

December 11, 2017

El Dorado County Board of Supervisors
2850 Fairlane Court
Placerville, CA 95667

Subject: Response to CNPS Letter Submitted December 8, 2017 on the Ponte Palmero Project EIR

To the Board of Supervisors:

This letter is in response to the El Dorado Chapter of the California Native Plant Society (CNPS) letter sent to the County on December 8, 2017 regarding the Ponte Palmero Project Environmental Impact Report (EIR). The concerns raised by CNPS re-iterate many of the comments previously submitted by CNPS in response to the Draft EIR, which were addressed in the Final EIR (September 2017). CNPS contends that the mitigation measures provided in the EIR do not fully mitigate impacts to those state-listed protected plant species present on the project site, including Stebbins' morning-glory (*Calystegiastebbinsii*), Pine Hill ceanothus (*Ceanothusroderickii*), Red Hills soaproot (*Chlorogalum grandiflorum*), Layne's butterweed (*Packera (Senecio) layneae*), and El Dorado County mule ears (*Wyethiareticulate*).

The EIR includes a two-pronged approach to mitigate impacts to protected plant species, based on the settlement terms of prior litigation between the County, CNPS and the Ponte Palmero project applicant (Parties) regarding the adjacent existing Cameron Park Congregate Care project. As stated in the Draft EIR, the Parties entered into a Settlement Agreement (SA) in 2010 resulting from the legal challenge filed by CNPS on the Mitigated Negative Declaration prepared and adopted by the County for the Cameron Park Congregate Care project (DEIR p. 3-2). The SA included a series of commitments related to the project applicant's potential development of the Ponte Palmero site in the future.

The SA included a term requiring the project applicant to execute an irrevocable offer of dedication for 23 acres gabbro plant habitat to the Bureau of Land Management's (BLM) Pine Hill Preserve. This dedication was completed in early 2016.

Through the SA, the Parties also identified measures for mitigating impacts to gabbro soil plant species and their habitat if the project applicant proposed a future "Phase 2" development of the Ponte Palmero site. The SA specified that if the County approved the project and no litigation was filed by CNPS or any of its members, an additional 10.64 acres of land would be voluntarily donated to the BLM or a signatory to the Pine Hill Preserve Cooperative Agreement, for inclusion in the Pine Hill Preserve. With the approval of the proposed project by the County without legal challenge, the project applicant also committed to donate \$50,000 dollars to CNPS to be used for conservation studies and/or other conservation activities at the discretion of CNPS. Compliance with the terms of the SA are also specified in Mitigation Measure 4.3-1(c) (FEIR p.2-4).

Consistent with the SA, in the event the EIR is certified and legally challenged, compliance with Mitigation Measures 4.3-1(a) and (b) would be required. These mitigation measures would

require preparation of a Special-Status Plant Conservation, Salvage, Seed Collection and Propagation Plan would be developed and implemented. This Plan would be developed in consultation with CDFW and include specific protocols for plant conservation, seed and vegetative plant material propagation and transplantation. The Plan would also document the project applicant's requisite payment to the County's Ecological Reserve Fee (DEIR pp. 4.3-30, 31).

The CNPS letter states that the mitigation measures proposed in the Final EIR are insufficient to "fully mitigate" the project's impact to special-status plant species pursuant to California Fish and Game Code section 2081(a)(b)(2), which governs authorized incidental "take" of endangered, threatened, or candidate species pursuant to the California Endangered Species Act (CESA). The project applicant has voluntarily agreed to apply for an ITP for the project's incidental take of special-status plants. As part of the ITP process, CDFW will determine whether the mitigation measures proposed for the project are sufficient to meet the standards under CESA and its implementing regulations. As noted in the Final EIR, in the opinion of the preparers of the EIR, the mitigation measures proposed for the project would fully mitigate the direct impacts of the proposed project on special-status plants (FEIR p. 3-28). The ultimate conclusion on whether the project's mitigation measures are sufficient to "fully mitigate" the impact for the purposes of the ITP rests with CDFW, however, and not the County.

CEQA does not require impacts to be "fully mitigated" as that term is used in CESA in order to avoid jeopardy to the species. Rather, CEQA requires public agencies to impose all feasible mitigation measures to avoid or substantially lessen otherwise significant impacts of a project, ideally, to less than significant. "A less than significant impact does not necessarily mean no impact at all." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 899.) As concluded in the EIR, and based on substantial evidence in the record as a whole, the project's mitigation measures would reduce the project's direct impact on special-status species to less than significant. The project's contribution to the cumulative loss of gabbro soils habitat in the region would, however, remain significant and unavoidable under CEQA. No changes to the EIR or additional mitigation measures are necessary.

Mitigation Scenario 2

The CNPS letter states that Mitigation Measures 4.3-1(a) and (b) (mitigation scenario 2) are not consistent with CEQA nor would it protect state and federally listed species or their habitats consistent with existing laws and the County's General Plan objective 7.4.1.

In particular, CNPS contends that the mitigation area is too small and protection of this area is not assured. Mitigation Measure 4.3-1 (a) requires preparation of a Special-Status Plant Conservation, Salvage, Seed Collection and Propagation plan as part of the ITP process; cuttings of the Pine Hill ceanothus plants shall be taken and propagated in a commercial nursery and planted in the previously established 5.96 acre preserve (established for the existing care facility), or within the 1.17 acre parcel (parcel 4 – see attached figure). Parcel 4 is designated as Open Space as part of the project and would be protected in perpetuity from development (also given its location, topography and size it is not feasible to be developed). As stated in the EIR,

Mitigation Measures 4.3-1(a) and (b) would offset project impacts on these plant species by requiring an equal number of plants be propagated and transplanted to ensure no net loss of plants, which, in addition to payment of the County's Ecological Preserve Fee (Mitigation Measure 4.3-2(b)), would reduce the impact to a less-than-significant level.

CNPS assert that scenario 2 is "the same type of mitigation package" that the Court of Appeal found inadequate in *CNPS v. County of El Dorado* (2009) 170 Cal.App.4th 1026. *CNPS v. County of El Dorado* involved CNPS's challenge to a MND issued for the (existing) Cameron Park Congregate Care Project. However, the question before the court was not whether substantial evidence supported the County's conclusion that the impact would be mitigated to less than significant, but whether substantial evidence supported a fair argument that the project may have a significant impact on rare plants. The court in *CNPS v. County of El Dorado* concluded that an EIR was required for the Cameron Park Congregate Care project. Here, an EIR has been prepared. As demonstrated in the Final EIR, and in the record as a whole, substantial evidence supports the conclusion that mitigation scenario 2 would reduce the project's project-specific impact to less than significant.

In *CNPS v. County of El Dorado*, the court explained that the County's General Plan EIR concluded that implementation of the General Plan would have a significant cumulative impact on rare plant habitat. Although the court applied a less deferential standard of review in that case than a court would apply to the County's EIR for Ponte Palmero, the EIR conservatively concludes that the project's cumulative impact associated with the loss of gabbro soils habitat in the region would be significant and unavoidable.

Further, since *CNPS v. County of El Dorado* was decided the project applicant has implemented rare-plant mitigation. Based on past propagation results of the Pine Hill ceanothus required as mitigation for the adjacent existing Cameron Park Congregate Care facility (see FEIR Appendix A for a copy of the monitoring report), it is anticipated propagation and transplantation would be a feasible option for this project. Part of the salvage plan also includes topsoil salvage where appropriate.

General Plan Objective 7.4.1, cited by CNPS, states: "The County shall protect State and Federally recognized rare, threatened, or endangered species and their habitats consistent with Federal and State laws." As described in Section 4.3, Biological Resources, of the Draft EIR impacts associated with the loss of special-status plant species would be mitigated to less-than-significant levels regardless of which mitigation scenario is implemented. Accordingly, the project would be consistent with the County's General Plan policies and objectives, as well as County ordinances designed to protect state and federally rare, threatened or endangered species and their habitats under either mitigation scenario.

CNPS's assertion that Mitigation Measure 4.3-1(c) must be adopted even if litigation is filed is mistaken. As discussed in the Final EIR, additional mitigation is not required because the impact would be less than significant. Further, requiring additional mitigation in the form of land acquisition under the "litigation scenario," may lack rough proportionality to the incremental impacts of the project considering the mitigation already required in the EIR and is therefore infeasible. (See CEQA Guidelines, §15041.) (Final EIR pp. 3-26, 27)

Mitigation Scenario 1

CNPS's correspondence also questions the feasibility and functionality of Mitigation Measure 4.3-1(c) (mitigation scenario 1), which is based on the terms of the SA endorsed by CNPS. As noted above, if the EIR is not challenged the project applicant will donate 10.64 acres of land (Parcels 4 and 5) that contain special-status plant species and their habitat to the BLM for inclusion in the Pine Hill Preserve; will pay CNPS \$50,000 to be used for conservation activities under the discretion of CNPS; and will pay the County's Ecological Preserve fee (FEIR p.2-4). Under this scenario, impacts would be less than significant because the project would mitigate for the loss of the plants and their habitat by preserving an equal (greater) amount of land than would be developed by the proposed project, and the 10.64 acres is of the same quality (i.e., gabbro soils). The 10.64 acres includes 9.47 acres (Parcel 5) of intact habitat and 1.17 acre (Parcel 4) that the project applicant has agreed to restore with cuttings of the Pine Hill ceanothus plants propagated in a commercial nursery as requested by CDFW.

CNPS contends that the EIR does not provide analysis that supports the conclusion that this mitigation would reduce impacts to less than significant. This statement is incorrect. The analysis presented in EIR Section 4.3, Biological Resources, under Impact 4.3-1 summarizes the existing special-status plant species present on the site, quantifies the potential loss of special-status plant species and their habitat due to project development, and provides an overview of the lawsuit that was filed on the adjacent Cameron Park Congregate Care facility including the terms of the SA to which the commenter is a signatory (FEIR p. 3-46).

The EIR includes sufficient evidence documenting the current existing conditions including the estimated number of Pine Hill ceanothus, Red Hills soaproot, Stebbins' morning-glory, El Dorado County mule-ears, Layne butterweed, Bisbee Peak rush-rose, and Chaparral sedge plants that would be affected by project development and identifies the required permits the project applicant would be required to obtain and sets forth mitigation that would fully mitigate for the loss of the plants and their habitat (FEIR p. 2-4).

The Final EIR also addresses concerns associated with propagation and its success rates. The success of the past gabbro soils plant propagation program, as documented by Sycamore Environmental Consultants, provides detailed evidence of the efficacy of this method of impact mitigation (FEIR pp. 3-21, 22 and Appendix A).

CNPS correspondence also states that the project would destroy 10,000 plants, but does not provide any evidence that supports this statement. Table 4.3-5 of the Draft EIR (DEIR, pp. 4.3-25, 26), describes the estimated number of Pine Hill ceanothus and Red Hills soaproot plants that would be affected by project development is over 4,100 plants. However, as noted in the table, discrete polygons were not mapped and it is estimated that thousands of Red Hills soaproot plants occur in the project area. The number of Stebbins' morning-glory, El Dorado County mule-ears, Layne butterweed, Bisbee Peak rush-rose, and Chaparral sedge plants present total less than 250 plants. CNPS does not provide any evidence to support the statement that the project would result in the loss of 10,000 plants. CNPS did not provide any scientific evidence to support for their contention that the EIR's plant population estimates are inaccurate.

Dedication of Parcel 4 Does Not Meet the Settlement Agreement or Provide Mitigation

CNPS states that the SA presumes that the area designated for rare plant habitat is relatively undisturbed. As explained above, the project includes 9.47 acres of intact, undisturbed habitat that would be designated Open Space and the project applicant has indicated will donate to the Bureau of Land Management (BLM). The project applicant is also offering to restore the 1.17 acre Parcel 4, but under Mitigation Measure 4.3-1 (c) and the terms of the SA is not required. The project applicant will be responsible for the restoration of Pine Hill ceanothus on this parcel. This planting program, as documented in both Mitigation Measure 4.3-1(a) and 4.3-1(c), would help minimize and displace invasive weeds and grasses that could otherwise attempt to colonize the disturbed areas.

CNPS also states in their letter that the plants and vegetation on the 1.17 acre (Parcel 4) was illegally removed as part of construction activities for the existing congregate care facility. This statement is incorrect. The disturbance of Parcel 4 was, in part, for purposes of constructing an approved culvert and used as a staging area. No findings of “illegal removal,” as characterized by CNPS, have been made or pursued by the County or any state agency. Lastly, the 1.17-acre Parcel 4 is contiguous with the approximately 2.02 acre Cameron Park Village Apartments Rare Plant Preserve land, owned by the Cameron Park Village Ltd., which was required to be set aside as open space for preservation of protected plants. This land is privately owned and was not dedicated to the Pine Hill Preserve. This parcel, therefore, would not be ecologically isolated from open space to the west and north of the project site, including the greater Pine Hill Preserve. This area also provides optimal opportunity for restoration because of its disturbed condition, the current presence of non-native plant species and the presence of gabbro soils.

Parcels 4 and 5 would be designated and dedicated as Open Space as part of the Development Plan and, in addition to remaining in Open Space, would not result in the creation of any future buildable parcels.

Integrating Planning and Permitting Processes for the Pine Hill Plants

The final comment from CNPS requests the County to develop an approach to planning and permitting projects that affect the Pine Hill plants that integrates the permitting requirements of the U.S. Fish and Wildlife Service (USFWS) and CDFW. The County is actively collaborating with CDFW and the USFWS on a conservation strategy to protect state and federally recognized rare, threatened or endangered species and their habitats consistent with existing laws and Objective 7.4.1, in the County’s General Plan.

Sincerely,

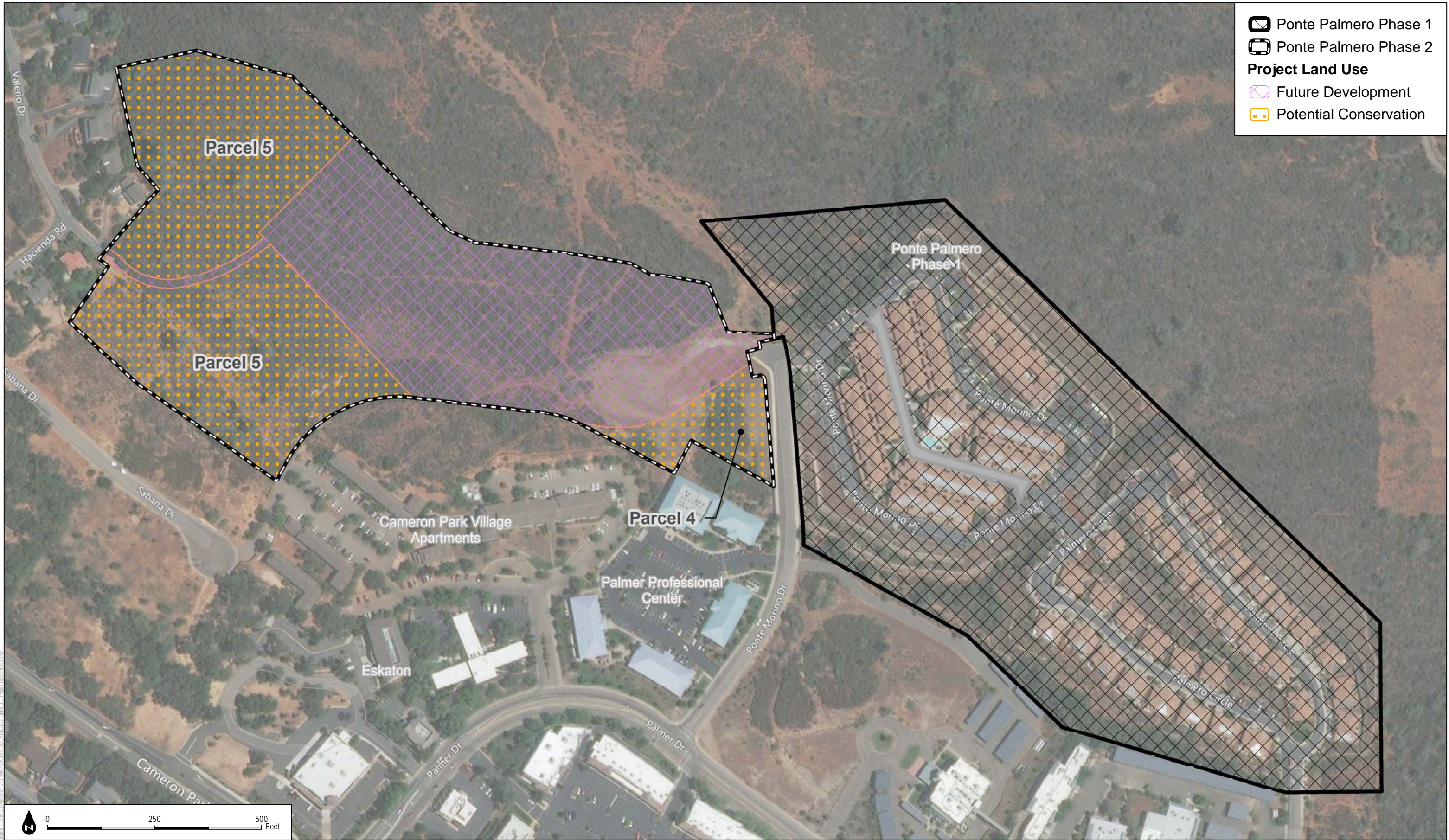






Christine Kronenberg, AICP
Senior Project Manager

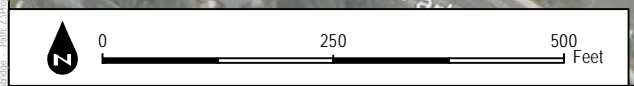
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Attachments:


1. Aerial Photo of the Ponte Palmero Project Site
2. Site Plan for Ponte Palmero Project

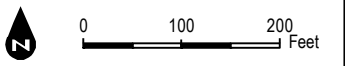


-  Ponte Palmero Phase 1
-  Ponte Palmero Phase 2
- Project Land Use**
-  Future Development
-  Potential Conservation





 Proposed Conservation Areas



SOURCE: Borges Architectural Group, 2015

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Ponte Palmero

FIGURE 3-6
Site Plan

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