

# LETTERS OF COMMENTS AND RESPONSES

## OTAY RIVER BUSINESS PARK PROJECT MITIGATED NEGATIVE DECLARATION COMMENT LETTERS

The following comment letters were received from agencies, organizations, and individuals during the public review of the Mitigated Negative Declaration. A copy of each comment letter along with corresponding staff responses has been included.

In accordance with CEQA Guidelines Section 15204(b), review of a [mitigated] negative declaration should focus on the proposed finding that the project will not have a significant effect on the environment. According to Section 15204(b), if persons and public agencies believe that the project may have a significant effect, they should: (1) Identify the specific effect, (2) Explain why they believe the effect would occur, and (3) Explain why they believe the effect would be significant.




Many of the comments received during public review of the Otay River Business Park Mitigated Negative Declaration did not address the adequacy and/or sufficiency of the environmental document; however, staff endeavored to provide responses as appropriate as a courtesy to the commenters. Where letters of comment have resulted in revisions to the October 2017 MND, those changes are indicated in the Final MND in strike-out/underline format (where omitted text is shown as ~~stricken~~ and added text is shown as underlined). Revisions that have been made to the Final MND do not affect the conclusions contained in the MND or the adequacy of the environmental document.

Letter	Author	Address	Date	Representing	Page Number of Letter
STATE AGENCIES					
A	Scott Morgan Director, State Clearinghouse	State of California Governor's Office of Planning and Research State Clearinghouse and Planning Unit 1400 Tenth Street/P.O. Box 3044 Sacramento, CA 95812-3044	December 5, 2017	State of California Governor's Office of Planning and Research State Clearinghouse and Planning Unit	3
B	Gail K. Sevens Environmental Program Manager	State of California Department of Fish and Wildlife South Coast Region 3883 Ruffin Road San Diego, CA 92123	December 4, 2017	State of California Department of Fish and Wildlife	5
C	Gayle Totton Associate Governmental Project Analyst	State of California Native American Heritage Commission 1550 Harbor Boulevard West Sacramento, CA 95961	November 14, 2017	State of California Native American Heritage Commission	7

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Letter	Author	Address	Date	Representing	Page Number of Letter
LOCAL AGENCIES					
D	Keri Robinson Acting Branch Chief Development Review Branch	State of California Department of Transportation District 11 4050 Taylor Street, MS 240 San Diego, CA 92110	December 6, 2017	State of California Department of Transportation	12
E	Melanie Tylke Land Use & Environmental Planner III	County of San Diego, Parks and Recreation 5500 Overland Ave., Ste. 410 San Diego, CA 92123	December 4, 2017	San Diego County Department of Parks and Recreation	14
F	Laura Ball	City of San Diego Open Space Division 202 C Street San Diego, CA 92101	December 4, 2017	City of San Diego Park and Recreation Department	15

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COMMENT	RESPONSE
<div style="text-align: center;">  <p>STATE OF CALIFORNIA Governor's Office of Planning and Research State Clearinghouse and Planning Unit</p>  </div> <p>Edmund G. Brown Jr. Governor</p> <p style="text-align: right;">Ken Alex Director</p> <p>December 5, 2017</p> <p>Steve Power City of Chula Vista 276 Fourth Avenue Building B Chula Vista, CA 91910</p> <p>Subject: Otay River Business Park Specific Plan SCH#: 2017111012</p> <p>Dear Steve Power:</p> <p>The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on December 4, 2017, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.</p> <p>Please note that Section 21104(c) of the California Public Resources Code states that:</p> <p style="padding-left: 40px;">"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."</p> <p>These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.</p> <p>This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.</p> <p>Sincerely,</p>  <p>Scott Morgan Director, State Clearinghouse</p> <p>Enclosures cc: Resources Agency</p> <p style="text-align: center;">1400 TENTH STREET, P.O. BOX 8044, SACRAMENTO, CALIFORNIA 95812-3044 TEL (916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov</p>	<p><b>A-1</b> This letter acknowledges compliance with the State Clearinghouse review requirements for draft environmental documents.</p>

**A-1**



**A-1** This letter acknowledges compliance with the State Clearinghouse review requirements for draft environmental documents.

# LETTERS OF COMMENTS AND RESPONSES

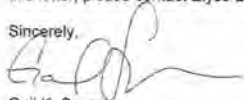
COMMENT	RESPONSE
<p style="text-align: center;"><b>Document Details Report State Clearinghouse Data Base</b></p> <p><b>SCH#</b> 2017111012  <b>Project Title</b> Otay River Business Park Specific Plan  <b>Lead Agency</b> Chula Vista, City of</p> <hr/> <p><b>Type</b> MND Mitigated Negative Declaration</p> <p><b>Description</b> The Otay River Business Park Specific Plan project proposes business park uses and retail services to serve the existing community. The specific plan would allow development of a high quality industrial business park with ancillary support commercial services and would establish land use, intensity, development regulations, design standards, and primary infrastructure components to support future development of the project. Proposed industrial and commercial lots would be served by new street connections to the existing street system, as well as new sewer, water, and drainage infrastructures. The specific plan also allows for an area for a future community park, as designated by the city of Chula Vista, situated adjacent to and above the Otay River Valley.</p> <hr/> <p><b>Lead Agency Contact</b></p> <p><b>Name</b> Steve Power  <b>Agency</b> City of Chula Vista  <b>Phone</b> (619) 409-5864 <b>Fax</b>  <b>email</b>  <b>Address</b> 276 Fourth Avenue Building B  <b>City</b> Chula Vista <b>State</b> CA <b>Zip</b> 91910</p> <hr/> <p><b>Project Location</b></p> <p><b>County</b> San Diego  <b>City</b> Chula Vista  <b>Region</b>  <b>Lat / Long</b> 32° 35' 29.8" N / 117° 04' 00.7" W  <b>Cross Streets</b> Main St and Fourth Ave  <b>Parcel No.</b> 629-030-04, 05, -040-09, 10, 12, 16, 20, 23, 24, 27, -050-05, -061-01  <b>Township</b> <b>Range</b> <b>Section</b> <b>Base</b></p> <hr/> <p><b>Proximity to:</b></p> <p><b>Highways</b> SR 905  <b>Airports</b>  <b>Railways</b>  <b>Waterways</b> Otay River  <b>Schools</b> John J. Montgomery ES  <b>Land Use</b> limited industrial/limited industrial with precise plan overlay/limited industrial</p> <hr/> <p><b>Project Issues</b> Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Cumulative Effects; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Landuse; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Toxic/Hazardous; Traffic/Circulation; Tribal Cultural Resources; Vegetation; Water Quality; Wetland/Riparian</p> <hr/> <p><b>Reviewing Agencies</b> Resources Agency; Department of Fish and Wildlife, Region 5; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 11; Regional Water Quality Control Board, Region 9; Native American Heritage Commission; San Diego River Conservancy</p> <hr/> <p><b>Date Received</b> 11/03/2017 <b>Start of Review</b> 11/03/2017 <b>End of Review</b> 12/04/2017</p> <p style="text-align: center; font-size: small;">Note: Blanks in data fields result from insufficient information provided by lead agency.</p>	

A-1,  
cont.


# LETTERS OF COMMENTS AND RESPONSES

COMMENT	RESPONSE
<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 30%;">  <p>State of California – Natural Resources Agency DEPARTMENT OF FISH AND WILDLIFE South Coast Region 3883 Ruffin Road San Diego, CA 92123 (858) 467-4201 www.wildlife.ca.gov</p> </div> <div style="width: 30%; text-align: right;">  <p>EDMUNDO G. BROWN JR., Governor CHARLTON H. BONHAM, Director</p> </div> </div> <p style="text-align: center;">December 4, 2017</p> <p>Mr. Steve Power City of Chula Vista 276 Fourth Avenue Chula Vista, California 91910</p> <p><b>Subject:</b> Notice of Intent to Adopt Proposed Mitigated Negative Declaration, City of Chula Vista, California (SCH No. 2017111012)</p> <p>Dear Mr. Power:</p> <p>The California Department of Fish and Wildlife (Department), has reviewed the above-referenced Notice of Intent to Adopt Proposed Mitigated Negative Declaration, dated November 03, 2017. The Department has identified potential effects of this project on wildlife and sensitive habitats. The project details provided herein are based on the information provided in the MND and associated documents including information submitted as part of the Project (City of Chula Vista, July 2017). The comments and recommendations provided are based on our knowledge of sensitive and declining vegetation communities in the City of Chula Vista (City) and our participation in regional conservation planning efforts.</p> <p>The Department administers the Natural Community Conservation Planning (NCCP) program (Fish and Game Code 2800, <i>et seq.</i>). On November 2003, the Department issued their permit for the City's Multiple Species Conservation Program (MSCP) Subarea Plan (SAP). The approved and permitted SAP constitutes a commitment by the City to assemble a preserve consistent with the goals of the MSCP Subregional Plan.</p> <p>Sudberry Development Inc. is proposing to develop the approximately 53-acre site formerly identified as the Sloan Nelson property, located at the southwest corner of Main Street and Fourth Street. The project would include the development of a Specific Plan, which would allow for changes in the zoning of the site from Light Industrial to an Industrial Park with some commercial use. The project is proposed to be constructed in two Phases: first the Business Park and then the City Park once funding becomes available. The project contains five Planning Areas: Commercial, Transitional Limited Commercial Business Park, Business Park, Flood Way and Habitat Areas, and a future City Park. Most of the project site was formerly mined and the Biological Technical Report has identified the following habitat designations: southern willow scrub, disturbed open water/freshwater marsh, disturbed arundo scrub, disturbed tamarisk scrub, eucalyptus woodland, agriculture, and urban developed. The project is proposing to impact 1.66 acres of disturbed open water/freshwater marsh and 0.17 acre of disturbed arundo scrub. The southern willow scrub and the floodway would be protected within designated biological open space. The project is not a covered project under the City's MSCP and is therefore subject to the Habitat Loss and Incidental Take (HLIT) permit process.</p> <p style="text-align: center;"><i>Conserving California's Wildlife Since 1870</i></p>	<p><b>B-1</b> This comment summarizes the California Department of Fish and Wildlife's (CDFW) mandate and legal responsibilities in administering the Natural Communities Conservation Program and the CDFW's issuance of their permit for the City's MSCP Subarea Plan. This comment also generally summarizes the proposed project and biological resources located on the project site, as presented in the MND and Initial Study prepared for the project.</p>

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	COMMENT	RESPONSE
<p><b>B-2</b></p> <p><b>B-3</b></p> <p><b>B-4</b></p>	<p>Mr. Steve Power City of Chula Vista December 4, 2017 2 of 2</p> <p>The Department offers the following comments and recommendations to assist the City in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources, and to ensure that the project is consistent with all applicable requirements of the approved SAP.</p> <p>1. The MND CEQA checklist section C and verbiage is inconsistent with the rest of the MND and Biological Technical Report (BTR). Section C states whether a project will "Have a substantial adverse effect on federally protected waters as defined by Section 404 of the Clean Water Act (CWA) (including but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption or other means." The document has the "No Impact" box checked and says in Section C that, "no federally protected waters as defined by section 404 of the CWA ...were observed onsite." This contradicts Section B that addresses "Jurisdictional and City Wetland Impacts" and identifies a total of 1.83 acres of impacts to protected wetlands, which would be a substantial adverse effect without mitigation. Measures Bio-4 and 5 indicate that permits and mitigation are required for these impacts. The CEQA checklist and responses should be revised to be consistent with the project description, impact analysis, and mitigation described in the MND.</p> <p>2. Page 5 of the MND states "The proposed project would not lead to edge effects." Figure 3 shows a Preliminary Park graphic, which identifies a potential trail connection to the south for the Otay Valley Regional Park, which is proposed as part of Phase 2 (i.e., City Park construction). Trails exiting the site into biological open space along the Otay River have the potential to increase edge effects into the surrounding preserve. We recommend that measures be included to reduce these potential impacts, such as fencing in areas adjacent to the preserve to ensure that people stay on the proposed trail, and thereby avoid creating unanticipated 'volunteer' trails.</p> <p>3. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of the forthcoming hearing date for the project (CEQA Guidelines, §15073(e)).</p> <p>We appreciate the opportunity to comment on the subject DEIR. If you have questions regarding this letter, please contact Elyse Levy of the Department at (858) 467-4237.</p> <p>Sincerely,  Gail K. Sevrens Environmental Program Manager South Coast Region</p> <p>cc: State Clearinghouse</p>	<p><b>B-2</b> The Biological Resources Section Issue C of the Initial Study Checklist has been revised to include Jurisdictional and City Wetland impacts and mitigation mentioned in Issue B. This revision is now consistent with the project description, impact analysis, and mitigation described in the MND.</p> <p><b>B-3</b> The proposed project development site does not include any changes, modifications or construction of the trail system. The future park is anticipated to add trail connections to the existing off-site trail system within the OVRP, but the future park trail access points have not yet been located. Per the Specific Plan associated with this project, configuration of such trails should follow the OVRP Design Standards and Guidelines, and could include such measures like fencing, if it is deemed necessary when the park is designed. However, project does not propose any new trails. Therefore, no edge effects beyond those evaluated in the MND and Initial study would occur.</p> <p><b>B-4</b> Comment noted. CDFW is included on the list of agencies to receive environmental documents prepared by the City of Chula Vista.</p>

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	COMMENT	RESPONSE
<p data-bbox="205 589 241 613"><b>C-1</b></p> <p data-bbox="205 703 241 727"><b>C-2</b></p> <p data-bbox="205 922 241 946"><b>C-3</b></p>	<div data-bbox="331 233 1050 329"> <p>STATE OF CALIFORNIA  <b>NATIVE AMERICAN HERITAGE COMMISSION</b>                      Environmental and Cultural Department                      1600 Harbor Blvd., Suite 100                      West Sacramento, CA 95821                      Phone (916) 373-3719                      Fax (916) 373-4471</p> </div> <div data-bbox="888 233 1050 250"> <p>Edmund G. Brown Jr., Governor</p> </div> <div data-bbox="982 253 1039 310">  </div> <p data-bbox="636 345 751 362">November 14, 2017</p> <p data-bbox="331 378 510 440">Steve Power                      City of Chula Vista                      276 Fourth Avenue, Building B                      Chula Vista, CA 91910</p> <p data-bbox="331 451 573 467">Sent via e-mail: spower@chulavista.gov</p> <p data-bbox="331 483 1024 500">Re: SCH# 2017111012, Otay River Business Park Specific Plan Project, City of Chula Vista, San Diego County, California</p> <p data-bbox="331 513 426 529">Dear Mr. Power:</p> <p data-bbox="331 540 1045 605">The Native American Heritage Commission (NAHC) has reviewed the Mitigated Negative Declaration prepared for the project referenced above. The review included the Project Setting, Project Description, Identification of Impacts, and Mitigation Necessary to Avoid Impacts, the Environmental Checklist and Analysis, section VI Cultural Resources prepared by ASM Affiliates for the City of Chula Vista. We have the following concerns:</p> <ol data-bbox="363 618 1050 821" style="list-style-type: none"> <li>1. While Tribal Cultural Resources are mentioned in the narrative under Cultural Resources, this does not adequately address the questions of significance stipulated in the California Natural Resources Agency (2016) "Final Text for tribal cultural resources update to Appendix G: Environmental Checklist Form."  <a href="http://resources.ca.gov/ceqa/docs/ab52/ceqa-final-AB-52-App-G-text-Submitted.pdf">http://resources.ca.gov/ceqa/docs/ab52/ceqa-final-AB-52-App-G-text-Submitted.pdf</a>                      A separate Tribal Cultural Resources section addressing these questions as well as consultation outreach and responses is preferred.</li> <li>2. Mitigation for inadvertent finds of Archaeological Resources, Cultural Resources, Tribal Cultural Resources, or Human Remains is missing or incomplete. Standard mitigation measures should be included in the document. Please refer to Health and Safety Code § 7050.5 and Public Resources Code § 5087.98 for the process for inadvertent finds of human remains. For sample mitigation measures for Tribal Cultural Resources, please refer the California Natural Resources document above and the Technical Advisory: AB52 and Tribal Cultural Resources in CEQA:  <a href="https://www.opr.ca.gov/docs/Revised_AB_52_Technical_Advisory_March_2017.pdf">https://www.opr.ca.gov/docs/Revised_AB_52_Technical_Advisory_March_2017.pdf</a></li> </ol> <p data-bbox="331 849 510 865"><b>ADDITIONAL INFORMATION:</b></p> <p data-bbox="331 865 1050 959">The California Environmental Quality Act (CEQA)<sup>1</sup>, specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.<sup>2</sup> If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.<sup>3</sup> In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).</p> <p data-bbox="331 971 1050 1122">CEQA was amended in 2014 by Assembly Bill 52. (AB 52).<sup>4</sup> AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015. AB 52 created a separate category for "tribal cultural resources", that now includes "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment."<sup>5</sup> Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.<sup>6</sup> Your project may also be subject to Senate Bill 18 (SB 18) (Burton, Chapter 905, Statutes of 2004), Government Code 85352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. Both SB 18 and AB 52 have tribal consultation requirements. Additionally, if your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966<sup>7</sup> may also apply.</p> <p data-bbox="331 1138 1050 1162">Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.</p>	

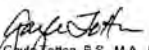
**C-1** A separate section for Tribal Cultural Resources was added to the Initial Study Checklist pursuant to the Final Text for tribal cultural resources updated Appendix G: Environmental Checklist Form. This new section addresses these question, as well as consultation and outreach by the City of Chula Vista, and summarize information presented in Section VI of the Initial Study that no archeological resources have been identified within the project area.

**C-2** As stated in the CEQA Initial Study and based on records search and the pedestrian survey, no archeological resources have been identified within the project area. The project site is not designated or listed, either individually or as part of a district, on a local, state, or national historical sites register.

The approximately four-acre agricultural fields in the northern half of the project area, identified as 1720 Fourth Avenue, were previously evaluated for California Register of Historical Resources (CRHR) eligibility as a cultural landscape and recommended not eligible for the CRHR and not a historical resource for the purposes of CEQA. No historical resources would be impacted in that portion of the project area. However, if human remains and/or artifacts are found during project grading, the City and applicant will follow all State requirements relative to tribal cultural resources.

**C-3** Comment noted. See also response C-2. The project would not cause a substantial adverse effect to tribal cultural resources, as there are no recorded sites listed or sites eligible for listing in the California Register of Historical Resource, or in a local register of historical resources as defined by Public Resources Code Section 5020.1(k). The City of Chula Vista sent out a tribal consultation notice on February 16, 2016 and did not receive a response. No impact would result.

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<div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px; text-align: right;"> <p><b>C-3</b> <b>(cont)</b></p> </div> <div style="border: 1px solid black; padding: 5px;"> <p>Agencies should be aware that AB 52 does not preclude agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Consultation Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <a href="http://nahc.ca.gov/resources/forms/">http://nahc.ca.gov/resources/forms/</a>. Additional information regarding AB 52 can be found online at <a href="http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf">http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf</a>, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".</p> <p>The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.</p> <p>A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.</p> <p>Please contact me at <a href="mailto:gayle.toffon@nahc.ca.gov">gayle.toffon@nahc.ca.gov</a> or call (916) 373-3714 if you have any questions.</p> <p>Sincerely,</p> <div style="text-align: center;">               Gayle Toffon, B.S., M.A., Ph.D.              Associate Governmental Project Analyst           </div> <p>Attachment</p> <p>cc: State Clearinghouse</p> </div> </div>	



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<p><b>C-4</b></p> <p><b>Pertinent Statutory Information:</b></p> <p>Under AB 52:            AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:            Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a <b>lead agency</b> shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice.            A <b>lead agency</b> shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project,<sup>14</sup> and prior to the release of a negative declaration, mitigated negative declaration or environmental impact report. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 55352.4 (SB 19)."<sup>15</sup>            The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:            a. Alternatives to the project.            b. Recommended mitigation measures.            c. Significant effects.<sup>16</sup>            4. The following topics are discretionary topics of consultation:            a. Type of environmental review necessary.            b. Significance of the tribal cultural resources.            c. Significance of the project's impacts on tribal cultural resources.            If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.            With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, constant with Government Code sections 6254 (r) and 6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.<sup>17</sup>            If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:            a. Whether the proposed project has a significant impact on an identified tribal cultural resource.            b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.<sup>18</sup>            Consultation with a tribe shall be considered concluded when either of the following occurs:            a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or            b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.<sup>19</sup>            Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.<sup>20</sup>            If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code section 21084.3 (b).            An environmental impact report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:            a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.            b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.            c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (c) and the tribe failed to request consultation within 30 days.<sup>21</sup></p> <p><sup>14</sup> Pub. Resources Code § 21080.3.1, subds. (d) and (e)  <sup>15</sup> Pub. Resources Code § 21080.3.1 (b)  <sup>16</sup> Pub. Resources Code § 21080.3.2 (a)  <sup>17</sup> Pub. Resources Code § 21080.3.2 (a)  <sup>18</sup> Pub. Resources Code § 21080.3.2 (c)(1)  <sup>19</sup> Pub. Resources Code § 21082.3 (b)  <sup>20</sup> Pub. Resources Code § 21080.3.2 (b)  <sup>21</sup> Pub. Resources Code § 21080.3.1 (a)  <sup>22</sup> Pub. Resources Code § 21082.3 (b)  <sup>23</sup> Pub. Resources Code § 21082.3 (d)</p>	<p><b>C-4</b> Comment noted.</p>	

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<p style="text-align: center;"><i>This process should be documented in the Tribal Cultural Resources section of your environmental document.</i></p> <p><b>Under SB 18:</b> Government Code § 65352.3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of "preserving or mitigating impacts to places, features, and objects described § 5097.9 and § 5091.993 of the Public Resources Code that are located within the city or county's jurisdiction." Government Code § 65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a county or city general plan for the purposes of protecting places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.</p> <ul style="list-style-type: none"> <li>• SB 18 applies to local governments and requires them to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: <a href="https://www.opwr.ca.gov/files/05_14_08_Updated_Guidelines_922.pdf">https://www.opwr.ca.gov/files/05_14_08_Updated_Guidelines_922.pdf</a></li> <li>• <b>Tribal Consultation:</b> If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes (identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.<sup>19</sup></li> <li>• <b>There is no Statutory Time Limit on Tribal Consultation under the law.</b></li> <li>• <b>Confidentiality:</b> Consistent with the guidelines developed and adopted by the Office of Planning and Research,<sup>20</sup> the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction.<sup>21</sup></li> <li>• <b>Conclusion Tribal Consultation:</b> Consultation should be concluded at the point in which:             <ul style="list-style-type: none"> <li>◦ The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or</li> <li>◦ Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation.<sup>22</sup></li> </ul> </li> </ul> <p><b>NAHC Recommendations for Cultural Resources Assessments:</b></p> <ul style="list-style-type: none"> <li>• Contact the NAHC for:             <ul style="list-style-type: none"> <li>◦ A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.</li> <li>◦ A Native American Tribal Contact List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or failing both, mitigation measures.                     <ul style="list-style-type: none"> <li>▪ The request form can be found at <a href="http://nahc.ca.gov/resources/forms/">http://nahc.ca.gov/resources/forms/</a>.</li> </ul> </li> </ul> </li> <li>• Contact the appropriate regional California Historical Research Information System (CHRIS) Center (<a href="http://ohp.parks.ca.gov/?page_id=1068">http://ohp.parks.ca.gov/?page_id=1068</a>) for an archaeological records search. The records search will determine:             <ul style="list-style-type: none"> <li>◦ If part or the entire APE has been previously surveyed for cultural resources.</li> <li>◦ If any known cultural resources have been already been recorded on or adjacent to the APE.</li> <li>◦ If the probability is low, moderate, or high that cultural resources are located in the APE.</li> <li>◦ If a survey is required to determine whether previously unrecorded cultural resources are present.</li> </ul> </li> <li>• If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.             <ul style="list-style-type: none"> <li>◦ The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.</li> <li>◦ The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.</li> </ul> </li> </ul> <p><b>Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:</b></p> <ul style="list-style-type: none"> <li>◦ Avoidance and preservation of the resources in place, including, but not limited to:             <ul style="list-style-type: none"> <li>▪ Planning and construction to avoid the resources and protect the cultural and natural context.</li> <li>▪ Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.</li> </ul> </li> </ul> <p><small><sup>19</sup> (Gov. Code § 65352.3 (a)(2)). <sup>20</sup> pursuant to Gov. Code section 69640.2. <sup>21</sup> (Gov. Code § 65352.3 (b)). <sup>22</sup> Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).</small></p>	

C-4  
(cont)

# LETTERS OF COMMENTS AND RESPONSES


COMMENT	RESPONSE
<p><b>C-4 (cont)</b></p> <ul style="list-style-type: none"> <li>◊ Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:             <ul style="list-style-type: none"> <li>• Protecting the cultural character and integrity of the resource.</li> <li>• Protecting the traditional use of the resource.</li> <li>• Protecting the confidentiality of the resource.</li> </ul> </li> <li>◊ Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.</li> <li>◊ Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed.<sup>25</sup></li> <li>◊ Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.<sup>26</sup></li> </ul> <p>The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.</p> <ul style="list-style-type: none"> <li>◊ Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the identification and evaluation of inadvertently discovered archaeological resources.<sup>27</sup> In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.</li> <li>◊ Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.</li> <li>◊ Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 15064.5, subs. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.</li> </ul> <p><sup>25</sup> (Civ. Code § 810.3 (c)).  <sup>26</sup> (Pub. Resources Code § 5097.98).  <sup>27</sup> per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).</p>	

# LETTERS OF COMMENTS AND RESPONSES

	COMMENT	RESPONSE
<p><b>D-1</b></p> <p><b>D-2</b></p> <p><b>D-3</b></p>	<p>STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY</p> <p>EDMUND G. BROWN Jr., Governor</p> <p><b>DEPARTMENT OF TRANSPORTATION</b></p> <p>DISTRICT 11 4050 TAYLOR STREET, M.S. 240 SAN DIEGO, CA 92110 PHONE: (619) 688-3193 TTY: 711 www.dot.ca.gov</p> <p>December 6, 2017</p> <p>11-SD-805 PM 6:21 MND SCH 2017111012</p> <p>Mr. Steve Power City of Chula Vista 276 4th Ave, Building B Chula Vista, CA 91910</p> <p>Dear Mr. Power:</p> <p>The California Department of Transportation (Caltrans) has reviewed the Mitigated Negative Declaration (MND) SCH 2017111012 for the Otay River Business Park Specific Plan, which will be located east of Beyer Boulevard and southwest of 4<sup>th</sup> Avenue in the City of Chula Vista. Caltrans has the following comments:</p> <p>Based on the data submitted in the Traffic Impact Analysis Report, dated March 22, 2017, and the Synchro files for our review, Caltrans agrees with this report's conclusion that this proposed project does impact our facilities at the intersections of southbound Interstate 805 at Main Street and northbound Interstate 805 at Main Street in Horizon Year 2035, and that a fair share contribution is needed on a future planned project at the undercrossing to mitigate for the impact.</p> <p>In the TIS Mitigation Traffic-1 states the horizon year impacts from their project will be alleviated. A fair share amount needs to be formulated, along with the mitigation measures to State facilities, should be included in TIS. Mitigation identified in the traffic study, subsequent environmental documents, and mitigation monitoring reports, should be coordinated with Caltrans to identify and implement the appropriate mitigation. This includes the actual implementation and collection of any "fair share" monies, as well as the appropriate timing of the mitigation. Mitigation improvements should be compatible with Caltrans concepts.</p> <p>Any work performed within Caltrans right-of-way (R/W) will require discretionary review and approval by Caltrans and an encroachment permit will be required for any work within the Caltrans R/W prior to construction. Additional information regarding encroachment permits may be obtained by contacting the Caltrans Permits Office at (619) 688-6158. Early coordination with Caltrans is strongly advised for all encroachment permits.</p> <p><i>"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability."</i></p>	<p><b>D-1</b> Comment noted.</p> <p><b>D-2</b> The applicant is fully mitigating the cumulative impact through payment to the city of Chula Vista Western Transportation Development Impact Fee (WTDIF) program. Any coordination between Caltrans and the City on the WTDIF improvement project "Facility I-805-2" is outside the preview of the applicant.</p> <p><b>D-3</b> Comment noted.</p>

# LETTERS OF COMMENTS AND RESPONSES


D-3  
(cont)

COMMENT	RESPONSE
<p>Mr. Power December 6, 2017 Page 2</p> <p>If you have any questions, or require further information, please contact Trent Clark at (619) 688-3140 or email at trent.clark@dot.ca.gov.</p> <p>Sincerely,</p>  <p>KERI ROBINSON, Acting Branch Chief Development Review Branch</p> <p><small>"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability."</small></p>	

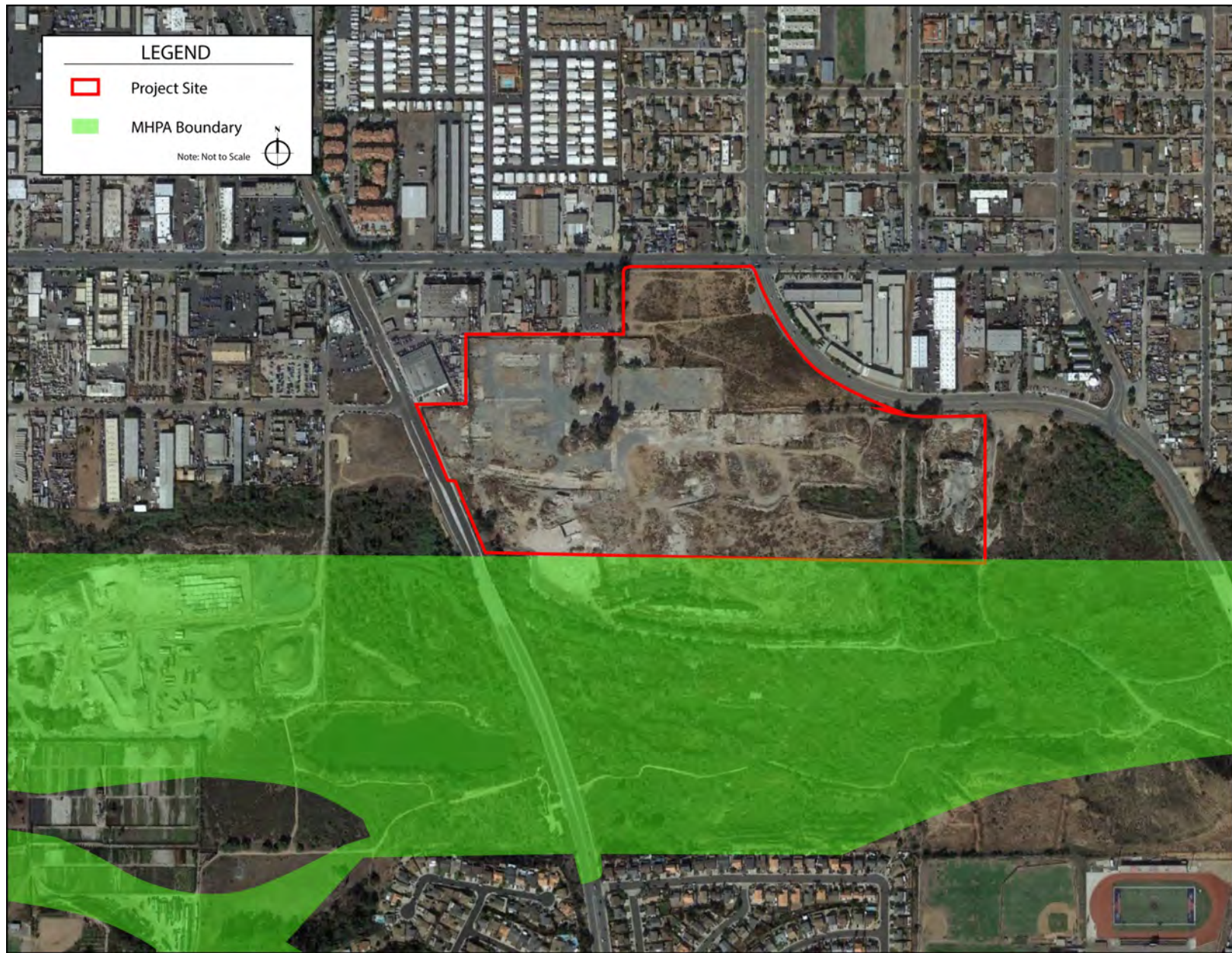
# LETTERS OF COMMENTS AND RESPONSES

	COMMENT	RESPONSE
	<p><b>Miguel Tapia</b></p> <hr/> <p><b>From:</b> Tylke, Melanie &lt;Melanie.Tylke@sdccounty.ca.gov&gt;  <b>Sent:</b> Monday, December 04, 2017 4:45 PM  <b>To:</b> Michael Walker; Miguel Tapia  <b>Cc:</b> Ball, Laura (L.Ball@sandiego.gov); Mosley, Deborah  <b>Subject:</b> RE: Otay River Business Park Project - Comments on MND  <b>Attachments:</b> Otay River Business Park MND MSCP&amp;OS.PDF</p> <p>Michael and Miguel –</p> <p>Please see County of San Diego, Department of Parks and Recreation comments on the proposed project, which falls wholly within the Otay Valley Regional Park boundary. The Otay Valley Regional Park is governed by a JEPA in which the County of San Diego, City of San Diego and City of Chula Vista are in partnership.</p> <ol style="list-style-type: none"> <li>1. Please ensure references to the Otay Valley Regional Park (OVRP) are accurately referenced (e.g. Otay River Valley Park is incorrect on page 3).</li> <li>2. The entire project site is located within the Otay Valley Regional Park boundary, not adjacent to. Please update references.             <ul style="list-style-type: none"> <li>o The park proposed in this project is a designated Active Recreation Area per the OVRP Concept Plan, and should be reflected as such in this document.</li> <li>o The OVRP Concept Plan was recently updated and adopted by all three JEPA partners and the updated document should be referenced in the environmental document.</li> <li>o As this project is wholly located within the OVRP boundary the OVRP Citizen Advisory Committee should receive notice of the MND and MMRP and be provided the opportunity to review and comment, per regular OVRP processes.</li> </ul> </li> <li>3. Public Comments. The County and City of San Diego have provided comments on the proposed project, please update section to reflect such.</li> <li>4. Please ensure section 8. Project Description for planning are 5, includes the construction of an access road, and pedestrian bridge as they are not currently listed.</li> <li>5. The Preliminary Park Graphic appears to still be the first concept of this park. The previous Director of Recreation, Kristi McClure Huckaby noted that a revised version of this proposed park plan was available and should be analyzed with this project.</li> <li>6. MMRP – Mitigation Measure 9 does not note the method of verification, timing, or the responsible party. Please clarify.</li> <li>7. The County agrees with the comments submitted by the City of San Diego in letter titled "Otay River Business Park Proposed Mitigated Negative Declaration IS15-0005" on Dec 4, 2017.</li> </ol> <p>If you have any questions, please feel free to contact me at 858-966-1377 or <a href="mailto:Melanie.tylke@sdccounty.ca.gov">Melanie.tylke@sdccounty.ca.gov</a>.</p> <p>Thank you,  <b>Melanie Tylke</b>, LEED AP ND          Land Use &amp; Environmental Planner III          County of San Diego, Parks and Recreation          5500 Overland Ave., Ste. 410          San Diego, CA. 92123          (858) 966-1377  <a href="http://www.sdparks.org">www.sdparks.org</a></p>	<p><b>E-1</b> Comment noted. The MND has been revised to accurately reference Otay Valley Regional Park in all instances.</p> <p><b>E-2</b> The Initial Study and MND have been revised to reflect that the entire project site is located within the OVRP.</p> <p><b>E-3</b> Comment noted. Comments from the County and City of San Diego have been received and addressed in this Response to Comments.</p> <p><b>E-4</b> The description for Area 5 has been revised to include the addition of an access road and pedestrian bridge.</p> <p><b>E-5</b> The MND and Initial Study evaluated a preliminary concept for the community park available at the time the environmental document was prepared. Once a final concept is developed for the park, City staff will evaluate that concept and determine if the MND/Initial Study adequately reviewed the potential environmental impacts or if there is the need for additional environmental review. Because park concepts are still in their developmental stage and a final design for the park is not yet ready for approval, there is no benefit in modifying the MND/Initial Study each time the preliminary park concept is modified and/or update.</p> <p><b>E-6</b> The MMRP was revised to include the method of verification, timing and the responsible party for Mitigation Measure 9.</p> <p><b>E-7</b> Comment noted. Comments submitted by the City of San Diego in the mentioned letter have been received and are addressed below.</p>

# LETTERS OF COMMENTS AND RESPONSES


COMMENT	RESPONSE
<p>The City of <b>SAN DIEGO</b> Park and Recreation Department</p> <p>Via email and US Mail</p> <p>December 4, 2017</p> <p>City of Chula Vista Development Services Department 276 Fourth Avenue Chula Vista, CA 91910 Attn: Miguel Z. Tapia</p> <p>SUBJECT: Otay River Business Park Proposed Mitigated Negative Declaration IS15-0005</p> <p>Dear Mr. Tapia:</p> <p>City of San Diego Multiple Species Conservation Program (MSCP) Planning Staff and Park and Recreation Department Open Space division have reviewed the Proposed Mitigated Negative Declaration for the Otay River Business Park.</p> <p>MSCP Planning staff reviewed the draft MND for the Otay River Business Park Specific Plan and has the following comments:</p> <ul style="list-style-type: none"> <li>The City of San Diego and Chula Vista Multiple Habitat Planning Areas (MHPA) should be clear in the figures. Please provide a figure with MHPA areas and the bed and bank of the Otay River (see City of San Diego MHPA in white and green screenshot below).</li> </ul>  <p>Open Space Division 202 C Street, MS 50 San Diego, CA 92101 osd@sanidiego.gov</p> <p>T (619) 685-1301 shd@sanidiego.gov</p>	<p><b>F-1</b> The requested figure is provided on the following page.</p>

**F-1**





# LETTERS OF COMMENTS AND RESPONSES

<p>Page 2</p> <p><b>F-2</b> Based on SANGIS, it appears that the project area would be located more than 100 feet from the Otay River and would comply with the City of San Diego's ESL regulations regarding biology mitigation ratios and the City of San Diego's MSCP Subarea Plan (MSCP SAP), including Section 1.4.3 -MHPA Land Use Adjacency Guidelines (LUAGs).</p> <p>Park and Recreation Department staff have the following comments:</p> <p><b>F-3</b> The entire project site is within the boundary of the OVRP. Please revise Section C. Compliance with Zoning and Plans, Page 3 of the MND which states "The park area of the Specific Plan is adjacent to the OVRP and park design would utilize the OVRP Design Standards and Guidelines."</p> <p><b>F-4</b> Ensure that the entire project, not just the future park site Park, utilizes OVRP Design Standards and Guidelines (see Section 5, Private Development Guidelines).</p> <p><b>F-5</b> Include the boundary of the OVRP in figures for the MND.</p> <p><b>F-6</b> Add a discussion/demonstrate compatibility of the project with the recently adopted/updated OVRP Concept Plan.</p> <p><b>F-7</b> The MND does not directly address brush management for the project. Please address and confirm that all brush management responsibilities would occur within the project site and not on/within adjacent open space.</p> <p><b>F-8</b> Additionally, it is recommended that the OVRP Citizen's Advisory Committee receive notice of the MND and MMRP and be provided the opportunity to review and comment.</p> <p>Please let me know if you have any question regarding these comments.</p> <p>Sincerely,            Laura Ball</p> <p>cc: Michael Walker, Chula Vista          Melanie Tylke, County of San Diego          Holly Smit-Kicklighter, City of San Diego MSCP</p>	<p><b>F-2</b> Comment noted.</p> <p><b>F-3</b> Section C of the MND has been revised to state the entire project site is within the boundary of the OVRP.</p> <p><b>F-4</b> Section C of the MND has been revised to state that the project and the design of the future Community Park would utilize the OVRP Design Standards and Guidelines.</p> <p><b>F-5</b> Figure 5, Otay Valley Regional Park, has been added to the MND, showing the project's relationship to the Park.</p> <p><b>F-6</b> See response E-5, above.</p> <p><b>F-7</b> No brush management is anticipated to be necessary for the project beyond the project site. The design includes industrial development pads above the floodway, with a permanently irrigated slope of minimum 50 feet between the pads and the floodway. There is an additional approximately 100 feet to the City of Chula Vista boundary and at least 200 feet to the existing Otay River vegetation within the City of San Diego. In project site areas where there is existing vegetation (southwest corner), the project's proposed storm water basins would ensure that all habitable structures are further than 100 feet away. The preliminary design for the future community park does not show any habitable structures within 100 feet of existing natural vegetation. Final plans of the park design would be reviewed in accordance with Chula Vista brush management regulations.</p> <p><b>F-8</b> Comment noted. The OVRP's Citizen Advisory Committee has been added on the list of agencies to receive environmental documents prepared by the City of Chula Vista.</p>
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