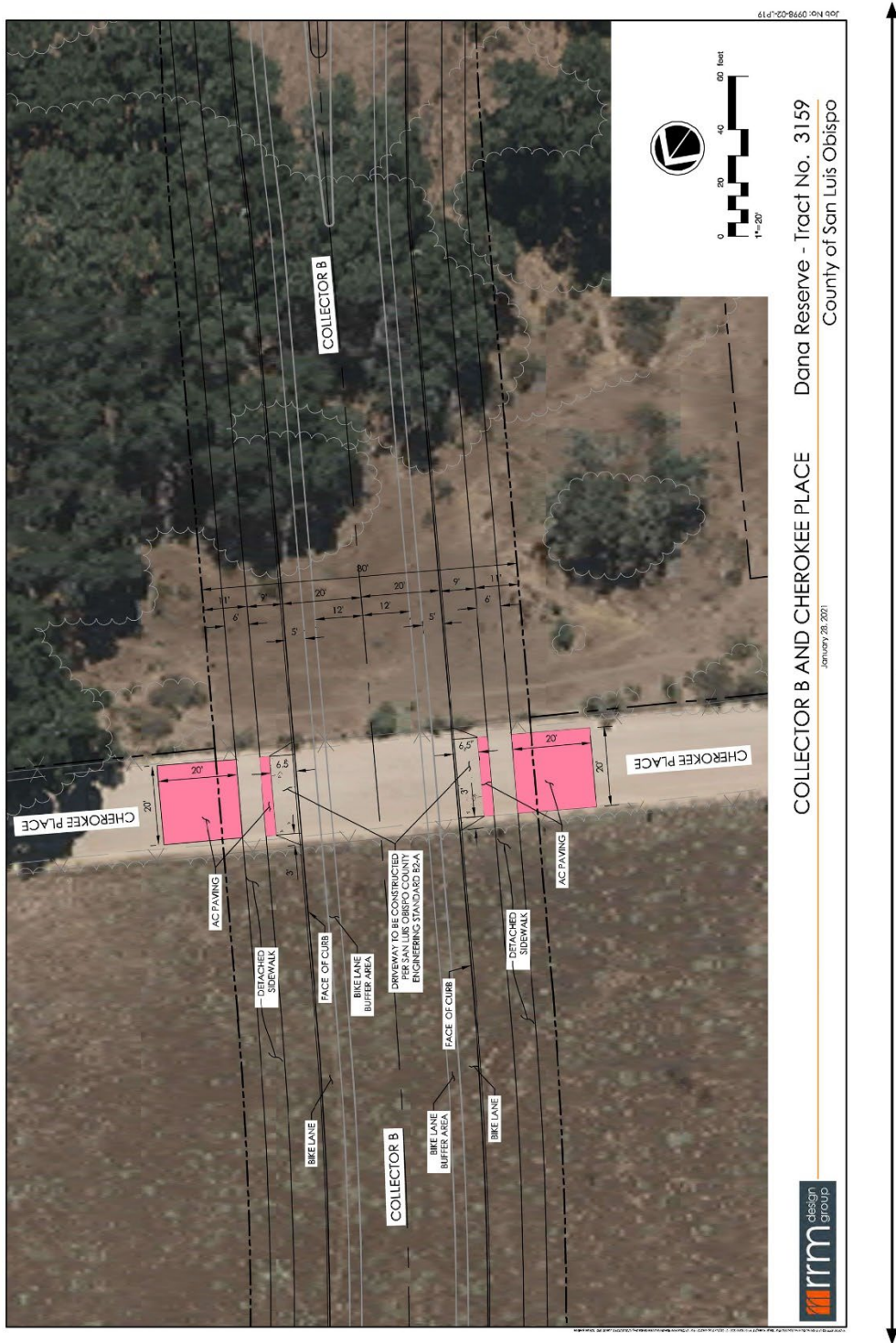
DRL-128

DRL-129



DRL-130





DRL-130  
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James G. Moose  
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Sent by Email

March 23, 2022

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Re: Dana Reserve Project: proposed Burton Mesa Chaparral Mitigation

Dear Mr. Singewald and Ms. Guetschow:

On behalf of NKT Development, LLC, applicant for the proposed Dana Reserve Specific Plan (the Project), I am writing to address the legal adequacy and sufficiency of the applicant's proposed mitigation for the Project's impacts on Burton Mesa Chaparral habitat. This mitigation proposal is set forth in the Biological Report for Dana Reserve, Nipomo, San Luis Obispo County (September 2021) (Biological Report), on pages 103 and 104 and is summarized below. Additional biological justification for the measure is described in the enclosed March 23, 2022, Memorandum from LynneDee Althouse of Althouse & Meade, Inc., to Jim Moose (Althouse Memorandum). Also enclosed is a set of graphic images of the onsite mitigation plan for the Project, created by the PleinAire Design Group.

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**DRL-130**  
**(cont'd)**

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 2

In the pages that follow, I explain the following: (i) that the County of San Luis Obispo (County), in formulating mitigation for this habitat type, is required to account for the degraded quality on the habitat as it currently exists on the Project site, and is periodically modified for the worse through historic and ongoing agricultural practices; (ii) that mitigation under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) is constrained by constitutional principles that set upper limits on what can be imposed on applicants (namely, that mitigation can be no more than what is “roughly proportional” to the impacts at issue); (iii) that CEQA tools for mitigating biological resource impacts include compensatory strategies such as conservation, enhancement, restoration, and recreation; and (iv) that here a “no net loss of habitat *quality*” performance standard using these strategies is the most logical and appropriate way for addressing mitigation for the degraded habitat in question.

#### ANALYSIS

##### **A. The Applicant’s proposed mitigation strategy**

As is explained in the Biological Report, “approximately 36 acres of the 295.3-acre Project site (12 percent) is degraded Burton Mesa chaparral, with less than two percent cover of representative species. This habitat has been subjected to periodic mowing, mulching, grubbing, and brush-raking<sup>1</sup> as part of the historical ongoing agricultural operation since at least the 1930s and is currently in poor condition, with low cover of constituent species. The proposed development will remove 35 acres (97 percent) and preserve 1 acre (3 percent) of this habitat onsite.” (Biological Report, p. 102.) “Onsite mitigation opportunities are limited, and a fire regime to sustain diverse characteristic species within maritime chaparral is not practical in a suburban setting[.]”

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<sup>1</sup> A brush rake is a device with fixed metal blades placed on the front or rear of a tractor for the purposes of facilitating the removal of larger stem plants from the soil in order to clear out brush and other unwanted plants. The brush rake typically leaves surface grasses undisturbed.

DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 3

(*Ibid.*) The total onsite area covered by characteristic shrub and herbaceous species is less than three percent of the mapped habitat boundary. Rare taxa such as sand mesa manzanita have been routinely mowed and grubbed out for the last 90 or more years (see photos in Appendix F of Biological Report). During botanical surveys in 2018 and 2019, shrubs were generally less than two feet tall and less than three feet in diameter.

The applicant proposes to mitigate for loss of this degraded Burton Mesa Chaparral habitat through a mitigation measure that would achieve a performance standard of *no net loss of habitat quality*. The measure would achieve this standard through a combination of conserving, enhancing, restoring, and/or re-creating from 8.8 acres up to 70 acres of Burton Mesa chaparral at the following mitigation ratios:

- conserve currently unprotected Burton Mesa Chaparral habitat in excellent condition at a 1.5:1 ratio;
- enhance protected Burton Mesa Chaparral habitat currently in moderate to poor condition at a 2:1 ratio;
- restore damaged protected Burton Mesa Chaparral habitat at a 0.5:1 ratio; and/or
- recreate high-quality Burton Mesa Chaparral at a 0.25:1 ratio in appropriate habitat that has been completely disturbed (e.g., abandoned farmland).

Under this proposed approach, for example, the applicant could do any of the following: (i) conserve unprotected Burton Mesa chaparral habitat in excellent condition at a 1.5:1 ratio, for a total of 52 acres; (ii) enhance protected Burton Mesa chaparral currently in moderate to poor condition at a 2:1 ratio, for a total of 70 acres; (iii) restore damaged protected Burton Mesa chaparral habitat at a 0.5:1 ratio, for a total of 14 acres; or (iv) recreate high-quality Burton Mesa chaparral at a 0.25:1 ratio, for a total of 8.8 acres. Other outcomes would also be possible, depending on how conservation, enhancement, restoration, and recreation strategies are pursued and combined. Under any scenario, however, the final outcome would have to avoid any net loss of habitat quality.



DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 4

As indicated above, the mitigation measure does *not* assume that mitigation for each acre of *degraded* habitat necessarily requires the conservation, enhancement, restoration, and/or recreation of one or more acres of *high-quality* habitat. Rather, the performance standard that the mitigation seeks to achieve is no net loss of habitat *quality*, using existing on-site conditions as the baseline for measurement. This outcome could be achieved through four possible strategies, together or in combination. The outcome could be achieved by conserving currently unprotected excellent habitat acreage at a ratio of 1.5 to 1 or by enhancing protected habitat acreage in moderate or poor condition at a ratio of 2 to 1. Both of these options employ ratios of greater than 1 to 1.

The same outcome – no net loss of habitat *quality* – could also be achieved, however, by restoring and/or re-creating high-quality habitat at acreage ratios of lower than 1 to 1. Restoration of damaged habitat can achieve this outcome at a ratio of 0.5 to 1, while the recreation of high-quality habitat in completely disturbed areas can achieve the outcome with a ratio of only 0.25 to 1.<sup>2</sup>

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<sup>2</sup> The Althouse Memorandum, on pages 6 and 7, summarizes the effects of the four different approaches as follows:

Chaparral habitat, as opposed to individual plants, may be mitigated by conservation of intact habitat, enhancement of weedy or lightly damaged protected habitat, restoration of degraded habitat, or re-creation of high-quality habitat. Depending on the approach taken, a ratio of 1 to 1 or higher may not be biologically necessary, given the low function and values of existing habitat being mitigated.

When ***conserving*** excellent but currently unprotected high-quality habitat as mitigation for the loss of degraded habitat, a 1.5 to 1 ratio will avoid loss of overall habitat quality because conservation with management for the benefit of unique habitat functions will offset the loss of highly degraded habitat. A ratio of more than 1:1 is needed because conservation does not produce new habitat, though it does provide legal protection for high-quality habitat against the possibility of future loss or degradation from lawful activities. The conserved habitat will also be managed to ensure that its high quality will be maintained.

When ***enhancing*** moderate to poor quality protected habitat as mitigation for the loss of degraded habitat, a 2 to 1 ratio will avoid loss of overall habitat quality because unique habitat functions that support chaparral dwellers is substantially improved by reducing invasive species cover, and/or reducing access that causes disturbance that otherwise



DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 5

This flexible approach, which includes ratios of less than 1 to 1 for habitat restoration and recreation, is both permissible and fully sufficient under CEQA and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). In contrast, an approach that required the conservation of a full acre of high-quality habitat for every lost on-site acre with any habitat on it, regardless of its existing quality or physical extent, would be excessive. Such an approach would not be “roughly proportional” to the impacts being mitigated, but instead would require the applicant to create a substantial environmental benefit in the form of a large net increase in protected high-quality habitat. Such an outcome would be inconsistent with constitutional limitations imposed on lead agencies when such agencies formulate mitigation measures under CEQA.

These constitutional limitations, as well as the judicial precedents that explain them, are set forth in the CEQA Guidelines as follows:

Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

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diminishes chaparral habitat functions and values. The 2 to 1 ratio accounts for the fact that the habitat is already protected, though it is in poor to moderate condition.

When ***restoring*** damaged protected habitat as mitigation for the loss of degraded habitat, a 0.5 to 1 ratio will avoid any loss of overall habitat quality because weed removal in concert with replanting and routine maintenance for the benefit of habitat functions significantly improves habitat functions and values from a degraded or damaged condition. A ratio of less than 1 to 1 is sufficient because restoration of damaged protected habitat will substantially improve the condition of such habitat. An acre of restored habitat will have substantially more biological value than an acre of degraded habitat. A half-acre of restored habitat would function at least as well, if not better than an acre of degraded habitat.

When ***recreating*** high quality habitat on completely disturbed land such as abandoned farmland, a 0.25 to 1 ratio will avoid any loss of overall habitat quality because conversion from completely degraded conditions to a highly functioning habitat transforms the land from zero chaparral habitat value to high quality chaparral habitat. A ratio of less than 1 to 1 is sufficient because recreating high quality habitat where none currently exists will result in the creation of all new habitat where it had been eliminated. A quarter-acre of recreated habitat will have significantly more value than no habitat at all.

DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 6

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be “roughly proportional” to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an *ad hoc* exaction, it must be “roughly proportional” to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(Cal. Code Regs., tit. 14, div. 6, ch. 3 [CEQA Guidelines], § 15126.4, subd. (a)(4).)

I will discuss in detail below the specific facts and principles forth in the cases cited here – *Nollan*, *Dolan*, and *Ehrlich*. I will then discuss CEQA case law on mitigation measures for biological resource impacts. But first I will lay out principles relevant to the “baseline” that the County must use first in assessing the Project’s impacts and then in formulating mitigation to address those impacts.

**B. The starting point for impact analysis in an EIR is existing conditions at the time of issuance of a Notice of Preparation; and, in assessing those existing conditions, lead agencies should account for historic fluctuations in land conditions.**

“An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines, § 15125, subd. (a).) “The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.” (*Ibid.*) “Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation [NOP] is published, ..., from both a local and regional perspective.” (*Id.*, subd. (a)(1).)

DRL-130  
(cont'd)



Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 7

Where such existing conditions reflect the environmental effects of past economic activities, such effects are appropriately reflected in the baseline, and need not, and generally cannot, be conceptually rolled back to try to capture a hypothetical more pristine prior condition. (See, e.g., *Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 558-562 [the EIR for the renewal of a lease for operating a marine terminal properly assumed ongoing terminal operations as the environmental baseline].)

This obligation to address existing conditions, whatever they are, applies even where (as is *not* the case here) the past activities in question may have been unlawful (See, e.g., *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1451-1453 [the baseline for an EIR for a proposed quarry project properly included floodplain conditions that had been altered in manner than United State Fish and Wildlife Service contended had been in violation of the Clean Water Act]; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278-1281 [in considering with to grant a use permit for an existing airport that had been built and operated illegally, the lead agency properly used a baseline that reflected the existence of the airport]; and *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 370-371 [an EIR for an illegally built playground properly assumed the playground as part of the baseline].)

The principle that CEQA takes the environment as it finds it – even if it is in a highly degraded condition – is illustrated by the outcome in *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832. There, the petitioners challenged the use of a Class 1 categorical exemption for a two-year interim water contract between the United States Bureau of Reclamation, on the one hand, and Westlands Water District and “its related distribution districts,” on the other. The interim contract continued water deliveries in substantially the same form and amounts that the water districts had been receiving since the 1960s, prior to the effective date of CEQA (1970).



DRL-130  
(cont'd)



Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 8

The petitioners argued that these historic deliveries had contributed to substantial environmental degradation in the Sacramento-San Joaquin Delta, from which the water supplies were exported. Petitioners pointed to “evidence that [Central Valley Project] pumping in the Delta in conjunction with that of the state water project contributes to factors that jeopardize or threaten the continued existence of the delta smelt and certain salmon species, the numbers of which are steadily declining; and also that the continued use of irrigation water in the area of Westlands Water District is causing groundwater and soil to be increasingly degraded over time to the point that agricultural land must be retired.” (227 Cal.App.4th at p. 876.) In response, however, the court reasoned that, “[a]lthough the matters raised by petitioners are genuine concerns, the evidence was inadequate to show that the particular project under consideration (i.e., the 2012 interim renewal contracts) had a potential to bring about a substantial adverse change to the environment.” (*Id.* at pp. 873–874.) “[T]he particular activities challenged by petitioners—i.e., the large volume of CVP water distributed to Water Districts and used for irrigation purposes on lands within Water Districts’ boundaries—were clearly part of the existing environmental baseline for Water Districts’ ongoing operations.” (*Id.* at p. 874.)<sup>3</sup>

Another important legal principle in this context is that, in assessing what constitute “existing conditions,” a lead agency can and should account for any historic fluctuations in the physical conditions on a project site resulting from cyclical land management practices. The case law regarding this principle, discussed below, is relevant here due to the normal cycles of agricultural management on the Project site, which

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<sup>3</sup> See also *CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 504-507 (physical work done on an eroding slope without CEQA compliance under the statutory exemption for actions to prevent emergencies was part of the environmental baseline for subsequent discretionary permits subject to CEQA); and *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476, 500-501 (upholding the application of the Class 1 exemption to the extension of a lease for the Diablo Canyon nuclear power plant, noting that the environmental risks associated with nuclear power were part of the environmental baseline).

DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 9

involves periodic mowing, mulching, grubbing, and brush-raking of the already degraded Burton Mesa Chaparral habitat and the intentional uprooting of the plants that contribute to such habitat.

These agricultural practices, which have been occurring for many decades, are intended to create better, grassier grazing conditions for cattle. These practices are totally lawful in the absence of any discretionary land use controls imposed by the County, as the practices do not occur on land, or involve species, that implicate federal or state environmental statutes such as the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.), Section 404 of the Clean Water Act (33 USC §1344), the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), or Fish and Game Code provisions governing the substantial obstruction of the bed, channel, or bank of any river, stream or lake (Fish & G. Code, § 1602). These activities would also occur going forward should the County ultimately choose not to allow development on the Project site.

As the Althouse Memorandum explains (see pp. 1-3), none of the plant species on the Project site that are characteristic of Burton Mesa Chaparral are formally listed as endangered, threatened, or rare under either ESA or CESA. Notably, unlisted plants identified under the Rare Plant Ranking System of the California Native Plant Society are not legally protected per se, though they are often treated by lead agency biologists as being *de facto* “endangered,” “threatened,” or “rare” for purposes of CEQA. (See CEQA Guidelines, § 15380 [unlisted species can be treated as endangered, threatened, or rare in CEQA documents even in the absence of formal listing].) Such plants, then, are only protected under CEQA, which does not apply to agricultural activities that require no permits from any local or state authority. (See *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 44-48 [section 15380 did not require the respondent lead agency to make a “specific finding or determination as to whether” a particular species “was ‘rare’ or ‘endangered’”]; see also *id.* at pp. 41-42 [CEQA does not “requir[e] public agencies to

DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 10

deny approval of any project where the perpetuation of rare or endangered species on the site cannot be guaranteed”].)

The legal principle that a lead agency may consider fluctuating past conditions in attempting to ascertain existing conditions is set forth in detail in the California Supreme Court’s seminal decision in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310 (*Communities for a Better Environment*). The principle has also been explored in Court of Appeal decisions issued subsequent to that Supreme Court decision.

In *Communities for a Better Environment*, the high court set aside a Mitigated Negative Declaration (MND) adopted by an air quality management district for a proposal by an oil company, ConocoPhillips, to modify its air permits for an existing petroleum refinery in order to meet new regulations involving motor vehicle diesel fuel. The project proposed, among other things, a substantial increase in the operation of an existing cogeneration plant and four boilers. The cogeneration plant and boilers were subject to prior permits that authorized a maximum rate of heat production for each piece of equipment. In actual practice, however, these maximum permitted rates had never been reached. In adopting an MND, the air district acknowledged that the increased operation of steam generation equipment would cause additional nitrogen oxide emissions beyond historic and existing levels, but did not consider these increases to be attributable to the project for CEQA purposes because the increases did not exceed the maximum rate of emissions authorized under the existing permits. Instead, the district treated the additional nitrogen oxide emissions arising from the increased plant operations to be within previously permitted levels as part of the baseline. (*Id.* at pp. 316–319.)

The Supreme Court determined that the air district erred by measuring the air pollutant emissions of the proposed project against hypothetical emissions at full operation under existing permits. (*Id.* at p. 322.) The court held that the district should



DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 11

have compared the project to the existing physical conditions, not hypothetical conditions allowed under the existing permit. (*Id.* at p. 321.) In this case, the air district’s baseline was premised on simultaneous operation of all boilers at their maximum permitted capacity, which was not a realistic description of existing conditions based on the record. This was an “illusory” comparison of the project against what could happen, rather than against what was actually happening. (*Id.* at p. 322.)

The air district and Conoco Phillips argued that daily fluctuations in refinery operations made it difficult to use annual averages to arrive at an accurate baseline. Although the court rejected the notion that such difficulties justified the use of permitted but unrealized levels of air pollution as the baseline, the court was cognizant of the need to account for fluctuations in some fashion and thus did not impose a rigid rule regarding how to estimate baseline conditions. “Neither CEQA nor the Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence.” (*Id.* at p. 328.) The court more fully explained the need for flexibility in ascertaining “existing conditions” as follows:

the date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods.” [Citation.] In some circumstances, peak impacts or recurring periods of resource scarcity may be as important environmentally as average conditions. Where environmental conditions are expected to change quickly during the period of environmental review for reasons other than the proposed project, project effects might reasonably be compared to predicted conditions at the expected date of approval, rather than to conditions at the time analysis is begun. [Citation.] A temporary lull or spike in operations that happens to occur at the time environmental review for a new project begins should not depress or elevate the baseline; overreliance on short-term activity averages



DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 12

might encourage companies to temporarily increase operations artificially, simply in order to establish a higher baseline.

(*Id.* at pp. 327–328.)

Two cases decided in the aftermath of *Communities for a Better Environment* illustrate how these legal principles should be applied in practice.

In *North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94 (*North County Advocates*), the Court of Appeal upheld the use of a shopping center’s historical full occupancy as a proper baseline for the EIR’s analysis. The case involved a proposal to renovate a former Robinsons-May store and other small portions of a shopping center. The EIR’s baseline for traffic impacts treated the Robinsons-May store as fully occupied, even though the store had been vacated years earlier and had been only periodically occupied since then. (*Id.* at p. 96.) The court held that substantial evidence supported the respondent city’s determination of the traffic baseline because it was based on “*recent historical use*” and was consistent with the property owner’s right to fully occupy the Robinsons-May space without further discretionary approvals. (*Id.* at pp. 105–106.) The court reasoned as follows:

[U]nlike *Communities for a Better Environment*, the City’s selection of a traffic baseline that assumed full occupancy of the Robinsons-May space was not merely hypothetical because it was not based *solely* on Westfield’s entitlement to reoccupy the Robinsons-May building “at anytime without discretionary action,” but was also based on the actual historical operation of the space at full occupancy for more than 30 years up until 2006. \* \* \* [T]he Robinsons-May space was less occupied from 2007 through 2009 (two retail users occupied part of it from August 2006 through December 2007, and two others occupied part of it from August through November in 2008 and in 2009). We view this fluctuating occupancy—which is “the nature of a shopping center”—as akin to the varying oil refinery operations in *Communities for a Better Environment* that led the Supreme Court to recognize that agencies have discretion ““to consider conditions over a range of time periods’ ” to account for a “temporary lull or spike in operations....”

DRL-130  
(cont’d)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 13

(241 Cal.App.4th at pp. 105-106 [italics original; footnote omitted].)

In *San Francisco Baykeeper, Inc. v. California State Lands Commission* (2015) 242 Cal.App.4th 202 (*Baykeeper*), another Court of Appeal reached a similar result. That case involved a challenge to the California State Lands Commission’s renewal of a lease allowing the continued dredge mining of sand from lands under the San Francisco Bay. (*Id.* at p. 210.) The draft EIR defined the baseline as the volume of sand mined from the lease parcels in 2007, the year the NOP for the EIR was published. Following the close of public comment on the draft EIR, however, the commission determined that changes to the project required recirculation of the draft EIR. Rather than using the year 2007 as a baseline, the revised draft EIR used the *average annual volume* of sand mined in the proposed project area per year from 2002 to 2007. (*Id.* at p. 212.) The petitioner argued that the revised draft EIR’s baseline was inadequate because it did not reflect the fact that sand mining levels dropped substantially after 2007. The Court of Appeal concluded, though, that substantial evidence supported the commission’s use of the five-year average baseline. (*Id.* at pp. 218–219.) For instance, the final EIR’s responses to comments explained that “inclusion of the unusually low mining volumes in years after NOP publication during the economic downturn ... would distort the baseline by understating the overall levels of mining in years prior to the expiration of the previous lease and commencement of EIR preparation.” (*Id.* at p. 219.) This conclusion was supported by statistical information in the record, including data from the California Geological Survey showing that California’s economic downturn during 2007 contributed to a significant decrease in both the production and value of construction aggregate, including sand. (*Id.* at p. 218.) The court therefore upheld the revised EIR’s use of a five-year average baseline.

In late 2018, the California Natural Resources Agency updated CEQA Guidelines section 15125, subdivision (a)(1), to reflect the principles and cases described above. The pertinent language in that provision now provides that “[w]here existing conditions

DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 14

change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence.”

In light of *Communities for a Better Environment*, *North County Advocates*, and *Baykeeper*, as well as the current language of CEQA Guidelines section 15125, subdivision (a)(1), the County, in identifying “existing conditions” on the Dana Reserve Project site, should take full account of the physical conditions that exist there immediately following agricultural practices that destroy the plants that are characteristic of Burton Mesa Chaparral. These “high impact” baseline conditions are analogous to both the fully occupied shopping center in *North County Advocates*, which reflected higher traffic levels than would occur in the absence of full occupation, and the high historic levels of sand mining in *Baykeeper*, which represented a more degraded baseline than the lower levels of mining that occurred after 2007 in that case.

Taken together, all of the legal precedents described above leave no doubt that, in assessing the significance of impacts to Burton Mesa Chaparral habitat on the Project site, the County must take full account of the degraded, low-quality character of that habitat, including its conditions immediately after periodic agricultural practices that uproot and destroy the plants associated with Burton Mesa Chaparral habitat. As noted above, these practices would continue if the County Board of Supervisors should choose to deny any development on the Project site.

As explained in detail below, moreover, the County, in formulating mitigation measures for impacts to such degraded habitat, may require no more from the applicant than is roughly proportional to the nature and extent of such impacts.



**DRL-130**  
**(cont'd)**

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 15

**C. Nollan, Dolan, and Ehrlich**

As indicated earlier, CEQA Guidelines section 15126.4, subdivision (a)(1)(4), expressly incorporates principles set forth in three leading cases from the United States Supreme Court and the California Supreme Court on the constitutional limitations on agencies' authority to extract various kinds of conditions on private project applicants during permitting processes. The facts of all three of these cases are illuminating with respect to the issues at hand.

In *Nollan v. Coastal Commission* (1987) 483 U.S. 825 (*Nollan*), the United States Supreme Court declared invalid a condition by which the California Coastal Commission had required a property owner to dedicate an easement allowing public access across beachfront land as "mitigation" for the effects of a coastal development permit allowing the owner to replace a small residential structure with a larger one. In so holding, the court explained that, in order for a condition of approval requiring a property owner to give up land to be valid, a "nexus" must exist between the condition and a purpose that would justify denial of the permit (*i.e.*, the condition must be addressed to the same harm that would justify denial). (483 U.S. at pp. 834–837.)<sup>4</sup>

The court invalidated the condition requiring a dedication of property *along* the beach (rather than *to* the beach) because the landward visual impacts associated with the property owner's construction of a new home in no way created the need for such

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<sup>4</sup> The court also stated that any such condition must also "substantially advance legitimate state interests." (483 U.S. at p. 834.) In *Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 540-542, however, the Supreme Court subsequently disapproved this first part of the *Nollan* "takings" analysis, which had first been announced in *Agins v. City of Tiburon* (1980) 447 U.S. 255, 260. The court in *Lingle* explained that "the language the Court selected [in *Agins*] was regrettably imprecise. The 'substantially advances' formula suggests a means-ends test: It asks, in essence, whether a regulation of private property is effective in achieving some legitimate public purpose. An inquiry of this nature has some logic in the context of a due process challenge, for a regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause. \*\*\* But such a test is not a valid method of discerning whether private property has been 'taken' for purposes of the Fifth Amendment." (544 U.S. at p. 542.)

DRL-130  
(cont'd)



Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 16

“lateral” access. As the court explained, “[i]t is quite impossible to understand how a requirement that people already on the public beaches be able to walk across the Nollans’ property reduces any obstacles to viewing the beach created by the new house.” (483 U.S. at p. 838.) The court indicated, however, that the commission might have properly imposed a condition “that would have protected the public’s ability to see the beach notwithstanding construction of the new house.” (*Id.* at p. 836.)

In *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*), the court addressed a question left unanswered in *Nollan*. Whereas *Nollan* addressed the permissible purposes of requiring a land dedication as a condition of project approval, *Dolan* focused on the related but distinct question of just *how extensive* the burdens of such a condition may be (assuming the purpose is legitimate). The challenged agency action in *Dolan* was the issuance of a building permit for the expansion of a commercial development. The defendant city required the property owner to dedicate to the city certain land lying within the 100-year floodplain for the construction of a storm drainage system, and to dedicate a 15-foot strip of land adjacent to the floodway for a pedestrian/bicycle pathway. (512 U.S. at pp. 379–380.)

The court recognized the general legitimacy of the purposes addressed by the dedications required of the property owner: the need for flood control to handle runoff from increased pavement; and the need to reduce traffic impacts that might be created by an expanded commercial facility. Thus, to use the language of *Nollan*, there was an “essential nexus” between the actual impacts associated with the development and the purposes of the land dedication required as a condition imposed on the property owner. (*Id.* at pp. 386–388.) The court was therefore required to determine whether “the *degree* of the exactions demanded by the city’s permit conditions bear the required relationship to the projected impact of the petitioner’s proposed development.” (*Id.* at p. 388, italics added.)



DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 17

In answering this inquiry, the court held that there must exist a “*rough proportionality*” between the extent of the impacts caused by a project approval and the extent to which the exactions actually mitigate such impacts. “No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and *extent* to the impact of the proposed development.” (*Id.* at p. 391, italics added.) In contrast to “most generally applicable zoning regulations,” for which “the burden properly rests on the party challenging the regulation to prove that it constitutes an arbitrary regulation of property rights,” the case at hand involved “an adjudicative decision to condition petitioner’s application for a building permit on an individual parcel” for which “the burden properly rests on the city” to justify the extent of the required dedication. (*Id.* at p. 391, fn. 8.)

After announcing the “rough proportionality” standard, the court proceeded to apply it to the facts in question. Emphasizing that the requirement to dedicate property eliminates a landowner’s “right to exclude others,” the court held that the respondent city had failed to properly justify the exactions imposed on the landowner. (*Id.* at pp. 392–396.) In closing, the court noted that “[t]he city’s goals in reducing flooding hazards and traffic congestion, and providing for public greenways, are laudable, but there are outer limits to how this may be done.” (*Id.* at p. 396.)

In *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854 (*Ehrlich*), the California Supreme Court interpreted and applied *Nollan* and *Dolan* in holding that a city had acted improperly in assessing a \$280,000 “recreation fee” against a property owner as a condition of approving a residential project requiring a general plan amendment, specific plan amendment, and rezone. The new development would replace a private club with tennis courts. The court determined that the fee was flawed because the \$280,000 required of the applicant was the amount necessary to build new *public* recreational facilities to replace the *private* facilities being “lost” with the project. The city’s approach wrongly assumed that the fee should fund the construction of new facilities that would be



DRL-130  
(cont’d)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 18

open, without further cost, to the public at large. In fact, however, the “lost” facilities were private facilities funded through the marketplace by membership dues. “[U]nder the city’s formula, the public would receive, ex gratia, \$280,000 worth of recreational facilities the cost of which it would otherwise have to finance through membership fees. *Plaintiff is being asked to pay for something that should be paid for either by the public as a whole, or by a private entrepreneur in business for profit.* The city may not constitutionally measure the magnitude of its loss, or of the recreational exaction, by the value of facilities it had no right to appropriate without paying for.” (12 Cal. 4th at p. 883, italics added.)

The *Ehrlich* decision consists of (i) a “plurality opinion” signed by three of the court’s seven justices, (ii) a “concurring opinion” authored by Justice Mosk, (iii) a “concurring and dissenting opinion” written by Justice Kennard and joined by Justice Baxter, and (iv) a “concurring and dissenting opinion” penned by Justice Werdegar. Thus, as to some issues, there is no clear majority “holding.” As to certain other issues, however, there clearly was general agreement amongst the Justices.

All members of the court agreed that both the “essential nexus” standard of *Nollan* and the “rough proportionality” standard of *Dolan* applied to the facility replacement fee imposed by the city. (12 Cal. 4th at pp. 881, 887, 903, 912.) Speaking generally, the court concluded that those standards applied to monetary exactions imposed “on an *individual* and discretionary basis.” (*Id.* at p. 876, italics added.) The court said that it would decline to apply the rigorous *Nollan* standard, however, to the judicial review of assessments imposed on *numerous* projects via broadly applied *legislative* enactments. The court therefore distinguished between ad hoc exactions imposed on a project-by-project basis, on the one hand, and generally applicable legislative requirements imposed across the board via legislation such as ordinances, on the other hand. (*Id.* at pp. 876.)

In the matter at hand – the mitigation of impacts to Burton Mesa Chaparral habitat due to the Dana Reserve project – the relevant portion of *Ehrlich* is its embrace of the

DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 19

reasoning of *Nollan* and *Dolan*. The County will impose mitigation for this habitat on an ad hoc, individualized basis as part of the environmental review process for the Project, rather than as a result of any generally applicable County ordinance addressing Burton Mesa Chaparral mitigation. The County’s mitigation, then, must meet both the “essential nexus” and the “rough proportionality” requirements discussed above.

**D. CEQA Case Law on Mitigation Measures for Biological Resource Impacts**

Although, as quoted above, section 15126.4, subdivision (a)(4)(B), of the CEQA Guidelines says that “[t]he mitigation measure must be ‘roughly proportional’ to the impacts of the project,” what this statement really means is that, *at most*, the mitigation for a significant environmental effect must be roughly proportional. While the constitutional principles discussed above preclude *over-mitigating* impacts, CEQA stops short of always requiring roughly proportional mitigation, though in practice it is often imposed, particularly where the environmental resources at issue, such as wetlands, are also subject to federal or state statutes or regulations above and beyond CEQA.

“The goal of mitigation measures is not to net out the impact of a proposed project, but to reduce the impact to insignificant levels.” (*Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 529.) “Mitigation measures need not include precise quantitative performance standards, but they must be at least partially effective, even if they cannot mitigate significant impacts to less than significant levels.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 523.)

The definition of “mitigation” found in section 15370 of the CEQA Guidelines includes, among other things, “[r]ectifying the impact by repairing, rehabilitating, or restoring the impacted environment[.]” “[r]educing or eliminating the impact over time by preservation and maintenance operations during the life of the action[.]” and “[c]ompensating for the impact by replacing or providing substitute resources or



DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 20

environments, including through permanent protection of such resources in the form of conservation easements.”

Though not all mitigation measures, to be valid, need to include performance standards, such standards are necessary where many of the crucial details for a mitigation plan are deferred until after project approval. “Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, 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 in the mitigation measure.” (CEQA Guidelines, § 15126.4, subd. (a)(1)(B), italics added.)

One common performance standard that is discussed in CEQA case law is “no net loss” of wetland habitat, which is commonly required, in any event, by the United States Army Corps of Engineers under the Clean Water Act. This approach to CEQA mitigation can generally be termed “compensatory,” though it also typically involves the use of conservation easements and the rehabilitation or restoration of former wetlands, along with ongoing maintenance.

In *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603 (*California Native Plant Society*), the court considered the adequacy of a mitigation measure addressed to mitigate for the loss of vernal pools, a kind of wetland, that were supporting two species of shrimp subject to protection under the Endangered Species Act. The measure was mitigation for “the direct loss of 14.1 acres of vernal pool fairy shrimp habitat” and “15.65 acres of vernal pool tadpole shrimp habitat.” (*Id.* at p. 610.) The measure “provided that these direct impacts would be mitigated ‘in such a manner that there will be no net loss of habitat (acreage and function) for these species in

DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 21

the Laguna Formation following implementation of the project.” (*Ibid.*) Under the measure, “the applicant would be required to ‘complete and implement a habitat mitigation and monitoring plan that will compensate for the loss of acreage, function and value of the impacted resources.’” (*Ibid.*) “The plan would have to include ‘[t]arget areas for creation, restoration and preservation,’ ‘[a] complete biological assessment of the existing resources on the target areas,’ ‘[s]pecific creation and restoration plans for each target area,’ and “[p]erformance standards for success that will illustrate that the compensation ratios are met.” (*Id.* at pp. 610-611.)

In upholding this measure, the court stated that the respondent city “did not defer a determination of whether the Project would have a significant impact on the vernal pool and seasonal wetland habitats or defer the identification of measures calculated to mitigate that impact. Rather, the City determined the impact the Project would have—habitat loss—and identified a specific measure to mitigate that impact—preservation or creation of replacement habitat off site in a specific ratio to the habitat lost as a result of the Project. While it is true the City did not identify any specific proposed mitigation site, there is nothing .... that required it to do so.” (*Id.* at p. 622.)

Although the measure in *California Native Plant Society* prohibited any net loss of acreage, the measure also addressed the “function and value of the impacted resources.” (*Id.* at p. 610.) Options for mitigating the function and value of the impacted wetland habitat included “creation, restoration and preservation.” (*Id.* at pp. 610-611.)

In *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 (*Endangered Habitats League*), the court, using similar reasoning, upheld a mitigation measure addressed to the loss of habitat for the California gnatcatcher, a federally protected bird. The measure, the court said, “sets out the possibilities—on-site or off-site preservation of similar habitat at a ratio of at least two to one, or one of several possible habitat loss permits from relevant agencies. We believe this enumeration of alternative mitigation measures saves the provision from improper deferral.” (*Ibid.*)

DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 22

The same court also upheld a “mitigation measure for tree loss [that] requires a tree restoration, maintenance, and monitoring plan to be prepared and approved prior to issuing grading permits. It provides the plan must ‘detail’ long-term maintenance and monitoring, include requirements for replanting procedures, and include a contract with a certified arborist for at least 10 years. The arborist must make reports throughout the year and must be given decision-making power over tree care and maintenance. We find these standards sufficient.” (*Id.* at p. 795.)

It is notable that, in *Endangered Habitats League*, the court upheld mitigation approaches that involved land preservation, tree replanting, maintenance, and monitoring as legitimate and complementary approaches to mitigation.

In *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 943, 946, the court upheld a mitigation measure addressing impacts to rare plants located on land identified for development. The measure allowed for “plant salvage and transportation plan to avoid, relocate or minimize impacts on these species.” The governing performance standard required the successful establishment of at least 80 percent of transplanted plants. Notable here is the fact that the measure was sufficient though its performance standard stopped short of requiring “no net loss” of the adversely affected plants.

In *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1038 (*ECOS*), the court was clear that adequate mitigation under CEQA, as well as under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), need not always require acre-for-acre mitigation. In that case, the court upheld under both CEQA and CESA a Habitat Conservation Plan approved not only under CESA but also under the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). The Conservation Plan required the purchase of a half-acre for habitat reserves for every acre of new development. The court explained the overall workings of the Conservation Plan as follows:



DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 23

Under the plan, the Natomas Basin Conservancy (Conservancy), a nonprofit organization, will manage the habitat and monitor the health and welfare of the species, including the hawks and the snakes. The centerpiece of the plan is the purchase of one-half acre for habitat reserves for every acre that is developed, irrespective of the habitat quality of the land developed. The land acquisitions for reserves will be funded with mitigation fees paid by developers. The Conservancy will dedicate 50 percent of the 8,750 acres of reserve land to rice cultivation that serves as habitat for the snakes, 25 percent to managed marsh habitat for the snakes, and the remaining 25 percent in upland habitat for foraging opportunities for the hawks. *The Conservation Plan provides multiple justifications for the 0.5:1 ratio: “(1) the reserves will provide higher quality habitat than the lands to be developed, especially given that the reserves will be managed for the covered species; (2) much of the land to be developed is of limited value as habitat but will be assessed as if it were of value; (3) the reserves will provide permanent habitat for the covered species; (4) the [Conservation Plan] provides monitoring and adaptive management to protect the species; and (5) the reserves will be large and biologically viable.”*

(142 Cal.App.4th at p. 1025, italics added.)

The referenced 0.5 to 1 mitigation ratio was intended not only to satisfy CEQA’s mitigation requirements, but also to satisfy the CESA requirement that the impacts of any “take” of an endangered or threatened species be “minimized and fully mitigated” in a manner that is “roughly proportional in extent to the impact of the authorized taking on the species.” (*Ibid.*, quoting Fish & G.Code, § 2081, subd. (b)(2).)

As the lengthy quotation above makes clear, among the reasons why a ratio of half an acre to one acre was permissible under both CEQA and CESA were that “much of the land to be developed is of limited value as habitat” and that “the reserves will provide higher quality habitat than the lands to be developed.”

The court rejected the petitioner’s argument that a minimum one to one ratio was required by CEQA. The court explained that “[t]he Conservation Plan in fact mitigates for the impacts on covered species in a variety of ways beyond the purchase of a half acre

DRL-130  
(cont’d)



Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 24

for every acre developed. The reserves purchased with the mitigation fees will be *maintained* as habitat in perpetuity. Moreover, the Conservancy is mandated by the Conservation Plan to *manage* rice farms, which might otherwise disappear from the Natomas Basin. The preconstruction surveys, preservation of land adjacent to Fisherman’s Lake, avoidance of development in the one-mile hawk zone, and *planting of nest trees* are all part of the integrated mitigation plan designed to compensate for the incidental take of any covered plants and animals.” (142 Cal.App.4th at p. 1039, italics added.) The court thus emphasized that the Conservation Plan would improve the biological conditions of the land to be preserved through an integrated approach that include active maintenance, management, and enhancement of the land.

The court made similar points in upholding the mitigation ratio against an attack under CESA:

We have described at some length the impressive avoidance, minimization, and mitigation features of the Conservation Plan, including the purchase of reserve lands to be developed and maintained as high quality habitat, adaptive management, adjustments because of recovery plan adoption, and extensive compliance and biological effectiveness monitoring. The Department’s findings that the entire Conservation Plan minimized and fully mitigated the impacts of the taking are further supported by the scientific assessment of the Natomas Basin in that several covered species do not occur in the basin or their use of the basin is low and sporadic, the basin constitutes an insignificant portion of most of the species’ ranges, and habitat remains available within and outside the basin to satisfy species’ essential behavioral needs.

(*Id.* at p. 1043.)

As the preceding detailed discussion of CEQA case law makes clear, there is abundant judicial authority for mitigation approaches that use tools such as conservation, enhancement, restoration, and recreation – separately or in combination – in order to achieve roughly proportional mitigation for lost or damaged biological resources. These are the very tools used in the Dana Reserve applicant’s proposal to mitigate the effects of



DRL-130  
(cont'd)

Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 25

the degraded Burton Mesa Chaparral habitat on the Project site. Where new or restored high-quality habitat will replace existing low-quality habitat, the proposal permissibly offers up smaller amounts of new or restored acreage to replace lost amounts of degraded acreage. The fact that the approach does not require “no net loss of acreage” does not make it legally or biologically infirm. The operative performance standard is “no net loss of habitat *quality*.” This approach is not only biologically legitimate; but it also functions within the parameters of the constitutional principles described at length above.

We recognize that, as with any mitigation measure associated with a project approved under CEQA, our proposal will be subject to inclusion in a mitigation monitoring or reporting program (MMRP) pursuant to Public Resources Code section 21081.6, subdivision (a)(1), and CEQA Guidelines section 15097. To the extent that County staff has any concerns regarding the details for determining how to assess and ensure full compliance with our proposed approach, one possible useful exercise would be to map out, sooner rather than later, what a monitoring or reporting strategy for our proposed measure could look like. Though lead agencies need not include MMRPs in their Draft EIRs, there is certainly no prohibition against thinking ahead about how monitoring or reporting could work. Nor is there any prohibition against including monitoring or reporting provisions within the four corners of a proposed mitigation measure.<sup>5</sup>

#### CONCLUSION

I am hopeful that this letter will assist San Luis Obispo County staff and its consultant team in understanding the reasoning behind the Dana Reserve applicant’s proposed approach for mitigating for the loss of degraded onsite Burton Mesa Chaparral

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<sup>5</sup> Our mitigation approach is also intended to achieve consistency with County General Plan Policy BR-2.6, which requires “require no net loss of sensitive natural plant communities and critical habitat areas.”

DRL-130  
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Mr. Singewald and Ms. Guetschow  
March 23, 2022  
Page 26

habitat. This habitat was degraded as of the time the NOP was issued and will be degraded even more the next time the current agricultural lessee of the property takes steps, as have occurred since the 1930s, to facilitate the growing of grasses for cattle grazing. For all of the reasons laid out above, I believe that the proposed mitigation approach is sound and appropriate from a legal standpoint. The net result of Project approval will be the conservation, enhancement, restoration, and/or recreation of permanent habitat in lieu of currently degraded habitat in which the plants that contribute to Burton Mesa Chaparral habitat are periodically uprooted and killed. I would be happy to participate in any future meetings or oral discussions on this subject matter.

Sincerely,




James G. Moose

Cc: Jon Ansolabehere (jansolabehere@co.slo.ca.us)  
Ben Dore (bdore@co.slo.ca.us)  
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LynnDee Althouse (lynnedee@althouseandmeade.com)

Enclosures (Althouse Memorandum and PleinAire Mitigation graphics)

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Althouse Memorandum



1602 Spring Street, Paso Robles, CA 93446  
(805) 237-9626 • FAX (805) 237-9181 • www.althouseandmeade.com

## Memo

To: Jim Moose  
From: LynneDee Althouse  
Date: 3/23/2022  
Copy: Nick Tomkins, Laurie Tamura  
**Re: Dana Reserve Maritime Chaparral Current Condition and Proposed Mitigation**

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Our recommended approach to reasonable and prudent mitigation for impacts to degraded maritime chaparral (aka Burton Mesa Chaparral) on the Dana Reserve is consistent with our 2021 Biological Report. This habitat has been periodically manipulated for farming and livestock range management since the 1930's (see historic aerials in Appendix F of our Biological Report).

### **1 SUMMARY OF IMPACTS**

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The Project proposes to impact 35 acres and preserve 0.9 acres of degraded Burton Mesa chaparral. The Alternative Project would impact 34.9 acres and preserve 1.1 acres of Burton Mesa chaparral. Boundaries of the mapped Dana Reserve chaparral habitat circumscribe grazing land that contains occasional shrubs characteristic of Burton Mesa chaparral with scattered oaks (less than 20% oak cover) in habitat otherwise dominated by non-native grasses and herbs (see photos on page 3 of this memo). Rare manzanitas and ceanothus shrubs were very small (generally less than 3 feet in diameter, and less than 2 feet tall) during our site surveys. The project proposes to remove 460 rare chaparral shrubs (127 sand almond and 323 sand mesa manzanita) scattered within mapped maritime chaparral habitat that contains some of the constituent elements (plant taxa) characteristic of Burton Mesa Chaparral. In addition, approximately 6600 rare mesa horkelia plants would be removed. This perennial herb grows in patches along shady edges of oak woodland and among chaparral shrubs.

### **2 MITIGATION JUSTIFICATION**

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Below is a description from the Biological Report that describes characteristics of the Burton Mesa chaparral and site conditions observed during our biological surveys of the Dana Reserve. Note that characteristic chaparral plants had very low cover due to routine mowing/grubbing. Scattered oaks were present at less than 20 percent canopy cover.

#### **2.1 Description of Typical Burton Mesa Chaparral**

The National Vegetation Classification Hierarchy (USNVC by Jennings et al. 2009) may be used to classify constituent elements of chaparral on the Dana Reserve as part of the Californian

DRL-130  
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maritime chaparral group. This group is within the formation subclass called Mediterranean scrub and grassland.

Burton Mesa chaparral (California Code 37.322.00) described in the CNPS Manual of California Vegetation Online (2022) lists two rare manzanitas, Purissima manzanita (*Arctostaphylos purissima*) and/or sand mesa manzanita (*Arctostaphylos rudis*), as the dominant or characteristically present manzanitas in the shrub canopy. Another manzanita, Eastwood's manzanita (*Arctostaphylos crustacea* ssp. *eastwoodiana*) is also a characteristic manzanita found in Santa Barbara County. Common shrub associates typically include chamise (*Adenostoma fasciculatum*), California sagebrush (*Artemisia californica*), coyote brush (*Baccharis pilularis*), buck brush (*Ceanothus cuneatus* var. *fascicularis*), bush monkeyflower (*Diplacus aurantiacus*), mock heather (*Ericameria ericoides*), golden yarrow (*Eriophyllum confertiflorum*), rush rose (*Helianthemum scoparium*), deer weed (*Lotus scoparius*) and black sage (*Salvia mellifera*). Rare varieties of the ceanothus species called *Ceanothus impressus* are also characteristic of this habitat. Emergent trees may be present at low cover, including coast live oak (*Quercus agrifolia*) or Shreve oak (*Quercus parvula* var. *shrevei*). Shrubs are generally less than 5 meters (16 feet) tall and their canopy open to continuous.

In the Burton Mesa chaparral, the herbaceous layer is variable and may include cryptogamic crust. Burton Mesa chaparral soils are derived from Pleistocene sand deposits, and occasionally marine siltstones overlain with a thin sand layer.

Burton Mesa chaparral, also known as *Arctostaphylos* (*purissima*, *rudis*) Shrubland Special Stands, is a Sensitive Natural Community listed by CDFW as G1/S1 and is considered a Special Stand by CNPS, which defines this habitat type by the characteristic presence of sand mesa manzanita (CDFW 2022, CNPS 2022).

## 2.2 Maritime Chaparral on the Dana Reserve

On Dana Reserve, representatives of the Burton Mesa chaparral habitat occurs primarily as re-sprouting shrubs with an open canopy that has been disturbed by routine brush removal (Photo 1). This habitat type shows substantial evidence of vegetation type conversion from chaparral to Mediterranean annual grassland with scattered oaks as described by Pratt 2022. Mechanical disturbances allow herb invasion and a concurrent decline in shrub cover. Over time, shrubland has been replaced by grassland savannah with scattered oaks. During our site investigations of the Dana Reserve, the sand mesa manzanita (*Arctostaphylos rudis*) occurs as scattered resprouting individuals, though never reaching more than 1-2% cover (Photo 2).



Photo 1. Re-sprouting shrubs in the disturbed Burton Mesa chaparral habitat which receives routine brush clearing, view north. May 18, 2018.



Photo 2. Re-sprouting sand mesa manzanita. June 9, 2020.

DRL-130  
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Weedy grasses, such as riggut brome (*Bromus diandrus*) and veldt grass (*Ehrharta calycina*) are the dominant vegetation. Crown-sprouting chamise (*Adenostoma fasciculatum*) and black sage (*Salvia mellifera*) co-occur as scattered individuals in the shrub layer along with deerweed (*Acmispon glaber* [*Lotus scoparius*]), sticky monkeyflower (*Mimulus* [*Diplacus*] *aurantiacus*), coffeeberry (*Frangula californica*), hollyleaf cherry (*Prunus ilicifolia*), and broom rush-rose (*Crocanthemum* [*Helicanthemum*] *scoparium*).

This habitat on the Dana Reserve includes special status species as scattered individuals of sand mesa manzanita, sand almond (*Prunus fasciculata* var. *punctata*), sand buckbrush (*Ceanothus cuneatus* var. *fascicularis*), mesa horkelia (*Horkelia cuneata* var. *puberula*), and California spineflower (*Mucronea californica*).

Coast live oak trees are commonly found within Burton Mesa chaparral, but canopy does not exceed 20 percent absolute cover. Many of the species described within Burton Mesa chaparral are also present in coast live oak woodland, as both habitats often intergrade. The primary distinction between these two habitats is the canopy cover of coast live oaks, which, when greater than 20 percent, is considered a woodland or forest.

### 2.3 Characteristic Plant Taxa

The Dana Reserve contains taxa characteristic of the Burton Mesa Chaparral as described in the Manual of California Vegetation (Table 1). The most iconic representative chaparral plant is the rare sand mesa manzanita. Two rare ceanothus taxa are present as scattered individuals.

TABLE 1. CHARACTERISTIC BURTON MESA CHAPARRAL TAXA PRESENT ON THE DANA RESERVE

Scientific Name	Common Name	Rarity Status
<i>Acmispon glaber</i> [ <i>Lotus scoparius</i> ]	Deer weed	--
<i>Adenostoma fasciculatum</i>	Chamise	--
<i>Arctostaphylos rudis</i>	Sand Mesa manzanita	CRPR 1B.2
<i>Artemisia californica</i>	California sagebrush	--
<i>Baccharis pilularis</i>	Coyote brush	--
<i>Ceanothus cuneatus</i> var. <i>fascicularis</i>	Sand buck brush	CRPR 4.2
<i>Ceanothus impressus</i> var. <i>nipomensis</i>	Nipomo mesa ceanothus	CRPR 1B.2
<i>Diplacus aurantiacus</i> [ <i>Mimulus aurantiacus</i> ]	Sticky monkeyflower	--
<i>Ericameria ericoides</i>	Mock heather	--
<i>Quercus agrifolia</i> var. <i>agrifolia</i>	Coast live oak	--
<i>Salvia mellifera</i>	Black sage	--

Other characteristic plant taxa listed in the Manual of California Vegetation not represented on the Dana Reserve include two manzanitas found in Santa Barbara County, plus two species well distributed in California: golden yarrow, a sub-shrub, and Shreve oak tree (Table 2).

TABLE 2. CHARACTERISTIC BURTON MESA CHAPARRAL TAXA NOT FOUND ON THE DANA RESERVE

Scientific Name	Common Name	Rarity Status
<i>Arctostaphylos crustacea</i> ssp. <i>eastwoodiana</i>	Eastwood's brittle-leaf manzanita	CRPR 1B.1
<i>Arctostaphylos purissima</i>	La Purissima manzanita	CRPR 1B.1
<i>Eriophyllum confertiflorum</i>	Golden yarrow	--
<i>Quercus parvula</i> var. <i>shrevei</i>	Shreve oak	--

*Dana Reserve Maritime Chaparral Mitigation*

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#### 2.4 Photos from CNPS MCVII Online

Two photographs from California Native Plant Society's website for the Manual of California Vegetation<sup>1</sup> for Burton Mesa Chaparral are provided below for reference. Notice structure and density of shrub cover in these reference sites.



Photo 3. Burton Mesa chaparral shrubs are densely packed. Older shrub crowns have started to die back. Younger, vigorous understory shrubs are in the foreground.

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<sup>1</sup> Available at: <https://vegetation.cnps.org/alliance/130>

DRL-130  
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Photo 4. Dense manzanita shrub cover near the coast in Santa Barbara County.

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## 2.5 Burton Mesa Chaparral Mitigation Considerations and Biological Justification

This section describes compensatory mitigation appropriate for loss of remnant Burton Mesa chaparral habitat and associated rare taxa that occur on the Dana Reserve. The total canopy area occupied by the sensitive characteristic herbs and shrubs plus oak trees on the Burton Mesa Chaparral during our site investigation was less than an acre (~25,000 sf; 0.57 acre), or less than 2 percent of the mapped 35 acre scattered distribution of the plants (Table 3). Burton mesa chaparral habitat should be replaced off site and protected for its habitat functions and values.

Individual rare plant taxa should be mitigated at ratios consistent with their rarity. Taxa considered rare and threatened (California Rare Plant Rank [CRPR] 1B) should have a higher mitigation ratio than less rare taxa (CRPR 4). For plants ranked 1B by CNPS the mitigation ratio shall be 2:1 for individuals in suitable/occupied habitat for taxa ranked 1B. Restore and/or enhance protected habitat suitable for 14,000 mesa horkelia, 100 Nipomo Mesa ceanothus, and 626 sand mesa manzanita (page 114 of the September 2021 Biological Report BIO-7).

For the annual plant ranked as 4, California mucronea, mitigation is complicated by its association with disturbance and its annual abundance directly affected by annual weather patterns. Mitigation measure BIO-8 in the Biological Report suggests restoration and/or enhancement of 45 acres of conserved land suitable for the spineflower. This measure may not be reasonable due to the variable population dynamics of this annual plant. This plant may occupy openings in chaparral shrub canopy within protected habitat.

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Perennial plants on List 4 can be avoided (Michael's rein orchid) or mitigated at a 1:1 ratio. Replacement plantings on or off-site should include at least two sand buck brush and 127 sand almond plants. Sand almond, another plant ranked 4, may be included in the Burton Mesa chaparral mitigation plan.

TABLE 3. IMPACTS TO SENSITIVE PLANT TAXA CHARACTERISTIC OF BURTON MESA CHAPARRAL ON THE DANA RESERVE

Sensitive Plant Species Impacted Alternative Plan	Rarity	Impact (approx. count)*	Impact degraded canopy (sf)	Percent of 35 Acres degraded habitat impacted
<b>Herbs</b>				
California spineflower [annual]	4.2	800,000**	variable	--
Mesa horkelia <sup>2</sup> [perennial]	1B.1	6608	5947	0.39%
<b>Shrubs</b>				
Nipomo mesa ceanothus	1B.2	8	56s	<0.01%
Sand almond <sup>3</sup>	4.3	127	897	0.06%
Sand buck brush	4.2	2	14	<0.01%
Sand mesa manzanita	1B.2	323	2280	0.15%
<b>Rare shrub totals</b>			<b>3509</b>	<b>0.23%</b>
<b>Trees</b>				
Coast live oaks (canopy)	(not rare)	155	101,160	6.64%
<b>Total Rare Shrub, Oak Tree and Mesa Horkelia Canopy Cover</b>			<b>110,616 (2.5 acres)</b>	<b>7.26%</b>

\*Refer to Table 19 in Biological Report (Sept 2021)

\*\*Count of individuals highly variable, depending on seasonal climate conditions. Individuals may occur in disturbed grassland or among chaparral shrubs in sandy soil.

Common species such as coyote brush, monkeyflower, California sagebrush, and chamise also occupy less than two percent vegetative cover within the chaparral habitat boundary. Low native shrub cover is due to decades of mowing and grubbing for livestock range management.

The functions and values of the Burton Mesa chaparral on site is very low; shrub cover is not contiguous, and does not provide substantial cover for songbirds, mammals, reptiles or insects. Unique habitat functions not present on the Dana Reserve include sufficient flowers, fruits, and vegetation necessary to support a stable population of chaparral dwellers such as rabbits, mice, voles, songbirds, bees, butterflies, spiders, flies, lizards, horned lizards, and snakes.

Chaparral habitat, as opposed to individual plants, may be mitigated by conservation of intact habitat, enhancement of weedy or lightly damaged protected habitat, restoration of degraded habitat, or re-creation of high-quality habitat. Depending on the approach taken, a ratio of 1 to 1 or higher may not be biologically necessary, given the low function and values of existing habitat being mitigated.

<sup>2</sup> A large proportion of impacted Mesa horkelia occurs along the edge of oak woodlands, NOT in the chaparral habitat. They are all included here for illustrative purposes.

<sup>3</sup> Dune almond grows on sandy soil in and adjacent to maritime chaparral in San Luis Obispo County.

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When **conserving** excellent but currently unprotected high-quality habitat as mitigation for the loss of degraded habitat, a 1.5 to 1 ratio will avoid loss of overall habitat quality because conservation with management for the benefit of unique habitat functions will offset the loss of highly degraded habitat. A ratio of more than 1:1 is needed because conservation does not produce new habitat, though it does provide legal protection for high-quality habitat against the possibility of future loss or degradation from lawful activities. The conserved habitat will also be managed to ensure that its high quality will be maintained.

When **enhancing** moderate to poor quality protected habitat as mitigation for the loss of degraded habitat, a 2 to 1 ratio will avoid loss of overall habitat quality because unique habitat functions that support chaparral dwellers is substantially improved by reducing invasive species cover, and/or reducing access that causes disturbance that otherwise diminishes chaparral habitat functions and values. The 2 to 1 ratio accounts for the fact that the habitat is already protected, though it is in poor to moderate condition.

When **restoring** damaged protected habitat as mitigation for the loss of degraded habitat, a 0.5 to 1 ratio will avoid any loss of overall habitat quality because weed removal in concert with replanting and routine maintenance for the benefit of habitat functions significantly improves habitat functions and values from a degraded or damaged condition. A ratio of less than 1 to 1 is sufficient because restoration of damaged protected habitat will substantially improve the condition of such habitat. An acre of restored habitat will have substantially more biological value than an acre of degraded habitat. A half-acre of restored habitat would function at least as well, if not better than an acre of degraded habitat.

When **recreating** high quality habitat on completely disturbed land such as abandoned farmland, a 0.25 to 1 ratio will avoid any loss of overall habitat quality because conversion from completely degraded conditions to a highly functioning habitat transforms the land from zero chaparral habitat value to high quality chaparral habitat. A ratio of less than 1 to 1 is sufficient because recreating high quality habitat where none currently exists will result in the creation of all new habitat where it had been eliminated. A quarter-acre of recreated habitat will have significantly more value than no habitat at all.

In summary, rare plant taxa associated with the Burton Mesa chaparral habitat on the Dana Reserve should be mitigated by replacement at ratios consistent with their rarity. These taxa should be planted in habitat protected for its chaparral functions and values for wildlife. The degraded habitat lost may be mitigated by a variety of methods from conservation of intact habitat, enhancement or restoration of moderate to poor quality habitat, and/or recreation of high-quality habitat.

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### **3 REFERENCES**

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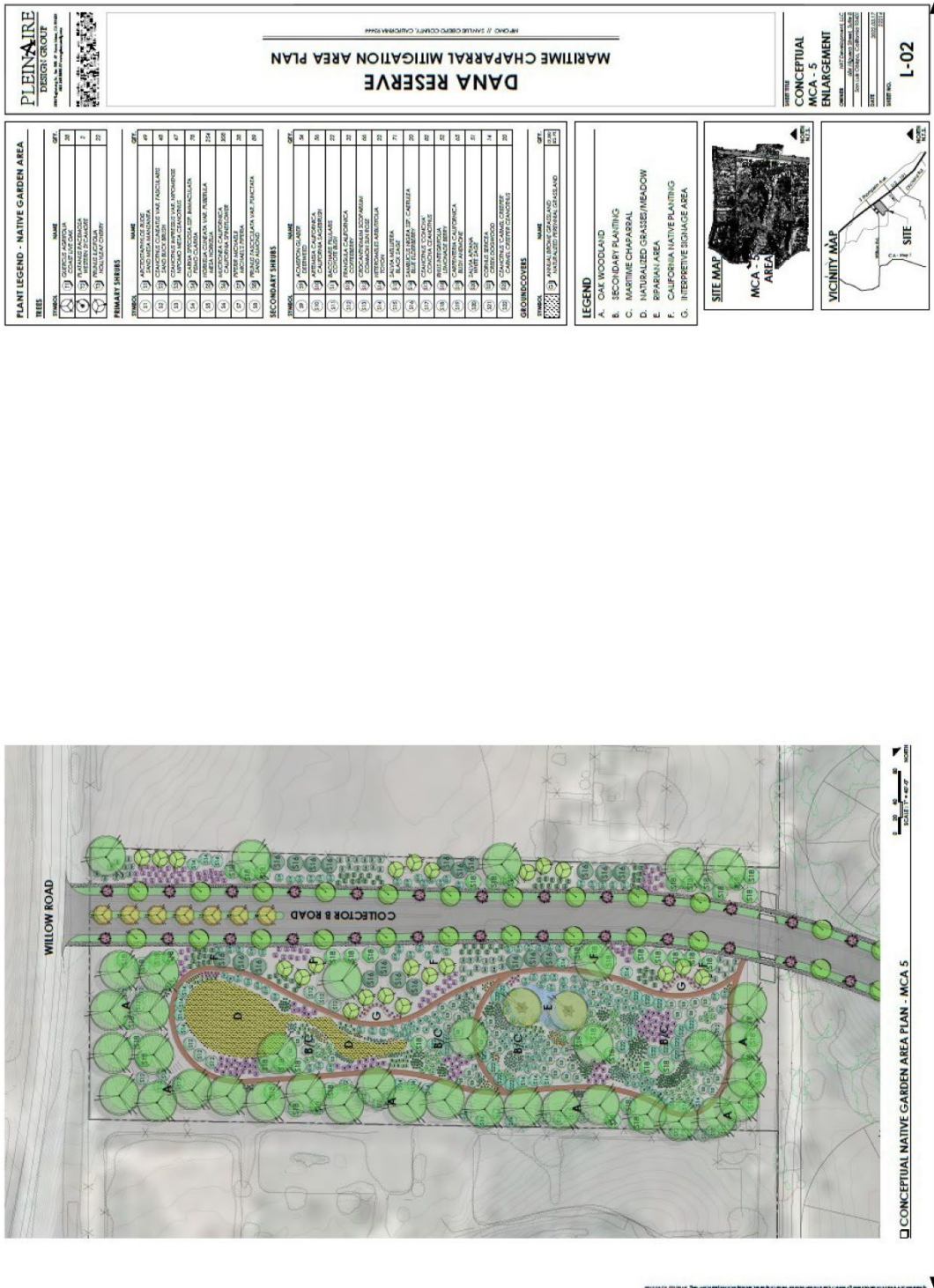
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PleinAire Mitigation Graphics



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PROJECT: DANA RESERVE  
 LOCATION: MARITIME CHAPARRAL MITIGATION AREA PLAN  
 SHEET NO. L-03

## DANA RESERVE

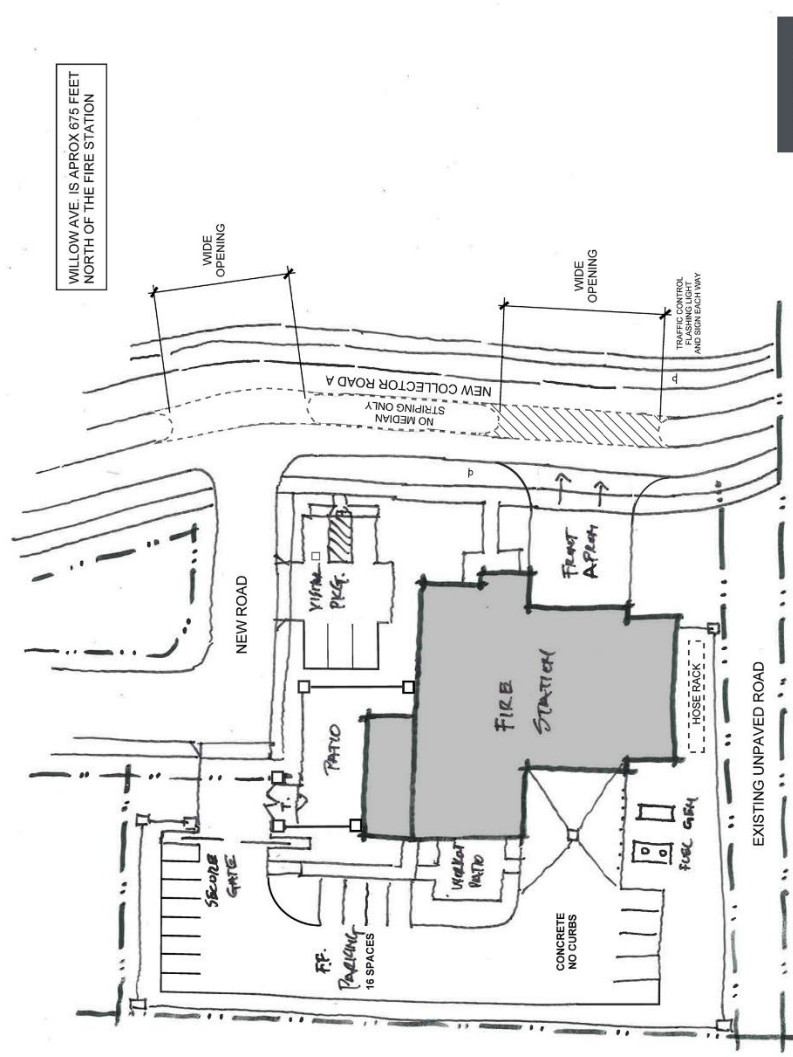
### MARITIME CHAPARRAL MITIGATION AREA PLAN

DATE: 08/14/2024  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SHEET NO. L-03

 PRIMARY SHRUBS	 PRIMARY SHRUBS	 SECONDARY SHRUBS	 SECONDARY SHRUBS	 TREES	 OVER AGRICULTURE
					
					
					
					
<p><b>NOTE:</b> PLANT IMAGERY SHOWN IS REPRESENTATIVE ONLY. FINAL SELECTIONS MAY VARY.</p>					<p><b>NOTE:</b> AMENITY IMAGERY SHOWN IS REPRESENTATIVE ONLY. FINAL SELECTIONS MAY VARY.</p>

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WILLOWAVE IS APPROX. 675 FEET NORTH OF THE FIRE STATION



**PROJECT INFORMATION:**  
 1 STORY FIRE STATION  
 SITE AREA: 1.15 ACRES  
 VISITOR PARKING SPACES: 5  
 FF PARKING SPACES: 16

**DANA RESERVE  
 FIRE STATION SITE LAYOUT**

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### 9.4.1.1 Response to Letter from Dana Reserve LLC (via RRM Design Group)

Comment No.	Response
DRL-1	<p>The comment states the EIR analysis related to policy inconsistency does not apply the principles established by <i>No Oil, Inc. v. City of Los Angeles</i> (1987), <i>Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. Of Supervisors</i> (1998), and <i>Endangered Habitats League, Inc. v. County of Orange</i> (2005).</p> <p>It is noted that perfect conformity with every general plan policy is neither achievable nor required (<i>Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors [1998] 62 Cal.App.4th 1332, 1341-1342</i>). The decision makers are required to evaluate the project's consistency with the General Plan as a whole and a project should only be found inconsistent with the General Plan as a whole when it conflicts with a general plan policy that is fundamental, mandatory, and clear. This background information has been added to Section 4.11, <i>Land Use and Planning</i>, of the EIR.</p> <p>Notwithstanding these requirements, CEQA Guidelines Section 15125(d) requires an EIR to "discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans." While CEQA requires a discussion of consistency with applicable plans and policies, inconsistency does not necessarily lead to a significant impact. Inconsistency with public plans or policies creates significant impacts under CEQA only when an adverse physical effect would result from the inconsistency. Ultimately, it is a function of the local decision-making body (San Luis Obispo County Board of Supervisors) to make a determination regarding the project's consistency with applicable plans as a whole. The detailed policy-specific analysis in the EIR is intended to facilitate that decision-making process. Therefore, the EIR preparers completed a detailed consistency analysis of the proposed project by analyzing each of the individual policies and goals applicable to the project, but only identified preliminary consistency findings (e.g., potentially consistent or potentially inconsistent).</p>
DRL-2	<p>The comment requests the Executive summary specify that Dana Ridge is 388 acres and that any necessary updates to impact headings and mitigation measures be verified and updated throughout the remainder of the EIR.</p> <p>Revisions have been incorporated in the Executive Summary to specify that the Dana Ridge site is 388 acres. All revisions to impact headings and mitigation measures have been carried through the Executive Summary, MMRP, and other relevant portions of the EIR.</p>
DRL-3	<p>Revisions have been incorporated Chapter 2, <i>Project Description</i>, of the EIR to clarify that commercial uses are also present south of the project site.</p>
DRL-4	<p>Figure 2-5 has been revised to show the Item 7 improvement within the footprint of the existing pump station facility.</p>
DRL-5	<p>The comment states Collector A will provide access and infrastructure connections as well as public facilities such as a park and ride and a potential fire stations and requests that this information be added to the Project Description.</p> <p>Revisions have been incorporated to add this information into the Project Description; however, a reference to the potential fire station was not included since it is not proposed as a project component (but rather, was a mitigation requirement).</p>
DRL-6	<p>The comment refers to Table 2-2, Section 2.5.3.11, and Table 2-5 and states that the density was revised for DR-SF2 to 11-13 du/ac per correspondence between the Applicant and the County on January 14, 2022.</p> <p>Revisions have been incorporated to revise this information in Table 2-2, Section 2.5.3.1.1, and Table 2-5.</p>
DRL-7	<p>The comment requested that a footnote be added to Table 2-4 stating that there will be a transit center, park and ride, and fire station in the RR parcel for Collector A.</p> <p>Footnote 4 has been revised to state a transit center and Park and Ride lot would be located within the RR land use designation; however, the fire station was not included in this revision since it is not proposed as a project component.</p>
DRL-8	<p>This comment requests that updated information from the 2020 Census be incorporated. Updated information from the 2020 Census has been incorporated.</p>
DRL-9	<p>Revisions have been incorporated for Table 2-9 to clarify that "Alternative Fueling Installations" such as hydrogen and EV charging stations would be a permitted use in Commercial land use categories.</p>

Comment No.	Response
DRL-10	<p>The comment states that Table 2-10 Rec and OS Development Standards from the Specific Plan is missing and should be added to Section 2.5.3.1.3.</p> <p>The information included in Table 2.10: Recreation and Open Space Development Standards in the Specific Plan. No further changes to the EIR are necessary.</p>
DRL-11	<p>The comment has provided an exhibit that illustrates the Cherokee Road improvements at the Collector A and B intersections. These improvements are described in Section 2.5.3.3.6 of the EIR, under Cherokee Place Intersections. These exhibits will be included in the Final EIR. No other changes to the EIR are necessary.</p>
DRL-12	<p>The comment states that the 2020 US Census and the population of Nipomo should be added to the Environmental Setting section. The EIR has been revised to include the 2020 US Census and population of Nipomo.</p>
DRL-13	<p>This comment states the property has a documented historic use of cattle grazing and periodic, seasonal dry farming for feed and requests that this information be included in every section that refers to the agricultural use of the property.</p> <p>This clarification has been incorporated in Chapter 3, <i>Environmental Setting</i>, Section 4.1, <i>Aesthetics</i>, and Section 4.2, <i>Agriculture and Forestry Resources</i>.</p>
DRL-14	<p>Chapter 3, <i>Environmental Setting</i>, has been revised to specify the acreage of Dana Ridge.</p>
DRL-15	<p>The comment states that the cumulative lists need a total for the build out and states the total build out of 300-unit housing units and ADUs and commercial square feet. Table 3-1 has been revised to include total buildout estimates.</p>
DRL-16	<p>See response to comment DRL-13.</p>
DRL-17	<p>The comment refers to the project's consistency with the existing visual character of the area. Table 4.1-1 has been revised to state that is planned for growth in the County's South County Area Plan.</p>
DRL-18	<p>This comment references Mitigation Measure AES/mm-3-1 and states the existing SoCalGas easement is 20 feet wide. The commenter states the Applicant agrees to an additional 30 feet for planting trees for a total of 50 feet for a landscaping buffer. Subsequent discussions have resulted in a reduction in the width of this buffer to 20 feet. The author of the Aesthetics section of the EIR, a landscape architect and visual resource specialist, has confirmed this change would still provide adequate mitigation to reduce potential impacts to less than significant.</p> <p>Mitigation Measure AES/mm-3.1 has been revised to incorporate this clarification.</p>
DRL-19	<p>The comment references Mitigation Measure AES/mm-3.2 and recommends revisions be included to specify container sizes for replacement trees. AES/mm-3.2 applies to all plantings throughout the Specific Plan Area, not just the U.S. Route 101 Visual Screening Zone. Therefore, no changes to AES/mm-3.2 have been made; the size requirements in AES/mm-3.2 will apply to half of all plantings on the project site. However, the more stringent container size requirements have been added to AES/mm-3.1 and would apply to any plantings within the U.S. Route 101 Visual Screening Zone.</p> <p>Mitigation Measure AES/mm-3.1 has been revised accordingly.</p>
DRL-20	<p>The comment refers to Mitigation Measure AES/mm-7.1 and states the EIR has already done the visual assessment and states the measure is redundant and should be deleted. The visual analysis has been completed at a programmatic level. Future analysis is needed to ensure future developments within the Specific Plan Area are appropriately designed to minimize noticeability from areas outside the Dana Reserve boundaries.</p>
DRL-21	<p>The comment refers to the policy consistency analysis related to Policy AQ 1.2 in Section 4.3, <i>Air Quality</i>, and states the project satisfies the intent of the policy through required mitigation. The EIR preparers agree; therefore, the policy consistency analysis has been revised to indicate that the project is potentially consistent with Policy AQ 1.2.</p>
DRL-22	<p>The comment refers to the policy consistency analysis related to Infill 8 in Section 4.3, <i>Air Quality</i>, and states the project should be considered consistent with this policy. The EIR preparers agree; therefore, the policy consistency analysis has been revised to indicate that the project is potentially consistent with Policy Infill 8 of the Sustainable Communities Strategy. This potential consistency determination was identified in Section 4-11, Land Use and Planning; therefore, this discrepancy in the Draft EIR has been remedied.</p>

Comment No.	Response
DRL-23	This comment refers to the policy consistency analysis related to Policies 11-24 in Section 4.3, <i>Air Quality</i> , and states that discussion should be added indicating that the property is planned for development in the SCAP and is in the Nipomo SOI and adjacent to the current service line. This clarification has been made in the policy consistency analysis.
DRL-24	This comment refers to the policy consistency analysis related to Land Use Planning Strategy L-3 and states that the analysis of Land Use Planning Strategy L-3 should be revised to reflect a regional perspective. The EIR identified a significant and unavoidable impacts related to unplanned growth, VMT, and an adverse contribution to the existing jobs and housing imbalance. No changes to the EIR are necessary in response to this comment.
DRL-25	This comment requests removal of AQ/mm-3.3(7) and AQ/mm-3.3(19). These measures are necessary to reduce potential impacts to the greatest extent feasible. AQ/mm-3.3(7) specifies that the Park and Ride lot proposed as part of the project could meet the requirements of this measure. Public Assembly and Entertainment Facilities are an allowed use in the Commercial designation. If no event centers are ultimately proposed, this measure would not be applicable. No changes to the EIR are necessary in response to this comment.
DRL-26	This comment requests that a discussion of <i>Deinandra paniculata</i> be included in Section 4.4, <i>Biological Resources</i> . A discussion of <i>Deinandra paniculate</i> has been added to Table 4.4-3 in Section 4.4, Biological Resources of the EIR.
DRL-27	This comment refers to Table 4.4-6 in Section 4.4, <i>Biological Resources</i> , and states the policy analysis should reflect that the site is planned for development in the South County Area Plan. Table 4.4-6 has been revised to reflect that the site is planned for development in the South County Area Plan; however, preliminary policy determinations have not changed.
DRL-28	This comment refers to Table 4.4-6 in Section 4.4, <i>Biological Resources</i> , and states that the policy consistency analysis related to Goal BR-1, Policy BR-1.4, Goal BR-3, and Policies BR-3.1 and BR-3.2 should include reference to the oaks to be retained/replanted onsite and preserved at Dana Ridge. The policy consistency analysis has been revised to reference oak trees and oak woodland habitat that would be retained at the Dana Ridge property.
DRL-29	The comment refers to the policy consistency analysis related to Policy BR 1.2 and states it should be deleted because it does not apply to the project. While it is agreed that the site has not been identified as "essential" habitat, the EIR contains substantial evidence supporting a potential inconsistency with this policy. No changes to the EIR are necessary.
DRL-30	The comment refers to the policy consistency analysis related to Policies BR 1.4, BR 1.9, BR 2.6, BR 3.3, OS 1.1, OS 2.1, and Policy Objective 6.4 and requests revisions be incorporated to refer to the Applicant-proposed 4.27-acre native garden. Reference to the Applicant-proposed 4.27-acre native garden has been included in Table 4.4-6.
DRL-31	The comment refers to the policy consistency analysis related to Goal BR 2 and requests revisions to the policy analysis. The policy consistency analysis has been revised to reflect Applicant-proposed measures to protect Pismo Clarkia.
DRL-32	The comment refers to the policy consistency analysis related to Policies BR 2.1 and BR 2.2 and requests revisions to the policy analysis. The policy analysis has been revised to clarify permitting requirements.
DRL-33	The comment refers to the policy consistency analysis related to Policies BR 3.5, BR 4.1, BR 4.2, BR 4.7, BR 5.1, BR 5.2, and Policy 3 and requests the language be revised to state "Applicant and/or NCSD will conduct a wetland delineation..." This revision is applicable to and has been incorporated for Policies BR 4.1, BR 4.2, BR 5.2, and Policy 3.
DRL-34	The comment refers to Mitigation Measure BIO/mm-5.1 and requests revisions be incorporated. The revisions do not affect the effectiveness of the measure. Mitigation Measure BIO/mm-5.1 has been revised in all applicable sections of the EIR.
DRL-35	The comment refers to Mitigation Measure BIO/mm-6.1 and requests revisions be incorporated. Bullet 4 is appropriate, as the County and CDFW should be apprised of the relocation activities. Biologist qualifications have been clarified in Bullet 7.
DRL-36	The comment refers to Mitigation Measure BIO/mm-8.1 and requests revisions be incorporated. Mitigation Measure BIO/mm-8.1 has been revised in all applicable sections of the EIR.

Comment No.	Response
DRL-37	The comment refers to Mitigation Measure BIO/mm-9.1 and requests revisions be incorporated. The revisions do not affect the effectiveness of the measure. Mitigation Measure BIO/mm-9.1 has been revised in all applicable sections of the EIR.
DRL-38	The comment refers to Mitigation Measure BIO/mm-10 and requests revisions be incorporated. Mitigation Measure BIO/mm-10 has been revised in all applicable sections of the EIR.
DRL-39	The comment refers to Mitigation Measure BIO/mm-11 and requests revisions be incorporated. Mitigation Measure BIO/mm-11 has been revised in all applicable sections of the EIR.
DRL-40	The comment refers to Mitigation Measure BIO/mm-12.1 and requests revisions be incorporated. Mitigation Measure BIO/mm-12.1 has been revised to include a reference to Nipomo Creek.
DRL-41	This comment refers to Mitigation Measure BIO/mm-19.1 and requests revisions be incorporated. Mitigation Measure BIO/mm-19.1 has been revised in all applicable sections of the EIR.
DRL-42	This comment refers to Mitigation Measure CLR/mm-3.1 and requests the language be revised to include “or utility district/company”. Mitigation Measure CR/mm-3.1 has been revised accordingly.
DRL-43	The comment refers to the policy consistency analysis related to Principal 1, Policy 5 and requests language be added to note that PG&E also needs to have a green portfolio for electricity generation and can serve this project as well as 3CE. This revision has been incorporated for the policy consistency analysis related to Principal 1, Policy 5 in Section 4.6, <i>Energy</i> .
DRL-44	The comment requests “11-acre public park” be revised to clarify a 10-acre park and 1-acre equestrian staging area are proposed. This revision has been incorporated in Section 4.6, <i>Energy</i> , Section 4.15, <i>Public Services</i> , Section 4.16, <i>Recreation</i> , and Section 4.19, <i>Utilities and Service Systems</i> .
DRL-45	The commenter refers to the impact discussion in Section 4.7, <i>Geology and Soils</i> , which discusses the low paleontological potential for the site and requests that Mitigation Measures GEO/mm 8.1, GEO/mm 8.2, and GEO/mm-8.3 be deleted or revised to state “if discovery during grading is found...” As described under Impact GEO 8, higher sensitivity formations (Qoa) are located in close proximity to the project site, and it is possible that deposits also underlie the Specific Plan Area. Therefore, based on required compliance with existing regulations, ground-disturbing activities could uncover paleontological resources in previously undisturbed geologic deposits, and, if improperly handled, such resources could be damaged or destroyed, a potentially significant impact. Therefore, mitigation has been identified requiring compliance with COSE Policy CR 4.5 to ensure potential impacts would be less than significant. No changes to the EIR are necessary.
DRL-46	The comment requests revisions be incorporated in Section 4.8, <i>Greenhouse Gas Emissions</i> , to state the 1990 level of GHG emissions. The 1990 level of GHG emissions has been incorporated into Section 4.8, <i>Greenhouse Gas Emissions</i> .
DRL-47	The comment states that the Dana Reserve incorporates all of the RTP/SCS standards and states this should be noted in Section 4.8, <i>Greenhouse Gas Emissions</i> . Section 4.8.2.3.1, <i>San Luis Obispo Council of Governments 2019 Regional Transportation Plan And Sustainable Communities Strategy</i> , includes a general description of the 2019 Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS), not a project-specific consistency analysis. A discussion of the project’s consistency with the RTP is included in Table 4.8-3, <i>Consistency Analysis for Greenhouse Gas Emissions</i> , of Section 4.8, <i>Greenhouse Gas Emissions</i> .
DRL-48	The comment refers to policy consistency analysis related to Policy AQ 1.2 and states it should clearly state that the VMT only exceeds the threshold by 4.8% and 9% and that these are minor exceedances. This revision has been incorporated in Table 4.8-3, <i>Consistency Analysis for Greenhouse Gas Emissions</i> , of Section 4.8, <i>Greenhouse Gas Emissions</i> .
DRL-49	This comment refers to the policy consistency analysis related to policies E1.1, E3.1, E3.2, E4.1, E4.4, E5.4 and clarifies that the nonresidential uses would still be served by natural gas. This revision, consistent with other changes to Mitigation Measure GHG/mm-1.1, has been incorporated in Table 4.8-3, <i>Consistency Analysis for Greenhouse Gas Emissions</i> , of Section 4.8, <i>Greenhouse Gas Emissions</i> .

Comment No.	Response
DRL-50	This comment requests revisions to the policy consistency analysis contained in Table 4.8-3 in Section 4.8, <i>Greenhouse Gas Emissions</i> . The policy consistency analysis has been revised to indicate that the project is potentially consistent with Policy Infill 8 of the Sustainable Communities Strategy.
DRL-51	This comment refers to Mitigation Measure GHG/mm-1.1(8) and clarifies that high reflective roofing material should only be installed on flat roofs. This measure has been revised to clarify that visual impacts of reflective roofing shall be a consideration in where the use of them is practical. This commenter also identifies two additional measures related to requirements for photovoltaic systems and EV stations that should be added to Mitigation Measure GHG/1.1. References to state requirements have been added to this measure.  This revision has been incorporated in Mitigation Measure GHG/mm-1.1(8) in Section 4.8, <i>Greenhouse Gas Emissions</i> .
DRL-52	The comment refers to the opening sentence of Section 4.10, <i>Hydrology and Water Quality</i> , and states that the word adverse should be removed. The intent of CEQA is to identify and disclose potential adverse effects on the environment. No changes to the EIR are necessary.
DRL-53	The comment refers to Section 4.10.1.2, <i>Specific Plan Area Conditions</i> , of Section 4.10, <i>Hydrology and Water Quality</i> , and states that the Assessor's Parcel Number (APN) of the northern parcel should be included.  This revision has been incorporated in Section 4.10, <i>Hydrology and Water Quality</i> .
DRL-54	The comment refers to Section 4.10.1.4.2, <i>Groundwater</i> , of Section 4.10, <i>Hydrology and Water Quality</i> , and states that "municipal mix" is also referred to as "blended" water. This clarification has been added.
DRL-55	This comment states that the language in the EIR should be revised to eliminate the phrase "service area" when referring to annexation to the NCS. Annexation into the NCS's service area is an accurate statement. No changes to the EIR are required.
DRL-56	This comment suggests revisions to the discussion of groundwater recharge Under HYD Impact 3.  This revision has been incorporated Section 4.10, <i>Hydrology and Water Quality</i> .
DRL-57	This comment refers to Section 4.11.2.3.2, <i>2019 Regional Transportation Plan/Sustainable Community Strategy</i> , in Section 4.11, <i>Land Use and Planning</i> , and states that the DRSP has incorporated features to make it consistent with the RTP/SCS. The analysis included in Land Use and Planning, includes a general description of the 2019 Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS), not a project-specific consistency analysis. A discussion of the project's consistency with the RTP is included in Table 4.11-3. No revisions are necessary.
DRL-58	This comment requests revisions to the policy consistency analysis related to policy AQ 1.1. The policy consistency analysis states that the project is potentially consistent with Policy AQ 1.1; minor modifications, consistent with other sections, have been added.
DRL-59	This comment refers to the policy consistency analysis related to policy Infill 8 and states that the project is consistent with this policy. The policy consistency analysis states that the project is potentially consistent with Policy Infill 8; however, the project's location near the Nipomo URL has been clarified.
DRL-60	This comment requests revisions to the evaluation of LUP Impact 3. The evaluation of LUP Impact 3 has been revised to clarify that the project would further divide the jobs-to-housing ratio in the community of Nipomo, which is a jobs and housing imbalance.
DRL-61	This comment refers to the goals and policies consistency analysis in Table 4.11-4 (Policies for which the Project would be Potentially Inconsistent With) of Section 4.11, <i>Land Use and Planning</i> , and states that any policy consistency analyses that are updated elsewhere should be reflected in this section. Relevant policy consistency analyses have been updated in Table 4.11-4.
DRL-62	This comment suggests revisions to LUP Impact 8 in Section 4.11, <i>Land Use and Planning</i> . The EIR has been revised to remove the reference to maintenance of the bus stop on North Thompson Avenue from LUP-8 in Section 4.11, <i>Land Use and Planning</i> .
DRL-63	This comment requests revisions to LUP Impact 8 in Section 4.11, <i>Land Use and Planning</i> . The evaluation has been updated to clarify that the project includes a request to adjust the Nipomo URL and Annexation to the NCS.

Comment No.	Response
DRL-64	<p>This comment requests clarification be made regarding the placement of commercial buildings along the freeway to Compatibility of <i>Proposed Land Uses with Traffic Noise Levels</i> under N Impact 1 in Section 4.13, <i>Noise</i>.</p> <p>This revision has been incorporated into Section 4.13, <i>Noise</i>. No discussion of alternatives is provided in this section.</p>
DRL-65	<p>This comment requests revisions to Mitigation Measure N/mm-1.2(1). It cannot be reasonably determined if the commercial buildings would serve as an adequate noise barrier to internal residential uses until acoustical assessments are completed based on project specific details such as building height, orientation, mass, and spacing. No changes to the EIR are necessary.</p>
DRL-66	<p>This comment requests revisions to Mitigation Measure N/mm-1.2(2). It cannot be reasonably determined if the placement of the listed equipment on the east side of the buildings would adequately reduce noise impacts until acoustical assessments are completed based on project specific details. No changes to the EIR are necessary.</p>
DRL-67	<p>This comment refers to Section 4.14.1.1.1, <i>County of San Luis Obispo</i>, of Section 4.14, <i>Population and Housing</i>, and states that the word “decrease” should be changed to “increase.” This commenter also states that the EIR should correctly state that 273 new jobs would be created by the proposed project.</p> <p>The word decrease is correctly used in Section 4.14.1.1.1, <i>County of San Luis Obispo</i>, of Section 4.14, <i>Population and Housing</i>; therefore, no changes to the EIR are necessary. However, the EIR has been updated to correctly state that 273 jobs would be created by the proposed project.</p>
DRL-68	<p>This comment requests that paragraphs 3 and 4 on page 4.14-15 of Section 4.14, <i>Population and Housing</i>, are updated to state that the Growth Management Ordinance will not apply to the DRSP because it is a stand-alone planning document. This is not a CEQA issue; no changes to the EIR are necessary.</p>
DRL-69	<p>This comment requests that the reference to Table 4.14-12 is changed to 4.14-13.</p> <p>This revision has been incorporated in Section 4.14, <i>Population and Housing</i>.</p>
DRL-70	<p>This comment requests revisions to the policy consistency analysis for Principle 2, Policy 2 of Section 4.14, <i>Population and Housing</i>. The determination of the policy consistency analysis for Principle 2, Policy 2 of Section 4.14, <i>Population and Housing</i>, is supported by evidence in this section. No changes to the EIR are necessary.</p>
DRL-71	<p>This comment refers to PH Impact 1 of Section 4.14, <i>Population and Housing</i>, and states that the 2030 population numbers are not consistent with those included in Section 4.16, <i>Recreation</i>, and should be revised. The evaluation of Section 4.15, <i>Public Services</i> and Section 4.16, <i>Recreation</i> is based on the total buildout population of the DRSP area resulting from 831 new residential single-family units, 458 new residential multi-family units, an estimated 152 ADUs, and approximately 203,000 square feet of land dedicated to flex commercial development. These sections accurately reflect the total buildout population of the proposed project and projected 2030 population for the county and the community of Nipomo; therefore, no revisions to the EIR are necessary.</p>
DRL-72	<p>This comment requests revisions to PH Impact 1 of Section 4.14, <i>Population and Housing</i>. This discussion has been revised to clarify that the project is in response to the SCAP and addresses a range of needed housing in the area.</p>
DRL-73	<p>This comment requests revisions to PH Impact 5 of Section 4.14, <i>Population and Housing</i>. This discussion has been revised to clearly state that the project would contribute to state and local housing goals and would be consistent with the need for a Specific Plan in the County’s South County Area Plan; however, PH Impact 5 would remain a Class I impact because potential impacts associated with substantial unplanned population growth are cumulative by nature, in that they are evaluated within the greater context of the region rather than impacts on the Specific Plan Area or local community of Nipomo.</p>
DRL-74	<p>This comment states that Section 4.15, <i>Public Services</i>, should rely on the final numbers of the 2020 Census numbers. The background information presented in Section 4.15.1.4.2, <i>Existing Regional Parkland Level of Severity</i>, provides a description of the existing recommended levels of severity for park facilities as determined in the County’s 2016 to 2018 Resource Summary Report. As such, these determinations are based on final Census numbers from 2010 and the evaluation of the project’s impacts on park facilities is based on current and future population numbers. Therefore, no revisions to the EIR are necessary.</p>
DRL-75	<p>This comment requests revisions to the policy consistency analysis related to Policy 2.2, Public Facilities #1, and Public Facilities #2,3. The determination of the policy consistency analysis is supported by evidence in this section. No changes to the EIR are necessary.</p>

Comment No.	Response
DRL-76	This comment requests revisions to the policy consistency analysis related to Principal 1, Policy 2 and Strategy 4. The determination of the policy consistency analysis is supported by evidence in this section. No changes to the EIR are necessary.
DRL-77	This comment requests revisions to PS Impact 1 of Section 4.15, <i>Public Services</i> . This discussion has been revised to reflect that CAL FIRE has requested that a fire station be located on-site, and funds be allocated toward this new station.
DRL-78	This comment notes that future development of the fire station will be the responsibility of the County. No changes to the EIR are necessary.
DRL-79	This commenter suggests that this section should include a conceptual figure of the future fire station for reference (see attachment). The conceptual plan is included in the Final EIR and a reference has been added to this section. No additional changes to the EIR are necessary.
DRL-80	This comment requests revisions to Table 4.15-5 and Table 4.15-9. These tables have been revised to rectify the population estimates for the community of Nipomo included in Table 4.15-5 and Table 4.15-9.
DRL-81	This comment is noted; however, no changes to the EIR are necessary.
DRL-82	This comment requests revisions to the policy consistency analysis of Policy 2.2-7, Objective B, Policy 6.4, Policy 6.9, Policy 6.10, and the South County Area Plan in Section 4.16, <i>Recreation</i> . The determination of the policy consistency analysis is supported by evidence in this section. No changes to the EIR are necessary.
DRL-83	This comment requests removal of Policy 4.2 from Table 4.16-3 of Section 4.16, <i>Recreation</i> . This policy has been removed from Table 4.16-3.
DRL-84	This comment refers to Section 4.17, <i>Transportation</i> , and states that “tis” should be revised to TIS. This revision has been incorporated in Section 4.17, <i>Transportation</i> .
DRL-85	This comment refers to Figure 4.17-1 of Section 4.17, <i>Transportation</i> , and states that Camino Caballo is not shown on this map and states that Hetrick Avenue all the way to Pomeroy and Cory Ways should be shown as emergency access. Figure 4.17-1 identifies Camino Caballo. This figure is intended to show the intersections that were studied as part of the Transportation Impact Study. Therefore, no revisions to the EIR are necessary.
DRL-86	This comment requests revisions to Section 4.17.1.1, <i>Roadway Network</i> , of Section 4.17, <i>Transportation</i> . This discussion has been updated to clarify the right-of-way associated with Cherokee Place and to include a description of Cory Way.
DRL-87	This comment requests revisions to Section 4.17.2.3.4, <i>2015 South County Circulation Study and Traffic Impact Fee Update Final Report</i> , of Section 4.17, <i>Transportation</i> . The EIR is based on the traffic report prepared for the project; no changes to the EIR are necessary.
DRL-88	This comment refers to the policy consistency analysis related to Policy AQ 1.2 in Table 4.17-1 (Preliminary Policy Consistency Evaluation) and states that Mitigation Measure TR/mm-3.1 should be referenced rather than TR/mm-2. This revision has been incorporated in Section 4.17, <i>Transportation</i> .
DRL-89	This comment refers to the policy consistency analysis related to Policy 7 in Table 4.17-1 (Preliminary Policy Consistency Evaluation) and states that Mitigation Measure TR/mm-3.1 should be referenced rather than TR/mm-2. This revision has been incorporated in Section 4.17, <i>Transportation</i> .
DRL-90	This comment refers to the policy consistency analysis related to Policy 9 in Table 4.17-1 (Preliminary Policy Consistency Evaluation) and states that the language of the determination should be revised to reflect the project’s provision of two transit centers with dedicated land and infrastructure. This revision has been incorporated in Section 4.17, <i>Transportation</i> .
DRL-91	This comment refers to the policy consistency analysis related to Policy 2 in Table 4.17-1 (Preliminary Policy Consistency Evaluation) and states that Mitigation Measure TR/mm-3.1 should be referenced rather than TR/mm-2. This revision has been incorporated in Section 4.17, <i>Transportation</i> .

Comment No.	Response
DRL-92	This comment requests revisions to the policy consistency analysis related to Circulation Objective a and Goal #3 in Table 4.17-1 (Preliminary Policy Consistency Evaluation). The policy consistency analyses have been updated to reference Mitigation Measure TR/mm-3.1 rather than TR/mm-2 and to clarify that implementation of TDM measures are for the whole project rather than individual neighborhoods.
DRL-93	This comment refers to the policy consistency analysis related to Circulation Objective d, Public Transit #2, Park and Ride #1, and Policy Objective 1.2 in Table 4.17-1 (Preliminary Policy Consistency Evaluation) and states that Mitigation Measure TR/mm-3.1 should be referenced rather than TR/mm-2. This revision has been incorporated in Section 4.17, <i>Transportation</i> .
DRL-94	This comment requests revisions to Section 4.17.4, <i>Impact Assessment and Methodology</i> , of Section 4.17, <i>Transportation</i> . These discussions have been revised to clarify the design of the new access driveways.
DRL-95	This comment requests revisions to TR Impact 1 of Section 4.17, <i>Transportation</i> . Refer to response to comment DRL-87.
DRL-96	This comment requests revisions to TR Impact 1 of Section 4.17, <i>Transportation</i> . This discussion has been revised to remove reference to the provision of a Class II bike trail on Thompson Ave.
DRL-97	This comment requests revisions to TR Impact 1 of Section 4.17, <i>Transportation</i> . This discussion has been revised to remove reference to the maintenance of the off-site bus stop.
DRL-98	This comment refers to TR Impact 3 of Section 4.17, <i>Transportation</i> and states that reference to the new transit route on Frontage road should be made. The discussion included in TR Impact 3 of Section 4.17, <i>Transportation</i> , evaluates the project's ability to be screened out as having less-than-significant impacts on VMT using the County's SB 743 Sketch VMT tool based on existing project conditions; therefore, reference to the proposed TDM measures related to provision of transit facilities is not necessary. The discussion of the project's TDM measure, which includes the provision of transit within the project area is discussed further in TR Impact 3.
DRL-99	This comment requests revisions to TR/mm-3.1 and clarifies that TDM will be done for the whole project not individual neighborhoods. This will be determined as appropriate by the County Public Works Department. This measure has been revised accordingly.
DRL-100	This comment refers to TR Impact 7 of Section 4.17, <i>Transportation</i> and states that there is no mention of the future fire station on Collector A. This revision has been incorporated in Section 4.17, <i>Transportation</i> .
DRL-101	This comment refers to <i>Groundwater</i> under Section 4.19.1.1.2, <i>Water Supply</i> , and states that the word basin should be replaced with the phrase management area. This revision has been incorporated in Section 4.19, <i>Utilities and Service Systems</i> .
DRL-102	This comment refers to <i>Groundwater</i> under Section 4.19.1.1.2, <i>Water Supply</i> , and suggests removing the word "basin" when referring to the NMMA management area. This revision has been incorporated in Section 4.19, <i>Utilities and Service Systems</i> . Response needed
DRL-103	This comment refers to <i>Groundwater</i> under Section 4.19.1.1.2, <i>Water Supply</i> , and states that the NCS D groundwater supply should be rewritten to state that the average groundwater supply was determined based on average pumping volumes over a 5-year period. This revision has been incorporated in Section 4.19, <i>Utilities and Service Systems</i> .
DRL-104	This comment refers to <i>Purchased or Imported Water</i> under Section 4.19.1.1.2, <i>Water Supply</i> , and suggests a replacement sentence for the opening sentence of the last paragraph. This revision has been incorporated in Section 4.19, <i>Utilities and Service Systems</i> .
DRL-105	This comment refers to USS Impact 3 and states that the evaluation incorrectly states that there may not be enough water for the project. US1 Impact 3 concludes that the NCS D is projected to have sufficient water supply to serve the existing service area, the proposed project, and reasonably foreseeable future demands during normal, single dry, and multiple dry year conditions. Due to the uncertainty of buildout, Mitigation Measure USS/mm-3.1 has been conservatively included to ensure the availability of water for the existing NCS D service area and proposed project. Therefore, no revisions to the EIR are necessary.
DRL-106	This comment refers to USS Impact 3 and states that the public park should be referenced as the 10-acre public park and 1-acre equestrian staging area. This revision has been incorporated in Section 4.19, <i>Utilities and Service Systems</i> .



Comment No.	Response
DRL-107	This comment refers to Tables 4.19-19 and 4.19-21 and states that they should be revised to reflect the construction of 1,289 residential units. Tables 4.19-19 and 4.19-20 do not indicate the number of housing units; no changes to the EIR are necessary. Please refer to Appendix H.
DRL-108	This comment states that Mitigation Measure USS/mm-3.1 should be removed. US1 Impact 3 concludes that the NCSD is projected to have sufficient water supply to serve the existing service area, the proposed project, and reasonably foreseeable future demands during normal, single dry, and multiple dry year conditions. Due to the uncertainty of buildout, Mitigation Measure USS/mm-3.1 has been conservatively included to ensure the availability of water for the existing NCSD service area and proposed project. Therefore, no revisions to the EIR are necessary.
DRL-109	This comment states that reference to additional service letters for each project should be removed from USS Impact 11. Due to the uncertainty of buildout, Mitigation Measure USS/mm-3.1 has been conservatively included to ensure the availability of water for the existing NCSD service area and proposed project. This mitigation would require future DRSP developers to provide proof of water availability sufficient to meet the estimated water demand of proposed development. Therefore, no revisions to the EIR are necessary.
DRL-110	This comment refers to WF Impact 3 and states that reference to “fire water storage” should be removed because the project would be served by the NCSD. This information is consistent with the Resolute Associates report prepared for the project; no changes to the EIR are necessary.
DRL-111	This comment refers to Section 5.4.1.1.19, <i>Utilities and Service Systems</i> , under the No Project Alternative and states that the No Project Alternative should identify an increase in traffic along Tefft Street due to other development. This revision has been incorporated in Section 5, <i>Alternatives Analysis</i> .
DRL-112	This comment refers to Section 5.4.1.1.17, <i>Transportation and Traffic</i> , under the No Project Alternative and states that the No Project Alternative should state that residents within the NCSD service area would be subject to higher costs for water for infrastructure improvements and the cost of contracted water. This revision has been incorporated in Section 5, <i>Alternatives Analysis</i> .
DRL-113	This comment refers to Section 5.4.2.1 Specific Plan Area under Alternative 1 and states that Collector B would connect Pomeroy to Willow Road. This revision has been incorporated in Section 5, <i>Alternatives Analysis</i> .
DRL-114	This comment requests revisions to <i>Specific Plan Area</i> under Section 5.4.2.3.1, <i>Aesthetics</i> , under Alternative 1. This discussion has been revised to indicate that the DRSP is the guiding document for this area and to clarify that visual impacts would be limited to those along US 101.
DRL-115	This comment requests revisions to Section 5.4.3.1, <i>Specific Plan Area</i> , under Alternative 2. This discussion has been revised to clearly state that Alternative 2 would not provide land donated for the day center, affordable housing, Cuesta College, transit station, and fire station should be added. The evaluation of Alternative 2 has also been revised to clarify potential VMT impacts.
DRL-116	This comment requests revisions to <i>Specific Plan Area</i> under Section 5.4.3.2.10, <i>Hydrology and Water Quality</i> , under Alternative 2 related to higher costs for water for infrastructure improvements and the cost of contracted water. A discussion of higher costs for water is not required because this section is related to hydrology rather than water supply. No revisions to the EIR are necessary.
DRL-117	This comment requests revisions to Section 5.4.3.2.11, <i>Specific Plan Area</i> , under Alternative 2. This discussion has been revised to clearly state that Alternative 2 would not provide land donated for the day center, affordable housing, Cuesta College, transit station, and fire station should be added.
DRL-118	This commenter states that Section 5.4.4.3, <i>Analysis of Alternative 3</i> , under Alternative 3 should be updated to indicate negative environmental justice impacts under this alternative. The Analysis of Alternative 3 states that Alternative 3 would not meet the basic project objective of providing affordable workforce market rate homes. Therefore, no revisions to the EIR are necessary.
DRL-119	This commenter refers to <i>Specific Plan Area</i> under Section 5.4.4.3.4, <i>Biological Resources</i> , under Alternative 3 and states that it was incorrectly assumed that this alternative would reduce impacts to biological resources. Clustered development could be sited and designed to avoid impacts to sensitive biological resources; however, this discussion has been revised to clarify that Alternative 3 would not provide dedicated open space to preserve sensitive biological resources. Based on the reduction of the disturbance area on the project site, it was determined that impacts to biological resources would be reduced under this alternative. Mitigation would continue to be required to require compensatory replanting, which would avoid individual landowners from removing additional resources from the project site. Therefore, no additional revisions are necessary.

Comment No.	Response
DRL-120	<p>This commenter refers to the GHG analysis under Alternative 3 and states that per capita VMT would likely increase. The GHG Analysis for Alternative 3 concludes that VMT generated by the project would continue to have the potential to exceed regional thresholds. This alternative would be required to implement mitigation to further reduce VMT to ensure consistency with applicable goals, plans, and policies related to GHG-reduction strategies. However, since Alternative 3 would result in less population growth and associated operational VMT in comparison to the proposed project, with implementation of mitigation to further reduce operational VMT, this alternative would be expected to be consistent with applicable goals, plans, and policies related to GHG-reduction strategies. Therefore, impacts would be decreased in comparison to the proposed project, and no revisions are necessary.</p>
DRL-121	<p>This commenter refers to Alternative 3 and states that it should not be the environmentally superior alternative because it has greater inconsistencies with applicable land use plans. The analysis provides substantial evidence to support the EIR's conclusion that Alternative 3 is the Environmentally Superior Alternative. No changes to the EIR are necessary.</p>
DRL-122	<p>This commenter states that paragraph 3 on page 5-52 should be revised to state the uncertainty of the maintenance of the proposed trail amenities.  This revision has been incorporated in Section 5, <i>Alternatives Analysis</i>.</p>
DRL-123	<p>This commenter refers to Specific Plan Area under Section 5.4.4.3.16, <i>Recreation</i>, under Alternative 3 and states that clarification should be made regarding maintenance of trails, type of proposed residential dwellings, and VMT impacts. The discussion of potential recreational impacts has been revised to clarify that the maintenance of trails would be unknown. The VMT Analysis for Alternative 3 concludes that VMT generated by the project would continue to have the potential to exceed regional thresholds. This alternative would be required to implement mitigation to further reduce VMT to ensure consistency with applicable goals, plans, and policies related to VMT-reduction strategies. However, since Alternative 3 would result in less population growth and associated operational VMT in comparison to the proposed project, with implementation of mitigation to further reduce operational VMT, this alternative would be expected to be consistent with applicable goals, plans, and policies related to VMT-reduction strategies. Therefore, impacts would be decreased in comparison to the proposed project, and no additional revisions are necessary.</p>
DRL-124	<p>This commenter states that <i>Specific Plan Area</i> under Section 5.4.4.3.19, <i>Utilities and Service Systems</i>, under Alternative 3 should include a calculation for water use under Alternative 3. A rough estimate of water demand for Alternative 3 has been included in paragraph 1 on page 5-54 of Chapter 5, <i>Alternative Analysis</i>.</p>
DRL-125	<p>This commenter states that Alternative 4 should clarify that approximately 15 acres of land would be used private roads.  This revision has been incorporated in Section 5, <i>Alternatives Analysis</i>.</p>
DRL-126	<p>This commenter states that Section 5.5, <i>Environmentally Superior Alternative</i>, should be updated to state that Alternative 3 should not be the environmentally superior alternative. Alternative 2 (La Cañada Ranch Specific Plan) and Alternative 3 (Residential Rural Cluster Subdivision) would both reduce the project's significant environmental impacts related to GHG emissions, land use and planning, and population and housing. In addition, Alternative 2 (La Cañada Ranch) would further reduce impacts to air quality and transportation, but would increase potential impacts to recreation. Alternative 3 (Residential Rural Cluster Subdivision) would further reduce impacts to biological resources and public services compared to the proposed project, but would potentially increase impacts to utilities and service systems if annexation into the NCSA service area was not feasible. Because Alternative 3 would be residentially focused, Alternative 3 would meet more of the project's basic objectives than Alternative 2. Therefore, the EIR determined that Alternative 3 would be considered the environmentally superior alternative because it would reduce the project's significant impacts and more successfully meet the basic project objectives. Minor revisions have been addressed.</p>
DRL-127	<p>This commenter states that the conclusion of the Alternative Analysis should be updated as Alternative 3 would increase impacts and would be more inconsistent with the DRSP. As discussed under DRL-126, the EIR determined that Alternative 3 would be considered the environmentally superior alternative because it would reduce the project's significant impacts and more successfully meet the basic project objectives. Therefore, no revisions are necessary.</p>

Comment No.	Response
DRL-128	<p>This commenter states that Section 6.1.3, <i>Establishment of a Precedent-Setting Action</i>, under Chapter 6, <i>Other CEQA Considerations</i>, should include Pomeroy as an additional access point and asks for clarification as to why the project would result in a precedent setting action. This revision has been made in Chapter 6, <i>Other CEQA Considerations</i>. As described in Section 6.1.3, the project would include establishment of new land use designations within the Specific Plan Area to allow for increased density of development as well as allow for the development of commercial uses, such as a hotel and educational facilities. Establishment of new higher-density residential development, recreational amenities, education facilities, and commercial uses within the Specific Plan Area may increase the attractiveness of surrounding rural residential land for future residential development at similarly higher densities, including construction of ADUs and/or subdivisions and future commercial development. Development of high-density uses within the Specific Plan Area would also influence the baseline for future development density and visual character of surrounding areas, which may make the demand for future higher-density development in the project vicinity increase, compared to existing conditions. No revisions related to a precedent setting action is necessary.</p>
DRL-129	<p>This commenter refers to Section 6.1.4, <i>Development or Encroachment into an Isolated Area</i>, under Chapter 6, <i>Other CEQA Considerations</i>, states that this should not be a Class 1 impact and that the project is consistent with the SCAP, RHNA, and many other policies. Although the Class 1 determination comes at the end of Section 6.1, it relates to the discussion under 6.1.3. This has been clarified in the EIR. This is a conservative determination consistent with the determination of PH Impact 1.</p>
DRL-130	<p>This comment includes exhibits provided for reference and a photocopy of a letter evaluating the adequacy of the proposed mitigation for the Burton Mesa Chaparral habitat. No revisions to the EIR are necessary.</p>

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