

T-2 SYCUAN BAND

T-2-1 The comment requests a 30-day extension to the County's 45-day review period of the Draft EIR, which the County denied. The commenter states the 45-day comment period is not adequate time to review the Draft EIR and as a result, the comments presented in the letter are preliminary. The comment also states that the Sycuan Band expects to enter additional comments should it progress through public hearings.

The County acknowledges the comment and notes that the public review period of 45 days was provided consistent with the requirements of CEQA. The comment further serves as an introduction to comments that follow and comments which may continue to be provided following the close of the public review comment period. The County refers the commenter to **Responses to Comments T-2-2 through T-2-28**. The County also notes that any late comment letters will continue to be accepted; however, in accordance with CEQA, any such late letters are not required to be responded to as part of the Final EIR. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

T-2-2 The comment provides background information about the Sycuan Band of the Kumeyaay Nation (the Tribe). The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

T-2-3 This comment states that Sycuan did not receive the notification letter sent by the County, dated June 1, 2017, that requested consultation under Senate Bill (SB) 18 and Assembly Bill (AB) 52.

Notification letters were sent on June 1, 2017, and were addressed to the attention of Mr. Cody Martinez, Chairperson, and Ms. Lisa Haws, Cultural Resource Manager. The AB 52 letter was forwarded to both Mr. Cody Martinez (ssilva@sycuan-nsn.gov) and Ms. Lisa Haws (lhaws@sycuan-nsn.gov) via email and via regular mail on June 1, 2017. No return mail or email was received. The SB 18 letter was forwarded to both Mr. Cody Martinez and Ms. Lisa Haws on June 1, 2017 via certified mail as required under SB 18. The County received confirmation dated June 19, 2017, and June 2, 2017, respectively that both Mr. Cody Martinez and Ms. Lisa Haws received the SB 18 letters. Both letters were mailed to 1 Kwaaypaay Court, El Cajon, CA 92019. The confirmation was signed by GL Higgins and Susanna Sandoval. Because of the lack of response requesting consultation pursuant to AB 52 and/or SB 18, consultation was concluded.

With respect to the commenter's statement that consultation under SB 18 and AB 52 are no substitute for government-to-government consultation, the County notes that government-to-government consultation is a requirement of the federal National Historic Preservation Act (NHPA) and applies to federal undertakings and actions. As such, it does not apply to CEQA, which is a state law. Regarding the commenter's footnoted observation that, despite requests, the County did not provide "copies of the Proposed Project's submittals to the County and the County's responses to the submittals as each were received or produced," the County notes that draft documents are not public. Volumes of draft documents are submitted by project applicants to the County on a continuing basis in the normal processing of any project. The County is not obligated to provide the many drafts and iterations of documents to any and all interested parties as they are reviewed and commented upon in the application process. After reviewing the application documents and identifying possible issues related to the Proposed Project, however, the County produced a First Iteration Project Scoping Letter in this regard dated July 18, 2017, which was sent to the Proposed Project applicant. The County has provided related documents to the commenters attorneys on several occasions.

T-2-4 The comment states that the Sycuan Band received a copy of the cultural resources confidential appendices on April 11, 2018, and as of the date of the letter stated the Sycuan Band was in the process of reviewing them. The comment further states that "[w]ithout adequate review time, consultation, responses to the preliminary questions and comments that follow, and the additional subsurface evaluation for the presence of cultural resources the Sycuan Band cannot agree with the Draft EIR that the Proposed Project will not negatively impact cultural resources important to the Sycuan Band."

The County acknowledges the comment and notes that the public review period of 45 days was provided consistent with the requirements of CEQA. Regarding consultation, please refer to **Response to Comment T-2-3**. Regarding the evaluation of cultural resources, please refer to **Responses to Comment T-2-5** and **T-2-6**. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

T-2-5 The comment states that without adequate time to review the confidential appendices, the Sycuan Band is led to the conclusion that the appendices demonstrate significant impacts to cultural resources. The comment also refers to information in the confidential appendices. The County acknowledges that certain cultural sites within the Project Area require evaluation for potential significance. This work was conducted as part of the Draft EIR, the results of which are set forth in Section 2.5,

Cultural Resources; Section 2.1.1, Tribal Cultural Resources; and Appendix 2.5-1, Cultural Resources Technical Report.

The Draft EIR, Section 2.5, Cultural Resources, identified one site (SDI-12373) as significant and eligible for listing under the California Register of Historical Resources (CRHR). One site, SDI 12397, may be impacted which has not been evaluated directly, as it is located on state-owned lands (offsite) and permission was not granted to evaluate the site. Site SDI 12397 was determined to be eligible for listing under CRHR. mitigation measures M-CR-1 through M-CR-3 would be implemented to ensure impacts to all sites are reduced to less than significant.

T-2-6 The comment states the confidential appendices do not support the findings of the Draft EIR and the conclusion that the Proposed Project would not directly or indirectly significantly impact cultural resources.

The County does not agree with the comment. The Draft EIR, Section 2.5 Cultural Resources, identifies direct and indirect impacts to each cultural resource, which were discussed in detail in the inventory and evaluation report. The County refers the commenter to Section 2.5, Cultural Resources, of the Draft EIR as well as Appendix 2.5-1, Cultural Resources Technical Report. As described in Section 2.5.4, Significance of Impacts Prior to Mitigation, of the Draft EIR, potentially significant impacts were identified as a result of the Proposed Project. These include:

- development activities which could affect cultural resources within 50 feet of the ADI or within resource-specific, predetermined buffers (Impact CR-1);
- the potential to affect 57 cultural resources that, although they are not recommended as eligible for listing in the CRHR or the local register, are significant under the County CEQA Guidelines (Impact CR-2);
- the potential to affect one cultural resource (CA-SDI-12397 East) that has been determined to be significant under CEQA and County Guidelines and eligible for listing in the CRHR and local register (Impacts CR-3);
- the potential to affect undiscovered cultural resources that may qualify as significant under the County Guidelines (Impact CR-4); and,
- if the Preserve Trails Option is selected, the Proposed Project has the potential to indirectly affect one cultural resource (CA-SDI-12373, Locus A) that has been determined to be significant under CEQA and County Guidelines and eligible for listing in the CRHR and local register (Impact CR-5).

Section 2.5.5, Mitigation, recommends mitigation measures (M-CR-1 through M-CR-3) which would reduce these impacts to less than significant.

T-2-7 The comment states that not enough information is known about values of cultural resources within the Project Area. The comment provides an introduction to the following comment. Please refer to **Response to Comment T-2-8**.

T-2-8 The comment quotes the Brian F. Smith and Associates (BFSA) letter report prepared for the Applicant, which provided the Applicant with a summary of the work performed for the Proposed Project to that point, including the acknowledgement that only surface investigations had been performed to that date. That letter report, however, was preliminary and does not serve as the formal inventory report. The results of the BFSA work were incorporated into Dudek's report, which constitute the official inventory and evaluation report, commensurate with County guidelines. Formal evaluations of all resources that will be impacted by the Proposed Project were performed and documented in Dudek's report, including subsurface testing, artifact analyses, which form the basis of the analysis in the Draft EIR.

T-2-9 The comment states that cultural resources may be present even in locations that do not have surface manifestations of such resources. The County acknowledges that below ground cultural resources cannot be identified during pedestrian surveys. To address the potential for encountering subsurface resources not otherwise known or visible during pedestrian surveys, the County is requiring the applicant to implement an archaeological monitoring program to identify and treat such resources should they be uncovered during project-related grading/ground disturbance (see mitigation measure M-CR-2).

T-2-10 This comment states that the Tribe believes this land is highly likely to host important environmental and cultural resources.

As indicated in **Response to Comment T-2-5**, the only significant site within the Proposed Project applicant's ownership will not be affected by development proposed by the Proposed Project. As for the sites located on state-owned lands, the applicant could not gain access to the property in question and thus could not evaluate these sites for significance. Consequently, the Draft EIR assumed these sites were significant and recommended mitigation measures accordingly. In addition, to address the potential for encountering subsurface resources not otherwise known, an archaeological monitoring program will be required (mitigation measure M-CR-2).

T-2-11 This comment states based on the richness of known cultural resources, there is a high probability that human remains are present. To date, no known human remains have been identified within the Project Area. In the event that human remains are found, all applicable state laws will be enforced in order to protect and treat such remains in an appropriate manner. Mitigation measure M-CR-2.c specifies these requirements.

T-2-12 This comment states that the Draft EIR “does not discuss impacts to certain plants, animals, habitat, and use areas that are also considered cultural resources by the Sycuan Band.”

The comment does not specify or identify which plants, animals, habitats, or use areas are considered culturally important by the Sycuan Band. Impacts to wildlife and vegetation within the Project Area are identified and analyzed in the Draft EIR, Section 2.4, Biological Resources, and Appendix 2.4-1, the Biological Resources Technical Report. Native American consultation was conducted with tribes who requested participation in the consultation process. To date, no information has been provided regarding the area as a traditional use area. Should information regarding such resources and their potential status as cultural resources/Tribal Cultural resources have been provided, the County would have incorporated those resources into the analysis of the Draft EIR; however, at this point, no such specific request has been made nor has any inadequacy with the Draft EIR been identified.

T-2-13 This comment requests that a Kumeyaay monitor be present for any pedestrian surveys conducted by archaeologists or biologists, and during all ground disturbing activities. The comment further requests that the County provide Sycuan the name and contact information of the proposed Kumeyaay monitor. The comment also requests copies of all archaeological reports on file in this area be provided to Sycuan.

The Draft EIR, Section 2.5, on page 59 states that Red Tail Monitoring and Research, Inc. provided Kumeyaay monitors for all survey and evaluation efforts performed to date by archaeologists for the Proposed Project. Mitigation measure M-CR-2 requires a Kumeyaay monitor during all initial ground disturbing activities during construction. Once a monitor is contracted for the construction phase, the name and contact info will be provided to Sycuan. Biological surveys are field surveys do not cause ground disturbance; as such, there would be no impact to cultural resources. Therefore, a Kumeyaay monitor would not be required during biological pedestrian surveys.

T-2-14 This comment states that mitigation measures must be incorporated to mitigate impacts if cultural resources may be impacted; however, avoidance is the preferred mitigation.

The County agrees that the preferred mitigation for impacts to significant archaeological resources is preservation in place, which can be accomplished through (1) avoidance, (2) incorporation of the site into a greenspace or park, (3) capping of the site, or (4) deeding the site into a permanent conservation area (see CEQA Guidelines, Section 15126.4(b)(3)(B)). If preservation in place proves infeasible, however, the impacts to the site in question may be mitigated through data recovery (CEQA Guidelines, Section 15126.4(b)(3)(C)). Potential impacts to resources have been identified in Section 2.5, Cultural Resources, and Appendix 2.5-1, Cultural Resources Technical Report of the Draft EIR. Each resource has been formally evaluated and mitigation measures M-CR-1 through M-CR-3 are recommended to reduce impacts to a less than significant level, as documented in Sections 2.5.6 and 2.5.7 of the Draft EIR. The comment also states that if potential impacts are not avoided, the Sycuan Band requests notice and consultation before development proceeds. The County refers the commenter to the Draft EIR, Section 2.5, Cultural Resources, which analyzed potential impacts to cultural resources and recommends mitigation measure M-CR-2 to address the concerns related to monitoring. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

T-2-15 This comment states that if archaeological collections are curated, then they should be curated in a facility in Kumeyaay territory, preferably in a tribal facility.

The County responds to this request as follows: the Proposed Project would be conditioned to either convey cultural material to a tribe of appropriate cultural affinity (repatriation) or to curate the collection at a federally-approved facility in San Diego. Any Kumeyaay curation facility that meets the federal standards would be able to take the collection, if the curation option is selected (See mitigation measure M-CR-2.f). The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

T-2-16 This comment identifies concerns regarding impacts to the “natural, beautiful terrain” of the Kumeyaay Nation and that such impacts may not have been avoided wherever possible and minimized where not possible.

The comment describes a general subject area, i.e., impacts to natural terrain, which received extensive analysis throughout the Draft EIR, including Sections 2.1,

Aesthetics, and 2.4, Biological Resources. Section 2.1.6 describes the impacts to Aesthetic Resources that were determined to be significant and unavoidable, which is consistent with the findings of the Otay Ranch Final Program EIR (Otay Ranch PEIR). (See Draft EIR at page 2.1-41) Impacts to biological resources are reduced to less than significant through mitigation measures M-BI-1 through M-BI-21 as explained in Section 2.4.7 of the Draft EIR.

T-2-17 The comment notes that the Proposed Project reliance on the 1993 Otay Ranch PEIR and Otay Ranch General Development Plan/Otay Subregional Plan, Volume II (Otay Ranch GDP/SRP) documents is “misplaced” and the physical environment that existed in 1993 no longer exists. The comment also serves as an introduction to Comment T-2-18 regarding impacts due to development (i.e., cumulative impacts), wildfire hazard, and biological resources). Each is addressed below.

First, under CEQA, tiering from an approved EIR is permitted (California Public Resources Code Sections 21093 and 21094; CEQA Guidelines, Sections 15152 and 15168(c)). The Otay Ranch PEIR was certified by both the County of San Diego and City of Chula Vista and withheld legal challenges through the State Supreme Court (*Chaparral Lands vs. City of Chula Vista et al.*).

Second, the County approved the Project Area for the amount and type of development proposed by the Proposed Project as part of the County General Plan Update (2011, SCH. No. 200111067). As described in Section 3.1.3, Land Use and Planning of the Draft EIR, the Proposed Project is consistent with the County General Plan.

Third, the Draft EIR for the Proposed Project provides project-specific technical analysis, as well as cumulative analysis, to analyze the potential impacts of the Proposed Project within the existing setting. This includes analysis contained in Sections 2.7, Greenhouse Gas Emissions, and 2.11, Tribal Cultural Resources, which address issue areas that were not part of the Otay Ranch PEIR analysis, and Section 3.1.1.2.4, Wildfire Hazard, which addresses more recent fire history in the Project Area.

Lastly, cumulative impacts were considered as part of the Otay Ranch PEIR analysis for the entire Otay Ranch project area. The Draft EIR builds on this cumulative analysis by addressing cumulative projects throughout the Draft EIR. Where appropriate, cumulative impacts have been identified (see, e.g., Sections 2.1, Aesthetics; 2.3, Air Quality; and 2.9, Transportation and Traffic).

Accordingly, the Draft EIR appropriately analyzed the Proposed Project's impacts and does not singularly rely upon compliance with the Otay Ranch GDP/SRP and the Otay Ranch PEIR.

T-2-18 The comment states “development and wildfires have significantly impacted both plant and animal life” in the region. The comment further provides background information regarding the history of the Kumeyaay nation as skilled hunters and agriculturalist. The comment expresses concern about impacts of the Proposed Project “on the already impacted plant and animal life” and the Otay Lakes.

The County refers the commenter to the Draft EIR, Section 2.4, Biological Resources, which analyzes the Proposed Project's consistency and compliance with the Multiple Species Conservation Program (MSCP) County Subarea Plan, and Section 2.4.4, Cumulative Impacts. The MSCP County Subarea Plan was approved in 1997 and addresses cumulative impacts to plants and animals. Section 2.4, Biological Resources, identifies that the Proposed Project is consistent with the MSCP County Subarea Plan. Cumulative impacts to Biological Resources were determined to be less than significant. Further, the Proposed Project is part of the Otay Ranch GDP/SRP and Otay Ranch Resource Management Plan (RMP). While predominately considered a biological mitigation plan for the Otay Ranch, the Otay Ranch RMP also considered impacts to cultural resources for cumulative development within Otay Ranch. Section 3.1.3, Land Use and Planning, determined the Proposed Project is consistent with the Otay Ranch GDP/SRP and RMP; thus, impacts to biological and cultural resources have been addressed at a cumulative level.

The County acknowledges the commenter's concern regarding impacts to the Otay Lakes. The County refers the commenter to Section 3.2, Hydrology and Water Quality, as well as **Response to Comments O-6-263** and **Comment Letter O-6.3** (Horner Report) for additional explanation regarding the adequacy of the analysis in the Draft EIR and appendices 3.1.2-1, Drainage Study; 3.1.2-2, Stormwater Management Plan; and 3.1.2-4, Hydromodification Management Plan.

T-2-19 The comment restates information about the location of the Project Area and anticipated improvements, including the extension of Proctor Valley Road and associated utilities, contained in Chapter 1, Project Description, of the Draft EIR. The comment does not raise any issue as to the adequacy the Draft EIR; therefore, no further response is required or provided.

T-2-20 The comment asserts that the Proposed Project would result in “leap frog development.” The County does not agree. The Proposed Project would extend an

identified Mobility Element roadway through a Preserve area. Proctor Valley Road is a planned facility within the Otay Ranch RMP/MSCP Preserve, the impacts of which have been anticipated by the MSCP County Subarea Plan and Otay Ranch RMP. Further, since adoption of the Otay Ranch GDP/SRP, Proctor Valley Road has been re-classified from a four-lane Major Road to a two-lane Collector (see Draft EIR at page 1-23).

With respect to the comment about leap-frog development, the County refers the commenter to Section 3.1.3, Land Use and Planning, which determined the Proposed Project would be consistent with the County General Plan. The Proposed Project has been anticipated in the County General since its original approval in 1993; was incorporated into the MSCP County Subarea Plan in 1998; and was reaffirmed in the County's General Plan Update in 2011. It is the next logical, anticipated phase of development in the Otay Ranch GDP/SRP as the Otay Ranch community progresses from west to east. From the intersection of Agua Vista and Proctor Valley Road to South Village 14, the Proposed Project is approximately 1.5 miles. The Proposed Project's village core is less than 1 mile directly east of, and visible from, the existing community of Bella Lago, which is in the process of building out its final homes. From the north, Planning Areas 16/19 are immediately adjacent to existing development in Jamul. In sum, the Proposed Project does not constitute leap-frog development. Please see Appendix 3.1.3-1, General Plan Amendment Report, for further analysis regarding the Proposed Project's consistency with the County General Plan.

The County refers the comment to **Response to Comment T-2-18**, above, regarding impacts to potable water resources.

T-2-21 The comment expresses an opinion that the Draft EIR has not considered the impact of the Proposed Project on adjacent lands. The Draft EIR, Section 1.8 analyzes the Proposed Project's potential to induce growth and thereby impact adjacent properties. Draft EIR, Section 1.8.5, Conclusion, determined growth-inducing impacts would be less than significant. See **Thematic Response – Inducements to Growth and Cumulative Projects**.

Visual impacts from adjacent lands are addressed in Section 2.1, Aesthetics. Potential edge effects and wildlife corridors are analyzed in Section 2.4, Biological Resources. Off-site noise impacts are addressed in Section 2.8, Noise. Traffic impacts are analyzed in Section 2.9, Transportation and Traffic. Potential impacts to hydrology and water quality, including the Otay Lakes is addressed in Section 3.1.2, Hydrology and Water Quality. Impacts to public services are analyzed in Section 3.1.6, Public Services.

The Draft EIR was prepared in accordance with the County's Report and Content Requirements and impacts have been analyzed against the County's Thresholds for Determining Significance. All potentially significant impacts have been identified in the Draft EIR in accordance with those Thresholds, and where feasible, mitigation measures are provided to reduce impacts in accordance with CEQA.

T-2-22 The comment provides background information on the Sycuan Band and the values of the Kumeyaay Nation with respect to plant and animal life, including birds of prey such as the golden eagle, bald eagle, and red-tailed hawk. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

T-2-23 The comment expresses an opinion that impacts to golden eagle and other birds of prey, such as the red-tailed hawk, are of particular cultural significance.

Section 2.4.3.1 of the Draft EIR analyzes the Proposed Project's impacts to golden eagle and determines that impacts to raptor foraging habitat are potentially significant (Impact BI-6, see Draft EIR, page 2.4-86) (see also, **Thematic Response – Golden Eagle**). The Draft EIR recommends mitigation measures to reduce such impacts to less than significant levels, including preservation of foraging/nesting habitat for golden eagle (mitigation measures M-BI-3, habitat conveyance and preservation, and M-BI-4, biological open space easement). In addition, mitigation measure M-BI-5 (permanent fencing and signage) would mitigate for potential long-term impacts by deterring unauthorized human activity within the Otay Ranch RMP/MSCP Preserve. With implementation of the recommended mitigation measures, the Draft EIR determined that impacts to golden eagle would be reduced to less than significant. As further described in **Responses to Comments A-3-98 through A-3-123** (CDFW), **O-6-131 to O-6-134** (EHL), and **O-6.1-47 through O-6.1-69** (Hamilton Biological), the Draft EIR appropriately and adequately analyzed impacts to golden eagle.

The Draft EIR also evaluated the Proposed Project's impacts on other birds of prey, such as the red-tailed hawk, and determined they would be less than significant. Further, mitigation measure M-BI-6 requires that all development activity, such as vegetation clearing, grubbing, and grading take place outside the nesting period for most bird species, including raptors such as hawks, unless a nesting bird survey is completed within 72 hours prior to the start of construction activities and the results must be submitted to the Director of Planning and Development Services for review and approval prior to initiating any construction activities. This provides additional protection for birds of prey in the Project Area.

- T-2-24** The comment addresses project-related impacts to golden eagle nesting sites. The County refers the commenter to **Thematic Response – Golden Eagle**.
- T-2-25** The comment addresses project-related impacts to golden eagle habitat. The County refers the commenter to **Thematic Response – Golden Eagle**, and **Responses to Comments O-6.1-47** through **O-6.1-69**.
- T-2-26** The comment states that the Draft EIR does not adequately consider the data provided in the U.S. Geological Survey study released in February 2016. The County addresses this issue in **Thematic Response – Golden Eagle**, and **Responses to Comment O-6.1-47** through **O-6.1-69**.
- T-2-27** The County acknowledges the commenter’s support to eliminate development in Planning Areas 16/19, as well as elimination of the connection of Proctor Valley Road to State Route (SR) 94. The County further notes that the Proposed Project does eliminate the four-lane extension of Proctor Valley Road included in the Otay Ranch GDP/SRP as preferred by commenter. Rather than extending Proctor Valley Road out to SR-94 as depicted in the Otay Ranch GDP/SRP, the Proposed Project eliminates that alignment and proposes to construct Proctor Valley Road substantially in its existing physical alignment – i.e., consistent with the alignment approved in the Mobility Element of the County’s General Plan. The County also notes that elimination of development in Planning Areas 16/19 is described and analyzed in Draft EIR Section 4.8, Land Exchange Alternative. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.
- T-2-28** The comment provides concluding remarks that do not raise new or additional environmental issues concerning the adequacy of the Draft EIR. The County also notes that any late comment letters will continue to be accepted; however, in accordance with CEQA, any such late letters are not required to be responded to as part of the Final EIR.
- T-2-29** The County has reviewed and considered the comment and the cited document (Tracey et al. 2016). The study was issued prior to the release of the Draft EIR, and therefore does not assess the adequacy of the Draft EIR. As explained in the **Thematic Response – Golden Eagle**, the U.S. Geological Survey (USGS) recently released another study based on the same golden eagle telemetry project. The Proposed Project’s raptor consultant, H.T. Harvey and Associates, reviewed this latest USGS study and determined that it did not change any of the conclusions drawn in the Draft EIR. Further, as explained in **Responses to Comments T-2-23** through **T-2-26**, above, the Draft EIR adequately analyzed impacts to golden eagle based on project-specific details. No further response is necessary or required.

INTENTIONALLY LEFT BLANK