Table 8-1
Summary of EIR Text Changes

Section (Page)	Change	Reason for Change
Section 4.8.2	Corrected Proposed Project GHG-operational emissions from 19,825 to 16,159; corrected Proposed Project GHG-construction emissions from 11,463 to 12,378 MT CO2e;	Correction
Section 4.8.2	Corrected Proposed Project library square footage, added Land Exchange Alternative library square footage	Correction and clarification
Section 4.8.2	Corrected Proposed Project average sewage flows.	Correction
Table 4-12	Corrected Land Exchange Alternative Total Annual Operational Emissions	Correction
Table 4-13	Corrected Project Life Operational Emissions (30 years)	Correction
Chapter 7.0, List of Mitigation Measures and Environmental Design Considerations		
Chapter 7.0	Mitigation Measures and Project Design Features updated per revisions to the Final EIR	Consistency with revisions in Response to Comments

8.4 Thematic Responses to Comments

Similar comments were received on several topics. In response, Thematic Responses were prepared to comprehensively address these comments. The individual responses refer to the following Thematic Responses, which are listed below and provided in Section 8.4.1 through 8.4.14, below.

- Baldwin Letter Proposal and PV 1, PV2, and PV3
- Golden Eagle
- Quino Checkerspot Butterly
- Proctor Valley Road and Other Offsite Roads
- Use of Carbon Offsets
- CAP Consistency
- Blasting Emissions (GHG)
- SR-94 Improvements
- Wildfire Protection and Evacuation
- Community Character and Plan Consistency
- Inducements to Growth
- Water Supply/Drought

- Sewer/Septic
- Alternatives

8.4.1 Baldwin Letter Proposal and PV1, PV2, and PV3

This Thematic Response addresses comments raised on the Draft EIR relating to the November 10, 1995, letter written by the Baldwin Company (the "Baldwin Letter") to the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) (collectively, "the Wildlife Agencies"), in which the Baldwin Company outlined a proposal for conserving some Baldwin Company-owned parcels in Otay Ranch in exchange for development rights on other parcels designated as Otay Ranch RMP Preserve. As part of the Baldwin Letter proposal, the Baldwin Company offered to designate three areas within Village 14 (referred to in the Baldwin Letter as "PV1," "PV2" and "PV3") as part of the MSCP Preserve, provided the Wildlife Agencies accepted the other terms set forth in the letter, some of which would provide the Baldwin Company with entitlements to build on other parcels within Otay Ranch. Several comments on the Draft EIR assumed that the Baldwin Letter proposal was accepted by the Wildlife Agencies and became a formal agreement through which PV1, PV2 and PV3 were designated as MSCP Preserve. Based on this assumption, a number of comments claimed that seeking take authorization for PV1, PV2 and PV3 through the County's Biological Mitigation Ordinance (BMO) is inappropriate.

Introduction

As explained herein, the Wildlife Agencies never accepted all terms of the Baldwin Letter proposal and, thus, there was no agreement to place PV1, PV2, and/or PV3 into permanent MSCP Preserve. Consequently, all comments that assume such an agreement was reached are in error. Moreover, the Draft EIR comments related to the Baldwin Letter and PV1, PV2 and PV3 reflect a misunderstanding of the County's contractual obligations under the Implementing Agreement[1] (IA) for the MSCP County Subarea Plan, which clearly indicates that PV1, PV2 and PV3 are approved for development, not Preserve, and would be added to the Preserve only if agreements were reached in the future. No such agreement(s) were reached. Further, the GDP/SRP and General Plan land use designation for PV1, PV2 and PV 3 has remained unchanged for 25 years; there has been no General Plan Amendment or County action taken to amend the land use to MSCP Preserve.

CEQA does, however, require that the potential environmental impacts resulting from the development of PV1, PV2 and/or PV3 be addressed as they are a part of the Proposed Project.

[1] County of San Diego MSCP Implementing Agreement (IA) By and Between the United States Fish and Wildlife Service, California Fish and Game Department and the County of San Diego", ("Implementing Agreement" or "IA"). March 17, 1998.

The potential impacts related to development of PV1, PV2 and PV3 are addressed throughout the Draft EIR as a part of the Proposed Project and each area is specifically addressed through the separate Biological Mitigation Ordinance (BMO) Analysis which is included as Appendix B of the Biological Resources Technical Report (Appendix 2.4-1 of the Draft EIR). Thus, the required CEQA analysis for impacts to PV1, PV2, and PV3 has been conducted, and this Thematic Response is provided for background informational purposes only.

Summary

Since the County approved the Otay Ranch General Development Plan/Subregional Plan (GDP/SRP) in 1993, the parcels known as PV1, PV2 and PV3 have been designated for development. Subsequent to 1993, the County received incidental take authority under the Multiple Species Conservation Program (MSCP). In March 1998, the County entered into an IA with the USFWS and CDFW in order to qualify the MSCP as a Natural Community Conservation Planning (NCCP) program and to set up procedures to contractually implement the MSCP County Subarea plan. Pursuant to and concurrent with the IA, the USFWS issued the County's Section 10(a) take permit and CDFW issued the California Endangered Species Act (CESA)/NCCP Authorization.

At the time the MSCP Plan, County Subarea Plan and the IA were being finalized and approved, the Baldwin Company owned all of Otay Ranch, including PV1, PV2 and PV3. During the MSCP planning process, the Baldwin Company and the Wildlife Agencies had entered into negotiations to designate certain developable lands as part of the Otay Ranch/MSCP Preserve in exchange for designating other Otay Ranch/MSCP Preserve areas as developable, and to incorporate other terms and conditions into the MSCP County Subarea Plan. PV1, PV2, and PV3 were among the areas proposed to be converted to MSCP Preserve. The Baldwin Letter, which outlined this proposal, was attached to the County's Subarea Plan to reflect the status of those negotiations. The County's Subarea Plan does not directly refer to the Baldwin Letter attachment. The IA, however, does clarify that the proposed Otay Ranch Preserve would be augmented by additional land if agreements – such as the one proposed in the Baldwin Letter – could be reached.

Additionally, the MSCP County Subarea Plan acknowledged that negotiations were "continuing" and that a County General Plan amendment would be required if the ongoing negotiations referred to resulted in any such future agreements. Prior to adoption of the MSCP County Subarea Plan and the IA, however, the Baldwin Company lost ownership of PV1, PV2 and PV3, and negotiations between the Baldwin Company and the Wildlife Agencies on these three areas came to a halt. None of the subsequent owners of PV1, PV2 and PV3 were offered additional development rights in exchange for designating these areas as MSCP Preserve, and without an

agreement, a general plan amendment was not triggered. Accordingly, these areas remain designated as development in the Otay Ranch GDP/SRP and the County General Plan.

Pursuant to the County's Biological Mitigation Ordinance (BMO), PV1, PV2 and PV3 are located within the boundaries of the MSCP County Subarea Plan depicted in BMO Attachment A, but are not exempt from the BMO per Attachment B. Therefore, the BMO process is applicable to PV1, PV2 and PV3. The required BMO Findings and BMO analysis for PV1, PV2 and PV3 are incorporated as Appendix A to the Biological Resources Technical Report (Appendix 2.4-1 of the Draft EIR).

The remainder of this Thematic Response first provides a detailed discussion of the Baldwin Letter, the Wildlife Agencies' response to that letter, and the ensuing fragmentation of Baldwin's ownership of Otay Ranch. The Thematic Response then provides a detailed discussion of PV1, PV2 and PV3 as related to the MSCP County Subarea Plan, the IA, MSCP Plan inconsistencies, as well as a review of subsequent implementation of proposed Baldwin Letter elements. The Thematic Response then shifts to a discussion of PV1, PV2 and PV3 County General Plan consistency, BMO applicability, and MSCP Plan compliance. A summary timeline is presented for convenience at the end of this Thematic Response.

The 1995 Baldwin Letter

Several of the Draft EIR comments state that the 1995 Baldwin Letter was an agreement. The County disagrees. The 1995 Baldwin Letter was a proposal, not an agreement. The Baldwin Letter was signed by the Baldwin Company alone; no other parties signed the letter. Included in the many proposed elements was the elimination of development entitlements within identified areas owned by the Baldwin Company, including PV1, PV2 and PV3. Specifically, the Baldwin Letter stated:

> *The following are the elements of a **proposed** agreement between the City of Chula Vista, the County of San Diego, the California Fish and Game Department, the US Fish and Wildlife Agency, and the Baldwin Company concerning the South County/Otay Ranch MSCP Subarea Plan relative to Otay Ranch properties controlled by The Baldwin Company or Baldwin Company affiliates.* [Emphasis added.]

As the highlighted text makes clear, the offer to designate PV1, PV2, and PV3 as Preserve was a proposal only.

The 1996 Agency Response

On February 22, 1996, the Wildlife Agencies responded to the Baldwin Letter with a written counter-proposal (the "Agencies' Counter Proposal"). In that letter, the Wildlife Agencies

repeatedly referred to Baldwin's offer as a "***proposed*** *Otay Ranch MSCP Plan Agreement dated November 10, 1995.*" [Emphasis added]. The Agencies' Counter-Proposal indicated: (i) a willingness to accept some of the proposed Baldwin Letter elements; (ii) a categorical rejection of some of the proposed Baldwin Letter elements; and/or (iii) additional conditions that would be necessary if the Agencies were to accept some of the other proposed Baldwin Letter elements. The Agencies' Counter-Proposal was signed by the Wildlife Agencies alone; no other parties signed the letter. The last paragraph in the Wildlife Agencies Counter Proposal, states:

> *We look forward to finalizing the Agreement as soon as possible and suggest we set a target date for Completion of the Agreement by March 30, 1996.*

While the Wildlife Agencies and others may refer to the Baldwin Letter proposal as the "Baldwin Agreement," the Baldwin Letter proposal and the Wildlife Agencies' Counter-Proposal do not constitute any kind of a legally enforceable agreement. There were no further writings between the Baldwin Company and the Wildlife Agencies concerning the initial Baldwin Letter proposal or the Agencies' Counter Proposal.

Otay Ranch Ownership Fragmentation

Subsequently, ownership of Otay Ranch became fragmented, and the Baldwin Company could no longer negotiate for properties they did not control. In May of 1997, ownership of PV1, PV2 and PV3 was transferred to the Stephen & Mary Birch Foundation, Inc. via Trustee's Deed through foreclosure. The Baldwin Company was no longer the owner and thus forfeited any legal authority or right to further negotiate any terms or relinquish any development rights with respect to PV1, PV2 and PV3. It then fell to the subsequent owners of PV1, PV2, and PV3 to continue negotiations with the Wildlife Agencies, if they chose to do so. The Stephen & Mary Birch Foundation did not reach any agreement with the Wildlife Agencies regarding PV1, PV2, and PV3, so the collective status as developable areas remained unchanged and has not been altered since. This fact is reflected in the County's current General Plan (also known as the 2011 General Plan Update).

MSCP County Subarea Plan

Several of the comments stated the Baldwin Letter constituted an agreement and, therefore, that the MSCP County Subarea Plan identified PV1, PV2 and PV3 as MSCP Preserve. The County disagrees.

In October of 1997, the County Board of Supervisors adopted the MSCP County Subarea Plan, which was subsequently approved by the Wildlife Agencies upon execution of the IA. The MSCP County Subarea Plan §1.0 defines the hardline MSCP Preserve as "*…areas titled 'Public Lands and Dedicated Private Open Space.' These lands are hereafter referred to as 'preserve areas.'"* PV1, PV2 and PV3 are not titled "Public Lands and Dedicated Private Open Space."

Moreover, Section 3.3.3.7 of the MSCP County Subarea Plan acknowledged that Baldwin and the Agencies had not reached an agreement at the time it was adopted by the Board of Supervisors, stating:

> ***Negotiations are continuing*** *between Village Development [The Baldwin Company] and the Wildlife agencies which would result in* ***additional*** *lands in Proctor Valley, east of the approved resort, and additional lands south of the lower Otay Lake being placed in open space. In return, additional development would be approved in the Poggi Canyon area, the area on the eastern edge of Village 10 and west of Salt Creek and a portion of Village 4, east of Rock Mountain. This project modification would require the County and the City of Chula Vista to amend the General Plan.* [Emphasis added.]

This language indicated that a ***future*** General Plan Amendment would be needed to add or delete portions of Otay Ranch to or from the MSCP Preserve ***if*** negotiations culminated in a future agreement. At the time of County MSCP Subarea Plan approval, in other words, no agreement had yet been reached to place PV1, PV2 and/or PV3 into the Preserve and no such action has occurred since.

The County of San Diego MSCP Implementing Agreement (IA)

The County's and the Wildlife Agencies' contractual obligations regarding the MSCP Plan and County Subarea Plan are set forth in the IA[2]. The IA was executed on March 17, 1998, ***concurrent*** with the Section 10(a) Permit and the California Endangered Species Act (CESA)/NCCP Authorization, but ***after*** the MSCP County Subarea Plan had been adopted by the County and approved by the Wildlife Agencies.

More than two years after the Baldwin Letter proposal, the IA makes it clear that no agreement was finalized with respect to the Baldwin Letter at the time the IA was executed. Specifically, IA Section10.5.A.2, which addresses "Assembly and Protection of the MSCP Plan Open Space Preserve ... Resource Protection Regulations …Application of Mitigation to Development," confirms that the Baldwin Letter proposal was not an agreement. It states:

[2] The IA is a contractually binding agreement and has a 50-yearterm. Recital 1.13 of the IA states: The purpose of the Agreement is to ensure the implementation of the MSCP and the Subarea Plan by **contractually binding** each of the Parties to fulfill and faithfully perform the obligations, responsibilities, and tasks assigned to it pursuant to the terms of the MSCP, the Subarea Plan and this Agreement. [Emphasis added.] Section 21.1 of the IA states: "This Agreement …shall remain in full force and effect for a period of 50 years". Section 12.3 and § 12.5 of the IA indicates that the Section 10(a) Permit and the CESA/NCCP Authorization are also effective for 50-years.

> *The County shall require…[p]rotection of the areas identified as preserved in the boundaries of the Otay Ranch project including approximately 11,375 acres…. **Additional** lands associated with agreements, as outlined in the letter attached to the South County Segment from the Baldwin Company dated November 10, 1995, will be included **if** the agreements are reached. [Emphasis added.] (IA, § 10.5.A.2.)*

It is important to note that the IA describes the Otay Ranch Preserve as consisting of 11,375 acres, which is the exact acreage of the Otay Ranch Preserve identified in the Otay Ranch Resource Management Plan[3] ("RMP") approved in 1993. Section 5.1 and Figure 24 of the Phase 1 RMP, define the 11,375-acre Otay Ranch Preserve and clearly indicate that PV1, PV2 and PV3 are not included as Preserve. Instead, these documents show PV1, PV2, and PV3 within the development footprint. Thus, the IA's reference to the 11,375-acre Otay Ranch Preserve establishes that PV1, PV2, and PV3 were not part of the MSCP Preserve.

IA Section 10.5.A.2 further demonstrates that, as of March 1998, the Baldwin Letter proposal was just that – a *proposal* – and not an agreement, and that all parties, including the Wildlife Agencies, acknowledged that the areas referred to in the Baldwin Letter (including PV1, PV2 and PV3) ***were not*** included in the MSCP Preserve at the time of MSCP County Subarea Plan was adopted. Additionally, by referring to future "agreements" rather than to a single "agreement," the IA confirms that elements of the Baldwin Letter proposal were to be addressed in the future through separate negotiations amongst the now fragmented Otay Ranch ownership, rather than in a single, comprehensive agreement. The parties, however, could not reach agreement on all deal points and the expected outcome did not materialize. It is for this reason that the IA, which post-dates the MSCP County Subarea Plan, discusses the ***potential*** for the Baldwin Letter parcels to be designated as MSCP Preserve "if the agreements are reached." (IA, § 10.5A2.) The agreements were ***not*** reached and no subsequent actions have designated them as MSCP Preserve. Consequently, PV1, PV2 and PV3 are developable areas and are ***not*** MSCP Preserve. Thus, any statement that PV1, PV2 and PV3 are part of the MSCP Preserve is inaccurate.

MSCP Inconsistencies

Several Draft EIR comments refer to inconsistent figures and statements regarding the Baldwin Letter in various documents and communications as confirmation that PV1, PV2 and PV3 are MSCP Preserve or that an agreement was reached. The County disagrees. It should be noted that several of the figures and statements identified in the Draft EIR comments were prepared while negotiations were "continuing" and thus reflect an attempt to depict what the Baldwin Letter had

[3] The Otay Ranch RMP was incorporated into the MSCP County Subarea Plan. See Note in Subarea Plan §3.3.3.7.

proposed. Additionally, the IA is the controlling document if there is an inconsistency between the IA and the MSCP Plan or the MSCP County Subarea Plan. IA Section 3.2 states:

> *This Agreement is intended to specify the obligations of the Parties under the MSCP and Subarea Plan, recognizing that the MSCP and Subarea Plans set forth the components of a conservation plan and were not drafted as contract documents. In the event of any direct contradiction, conflict or inconsistency between the MSCP Plan and the Subarea Plan, the Subarea Plan shall control. In the event of any direct contradiction, conflict or inconsistency between the MSCP Plan or the Subarea Plan on the one hand, and this Agreement on the other,* ***the terms of this Agreement shall control***. [Emphasis added].

Furthermore, the IA supersedes any and all other agreements. IA Section 25.5 states:

> *This Agreement supersedes any and all other Agreements, either oral or in writing, among the Parties with respect to the subject matter hereof….*

This language from the IA is important in several respects:

1. The fact that the Baldwin Letter proposal was attached to the MSCP County Subarea Plan is not dispositive. While the Baldwin Letter was attached, the MSCP County Subarea Plan never references it directly, referring to it only by implication in §3.3.3.7, which discusses the status of negotiations with the Baldwin Company, as confirmed by the IA. The only explanation for the inclusion of the Baldwin Letter was to demonstrate the status of the negotiations at the time, which would have been honored pursuant to IA Section10.5.A.2 if future agreements had been reached;
2. The original MSCP County Subarea Plan map in 1997 categorized PV1, PV2 and PV3 as "Otay Ranch Areas Where No 'Take Permits' Will Be Issued." PV1, PV2 and PV3 are <u>not</u> designated as "*preserve areas*", which are defined as "Public Lands and Dedicated Private Open Space" in Figure 1-1. Additionally, MSCP County Subarea Plan figures – whatever they show and however they are interpreted –must be read consistently with the language of all permitting documents, including the IA text; which clearly states that PV1, PV2 and PV3 were not designated as MSCP Preserve (Section 10.5.A.2); and
3. To the extent that anything in the MSCP Plan or MSCP County Subarea Plan, including statements, figures, or maps, is inconsistent with the IA, the IA controls.

Subsequent Implementation of Proposed Baldwin Letter Elements

Some commenters stated that subsequent implementation of certain elements of the Baldwin Letter proposal indicate that it was an agreement and, therefore, PV1, PV2 and PV3 should be considered MSCP Preserve. The County disagrees.

First, certain elements of the Baldwin Letter Proposal have ***never been*** implemented, further demonstrating there was no subsequent Baldwin Letter agreement or obligations. Three illustrative examples include: (i) the City of Chula Vista and the County have never decreased the densities in the Otay Ranch transit village cores from an average of 18 dwelling units per acre to 14.5 dwelling units per acre (Baldwin Letter §C.1.); (ii) the USFWS has never accepted title to, nor maintenance responsibility for, the Otay Ranch open space areas east of the Otay Reservoir (Baldwin Letter §C.4.); and (iii) the Wildlife Agencies never agreed to delete the Maritime Succulent Scrub restoration requirement (Baldwin Letter §C.2.).

Second, while several elements of the Baldwin Letter proposal elements did occur, they were ***not*** implemented because of the Baldwin Letter proposal. Rather, they occurred because of subsequent landowner negotiations, separate permits, and/or separate processing of the City of Chula Vista Subarea Plan. These separate negotiations were wholly independent of, and without any connection to, the MSCP County Subarea Plan, the IA and/or the County's take permit.

For example, parcel "P1" (Baldwin Letter §B.1) [4] was ***not*** converted to developable "take authorized" land through the MSCP County Subarea Plan, the City of Chula Vista Subarea Plan, or the terms proposed in the Baldwin Letter. Rather, the owner of P1, the City of Chula Vista and the Wildlife Agencies negotiated an Interim Habitat Loss Permit[5] (IHLP) that imposed ***additional*** terms – terms ***never*** contemplated by the Baldwin Letter – on development entitlements for this parcel. The IHLP required use of the County 4d permit, payment of $300,000 for County coastal sage scrub allocation, contribution of mitigation land and habitat restoration exceeding the RMP requirements, and a requirement to process a General Plan amendment in the County to convert certain development areas in Villages 13 and 15 to MSCP Preserve (Baldwin Letter §A.2 and §A.3). While a number of the commenters point to GPA 98-003 in Village 13 and 15 as evidence that the Baldwin Letter was, in fact, an agreement, the facts demonstrate that the Village 13 and 15 GPA 98-003 was actually required as a condition of the IHLP, not the Baldwin Letter.

Third, as previously stated, no agreement has occurred with any owner of PV1, PV2, and PV3 to provide additional development rights in exchange for designating PV1, PV2 and P3 as MSCP Preserve. The Wildlife Agencies and the Stephen & Mary Birch Foundation never reached

[4] "P1" located in Chula Vista's Poggi Canyon area, not to be confused with PV1

[5] Joint letter dated February 5, 2001 from USFWS and CDFW FWS-SD-953.1)

agreement as to the status of PV1, PV2 and PV3. Likewise, no owner of these parcels subsequent to the Stephen & Mary Birch Foundation has reached any agreement with the Wildlife Agencies as to PV1, PV2, and/or PV3. As a result, the areas retain their development entitlements, as first established in the 1993 Otay Ranch GDP/SRP.

County General Plan Consistency

The 1993 Otay Ranch GDP/SRP, which is incorporated into the County's General Plan, governs the land uses and development intensities permitted for the Proposed Project. The Otay Ranch GDP/SRP designates PV1, PV2, and PV3 as Low Density Residential (L) and Low Medium Village Density Residential (LMV). The GDP/SRP uses Open Space (OS) as the land use designation for areas identified as Preserve in the Otay Ranch RMP and MSCP County Subarea Plan. There are ***no*** areas designated as OS within PV1, PV2 or PV3. Had PV1, PV2 and PV3 been included as hardline preserve in the MSCP, they would have been designated "OS" in the General Plan.

When the County prepared its 2011 General Plan Update, it did not alter the 1993 GDP/SRP land use designations for PV1, PV2 and PV3. Rather, in conjunction with the 2011 General Plan Update, the County's EIR identified PV1, PV2 and PV3 as a "100% Impacted" area[6] and analyzed PV1, PV2 and PV3 for biological impacts. The County approved PV1, PV2 and PV3 for development with a "Specific Plan Area" land use designation and made findings indicating that the General Plan Update ***was consistent*** with the MSCP Plan and County Subarea Plan. While the Agencies made no specific comments or objections regarding PV1, PV2 and PV3 in conjunction with the General Plan Update EIR, the County did respond to the CDFW's EIR Comment Letter "X6" stating:

> *all of the provisions within the MSCP Plan documents will remain unchanged and no conflicts have been identified between the proposed project and the MSCP. Implementation measures to "ensure consistency" with HCPs and NCCPs are not appropriate since the proposed project is already consistent with all identified HCPs and NCCPs in the project area. (Page X6-22).*

Applicability of the Biological Mitigation Ordinance (BMO)

Several comments stated that the BMO is not applicable to PV1, PV2 and PV3. The County disagrees. Because the MSCP County Subarea Plan did not identify PV1, PV2 and PV3 as either MSCP "preserve" or "hardline" development, any construction or development on the three parcels is subject to the BMO.

[6] Figure 2.4.2 Estimated Vegetation Impact EIR #02-ZA-001 SCH#2002111067

The BMO Analysis and Findings are included as an Appendix A to the Biological Resources Technical Report, which is included as Appendix 2.4-1 to the Draft EIR. As required by the BMO, the County has determined that PV1, PV2 and PV3 are all located within the boundaries of the MSCP Boundary map shown on Attachment A to the BMO. Specifically, BMO Section 86.502 "Application of Regulations" defines the areas the BMO applies to as:

> ***all*** *land within San Diego County shown on the MSCP Boundary Map (Attachment A of Document No. 0769999 on file with the Clerk of the Board).*

The only properties ***excepted*** from the application of the BMO are those described in Section 86.503 "Exceptions." ***None*** of the 12 exceptions identified in BMO Section 86.503 (a) applies to PV1, PV2 and PV3. Most importantly, pursuant to Section 86.503 (4), properties that are excepted from the BMO are depicted in Attachment B to the BMO, and PV1, PV2, and PV3 do not appear in that exhibit. The BMO Section 86.503 (4) exception states:

> *Any Take Authorization Area approved by the Board of Supervisors and the Wildlife Agencies as part of the County Subarea Plan, as shown on Attachment B of Document No 0769999 on file with the Clerk of the Board …*

Read in concert, therefore, Attachment A shows PV1, PV2 and PV3 located within the area to which the BMO applies and Attachment B demonstrates that PV1, PV2 and PV3 are not excepted. Therefore, the BMO applies to PV1, PV2 and PV3, and the County has conducted a BMO analysis accordingly.

MSCP County Subarea Plan Compliance and Adequacy of the Preserve

Several comments state that development of PV1, PV2 and PV3 is inconsistent with the MSCP County Subarea Plan, and therefore not in compliance with the MSCP, the Section 10(a) permit or the CESA/NCCP authorization. The County disagrees. Section 10 of the IA provides specific guidance with respect to determining MSCP compliance[7]. The IA requires the County to assemble the preserve using the methods set forth in Section 10.5 of the IA which, states:

> *The County will conserve its share of Covered Species and their habitats … through [1]implementation of the Subarea Plan and application of the Biological mitigation Ordinance, [2] through application and mitigation requirements for areas depicted in the Lake Hodges and South County Segments of the County Subarea Plan and [3] through land acquisitions…..The County will also utilize, in part, the California Environmental Quality Act (CEQA) in connection with the implementation of the Biological Mitigation Ordinance and the goals and criteria*

[7] See IA Sections 17.1 "Authorization", 10.2 "**Compliance** and Implementation" and 10.4 "Preserve Completion"

> *in the Subarea plan for the County in order to achieve the conservation goals listed in table 1-2 of the Subarea Plan for the County.*

As required, the County has analyzed PV1, PV2 and PV3 pursuant to Section 10.5.A, determined that the BMO applies to PV1, PV2 and PV3, and provided a BMO Analysis and Findings as part of the CEQA process (see Appendix B of the Biological Resources Technical Report (Appendix 2.4-1 of the Draft EIR)). The County, aware that the Wildlife Agencies recently expressed concern regarding PV1, PV2 and PV3, required a site-specific analysis under the BMO to demonstrate adequate protection of habitat and species. The BMO Analysis and Findings require additional mitigation land, translocation of certain plant species and placing some of PV2 and PV3 into Conserved Open Space subject to open space easements. In addition, the County concluded that the 11,375-acre Otay Ranch Preserve required pursuant to Section 10.5.A of the IA does ***not*** require that PV1, PV2 and PV3 be included within the MSCP Preserve. Therefore PV1, PV2 and PV3 are in compliance with the MSCP Subarea Plan as determined by Section 10 of the IA.

The IA explicitly addresses the adequacy of the MSCP Subarea Plan and MSCP Preserve ***as designed*** – i.e. with PV1, PV2 and PV3 designated as developable and not as MSCP Preserve. First, IA Section 9.3 states:

> *Implementation of the MSCP through the Subarea Plan, **in accordance with this Agreement**, will adequately provide for the conservation and protection of the Covered Species Subject to Incidental Take and their habitat in the Subarea in perpetuity. [Emphasis added].*

Second, the IA cites the Wildlife Agencies' findings, which notably were made without PV1, PV2 and PV3 included in the MSCP Preserve. This importantly demonstrates the Wildlife Agencies did not require that PV1, PV2 and PV3 be added to the MSCP Preserve as a condition of approving the MSCP County Subarea Plan or issuing the Section 10 (a) permit. It also demonstrates that the 11,375-acre hardline Otay Ranch Preserve prescribed in Section 10.5.A would provide adequate mitigation to maintain the function of the MSCP Preserve. Specifically, IA Section 8.0.D. "Satisfaction of Legal Requirements" states:

> *Incidental Take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. The USFWS has found that the MSCP and the Subarea Plan **as implemented pursuant to this Agreement** do provide such measures …The CDFW has found that the Subarea Plan **as implemented pursuant to this Agreement** satisfies the legal requirements necessary for the CDFW to issue a CESA/NCCP Authorization. [Emphasis added].*

Sections 12.3, 12.5 and 12.6 of the IA link the Section 10(a) permit and the CESA/NCCP authorization and make them both effective as of the date of the IA. This establishes that, from the Wildlife Agencies' perspective, the 11,375-acre Otay Ranch Preserve was adequate mitigation. Therefore, any comment stating that development of PV1, PV2, and/or PV3 invalidates the Section 10(a) permit or the CESA/NCCP authorization is incorrect. Specifically:

> *USFWS has found that the Covered Species Subject to incidental Take will be adequately conserved in the Subarea as the result of implementation of the Subarea Plan and this Agreement. Accordingly, concurrent with the Effective Date the USFWS will issue the Section 10 (a) Permit to the County authorizing the Incidental Take, (IA, § 12.3);*
>
> *The CDFG has found…that the MSCP, the Subarea Plan and this Agreement (1) adequately provide for the conservation and management of the Covered Species Subject to Incidental Take and their habitat within the MSCP Area and the Subareas, (2) satisfy all legal requirements under the NCCP Act necessary for the CDFG to issue a CESA/NCCP Authorization for the Covered Species Subject to Incidental take, and (3) are consistent with the NCCP Process and Conservation Guidelines, (IA, §12.5); and*
>
> *Concurrent with the effective date, the CDFG will issue its approval of the Subarea Plan and a CESA/NCCP Authorization which authorizes the Incidental Take of Covered Species… subject to the terms of the MSCP, the Subarea Plan, this Agreement and the CESA/NCCP Authorization. (IA, §12.6)*

Conclusion

The County, relying on the terms of the MSCP Plan, the MSCP County Subarea Plan, and the IA has determined that: (i) the Baldwin Letter Proposal was never finalized and executed as an agreement; (ii) PV1, PV2 and PV3 are not designated as hardline MSCP Preserve, "Major Amendment Area" or "Minor Amendment Area"; (iii) a boundary adjustment is not required because PV1, PV2 and PV3 are not part of the hardline MSCP Preserve; (iv) PV1, PV2 and PV3 are included within the boundaries of the MSCP County Subarea Plan as depicted on *Attachment A of Document No 0769999* and they are not subject to any of the twelve exemptions in the BMO*;* therefore, pursuant to Section 86.502 of the BMO, a BMO analysis is appropriate and required; and (v) the BMO analysis shows that PV1, PV2 and PV3 are consistent with the BMO, and therefore consistent with the MSCP Plan and the County Subarea Plan.

Note also that the County's position is consistent with the "No Surprises" policy built into the fabric of the MSCP itself. As explained in the "No Surprises" Thematic Response set forth in the Final MSCP EIR/EIS:

> The "No Surprises" policy was established to provide jurisdictions and private landowners with certainty that agreements entered into with the USFWS under approved habitat conservation plans (HCP) will be honored over the life of the plans. Under the policy, MSCP Participating Jurisdictions and Special Entities with properly functioning plans are assured that a "deal is a deal" and that demands will not subsequently be made by the wildlife agencies for additional land, funds, or land restrictions beyond the mitigation levels contemplated by the plans – even if the needs of any species covered by the plans change over time.
>
> In the event that "unforeseen or "extraordinary" circumstances arise that require additional mitigation measure necessary to conserve species covered by a properly functioning subarea plan, the obligation for such measures would be borne primarily by the federal and state governments, private conservation organizations, or other jurisdictions or private landowners who have not yet developed an NCCP/NCP. The mitigation obligations of the permittees would, to the maximum extent possible, not extend beyond measure reflected in the original terms of the subareas plans, and would be limited to modifications of the preserve management program and/or to the habitat acquisition program. Again, these steps would not involve additional land protection, payment of funds, or restrictions on land available for development or other uses, unless the permittee consented to such measures. The MSCP subareas plan will be considered "properly functioning" if the terms and conditions of the plans and the implementing agreements are being fully met by the parties. (MSCP Final EIR/EIS, January 2, 1997, p. 28).

In this case, the "deal" in question did not include placement of PV1, PV2, or PV3 into Preserve, a fact clearly established by the available evidence, including the text of the IA itself. It would be disingenuous for the County – and a violation of the "No Surprises" policy of the MSCP – to now demand that those lands be moved into Preserve without compensation to the land owner.

Timeline with Respect to PV1, PV2 and PV3

The following timeline of the Baldwin Letter and PV1, PV2 and PV3 establishes that the Baldwin Letter is not an agreement. Documents referenced are public record.

October 1993 **Otay Ranch GDP/SRP and RMP**

County Board of Supervisors approves the Otay Ranch General Development Plan/Subregional Plan ("GDP/SRP") and Otay Ranch Resource Management Plan (RMP), both of which identify property that would later be referred to as PV1, PV2 and PV3 as ***development*** footprint.

November 1995 **Baldwin Letter Proposal**

The Baldwin Company ("Baldwin") sends a letter to USFWS and CDFW ("Wildlife Agencies"), ***proposing*** an agreement be reached regarding a number of Otay Ranch related issues. *At this point in time, no legally enforceable agreement had been reached or executed.*

February 1996 **Wildlife Agencies Counter Proposal**

The Agencies send Baldwin a counter proposal titled "Comments on the Baldwin Company's ***proposed*** Otay Ranch MSCP Plan Agreement dated November 10, 1995." The Wildlife Agencies' counter-proposal rejected major elements of the proposal and accepted others only if specific conditions could be met. *At this point in time, no legally enforceable agreement had been reached or executed.*

Feb. 1996-May 1997 **Fragmentation of Otay Ranch Ownership**

Ownership of Otay Ranch becomes fragmented. The Baldwin Company loses all ability to encumber or negotiate future development rights on PV1, PV2, and PV3.

May 16, 1997 **Change in Ownership of PV1, PV2 and PV3**

Ownership of PV1, PV2 and PV3 is conveyed to the Stephen & Mary Birch Foundation by a Trustee's Deed through foreclosure.

October 1997 **MSCP County Subarea Plan Adopted**

The County Board of Supervisors adopts the MSCP County Subarea Plan, The Baldwin Letter Proposal is attached to the Subarea Plan. § 3.3.3.7 of the Subarea Plan acknowledges that the Baldwin Letter Proposal was *not* an agreement stating "…***negotiations are continuing*** *between Village Development [The Baldwin Company] and the Wildlife agencies…"* At this point in time, no legally enforceable agreement had been reached or executed.

March 1998 **Implementing Agreement (IA) for County Subarea Plan Executed**

The County and the Wildlife Agencies execute the IA. The IA confirms that the Baldwin Letter Proposal was not an agreement. §10.5.A.2 requires "…[p]rotection of the areas identified as preserved in the boundaries of the Otay Ranch project including approximately 11,375 acres…. ***Additional*** lands associated with agreements, as outlined in the letter attached to the South County Segment from the Baldwin Company dated November 10, 1995, will be included ***if*** the agreements are reached." [Emphasis added]. *At this point in time, no legally enforceable agreement had been reached or executed.*

Subsequent to 1998 **No Agreement Reached Regarding PV1, PV2 and PV3**

Post 1998, no agreement has been reached between the owner of PV1, PV2 and PV3 and the Wildlife Agencies. Agreements regarding other elements of the Baldwin Letter Proposal occurred via separate landowner negotiations, separate permits, and/or separate processing of the City of Chula Vista Subarea Plan. These separate negotiations were wholly independent of, and without any connection to, the MSCP County Subarea Plan, the IA and/or the County's take permit. *At this point in time, no legally enforceable agreement had been reached or executed. The development entitlements for PV1, PV2 and PV3 remain. These areas have not been added to the MSCP Preserve.*

2003 **County GPA 98-003**

General Plan amendment in the County converts certain development areas in Villages 13 and 15 to MSCP Preserve as required by the February 5, 2001 IHLP. PV1, PV2 and PV3 land use is not changed by GPA 98-003 and remains development.

August 3, 2011 **County General Plan Update**

PV1, PV2 and PV3 remain designated development land use with Specific Plan Zoning.

8.4.2 Golden Eagle

*This Thematic Response addresses comments raised on the Draft EIR relating to golden eagle (*Aquila chrysaetos*)., including background information, a summary of Proposed Project impacts on and mitigation, golden eagle in the context of the Otay Ranch RMP, MSCP County Subarea Plan and MSCP Plan and recent USGS golden eagle data.*

The golden eagle is not listed under either the California Endangered Species Act (CESA, Cal. Fish & G. Code, § 2050, et seq.) or the federal Endangered Species Act (ESA, 16 U.S.C. § 1531, et seq.). It is, however, a California "fully-protected" species under Fish and Game Code section 3511. Impacts to golden eagles are also regulated under the federal Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. §§ 668, et seq.).

The golden eagle is a covered species under the Multiple Species Conservation Program (MSCP) Plan and the MSCP County Subarea Plan. In addition, golden eagle habitat is protected in the Preserve established under the Otay Ranch Resource Management Plan (RMP), which is integrated into the MSCP County Subarea Plan. As explained below, the Proposed Project is consistent with the MSCP Plan, the MSCP County Subarea Plan, and the Otay Ranch RMP.

This Thematic Response is organized into various sections. The first section provides a general overview of the Proposed Project and summarizes the project's impacts on and mitigation for golden eagle. The next section discusses the Otay Ranch General Development Plan/Subregional Plan (GDP/SRP) and Otay Ranch Resource Management Plan (RMP) as they relate to golden eagle, and then includes a similar discussion of the Multiple Species Conservation Program (MSCP) Plan, the County Subarea Plan, and the Implementing Agreement that applies to both. These discussions focus on the Proposed Project's consistency with the various plans and their requirements vis-à-vis golden eagle. The response concludes with a more detailed assessment of the Proposed Project's impacts on golden eagle and a discussion of recent golden eagle data generated by the U.S. Geological Survey.

General Overview

The Proposed Project will convey land to the Otay Ranch RMP/MSCP Preserve, as required under the Otay Ranch RMP. Preserve will be conveyed within the Project Area and off-site. The RMP Preserve conveyance contains substantial amounts of golden eagle habitat and functions as the Proposed Project's mitigation for impacts to the species. Also note that the Proposed Project and the Alternatives discussed in the Final EIR are consistent with the conditions set forth in the County's Section 10(a) permit as they relate to the golden eagle. Accordingly, the Proposed Project's compliance with the MSCP and Otay Ranch RMP Preserve conveyance not only mitigates the Proposed Project's impacts to golden eagles and golden eagle habitat, it provides

coverage under BGEPA for any "take" of golden eagles that might occur with implementation of the Proposed Project or alternatives.

In addition, the MSCP Plan and County Subarea Plan's coverage determinations assumed that a certain amount of development, outside the established "hardline" MSCP Preserve, would take place over the 50-year life of the MSCP County Subarea Plan. Thus, the MSCP Plan and County Subarea Plan concluded that such development, if implemented consistent with the assumptions and analyses underlying the MSCP and the Section 10(a) permit, would be considered consistent with the MSCP for covered species, of which the golden eagle is one. This point was confirmed in a letter dated December 19, 2017, from the USFWS to the County's Director of Planning & Development Services, Mark Wardlaw:

> *As long as covered activities are conducted as previously analyzed by the Service in issuing the County's [10a] permit they will be considered consistent with the MSCP for covered species, including golden eagle.*
>
> *Under Bald and Golden Eagle Protection Act, only future take of golden eagles not addressed by the MSCP need to be addressed by additional regulatory compliance.*

As explained below, the Proposed Project was among those developments assessed during the MSCP process and incorporated into the Implementing Agreement for the MSCP County Subarea Plan. (See Implementing Agreement, Section 10.5.A.2, pp. 29-30 [specifically discussing the Otay Ranch project and the 11,375-acre Otay Ranch Preserve].) Moreover, the Proposed Project is consistent with the development assumptions and analyses that informed the MSCP Plan, County Subarea Plan, and Section 10(a) permit. Thus, the project is consistent with the MSCP and is entitled to coverage for golden eagle (among other species).

Summary of Proposed Project Impacts on and Mitigation for Golden Eagles

As explained in Section 2.4, Biological Resources of the Draft EIR, the Project Area contains 1,325.5 acres of suitable foraging habitat for golden eagle. Currently, there are no extant golden eagle nests in the Project Area or located within 4,000 feet of the Development Footprint. The Project Area does lie within a former golden eagle breeding territory – known as the "Rancho San Diego" or "San Miguel Mountain" territory – but that breeding territory is believed to be inactive (DEIR, Biological Resources, Section 2.4, p. 2.4-88, 2.4-92). Specifically, the Rancho San Diego/San Miguel Mountain territory has not supported an active nest since 2007 when the last known historic nest and nest substrate were destroyed by the Harris Fire. (*Ibid.*) Raptor specialists H.T. Harvey & Associates conducted periodic 2-day surveys in 2016 and 2017 during the golden eagle breeding season to document activity at San Miguel Mountain, the Jamul

Mountains, and Proctor Valley areas. During these surveys, H.T. Harvey & Associates did not observe any evidence that eagles have attempted to rebuild the nest.

The nearest known active golden eagle nest (as of 2011) is located in the Cedar Canyon area near Otay Mountain, just over 5 miles from the proposed Development Footprint (USFWS et al. 2012 and Appendix C of the BTR [Appendix 2.4-1 to this EIR]). There is no evidence of current golden eagle nesting within 4,000 feet of the Development Footprint. The Proposed Project would remain outside of the 3,000-foot buffer of historical nests as recommended in the Otay Ranch Raptor Management Study (Ogden 1992b). (DEIR, Biological Resources, Section 2.4, p. 2.4-88.)

The Proposed Project would permanently disturb 780.8 acres of the 1,325.5 acres of suitable golden eagle foraging habitat within the Project Area. Per the requirements of the Otay Ranch RMP, 390.7 acres of suitable habitat onsite would be conveyed to the Otay Ranch RMP Preserve system and be professionally managed for the benefit of the various plant and wildlife species that reside in or use that land, including golden eagle. In addition, the Proposed Project would convey up to 350.1 acres of potential off-site golden eagle habitat to the Otay Ranch RMP Preserve, which is consistent with the Otay Ranch RMP conveyance obligation and consistent with the 11,375 hardline MSCP Preserve mitigation for Otay Ranch identified in Section 10.5.A.2 of the MSCP Implementing Agreement. Based on Project Area and off-site Otay Ranch RMP Preserve conveyances, the Proposed Project would potentially convey up to 740.8 acres of golden eagle foraging habitat into the Otay Ranch RMP/MSCP Preserve. In addition, per the requirements of the Otay Ranch RMP, an open space easement would be placed over 73.0 acres of non-graded Limited Development Area (LDA), all of which is suitable golden eagle foraging habitat and located adjacent to MSCP Preserve. An additional 72.4 acres of suitable golden eagle foraging habitat would be designated as Conserved Open Space, with a biological open space easement, as mitigation that exceeds the 1.188-acre Otay Ranch RMP conveyance requirement. Because the MSCP Plan and Otay Ranch RMP previously established the mitigation requirements for participating developments, including this Proposed Project, and because the 740.8-acre conveyance to the Otay Ranch RMP/MSCP Preserve complies with the habitat set aside mandates of the MSCP Plan, MSCP County Subarea Plan, and Otay Ranch RMP, the Proposed Project's impacts on golden eagle foraging habitat – direct, indirect, and cumulative – are deemed mitigated to a less than significant level.

Otay Ranch General Development Plan/Subregional Plan (GDP/SRP) and Otay Ranch Resource Management Plan (RMP)

In 1993, the County adopted the Otay Ranch General Development Plan/Subregional Plan (GDP/SRP), which contemplated development in Village 14 and Planning Areas 16/19, consistent with the Proposed Project now under review. (Draft EIR, section 1.0 – Project Objectives, pp. 1-2—1-3.) When it adopted the GDP/SRP, the County certified the Otay Ranch

Program EIR and also approved the Otay Ranch Resource Management Plan (RMP). (*Ibid.*) Together, the GDP/SRP and the RMP establish the Otay Ranch RMP Preserve system and set the mitigation requirements for participating projects, such as the Proposed Project, for purposes of addressing biological impacts, including impacts to golden eagles. As stated in the Draft EIR, Section 1, Project Description, Location and Environmental Setting (p. 1-3): "In addition, pursuant to the Otay Ranch GDP/SRP and approved Otay Ranch RMP, Otay Ranch includes an 11,375-acre funded and managed natural conservation area known as the Otay Ranch RMP Preserve. The Otay Ranch RMP Preserve is part of the multi-jurisdictional MSCP Plan (adopted in 1998), which is a comprehensive long-term habitat conservation plan for southwestern San Diego County. Local jurisdictions implement their respective portions through subarea plans, which includes the MSCP County Subarea Plan (adopted in 1997). The Otay Ranch RMP Preserve was established in conjunction with natural open space located in the Jamul and Dulzura planning areas."

The Draft EIR also states the following on pages 1-30 and 1-31:

> The Otay Ranch GDP/SRP was designed, in part, to create a managed Preserve system that would conserve important natural resources, including multiple sensitive species and their habitats. The Otay Ranch GDP/SRP provided for this managed Preserve system through adoption of the Otay Ranch RMP, which designated the 11,375-acre Otay Ranch RMP Preserve and established the Otay Ranch RMP P[reserve] O[wner] M[anager], funded in perpetuity through an assessment mechanism. The Phase 1 RMP established the policies and framework for the Otay Ranch RMP Preserve system, and the Phase 2 RMP established the mechanisms for the management of the POM. Collectively, the two documents create the Otay Ranch RMP Preserve, and establish the POM and the Otay Ranch RMP Preserve funding and conveyance mechanisms. The Otay Ranch RMP was approved prior to the MSCP, and was incorporated into the MSCP County Subarea Plan and Implementing Agreement.

The Otay Ranch RMP requires that the Otay Ranch RMP Preserve be conveyed to the POM as development occurs in Otay Ranch. For every "developable acre" (as defined by the Phase 2 RMP) of land that is included in a final subdivision map, 1.188 acres of Otay Ranch RMP Preserve land must be conveyed to the designated POM for inclusion in the Otay Ranch RMP Preserve. The Otay Ranch RMP Preserve is designed to protect biological resources; natural resources such as floodplains, watersheds, wetlands, viewsheds, steep slopes, and wildlife linkages; and archaeological and paleontological resources. The Otay Ranch RMP Preserve also meets the requirements of the MSCP Plan and MSCP County Subarea Plan because it protects species, along with their habitat, that currently are threatened and endangered, and preserves the habitat and known locations of other special-status species so they do not become endangered. In

addition, the Otay Ranch RMP Preserve is incorporated into, and is a component of, the MSCP County Subarea Plan.

With respect to mitigation required to address impacts of the Proposed Project itself, the Biological Resources Technical Report (Appendix 2.4-1 to the Draft EIR) provides as follows:

> Mitigation for the Proposed Project is generally governed by the terms of the Otay Ranch RMP and includes conveyance of Preserve land at a ratio of 1.188, for a total of 776.8 acres, 426.7 acres of which would be preserved on site (in the Project Area). The additional 350.1 acres would be acquired through the purchase of Otay Ranch RMP land outside of the Project Area." (p. xvi.).

Multiple Species Conservation Program (MSCP) Plan and County Subarea Plan

As stated in the Draft EIR, the MSCP Plan (adopted in 1998) is a comprehensive habitat conservation planning program for southwestern San Diego County (p. 1-30). It addresses multiple species habitat needs and the preservation of native vegetation for an approximately 900-square mile area, of which 171,000+ acres have been included in a habitat preserve in southwestern San Diego County (MSCP Plan, p. 1-1). Participating local jurisdictions and special districts within the MSCP Plan implement their respective portions of the MSCP Plan through "subarea plans" and "implementing agreements."

The combination of the subregional MSCP Plan, the subarea plans, and the implementing agreements serve as a multiple species Habitat Conservation Plan (HCP) under section 10(a)(1)(B) of the federal ESA and a Natural Communities Conservation Plan (NCCP) pursuant to both the California Natural Communities Conservation Act of 1991 (Cal. Fish & G. Code, § 2800, et seq.) and CESA (MSCP Plan, p. 1-1.). Because the MSCP Plan and subarea plans collectively constitute an NCCP, they effectively provide authorization for the take of special-status species, including those listed as endangered, threatened, or fully protected (Cal. Fish & G. Code, § 2835.). As discussed below, the Proposed Project does not contemplate any lethal take.

The MSCP County Subarea Plan approved by the County in 1997 included Otay Ranch and, by extension, the Project Area. The Implementing Agreement for the MSCP County Subarea Plan was executed by the County, the California Department of Fish and Game (now the California Department of Fish and Wildlife (CDFW)), and the United States Fish and Wildlife Service (USFWS) on March 17, 1998. The MSCP Plan, the MSCP County Subarea Plan and the associated Implementing Agreement, and the Otay Ranch RMP are critical to the mitigation of the Proposed Project impacts on golden eagle. The Otay Ranch RMP is discussed above while the three other documents are discussed in greater detail below.

MSCP Plan

The "biological goal" of the MSCP Plan is to conserve and maintain the diversity, ecosystem functions, and persistence of extant populations of covered species through the preservation and adaptive management of large blocks of interconnected habitat and smaller areas that support rare vegetation communities (MSCP Plan, p. 1-5). The MSCP Plan anticipates that "fluctuations of species populations, including recolonization, will continue to occur" and that the "size (171,000+ acres), configuration, diversity, connectivity, and adaptive management of the preserve will allow the anticipated fluctuations to occur while still meeting the biological goal of the MSCP." (Ibid.)

The approved MSCP Plan identifies 85 species, including golden eagle, that "will be adequately conserved and 'covered' by [the] plan (Table 3-4a)." (MSCP Plan, p. 3-22, italics added.). The MSCP Plan further states "Once the wildlife agencies have approved a subarea plan and signed the corresponding implement agreement, that local agency will receive permits and/or management authorizations to directly impact or "take" these 85 species, pursuant to its approved plan and implementing agreement…" (MSPC Plan, p. 3-22). Table 3-5 of the MSCP Plan, which explains the rationale for including each species under the plan, states that coverage for the golden eagle is appropriate "because 53% of the potential foraging and nesting habitat will be conserved." As discussed below and in the Draft EIR, the Proposed Project would place 740.8 acres of suitable golden eagle foraging and nesting habitat into the assembled MSCP/Otay Ranch Preserve, advancing the goal of conserving 53 percent of such golden eagle habitat in the MSCP planning area (approximately 139,000 acres). (Draft EIR, Section 2.4, p. 2.4-37. Currently, 90,856 acres of golden eagle habitat have been placed into MSCP Preserve. (Draft EIR, Section 2.4, p. 2.4-126.) The MSCP Preserve is still being assembled, but estimates indicate that 64,878 acres of suitable golden eagle habitat, including that provided by the Proposed Project, is already identified for conveyance/inclusion into the MSCP Preserve (Draft EIR, section 2.4, p. 2.4-126; Attachment C of the Biological Resources Technical Report). Once this happens, the 53 percent conservation goal set forth in Table 3-5 of the MSCP Plan will not only be met, it will be exceeded.

The MSCP Plan identified 11 golden eagle nesting territories fully within (or partially within) the MSCP Plan area (i.e., the approximate 900 square mile area in southwestern San Diego County (MSCP, Table 3-5, pp. 3-75 - 3-76). The Proposed Project lies within what the MSCP Plan refers to as the "Rancho San Diego" nesting territory.

Table 3-5 of the MSCP Plan also states that large blocks of habitat would be conserved in the eastern portion of the Plan area where active nesting territories exist.

The Table 3-5 entry for golden eagle also included explanatory notes, setting forth what the Wildlife Agencies expected would occur in the event the MSCP Plan – including the

development anticipated in the plan – were implemented. The notes relevant to the Proposed Project are as follows:

- "This species [golden eagle] will be conserved by the MSCP because 53% of potential foraging and nesting habitat will be conserved." (MSCP, Table 3-5, pp. 3-76.)
- "Local populations are not critical to, and the plan will not adversely affect, the species' long-term survival." (MSCP, Table 3-5, pp. 3-76.)
- "The following is an analysis of the plan's effects on each nesting territory within the MSCP study area:
    - "Rancho San Diego – development of the plan will result in <10 loss of habitat in the nesting territory; nesting territory should remain viable." (MSCP, Table 3-5, pp. 3-76.)
- "**Conditions:** Area-specific management directives with nest sites must include measures to avoid human disturbance while the nest is active, including establishing a 4,000-foot disturbance avoidance area within preserve lands. Area-specific management directive must also include monitoring of nest sites to determine use/success." ((MSCP, Table 3-5, pp. 3-76.) (Emphasis in original.)

These notes were later incorporated into the County's Section 10a permit.

MSCP County Subarea Plan

The San Diego County Board of Supervisors adopted the MSCP County Subarea Plan on October 22, 1997. The Implementing Agreement was executed by the parties on March 17, 1998.

Together with the Implementing Agreement (discussed below), the MSCP County Subarea Plan establishes the conditions under which the County, for the benefit of itself and of public and private landowners and other land development project proponents within its subarea boundary (i.e., Third Party Beneficiaries), will receive from the USFWS and CDFW certain long-term authorizations allowing the take of certain "covered" species incidental to land development and other lawful land uses authorized by the County (County Subarea Plan (1997), p. 1-1). Geographically, the County's Subarea Plan is divided into three segments, one of which is the "South County segment." This segment, which includes the Proposed Project site, encompasses the Otay Ranch General Development Plan amendment approved by the County in October 1993. (MSCP County Subarea Plan (1997), pp. 1-3, 3-1-3-2, 3-13-3-16.)

The County's Subarea Plan also includes USFWS conditions related to the golden eagle. Those conditions provide that (a) no lethal take is authorized, (b) take of active nests is not permitted at any time, and (c) human disturbance of active nests must be avoided, including establishing a

4,000-foot disturbance avoidance area around active nests within the MSCP Preserve. These same conditions are set forth in the County's Section 10(a) permit.

The Proposed Project complies with these conditions because (a) it will not result in lethal take of golden eagles, (b) it will not take any active golden eagle nest; and (c) there are no known active nesting locations within 4,000 feet of the Development Footprint.

The MSCP County Subarea Plan conditions also authorize "harm" due to habitat loss "in the amount and locations specified in Table 3-5 of the MSCP Plan" (See County's Subarea Plan, USFWS Conditions, paragraph H). As explained above, Table 3-5 identifies 11 nesting territories in the MSCP Plan area and then estimates the amount of habitat loss those territories will sustain once the MSCP Plan – including the development it assumed – is fully implemented. Based on that information, Table 3-5 then predicts which of the 11 nesting territories is likely to remain viable following implementation of the Plan. The Proposed Project is located within a historical nesting territory then known as the "Rancho San Diego" nesting territory (now more often referred to as the "San Miguel Mountain" breeding territory).[8]

According to the Table 3-5 notes, "development under the plan will result in < 10 % loss of habitat in the nesting territory." The Table 3-5 notes also determined that, based on this amount of habitat loss, the nesting territory "should remain viable" (MSCP Plan, p. 3-75). The Proposed Project is consistent with the findings set forth in the Table 3-5 notes because the Proposed Project would not disturb the MSCP Preserve "hardline" established in the MSCP Plan and County Subarea Plan. So long as the Proposed Project is consistent with the MSCP Preserve hardline, the expectations set forth in the Table 3-5 notes should remain intact. In this case, the Proposed Project is consistent with the development assumed and incorporated into the MSCP Plan and County Subarea Plan, which is why the applicant is not seeking an amendment to the MSCP Plan or Subarea Plan and is likewise not seeking an adjustment to the MSCP Preserve boundary. Thus, the Proposed Project complies with the Subarea Plan's conditions regarding golden eagle.

CDFW has requested that the County conduct a GIS analysis to make sure this project does not exceed the 10% impact to the San Miguel Mountain breeding territory. The County does not agree that such a project-specific analysis is required. As an initial matter, there is no evidence that the Proposed Project will actually "take" any golden eagle. Moreover, there is no reason to

[8] To reiterate, none of the historic nest(s) on which the Rancho San Diego/San Miguel Mountain territory were based currently exist and the territory has not been occupied by a distinct territorial breeding pair since 2007; therefore, the breeding territory is currently considered inactive. This does not mean that golden eagles do not currently occur and forage in the Project Area; to the contrary, the Draft EIR assumes they do forage in the Project area. In addition, the Draft EIR does not assert that golden eagles will never re-establish a breeding territory within the San Miguel Mountain territory; they could. The data provided here and in the Draft EIR simply reflect existing conditions, as required under CEQA Guidelines section 15125(a).

conduct a "GIS analysis" for the San Miguel territory to confirm the amount of habitat that will remain undeveloped. That work was already conducted when the MSCP Plan was being prepared and adopted. Revisiting the analysis would suggest that the MSCP's habitat determinations for all 84 covered species must likewise be re-evaluated, rescored, and then re-inserted into the plan. This is not a requirement of the MSCP Plan itself. Finally, there is no means to assess the current size and boundaries of the Rancho San Diego/San Miguel Mountain breeding territory, as no breeding pair of eagles has nested at this location since 2007. Without nesting birds, there is no way to define a nesting territory. Delineation of a relevant "territory" would be based solely on projecting a coarse-scale domain of some arbitrary shape based on the expected average home-range size of golden eagles in the region. Such an arbitrary analysis could easily lead to highly biased results.

The County further notes that the anticipated 10% impact to this territory assumed buildout of all development projects in the area. However, the amount of developable land in this breeding territory has in fact been reduced due to the purchases of land by CDFW for conservation purposes. Based on these reductions of developable land, there will be fewer impacts to foraging habitat than what was assumed in the MSCP County Subarea Plan. (see Appendix C of the Biological Resources Technical Report, Appendix 2.4-1 of the Draft EIR).

Implementing Agreement

The County's Board of Supervisors approved the County's MSCP Implementing Agreement on March 17, 1998, joining USFWS and CDFW as signatories. The County's Implementing Agreement includes golden eagle as a covered species, and golden eagle is also listed as a "species of concern" and a "covered species subject to incidental take" (See County Implementing Agreement, Exhibits C and D). The Implementing Agreement also incorporates and specifically discusses the Otay Ranch project – of which the Proposed Project is a part – as well as the 11,375-acre Otay Ranch RMP Preserve. (See Implementing Agreement, Section 10.5.A.2, pp. 29-30.)

In summary, because the Proposed Project is covered by the MSCP Plan, the MSCP County Subarea Plan, and the Implementing Agreement, the golden eagles within the MSCP Plan area are deemed adequately conserved and covered by the MSCP Plan and the implementing documents. Consequently, under the MSCP Plan and implementing documents, impacts to the golden eagle have been mitigated by the habitat set-asides already built into the MSCP Plan and the Otay Ranch RMP, which was incorporated into the MSCP Plan in 1997. In addition, the incidental "take" of golden eagle has been pre-authorized and does not require any further federal or state authorizations, including permits under the BGEPA, provided such take, if any, does not exceed the conditions set forth in the MSCP Plan. For this Proposed Project, however, no "take" of golden eagle is expected, nor is there any evidence that would support a

determination that the Proposed Project will "take" golden eagle. For this reason, the Draft EIR for the Proposed Project, while acknowledging impacts to golden eagle foraging habitat, determined those impacts would be less than significant. This determination is supported by: (i) golden eagle's status as a Covered Species under the MSCP Plan; (ii) the preservation of golden eagle foraging habitat on site; (iii) the preservation of suitable golden eagle foraging habitat within the MSCP Plan area as a whole; (iv) the Proposed Project would not encroach into or reduce the size of the previously approved hardline MSCP Preserve; and (v) the Development Footprint is over 4,000 feet from an active nest.

Proposed Project Impacts on Golden Eagles

Impacts on Foraging Habitat

As discussed above, the MSCP Plan, MSCP County Subarea Plan, and the Otay Ranch RMP anticipated that the foraging habitat for the golden eagle would be disturbed within the area of the Proposed Project. This impact was to be mitigated by the Proposed Project's participation in the Otay Ranch RMP, MSCP Plan and County Subarea Plan processes, which require the Proposed Project to convey certain land into the Otay Ranch RMP/MSCP Preserve. The County has determined that the Proposed Project is in compliance with the MSCP County Subarea Plan pursuant to Section 10 of the Implementing Agreement, the MSCP Plan and the Otay Ranch RMP. The Draft EIR states that the Project Area supports approximately 1,325.5 acres of habitat suitable for golden eagle foraging, such as non-native grassland, coastal sage scrub, and chamise and southern mixed chaparral (Draft EIR, p. 2.4-37). Of these 1,325.5 acres, the Proposed Project would adversely affect approximately 780.8 acres (Final EIR, p. 2.4-39). To compensate for this impact, the Proposed Project will convey 740.8 acres of suitable golden eagle habitat to the Otay Ranch RMP Preserve.[9] The Proposed Project will also conserve an additional 145.4 acres of suitable golden eagle habitat by placing 73 acres in non-graded LDA and 72.4 acres in Conserved Open Space. Based on these conveyances, the Draft EIR determined that, "the Proposed Project is consistent with the habitat preservation requirements of MSCP Plan Table 3-5 and the County's Section 10 permit. Therefore, the Proposed Project's impacts on golden eagle foraging habitat would be less than significant" (Draft EIR, p. 2.4-88).

As stated above, the golden eagle is not listed under the federal Endangered Species Act (ESA, 16 U.S.C. 1531, et seq.). It is afforded special protection under the Bald and Golden Eagle Protection Act. The County further notes the golden eagle is not listed under the California Endangered Species Act (CESA, Cal. Fish & G. Code, Section 2050, et seq.), however, it is a California "fully-protected" species under Fish and Game Code Section 3511. None of these laws prevent the development of areas used as foraging habitat. Moreover, the MSCP anticipated project

[9] These 740.8 acres of suitable golden eagle habitat are a subset of the Proposed Project's total Otay Ranch RMP Preserve conveyance of 776.8 acres.

development in the Project Area and concluded that impacts to the eagles' foraging habitat "will not adversely affect, the species' long-term survival" in the region. (MSCP at pg. 3-76.)

Impacts on Golden Eagle Individuals and Nests

The MSCP Plan, the MSCP County Subarea Plan and the County's section 10(a) permit prohibit lethal take of golden eagle individuals. The Proposed Project does not contemplate any such lethal take. The MSCP Plan, County Subarea Plan, and section 10(a) permit also prohibit disturbance of any active golden eagle nest or placement of any human-related improvement within 4,000 feet of any active nest within the MSCP Preserve. Because there is no active eagle nest within 4,000 feet of the Proposed Project boundary (in fact, the nearest active nest is approximately 6 miles away), the Proposed Project complies with the prohibition.

Indirect Impacts on Golden Eagles

Indirect impacts – including "edge effects" – consist of such things as spill-over lighting, noise, and other human-related disturbance that may disrupt existing biological resources. Within the context of the MSCP, "edge effects" are indirect impacts to a preserve area caused by the existence of development adjacent to the preserve area. The Proposed Project is consistent with the MSCP Plan (1998) and MSCP County Subarea Plan, both of which anticipated the kind of the edge effects described in comments. The MSCP Plan and MSCP County Subarea Plan identified a preserve system, designed by the Wildlife Agencies and other Plan participants. Indirect impacts are covered under the MSCP Plan and Subarea Plan (IA Section 1.7). The MSCP Plan addresses preserve edge guidelines and management of potential edge effects in Section 6.3, Guidelines for Preserve Management, including Section 6.3.1, Preparation of Framework Management Plans; Section 6.3.2, Responsibility for Preserve Management and Biological Monitoring; 6.3.3, Preserve Management on Private Lands; 6.3.4, Fire Management; 6.3.5, Restoration; 6.3.7, Hydrology; 6.3.7, Fencing, Signage, and Lighting; Section 6.3.8, Predator and Exotic Species Control; 6.3.9, Species Reintroduction; and 6.3.10, Enforcement. Specifically, the MSCP Plan states that "through the subarea plans and regulations, the participating jurisdictions and other take authorization holders will ensure that that direct and indirect impacts of new development on the preserve will be minimized using good land planning and design principles and preserve management provisions." (MSCP Plan, p. 6-3).

The Proposed Project includes a "Preserve Edge Plan" (Appendix 1 of the Specific Plan) prepared pursuant to Policy 7.2 of the Otay Ranch RMP. The proposed "edge plan area" consists of a 100-foot wide strip of land adjacent to the Otay Ranch RMP Preserve. The purpose of the Preserve Edge Plan is to identify appropriate uses next to the Otay Ranch RMP Preserve and impose measures to reduce edge effects.

Cumulative Impacts

By definition and design, the Otay Ranch RMP and MSCP Plan are regional conservation plans that provide large, contiguous blocks of natural habitat to offset regional biological impacts. As such, they mitigate the cumulative impacts of participating projects, including those associated with the Village 14 and Planning Areas 16/19 project now under review. This is explained in the Biological Resources Technical Report, attached as Appendix 2.4-1 to the Draft EIR, states "As discussed previously, the Proposed Project is consistent with the MSCP Plan, the MSCP County Subarea Plan, and the Otay Ranch RMP as they relate to golden eagle. The Proposed Project also complies with conditions relating to golden eagle as set forth in the County's Section 10 permit issued by USFWS in 1998. Accordingly, the Proposed Project's contribution to cumulative impacts on golden eagle would be less than cumulatively considerable. As additional support for this conclusion, the Proposed Project was also assessed in terms of the MSCP's overall goal of preserving 53% (approximately 139,000 acres) of potential foraging/nesting golden eagle habitat within the MSCP Plan area. The details of that analysis, including all calculations, are provided in Appendix C of the Biological Resources Technical Report (p. 519). It is important to note, however, that the MSCP Plan also anticipated the disturbance or removal of a certain portion of golden eagle foraging habitat. Nevertheless, the MSCP Plan determined that the loss would not be significant, given the large amount of golden eagle foraging habitat to be preserved regionally within the MSCP planning area as a whole. Specifically, the MSCP Plan stated that "[t]his species [golden eagle] will be covered by the MSCP because 53% of potential nesting habitat will be conserved" (MSCP Table 3-5, p. 3-76).

U.S. Geological Survey Data for Golden Eagles

The U.S. Geological Survey (USGS) is currently in the process of collecting tracking data for golden eagles. This is a multi-year effort that is not yet complete as of April 2018. On April 21, 2016, the USGS released a portion of its golden eagle tracking data (USGS DATA Series 994), under the title "Biotelemetry Data for Golden Eagles (*Aquila chrysaetos*) Captured in Coastal Southern California, November 2014-February 2016."[10] A second set of data (USGS DATA Series 1051) was released on May 12, 2017, under the title "Biotelemetery data for golden eagles (*Aquila chrysaetos*) captured in coastal southern California, February 2016–February 2017."[11] The USGS intends to release more eagle tracking data as they become available, but there is currently no timetable for such releases. As indicated in the April 2016 and February 2017 USGS

[10] Tracey, J.A., Madden, M.C., Sebes, J.B., Bloom, P.H., Katzner, T.E., and Fisher, R.N., 2016, Biotelemetry data for golden eagles (*Aquila chrysaetos*) captured in coastal southern California, November 2014–February 2016: U.S. Geological Survey Data Series 994, 32 p., http://dx.doi.org/10.3133/ds994.

[11] Tracey, J.A., Madden, M.C., Sebes, J.B., Bloom, P.H., Katzner, T.E., and Fisher, R.N., 2017, Biotelemetry data for golden eagles (*Aquila chrysaetos*) captured in coastal southern California, February 2016-February 2017: U.S. Geological Survey Data Series 1051, 35 p., https://doi.org/10.3133/ds1051.

data release, the biotelemetry data was collected in collaboration with local, State, and other Federal agencies as part of a "multi-year survey and tracking program of golden eagles to address questions regarding habitat use, movement behavior, nest occupancy, genetic population structure, and human impacts on eagles." The USGS tracking data (USGS DATA Series 994) provides tracking data, covering 15 months, for 27 golden eagles that were trapped at various sites in Riverside, Orange, and San Diego counties and fitted with transmitters. The 1051 DATA Series report includes tracking data for 10 additional golden eagles for a total of 37 individuals. Neither of these documents include any analysis of the tracking data.

In April 2018, the USGS released an initial modeling analysis of the tracking data collected through 2017 (USGS Open-File Report 2018–1067). This report provided new macro-scale insight about the movement patterns of the tracked eagles across San Diego County in relation to urban development and general habitat features, but did not focus specific attention on eagle use of Proctor Valley and the former San Miguel Mountain breeding territory area. Without such focused analyses, the USGS tracking data, as currently represented in published reports, do not provide sufficient detail to address the Proposed Project's impacts on golden eagle beyond what is already presumed in the context of the MSCP.

Evidence of golden eagle foraging within the Project Area is neither new nor unexpected. Potential eagle foraging in the vicinity of the Project Area has been known since at least the mid-1990s – a point reiterated in the Draft EIR and in this response. For this reason, the MSCP Plan identified the Project Area among the MSCP areas that support golden eagle foraging.

The USGS data released in April 2016 and February 2017 does not suggest that any golden eagle pairs have established a breeding territory area on either San Miguel Mountain or in the Jamul Mountains. The eagle specialists at H. T. Harvey & Associates confirmed during a 2016/2017 survey that all known historic nests associated with the "Rancho San Diego/San Miguel Mountain" breeding territory currently do not exist, that the territory has been inactive since 2007, and that no territorial breeding pair currently occupies the territory. Recently, the USFWS and BLM installed experimental nesting platforms near the former San Miguel Mountain nest locations as well as on the southeastern flank of the Jamul Mountains, but to date no eagles have nested in either location. In addition, even if golden eagles did establish a new nest on either of the USFWS/BLM nesting platform, both locations lie beyond the 4,000-foot impact buffer required under the MSCP Plan and the County's section 10(a) permit. Although the 4,000-foot buffer for the San Miguel experimental nest platform overlaps with the very edge of PV1, the area of overlap consists of fuel modification, which will not contain any actual development (i.e., no houses or structures). The Jamul nest platform overlaps with portions of Planning Area 16, but none of the overlap contains development.

8.4.3 Quino Checkerspot Butterfly

This Thematic Response addresses comments to the Draft EIR regarding Quino checkerspot butterfly, including the assessment of on-site habitat and populations, analysis of Proposed Project-related impacts, both direct and indirect/edge effects, and recommended mitigation measures.

Status of Quino Checkerspot Butterfly and the MSCP County Subarea Plan

In the early 1990s, when the County and Wildlife Agencies (California Department of Fish and Wildlife [CDFW] and the U.S. Fish and Wildlife Service [USFWS]) were preparing the Otay Ranch Resource Management Plan (Otay Ranch RMP) and the Multiple Species Conservation Program (MSCP) County Subarea Plan, the Quino checkerspot butterfly had no protective designation under state or federal law. The Quino checkerspot butterfly was not included in the MSCP County Subarea Plan as a covered species. In January 1997, the USFWS issued a final rule listing the Quino checkerspot butterfly as an endangered species. As a result, the MSCP County Subarea Plan does not provide "take" authorization for the species.[12]

The County has been working on an "Addition" to the MSCP County Subarea Plan that would add the Quino checkerspot butterfly to the protections and take authorization. However, the Applicant anticipates processing a Section 7 consultation if take is needed for the Quino checkerspot butterfly and the Addition is yet not adopted.

Habitat Assessments and Focused Surveys

Dudek conducted a Quino checkerspot butterfly habitat assessment for, and mapped host plants within, the Project Area in 2014. HELIX conducted habitat assessments and protocol surveys for the Project Area in 2015 and 2016. The 2015 habitat assessment and protocols surveys were conducted in accordance with the 2014 USFWS Survey Protocol. The 2016 habitat assessment and protocol survey was conducted in accordance with the 2016 Quino Checkerspot Butterfly Survey Protocol that was developed in coordination with USFWS, the County of San Diego, and the Building Industry Association (hereafter referred to as the "2016 USFWS Survey Protocol") (USFWS 2016). The habitat assessments resulted in mapping of suitable habitat and host plants for Quino checkerspot butterfly. These habitat assessments did not result in the detection of any Quino checkerspot butterfly individuals. Please refer to Section 2.4 of the DEIR and Appendix 2.4-1 for a complete description of survey methodology and results of the Quino checkerspot surveys.

Based on available information (CDFW 2016c; USFWS 2016), no Quino checkerspot butterflies have been observed within the Project Area since 2007. Focused surveys were

[12] It should be noted that the City of Chula Vista's MSCP Subarea Plan was adopted in 2003 and does include Quino checkerspot butterfly coverage for the offsite portion of Proctor Road located in the City of Chula Vista. Accordingly, the remainder of the response focuses on the MSCP County Subarea Plan.

conducted for the Project Area in 2015 and 2016 and resulted in no sightings of Quino checkerspot butterfly.

In 2017, however, USFWS documented eight individuals in the vicinity of the Project Area. Two individuals were observed west of the central portion of the Village 14 Preserve. In addition, four individuals were observed immediately off-site of the Project Area to the west of Proctor Valley Road, again along the west-central portion of Village 14. Two more individuals were observed immediately east of Proctor Valley Road (one individual) and just west of Planning Area 16 (one individual) (USFWS 2017).

Impact Analysis

Impacts to Locations Where Quino Checkerspot Butterflies Have Been Observed

No Quino checkerspot butterfly adults or larvae were observed within the Project Area by Dudek in 2014 or by HELIX in 2015 or 2016. HELIX reviewed the CNDDB and USFWS databases for documented Quino checkerspot butterfly locations within and adjacent to the Project Area.[13] The databases contain scattered Quino checkerspot butterfly locations throughout the broader Proctor Valley region, with the dates of the documented sightings ranging from 1990 to 2007 (Figures 2.4-12 series of the Draft EIR). As discussed above, documented sightings were also reported in the vicinity of the Project Area in 2017. Only one location (Historical Sighting Location 1 described in Section 4.6.1 of the BTR) has been documented within the Village 14 Development Footprint; this sighting occurred in 2001. A second location, originally documented in 2003, occurs just north of the west-central portion of the Village 14 Development Footprint (Historical Sighting Location 2 described in Section 4.6.1 of the Biological Resources Technical Report). Quino checkerspot butterflies were also observed at the second location in 2006 and 2007.

Impacts to Habitat Suitable for Quino Checkerspot Butterfly

As discussed in Section 2.4 of the Draft EIR, the Project Area includes approximately 1,348.4 acres of habitat that could support Quino checkerspot butterfly. Of these, the Proposed Project would disturb 793.7 acres (approximately 59 percent) of habitat identified during the habitat assessments (see Table 8.4.3-1 in this Thematic Response). Although Quino checkerspot butterfly was not observed during the 2015 and 2016 focused surveys conducted for the Project Area, the loss of approximately 793.7 acres of potentially suitable Quino checkerspot butterfly habitat is considered significant absent mitigation.

[13] In 2017, a biologist from the USFWS, while walking near the Project Area, anecdotally observed Quino checkerspot butterfly individuals he believed were located within the Proposed Project boundary. This was not a protocol survey, and the biologist was not able to determine his exact location through his GPS. The biologist's description of the area of observation suggests that the Quino checkerspot butterflies in question were not observed within the Project Area.

Suitable habitat identified by HELIX during the 2015 and 2016 habitat assessments were used as the basis for calculating Project-related impacts on suitable Quino checkerspot butterfly habitat. This method was considered more appropriate than using host plants to determine habitat suitability. Because individual butterflies and host plants vary in population size, density, and location from year to year (and from day to day during the flight season), the habitat acreage method was considered a more reliable method of determining Project-related impacts on the species.

Indirect and Edge Effects

Indirect effects, including edge effects are analyzed in Section 2.4.3.1 of the Draft EIR, including edge effects to Quino checkerspot butterfly. Specifically, the Draft EIR identifies the following indirect impacts, including edge effects, that might adversely affect Quino checkerspot butterfly and other sensitive wildlife: generation of fugitive dust; off-road-vehicle use; introduction of non-native, invasive plant and animal species; increased human activity; alteration of the natural fire regime; and altered hydrology. The Draft EIR identifies these effects as potentially significant, absent mitigation. The Draft EIR then recommends the following mitigation measures to address the significant long-term indirect impacts to special-status wildlife species (including the Quino checkerspot butterfly): M-BI-5 (permanent fencing and signage), M-BI-14 (SWPPP), M-BI-15 (erosion and runoff control), M-BI-16 (prevention of invasive plant species), M-BI-17 (noise), M-BI-19 (fire protection), and M-BI-20 (lighting).

Edge effects are also addressed under the MSCP County Subarea Plan as adjacency issues. In addition, the Otay Ranch RMP addresses indirect impacts through the preparation and implementation of a Preserve Edge Plan for each SPA/project. A Preserve Edge Plan has been prepared for the Proposed Project and is included as Appendix 1 of the Specific Plan. In order to protect the Preserve from human intrusion and edge effects upon completion of construction, a fence or wall, along with informational signs, will be installed (i) along all open space edges where open space is adjacent to residential uses, (ii) along internal streets, and (iii) as indicated in the Otay Ranch Village 14 and Planning Areas 16/19 Preserve Edge Plan and Proposed Fencing, Preserve signage, and Fuel Modification Zones (mitigation measure M-BI-5). The barrier must be able to preclude human entry and may be any suitable construction material, as approved by Department of Planning and Development Services and the Director of Parks and Recreation.

Table 8.4.3-1
Proposed Project Impacts on Quino Checkerspot Butterfly

Species Scientific Name	Regulatory Status: Federal; State; MSCP; County Group	Basis for Impact Evaluation	Number of Quino Individuals/ Acre(s) impacted	Percent Permanently Impacted On Site	Number/ Acre(s) preserved	Percent Preserved On Site
Quino checkerspot (*Euphydryas editha quino*)	USFWS: FE CDFW: None MSCP: Not Covered County: 1	No individuals were observed over two years of protocol surveys (2015 and 2016), however there have been historical sightings, one of which occurs in the Project Area. A total of 1,348.4 acres of potential habitat are located on site. The project would impact 793.7 acres of potential habitat.	0 individuals (inclusive over 2 years of surveys 2015 and 2016). A total of 793.7 acres of potential habitat.	59% of potential habitat and one historical observation that was not observed during recent surveys.	1) 404.8 acres onsite conveyed to the Otay Ranch RMP Preserve 2) 72.4 acres within a County biological open space easement 3) 82.7 acres within an RMP open space easement 4) 350.1 acres of additional RMP Preserve conveyance	41% of potential habitat.

Mitigation

As indicated above, the Proposed Project would impact approximately 793.7 acres of Quino checkerspot habitat (Impact BI-1). Per mitigation measure M-BI-3, the Proposed Project shall convey 404.8 acres of potential habitat for Quino checkerspot butterfly within the designated hardline Preserve of the Project Area. In addition, per mitigation measure M-BI-4, a biological open space easement shall be placed over 72.4 acres of potential habitat within Conserved Open Space. Therefore, 477.2 acres of potential habitat for Quino checkerspot butterfly shall be conveyed to the Otay Ranch RMP Preserve or not be impacted by the Proposed Project within the Project Area. An additional 350.1 acres of conveyance is required for the Proposed Project's impacts and shall be selected to include suitable Quino checkerspot butterfly habitat (mitigation measure M-BI-9). For the off-site mitigation parcel(s) to be acceptable as mitigation for sensitive plant and wildlife species, including Quino checkerspot butterfly, vegetation within the off-site parcel must be mapped and the site must have suitable habitat to support Quino checkerspot butterfly per the survey guidelines definition of habitat. Thus, the Proposed Project shall provide mitigation acreage at a ratio in excess of 1:1 (preservation of 1 acre for every 1 acre of impact) and shall adequately mitigate impacts to potential Quino checkerspot butterfly habitat. This mitigation measure also satisfies the mitigation requirements for those portions of the Project Area subject to the Biological Mitigation Ordinance. These areas shall be managed under a Quino Checkerspot Butterfly Management/Enhancement Plan, as discussed in mitigation measure M-BI-10.

Note that the Proposed Project would also help meet the overall South County Quino Management Unit (South County QMU) management goal of protecting, restoring and enhancing Quino checkerspot butterfly habitat.

Through the RMP requirement for preserve conveyance, the Project will dedicate the designated Preserve land to the Otay Ranch Preserve Owner Manager (POM), which currently consists of the County of San Diego and City of Chula Vista. In addition, the Project must participate in preserve management funding, which requires that a Communities Facilities District (CFD) be established on the developed portions of the Project area. This CFD charges a special tax against the developed portions of the site to perpetually fund the management and maintenance of the Otay Ranch Preserve. What this means for the Quino checkerspot butterfly is that there will be funding for maintenance and monitoring and a habitat manager to oversee the condition of the Preserve and the status of the species.

The Proposed Project in combination with other projects in the cumulative analysis study area (see Figure 2.4-22, Cumulative Analysis of the Draft EIR) could result in significant impacts to Quino checkerspot butterfly and its habitat. This impact, if not mitigated, would constitute a cumulatively considerable contribution to cumulative impacts on Quino checkerspot butterfly. The Proctor Valley region is not considered a core area for Quino checkerspot butterfly in the

Recovery Plan adopted by USFWS (2003), but the region does contain documented historical sightings, and the region is included in the metapopulation structure for the species.

From a metapopulation context, the Proctor Valley region provides suitable habitat for the species to expand into during good reproductive and flight years. The Otay Ranch RMP Preserve within the Project Area allows for contiguity of suitable habitat and Quino checkerspot butterfly resource areas with adjacent Preserve lands (Figure 2.4-21 of the Draft EIR). The majority of the Otay Ranch RMP Preserve, Conserved Open Space and non-graded LDA are composed of open coastal sage scrub that is also contiguous with other sage scrub habitats off site. There have been substantial numbers of Quino checkerspot butterflies documented south of the Village 14 Development Footprint, east of the Otay Reservoir System, and farther south toward the Otay Mesa area. The Proposed Project would maintain contiguous habitat with these locations with areas to the north on San Miguel Mountain; would provide widespread Quino checkerspot butterfly resource areas, including hilltops and nectaring resources; and would provide host plant patches to help maintain metapopulation dynamics for the species.

Based on the suite of conservation measures included in the Proposed Project and mitigation measures, as described above, the Draft EIR determined the Proposed Project's impacts on Quino checkerspot butterfly individuals and suitable habitat will be mitigated to less than significant levels.

Federal Endangered Species Act (FESA) Issues

A number of commenters raised issues regarding the Proposed Project's potential need for federal "take" of Quino checkerspot butterfly. Some commenters also requested information as to whether and to what extent the Proposed Project would affect federally-designated critical habitat for the Quino checkerspot butterfly. The following is provided as background regarding those comments.

Federal Take Authorization

The Project Applicant will consult with USFWS or other appropriate agencies to determine if Take Authorization is required for Quino checkerspot butterfly habitat as recommended by **M-BI-8**. If it is determined that federal take authorization is needed through consultation with the USFWS, the Project Applicant could obtain take for this species by (a) participating in a future Quino Checkerspot Butterfly Addition to the MSCP County Subarea Plan (planning effort currently underway); (b) processing a U.S. Army Corps of Engineers (ACOE) Section 7 consultation with the Army Corps of Engineers (ACOE) and USFWS; or (c) preparing a Section 10(a) Permit Habitat Conservation Plan.

Critical Habitat Impacts

With respect to critical habitat for the Quino checkerspot butterfly, the Proposed Project is located within the Otay Unit, which consists of 34,941 acres of designated critical habitat. Note, however, that not all 34,941 acres actually provide habitat that is suitable for Quino checkerspot butterfly. The Project Area includes 813.9 acres of USFWS-designated critical habitat for this species, of which 502.3 acres of potential habitat within that critical habitat would be impacted by the Proposed Project (see Draft EIR Figure 2.4-20, Impacts to Critical Habitat). A total of 274.6 acres of potential habitat within critical habitat in the Project Area is located in the Otay Ranch RMP Preserve. The remaining 37 acres are within Conserved Open Space. Of the 34,941 acres of designated critical habitat within the Otay Unit, the Proposed Project would disturb 502.3 acres or approximately 1.4 percent of the total. Impact determinations and mitigation are not based on impacts to critical habitat because not all critical habitat is actually suitable for the species as indicated by conducting protocol surveys.

8.4.4 Proctor Valley Road and Other Offsite Roads (located in California Dept. of Fish and Game Lands, City of Chula Vista, City of San Diego Cornerstone Lands and Whispering Meadows Lane/Valley Knolls Road)

This Thematic Response addresses comments received on the Draft EIR regarding the development of, and access rights for, offsite roads located within lands owned and managed by the California Department of Fish and Wildlife, the Cities of Chula Vista and San Diego, and the County. This Thematic Response addresses the concerns of commenters related to the realignment and improvements of Proctor Valley Road as well as development of access roads, both of which are required for development of the Proposed Project. In addition, this response addresses concerns regarding public access through Whispering Meadows Lane and Valley Knolls Road.

Proctor Valley Road Overview

Proctor Valley Road has been a County Road since 1891, first noted in Old Survey No. 133, recorded Engineer's Record of Survey on Map 16315 recorded August 27, 1989; recorded Engineer's Record of Survey on Map 16314295 recorded September 2, 1993 and is a County General Plan Mobility Element Road on the General Plan (County of San Diego 2011a). There have been several record surveys, one in 1933 and the latest being Record of Survey Map No. 14295 dated September 2, 1993. The road currently consists of two lanes and is not constructed to County public road standards. As explained below, the Proposed Project includes improvements to Proctor Valley Road that would bring the existing 2-lane road up to County standard.

Proctor Valley Road is an approved facility in the MSCP Plan (MSCP 1998), the City of San Diego MSCP Subarea Plan (City of San Diego 1997), the City of Chula Vista Subarea Plan (City of Chula Vista 2003) and the County of San Diego MSCP Subarea Plan (County of San Diego 1997) and an approved facility within the Otay Ranch RMP Preserve pursuant to Policy 6.6 and

Figures 14-18 of the Otay Ranch RMP. Note, however, the Jamul-Dulzura Mobility Element Network (Facility 2) of the County General Plan identifies the road as a 2-lane thoroughfare in essentially its existing alignment, while the Otay Ranch GDP/SRP and related planning documents identify the road as a 4-lane thoroughfare re-aligned out to SR 94. The Proposed Project would amend the Otay Ranch GDP/SRP to eliminate this discrepancy and designate Proctor Valley Road as a 2-lane roadway consistent with the County General Plan.

Proctor Valley Road in the City of Chula Vista is a General Plan Circulation Element Road. The portion of the road within the City of Chula Vista has previously been reviewed under CEQA as part of Rolling Hills Ranch (also known as "Salt Creek Ranch"), a Covered Project. Therefore, impacts from the City of Chula Vista's portion of Proctor Valley Road have already been analyzed, disclosed, and mitigated.[14] Construction of Proctor Valley Road within the City of Chula Vista from Agua Vista Drive to the County boundary was originally a tentative map condition for Rolling Hills Ranch Tentative Map (TM CVT 92-02 Resolution 16834 dated October 6, 1992 Section 7, Conditions 6 and 7, Table 1, Item 8). This condition was amended May 13, 2003 by Resolution 2003-198 and 2003-199, TM92-02A Condition 135 Facility A "…dedicate to the City in a form acceptable to the City Engineer, the "future Proctor Valley Road" easement as shown on the Tentative Map east of Agua Vista Drive." The Addendum to the Final EIR-91-03 SCH #89092721 further stated:

> Modifications to the improvement requirements resulting in payment of a Traffic Development Impact Fee (TDIF) in lieu of construction of Proctor Valley Road between the projects' easternmost access point at the eastern project boundary would not result in any significant traffic impacts because no project traffic is projected to travel that segment of road, since the remainder of the road off-site to the east is unimproved. At the point in time when the offsite easterly extension for Proctor Valley Road is aligned and constructed, the easterly segment within the project boundary can be constructed using the TDIF money that will be collected in lieu of road improvements. As proposed, there will be flexibility in the alignment of Proctor Valley Road to accommodate future alignment considerations for the easterly extension of the road within the unincorporated county area.

Accordingly, the "future Proctor Valley Road" easement was recorded with Rolling Hills Ranch Map No 14756. This segment of Proctor Valley Road is included in the City's Eastern Transportation Development Fee Program (TDIF Facility #59c).

[14] See the Salt Creek Ranch Annexation General Development Plan Pre-Zone Final Environmental Impact Report (ECI/EIR-89-3); Salt Creek Ranch Sectional Planning Area (SPA) Plan Final Supplemental Environmental Impact Report EIR-91-03; Addendum to Final EIR No91-03 for Salt Creek Ranch Sectional Planning Area Plan; City of Chula Vista's Final Map 14756A; and Letter Agreement between USFWS, CDFW, City of Chula Vista, and Pacific Bay Homes dated July 19, 2001 (Appendix B of the BTR).

Proctor Valley Road in the City of San Diego's Cornerstone land is included in the City of San Diego's Subarea Plan MHPA and is also referred to in the County's Subarea Plan. Section 3.3.4.5 of the County Subarea Plan states "Otay Lakes Road may be realigned and Proctor Valley Road improved on these cornerstone lands" and Section 3.6.5.4 states "The City has excluded certain utilities and public facilities from the Preserve Area". Both the County and the City of Chula Vista General Plan Circulation Elements show Proctor Valley Road with MSCP Preserve areas on City of San Diego owned land. Construction of these roads is not precluded based on the City's Cornerstone Lands Conservation Bank Agreement. These Cornerstone Lands, right of way easements, will be acquired via the site development permit process.

Proctor Valley Road Right of Way

The existing Proctor Valley Road right of way is located within multiple ownerships and jurisdictions, including CDFW, City of San Diego, City of Chula Vista as discussed below.

CDFW Ownership

In 2003, the State of California, on behalf of the California Department of Fish and Wildlife (CDFW), acquired portions of Otay Ranch Village 14 and Planning Areas 16/19. When it did so, the State acquired the property subject to Proctor Valley Road's existing County right-of-way and subject to the road's designation within the Mobility Element of the County General Plan.

Specifically, with respect to the portion of Proctor Valley Road situated on the Otay Ranch CDFW owned land, the 2011 County General Plan Update retained the Otay Ranch GDP/SRP and County General Plan Land Use designations. The 2011 General Plan Land Use designations for Proctor Valley Road through CDFW's ownership include S88 (Specific Plan) and S80 (Open Space) and the Otay Ranch GDP/SRP Land Use designations of MU (Mixed-Use), MH (Medium high density residential), M (Medium density residential), L2 (Low density residential), L1 (Low density residential), VL .33 (Very low density residential), Open Space and Arterial. The portion of Proctor Valley Road through the S80 Land Use designation was identified in the MSCP Plan, the MSCP County Subarea Plan and the Otay Ranch GDP/SRP as an approved facility in Otay Ranch RMP/MSCP Preserve. The balance of the roadway, outside of S80 Land Use designation, is in hardline MSCP County Subarea Plan "take" authorized areas that CDFW is operating as MSCP Preserve. These land use designations actually allow development on the CDFW-owned parcels.

Nevertheless, the State is operating these areas as MSCP Preserve and, as a result, receiving credit for the acreage as part of its required contribution to the MSCP Plan (USFWS et al. 1998). As stated above, Proctor Valley Road is an approved facility in the MSCP Plan (MSCP 1998), the City of San Diego MSCP Subarea Plan (City of San Diego 1997), the City of Chula Vista Subarea Plan (City of Chula Vista 2003) and the County of San Diego MSCP Subarea Plan (County of San Diego 1997). The Draft EIR has considered impacts to Proctor Valley Road, and mitigation is proposed that would

reduce impacts to less than significant. The County notes, however, that the project applicant will have to obtain from CDFW, and any other relevant landowners, the right to construct upon and use the off-site lands in question. The County understands that the Project applicant, to acquire lands for the additional right-of-way, may be required to provide CDFW and others with additional consideration. The County notes that, because property rights/right of way acquisition is not a CEQA issue, the Draft EIR does not address it.

As stated in the Draft EIR, the majority of off-site impacts are associated with realignment and improvements to Proctor Valley Road. Proctor Valley Road is a 2.2E Light Collector Mobility Element road within the County's General Plan and is identified in the MSCP and MSCP County Subarea Plan as a planned facility through the MSCP Preserve. (See, e.g., Otay Ranch RMP Figures 14-18 which are incorporated into the MSCP County Subarea Plan in Section 3.3.3.7). As such, construction of Proctor Valley Road is allowed through the MSCP Preserve (including portions of the MSCP Preserve not owned by the Project Applicant), provided it is designed in conformance with the appropriate MSCP facility siting criteria (see Tables 2.4-17, 2.4-18, and 2.4-19 of the Draft EIR). The alignment of Proctor Valley Road through the Proposed Project is consistent with the County's Mobility Element alignment. Additional right of way easements or dedication of right of way may occur by negotiated easement, purchase or condemnation. Impacts are analyzed in Section 2.4.3.5 Biological Resources of the Draft EIR (page 2.4-112). Since the Otay Ranch RMP specifically excludes mobility element roads from the conveyance requirements (City of Chula Vista and County of San Diego 1996), permanent impacts to sensitive vegetation communities within CDFW-owned lands associated with improvements to Proctor Valley Road would not require mitigation per the Otay Ranch RMP or the MSCP (Draft EIR, page 2.4-97).

City of San Diego Ownership

Right of way within City of San Diego Cornerstone Lands is processed through the City of San Diego's Site Development Permit Process. Impacts are analyzed on pages 2.4-114 through 2.4-116 of the Draft EIR and mitigation measures for permanent and temporary impacts include **M-BI-1** (biological monitoring), **M-BI-2** (temporary construction fencing), **M-BI-4** (biological open space easement), **M-BI-12** (restoration of temporary impacts), and **M-BI-21** (federal and state agency permits) described in Section 2.4.6 Biological Resources – Mitigation Measures of the Draft EIR.

City of Chula Vista Ownership

Right of way within the City of Chula Vista has been provided on Final Map 14756 sheet 15 noted as an easement for future street purposes granted therein to the City of Chula Vista, as discussed above. Impacts are analyzed on pages 2.4-116 through 2.4-119 of the Draft EIR. Mitigation is not required for permanent impacts to upland habitat per the Letter Agreement between USFWS,

CDFW, the City of Chula Vista, and Pacific Bay Homes dated July 19, 2001 (see Appendix B to the Biological Resources Technical Report) (Draft EIR page 2.4-96). Mitigation is required for impacts to wetland habitat and will be provided through **M-BI-21** (federal and state agency permits). Mitigation for temporary impacts include **M-BI-1** (biological monitoring), **M-BI-2** (temporary construction fencing), and **M-BI-12** (restoration of temporary impacts), and described in Section 2.4.6 Biological Resources – Mitigation Measures of the Draft EIR.

Planning Area 16/19 Offsite Access Roads

Other comments indicated that the County or Project Applicant cannot construct access roads to Planning Area 16 through CDFW-owned and managed lands within this Planning Area. The County does not agree that these roads cannot be constructed. There are access roads internal to Planning Area 16 that are located in the CDFW owned lands. These access roads are not Mobility Element roads, but instead have other underlying land use designations in the County General Plan and Otay Ranch GDP/SRP. The County General Plan Land Use designation for proposed offsite access roads in PA 16, through CDFW's ownership, is S88 (Specific Plan) and the Otay Ranch GDP/SRP Land Use designations are VL .33 (Very low density residential), VL .5 (Very low density residential), LDA (Limited Development Area) and Arterial. There is no portion of these access roads through S80 (Open Space) as they are all in hardline MSCP County Subarea Plan "take" authorized areas that CDFW is operating as MSCP Preserve. Moreover, even if these roads were located in MSCP Preserve lands, they are allowed under the MSCP County Subarea Plan policy 1.9.3.3, under the heading "Other Infrastructure within the Lake Hodges and South County Segments". Section 1.9.3.3(a) of the MSCP County Subarea Plan indicates that "Infrastructure necessary and incidental to development projects and identified in the projects within the South County and Lake Hodges Segments of the Subarea Plan that contribute open space to the MSCP preserve are permitted within the MHPA."

Right of way will need to be acquired for the access roads located within CDFW-owned and managed land in Planning Area 16. As noted above, because property right/right of way acquisition is not a CEQA issue, the Draft EIR does not address it. The County notes, however, that the project applicant will have to obtain from CDFW, and any other relevant landowner, the right to construct upon and use the off-site lands in question. Impacts are analyzed in Section 2.4, Biological Resources of the Draft EIR as part of the offsite impacts in the development footprint (see Sections 2.4.3.2 and 2.4.3.5). The temporary impacts associated from constructing these roads would be restored in accordance with **M-BI-12**, and the permanent impacts would be mitigated through conveyance of land to the POM (**M-BI-3**). Since these access roads are located in the Otay Ranch GDP/SRP development footprint, as well as MSCP County Subarea Plan hardline development footprint on the original MSCP County Subarea Plan Figure 1-2, mitigation for permanent impacts were calculated at the 1.188 Otay Ranch RMP conveyance factor.

Whispering Meadows Lane and Valley Knolls Road

Other comments indicated that the County does not have public access through Whispering Meadows Lane and Valley Knolls Road. The County disagrees. Although Whispering Meadows Land and Valley Knolls Road are currently privately maintained as private roads, a 60' public right of way is provided by means of an irrevocable offer to dedicate (IOD) recorded on various maps and parcel maps (PM) filed with the County. These IODs have been made to the County and remain in perpetuity until accepted or vacated. The County has not vacated any of the IODs in question. Thus, the County can provide public access through Whispering Meadows Lane and Valley Knolls Road by accepting these IODs. Maintenance may become the County's responsibility or be allowed to remain under existing maintenance agreements.

The IODs were filed between the 1969 to 1988 timeframe and are listed as follows: Map 6488 offered to dedicate Valley Knolls Road and Whispering Meadows Lane as public road; PM 4131 references the offers for road previously made on Map 6488; PM 4751 references separately recorded IOD for Road 76-143630; PM 8995 references separately recorded IOD for Road 79-044082; PM 9267 references separately recorded IOD for Road 79-363829; PM 9333 references separately recorded IOD for Road 79-446231; PM 11850 references separately recorded IOD's for Road 76-143630 and 81-346566; PM 14058 references separately recorded IOD for Road 76-143630; PM 15041 references separately recorded IOD for Road 79-044082; PM 15041 made an additional Offer for Road on the map; PM 15343 references separately recorded IOD for Road 79-446231; PM 15343 made an additional Offer for Road on the map; Assessor map 597-18 sheet 1 and 597-20.

8.4.5 Use of Carbon Offsets

This Thematic Response addresses comments that the Proposed Project cannot guarantee that it will offset all of its GHG emissions with carbon credits and that the County has no control over these programs and, therefore, cannot be assured of their implementation. The comments state that the use of carbon offset credits is not enforceable and suggest that the timing for purchase of such offsets occurs after Project permits have been issued; therefore, the comments state that the County cannot ensure the Proposed Project will reduce its GHG emission to net zero. However, the information below demonstrates that the carbon offsets required by Mitigation Measures M-GHG-1 and M-GHG-2 will achieve high environmental integrity standards and will be documented in a form that can be tracked and monitored by the County.

Overview of Carbon Offsets

Overview of Carbon Offsets

Carbon offsets (or "offsets") are instruments that can be bought, sold, and traded. Like a stock or equity that represents a unit of ownership in a company, a carbon offset represents a unit of GHG

emissions reductions. Each offset is essentially a certification that a certain quantity of GHG emissions has been avoided, prevented, or sequestered. Examples of activities that generate offsets include reforestation to increase carbon sequestration and the capture and destruction of methane emissions from livestock.

Carbon Offsets Must Meet Certain Standards

An activity can only generate carbon offsets if the project developer demonstrates the environmental integrity of the activity by meeting specific standards. Therefore, offset registries have developed a broad consensus around the standards that are necessary to ensure that offsets are environmentally sound, namely that offsets be real, permanent, quantifiable, verifiable, enforceable, and additional, defined as follows:

> "Real": offsets may only be issued for emissions reductions that are a result of complete emissions accounting.
>
> "Permanent": the emissions reductions must be permanent and not be reversed. For example, in the context of forestry, offset project developers must demonstrate that the carbon sequestered in the trees of the forest will not be released to the atmosphere after the fact; i.e., that the trees will not be cut down.
>
> "Quantifiable": the emissions reductions from an activity must be rigorously quantified, and offsets may only be issued in an amount that corresponds to emissions that have been quantified. Project developers must ensure the accuracy of their emissions accounting by adhering to standardized quantification methodologies called "protocols," which are discussed further below.
>
> "Validated": to receive offset credits, emission reductions must be well documented and transparent enough to be capable of objective review by a neutral, third party verifier.
>
> "Enforceable": in order to be eligible to generate offsets from reputable programs, the implementation of the activity must represent the legally binding commitment of the offset project developer. Once the developer undertakes the activity, the developer is under a legal obligation to carry it out.
>
> "Additional": the GHG emissions reductions generated by an activity must be "additional," meaning that they are only eligible to generate offsets if they would not have occurred without the offset activity. Project developers must ensure additionality by adhering to the applicable protocol, as discussed further below.

Different offset programs have adopted slightly different versions of these standards, but the differences are non-substantive.[15] Further, these environmental integrity criteria are broadly recognized as sufficient to ensure the environmental benefit of activities that generate carbon offsets.[16]

Climate Registries Use Standardized Protocols and a Rigorous Review Process to Approve Offset Credits

Carbon offsets are issued by a climate registry that has undertaken the responsibility of certifying that the emissions reductions have occurred. Developers of offsets can demonstrate the environmental integrity of an offset project by complying with a climate registry's standards-based "protocol."[17] A "protocol" is a method of measuring emission reductions. A standards-based protocol accomplishes that fundamental goal by establishing the baseline scenario for a given activity and then providing the project developer a specific, defined methodology to quantify and verify emissions reductions that occur over and above that baseline scenario.

For example, a livestock project may not receive offset credits for the operation of a biogas system at a farm if the farm is otherwise obligated by law or other legally binding mandate to operate the biogas control system. If a farm or feedlot had to operate a biogas control system as a condition of a permit to operate issued by a local air district or other permitting authority, the farm could not receive any offset credits for the emissions captured by the system. (This is the concept of "additionality," as discussed below.)

Carbon offset registries measure compliance with approved protocols using rigorous, standardized review processes. As a general rule, when approving a GHG reduction project, the climate registry would require that the offset project meet the following steps to receive offsets:

> Listing or Registration: Apply to list or register the proposed GHG emission reduction project with the climate registry. The climate registry will review the application and accept it only if it complies with the applicable climate registry requirements.
>
> Independent, Qualified Third-Party Confirmation of Reduction or Sequestration: Once a GHG emission reduction project has begun, the climate registry will require the offset project developer to retain an independent, qualified, third-party to verify the reduction or sequestration achieved by the project. Each climate

[15] See generally American Carbon Registry, "The American Carbon Registry Standard" (January 2015); Climate Action Reserve, "Program Manual" (Sept. 1, 2015); VCS, "VCS Program Guide" (Oct. 19, 2016); see also Health & Safety Code Section 38562(d)(1)-(2).

[16] See, e.g., *Our Children's Earth Foundation v. CARB* (2015) 234 Cal.App.4th 870; Three-Regions Offsets Working Group, "Ensuring Offset Quality: Design and Implementation Criteria for a High-Quality Offset Program" (May 2010) at pp. 3-4.

[17] The Market Advisory Committee recommends that California use a "standards-based approach" to quantifying and issuing offset credits. Id. at p. 61.

registry has adopted stringent requirements applicable to the accreditation of third parties and only such third parties are qualified to verify and audit the activities under the applicable registry rules. This process typically takes place on an annual basis. Activities undertaken in a given 12-month period are typically verified during the following 6-12 months. Most climate registry rules and protocols require "boots on the ground" audits, although in certain instances desktop reviews may be sufficient.

Registry Approval and Issuance: The final step under most climate registry rules and protocols involve the issuance of the offsets. Registry rules and protocols require the project developer to apply for issuance and to provide the verification report prepared by the independent, qualified third-party. The registry will typically review a verification report and, to the extent that the registry finds that the report complies with the applicable registry requirements, the registry will issue the offsets to the account of the project developer.

Carbon Offset Retirement: Each registry has adopted rules and procedures governing the retirement or cancellation of offsets. Typically, these rules or procedures involve the transfer of the offset serial numbers from a registry account and ensure that once a carbon offset credit has been retired, the retirement is permanent and the carbon offset cannot be further used in any manner.

These protocols and processes ensure that offsets issued by offset registries satisfy the environmental integrity criteria described above, as multiple jurisdictions implementing such programs have recognized. "[C]ARB recognizes the rigor of the voluntary accounting procedures CAR adopted to establish that GHG emissions are real, additional, and permanent."[18]

Carbon Offset Protocols Rely on Rigorous Accounting Principles

There is a broad consensus on the accounting principles necessary to ensure environmentally sound offsets. The standards include International Organization for Standardization (ISO) 14064 and 14065. The ISO is an independent, non-governmental international organization with a membership of 162 countries, including the United States. The ISO publishes standards for a wide variety of industrial activities, such as food safety management, medical device management, and

[18] CARB, "Proposed Regulation to Implement the California Cap-and-Trade Program, Part I, Volume I: Initial Statement of Reasons" (October 28, 2010) at II-48. Note that the carbon offsets purchased by the Proposed Project would be from the voluntary marketplace (because the Project is not a regulated entity covered by and subject to CARB's Cap-and-Trade Program). The County notes that entities regulated by the Cap-and-Trade Program have direct operational control of the long-term GHG emissions from the source profile, whereas land use developers do not have continuing control and authority over many if not all of the sources (e.g., homeowners decide when to turn appliances on and off; business owners decide their hours of operation).

anti-bribery management.[19] In short, the ISO is an independent, rigorous, neutral developer of standards, including greenhouse gas emission reduction accounting standards.

Carbon Offset Protocols Have Been Upheld By Courts

In *Our Children's Earth Foundation v. CARB* (2015) 234 Cal.App.4th 870, 880, the First Appellate District recognized the validity of carbon offsets:

> [P]rotocols developed by the Climate Action Reserve (Reserve) employ a standards-based approach for ensuring additionality. The Reserve is a national nonprofit organization that (1) develops standards for evaluating, verifying and monitoring GHG emission inventories and reduction projects in North America; (2) issues offset credits for those projects; and (3) tracks offset credits over time "in a transparent, publicly-accessible system." A primary goal of the Reserve is to establish conservative GHG accounting which will ensure that GHG emission reductions are "real, permanent, additional, verifiable, and enforceable by contract." In formulating its standards-based protocols, the Reserve identifies types of emission reduction projects that are both subject to quantification and appropriate for assessment pursuant to performance-based additionality tests.

In 2011, CARB formally adopted its own protocols, which it took almost verbatim from Climate Action Reserve's protocols.[20] CARB's protocols were challenged as violating AB 32 because they purportedly failed to accurately ensure additionality as required by the act, but the court sided with CARB, finding that CARB's protocols based on Climate Action Reserve's protocols are a "workable method of ensuring additionality with respect to offset credits." (*Our Children's Earth Foundation* at p. 889.) CARB has since expanded its program to accept carbon offsets issued under American Carbon Registry and Verified Carbon Standard methodologies.[21]

[19] ISO, "Standards" available at http://www.iso.org/iso/home/standards.htm.

[20] See, e.g., CARB, "Compliance Offset Protocol Livestock Projects: Capturing and Destroying Methane from Manure Management Systems" (October 20, 2011).

[21] See, e.g., Cal. Code Regs., Tit. 17, Section 95990(c)(5).

Carbon Offsets Have Been Used to Mitigate Emissions under CEQA

The appropriateness of using offsets as CEQA mitigation for GHG emissions is well established. Specifically, CEQA Guidelines Section 15126.4(c)(3) provides that "[o]ff-site measures, including offsets that are not otherwise required," can be used to mitigate a project's GHG emissions.[22]

In promulgating the CEQA Guidelines for GHG mitigation, the California Natural Resources Agency (CNRA) and the Governor's Office of Planning and Research (OPR) addressed the legitimacy of offsets as follows:[23]

> The Initial Statement of Reasons...cites several sources discussing examples of offsets being used in a CEQA context. Further, the CARB Scoping Plan describes offsets as way to provide regulated entities a source of low-cost emission reductions, and … encourage the spread of clean, efficient technology within and outside California. The Natural Resources Agency finds that the offset concept is consistent with the existing CEQA Guidelines' definition of "mitigation," which includes "[r]ectifying the impact by repairing, rehabilitating, or restoring the impacted environment" and "[c]ompensating for the impact by replacing or providing substitute resources or environments."

Similarly, when discussing "Project-Level Greenhouse Gas Emissions Reduction Actions and Thresholds" in *California's 2017 Climate Change Scoping Plan* (November 2017), CARB stated that, "Where further project design or regional investments are infeasible or not proven to be

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[22] CEQA Guidelines Section 15126.4(a)(1)(D) states: "If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed." In this instance, and based on the type of information reasonably available at this time, the Proposed Project's utilization of carbon offsets – via implementation of Mitigation Measures M-GHG-1 and M-GHG-2 – is not expected to result in one or more significant effects because carbon registries prioritize protocols for offset project types that can create significant co-benefits and avoid those with significant negative social and environmental impacts.

In support of this determination, please see Climate Action Reserve's webpage regarding "Criteria for Protocol Development," available at http://www.climateactionreserve.org/how/future-protocol-development/criteria/. See also Climate Action Reserve's *Program Manual* (September 1, 2015), available at http://www.climateactionreserve.org/how/program/program-manual/. As provided in Section 2.4.6 of the *Program Manual*, the Climate Action Reserve "requires project developers to demonstrate that their GHG projects will not undermine progress on other environmental issues such as air and water quality, endangered species and natural resource protection, and environmental justice." In order to ensure that such adverse effects are avoided, the Climate Action Reserve coordinates with government agencies and environmental representatives, requires project developers to demonstrate compliance with all applicable laws (including environmental regulations), and may include – within individual offset protocols – requirements specifically designed to serve as environmental and social safeguards.

[23] California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97 (December 2009).

effective, it may be appropriate and feasible to mitigate project emissions throughout purchasing and retiring carbon credits."[24]

Moreover, under AB 900, the Jobs and Economic Improvement through Environmental Leadership Act, certain CEQA streamlining benefits were provided to "environmental leadership" projects. One of the key conditions was that such projects offset all emissions to be GHG neutral. (Pub. Resources Code Section 21183(c).) To date, multiple projects have been designated as AB 900 leadership projects by CARB and the Governor, and those projects have made a commitment to purchase GHG offset credits from the voluntary carbon marketplace to ensure carbon neutrality, including the Crossroads Hollywood project (a mixed-use, residential and commercial project), Qualcomm Stadium Reconstruction project, the Event Center and Mixed Use Development at Mission Bay Blocks, 8150 Sunset Boulevard, and Soitec Solar Energy Project, which was approved by the County of San Diego Board of Supervisors in 2015.[25]

"Additionality" of Carbon Offsets

The comment states that the Draft EIR does not satisfy additionality requirements. The County does not concur with this statement for the following reasons.

To begin, OPR squarely addressed this question of additionality when revising the CEQA Guidelines in response to the passage of SB 97. In that proceeding, public commenters asked the California Natural Resources Agency (CNRA) to incorporate the AB 32 cap-and-trade requirements for offsets directly into the CEQA Guidelines. CNRA declined to follow this request because AB 32 is a different statutory scheme that is not applicable to many projects subject to CEQA. Further, CEQA has established standards for ensuring the adequacy of mitigation measures, including GHG reduction mitigation measures. Specifically, CNRA concluded:

> Several comments also suggested that mitigation for GHG emissions must be "real, permanent, quantifiable, verifiable, and enforceable." The Proposed Amendments do not include such standards, however, for several reasons. The proposed standard appears to have been derived from section 38562(d) of the Health and Safety Code, which prescribes requirements for regulations to be promulgated to implement AB 32. AB 32 is a separate statutory scheme, and, as noted above, there is no indication that the legislature intended to alter standards for mitigation under CEQA. Similarly, standards for mitigation under CEQA already exist and are set out in section 15126.4(a). Specifically, mitigation must be fully enforceable, which implies that the measure is also real and verifiable.

[24] Appendix B of *California's 2017 Climate Change Scoping Plan* provides that CEQA lead agencies should consider: (1) requiring projects to purchase carbon credits from credible offset registries, and (2) encouraging projects to select local and California-only carbon credits, where available.

[25] Information on current AB 900 leadership projects is found at: http://www.opr.ca.gov/ceqa/california-jobs.html.

> Additionally, substantial evidence in the record must support an agency's conclusion that mitigation will be effective, and in the context of an EIR, courts will defer to an agency's determination of a measure's effectiveness. No existing law requires CEQA mitigation to be quantifiable.
>
> Rather, mitigation need only be "roughly proportional" to the impact being mitigated.

(*CNRA, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97* (December 2009) p. 50; internal citations omitted.)

The Draft EIR references compliance with CEQA Guidelines Section 15126.4(c)(3) (see Draft EIR, Section 2.7.6, p. 2.7-31). And, for clarification, the Draft EIR explicitly requires all carbon offsets utilized under Mitigation Measures M-GHG-1 and M-GHG-2 to satisfy additionality requirements consistent with CEQA. Specifically, M-GHG-1 and M-GHG-2 state, "any carbon offset used to reduce the project's GHG emissions shall be a carbon offset that represents the past reduction or sequestration of one metric ton of carbon dioxide equivalent that is 'not otherwise required' (CEQA Guidelines section 15126.4(c)(3))." (Draft EIR, pp. 2.7-32 and 2.7-33).

Mitigation Measures M-GHG-1 and M-GHG-2 require all purchased and retired carbon offsets to meet certain performance standards, including that all purchased carbon offsets be additional. By relying on established protocols from recognized registries, the County would ensure confirmation of the additionality of any carbon offsets used for Mitigation Measures M-GHG-1 and M-GHG-2.

Enforcement of Mitigation Measures M-GHG-1 and M-GHG-2

Comments state that the County cannot enforce the reductions required under M-GHG-2 and M-GHG-2. The County does not agree.

Mitigation Measure M-GHG-1 addresses the Proposed Project's construction-related GHG emissions and requires the Proposed Project to purchase and retire carbon offsets in the amount of 22,760 MT CO_2e, which reflects the total construction-related GHG emissions (including a one-time vegetation loss). Mitigation Measure M-GHG-2 addresses the Proposed Project's operational-related GHG emissions, and similarly requires the Proposed Project to purchase and retire carbon offsets for the incremental portion of the Proposed Project within each Site Plan in a quantity sufficient to offset, for a 30-year period, the operational GHG emissions from that incremental amount of development to net zero. The Proposed Project will be required to reduce the annual emissions by 16,159 MT CO_2e per year for a 30-year period (project life), which is an approximate total reduction of 484,770 MT CO_2e. (Draft EIR, p. 2.7-33.)

Critically, because of the parameters of the mitigation framework, the Proposed Project must mitigate – via offsets – the incremental quantity of greenhouse gas emissions at issue before it can proceed with development. And, as explained above, Mitigation Measures M-GHG-1 and M-GHG-2 require carbon offsets to be secured by the Project Applicant in advance of when the projected emissions will be generated by the Project. Specifically, Mitigation Measure M-GHG-1 requires all of the construction and vegetation removal emissions associated with the Proposed Project to be offset "*prior to* the County's issuance of each grading permit." (Draft EIR, p. 2.7-32; italics added.) Mitigation Measure M-GHG-2 requires the operational emissions associated with the incremental amount of development within a Site Plan being permitted to be offset *prior to* the County's issuance of building permits for development within that Site Plan for a 30-year period (Draft EIR, p. 2.7-33). In other words, each permitted development that occurs within the Site Plan would be required to reduce or sequester 30 years of projected emissions in advance of the operational emissions being generated, which could be several years depending on when development is constructed in advance of such emissions being generated by the Proposed Project.

The following performance standards and requirements are established by Mitigation Measures M-GHG-1 and M-GHG-2:

- "Carbon offset" shall mean an instrument issued by any of the following: (i) the Climate Action Reserve, the American Carbon Registry, and the Verified Carbon Standard; (ii) any registry approved by the California Air Resources Board (CARB) to act as a registry under the state's cap-and-trade program; or (iii) if no registry is in existence as identified in options (i) and (ii), above, then any other reputable registry or entity that issues carbon offsets.
- Any carbon offset used to reduce the Proposed Project's GHG emissions shall be a carbon offset that represents the past reduction or sequestration of one metric ton of carbon dioxide equivalent that is "not otherwise required" (CEQA Guidelines Section 15126.4(c)(3)).
- The purchased carbon offsets used to reduce GHG emissions shall achieve real, permanent, quantifiable, verifiable, and enforceable reductions (California Health & Safety Code Section 38562(d)(1)).
- The County of San Diego Planning & Development Services shall consider, to the satisfaction of the Director of PDS, the following geographic priorities for carbon offsets: (1) off-site within the unincorporated areas of the County of San Diego; (2) off-site within the County of San Diego; (3) off-site within California; (4) off-site within the United States; and (5) off-site internationally. As listed, geographic priorities would focus first on local reduction features (including projects and programs that would reduce GHG emissions) to ensure that reduction efforts achieved locally would provide cross-over benefits related to air quality criteria pollutant reductions within the San Diego Air Basin, and to aid in San Diego County jurisdictions' efforts to meet their GHG reduction goals. The Proposed Project applicant or its designee shall first pursue offset projects and

> programs locally within unincorporated areas of the County of San Diego to the extent such offset projects and programs are financially competitive in the global offset market.

Availability of Carbon Offset Credits

Based on the County's research, it believes that sufficient carbon offsets are available for use within the CEQA context.[26] By way of example, as of November 2017, the Climate Action Reserve has issued more than 100 million carbon offsets.[27] The Climate Action Reserve found that California leads the nation in the number of offset projects registered (52) and the number of credits issued (22.5 million).[28] The American Climate Registry reached the same milestone in August 2017,29 and the Verified Carbon Standard (now referred to as Verra) has certified more than 1,300 projects that have removed or reduced more than 200 million metric tons of GHGs.[30]

Implementation of Feasible Project Design Features Prior to Reliance on Carbon Offsets

Comments state that the Proposed Project should include additional project design features and incorporate other mitigation measures before relying on the purchase of carbon offsets to reduce greenhouse gas emissions. The County does not concur for the following reasons.

To begin, CEQA provides lead agencies with discretion to formulate feasible mitigation measures for the reduction of GHG emissions. Specifically, CEQA Guidelines Section 15126.4(c) addresses the mitigation of GHG emissions and provides a non-exclusive list of potentially feasible mitigation concepts for consideration by lead agencies and project proponents.

> Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:
>
> - Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;
> - Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F [Energy Conservation];

26 See, e.g., Unlocking Potential: State of the Voluntary Carbon Markets 2017, Ecosystem Marketplace, available at https://www.cbd.int/financial/2017docs/carbonmarket2017.pdf.

27 See http://www.climateactionreserve.org/blog/2017/11/06/thank-you-for-helping-us-reach-100-million-metric-tons-of-ghg-emissions-reductions/ and http://www.climateactionreserve.org/blog/2017/11/06/north-american-climate-action-shows-its-strength-and-impact-with-milestone-100-million-offset-credits-issued-by-a-california-carbon-market-pioneer/.

28 See http://www.climateactionreserve.org/blog/2017/11/06/thank-you-for-helping-us-reach-100-million-metric-tons-of-ghg-emissions-reductions/.

29 See https://americancarbonregistry.org/news-events/program-announcements/acr-reaches-milestone-issuance-of-100-million-tonnes-of-greenhouse-gas-emissions-reductions.

30 See http://verra.org/project/vcs-program/.

- Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;
- Measures that sequester greenhouse gases;
- In the case of the adoption of a plan, such as a general plan, long range development plan, or plans for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

CEQA Guidelines Section 15126.4(c) does not establish a hierarchy of allowable mitigation options – there are no limits imposed on the geographic or locational attributes of the mitigation options, and there is no imperative to secure additional on-site reductions before utilizing carbon offsets.

As background, CEQA Guidelines Section 15126.4(c) was adopted by the California Natural Resources Agency (CNRA) at the conclusion of the rulemaking processes mandated by Senate Bill 97 (Dutton, 2007; see also Pub. Resources Code, §21083.05) and became effective in March 2010. On page 50 of the CNRA's *Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97* (December 2009), the CNRA expressly rejected invitations to establish any sort of mitigation hierarchy for GHG emissions in CEQA Guidelines Section 15126.4(c):

> Several comments, for example, suggested that the Guidelines provide a specific "hierarchy" of mitigation requiring lead agencies to mitigate GHG emissions on-site where possible, and to allow consideration and use of off-site mitigation only if on-site mitigation is impossible or insufficient. OPR and the Resources Agency recognize that there may be circumstances in which requiring on-site mitigation may result in various co-benefits for the project and local community, and that monitoring the implementation of such measures may be easier. However, CEQA leaves the determination of the precise method of mitigation to the discretion of lead agencies.

On page 87 of the *Final Statement of Reasons*, the CNRA similarly recognized that it "cannot, however, state in the State CEQA Guidelines that all lead agencies have the authority to prioritize types of mitigation measures, or to establish any particular priority order for them. Each lead agency must determine the scope of its own authority based on its own statutory or constitutional authorization."

When discussing how local governments can support climate action through CEQA, on page 102 of *California's 2017 Climate Change Scoping Plan* (November 2017), CARB "recommends that lead agencies prioritize on-site design features that reduce emissions, especially from VMT, and direct investments in GHG reductions within the project's region that contribute potential air

quality, health, and economic co-benefits locally." On that same page, CARB recognizes that "[w]here further project design or regional investments are infeasible or not proven to be effective," it also "may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits." As such, much like the framework established in CEQA Guidelines Section 15126.4(c), CARB recognizes the utilization of a portfolio-based approach in the development and selection of feasible mitigation measures for the reduction of GHG emissions, while simultaneously recommending the prioritization of GHG emissions-reducing strategies in a project's vicinity due to the corresponding economic and air quality co-benefits.

Here, the Proposed Project includes project design features (PDFs) (see Draft EIR, Table 2.7-5) to reduce GHG emissions, the implementation of which will be secured through Mitigation Measure M-GHG-4. These design requirements include:

- Transportation Demand Management (TDM) Program (PDF-TR-1),
- Zero Net Energy residences (PDF-AQ/GHG-2),
- Solar water heating (PDF-AQ/GHG-5),
- Water efficient landscaping and irrigation equipment to reduce water usage (PDF-UT-4),
- Energy efficient appliances (PDF-AQ/GHG-4),
- Installation of electric vehicle chargers in all half of all single-family homes (PDF-AQ/GHG-10), and,
- Other features to reduce energy usage, water consumption and limit GHG emissions, including energy efficient outdoor lighting (PSF-AQ/GHG-6), new resident information packets (PDF-AQ/GHG-7), cool roofs (PDF-AQ/GHG-8), and cool pavement (PDF-AQ/GHG-9).

The Draft EIR conservatively and only accounts for GHG emission reductions from those PDFs which are readily quantifiable, and thus likely underestimates the amount of GHG emissions reductions achieved by the project. A separate analysis was conducted to estimate the reduction in GHG emissions attributable to the Project Design Features. Based on the analysis contained in Appendix 8-1, *Otay Ranch Village 14 and Planning Areas 16/19 On-Site Emissions Reduction Estimates*, on-site design features would reduce operational GHG emission by approximately 27%.

In conjunction with implementation of the on-site PDFs, the EIR recommends adoption of Mitigation Measures M-GHG-1 and M-GHG-2, which require the purchase and retirement of carbon offsets to reduce project GHG emissions to net zero. As described above, the use of carbon offsets as CEQA mitigation is appropriate and supported. And, the County's development of this combination of on- and off-site reduction strategies is consistent with the discretion afforded to it by CEQA for purposes of mitigating GHG emissions.

The geographic location of the offset projects from which the Proposed Project will purchase its offsets from will be determined at the time of purchase. Regarding geographic preference, the following revision to M-GHG-1 (Sixth item) and M-GHG-2 (Ninth item) has been made in the Final EIR:

> … ~~the County of San Diego Planning & Development Services shall consider,~~ the Proposed Project applicant or its designee shall demonstrate, ~~-~~to the satisfaction of the Development Services Director~~ of PDS~~, that the following geographic priorities for ~~GHG reduction features, and GHG reduction projects and programs~~carbon offsets have been met: (1) ~~project design features/on-site reduction measures; (2)~~ off-site within the unincorporated areas of the County of San Diego; (~~3~~2) off-site within the County of San Diego; (3~~4~~) off-site within California; (4~~5~~) off-site within the United States; and (5~~6~~) off-site internationally. As listed, geographic priorities would focus first on local reduction features (including projects and programs that would reduce GHG emissions) to ensure that reduction efforts achieved locally would provide cross-over benefits related to air quality criteria pollutant reductions within the San Diego Air Basin, and to aid in San Diego County jurisdictions' efforts to meet their GHG reduction goals. The Proposed Project applicant or its designee shall first pursue offset projects and programs locally within unincorporated areas of the County of San Diego to the extent such offset projects and programs are financially competitive in the global offset market. The Proposed Project applicant or its designee shall submit proof to the County that offsets are unavailable and/or fail to meet the feasibility factors defined in CEQA Guidelines Section 15364 in a higher priority category before seeking offsets from the next lower priority category.

Through implementation of the MMRP and with the identified mitigation refinements, the County would have a measured process in place to evaluate the Proposed Project's compliance with the geographic priority provisions.

Scientific Attributes of GHG Emissions and Global Climate Change

While the EIR's recommended mitigation framework includes a locational preference criterion, the County also notes that GHG emissions result in a global, cumulative impact. This has been acknowledged by the California Supreme Court in *Center for Biological Diversity et al., v. California Department of Fish and Wildlife* 62 Cal. 4th 204 (2015). In that decision, the Supreme Court stated that:

> *First, because of the global scale of climate change, any project's contribution is unlikely to be significant by itself…With respect to climate change, an individual project's emissions will most likely not have any appreciable impact on the global*

> *problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe…Second, the global scope of climate change and the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local.*

The County also notes that, unlike criteria pollutants where individual districts are characterized by varying levels of pollutant concentrations and source types, GHGs and their attendant climate change ramifications are a global problem (CAPCOA 2008). Climate change is a global phenomenon in that all GHG emissions generated throughout the earth contribute to it; the action of GHGs is global in nature, rather than local or regional (or even statewide or national) (CAPCOA 2008).

Accordingly, geographical limits to mitigation options do not align with the science and understanding of GHGs and the global, cumulative nature of GHG emissions. As all GHG emissions generated throughout the earth contribute to climate change, a reduction in GHG emissions on earth would offset the generation of GHG emissions and their contribution to climate change regardless of geographic location.

The Use of Carbon Offsets Is Not Inconsistent with the County's General Plan

Commenters have questioned whether the Proposed Project's use of carbon offsets that are not associated with San Diego County-based, offsets-generating projects is consistent with the County's General Plan, and specifically Goal COS-20 and Policy COS-20.1 therein. However, as provided below, the Proposed Project's mitigation framework is consistent with the General Plan because it reduces Project-related emissions at a level that aligns with the statewide reduction targets established by AB 32 and SB 32.

As background, the subject Goal and Policy are set forth below, with underline/strikeout text used to illustrate the modifications to the subject text made by the County in concert with its February 2018 adoption of its Climate Action Plan (see Thematic Response – CAP Consistency).

Goal COS-20 (Governance and Administration)

> Reduction of ~~local~~ community-wide (i.e., unincorporated County) and County Operations ~~GHG~~ greenhouse gas emissions contributing to climate change that meet or exceed requirements of the Global Warming Solutions Act of 2006, as amended by Senate Bill 32 (as amended, Pavley. California Global Warming Solutions Act of 2006: emissions limit).

Policy COS-20.1 (Climate ~~Change~~ Action Plan)

> Prepare, maintain, and implement a ~~climate change action plan with a baseline inventory of GHG emissions from all sources; GHG emissions reduction targets and deadlines, and environmental GHG emissions reduction measures.~~ Climate Action Plan for the reduction of community-wide (i.e., unincorporated County) and County Operations greenhouse gas emissions consistent with the California Environmental Quality Act (CEQA) Guidelines Section 15183.5.

As to Goal COS-20, the Goal envisions a reduction of GHG emissions associated with community-wide activities and County operations. The Goal does not require that the desired GHG reductions occur locally. Such an interpretation is unsupported by a plain reading of the Goal, is not consistent with the intent of the County (including its Board of Supervisors) when developing and adopting the Goal, and is not scientifically supportable given the global nature and implications of climate change. If the County had intended to mandate local reductions, the Goal would have read: "Local reduction of …;" but alas, it does not.

Particularly in the scientific realm of global climate change, such an interpretation of the Goal is over-broad and unsupported. In fact, both COS-20 and the 2011 GPU PEIR mitigation specifically refer to AB 32, the Global Warming Solutions Act, and global warming in general (2011 GPU EIR pages S-20, 2.17-1 et seq., and 7-80; 2011 GPU pages 5-31-33, 38). Further, GHG emissions are a global, cumulative impact, as discussed above.

An interpretation of Goal COS-20 that requires exclusively local reductions also runs afoul of the policy principles of the Kyoto Protocol (which encourage the investment of GHG reduction programs in developing nations), the California Air Resources Board's *California's 2017 Climate Change Scoping Plan* (which recognizes and affirms the use of non-local reduction opportunities), and the Cap-and-Trade Program (which allows regulated entities to achieve a portion of their GHG reductions through the use of non-local offsets), and the California Department of Fish and Wildlife's approval of the Newhall Ranch project (which also relies on non-local GHG reduction opportunities to achieve net zero GHG emissions).

In any case, even if Goal COS-20 is erroneously interpreted as requiring local reductions, Mitigation Measures M-GHG-1 and M-GHG-2 of the Final EIR require that the County and Project Applicant follow a geographic priority system with respect to the purchase of carbon offsets, with the highest level of priority afforded to local offsets.

Further, the Proposed Project's use of non-local carbon offsets does not mean that a significant environmental impact would follow for purposes of CEQA. As explained in this thematic response and elsewhere in the Final EIR, the use of carbon offsets to mitigate GHG emissions is

expressly recognized by CEQA Guidelines Section 15126.4, the California Natural Resources Agency, the California Air Resources Board, and other experts in the field.

The Goal must also be read in the context of the policies that guide its implementation. As background, the relationship between Goals, Policies, and Implementation Measures is described in the County of San Diego General Plan on page I-5 and I-6:

- Goals describe ideal future conditions for a particular topic, such as town centers, rural character, protection of environmental resources, traffic congestion, or sustainability. Goals tend to be very general and broad.
- Policies provide guidance to assist the County as it makes decisions relating to each goal and indicates a commitment by the County to a particular course of action. The policy is carried out by implementation measures. While every effort has been made to provide clear and unambiguous policies, the need for interpretation will inevitably arise. The authority of interpretation lies with the County and will be enacted through its implementation measures and decisions. Therefore, the Implementation Plan should be reviewed for a complete understanding of each policy.
- Implementation Measures, adopted by the County in a separate Implementation Plan, identify all the specific steps to be taken by the County to implement the policies. They may include revisions of current codes and ordinances, adoption of plans and capital improvement programs, financing actions, and other measures that will be assigned to different County departments after the General Plan is adopted.

The General Plan's policies, operating as policy guidance, guide the County's policy efforts to achieve the ideal future conditions envisioned in the goal. These policies frame the intent and vision for implementation of a goal. For Goal COS-20, the General Plan does not set forth policies envisioning direct application to individual projects, but rather policies envisioning changes to County operations and the creation of applicable plans: Policy COS-20.1 directs the County to implement a Climate Action Plan; Policy 20.2 directs the County to establish and maintain a program to monitor GHG emissions from various sources for a review of effective GHG-reducing strategies; COS-20.3 directs the County to coordinate with other jurisdictions; and COS-20.4 directs the County to provide education and assistance on the importance and approaches for reductions to GHG emissions.

As to Policy COS-20.1, the Policy is not applicable to individual projects (like the Proposed Project) but rather pertains to a jurisdictional responsibility of the County of San Diego. CEQA Guidelines Section 15064.4 does not require that the County use a climate action plan to evaluate the environmental significance of a project, and – for the reasons set forth in Section 8.4.6, Thematic Response – CAP Consistency, the Proposed Project does not use, tier from, or rely on, the County's 2018 Climate Action Plan (or its mitigation), which that is the subject of pending litigation.

In the context of global climate change, this structure provides the necessary hardline goal and policy flexibility necessary to address the multi-faceted and inter-related tools to reduce overall GHG emissions. Project-level consistency must accordingly be measured by the project's consistency with the County's plans and operations as directed through General Plan Policies CO-20.1– through 20.4.

8.4.6 CAP Consistency

This Thematic Response addresses comments received on the Draft EIR stating that the Proposed Project is not consistent with the County's Climate Action Plan (CAP).

In order to set the appropriate context, the Notice of Preparation (NOP) for the Otay Ranch Village 14 and Planning Areas 16/19 (Proposed Project) Environmental Impact Report was issued in December 2016, at which time the County was preparing but had not yet adopted a Climate Action Plan (CAP). The County released a Draft CAP and related Draft Supplemental EIR (SCH No. 2016101055) for public review in August 2017. The Final CAP was adopted by the County's Board of Supervisors in February 2018. And, in March 2018, lawsuits were filed by numerous environmental organizations and a business entity challenging the County's adoption of the CAP. (Resolution of that litigation is anticipated to post-date the County's consideration of the Proposed Project.)

In light of the CAP's timeline and because litigation over the CAP was reasonably foreseeable and imminent, the CAP was not relied upon or used to establish the analytical framework set forth in EIR Section 2.7, Greenhouse Gas Emissions. Notably, CEQA Guidelines Section 15064.4 does not require that the County have an adopted or judicially-validated CAP in place in order to analyze, determine, and mitigate the effects of the Proposed Project's GHG emissions. However, because the CAP remains an adopted, applicable plan for CEQA purposes while the referenced litigation is pending, this response addresses the Proposed Project's consistency with the County's CAP.

Summary of Climate Action Plan

The purpose of the CAP is to serve as mitigation to reduce greenhouse gas (GHG) emissions resulting from buildout of the County's 2011 General Plan Update (GPU) in accordance with GPU Policy COS-20.1 and GPU EIR Mitigation Measures CC-1.2 and CC-1.8. The CAP includes six chapters: (1) Introduction; (2) Greenhouse Gas Emissions Inventory, Projections, and Reduction Targets; (3) Greenhouse Gas Reduction Strategies and Measures; (4) Climate Change Vulnerability, Resiliency, and Adaptation; (5) Implementation and Monitoring; and, (6) Public Outreach and Engagement. The CAP also sets the following County-specific GHG reduction targets: by 2020, a 2 percent reduction from 2014 levels; by 2030, a 40 percent reduction from 2014 levels; and, by 2050, a 77 percent reduction from 2014 levels. The CAP is designed to achieve those targets through the implementation of multiple strategies and measures applicable to

five general categories of GHG emission sources: (1) Built Environment and Transportation; (2) Energy; (3) Solid Waste; (4) Water and Wastewater; and, (5) Agriculture and Conservation.

The CAP was prepared in accordance with CEQA Guidelines Section 15183.5 in order to afford certain projects the opportunity to use the CAP as a CEQA streamlining tool; specifically, the CAP:

- Describes the County's methodology for quantification of existing baseline and projected emissions for 2020, 2030, and 2050 (see CEQA Guidelines § 15183.5(b)(1)(A));
- Describes the recommended reduction targets for 2020 and 2030, which are designed to be consistent with the recommended community targets in CARB's 2017 Scoping Plan, the State's 2014 GHG emissions inventory, and the targets established by Assembly Bill 32, Senate Bill 32, and Executive Orders B-30-15 and S-3-05 (CEQA Guidelines § 15183.5(b)(1)(B));
- Describes the specific strategies and actions the County will take to reduce GHG emissions and quantifies the resultant reductions that would be achieved by each measure (CEQA Guidelines § 15183.5(b)(1)(C)-(D)); and,
- Describes how the County will implement the plan, monitor its effectiveness, and adaptively manage implementation of specific strategies to achieve reduction targets (CEQA Guidelines § 15183.5(b)(1)(E)).

The CAP was designed and developed to be an adaptive plan; as progress is made in implementing GHG reduction measures, that progress will be monitored (i.e., reductions achieved will be logged), and an assessment will be made on whether changes to the CAP would be required. For example, if certain measures have proven successful, additional investment in those measures may be made; or, conversely, if certain measures are proving to be more difficult to achieve, then the County may redirect its efforts to other measures to achieve overall GHG reduction targets. The County will continually monitor the overall effectiveness of the CAP through annual progress reports, and will ensure the CAP continues to make substantial progress toward reduction targets through inventory updates every two years and with updates made to the CAP every five years.

Climate Action Plan Implementing Documents

In conjunction with its adoption of the CAP in February 2018, the County also adopted CEQA implementation tools, including the *Guidelines for Determining Significance: Climate Change* (Guidelines) and *Appendix A: Final Climate Action Plan Consistency Review Checklist* (CAP Consistency Checklist). The Guidelines and CAP Consistency Checklist set forth the following two-step process for determining the significance of GHG emissions at the project level for CEQA purposes (County of San Diego 2018):

- **Step 1**: Step 1 (Land Use Consistency) assesses a project's consistency with the growth projections and land use assumptions made in the CAP. If a project is consistent with the projections in the CAP, its associated growth (in terms of GHG emissions) was accounted for in the CAP's emissions projections and would not increase emissions beyond what is anticipated in the CAP or inhibit the County from reaching its reduction targets. If a project is consistent with the existing General Plan land use designation(s), it can be determined to be consistent with the CAP projections and can move forward to Step 2 (CAP Measures Consistency) of the CAP Consistency Checklist. Also, a project that is inconsistent with existing General Plan or zoning designations but which would propose an equivalent or less GHG-intensive project than that allowed by existing designations can move to Step 2.

  If an amendment is needed to the existing land use and/or zoning designation, and if that land use and/or zoning designation amendment results in a more GHG-intensive project, a project is required to undertake a more detailed, project-level GHG analysis. The project also is required to demonstrate compliance with each of the CAP measures identified in the CAP Consistency Checklist. Additionally, in order to support a determination that such a project would not conflict with the CAP and would not make a cumulatively considerable contribution to global climate change, the project is required to demonstrate that it results *either* in "no net increase" in GHG emissions from additional density or intensity above that identified in the County's 2011 General Plan Update *or* "no net increase over baseline conditions (carbon neutrality)." In doing so, the project must first demonstrate compliance with relevant CAP measures and then achieve any additional needed reductions through on-site design features and mitigation measures, followed by off-site mitigation.

- **Step 2**: Step 2 (CAP Measures Consistency) identifies CAP GHG reduction measures that would apply to discretionary projects and establishes clear questions that can be used to assess a project's consistency with CAP measures. The specific applicable requirements outlined in the Checklist, shall be required as a condition of project approval. The project must provide substantial evidence that demonstrates how the proposed project would implement each applicable Checklist requirement described in Appendix A to the satisfaction of the Director of Planning & Development Services (PDS). If a question in the Checklist is deemed not applicable (N/A) to a project, substantial evidence must be provided to the satisfaction of the Director of PDS.

Project Consistency with the Climate Action Plan

As provided above, the CAP was adopted following issuance of the Notice of Preparation (NOP) for the Proposed Project's EIR. Accordingly, the Proposed Project's Draft EIR does not rely upon or use the CAP, because it was not an applicable plan at the time the NOP was published (see CEQA Guidelines § 15125). Instead, the Draft EIR identified significance thresholds

derived from Appendix G of the CEQA Guidelines and was informed by CEQA Guidelines Section 15064.4, as explained in Draft EIR Section 2.7.3. Accordingly, the Proposed Project's Draft EIR does not rely upon, use or tier from the CAP. Although the Proposed Project was initiated before the adoption of the CAP, now that the CAP has been adopted by the County, the Proposed Project must demonstrate consistency with the CAP as a condition of approval.

Regarding Step 1, the Proposed Project does not propose any changes to the existing regional categories, land use designations, or zoning. As background, the Proposed Project is one component of the Otay Ranch master-planned community, which is regulated by the policies of the Otay Ranch General Development Plan/Subregional Plan (GDP/SRP). The underlying purpose of the Proposed Project, therefore, is to implement the adopted Otay Ranch GDP/SRP and complete the planned development of Village 14 and Planning Areas 16/19 therein, to the extent those areas are within the applicant's ownership. The Otay Ranch GDP/SRP constitutes Volume II of the County's Otay Subregional Plan and is part of the County's General Plan, which allows for 2,123 homes in Village 14 and Planning Areas 16/19.

In the County's General Plan, the Project Area is designated as Rural and Semi-Rural regional categories, and has Specific Plan Area (SPA) and Open Space (Conservation) land use designations. The Project Area is zoned S80 (Open Space) and S88 (Specific Plan) by the County of San Diego Zoning Map. Because the County adopted the Otay Ranch GDP/SRP) to govern development within the Otay Ranch area, the land use designations specified in the Otay Ranch GDP/SRP apply. A wide range of land use designations are specified in the Otay Ranch GDP/SRP for the Project Area: Very Low Density Residential (VL), Low Density Residential (L), Low Medium Village Density Residential (LMV), Medium Density Residential (MD), Medium High Residential (MH), Mixed Use (MU), Public/Quasi Public (P/QP), Park (P), and Open Space (OS). The Proposed Project would implement development that is consistent with these designations.

Because the Proposed Project is consistent with the existing General Plan land use designations (as set forth in the GDP/SRP), the Proposed Project is consistent with the CAP growth projections and land use assumptions under Step 1 and need only demonstrate additional consistency with the GHG reduction measures identified in Step 2.

Regarding Step 2, the Proposed Project's compliance with the CAP is outlined in Table 8.4.6-1.

Table 8.4.6-1
Climate Action Plan Consistency Checklist

CAP Checklist Item	Project Compliance
1a. Reducing Vehicle Miles Traveled: Non-Residential: For non-residential projects with anticipated tenant occupants of 25 or more, will the project achieve a 15% reduction in emissions from commute vehicle miles traveled (VMT)), and commit to monitoring and reporting results to demonstrate on-going compliance? VMT reduction may be achieved through a combination of Transportation Demand Management (TDM) and parking strategies, as long as the 15% reduction can be substantiated.	**Consistent**. As calculated in Attachment 1, the commute related trips would result in approximately 1,651 VMT per day, based on an average trip length of 8.78 miles per trip and 94 employees between the commercial retail and school, before the implementation of any TDM measures. Therefore, a 15% reduction under this measure would equate to 248 VMT per day. Implementation of the TDM measures set forth in the Proposed Project's TDM Program (PDF-TR-1), as applicable to the commercial/retail component of the Project, would reduce overall VMT by 4.1%, which is the equivalent of approximately 4,951 VMT per day. As such, the measure's requirements have been met.
2a. Shared and Reduced Parking: Non-Residential: For non-residential projects with anticipated tenant-occupants of 24 or less, will the project implement shared and reduced parking strategies that achieves a 10% reduction in emissions from commute VMT? Check "N/A" if the project is a residential project or if the project would accommodate 25 or more tenant-occupants.	**N/A**. This is not applicable to the Proposed Project, which would accommodate 25 or more tenant-occupants.
3a. Electric or Alternatively-Fueled Water Heating Systems Residential: For projects that include residential construction, will the project, as a condition of approval, install the following types of electric or alternatively-fueled water heating system(s)? ☐ Solar thermal water heater ☐ Tankless electric water heater ☐ Storage electric water heaters ☐ Electric heat pump water heater ☐ Tankless gas water heater ☐ Other	**Consistent**: Prior to the issuance of residential building permits, the Proposed Project applicant or its designee shall submit building plans illustrating that the Project would provide each residential unit with one of the identified water heating system types.
4a. Water Efficient Appliances and Plumbing Fixtures Residential: For new residential projects, will the project comply with all of the following water efficiency and conservation BMPs? 1. Kitchen Faucets: *The maximum flow rate of kitchen faucets shall not exceed 1.5 gallons per minute at 60 psi. Kitchen faucets may temporarily increase the flow above the maximum rate, but not to exceed 2.2 gallons per minute at 60 psi, and must default to a maximum flow rate of 1.5 gallons per minute at 60 psi.* 2. Energy Efficient Appliances: Install at least one qualified ENERGY STAR dishwasher or clothes washer per unit.	**Consistent**: Prior to the issuance of residential building permits, the Proposed Project applicant or its designee shall submit building plans illustrating that the Project would provide kitchen faucets that would not exceed 1.5 gallons per minute at 60 psi. The Proposed Project also would install at least one ENERGY STAR dish or clothes washer per residential unit. The choice of appliance would be given to the residents. Residents may choose to have both appliances be ENERGY STAR, consistent with PDF-UT-2 and PDF-UT-3.
5a. Rain Barrel Installations: Residential: For new residential projects, will the project make use of incentives to install one rain barrel per every 500 square feet of available roof area? Check "N/A" if the project is a non-residential project; if State, regional or local incentives/rebates to purchase rain barrels are not available; or if funding for programs/rebates has been exhausted.	**Consistent**: Prior to the issuance of residential building permits, the Proposed Project applicant or its designee shall submit building plans illustrating that the Project would install one rain barrel per every 500 square feet of available roof area, to the extent that State, regional or local incentives/rebates are available to fund the purchase of such rain barrels.

Table 8.4.6-1
Climate Action Plan Consistency Checklist

CAP Checklist Item	Project Compliance
6a. Reduce Outdoor Water: Residential: Will the project submit a Landscape Document Package that is compliant with the County's Water Conservation in Landscaping Ordinance and demonstrates a 40% reduction in current Maximum Applied Water Allowance (MAWA) for outdoor use? Non-Residential: Will the project submit a Landscape Document Package that is compliant with the County's Water Conservation in Landscaping Ordinance and demonstrates a 40% reduction in current MAWA for outdoor use?	**Consistent**: Prior to the issuance of grading permits, the Proposed Project would submit a Landscape Document Package that is compliant with the County's Water Conservation in Landscaping Ordinance, and demonstrates a 40% reduction in MAWA.
7a. Agricultural and Farming Equipment: Will the project use the San Diego County Air Pollution Control District's (SDAPCD's) farm equipment incentive program to convert gas- and diesel-powered farm equipment to electric equipment? Check "N/A" if the project does not contain any agricultural or farming operations; if the SDAPCD incentive program is no longer available; or if funding for the incentive program has been exhausted.	**N/A**. This is not applicable to the Proposed Project, as the Project would not include gas or diesel-powered farm equipment.
8a. Electric Irrigation Pumps: Will the project use SDAPCD's farm equipment incentive program to convert diesel- or gas-powered irrigation pumps to electric irrigation pumps? Check "N/A" if the project does not contain any agricultural or farming operations; if the SDAPCD incentive program is no longer available; or if funding for the incentive program has been exhausted.	**N/A**. This is not applicable to the Proposed Project, as the Project would not include irrigation pumps.
9a. Tree Planting: Residential: For residential projects, will the project plant, at a minimum, two trees per every new residential dwelling unit proposed? Check "N/A" if the project is a non-residential project	**Consistent**: Prior to the issuance of grading permits, the Proposed Project would submit a Landscape Document Package demonstrating that the Project would plant, at a minimum, two trees per residential unit.

As shown in Table 8.4.6-1, the Proposed Project would be consistent with Step 2 of the County's CAP. Additionally, compliance with the adopted CAP would be required as a Condition of Approval for the Proposed Project.

It also is noted that the Proposed Project mitigates GHG emissions impacts within San Diego County through use of on-site project design features and mitigation requirements (see, e.g., Draft EIR Table 2.7-5); would not allocate 100% of its emissions reductions to off-site actions outside San Diego County; and further reduces emissions beyond those anticipated in the County's CAP by committing to "offset all of its GHG emissions to achieve and maintain carbon neutrality (i.e., net zero emissions) for the life of the project."

Relationship of the Project's EIR to the Climate Action Plan

It is important to note that the CEQA analysis prepared for the Proposed Project's Draft EIR did not use, rely on, or tier from the CAP to streamline the Project's environmental analysis. Rather,

the Draft EIR rendered significance determinations (using the criteria contained in CEQA Guidelines Appendix G, and informed by CEQA Guidelines Sections 15064.4 and 15126.4) that are independent of the CAP. As such, in the event that the CAP does not withstand judicial scrutiny, the Project's EIR would continue to provide a separate, stand-alone basis for the finding that the Proposed Project's GHG emissions would not significantly impact the environment, with implementation of its own EIR Mitigation Measures M-GHG-1 through M-GHG-4. For additional relevant information on this point, please see **Appendix 8-2** of this Final EIR, which contains the County's response to comments suggesting that the County cannot consider this Proposed Project (or other GPA projects) until final resolution of the separate CAP litigation.

On this point, the County notes that the commitment of the Proposed Project to achieve carbon neutrality, and the Draft EIR's corresponding basis to determine that impacts would be less than significant with mitigation, is supported by CEQA, State guidance, and case law. For example, the overall approach presented in the Proposed Project's EIR (i.e., attainment of net zero GHG emissions through utilization of a portfolio of on- and off-site reduction strategies) accords to the approach developed by the State of California (and specifically the California Department of Fish and Wildlife and California Air Resources Board) for the Newhall Ranch Project and AB 900 projects, as well as the approach described for project-level CEQA analysis by the California Air Resources Board in its adopted *California's 2017 Climate Change Scoping Plan*.

ATTACHMENT 1

CAP Measure 1a Calculation Explanation

The Proposed Project would result in 12,758 daily trips (Appendix 2.9-1) and 111,988 total vehicle miles traveled (VMT) before the implementation of the identified TDM measures (Appendix 2.9-1, Appendix P, TDM Memo). The Proposed Project would employ 94 people in the commercial/retail area and school. Using an average pre-TDM trip length of 8.78 miles per trip, and two trips per employee, the Proposed Project's commute related trips would result in a daily VMT of approximately 1,651 miles. A 15% reduction for all commute-related VMT per the CAP requirements would be equal to approximately 248 VMT per day. As detailed in Table 8.4.6-2, TDM Measures 1 through 3 and PDFs 1 and 2 result in a project-wide VMT percent reduction 4.10% or a project-wide VMT reduction of 4,592 miles per day, which exceeds the required commute-related VMT reduction requirements.

Table 8.4.6-2
Proposed Project VMT Reduction Applicable to Project Commercial Land Uses

		% VMT Reduction
TDM #	*Transportation Demand Management Program*	
1	Provision of a Comprehensive Trails Network	0.100%
2	Provision of Bicycle Racks	0.625%
3	Coordination with SANDAG's iCommute Program	0.750%
4	Promotion of Websites with Transportation Options	N/A
5	Distribution of New Resident Package	N/A
6	Coordination with MTS regarding Future Transit	N/A
7	Provision of a "School Pool" Program	N/A
8	Implementation of a "Walking School Bus" Program	N/A
	Subtotal	*1.48%*
PDF #	*Transportation Project Design Features*	
1	Provide Pedestrian Network Improvement	2.000%
2	Provide Roundabouts as a Traffic Calming Measure	0.625%
	Subtotal	*2.625%*
	Total VMT Reduction %	**4.10%**
	Total Proposed Project VMT/day Reduction	**4,591.51**

Source: Appendix P of the Transportation Impact Report.
Notes: % = percent; VMT = vehicle miles traveled; TDM: Transportation Demand Management; SANDAG = San Diego Association of Governments; MTS = Metropolitan Transit System; PDF = Project Design Feature.

8.4.7 GHG Blasting Emissions

This Thematic Response addresses comments received on the Draft EIR stating the Proposed Project analysis should include greenhouse gas (GHG) emissions from blasting.

As explained in Draft Environmental Impact Report (EIR) Section 2.7 Greenhouse Gas Emissions (page 2.47-23):

> Construction of the Proposed Project would also include blasting, as discussed in Section 2.3, Air Quality. However, pursuant to EPA AP-42, Section 13.3 Explosives Detonation, there are no CO_2 or CH_4 emission factors for the explosive ammonium nitrate fuel oil. Accordingly, GHG emissions associated with blasting were not included in this GHG analysis.

Although there are no industry standard GHG emission factors to estimate GHG emissions from use of ammonium nitrate fuel oil (ANFO, composed of ammonium nitrate with 5.8%–8% fuel oil) during blasting activities, following publication of the Draft EIR, two approaches to estimating GHG emissions from blasting were identified:

1. First, a carbon dioxide (CO_2) emission factor for consumption of fuel oil from The Climate Registry could be used. The Climate Registry emission factor is 0.01035 of metric tons (MT) of CO_2 per gallon of fuel oil (The Climate Registry 2018). The following assumptions were also applied to estimate GHG emissions based on The Climate Registry CO_2 emission factor: 6% composition of fuel oil #2 in ANFO and 7.41 pounds of fuel oil per gallon. Consistent with the analysis presented in Draft EIR Section 2.3, Air Quality, 8.25 tons of ANFO were assumed per blast. Based on The Climate Registry assumptions, it was determined that GHG emissions would be 1.38 MT CO_2 per blast.
2. Second, an emission factor per tons of ANFO as applied by the Australian Greenhouse Office (AGO) could be used. The AGO assumed 0.167 metric tons of CO_2 per ton of ANFO (Austrian Greenhouse Office 2006). Each blast was assumed to consume 8.25 tons of ANFO. Based on the AGO assumptions, it was determined that GHG emissions would be 1.25 MT CO_2 per blast.

Because the approach using The Climate Registry emission factor yielded more conservative GHG emission estimates, GHG emissions using The Climate Registry CO_2 emission factor was carried forward into the Final EIR. Estimated CO_2 emissions from Proposed Project blasting activities is presented in Table 8.4.7-1.

Table 8.4.7-1
Greenhouse Gas Emissions from Blasting

Phase	Year	Total Blasts	CO_2
			Metric Tons per year
Proctor Valley Road North	2019	1.90	2.62
South Village 14	2019	4.70	6.54
Central Village 14[1]	2020	12.79	17.69
	2021	115.11	159.17
North Village 14	2022	18.00	24.86
Planning Areas 16/19	2023	56.40	77.97
		Total	**288.84**

Notes:
[1] Central Village construction would occur over 10 months, one month in 2020, and nine in 2021. Blasting Emissions were allocated accordingly.

As shown in Table 8.4.7-1, an additional approximately 289 MT of CO_2 of would be emitted as a result of blasting activities during construction. When amortized over 30 years, 289 MT of CO_2 would result in an additional 9.63 MT of CO_2 per year.

As a result of these findings the following changes were made in the Section 2.7 of the EIR as presented as strike-out for deletions and underline for additions:

Section 2.7.3 Analysis of Project Effects and Determination as to Significance

> Blasting operations would be required for site preparation. Rock blasting is the controlled use of explosives to excavate, break down, or remove rock. The result of rock blasting is often known as a rock cut. The most commonly used explosives today are ammonium nitrate/fuel oil (ANFO)–based blends due to their lower cost compared to dynamite. The composition of ANFO is 6% fuel oil, which emits CO_2 when detonated. An emission factor of 10.35 kilograms of CO_2 per gallon of fuel oil (based on information presented in *The Climate Registry 2018 Default Emission Factors*) was used to estimate GHG emissions from blasting.
>
> ~~Construction of the Proposed Project would also include blasting, as discussed in Section 2.3, Air Quality. However, pursuant to EPA AP-42, Section 13.3 Explosives Detonation, there are no CO_2 or CH_4 emission factors for the explosive ammonium nitrate fuel oil. Accordingly, GHG emissions associated with blasting were not included in this GHG analysis.~~

Section 2.7.4, Conclusion page 2.7-47.

Table 2.7-6
Estimated Annual Construction Greenhouse Gas Emissions

Year	CO_2	CH_4	N_2O	CO_2e
	Metric Tons per Year			
2019	793.65 ~~784.49~~	0.17	0.00	793.82 ~~797.55~~
2020	1,360.67 ~~1,342.98~~	0.37	0.00	1,361.04 ~~1,352.22~~
2021	2,949.77 ~~2,339.79~~	0.41~~39~~	0.00	2,960.02 ~~2,349.56~~
2022	1,838.84 ~~1,813.98~~	0.38~~37~~	0.00	1,848.46 ~~1,823.22~~
2023	2,201.61 ~~2,088.40~~	0.34	0.00	2,210.16 ~~2,097.23~~
2024	1,394.70 ~~1,234.14~~	0.31	0.00	1,402.63 ~~1,241.83~~
2025	1,023.88	0.24	0.00	1,029.85
2026	586.25	0.13	0.00	589.45
2027	181.24	0.04	0.00	182.32
Total	**12,330.62 ~~11,395.13~~**	**2.40 ~~2.36~~**	**0.00~~0.00~~**	**12,377.74 ~~11,463.22~~**

Notes:
CO_2 = carbon dioxide; CH_4 = methane; N_2O = nitrous oxide; CO_2e = carbon dioxide equivalent.
See Appendix A for complete results.
Includes rock crushing emissions (2019, 2020, 2021, 2022, 2023, 2024). Includes blasting emissions (2019, 2020, 2021, 2022, 2023) See Appendix A for detailed emissions.

Table 2.7-8
Estimated Total Construction and Vegetation Removal Greenhouse Gas Emissions

Emission Source	CO_2e (Metric Tons per Year)
Construction Emissions	12,378~~11,463.22~~
Vegetation Removal	10,382
Total Emissions	**22,760~~21,845.22~~**
Emissions Amortized Over 30 Years	**759~~728.17~~**

CO_2e = carbon dioxide equivalent.

Revisions were also made in Appendix 2.7-1, Greenhouse Gas Technical Report, to incorporate the addition of blasting GHG emissions during construction.

With implementation of Mitigation Measures M-GHG-1 through M-GHG-4, impacts would remain less than significant.

8.4.8 SR-94 Improvements

This Thematic Response addresses comments which raised concerns regarding the Proposed Project's impacts along SR-94, generally, including impacts at the intersection with Lyons Valley Road, and the related timing of implementation of mitigation measures that would reduce those impacts.

The Project proposes, and the County would require as a Tentative Map condition, signalization of the intersection of SR-94 at Lyons Valley Road by the 741st EDU (M-TR-2). The Proposed

Project would not result in a significant impact until that time and installation of a traffic signal at the intersection would mitigate the Proposed Project's significant impacts at this location. However, the reader and commenter should be aware that the SR-94 and Lyons Valley Road intersection is a Caltrans [California Department of Transportation] facility. Therefore, while the Proposed Project would be conditioned to implement mitigation to signalize the intersection of SR-94 at Lyons Valley Road by the 741st EDU (which signalization would mitigate the Proposed Project's significant impacts at the intersection), the Draft EIR considers the impacts significant and unavoidable because the improvements are within Caltrans jurisdiction, and, therefore, the County does not have jurisdiction to issue permits or implement the SR-94 improvements.

Further, the SR-94 and Lyons Valley Road intersection is one of six areas related to SR-94 that is to be improved by the Jamul Indian Village (JIV) as part of the Hollywood Casino project, based on information provided to the County regarding the JIV agreement with the State Governor's Office and Gaming Compact. Caltrans has been working with the JIV's contractor on the design/improvement plans for installation of a traffic signal at the SR-94 / Lyons Valley Road intersection and has issued an encroachment permit for installation of the signal at the intersection. This intersection improvement is part of the project analyzed in the Caltrans State Route 94 Improvement Project Draft Environmental Impact Report (Caltrans 2015) and was a mitigation measure specified in the JIV Final Environmental Evaluation and Mitigation Monitoring and Reporting Plan.

In addition, the County has an agreement with JIV by which JIV will be providing funding for additional "off-reservation" roadway improvements to SR-94, including: 1) participation in the Steele Canyon Road Fair Share Improvement program for the construction of additional lanes; 2) contribution to the County for sight distance enhancements at local intersections; 3) contribution to the County of a fair share of the Cumulative Transportation Impact Fee (TIF) for roadway improvements/transportation projects in Jamul; and 4) contribution to County/Caltrans intersection improvements at the following intersections: i) SR-94 and Vista Sage Road – sight distance improvements, ii) SR-94 and Vista Diego/Lyons Road – sight distance improvements; and iii) SR-94 and Otay Lakes Road intersection improvements. Additionally, Caltrans has annual ongoing maintenance programs along the SR-94 corridor relating to culverts, drainage, debris removals, repairs, signage, etc.

8.4.9 Wildfire Protection and Evacuation

This Thematic Response addresses comments on the Draft EIR regarding the Proposed Project's location within an area with a recent history of wildland fires, concerns about evacuation in the event of a wildfire; and comments stating that the Draft EIR should have identified a significant impact to wildland fire hazards.

Overview

The Fire Protection Plan (FPP) discloses that the Proposed Project is located within a Very High Fire Hazard Severity Zone (VHFHSZ). Specifically, page 2 states that "code compliance is an important component of the requirements of this FPP, given the Proposed Project's wildland/urban interface (WUI) location that is within an area statutorily designated as a Very High Fire Hazard Severity Zone by CAL FIRE (FRAP 2015)." Due to its location in a VHFHSZ, the Proposed Project is required to provide for a specified level of planning, ignition resistant construction, access, water availability, fuel modification, and construction materials and methods that have been developed specifically to allow safe development within these areas. Due to the Project Area's location within a VHFHSZ, a Fire Protection Plan (Draft EIR; Appendix 3.1.1-2, Otay Ranch Village 14 and Planning Area 16/19 Fire Protection Plan, February 2018) and Wildland Fire Evacuation Plan (Draft EIR; Appendix 3.1.1-3, Wildland Fire Evacuation Plan for Otay Ranch Village 14 and Planning Area 16/19, February 2018) have been prepared for the Proposed Project.

The San Diego County Fire Authority (SDCFA) has reviewed the Proposed Project's Fire Protection Plan and Wildland Fire Evacuation Plan and accepted these Plans on February 5, 2018. Collectively, the Fire Protection Plan and Wildland Fire Evacuation Plan address several important aspects, including fire history, flame-length modeling based on site vegetation and climate, project design, compliance with applicable fire codes, and emergency evacuation.

As described in Appendix 3.1.1-2, the Proposed Project will provide infrastructure that will assist fire response teams and evacuation efforts. The structures within the Proposed Project will be built using the latest ignition-resistant construction methods and materials, and will include interior, automatic fire sprinklers consistent with the fire codes. Further, fuel modification will occur on perimeter edges adjacent to open space/conservation areas, and throughout the interior of the Proposed Project. In addition, the Proposed Project would include:

1. A ~~construction~~ Construction FPP would be prepared, detailing the important construction-phase restrictions and fire safety requirements to be implemented to reduce risk of ignitions and plans for responding to ~~an unlikely~~any potential ignitions.
2. Proposed Project buildings would be constructed of ignition-resistant materials based on the latest building and fire codes.

3. Fuel M~~m~~odification Zones (FMZ) will be provided throughout the perimeter of the project site and would be up to 120 feet wide in most locations, including the rear yard areas as part of the fuel modified zone. Maintenance will occur as required ~~needed~~, and the homeowner's association (HOA) will annually hire a third-party, SDCFA-approved Fuel Modification Zone ~~FMZ~~ inspector to provide annual certification that fuel modification meets the FPP requirements.
4. One-acre and larger lots (lots designated as 1, 2, or 3 acres) will include fuel modification equal to 100 feet in width from all ~~combustible~~ buildings of more than 250 square feet in size. The FMZ will begin at the structure and extend outward in all directions (i.e., front, sides, and rear of house). Homeowners will be responsible for maintaining the FMZs and they will be included in the annual HOA or Approved Management Entity funded third-party inspections.
5. Large lots in Planning Areas 16/19 would include limited building zones (LBZs) where the properties are adjacent to open space areas. The LBZs would designate buffer areas where no building would be allowed. If a structure is built adjacent to the LBZ, then the LBZ can be maintained as an FMZ.
6. Fire apparatus access roads would be provided throughout the community, varying in width and configuration, but would all provide at least the minimum required unobstructed travel lanes, lengths, turnouts, turnarounds, and clearances required by the applicable code.
7. Firefighting staging areas and temporary refuge areas would be available throughout the development, as well as along roadways and Project Area green spaces so that firefighters will be able to stage operations and seek temporary refuge from wildfire, if necessary.
8. Water capacity and delivery would provide for a reliable water source for operations and during emergencies requiring extended fire flow.
9. A site-specific evacuation plan will be prepared for the Proposed Project and will include input and review ~~with~~ from SDCFA~~, law enforcement, and San Diego County Office of Emergency Services~~. (subsequently prepared as part of the Draft EIR, see Appendix 3.1.1-3)

The Draft EIR, Table 3.1.1-2, Project Design Features: Code Exceeding or Alternative Materials and Methods Fire Safety, provides the following list of "examples" of how the Proposed Project meets or exceeds code requirements:

Table 3.1.1-2
Project Design Features: Code Exceeding or Alternative Materials and Methods Fire Safety

Feature No.	Code Exceeding or Alternative Material or Method Feature
1	**Construction Fire Prevention Plan.** Details the important construction phase restrictions and fire safety requirements that would be implemented to reduce risk of ignitions and pre-plans for responding to an unlikely ignition.

Table 3.1.1-2
Project Design Features: Code Exceeding or Alternative Materials and Methods Fire Safety

Feature No.	Code Exceeding or Alternative Material or Method Feature
2	**Community Evacuation Plan.** A site-specific evacuation plan has been prepared for the Proposed Project and includes input and review with SDCFA (CODE EXCEEDING)
3	**HOA Wildfire Education and Outreach.** The Community HOA would include an outreach and educational role to coordinate with SDCFA, oversee landscape committee enforcement of fire safe landscaping, ensure fire safety measures detailed in this FPP have been implemented, and educate residents on and prepare facility-wide "Ready, Set, Go!" plans. (CODE EXCEEDING)
4	**Heat-Deflecting Landscape Walls.** Walls would be provided for 38 lots to provide additional fire protection and to enhance structure setback from top of slope. At a few locations, where FMZ is constrained to approximately 70 feet, walls would be provided as mitigation to provide same practical effect. (ALTERNATIVE MATERIALS AND METHODS FOR FMZ REDUCTIONS IN SOME LOCATIONS. ALSO A CODE EXCEEDING MEASURE AS IT IS NOT REQUIRED FOR STRUCTURE SETBACK)
5	**FMZ Third-Party Inspections.** Annual FMZ and LBZ/LBA inspections would be funded by the HOA and conducted by a qualified third-party consultant to certify that the Proposed Project's FMZs are maintained and LBZ/LBA have no authorized structures. (CODE EXCEEDING)
5	**Planning Areas 16/19 Roadside FMZs.** Roadside FMZs would be 50 feet wide on either side of the road, 30 feet wider than required, where roads traverse open areas with adjacent native fuels. (CODE EXCEEDING)
6	**Planning Areas 16/19 FMZ Maintenance Enforcement.** The HOA would be responsible for enforcing private property maintenance of large lot FMZs in PA 16/19. These FMZ areas would also be inspected by the third-party inspector. (CODE EXCEEDING)
7	**Trail Maintenance.** Trails within the Otay Ranch RMP/MSCP Preserve would include ongoing maintenance of flammable vegetation but not including vegetation removal alongside the trails. (CODE EXCEEDING)
8	**Wider Roads and Driveway Exclusion.** In South Village 14, Streets "A" and "M" include wider roads and do not have driveways, enabling free traffic flow and enhanced evacuation capability. (CODE EXCEEDING)

As determined by the Draft EIR, Section 3.1.1.2.4 Wildlife Hazards, on page 3.1.1-29,

> "The Proposed Project demonstrates compliance with applicable fire codes, consistency with the Proposed Project's FPP, and the ability to meet the County's emergency response objectives. Table 3.1.1-2 lists project design features that exceed code standards. As such, wildland fire impacts would be **less than significant**."

Fire Service Provision

The Proposed Project will provide a new fire station (FS 34) for the San Diego County Fire Authority (SDCFA), which will be centrally located within the Project Area and be capable of meeting the travel time requirements of the County General Plan. The station is anticipated to house a Type I structural fire engine with Advanced Life Support (ALS) capabilities and is anticipated to be staffed with three CAL FIRE firefighters and a SDCFA reserve firefighter.

The County General Plan Safety Policy S-6.4 requires that new development demonstrate that fire services can be provided which meet the minimum travel times identified in Table S-1 (Travel Time Standards from Closest Fire Station) in the General Plan. The travel time standards are based on Land Use Designations. This is separate from total response time and assumes call processing times and turnout/reflex times meet typical averages. Travel time is the most appropriate portion of the total response time to focus on because this, in large part, determines the geographic distribution of fire stations.

The San Diego County Fire Authority (SDCFA) calculates travel time using the formula found in the National Fire Protection Association (NFPA) 1142 Standard. The travel time formula in this standard is essentially the same as the ISO travel time formula except that the NFPA formula allows for the input of different speed constants. The formula was developed from a study that was conducted by the Rand Corporation and is a nationally-recognized method of determining travel time for fire apparatus. The formula contain a friction coefficient that accounts for acceleration/ deceleration and other impedances such as intersections etc.

Based on the proposed Land Use Designations for the Proposed Project, the travel time standard of 5 minutes is applicable to Village 14 and the travel time standard of 10 minutes is applicable to Planning Areas 16/ 19.

For the Proposed Project, the posted speed limits were used in the formula for established roadways leading to the project site (from existing fire stations) and a 35 mph speed constant was used in the formula to calculate travel times from the proposed fire station locations (temporary and permanent) to the furthest parcels in the project site.

Pursuant to Section 4.4.2 of the Fire Protection Plan (Appendix 3.1.1-2 to the Draft EIR) all habitable structures regardless of occupancy classification, building type or use, will be equipped with an automatic fire sprinkler system in accordance with the appropriate National Fire Protection Association (NFPA) Standard. This requirement exceeds state model building and fire code requirements and is specifically intended to improve firefighter and public safety, minimize fire damage, and limit environmental impacts.

In addition, SDCFA has executed an intergovernmental agreement that provides funding for additional staffing and a 103’ Quint Aerial Ladder Truck that is located at the existing SDCFA Jamul Fire Station (FS 36). This apparatus is staffed with four CAL FIRE firefighters with ALS capabilities and is in addition to the existing Type I structural fire engine that is assigned to this station with a separate crew of three CAL FIRE firefighters with ALS capabilities that cross-staff a Heavy Rescue Unit and a Type VI apparatus. Total SDCFA staffing at FS 36 is seven CAL FIRE firefighters. Additionally, through a cooperative agreement, FS 36 also houses two U.S. Fish and Wildlife Service (USFWS) Type III wildland fire engines staffed with four career

USFWS firefighters each and there is an ALS transport ambulance from Mercy Ambulance at this fire station also. Total combined staffing at FS 36 is 17 emergency personnel.

The SDCFA Otay fire station (FS 38) has a 105' Quint Aerial Truck Company that is staffed with 4 CAL FIRE career firefighters with ALS capabilities and there is also a Type I reserve structural fire engine at this station. A separate developer agreement in the Otay Mesa area will also fund additional career staffing for the Type I structural fire engine at FS 38 which will consist of 3 career CAL FIRE firefighters with ALS capabilities and one SDCFA reserve firefighter. The SDCFA Deerhorn Valley fire station (FS 37) has a Type I structural fire engine and is staffed with 2 CAL FIRE career firefighters with ALS capabilities and 1-2 SDCFA reserve firefighters. Lastly, the County has an Amador Agreement to fund staffing at CAL FIRE FS 30 located in Dulzura and, as a result, this station is staffed with three CAL FIRE career firefighters that respond on a Type III wildland interface fire engine throughout the year.

All of these assets will be available to support fire and emergency responses in the Proposed Project and surrounding areas in accordance with the SDCFA Fire Master Plan.

The cumulative response from the above referenced fire stations includes 36 emergency services personnel (25 CAL FIRE/SDCFA firefighters, 8 USFWS career firefighters and 2 ALS transport paramedics) on 7 fire apparatus (various configurations) and two ALS transport ambulances.

In summary, with the additional staffing and equipment located in the newly constructed Fire Station (FS 34) in the Proposed Project, the SDCFA would be able to meet the travel time standards in the County General Plan Safety Element. This, combined with the previously mentioned additional and strategically positioned existing resources and the inclusion of project design features designed to improve firefighter and public safety, are sufficient to provide appropriate emergency fire and Emergency Medical Service (EMS) services to the Proposed Project.

Wildfire Evacuation

As to emergency access, Appendix 3.1.1-3, Wildland Fire Evacuation Plan (WFEP) of the Draft EIR, was prepared in coordination with the County of San Diego, does not conflict with existing evacuation and pre-plans. As stated on page 3.1.1-29 of the Draft EIR, the Wildland Fire Evacuation Plan was prepared "based on the Unified San Diego County Emergency Services Organization and County of San Diego Operational Area Emergency Operations Plan – Evacuation Annex (Appendix 3.1.1-3). It also incorporates key information from the Jamul Community Protection Plan (Jamul Disaster Team 2006), Evacuation Plan Appendix."

The Wildland Fire Evacuation Plan identifies the Proposed Project's evacuation road network. The two primary ingress/egress routes are as follows:

1. Egress to the south (and west) via Proctor Valley Road – This is the primary Village 14 access road and connects with East H Street, which offers travel options to the west and south on State Route (SR) 125 into Chula Vista or to the north on SR-125 into Bonita and SR-54. SR-54 also provides travel options to the north towards Lemon Grove-Spring Valley or southwest toward National City. Likely neighborhoods using this access during an evacuation include: southern and central portions of Village 14, unless threat is to the east/northeast of the Proposed Project, in which case, all evacuations would occur to the south (and west).
2. Egress to the north on Proctor Valley Road – This secondary access road provides a route to Campo Road (SR-94) in Jamul, at which point travel to the north into Rancho San Diego/Casa de Oro or south to Dulzura/Campo is possible. Likely neighborhoods using this access road during an evacuation are northern portion of Otay Ranch Village 14 and Planning Areas 16/19, unless threat is to the east/northeast of the Proposed Project.

Section 4, Village 14 and Planning Areas 16/19 Evacuation Road Network, of Appendix 3.1.1-3 describes two evacuation options based on various factors and assumptions regarding potential wildland fires. Section 4.2 of the WFEP also evaluates the capacity of the surrounding road network. As described in Section 4.2 on page 15):

> Roadway capacity represents the maximum number of vehicles that can reasonably be accommodated on a road…[and] is typically measured in vehicles per hour and can fluctuate based on the number of available lanes, number of traffic signals, construction activity, accidents, and obstructions as well as positively by traffic control measures. … The Proposed Project includes improvements to vehicle capacity through road widening, paving, and related improvements.
>
> Each roadway classification has a different capacity based on level of service, with freeways and highways having the highest capacities. Based on traffic engineer estimates (Chen Ryan Associates 2017) and using peak numbers and a conservative estimate, roads that would be the most likely available to the Proposed Project's residents and their hourly capacities are presented in Table 1.

Under the first evacuation scenario, 70% of the Proposed Project's evacuating vehicles would travel south (and west) on Proctor Valley Road to Chula Vista and 30% would travel north (and east) on Proctor Valley Road to El Cajon area. Under the second evacuation scenario, 100% of the Proposed Project's vehicles would travel south (and west) on Proctor Valley Road into Chula Vista.

Intersections with competing traffic are a primary factor for slowing down evacuations. There are no such intersections with Proctor Valley Road from the Project Area south until developed areas in Chula Vista, and a limited number of intersections to SR-125. Law enforcement and emergency responders would control intersections as part of a pre-planned protocol. Therefore, Proctor Valley Road is considered appropriate for evacuation in this area.

These scenarios are described below:

First Evacuation Scenario:

Based on the factors and assumptions previously detailed regarding neighborhood evacuation routes, and incorporating standard pre-evacuation timeframes…, it is estimated that the 1,723 vehicles anticipated to use Proctor Valley Road south (minimum capacity of 1,900 vehicles/hour) to the improved Proctor Valley Road with four total lanes (4,700 vehicles/hour), to SR-125 (4,200 vehicles/hour), can be evacuated to urban Chula Vista within a 1-hour travel time and up to 1.5 hours of evacuation mobilization time. The total evacuation time is approximately 3 hours, including a safety factor to allow for potential impedances/delays of an additional 45 minutes. Simultaneous evacuation of the estimated 739 vehicles via Proctor Valley Road north (minimum capacity of 1,800 vehicles/hour) to SR-94 (1,900 vehicles/hour) and into developed areas of El Cajon would require approximately 30 to 45 minutes travel time. Allowing up to 90 minutes for evacuation mobilization … results in approximately 2 hours required for complete evacuation plus a safety buffer of 30 minutes resulting in a 2.5 hour timeframe.

Second Evacuation Scenario:

The following estimate is based on the factors and assumptions previously detailed regarding neighborhood evacuation routes, and incorporating standard pre-evacuation timeframes…. It is estimated that the 2,462 vehicles anticipated to use Proctor Valley Road south (minimum capacity of 1,900 vehicles/hour) to the improved Proctor Valley Road with four total lanes (4,700 vehicles/hour), to SR-125 (4,200 vehicles/hour), can be evacuated to urban Chula Vista within 75 minutes travel time. Additional mobilization time could require up to an additional 45 minutes. An additional time buffer is added to the evacuation timeframe to allow for impedances that may occur. In this case, adding 50% more time, or up to 45 minutes is considered appropriate.

Based on the post-mitigation capacity, the Wildland Fire Evacuation Plan estimates the potential amount of time needed to evacuate the Proposed Project is as follows:

Evacuation time of 2.5 to nearly 3 hours is considered acceptable for this type of community and is aided by the multiple ingress/egress points and the major road improvements to existing roads that would occur with the Project Area. This evacuation timeframe would be accommodated during large, wind-driven wildfires from the east/northeast where advance notice allows appropriate evacuation order timing/phasing. Wildfires originating closer to the community

could allow significantly less time for evacuation than would be required, and the Proposed Project offers decision makers contingency options, including evacuating or relocating a portion of the community (much lower number of vehicles and faster evacuation time, proportional to the vehicle total being relocated)."

The Draft EIR, Section 3.1.1.2.5, describes on page 3.1.1-30:

> "Site access, including roads, gates, and driveways, would comply with the requirements of the Consolidated County Fire Code (Section 96.1.503). The Proposed Project includes improvements to vehicle capacity through road widening, paving, and related improvements. For example, on-site roads will be constructed to a minimum unobstructed width of 24 feet and 26 feet at commercial buildings and schools. The Proposed Project would comply with secondary access and avoidance of dead-end roads that exceed the maximum allowable ~~800 or 1,320 feet, respectively~~dead-end road length. Any gates on private roads or on private driveways may be permitted, must comply with SDCFA standards for electric gates, and will not represent a dead-end road condition that jeopardizes the dead-end road length requirements for the Proposed Project; see Section 6.3 of the FPP (Appendix 3.1.1-2) for more specifications on road requirements and emergency access." (Draft EIR, pp. 3.1.1-30)

The Wildland Fire Evacuation Plan also provides that "fire and law enforcement official will identify evacuation points before evacuation routes are announced to the public. Evacuation routes are determined based on the location and extent of the incident and include as many pre-designated transportation routes as possible." (Appendix 3.1.1-3, Section 4.1, pg. 15) However, emergency personnel may determine that a mass evacuation of the Proposed Project would result in vehicles on roadways that would be less safe than residents remaining on site in protected homes, the school, or other designated areas. This contingency plan to temporarily shelter people on site would alleviate the reliance on Proctor Valley Road to evacuate all residents when there may not be enough time to do so. The Draft EIR determined that impacts related to Emergency Response Plans would be **less than significant**. (pg. 3.1.1-31)

Conclusion

Based on the Draft EIR's evaluation, FPP, and WFEP, the Proposed Project would comply with all applicable fire codes, provide adequate emergency access routes and evacuation plans, and would not create any significant impacts to Wildfire Hazards or Emergency Response Plans.

8.4.10 Community Character and Plan Consistency

This Thematic Response addresses comments stating that the Proposed Project is inconsistent with the Community Character of the Project Area. The County does not agree that the Proposed Project is inconsistent for the reasons discussed in this response.

Background

Impacts to community character are analyzed in Section 3.1.3, Land Use and Planning, and Section 2.1, Aesthetics, of the Draft EIR. Specifically, as stated on pg. 3.1.3-18 of the Draft EIR:

> Impacts to land use/community character are considered significant if the Proposed Project would result in any of the following:
>
> - Physically divide an established community.
> - Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to, the General Plan, Community Plan, Specific Plan, or Zoning Ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.
> - Conflict with an applicable habitat conservation plan or natural community conservation plan.

Section 2.1.2.4 establishes the following threshold:

> The project would not comply with applicable goals, policies, or requirements of an applicable County Community Plan, Subregional Plan, or Historic District's Zoning.

Therefore, an impact to community character would occur if the Proposed Project physically divided an established community; conflicted with any applicable Community or Subregional Plan Historic District, land use plan, policy or regulation; or conflicted with an applicable habitat conservation plan or Natural Communities Conservation Plan (NCCP). As analyzed and discussed in Sections 2.1.2.4 and 3.1.3 of the Draft EIR, the Proposed Project would not result in a significant impact under any of these three thresholds.

Physically divide an established community

As to the first threshold, the Draft EIR, in Section 3.1.3.2.1, Physically Divide and Established Community, indicates that "[t]he Project Area is currently undeveloped but is planned as a 'Specialty Village.'" Regarding the surrounding land uses, the Draft EIR states:

> Existing development, including the Chula Vista master-planned communities of Eastlake Woods, Bella Lago, Salt Creek Ranch, and Rolling Hills Ranch, is

> located approximately 1 mile to the southwest of the Project Area…. Existing communities in the County include Jamul and Rancho San Diego, located northeast of the Project Area…community of Jamul has a rural character, as reflected by primarily large-lot estates and horse ranches. The small commercial corridor through the community of Jamul is located approximately 1 mile to the north of the Project Area. Rancho San Diego, a built-out mixed-use planned community composed of low- and medium-density residential and commercial land uses, is located approximately 2 miles to the northwest of the Project Area. Rancho San Diego is physically and visually separated from the Project Area by mountainous terrain.

Accordingly, "there is no existing established community surrounding the Project Area that would be physically divided by construction or operation of the Proposed Project…"

The land uses in the Project Area "are governed by the Otay Ranch GDP/SRP and must be consistent with the goals, objectives, and policies of that document." The Otay Ranch GDP/SRP identifies Village 14 as a "Specialty Village," and is further defined as a "Transitional Village."

Consistent with the designation as a "Specialty Village," the Draft EIR states that "[t]he Proposed Project would provide a mix of residential, park, and public service land uses, consistent with land uses already present in the easterly neighborhoods of Chula Vista." Further, and critically, consistent with the its designation as a "transitional village," the Proposed Project would include:

> single-family homes and associated residential-serving land uses, and larger-lot single-family residential uses (estates and ranchettes) in Planning Areas 16/19 that would serve as a transitional area between the existing development within the City of Chula Vista and the rural community of Jamul.

In addition, the Draft EIR describes how anticipated improvements to Proctor Valley Road, between the City of Chula Vista and community of Jamul, "would not include a major roadway, physical barrier, infrastructure improvement, building, or structure that would physically divide an established community," because the Proposed Project would actually reduce the classification of Proctor Valley Road from a 4-lane Major Road to a 2-lane Community Collector, consistent with County General Plan Mobility Element and Jamul/Dulzura Subregional Plan designation for Proctor Valley Road, and would construct Proctor Valley Road through property that is currently unimproved, not "an established community".

Section 3.1.5, Population and Housing, further finds that "[t]he Project Area is currently undeveloped. Implementation of the Proposed Project would convert vacant land to homes,

infrastructure, and associated amenities, and would not displace any existing housing or people, or necessitate construction of replacement housing elsewhere." (pg. 3.1.5-11)

As a result, the Draft EIR determined "the Proposed Project is designed for planned uses consistent with the Otay Ranch GDP/SRP. Therefore, impacts associated with physical division of an established community would be less than significant."

Conflict with any applicable land use plan, policy or regulation

As to the second threshold, conflicts with applicable plans, policies and regulations, as stated in Section 1.2.15, the Proposed Project would include a series of minor amendments to the General Plan and Otay Ranch GDP/SRP, which include the following:

County of San Diego Mapping Corrections

These corrections to the County Land Use Designation and Zoning maps are designed to correct minor inconsistencies and GIS registration errors between the County's General Plan land use, regional categories, and zoning maps and the approved Otay Ranch GDP/SRP. These are shown in Section 3.1.3, Figures 3.1.3-1 through 3.1.3-8.

County General Plan Mobility Element Amendments

The Proposed Project would retain Proctor Valley Road's Mobility Element classification as a two-lane Light Collector. (County of San Diego 2011a), but proposes to "modify the Mobility Element classification … to 2.2A Light Collector (raised median two-lane divided) for the segment between the City of Chula Vista/County boundary and Village 14 Street "Y"…and [t]he northern segment of Proctor Valley Road would be realigned and reclassified as a modified 2.2F Light Collector. As a result, "approximately 1,650 feet (0.3 miles) of the road between South Village 14 and Central Village 14 would be realigned … to provide a 100-foot buffer between … vernal pools that are located in the City of San Diego's Cornerstone Lands and the road."

Otay Ranch GDP/SRP Circulation Plan Amendments

Consistent with the General Plan Mobility Element Amendments described above, the Proposed Project would amend the Otay Ranch GDP/SRP "Circulation Element Roads" exhibit to reflect two revisions to the Proctor Valley Road alignment. These include (1) realigning the segment of Proctor Valley Road in the southern portion of Village 14 eastward to avoid vernal pools and (2) amending the alignment of Proctor Valley Road "to conform to the existing Proctor Valley Road right-of-way, rather than pioneering a new roadway through the Otay Ranch RMP/MSCP Preserve area in Planning Area 16." In addition, under the Proposed Project, Proctor Valley Road would be improved to a two-lane collector road, consistency with the County General Plan Mobility Element, not a four-lane major road as contemplated in the Circulation Plan for the Otay Ranch GDP/SRP." Thus, the Proposed

Project includes an amendment to the Otay Ranch GDP/SRP Circulation Plan to reduce Proctor Valley Road from a four-lane major road to a two-lane collector."

Otay Ranch GDP/SRP Amendments

The Proposed Project is consistent with the underlying County General Plan and Community Plan land uses and zoning for the Project Area. As described in Section 3.1.3, Land Use and Planning, and Appendix 3.1.3-1, General Plan Amendment Report (GPAR), the Proposed Project is consistent with the County General Plan, Zoning, and Otay Ranch General Development Plan/Otay Subregional Plan (Otay Ranch GDP/SRP).

In addition, the Proposed Project would not increase the overall number of homes approved in the Otay Ranch GDP/SRP; nor would it increase the housing density, as that term is used in the GDP/SRP. Ultimately, the Proposed Project does not require or request a General Plan Land Use Amendment, other than those necessary to correct mapping errors. The corrective changes include a minor redline change to the Village 14 and PA 16/19 descriptions; redline changes to the land use tables for the Proctor Valley (PV) parcels, Village 14, and PA 16/19; and conforming amendments to bring the GDP/SRP into alignment with recent City of Chula Vista GDP amendments.

The Proposed Project would amend the Otay Ranch GDP/SRP to reflect the proposed land plan, including adjustments to the densities, deleting references to possible golf course and equestrian uses, and reducing the acreage for commercial uses. Relative to the proposed land plan and acreage for commercial uses, the Proposed Project includes a Specific Plan and Tentative Map which further refine and implement the land uses and their configurations that conceptually were designated by the Otay Ranch GDP/SRP. Relative to adjustments to densities, the Proposed Project Specific Plan and Tentative Map land use plan similarly refine and implement the Otay Ranch/ GDP/SRP land uses, which provided gross acreages and density totals, at the tentative-map scale; however, as noted above, the density and total number of homes proposed are consistent with those in the Otay Ranch GDP/SRP. Relative to references to a golf course and equestrian use, the Proposed Project would eliminate these uses, which were not required by the Otay Ranch GDP/SRP. Please refer to Appendix 3.1.3-1, General Plan Amendment Report, for further explanation regarding these refinements.

The Jamul/Dulzura Subregional Plan, adopted August 3, 2011 as part of the County of San Diego General Plan Update, provided that

> due to the size and complexity of [the Otay ranch] project, the policies governing the development of the Otay Ranch area within the Jamul/Dulzura planning boundaries have been placed in Volume 2 of the Otay Subregional Plan text. [The Otay Ranch Project] also amended the boundaries between the Jamul/Dulzura and Otay Subregion to the southwestern area of the Jamul/Dulzura Planning Area, and

> by transferring approximately 4,000 acres in the Proctor Valley area from the Otay Subregion to the Jamul/Dulzura Subregion.

In addition, Policy 15 of the Jamul/Dulzura Subregional Plan clarifies that:

> [t]he development policies for the Otay Ranch project are contained in Volume 2 of the Otay Subregional Plan Text per GPA 92-04 adopted by the Board of Supervisors on October 28, 1993. The policies contained in the Jamul/Dulzura Plan Text apply to the areas of the Otay Ranch located within the Jamul/Dulzura Subregion. In case of conflict, the policies contained in Volume 2 of the Otay Subregional Plan Text shall take precedence.

Effectively, the Otay Ranch GDP/SRP, as Volume II of the Otay Subregional Plan, is the controlling subregional plan for the Otay Ranch in the Jamul/Dulzura Subregional Plan area. Section 3.1.3.2.2 of the Draft EIR analyzes the Proposed Project's consistency with applicable goals, policies, and regulations of the "County General Plan, Jamul/Dulzura Subregional Plan, Otay Ranch GDP/SRP, County Zoning Ordinance, Otay Ranch RMP, MSCP Plan, MSCP County Subarea Plan, County Light Pollution Code, City of Chula Vista General Plan Land Use and Transportation Elements, Otay River Watershed Management Plan, Otay Valley Regional Park Concept Plan, and SANDAG 2050 RTP/SCS." Appendix 3.1.3-1, General Plan Amendment Report, provides a "comprehensive policy consistency analysis of the County General Plan, Jamul/Dulzura Subregional Plan, and Otay Ranch GDP/SRP." Further, Section 2.7, Greenhouse emissions, and Table 2.7-12 (title) provide a comprehensive policy consistency analysis of the SANDAG 2050 RTP/SCS."

As analyzed and described in Section 3.1.3.2.2 of the Draft EIR, the Proposed Project would be consistent with these applicable goals, policies, and regulations. Accordingly, the Draft EIR determined that "[t]he Proposed Project would not conflict with any applicable goals, policies, or regulations; therefore, impacts would be less than significant." (Draft EIR, page 3.1.3-29)

Conflict with an applicable habitat conservation plan or natural community conservation plan

As to the third threshold, conflicts with an applicable habitat conservation plan or natural community conservation plan, Section 2.4.3.5, Guideline 4.5: Local Policies, Ordinance and Adopted Plans and Section 3.1.3.2.3, Conflicts With Habitat Conservation Plan or Natural Community Conservation Plan of the Draft EIR analyze the Proposed Project's consistency with the Multiple Species Conservation Program (MSCP) Plan, including the County MSCP Subarea Plan, City of Chula Vista MSCP Subarea, and City of San Diego MSCP Subarea Plan, and the Otay Ranch Resource Management Plan (RMP). The following is a summary of the Proposed Project's consistency with these conservation plans as analyzed in Section 3.1.3.2.3 of the Draft EIR.

The Draft EIR finds that, "the Proposed Project is in conformance with regional and subregional planning documents, including the applicable MSCP Subarea Plans…" and that "[t]he Development Footprint … is consistent with the County of San Diego General Plan, Otay Ranch GDP/SRP, and Otay Ranch RMP Preserve" because "development of the Proposed Project would not occur within areas that have been identified by the County or resource agencies as open space Preserves." (See Section 3.1.3.2.3, pg. 3.1.3-29)

In addition, the Proposed Project is within the Otay Ranch GDP/SRP planning area, "which is an approved hardline project under both the MSCP County Subarea Plan and Chula Vista MSCP Subarea Plan … which are approved by the Wildlife Agencies, meet conservation targets established for coastal sage scrub." As a result, the Draft EIR concludes that, "the Proposed Project is not subject to compliance with Section 4.3 of the Natural Communities Conservation Planning Process Guidelines." (See Draft EIR Section 3.1.3.2.3, pg. 3.1.3-30)

Further, because the MSCP County Subarea Plan did not identify the areas referred to as PV1, PV2 and PV3 as either MSCP "preserve" or "hardline" development, any construction or development on the three parcels is subject to the Biological Mitigation Ordinance (BMO). The BMO Analysis and Findings are included as an Appendix A to the Biological Resources Technical Report, which is included as Appendix 2.4-1 to the Draft EIR. The BMO Analysis and Findings require additional mitigation land, translocation of certain plant species and placing some of PV2 and PV3 into Conserved Open Space subject to open space easements. Therefore, PV1, PV2 and PV3 are in compliance with the MSCP Subarea Plan, as determined by Section 10 of the MSCP Implementing Agreement.

Based on the above, the Draft EIR concludes that "[t]he Proposed Project conforms to the goals and requirements outlined in the …. MSCP County Subarea Plan, City of San Diego's MHPA, City of Chula Vista MSCP Subarea Plan, and Otay Ranch RMP," and that because the Proposed Project is consistent with the MSCP Plan, MSCP County Subarea Plan, and Otay Ranch RMP, "[t]he Proposed Project would not conflict with any applicable Habitat Conservation Plan or NCCP, and impacts would be less than significant." (See Draft EIR, Section 3.1.3.2.3, pg. 3.1.3-30)

Compliance with applicable goals, policies, or requirements of an applicable County Community Plan, Subregional Plan, or Historic District's Zoning

Consistency with community character and compliance with applicable goals, policies, or regulations of an applicable County Community Plan, Subregional Plan, or Historic District are discussed in Section 2.1.2.4, Compliance with Applicable Community and Regional Plans, of the Draft EIR. As stated on page 2.1-36 of the Draft EIR,

> A General Plan Amendment Report (Appendix 3.1.3-1) has been prepared for the Proposed Project that includes a policy-by-policy discussion of how the Proposed Project would meet applicable goals and policies of the County's General Plan, the Otay Ranch GDP/SRP (included in the Otay Subregional Plan Volume II), and the Jamul/Dulzura Subregional Plan.

The Draft EIR also includes Table 2.1-1, Consistency Analysis – Visual Resource Policies, which summarizes applicable Otay Ranch GDP/SRP goals and policies related to visual resources. The analysis contain in Table 2.1-1 demonstrates how the Proposed Project is consistent with these policies. The Draft EIR, pages 2.1-36 through 2.1-40 also analyze the Proposed Project's compliance with the applicable goals and policies of the Otay Ranch GDP/SRP (Otay Subregional Plan Volume II) and the mitigation measures identified in the Otay Ranch PEIR Landform Alteration/Aesthetics section and concludes that impacts would be less than significant.

Conclusion

Accordingly, the Draft EIR has thoroughly evaluated the Proposed Project's impacts to Community Character and compliance and consistency with applicable Community, Subregional, planning and policy plans and documents, including the Otay Ranch GDP/SRP, Jamul/Dulzura Subregional Plan, and San Diego County General Plan. Based on the Proposed Project's consistency with these plans, impacts were determined to be less than significant.

8.4.11 Inducements to Growth

This thematic responses addresses comments on the Draft EIR which assert that the Draft EIR did not adequately analyze the potential Growth Inducing effects of the Proposed Project.

The Proposed Project is part of the Otay Ranch Master Planned Community, and was analyzed under the previously certified Otay Ranch GDP/SRP PEIR (City of Chula Vista and County of San Diego 1993). The analysis in the Otay Ranch PEIR included potential Growth Inducing and Cumulative Impacts. Further, the Proposed Project is located within unincorporated County of San Diego and the Proposed Project's land uses are consistent with the land uses in the San Diego County 2011 General Plan Update (GPU). As analyzed throughout the Draft EIR, specifically in Section 3.1.3, Land Use and Planning, the Proposed Project is consistent with both the County General Plan (including the Jamul Community Plan) and the Otay Ranch GDP/SRP. Therefore, the growth inducing and cumulative impacts of the Proposed Project have previously been analyzed in these program-level EIRs. The County GPU PEIR considers projects and growth at both the county-wide (County General Plan) and Otay Ranch PEIR considers community-wide (Otay SRP/Community Plan) levels.

The Draft EIR addresses potential Growth Inducing impacts in Chapter 1.8, Growth Inducing Impacts, et seq. consistent with the County's Format and Content Requirements, specifically page 18 of the *County EIR Format and Content Requirements*.

As explained on page 1-40 of the DEIR,

> Section 15126.2(d) of the CEQA Guidelines requires an EIR to discuss 'the ways in which the Proposed Project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment,' including projects that would remove obstacles to population growth. The guidelines also require that an EIR discuss 'the characteristics of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively' (14 CCR 15000 et seq.).

The Draft EIR considered the following questions relative to whether the Proposed Project would result in or contribute to growth inducing impacts:

- Would the project remove obstacles to growth (e.g., through the construction or extension of major infrastructure facilities that do not presently exist in the Project Area, or through changes in existing regulations pertaining to land development)?
- Would the project result in the need to expand one or more public services to maintain desired levels of service?
- Would the project encourage or facilitate economic effects that could result in other activities that could significantly affect the environment?
- Would approval of the project involve some precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment?

The Draft EIR concluded in Section 1.8.1, Removing Obstacle to Growth, that the Proposed Project would not remove obstacles to growth, as most of these obstacles were eliminated through the Otay Ranch GDP/SRP. The Otay Ranch PEIR identified direct and cumulative growth inducing impacts of Otay Ranch because the GDP/SRP would "increase the population, housing, and employment opportunities in excess of the growth already occurring or projected for the area," and would extend infrastructure to areas that did not previously have such infrastructure.

Further, the Draft EIR found that, "new constraints on development reduce the Proposed Project's potential to induce growth," and identified the following changes to the Otay Ranch planning area which demonstrate that the Proposed Project would not remove existing obstacles to growth.

- The Otay Ranch GDP/SRP's approved population, housing, and employment projections, including those of the Proposed Project, have been accounted for in regional projections;

therefore, the Proposed Project is consistent with the growth projected for the area and are not considered growth inducing.

- Public agencies have acquired significant portions of Otay Ranch Village 14, Village 15, and Planning Area 16; therefore, the assumptions regarding the number and size of certain utility improvements (i.e., sewer, water, storm drainage and roads) necessary to serve Otay Ranch's San Ysidro and Proctor Valley Parcels no longer apply because the cumulative level of development in these parcels is less than assumed by the Otay Ranch GDP/SRP.
- The MSCP Plan and the MSCP County of San Diego Subarea Plan were adopted and generally coincide with the Otay Ranch RMP Preserve boundaries, creating greater certainty that the Preserve system will be fully implemented. Specific to the Proposed Project, approximately 426.7 acres of Otay Ranch RMP Preserve lands and approximately 350 acres of Otay Ranch RMP Preserve outside of the Project Area would be conveyed to the Otay Ranch Preserve Owner/Manager (POM) as part of the Preserve design that establishes an 11,375-acre Otay Ranch RMP Preserve. Further, the Project Area is surrounded by MSCP Preserve lands around the eastern and northern boundaries of the Project Area, limiting growth-inducing impacts of the Proposed Project. Combined with the public agencies' acquisition of Otay Ranch GDP/SRP developable land and the changes to the Otay Ranch planning area discussed above, implementation of the MSCP Preserve will ensure the Proposed Project's growth-inducing effects are less than what the Otay Ranch PEIR anticipated.

As described in more detail in the DEIR at page 1-42, "[a] project may also result in growth-inducing impacts through revisions to land use policies, such as general plan amendments, annexations, and rezones." The Proposed Project includes (1) an Amendment to the County General Plan Mobility Element and Otay Ranch GDP/SRP relative to Proctor Valley Road; however, the proposed amendment would not expand roadway capacity, which may result in an inducement to growth, and (2) minor boundary adjustments to correct mapping inconsistencies, however, no policy amendment or rezone is proposed.

As explained in the Draft EIR, Section 1.8.2, Growth-inducing impacts may result from extension or expansion of public services to a project site. The Proposed Project includes plans to extend public services and utilities to the Project Area; however, the Proposed Project has already been anticipated by the various service providers at a level greater than or commensurate with the Proposed Project.

Relative to water service, the Proposed Project is included in the service area of the Otay Water District (OWD), and has been incorporated into OWD's Master Plan. Although water lines would be extended to the Project Area, these facilities have been included in the OWD Master Plan since at least 1991, and, in fact, the facilities required to serve the Project Area have been downsized since the original master planning for the area. Specifically, the 1991 Master Plan shows a 36"

transmission line and a 10 MG storage 1296 Zone reservoir in Planning Area 16/19 whereas current planning is for a 20 "transmission line and 2.0 MG 980 Zone Reservoir adjacent to Village 14). Accordingly, implementation of the Proposed Project's water facilities will not be growth inducing.

Relative to wastewater, sewer service would be extended to the Project Area as anticipated and assumed by the Otay Ranch GDP/SRP in 1993. Sewer capacity would be provided by the County of San Diego using the City of Chula Vista's sewer conveyance system, including the Salt Creek Interceptor (designed to handle anticipated City and County projects within Otay Ranch) which was designed following the adopted of the Otay Ranch GDP/SRP to accommodate flows from the Proposed Project. Capacity exists to accommodate the needs of the Proposed Project (see Appendices 3.1.8-1 and 3.1.8-2), and the City of Chula Vista and the County of San Diego entered into a sewer transportation agreement (July 2016) that only allows units approved in Otay Ranch, including the Proposed Project, to connect to this sewer system. Accordingly, potential growth-inducing impacts associated with extension of water and sewer services to the Project Area would be **less-than-significant**.

Relative to emergency fire service and law enforcement services, the Proposed Project reserves a 2.3-acre public safety site which would include a fire station and satellite sheriff's facility. The certified Otay Ranch PEIR previously analyzed emergency fire service, sheriff's service, and a fire station. Because the Proposed Project's public service needs are no greater than those already assessed in the certified Otay Ranch PEIR, and because the public safety site would not be within the General Plan Safety Element (Table S-1) travel time of any major, privately owned development property due to the surrounding MSCP Preserve, the Proposed Project's need for, and provision of, fire and law enforcement services would not have growth-inducing impacts.

Relative to school services, the Proposed Project reserves an elementary school site (9.7 acres) centrally located within the Village Core, which may serve up to approximately 460 elementary school students generated by the Proposed Project; however, the CVESD may decide that an elementary school located within the Project Area is either not needed or not ideal for its particular needs. In such case, the elementary school would not be built. The Proposed Project also is anticipated to generate 136 middle school students, and 256 high school students who are anticipated to be accommodate in existing middle and high schools (see page 1-44); therefore, no new middle or high school facilities are required as a result of the Proposed Project which may induce additional growth. Because the student generation for the Project Area is no greater than already analyzed in the certified Otay Ranch PEIR as a result of state acquisition of Otay Ranch developable lands, the Proposed Project would not have a growth-inducing impact on schools.

The Proposed Project also would require construction of roads to provide local access to the Proposed Project and adequate internal circulation. These roads would not provide direct access to any off-site areas or increase the capacity of the overall regional circulation system.

The Draft EIR, Section 1.8.3 explains further that "[a] project may encourage growth through economic stimuli, such as the construction of homes, golf courses, shopping centers, and industrial facilities" and therefore result in growth inducing impacts. The Proposed Project includes 10,000 square feet of commercial/retail uses which are intended to provide neighborhood-serving opportunities for the residents of Project Area; and while some economic activity may be generated by non-residents, this neighborhood-focused commercial is not anticipated to result in growth including impacts. Relative to the construction of new homes, the Proposed Project would not foster growth beyond that already analyzed and planned for in Otay Ranch Village 14 and Planning Areas 1/19; therefore, the growth-inducing impacts of the Proposed Project were previously analyzed in the certified Otay Ranch PEIR. The Proposed Project does not include the golf course analyzed in the certified Otay Ranch PEIR. Therefore, the Proposed Project is not likely to provide an economic stimulus to growth.

Finally, the Proposed Project does not include any precedent-setting actions that, if approved, would specifically allow or encourage other projects and resultant growth to occur in the area.
Further, the Draft EIR adequately analyzes the Proposed Project's cumulative impacts. The County's *EIR Format and Content Requirements* allows for two general approaches to address Cumulative Impacts, a List of Projects Method, and a Summary of Projections Methods. As explained on page 1-40 of the Draft EIR, "the geographic scope of the cumulative analysis for each environmental topic in Chapters 2 and 3 includes a combination of growth projections and a project list." Table 1.0-7, List of Cumulative Projects, of the Draft EIR identified cumulative projects within the County's jurisdiction. The Draft EIR identifies additional projects specific to each issue area which may contribute to cumulative impacts relative. Accordingly, each subsection of the Draft EIR appropriately and adequately identified the cumulative study area and considered all past, present, and reasonably foreseeable future projects.

Although implementation of the Proposed Project would result in the establishment of new homes, businesses, and public facilities, the associated increases in population, housing, and employment represent growth previously planned for, and anticipated to occur within the Otay Ranch GDP/SRP, Village 14 and Planning Areas 16/19, as analyzed in the certified Otay Ranch GDP/SRP Program EIR. The Program development was also anticipated in the County General Plan Update. Therefore, because the Proposed Project would result in similar or less development (Appendix 3.1.3-1, General Plan Amendment Report) than anticipated in the Otay Ranch GDP/SRP and County General Plan Update, it would not contribute to any new cumulative or growth inducement. Further, the Proposed Project would reduce the size of Proctor Valley Road from four lanes to two lanes and would eliminate Proctor Valley Road easterly toward SR-94 through Planning Area 16. Also, the Proposed Project is adjacent to Otay Ranch RMP/MSCP Preserve lands to the west, north, and east, and Lower Otay Reservoir to the south, which would physically constrain any additional growth. For these reasons, the Proposed Project, while accommodating growth already planned for, would not significantly induce growth.

8.4.12 Water Shortage/Drought

This Thematic Response addresses comments on the Draft EIR state that climate change has caused, and will continue to cause, severe droughts in California and that the Draft EIR ignores the evidence and fails to acknowledge the projections for long-term droughts and the induced water supply deficits that will occur. Comments state that measures must be identified to supplement the water supply, and evaluate the impacts of obtained "new" water to meet supply deficits. Other comments state that drought conditions will grow worse and that the region lacks sufficient water supplies to support additional development.

This thematic response summarizes the Draft EIR's analysis of water supply, which takes into account drought conditions, the status of California's drought, and the actions taken in response to drought conditions. This response shows that: (a) there are sufficient, reliable water supplies to serve the water demands of the Proposed Project, in addition to existing and planned future water demands within the Otay Water District's potable service area; (b) the Proposed Project includes water conservation features, as well as the Proposed Project's required Water Supply Assessment; (c) numerous regulatory actions have been taken in response to drought conditions to ensure long-term water supplies remain available and reliable; and (d) new development provides increased water conservation and efficiency benefits in comparison to existing development.

EIR Water Supply Analysis

In the Draft EIR, the County has evaluated impacts associated with providing water to the Proposed Project, and the impact analysis accounted for dry year and multiple-dry year conditions (i.e., drought conditions). (Draft EIR, Section 3.1.8, Utilities and Utility Systems, pp. 3.1.8-34 through 3.1.8-35.) Pursuant to CEQA and the State CEQA Guidelines, the Draft EIR also analyzed the adequacy of water supplies needed to serve the Proposed Project's water demand, in addition to the existing and planned future water demands within the potable water service area of the Otay Water District (where the Proposed Project site is situated). (*Ibid*.) This analysis relied, in part, on the Proposed Project's Water Supply Assessment & Verification Report (WSAV), and the regional and local Urban Water Management Plans (UWMPs) adopted by the Metropolitan Water District of Southern California (MWD), the San Diego County Water Authority (Water Authority), and the Otay Water District (OWD). (*Ibid*.)

Further, OWD's 2015 UWMP, which was relied on in preparing the Draft EIR's water analysis, identifies numerous existing conditions that affect water demand, including climate/weather conditions, to provide a basis for estimating future water requirements. (See OWD 2015 UWMP, pp. 3-1 through 3-5.) As part of the UWMP, OWD quantifies past and current water use and forecasts the total water demand for its water system. (*Id*. pp. 4-1 through 4-6.)

In addition, OWD's 2015 UWMP addresses climate change as an uncertainty to the challenge of water supply planning. (*Id*. pp. 4-7 through 4-9.) The analysis discloses that drought conditions can adversely affect and reduce water supplies. It provides that its most vulnerable water sources subject to climate change impacts is OWD's imported water supplies from the Water Authority, especially from water sources originating from mountain snow pack (e.g., Sierra Nevada snow pack). (*Ibid*.) The UWMP discloses the areas of concern due to climate change for water planners, including reduced snow pack, increased intensity and frequency of extreme weather conditions, and rising sea levels affecting water supplies. (*Ibid*.) The UWMP highlights the Water Authority adaptive management and mitigation efforts. (*Ibid*.) The UWMP also correctly points out that uncertainties remain regarding the exact timing, magnitude, and regional impacts of temperature and precipitation changes due to climate change. (*Ibid*.) Despite the identified uncertainties, OWD evaluates its urban water supplies for reliability in normal, single-dry, and multiple-dry years over the next 25 years, in five-year increments. (*Id*. pp. 7-1 through 7-6.)

Based on OWD's 2015 UWMP, both MWD's and the Water Authority's 2015 UWMPs include a discussion of supply reliability under the same long-term variable water year conditions, and those plans also account for climate change impacts on the region's water supplies.

For example, MWD's plan used a computer model to evaluate 70 years of historic hydrology and develop estimates of water surplus or shortage, and the analysis determined that MWD could maintain reliable supplies during normal, or dry-year conditions from 2015 through 2040, even in multiple dry year periods. (*Id*. p. 7-1.)

Further, results from the Water Authority's 2015 UWMP reliability assessment demonstrates that the region's existing and projected water resource mix is drought-resilient, with only minor shortages during multiple dry periods occurring 15 to 20 years in the future and that such shortages can be addressed through extraordinary water conservation actions and if necessary, dry-year water transfers. (*Id*. pp. 7-1 through 7-2.) Section 9.5 of the Water Authority's 2015 UWMP describes the additional planned supply projects that the Water Authority could utilize in the future to meet potential water shortages during dry year periods. (*Ibid*.)[31]

Importantly, OWD's 2015 UWMP also documents the District's water shortage contingency planning efforts; and those efforts account for droughts, including California's "most significant droughts." (Id. pp. 8-1 through 8-8.) The District also relies on water conservation as part of OWD's 2015 UWMP and its long-term strategy to meet its water needs. (*Id*. pp. 9-1 through 9-2.)

As reported in the Proposed Project's WSAV, (Appendix 3.1.8-4 of the Draft EIR) page 3, MWD's 2015 UWMP findings state that MWD has supply capabilities that would be sufficient

[31] The Otay Water District's 2015 UWMP is incorporated by reference and available for public review upon request to the County. In addition, the Water Authority's 2015 UWMP is likewise incorporated by reference and available for public review upon request to the County, and, Section 9.5 of that report.

to meet expected demands from 2020 through 2040 through supply implementation and continued development of a diversified resource mix including programs in the Colorado River Aqueduct, the State Water Project, the Central Valley transfers, local resource projects, and in-region storage that enables the region to meet its water supply needs.

Further, as reported in the project's WSAV, page 3, the Water Authority Act, Section 5, subdivision 11, states that the Water Authority "as far as practicable, shall provide each of its member agencies with adequate supplies of water to meet their expanding and increasing needs." To supplement OWD's water contingency planning, the Water Authority's 2015 UWMP contains a detailed water shortage contingency analysis that addresses regional shortages and drought management. The analysis demonstrates that the Water Authority and its member agencies (including OWD) are taking actions to prepare for and appropriately manage an interruption of water supplies, including a drought response plan. OWD finds that these actions will help the region avoid or minimize the impacts of shortages and ensure an equitable allocation of supplies due to prolonged droughts or other supply shortfall conditions. (See Appendix 3.1.8-4, WSAV, p. 3.)

Thus, water agencies throughout California continue to face climate, environmental, legal, and other challenges that impact water source supply conditions, such as court rulings affecting the Sacramento-San Joaquin Delta and reoccurring droughts impacting the western states. Even with these ever present challenges, OWD finds that the Water Authority and MWD, along with OWD, fully intend to have sufficient, reliable supplies to serve demands. (See Appendix 3.1.8-4, WSAV, p. 4.)

Based on the analysis in the Draft EIR and the record, the County has determined that project-specific and cumulative impacts on water supplies and water delivery systems would be less than significant and no mitigation measures would be required. *(E.g.*, Draft EIR, Section 3.1.8, Utilities and Utility Systems, pp. 3.1.8-34 through 3.1.8-35; p. 3.1.8-48.) Based on that analysis, the County has further determined that the Proposed Project's water supply analysis is consistent with the applicable adopted plans, policies, and ordinances with regard to water supplies and related topics. In addition, the Proposed Project represents development scenario's that are being planned throughout California and have included details for short/long term water sources/ supplies and applying direct efficiency measures to substantially reduce water usage.

Water Shortage and Drought Response

In addition to the information provided in Section 3.1.8 of the Draft EIR, the Water Authority — the wholesale water supplier for the San Diego region — has plans in place to help manage demand during times of limited supply (e.g., droughts). The Water Authority's plans and programs, described below, are implemented working with other retail water districts or agencies in the San Diego region (including OWD).

To assist the San Diego region manage water resources when supplies are limited (e.g., droughts), the Water Authority's Board, in August 2017, approved the Water Shortage Contingency Plan (WSCP). This planning document outlines a series of orderly, progressive steps for the Water Authority to take during shortages to minimize impacts to the region's economy and quality of life. The WSCP is consistent with the long-term framework contained in the April 2017 Final Report, *Making Water Conservation a California Way of Life, Implementing Executive Order B-37-16*. The WSCP is incorporated by reference and available for public review upon request to the County. It is also available at the Water Authority's website (http://www.sdcwa.org/sites/default/files/Water%20Shortage%20Contingency%20Plan%20August%202017.pdf).

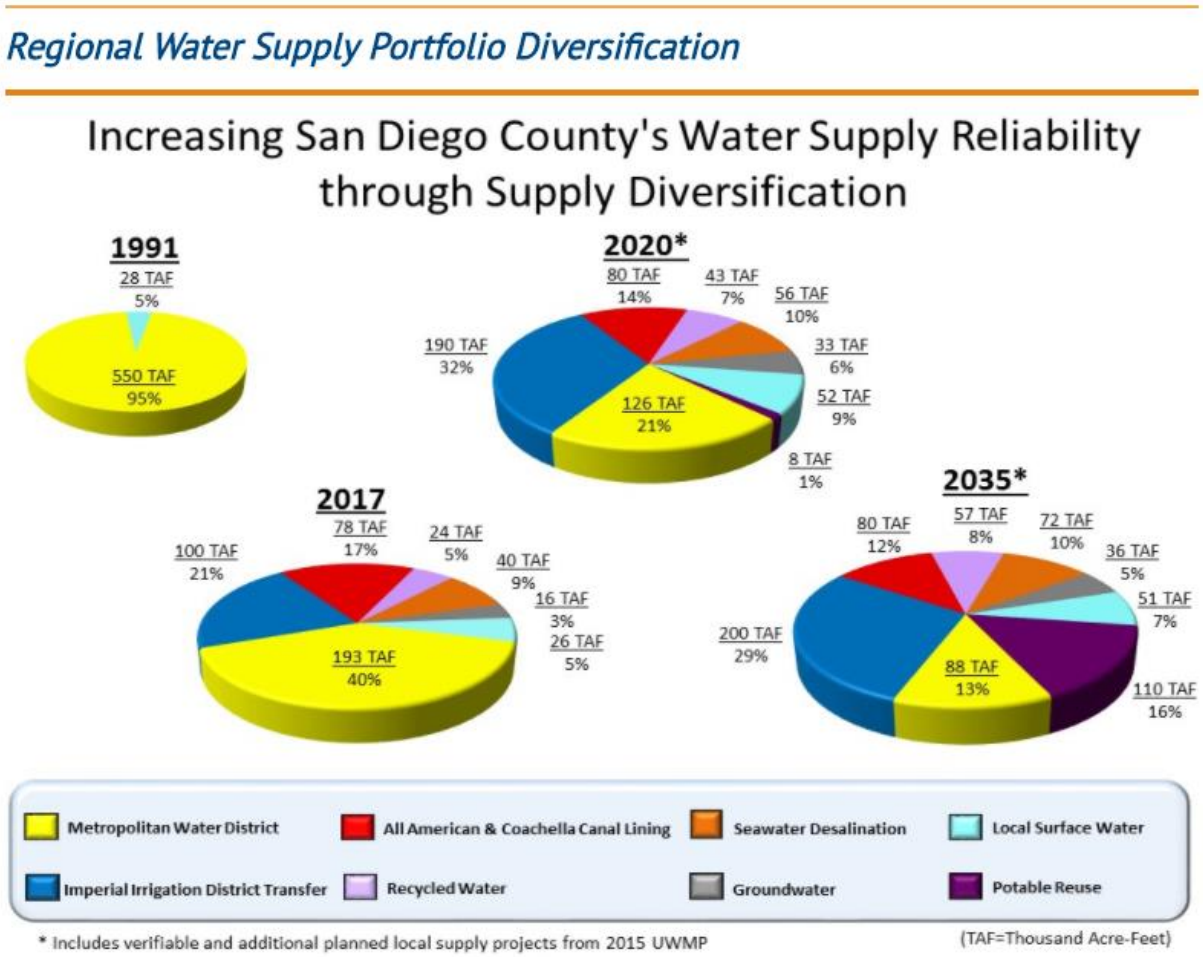
Another important tool to help the region manage water shortages is the Water Authority's Model Drought Response Ordinance (Ordinance) (https://www.sdcwa.org/sites/default/files/files/droughtordinance_03272008.pdf). Approved by the Water Authority's Board in March 2008, the Ordinance serves as a guide for the Water Authority's retail member agencies (and OWD is a member agency). It identifies four levels of drought response with progressive water-use restrictions designed to align demand with supply during water shortages. Retail member agencies (including OWD) have used the model to create or update their own local ordinances.

While managing shortages is important, so is the wise use of water no matter the weather because California has mandated a 20 percent reduction in water use by 2020. Most residents, however, realize that they live in an arid climate where most of the water used must be imported, and they view water-use efficiency as a civic duty (see https://www.sdcwa.org/water-shortage-and-drought-response).

Supply Diversification

The Water Authority also has diversified its portfolio of supplies (http://www.sdcwa.org/enhancing-water-supply-reliability) so that it is not dependent on any single source for the majority of its water. The Water Authority has worked diligently to reduce the potential for a major water shortage through a series of investments in new facilities that are part of its Emergency Storage Project. (https://www.sdcwa.org/emergency-storage-project) In addition, the Water Authority promotes ongoing region-wide efforts to improve water-use efficiency (http://www.watersmartsd.org/)in homes, businesses, and public places across the San Diego region.

Specifically, in 1991, the San Diego region was 95 percent reliant on a single supplier of imported water from MWD. This made the region extremely vulnerable to water supply shortages. That year, an ongoing drought forced MWD to cut deliveries to the San Diego region by 30 percent.



As a result, the Water Authority Board approved a strategy to diversify its water supply portfolio by developing new local and imported water supplies. This strategy already is enhancing regional supply reliability. By fiscal year 2012, the San Diego region had reduced its reliance on MWD supplies to 45 percent.

The Water Authority is working with its 24 local member retail agencies (including OWD) to develop local supplies such as groundwater, recycled water, seawater desalination, and conservation. By 2020, local water supplies are projected to meet 36 percent of the region's water demand.

The Water Authority also has secured new imported water supplies through a long-term (45 to 75 years) water conservation and transfer agreement with the Imperial Irrigation District. The agreement, reached in 2003, provides 100,000 acre-feet of highly reliable Colorado River water in 2013 and increases to 200,000 acre-feet annually by 2021.

The Water Authority also has a separate, 110-year agreement to receive Colorado River water conserved by lining parts of the Coachella and All-American canals. These projects provide 80,000 acre-feet of water to the region annually.

The Water Authority is in the final stages of executing a $3.1 billion Capital Improvement Program to further improve regional water delivery and storage capacity. The program includes 50 different projects, including new reservoirs, pipelines, pumping stations and a regional water treatment facility. Major projects under way include raising San Vicente Dam in East County by 117 feet to provide 152,100 acre-feet of additional local storage.

In addition to developing new water supplies, the Water Authority (and its retail member agencies) encourage the use of its existing water resources as wisely and efficiently as possible. This is why conservation has been a key component of the Water Authority's supply diversification strategy for the last two decades. The Water Authority works with its retail member agencies and other partners to offer programs that improve water use efficiency for residential, commercial, and agricultural users and help promote conservation as a way of life in the San Diego region.

This Water Authority is cost-effectively managing the region's water supply portfolio through:

- Collaborative planning with member agencies and regional partners on water supply issues and response to shortages
- Aggressively representing regional interests at MWD and other agencies
- Setting appropriate and fair rates and charges
- Monitoring current and historical water use trends
- Delivering high-quality treated water as cost-effectively as possible
- Building and operating regional facilities
- Planning and preparing for water reliability during emergencies

(See https://www.sdcwa.org/water-supplies.)

Future Planning

The Water Authority's future planning program focuses on long-term water resources planning. Through this program, the Water Authority works with other agencies to estimate future water demands and identify necessary facilities and supplies to meet these demands.

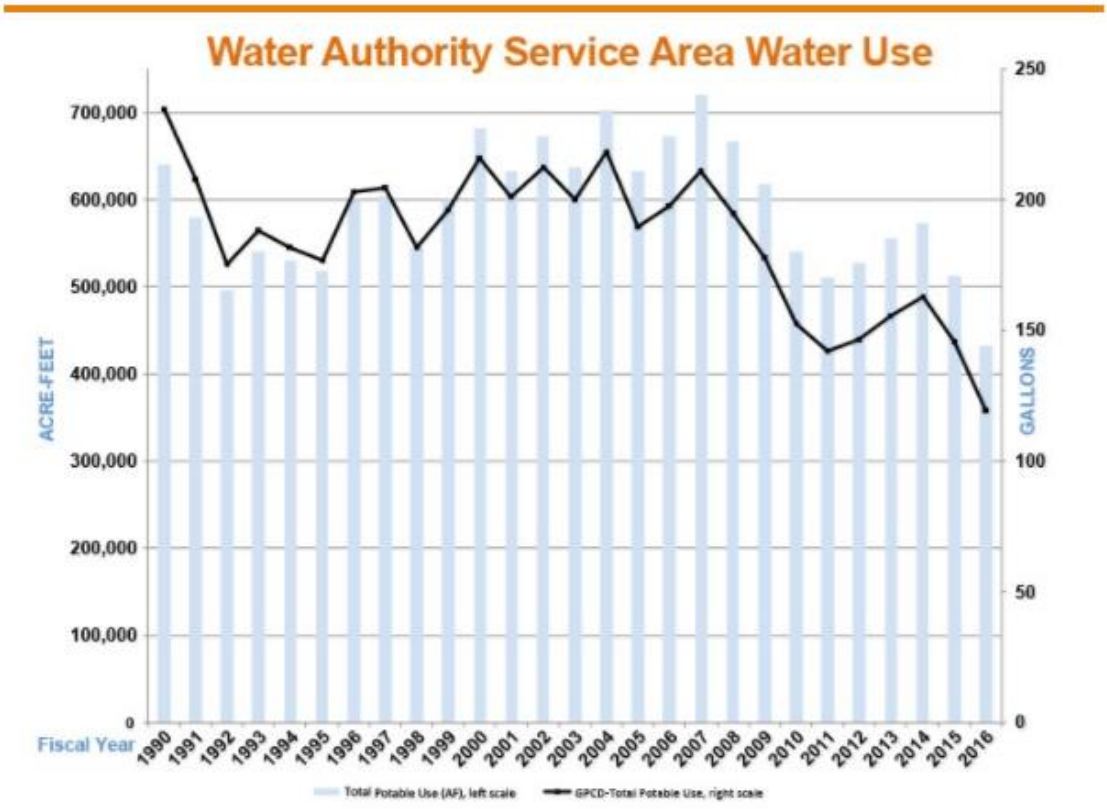
To assist in accomplishing this program, the Water Authority engages in a variety of supply planning efforts. Every five years, the Water Authority prepares an Urban Water Management Plan that identifies the projected water resource mix. Preparation of this plan involves updating the regional water demand forecast and conservation savings projections, documenting the supplies, and coordinating with retail member agencies (including OWD) on local supply projections.

Periodically, the Water Authority will prepare a Regional Water Facilities Master Plan that identifies the proper facility mix to best meet current and future water demands. Another important element of water resources planning is on-going coordination with others involved in the areas of water management — water quality and natural resources — to ensure a comprehensive, regional, and integrated approach to water management within San Diego. Updating the region's Integrated Regional Water Management Plan, along with securing and managing outside funds are essential elements to accomplishing this effort (see https://www.sdcwa.org/future-planning).

Water Use

Average temperatures in San Diego have continued to be above average in most recent months. In spite of warmer temperatures, monthly water use has continued to decrease, in most months, over the 2013 base period. For the 26 months ended July 2017, potable municipal and industrial (M&I) use has decreased 20 percent over the 2013 base period.

Per capita water use in the Water Authority's service area has fallen from approximately 200 gallons per person/day (gpcd) to less than 120 gpcd over the past decade, as shown in the chart below. In 2016, total regional use of potable water was about 33 percent less than it was in 1990, *despite a population increase of approximately 32 percent over that period* (see https://www.sdcwa.org/water-use)



As reported in the Proposed Project's Water Supply Assessment, page 21, County residents and businesses also exceeded the State's emergency water-use reduction mandates during 2015 and 2016, and they continue to use less water than they did in 2013 even though drought conditions have ended. Since the State's conservation mandate began in June 2015, OWD customers have saved an average of 16 to 19 percent more water compared to 2013 water-use totals.

Despite the above showing, some comments object to the Proposed Project moving forward during drought conditions. The County does not agree with these comments.

First, as shown in the Proposed Project's Water Supply Assessment, pages 9 and 16, the County is not "adding" new, unforeseen units with this project; instead, the projected water demand for the Proposed Project was included in OWD's 2016 Water Facilities Master Plan Update.

Second, during the most recent drought, the water usage restrictions put in place by the State were not due to a local supply shortage, as the Water Authority and the OWD had sufficient water supplies. The cutbacks were mandated by Executive Orders from Governor Brown and interim water conservation regulations issued by the State Water Resources Control Board (State Water Board). In response to those regulations, the Water Authority and its retail member water agencies (including OWD) took action implementing water shortage contingency plans to comply with the state-mandated requirements.

Nonetheless, the Water Authority, OWD, and other retail member water agencies in the San Diego region encouraged residents to continue to make water conservation a permanent way of life. The water agencies' conservation efforts are set forth in the 2015 UWMPs, which are incorporated by reference. Further, the 2015 UWMPs contain water shortage contingency planning measures to account for water supply reductions or interruptions, such as droughts that limit supplies. Together, the Water Authority and its retail member agencies (including OWD) have coordinated their efforts to respond to drought conditions from 1987 to the present, and such efforts have worked well in all prior drought conditions and other interruptions.

Additional Analysis Water Supply and Drought Conditions

The Draft EIR describes some of the regulatory actions taken in response to the recent drought. (See Draft EIR, Section 3.1.8, Section 3.1.8, Utilities and Utility Systems, pp. 3.1.8-12 through 3.1.8-14.)

Overview of Regulatory Actions Taken in Response to Drought

Office of the Governor

In January 2014, Governor Brown declared a statewide drought emergency due to record dry conditions and an extremely low Sierra snowpack. The January 2014 emergency declaration is

available at http://gov.ca.gov/news.php?id=18368. Key measures in the Governor's drought declaration include:

- Calling on all Californians to reduce their water consumption by 20 percent.
- Directing local water suppliers to immediately implement local water shortage contingency plans.
- Ordering the State Water Board to consider petitions for consolidation of places of use for the State Water Project and Central Valley Project, which would streamline water transfers and exchanges between water users.
- Directing the California Department of Water Resources and the State Water Board to accelerate funding for projects that could break ground this year and enhance water supplies.
- Ordering the State Water Board to put water rights holders across the state on notice that they may be directed to cease or reduce water diversions.
- Asking the State Water Board to consider modifying requirements for releases of water from reservoirs or diversion limitations so that water may be conserved in reservoirs to protect cold water supplies for salmon, maintain water supplies, and improve water quality.

In April 2014, Governor Brown issued an Executive Order to expedite actions necessary to reduce harmful effects of the drought and called on all Californians to redouble their efforts to conserve water. The April 2014 Executive Order is available at https://www.gov.ca.gov/2014/04/25/news18495/.

In September 2014, Governor Brown signed into law the Sustainable Groundwater Management Act, historic legislation to strengthen local management and monitoring of groundwater basins most critical to the state's water needs.

In April 2015, Governor Brown issued Executive Order B-29-15. The primary goal of this Executive Order was to achieve a 25 percent reduction in water use across the state as compared to the amount utilized in 2013. Specifically, key provisions included ordering the State Water Board to impose restrictions to achieve a 25 percent reduction in potable urban water usage through February 2016; directing the California Department of Water Resources to lead a statewide initiative, in partnership with local agencies, to collectively replace 50 million square feet of lawns and ornamental turf with drought tolerant landscapes; and directing the California Energy Commission to implement a statewide appliance rebate program to provide monetary incentives for the replacement of inefficient household devices. There also were additional directives to the State Water Board to implement regulations to determine how new developments would be landscaped and irrigated with drip or microspray technology. The Executive Order is available at https://www.gov.ca.gov/wp-content/uploads/2017/09/4.1.15_Executive_Order.pdf.

In April 2017, Governor Brown issued Executive Order B-40-17, which marked the termination of the drought emergency. More specifically, the Executive Order rescinded the drought emergency-related provisions of multiple Executive Orders and emergency proclamations for most counties within California (including Los Angeles County) while retaining critical water conservation provisions set forth in Executive Order B-37-16, The referenced water conservation provisions allow for the continued development and implementation of permanent prohibitions on wasteful water use and requirements for reporting water use by urban water agencies. The Executive Order is available at https://www.gov.ca.gov/wp-content/uploads/2017/09/4.7.17_Exec_Order_B-40-17.pdf.

State Water Board

In July 2014, the State Water Board approved interim emergency regulations for statewide urban water conservation. The regulations were intended to reduce outdoor urban water use. On March 17, 2015, the State Water Board expanded and extended its emergency water conservation regulations.

In May 2015, the State Water Board adopted emergency conservation regulations in accordance with the Governor's April 1st Executive Order B-29-15, which went into effect on May 18, 2015. The emergency regulation addressed specific provisions of the Governor's directive, including the mandatory 25 percent statewide reduction in potable urban water use between June 2015 and February 2016. The regulations delineated the conservation percentages required, compared to 2013 water use levels (i.e., the reduction amount of each urban water supplier was determined based on per capita water use whereby those areas with high per capita use were to achieve proportionally greater reductions than those with low use).[32]

Otay Water District

Under the state rules that went into effect June 1, 2015, OWD was required to reduce water use by a specified percentage for the period June 2015 through February 2016, compared to 2013 water use levels for the same period. In response, the OWD Board of Directors adopted a series of mandatory watering restrictions and emergency water conservation measures to comply with the State Water Board's mandate to reduce water use, as directed. These additional emergency conservation measures by OWD were mandatory restrictions in effect for all of its customers.

Application to the Proposed Project

The Draft EIR's impact analysis, pages 3.1.8-32 through 3.1.8-34, includes "project design features" that summarize some of the Proposed Project's water conservation design features to reduce water demand (e.g., hot water pipe installation, pressure reducing valves, water-efficient

[32] SWRCB Regulations Section 865(c)(3-10).

dishwashers, water-efficient landscaping). In addition, the Proposed Project must comply with the mandatory water conservation measures required by law. (Draft EIR, Section 3.1.8, Utilities and Utility Systems, p. 3.1.8-32.) Further, the Proposed Project includes a Water Conservation Plan in accordance with the requirements of the adopted Otay Ranch GDP/SRP. (*Id.*) The Proposed Project also must comply with applicable provisions of the CALGreen Code (C.C.R. Title 24) and the County's Green Building Standards Code (County Code Title 31). Draft EIR, Section 3.1.8, Utilities and Utility Systems, Table 3.1.8-2 also identifies the mandated water conservation devices that the Proposed Project must use under the Green Building Code requirements.

California's Drought Response

Following unprecedented water conservation and plentiful winter rain and snow, Governor Brown ended the drought state of emergency in most of California (except for a few counties in central California) in April 2017, but at the same time, maintained water reporting requirements and prohibitions on wasteful water practices, such as watering during or right after rainfall, hosing off sidewalks, and irrigating ornamental turf on public street medians.[33]

In related action, the State Water Board amended its emergency water conservation regulations to include a supply-based approach that recognizes the unique water supply conditions of each water supplier. The supply-based approach considers the necessity for a conservation standard for the period June 2016 through January 2017, based on each water supplier's specific circumstances and water supplies. The amended regulation requires individual urban water suppliers—or a region as a whole, if all of that region's water suppliers agree—to self-certify the sufficiency of available water supplies using a calculation methodology prescribed in the amended regulations.

In addition, since July 2014, the State Water Board has been tracking water conservation for each of the State's larger urban water suppliers (i.e., those with more than 3,000 connections) on a monthly basis. Compliance with individual water supplier conservation requirements is based on cumulative savings. Cumulative tracking means that conservation savings will be added together from one month to the next and compared to the amount of water used during the same months in 2013 (the State Water Board's baseline year).[34]

The cumulative savings from June 2015 through February 2017 was 25.1 percent, compared with the same months in 2013. Based on the estimate that the average person uses 0.2 af of water per year, the 25.1 percent water savings is enough to supply 13 million Californians with water for

[33] California Drought, Statewide Water Savings Exceed 25 Percent in February; Conservation to Remain a California Way of Life, April 7, 2017; available at http://drought.ca.gov/topstory/top-story-72.html, accessed May 22, 2018.

[34] "Statewide Water Conservation Grows to 28 Percent in May; Urban Water Suppliers 'Stress Test' Data Under Review," July 6, 2016, available at www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/2016jul/pr070616.pdf, accessed May 22, 2018.

one year, which is approximately the combined population of Los Angeles, Contra Costa, Fresno, and San Joaquin counties, or one-third of the State's population.[35] Thus, water conservation efforts have worked well in response to California's most recent drought.

The most recent drought spanned water years 2012-2016 and included the driest four-year precipitation on record (2012-2015) and the smallest Sierra-Cascades snowpack year on record (2015), coupled with extraordinary heat. The State responded to the drought with actions and investment, while also advancing the State's *California Water Action Plan* (Water Action Plan).[36] This plan is California's five-year blueprint for achieving more reliable, resilient water systems to prepare for climate change and population growth.

For example, to advance the priorities in the Water Action Plan and respond to the drought, the voters passed a comprehensive water bond; the Legislature appropriated and accelerated funding; and state agencies accelerated grants and loans to water projects. California also enacted the Sustainable Groundwater Management Act; took action to improve measurement and management of water; retrofitted tens of thousands of inefficient toilets; replaced lawns with water-wise landscaping; and provided safe drinking water to impacted communities. As stated above, California also responded to the drought with extraordinary water conservation, including nearly 25 percent average reduction in urban water use across the state, as compared to 2013 water use levels.[37]

New Development During Periods of Drought

While some comments may suggest that an appropriate response to drought conditions would be to stop or delay building new homes, evidence shows that new homes help improve efficient water use compared to existing homes. A comparison of California's existing home stock, especially houses built before 1980, and new home construction shows that new home development can improve water conservation strategies.

New homes use half as much water as most of the existing housing stock in California. More than half of California's 7.5 million existing single-family homes were built before 1980, which means they are equipped with outdated fixtures that can use up to three times more water than current models required under the California Green Building Standards Code (CALGreen Code) codified in the California Code of Regulations, Title 24, Part 11. The CALGreen Code, which was established in 2008 and most recently amended in 2016, sets new standards for the

[35] State Water Board, Fact Sheet, February 2017 Statewide Conservation Data, available at www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/2017apr/fs040417_february_conservation.pdf, accessed May 22, 2018.

[36] California Water Action Plan, 2016 Update, January 9, 2017; available at http://resources.ca.gov/docs/california_water_action_plan/Final_California_Water_Action_Plan.pdf, accessed May 22, 2018.

[37] California Water Boards, April 4, 2017; available at www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/2017apr/pr040417_february_conservation.pdf, accessed September 5, 2017.

maximum flow rates of plumbing fixtures in new construction and resulted in the most significant reduction in indoor water use in the history of California building codes; it also calls for a 20 percent reduction in indoor water use.[38]

Further, new three-bedroom single-family homes with four occupants in California use an estimated 46,500 gallons of water per year for indoor use.[39] This represents a savings of over 20,500 gallons of water per year from homes built in 1992 and a savings of 47,000 gallons of water per year from homes built in 1980.

In other words, this represents a 21-percent decrease from homes built in 2009, a 37-percent decrease from those built in 1990, and a 50-percent reduction from those built in 1980.[40] Much of the increased efficiency comes from installing low-flow fixtures such as toilets that average 1.28 gallons per flush in comparison to 1.6 gallons in 1992, and appliances such as clothes washers that use six gallons per cubic foot as compared with 15 gallons in 1992.[41] The Proposed Project would continue this trend through compliance with all applicable building codes, as well as implementation of a Water Conservation Plan, which would reduce water usage by 44,744 gallon per day.

Accordingly, state and local officials contend that new growth does not necessarily translate to extra water use. Southern California water providers confirm they added 5 million residents in the last two decades without using extra water due to extensive conservation measures.[42]

Conclusion

In short, the Draft EIR and record account for drought conditions and show there are sufficient, reliable water supplies to serve the water supply demands calculated for the Proposed Project, in addition to existing and planned future water demands within the retail and wholesale service areas of OWD and the Water Authority. The Proposed Project also is consistent with and will adhere to existing and new water regulations from the Office of the Governor, the State Water Board, MWD, the Water Authority, and OWD that are applicable and in effect at the time of building permit issuance. Further, the Proposed Project would help both accommodate forecasted growth and meet the County's Regional Housing Needs Assessment allocation of residential units within the County's unincorporated areas with new development that benefits from a suite

[38] For more information on the CALGreen Code, see www.bsc.ca.gov/Home/CALGreen.aspx.

[39] California Homebuilding Foundation, "Codes and Standards Research Report: California's Residential Indoor Water Use" (2d ed.), May 8, 2015, available at www.cbia.org/uploads/5/1/2/6/51268865/codes_and_standards_residential_indoor_water_use_may_15_v2.pdf, accessed September 5, 2017.

[40] Wall Street Journal, "As California Drought Drags On, Homebuilders Vie for a Voice," April 26, 2015, available at www.wsj.com/articles/as-california-drought-drags-on-home-builders-vie-for-a-voice-1429867801, accessed September 5, 2017.

[41] *Ibid*.

[42] The Sacramento Bee, "Sacramento wants to grow; will drought say no?" May 9, 2015, available at www.sacbee.com/news/state/california/water-and-drought/article20600319.html, accessed September 5, 2017.

of indoor and outdoor water conservation design measures, compared to California's existing housing stock. As evaluated in Section 3.1.8, Utilities and Service Systems, of the Draft EIR, the Proposed Project and cumulative impacts on water supplies and water delivery systems would be less than significant, and no mitigation measures would be required.

8.4.13 Septic/Sewer

This Thematic Response addresses comments received on the Draft EIR which stated that Planning Areas 16 and 19 should not be allowed to connect to municipal sewer service and should instead rely on individual septic systems. These comments contend that the Proposed Project's extension and connections to the municipal sewer system could induce additional growth. In addition, the Jamul Dulzura Community Planning Group (JDCPG) asserts that the Jamul Community Plan prohibits sewer.

First, the County would like to note that Policy 15 of the Jamul/Dulzura Community Plan states that the provisions of the Otay Ranch General Development Plan/Subregional Plan (GDP/SRP) (i.e. Otay Subregional Plan, Volume 2) take precedence in the event of any conflict between the Otay Ranch GDP/SRP and the Jamul/Dulzura Community Plan. Therefore, in this case, the provisions of the Otay Ranch GDP/SRP allow for and assume the extension of sewer service to Planning Areas 16 and 19 as discussed further below.

Sewer as per the Otay Ranch GDP/SRP

Sewer has been contemplated and approved for use in Otay Ranch Village 14 and Planning Areas 16 and 19 since the County Board of Supervisors adopted the Otay Ranch GDP/SRP in 1993. Actions and documents confirming that sewer is to be provided in Village 14 and Planning Areas 16 and 19 include, but are not limited to, the following:

- The Salt Creek Basin Gravity Sewer Analysis (Wilson Engineering, November 1994). This document was prepared in conjunction with the original Otay Ranch approvals. It assumed that both Village 14 and Planning Areas 16 and 19 would be accommodated by the City of Chula Vista's Salt Creek Interceptor. The analysis projected future flows for the southern and eastern Otay Ranch areas and included flows from 5,322 units within Villages 13, 14 and 15 and Planning Areas 16 and 19 in the County of San Diego. With the acquisition of Village 15, and portions of Village 14 and Planning Area 16 for conservation, total development in these Otay Ranch Villages and Planning Areas would be less than 5,322 units.
- The Otay Ranch Resource Management Plan, Figure 15 identifies the location of sewer facilities in Village 14 and Planning Areas 16 and 19.
- The Otay Ranch GDP/SRP states "The provision of sewer service is not precluded in Village Fourteen." (Otay Ranch GDP/SRP, page 194) and that "[t]he provision of sewer service is not precluded in Planning Areas 16 and 19." (GDP/SRP, page 204). By way of

contrast, the Otay Ranch GDP/SRP specifically indicates that "[t]he provision of sewer service is precluded in Planning Area 17." (GDP/SRP, page 209)

- The 1993 "Follow up Report" to the 1990 "Report of the Otay Ranch Community Advisory Task Forces" acknowledges that originally "a consensus did not emerge concerning the use of sewer near Jamul" but then concludes that "[s]ewers are proposed for the Proctor Valley and Jamul areas to protect the water quality of the reservoir."
- "The Salt Creek Gravity Sewer Interceptor Final Flow Analysis Report" (Dudek and Associates, January 2001) included recommendations to upsize the downstream reaches of the Salt Creek Interceptor in anticipation of potential future land use changes in Chula Vista, while continuing to accommodate flows from Villages 13, 14, 15 and Planning Areas 16 and 19 in the County. The design and construction of the Salt Creek Interceptor incorporated the recommended upsizing from the Dudek and Associates study.
- The June 2016 Sewage Transportation Agreement for the Salt Creek Interceptor between the City of Chula Vista and the County of San Diego formalized the process by which Village 14 and Planning Areas 16 and 19 will be served by sewer service. The Sewerage Transportation Agreement allows the City of Chula Vista to accommodate those sewage flows through its existing sewage transportation system as contemplated by the Salt Creek Interceptor studies.

Septic Discussion

While sewer service to Village 14 and Planning Areas 16 and 19 has, as outlined above, always been assumed in the Otay Ranch approval documents, representatives of the Jamul-Dulzura Community Planning Group asked the Project Applicant to conduct percolation tests in Planning Area 16 and 19 to determine whether septic or alternative onsite treatment methods might be feasible.

Advance Geotechnical Solutions, Inc. researched the septic issue in Planning Areas 16 and 19, identified soil characteristics and determined that septic is not feasible in these locations. Specifically, the Draft EIR contains Appendix 3.1.8-3, Feasibility Study for Onsite Wastewater Treatment Systems, Otay Ranch Village 14 and Planning Areas 16/19 ("Septic Feasibility Study") dated March 28, 2017. The Septic Feasibility Study concluded that prevailing site conditions are not suitable for onsite water treatment systems. The County Department of Environmental Health Land and Water Quality Division reviewed the Septic Feasibility Study and concluded "the majority of the site is not suitable for the use of onsite wastewater treatment systems." (Appendix 8-3, Letter from County Department of Environmental Health Land and Water Quality Division, dated June 20, 2017)

Sewer as Growth Inducing

Regarding concerns that extending sewer could be growth inducing, it should be noted that (1) the June 2016 Sewer Transportation Agreement specifically limits the provision of sewer service to Otay

Ranch projects only – i.e., it precludes any other party or project from using Village 14 and Planning Area 16/19 sewer facilities; and (2) the sewer facilities for the Proposed Project would be sized to serve only Village 14 and Planning Area 16/19 and would not have additional capacity to serve other development. Please refer to **Thematic Response – Inducements to Growth**.

8.4.14 Alternatives

This Thematic Response addresses comments received on the Draft EIR regarding the alternatives to the Proposed Project that questioned whether the Draft EIR evaluated a sufficient range of alternatives or suggested additional alternatives for consideration.

Under CEQA, an alternatives analysis is required when the Draft EIR reveals that the project may create one or more significant impacts that cannot be mitigated to below the level of significance. The alternatives analysis focuses on alternatives to a project or its location, which would avoid or substantially lessen any of the project's significant effects while feasibly attaining most of the project's objectives. Alternatives that do not address the identified significant impacts or do not meet most of the project objectives need not be considered. (*Sierra Club v. Tahoe Regional Planning Agency, 916 F. Supp.2d 1098,* 1122 (E.D. Cal. 2013)). The EIR must discuss a reasonable range of alternatives that at least have the potential of satisfying these two critical criteria. (CEQA Guidelines, § 15126.6(a).) An agency's selection of alternatives need not be perfect; that selection must, however, encourage informed decision-making and public participation. (*Cal.Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 276.)

The Draft EIR analyzed five alternatives (Section 4.4, No Project; Section 4.5, Low Density; 4.6, Alternative Site Location; 4.7, Otay Ranch GDP/SRP Four-Lane Proctor Valley Road; and 4.8, Land Exchange). In addition, the Draft EIR considered and rejected other alternatives that, upon closer review, either could not feasibly meet most of the Project Objectives identified in Section 1.0, Project Description, or had no real potential for reducing to insignificance one or more of the Proposed Project impacts identified as significant and unmitigable effects. These alternatives included the Village 15 Alternative Site, and four Otay Ranch GDP/SRP Program EIR Alternative Sites (Draft EIR, Section 4.3). Furthermore, the Draft EIR tiers off the Otay Ranch Program EIR (PEIR), which previously analyzed seven land use alternatives as summarized Section 4.9. The PEIR was ultimately certified with the land uses and intensities proposed by the Project.

Four alternatives reduce the development footprint when compared to the Proposed Project (No Project, Low Density, Alternate Site Location, and Land Exchange)). Four of the alternatives also reduce the number of dwelling units when compared to the Proposed Project (Section 4.5, No Project Alternative; Section 4.6, Low Density Alternative; Section 4.7, Alternate Site Location; and Section 4.7, Four-Lane Proctor Valley Road Alternative[43]). By reducing the development footprint and/or the number of dwelling units, each of the alternatives has the

[43] The Four-Lane Proctor Valley Road Alternative only reduces the number of units by 14.

potential to reduce impacts compared to the Proposed Project as required by CEQA. The reduction in impacts are discussed Sections 4.4 through 4.8.

This same analysis, however, determined that, none of the four "build" alternatives is capable of reducing to less than significant levels the Proposed Project's significant and unavoidable impacts on aesthetics, agricultural resources, air quality, noise or transportation and traffic. The No Project Alternative *would* reduce these five impacts to less than significant levels, but would not meet the most of the Project's objectives.

The County does not agree with comments stating that the range of alternatives analyzed is not adequate. The County believes that the Draft EIR examined a reasonable range of alternatives given the Project Objectives, which include:

- assisting in meeting the regional housing needs identified in the County's General Plan Housing Element;
- implementing the Goals, Objectives, Policies and the vision embedded in the Otay Ranch GDP/SRP;
- serving as a transitional area between the Otay Ranch villages and Eastern Territories of Chula Vista and the more rural areas of Jamul north of the Project Area while creating a buffer adjacent to the existing community of Jamul;
- creating a centrally located Village Core that combines land uses with current local and state conservation technologies and strategies to meet local, state, and federal goals for reducing greenhouse gas emissions; and,
- minimizing the width of Proctor Valley Road as a two-lane Light Collector to minimize impacts consistent with County ME Goal M-2, limits inducements to growth, and maintains community character.

An analysis of how each of the five alternatives would meet these objectives is provided in Sections 4.4.4, 4.5.4, 4.6.4, 4.7.4, and 4.8.4, respectively.

In addition, the Otay Ranch GDP/SRP PEIR previously analyzed seven alternatives for Otay Ranch, including the Project Area. These alternatives are discussed in Section 4.9 of the Draft EIR. Ultimately, the Otay Ranch GDP/SRP was approved in the configuration and with the level of development that is proposed by the Project. Further, the Proposed Project is in the County General Plan, which was updated in 2011. The land uses that were ultimately selected in the County General Plan Update (GPU) FEIR are consistent with those proposed by the Project; other alternatives were considered and rejected in the GPU FEIR. For this reason, the County believes the four build alternatives, along with the CEQA-required "No Project" alternative, comprise a sufficiently wide range of options to the Project. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1177 [rule of reason governs the selection of alternatives]).

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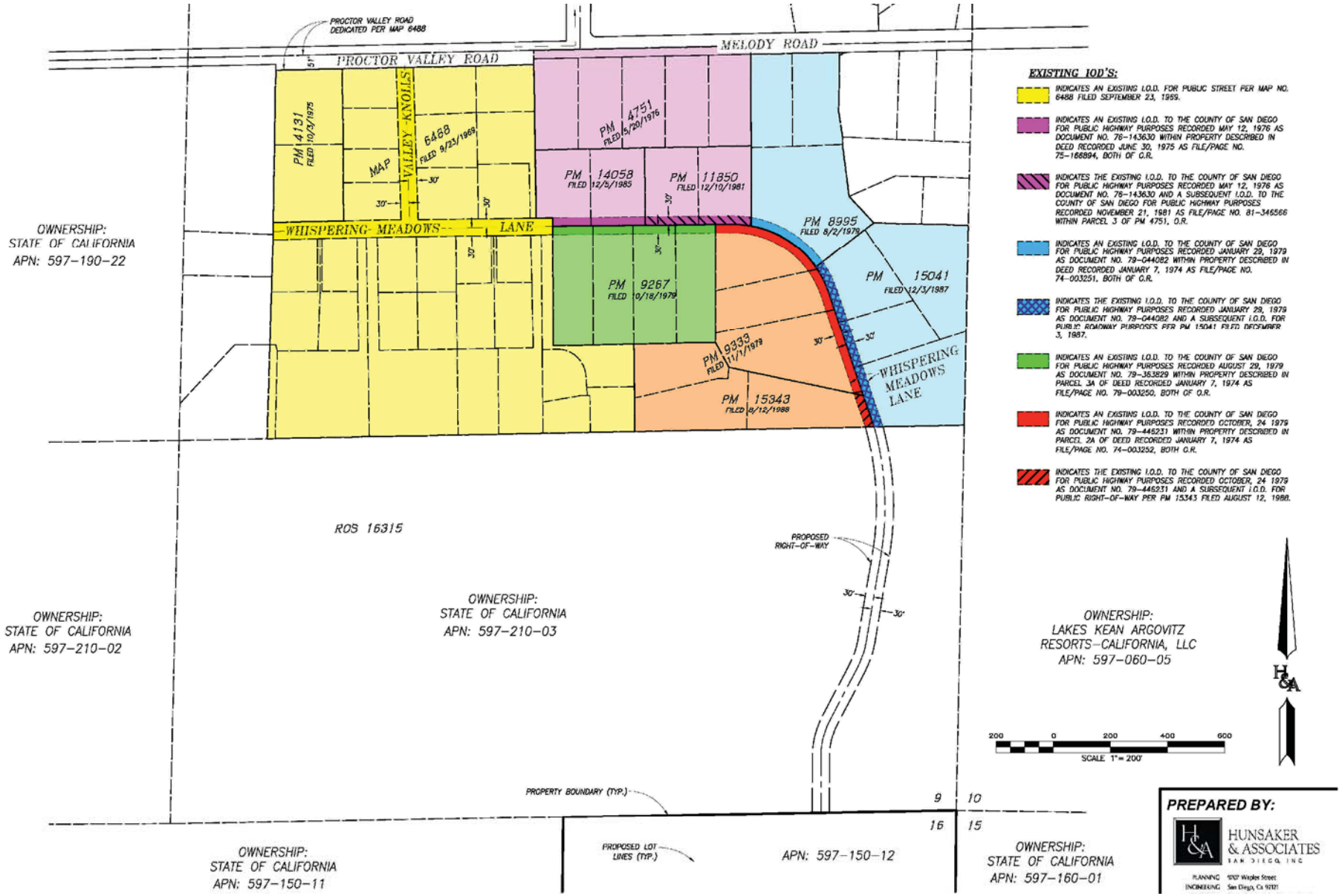

SOURCE: Hunsaker 2018

FIGURE 8-1

Existing IODs for Whispering Meadows Lane and Valley Knolls

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