

Letters and Comments received outside the Public Comment Period for the DEIR:

As stated in the body of the staff report, the public comment period for the Draft EIR began on December 27, 2009 and ended on February 25, 2010. Letters and comments on the DEIR submitted during this period are included in the Final EIR along with staff responses to those comments. This attachment is intended to identify letters and comments received concerning the DEIR since the close of the comment period and provide responses to points made in those letters.

Under CEQA Guidelines section 15105, the County was legally required to provide only a 45-day public review period. In order to provide additional time, the County instead provided 60 days for public review and comment. Under CEQA, a lead agency is required to consider comments on the DEIR and to prepare written responses, if a comment is received within the public comment period. (Pub. Resources Code, § 21091, subd. (d); CEQA Guidelines, § 15088.) When a comment letter is received after the close of the public comment period, however, a lead agency does not have an obligation to respond. (Pub. Resources Code, § 21091, subd. (d)(1); Pub. Resources Code, § 21092.5, subd. (c)(“Nothing in this section requires the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a negative declaration or environmental impact report.”).) Although a lead agency is not required to respond to late comments, it may choose to do so. (*Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1110 (*Gray*), citing Pub. Resources Code, § 21091, subd. (d)(1); CEQA Guidelines, § 15088; *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 925, fn. 10 (*Gilroy Citizens*).)

Amber Kemble (Attachment B)

The County Department of Resource Management received a letter from Amber Kemble, Esq., on behalf of an unincorporated association the “Upper Green Valley Homeowners.” After receiving the letter, County staff met with Ms. Kemble and client. Following the meeting and in response to these concerns, County staff recommended modifications to the Specific Plan, including: (i) lighting plan and signage sections to more clearly state the Specific Plan's policies regarding minimizing street and exterior lighting to minimize lighting to preserve the rural character of the area and the night sky, and (ii) the description of Conservancy's design review function to clarify that the Conservancy's design review function is advisory to the County and will include public notice and a means for the public to provide input/comments to the Conservancy (See **Attachment G**).

Disclosure of Current Chinook Salmon Data

The letter argues that current evidence from the National Marine Fisheries Service demonstrates fall run “Chinook Salmon are present in Green Valley Creek.” To support that point, the letter attaches and quotes from Salmonid Habitat Assessment prepared for the Solano Habitat Conservation Plan (LSA, June 30, 2008). The Habitat Assessment states that “Chinook salmon have been observed upstream to the base of Green Valley Falls and redds have been observed at Mankas Corner (Edwards, personal communication in National Marine Fisheries Service [NMFS] 2008).” The Salmonid Habitat Assessment indicates that its authors accessed a NMFS website in 2008. The NMFS website displays the “Current Stream Habitat Distribution Table” found on the NMFS website at: <http://swr.nmfs.noaa.gov/hcd/dist2.htm>. The source stated there is a “Personal Communication” cited as: “Edwards, Jack. 1998. CDFG Warden (ret.), (Solano Co.), Region 3,” and for a date of the observation the table states “personal observations over a period of time.” The observation was reportedly of “redds” (i.e., eggs) at Mankas Crossing. The personal communication took place in 1998, based on observations at unspecified prior times. Mr. Edwards had a 27-year career with CDFG, commencing in 1977. (See, http://californiagamewardensfoundation.com/board_members.html.) The submitted information therefore purports to indicate at least one incidental observation of Chinook

redds at Mankas Corner some time potentially as long ago as 1977. The information submitted is not of a current observation, and is therefore not evidence that Chinook are currently present in the creek.

In addition, this reported incidental observation of fish eggs that were suspected to be Chinook is not the best evidence. The identification of salmon to species based on redds carries a great deal of uncertainty with it (Gallagher and Gallagher 2005), and the balance of the available information supports the conclusion that Chinook are not present in Green Valley Creek. The EIR reference to which the comment relates is a citation to Leidy et al. (1996). (Draft EIR, p. 6-30.) The EIR's conclusion regarding the potential for occurrence of Chinook Salmon in Green Valley Creek is further supported by the following citation: "Leidy, Robert A. 2007. Ecology, Assemblage Structure, Distribution, and Status of Fishes in Streams Tributary to the San Francisco Estuary, California. San Francisco Estuary Institute. April 2007."

The EIR did not say that the Chinook had no potential to occur, but instead indicated only that their occurrence was unlikely. In order to protect habitat for *all* sensitive salmonid species that may occur in the plan area, Chapter 6 of the EIR provides detailed mitigation measures. The emphasis in the EIR and Specific Plan are on protecting potential habitat, and those measures would protect any individual members of the species that may later be found to be present.

Disclosure of Current Zoning

The letter says that a map of current zoning is omitted from the DEIR. The existing General Plan land use map, however, is provided as Exhibit 12.2 of the Draft EIR, page 12-6. Also, Figure 19.1, depicting alternative 19.2 "current zoning scenario" shows how the general plan would be applied through current zoning in the plan area. (DEIR p. 19.2.)

Disclosure of Availability of Water

The letter says that the DEIR inadequately discloses the baseline for supplying water through Option B relating to groundwater. These issues are responded to in the FEIR, in Master Response I. (FEIR, p. 2-15.)

The EIR for the Middle Green Valley Specific Plan is being prepared at the specific plan stage. In addition to other discussion (see, e.g., secs. 1.2, 1.4, and appen. 23.2), the EIR for the Middle Green Valley Specific Plan specifically provides for later public and governmental review with respect to Option B groundwater by pointing out that the County would require: "Prior to subdivision map approval, as a possible supplement to this EIR (SEIR), County preparation and approval of a water supply assessment that, consistent with State SB 610, verifies sufficient water supply availability and recharge to meet the requirements of maximum development area buildout during normal conditions and during single-year and multiple year drought conditions (pursuant to General Plan Implementation Program PF.I-11)." (See, FEIR, p. 2-16; DEIR, p 16-18.) SB 610 analyses require detailed discussion of groundwater and groundwater basins, including amounts and sufficiency. (Water Code, §10910.) Supplemental EIRs and subsequent EIRs both receive the same public review and comment as an EIR. (CEQA Guidelines, §§15162(d), 15163(c).) Provision for detailed public and governmental review at appropriate subsequent points in the process are included in the approach taken for the Middle Green Valley Specific Plan.

In addition, the letter suggests that more water-saving mechanisms should be required. As discussed in the DEIR, the plan is anticipated to result in a 25 to 40 percent reduction compared to the typical countywide single family subdivision home water use rate. (DEIR, p. 16-13.)

Disclosure of Flooding Zones

The letter says that the DEIR “does not show where flooding zones actually are located.” (p. 6.) The 100-year floodplain is shown in Figure 11.2 of the DEIR, p. 11-4 (“Flood Stormwater and Inundation Areas in Plan Area and Vicinity”).

Relationship Between Mitigation Measures

The letter comments on Mitigation 6-1 relating to a biological resources assessment, without consideration of its relationship to Mitigations 6-2 through 6-13. Measures 6-2 through 6-13 include avoidance, minimization, compensatory mitigation, conservation, replanting, transplantation, onsite and offsite preservation, replanting, setbacks, conservation easements, selection of appropriate plants, preparation of a restoration plan, minimizing footings in channels, designing road crossings to minimize stream disturbance, prioritization of avoidance of special status plant species, buffers and avoidance of occupied nests, construction best management practices, and other steps. Mitigation 6-1 in part provides a mechanism to apply and tailor final mitigation under 6-2 through 6-13 to project-specific details.

Runoff Impacts on Biology and Fish Passage Design

The letter says that the report should include impacts to other biological resources, such as sediment runoff and pollution into creeks originating from outside of the riparian habitat. Mitigation 6-6 discusses the requirement that [potential indirect hydrology impacts shall be evaluated as part of the special status plant species survey report. Also, indirect hydrology and water quality impacts on Western Pond Turtle habitat shall be mitigated through implementation of mitigation measures recommended in Chapter 11, Hydrology and Water Quality. (Mitigation 6-11, DEIR, p. 6-75.) In addition, Mitigation 6-12 requires implementation of mitigation measures for stormwater quality and quantity as described in DEIR chapter 11 to minimize indirect impacts on Steelhead from stormwater and water quality changes due to construction. (Mitigation 6-12, DEIR, p. 6-77.)

The letter cites a document concerning fish passage design which is the current version of CDFG’s Fish Passage Design and Implementation section from the California Salmonid Stream Habitat Restoration Manual. The DFG and NMFS manuals on fish passage design (i.e., the then-current updates or future revisions) would be among the tools used to evaluate any such design in the plan area.

Right to Farm and Farmers Markets

The letter refers to the Right to Farm Act and its use in preventing nuisance or negligence lawsuits from homeowners. The letter indicates that the Right to Farm Act could be repealed or modified. However, the Act is in place now and may be relied upon in impact discussion and analysis. It is beyond the scope of the EIR to speculate whether existing legislation may be repealed at some point in the future. Any existing law could fall into that category. In addition, County Code provides protections to prevent nuisance claims. Under current County Code Section 2.20-30, no preexisting or future agricultural operation on agricultural land shall be or become a nuisance due to any changed condition of adjacent land uses in the locality, unless a nuisance results from the negligent or improper agricultural operation or if the agricultural activity obstructs any navigable lake, river, stream, canal or basin, or any public park, square, street or highway. The provisions of the required notice informs recipients, among other things that: “If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and a healthy agriculture sector.” (County Code Section 2.20-40.)

The letter also suggests that space should be dedicated to a farmers market. The Land Use Table 3-4 shows that Farmers Markets are permitted uses in the OL-R, RC, CS, and the Overlay districts.

Reduced Project

The letter recommends scaling back the development to avoid prime farmland and to minimize other potential impacts. This alternative approach is evaluated in the EIR in Alternative 19.4. The DEIR acknowledges the improved environmental benefits with this alternative, but also discusses the adverse effect on the economic viability of the Specific Plan program.

Non-residential Uses

The letter says that non-residential uses must be prohibited in the plan area, pointing to Table LU-6 of the General Plan as the basis for that argument. Table LU-6 indicated the expected estimated build-out of the General Plan's Specific Project Areas (including Middle Green Valley and others). The General Plan text accompanying Table LU-6 stated that "These areas were chosen for this designation because the County anticipates using a specific plan or policy plan to guide the type, location, and density of development in these areas...More specific information on the build-out level of these specific project areas will be available when the specific plans are completed." (General Plan, p. LU-26.)

Second Units and Non residential units Inconsistent with General Plan

The letter states that the proposal to include 100 secondary units in addition to 400 new primary residential units is inconsistent with the General Plan. Second units are an ancillary use to the primary residential use of the property. They cannot be conveyed separately or subdivided. They will remain under the same ownership as the primary residence. General Plan policies of encouraging and allowing secondary units in areas of the County such as Middle Green Valley are summarized on p. 3-48 of the Specific Plan.

Prohibition of Street Lights

The letter states that street lights must be prohibited in order to maintain the rural character of the area and to conform to the related General Plan policies. Staff has recommended modifications to the Specific Plan to address these concerns (See **Attachment G**).

Yocha Dehe Wintun Nation (Tribe) (Attachment C)

The Tribe describes its opposition to the project as well as provides comments on the Draft EIR regarding historic cultural resources, for which the public review period ended on February 25, 2010. County staff met with Tribe representatives on August 7, 2009 to discuss what, if any, potential issues could arise and to work in a cooperative manner. On August 10, 2009, staff sent a letter to the Tribe to formally begin the SB 18 consultation process (Gov. Code Section 65352.3) which provides for input and opportunity to preserve or mitigate potential impacts on cultural resources in the area. The Tribe has up to 90 days to then request a formal consultation. The County did not receive any request for consultation from the Tribe. Tribe representatives did attend multiple CAC meetings as well as a Planning Commission meeting. The Tribe was included on all notifications of CAC meetings, Planning Commission and Board meetings.

Concerning the potential for impacts to historic cultural resources, the development of the Plan took efforts to avoid known archaeological sites. The Final EIR includes a description of existing and potential cultural resources in the plan area and associated potential impacts of the plan, as well as mitigation measures recommended to minimize potential impacts. The Draft EIR analysis of these values was prepared based on a combination of protocol tribal consultation, a file search and data review commissioned by the County from the California Historic Resources Information System (CHRIS) Northwest Information Center at Sonoma State University, and a cultural resources inventory and field survey of the planning area commissioned by the County from Holman & Associates, consulting archaeologists. The Draft EIR recommends and the Specific Plan implements avoidance of development along onsite creek corridors, which are the most culturally sensitive elements in the planning area, and also provides for additional site specific archaeological surveys to be performed on future discretionary projects that involve substantial amounts of ground disturbance. If the survey

reveals the presence of historic remains, preservation in place is the preferred alternative to avoid impacts. If preservation in place is not feasible, a data recovery plan must be developed and submitted to both the California Historical Records Information System (CHRIS) and to the Native American Heritage Commission. If historical resources are discovered during construction, work shall be stopped and an archaeologist must be retained for further evaluation. Mitigation Measure 8-1 in the Final EIR provides further discussion. At this Specific Plan stage, utilizing a program EIR methodology, the incorporation of this measure reduces potential impacts to a less than significant level.

Staff has reviewed these additional comments with its EIR consultant, and finds that the Final EIR includes all appropriate information and mitigation measures to address the concerns raised.

Comments made at May 20, 2010 Planning Commission meeting (Attachment A)

Use of City Services to Provide Water and Sewer

Several speakers at the Planning Commission hearing expressed their opinion that the Specific Plan's water and sewer utility service proposal might conflict with the City of Fairfield's Measure L and LAFCO's governing laws. County Counsel has reviewed the issue and concluded that there would not be a conflict, but it is ultimately up to the City of Fairfield and LAFCO to decide whether the water and sewer proposal is consistent with the governing laws applicable to those agencies. County Counsel provided a response to this issue, which is included in the Responses to Comments section of the Final EIR.

Trails

The subject of trails arises often when speakers discuss this Plan. The Specific Plan describes ten miles of trails, walkways, rambles, and paths within its boundaries. Staff, consultants, and the CAC agree that walkable neighborhoods add value to the community, as well as surrounding areas. The Plan attempts to link its neighborhoods, common areas, and roads with a comprehensive trail system. There has been much discussion over how the Plan provides for linking Middle Green Valley trails to more regional trail systems. There was a lack of comfort from surrounding property owners when the concept of possible connections is brought up. Proposing public trails on private property can be a sensitive subject. As such, the mapped trail system included in the Plan effectively stops at the Specific Plan boundaries. The primary trail system into the foothills follows the Neighborhood Roads 3. Other potential trails are identified, but are not mandated by this Plan. It was agreed by all involved in the development of the Plan to leave these trail connections as "potential" knowing that the goals of the specific plan were to support linkages when landowners voluntarily agree to specific trails, the regional agencies review the potential conservation easement requirements, and it makes sense to the ranchers on a case-by-case voluntary basis. The consensus surrounding the Plan is built on voluntary cooperation based on incentives. The Specific Plan discusses the trail network on page 3-45 and in Chapter 5, Section 5.7.4, page 5-102.

The subject of the trail system is also included in the Final EIR as Master Response E. This section provides a response to the many comments concerning trails that were submitted during the Draft EIR comment period.

Green Valley Agricultural Conservancy

The Commission also had questions concerning the nature of the Green Valley Agricultural Conservancy. It should be stressed that though the landowners have taken steps to create the Conservancy, the Board is not being asked to approve the Conservancy at this time. Pursuant to Section 4.5 of the proposed Master DA, the formation documents for the Conservancy (articles of incorporation, bylaws etc.) will be reviewed in detail by staff and County Counsel prior to the recordation of the first subdivision map. The County Counsel will then confirm that the Conservancy is

consistent with all project approvals, including the goals and policies of the Specific Plan (as approved), Master DA, Final EIR etc.) and is a duly formed non-profit entity. The map will not be recorded unless the Conservancy has been reviewed and approved by the County.