

Response to Comment Letter #27
Letter sent by the San Joaquin River and Parkway Trust
1550 E. Shaw Ave. Ste. 114
Fresno, CA 93710
Dated August 18th

Comment 27-1:

- **The proposed Project and related projects nearby threaten the viability of a healthy river corridor and associated plant and wildlife populations.**

Response 27-1:

Per CEQA Guideline 15384. Substantial Evidence; comments require the inclusion of relevant information and reasonable inferences that a fair argument can be made. Argument, speculation, unsubstantiated opinion or narrative, do not constitute substantial evidence. Such evidence shall include facts, reasonable assumptions predicated upon facts and expert opinion supported by facts. The comment does not provide substantial evidence.

Comment 27-2:

- **The development proposal does not implement a funding mechanism to collect a fair share mitigation fee for significant impacts to the public resources of Millerton Lake State Recreation Area and the San Joaquin River Parkway that will result from the Project.**

Response 27-2:

See Response to Letter 10 of the NFV-1 Response to Comments. It should be noted that the State of California operates and maintains the MLSRA as a lessee of lands owned by the United States Department of Interior and is currently operating under an expired lease agreement with the federal government. It is unknown at this time if the federal government will be renewing this lease and what terms of the lease may be changing. The State of California has not initiated, to the best knowledge of the applicant, a development impact fee schedule which would seek to recover costs for new infrastructure, operations, and/or maintenance of existing or new state park facilities. Thus, the request for "fair share" impact fees made by local State Park officials does not represent an official position of the State of California as voted and approved by the California Legislature. As example, the County of Madera recently approved development impact fees which were established by the County to pay for new public facilities such as parks, libraries, fire and other County of Madera facilities.

Residents living within the project will be required to enter and pay at the park gates, just like any other user. It is also understood that recently reviewed and approved projects within the region have not received comments by the State of California regarding "fair share" fees. Such projects include, but are not limited to, Central Green, Gateway Village, Tesoro Viejo, Millerton New Town, Friant

Ranch, Copper River and Fancher Creek. Has the applicant been singled out for “fair share” fees simply because of project proximity? Why has the state not commented on park impacts by other regionally significant developments and requested similar “fair share” usage fees?

The State of California, in its request for “fair share” fees, fails to disclose that park attendance at the MLSRA has fallen by more than 50% over the past seven (7) years. The recently completed Draft Resource Management Plan EIR for the MLSRA does not freely discuss the sizable decrease in park attendance, but rather states, “*Total visitor use from July 1995 through June 2002 averaged just over 500,000 visitors per year. During that time, total visitor use increased 35 percent, from approximately 460,000 visitors to 620,000.*” Note that the EIR is dated June 2008 but is justifying an expansion of park facilities on statistics generated between 1995 and 2002. As provided in Table 1 attached herein, overall attendance between FY 1996 and FY 2006 has dropped by 9.4% while population growth in Fresno and Madera counties has grown by more than 20%.

The reasons for this drop are not readily apparent in the MLSRA EIR. Page 3-51 of the EIR seems to imply that the drastic reduction is due to increases in park fees. The comment letter delivered to the USBR regarding the MLSRA EIR shows the gasoline prices are highly correlative to park attendance. Page 3-54 of the MLSRA EIR, while attempting to provide Recreation Projections (Section 3.9.4.4), simply states that since Fresno and Madera counties are growing, there would likely be and increase in park usage. As stated previously, attendance is, in fact, declining with regional population increases.

Page 3-58 of the MLSRA EIR states, “*As Table 3.10-1 indicates, the number of paying vehicles per year has decreased from 2000 to 2006. The total number of vehicles was 130,567 in FY 2001 and 107,235 in FY 2005, a decrease of 17.9 percent.*” Again, the EIR is does not reference in the statistical summary the total count for FY 2006 which was 54,031 vehicles. Accounting correctly for FY 2006, the total decrease in vehicles between FY 2001 and FY 2006 is 58.6%.

In conclusion, the applicant is concerned that the State of California is painting a picture of substantial impacts caused by the project, while the reality is contrary. Attendance in day use and overnight camping are both decreasing, yet the state is asking for development impact fees and requesting a grant of more than 100 acres in applicant land as “adequate” mitigation for facility expansion.

As provided in Comment Letter 10, the project applicant will pay a “fair share” fee as negotiated between the County of Madera and the State of California which would include the County utilizing state facilities for Quimby Act requirements, if necessary. Costs shall include impacts expected by other, nearby master planned projects (per Exhibit “A” of Comment Letter 27 regarding other local projects). Such developments include, but are not limited to, Millerton New Town, the Friant Ranch Specific Plan, Lakeview, Marina Estates, Brighton Crest,

the City of Fresno Southeast Growth Area, the City of Clovis Southeast Growth Area, Ventana Hills, Copper River, Fancher Creek, Wellington Ranch, Tesoro Viejo, Gunner Ranch West, Gateway Village, and other regional areas of general plan expansion that have been approved or are to be approved by regional planning bodies.

Regarding “fair share” fees for the San Joaquin River Parkway Trail, see Response 27-8.

Comment 27-3:

- **The EIR does not provide adequate biological information and mitigation for listed species and critical habitat to be eliminated; and, as a result, many of the EIR’s proposed actions, mitigation measures and conclusions are not sound.**

Response 27-3:

The EIR included and further evaluated a report entitled, “*Biological Evaluation Report NFV-1 Rio Mesa, Madera County, California*” conducted by Live Oak Associates, Inc. of Oakhurst, California. The principal author of this report was David J. Hartesveldt, a Senior Botanist and Wetlands Scientist. According to the company’s website, Mr. Hartesveldt oversees issues relating to the botanical and wetland resources for projects. He is an experienced botanist and wetlands ecologist who has been studying the flora of California for much of his life. Although his particular interest is the flora of California, he has studied regional flora in Oregon and Minnesota, states in which he worked as a seasonal ranger for the National Park Service. He has provided consulting services to a variety of clients including local agencies, planning firms, attorneys, and developers. Mr. Hartesveldt has completed specialized training in wetland delineation methodologies and, during the past 15 years, he has completed more than 300 wetland delineations. He has conducted studies in tidal marshes, diked salt marshes, freshwater marshes, ruderal seasonal wetlands, alkali wetlands, vernal pools, and montane meadows. Mr. Hartesveldt has conducted numerous surveys for threatened or endangered plants and animals, and/or their habitats, and assisted his clients with mitigation that reduced impacts to such species. Mr. Hartesveldt possesses extensive experience in establishing conservation easements throughout California, especially throughout San Joaquin Valley and Madera and Fresno Counties. He has also prepared portions of over 800 Environmental Impact Reports, initial studies, and NEPA documents requiring wetland delineations, special status species surveys, habitat mapping, etc. As a project manager for many of these projects, he has supervised interdisciplinary teams of biologists characterizing the biological setting of project sites and planning areas, determining project impacts, and developing conceptual mitigation plans consistent with the requirements of CEQA and NEPA.

In addition to the qualifications of Mr. Hartesveldt, Live Oak Associates has completed more than 1,300 projects, providing information that is thorough, objective, and scientifically accurate which have enabled their clients to make informed decisions regarding natural resources management. Live Oak Associates scientists are thoroughly familiar with permitting processes required by all city, county, state and federal jurisdictions in California and neighboring states. The company assists their clients in both the public and private sectors comply with local, state, and federal regulations to protect our scarce and sensitive biotic resources.

As stated in Response 27-1 and per CEQA Guideline 15384. Substantial Evidence, substantiated facts are required to support the assertion.

Comment 27-4:

- **The EIR fails to demonstrate an assured long-term water supply for urban and commercial development; and fails to adequately evaluate the adverse effects to Cottonwood Creek from groundwater wells.**

Response 27-4:

The EIR included substantial evidence that thoroughly evaluated the groundwater supply available to the project. Specific studies included the, "*Hydrogeologic Analysis, North Fork Village – North Project, Madera County, California*" and the, "*Supplementary Well Test Data & Hydrogeologic Reevaluation, Northern & Southern Well Fields, Northfork Village Project, Madera County*". Both reports were prepared by Melvin C. Simons Associates.

Melvin C. Simons is a California registered geologist with over 45 years of experience in hydrogeology. In addition to the substantial evidence provided in the project EIR, Response to Comment Letters 20 and 20A of the final NFV-1 Response to Comments addressed project groundwater supplies and the chemical composition of the groundwater supply within the project, further validating that the project water supply is groundwater, not a surface water. The EIR complies with the requirements of CEQA and the State of California SB 610 regarding a long term water supply. The comment is specifically directed to Response to Comment Letter 20A, provided by Kenneth Schmidt, a California licensed geologist. See additionally Response 27-1 regarding substantial evidence.

Comment 27-5:

- **The EIR fails to define a study area appropriate for each resource evaluated, report how the determination of the study area was made, identify reasonably foreseeable actions within the study area that were considered, and compare cumulative impacts for each project alternative.**

Response 27-5:

Prior to the creation of the project EIR, a Notice of Preparation (NOP) was created and circulated as required under CEQA. The NOP delineated the project study area and studies conducted for the project EIR were evaluated for the study area noticed in the project NOP. The study area included all lands within the NFV-1 Specific Plan as required by state law. The NOP publicly noticed the project boundaries and the intentions of the project applicant to conduct an EIR for the project regarding future project entitlements and project approvals. Contained within the project EIR is a project alternatives analysis (Section 8 of the EIR) which evaluates alternatives to the project. Within each sub-section of Section 8 of the EIR, an evaluation is made on the cumulative impacts for each alternative. See additionally Response 27-1 regarding substantial evidence.

Comment 27-6:

- **The EIR relies too heavily on cumulative impact mitigation measures of the Rio Mesa Area Plan (RMAP). RMAP was adopted over a dozen years ago and there are many new development projects and foreseeable actions that should be considered. Also, impacted sensitive species such as the California Tiger Salamander have been listed since adoption of the RMAP the health of their overall range has declined.**

Response 27-6:

The Rio Mesa Area Plan is an approved area plan, contested and upheld by the State of California Court of Appeal Fifth District. By evaluating and approving the project EIR, the County of Madera is continuously and actively evaluating master, sub-area projects within the Rio Mesa Area Plan. Each project specific EIR approved by the County of Madera evaluates current conditions as required under CEQA. The comment cites the California Tiger Salamander (CTS) as a species of concern that was listed as threatened several years following the approval of the Rio Mesa Area Plan. The project EIR thoroughly evaluates the impacts of the project on potential CTS habitat as provided in Response 1-13 and specifically investigates and cites known habitat requirements of the species, specifically range, predation and required habitat. Response 1-13 also provides mitigation for impacts to potential project specific impacts. As also noted in Response 1-13, the NFV-1 project area does not provide ideal habitat preferred by the species.

Comment 27-7:

- **The Related Projects (Table 4-1 of the EIR) considered in the cumulative impact analysis is incomplete and out of date. For example, Tesoro Viejo is a large-scale project Madera County is processing within the immediate vicinity yet it is not identified in the list of projects. Also, there are related projects in Fresno County that were not considered. For example, Attachment “A” to this letter is an email from Lynn Gorman dated April 2007, which identifies several related projects; additionally Wellington Ranch and Copper River needing to be included. The Related Projects list should be revised; the County of Fresno and City of Fresno should be contacted for input. The cumulative impacts for each resource should be analyzed again with current information.**

Response 27-7:

The comment does not consider the continuation of Table 4-1, found on Page 4-4 of the EIR which specifically lists the projects referenced in Exhibit “A” of the comment letter. Tesoro Viejo is contained within “Other Rio Mesa” as provided in Table 4-1. It must also be noted that the traffic analysis conducted for the project contains a cumulative impact model which evaluates all of the Rio Mesa Area Plan, including Gunner Ranch West and Gateway Village as well as the Fresno County Council of Governments (Fresno COG) Year 2025 model analysis which includes the projects referenced in the comment. See also Response to Comment Letter 36.

Comment 27-8:

- **The Cumulative Impact Analysis must consider the impacts that the Project and Related Projects may have on public facilities, such as Millerton State Recreation Area and the San Joaquin River Parkway. The Project will tax agencies to construct facilities to meet population increases caused by the Project. Mitigation fees to meet the demand on public services must be provided, including consideration of mitigating the environmental impact generated from constructing the new public facilities. For example the Project will require a need for new facilities at Millerton SRA and the San Joaquin River Parkway, and these may cause environmental impacts including impacts to the California Tiger Salamander. The EIR must include a provision to mitigate impacts caused as a result of the need to create public facilities on public lands..**

Response 27-8:

Regarding state park facilities, see Response 27-2 and Response to Comment Letters 10 and 32. As provided in Response 11-7, *“The project CSD will maintain trail facilities along with all park and open spaces within the boundaries of the project. The project does not request cost recovery from any outside agency for operations and maintenance of project parks, trails and open space, specifically as the project will be constructing a vital link between two regional*

trail systems which will incur high volumes of usage by non-residents. For reasons of reciprocity, fees will not be paid to outside agencies for maintenance of off-site trails. Per the DEIR, the State of California has an existing fee system for operations and maintenance of State facilities.” The comment incorrectly speculates that the project must also consider future CEQA analysis of desired facility expansions by the State of California and the San Joaquin River Parkway Trust which fall beyond the scope of the project EIR. The comment is directed to Response 1-13 regarding California Tiger Salamander mitigation.

The applicant, through mutual agreement with the San Joaquin River Parkway Trust, agrees to build, operate and maintain additional trail networks as agreed to between the parties.

Comment 27-9:

- The EIR identifies there will be significant impacts to Millerton State Park Recreation Area and the San Joaquin River Parkway from increased use generated by the Project; however, the EIR fails to include adequate mitigation measures for the Project and provide a source of funding for both its fair share of facility improvements and on-going operations. It is the County of Madera’s responsibility to determine adequate mitigation fees and implement a fee collection mechanism.

Response 27-9:

See Response 27-2 and Response to Comment Letters 10 and 32.

The comment presumes that it is the responsibility of the County of Madera to ascertain and develop a capital improvement program for the State of California for capital facility expansion. Such responsibility falls on the State of California in their recent EIR to determine a preferred alternative. In fact, the state does not, in their EIR, recommend a preferred alternative. Hence, general confusion exists as to what the state is electing to do with the MLSRA and how they will be able to justify an expansion of the park on decreasing attendance.

Comment 27-10:

- The Trust does not agree with the conclusions in the EIR that the mitigation outlined is sufficient for addressing the impacts to Millerton State Recreation Area, which are detailed in the State Parks letter of June 11, 2007.

Response 27-10:

See Response 27-2 and response to Comment Letters 10 & 32.

Comment 27-11:

- The Trust has the same concerns expressed by the US Fish and Wildlife Service and the California Department of Fish and Game, letters in the EIR Response to Comments document dated June 12, 2007 and June 1, 2007 respectively, that there a) are insufficient studies and information for biological resources, b) that the EIR's findings of reducing many of the impacts to a "less than significant level" cannot be made; and, c) that in many cases, the proposed mitigation measures for some species cannot prevent or reduce the Project's significant impacts.

Response 27-11:

In response to a) of the comment, see Response 27-3. In response to b) and c) of the comment, see Response 27-1 which discusses substantial evidence.

Comment 27-12:

- In spring of this year, Dr. Patrick Kelly, with the Endangered Species Recovery Program, CSU Stanislaus, conducted surveys on the Hallowell Ranch and found several California Tiger Salamanders. The Trust believes the habitat values on the Hallowell Ranch, for with the Trust holds a conservation easement, will likely be significantly impacted by this Project as a result of EIR's inadequacies outlined in this letter.

Response 27-12:

As stated in Response 27-1, the claim that habitat values on the Hallowell Ranch, separated by a range of steep hills, would be significantly impacted by the project is unsubstantiated [See Public Resource Code Section 21082.2(c) and CEQA Guidelines, Section 15384 (a)]. The comment is also directed to Response 1-13 which discusses the quality of potential habitat within the NFV-1 project. While CTS may have been found on the Hallowell Ranch, the survivability and growth of the species, according to all known scientific research conducted on the species, lies within the preservation and enhancement of naturally occurring ephemeral, vernal pools. While the USFWS has delineated critical habitat for the species, the service freely admits that they have not established a recovery program for the species. Such a recovery program would

primarily focus on naturally occurring vernal pool habitat, the habitat desired by the species and the very habitat which does not exist within the boundaries of the NFV-1 project.

Comment 27-13:

- **Impacts from the Project to the San Joaquin River Restoration Program and the recovery of salmon to the San Joaquin River have not been evaluated.**

Response 27-13:

The project lies along Cottonwood Creek, a seasonally intermittent creek, tributary to the San Joaquin River. The comment is referred to Section 5.8 – Hydrology and Water Quality of the EIR which fully discusses project storm water design in full compliance with the federal Clean Water Act of 1972. The comment requires substantial evidence that compliance with the Clean Water Act of 1972 within the Cottonwood Creek watershed is insufficient for salmon recovery.

As a matter of reference, storm drainage detention mechanisms already exist along the San Joaquin River in the form of Fresno Metropolitan Flood Control District basins DK, DN, and EK as well as several other storm basins that directly discharge into the San Joaquin River. The comment is directed to the report, “*Evaluation of Basin EK Effectiveness*” written by the Fresno Metropolitan Flood Control District (FMFCD). The conclusions of this report state:

“The results of this study show that Basin EK [a detention basin] effectively prevents pollutant loads from discharging to the San Joaquin River.”

The comment is further directed to *San Joaquin River Restoration Study, Chapter 6 – Water Quality*. Section 6.5 of this report states:

“No impairments were listed in for Reaches 1 and 2 [Friant Dam to Mendota Pool].”

“We assume that if the CVRWQCB does not list a river reach as impaired, then the existing water quality conditions are adequate for aquatic resources.”

Note that all existing FMFCD storm drain detention basins are located in Reaches 1 and 2 and have been operational for many years. Thus, the final San Joaquin River Restoration Study effectively determined that the presence of such storm drainage detention basins do not pose a significant risk to either existing fish populations or to future salmon restoration efforts. See additionally Response 27-1 regarding substantial evidence.

Comment 27-14:

- **The ability to provide an assured long-term water supply for the project is understated due to the inadequate analysis of cumulative impacts that are outlined in this letter.**

Response to 27-14:

See Response 27-4 with regard comment concerning long-term water supply. The comment is presumed to state that the water supply is overstated, not understated? The comment is directed to Section 5.8 and Appendix F of the EIR and the NFV-1 Response to Comments Letter 20 and Letter 20A.

Comment 27-15:

- **The EIR concludes that the Project's source of water is groundwater wells, yet the vast majority of the Project is proposed to come from wells on Cottonwood Creek and the EIR states the water is from the creek's fractured rock. The surface water and the groundwater are directly connected and the EIR does not quantify how the surface water flows in Cottonwood Creek will be affected.**

Response 27-15:

See Response 27-14. See additionally Response 27-1 regarding substantial evidence.

Comment 27-16:

- **Pumping water for the Project may affect the water wells on Hallowell Ranch as well as Cottonwood Creek itself. A mitigation measure to provide monitoring wells for the Hallowell ranch and monitoring of Cottonwood Creek should be added along with appropriate corrective action if the Ranch's water supply is impacted.**

Response 27-16:

See response to comment Letter 20 and Letter 20A regarding surface water and groundwater. Note that wells located on Hallowell Ranch are substantially up-gradient of project wells; thus, no monitoring is necessary. Existing monitoring of Cottonwood Creek already exists in the form of a USBR gauging station located within the limits of the NFV-1 project boundary.

The applicant wishes to thank the San Joaquin River and Parkway Trust once again for their comments. While the applicant realizes that concerns exist for a development of any kind, it is hoped that the commenter appreciates the extensive work and evaluation that have gone into ensuring that the NFV-1 project is a model for all future development within the region.

Comment 27-17:

In conclusion, the Trust urges the Madera County Planning Commission to reject consideration of the Project and direct the EIR to reconcile these issues prior to the Project's further consideration.

Response to Comment:

All issues conveyed in this comment letter have been fully addressed in the EIR and in the NFV-1 Response to Comments. The applicant again thanks the Trust for the additional comments contained herein; however, no new information has been provided to warrant a delay in the review required by the Madera County Planning Commission or the Madera County Board of Supervisors.

Response to Comment Letter #28
Letter sent via fax from Coke and James Hallowell
19623 Road 211
Friant, CA 93626
Faxed on August 19th, 2008 at 11:26 a.m.

Comment 28-1:

1. Protect Millerton State Park and San Joaquin River Parkway.
 - a. The EIR outlines numerous impacts to the scenic, natural, and recreational qualities of Millerton State Park and the Parkway. The mitigation measures and buffer zones recommended by California State Parks and the San Joaquin River Parkway should be included.

Response 28-1:

The comment is referred to project findings regarding project Aesthetics and Section 5.1.6 of the EIR [pg 5.1-18 to 5.1-20]. Per Response 10-2 of the NFV-1 Response to Comments, a 150' buffer has been provided per the request of the State of California. See additionally response to comment Letter 10, Response 27-2, Response 27-10 and Response to Letter 32 regarding the MLSRA.

Regarding the San Joaquin River Parkway Trail, see Response 27-8 regarding the provision of additional parkway trail.

Comment 28-2:

Protect Our Water and Water Quality

- a. The information presented in the EIR is inconclusive regarding the ability to provide a long-term water supply to the project and the relationship between groundwater and surface water of Cottonwood Creek. The Creek flows through our ranch and is an important resource. We have built a fence to exclude cattle along it and are restoring its habitat. The Creek is well documented to be important spawning habitat for a restored salmon fishery and the EIR does not study or address this aspect.
- b. Mitigation measures to protect our ranch from impacting our groundwater wells should be taken.

Response 28-2:

Section 5.8 and Appendix F of the EIR and the NFV-1 Response to Comments, particularly response to Letter 20 and Letter 20A provide clear and substantial evidence on groundwater supply while also providing data on the intermittent surface flows of Cottonwood Creek. With regard to salmon restoration, the applicant has contacted, on multiple occasions, Revive the San Joaquin, an organization tasked with providing beneficial habitat for salmon restoration, regarding an MOU for the preservation and enhancement of Cottonwood Creek

as provided in Section 3.3 of the Draft San Joaquin Restoration Study. Specifically within Section 3.3 of this report is the desire to introduce 20 cfs of annual flow to Cottonwood Creek for the restoration of Steelhead, an important species in addition to salmon. The applicant continues to be available for ongoing discussions with Mr. Chris Acree of Revive the San Joaquin to create an active rehabilitation and enhancement strategy which would create an area specifically tailored for salmon restoration, free from fishing and other predation as a habitat corridor [note that commentator is a board member of Revive the San Joaquin].

In response to item b) of the comment letter, see Response to Comment 27-16 which discusses up-gradient groundwater wells. Note that wells owned by commenter are approximately 2 miles up-gradient and nearly 100' higher in elevation than projects wells.

Comment 28-3

3. Protect the Area's Rich Natural Resources

- a. Agencies responsible for protection of plants and wildlife have recommended that surveys for sensitive species be conducted prior to the project's approval. The area is covered with sensitive species. Why put the County in the position of approving a project prior to identifying what areas should be conserved?

Response 28-3:

The commenter is referred to Section 5.4.6 – Mitigation Measures of the EIR. A complete biological evaluation of the project can be found in Appendix C of the EIR.

Comment 28-4

- b. In March of 2008, Dr. Patrick Kelly, a professor of zoology with CSU Stanislaus and director of the Endangered Species Recovery Program, and a team of biologists found several California tiger salamander larvae in the stock pond near our barn, bordering the project's boundary. The project puts resources we want to protect on our ranch at risk of survival.

Response 28-4:

See Response 27-12. As reference, the applicant met with commenter on March 30, 2005 providing a presentation of the project and seeking comment. The commenter provided feedback in Comment Letter 21, dated June 13, 2007. The project applicant has, on multiple occasions, met with the commenter while representing organizations of which commenter is a member. The applicant is available to meet with commenter at any time.

Response to Comment Letter #29
Letter from the California Department of Fish and Game
1234 E. Shaw Ave.
Fresno, CA 93710
August 18th, 2008.

The comment letter discusses the project impacts the Hartweg's Golden Sunburst (*Pseudobahia*) within the boundaries of the project:

Comment 29-1:

- The project proposes elimination of 4.1 acres of this endangered species. The species only exist at 13 sites in California. A statement of overriding consideration may satisfy CEQA, but does not satisfy CESA.

Response 29-1:

Comment noted.

Comment 29-2:

- The CDFG has regulatory authority over projects the could result in "take". CDFG has permit authority for such "take". Is in unlikely that CDFG will allow a "take" of the species.

Response 29-2:

Comment noted.

Comment 29-3:

- Significant changes to the project would likely be required in order to satisfy such a "take". Such changes could require new or revised CEQA analysis. The Department recommends non-approval given potential species take. Applicant should meet with CDFG prior to project implementation.

Response to Comment:

Per the EIR and the Mitigation Monitoring Program of the EIR, avoidance is listed as the preferred mitigation with a 2:1 or 3:1 compensation mitigation ratio for Hartweg's Golden Sunburst (*Pseudobahia*). The EIR clearly states that, "*Prior to any elimination and/or relocation of state and federally listed plant species, the applicant must comply with provisions of the state and federal Endangered Species Acts.*"

Response to Comment Letter #30
Letter from the State of California Clearinghouse
Terry Roberts, Senior Planner
August 18th, 2008.

The comment letter discusses attached Madera Oversight Committee letter and recommends addressing all comment letters. No response required. See Response to Letter 31.

Response to Comment Letter #31
Letter from the Madera Oversight Committee
Chuck Leavitt
August 18th, 2008.

The comment letter discusses regional growth concerns:

Comment 31-1:

- Cumulative impacts to roads, water, etc. The Rio Mesa Area Plan (RMAP) is outdated and inadequate.

Response 31-1:

Cumulative impacts are addressed in Section 7.3 [pg. 7-2] and throughout the NFV-1 EIR which provide mitigation measures on both a project specific and cumulative basis. Since the creation of the Rio Mesa Area Plan (RMAP), significant analysis and planning of the region has been conducted and continues to occur. For example, the traffic study conducted for the NFV-1 Specific Plan (Appendix I of the EIR) analyzed a cumulative RMAP at “full build” on top of the Madera County MCTC and Fresno County COG forecast travel models. The comment also does not consider County Service Area 22 (i.e. the RMAP) and its draft Municipal Services Review (MSR) which evaluates water, sewer, storm drain, water balance, groundwater recharge, road maintenance, and fire and ambulatory services. In addition, existing County of Madera development impact fees are collected on each building permit issued in Madera County to provide for new county facilities such as police, fire, parks, government services and libraries. Also, the County of Madera passed Ordinance 367-O which ensures that fees are collected for future improvements to the county road system and to State Route 41. With regards to air quality, the San Joaquin Valley Air Pollution Control District passed Indirect Source Rule 9510 which requires the Project to participate in both the payment of fees to mitigate project impacts and to reduce emissions, resulting from the Project. With regards to Fresno County roads, the County of Madera and the County of Fresno have worked together to create the San Joaquin River Crossing Traffic Study which evaluated cross county traffic. The project applicant provided \$25,000 towards this traffic analysis and agrees in the Project EIR to participate in any regional fees which may be mutually established by both the County of Madera and the County of Fresno. The Project EIR also provides pro-rata monies for the improvement of the intersection at Friant Road and Road 206. Lastly, the comment fails to identify which elements or components of the general plan or the Rio Mesa Area Plan are outdated or inadequate.

Comment 31-2:

- The RMAP is UC campus dependent. The NFV-1 project is being considered first.

Response 31-2:

The University of California alternative was fully addressed in the RMAP EIR as an overlay and as a potential alternative, not a requirement [per the Rio Mesa Area Plan, Item C., pg. 35]. The comment stating that the NFV-1 is being considered first is inaccurate. For clarification, Central Green and the outlying Gunner Ranch West and Gateway Village were considered before the project by the County of Madera while Tesoro Viejo is being considered concurrently. There is no phasing requirement contained within the RMAP which dictated “systematic and sequential” development.

Comment 31-3:

- Road infrastructure, burden falls on Road 145 and Friant Road to carry traffic.

Response 31-3:

Per Response 31-1, the EIR contains a complete, cumulative traffic impacts analysis which considers all growth in the region, including the RMAP, Gunner Ranch West, Gateway Village as well as the Madera County and Fresno County future travel models. Specific road impact mitigation measures are provided in the EIR, the Response to Comments of the EIR, as well as in the Development Agreement for the project. As cited in the EIR, the comment is further directed to Madera County Ordinance 367-O Road Impact Fees which require the applicant to pay fees for impacts to roads in Madera County beyond the roads being improved by the applicant. The comment is directed to Response 36-3 which addresses impacts to Fresno County roads. As stated in Response 31-1, the applicant is a financial participant in the San Joaquin River Crossing Study which analyzed regional traffic between Madera and Fresno counties. The study is tasked with identifying regional traffic impacts and determining fair share regional road impact fees.

Comment 31-4:

- Water availability, SB 610 significance. Findings of the IRWMP.

Response 31-4:

The EIR contains a Water Supply Assessment that fully complies with the requirements of SB610 and SB221. The comment cites Letter 20A from Kenneth D. Schmidt. The comment is referred to response to comment Letter 20A, provided in the final NFV-1 Response to Comments. As provided in Response 20-6, the applicant agrees to participate in a regional, groundwater recharge program as required mitigation of the Rio Mesa Area Plan and as discussed in the County of Madera IRWMP. Per Response 27-1, the comment does not contain substantial evidence regarding specific IRWMP concerns and fails to

identify which specific findings of the Integrated Water Management Plan require reconciliation with regards to the Project EIR.

Comment 31-5:

- Tulare County impacts should be considered [et. al.]

Response 31-5:

The comment is referred to the report “*Global Climate Change Analysis, North Fork Village - 1, Madera County, California*”, dated June 4, 2008, contained in the final NFV-1 Response to Comments. Final regulations by the California Air Resources Board (CARB) have not been approved. AB32 does not currently require updating of general plans or area plans.

Comment 31-6:

- Leapfrog development, continuous infrastructure.

Response 31-6:

See Response 31-2 regarding leapfrog and continuous development concerns. All comments regarding traffic, water supply, etc. are addressed in the EIR and in these Response to Comments. See Response 31-4 regarding water supply. All project roads comply with Madera County Road Ordinance 542. See Response 27-1 regarding substantial evidence for all other comments.

Comment 31-7:

- Support for assertions

Response 31-7:

CEQA invites comments to project EIR's. The EIR fully informs the public and provides mitigation for project impacts. All comments made to the project EIR have received a response, referring each comment to the appropriate section of the EIR or specifically addressing the comment. Section 7.3 of the EIR addresses cumulative impacts.

Response to Comment Letter #32
Letter from the California Department of Parks and Recreation
Jess Cooper
August 19th, 2008.

The comment letter discusses regional State Park concerns:

Comment 32-1:

On behalf of the California Department of Parks and Recreation (DPR), we would like to offer our concerns regarding the subject draft EIR, Specific Plan, and "Tentative Map" you are considering for approval.

Response 32-1:

Since 2005, the applicant has met with representatives of the DPR more than a dozen times. The goal of these meetings has been to work towards understanding and mutual agreement addressing DPR concerns. As example, building setback requirements along the common property line adjacent to the MLSRA campground have been repeatedly discussed. At one of the first meetings between the applicant and DPR representatives, a 30' setback was offered and agreed upon. Soon thereafter, the applicant was notified that a 100' setback was desired to which the applicant agreed. Comment Letter 10 was received which stated that a 150' setback was desired. The applicant, in the final NFV-1 Response to Comments, agreed to the requested 150' setback. Currently, as asked by the Madera County Planning Commission and as provided in Comment Letter 32, the agency is unable to identify a correct distance and simply requests an "appropriate" setback. It is difficult for the applicant to adequately address concerns under a moving bar scenario. Of note, new concerns are now provided in Comment Letter 32 contained herein which have not been presented to the applicant in more than a dozen previous meetings.

Comment 32-2:

The proposed North Shore at Millerton Lake (AKA North Fork Village) is contiguous with Millerton Lake State Recreation Area (MLSRA), which is operated by the DPR and is a prime recreational facility in the Southern Sierra Nevada foothills and San Joaquin Valley. We would like to acknowledge our appreciation of Mr. Kesterson making himself and his staff accessible, and his willingness to discuss our concerns.

Response 32-2:

As provided in Response 32-1, the applicant has been, and will continue to be willing to work with the DPR. The MLSRA is a neighboring property and good neighbors are always willing to work together in finding common ground.

Comment 32-3:

First, I have a question for the Commission to consider: When in your lifetime will you have another opportunity to protect a highly valued recreation area such as Millerton Lake, including its very special view shed and natural setting, for future generations to enjoy in Madera County? Along with this question is an alternative being explored by State Parks and other interests: Wouldn't it be best to work together to place this important resource into public conservation and use for the rest of the Rio Mesa residents (some 30,000 homes in the HWY 145 corridor) and others currently enjoying the lake? The Rio Mesa Area would benefit greatly from this high quality natural environment and park, and I am sure we can work collectively (the County and others) to find some way to compensate Mr. Kesterson for his investment, such as using his property as mitigation for other projects, a win-win for everyone.

Response 32-3:

The commenter provides no substantive information that a conservation easement is likely or that state or federal funding sources for compensation are available or realistic.

Comment 32-4:

The proximity to and use of Millerton Lake will certainly be a major benefit and selling point to those considering living within this development. This is substantiated by the change in name for the development to "The North Shore at Millerton Lake". The County and developer have much to gain by protecting this resource and the quality of the services at the park. The following are our recommendations:

Response 32-4:

Comment noted that both parties have a better product and/or service by the simple presence of the other.

Comment 32-5:

Require an appropriate buffer in the area of the Group Campground, where apartment style zoning is proposed. These uses clearly will not fit in with the park facilities and will destroy the visitors' experience. We would like to see the area from PA 28 east dedicated to public ownership and developed for park use to assist in buffering current facilities such as the Group Camps and others. A simple set back in this area will not suffice without destroying the park experience. Mr. Kesterson has given us a CD of his maps and we are working to have a State Architect draw conceptual plans as to what a park facility might look like in this area, and how that would assist in buffering the existing park and the campgrounds in particular.

Response 32-5:

As discussed in Response 32-1, the State is now requesting an "appropriate" setback where specific dimensions were previously requested and provided by applicant. The zoning around the subject campground is MDR (Medium Density Residential) with a 150' setback behind the property line as requested by the commenter and agreed to by the applicant in Response 10-7 of the NFV-1 Response to Comments. With regard to PA28 and other areas adjacent to the DPR boundary, the applicant has been and continues to be willing to offer for sale, any portion of land desired by the State of California. The comment that the placement of structures within these areas would "destroy" the park experience is not well taken. Many state parks throughout California have structures consisting

of various land uses abutting park boundaries. The State of California even builds, owns and operates buildings within and adjacent to many state parks. For the paying public, who visit such parks, it is difficult to imagine that their experience within each park facility was “destroyed” by the presence of a structure(s). Comment noted that the commenter has initiated contact with the State Architect. The applicant is willing to meet with any state representative at any time to ensure that the development is conducted in a manner that satisfies all parties.

Comment 32-6:

In order to reduce impacts on the lake's resources, the natural setting of the recreation area, and minimize conflicts between public recreation and private residences, require the developer to dedicate PA 30 & 31 adjacent to the Rocky Point Campground on the lake side of the road for conservation, open space, and public use; and dedicate PA 29 for public ownership and use. All of parcel 29 is within the lake side of the paved road.

Response 32-6:

Note that PA30 already contains a 10 acre park and is zoned as ‘open space’. As previously stated, the applicant remains committed to offering for sale, any portion of land desired by the State of California, including “friendly condemnation”.

Comment 32-7:

The development will place demand for additional day use on the north shore. It is recommended the County require PA 31, 32 and 35, at a minimum, be dedicated to the park to be developed as a day use area, with a moderate increase in camping opportunity as well. If sized and placed appropriately, additional park land would assist the park in meeting the increase in demand for recreation from this development and others in the Rio Mesa Area plan. This area would also assist in establishing a much needed buffer for the Group Campground, as a day use area would not be populated at night.

Response 32-7:

Note that the total acreage now requested by the State of California from PA’s 28, 29, 30, 31 and 35 is approximately 106 acres. The State, neither in Comment Letter 10 nor in Comment Letter 32, volunteers any metrics, specifically annual park attendance at the MLSRA. Such attendance data were collected and compiled by the applicant and show that since 2001, park attendance at the MLSRA is down more than 50% (source: California State Park System Statistical Report). See also Response 27-2 which discusses park attendance figures. The question remains, “How can future impacts caused by the applicant be pushing the MLSRA beyond capacity when current data show the public to be using this specific state facility less each year?” The data are clear. In 2001, annual park attendance at the MLSRA was 633,889. By 2007, the figure had fallen to 311,874 (a decrease of 50.8%). The applicant continues to stress that he is willing to work with the State of California, but is concerned that local officials have chosen to discuss the potential significance of project impacts on park facilities without disclosing the substantial declines in park

attendance. At present, metrics accumulated by the applicant demonstrate that an additional allocation of more than 100 acres to the State of California to be both unwarranted and unsubstantiated. As stated in previous Responses, the applicant remains committed to offer for sale, any portion of land desired by the State of California.

Comment 32-8:

At the present time, the park considers closure daily on summer weekends at the North Shore due to high volume visitation, as boat launch and day use parking is limited. Adding newly established North Shore at Millerton Lake residents arriving early to the park due to their living so close, will cause current park visitors to be displaced. Arriving later in the day will cause the new residents to be displaced. Implementing additional camping, day use, and parking areas would provide some relief to this situation.

Response 32-8:

See Response 32-7. Note that DPR “considers” closure. As provided in Response 27-1, substantial evidence would consist of the provision of specific days and times of park closure, not when “consideration” was given. Note that park attendance is down more than 50% in the past several years. As example, the dates and times of actual gate closure since FY 2001 could be provided.

Comment 32-9:

The EIR states that impacts to the park are significant; our comments are intended to assist the County in reducing those impacts.

The conflicts between access to the development, the existing park entrance, and emergency evacuation, at Road 145 from road 211 to the park entrance are simply not addressed. There will be additional impacts on this road from The North Shore at Millerton Lake and the greater Rio Mesa Area that need to be addressed in the EIR.

Response 32-9:

The EIR states that the impacts caused by the entire Rio Mesa Area Plan, not the project, are cumulatively significant. See Section 5.15 and Appendix I of the EIR and Response 32-10 which discusses Road 145 and access across the NFV-1 project. The applicant also disputes the EIR in its assessment that each person in the NFV-1 Specific Plan at project build-out will visit the park 3 times every year. The EIR preparer, by their own admission, had no data to support the assertion and simply made an assumption.

Comment 32-10:

The developer has agreed to add an additional traffic lane at the entrance station to assist with traffic coming into the park; however, it was our understanding that this gate was proposed only as an emergency exit from the development. We now understand that the exit will be for normal use at the discretion of the residents. With key card access by residents of The North Shore at Millerton Lake just 600' from the entrance station of the park, impacts are eminent. No Road 145 access to the development should be considered or allowed. The impact of the traffic generated by this road on the incoming traffic to MLSRA and to the lines of visitor cars, boats and motor homes waiting to enter MLSRA north shore on any given day will be significant, especially with the growth in MLSRA visitation from this and other Rio Mesa Area developments (cumulative impacts). In the event of an emergency within the development, such as a wildfire (which we had

in this area in 2006 and 2008), the impact could be significant if this evacuation route were blocked by traffic waiting to enter MLSRA. Additional study and mitigation measures for the north shore entrance road to MLSRA need to be addressed before the EIR is approved.

Use of this gate should be limited to emergency traffic and should be listed in the CC&Rs, allowing for enforcement action to be taken.

Response 32-10:

Regarding access along Road 145, the NFV-1 Specific Plan [pg. 51] states, "...access will be restricted to this Neighborhood [Oak Ranch] by entry gates located in South Mesa Neighborhood, Central Park Neighborhood and the Road 145 entrance gate." Again on pg. 60, "A third, limited access point is planned near the entrance gate of the Millerton Lake SRA. This access point is designed to satisfy Madera County Fire Code requirements for multiple connection points." And again on pg. 128, "Enhanced Entries. One (1) enhanced entries is planned within the NFV-1 project. This entry will be located at the entrance to the project from existing county road 145. This will be a controlled entry with an access card. Emergency access will be authorized. Although these entries will reflect the design and landscaping of the Enhanced Community Minor Entry features, the enhanced entries will be simpler." The NFV-1 Specific Plan is clear in stating that the gate is not for "normal" access as stated by the commenter, but that the gate is "restricted" via access cards. As the traffic study, provided in Section 5.15 and in Appendix I of the EIR shows, little to no traffic impacts occur on Road 145 adjacent to the State Park Entrance Gate and no further analysis is necessary. However, to alleviate the concerns by the commenter, the applicant has agreed to construct an additional travel lane, 450' in length, west of the North Entrance Gate to address potential queuing concerns.

Comment 32-11:

We are concerned with the height of homes and commercial buildings proximate to the park boundary and sight line. Homes and commercial buildings which are proximate to the leading edge (or interface area from the park to the housing development) should be restricted to single story. Areas adjacent to the tentative map on the lake side of the shaded map area which are not part of this map for approval should not be developed and should be rezoned to open space to limit impacts to the view shed.

Response 32-11:

See Response 10-3 of the NFV-1 Response to Comments. This concern was raised in a previous letter and was responded to accordingly in that the applicant has agreed to limit the height of structures to 35' adjacent to DPR lands. The comment is generally confusing regarding "map shading" and rezoning of land uses consistent with the Rio Mesa Area Plan.

Comment 32-12:

There should be one time facility development impact fees and ongoing operational fees collected to assist the State Park in meeting the needs of the North Shore at Millerton Lake and greater Rio Mesa Area residents. This includes area-wide consideration with subsequent developments in the Rio Mesa Plan area and others, and should be negotiated in good faith by the County with the DPR. These fees should be allocated to the DPR for use in facility development and ongoing costs associated with public safety and operational support necessary to overcome the impacts of this development on Millerton Lake State Recreation Area, such as the need for additional lifeguard services, camping and day use demand.

Response 32-12:

As referenced in Response 32-7, attendance at the MLSRA is down more than 50% in the past 7 years, despite regional population increases. See Response 27-2.

Comment 32-13:

Additional park entrance fees from increased visitation will not mitigate the cost of necessary increases in service and maintenance. Additional mitigation is needed, such as budgetary assistance with the added costs created by this development and the cumulative impacts of other nearby developments in the Rio Mesa area plan.

Response 32-13:

As stated in Response 27-2, the State has not commented on any other, regionally significant EIR. As referenced in Response 32-7, attendance at the MLSRA is down more than 50% in the past 7 years, despite regional population increases. Specifically, the comment does not provide substantial evidence illustrating, for example the type of staffing cuts that may or may not have taken place over the past 7 years which have resulted in a higher (same staff, less visitors) or lower (reduced staff) level of service. As stated in Response 10-5, comment noted that the MLSRA is a State funded park that does not collect sufficient fees from the paying public which is an issue requiring input from the

California Legislature. Should State Parks be under funded by the paying public with gaps covered by the State of California budgetary process or should parks collect fees on a “pay as you go” system that covers 100% of operational costs?

To establish a correlative, the State of California owns and operates the Golden Gate Bridge (a toll bridge). The state recently informed the public that due to inflation and increased maintenance, an increase in the bridge toll is necessary. The State then increases fees for the paying public to use the bridge. Do people in San Rafael pay a higher toll than a visitor from England because they live closer to the bridge? And what of the people who choose to cross the bridge by foot instead of a car? Is there a higher fee for residents living outside the State of California? The comment has not provided substantial evidence that provides for the collection of “budgetary assistance” by the applicant.

Comment 32-14:

The developer has stated he is not opposed to fees for recreation impacts to Millerton Lake State Recreation Area, but feels his development should not be the only one to pay. We agree with this and support communications between the developer, the County and the State Park. Park staff are currently looking at the formulas and authorities for equitable cost sharing for recreation impacts as a starting point for discussions. These fees should be agreed upon prior to the adoption of “final map” for any phase of the development.

Response 32-14:

The applicant is a developer who requires equality across the marketplace in order to remain competitive. The applicant is not opposed to the imposition of any fee, so long as it is justified through substantial evidence and all cumulatively impacting regional developments also participate in a “fair share” system. However, given recent information regarding significant declines in park attendance, the applicant questions the desire to incur a fee for park use which is clearly in decline. Were attendance figures to have been found increasing, the applicant could understand that increases in park usage caused by his development could push the park system beyond its current capacity. But the comment has not provided such requisite evidence.

Comment 32-15:

Impact fees or mitigation may take the form of operating dollars set aside in an account with DPR, additional land made available by the developer as an addition to MLSRA, or a combination of fees and land set aside through negotiations with the County, DPR and the Developer.

Response 32-15:

With decreases in park usage, the desire to acquire additional lands and/or impact fees are un-substantiated. See Response 32-7.

Comment 32-16:

Setbacks adjacent to all project buildings should be at least 150' to provide for any fire safety measures, i.e.; clearing, discing, to be accomplished within the project and not require the use of park lands.

Response 32-16:

Comment noted. This was the agreed to distance as provided in Response 10-7 the NFV-1 Response to Comments. Note that the agreed setback of 150' is different than the "appropriate" dimension referenced in Comment 32-5. The applicant agrees to conduct all fire suppression within the 150' setback distance and to not cross onto USBR lands, operated by the DPR.

Response to Comment Letter #33
Letter from the San Joaquin River Conservancy
5469 E. Olive Ave.
Fresno, CA 93727
August 19th, 2008.

The comment letter discusses the San Joaquin River:

Comment 33-1:

The San Joaquin River Conservancy was formed by the state legislature to create a regional partnership among state and local agencies, including the County of Madera, to develop and manage the San Joaquin River Parkway. The planned Parkway will consist of a 22-mile regional wildlife corridor in the river-bottom extending from Friant Dam to Highway 99, with an interconnected trail system and recreational and educational features.

Response 33-1:

Like the commenter, the applicant is eager to construct more than 12 miles of trails within the project and provide an integral link and extension to the regional trail system.

Comment 33-2:

Lands acquired by the Conservancy for the Parkway are immediately adjacent to the proposed project between the project and the San Joaquin River. Cottonwood Creek flows through the project and downstream along the boundary of the Conservancy's property.

Response 33-2:

Correction. The Madera Canal, owned by the US Bureau of Reclamation and operated by the Madera Irrigation District, lies between the two properties.

Comment 33-3:

The following impacts directly relevant to the Parkway, natural and cultural resources, and recreational opportunities in the area are recognized in the DEIR as significant and unavoidable:

- A significant adverse effect on a scenic vista, the existing visual character and quality of the site and its surroundings;

Response 33-3:

Comment noted; however, note that the applicant has taken extensive measures to reduce the effects of visual impacts by requiring earth toned coloring on

exterior walls and roofs of structures, plantings requirements around structures, building setbacks and low roof pitches and single story structures on ridge lines.

Comment 33-4:

- A significant adverse affect on night time views from a new source of substantial light and glare; and

Response 33-4:

Comment noted; however, note that the applicant has taken extensive measures to minimize light and glare, specifically requiring the installation of 48" tall, down lighting bollard lights in lieu of 30' high standard street light poles.

Comment 33-5:

- Significant cumulative impacts on:
 - Hartwig's golden sunburst (listed as state and federal endangered), non-native grassland, and blue oak woodland;
 - Floodwater conveyance and flooding within the San Joaquin River floodplain;
 - The Madera groundwater basin; and
 - Recreation within both the Millerton Lake State Recreation Area and the San Joaquin River corridor.

The Conservancy encourages the Commission to carefully consider commenters' recommendations to reduce these significant impacts through project changes and additional mitigation.

Response 33-5:

Comment noted. Each concern has been evaluated and includes requisite mitigation measures as outlined in the NFV-1 EIR. See Comment Letter 29 regarding Hartweg's Golden Sunburst.

Comment 33-6:

The Conservancy remains concerned that the proposed community well fields and stormwater quality treatment facilities on Cottonwood Creek will significantly affect habitat, flows, and water quality. The project plans and mitigation measures must be adequate to protect and enhance riparian habitat and wildlife movement on Cottonwood Creek and to establish appropriate buffers along the creek.

Response 33-6:

Wells are existing with no relationship shown to exist between the surface flows of Cottonwood Creek as provided in Section 5.8 and Appendix D of the EIR, as well as in the NFV-1 Response to Comment Letters 20 and 20A. The EIR also provides significant information regarding the storm water management system which fully complies with the Clean Water Act.

As further support of the effectiveness of storm drainage detention basins on the San Joaquin, see Response 27-13 which further supports the conclusions of the EIR that storm drain detention systems are effective. It is also worth noting that as discussed in Response 27-13, Basin EK has a higher concentration and greater diversity of land uses than those proposed within the NFV-1 Specific Plan. Buffers, setbacks and restoration measures are provided within the NFV-1 Specific Plan and EIR.

Comment 33-7:

The project includes a commitment to define specific recreational trail alignments and associated buffers in consultation with the Conservancy, California State Parks, other Parkway interests, and resources agencies. Early, approved alignments are necessary to ensure the trails can be implemented in a manner compatible with resources protection.

Response 33-7:

See Response 11-4. The applicant is pleased to construct more than 12 miles of trail and provide a vital link and extension to the San Joaquin River Parkway Trail system.

Comment 33-8:

A Community Services District is planned to operate and maintain all parks, open spaces, trails, and other public services and facilities associated with the project. For the nearby River Ranch Estates project, the County of Madera Planning Commission and Board of Supervisors included a requirement that the community services district formed to maintain parks within the project also assist with maintaining adjacent areas of the Parkway. Due to the magnitude of impact on the Parkway and Millerton Lake State Recreation Area from the large projected population of Northshore at Millerton Lake, the County should require a fair share contribution toward maintenance and operation of adjacent public recreation lands. The incremental cost to the rate payers would be minimal, and the quality of facilities and services could be assured.

Response 33-8:

The applicant agrees that the County of Madera should adopt the proposed San Joaquin River trail network which specifically resides within Madera County into the operations and maintenance schedule of County Service Area 22. As stated in Response 11-7, the project does not seek financial assistance from impacts made by hikers crossing from the San Joaquin River Parkway Trail, out of reciprocity and given mutual use and benefit to the public, the applicant will not pay to maintain off-site trails.

Response to Comment Letter #34
Letter from Revive the San Joaquin
5132 N. Palm Ave.
Fresno, CA 93704
August 19th, 2008.

The comment letter discusses the San Joaquin River:

Comment 34-1:

Revive the San Joaquin is a local non-profit corporation working towards a restored San Joaquin River and an improved community stewardship of its resources. Our organization is an active stakeholder and participant in the San Joaquin River Restoration Program (SJRRP) planning process, a process that is aimed at restoring water to the river, native fish species, and many of its native habitats. The San Joaquin River below Friant Dam will be an area of special significance in this planning process as the goal of returning Spring-Run Chinook salmon will require adequate habitat, clean water, and active community stewardship to sustain a naturally reproducing population of the salmon and many other returning native species.

Response 34-1:

The applicant is awaiting response from the commenter regarding the proposal made by the applicant to offer the necessary right-of-way for an inter-tie with the Madera Canal and Cottonwood Creek as specifically referenced in Section 3.3 of the report *Draft Restoration Strategies of the San Joaquin River*. In this report, a reference is made to diverting flows out of the Madera Canal and into Cottonwood Creek for the purpose of creating a habitat for both salmon and steelhead trout. The applicant, when learning of the concept, contacted the commenter in a July 16, 2008 letter stating:

“As we discussed during our meeting, we feel that Cottonwood Creek provides a genuinely unique opportunity in ensuring that the restoration of the San Joaquin River can take place in a dedicated open space preserve, free from fishing and other predation. Also, as a habitat preservation and enhancement project, your organization, combined with the California Department of Fish and Game (CDFG), would be given the opportunity do some especially unique and remarkable reconstruction, both inside and outside the defined bed and bank of Cottonwood Creek with deep gravel pools, overhanging tree shading, sections of rapid and meandering flows, and other species specific enhancements that would provide needed protection for the restoration effort of both Chinook Salmon and potentially, Steelhead.

The applicant is discourage that the commenter, via correspondence, appears more interested in preventing development than in actively working to restore the San Joaquin River.

Comment 34-2:

The lands being considered for development under the Northshore at Millerton Lake project are unique to the County of Madera, and should be afforded special attention during project review. The location considered for urbanization is at a critical junction between the Upper San Joaquin River watershed and the valley portion of the San Joaquin River, and provides significant transitional habitat linkages between the two areas. Extensive comments by the US Fish and Wildlife Service, the CA Department of Fish and Game, and others reflect the value of Cottonwood Creek and the Northshore of Millerton as an area with unique habitat critical to protecting and sustaining wildlife populations. Also these agencies have submitted comments that the project site has not been adequately assessed to fully understand the biological resources and their significance within the area. Further, the EIR is not adequate to support the conclusions in the report or the findings of significance for mitigation measures.

Response 34-2:

Biological resources are addressed in Section 5.4 and Appendix C of the NFV-1 EIR. Further discussion of the work conducted and the professional qualifications of the biological consultant, Live Oak Associates, is provided in Response 27-3. With regard to EIR adequacy, see Response 27-1, Substantial Evidence. The applicant agrees that Cottonwood Creek is unique and is awaiting a response from the commenter regarding the salmon and steelhead restoration proposal made by the applicant.

Comment 34-3:

A watershed-scale water supply assessment should be conducted that is consistent with regional data available from other geographically related plans and projects. Large-scale developments such as this project should be evaluated in collaboration and coordination with neighboring counties and State-federal partnerships (such as SJRRP, Upper San Joaquin River Stewardship Council & Watershed Study, the San Joaquin Valley Blueprint Planning Process, the Eastern Fresno County Mountain and Foothill Water Supply Study, etc.). Regional coordination can ensure correct assessment factors are used and cumulative impacts are adequately addressed.

Response 34-3:

A watershed-scale water supply assessment for the project was conducted and is provided in Section 5.8 and Appendix F of the project EIR. As provided in Response to Letter 20 and Letter 20A, the groundwater study conducted for the project can now be considered a complete watershed analysis for the subject aquifer.

Comment 34-4:

The policies of the Madera County General Plan provides protections for the county's rivers, streams, creeks, and groundwater resources, however, the Environmental Impact Report (EIR) for the project does not adequately address policy set forth in the General Plan or comments made by reviewing agencies and other groups. I would like to take this opportunity to request that the project be reconfigured, new mitigations be adopted, and the EIR be re-drafted before moving forward to the Board of Supervisors. The project in its current form fails to conform to Madera's General Plan policies as follows:

Response 34-4:

General Plan compliance of the project is contained in Section 2.2 and Section 3.3 of the NFV-1 Specific Plan as well as throughout the project EIR.

Comment 34-5:

- *The County should promote infill development and contiguous growth to existing cities to minimize conversion of agricultural and open space lands. Alternative sites contiguous to existing cities should be considered, and sites outside the Rio Mesa Area Plan should be evaluated as potential sites with existing water supply infrastructure.*

Response 34-5:

The italicized comment is Madera County General Plan Policy 1.A.4. General Plan Policy 1.A.3 also states, "*New development should be centered in existing communities and designated new growth areas.*" The project is inside the Rio Mesa Area Plan, a Madera County designated and approved new growth area. To be effective, general plan policy statements are to be read in their entirety. Land use planning by any planning body cannot be constrained to any one, singular policy statement. Rather, policies shall contain clear direction given a variety of land use conditions that exist within every county.

Comment 34-6:

- *The County shall permit only low-intensity forms of development in areas with sensitive environmental resources or hazard areas, and preserve and maintain the rural character and quality of the county.* The development of the NFV village project is not consistent with the low-intensity designation and would constitute a significant change in the character of these lands.

Response 34-6:

See Response 34-6. On the contrary, nearly 50% of all land contained within the NFV-1 Specific Plan is being retained as open space. As stated in Section 5.9.4 of the NFV-1 EIR,

“The RMAP designates approximately 3,994 residential units on 2,087 acres in the area of the North Fork Village-1 project (RMAP Final EIR Volume I, Table 4.3-6, Zones 730, 731, 732, 733, 757), with a resulting gross area density of 1.9 units per acre. Within approximately the same area as defined by these zones, the proposed project identifies 2,966 residential units on 2,238 acres, with a resulting gross area density of 1.3 units per acre. This represents a reduction of 998 residential units from the RMAP. Recognizing the policies and standards of the RMAP designed to preserve and retain open space and significant natural features including topography/landform and biological resources, the specific plan has included approximately 799 gross acres of the NFV-1 site in major open space categories.”

Note that additional open space, bringing the project total to nearly 50% of the total plan area, is contained within the Open Space – Use Area overlay category as provided in the NFV-1 Specific Plan.

Comment 34-7:

- *The County shall support the use of surface water wherever feasible, and shall approve new developments only if an adequate water supply is demonstrated.* The groundwater supply assessment is not sufficient to demonstrate a reliable amount of recoverable water, surface water impacts and water rights are not properly addressed, and pump tests are not adequate to project 20-year supply reliability, prove drought year reliability, establish shallow groundwater and surface water connectivity, and assess streamflow impacts to the water supply. The current groundwater supply assessment relies on surface water from a fully appropriated system, and has potential to impact supply and temperature models for the SJRRP restoration program activities.

Response 34-7:

See Section 5.8 and Appendix F of the project EIR and also Response to Comment Letters 20 and 20A.

Comment 34-8:

- *The County seeks to enhance and protect the natural qualities of streams, creeks, and groundwater, to mitigate the impacts of pollutants in waters, and provide for protection zones around natural water courses.* The development of in-channel detention and retention basins is not compatible with the goals of riparian protection, and there is not adequate mitigation to control pollutants that may impact salmon spawning.

Response 34-8:

See Response 27-13. The comment appears to assume that retention and detention basins lie within the defined bed and bank of Cottonwood Creek, which are not the case. As provided in the EIR and in Response to Comment Letters

20 and 20A, the project is not exempt from the mandates of the federal Clean Water Act of 1972. As provided in Response 27-13, no evidence has been provided that the Clean Water Act is insufficient for salmon restoration.

Comment 34-9:

- *The County shall require that new development adjacent to bodies of water used as domestic water sources to adequately mitigate for impacts to these waters. The San Joaquin River is undergoing significant changes under the restoration program and water quality standards are likely to change in response to these programs. The project should be designed with flexibility to address new uses of water in the San Joaquin River, and ensure through mitigation measures that no specific or cumulative impacts would negatively affect water quality in the creek or the river.*

Response 34-9:

The comment assumes that the water supply for the project is provided by a “body of water”. As provided in the EIR and in Response to Letters 20 and 20A, the project is using groundwater, not surface water. The comment is confusing regarding “flexibility” in project design.

Comment 34-10:

- *The County shall strive to identify upland habitat areas critical to feeding of wildlife, and require private developers to preserve and enhance existing natural riparian habitat unless safety concerns require removal (removal must be offset with new riparian habitats at 3 to 1 ratio). The EIR lacks a comprehensive site assessment for biological resources, fails to identify reasonably foreseeable changes to habitat and species in the San Joaquin River, and does not mitigate for lost habitat due to wastewater and storm-water basin construction.*

Response 34-10:

See Response 27-3 regarding adequacy of the biological analysis. The project provides a substantial buffer around Cottonwood Creek and fully preserves this existing riparian habitat. See Response 27-1 regarding substantial evidence which would require further explanation on the “foreseeable changes to habitat and species in the San Joaquin River.” Storm water and reclaimed water basins are bodies of water and the comment is generally confusing regarding “lost habitat”.

Comment 34-11:

- *The County shall protect important spawning grounds critical to sustaining wildlife populations, shall support preservation of rare, threatened, endangered, or other species of special concern, and shall support preservation or re-establishment of fisheries in rivers and streams wherever possible. The EIR neglects to assess site specific or cumulative impacts of urban runoff to water quality that would drain from the project site into the San Joaquin River and other water quality impacts to a healthy salmon population.*

Response 34-11:

See Response 27-13. As provided in the EIR and in Response to Comment Letters 20 and 20A, the project is not exempt from the mandates of the federal Clean Water Act of 1972. As provided in Response 27-13, no evidence has been provided that the Clean Water Act, either for a singular project or on a cumulative basis, is insufficient for salmon restoration.

Comment 34-12:

Revive the San Joaquin is concerned that the response to comments were conducted in a capricious manner and that further coordination and mitigations will need to be established before the Madera County Board of Supervisors review the EIR. Thank you for your time and consideration of our concerns.

Response 34-12:

Approximately 9 months of work effort were put into reviewing and responding to the comments provided to the NFV-1 Environmental Impact Report by the applicant, the County of Madera and the EIR Consultant. It is concerning that the commenter would consider such detailed effort as “capricious”. Per Response 27-1, substantial evidence must be provided which serves to enforce and corroborate assertions. The commenter is encouraged to respond to the proposal by the applicant for a restored Cottonwood Creek as discussed in Response 34-1.

Response to Comment Letter #35
Letter from Community Systems Assoc.
3367 Corte Levanto
Costa Mesa, CA 92626
August 19th, 2008.

The comment letter discusses the Chawanakee School District:

Response to Letter 35:

The applicant is actively working with school district representatives to formulate an agreement with regards to Level 1 school fees and additional taxes to be assessed against all future dwelling unit parcel within the NFV-1 Specific Plan.

Response to Comment Letter #36
Letter from the County of Fresno
2220 Tulare Street, Third Floor
Fresno, CA 93721
August 19th, 2008.

The comment letter discusses Fresno County Circulation:

Comment 36-1:

This project will significantly impact roads and intersections in Fresno County, which were not identified in the TIS for the project. The study fails to disclose significant impacts outside of Madera County. The San Joaquin River Crossing Study conducted by Madera County clearly depicts significant impacts to Fresno County roads and intersections from traffic generated by this project.

Response 36-1:

Figure 4 contained within the Traffic Impact Study (TIS) as provided in Appendix I of the NFV-1 EIR, illustrates road segments and intersections evaluated in the TIS. As shown in the document, the following Fresno County segments and intersections were analyzed. 1) Friant Road – Road 206 to Willow Avenue, 2) The intersection of Road 206 and Friant Road, 3) The intersection of Friant Road and SR-41 and 4) The intersection of Herndon Avenue and SR-41.

The TIS also contains a report entitled “*Documentation of Rio Mesa Cumulative Land Use and Travel Forecasts*” conducted by Korve Engineering and Ennis Consulting. This report conducted a cumulative traffic impact analysis for all of the Rio Mesa Area Plan on top of the Fresno COG and MCTC Year 2025 Travel Demand Models. The cumulative analysis was also conducted with and without the NFV-1 Specific Plan. Figure 8 of this report shows trip generation resulting from the full build-out of the NFV-1 Specific Plan across the Rio Mesa Area Plan and for Fresno County and City of Fresno road segments. Thus disclosing all expected road travel segments and intersections as are also shown in the San Joaquin River Crossing Study (SJRCs). In fact, URS (the traffic engineering consultant for the SJRCs) contacted both Korve Engineering and Ennis Consulting to ask for permission by the NFV-1 Project Applicant to allow use of the cumulative Rio Mesa Traffic Model, which was conducted at the expense of the applicant. The applicant agreed to allow Korve and Ennis to give the traffic model to URS for the purpose of conducting a regional traffic model for the SJRCs. Thus, the SJRCs utilizes the exact data sets and information as provided in Appendix I of the NFV-1 EIR.

Comment 36-2:

The County of Fresno has also noted that the San Joaquin river Crossing Transportation Study prepared for Madera County does not identify specific fair share impact fees for the new development. However, the study does identify approximately \$900 million in improvements that will be required to mitigate impacts of traffic from this project for the region. The County of Fresno requests a response that clearly defines the developers' responsibility for the identified improvements based on Madera County's Study, and based on the pro-rata share of the project's trips generated to those facilities.

Response 36-2:

Elected officials of both counties, who have been in attendance at the various progress meetings of the SJRCS, are fully aware that one of the primary objectives of the SJRCS is to identify regional impacts and to determine "fair share" costs for the requisite infrastructure to be placed on new developments in both Fresno and Madera Counties. It is specifically for this reason that the project applicant provided \$25,000 to the SJRCS in order to assure that regional traffic concerns are adequately identified and addressed with commensurate contributions from new developments in both counties. The comment is concerning in that there appears to be no communication between elected officials and representatives from the Fresno County Public Works and Planning Department who have been actively involved in the SJRCS and those who have been tasked with reviewing and commenting on the EIR for the NFV-1 Specific Plan.

As stated, the goal of the SJRCS is to determine pro-rata contributions for a new river crossing, whether that crossing is the new alignment for State Route 65 or an improved bridge crossing at Road 206 (or both), the SJRCS will make that recommendation. However, in order to make that recommendation and to begin an extensive planning and environmental review process for a new crossing, the County of Fresno should work to embrace the study and its recommendations. The comment is not encouraging in that the study is being reference by Fresno County staff as being "prepared for Madera County" when it is evident that a new State Route 65 alignment significantly helps the cities of Fresno and Clovis access northbound State Route 99 and avoid the problematic Herndon Avenue "solution". In addition, the County of Fresno must also recognize that by relying so heavily upon the Herndon Avenue "solution", traffic volumes on both Avenue 9 and Avenue 12 in southeast Madera County have been, and are continuing to increase significantly. This is because Herndon Avenue is currently deficient and will become more deficient as north Fresno and the City of Clovis continue to develop. Is the County of Fresno stating that a problem does not exist with Herndon Avenue and that a new river crossing is folly, particularly given the numerous studies and analyses conducted by the County of Fresno that show otherwise? Absent a new river crossing, what long term solution does the County of Fresno offer to its citizens living in north Fresno and the City of Clovis? Without support of the SJRCS, what is the long term strategy of Fresno County doing to ensure a reduction in traffic demands placed on Madera County roads

Avenue 7, Avenue 9 and Avenue 12? Is Fresno County prepared to offer a tax sharing agreement to pay for the upgrade and maintenance by Fresno County citizens using these specific road segments?

Comment 36-3:

In conclusion, the County would like to reiterate our concerns that the TIS and Madera County's responses do not adequately address or disclose significant impacts from traffic generated by the project to Fresno County roads and intersections. The EIR must disclose significant impacts to Fresno County roads and identify mitigation measures to reduce those impacts to an insignificant level to the extent feasible. Without such analysis, the EIR does not adequately inform the decision maker or the public of the environmental consequences of the project.

Response 36-3:

Regarding concerns that Fresno County segments and intersections were not adequately analyzed, see Response 36-1. The first six (6) pages of the TIS contained in Appendix I and used in Section 5.15 of the NFV-1 EIR provide an executive summary of the traffic study. Contained in this summary are Tables 2 & 3, which contain Level of Service (LOS) calculations on all road and intersections evaluated in the EIR. Following these tables is written text containing the necessary mitigation and improvements for the NFV-1 project. With regards to project impacts on Fresno County roads, the TIS recommended a traffic signal be placed at the intersection of Road 206 and Friant Road. As provided in the Response 6-2 of the NFV-1 Response to Comments, the project has agreed to pay a pro-rata share for the construction of this new traffic signal.

In final, the applicant hopes for improved dialogue within the County of Fresno and outwards towards the County of Madera. The Central Valley is expected to undergo significant change over the next 50 years and it does little service to the entire region when governmental agencies needlessly posture and refuse to work with one another in finding solutions. The County of Fresno has nearly 10 times the population of the County of Madera and, according to comments received, appears unwilling to work towards regional solutions that will provide ready access to northbound SR-99 for an estimated Fresno County population of more than 250,000 citizens who require such access. The applicant continues to offer assistance, both in the form of dialogue and in assisting in the finance of any necessary study which would further evaluate requisite infrastructure.