



# Northern Chumash Tribal Council

A Native American Corporation  
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County of San Luis Obispo  
Department of Planning and Building  
ATTN: Dana Reserve/Jennifer Guetschow  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408

RE: Dana Reserve Specific Plan Draft Environmental Impact Report

Dear Ms. Guetschow:

The Northern Chumash Tribal Council (NCTC; the Tribe) submits the following comments on the Cultural Resources and Tribal Cultural Resources sections of the Draft Environmental Impact Report (DEIR) for the Dana Reserve Specific Plan (the Project). In general, we find these sections of the DEIR are poorly written and demonstrate a general lack of familiarity with the local resources. Many of their conclusions and recommendations aren't substantiated with facts or reasonable assumptions based on facts. Moreover, the requirements of CEQA regarding the evaluation of California Register of Historic Places (CRHR) eligibility, impact assessment, and mitigation are skirted or ignored outright.

## **Section 4.5.1, Existing Conditions**

The section does not demonstrate any understanding of the local history, prehistory, or archaeology which is the necessary context for the assessment of impacts on sites in the Project area. It completely ignores the Chumash history of Nipomo and lacks any discussion of local sites of importance to which the resources in the Project area may be related. The ethnographic overview even fails to mention the most relevant Chumash place in the region, *Nipumu*, the Northern Chumash village for which the current town of Nipomo is named. This is a substantial oversight that demonstrates the lack of knowledge regarding the study area. CA-SLO-809, the archaeological site associated with that village, is less than a mile away from the Project and should have been mentioned as the most substantial and well-known site in the area, even though it's beyond the arbitrary quarter-mile radius of the records search. The excavation at CA-SLO-809 is still the most substantial excavation in the local area; its findings provide the basis for the local prehistoric cultural sequence and should have been referenced in the overview section. Another omission has to do with the well-known discovery of a Clovis point in the hills surrounding the valley, substantiating the Late Paleoindian use of the area.

The Euro-American history of Nipomo is simply glossed over as well. There is no historical overview, even though the ranching history of the area is mentioned in passing and one historical archaeological site was identified in the project area. The Dana Rancho gets no mention anywhere, a considerable oversight since it provides critical historical context for the study area (and considering the Project name), even if the Adobe itself is more than 0.25 miles distant. In general, this section is poorly written, sloppy, and internally inconsistent. In addition to the omissions already noted, it also contains factual errors. For example, Mission San Fernando Rey is not in the Chumash territory, as stated on pages 4.5-2; it is in the Tataviam/Gabrielino area.

### **Section 4.5.13, Existing Cultural Resources**

The DEIR glosses over the history of the project area and writes off one site (P-40-002271) as insignificant because it is “undoubtedly historic” (pg 4.5.2-8) without providing evidence or explaining how they determined its age or reached this judgment regarding its significance. This information should be provided. Given the proximity of the Dana Adobe and the known historic uses of the area, this judgment should be reconsidered (or at least better supported).

Since all these sites seem to contain marine shells that can be dated using radiocarbon, please explain why that wasn't done. Such dating would have helped in evaluating the eligibility of these sites for the CRHR and assessing potential Project impacts.

It does not appear that there has been any study of the proposed offsite conservation area/mitigation lands over in the hills on the other side of the valley. This area is part of the Project and should have been studied at the same level. In our experience, there are activities related to biological mitigation, water and range management, and other activities that could occur on these lands and would definitely impact any cultural resources present.

### **Section 4.5.1.3.2, Native American Coordination**

This section refers to a positive response from the Native American Heritage Commission (NAHC) but there was no effort to identify the nature or location of sacred lands in the Project area so they could be protected. The reader is referred to Section 4.18 for a description of tribal consultation, but that section doesn't discuss sacred lands and the NAHC response was not disclosed to NCTC or other tribal consultants. We received no response to our additional inquiries to the County about this matter. For these and other reasons, consultation is not completed to our satisfaction. If there are identified sacred sites they have to be considered in the early planning stages so they can be respected and protected. The County should require an ethnohistoric study to identify sacred sites so Project impacts can be identified and mitigated.

### **Section 4.5.4, Impact Assessment and Methodology**

The County will assume that archaeological sites DR-001, P-40-2132, and P-40-2273 are eligible for the California Register for the purposes of the project, and are thus historical resources under CEQA, but the DEIR does not explain what qualities these sites have that would make them CRHR-eligible (Section 4.5.4, pp 4.5-16). Please provide this information. The DEIR avers that this assumption is based on the results of the Extended Phase 1 (XP1) investigation, but the XP1 study was only intended to define the vertical and horizontal extent of identified archaeological resources (i.e., the boundaries of the archaeological sites—see Morgan Bird's 12-13-21 letter report to Senior Planner Jennifer Guetschow). The XP1 was helpful in defining the structure and content of the resources but does not constitute a significant evaluation, which is necessary at this point. This is a critical omission since it is

the Project's effects on those significant qualities of the sites that determine whether an impact is significant. How is the Tribe or the public judge the validity of the County's assumptions or the efficacy of the proposed mitigation without this critical missing information? Please explain why the cultural resources in the Project area were not evaluated for significance. This deficiency must be remedied in order to adequately determine the age of the cultural resources, identify their function(s), define the qualities that make the sites significant and justify recommendations regarding significance, avoidance, and other mitigation measures.

A letter to your department dated 12-13-21 from Cultural Resource Specialist Morgan Bird refers to a subsequent "comprehensive technical report." This report has not been supplied to the Tribe, and we request that it be provided now and that the comment period on the DEIR be extended for 30 days from our receipt of said document to allow us additional time for review and comment.

#### **Section 4.5.5, Project-Specific Impacts and Mitigation Measures**

Mitigation measures (MM) CR/mm-1.1 and -3.1 delay environmental review of off-site improvements and defer identification of impacts and MMs to some future unspecified time. They declare that unidentified historical and archaeological resources could be impacted but that those impacts would be less than significant with mitigation. However, these mitigation measures only require preparation of reports and do not specify that resources shall be avoided, or other mitigation. It is improper and inconsistent with CEQA requirements to rely on a future plan or report without additional public review as mitigation now. It is not necessary to know the "precise location" of the offsite improvements. A general area for these potential effects should be identified now, and the architectural/historical/archaeological studies should be completed and reported in the EIR so that design changes can be implemented to avoid any significant resources.

Please clarify whether the known archaeological sites shall be avoided or not? The EIR uses squishy language. CR/mm-2.1 says the parts of the sites found to contain subsurface deposits "shall be avoided." But then CR/mm-2.2 says, essentially, "oh that's okay, if we can't we'll do data recovery." Which is it, who decides, and when, and what are the circumstances that would preclude avoidance? None of this is specified, as it must be.

Since data recovery through excavation is not the only feasible mitigation for the impacts of this Project, the EIR must explain why avoidance and preservation in place are not feasible or why other measures better mitigate the impacts.

The DEIR notes that subsurface archaeological deposits exist in some small areas, and those areas are "potentially significant." These small areas where they identified subsurface layers are to be protected as ESAs, but the areas are not specified and we're not told where we can find that information, even if it's confidential and controlled. The Tribe requests detailed maps showing the locations of all proposed ESAs, and further requests that the comment period of the DEIR be extended for 30 days following receipt of those maps to allow sufficient time for review and comment.

The argument that surface deposits without identified subsurface components are not eligible for the CRHR is based on a highly contingent set of assumptions that are not specified in the DEIR and requires substantiation, which might well have been obtained if a realistic program of site testing and evaluation had been carried out. Without meaningful testing results, however, such a conclusion is not justified. For example, a sparse surface deposit that is 8-10,000 years old might well be judged significant, while a similar deposit of only 500 years might not. Since we know that sites of Clovis age (as much as 12,000 years old) exist in the Nipomo area, it is premature to disregard these sparse surface deposits.

Regarding CR/mm-2.2, what does it mean to say “The Data Recovery Plan will be tailored to the level of physical disturbance at each resource (if any)”? First of all, if there’s no physical disturbance why do data recovery? But more importantly, data recovery should be tailored to the significant qualities of the sites and the amount of data needed to answer the questions in the research design. It has nothing to do with the extent of disturbance. If the intent is to have specific measures for the amount of hand excavation, linked somehow to the amount of site disturbance, then that must be specified in the DEIR in some concrete way (either volume of excavation, or percentage of the site, or a ratio of the volume of site disturbance, or some other concrete measure) so the Tribe has an opportunity to review and comment. Such decisions cannot be deferred to some unspecified future time.

When data recovery is the only feasible mitigation, a data recovery plan “shall be prepared and adopted prior to any excavation being undertaken.” There are specific requirements for data recovery plans. Even though the CEQA Guidelines allow for certain details of a mitigation measure to be specified project approval when it is impractical or infeasible to include those details during the project's environmental review, it seems perfectly feasible and practical to include the data recovery plan as an appendix to the DEIR in this case. Moreover, it will be impossible to gauge the adequacy of the measure, whether it is proportional to the impacts, and whether there are any residual impacts without knowing the details of the plan.

MM CR/mm-2.3 calls for a Cultural Resource Protection Plan which may or may not include some level of tribal and archaeological monitoring. The language is unclear. Given the nature of archaeological resources on the Nipomo Mesa there is a high likelihood that sites will be discovered during construction. For that reason, tribal and archaeological monitoring of all ground disturbance should be required as a specific mitigation measure, and not just in the vicinity of known sites. The DEIR should provide details regarding the extent of monitoring required, when it shall occur, by whom, and under what conditions; such details are all omitted. These critical details cannot be deferred to some later, unspecified time. Again, the Tribes and public then have no way of judging the adequacy of the monitoring effort to mitigate impacts.

Along these same lines, there is no explanation of just what should happen when previously unidentified sites are discovered, or when unanticipated artifacts and features are found in the known sites. Please include this information in the DEIR. Definition of these mitigation details cannot be deferred; they must be included as specific measures in the EIR.

Regarding CR Impacts 4 and 5, any impacts to human remains would be significant and cannot be mitigated to less than significant levels by simply following state and law and local policy, as proposed in CR Impact 4. Simply following the law is not mitigation. We can see where you want to go with this—yank out the bodies and move on—but that’s not explicitly stated as a MM. The text (page 4.5-22) states “The NAHC would determine a Most Likely Descendant (MLD) to complete an inspection of the site within 48 hours of notification and recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials.” Is removal and analysis the only option? How do you know that’s what the MLD will recommend? Leaving our ancestors’ remains in place is always the preferred option, and there are many ways to accomplish that, but it is not mentioned as an alternative. Moreover, the MM does not even mention reburial if the individuals are moved!! One could assume that’s what the author thinks would happen, but where would that occur? Removing and reburying human remains does not mitigate impacts to less than significant levels. This would be a Class I (significant unmitigable) impact. What about leaving them in place? Redesign to avoid? Not even considered! This section is completely inadequate.

The Tribe considers the cumulative impacts of this Project to be substantial, and that the proposed MMs are not adequate to mitigate those impacts. We request that the County require a specific MM that more comprehensively considers the broader cultural geography of the Nipomo Mesa and surrounding area, specifically geared to the cumulative impacts on cultural values and regional research.

Regarding tribal consultation and tribal cultural resources (Section 4.18), NCTC maintains that AB52 consultation has not been completed. We have had ongoing discussions with the County and developers’ representatives that have not been concluded and need to continue.

TCR/mm-1.1 calls for the construction of a repatriation vault within site DR-001. This mitigation will have a significant residual impact on the site which is not addressed. Section 4.5 calls for avoidance of the site, so these measures are inconsistent and conflicting.

TCR/mm-1.2 calls for the incorporation of tribal themes and placenames into the project design, but provides no performance standards and designates no party responsible for ensuring the measure is carried out. This must be remedied.

We reiterate our mission to protect the natural and cultural resources of the Project area and to utilize this site for the interpretative benefit of the public. We extend an invitation for further collaboration with the County and public agencies to assist the Project in the development of educational opportunities at the site.

Sincerely,

Violet Sage Walker,  
Northern Chumash Tribal Council Chairwoman

