

# FINAL ENVIRONMENTAL IMPACT REPORT



## City of Santa Cruz Parks Master Plan 2030

City of Santa Cruz  
Parks and Recreation Department

July 2020



**FINAL**

# **ENVIRONMENTAL IMPACT REPORT**

**CITY OF SANTA CRUZ PARKS MASTER PLAN 2030**

SCH#2018012030

**PREPARED FOR**

**CITY OF SANTA CRUZ**

Parks and Recreation Department

**PREPARED BY**

**DUDEK**

Santa Cruz, California

July 2020



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# CHAPTER 1

## INTRODUCTION

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### 1.1 PURPOSE OF THE EIR

This EIR has been prepared for the City of Santa Cruz (City), which is the lead agency for the *Parks Master Plan 2030* (Project). This document, together with the Draft EIR dated March 2020, constitute the Final EIR for the proposed *Parks Master Plan 2030* Project. This EIR has been prepared in accordance with the California Environmental Quality Act (CEQA), which is found in the California Public Resources Code, Division 13, and with the State CEQA Guidelines, which are found in Title 14 of the California Code of Regulations, commencing with section 15000.

As stated in the CEQA Guidelines section 15002, the basic purposes of CEQA are to:

- ☐ Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.
- ☐ Identify the ways that environmental damage can be avoided or significantly reduced.
- ☐ Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- ☐ Disclose to the public the reasons a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

Pursuant to State CEQA Guidelines section 15121, an EIR is an informational document which will inform public agency decision-makers and the public generally of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency. While the information in the EIR does not control the ultimate decision about the project, the agency must consider the information in the EIR and respond to each significant effect identified in the EIR by making findings pursuant to Public Resources Code section 21081.

This EIR is prepared as a “Program EIR” pursuant to section 15168 of the State CEQA Guidelines. A program EIR is an EIR that may be prepared on a series of actions that can be characterized as one large project and are related geographically, by similar environmental effects, as logical parts in the chain of contemplated actions, or in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program. A program EIR can provide a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action and can ensure consideration of cumulative impacts. A program EIR can be used as part of the environmental review for later individual projects to be carried out pursuant to the project previously analyzed in the program EIR, where impacts have been adequately

addressed in the program EIR. This is referred to as “tiering” as set forth in section 15152 of the State CEQA Guidelines. “Tiering” uses the analysis of general matters contained in a broader program EIR (such as one prepared for a general plan) with later EIRs and negative declarations on narrower projects, incorporating by reference the general discussions from the broader EIR and concentrating the later EIR or negative declaration solely on the issues specific to the later project. The State CEQA Guidelines encourage agencies to tier the environmental analyses which they prepare for separate but related projects, including general plans, zoning changes, and development projects. For later individual projects covered in this EIR, the City will determine whether the individual project or subsequent activity is within the scope of this Program EIR. If appropriate and applicable to a proposed project, the City may also consider one or more statutory or categorical exemptions.

Pursuant to CEQA (Public Resources Code section 21002), public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which would substantially lessen the significant environmental effects of such projects. Pursuant to section 15021 of the State CEQA Guidelines, CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible. In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors. According to the State CEQA Guidelines, “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. This section further indicates that CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors, and an agency shall prepare a “statement of overriding considerations” as to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project that will cause one or more significant effects on the environment. The environmental review process is further explained below in subsection 1.4.

## 1.2 PROJECT OVERVIEW

The Parks Master Plan is a guidance document that assesses existing conditions and community needs and guides the short- and long-term planning of parks, recreational facilities, beaches, and open space-greenbelt lands. The Parks Master Plan also will aid implementation of the City’s General Plan, and the plan’s recommendations are advisory. The Parks Master Plan provides an analysis of the current parks, open spaces, and recreational facilities based on an assessment of the existing assets, quantitative and qualitative data gathered from the community outreach, emerging trends in recreation, and standards for park development.

The Parks Master Plan includes goals, policies and actions for the provision of parks and recreational services. These include general recommendations for new and/or expanded recreational uses. The Master Plan also provides specific recommendations for improvements at the City’s individual parks, beaches, open spaces, and recreational facilities. The Parks Master Plan lays out recommendations for the next 15 years but is designed to be updated over time, providing

a guiding framework while allowing for adjustments based on both presently anticipated and unforeseen future needs and community desires.

The proposed Parks Master Plan includes the following components; a full Project Description is included in Chapter 3.0 of the Draft EIR volume:

- ☐ An inventory of existing conditions, parks, open space and recreational facilities
- ☐ An assessment of emerging trends and community needs
- ☐ Goals, policies and actions
- ☐ Recommendations for specific facilities
- ☐ Implementation and funding strategies

## 1.3 SCOPE OF THE EIR

The City has identified the topics listed below for analysis in the EIR based on the analyses in the February 2019 Initial Study and responses to the EIR Notice of Preparation. This EIR also evaluates topics required by CEQA and CEQA Guidelines, including growth inducement, cumulative impacts, and project alternatives.

- ☐ Aesthetics
- ☐ Air Quality and Greenhouse Gas Emissions
- ☐ Biological Resources
- ☐ Cultural Resources
- ☐ Geology and Soils
- ☐ Hazards
- ☐ Hydrology and Water Quality
- ☐ Noise
- ☐ Public Services
- ☐ Transportation and Traffic
- ☐ Utilities and Energy Conservation
- ☐ Land Use

Other issues are evaluated in the 2019 Initial Study, which is available for review by appointment at the Parks and Recreation Department, 323 Church Street, Santa Cruz during regular business hours, Monday through Friday between 8:00 AM and 12:00 and 1:00 PM and 5:00 PM. Contact Noah Downing at [NDowning@cityofsantacruz.com](mailto:NDowning@cityofsantacruz.com) to make an appointment. The Initial Study also is available for review on the City's website at: <http://www.cityofsantacruz.com/government/city-departments/parks-recreation/parks-beaches-open-spaces/parks-master-plan>. Section 4.13 of the Draft EIR volume identifies and discusses impacts which have not been found to be significant and are therefore not addressed in the EIR.

As indicated above, the focus of the environmental review process is upon significant environmental effects. As defined in section 15382 of the CEQA Guidelines, a “significant effect on the environment” is:

... a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether a physical change is significant.

In evaluating the significance of the environmental effects of a project, the State CEQA Guidelines require the lead agency to consider direct physical changes in the environment and reasonably foreseeable indirect physical changes in the environment which may be caused by the project (CEQA Guidelines section 15064[d]). A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. An indirect physical change in the environment is a physical change in the environment, which is not immediately related to the project, but which is caused indirectly by the project. An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project.

CEQA Guidelines section 15064(e) further indicates that economic and social changes resulting from a project shall not be treated as significant effects on the environment, although they may be used to determine that a physical change shall be regarded as a significant effect on the environment. In addition, where a reasonably foreseeable physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project.

## **1.4 ENVIRONMENTAL REVIEW AND APPROVAL PROCESS**

### **1.4.1 Background**

An Initial Study (IS) and Mitigated Negative Declaration (MND) were prepared and circulated for a 30-day public review period from January 22, 2018 through February 20, 2018. Comments were received from two public agencies (California Coastal Commission and California Department of Transportation [Caltrans]), five organizations (Beach Flats Junior Youth Group, Friends of Jessie Street Marsh, Friends of Pogonip, Sierra Club, and Wildlife Emergency Services), and 39 individuals. The comments are on file at the City Parks and Recreation Department.

The IS/MND was revised to provide expanded analyses in response to public comments and was recirculated for public review and comment for a 30-day public review period from February 11, 2019 through March 12, 2019. The IS/MND was recirculated due to revision of impact significance

and new mitigation measures (geology-soils-water quality-erosion), as well as revised text. However, the Initial Study did not identify significant effects that would require preparation of an EIR as outlined in the State CEQA Guidelines section 15065. The IS/MND determined that potentially significant impacts would be mitigated to a less-than-significant level and had been agreed to by the City, in which case an EIR need not be prepared solely because without mitigation, an environmental effect would be significant (State CEQA Guidelines section 15065(b)(1)).

Comments were received from one public agency (California Coastal Commission [same letter as previously submitted]), three organizations (California Native Plant Society, Friends of Pogonip, and Sierra Club), and six individuals. The comments are on file at the City Parks and Recreation Department. In consultation with the City Attorney, City staff determined that although identified significant impacts could be reduced to a less-than-significant level and an EIR was not warranted, an EIR should be prepared to provide full public disclosure of potential impacts and mitigation measures.

### 1.4.2 Scoping

Under CEQA, the lead agency for a project is the public agency with primary responsibility for carrying out or approving the project, and for implementing the requirements of CEQA. CEQA Guidelines section 15083 authorizes and encourages an early consultation or scoping process to help identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed and considered in an EIR, and to help resolve the concerns of affected regulatory agencies, organizations, and the public. Scoping is designed to explore issues for environmental evaluation, ensuring that important considerations are not overlooked and uncovering concerns that might otherwise go unrecognized.

A Notice of Preparation (NOP) for this EIR was circulated for a 30-day comment period on July 26, 2019. The NOP was circulated to the State Clearinghouse and to local, regional, and federal agencies in accordance with State CEQA Guidelines. The NOP also was sent to organizations and interested citizens that have requested notification in the past. The NOP is included in Appendix A.

Written comments were received in response to the NOP from two public agencies (Caltrans and California Native Heritage Commission) and two individuals. These letters are included in Appendix A. The comments have been taken into consideration in the preparation of this EIR for comments that address environmental issues.

### 1.4.3 Public Review of Draft EIR

The Draft EIR was published and circulated for review and comment by the public and other interested parties, agencies, and organizations for a 45-day public review period from March 11,

2020 through April 24, 2020, which was subsequently extended to May 8, 2020 due to the coronavirus pandemic.

The City of Santa Cruz encouraged public agencies, organizations, community groups, and all other interested persons to provide written comments on the Draft EIR prior to the end of the public review period. Section 15204(a) provides guidance on the focus of review of EIRs, indicating that in reviewing draft EIRs, persons and public agencies “should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated,” and that comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. This section further states that: “CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

Eight letters of comment were received; agencies, organizations and individuals that submitted written comments on the draft EIR are outlined below.

### ***State & Local Agencies***

1. California Department of Transportation (Caltrans)
2. California Native American Heritage Commission
3. California State Clearinghouse

### ***Organizations***

4. Bike Santa Cruz – Gina Gallino Cole
5. Friends of Pogonip - Wittwer/Parkin
6. Santa Cruz Wymyn for Wild Nature – Erica Stanojevic

### ***Individuals***

7. Candace Brown
8. Grant Weseman

This Final EIR volume includes written responses to significant environmental issues raised in comments received during the public review period in accordance with CEQA Guidelines section 15088. The Final EIR also includes Draft EIR text changes and additions that became necessary after consideration of public comments. (See CEQA Guidelines, § 15088, subd. (c)).)

## **1.4.4 Final EIR / Project Approval**

The Final EIR, which includes both the Draft and Final EIR documents, will be presented to the Parks and Recreational Commission and the City Council. The City Council will make the final

decision on certification of the EIR and the Parks Master Plan. The Parks Master Plan and EIR also will be reviewed by the City Parks and Recreation Commission, and the Commission will provide a recommendation to the City Council. The City Council must ultimately certify that it has reviewed and considered the information in the EIR. Before it can approve the project or any of the alternatives described in the Final EIR, the City Council must first certify that it has reviewed and considered the information in the EIR, that the EIR has been completed in conformity with the requirements of CEQA, and that the document reflects the City's independent judgment. (See CEQA Guidelines, § 15090, subd. (a).)

Pursuant to sections 21002, 21002.1 and 21081 of CEQA and sections 15091 and 15093 of the State CEQA Guidelines, no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant effects unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
  - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects on the environment.
  - 2. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by such other agency.
  - 3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

Although these determinations (especially regarding feasibility) are made by the public agency's final decision-making body based on the entirety of the agency's administrative record as it exists after completion of a Final EIR, the Draft EIR must provide information regarding the significant effects of the proposed project and must identify the potentially feasible mitigation measures and alternatives to be considered by that decision-making body.

### **1.4.5 Adoption of Mitigation Monitoring & Reporting Program**

CEQA requires that a program to monitor and report on mitigation measures be adopted by a lead agency as part of the project approval process. CEQA requires that such a program be adopted at the time the agency approves a project or determines to carry out a project for which an EIR has

been prepared to ensure that mitigation measures identified in the EIR are implemented. The Mitigation Monitoring and Reporting Program is included in Appendix A of this document.

## 1.5 INTENDED USE OF THE EIR

The City of Santa Cruz will consider the EIR prior to the adoption and implementation of the *Parks Master Plan 2030*. No other agencies have approval or review authority over the Parks Master Plan. Some of the recommended projects may need additional permits from other agencies at the time a specific project is proposed.

## 1.6 ORGANIZATION OF DRAFT EIR

This document, together with the Draft EIR dated March 2020, constitutes the Final EIR for the project. This document contains responses to comments received on the Draft EIR. The Final EIR is organized with the following sections.

- ❑ **Chapter 1, Introduction**, explains the CEQA process; describes the scope and purpose of this EIR; provides information on the environmental review and approval process; and outlines the organization of this Final EIR document.
- ❑ **Chapter 2, Summary**, presents an overview of the project; provides a summary of the impacts of the project and mitigation measures; provides a summary of the alternatives being considered; includes a discussion of known areas of controversy; and lists the topics not carried forward for further analysis.
- ❑ **Chapter 3, Changes to Draft EIR**, outlines revisions to the Draft EIR text as a result of review of comments and responses as may be needed. Additional clarification provided by City staff also is included.
- ❑ **Chapter 4, Public Comments and Responses**, includes each comment letter with responses to comments immediately following the comment letter.
- ❑ **Appendices**. A Mitigation Monitoring and Reporting Program is included in Appendix A.

# CHAPTER 2

## SUMMARY

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### 2.1 INTRODUCTION

This chapter provides a brief description of the proposed project, known areas of controversy or concern, project alternatives, all potentially significant impacts identified during the course of this environmental analysis, and issues to be resolved. This summary is intended as an overview and should be used in conjunction with a thorough reading of the EIR. The text of this report, including figures, tables and appendices, serves as the basis for this summary.

### 2.2 PROJECT OVERVIEW

This Environmental Impact Report (EIR) addresses the potential environmental effects of adoption and implementation of the City of Santa Cruz Parks Master Plan. The Parks Master Plan is a guidance document that assesses existing conditions and community needs, and guides the short- and long-term planning of parks, recreational facilities, beaches, and open space-greenbelt lands. The Parks Master Plan also will aid implementation of the City's General Plan, and the plan's recommendations are advisory. The Parks Master Plan provides an analysis of the current parks, open spaces, and recreational facilities based on an assessment of the existing assets, quantitative and qualitative data gathered from the community outreach, emerging trends in recreation, and standards for park development.

The Parks Master Plan includes goals, policies and actions for the provision of parks and recreational services. These include general recommendations for new and/or expanded recreational uses. The Master Plan also provides specific recommendations for improvements at the City's individual parks, beaches, open spaces, and recreational facilities. The Parks Master Plan lays out recommendations for the next 15 years but is designed to be updated over time, providing a guiding framework while allowing for adjustments based on both presently anticipated and unforeseen future needs and community desires.

The proposed Parks Master Plan includes the following components; key elements are described in the following sections:

- ☐ An inventory of existing conditions, parks, open space and recreational facilities
- ☐ An assessment of emerging trends and community needs
- ☐ Goals, policies and actions
- ☐ Recommendations for specific facilities
- ☐ Implementation and funding strategies

## 2.3 AREAS OF CONTROVERSY OR CONCERN

The following issues of concern were raised on the Initial Study prepared for the Parks Master Plan (Project), both the 2018 Initial Study/Mitigated Negative Declaration (IS/MND) and the 2019 Recirculated IS/MND.

- ☐ Potential impacts associated with expanding off-leash areas for dogs or expanding multi-use trails in Pogonip, Arroyo Seco, and DeLaveaga Park;
- ☐ Level of analysis regarding potential biological, erosion and drainage impacts associated with new trails, particularly in Pogonip, DeLaveaga Park, Moore Creek Preserve and Arroyo Seco, and claims that the document defers studies and analyses related to these issues;
- ☐ Implementation of and potential changes to the Jessie Street Marsh Management Plan;
- ☐ Increased lighting at DeLaveaga Park, Depot Park, Neary Lagoon, Main Beach, San Lorenzo River and new parking lots;
- ☐ Impacts of development of a drone course;
- ☐ Conflicts with and potential to amend adopted management plans;
- ☐ Transportation impacts;
- ☐ Support for the Beach Flats community garden; and
- ☐ An EIR should be prepared for the Project.

A Notice of Preparation (NOP) for this EIR was circulated for a 30-day comment period on July 26, 2019. Written comments were received in response to the NOP from two public agencies (Caltrans and California Native Heritage Commission) and two individuals (Erica Stanojevic and Grant Weseman). These letters are included in Appendix A and generally addressed:

- ☐ Requirements of Caltrans;
- ☐ Recommendations for conducting cultural resource assessments and Native American consultations;
- ☐ Impacts of lighting (aesthetics and biological resources);
- ☐ Request to take park management plans into consideration and anticipated increased usage of parks and open space; and
- ☐ Issues regarding enforcement or lack of enforcement of dog regulations, on or off leash.

As indicated in Chapter 1, Introduction, the comments have been taken into consideration in the preparation of this EIR for comments that raise environmental issues.

## 2.4 SUMMARY OF ALTERNATIVES

CEQA Guidelines require that an EIR describe and evaluate alternatives to the project that could eliminate significant adverse project impacts or reduce them to a less-than-significant level. The following alternatives are evaluated in Section 5.5.

- ☐ No Project – Required by CEQA
- ☐ Alternative 1 – Reduced Project
- ☐ Alternative 2 – Modified Project

Table 5-1 in Section 5.5 of this EIR presents a comparison of project impacts between the proposed project and the alternatives. Excluding the No Project Alternative, Alternative 2, Modified Project, is considered the environmentally superior alternative of the alternatives considered because it would avoid and/or reduce potentially significant impacts, while meeting Project objectives.

## 2.5 SUMMARY OF IMPACTS AND MITIGATION MEASURES

All impacts identified in the subsequent environmental analyses are summarized in this section. This summary groups impacts of similar ranking together, beginning with significant unavoidable impacts, followed by significant impacts that can be mitigated to a less-than-significant level, followed by impacts not found to be significant. The discussions in the Initial Study of impacts that are not being addressed in detail in the text of the Draft EIR are intended to satisfy the requirement of CEQA Guidelines section 15128 that an EIR “shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and therefore were not discussed in detail in the EIR.” The Initial Study is included in Appendix A of this EIR. A summary of less-than-significant and no impacts identified in the Initial study is presented at the end of this section.

### 2.5.1 Significant Unavoidable Impacts

No significant unavoidable impacts were identified as a result of the impact analyses.

### 2.5.2 Significant Impacts

The following impacts were found to be potentially significant but could be reduced to a less-than-significant level with implementation of identified mitigation measures should the City’s decision-makers impose the measures on the project at the time of final action on the project.

**Impact BIO-4: Wildlife Breeding – Nesting Birds.** Implementation of the Parks Master Plan and future implementation of recommended improvements could result in

indirect impacts to nesting birds if any are occurring within or near future construction areas.

#### **Mitigation Measures**

**MITIGATION BIO-4A:** Require that a pre-construction nesting survey be conducted by a qualified wildlife biologist if future park facility construction or tree removal occurs near mature trees and wooded areas, and is scheduled to begin between February 1 and August 31 ~~March and late July~~ to determine if nesting birds are in the vicinity of the construction sites. If nesting raptors or other nesting species protected under the Migratory Bird Treaty Act are found, construction may need to be delayed until late-August or after the wildlife biologist has determined the nest is no longer in use or unless a suitable construction buffer zone can be identified by the biologist. This measure also is a requirement of the *City-wide Creeks and Wetlands Management Plan* (Standard 12).

**MITIGATION BIO-4B:** Include an Action in the Parks Master Plan to prohibit recreational use of drones and/or establishment of a recreational drone course within sensitive habitat areas or near wildlife nesting areas that could cause disturbance or harm to breeding or nesting wildlife.

**Impact GEO-2: Soils and Erosion.** The proposed Project would not directly result in substantial erosion or loss of topsoil, but may result in indirect erosion impacts related to future trail development supported by the Parks Master Plan.

#### **Mitigation Measures**

**MITIGATION GEO-2A:** Implement site design and erosion control measures for new trails and other facilities in areas subject to high erosion hazards or adjacent to streams and wetland areas, including but not limited to, installation of temporary fencing on the outer edges of steep slopes and creek crossings to prevent inadvertent erosion and sedimentation from entering adjacent drainages and streams during construction; conducting grading prior to the rainy season and protecting disturbed areas during the rainy season; and revegetating disturbed cut/fill areas.

**MITIGATION GEO-2B:** Limit trail use and/or implement seasonal trail closures as needed during the rainy season to prevent erosion due to trail use.

**Impact HYD-1: Water Quality.** Future development accommodated by the proposed *Parks Master Plan 2030* could result in minor increases in stormwater runoff, but would not result in violations of any water quality standards or waste discharge

requirements or otherwise substantially degrade surface or groundwater quality, except for potential erosion due to construction.

#### **Mitigation Measures**

Implementation of the Project policies and actions that would avoid or minimize runoff and water quality impacts, as well as City stormwater management requirements, provisions of adopted park plans and accompanying EIR requirements, and Mitigation Measures GEO-2A and GEO-2B would reduce potential erosion impacts from future trails and other development to a *less-than-significant* impact.

**Impact PUB-3:** **New Recreational Facilities.** The proposed Project would not include recreational facilities or require expansion of recreational facilities which might have an adverse effect on the environment, but future development could result in potentially significant impacts related to biological resources, soils-erosion, and water quality.

#### **Mitigation Measures**

Potential indirect impacts resulting from future development of park and trail improvements would be avoided or minimized with implementation of the policies and actions included in the Master Plan, compliance with regulations, and implementation of Mitigation Measures BIO-4A, BIO-4B, GEO-2A, and GEO-2B would result indirect impacts to a less-than-significant level.

### **2.5.3 Less-Than-Significant Impacts**

The following impacts were found to be less-than-significant. Mitigation measures are not required.

**Impact AES-3:** **Visual Character.** The proposed Project would not substantially degrade the existing visual character or quality of public views of the site and its surroundings or conflict with applicable zoning and other regulations governing scenic quality.

**Impact AES-4:** **Light and Glare.** The proposed Project would not result in new sources of substantial light or glare.

**Impact AIR-2:** **Project Emissions.** The proposed Project would not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment.

- Impact AIR-3: Sensitive Receptors.** The proposed Project would not expose sensitive receptors to substantial pollutant concentrations.
- Impact GHG-1: Greenhouse Gas Emissions.** The proposed Project would not generate GHG emissions that may have a significant impact on the environment.
- Impact BIO-1: Sensitive Habitats.** Implementation of the Parks Master Plan could result in indirect impacts to sensitive habitats as a result of future implementation of recommended improvements identified in the Master Plan, which would be avoided or minimized with implementation of policies and actions in the Parks Master Plan and the *General Plan 2030*, as well as with mitigation or other measures included in previously adopted park/open space management plans and their accompanying CEQA documents.
- Impact BIO-2: Wetland Habitats.** Implementation of the Parks Master Plan could result in indirect impacts to sensitive wetland habitats as a result of future implementation of recommended improvements identified in the Master Plan, which would be avoided or minimized with implementation of policies and actions in the Parks Master Plan and the *General Plan 2030*, as well as with mitigation or other measures included in previously adopted park/open space management plans and their accompanying CEQA documents.
- Impact BIO-3: Special Status Species.** Implementation of the Parks Master Plan could result in indirect impacts to special status species or their habitat areas as a result of future implementation of recommended improvements identified in the Master Plan, which would be avoided or minimized with implementation of policies and actions in the Parks Master Plan and the *General Plan 2030*, as well as with mitigation or other measures included in previously adopted park/open space management plans and their accompanying CEQA documents.
- Impact CUL-1: Historical Resources.** The proposed Project could cause a substantial adverse change in the significance of a historical resource due to future renovations of structures listed in the City's Historic Building Survey
- Impact CUL-2: Archaeological Resources.** The proposed Project would not cause a substantial adverse change in the significance of an archaeological resource.
- Impact CUL-3: Human Remains.** The proposed Project would not disturb human remains.
- Impact CUL-4: Tribal Cultural Resources.** The proposed Project would not cause a substantial adverse change in the significance of a tribal cultural resource.

- Impact GEO-1: Exposure to Seismic Hazards.** The Project would not directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death resulting from rupture of a known earthquake fault, seismic ground shaking, landslides, or seismic related ground failure, including liquefaction, which cannot be mitigated through the use of standard engineering design techniques.
- Impact GEO-3: Unstable Geologic Units or Soils.** The proposed Project would not be located on an unstable geologic unit or soil.
- Impact GEO-4: Expansive Soils.** Future parks improvements would not result in substantial new structural development that would be subject to expansive soils.
- Impact GEO-6: Paleontological Resources.** The proposed Project would not directly or indirectly destroy a unique paleontological resource or site or unique geological feature.
- Impact HAZ-2: Exposure to Wildland Fire Hazard.** The proposed Project would not expose people or structures to wildland fires.
- Impact HYD-3: Alteration of Drainage Patterns and Stormwater Runoff.** Future development accommodated by the proposed *Parks Master Plan 2030* could result in minor increases in stormwater runoff, but would not substantially alter the existing drainage pattern of the area or increase impervious surfaces in a manner that would result in substantial off-site erosion, a substantial increase in the rate or amount of surface runoff that would result in flooding, runoff that would exceed the capacity of existing or planned stormwater drainage systems or provide additional sources of polluted runoff.
- Impact NOISE-1: Increase in Ambient Noise Levels.** The proposed Project would not generate a substantial increase in temporary or permanent ambient noise levels.
- Impact PUB-1: New or Expanded Public Service Facilities.** The proposed Project would not require new or physically altered governmental facilities.
- Impact PUB-2: Increased Use of Parks.** The proposed Project would not cause a substantial increase in use of parks and recreational facilities.
- ~~**Impact PUB-3: New Recreational Facilities.** The proposed Project would not include recreational facilities or require expansion of recreational facilities which might have an adverse effect on the environment.~~

**Impact TRANS-1: Conflicts with Plans Addressing the Circulation System.** The proposed Project would not conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle, and pedestrian facilities.

**Impact UTIL-2: Water Supply.** The proposed Project would have sufficient water supplies available to serve the Project and reasonably foreseeable future development during normal, dry and multiple dry years.

**Impact UTIL-3: Wastewater Treatment.** Adoption and implementation of the proposed Parks Master Plan could indirectly result in increased generation of wastewater that could be accommodated by the existing wastewater treatment plant.

**Impact UTIL-4: Solid Waste Disposal.** The proposed Project would not exceed existing landfill capacity.

**Impact UTIL-6: Energy.** The proposed Project would not result in the wasteful or inefficient use of energy.

**Impact LAND-2: Conflicts with Plans.** The proposed project will not conflict with policies or regulations adopted for the purpose of avoiding or mitigating an environmental effect.

## 2.5.4 No Impacts

The following were found to have no impacts. No mitigation measures are required.

- AES-1: Scenic Vistas-Views
- AES-2: Scenic Resources
- AIR-1 Conflicts with Air Quality Management Plan.
- AIR 4: Odors
- GHG-2 Conflicts with Climate Action Plan
- BIO-4 Wildlife Corridors
- BIO5 Conflicts with Local Ordinances
- BIO-6 Conflicts with HCP or NCCP
- BIO-7 Substantially Reduce Fish or Wildlife Species Habitat.
- BIO-8 Cause a Fish or Wildlife Population Decline
- BIO-9 Threaten to Eliminate a Plant or Animal Community.
- GEO-5 Use of Septic Systems
- HAZ-1 Emergency Response
- HAZ-3 Wildland Fire Hazard
- HYD-2 Groundwater Impacts

- HYD-4 Flood Hazards / Tsunamis
- HYD-5 Conflict with Water Quality or Groundwater Plans
- HAZ-1 Emergency Response
- HAZ-3 Wildland Fire Hazard
- NOISE-2 Vibration
- NOISE-3 Location near Airport
- TRANS-2 Conflict with State CEQA Guidelines-Vehicle Miles Traveled
- TRANS-3 Geometric Design Hazards
- TRANS-4 Emergency Access
- UTIL-1 *New or Expanded Utilities*
- UTIL-5 *Conflict with Solid Waste Regulations*
- UTIL-7 *Conflict with Energy Plan.*
- LAND-1 *Division of an Established Community*

## 2.6 ISSUES TO BE RESOLVED

CEQA Guidelines section 15123 requires the Summary to identify “issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.” This EIR has presented mitigation measures and project alternatives, and the City Council will consider the Final EIR when considering the proposed project. In considering whether to approve the project, the City Council will take into consideration the environmental consequences of the project with mitigation measures and project alternatives, as well as other factors related to feasibility. “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (State CEQA Guidelines, section 15364). Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site (or already owns the alternative site). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. The concept of feasibility also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. Moreover, feasibility under CEQA encompasses “desirability” to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

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# CHAPTER 3

## CHANGES TO DRAFT EIR

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### 3.1 INTRODUCTION

This chapter identifies revisions to the text in the Draft EIR based on consideration of comments received during the public review period. Changes to Draft EIR text that are identified below are shown in underlined type for new text and ~~strikeout~~ type for deleted text.

### 3.2 REVISIONS TO DRAFT EIR TEXT

#### 3.2.1 Changes to Chapter 2, Summary

Page 2-4      Revise Mitigation BIO-4A to match the impact text regarding nesting bird season as shown in Chapter 2 of this document.

Page 2-5      Move Impact PUB-3 from section 2.5.3 to section 2.5.2, Significant Impacts, as shown in Chapter 2 of this document. The impact was correctly identified and analyzed as less than significant with mitigation in the Draft EIR text, but erroneously included in section 2.5.3, Less-Than-Significant Impacts, in the Draft EIR.

#### 3.2.2 Changes to Chapter 3, Project Description

Page 3-20      Revise the last sentence of the first paragraph as follows:

Appendix B provides a summary of key recommendations at existing park and recreational facility sites, as well as potential environmental issues or impacts known at these sites.

Page 3-21      Revise/clarify text regarding Parks Master Plan recommendations for Pogonip as follows:

**Pogonip Open Space:** The Parks Master Plan recommends continued implementation of the existing Pogonip Master Plan, including: restoration and renovation of the Pogonip clubhouse; implementation of the Sycamore Grove interpretive trail; consideration of a caretaker residence; enhanced restoration efforts, including native plant restoration; renovation of cattle grazing infrastructure and grazing; installation of interpretive signage; and construction of a road, parking lot, infrastructure, and other site improvements. The Parks Master Plan recommends that a restored Pogonip Clubhouse could be used for various

uses, such as events, weddings, community center, or winery<sup>1</sup>. It is noted that the adopted Pogonip Master Plan calls for restoration of the clubhouse for use as a staging area for educational programs, a meeting and retreat center, and a site for special events. Recommendations also include ~~consideration of a caretaker residence, enhanced restoration efforts, including native plant restoration, renovation of cattle grazing infrastructure and grazing, site improvements that are included in the adopted Pogonip Master Plan, including implementation of the Sycamore Grove interpretive trail,~~ conducting a trail assessment, as discussed above, and a potential new parking area near the Emma McCrary trailhead on Golf Club Drive.

### 3.2.3 Changes to Section 4.1 – Aesthetics

Page 4.1-7 Revise the last paragraph as follows:

Existing open space lands, the San Lorenzo River and other watercourses may provide or contain scenic resources, such as prominently visible and distinctive trees. There are no recommendations in the proposed Parks Master Plan that would result in removal of trees or significant vegetation. Removal of heritage trees that may occur with implementation of future improvements recommended in the Plan would be subject to provisions of the City's heritage tree regulations, which require tree replacement for removed heritage trees. Chapter 9.56 of the City Municipal Code defines heritage trees, establishes permit requirements for the removal of a heritage tree, and sets forth mitigation requirements as adopted by resolution by the City Council. Generally, trees with a 14-inch or larger diameter are heritage trees. Approval of a heritage tree removal permit automatically requires replacement trees as set forth above. Removal of heritage trees consistent with City regulations and requirements is not considered a significant impact.

Page 4.1-8 Clarify second full paragraph as follows:

Therefore, the Project would result in increased tree canopy throughout the City and would not result in impacts to significant trees that might be considered scenic resources. The proposed project would have no direct impacts on scenic resources and does not propose tree removal, but seeks to increase tree and tree canopy throughout the City. ~~and~~ Potential indirect impacts resulting from further improvements recommended in the Plan would be avoided or minimized with implementation of the proposed Parks Master Plan 2030 that calls for increased trees and General Plan 2030 policies and actions that call for protection of significant and heritage trees, as well as tree replacement requirements for any

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<sup>1</sup> This was envisioned as potential wine tasting venue within the Pogonip Clubhouse.

removal of heritage trees as set forth in the City's Municipal Code. Therefore, the Project would result in *no impacts* to scenic resources.

Page 4.1-10 Clarify the last full sentence as follows:

In some cases, new structural development would also be subject to approval of a Design Permit pursuant to the City's Municipal Code requirements that would provide review of architectural and site development proposals and through application of recognized principles of design, planning and aesthetics and qualities typifying the Santa Cruz community.

Page 4.1-11 Revise last paragraph as follows:

Furthermore, the *City's General Plan 2030* calls for maintaining high-quality landscaping on City-owned lands, parking lots, and parks (CD4.3.2). With sensitive siting, design, and installation of landscaping as set forth in the Parks Master Plan, including Goal III-Policy B as identified in the Impact AES-3 discussion, and General Plan, future parking improvements, if implemented, would not result in introduction of a substantial source of glare, and the project would result in a *less-than-significant impact*.

Page 4.1-12 Revise second to last sentence of the third paragraph as follows:

The policies and actions included in the proposed Parks Master Plan provide guidance on design of future lighting to avoid adverse impacts by utilizing designs that minimize impacts of light on other properties and including appropriate tree screening.

### 3.2.4 Changes to Section 4.3 – Biological Resources

Page 4.3-18 Revise the BIO-4 No Impact text as follows:

*Wildlife Corridors.* None of the ~~recommended~~ improvements recommended in the Parks Master Plan would interrupt or adversely affect wildlife movement corridors because recommended improvements (small structures, minor improvements and amenities, parking areas, and/or new trails) would typically occupy small areas of land and result in small built features within larger open, natural habitat, and thus would not interfere with wildlife movement. Future improvements and/or project located along streams and creeks within the City would be required to comply with setbacks established in the City's City-wide Creeks and Wetlands Management Plan, which would protect wildlife movement along major corridors identified in the City. Furthermore, Goal IV-Policy B, Action 2h calls for identification and elimination of barriers (e.g. remove unnecessary fences, old barbed wire, and

other barriers) and provide safe crossings (e.g. protect existing and promote additional wildlife crossings and use wildlife friendly fencing) to enhance wildlife movement. Goal IV-Policy A, Action 3h seeks to study, enhance and expand wildlife corridors. ~~Furthermore, potential future development, including potential new trails, would be subject to site-specific review and would be required to comply the City's City-wide Creeks and Wetlands Management Plan, which establishes requirements for setbacks that would protect wildlife movement along major corridors identified in the City.~~ Therefore, adoption and implementation of the Parks Master Plan would not directly or indirectly substantially interfere with wildlife movement or with established wildlife corridors and would result in *no impact*.

Page 4.3-22      Revise the last two sentences of the second paragraph on both pages as follows:  
Page 4.3-25

Furthermore, the *General Plan 2030* sets forth protocols for evaluation of sensitive biological resources as part of project-specific development and environmental review. Table 1 summarizes assessment protocols to determine if a sensitive biological resource is present, and identifies general avoidance or management strategies to be employed for specified types of sensitive biological resources and habitats (NRC2.4.1). Any development within or adjacent to riparian or wetland habitat would be subject to provisions of the City-wide Creeks and Wetland Management Plan and would be required to provide the setbacks established in the Plan and comply with development standards and guidelines in the Plan, which is also required by General Plan (NRC1.1.1). Provisions of required setbacks and implementation of development guidelines would provide protection to riparian habitat.

Page 4.3-23      Revise the first sentence of the first full paragraph as follows:

The Parks Master Plan also supports continued implementation of adopted habitat management plans with the following recommendations.

Page 4.3-25      Revise the last sentence as follows:

Implementation of the proposed *Parks Master Plan 2030* policies and actions in conjunction with compliance with provisions of the *General Plan 2030*, *City-wide Creeks Wetlands and Management Plan*, and adopted parks master and management plans, as explained in the Impact BIO-2 analysis, and local regulations ~~and plans~~ would result in improvements that would be sited and designed to avoid or minimize impacts to sensitive wetland habitat areas.

Page 4.3-27      Revise the last two sentences of the second paragraph on both pages as follows:

Furthermore, the *General Plan 2030* sets forth protocols for evaluation of sensitive biological resources as part of project-specific development and environmental review. Table 1 summarizes assessment protocols to determine if a sensitive biological resource is present, and identifies general avoidance or management strategies to be employed for specified types of sensitive biological resources and special status species (NRC2.4.1). Any development within or adjacent to riparian or wetland habitat would be subject to provisions of the City-wide Creeks and Wetland Management Plan and would be required to provide the setbacks established in the Plan and comply with development standards and guidelines in the Plan, which is also required by General Plan (NRC1.1.1). Provisions of required setbacks and implementation of development guidelines would provide protection to riparian habitat that may support special status species.

Implementation of the proposed *Parks Master Plan 2030* policies and actions in conjunction with compliance with provisions of the *General Plan 2030, City-wide Creeks Wetlands and Management Plan*, and adopted parks master and management plans ~~and local regulations and plans~~ would result in improvements that would be sited and designed to avoid or minimize impacts to special status species ~~sensitive wetland habitat areas.~~

Page 4.3-30      Revise Mitigation BIO-4A to match the impact text regarding nesting bird season as shown in Chapter 2 of this document.

### 3.2.5      Changes to Section 4.4 - Cultural and Tribal Cultural Resources

Page 4.4-5      Add the following new text before the second to last paragraph:

In July 2018, the City Planning and Community Development Department completed an update to the Cultural Resources Background Report that was prepared for the *General Plan 2030* (City of Santa Cruz 2018). The report was prepared to assist the City in complying with General Plan policy HA1.1.2 to update the City's archaeological sensitivity maps. The update determined that the background report prepared for the General Plan was adequate to characterize the City's cultural resources regarding prehistory, ethnography, and architectural heritage. The update was focused on review of the Cultural Resources Sensitivity map. The update included a records search of reports and resources on file with the California Historical Resources Information System (CHRIS) at the Northwest Information Center (NWIC) and consultation with the Native American Heritage Commission. The records search recovered 59 resource records within the City, and contacts with individuals of local Native American tribes did not result in consultations. The update included review and revision of criteria to determine

sensitivity and an update to the archaeological and historical archaeological sensitivity maps developed for the General Plan into one “Cultural Sensitivity” Map with two sensitivity categories.

Page 4.4-12 Revise the first paragraph of Impact CUL-2 as follows:

According to maps developed for the City’s *General Plan 2030* and included in the General Plan EIR as updated in July 2018, many existing parks and facilities are located within a mapped “highly sensitive” or “sensitive” archaeological area ~~and/or within a “sensitive” historical archaeological area~~. The City’s General Plan (Action HA1.2.2) requires preparation of archaeological investigations on sites proposed for development within designated sensitive archaeological and/or historical archaeological areas, except for exempt uses within “sensitive” areas described as follows. The exemption is for minor project that generally involves spot excavation to a depth of 12 inches or less below existing grade. Exempt projects may include building additions, outdoor decks, or excavation in soil that can be documented as previously disturbed. This policy also indicates that significance of identified resources shall be ascertained in accordance with CEQA definitions, and impacts and mitigation measures outlined if significant impacts are identified, including, but not limited to recovery options and onsite monitoring by an archaeologist during excavation activities.

Page 4.4-12 Revise the second to last sentence of the last paragraph of Impact CUL-2 as follows:

However, compliance with the City’s General Plan policies and regulations would ensure that archaeological resources are addressed and protected and/or mitigated as part of potential future improvements or development and construction at City parks and/or if unknown resources are encountered during construction.

### 3.2.6 Changes to Section 4.5 – Geology and Soils

Page 4.5-7 Revise and expand the second paragraph as follows:

Implementation of the Parks Master Plan and future implementation of recommended improvements could result in indirect impacts related to erosion resulting from future park and recreational facility improvements. The projects recommended in the Parks Master Plan are outdoor recreational facilities without new structural development, except for several recommended restroom facilities in urban parks and restroom and ancillary buildings at the Audrey Stanley Grove

amphitheater at DeLaveaga Park<sup>2</sup>. In addition, two new small parking areas identified at Pogonip and Moore Creek Preserve are recommended in the Parks Master Plan. These limited structural projects identified in the Plan would be small and located on generally flat topography and would not result in significant erosion, resulting in a *less-than-significant* impact.

Furthermore, compliance with City regulations regarding stormwater and erosion control measures would prevent substantial soil erosion or loss of topsoil associated with potential future development. ~~resulting in a *less-than-significant* impact.~~ Chapter 18.45, Excavation and Grading Regulations, of the City's Municipal Code regulates grading and requires implementation of drainage and erosion control measures. The purposes of this chapter "is to detail the technical regulations of grading and excavation and in conjunction with Chapter 24.14. (Environmental Resource Management) of this code, to safeguard life, health, safety and the public welfare; to protect fish and wildlife, and riparian corridors and habitats, domestic and industrial water supplies, private and public property, and to otherwise protect the environment from the effects of flooding, accelerated erosion and/or siltation by establishing minimum requirements for clearing, excavation, cuts, fills, earth moving, grading operations (including cumulative grading), water runoff and sediment control." Section 24.14.060 of the Municipal Code requires preparation and implementation of an erosion control plan for projects located within, or adjacent to, erosion hazard areas, development on slopes in excess of ten percent, and all development adjacent to streams and wetland areas. Thus, developments in areas of steep slopes and adjacent to streams, would be subject to compliance with these regulations which are intended to avoid and/or minimize erosion.

Page 4.5-10      Revise the first two paragraphs as follows:

Section 24.14.030 of the City's Municipal Code regulates development on steep slopes and generally prohibits development on slopes greater than 50 percent with setbacks from 30+ percent slopes. The General Plan policies and actions ~~outlined in Table 4.10-6~~ also serve to reduce exposure to landslide/slope stability exposure. Policy HZ6.2 discourages development on unstable slopes with preparation of engineering geology reports where excavation and grading have the potential to create unstable slopes or be exposed to slope stability (HZ6.2.1).

With adherence to City regulations and ~~proposed General Plan 2030 goals~~, policies and actions, ~~the~~ future development and improvements would not be located on

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<sup>2</sup> An application for a Design Permit to construct a 5,500 square foot multi-purpose building to replace existing trailer at the amphitheater has been submitted to the City's Planning and Community Development Department.

unstable areas related to landslides, slope instability or coastal bluff retreat. This is considered a *less-than-significant* impact.

Page 4.5-11 Revise the first paragraph as follows:

Since most of the proposed improvements involve little or no structural development, limited or no significant grading and excavation is expected. However, future construction could result in discovery of unknown paleontological resources with or without the proposed project. The General Plan 2030 (Action HA1.2.3) requires the City to notify applicants within paleontologically sensitive areas of the potential for encountering paleontological resources during construction and requires that construction be halted and resources examined in the event paleontological resources are found. If the discovery is considered significant, implementation of recommendations of the paleontologist would be required, including but not limited to, specimen recovery and curation or thorough documentation. With application of the notification process required by the General Plan (Action HA1.2.3), future development would not result in significant impacts in the event that paleontological resources are discovered during construction, and the project would result in an indirect *less-than-significant impact* on paleontological resources.

### 3.2.7 Changes to Section 4.9 – Public Services

Page 4.9-14 Revise incorrect last sentence to match the impact analysis text as follows:

~~No mitigation measures are required as a significant impact has not been identified.~~ Potential indirect impacts resulting from future development of park and trail improvements would be avoided or minimized with implementation of the policies and actions included in the Master Plan, compliance with regulations, and implementation of Mitigation Measures BIO-4A, BIO-4B, GEO-2A, and GEO-2B would result indirect impacts to a less-than-significant level.

### 3.2.8 Changes to Section 4.10 - Transportation

Page 4.10-9 Revise the second full paragraph as follows:

As previously indicated, the City of Santa Cruz has high percentages of its population that commute by walking and bicycling, which indicates a need and high demand beyond recreation for pedestrian and bike routes and trails. The Parks Master Plan recognizes that an increasingly urban population relies on public transportation and alternative means of transit, such as bicycles, as a primary mode of transport. Goal VI of the Parks Master Plan, Connectivity and Access,

notes that national trends indicate a move towards more interconnected park systems, and a greater emphasis on pedestrian and bicycle pathways also aligns with national trends indicating an increase in the popularity of health and fitness recreation.

Trails located within parks and open spaces can serve as important links between parks, recreation facilities, and natural and urban areas. According to the Parks Master Plan, significant trails in the City include the Santa Cruz Riverwalk, an important north-south connector along the San Lorenzo River, and the Monterey Bay Scenic Rail Trail, which will provide a multi-use trail through the City, and ultimately connect Davenport to Monterey. Multi-use trails also provide mountain biking and horseback riding opportunities in DeLaveaga Park Wilderness Area and Pogonip Open Space, and a paved multi-use path enables bicyclists to access and pass through Arana Gulch Open Space. It is also noted that Goal VI of the Parks Master Plan supports an integrated park system that in part provides a means for alternative transportation, and Policy A, Action 7 of this goal supports a Felton-Santa Cruz recreational trail and transportation/commuter corridor.

General Plan PR4.1 and supporting actions call for an accessible citywide trail system within the city with connection to regional trails. The City's Active Transportation Plan (ATP) identifies an integrated network of walkways and bikeways that connect the City of Santa Cruz neighborhoods and communities to employment, education, commercial, recreational and tourist destinations. This Plan prioritizes a set of connected projects that, when fully implemented, will increase active transportation opportunities and make it safer and more convenient for people to walk, bike and use active transportation modes in the City of Santa Cruz.

Designation of bicycle and pedestrian routes for transportation are included in the City's General Plan and Active Transportation Plan. In particular, the Active Transportation Plan assesses the needs of bicyclists and pedestrians in Santa Cruz and identifies local improvements and implementation strategies that will encourage people to use active transportation modes for more of their daily trips. The Active Transportation Plan (Santa Cruz 2017) identifies bike paths and/or multi-use trails within City parks and open space areas at the following locations: along Arroyo Seco, one trail in Pogonip (linking to the University of California Santa Cruz [UCSC], the Santa Cruz Riverwalk, and Arana Gulch Open Space. None of the recommendations in the Parks Master Plan would conflict with plans or policies related to transportation via paths in public parks.

To the extent that trails and pathways in City parks and open space areas also serve as alternative transportation routes, the Parks Master Plan does not include recommendations that would conflict with City plans or policies related to bicycle

transportation. Thus, the Project supports and is consistent with City General Plan policies that support alternative modes of transportation. Therefore, potential indirect project impacts related to transportation or traffic resulting from future improvements and/or expanded uses would not result in potential conflicts with plans and policies regarding the City's circulation system are considered *less than significant*.

### 3.2.9 Changes to Section 4.12 - Land Use

Page 4.12-6 Add the following to the list of uses included in the Pogonip Master Plan:

- ☐ A permanent caretaker residence in the vicinity of the Park Ranger facilities to discourage and prevent vandalism and other illegal activities in the vicinity of the clubhouse.

Page 4.12-10 Add the following new text before and revise the last paragraph as follows:

The Parks Master Plan recommends restoration and renovation of the Pogonip Clubhouse for various uses ("events, weddings, community center, winery, etc.") and also calls for consideration of a caretaker residence or "park host" onsite. Both special events at a future rehabilitated clubhouse and a caretaker residence are included in the Pogonip Master Plan and addressed in the EIR prepared for that plan (City of Santa Cruz 1998). The Pogonip Master Plan indicates that a rehabilitated clubhouse structure would provide "an adaptive re-use, which includes space for educational programs, meeting rooms, and special events." The Pogonip Master Plan also limits both indoor and outdoor events at the Clubhouse to 200 people. The EIR for the Pogonip Master Plan evaluated a range of special events that could take place at the Clubhouse, including "fundraising functions, nature shows, lectures, cultural performances and music events (non-amplified music only), and weddings." The Pogonip Master Plan also includes a permanent caretaker residence in the vicinity of the Park Ranger facilities to discourage and prevent vandalism and other illegal activities in the vicinity of the clubhouse, which also was addressed in the Pogonip Master Plan EIR. Therefore, both special events at the clubhouse and a caretaker residence are uses already considered in the Pogonip Master Plan, the impacts of which have been evaluated in the Pogonip Master Plan EIR. The examples of special events included in the Parks Master Plan would be within the scope of special events evaluated in the Pogonip Master Plan EIR. Therefore, impacts associated with special uses at the Pogonip Clubhouse when rehabilitated and construction of a caretaker residence have already been analyzed in the Pogonip Master Plan EIR and no further review is required.

~~The project site is not~~ None of the City's parks, open space lands, or recreational facilities are located within areas that are subject to any Habitat Conservation or Natural Community Conservation Plans.

### 3.2.10 Changes to Section 5.5 – Project Alternatives

Page 5-12 Add the following to the list of Potentially Significant Impacts, which was correctly identified as a significant impact in the Draft EIR text, but was inadvertently left off the list:

- ☐ **Impact PUB-3: New Recreational Facilities.** The proposed Project would not include recreational facilities or require expansion of recreational facilities which might have an adverse effect on the environment, but future development could result in potentially significant impacts related to biological resources, soils-erosion, and water quality.

### 3.2.11 Changes to References Section

Page 6-3 Add the following references:

City of Santa Cruz.

- July 2018. "Cultural Resources Background Report Update with Policies, Programs and Maps, City of Santa Cruz, Santa Cruz County, California. Prepared by Dudek.
- February 2017. FINAL. *City of Santa Cruz Active Transportation Plan*.

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# CHAPTER 4

## COMMENTS AND RESPONSES

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### 4.1 INTRODUCTION

This chapter provides responses to individual comments that were submitted by agencies, organizations, and individuals as summarized below in subsection 4.2. Each letter of comment is included in subsection 4.3; a response to each comment is provided immediately following each letter. Appropriate changes that have been made to the Draft EIR (DEIR) text based on these comments and responses are provided in Chapter 3, Changes to Draft EIR.

State CEQA Guidelines section 15088(a) requires a lead agency to evaluate comments on environmental issues and provide written responses. Section 15204(a) provides guidance on the focus of review of EIRs as follows:

In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

In reviewing comments and providing responses on the following pages, this section of the CEQA Guidelines will be considered. The focus will be on providing responses to significant environmental issues.

### 4.2 LIST OF COMMENT LETTERS RECEIVED

The DEIR was published and circulated for review and comment by the public and other interested parties, agencies, and organizations for a 45-day public review period from March 11, 2020 through April 24, 2020, which was subsequently extended to May 8, 2020 due to the coronavirus

pandemic. Eight letters of comment were received; agencies, organizations and individuals that submitted written comments on the DEIR are outlined below.

***State & Local Agencies***

1. California Department of Transportation (Caltrans)
2. California Native American Heritage Commission
3. California State Clearinghouse

***Organizations***

4. Bike Santa Cruz - Gina Gallino Cole
5. Friends of Pogonip - Wittwer / Parkin
6. Santa Cruz Wymyn for Wild Nature - Erica Stanojevic

***Individuals***

7. Candace Brown
8. Grant Weseman

## **4.3 COMMENT LETTERS AND RESPONSES**

Agencies, organizations, and individuals that submitted written comments on the DEIR are outlined above in section 4.2. Each comment letter is included in this section. As indicated above, CEQA Guidelines section 15088(a) requires a lead agency to evaluate comments on environmental issues and provide a written response to all substantive comments. A response to each comment is provided immediately following each letter. As indicated in subsection 4.1 above, the emphasis of the responses will be on significant environmental issues raised by the commenters. (CEQA Guidelines, § 15204, subd. (a).) Appropriate changes that have been made to the DEIR text based on these comments and responses are provided in the Chapter 3, Changes to DEIR.

**DEPARTMENT OF TRANSPORTATION**

CALTRANS DISTRICT 5

50 HIGUERA STREET

SAN LUIS OBISPO, CA 93401-5415

PHONE (805) 549-3101

FAX (805) 549-3329

TTY 711

[www.dot.ca.gov/dist05/](http://www.dot.ca.gov/dist05/)Making Conservation  
a California Way of Life.

March 17, 2020

SCr-1/17-VAR  
SCH#2018012030

Noah Downing  
Park Planner  
City of Santa Cruz Parks and Recreation Department  
323 Church Street  
Santa Cruz, California 95060

Dear Mr. Downing:

COMMENTS FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) OF THE SANTA CRUZ  
PARKS MASTER PLAN 2030, SANTA CRUZ, CA

- 1-1 1. Caltrans requests further traffic analysis for the parking lot considered off State Route (SR) 1 at Moore Creek Reserve. If a parking lot is proposed at this location, site distance analysis and channelization analysis will need to be included.
- 1-2 2. Please be aware that if any work is completed in the State's right-of-way it will require an encroachment permit from Caltrans and must be done to our engineering and environmental standards, and at no cost to the State. The conditions of approval and the requirements for the encroachment permit are issued at the sole discretion of the Permits Office, and nothing in this letter shall be implied as limiting those future conditioned and requirements. For more information regarding the encroachment permit process, please visit our Encroachment Permit Website at:  
<http://www.dot.ca.gov/trafficops/ep/index.html>.

Thank you for the opportunity to review and comment on the proposed project. If you have any questions, or need further clarification on items discussed above, please contact me at (805) 549-3157 or email [christopher.bjornstad@dot.ca.gov](mailto:christopher.bjornstad@dot.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Chris Bjornstad".

Chris Bjornstad  
Transportation Planner  
District 5 Development Review

## LETTER 1 – California Department of Transportation

- 1-1 Parking at Moore Creek Preserve. The comment requests further traffic analysis for the parking lot considered off of State Route 1 at Moore Creek Preserve, including site distance and channelization analyses. *Response:* As indicated on page 4.10-9 of the DEIR, the Parks Master Plan does include a recommendation to consider developing a parking area off of State Route 1 (Highway 1) to improve access to the property, but does not provide a specific proposal in terms of size, layout or driveway location. The City concurs that further study and design would be necessary should the City decide to propose a parking area in the future. The Parks Master Plan also acknowledges that recommendations in the Plan are conceptual and further study would be needed once specific improvements are proposed, sited and designed.
- 1-2 Other Comments. The letter also states that any work in the State's right-of-way would require an encroachment permit from Caltrans and must be completed in accordance with Caltrans' engineering and environmental standards. *Response:* The comment is acknowledged; no response is necessary.

## NATIVE AMERICAN HERITAGE COMMISSION

March 19, 2020

Noah Downing  
City of Santa Cruz

Governor's Office of Planning &amp; Research

MAR 20 2020

STATE CLEARINGHOUSE

CHAIRPERSON  
**Laura Miranda**  
LuiseñoVia Email to: [ndowning@cityofsantacruz.com](mailto:ndowning@cityofsantacruz.com)VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash**Re: SCH#2018012030, City of Santa Cruz Parks Master Plan Project, Santa Cruz County, California**

Dear Mr. Downing:

SECRETARY  
**Merri Lopez-Keifer**  
Luiseño

2 - 1 The Native American Heritage Commission (NAHC) has reviewed the Draft Environmental Impact Report (DEIR)/Mitigated Negative Declaration (MND) or Negative Declaration prepared for the project referenced above. The review may have included the Cultural Resources Section, Archaeological Report, Appendices for Cultural Resources Compliance, as well as other informational materials. We have the following concerns:

PARLIAMENTARIAN  
**Russell Attebery**  
KarukCOMMISSIONER  
**Marshall McKay**  
Wintun

- There is no information in the documents of any contact or consultation with all traditionally, culturally affiliated California Native American Tribes from the NAHC's contact list.
- There does not appear to be evidence that possible mitigation measures were developed in consultation with the traditionally, culturally affiliated California Native American Tribes, for example when resources are found, avoidance or conservation easements.
- There does not appear evidence that a cultural assessment was completed.

COMMISSIONER  
**William Mungary**  
Paiute/White Mountain Apache  
2-2COMMISSIONER  
**Joseph Myers**  
Pomo  
2-3COMMISSIONER  
**Julie Tumamait-Stenslie**  
Chumash

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).

COMMISSIONER  
[Vacant]  
2-4EXECUTIVE SECRETARY  
**Christina Snider**  
Pomo

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"<sup>5</sup>, 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>6</sup> Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.<sup>7</sup> Your project may also be subject to **Senate Bill 18 (SB 18)** (Burton, Chapter 905, Statutes of 2004), Government Code 65352.3, 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

**NAHC HEADQUARTERS**  
1550 Harbor Boulevard  
Suite 100  
West Sacramento,  
California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
[NAHC.ca.gov](http://NAHC.ca.gov)

<sup>1</sup> Pub. Resources Code § 21000 et seq.<sup>2</sup> Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)<sup>3</sup> Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1); CEQA Guidelines § 15064 (a)(1)

## LETTER 2

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>8</sup> may also apply.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

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 Contact Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf), entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".

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.

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.

If you have any questions or need additional information, please contact me at my email address: [Sarah.Fonseca@nahc.ca.gov](mailto:Sarah.Fonseca@nahc.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah Fonseca".

Sarah Fonseca  
*Cultural Resources Analyst*

Attachment

cc: State Clearinghouse

**Pertinent Statutory Information:****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 **lead agency** 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 **lead agency** 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>4</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 § 65352.4 (SB 18).<sup>5</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>6</sup>

1. 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.<sup>7</sup>

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, consistent 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>8</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>9</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>10</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>11</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).<sup>12</sup>

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:

<sup>4</sup> Pub. Resources Code § 21080.3.1, subds. (d) and (e)

<sup>5</sup> Pub. Resources Code § 21080.3.1 (b)

<sup>6</sup> Pub. Resources Code § 21080.3.2 (a)

<sup>7</sup> Pub. Resources Code § 21080.3.2 (a)

<sup>8</sup> Pub. Resources Code § 21082.3 (c)(1)

<sup>9</sup> Pub. Resources Code § 21082.3 (b)

<sup>10</sup> Pub. Resources Code § 21080.3.2 (b)

<sup>11</sup> Pub. Resources Code § 21082.3 (a)

<sup>12</sup> Pub. Resources Code § 21082.3 (e)

## LETTER 2

- 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 (d) and the tribe failed to request consultation within 30 days.<sup>13</sup>

***This process should be documented in the Tribal Cultural Resources section of your environmental document.***

### Under SB 18:

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.

- 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: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf)
- **Tribal Consultation:** 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>14</sup>
- **There is no Statutory Time Limit on Tribal Consultation under the law.**
- **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research,<sup>15</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>16</sup>
- **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
  - The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - 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>17</sup>

### **NAHC Recommendations for Cultural Resources Assessments:**

- Contact the NAHC for:
  - 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.
  - 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.
    - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - If part or the entire APE has been previously surveyed for cultural resources.
  - If any known cultural resources have been already been recorded on or adjacent to the APE.
  - If the probability is low, moderate, or high that cultural resources are located in the APE.
  - If a survey is required to determine whether previously unrecorded cultural resources are present.

<sup>13</sup> Pub. Resources Code § 21082.3 (d)

<sup>14</sup> (Gov. Code § 65352.3 (a)(2)).

<sup>15</sup> pursuant to Gov. Code section 65040.2,

<sup>16</sup> (Gov. Code § 65352.3 (b)).

<sup>17</sup> (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

- 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.
  - 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.
  - The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

**Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**

- Avoidance and preservation of the resources in place, including, but not limited to:
  - Planning and construction to avoid the resources and protect the cultural and natural context.
  - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- 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:
  - Protecting the cultural character and integrity of the resource.
  - Protecting the traditional use of the resource.
  - Protecting the confidentiality of the resource.
- 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.
- 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>18</sup>
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.<sup>19</sup>

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources.<sup>20</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.
- 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.
- 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, subds. (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.

<sup>18</sup> (Civ. Code § 815.3 (c)).

<sup>19</sup> (Pub. Resources Code § 5097.991).

<sup>20</sup> per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).

## LETTER 2 – California Native Heritage Commission

- 2-1 Consultation Native American Tribes. The comment states that there is no information in the EIR regarding contact or consultation with traditionally affiliated California Native American tribes and that it does not appear that mitigation measures were developed in consultation with Native American tribes. *Response*: The proposed Project consists of a Parks Master Plan that provides general conceptual recommendations for future uses and/or improvements at City parks, open spaces and recreational facilities. The EIR is a “program” EIR pursuant to CEQA as explained on pages 1-1 and 1-2 of the DEIR. While the proposed Parks Master Plan includes general recommendations for future park and facility improvements, no specific facility locations or designs are included in the plan as explained on pages 3-17 to 3-22 and 4.0-3 to 4.0-4 of the DEIR. Requirements for consultation with Native American tribes are described on page 4.4-5 of the DEIR, and as indicated, consultation was not required for the proposed Project. However, in 2018 the City completed an update to the Cultural Resources Background Report prepared for the *General Plan 2030*, which included a city-wide updated Records Search and contacts with individuals of local Native American tribes to discuss archaeologically sensitive areas; contacts with individuals of local Native American tribes did not result in consultations. See “Changes to Draft EIR” section of this document for a summary of the citywide cultural resources update.
- 2-2 Cultural Resources Assessment. The comment indicates that it does not appear that a cultural assessment was completed. *Response*: At a program-level analysis, the EIR Cultural and Tribal Resources section was based on the City’s *General Plan 2030* as indicated on page 4.4-1 of the EIR. The General Plan cultural resources policies and actions were developed in part from a technical citywide cultural resources assessment prepared for the General Plan (LSA 2006, 2009) that was updated in 2018 as explained in Response to Comment 2-1. While the proposed Parks Master Plan includes general recommendations for future park and facility improvements, no specific locations or project designs are included in the plan as explained in Response to Comment 2-1 above. As indicated on page 4.4-12, the City’s General Plan (Action HA1.2.2) requires preparation of archaeological investigations on sites proposed for development within designated sensitive archaeological areas, except for specified exempt uses that generally involve spot excavation to a depth of 12 inches or less below existing grade. The General Plan HA1.2.2 further requires identification of significant impacts as defined in CEQA and mitigation measures if significant impacts are identified, including, but not limited to recovery options and onsite monitoring.

Although, many existing parks and recreational facilities are located in sensitive archaeological areas, the proposed Parks Master Plan does not identify specific locations or designs for future improvements, and thus a site- or project-level analysis cannot be made. However, any future development or improvement projects proposed at specific park, open space and recreational areas that are located in sensitive areas would be

subject to this requirement for site-specific cultural resources assessment with mitigation if required at the time that a site-specific improvement or project is proposed in the future.

- 2-3 Historical Resources. The comment states that in order to determine whether a project would cause a substantial adverse change in the significance of a historical resource, a lead agency needs to determine whether historical resources occur within the area of project effect. *Response*: See Response to Comment 2-2 regarding archaeological resources. Built-environment, historical resources are addressed on pages 4.4-7 to 4.4-9 of the DEIR, and known historical resources are identified. Impacts to historical resources are assessed on page 4.4-11 of the DEIR.
- 2-4 Native American Consultation. The comment provides background on tribal consultation requirements and recommends that lead agencies consult with California Native American tribes that are traditionally and culturally affiliated with the geographic area of the project. *Response*: Comment is acknowledged; see Response to Comment 2-1 regarding tribal consultation.

**From:** Mikayla Vaba [<mailto:mikayla.vaba@opr.ca.gov>]  
**Sent:** Monday, May 11, 2020 1:53 PM  
**To:** Noah Downing <[NDowning@cityofsantacruz.com](mailto:NDowning@cityofsantacruz.com)>  
**Subject:** SCH# 2018012030

The State Clearinghouse would like to inform you that our office will be transitioning from providing a hard copy of acknowledging the close of review period on your project to electronic mail system.

Please visit: <https://ceqanet.opr.ca.gov/2018012030/4> for full details about your project and if any state agencies submitted comments by close of review period (note: any state agencies in bold, submitted comments and are available).

- 3-1 This email acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please email the State Clearinghouse at [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov) if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

### LETTER 3 – California State Clearinghouse

- 3-1 Compliance with State Clearinghouse Review. The email acknowledges that the City of Santa Cruz complied with the State Clearinghouse review requirements for review of draft environmental documents pursuant to the California Environmental Quality Act. *Response:* The comment is acknowledged; no response is necessary.

**From:** Gina Cole [<mailto:director@bikesantacruzcounty.org>]

**Sent:** Tuesday, May 05, 2020 2:14 PM

**To:** Noah Downing <[NDowning@cityofsantacruz.com](mailto:NDowning@cityofsantacruz.com)>

**Cc:** Matt De Young <[matt@mbosc.org](mailto:matt@mbosc.org)>; Claire Gallogly <[cgallogly@cityofsantacruz.com](mailto:cgallogly@cityofsantacruz.com)>; Rick Longinotti <[longinotti@baymoon.com](mailto:longinotti@baymoon.com)>

**Subject:** Draft EIR on City of Santa Cruz Parks Master Plan, 2030

Noah Dowling, Park Planner  
City of Santa Cruz  
Parks & Recreation Department  
323 Church Street  
Santa Cruz, California 95060

RE: Draft EIR on City of Santa Cruz Parks Master Plan 2030

Dear Mr. Dowling,

- 4-1 Bike Santa Cruz requests that the Final EIR on the Parks Master Plan address keeping bike routes through parks open and that the City continue to explore opening more routes to bikes.

With regard to transportation impacts, the Draft EIR concludes on page 4.10-8, “The proposed Project would not conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle, and pedestrian facilities.” While this statement may be true, it is incomplete. The draft EIR states that, “Goal VI of the Parks Master Plan, Connectivity and Access, notes that national trends indicate a move towards more interconnected park systems, and a greater emphasis on pedestrian and bicycle pathways also aligns with national trends indicating an increase in the popularity of health and fitness recreation. It is also noted that Goal VI supports an integrated park system that in part provides a means for alternative transportation.” However, with the absence of assurances in the Plan that pathways will remain open, restrictions could be placed on their use which would have adverse impacts on bicycle and pedestrian transportation. The City has already classified the Branciforte Creek path as a park, then subsequently gated it and closed it at night. The City closes Grant Park, which has a bike/ped connection from Grant St. to May Ave., at night. Even the San Lorenzo Riverwalk (a poor name choice given that cyclists use it too) has conflicting signs – some seem to allow cycling at night, others seem to prohibit it.

- 4-2 Thus, an appropriate mitigation measure for the potential adverse impact to active transportation policies would be for the City to conduct an analysis of which existing or potential pathways, located in parks or other areas covered by the Parks Master Plan, serve or could serve as transportation routes, and designate them as such. This is not to say that they be considered “bicycle highways;” there are a range of measures that can be taken to promote and enforce multi-use, where all users respect each other and the habitat. Rather, the default should be that these designated active transportation routes are always open to be ridden – 24 hours a day, just as roads and sidewalks are. Physical and management measures should be implemented to achieve this objective to the extent feasible, consistent with public health and safety concerns. Examples could include having different closure criteria for the pathways than for the rest of the

parks; signing the pathways for active transportation uses only at night; not fencing in these designated pathway parts of the parks; using nighttime police patrols to cover the in-park pathways as well; limiting any necessary nighttime closures to just a few hours, say 1 to 4 am.

- 4-3 Obviously, the Draft EIR did not anticipate COVID-19. We note two implications for bicycling and parks. First, a combination of factors -- including being out of work and school, not being able to engage in some recreational activities or to travel, but still needing exercise -- has led many individuals and families to be out bicycling. Also, crowding at some locations led to at least temporary closure of some city parks and recreation areas that contained pathways used by bicyclists for essential transportation (e.g., through Arana Gulch, along the San Lorenzo River). Several community members sent us letters stating their concern with having to ride on major roads during that time. We hope that your Department will work with County Health officials and others to ensure that bicycling, performed in a safe manner, is not unnecessarily limited and hopefully is encouraged within the properties under your control, especially during this pandemic.
- 4-4 Bike Santa Cruz's comments on the Draft Master Plan (September 25, 2017) requested that trail access for cyclists in city parks be increased and we still hope to see that accomplished. We note that the Draft EIR recommends mitigation measures for future trails in order to prevent adverse environmental impacts and we are supportive of these recommendations.

Sincerely,

Gina Cole

**Gina Gallino Cole**  
 Executive Director  
 Bike Santa Cruz County  
 333 Soquel Ave.,  
 Santa Cruz, CA 95062  
 (831) 425-0665 office  
 (831) 840-1884 cell  
[bikesantacruzcounty.org](http://bikesantacruzcounty.org)

**LETTER 4 – Bike Santa Cruz – Gina Gallino Cole**

- 4-1 Closure of Trails. The comment requests that the EIR address keeping bike routes through parks open and that the City continue to explore opening more routes to bikes. The comment provides examples of some paths in the City that are closed at night and in the absence of assurances in the Plan that pathways will remain open, the comment states that restrictions could be placed on their use which would have adverse impacts on bicycle and pedestrian transportation. *Response:* As acknowledged in the comment, the DEIR indicates that the Parks Master Plan Goal VI supports an integrated park system that in part provides a means for alternative transportation, and Policy A, Action 7 of this goal supports a Felton-Santa Cruz recreational trail and transportation/commuter corridor. To the extent that trails and pathways in City parks and open space areas also serve as alternative transportation routes, the Parks Master Plan does not include recommendations to close or restrict routes. The purpose of the EIR is to address potential impacts related to adoption and implementation of the Parks Master Plan as explained on pages 1-1 to 1-4 of the DEIR. It is not the role of the EIR to address whether existing bike routes in parks should remain open. However, the comment is referred to City decision makers for further consideration.
- 4-2 Bike Routes in Parks. The comment requests that the City conduct an analysis of which existing or potential pathways located in parks or other areas covered by the Parks Master Plan serve or could serve as transportation routes and designate them as such. The comment also states that physical and management measures should be implemented to achieve this objective to the extent feasible. *Response:* Designation of bicycle and pedestrian routes for transportation are included in the City's *General Plan 2030* and *Active Transportation Plan (ATP)*. In particular, the ATP (Santa Cruz 2017) assesses the needs of bicyclists and pedestrians in Santa Cruz and identifies local improvements and implementation strategies that will encourage people to use active transportation modes for more of their daily trips. The ATP identifies bike paths and/or multi-use trails within City parks and open space areas at the following locations: along Arroyo Seco, one trail in Pogonip (linking to the University of California Santa Cruz [UCSC], the Santa Cruz Riverwalk, and Arana Gulch Open Space. None of the recommendations in the Parks Master Plan would conflict with plans or policies related to transportation via paths in public parks. The DEIR text discussion of bicycle transportation planning has been expanded; see the "Changes to Draft EIR" section of this document.
- 4-3 Bicycling with COVID-19. The comment requests that the City work with the County Health Department to ensure that bicycling, performed in a safe manner, is not unnecessarily limited during the pandemic. *Response:* Comment is acknowledged, although it does not address analyses in the DEIR. The comment is referred to City decision makers for consideration.

- 4-4 Trail Access for Cyclists. The comment indicates that Bike Santa Cruz requested that trail access for cyclists in city parks be increased in its comments on the Draft Parks Master Plan. The comment also notes that the DEIR recommends mitigation measures for future trails to prevent adverse environmental impacts and Bike Santa Cruz is supportive of these recommendations. *Response:* Comment is acknowledged; no response is necessary.

May 8, 2020

**VIA EMAIL**

Mr. Noah Downing  
City of Santa Cruz  
Parks and Recreation Department  
323 Church Street  
Santa Cruz, CA 95060  
ndowning@cityofsantacruz.com

**Re: Comments on Draft Environmental Impact Report - Parks Master Plan 2030**

Dear Mr. Downing:

5-1 This law firm represents Friends of the Pogonip regarding the above referenced Parks  
Master Plan (Plan) and submits the following comments on the Draft Environmental Impact  
Report (DEIR). We have submitted comments on the previous Negative Declaration and  
5-2 Revised Negative Declaration for the Plan. As a preliminary matter, we note that the DEIR does  
not cure the infirmities in the analysis first presented in the Negative Declarations. In fact, the  
analysis in the DEIR is inconsistent and circular, turns environmental analysis on its head, relies  
5-3 on other plans to avoid environmental impacts without any explanation of how these plans  
actually reduce the impacts, and improperly defers environmental analysis. Like the Negative  
Declarations, the DEIR defers environmental impacts analysis regarding critical policy choices  
5-4 until a later time. The DEIR still does not address potential impacts associated with expanding  
multi-use trails in the Pogonip, Arroyo Seco and DeLaveaga Park. The DEIR also implies that  
the Plan is self-mitigating, meaning that the policies in the Plan mitigate for any potentially  
significant environmental impacts. However, the efficacy of such policies is never analyzed.  
The DEIR makes bald assertions that either the Plan self-mitigates, or that the impacts are less-  
than-significant due to Plan's own policies. This is not environmental analysis. Instead, it is self-  
serving assumptions. The DEIR is so fatally flawed that it must be corrected and recirculated for  
5-5 further public comment.

We present the following specific comments on the DEIR. **(All page references are to the DEIR.)**

5-6 1) The DEIR largely adopts the language of the Negative Declarations rather than  
perform new robust analysis of the environmental impacts. In fact, the DEIR is basically the

Negative Declarations with window dressing, and the perfunctory addition of required sections on cumulative impacts and alternatives. The DEIR fails to seriously consider the environmental impacts of adopting the Plan. In many instances, some of which are pointed out below, the City asserts that environmental review will be done at a later date. However, the City is likely to state later that based on this program EIR, that the impacts are mitigated. Indeed, in many instances, while the DEIR claims that there will be subsequent environmental review, it also concludes that the impacts are insignificant. The City cannot say on one hand that further environmental review is necessary, and then claim that there is a less-than-significant impact in the same breath. The DEIR must perform the environmental analysis now.

As we stated in our previous correspondence, the City cannot defer environmental impacts analysis regarding critical policy choices until a later time. The CEQA Guidelines state that “‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [including] [a]n activity directly undertaken by any public agency... .” 14 Cal. Code Regs. § 15378(a). A project is defined broadly in order to maximize environmental protection. *City of Santee v. County of San Diego (Santee)* (1989) 214 Cal.App.3d 1438, 1452; *McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds). A project must be defined and accurately described to ensure an “intelligent evaluation of the potential environmental effects of a proposed activity.” *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592 (citing *McQueen v. Bd. of Directors, supra*, 202 Cal.App.3d at 1143-44). “A narrow view of a project could result in the fallacy of division, that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole.” *Id.*

The City makes conclusory statements regarding environmental impacts without any analysis, and illegally defers the analysis. It must address the potential impacts associated with the improvements contemplated by the Parks Master Plan, even if the exact alignment of the trails or location of dog facilities are unknown. An “agency should not be allowed to hide behind its own failure to gather relevant data.” *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408.

CEQA advances a policy of requiring an agency to evaluate the environmental effects of a project at the earliest possible stage in the planning process. We conclude that, by failing to accurately describe the agency action and by deferring full environmental assessment of the consequences of such action, the County has failed to comply with CEQA’s policy and requirements.

*Id.* at 410 (emphasis added). “By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. [Citations].” *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307. “A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of *post hoc* rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. [Citations].” *Id.* at 307; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

Courts have consistently held that

it is improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur before the project is approved.

*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906 (citing *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621; *Sundstrom v. County of Mendocino*, *supra*, 202 Cal.App.3d 296; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1359).

The DEIR violates all these principles. Therefore, it is a fatally flawed document.

5-7

2) Page 1-1 states that “the information in the EIR does not control the ultimate decision about the project....” This statement is a gross overstatement. The decisionmaking body must consider and adopt feasible mitigations and alternatives that reduce or avoid environmental impacts. This is the substantive mandate of CEQA.

Our Supreme Court has described the alternatives and mitigation sections as ‘the core’ of an EIR.” (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.) In furtherance of this policy, [Public Resources Code] section 21081, subdivision (a) “contains a ‘**substantive mandate**’ requiring public agencies to refrain from approving projects with significant environmental effects **if ‘there are feasible alternatives or mitigation measures’** that can substantially lessen or avoid those effects.” (*County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 98, italics omitted; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.)

*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597-598 (review denied), emphasis added; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 883.

CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, ***unless the measures necessary to mitigate those effects are truly infeasible.***

*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368-369, emphasis added; see also *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 98, 108, fn.18. Therefore, the statement in the DEIR that the information in the document is of no real consequence for the ultimate decision is erroneous and contrary to CEQA. Therefore, this statement must be corrected.

5-8           3)       Page 1-2 states that the recommendations in the Plan “are advisory.” (See also, DIER, p. 2-1.) However, it is clear that the Plan will be used as cudgel to force changes in park plans, such as those for the Pogonip and the Moore Creek Preserve. Indeed, the DEIR dismisses the Reduced Project Alternative as not fully meeting three of the Plan’s objectives, including the objective of an integrated system of citywide and regional trails, and that it would not respond to needs of all user groups because the alternative would not include new trails in DeLaveaga and the Pogonip. Thus, these trails are a fait accompli, all without environmental review.

5-9           4)       Page 1-5 states that “In consultation with the City Attorney, City staff determined that although identified significant impacts could be reduced to a less-than-significant level and an EIR was not warranted, and an EIR should be prepared to provide full public disclosure of potential impacts and mitigation measures.” This statement ignores the standard of review for Negative Declarations.

As we stated in our letters on the previous Negative Declarations, courts review negative declarations favorably to challengers. Since the City had not previously prepared an Environmental Impact Report for the Plan, Friends of the Pogonip or others only had to make a “fair argument” that the Plan causes a significant environmental impact. Courts have repeatedly affirmed that the fair argument standard is a “low threshold test.” *The Pocket Protectors v. City of Sacramento* (“*Pocket Protectors*”) (2004) 124 Cal.App.4th 903, 928; *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123-1126. Whether the administrative record contains “substantial evidence” in support of a “fair argument” sufficient to trigger a mandatory EIR is a question of law, not a question of fact. *League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905; *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1122 (overruled in part on other grounds in *Friends of Willow Glen Trestle v. City of San Jose* (2016) 2 Cal.App.5th 457, 460). Therefore, under the fair argument standard, “deference to the

agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Sierra Club v. County of Sonoma* (1992) 6 Cal App 4th 1307, 1318; *see also, Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597 (rejecting an approval of a Negative Declaration prepared for a golf course holding that "[a]pplication of [the fair argument] standard is a question of law and deference to the agency's determination is not appropriate.") Evidence supporting a fair argument need not be overwhelming, overpowering or uncontradicted. *Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1402. Instead, substantial evidence to support a fair argument simply means "information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." 14 Cal. Code Regs. § 15384; *Pocket Protectors, supra* 124 Cal.App.4th at 927-928; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland, supra*, 52 Cal.App.4th at 905. The DEIR's attempt to minimize the standard, and impliedly excusing the lack of a through EIR, by claiming that the City did not have to prepare this DEIR in the first place is inappropriate. The City was mandated to prepare this DEIR.

Furthermore, as this office previously pointed out, the City styled the Negative Declarations as program-level documents. The CEQA Guidelines do not provide for "program" Negative Declarations, mitigated or otherwise. The Guidelines section which promotes the use of program EIRs limits its use to just that: program EIRs. CEQA Guidelines § 15168. There is no case sanctioning the use of Program Negative Declarations. The foremost principle under CEQA is that it is to be "interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 563-564. The fact that the CEQA Guidelines do not mention the use of Negative Declarations on a program level, means that they were never intended to be used as such.

By analogy, it has been determined that the use of program document that is not an EIR has been disapproved. In *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, the State Water Resources Control Board (SWRQCB) evaluated impacts under a certified regulatory program. On appeal, SWRCB attempted to rely on the ambiguity of its certified regulatory program to claim its environmental review was tiered and that its document qualified as a program EIR. The court disagreed holding the document was clearly intended to function like a negative declaration, not a program EIR.

The Regional Board obviously intended its documentation to be the functional equivalent of a negative declaration. Nonetheless, on appeal the Water Boards claim for the first time that the Regional Board's environmental review process is tiered, and its documentation meets the requirements of a first tier EIR under Public Resources Code section 21159. They assert the court's criticism of the checklist is baseless “because it ignores the concept of tiered environmental review and specific provisions for pollution control performance standards.”

“ ‘Tiering’ refers ‘to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is: [¶] ... [f]rom a general plan, policy, or program EIR to a ... site-specific EIR.’” (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 285...) “[C]ourts have allowed first tier EIR's to defer detailed analysis to subsequent project EIR's.” (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 532....)

*City of Arcadia v. State Water Resources Control Board, supra*, 135 Cal.App.4th at 1423-1424.

Therefore, the statement that this DEIR was unnecessary ***must be stricken from the DEIR*** as it is misleading and does not correctly represent the law in this matter.

5-10

5) Page 3-19 states that The Plan recommends

looking at modifications to the existing *Pogonip Master Plan* with conducting a trails assessment to evaluate existing trail conditions and use issues and to identify ways to improve access, recreational enjoyment, and connectivity. According to the Parks Master Plan, the assessment would help inform the determination of whether or not future trail modifications or improvements are appropriate and provide for a range of uses (hiking, horseback riding, mountain biking).

(See also, DEIR, p. 4.12-9.) Then the DEIR states that potential environmental impacts and mitigations would be evaluated “through the CEQA process.” Similarly, page 4.0-4 says that with respect to future site-specific projects would be subject to “project-level CEQA environmental analysis once conceptual designs have been developed.” (DEIR, p. 3-19, 4.12-9.)

However, the DEIR then attempts to have it both ways. On page 4.0-4 states that “No ‘reasonably foreseeable’ projects are known with regards to new or expanded trails, off-leash areas for dogs, improvements at Jesse Street Marsh, or development of a drone course, all of which were rained in previous public comments.” Page 4.0-4 – 4.0-5 states that

Some potential new trails locations were conceptually identified for DeLaveaga and Pogonip during the public process of developing the Parks Master Plan, however, there

were intended for discussion purposes, and no specific trail alignments are recommended in the Parks Master Plan. Therefore, there are no “reasonably foreseeable” trail projects.

Then the DEIR at page 4.0-5, as it does throughout the document, concludes that CEQA review will be done for future trail projects, while simultaneously stating that “This EIR does address the types of impacts that could occur with development of new trails and identifies the proposed Parks Master Plan goals, policies, and/or actions that include measures to avoid or minimize identified impacts....”

5-11 This type of circular reasoning is pervasive in the DEIR and amounts to a deferral of impact analysis through the DEIR, which is illegal as pointed out above. To make matter worse, it is clear that additional trails will be coming to the Pogonip, yet the City refuses to provide the requisite environmental analysis. Page 3-17 states regarding Bike Parks and Mountain Bike Facilities that the Plan “Calls for consideration of spurs from multi-use trails to enable mountain bikers to reach more advanced features and terrain and a technical downhill trail.” (See also page 3-18). This can only apply to limited areas, such as the Pogonip. Moreover, as mentioned earlier, the DEIR dismisses the Reduced Project Alternative as not fully meeting three of the Plan’s objectives, including the objective of an integrated system of citywide and regional trails, and that it would not respond to needs of all user groups because the alternative would not include new trails in DeLaveaga and the Pogonip. Thus, these trails are a fait accompli, all without environmental review. And nothing is left to the imagination, not even the locations of trails. Conceptual locations were already identified. The City merely deleted the alignments from the plan to short circuit environmental review. The City cannot relieve itself of analyzing the “whole of the action” by simply deferring the actual release or decision regarding the alignment of these trails. Therefore, the DEIR must identify the environmental impacts of the conceptual plans.

5-12 6) Page 3-21 states that the Plan “recommends restoration and renovation of the Pogonip clubhouse for various uses, such as events, weddings, community center, or winery. It is noted that the adopted Pogonip Master Plan calls for restoration of the clubhouse for use as a staging area for educational programs, a meeting and retreat center, and a site for special events.” Yet, the DEIR fails its fundamental informational requirement to analyze the impact of weddings and a winery or winetasting at the site. These uses will fundamentally change the character and use of the Pogonip and increase visitation. The DEIR cannot simply ignore these uses. In fact, these uses are barely mentioned elsewhere in the DEIR. The same is true for the inclusion of a caretaker’s residence and the addition of a parking area in the Pogonip. The DEIR improperly deferred the analysis and impacts of these uses and improvements.

5-13           7)       Page 3-22 states that a parking area will be potentially added off Highway 1 for the Moore Creek Preserve, and near the Emma McCrary trailhead on Golf Club Drive. The aesthetics section of the DEIR that development of parking would not degrade the visual character of the areas where they would be constructed but then concludes that further environmental analysis would occur later. (DEIR, p. 4.1-10.) Page 4.12-9 states that “The adopted master plans for Pogonip Open Space and Moore Creek Preserve would require amendment to allow parking areas, which would be separate actions in the future should the City pursue these improvements.” Then it states that these projects would be subject to environmental review. (DEIR, p. 4.12-10.) This again illegally defers the environmental analysis. Moreover, the DEIR cannot conclude that there are no environmental impacts when it defers the environmental analysis to a later date.

5-14           8)       Page 3-23 states that

The Plan indicates that an Action Plan will be maintained to help guide broader priorities and actions that will be a separate, but complimentary document, to the Parks Master Plan 2030.... The Action Plan has been prepared from the parks Master Plan based on the Parks and Recreation Commission’s ranking of highest priority for the City to pursue. A Draft Action Plan has been prepared from the Parks Master Plan based on the Parks and Recreation Commission’s ranking of highest priority actions and City Council’s acceptance of the Action Plan pending environmental review and is included in Attachment C.”

This is classic segmentation or piecemeal environmental review. As stated earlier, “‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [including] [a]n activity directly undertaken by any public agency... .” 14 Cal. Code Regs. § 15378(a). The City must address the Action Plan in the DEIR. The failure to do so is fatal.

5-15           9)       Page 4.1-11 states that the addition of parking will not result in light and glare. Given that no environmental review of the impacts of parking has been conducted, the DEIR cannot make this conclusion. It deferred the analysis and simultaneously concludes that there is no impact. Particularly since the DEIR states that “the areas envisioned are small and likely would accommodate a limited number of parking spaces. The sites are generally ringed with trees or in the case of Moore Creek not highly visible from public roads or viewpoints due to

intervening topography and vegetation.” It is clear that the City has enough information to analyze the impacts associated with the new parking areas and it must do so in the DEIR.

5-16 10) Similarly, page 4.3-18 states that “None of the recommended improvements in the Parks Master Plan would interrupt or adversely affect wildlife movement corridors.” Then the DEIR concludes that “potential future development, including potential new trails, would be subject to site-specific review and would be required to comply with the City’s *City-wide Creeks and Wetlands Management Plan*, which establishes requirements for setbacks that would protect wildlife movement along major corridors identified in the City.” Therefore, the document concludes there would be “no impact.” This circular reasoning is short-circuiting the public’s right to the analysis of these conclusions. The DEIR attempts to have it both ways. Moreover, creeks and wetlands are not the only wildlife corridors.

11) How does the DEIR define a wildlife corridor?

5-17 12) In reference to Sensitive Habitats, page 4.3-19 simply states that the impacts are less-than-significant because of “policies and actions in the Parks Master Plan and the *General Plan 2030*, as well as with mitigation or other measures included in previously adopted park/open space management plans and their accompanying CEQA documents.” Oddly, page 4.3-20 states that “recommendations in the Plan could lead to additional development of trails and small structures that could adversely affect sensitive habitats if not designed to avoid sensitive habitat areas.” Then the DEIR concludes that no mitigations are necessary because design and siting would be subject to policies in the Creeks and Wetlands Management Plan, the Pogonip Master Plan and its EIR (which never contemplated the actions in the Parks Master Plan), and the Parks Master Plan. (DEIR, p. 4.3-21; see also p. 4.3-28 with respect to special status species.) Then, the DEIR states “No specific development is proposed as part of the Parks Master Plan.” (DEIR, p. 4.3-22.) (See also page 4.3-27 with respect to special status species.)

With respect to impacts associated with erosion, the DEIR makes the same fatal mistakes. While it concludes that impacts are potentially significant, it then concludes that compliance with stormwater and erosion control measures it is less-than-significant. However, the DEIR then states that new trails “could result in soil erosion if trails are not properly designed or standard erosion control measures are not implemented.” (DEIR, p. 4.5-7.) Then page 5.4-8 concludes that “erosion impacts can be mitigated through trail design, trail maintenance, and seasonal closures.” And that site-specific proposal would be subject to “project-level analysis.” The mitigations for these impacts is implementation of policies and actions in the adopted park plans, such as the Pogonip Master Plan. (DEIR, p. 4.5-9.)

With respect to Hydrology, the DEIR again concludes that the Parks Master Plan is self-mitigating and references a series of Plan policies and stormwater regulations. (See also, Hydrology discussion at pages 4.7-10 – 4.7-14.)

Again, the City improperly employs circular reasoning, defers environmental analysis, and simultaneously concludes that there are no environmental impacts. Moreover, the DEIR never analyzes the reasons why policies in other plans dispense with the need for mitigations. The efficacy of these policies is never discussed. The DEIR simply assumes that compliance with plans results in no environmental impacts.

5-18

13) For Land Use impacts, page 4.12-8 concludes that the Plan is

consistent with adopted management plans for the City's open spaces, and the proposed Parks Master Plan would not conflict with policies or regulations adopted for the purpose of avoiding or mitigating an environmental effect. However, the Parks Master Plan indicates that some amendments to existing management plans, such as Jessie Street Marsh, Moore Creek Preserve, and Pogonip Open Space, may be necessary to implement some of the recommendations in the Parks Master Plan. Updates to existing plans would need to conform to the General Plan and would undergo a future planning process prior to implementation. The Master Plan does not amend or supersede the existing adopted management or park master plans."

If these plans need to be amended, how does the Parks Master Plan not conflict with these plans?

14) What policies in existing management plans, such as Jessie Street Marsh, Moore Creek Preserve, and Pogonip Open Space, would have to be considered for amendment?

15) What environmental impacts are there associated with amending existing management plans, such as Jessie Street Marsh, Moore Creek Preserve, and Pogonip Open Space?

5-19

16) As shown above, the DEIR illegally relies on compliance with policies in General Plan and other city plans, ordinances, and other regulations to conclude that impacts are less-than-significant. This reliance on plans and regulations violates CEQA. The City conflates the issue of identification of impacts in the first place, and the appropriate mitigation for potentially significant impacts. The City must first perform the environmental assessment of project impacts.

In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal.App.4th 1, the court held that the Department of Food and Agriculture cannot forgo

environmental analysis under CEQA by relying on a regulatory and registration program operated by the Department of Pesticide Regulation.

These conclusory statements do not fit the CEQA bill. Compliance with the law is not enough to support a finding of no significant impact under the CEQA. (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882 ... [court rejected assertion that noise level under proposed project would be insignificant simply by virtue of being consistent with general plan standards for zone in question].)

*Californians for Alternatives to Toxics v. Department of Food & Agric.*, *supra*, 136 Cal.App.4th at 17; see also, *Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 956 (court held that Department of Pesticide Regulation’s assessment of environmental effects does not excuse failure of agency to assess the effects of their use for a specific project). Here, the City also punts the environmental analysis and simply concludes that policies, ordinances, and regulations will take care of the problem. “These conclusory statements do not fit the CEQA bill.”

5-20           17)     The Modified Project Alternative is not a real alternative. All the while the DEIR concludes that there are no remaining significant and unavoidable impacts, and that all the impacts are either avoided or mitigated, the Modified Project Alternative is described as modifying policies and actions “to address potential indirect impacts to nesting birds, erosion and water quality, potentially resulting from development or construction of facilities and improvements recommended in the Master Plan, particularly trails.” (DEIR, p. 5-17.) Then the DEIR concludes that “potentially significant impacts would be avoided with this alternative.” This proves our point that the DEIR is fatally flawed. It concludes without any basis or analysis that there are no impacts, and then the DEIR contrives an alternative that purportedly expands policies and actions to mitigate potentially significant environmental impacts. The two conclusions are mutually exclusive. It also highlights that the DEIR’s lack of analysis is problematic. There is no analysis whatsoever that the expanded policies and actions will actually mitigate environmental impacts, anymore than the analysis and mitigations accomplish in other parts of the DEIR.

                  18)  
5-21           For the foregoing reasons, the DEIR must be completely revised to include environmental analysis and recirculated for further public comment.

5-22           Pursuant to Public Resources Code § 21167(f), I am renewing my request that the City forward a Notice of Determination to me if the Project is finally approved. That section provides:

If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid.

Thank you for your consideration of these comments. I look forward to the City's individual responses to these comments.

Very truly yours,  
WITTWER PARKIN LLP

A handwritten signature in blue ink, appearing to read 'W. Parkin', with a long horizontal flourish extending to the right.

William P. Parkin

cc: Celia Scott, Friends of the Pogonip  
Peter Scott, Friends of the Pogonip

## LETTER 5 – Friends of the Pogonip – Wittwer/Parkin

- 5-1 Use of Plans. The comment states that the DEIR relies on other plans to avoid environmental impacts without explanation of how these plans reduce impacts. *Response*: See Response to Comment 5-19.
- 5-2 Deferral of Analyses. The comment states that the DEIR “improperly” defers environmental impact analyses to a later time, but is not specific in what analyses are allegedly being deferred. *Response*: See Response to Comment 5-6.
- 5-3 Impacts of Trails. The comment states that the DEIR does not address potential impacts associated with expanding multi-use trails in the Pogonip, Arroyo Seco and DeLaveaga Park. *Response*: As explained on pages 4.0-4 to 4.0-5 of the DEIR, the *Parks Master Plan 2030* calls for improvement, enhancement and expansion of trails, but the Plan also clearly calls for evaluation of new trail uses through a public process to determine if they are appropriate for a specific space. Upon future completion of these studies, any proposed site-specific proposals would be subject to development of site plans and project-level environmental analysis. The Plan includes recommendations for consideration of new trails at Arroyo Seco, DeLaveaga Park, Moore Creek Preserve, and Pogonip, but does not identify specific trail locations or alignments. (The Plan does support implementation of the Sycamore Grove interpretive trail that is included in the *Pogonip Master Plan* and evaluated in the Pogonip Master Plan EIR.)

Any future trail would be considered and studied in accordance with the Parks Master Plan policies and actions that call for additional study. In addition, recommendations for Pogonip Open Space, as reported on pages 3-19 and 3-21 of the DEIR, include conducting a trails assessment to evaluate existing trail connections and use issues that would help inform the determination of whether or not future trail modifications or improvements are appropriate. The Parks Master Plan also specifically indicates that potential impacts and mitigation measures related to new or expanded trails at Pogonip would be evaluated through the CEQA process conducted for specific future trail projects, if and when they might be proposed. At the conclusion of the trails assessment, it may be determined that additional trails or improvements may or may not be appropriate. The process of undertaking a trails assessment to consider possible modifications to the trails system does not have any direct environmental impacts.

According to CEQA Guidelines section 15146, the degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR. An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy. An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary

effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow. The Parks Master Plan is a program document that includes policies and actions as well as general recommendations for improvements and new uses without site-specific identification of location, size or design of facilities.

Contrary to the comment's allegation, the DEIR does address the types of impacts that could occur with development of new trails. As summarized on page 4.0-5, impacts related to new trail development are addressed in the following sections: 4.1-Aesthetics (page 4.1-6 to 4.1-7, 4.1-9 to 4.1-10); 4.2-Air quality (page 4.2-16 to 4.2-17); 4-3-Biological Resources (page 4.3-20 to 4.3-28); 4.5-Geology and Soils (page 4.5-7 to 4.5-9); 4.7-Hydrology and Water Quality (page 4.7-11 to 4.7-13); and 4.10-Transportation (page 4.10-8 to 4.10-9). The DEIR does disclose impacts related to future development of trails within the City's open space areas, and also indicates that additional environmental review would be required at the time specific trail alignment locations and design are proposed and required project-level CEQA analysis is conducted. See also Response to Comment 5-6.

- 5-4 Parks Master Plan Policies and Actions. The comment states that the DEIR implies that the Parks Master Plan's policies mitigate potentially significant impacts or impacts are less than significant due to the Plan's policies, but the efficacy of such policies is not analyzed. *Response:* As explained in Chapter 3 of the DEIR, the Parks Master Plan consists of five key components including: 1) an inventory of existing facilities; 2) an assessment of community needs; 3) goals, policies and actions; 4) recommendations for specific facilities; and 5) implementation and funding strategies. In assessing project impacts, the EIR must consider the "whole of an action" that has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment according to definitions in the CEQA Guidelines (section 15378).

The goals, policies and actions chapter is part of the Parks Master Plan. As indicated on page 3-9 of the DEIR, overall, the goals, policies and actions address the provision of additional parks and recreational facilities and new or expanded recreational uses. The goals, policies and actions also promote sustainability and include specific actions to avoid environmental impacts associated with future park and recreational facility improvements or expanded uses. Thus, the DEIR does evaluate the indirect impacts of implementation of policies and actions that could lead to development of new facilities, and also identifies those policies and actions that could avoid or reduce a potential impact as part of the Plan's implementation. The reason policies and actions serve to avoid or reduce a potential impact are explained for each topic where applicable policies and actions have been identified. See pages 4.1-7 to 4.1-8, 4.1-10, 4.1-12 (Aesthetics), 4.2-18 (Air Quality-Greenhouse Gas Emissions), 4.3-22 to 4.3-24, 4.3-27 to 4.3-28, 4.3-29, 3-31 (Biological Resources), 4.5-8 (Geology and Soils), 4.7-12-14 (Hydrology and Water Quality), 4.9-12 (Public Services), 4.10-9 (Transportation), and 4.11-20 to 4.11-24 (Utilities and Energy Conservation). The effects of the proposed policies and actions, as well as policies and

actions identified in other area or management plans (see Response to Comment 5-19), are taken into account before determining Project impact significance. Where significant impacts are identified, even with implementation of proposed policies and actions, mitigation is recommended.

- 5-5 Recirculation of DEIR. The comment states that the DEIR is fatally flawed and must be corrected and recirculated for further public comment. *Response*: The comment does not elaborate on what the alleged flaws are, however, responses to specific comments are provided below. The City disagrees with the claim that the DEIR is inadequate as explained in the preceding and following responses. CEQA Guidelines section 15088.5 requires a lead agency to recirculate an EIR when “significant new information” is added to an EIR after public review but before certification. New information is not significant unless the “EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.” “Significant new information” that would require circulation according to this section of the CEQA Guidelines include:

- A new significant environmental effect resulting from the project or from a new mitigation measure.
- A substantial increase in the severity of an environmental impact unless mitigation measures are adopted to reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impact of the project, but the project proponents decline to adopt it.
- The DEIR was so fundamentally inadequate that meaningful public review and comment were precluded.

The responses and clarifications provided in this document do not result in any of the above conditions that would warrant recirculation. None of the DEIR text revisions result in or indicate a new significant impact or a substantial increase in the severity of an impact associated with the proposed project. Finally, no feasible project alternatives or mitigation measures were put forward nor did comments received on the DEIR indicate that the document was fundamentally inadequate as to preclude meaningful public review. For these reasons, recirculation of the Parks Master Plan DEIR is not required.

- 5-6 Environmental Review-Deferral of Analysis. The comment states that the DEIR claims that there will be subsequent environmental review, but also concludes that impacts are “insignificant.” The comment states that the EIR must perform environmental analysis now, and that the City cannot defer environmental analysis to a later time. *Response*: The commenter’s assertion that the DEIR concludes that future environmental review will

render an impact as less than significant is erroneous and is not the conclusion presented in the DEIR as explained in this response.

The City concurs with the commenter's note that the CEQA Guidelines (section 15378) state that "Project" means the whole of an action, which has a potential for resulting direct or indirect physical changes, and as such, the DEIR has evaluated the potential impacts of implementation of the policies, actions and recommended improvements identified in the Parks Master Plan. As explained on pages 4.0-2 to 4.0-3 of the DEIR, Section 15064(d) of the State CEQA Guidelines indicates that an evaluation of significant effects "shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." This section further specifies that an indirect physical change in the environment is a physical change in the environment, which is not immediately related to the project, but which is caused indirectly by the project. An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project.

In this case, the project is the proposed Parks Master Plan 2030, which is a planning guidance document to inform park and recreational facility planning and development and to implement the City's General Plan 2030. The proposed Parks Master Plan includes goals, policies, actions and recommendations that could result in future improvements to existing park and recreational facilities and uses and/or expansion or addition of facilities and recreational uses. As explained on pages 1-1 to 1-2, the DEIR is a program EIR that evaluates all the components of the Parks Master Plan. As indicated in the Parks Master Plan, the recommendations are conceptual, and there are no proposals or details regarding a specific location, design, size or siting of recommended improvements or potential new uses. The Plan recognizes that additional efforts will be necessary to determine if specific projects should be pursued, and during future processes, additional environmental review may be necessary once design plans have been developed.

Under 14 CCR section 15146, the degree of specificity required in an EIR corresponds to the degree of specificity involved in the underlying activity described in the EIR. The Park Master Plan DEIR is a program EIR. To the extent that future expanded uses or improvements may result in environmental impacts, the nature and significance of the impacts are addressed in the DEIR as explained on pages 4.0-3 to 4.0-6. The sections in which impacts are addressed for different new uses recommended in the Parks Master Plan as explained on pages 4.0-3 to 4.0-6. Furthermore, as indicated on page 4.0-4, Appendix B of the DEIR summarizes potential impacts of recommendations of the Plan at existing facilities, which are specifically addressed in the DEIR impact analyses. Thus, the DEIR analyzes potential impacts that could occur based on the types of uses and/or improvements generally recommended in the Parks Master Plan, as well as for recommended improvements for specific park/recreational facility locations. Therefore, the DEIR appropriately analyzes potential indirect reasonably foreseeable impacts that

could occur as a result of implementation of the Parks Master Plan and future specific projects, and the DEIR does not conclude that future environmental review will render an impact as less than significant. The DEIR does consider all components of the Parks Master Plan in the environmental analyses and does not “defer” environmental analysis, but acknowledges that project-level analysis may occur in the future once specific improvement locations and designs are determined in accordance with requirements of CEQA.

The comment further states that the DEIR must address potential impacts associated with improvements contemplated by the Parks Master Plan, “even if the exact alignment of the trails or location of dog facilities are unknown.” As indicated in Response to Comment 5-3, the impacts of future trail development of recommended improvements are analyzed in the DEIR. The potential impacts related to “dog facilities” are addressed in the DEIR on pages 3-13, 3-17 to 3-18, 4.0-5 to 4.0-6, 4.0-1, and 4.9-12.

Therefore, the analyses in the DEIR properly address the “whole of the action”, including all components of the Parks Master Plan and does not defer analyses. Similarly, as discussed in Response to Comment 5-4, the DEIR does not defer formulation of mitigation measures. Therefore, the City disagrees with the commenter’s allegation that the DEIR is “fatally flawed”.

- 5-7     DEIR Introduction. The comment states that the statement on page 1-1 that “information in the EIR does not control the ultimate decision about the project...” is a “gross overstatement, that the decision-making body must consider and adopt feasible mitigations and alternatives to reduce or avoid environmental impacts, and that the statement must be corrected. *Response:* The cited statement on page 1-1 of the DEIR is from CEQA Guidelines section 15121, which also says the agency must consider the information in the EIR and respond to each significant effect identified as also stated on page 1-1. The paragraph preceding the cited statement also indicates that one of the purposes of the CEQA is to prevent significant impacts through use of alternatives or mitigation measures. The first full paragraph on page 1-2 of the DEIR indicates that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures, which would substantially lessen the significant environmental effects of such projects, and that pursuant to section 15021 of the State CEQA Guidelines, CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible. See also pages 1-6 to 1-7 regarding the process for the Final EIR and project approval. Therefore, the DEIR accurately summarizes CEQA requirements, and no change in text is required.
- 5-8     Plan Recommendations Regarding Trails. The comment states that the Parks Master Plan will be used to force changes in park plans such as those for Pogonip and Moore Creek Preserve and that new trails at DeLaveaga and Pogonip are a “fait accompli” without environmental review. *Response:* As indicated in Response to Comment 5-18, potential

changes to existing open space management plans have been identified and evaluated in the DEIR, but it is not known whether such amendments may actually be proposed in the future. Additionally, as indicated on page 3-2 of the DEIR, the City's General Plan 2030 specifically calls for development of the Parks Master Plan, and the City's *General Plan 2030* goals already call for an integrated system of citywide and regional trails. Potential new trails recommended in the Parks Master Plan are not "a fait accompli" as suggested in the comment because future proposals would be subject to project-level design and reviews prior to approval of open space management plan amendments and/or new trails. Furthermore, as discussed in Response to Comment 5-3, the DEIR provides analysis of potential impacts related to future development of new trails.

- 5-9 Standard of Review for Negative Declarations. The comment references a statement on page 1-5 of the DEIR regarding the background on the environmental review for the project and the determination to prepare an EIR, and comments on standards of review for Negative Declarations as well as the previously prepared Mitigated Negative Declaration (referenced as Negative Declaration in the comment) prepared for the project. The comment states that the following statement is unnecessary and should be stricken from the DEIR: *In consultation with the City Attorney, City staff determined that although identified significant impacts could be reduced to a less-than-significant level and an EIR was not warranted, an EIR should be prepared to provide full public disclosure of potential impacts and mitigation measures.* *Response:* The cited statement in the DEIR was preceded by a description of the conclusion that potentially significant impacts identified in the Mitigated Negative Declaration (MND) would be mitigated to a less-than-significant level in which case an EIR need not be prepared pursuant to CEQA Guidelines, solely because without mitigation, an environmental effect would be significant (State CEQA Guidelines section 15065(b)(1)). However, based on review of comments on the MND, the City decided to prepare an EIR. The comment is noted; no change to the DEIR text is required. This statement describes the City's decision-making process, not the legal standards for review of different CEQA documents.
- 5-10 Deferral of Analysis. The comment cites several sentences in the DEIR related to future project-level CEQA analyses and reasonably foreseeable projects. The comment states that the DEIR "concludes that CEQA review will be done for future trail projects, while simultaneously stating that this EIR does address the types of impacts that could occur with development of new trails." *Response:* The commenter claims this is a deferral of analysis. As explained in Response to Comment 5-6, the DEIR does not defer impact analysis, but does indicate when subsequent review would be conducted at a project level, which is required under CEQA. See Response to Comment 5-11 regarding reference to a statement in the DEIR about conceptual trail locations at Pogonip and DeLaveaga Park that were discussed during the preparation of the Parks Master Plan.
- 5-11 New Trails at DeLaveaga and Pogonip. The comment states that additional trails at Pogonip will occur, but the City did not provide environmental analysis, referencing conceptual trail

locations. The comment states that the City cannot “relieve itself of analyzing the ‘whole of the action’ by simply deferring the actual release or decision regarding the alignment of trails.” *Response:* See Response to Comments 5-3 and 5-8 regarding potential new trails, and see Response to Comment 5-6 regarding alleged deferral of analysis. As indicated on page 4.0-4 to 4.0-5 of the DEIR, some potential new trail locations were conceptually identified for DeLaveaga and Pogonip during the public process of developing the Parks Master Plan, however, these were intended for discussion purposes and no specific trail alignments were proposed or are recommended in the Parks Master Plan. Therefore, there are no “reasonably foreseeable” trail project locations that could be evaluated. It is noted that the existing adopted Pogonip Master Plan and DeLaveaga Park Master Plan already identify existing and planned trail networks in these open space properties. The trail networks identified in the Pogonip Master Plan were analyzed under CEQA when the Master Plan was prepared; the DeLaveaga Park Master Plan was prepared prior to the enactment of CEQA. Additional CEQA review of the trail network alignments previously adopted in the Pogonip and DeLaveaga Park Master Plans is not required in the Park Master Plan EIR. Any new trail alignments not addressed in those prior planning efforts under CEQA would require project-level analysis once any new trail project is proposed for development. No such new trail alignments are identified or proposed in the Park Master Plan.

- 5-12 Pogonip Clubhouse. The comment states that the DEIR fails to analyze the impact of weddings or winery or wine tasting at the Pogonip Club, which are identified as potential uses in the Parks Master Plan, as well as a caretaker’s residence and parking area, and improperly defers analysis of impacts of these uses and improvements. *Response:* The Parks Master Plan indicates that rehabilitation and use of the Pogonip Clubhouse is included in the Pogonip Master Plan as reported on page 4.12-6 of the DEIR. Furthermore, the Parks Master Plan recommends continued implementation of the existing Pogonip Master Plan; see “Changes to DEIR” of this document for clarified Project Description text regarding proposed Parks Master Plan recommendations for Pogonip. Both special events at the clubhouse and a caretaker residence are uses already considered in the Pogonip Master Plan and evaluated in the Pogonip Master Plan EIR. The examples of special events included in the Parks Master Plan would be within the scope of special events evaluated in the Pogonip Master Plan EIR, which include weddings. Therefore, impacts associated with special uses at the Pogonip Clubhouse when rehabilitated and construction of a caretaker residence have already been analyzed in the Pogonip Master Plan EIR and no further review is required. The text on pages 4.12-6 and 4.12-10 has been clarified; see “Changes to DEIR” of this document.

Potential impacts associated with a new parking lot at Pogonip, as well as Moore Creek Preserve, are addressed in the DEIR on pages 3-22 (Project Description), 4.1-9 to 4.1-12 (aesthetics), 4.3-20 to 4.3-21, 4.3-26 (biological resources), 4.7-10 to 4.7-11 (hydrology-water quality), 4.8-5 (noise), 4.10-8 to 4.10-9 (transportation), and 4.12-6, 4.12-9 to 4.12-10 (transportation). See also Response to Comments 5-13 and 5-15.

Therefore, the DEIR does not defer analysis of impacts associated with uses and improvements at Pogonip as recommended in the Parks Master Plan.

- 5-13 Aesthetic Impacts of New Parking Lots. The comment states that the DEIR defers environmental analysis of the aesthetics impacts of new parking areas for Moore Creek Preserve and Pogonip. *Response*: The DEIR discusses potential aesthetic impacts of new parking lots on pages 4.1-9 to 4.1-10 and concludes that new parking areas at these areas would not substantially degrade the visual character of the areas due to the fact that the sites are not highly visible from public roads or viewpoints due to intervening topography and vegetation and are envisioned to accommodate a limited amount of cars. The DEIR does not conclude that “further environmental analysis would occur later” as alleged in the comment, but rather indicates that parking lot recommendations are conceptual and further study, planning and environmental analysis, and funding would occur prior to implementation. Additional study and planning would be to define the actual site location and develop design plans that would be subject to project-level environmental review pursuant to CEQA. Therefore, the DEIR does not defer environmental analysis to a later date, but does note that subsequent project-level environmental review would be required when site-specific locations and designs are identified. See also Response to Comment 5-6 regarding subsequent project-level CEQA reviews.
- 5-14 Action Plan. The comment states that the DEIR must address the Parks Master Plan “Action Plan” in the DEIR. *Response*: The Draft Action Plan is described on page 3-23 of the DEIR and is included in Appendix C of the DEIR. The Action Plan is part of the implementation strategy for the Parks Master Plan and includes actions that are the highest priority for the City to pursue. As indicated in Appendix C, the Parks and Recreational Commission ranked actions in the Parks Master Plan based on their overall value to the community, and the highest ranking actions are identified for each of the Parks Master Plan’s seven goals. Thus, the Action Plan does not include new Project elements, but rather prioritizes actions identified in the Parks Master Plan, which are already described and analyzed in the DEIR. See also Response to Comment 5-4.
- 5-15 Parking Lot Light and Glare Impacts. The comment states that the DEIR at page 4.1-11 states that the addition of parking will not result in light and glare, but the DEIR cannot make this conclusion given no review of the impacts of parking has been conducted. The comment states the DEIR deferred the analysis and simultaneously concludes that there is no impact, and it is clear that the City has enough information to analyze impacts associated with new parking areas. *Response*: The DEIR discusses potential aesthetic impacts of new parking lots on pages 4.1-11 to 4.1-12 and concludes that new parking areas at these areas would not be in a substantial new source of glare because the sites are not highly visible from public roads or viewpoints due to intervening topography and vegetation, the sites are small in size and could only accommodate a limited amount of cars. Parks Master Plan Goal III-Policy B, Action 2 calls for provision of tree screening in design considerations. The

Parks Master Plan does not propose lighting at new or existing parking lots, and lighting is not required for parking lots as parks and recreational areas close at sunset. Thus, the DEIR does not defer analysis as alleged in the comment. This comment misstates EIR review requirements. Under 14 CCR section 15146, the degree of specificity required in an EIR corresponds to the degree of specificity involved in the underlying activity described in the EIR. The Park Master Plan DEIR is a program EIR. The Park Master Plan provides general recommendations for potential future parking lots. As such, the programmatic DEIR has adequate information to assess light and glare. The Park Master Plan states that trees will screen parking lots from public view and will not include artificial lighting, but does not provide specific location and design information to address all impacts of potential future parking lots that are not yet proposed as projects. No DEIR text revisions are required to address this comment.

- 5-16 Wildlife Corridors. The comment states that the DEIR indicates that none of the recommended improvements would adversely affect wildlife corridors, but concludes potential future development would be subject to site-specific review and would be required to comply with setbacks in the City's *City-wide Creeks and Wetlands Management Plan*, which is "circular reasoning", "short-cutting the public's right to the analysis of these conclusions." *Response:* The comment indicates that creeks and wetlands are not the only wildlife corridors and asks how the DEIR defines a wildlife corridor. The comment states that the City uses circular reasoning by citing relevant information in adopted plans and certified CEQA documents for those plans to support conclusions made in this EIR. However, Public Resources Code section 21061 states that detailed EIRs should incorporate relevant information or data by referring to matters of public record as the source for conclusions and need not repeat that information in its entirety. It is agreed that creeks are not the only wildlife corridors, but major creek corridors are the primary major wildlife corridors within the City. See page 4.3-8 for a definition of wildlife corridors, which is based on information in the City's *General Plan 2030* EIR. However, the DEIR text on page 4.3-18 has been expanded regarding the conclusion that the Parks Master Plan would not result in impacts to wildlife corridors and to clarify that future project would be required to comply with the Creeks and Wetlands Management Plan setbacks. See "Changes to Draft EIR" section of this document.
- 5-17 Sensitive Habitat, Erosion, and Hydrology Impacts. The comment states DEIR conclusions that impacts related to sensitive habitat, erosion, and hydrology are less than significant with compliance with other City plans and policies, and alleges deferred environmental analysis and states that the DEIR does not analyze the reasons why policies in other plans dispense with the need for mitigation. The comment also alleges the City's use of circular reasoning by referring to prior approved plans and their certified CEQA documents to address potential impacts in the Park Master Plan EIR. *Response:* See Response to Comments 5-6 regarding deferral of analysis, 5-19 regarding other plans and regulations, and 5-16 regarding alleged circular reasoning.

- 5-18 Land Use. The comment asks how the Parks Master Plan does not conflict with existing management plans if they need to be amended, referencing page 4.12-8 in the DEIR. The comment also asks what policies would have to be considered for amendment in existing management plans, such as the Jessie Street Marsh, Moore Creek Preserve and Pogonip Open Space management plans. *Response*: As indicated on the DEIR page 4.12-8, the DEIR concluded that the recommendations in the Parks Master Plan do not conflict with policies or regulations adopted for the purpose of avoiding or mitigating an environmental effect, which is the threshold of impact significant as indicated on page 4.12-7. See page 4.3-25 and 4.12-8 to 4.12-9 regarding the Parks Master Plan recommendations to “discuss potential modifications” to the Jessie Street Marsh Plan through a public process.

See page 4.12-9 of the DEIR regarding potential uses at Moore Creek and Pogonip. A new parking area and potential trails are recommended at each facility, which could lead to potential amendment to the management plans at these two properties to allow these uses. However, potential impacts resulting from both the parking areas and potential trails are evaluated in the EIR; see Response to Comments 5-13 and 5-15 regarding parking areas and 5-3, 5-8 and 5-11 regarding new trails. Neither the Moore Creek Preserve Interim Management Plan nor Pogonip Master Plan contain policies, but rather include a range of management actions and trail and facility design guidelines. It is unknown whether amendment to actions and guidelines would be proposed in the future.

- 5-19 Reliance on General Plan Policies and Other Regulations. The comment states that the DEIR illegally relies on compliance with policies in the General Plan and other city plans, ordinances and other regulations to conclude that impacts are less than significant, and cites two legal cases. *Response*: Public Resources Code section 21061 specifically states that EIRs should incorporate relevant information or data by referring to matters of public record as the source for conclusions and need not repeat that information in its entirety. CEQA Guidelines section 15126.4(1)(B), which was amended at the end of 2019 based in part on past case rulings, addresses compliance with regulatory process. Specifically, the section indicates that “Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.” Where, existing plans, policies and/or regulations contain provisions that would serve to avoid or reduce a potentially significant impact, the DEIR correctly identifies existing plans or regulations and relevant provisions that serve to avoid or reduce impacts in the following impact analyses:

- AESTHETICS - Scenic Resources (page 4.1-7): The City’s Heritage Tree Removal regulations automatically requires replacement of removed heritage trees, which would mitigate potential impacts to scenic resources due to removal of heritage trees. DEIR text has been further clarified; see “Changes to Draft EIR” section of this document.

- AESTHETICS - Scenic Resources (page 4.1-7 to 4.1-8): The DEIR cites three General Plan policies that call for protection and management of tree resources, including landscaping that provides scenic value as indicated in the text, which would avoid impacts to scenic resources related to tree removal.
- AESTHETICS – Introduction of Substantial Glare (page 4.1-11 to 4.1-12): The DEIR indicates that the General Plan calls for maintaining high-quality landscaping on City properties and considering appropriate lighting in parks in combination with proposed Parks Master Plan policies and actions regarding design would not result in introduction of a substantial new source of light and glare. DEIR text has been further clarified; see “Changes to Draft EIR” section of this document.
- BIOLOGICAL RESOURCES – Sensitive Habitat, Wetlands and Special Status Species (page 4.3-22, 4.3-25 to 4.3-28): The DEIR indicates that General Plan summarizes assessment protocols to determine if a sensitive biological resource is present and identifies general avoidance or management strategies to be employed for specified types of sensitive biological resources and habitats and specifically requires compliance with setbacks and provisions in the *City-wide Creeks and Wetland Management Plan*, both of which would provide protection to sensitive habitat areas. DEIR text has been further clarified; see “Changes to Draft EIR” section of this document.
- CULTURAL RESOURCES – Historic Resources (page 4.4-11): The DEIR reports that the CEQA Guidelines indicate that a project that follows the Secretary of the Interior’s Standards for the Treatment of Historic Properties shall be considered to mitigate an impact to a historical resource, and the City’s Municipal Code requires a finding that the project comply with the Secretary of Interior Standards for rehabilitation for issuance of a historical alteration permit. Thus, City regulations require compliance with the standard that the CEQA Guidelines identifies as a mitigation for impacts to a historical resource. It is also noted that the only potential impacts to a historical resource would be minor improvements at the Depot Park Freight Depot and the Pogonip Clubhouse, the latter of which has already been evaluated in the Pogonip Master Plan EIR.
- CULTURAL RESOURCES – Archaeological Resources (page 4.4-12 to 4.4-13): The DEIR explains that the City’s General Plan requires preparation of archaeological investigations for projects located within mapped sensitive archaeological areas, and identifies measures to protect resources if any are identified. The DEIR also cites the City’s Municipal Code section that sets forth the procedures to follow to evaluate and protect an unknown archaeological resource discovered during construction.
- GEOLOGY AND SOILS – Seismic Hazards (page 4.5-6 to 4.5-7) and Expansive Soils (page 4.5-10): The DEIR explains that the few structures that may be constructed or improved as a result of recommendations in the Parks Master Plan would be required to be designed to withstand seismic hazards as required by the California

Building Code, and geotechnical investigations are required to assess potential hazards with incorporation of design features to withstand any hazards posed by geologic and/or soils conditions present at a site.

- GEOLOGY AND SOILS – Soils and Erosion (page 4.5-7): Chapter 18.45, Excavation and Grading Regulations, of the City’s Municipal Code regulates grading and requires implementation of drainage and erosion control measures. The purpose of this chapter “is to detail the technical regulations of grading and excavation and in conjunction with Chapter 24.14 in part to provide protection accelerated erosion and/or siltation.” Section 24.14.060 of the Municipal Code requires preparation and implementation of an erosion control plan for projects located within, or adjacent to, erosion hazard areas, development on slopes in excess of ten percent, and all development adjacent to streams and wetland areas. Thus, developments in areas of steep slopes and adjacent to streams, would be subject to compliance with these regulations which are intended to avoid and/or minimize erosion. The DEIR text has been further clarified; see “Changes to Draft EIR” section of this document.
- GEOLOGY AND SOILS – Steep Slopes (page 4.5-10): The DEIR explains that the few structures that may be constructed or improved in areas of steep slopes are regulated by the City’s Municipal Code that prohibits development on steep slopes and requires setbacks from slopes greater than 30 percent, and the General Plan requires geotechnical reports and implementation of recommendations for structures in areas of steep slopes. Compliance would prevent future improvements from being located in unstable areas. DEIR text has been further clarified; see “Changes to Draft EIR” section of this document.
- GEOLOGY AND SOILS – Paleontological Resources (page 4.5-11): The DEIR explains that while the recommendations in the Parks Master Plan would result in little or no new structural development that would require excavation, the General Plan establishes and requires a process for notification and review in the event that unknown paleontological resources are discovered during construction. DEIR text has been further clarified; see “Changes to Draft EIR” section of this document.
- HAZARDS-WILDFIRE (page 4.6-3, 4.6-6): The DEIR explains that continued compliance with fire prevention measures set forth in the City’s Local Hazard Mitigation Plan would minimize risks to new structures in wildfire hazard areas, which is limited to a new small building in DeLaveaga Park.
- HYDROLOGY AND WATER QUALITY - Water Quality (page 4.7-10 to 4.7-14): The DEIR explains that the City’s stormwater regulations require new development to incorporate Best Management Practices (BMPs) as outlined in the City’s BMP manual to incorporate measures into project design for treatment of stormwater runoff and to implement controls during construction, both of which are intended to prevent water quality degradation. Applicable adopted mitigation measures

from the Pogonip Master Plan EIR also would be required to prevent erosion and water quality degradation associated with new trails.

- NOISE - Water Quality (page 4.8-6 to 4.8-7): The DEIR explains that the City's Municipal Code specifies noise level increases at property lines that would ensure that expanded events at the existing Audrey Stanley Grove amphitheater at DeLaveaga Park would not exceed these established levels or result in significant noise impacts.
- PUBLIC SERVICES – New Recreational Facilities (page 4.9-14): The DEIR indicates that potential impacts of new recreational facilities are avoided or minimized with implementation of policies and actions in the Parks Master Plan (see Response to Comment 5-4) and other City policies and regulations as summarized in this response. The text also indicates that mitigation measures are included in the EIR.
- UTILITIES AND ENERGY CONSERVATION – Energy (page 4.11-24): The DEIR indicates that structural renovations would be required to be constructed in compliance with City Green Building and water conservation regulations, which require energy- and water-efficient designs that would not cause new or improved facilities recommended in the Parks Master Plan to result in unnecessary consumption of energy resources.

5-20 Modified Project Alternative. The comment states that the Modified Project Alternative is not a real alternative and that the DEIR concludes that there are no remaining significant and unavoidable impacts and potentially significant impacts would be avoided with this alternative, which are mutually exclusive conclusions. The comment also states that there is no analysis that the expanded policies and actions in the alternative would mitigate impacts. *Response:* Contrary to the information provided in the comment, the DEIR identifies potentially significant impacts to nesting birds, erosion and water quality, all of which can be reduced to a less-than-significant level with mitigation measures included in the EIR. In accordance with CEQA requirements as explained on page 5-11 of the DEIR, an EIR shall evaluate alternatives that would avoid or substantially lessen significant effects of a project. The DEIR identified a Parks Master Plan Modified Project Alternative and analyzed revisions and additional actions to the Parks Master Plan to further address potential indirect impacts from development of future facilities, uses or improvements. The measures include performance criteria for a drone course, implementation of erosion control measures, and measures to protect nesting birds. According to CEQA Guidelines section 15126.6(d) the Lead Agency is required to evaluate and compare the environmental impacts of feasible project alternatives to the proposed project in an EIR, though not at the same level of detail as the proposed project. Under Public Resources Code sections 21002 and 21081, public agencies should not approve projects as proposed if there are feasible project alternatives that would substantially lessen the significant environmental effects of the project. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. Analysis of the Parks Master Plan Modified Project Alternative discussed in the DEIR provided adequate

detail and showed no substantial lessening of significant environmental effects over the proposed project, thus, the alternatives analysis in the DEIR is adequate according to the relevant legal standards.

- 5-21 Recirculation of DEIR. The comment states that the DEIR must be completely revised to include environmental analysis and recirculated for public comment. *Response*: See Response to Comment 5-5.
- 5-22 Notice of Determination. The comment requests that the City forward a Notice of Determination to the commenter if the Project is approved. *Response*: The comment is acknowledged, but no response is required.

May 8, 2020

To: City of Santa Cruz Parks Commission and City Council

ATTN: Noah Downing, Parks Planner

Re: Response to Parks Master Plan DEIR

- 6-1 We appreciate the opportunity to comment on the Draft Environmental Impact Report for the Parks Master Plan (PMP). Natural wild areas in our parks have provided sacred connection for us during this time of social isolation. Many communities are centering attention on the loss of biodiversity, increases in climate disruption, and damage to our planet in master planning documents. Legal rights of “personhood” are even being granted to rivers worldwide. While we do not require that the City of Santa Cruz meet these standards in its planning documents, we wish to contextualize the gravity of the effort we are undertaking today. The residents of Santa Cruz cherish our ability to connect with nature through our parks; thus, our community needs a robust plan that **prioritizes Objective 5, Environmental Stewardship**.

The City of Santa Cruz Parks Master Plan Draft Environmental Impact Report does not take this objective fully into consideration as drafted. City of Santa Cruz Parks and Open Spaces host an abundance of biodiversity, due to the rich diversity of ecosystems the parks system represents, due to our city’s location in a global biodiversity hotspot (driven by incredible edaphic and climatological microadaptation), due to the rich riparian and wetland habitats associated with the San Lorenzo River watershed, and above all due to our community’s wise decision to protect these parks and open spaces for the benefit of the community and the planet, even as Santa Cruz has grown as a city. Many of the parks covered by the PMP are homes to plant and animal species found nowhere else on earth. This rich biodiversity represents a responsibility as much as a privilege, however. The fascinating ancient soils of our parks, seafloors raised up over millennia, are also among the most erosive on the planet. The waters of our parks are clean and relatively abundant, home to the last remaining, nearly extirpated, wild populations of Steelhead, but they are vulnerable to the siltation caused by overuse of our watershed.

Many of the actions proposed in this Parks Master plan are intended to increase human use of our vulnerable parks in louder, brighter, rougher, and more damaging ways, and mitigation measures proposed are inadequate to prevent the damage that can clearly be anticipated.

- 6-2 In particular, the PMP acknowledges that lighting will be increased in some of the darkest areas of our open spaces, both for parking and for athletic fields, including at Delaveaga park, a park designated as a “wilderness”. Hundreds of native species (see table 1 below) use Delaveaga Park (DLV). The impact of this lighting is NOT QUANTIFIED in the DEIR. The only mitigation proposed is shielding, which is inadequate to protect migratory and canopy dwelling species, and has no mitigating effect on ground dwellers. Lighting impacts should be designated **significant** and unavoidable due to their effects on biodiversity in the park. Adding light of the levels proposed to wilderness cannot be mitigated. Lighting studies should be presented to quantify impacts on resident native species.
- 6-3 Similarly, the DEIR for the PMP does not fully analyze the biological impacts of erosion and siltation due to proposed increased trail use. USGS maps show that Delaveaga park and Pogonip both contain some of the most erosive soils in the country. LandUse maps show that most of DLV is not suitable for trails (see figure 1 and table 2 below). And yet the PMP proposes to expand trail use without QUANTIFYING current erosion settings or models for increased trail USE due to improvements. It further defers analysis of impacts of easily foreseeable segments of trail projects to future documents. This piecemealing is impermissible under CEQA. Cumulative effects of erosion due to increased use of trails and trail spurs in DLV and other parks will be significant and cannot be mitigated. The full extent of this impact must be analyzed so that our elected decision makers can make good decisions on the future of our natural environment. As written, erosion and siltation due to actions in this plan will be **significant** and unavoidable.
- 6-4 In addition, the PMP and DEIR do not conform adequately to the Santa Cruz General Plan 2030 (GP). The GP classifies the River as “Open Space” on page 110, yet it is omitted from the Open Space map, Figure 2-1 in the DEIR, which does not mention the San Lorenzo River at all. Elsewhere, the PMP only classifies the SLR Open Space as a “riverwalk” or “Other major City recreation destinations and facilities” (p. 2.4-14). The SLR is watershed, incredible riparian habitat of its own accord, and it acts as a wildlife corridor. The river should be classified as “Open Space” and “Sensitive Habitat” in the PMP and considered as such throughout the DEIR. The San Lorenzo River (SLR) needs a more protective classification within this plan, and the DEIR needs to more accurately quantify impacts of proposed intensification of river activities and use on the wild nature of the river. Impacts of human activities on garbage, noise, light, and disturbance of nesting wildlife in the SLR river watershed will be **significant** as the PMP is written, and it cannot be mitigated to less than significant.

- 6-5 Project Objective 5 of the plan is to “Provide policies and actions to support community goals and in response to needs of all user groups.” However, the fastest growing user group - bird watchers - are largely omitted from consideration of this plan. The Final EIR will need to consider the needs of bird watchers more deeply. The San Lorenzo River and Moore Creek, as well as all our open spaces generally, have many bird watching opportunities. This stakeholder group needs to be accounted for.
- 6-6 The Reduced Project Alternative would reduce some of the impacts identified above. In the DEIR, however, it is stated that this alternative does not meet some objectives of the plan. If not, then the range of alternatives analyzed by this DEIR is flawed. The DEIR must consider **a reasonable range** of alternatives that **meet the project objectives**. If the drone course and the additional trails are somehow fundamental to the project objectives, then **their impacts must be analyzed now**, not in the future, to avoid segmenting. If included, the impacts of these projects on noise, wildlife, lighting, erosion, and siltation would be significant and unavoidable. Similarly, if changes are foreseen for any of the adopted park plans, including the Jessie Street Marsh Management Plan, then impacts of these changes must be analyzed in the current document or **all references to these projects should be removed** from the current document. In determining that the reduced-project alternative does not meet users’ needs, the needs of birdwatchers and naturalists are not considered. In contrast, the staff-supported Modified Project Alternative in the draft Environmental Impact Report for the Parks Master Plan **does not meet Objective 5** of the plan. Modifications in this alternative are insufficient to reduce cumulative impacts to less-than-significant, and the DEIR inappropriately defers assessment of major impacts to the future. Specifically, impacts of a drone course and new potential trails at Delaveaga and Pogonip need to be analyzed before a Master Plan is created, not after.
- 6-7
- 6-8

Now is the time to acknowledge and resolve potential conflicts among human users of the parks and between humans and the wild nature of our parks system. This Parks Master Plan is a valuable opportunity to bring stakeholders together to truly plan our post-pandemic, climate and biodiversity supportive future. Please do not rush it through. As the lead agency and the proponent for this plan, we implore you to hold live hearings AFTER THE CITY IS OUT OF SHELTER IN PLACE and we can have a live hearing with true discourse. You have that discretion. Please use it for all our benefit.

Sincerely,

Santa Cruz Wymyn for Wild Nature  
Erica Stanojevic, Founder

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Table 1: Native California species documented recently at Delaveaga Park (source iNaturalist)

Arachnida	<i>Diaea livens</i>	Green crab spider
Insecta	<i>Zarhipis integripennis</i>	Western Banded Glowworm
Insecta	<i>Dictyoptera simplicipes</i>	Red Net-winged Beetle
Insecta	<i>Ellychnia californica</i>	California Glowworm
Insecta	<i>Bibio albipennis</i>	White-winged March Fly
Insecta	<i>Cosmopepla uhleri</i>	Western Stink Bug
Insecta	<i>Xylocopa tabaniformis</i> <i>orpifex</i>	Foothill Carpenter Bee
Insecta	<i>Xylocopa tabaniformis</i>	Horsefly-like Carpenter Bee
Insecta	<i>Bombus melanopygus</i>	Black-tailed Bumble Bee
Insecta	<i>Poanes melane</i>	Umber Skipper
Insecta	<i>Vanessa cardui</i>	Painted Lady
Insecta	<i>Cordulegaster dorsalis</i>	Pacific Spiketail
Amphibia	<i>Pseudacris sierra</i>	Sierran Tree Frog
Amphibia	<i>Batrachoseps attenuatus</i>	California Slender Salamander
Amphibia	<i>Aneides lugubris</i>	Arboreal Salamander
Amphibia	<i>Ensatina eschscholtzii</i> <i>xanthoptica</i>	Yellow-eyed Ensatina
Aves	<i>Catharus ustulatus</i>	Swainson's Thrush
Aves	<i>Sitta pygmaea</i>	Pygmy Nuthatch
Aves	<i>Junco hyemalis</i>	Dark-eyed Junco
Aves	<i>Certhia americana</i>	Brown Creeper

Aves	<i>Pheucticus melanocephalus</i>	Black-headed Grosbeak
Aves	<i>Cardellina pusilla</i>	Wilson's Warbler
Mammalia	<i>Scapanus latimanus</i>	Broad-footed Mole
Reptilia	<i>Sceloporus occidentalis</i>	Western Fence Lizard
Reptilia	<i>Elgaria coerulea</i>	Northern Alligator Lizard
Reptilia	<i>Diadophis punctatus amabilis</i>	Pacific Ringneck Snake
Reptilia	<i>Thamnophis atratus</i>	Aquatic Garter Snake
Reptilia	<i>Thamnophis atratus atratus</i>	Santa Cruz Aquatic Garter Snake
Gastropoda	<i>Ariolimax dolichophallus</i>	Slender Banana Slug
Gastropoda	<i>Ariolimax californicus</i>	California Banana Slug
Gastropoda	<i>Helminthoglypta sequoicola</i>	Redwood Shoulderband Snail
Lecanoromycetes	<i>Heterodermia leucomelos</i>	Elegant Fringe Lichen
Lecanoromycetes	<i>Hypogymnia physodes</i>	Hooded Tube Lichen
Pezizomycetes	<i>Scutellinia scutellata</i>	Eyelash Cup
Sordariomycetes	<i>Hypomyces chrysospermus</i>	bolete mould
Agaricomycetes	<i>Galerina marginata</i>	Funeral Bell
Agaricomycetes	<i>Leratiomyces ceres</i>	Chip Cherries
Agaricomycetes	<i>Agaricus xanthodermus</i>	Yellow Stainer
Agaricomycetes	<i>Leratiomyces percevalii</i>	Mulch Maids
Agaricomycetes	<i>Hypholoma fasciculare</i>	Sulphur Tuft

Agaricomycetes	<i>Gymnopilus ventricosus</i>	Western Jumbo Gym
Agaricomycetes	<i>Battarrea phalloides</i>	Sandy Stilt-puffball
Agaricomycetes	<i>Omphalotus olivascens</i>	western jack-o'-lantern
Agaricomycetes	<i>Marasmiellus candidus</i>	Fairy Parachutes
Agaricomycetes	<i>Gymnopus quercophilus</i>	Oak-leaf Pinwheel
Agaricomycetes	<i>Amanita gemmata</i>	Jewelled Amanita
Agaricomycetes	<i>Amanita muscaria flavivolvata</i>	American fly agaric mushroom
Agaricomycetes	<i>Schizophyllum commune</i>	splitgill mushroom
Agaricomycetes	<i>Entoloma medianox</i>	Midnight Entoloma
Agaricomycetes	<i>Caulorhiza umbonata</i>	Redwood Rooter
Agaricomycetes	<i>Leucopaxillus albissimus</i>	Large White Leucopax
Agaricomycetes	<i>Hygrocybe singeri</i>	Western Witch's Hat
Agaricomycetes	<i>Mycena acicula</i>	orange bonnet
Agaricomycetes	<i>Suillus pungens</i>	Pungent Slippery Jack
Agaricomycetes	<i>Cotylidia diaphana</i>	Cotylidia fungus
Agaricomycetes	<i>Trichaptum abietinum</i>	Purplepore Bracket
Agaricomycetes	<i>Trametes versicolor</i>	turkey-tail
Agaricomycetes	<i>Ganoderma brownii</i>	artist's conk.
Agaricomycetes	<i>Laetiporus gilbertsonii</i>	Western Hardwood Sulphur Shelf
Agaricomycetes	<i>Fuscopostia fragilis</i>	brown-staining cheese polypore
Agaricomycetes	<i>Byssomerulius corium</i>	Netted Crust
Agaricomycetes	<i>Ganoderma applanatum</i>	artist's bracket
Agaricomycetes	<i>Trametes betulina</i>	Gilled Polypore

Agaricomycetes	<i>Russula sanguinea</i>	bloody brittlegill
Agaricomycetes	<i>Stereum hirsutum</i>	hairy curtain crust
Agaricomycetes	<i>Lactarius rubidus</i>	Candy Cap
Agaricomycetes	<i>Stereum ostrea</i>	false turkey-tail
Tremellomycetes	<i>Tremella aurantia</i>	golden ear
Liliopsida	<i>Chlorogalum pomeridianum</i>	wavy-leafed soap plant
Liliopsida	<i>Sisyrinchium bellum</i>	western blue-eyed grass
Liliopsida	<i>Calochortus albus</i>	White Globe Lily
Liliopsida	<i>Trillium ovatum</i>	Pacific trillium
Liliopsida	<i>Trillium chloropetalum</i>	giant wakerobin
Liliopsida	<i>Clintonia andrewsiana</i>	Andrews' Clintonia
Liliopsida	<i>Fritillaria affinis</i>	checker lily
Liliopsida	<i>Trillium ovatum ovatum</i>	Western Trillium
Magnoliopsida	<i>Heracleum maximum</i>	common cowparsnip
Magnoliopsida	<i>Osmorhiza berteroi</i>	mountain sweet cicely
Magnoliopsida	<i>Baccharis pilularis</i>	coyote brush
Magnoliopsida	<i>Pseudognaphalium ramosissimum</i>	pink everlasting
Magnoliopsida	<i>Helenium puberulum</i>	Rosilla
Magnoliopsida	<i>Anisocarpus madioides</i>	woodland madia
Magnoliopsida	<i>Artemisia douglasiana</i>	California mugwort
Magnoliopsida	<i>Adenocaulon bicolor</i>	American trailplant
Magnoliopsida	<i>Nemophila parviflora</i>	small-flowered nemophila
Magnoliopsida	<i>Adelinia grande</i>	Pacific hound's tongue

Magnoliopsida	<i>Cardamine californica</i>	milkmaids
Magnoliopsida	<i>Cornus sericea</i>	red osier dogwood
Magnoliopsida	<i>Marah fabacea</i>	California manroot
Magnoliopsida	<i>Lonicera hispidula</i>	Pink Honeysuckle
Magnoliopsida	<i>Arbutus menziesii</i>	Pacific madrone
Magnoliopsida	<i>Rhinotropis californica</i>	California milkwort
Magnoliopsida	<i>Lathyrus vestitus</i>	Pacific pea
Magnoliopsida	<i>Acmispon glaber</i>	deerweed
Magnoliopsida	<i>Acacia dealbata</i>	Silver wattle
Magnoliopsida	<i>Quercus agrifolia</i>	coast live oak
Magnoliopsida	<i>Alnus rhombifolia</i>	white alder
Magnoliopsida	<i>Diplacus aurantiacus</i>	orange bush monkeyflower
Magnoliopsida	<i>Scrophularia californica</i>	California bee plant
Magnoliopsida	<i>Prunella vulgaris</i>	common selfheal
Magnoliopsida	<i>Trichostema lanceolatum</i>	Vinegar Weed
Magnoliopsida	<i>Stachys bullata</i>	California Hedge Nettle
Magnoliopsida	<i>Clinopodium douglasii</i>	yerba buena
Magnoliopsida	<i>Umbellularia californica</i>	California bay
Magnoliopsida	<i>Viola glabella</i>	stream violet
Magnoliopsida	<i>Epilobium canum</i>	California fuchsia
Magnoliopsida	<i>Clarkia unguiculata</i>	Elegant Clarkia
Magnoliopsida	<i>Dicentra formosa</i>	Pacific Bleeding Heart
Magnoliopsida	<i>Frangula californica</i>	coffeeberry

Magnoliopsida	<i>Urtica dioica</i>	stinging nettle
Magnoliopsida	<i>Rubus ursinus</i>	trailing blackberry
Magnoliopsida	<i>Fragaria vesca</i>	Wild strawberry
Magnoliopsida	<i>Acer macrophyllum</i>	bigleaf maple
Magnoliopsida	<i>Aesculus californica</i>	California buckeye
Magnoliopsida	<i>Acer negundo</i>	boxelder
Magnoliopsida	<i>Calystegia purpurata</i>	Pacific False Bindweed
Pinopsida	<i>Sequoia sempervirens</i>	coast redwood
Polypodiopsida	<i>Polystichum munitum</i>	western sword fern
Polypodiopsida	<i>Dryopteris arguta</i>	coastal woodfern
Polypodiopsida	<i>Adiantum aleuticum</i>	western maidenhair fern
Polypodiopsida	<i>Athyrium filix-femina</i>	lady fern
Polypodiopsida	<i>Pentagramma triangularis</i>	goldback fern
Polypodiopsida	<i>Pteridium aquilinum</i>	common bracken
Polypodiopsida	<i>Woodwardia fimbriata</i>	giant chain fern
Polypodiopsida	<i>Adiantum jordanii</i>	California Maidenhair Fern
Polypodiopsida	<i>Pteridium aquilinum pubescens</i>	Hairy brackenfern
Myxomycetes	<i>Lycogala epidendrum</i>	Wolf's Milk

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Figure 1. USDA NRCS soils survey rating of soil suitability for paths and trails DLV park

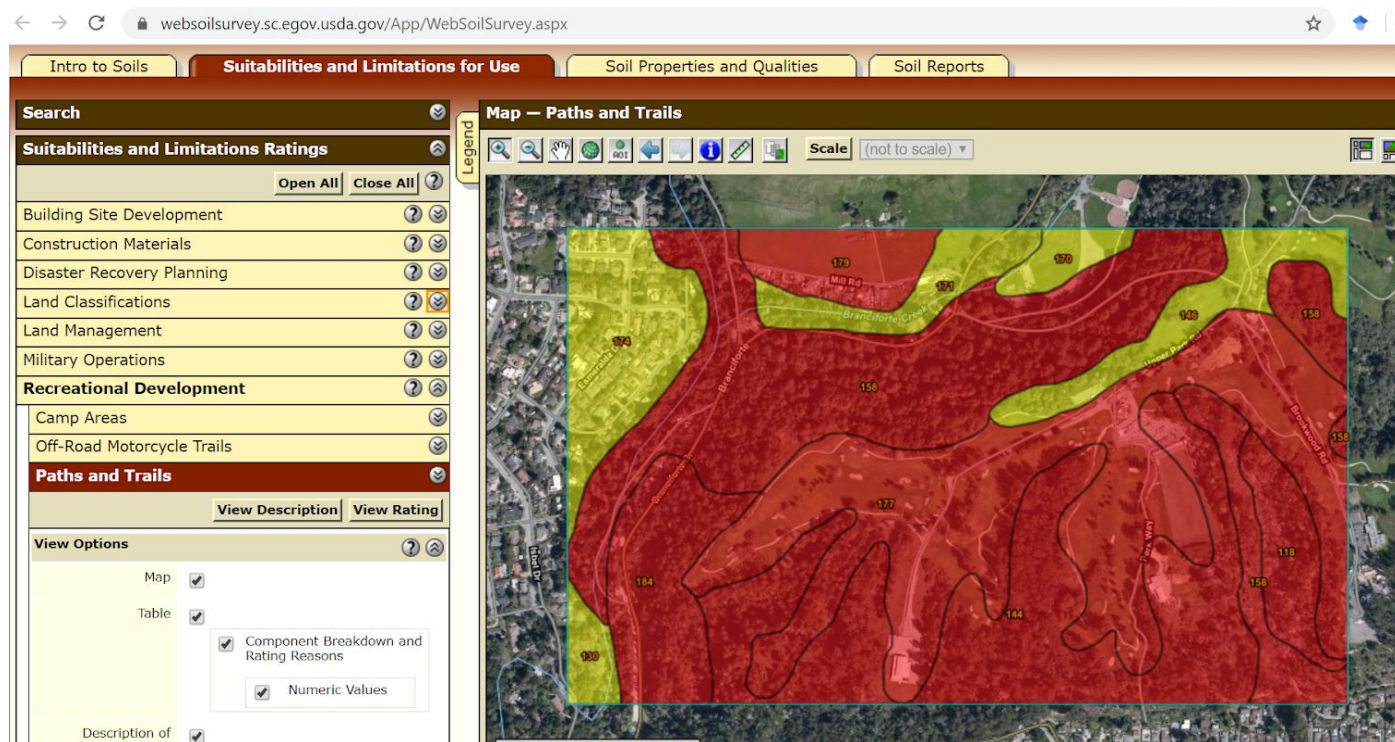


Table 2. Summary by Map Unit — Santa Cruz County, California (CA087)

Map unit symbol	Map unit name	Rating	Component name (percent)	Rating reasons (numeric values)	Acres in AOI	Percent of AOI
118	Bonnydoon-Rock outcrop complex, 50 to 85 percent slopes	Very limited	Bonnydoon (45%)	Slope (1.00)	9.4	3.0%
				Water erosion (1.00)		
				Dusty (0.18)		
130	Elder sandy loam, 2 to 9	Somewhat limited	Elder (85%)	Dusty (0.03)	4.0	1.3%

	percent slopes, MLRA 14					
144	Lompico-Felton complex, 50 to 75 percent slopes, MLRA 4B	Very limited	Lompico (45%)	Slope (1.00)	58.1	18.5%
				Water erosion (1.00)		
				Dusty (0.06)		
			Felton (40%)	Slope (1.00)		
				Dusty (0.04)		
146	Los Osos loam, 5 to 15 percent slopes	Somewhat limited	Los Osos (85%)	Dusty (0.30)	13.5	4.3%
158	Nisene-Aptos complex, 50 to 75 percent slopes	Very limited	Nisene (30%)	Slope (1.00)	80.4	25.6%
				Dusty (0.01)		
			Aptos (30%)	Slope (1.00)		
				Dusty (0.01)		

**LETTER 6**

170	Soquel loam, 0 to 2 percent slopes	Somewhat limited	Soquel (85%)	Dusty (0.16)	4.4	1.4%
171	Soquel loam, 2 to 9 percent slopes	Somewhat limited	Soquel (85%)	Dusty (0.16)	9.9	3.2%
174	Tierra-Watsonville complex, 15 to 30 percent slopes	Somewhat limited	Tierra (55%)	Slope (0.92)	21.3	6.8%
				Dusty (0.15)		
177	Watsonville loam, 2 to 15 percent slopes	Very limited	Watsonville (85%)	Water erosion (1.00)	82.5	26.3%
				Dusty (0.19)		
179	Watsonville loam, thick surface, 2 to 15 percent slopes	Very limited	Watsonville (85%)	Water erosion (1.00)	10.8	3.4%
				Dusty (0.19)		
184	Zayante-Rock outcrop complex, 15 to 75 percent slopes	Very limited	Zayante (45%)	Slope (1.00)	19.1	6.1%
				Too sandy (1.00)		

<b>Totals for Area of Interest</b>	<b>313.4</b>	<b>100.0%</b>
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### Collapse Table — Paths and Trails — Summary by Rating Value

### Table — Paths and Trails — Summary by Rating Value

Collapse Summary by Rating Value		
Summary by Rating Value		
Rating	Acres in AOI	Percent of AOI
Very limited	260.2	83.0%
Somewhat limited	53.2	17.0%
<b>Totals for Area of Interest</b>	<b>313.4</b>	<b>100.0%</b>

**LETTER 6 – Santa Cruz Wymyn for Wild Nature – Erica Stanojevic**

- 6-1 Environmental Stewardship. The comment states that the DEIR does not take the Parks Master Plan objective 5, Environmental Stewardship, fully into consideration and that many of actions proposed in the Parks Master Plan are intended to increase human use of parks in more damaging ways and mitigation measures are inadequate to prevent damage and references potential impacts related to biological resources and erosion. *Response*: The Parks Master Plan does not include policies, actions or recommendations that would substantially increase use or activities in parks, except for additional off-season uses of the Audrey Stanley Grove amphitheater, which is evaluated in the following sections in the DEIR: Aesthetics (page 4.1-6, 4.1-9), Air Quality and Greenhouse Gas Emissions (page 4.2-16), Biological Resources (page 4.3-20), Geology and Soils (page 4.5-6 to 4.5-7, 4.5-9 to 4.5-10), Hazards-Wildfire (page 4.6-6), Hydrology and Water Quality (page 4.7-13), Noise (page 4.8-6 to 4.8-7), Public Services (page 4.9-12), and Transportation and Traffic (page 4.10-8). The Parks Master Plan also includes policies and actions: to discourage human intrusion into sensitive wildlife habitats through appropriate placement of facilities and trails (Goal IV-Policy B, Action 2g), protect areas with special status species from negative human activities and other impacts such as erosion, trampling, and litter with protective measures such as trail rerouting, educational signs, and fencing (Goal IV-Policy B, Action 1e); and to reduce conflicts between wildlife and humans through notification and education and control of human access trails (Goal IV-Policy B, Action 2i). See pages 4.3-19 to 4.3-31 regarding impacts to biological resources and pages 4.5-7 to 4.5-8 regarding erosion impacts.
- 6-2 Impacts of Lighting at DeLaveaga Park. The comment states that the impact of lighting is not quantified in the DEIR, and lighting impacts should be considered significant and unavoidable due to their effects on biodiversity in DeLaveaga Park. *Response*: The recommendation for lighting at DeLaveaga Park is to install energy-efficient light at existing ball fields where lighting already exists. Thus, the replacement of existing lighting with energy-efficient lighting would not result in introduction of a new source of substantial light. This area also is separate from the wilderness area of DeLaveaga Park, which is identified as a separate unit of DeLaveaga Park in the Parks Master Plan. The commenter’s attached plant list for DeLaveaga Park is noted.
- 6-3 Erosion Impacts. The comment states that DEIR does not address the “biological impacts of erosion and siltation due to proposed increased trail use.” The comment also states that the DEIR defers analysis of impacts of “foreseeable segments of trail projects” and that the cumulative effects of erosion due to increased use of trails and trail spurs in DeLaveaga and other parks will be significant and cannot be mitigated. *Response*: Potential impacts of construction of new trails and mountain bike uses are evaluated on pages 4.5-7 to 4.5-9. See also Response to Comment 5-3 regarding potential development of future trails. The commenter’s attached map and soil list from the County Soils Survey is noted.

- 6-4 San Lorenzo River. The comment states that the *General Plan 2030* classifies the River as Open Space, but the DEIR does not mention the San Lorenzo River and the Parks Master Plan only classifies the San Lorenzo River open space as a “Riverwalk”. The commenter suggests that the river be classified as open space and sensitive habitat in the Parks Master Plan and that the DEIR should address impacts of “proposed intensification of river activities and use” on the river, including garbage, noise, light and disturbance to nesting wildlife. *Response*: The General Plan’s land-use designation for the river area is Natural Area, and the river is further described as an open space in the Parks, Recreation and Open space chapter of the General Plan. The DEIR Figure 2-1 is from the Parks Master Plan that shows existing City park and recreational lands. The Parks Master Plan does not propose intensification of river activities that would result in environmental impacts. It lists the San Lorenzo River area under “Other City Recreational Areas and Facilities”. The Parks Master Plan describes that “most importantly, the river and surrounding vegetation provide natural habitat for wildlife. The San Lorenzo Urban River plan (2003) guides future improvements and restoration efforts along the river” (Parks Master Plan, page 2.4-14). The Parks Master Plan includes recommendations to implement the *San Lorenzo Urban River Plan* (SLURP), integrate multi-departmental and agency partnerships, and install artwork, site furnishings, infrastructure and recreational amenities. The DEIR addresses sensitive biological resources, including the San Lorenzo River in section 4.3; see pages 4.3-6, 4.3-13 and 4.3-17 regarding sensitive river resources and the SLURP.
- 6-5 Bird Watching. The comment states that the Parks Master Plan does not consider bird watchers and the EIR should consider the needs of bird watchers. *Response*: As explained on pages 1-1 and 1-4 of the DEIR, the environmental review process is focused on evaluation of significant environmental effects of a project on the physical environment. The comment is acknowledged and referred to decision makers for further consideration.
- 6-6 Reduced Project Alternative. The comment states that if the Reduced Project Alternative does not meet some objectives of the plan, then the range of alternatives analyzed by the DEIR is flawed and that the DEIR must consider a reasonable range of alternatives that meet the project objectives. The comment also states that if the drone course and additional trails are fundamental to project objectives, impacts related to noise, wildlife, lighting, erosion and siltation would be significant and unavoidable. *Response*: As explained on page 5-11 of the DEIR, CEQA Guidelines require evaluation of a range of reasonable alternatives that would “feasibly attain most of the basic objectives of the project” and avoid or substantially lessen significant impacts. The Guidelines further indicate that the discussion focus on alternatives capable of eliminating or reducing impacts even if these alternatives would impede to some degree the attainment of project objectives. The Reduced Project Alternative was developed to avoid or reduce significant impacts identified with potential biological impacts related to a drone course and potential impacts related to erosion, even though some objectives would not be fully met. However, the analysis is in accordance with provisions in the CEQA Guidelines. Furthermore, potential impacts related to development of a recreational drone course and new trails

were evaluated in the DEIR. See Response to Comments 5-3 and 5-11 regarding analysis of new trails in the DEIR. See the following DEIR pages regarding impacts of a drone course: 4.0-6, 4.3-20 to 4.3-22, and 4.3-29 to 4.3-30.

- 6-7 Changes to Plans. The comment states that if changes to any adopted park plans are foreseen, including Jessie Street Marsh, the impacts of these changes must be analyzed or references to these projects removed. *Response*: See Response to Comment 5-18.
- 6-8 Reduced Project Alternative. The comment states that the Reduced Project Alternative does not meet the needs of bird watchers and modifications in this alternative are insufficient to reduce cumulative impacts to less than significant. The comment also states that impacts of a drone course and potential trails at DeLaveaga and Pogonip are improperly deferred. *Response*: See Response to Comment 6-5 regarding bird watches. See Response to Comment 6-6 regarding analysis of a drone course and new trails. See Response to Comment 5-6 regarding deferral of analyses.
- 6-9 Public Hearing. The comment states that hearings on the project should not be held until after the pandemic when a public hearing can be held live with meaningful discourse. *Response*: The comment does not address analyses in the DEIR and is referred to decision makers for further consideration.

**From:** Candace Brown [<mailto:clbrown23@gmail.com>]  
**Sent:** Friday, May 08, 2020 5:04 PM  
**To:** Noah Downing <[NDowning@cityofsantacruz.com](mailto:NDowning@cityofsantacruz.com)>  
**Subject:** PARK Master Plan PARTIAL REVIEW

Please see attached. Ran out of time with short notice.

Re: PARK MASTER PLAN Draft EIR

Date: MAY 8, 2019

To: NOAH DOWNING  
City of Santa Cruz

- 7-1 I am halfway through the Park Master Plan document and running out of time. This document should not have been released for review in the beginning of a pandemic and Santa Cruz shutdown. I just heard about the deadline today in last several days.

Please consider a review extension of at least 3 months and once Santa Cruz is opened up in the summer.

These are rough notes and comments without the time to review the entire document. It is organized text and comment.

- 7-2 Text 4.1 p 64  
Goal IV-Policy A, Action 6: Maintain and expand tree canopy coverage. This Action calls for completions of a tree inventory on public lands and increasing the City's urban tree canopy by 10% between 2008 and 2020.  
COMMENT: Would like to know if 10% was met and how many trees is that in numbers and if they survived over decade? If 5,000 trees then that would mean 500 more trees on public land. Would like to see 25% so if 5,000 trees now, then 1,250 established trees more in next 15 years. How is this tied to goals of the Climate Change Plan for the City? The 25% would not include replacement of existing trees. If heritage trees taken down, then there should be a climate change equivalent to the loss of that size of heritage tree (eg, carbon sequestration).

Pg 85 Policy A, Action 1f, calls for increasing the number of trees and tree canopy within the City to increase carbon sequestration.  
How is this quantified into tangible Climate Change impact?

SEE SAN MATEO PLANNING DOCUMENT TREE REPLACEMENT  
San Mateo County Tree Ordinances Steering Committee  
May 25, 2017 Meeting Staff Report  
Tree Replacement Requirements – Canopy Goals and Policy Options  
[https://www.google.com/url?sa=t&source=web&rct=j&url=https://planning.smcgov.org/sites/planning.smcgov.org/files/Tree%2520Replacement%2520Report%25205-25-17.pdf&ved=2ahUKEwj8jb-hoKXpAhXSHzQIHZyeC\\_kQFjAKegQIBBAB&usq=AOvVaw2YwSXgvv6s2dpYwqJmDdls](https://www.google.com/url?sa=t&source=web&rct=j&url=https://planning.smcgov.org/sites/planning.smcgov.org/files/Tree%2520Replacement%2520Report%25205-25-17.pdf&ved=2ahUKEwj8jb-hoKXpAhXSHzQIHZyeC_kQFjAKegQIBBAB&usq=AOvVaw2YwSXgvv6s2dpYwqJmDdls)  
<https://www.nytimes.com/2020/02/10/opinion/trillion-trees-trump-climate.html>

"And planting trees is a tangible way to address climate change that can be done on both a micro and a macro scale. Got a sunny spot in your yard? Plant a tree. Got a country where logging or development or agriculture has mowed down whole forests? Plant millions of trees.

Unfortunately, the math is more complicated than that line in the State of the Union address implies. Planting a seedling is better than doing nothing, it's true, but it takes decades for a seedling to replace a tree, and that's if the seedling survives at all: In China's Great Green Wall reforestation program, up to 85 percent of the plantings fail over time, according to Yale Environment 360. For large-scale reforestation to succeed, the right trees have to be planted in the right places — a variety of species, not a monoculture, all native to the ecosystem at hand — and they have to be cared for until the roots are well-enough established to survive the temperature extremes, storms, floods and droughts that are the hallmark of climate change. It can be done, but it can't be done without effort.

Reforestation is a crucial goal, but even more crucial is the other goal of the One Trillion Trees initiative: preserving the trees we already have. So far we're doing a terrible job of it. Here in the United States, we're losing 36 million trees a year in metropolitan areas alone."

7-3 Text pg 65

The Parks Master Plan also calls for consideration of artificial turf for playing fields in some locations:

DeLaveaga and Harvey West Parks, and potential development of an artificial turf playing field near Sgt. Derby Park and mini-soccer field at University Terrace Park. The use of artificial turf may look different than natural turf in some instances. However, the use of artificial turf has become widely used in many areas for playing fields, and designs have evolved that have established more a natural-looking appearance. The Parks Master Plan also calls for careful consideration of impacts of use of artificial turf when considering whether or not to convert grass to synthetic turf fields (Goal III-Policy D, Action 3). Therefore, the use of artificial turf in the locations identified in the Master Plan, which are in existing developed areas, would not be expected to result in significant aesthetic impacts.

COMMENT One only has to see the Branciforte Middle School and high fences locked to see it does not invite Community use. For years it was considered a neighborhood asset until it was locked down after it went "artificial". Also there is growing evidence of health issues for women goalies of the materials used for the turf. This should not be overlooked and would have significant impact aesthetically and as far as use and health concerns. <https://www.ehhi.org/turf-cancer-stats.php>

7-4 Text pg 103to 107

TABLE 4.3-2: Major Sensitive Biological Resources  
At City Parks and Open Space Lands  
Park-Open Space-  
Facility Sensitive Habitat Special Status Species

Arana Gulch Open Space Coastal prairie  
Riparian  
Potential monarch butterfly  
Santa Cruz tarplant  
Nesting bird species

Arroyo Seco Canyon Riparian  
Coastal prairie  
Potential monarch butterfly  
Nesting bird species

DeLaveaga Park Coastal prairie  
Riparian  
Potential monarch butterfly  
Oak woodlands  
Wetlands  
Santa Cruz tarplant  
California Species of Special  
Concern (birds)  
Nesting bird species  
Jessie Street Marsh Wetland Potential nesting bird species

Moore Creek Preserve Coastal prairie  
Riparian  
Potential monarch butterfly  
San Francisco popcornflower  
Ohlone tiger beetle  
California red-legged frog  
Southwestern pond turtle  
California Species of Special  
Concern (bats)  
Nesting bird Species

COMMENT There is a need to incorporate further consideration of the Monarch butterfly dramatic decline in the Park Master Plan and the noted Management Plans regarding biological diversity and the identified tree clusters for monarch butterflies.

<https://www.theguardian.com/environment/2020/jan/22/monarch-butterfly-population-decline-california-coast>

Monarch butterfly population critically low on California coast – again  
January 2020 article

Study finds 29,000 butterflies, compared with 4.5 million during the 1980s, as experts point to habitat destruction

- 7-5 Text pg 109 BIO-9 Threaten to Eliminate a Plant or Animal Community. The proposed Project would not threaten to eliminate a plant or animal community. As explained in Impact BIO-1 and BIO-2 below and BIO-7 and BIO-8 above, potential impacts to wildlife habitat and species population would not be significant. The Plan includes policies and actions to protect habitat and wildlife areas. In addition, the recommended improvements are mostly minor or small structures that would not result in substantial ground disturbance or result in loss of habitat. Therefore, the Project does not have the potential to threaten to eliminate a plant or animal community.

COMMENT Are you absolutely certain there is no impact to environmentally sensitive areas when you are considering increased trails and multi-use infrastructure and trails in some of the Open Spaces noted above?

- 7-6 Text pg113- The Parks Master Plan also supports continued implementation of habitat managements with the following recommendations. Specific Plan recommendations:  
 Arana Gulch Open Space: Continue to implement the Habitat Management Plan and restore the Santa Cruz tarplant population and coastal prairie, woodland, and riparian areas.  
 Delaveaga Park: Continue to work with Resource Conservation District and implement the Arana Gulch Creek Stormwater Watershed improvement projects.  
 Santa Cruz Riverwalk. Implement the San Lorenzo Urban River Plan.

COMMENT -

Arana Gulch - Has tarplant been restored?

Why do motorcycles ride on the biketrail. There are no signs designating otherwise.

Why do mountain bikes ride in the pedestrian trails without punity and ruin the pedestrian paths?

DeLaveaga Park - Why are mountain bikes and major events allowed that have dramatically eroded trails down to the tree roots and compromised old sea beds with soil erosion that have flowed into the Branciforte Creek and fill gills of endangered fish?

San Lorenzo Urban River Plan - Why is this not expanded in the Park Master Plan? To what extent is the Urban River Plan include the San Lorenzo River impacts rather than focus on the Riverwalk?

- 7-7 Text 143 Future trail construction, especially on steeper slopes and in areas of high erosion potential, such as Pogonip Open Space, DeLaveaga Park, and portions of Moore Creek and Arroyo Seco, could result in soil erosion if trails are not properly designed or standard erosion control measures are not implemented. This would be considered a potentially significant impact. The principal risk associated with erosion in an urban or semi-urban setting is due to accelerated erosion, which is caused directly or indirectly by human activities or land management. Accelerated erosion is caused principally by grading for roads and other development and by land clearing. Both these processes remove vegetative cover that protects soils from erosion, and they change natural drainage patterns in a way that can concentrate runoff, increasing its erosive potential. Consequently, erosion hazards can be best mitigated by proper planning and implementation of erosion control measures on a site-specific basis during construction, and by implementation of permanent, fail-safe drainage systems post-construction (City of Santa Cruz, April 2012, DEIR volume).

COMMENT - There has been significant use and impact in DeLaveaga Park since 2012 and thr erosion and mud slides across Branciforte and into the adjoining creek has been brought to the attention to the City Council. What mitigation has been instituted? Instead there is growing use of the area for significant biking events including with UCSC sponsorship. Plans without meaningful intent to mitigate brings into question the process to enforce multi-use impacts on trails and erosion and impacts on the creek and endangered species violations of the Park Master Plan implementation.

- 7-8 Text pg 160 -  
 The City's "Storm Water Management Plan" (SWMP) is a comprehensive program to reduce the amount of pollutants discharged in urban runoff and to improve and protect water quality. The

SWMP includes six required control programs and two recommended control programs for industrial and commercial facilities, and BMPs. The City's SWMP was approved by the Central Coast RWQCB on April 14, 2009, and thus, the City is granted coverage under the statewide NPDES Small Municipal Separate Storm Sewer Systems General Permit.

COMMENT - the permit was established in 2009 and yet the Golf Course Plan was established in 2012. What is the impact of the golf course in water quality concerns?

7-9 I am halfway through the Park Master Plan document and running out of time. This document should not have been released for review in the beginning of a pandemic and Santa Cruz shutdown. I just heard about the deadline today in last several days.

Please consider a review extension of at least 3 months and once Santa Cruz is opened up in the summer.

Sincerely, Candace Brown

**LETTER 7 – Candace Brown**

- 7-1 DEIR Public Review. The commenter asks that the City consider extension of the public review period by three months. *Response*: The City did extend the required 45-day review period by two weeks, notice of which was provided to all agencies and individuals on the EIR distribution list.
- 7-2 Tree Canopy. The commenter asks questions on the Parks Master Plan Goal IV-Policy A, Action 6 regarding increasing tree canopy by 10 percent and Goal I-Policy A, Action 1f regarding tree canopy and carbon sequestration. *Response*: The comment does not address analyses in the DEIR, and no response is required.
- 7-3 Artificial Turf. The comment suggests that artificial turf is not inviting to the community and potential health and aesthetics impacts should not be overlooked. *Response*: Potential aesthetic impacts of artificial turf are addressed on page 4.1-9 of the DEIR. Parks Master Plan Goal III, Policy D, Action 3 describes that careful considerations of health, the environment, and long-term costs are necessary when determining whether or not to convert grass to synthetic turf. However, the purpose of CEQA is to evaluate the impacts of a project on the physical environment. The comment regarding potential health effects associated with artificial turf is referred to City decision makers for consideration.
- 7-4 Monarch Butterflies. The comment states that there is a need to incorporate “further consideration of the Monarch butterfly dramatic decline in the Park Master Plan and the noted Management Plans regarding biological diversity...” *Response*: The comment does not address analyses in the DEIR and is referred to City staff and decision makers for further consideration. It should be noted, however, that the Plan does include numerous policies, actions, and recommendations which consider biological biodiversity. Parks Master Plan Goal IV, Policy A includes numerous actions to understand and maintain the diversity of native plant communities, understand wildlife movement patterns and habitat features with high value to wildlife, formulate site specific management goals for parks and open spaces, inventory critical and sensitive habits and develop strategies for protection, identify how urban parks can be landscaped to contain features to aid in habitat connectivity, develop and implement restoration work plans, identify and convert non-usage turf areas to native gardens, create park specific planting lists and incorporate Xerces Society planting recommendations for pollinators, and certify landscapes through the National Wildlife Federation’s Garden for Wildlife Program to increase awareness of the importance of gardens for butterflies. Goal IV, Policy B, Action 1 describes protecting and enhancing the habitat and populations of special statues plant and animal species. Goal IV, Policy C, Action 4 describes continuing to improve partnerships with local, state, and federal agencies and organizations to help address regional challenges such as habitat fragmentation. Recommendations for Tyrrell Park, Ocean View Park, and La Barranca Park include planting demonstration or native gardens, with the recommendation for Bethany

Curve Park specifically describing that the park could be beautified by planting native gardens which could improve habitat for migrating birds and Monarch butterflies.

- 7-5 Biological Impacts of Trails. The comment questions impacts to environmentally sensitive areas related to trails. *Response*: Impacts to sensitive habitat areas, including potential trails are addressed on pages 4.3-19 to 4.3-24 in the DEIR.
- 7-6 Arana Gulch, DeLaveaga Park and San Lorenzo Urban River Plan. The comment asks questions about tarplant restoration and motorcycle and mountain bike use at Arana Gulch; states that mountain bikes and events at DeLaveaga Park that have eroded trails; and asks why the San Lorenzo Urban River Plan is not expanded in the Parks Master Plan. *Response*: The comment does not address analyses in the DEIR and is referred to decision makers for further consideration.
- 7-7 Erosion Impacts at DeLaveaga Park. The comment asks questions about erosion and mudslides across Branciforte Creek and processes to enforce multi-use impacts of trails and erosion, creeks and endangered species. *Response*: See Response to Comment 5-3 regarding discussion of impacts of new trails in the DEIR.
- 7-8 Golf Course Impact. The comment cites the DEIR description of the City's Storm Water Management Plan and asks what the water quality impacts of the golf course would be. *Response*: The Parks Master Plan includes a recommendation to implement the previously adopted DeLaveaga Golf Course Master Plan. The comment does not address analyses in the DEIR and is referred to decision makers for further consideration.
- 7-9 DEIR Review. The comment states that the document should not have been released for review in the beginning of a pandemic. *Response*: The comment does not address analyses in the DEIR and is referred to decision makers for further consideration.

Noah Downing  
City of Santa Cruz  
Parks and Recreation Dept  
323 Church St  
Santa Cruz, CA 95060

May 6, 2020

**LETTER 8**

Dear Noah,

8-1            Thanks for making possible the inclusion of these comments on the 2030 Parks Master Plan. I would like my comments and this document to be made part of the public record for this project.

It is my belief that the IS/MND for this program is inadequate in so far as it relates to Its Beach. I am including a document, certified for publication, in the Court of Appeal of the State of California, Sixth Appellate District, Lighthouse Field Beach Rescue v. City of Santa Cruz, et al., that summarizes the courts findings on the previous IS/MND reviewed in 2005.

Thank you for your service to the community,

Grant Weseman

Santa Cruz

Filed 8/10/05

## CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

LIGHTHOUSE FIELD BEACH RESCUE,

Plaintiff and Appellant,

v.

CITY OF SANTA CRUZ, et al.,

Defendants and Respondents,

CALIFORNIA DEPARTMENT OF  
PARKS AND RECREATION,Real Party in Interest  
and Respondent.

H027491

(Santa Cruz County  
Super. Ct. No. CV146505)

The principal issues in this case are whether the City of Santa Cruz (City) complied with the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 et seq.)<sup>1</sup> in preparing its initial study of the proposed revisions of the 1984 Lighthouse Field State Beach General Plan (revised general plan), adopting a negative declaration instead of preparing an environmental impact report (EIR), and approving the revised general plan. Appellant Lighthouse Field Beach Rescue (Beach Rescue), an unincorporated advocacy association, unsuccessfully petitioned for a writ of mandate on the ground that respondents City and City of Santa Cruz City Council (City Council)

<sup>1</sup> All further statutory references are to the Public Resources Code unless otherwise specified.

violated CEQA. The California Department of Parks and Recreation (Department) is named as a real party in interest.<sup>2</sup>

The petition alleged that the City "abused its discretion and failed to act in the manner required by law" by (1) failing to adequately "describe the environmental setting, including the impacts and extent of the current off-leash dog use at the Beach" in its initial study, (2) failing to certify an EIR since the "administrative record contains a fair argument that the amendments to the Plan may result in significant environmental impacts relating to but not limited to the continuing and increasing presence of off-leash dogs at the Beach . . .," and (3) improperly deferring environmental analysis of "the impacts and mitigations for dog use at the Beach." Appellant had sought an order requiring respondents to set aside all approvals related to the revised general plan and to fully comply with CEQA, "including certification of an adequate environmental impact report and adoption of feasible project mitigations and alternatives based on findings supported by substantial evidence in the record."

On appeal from the denial of the writ petition, appellant Beach Rescue argues that (1) the initial study is inadequate because it failed to adequately describe the environmental setting and evaluate the environmental impacts of unleashed dogs at Lighthouse Field State Beach, (2) the City's approval of the amended plan and adoption of a negative declaration was improper because it could be fairly argued, based on substantial evidence, that "the project may have a significant effect on the environment," and (3) the City's deferral of unleashed dog issues to future environmental review resulted in prohibited "piecemeal" environmental review.

We reverse.

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<sup>2</sup> The Department joins in the respondent's brief filed by the City and City Council. Respondents City and City Council join in the Department's supplemental brief.

### *A. Background*

Lighthouse Field State Beach (LF State Beach) is a state recreation unit of the state park system that has been designated as a state beach. (Cal. Code Regs., tit. 14, § 4753; see Cal. Code Regs., tit. 14, §§ 4302 [definition of "unit"]; see also §§ 5019.50 [classification by the State Park and Recreation Commission required]; § 5019.56 [subclassifications of state recreation units].) "State recreation units consist of areas selected, developed, and operated to provide outdoor recreational opportunities." (§ 5019.56.) "The Department of Parks and Recreation has control of the state park system." (§ 5001.)

The general plan for a unit of the state park system "serve[s] as a guide for the future development, management, and operation of the unit." (§ 5002.2, subd. (a).) "The resource element of the general plan shall evaluate the unit as a constituent of an ecological region and as a distinct ecological entity, based upon historical and ecological research of plant-animal and soil-geological relationships and shall contain a declaration of purpose, setting forth specific long-range management objectives for the unit consistent with the unit's classification . . . , and a declaration of resource management policy, setting forth the precise actions and limitations required for the achievement of the objectives established in the declaration of purpose." (§ 5002.2, subd. (b).)

The Department of Parks and Recreation is permitted to enter into contracts with other governmental entities "for the care, maintenance, administration, and control by any party to the agreement, of lands under the jurisdiction of any party to the agreement for the purpose of the state park system." (§ 5080.30.) "The general plan for a unit of the state park system that is the subject of an agreement entered into pursuant to this article shall, in addition to the requirements set forth in Section 5002.2, specifically evaluate and define the manner in which the unit is proposed to be operated." (§ 5080.31, subd. (a).) Such a general plan must be reviewed "for a determination that the unit will be operated in a manner that generally meets the standards followed by the department in its

operation of similar units, that enhances the general public use and enjoyment of, and recreational and educational experiences at, the unit, and that provides for the satisfactory management of park resources." (§ 5080.31., subd. (a).)

LF State Beach is located in the City of Santa Cruz and consists of a field area north of West Cliff Drive, a coastal area south of West Cliff Drive, and a small pocket beach called "Its Beach." LF State Beach is operated and maintained by the City under contractual operating agreements.<sup>3</sup>

The original 1984 Lighthouse Field State Beach General Plan (original plan) contained a general management guideline, designed to implement the policy of protecting natural wildlife, that stated: "Pets should be restricted to leashes." The revised general plan establishes four management areas (coastal, field, monarch butterfly, and willow riparian) and replaces the general leash requirement with guidelines specific to each management area, including guidelines pertaining to dogs. In regard to the coastal management area, including Its Beach, and the field management area, the updated plan provides that "California Department of Parks and Recreation policies on dogs in State Parks will be utilized to determine dog use policies . . . ."

#### B. CEQA

"CEQA embodies our state's policy that 'the long-term protection of the environment . . . shall be the guiding criterion in public decisions.' (§ 21001, subd. (d). See *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112, 62 Cal.Rptr.2d

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<sup>3</sup> The 1977 operating agreement between the State of California, acting through the Department of Parks and Recreation, and the City and County of Santa Cruz, provided that rules and regulations adopted by the local agency for the use and enjoyment of the property "shall conform to and be consistent with the rules and regulations adopted by [the State] and generally applicable to the State Park System, including said property." A 1977 agreement between the City and County of Santa Cruz provided that the County would contribute financially to the cost of park operation and maintenance, and specified that the "City shall perform all functions relating to operation and maintenance of said public park in accordance with the long-term agreement and the Master Plan . . . ."

612.)" (*Architectural Heritage Ass'n v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1100.) Generally, an EIR must be prepared whenever "there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment . . . ." (§ 21082.2, subd. (d); see § 21082.2, subd. (a).)

Under CEQA, a "project" includes "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: [¶] (a) An activity directly undertaken by any public agency. . . ." (§ 21065.) The implementing administrative guidelines (Cal. Code Regs., tit. 14, § 15000 et seq. (hereinafter "Guidelines")); see § 21083) clarifies that " [p]roject' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Guidelines, § 15378, subd. (a).) "An activity directly undertaken by any public agency," such as "the adoption and amendment of local General Plans or elements thereof," may be a "project." (Guidelines, § 15378, subd. (a)(1), § 21065.) " 'Project' is given a broad interpretation in order to maximize protection of the environment." (*McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143.) It is undisputed that the adoption of the revised general plan for LF State Beach is a "project" within the meaning of CEQA.

" 'Lead agency' means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." (§ 21067; see Guidelines, § 15367 [defining "lead agency"].) It is undisputed that the City acted as the lead agency for purposes of CEQA.

"A significant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment." (§ 21068; see Guidelines, § 15382.) A "significant effect on the environment" is "limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area

as defined in Section 21060.5." (§ 21151, subd. (b).) Section 21060.5 defines "environment" as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (See Guidelines, § 15360 ["environment" defined].)

A lead agency considering a nonexempt project generally must "conduct an initial study to determine if the project may have a significant effect on the environment" unless the lead agency "can determine that an EIR will clearly be required for the project . . . ." (Guidelines, § 15063, subd. (a).) The initial study as a standardized document "is largely a creature of the Guidelines . . ." and "CEQA refers to [an initial study] only glancingly (e.g., § 21080, subd. (c)(2))." (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1376.) It is now well established, however, that an initial study is the preliminary environmental analysis (see Guidelines, § 15365) and its purposes include "[p]rovid[ing] the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration," "[e]nabl[ing] an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration," and "[p]rovid[ing] documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment." (Guidelines, § 15063, subd. (c)(1), (c)(2), (c)(5).)

The lead agency is "responsible for considering the effects, both individual and collective, of all activities involved in a project." (§ 21002.1, subd. (d).) "When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. 'Cumulatively considerable' means that the incremental effects of an individual project are significant when viewed in connection with the effects

of past projects, the effects of other current projects, and the effects of probable future projects." (Guidelines, § 15064, subd. (h)(1), see § 21083, subd. (b)(2).)

When "[t]here is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment," the lead agency must prepare a negative declaration to that effect. (§§ 21080, subd. (c), Guidelines, §§ 15064, subd. (f)(3), 15070; see § 21064 ["negative declaration" defined]; Guidelines, § 15371 ["negative declaration" defined], 15071 [contents of negative declaration].) The lead agency may also prepare a mitigated negative declaration if appropriate.<sup>4</sup> (See § 21080, subd. (c)(2); Guidelines, § 15070.)

The CEQA process requires a period for public review of a proposed negative declaration or mitigated negative declaration. (§ 21091; Guidelines, § 15073.) The lead agency must consider all comments that are received within the public review period. (§ 21091, subd. (d)(1).)

"The decisionmaking body [of the lead agency] shall adopt the proposed negative declaration . . . only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment . . . ." (Guidelines, § 15074, subd. (b).) "Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with comments that were received and considered . . . ." (§ 21091, subd. (f); see Guidelines, § 15074, subd. (b).) The lead agency must prepare an EIR if it "is presented with a fair

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<sup>4</sup> " 'Mitigated negative declaration' means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (§ 21064.5.)

argument that a project may have a significant effect on the environment," even where it is also "presented with other substantial evidence that the project will not have a significant effect." (Guidelines, § 15064, subd. (f)(1); see §§ 21080, subd. (d), 21082.2, subd. (d), 21151, subd. (a); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.) This is because "an EIR is the key to environmental protection under CEQA." (*Id.* at p. 75.)

### C. Appellate Review

In a mandamus action challenging a public agency's quasi-legislative decision on the grounds of noncompliance with CEQA, "the inquiry shall extend only to whether there was a prejudicial abuse of discretion." (§ 21168.5; see Code Civ. Proc., § 1085 [a writ of mandate lies "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . ."].) "Abuse of discretion is established if the agency has not proceeded in a manner required by law *or* if the determination or decision is not supported by substantial evidence." (§ 21168.5, italics added.)

The Legislature has declared: "[I]t is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions." (§ 21005, subd. (a).) The Legislature has further explained that it intends that the courts, in undertaking judicial review pursuant to section 21168.5, shall continue to follow the established principle that there is no presumption that error is prejudicial. (§ 21005, subd. (b).) Thus, "[f]ailure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decision making and informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with

the disclosure requirements. [Citations.]" (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.)

"[T]he substantiality of the evidence supporting such administrative decisions is a question of law" and "a court generally may consider only the administrative record in determining whether a quasi-legislative decision was supported by substantial evidence within the meaning of Public Resources Code section 21168.5." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573.) In reviewing the lower court's ruling on a petition for traditional writ of mandate in a CEQA case, an appellate court is not bound by the trial court's determinations of law. (See *Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th at pp. 1375-1376.) "On appeal, the appellate court's 'task . . . is the same as that of the trial court: that is, to review the agency's actions to determine whether the agency complied with procedures required by law.' [Citation.] The appellate court reviews the administrative record independently; the trial court's conclusions are not binding on it. [Citations.]" (*Ibid.*; see *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.)

#### D. Administrative Record

Despite the original general plan's guideline specifying that pets should be on leash, the City of Santa Cruz, through its Parks and Recreation Director, permitted off-leash dog use of Lighthouse Field and Its Beach during designated hours under the authority of 8.14.200 of the Municipal Code beginning in early 1993.<sup>5</sup> A memo from the City's Park and Recreation Department evaluating the impact of the changes in dog use laws along West Cliff Drive and Lighthouse Field, dated August 31, 1993, indicated that "[i]t was the Department's hope the relaxation of the laws would lead to educate[d] dog owners which would in turn lead to cooperation with law enforcement and the potential

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<sup>5</sup> The City's Parks and Recreation Director is authorized under the City's municipal code to "designate certain beach and park areas, roads and trails for use by dogs." (Santa Cruz Municipal Code, § 8.14.200.)

for further relaxation of the laws." However, the memo acknowledged that the Department's hopes had not been realized and recognized that there was a considerable and increasing problem with defecation throughout the field and Its Beach, dogs were frequently being seen off-leash during on-leash hours, and the "signage and pooper-scooper bag stations" had been "severely vandalized."

In a letter dated August 17, 1999, responding to a letter from a visitor complaining about off-leash dogs beyond the authorized time, the Chief Ranger of the Santa Cruz District of the California Department of Parks and Recreation explained that "Lighthouse 'State' park is administered by the City of Santa Cruz Parks Department under an operating agreement and is not patrolled by State Park Rangers or other staff. [The City's] dog policy is not the same as the State policy."

The planning process for the purpose of updating the original plan commenced in 2001. The City, through its Parks and Recreation Department, held a community workshop on November 15, 2001 to identify issues and receive public input. The Parks and Recreation Department developed an outline of "preliminary concepts." The draft "preliminary concepts" provided as to dog use that (1) dog use would be restricted in sensitive habitat areas, (2) off-leash dog use hours would be extended to sunrise to sunset in non-sensitive areas of the field, and (3) off-leash dog use hours would be extended "on Its Beach during non-peak use (late fall through spring)." The proposed preliminary concepts were presented to the public at a community workshop held in March 2002.

The Park and Recreation Commission met in April, May, and June 2002 and the agenda items included update of original general plan and dog use. Numerous public comments regarding dog use, pro and con, were submitted to the City indicating strong feelings on both sides of the issue.

A posted order of the District Superintendent of the Santa Cruz District of California's Department of Parks and Recreation, effective August 10, 2002, authorized off-leash dog use of LF State Beach from sunrise to 10:00 a.m. and from 4:00 p.m. to

sunset.<sup>6</sup> Under the order, between the hours of 10:00 a.m. and 4:00 p.m., dogs were permitted on leash in the field area and were not permitted on Its Beach.

The City's Department of Parks and Recreation prepared an administrative draft of the revised general plan, which was circulated for review. This version explicitly allowed off-leash dog use in certain areas. After reviewing the draft, the District Superintendent of the Santa Cruz District of the California Department of Parks and Recreation, by letter dated January 29, 2003, recommended that all references to off-leash dog use be deleted and the following language be inserted: "California Department of Parks and Recreation policies on Dogs in State Parks will be utilized to determine dog use at Lighthouse [F]ield [S]tate Beach." A memo indicates that this recommendation was implemented and the revised general plan reflects those changes.

The City published a notice of intent to issue a negative declaration regarding the revised general plan. The notice stated that the public review period for the proposed negative declaration ran from February 5, 2003 through March 6, 2003. The State Clearinghouse distributed the proposed negative declaration to selected state agencies and departments for review and comment.

The City received many comments from the public regarding the effect of dogs, especially unleashed dogs, on visitors' enjoyment and use of the State Beach. The comments included the following adverse remarks regarding dogs. "[T]he Field at present resembles an urban wasteland, a neglected backyard. Its primary present use and future if the draft report is accepted is as a dog-running area." "[B]oth the field and the Its Beach have somehow become the exclusive domain of dogs. . . . [A]nyone who wants to stroll on Lighthouse Field and/or enjoy Its Beach had better be prepared to deal with

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<sup>6</sup> The administrative regulations of California's Department of Parks and Recreation define "District Superintendent" as "the person in charge of an administrative district consisting of one or more units under control of the Department of Parks and Recreation." (Cal. Code Regs., tit. 14, § 4301, subd. (e), see § 5003.)

piles of dog poop, scary unleashed and uncontrolled dogs, and their self-righteous owners." "Irresponsible dog owners have turned Its Beach into a dog toilet and dogs (have the) run of the beach even during the hours when dogs are not permitted. . . . I have been 'run over' and accosted by dogs on numerous occasions . . . . It is no longer pleasant to go to Its Beach even during the hours reserved for people without dogs because dogs are always there." "[T]he clear policy is to allow dogs off leash at the beginning and end of each day; and a defacto [*sic*] policy made by the City of allowing off-leash dogs in the park 24 x 7 by reason of non-enforcement of the existing law . . . ." "It is obvious and well-documented that the biggest single cause of sensitive habitat degradation in LFSB is the relatively recent introduction of huge numbers of dogs that are allowed to run free." "I paid a premium to live at my favorite park and beach (Its) but now I don't even use them because they are so dangerous and unpleasant due to uncontrolled dogs everywhere." "The current daily heavy input to the park of dog feces and urine, and uncontrolled dog behavior are harmful to the wildlife and environment and to people. The current dominant use of Lighthouse Field State Beach is as a mecca for off-leash dog use . . . . I and my children have personally been snarled at and chased 3 times by unleashed dogs in the park. . . . As a result I and many other people I know, including neighborhood dog owners, avoid using Lighthouse Field State Beach, including Its Beach and the field, solely because of the heavy off-leash dog usage of the park." "Due to confusion about the rules coupled with lax enforcement it has not been uncommon to see as many as 60 dogs running loose on the beach at one time. . . . The sands which are typically used by human visitors as a place to lay [*sic*] down and sit are a place where dogs prefer to defecate and urinate. . . . [¶] Other dog behaviors that are particularly unsuited to beaches where humans congregate: [¶] Constant barking . . . . [¶] Whining, yowling, crying and other forms of dog complaint. [¶] Fighting; chasing; digging (with flying sand in all directions); begging for food; stealing food that is left unattended; running over people's towels and blankets; shaking off water next to people other than

owner, chasing . . . animals, wild or domesticated; . . . violating personal space of humans . . . and on and on."

The California Coastal Commission reviewed the proposed revised general plan, initial study, and negative declaration. In a letter dated March 5, 2003, it offered the following feedback regarding dogs: "Perhaps the most controversial and publicly discussed aspect of the Plan includes whether to continue to allow dogs at Lighthouse Field State Beach. . . . [T]he Plan should include provisions for more enforcement (by State or City officials or volunteers) of the dog restrictions to ensure that beach goers . . . are not inundated with dogs during the prohibited hours. . . . Additional enforcement and signage would help ensure that those who do not wish to share the beach with dogs are able to do so during the peak beach-going times of day." It also recommended strengthening the language of the updated plan to ensure adequate protection of resources by, among other things, "prohibiting," rather than "discouraging," humans and dogs from entering seasonal pond areas and mandating, rather than suggesting, fencing to prevent seasonal ponds from excessive damage.

The City of Santa Cruz Planning Commission's Agenda Report, dated March 10, 2003, states: "The State directed that specific dog use policies should not be addressed in the LFSB General Plan in as much as this represented an operational issue to be dealt with at the local level as opposed to a policy based land use issue. Therefore, specific dog-use policies and regulations are not included in the Draft Plan."

In a letter dated March 12, 2003, the District Superintendent of the Santa Cruz District of the California Department of Parks and Recreation clarified that the Department's position was that detailed dog use policies should be developed at the local community level and not be included in the General Plan and the City should "serve as primary decision maker regarding specific dog use issues" since the state beach is a locally operated and managed unit. The District Superintendent advised the City: "Given that this State Park unit is a locally operated and managed unit, the more

appropriate forum is for the City to serve as primary decision maker regarding specific dog use issues. The City's recommendation would then be forwarded to the local State Park District Superintendent. Upon concurrence with this recommendation an appropriate Posted Order regarding dog use policies would be issued."

The minutes of the City's Parks and Recreation Commission meeting on March 13, 2003 show that during the public hearing both the Director of the City's Parks and Recreation Department and the District Superintendent of the Santa Cruz District of the California Department of Parks and Recreation separately announced that the dog issues should be addressed at a future time. Following public comment, a motion carried to add language to the revised general plan acknowledging some users do not comply with dog use regulations at Its Beach and stating "it appears dog use at Its Beach has increased over the years." The Parks and Recreation Commission then passed a motion to recommend to the City Council that it adopt the negative declaration and approve the revised general plan.

The draft minutes of the City's Planning Commission meeting on April 3, 2003, show that a staff member of the City's Parks and Recreation Department announced that dog use policies would be discussed at a future date. Planning Commissioner Louie "expressed she was very frustrated with being told that discussion regarding dog presence was not appropriate because the issue was going to be addressed at another time under a different forum and with being asked to adopt a Negative Declaration." She "questioned how consideration could be given to approve the initial study without knowing what the policies pertaining to dogs and the field would be." Planning Commissioner Foster "acknowledged the problem with prohibiting dogs from certain areas of the field and at the same time not being allowed to discuss it." Planning Commissioner Gaffney stated that she believed "allowing dogs off leash in any area results in a bigger impact than allowing them on leash in every area." The Planning Commission passed a motion, by a

vote of five to two, to recommend to the City Council that it *not* adopt the negative declaration and revised general plan.

The City Council Agenda Report, dated March 10, 2003 for its April 22, 2003 meeting, stated in regard to the proposed adoption of the negative declaration and the revised general plan: "The intent of the revision to [the original plan] was to increase the protection of sensitive resources by restricting public use (people and dogs) to designated trails and viewing areas within the habitat areas. The Planning Commissioners expressed concern that the elimination of the words 'restricted to leashes', would imply that dogs would be allowed in the park off-leash. With this assumption, there was further concern that the Initial Study/Negative Declaration and the LFSB General Plan did not consider the impacts of off-leash dogs on the park areas not fenced or protected. [¶] The Initial Study recognized that dogs are present at the park and are allowed on and off-leash since 1993 per the approval of the Parks and Recreation Director and a posted order of the District of the [sic] Superintendent of the California Department of Parks and Recreation. As dogs are currently allowed in the park on and off-leash, the proposed change to [the Original Plan] will not introduce dogs into the park nor will it establish off-leash dog use as a new policy. Therefore, given the current 'baseline' environmental setting, the Revised LFSB General plan would not result in significant environmental impacts."

Following the public meeting of the City Council on April 22, 2003, the City Council unanimously passed a resolution adopting the negative declaration and adopting the revised general plan with text amendments to the plan that strengthened restrictions on dog use of environmentally sensitive areas. The City Council's April 22, 2003 resolution also adopted a related implementing amendment to the City's General Plan/Local Coastal Program and directed that the "City Manager or his designee" submit the amendment to the California Coastal Commission for final certification.

The new text included in the general plan by the City Council recognized that some users of LF State Beach do not comply with dog use regulations, "[o]ff-leash dog

use at Its Beach appears to have increased over the years," and dog use was "the most controversial and publicly discussed issue during this planning process." The new text acknowledges: "Dog use, in particular, generated the most community input. At these meetings, there was considerable community debate about off-leash dog use." It explains: "The California Department of Parks and Recreation considered specific dog use regulations to be an operational issue that is more appropriately addressed at the local level, and subsequently determined that specific dog use policies regarding leash regulations and hours of use should not be included in the General Plan."

#### *E. Adequacy of Initial Study*

Appellant Beach Rescue asserts that the City failed to proceed in the manner required by law by not properly preparing the initial study. Specifically, appellant charges that the initial study is inadequate because the City failed to fully set forth the baseline environmental setting and failed to fully analyze the impact of unleashed dogs.

##### *1. Content of Initial Study*

The initial study indicated that the habitat values of the field management area, which "features 26 ½ acres of grassland with scattered Monterey cypress trees and seasonal ponds," are limited "[d]ue to the dominance of non-native species and other factors." The initial study determined that "[w]ildlife habitat values in the field area are moderated due to several factors," including "the relatively minimal extent of the willow riparian forest; degraded condition and seasonal nature of the drainage swale and ponds; abundance of non-native starlings which out compete native species for tree cavity nests; the fragmented and relatively isolated nature of the property from undisturbed open space areas; the urbanized residential setting; and the use of the site by people and dogs . . . ."

According to the initial study, the field's primary value was its "undeveloped open space character." The initial study explained that "Lighthouse Field has a long history of human disturbance and plant introductions." In regard to recreation and trail use authorized under the revised general plan, the initial study observed: "Informal pathways

that are redundant or conflict with resource protection will be removed. [¶] Dog use will be consistent with the California Department of Parks and Recreation policy."

The initial study observed that "[n]on-native annual grassland is the most prevalent plant community at Lighthouse Field State Beach, occurring in large expanses in the western and central areas of the field." It identified only one special status plant species, the artist popcorn flower, but anticipated no significant impacts. The initial study explained that the revised general plan "calls for continued, low-intensity, passive recreational uses within the southwestern portion of the site where "artist's popcorn flower may exist along with other native grasses and plant species. One maintained east-west trail is located within this area."

The initial study recognized the presence of seasonal ponds within the field area. It explained that "[t]he habitat value of these seasonal ponds varies, depending on the associated wetland vegetation and disturbance by recreational use. Some of these ponds have been more heavily impacted by human and dog use . . . ." It concluded: "The revised General Plan supports protection and restoration of seasonal ponds. Both human and dog use are discouraged in these areas, and minimal or temporary fencing is suggested to prevent seasonal ponds from excessive damage."

The initial study recognized that the monarch butterfly and willow riparian management areas contain the most environmentally sensitive resources. The initial study observed: "Dog, as well as human, use is prohibited in the Monarch Butterfly and Willow Riparian Management Areas except on designated trails." It specified: "The revised General Plan calls for protection and enhancement of the monarch butterfly and willow riparian areas. Both human and dog use are prohibited in these areas except on designated trails. . . . [T]he revised General Plan seeks to protect the willow riparian Management Area[] by prohibiting all use, including human and dogs, closing unauthorized trails, and installing fencing to discourage access. The main east-west trail route would be maintained as a multi-use trail, including for dogs."

The initial study further stated: "The revised LFSB General Plan calls for prohibiting public access (including humans and dogs) into the riparian area except on designated trails. This will be accomplished through signage, fencing, and/or designated trails. Some pond areas at Lighthouse Field State Beach have been disturbed in the past due to human and dog use, although these areas have largely been devoid of vegetation and are of low habitat value. The proposed management guidelines for the Willow Riparian Management Area include installation of fencing as needed to discourage access into sensitive habitat areas, which would largely protect these areas from intrusion by either humans or dogs." It also indicated that the management guidelines provided for the closing of "unauthorized informal trails" "in order to promote recreational use on designated trails" and the use of "[s]ignage and fencing (such as split rail wood fencing)" "as necessary to discourage access into sensitive riparian areas."

In regard to the coastal management area, which encompasses "8 ½ acres along the coastal bluffs" and all visitor facilities, the initial study recognized there are "valuable natural resources along the coastal bluffs and near shore waters that must be protected" but "the primary intent of this area is to provide for visitor use." The initial study identified ongoing coastal bluff erosion as the main environmental concern. It stated that "[b]luff vegetation is dominated by iceplant . . . , a perennial non-native succulent" and "[w]hile iceplant is often utilized to minimize erosion, it provides little habitat value." It also reported that "[o]ther non-native weeds also occur along much of the bluff top."

The initial study reported that "[b]irds are the primary wildlife species utilizing the open field, coastal bluffs, and shoreline of Lighthouse Field State Beach" and indicated a resident species had been observed nesting in the grassland area during a recent survey. However, it noted that the field appeared to have "minor value as nesting habitat for long-distance migrants." It concluded that "[t]he proposed riparian restoration project would result in enhanced wildlife habitat and potential nesting in these areas . . . ."

The initial study concluded only four of the special status wildlife species known to exist in the vicinity were considered "significant users" within the boundaries of LF State Beach, namely monarch butterflies, peregrine falcons, merlins, and black swifts. As to monarch butterflies, the initial study reported: "The main habitat area is proposed to be protected with fencing and signage in order to keep people and dogs out of the protected overwintering habitat."

Regarding peregrine falcons and merlins, the initial study stated "Peregrines primarily nest on ledges and crevices of steep, inaccessible coastal bluffs and on cliff faces at inland locations" but "[c]urrently . . . do not nest on the coastal bluffs within the study area" and merlins "do not nest in California." It concluded that the revised general plan would "not result in new development or disruption of the existing Lighthouse Field grassland habitat" and "[p]roposed management guidelines seek to maintain and enhance existing habitat areas."

As to the black swift, the initial study stated that "in the past 5 years, no nests have been reported" but "potential nesting habitat is present along the bluffs within the study area." It also recognized that pigeon guillemots nest in cliff crevices and "are fairly common in subtidal and intertidal marine habitats and on rocky shores." However, since the revised general plan would not "result in new development on or adjacent to the coastal bluffs," the initial study concluded that the plan would "not result in impacts to black swifts or pigeon guillemots, should nesting be present."

In regard to water quality at Its Beach, the initial study acknowledged that "[c]oncerns have been raised about the impact of dog feces . . . ." The initial study indicated that water quality sampling had been conducted at Its Beach. It determined that the project would not substantially degrade water quality. The initial study explained: "[R]eview of water quality testing reveals that bacterial levels at Its Beach are generally well within acceptable levels, and limited exceedances [*sic*] have often occurred during winter storm periods after heavier storm periods. Dogs can contribute to higher bacterial

levels, but other animals (sea lions, seabirds) are also potential sources. There is no current evidence that dogs are contributing significantly to infrequent exceedances of water quality. The City does provide bags for cleaning up after pets at Its Beach, as well as at the field area."

## 2. *Environmental Setting*

Appellant maintains that the initial study's description of the environmental setting is "fatally flawed" in that it "fails to provide a useful and accurate baseline" "by neglecting to address the extent, intensity, or effects of current dog use beyond citing on-leash and off-leash hours and conceding that unleashed dog use is a controversial problem." Appellant points to the brief statements in the initial study that describe the existing recreational uses. The initial study states that "the field area is also a highly valued recreational resource for walking and visitors with dogs" and indicates that dogs are permitted off-leash on Its Beach and in the field during specified hours "under a posted order issued by the District Superintendent of the California Department of Parks and Recreation."

Appellant Beach Rescue asserts that the initial study's description of the environmental setting is inadequate because it fails to make clear that "off-leash dogs have created an ever-increasing problem at Lighthouse Field." Appellant complains that the initial study's "environmental setting" component "provided no context against which to measure the ongoing, increasing, incremental effects of off-leash dog use" and failed to "review the damaging environmental effects relating to current use of Its Beach and Lighthouse Field by off-leash dogs, nor does it discuss the extent to which dog use has increased in recent years or in what manner and degree."

Under the CEQA Guidelines, an initial study must "contain in *brief* form: [¶] (1) A description of the project including the location of the project; [¶] (2) An identification of the environmental setting; [¶] (3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist

or other form are *briefly* explained to indicate that there is some evidence to support the entries. . . . [¶] (4) A discussion of ways to mitigate the significant effects identified, if any; [¶] (5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; [¶] (6) The name of the person or persons who prepared or participated in the initial study." (Guidelines, § 15063, subd. (d), *italics added*.) The Guidelines' sample environmental checklist form is indicative of the general level of brevity that is acceptable. (See Guidelines, Appendix G.)

The Guidelines define the term "environment," consistent with statute, to mean "the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (Guidelines, § 15360, see § 21060.5.) The Guidelines do not specially define "environmental setting" with regard to an initial study but do state in regard to EIR preparation: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a), *italics added*.)

An EIR's description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

However, the Guidelines merely require an initial study, in contrast to an EIR, to briefly identify the environmental setting. (Guidelines, § 15063, subd. (d)(2); cf.

Guidelines, § 15125, subd. (a).) An initial study is only a "preliminary analysis" (Guidelines, § 15365) and the regulatory requirements regarding its contents are not as demanding as those imposed upon an EIR. (See Guidelines, § 15063, subd. (d), cf. Guidelines, § 15120 et seq.) "[A]n initial study is neither intended nor required to include the level of detail included in an EIR." (Guidelines, § 15063, subd. (a)(3).)

In this case, the initial study described the "environmental setting" with some specificity for several pages and set forth the existing site conditions, the existing facilities, and existing recreational uses. It contains a brief description of the existing physical conditions, including the topography and types of habitats and vegetation. It notes the existence of "non-native annual grasslands," "scattered Monterey cypress and eucalyptus trees," "[c]entral coast arroyo willow riparian forest, seasonal ponds, and associated wetland vegetation," "scattered remnants of native grasses and wildflowers," a "mixed cypress/eucalyptus grove" serving as an "over-wintering site for monarch butterflies," and unpaved trails providing public access to the natural open space. The initial study also briefly mentions the use of the area by visitors with dogs. Appellant does not suggest that the identification of the existing physical conditions was inaccurate insofar as it went.

Most of the cases cited by appellant in support of its claim that the initial study was deficient in failing to provide an adequate description of the environmental setting involved a challenge to an EIR, not an initial study. (See e.g. *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859; *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109.) None of these cases demonstrate that the portion of the initial study's identifying the environmental setting was deficient.

Quoting *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278 (*Fat*), appellant asserts that "Guideline section 15125 'supplies the definition of "environmental setting" against which environmental impacts are measured at each of the three steps in the CEQA process' beginning with the Initial Study." In *Fat*, the County of Sacramento approved a negative declaration and conditional use permit allowing the operation and expansion of an airport, which was "a privately owned public facility."

The sole issue in *Fat, supra*, 97 Cal.App.4th 1270 was whether the county had abused its discretion in considering the physical conditions that existed in 1997 when the application for a conditional use permit was submitted, rather than in 1970 when CEQA was enacted, as the baseline for its initial study. (*Id.* at pp. 1272-1275.) Although the airport had "developed over a period of nearly 30 years without County authorization" and "there was evidence of environmental damage during that period" (*id.* at p. 1281), the initial study "describe[d] the existing environmental setting" rather than some earlier environmental setting. (*Id.* at p. 1280.)

The appellate court in *Fat* found it significant that Guideline section 15125, subdivision (a), had been amended to define "environmental setting" in the context of an EIR as "the physical environmental conditions in the vicinity of the project, as they exist at the time . . . environmental analysis is commenced, from both a local and regional perspective" and "[t]his environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant" (Guidelines, § 15125, subd. (a)). (*Fat, supra*, 97 Cal.App.4th at pp. 1277-1280.) The appellate court concluded that substantial evidence supported "the County's decision to use the 1997 baseline under the general rule set forth in section 15125, subdivision (a) of the Guidelines" for its determination that the proposed project would not result in significant environmental impacts (*id.* at p. 1281) and the county had proceeded in the manner required by law. (*Id.* at p. 1272.)

Guidelines section 15125 was used in *Fat* for the limited purpose of analyzing whether the lead agency had selected the proper reference point in time for assessing the environmental impact of the project. (*Fat, supra*, 97 Cal.App.4th at pp. 1277-1278.) Appellant agrees that the appropriate baseline time for the initial study in this case was 2001, not 1993 when unleashed dogs were first allowed at LF State Beach. The *Fat* opinion does not establish that Guidelines section 15125 controls the degree of detail necessary in an initial study's identification of the environmental setting.

The initial study in this case met the minimum requirements of Guidelines section 15063, subdivision (d)(2), of briefly identifying the baseline environmental setting. The City was not required, as part of a brief "environmental setting" description, to analyze the extent to which off-leash dog use had caused or contributed to the existing environmental conditions.

### 3. *Analysis of Impact of Unleashed Dogs*

Appellant Beach Rescue charges that the initial study failed to adequately analyze the impact of unleashed dogs on the environment given that the updated plan eliminated the original plan's guideline restricting pets to leashes. Appellant complains that "the [i]nitial study fails to recognize the obvious, well-documented fact that the biggest single cause of sensitive habitat degradation in the area is the recent introduction of huge numbers of dogs allowed to run free." It directs us to comments in the record indicating "huge numbers" of uncontrolled dogs have been allowed to run free, leash rules were frequently not enforced, and this situation has adversely affected other visitors to LF State Beach. It queries whether off-leash dogs have created environmental problems and charges that "[s]omeone reading the [i]nitial [s]tudy would have no idea that off-leash dogs have created an ever-increasing problem at Lighthouse Field." Appellant also complains that the initial study fails to "address the potential aesthetic and recreational changes that will result from unstudied fencing" and "there is no need for fencing if the current policy of dogs on leash is honored."

The City maintains that the updated general plan "did nothing to change applicable regulations governing off-leash dog use" and "did nothing to effect a change in actual off-leash dog use at the park." It asserts that "[w]ith respect to off-leash dog use, the City Council therefore made a policy decision to do nothing more than preserve the long-established status quo."

In contrast to an EIR, an initial study is not required to consider or discuss alternatives to a project. (See Guidelines, § 15063, subd. (d) [contents of initial study]; § 21100, subd. (b)(4) [EIR must include alternatives to the proposed project]; Guidelines, § 15126.6 [consideration of alternatives to proposed project in EIR]; see also §§ 21002 [state policy that proposed projects should not be approved if there are feasible alternatives that would substantially lessen the significant environmental effects], 21002.1, subd. (a) [purpose of an EIR is to identify alternatives to the project], 21003, subd. (c) [state policy that an EIR emphasize feasible alternatives to projects].) Thus, the City was not obligated to evaluate alternatives to the fencing required under the updated plan in its initial study. However, insofar as appellant is arguing that the elimination of the leash requirement represents a policy shift, we think that is a completely fair characterization.

We asked the parties to discuss in supplemental briefing whether section 4312 of title 14 of the California Code of Regulations, which generally requires any dog brought into a unit under control of the Department of Parks and Recreation to be "on a leash of no more than six feet in length" (Cal. Code Regs., tit. 14, § 4312, subd. (e)), represents a California Department of Parks and Recreation policy on dogs in state parks. The City, City Council, and the California Department of Parks and Recreation maintain that this administrative regulation is not a policy level determination and, furthermore, "explicitly authorizes the promulgation of park-specific off-leash dog use regulations at the local

level."<sup>7</sup> They reassert: "[I]t is the position of the City and State Parks that the Lighthouse Field State Beach off-leash dog use rules at issue in this proceeding were legally established in accordance with all applicable statutes, regulations and ordinances in 1993, and that off-leash dog use at the park has continued, as permitted by the 1993 rules, without interruption since those rules were adopted. . . . Thus, when applying the legally applicable 'existing environment/baseline' principles, it is readily apparent that the Administrative Record testimony and documentation cited by Appellant . . . are of limited relevance. None of that evidence is probative of the germane incremental difference between environmental conditions in place at the park as of the 2001 'baseline' date and ensuing environmental conditions that can be expected as a result of the General Plan Update's implementation." They are adamant that the City was entitled to view dog usage as part of the existing environmental baseline.

In addition to contending that application of environmental baseline principles to the "relevant record evidence" "validates the City's decision to prepare and adopt a Negative Declaration," respondents argue that new restrictions on dog use provide for "a net *decrease* in adverse environmental impacts that might be sustained as a result of off-leash dog use . . . ." They insist that, since there is no disagreement "the proper baseline is the park's 2001 environmental setting," the initial study "provided more than sufficient relevant information" and was legally adequate.

We find several flaws in respondents' analysis. First, respondents ignore the fact the general plan is the primary management document guiding the State Beach's future operation and management. (See § 5002.2, subd. (a).) It provides the framework for

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<sup>7</sup> Respondents point to other language in the regulation: "(a) No person shall permit a dog to run loose, or turn loose any animal in any portion of a unit, *except upon written authorization by the District Superintendent*. . . . [¶] (f) No person shall bring a dog into, permit a dog to enter or remain, or possess a dog: . . . [¶] (2) on any beach adjacent to any body of water in any unit *except in portions of units designated for dogs*." (Cal. Code Regs., tit. 14, § 4312, italics added.)

ongoing decisions regarding the management and operation of the State Beach. The revised dog guidelines unquestionably alter the management direction for the State Beach regarding off-leash dog use, which was previously set by the original plan. (See § 5002.2.) The fact that the City disregarded or failed to enforce the original leash guideline in the past does not change the scope of CEQA review in the present since the City is supposed to take its ongoing management direction from the general plan. The expectation is that revisions to the general plan will govern City's prospective actions and decisions regarding the LF State Beach, including those involving dogs. In habitat areas not identified as environmentally sensitive and accessible to dogs under the revised plan, the new open-ended dog guidelines provide no parameters regarding unleashed dog use and seemingly allow for unchecked increases in unleashed dog use, including the expanded use contemplated by the City in its "preliminary concepts."

Another flaw in respondents' reasoning is that the environment has been defined by statute and implementing administrative regulations to mean the existing physical conditions. (§ 21060.5; Guidelines, §§ 15360, 15382, see §§ 21100, subd. (d), 21151, subd. (b).) While the physical impacts of established levels of a particular use have been considered part of the existing environmental baseline (see *Fat*, *supra*, 97 Cal.App.4th 1270, 1272 [existing airport facility]; *Save our Peninsula Committee v. Monterey County Bd. of Supervisors*, *supra*, 87 Cal.App.4th 99, 102 [existing water use]; *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242 [existing traffic levels]; *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1349-1353; [existing traffic levels]), nothing in the baseline concept excuses a lead agency from considering the potential environmental impacts of increases in the intensity or rate of use that may result from a project. In this case, as already stated, the elimination of the leash requirement in the primary management document not only permitted continued off-leash dog use at existing levels of impact in the areas accessible to dogs but also left the door open to continuing increases in such off-leash dog use. Yet, the City never indicated in

its initial study that it had considered the potential environmental impact of the policy change regarding leashes. To the contrary, it appears the City incorrectly ignored the possibility of increases in visitors with off-leash dogs resulting from adoption of the revised general plan due to its view of the environmental baseline concept. "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2); 21082.2, subd. (c).)

While the updated general plan should be commended for being more protective of the State Beach's environmentally sensitive resources than the original plan, we must reject the City's advocacy of a "net" environmental analysis. Any potential significant environmental effect triggers the EIR requirement (§ 21080, subds. (c) and (d)), even if the plan revisions together provide a "net" or overall positive for the environment. The Guidelines provide: "If the agency determines that there is substantial evidence that *any aspect of the project*, either individually or cumulatively, may cause a significant effect on the environment, *regardless of whether the overall effect of the project is adverse or beneficial*, the lead agency shall do one of the following: [¶] (A) Prepare an EIR or [¶] (B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or [¶] (C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. . . . The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration." (Guidelines, § 15063, subd. (b)(1), italics added.) "The lead agency shall prepare a negative declaration if there is no substantial evidence that *the project or any of its aspects* may cause a significant effect on the environment." (Guidelines, § 15063, subd. (b)(2), italics added.) Once a lead agency has identified a significant effect, a primary purpose of an initial study is to enable the lead agency "to modify a project, mitigating adverse impacts

before an EIR is prepared, thereby enabling the project to qualify for a negative declaration." (Guidelines, § 15063, subd. (c)(2).)

This case is not like *Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, which the City cites. In *Black Property Owners Assn.*, nonprofit property owner associations challenged the City of Berkeley's compliance with CEQA in updating the housing element of its general plan as statutorily mandated. (*Id.* at p. 978.) "[T]he City conducted an initial study under CEQA to determine whether an EIR was necessary because the draft update contemplated possible construction of 747 additional housing units between 1990 and 1995. The initial study indicated that this new construction would not result in adverse environmental effects and would instead have beneficial effects. Based on this study, a negative declaration was prepared." (*Ibid.*)

The appellate court recognized: "Because general plans embody fundamental land use decisions that guide future growth and development of cities and counties, they have the potential for resulting in ultimate physical changes in the environment. . . . [W]hen a proposed amendment to a general plan is the subject of an initial study, in most cases the agency will not be required to assess the environmental effects of the entire plan or preexisting land use designations. Instead, the question is the potential impact on the existing environment of *changes* in the plan which are embodied in the amendment. [Citations.]" (*Id.* at p. 985.)

The appellate court determined the City of Berkeley had complied with CEQA in that instance and "the City's acknowledgment of its existing housing-related ordinances in its update was not an aspect of the project necessitating environmental review." (*Id.* at p. 986.) It explained: "Because the revision was a project as defined by CEQA and the possibility existed that it might have a significant effect on the environment, the City conducted the necessary initial study. Consistent with its duty to assess the effects on the physical environment of any proposed changes in the element, the initial study analyzed the potential impact of the contemplated new housing construction and concluded that

beneficial environmental effects would result. [Fn. omitted.] Because no changes were proposed in the housing-related ordinances, no assessment of their environmental effect was required by CEQA." (*Id.* at p. 985.)

In *Black Property Owners Assn.*, *supra*, 22 Cal.App.4th 974, the parties did not dispute that the new housing construction contemplated by the revised general plan would not have a potentially significant effect on environment. (*Id.* at p. 985, fn. 7.) Here, the environmental impact of omitting the leash guideline is disputed. Most significantly, in *Black Property Owners Assn.*, the existing housing-related ordinances were merely described in the general plan and the revisions did not affect them. (*Id.* at p. 985.) In this case, the revisions in the general plan pertaining to the leashing of dogs will affect the City's enactments and rules governing dogs at the State Beach in that the City is expected to conform its management to the general plan.

This case has some similarity to *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, in which a mischaracterization of the project resulted in an inadequate initial study. In that case, the County of San Bernardino approved amendments to its general plan "relating to land use regulation of unincorporated territory located within a city's 'sphere of influence' " and adopted a negative declaration. (*Id.* at p. 403.) Two cities filed petitions for a writ of mandate on the ground that the county failed to comply with CEQA by not preparing an EIR. (*Ibid.*)

The County's initial study characterized the project as a clarification of the County's land use planning authority and development approval discretion in sphere of influence areas and stated that " ' . . . [t]he wording changes proposed in the amendment are necessary to ensure that policies meant to promote cooperation with cities cannot be interpreted as a forfeiture of the authority of the County Board of Supervisors.' " (*Id.* at pp. 404, 406.) The lower court issued the writ of mandate after finding that "the amendments, instead of clarifying existing policy, substantially changed the County's land use policies pertaining to unincorporated territories within various spheres of

influence," "the County failed to gather facts necessary to perform an adequate environmental analysis," and "substantial evidence supported a fair argument that the amendments may have a significant impact on the environment." (*Id.* at p. 404.)

The appellate court determined: "In essence, the amendments eliminated the requirement that the County give substantial weight to and even implement the standards provided in an affected city's general plan. [¶] . . . Under the new amendments, where a conflict between city and county standards exist, the County has granted itself discretion to override city standards in making decisions concerning land within that city's sphere of influence." (*City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398 at pp. 407-408.) The appellate court concluded: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments. 'The agency should not be allowed to hide behind its own failure to gather relevant data.' Although the amendments essentially indicate a movement away from a city's standards and a movement toward county's exercise of greater discretion, the County does not provide evidence to show how such a shift in policy would have little or no effect on the environment." (*Id.* at p. 408, fns. omitted.)

The initial study in this case, while extensive and thorough in most respects, does not reflect that the City ever considered or assessed the effect of the revisions on future off-leash dog use. This situation is in keeping with respondents' staunch position that unleashed dog use was merely part of the existing environmental baseline. As indicated, they were correct only as to the existing levels of use but not as to any increases in such use that may be engendered by the revisions. Consequently, we are compelled to conclude the City failed to proceed in "a manner required by law." (§ 21168.5.)

"When the informational requirements of CEQA are not complied with, an agency has failed to proceed in 'a manner required by law' and has therefore abused its discretion. (Pub. Resources Code, §§ 21168.5, 21005, subd. (a); *County of Amador v. El Dorado County Water Agency*, *supra*, 76 Cal.App.4th at p. 946; *Environmental Planning &*

*Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 355 [182 Cal.Rptr. 317].)" (*Save our Peninsula Committee v. Monterey County Board of Supervisors*, *supra*, 87 Cal.App.4th at p. 118.) Since we find the City failed to consider the whole of the project in its initial study, we turn to the question of prejudice. (See § 21005, subd. (b) ["no presumption that error is prejudicial"].)

Respondents maintain that, even if the initial study was deficient, it would be improper "to decertify the City's environmental determination" given the administrative record. Citing several cases, respondents suggest that a comprehensive administrative record may "cure" a defective initial study. They argue that the City had "sufficient information at the time of its Plan Update adoption to determine that it could appropriately, and legally, accept the Initial Study as adequate and adopt the subject Negative Declaration." Again, it points to "the incremental *decrease* in adverse environmental impacts that can be expected to ensue upon implementation of the Plan Update's habitat protection programs . . . ."

As we have already indicated, CEQA is not satisfied by a "net" analysis nor can the question of prejudice be resolved by such analysis. We recognize that in a number of cases, several of which respondents have cited, appellate courts have indicated that a defective initial study does not necessarily require a reviewing court to find prejudice or mandate preparation of an EIR. (See *Silveira v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980, 992 ["inadequate initial study does not automatically make an EIR necessary" and "when the agency bases its decision on more information than that contained in the initial study, the additional information may cure any defects"], *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 625 [defective initial study does not necessarily require agency decisions to be overturned where those actions were based on public comments as well as initial study]; *Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th 1359, 1380 [the defect was remedied in the course of public hearings on the project]; *Leonoff v. Monterey County Bd. of*

*Supervisors, supra*, 222 Cal.App.3d 1337, 1347-1348 ["where the agency decision is based on more information than the initial study, the additional information may cure any defects in the initial study"].) These cases, however, do not aid respondents since the administrative record does not establish that the omitted information was disclosed in the course of public review and considered in adopting the negative declaration and revised general plan. The administrative record discloses that early on it was decided that off-leash dog use policies would not be addressed in the general plan and those issues were viewed as not within the purview of the CEQA review of the updated plan.

In *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, the Board of Forestry approved a lumber company's two timber harvesting plans covering old-growth forest, "finding that 'there will not be any significant adverse effect on old-growth-dependent wildlife species or habitat from the harvesting that will occur under these two plans.' " (*Id.* at p. 1219.) The California Supreme Court concluded that the board abused its discretion "when it evaluated and approved the plans on the basis of a record which lacked information regarding the presence in the subject areas of some old-growth-dependent species, information which both [the Department of Forestry and the Department of Fish and Game] had determined was necessary." (*Id.* at p. 1220.) The board had believed that the lumber company could not be required to provide the additional information and evaluated the plans "based solely on the information already in the record." (*Id.* at p. 1236.)

The Supreme Court determined that "the board had failed to proceed in the manner prescribed by CEQA" by evaluating and approving the timber harvest plans in the absence of site-specific data regarding old-growth-dependent species and site-specific recommendations regarding mitigation measures from the Department of Fish and Game. (*Ibid.*) It stated that the board, through the Department of Forestry, had an obligation under CEQA to collect such data because the board could not identify environmental impacts without the information. (*Ibid.*) The court concluded that the failure of the

board to proceed as required by law was prejudicial because the absence of information "made any meaningful assessment of the potentially significant environmental impacts of timber harvesting and the development of site-specific mitigation measures impossible." (*Id.* at p. 1237.)

"The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation." (*County of Amador v. El Dorado County Water Agency, supra*, 76 Cal.App.4th at p. 946.) " 'CEQA places the burden of environmental investigation on government rather than the public.' " (*Gentry v. City of Murrieta, supra*, 36 Cal.App.4th at pp. 1378-1379.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. (*Redlands, supra*, 96 Cal.App.4th at pp. 406, 408, 117 Cal.Rptr.2d 582.)" (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591, 1597.)

While we conclude that the shortcomings of the initial study precluded fully informed decision-making pertaining to the revisions affecting the leashing of dogs, this conclusion does not imply any opinion regarding the necessity of an EIR. A prejudicial abuse of discretion may be found "regardless of whether a different outcome would have resulted if the public agency had complied with those provisions." (§ 21005, subd. (a).) As will be discussed below, the existing administrative record does not contain evidence supporting a fair argument that the revised general plan may have a significant effect on the environment. Once the informational requirements of a complete initial study have been met, the City as lead agency may again determine whether a negative declaration, a mitigated negative declaration, or an EIR is appropriate. (See § 21080.1, subd. (a).)

#### *F. No Fair Argument of Significant Effect Based on Existing Administrative Record*

Appellant Beach Rescue maintains that "the administrative record contains substantial evidence sufficient to support a fair argument that the implementation of the

Amended Plan may have significant adverse environmental effects." Appellant asserts: "Among the documented environmental issues relating to unleashed dogs are the inconsistency of the Amended Plan with site natural resource and wildlife management, conflicts with various State Beach uses, impeded use, conflict with the stated goals of the General Plan, noise, dog waste, aggressive dogs, health and safety, aesthetics, impacts to the riparian habitat, impacts to native grasses, interference with migratory and resident birds and nesting, interference with wildlife nursery sites, water quality, exposure to feces-borne bacteria, and impacts on the Monterey Bay Marine Sanctuary." Appellant also argues that the administrative record "presents a fair argument that the continued and increasing presence of off-leash dogs *may* have significant impacts on the unique biology and wildlife species at Lighthouse Field, and has the potential to reduce habitat of rare or endangered plants or animals . . . ."

Appellant directs us to a letter from Barney and Pamela, dated April 17, 2000, generally discussing the health risks of dog feces, safety risks of unleashed dogs to other visitors, the adverse impact of dogs on the recreational experience of other visitors in terms of noise, aesthetics, and personal safety and peace and quiet, and the adverse impact of dogs on habitats and wildlife in general. The letter cites to various Internet sources.

Appellant also directs our attention to several anecdotal accounts, including the following. Ben Korte submitted an e-mail, dated May 31, 2002, complaining that the shore birds, pheasant, hawk, migrant ducks, and snowy white egret were gone from Its Beach because they could not "co-exist with the numerous dogs." Grant Weseman submitted a comment, dated March 5, 2003, stating in part: "I think it is apparent, even to the casual observer, that dogs running loose, in a natural park-like setting have the capability to irreparably harm the habitat of wildlife species. The absence of many ground-feeding birds, rodents and other mammals in Lighthouse Field State Beach is a testament to that potential."

At the Santa Cruz City Council meeting on April 22, 2003, Barney Elders stated: "We all know, if we go out there, that there's damage to vegetation, that the dogs chase the native animals. I used to go out there all the time and see huge colonies of quail. There are no quail left in the park anymore." At that same meeting, Gillian Greensite stated: "[T]he dogs are mostly doing destruction in the open pond area where we used to have migratory birds in those areas and now it is just trampled down with dog feet everywhere. There used to be 125 species of birds documented in this book, the Monterey Bay Shoreline Guide. I couldn't believe that there was no mention of the decline in bird use of the park."

As already discussed, the potential impact of the updated plan must be assessed against the existing environmental baseline. In addition, guidelines concerning dogs must be considered in the context of the general plan as a whole, since the entire document provides the framework for future management and operation of the State Beach.

The revised general plan sets forth the general park-wide goals, which include "[p]rotect[ing] the open space character of this unique coastal headland, "[p]rotect[ing] and enhanc[ing] sensitive resources, including the monarch butterfly habitat and the willow riparian forest," and "restor[ing] and revegetat[ing] coastal bluffs, grassland areas, and seasonal ponds as feasible." The updated plan recognizes that certain portions of LF State Beach feature sensitive natural resources and require restrictions on public access and use.

In regard to the monarch butterfly management area, the new plan recognizes "the sensitivity of this site during the over-wintering season and the need to protect grove characteristics during the remainder of the year." It specifies that "only the lowest intensity level of public use is appropriate" and "[p]ublic access should be restricted within the primary clustering grove and immediately adjacent grassland areas where butterflies are often observed on the ground." The resource management guidelines for

this management area call for "[a]ctively maintain[ing] and enhanc[ing] the primary clustering grove to ensure its suitability as an overwintering site for monarch butterflies" and "[l]imit[ing] public access, including human and dog use, in the main habitat area" and "[u]tiliz[ing] fencing and signs to demarcate the protected area." Those guidelines also state: "Install and maintain signs to inform the public to remain on designated trails and not to disturb butterflies."

The revised general plan also recognizes the environmental sensitivity of the willow riparian areas: "Because the carrying capacity of sensitive riparian areas for public use is limited, only the lowest intensity uses would be allowed. . . . Public access within this area would be provided on designated trails and observation areas. All public uses, including dogs, would be prohibited within the willow riparian vegetation, drainage channels and attached ponds." The resource management guidelines for the willow riparian management area include: "Ensure protection of the willow riparian vegetation, drainage and attached ponds by prohibiting human and dog use." They also provide for "[c]los[ing] unauthorized trails into the willow thickets and drainages" and "[i]nstall[ing] fencing as needed to discourage access, human and dog use into the sensitive habitat area." Another guideline calls for "interpretative displays educating visitors about the values of coastal drainage systems" that includes "information about the importance of protecting these areas and preventing human and dog disturbance."

The revised general plan's guidelines for the field management area, as finally revised, specify: "Prohibit public access, including human and dogs, within the seasonal ponds through educational programs, and install fencing where needed." As finally revised, they also state: "Initiate protective measures to prevent further damage to seasonal ponds and enable wetland vegetation to re-establish, and install minimal or temporary fencing where needed."

The revised general plan further states: "A key goal of this Field Management Area is to maintain designated trails and close unauthorized informal pathways where

appropriate." The guidelines for the field management area specifically provide for the closing of redundant informal pathways to allow the grassland to revegetate. A guideline for the coastal management area provides: "Enable public use in coastal bluff areas in a manner that ensures public safety and minimizes impacts to bluff resources."

The administrative record does not contain substantial evidence that the revisions pertaining to dogs may cause a potentially substantial adverse impact on the environment as measured against the existing environmental baseline. Visitors with both leashed and unleashed dogs have already been using the State Beach extensively. In addition, appellant's analysis overlooks the fact that the original plan permitted dogs in all parts of LF State Beach. The original plan's guidelines did not specify that visitors pick up their dogs' waste or otherwise control their dogs' behavior beyond having them on leash. The revised general plan is more protective than the original plan insofar as it restricts dogs from certain environmentally sensitive areas and seeks to educate the public regarding protecting these areas from human and dog disturbance. Nothing in the updated general plan condones failures to enforce leash or other dog use restrictions implementing the plan.

The administrative record does not suggest that the plan changes affecting dog use may have the potential to substantially degrade the *existing* scenic character or other *existing* qualities of the environment, create objectionable odors affecting a substantial number of people, result in a substantial temporary, periodic, or permanent increase in ambient noise levels *existing without the project*, reduce a wildlife species, cause a wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or reduce the number or restrict the range of a rare or endangered plant or animal. (See Guidelines, § 15065, subd. (a)(1) [mandatory findings of significance]; Guidelines, Appendix G, I, III, XI, XVII; see also §§ 21001, subd. (c), 21083, subd. (b)(1).) To the contrary, the record suggests that the revisions affecting dog use will be more protective of vulnerable habitat areas than the original plan.

While evidence in the record suggests that recreational users vigorously disagree regarding the propriety of the dogs, leashed and unleashed, at the State Beach and that the presence of dogs may decrease the enjoyment of some visitors to the State Park or deter others from visiting at all, these effects are essentially social. "Effects analyzed under CEQA must be related to a physical change." (Guidelines, § 15358, subd. (b).) A social or economic change in itself is not a significant effect on the environment. (Guidelines, §§ 15064, subd. (f)(6), 15382.) CEQA is not concerned with the updated plan's direct social effects that do not contribute to a secondary physical impact. (See Guidelines, §§ 15064, subds. (e) and (f)(6), 15131, subd. (a), 15358, subd. (b); see also § 21060.5, Guidelines, § 15360.)

The administrative record does reflect continuing public controversy over the desirability of dogs, especially off-leash, at LF State Beach and frustration with lax enforcement of leash rules, which the final text of the updated plan acknowledges to an extent. However, "[t]he existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment." (§ 21082.2, subd. (b); see Guidelines, § 15064, subd. (f)(4).) "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (§ 21082.2, subd. (c); see § 21080, subd. (e)(2); Guidelines, § 15064, subds. (f)(5) and (f)(6).)

Appellant finally tries to bolster its "significant effect" argument by contending that the revised general plan is inconsistent with the City of Santa Cruz's General Plan/Local Coastal Program and, therefore, an EIR is required. It points to the sample

initial study checklist provided by Appendix G to the CEQA Guidelines. (See Guidelines, § 15063, subd. (f) ["forms are only suggested;" "public agencies are free to devise their own format for an initial study"].) In the category of land use and planning, the checklist asks whether there is a "[c]onflict 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, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect." (Guidelines, Appendix G, IX.)

First, an inconsistency between a project and other land use controls does not in itself mandate a finding of significance. (See § 21083, subd. (b); Guidelines, § 15065, subd. (a).) It is merely a factor to be considered in determining whether a particular project may cause a significant environmental effect. (See Guidelines, § 15063, subd. (d)(5) [initial study must contain brief examination of project's consistency with "zoning, plans, and other applicable land use controls"].) However, in this case, approval actions for the revised general plan include amendment of the City's General Plan/Local Coastal Program "to reflect the revised Lighthouse Beach State Park General Plan." Thus, amendment of the General Plan/Local Coastal Program is in effect part of the project being considered.

Appellant further contends that the revised general plan is inconsistent with section 5008.1 and this inconsistency "add[s] to the fair argument for an EIR." Nothing in the updated plan sanctions dog use, on or off leash, "[p]os[ing] a threat to public safety and welfare," "[c]reat[ing] a public nuisance," or "[p]os[ing] a threat to the natural or cultural resources of the unit or to the improvements at the unit" contrary to section 5008.1. (§ 5008.1, subd. (b).) Dog access to environmentally sensitive habitats is restricted under the new plan and the plan's overarching vision and goals include protecting and enhancing sensitive resources, which presumably will guide future management decisions pertaining to dogs.

Appellant also argues that "imposition of fences within the park to protect sensitive habitat from off-leash dogs will physically divide the current open space contrary to Appendix G section IX subd. (b)." Appendix G to the Guidelines actually asks, in regard to land use and planning, whether a project would "[p]hysically divide an established community." Appellant has not pointed to any evidence in the administrative record suggesting that recommended fencing would physically disrupt any plant or animal community.

As already mentioned, a primary goal under the updated plan is to "[p]rotect the open space character of this unique coastal headland." In regard to the coastal management area, the plan specifically provides: "Install and maintain railing along the coastal bluffs as needed. Safety railing should be designed to keep the public away from the cliff edges *while also allowing for views through the railing.*" (Italics added.) In the field management area, the plan provides for the installation of fencing as needed to prevent public access within the seasonal ponds and the installation of minimal or temporary fencing as needed to protect seasonal ponds and wetland vegetation. In regard to monarch butterfly management area, the plan provides for the utilization of "fencing and signs to demarcate the protected area" of the monarch butterflies' main habitat as it might vary from year to year. In regard to the willow riparian management area, the plan calls for the installation of fencing to protect sensitive habitat but states "[m]inimize the amount of fencing and ensure fence design is compatible with the natural area and the setting." Appellant has not pointed to any evidence that the limited fencing required under the updated plan would substantially impair the open space character of LF State Beach.

Appellant Beach Rescue has failed to show there is substantial evidence in the administrative record supporting a fair argument that the revised general plan may have a significant effect on the environment.

### G. Piecemeal Environmental Review

Appellant Beach Rescue asserts that the City engaged in improper piecemeal environmental review by deferring "unleashed dog issues." It is true that "CEQA contemplates consideration of environmental consequences at the 'earliest possible stage, even though more detailed environmental review may be necessary later.'" (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1346 [272 Cal.Rptr. 372].) The requirements of CEQA cannot be avoided by piecemeal review which results from 'chopping a large project into many little ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences.' (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284 [118 Cal.Rptr. 249, 529 P.2d 1017]; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333 [232 Cal.Rptr. 507].)" (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370.) For example, "[w]here an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project." (Guidelines, § 15165.) The prohibition against piecemeal review is the flip side of the requirement that the whole of a project be reviewed under CEQA. (See Guidelines, § 15378, subd. (a).)

Appellant's complaint regarding deferral of dog issues has been answered by our determination that the City as lead agency was required to consider in its initial study whether plan changes pertaining to dogs, including omission of the leash guideline, may potentially generate increased levels of off-leash dog use and result in adverse environmental effects.

The order denying the petition for a writ of mandate is reversed. The trial court is directed to issue a peremptory writ of mandate requiring the City to set aside its adoption of the negative declaration, its adoption of the Revised General Plan for Lighthouse Field

State Beach, and its related actions and to take further action, consistent with this opinion, as necessary to comply with CEQA and the Guidelines. (See § 21168.9.)

City of Santa Cruz, et al., defendants and respondents, shall bear appellant's costs on appeal. Otherwise, parties shall bear their own costs on appeal.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.

Trial Court: Santa Cruz County Superior Court

Trial Judge: Hon. Robert B. Attack

Attorneys for Appellants: Brandt-Hawley Law Group and  
Susan Brandt-Hawley and  
Paige J. Swartley

Attorneys for Respondents  
City of Santa Cruz and  
City of Santa Cruz City  
Council: Atchison, Barisone, Condotti & Kovacevich and  
John G. Barisone, Santa Cruz City Attorney

Attorneys for Respondent  
California Department of  
Parks and Recreation: Bill Lockyer,  
Attorney General,  
Thomas Greene,  
Chief Assistant Attorney General,  
Mary E. Hackenbracht,  
Sr. Assistant Attorney General,  
John Davidson,  
Supervising Deputy Attorney General and  
Anita E. Ruud,  
Deputy Attorney General

**LETTER 8 – Grant Weseman**

- 8-1 Its Beach. The commenter believes that “the IS/MND for the program is inadequate in so far as it relates to Its Beach” and attaches the California Court of Appeals, Sixth Appellate District decision in the Lighthouse Field Beach Rescue v. City of Santa Cruz case. *Response*: The comment does not address analyses in the DEIR. It is noted that commenter submitted comments on the EIR Notice of Preparation that are included in Appendix A of the DEIR. The comments pertain to enforcement of off-leash dog use at Its Beach. Concern about the City’s failure to enforce rules on off-leash dog use in the past are expressed with reference to State Parks and a past court decision at Lighthouse Field State Park. The proposed Parks Master Plan does not propose legalizing illegal off-leash use, but rather supports fenced areas for such use and increased enforcement. The Parks Master Plan also includes a recommendation under Its Beach to improve coordination with the State to maintain rules and enforcement. Potential impacts related to dog facilities are addressed in the DEIR on pages 3-13, 3-17 to 3-18, 4.0-5 to 4.0-6, 4.0-1, and 4.9-12.

## APPENDIX A

### Mitigation Monitoring and Reporting Program

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## **MITIGATION MONITORING AND REPORTING PROGRAM**

This Mitigation Monitoring and Reporting Program (MMRP) for the City of Santa Cruz Parks Master Plan 2030 has been prepared pursuant to the California Environmental Quality Act (CEQA – Public Resources Code, Section 21000 *et seq.*), the CEQA Guidelines (Cal. Code Regs., Title 14, Chapter 3, Sections 15074 and 15097). A master copy of this MMRP shall be kept in the office of the City of Santa Cruz Parks and Recreation Department and shall be available for viewing upon request.

Mitigation Measure	Implementation Actions	Monitoring / Reporting Responsibility	Timing Requirements	Reporting Requirements	Verification of Compliance
<b>Biological Resources</b>					
<b>MITIGATION BIO-4A:</b> Require that a pre-construction nesting survey be conducted by a qualified wildlife biologist if future park facility construction or tree removal occurs near mature trees and wooded areas, and is scheduled to begin between February 1 and August 31 to determine if nesting birds are in the vicinity of the construction sites. If nesting raptors or other nesting species protected under the Migratory Bird Treaty Act are found, construction may need to be delayed until late-August or after the wildlife biologist has determined the nest is no longer in use or unless a suitable construction buffer zone can be identified by the biologist. This measure also is a requirement of the <i>City-wide Creeks and Wetlands Management Plan</i> (Standard 12).	Implementation actions are specified in the mitigation measure.	The City Parks and Recreation Department staff are responsible for hiring a qualified biologist to conduct pre-construction nesting survey for any tree removal or construction adjacent to trees during the bird nesting period.	Prior to tree removal and/or construction.	City Parks and Recreation Department staff are responsible for reporting results to the Parks and Recreation Director.	
<b>MITIGATION BIO-4B:</b> Include an Action in the Parks Master Plan to prohibit recreational use of drones and/or establishment of a recreational drone course within sensitive habitat areas or near wildlife nesting areas that could cause disturbance or harm to breeding or nesting wildlife.	Add new Action to Parks Master Plan 2030.	City Parks and Recreation Department staff.	The City Council adopts a version of the plan with the action included.	None required.	
<b>Geology and Soils</b>					
<b>MITIGATION GEO-2A:</b> Implement site design and erosion control measures for new trails and other facilities in areas subject to high erosion hazards or adjacent to streams and wetland areas, including but not limited to, installation of temporary fencing on the outer edges of steep slopes and creek crossings to prevent inadvertent erosion and sedimentation from entering adjacent drainages and streams during construction; conducting grading prior to the rainy season and protecting disturbed areas during the rainy season; and revegetating disturbed cut/fill areas.	Implementation actions are specified in the mitigation measure.	The City Parks and Recreation Department staff are responsible for including erosion control measures in future construction plans for new facilities.	During construction.	City Parks and Recreation Department staff are responsible for reporting results to the Parks and Recreation Director.	

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<b>MITIGATION GEO-2B:</b> Limit trail use and/or implement seasonal trail closures as needed during the rainy season to prevent erosion due to trail use.	Implementation actions are specified in the plan.	The City Parks and Recreation Department staff are responsible for monitoring trail conditions during rainy season and implementation trail use limits or closures.	During rainy season.	City Parks and Recreation Department staff are responsible for reporting results to the Parks and Recreation Director.	

